



Control Number: 25960



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SOAH DOCKET NO. 473-02-3537

PUC DOCKET NO. 25960

APPLICATION OF BRAZOS ELECTRIC
POWER COOPERATIVE, INC. TO
CHANGE RATES FOR WHOLESALE
TRANSMISSION SERVICE

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ADMINISTRATIVE HEARINGS

ORDER NO. 2

**MEMORIALIZING PARTIES' AGREEMENTS
ON PROCEDURAL SCHEDULES AND HEARING DATES
FOR INTERIM HEARING AND HEARING ON THE MERITS**

On May 28, 2002, Brazos Electric Power Cooperative, Inc. (Brazos Electric) filed a Statement of Intent to Change Rates for Wholesale Transmission Service (TCOS application) with the Public Utility Commission of Texas (Commission) pursuant to TEX. UTIL. CODE ANN. §§ 35.001 et seq. and 36.001(Vernon 1998 & Supp.2002) (PURA) and P.U.C. SUBST. R. 25.191. The Commission referred this case to State Office of Administrative Hearings (SOAH) on July 9, 2002, requesting assignment of an Administrative Law Judge (ALJ) to conduct a hearing and issue a proposal for decision, if necessary. SOAH has jurisdiction over all matters related to conducting the contested hearing pursuant to TEX. GOV'T. CODE ANN. § 2003.049 (Vernon 2000). Brazos Electric contends that a regulatory deadline of November 29, 2002 (150 days from filing) applies to this case.

On July 31, 2002, the ALJ convened a prehearing conference to address Brazos Electric's request for an expedited hearing on its request for interim rate relief. The ALJ recessed the prehearing conference that day to accommodate Commission Staff's schedule and give the parties an opportunity to reach agreements on procedural schedules for both an interim hearing and the hearing on this TCOS application's merits. She reconvened the prehearing conference on Friday, August 2, 2002.¹ The following parties appeared by their representatives at both prehearing sessions:

¹ The ALJ acted as the court recorder for the prehearing conference. She will maintain the tape recordings as the official prehearing conference record until she closes the SOAH file and sends the exhibits and tape recordings to the Commission in the accordance with Commission requirements.

Brazos Electric represented by Phillip A. Holder, Phillip R. Segrest, and David Carpenter;

City of Garland represented by Lambeth Townsend and Melissa Ramirez;

TXU Energy Retail Company represented by Carolyn Shellman;

San Antonio City Public Service Board represented by Paul M. Gonzalez;

CenterPoint Energy Houston Electric represented by George Schalles, III;

AEP Ercot Company represented by Rhonda Ryan; and

Public Utility Commission Staff represented by Brian Judis

After significant discussion and negotiation, all parties agreed on the deadlines and hearing dates set forth below for the interim rate relief hearing and the hearing on the merits.

I. Procedural Schedule

INTERIM RATE RELIEF HEARING		
Event	Date	Remarks
Filing of all testimony and exhibits for interim hearing	August 12, 2002 by 5:00 p.m.	Applicant rebuttal is not prefiled but addressed live
Hearing on interim implementation commences	August 15, 2002 10:00 a.m.	Parties agree that Applicant witness Bandovsky can sponsor Applicant's evidence in support of interim implementation, and other prefilng witnesses for Applicant need not appear
One round of brief/closing arguments on motion for interim implementation	August 20, 2002 noon	Parties to indicate proposed order via electronic submission or diskette

HEARING ON THE MERITS		
<u>Event</u>	<u>Date</u>	<u>Remarks</u>
Last day to file/propound RFIs	September 12, 2002	Responses to RFIs to be furnished within 5 working days after receipt of the RFI; deadline for responses to large, complex or multiple simultaneous RFIs subject to good faith negotiation and accommodation by parties
Intervenors file list of witnesses, written direct testimony, and exhibits on merits of application	September 13, 2002	
Staff files list of witnesses, direct testimony, and exhibits	September 20, 2002	
Applicant files rebuttal testimony and exhibits	September 25, 2002	Parties agreed to explore options for settlement based on party positions, although a specific formal conference was not included as part of this schedule.
Last day to take depositions, if any	September 27, 2002	Applicant offered informal discovery via technical conference, and other parties took under consideration.
Hearing on the merits	September 30, 2002	Parties' briefs/closing arguments in initial and reply rounds, filed within 2 weeks after close of hearing
Proposal for decision issued	estimated: late October	ALJ notifies PUC that case is requested to be taken up at last open meeting in November, parties have agreed to abbreviated exception and replies period
Final order	estimated: late November	

When she issues her proposal for decision, the ALJ will notify the Commission that the parties would like the case considered at the last open meeting in November 2002, and that the parties have agreed to abbreviated exception and replies period to facilitate the request. *The parties are instructed to reiterate this request on the record before adjournment on September 30, 2002, and in their written briefs.*

In addition to abiding by the filing requirements below, the parties shall send their briefs and proposed orders by e-mail attachment to the ALJ's assistant, Norma.Lopez@soah.state.tx.us, in a format compatible with WordPerfect 8.0 the same day they are filed. Hard copies must also be sent to the ALJ. Faxing briefs up to 25 pages to 512.936.0770 is permitted, but the ALJ prefers to receive original printed copy for easier reading.

II. Notice of Interim Hearing and Hearing on the Merits

Pursuant to the parties' agreements and the ALJ's rulings at the July 31/August 2, 2002 prehearing conference, the ALJ will convene an interim hearing on Brazos Electric's interim rate request **August 15, 2002, at 10:00 a.m. at the State Office of Administrative Hearings located in the William P. Clements, Jr. State Office Building at 300 W. 15th Street, 4th Floor, in Austin, Texas.** The ALJ will convene the interim hearing pursuant to the applicable provisions of PURA, the Texas Government Code, P.U.C SUBST. R. 25.191-25.203, the Commission's procedural rules, and SOAH's procedural rules at 1 TEX. ADMIN. CODE §§ 155.1 *et seq.* and take evidence on the following issue: **Has Brazos Electric satisfied its burden of proof for being granted interim rate relief pursuant to P.U.C. PROC. R. 22.125?**

In accordance with Subchapter K of the Commission procedural rules, the ALJ gives notice that a hearing on the merits will be conducted in this proceeding on **September 30, 2002, at 10:00 a.m. at the State Office of Administrative Hearings located in the William P. Clements,**

Jr. State Office Building at 300 W. 15th Street, 4th Floor, in Austin, Texas, and will continue from day to day until adjourned.

III. Motions to Intervene

The motions to intervene of San Antonio City Public Service Board and CenterPoint Energy Houston Electric were granted without objection. All other intervention motions were ruled on by the Commission ALJ Mark Gentle.

IV. Discovery

Discovery may begin immediately. Subchapter H of the Commission procedural rules regarding discovery shall govern discovery in this case, except that responses to RFIs shall be provided within **three working days** of receipt of the RFIs. Objections to discovery shall be made within **two working days** of receipt of the discovery requests; motions to compel shall be filed within **two working days** of receipt of the objection; and responses to motions to compel shall be filed within **two working days** of receipt of the motion.

V. Motions

Responses to motions shall be due within **two working days** of receipt of the motion. Motions for continuance are governed by the requirements of P.U.C. PROC. R. 22.79. The ALJ will not contact parties to ascertain their positions regarding continuance or to negotiate dates. In the absence of a ruling by the ALJ, a motion for continuance, cancellation, or extension is not granted and the existing schedule remains in place.

VI. Filing and Service Procedures

All pleadings shall be filed with the Commission's filing clerk, not with the SOAH filing clerk. The Commission filing clerk should forward a copy of the pleadings to SOAH. Parties wishing to hand-deliver a file-stamped copy of a pleading to the ALJ, should deliver it to Room 504, 5th Floor, Clements Building, 300 W. 15th St., Austin, Texas. Parties may also FAX copies of pleadings, especially those that are time-sensitive, to the ALJ at (512) 936-0770.

The procedures regarding filing specified in Subchapter E of the Commission's procedural rules apply in this proceeding. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings shall be deemed filed when the proper number of legible copies are presented to the Commission filing clerk for filing. P.U.C. PROC. R. 22.71(c).

All mail sent to the parties by the ALJ will be sent by first class mail *or* by FAX, unless the party requests express mailing and provides an express mail account number. Parties seeking to arrange express mailing should contact Ms. Norma Lopez at (512) 936-0712.

Each party shall provide its current telephone and facsimile number, to all other parties and the Commission by filing and serving all parties with such numbers. Each party is responsible for providing the Commission, SOAH, and all parties with current address, telephone, and facsimile information if such information changes. The telephone and facsimile numbers will be placed on the service list for the convenience of the parties. Parties are responsible for updating their own service lists to reflect changed information and the addition of other parties, if any. Only one address per party will be included on the official service list maintained by SOAH. The parties may agree to serve more than one representative per party. Corrections to the service list should be directed to Ms. Lopez. Parties are encouraged to use facsimile and e-mail for service between each other.

With regard to service, the following assumptions apply:

1. Hand Delivery: If a document has been served in person or by agent, the ALJ will assume that the document was received on the date of filing.
2. Courier-Receipted Delivery: If a document has been served by courier-receipted delivery, the ALJ will assume that the document was received on the date after filing.
3. Regular Mail, Certified Mail, or Registered Mail: If a document has been served by regular mail, certified mail, or registered mail, the ALJ will assume that the document was received no later than three days after filing.
4. Facsimile Transmission: If a document has been served by facsimile transmission before 4:00 p.m., on a work day, the ALJ will assume that the document was received on that day; otherwise, the ALJ will assume that the document was received the next work day after filing.

VII. Testimony, Evidence and Exhibits

Evidence and exhibits are governed by Subchapter L of the Commission's procedural rules, **except that in this proceeding the remaining testimony, including Intervenor, Staff, and First Choice rebuttal shall be presented live.**

A. Exhibits

Counsel should work with their witnesses to eliminate argumentative, cumulative, or otherwise objectionable passages in testimony they intend to prefile. The exhibits should not

encumber the hearing record or pose difficulties in duplication. Voluminous or complicated data will not be admitted in bulk. Counsel shall be prepared to state that he or she has read the proffered exhibit in full and to show the admissibility of all portions offered. Exhibits should be summarized or excerpted when possible. The underlying data from which exhibits are taken shall be made available to the parties for inspection.

Parties shall have exhibits they intend to offer marked in advance, by the court reporter, and have the correct number of copies for distribution. The pages of any multi-page exhibit shall be numbered consecutively.

At the time a party offers prefiled testimony and exhibits into evidence during its direct case, it shall provide a copy to the court reporter and two copies to the presiding judge; with respect to all other exhibits proffered, the party shall provide a copy to the court reporter and three copies to the presiding judge. The extra copies provided to the judge will be used for purposes of preparing the administrative record in the event the Commission's final order in this case is appealed for judicial review. Therefore, these copies must be conformed to reflect any changes or corrections which are made to the official exhibit. A party failing to comply with this requirement may lose the opportunity to offer the particular exhibit in question.

Demonstrative exhibits which are used at the hearing and which are otherwise admissible into evidence will not be placed in the record if their admission would unduly burden the record. Parties instead may submit photographs, which fairly and accurately represent such exhibits, for admission into evidence. Copies of such photographs shall be provided by the sponsoring party to all other parties participating in the hearing.

B. Information for Court Reporter

At the start of the hearing, each party shall provide the court reporter with the following

information:

- (1) A list of the party's witnesses with the correct spelling of the witnesses names and a contact phone number for each witness.
- (2) The name and address of the representative for that party.
- (3) A glossary of technical terms and acronyms referenced in the party's testimony, if such has been prepared or is available.

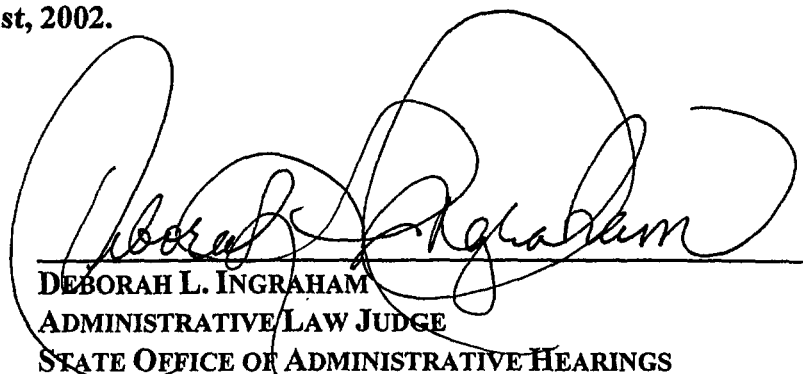
C. Matters Read Into the Record

Any time that an attorney or a witness reads a document into the record, which document is not offered into evidence, the party questioning the witness or eliciting the answer shall supply to the court reporter a copy of the page or pages which have been read into the record.

D. Official Notice

If a party requests official notice of judicially cognizable facts pursuant to P.U.C. PROC. R. 22.222, the party shall provide a record copy to the court reporter, three copies to the ALJ, and a copy to all other parties no later than the time the request for official notice is made. The ALJ encourages the parties to reach an agreement relating to official notice of documents before the request is made.

ISSUED this 12th of August, 2002.



DEBORAH L. INGRAHAM
ADMINISTRATIVE/LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS