P.U.C. DOCKET NO. 28813

PETITION TO INQUIRE INTO THE REASONABLENESS OF THE RATES AND SERVICES OF CAP ROCK ENERGY CORPORATION	§ § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

TEXAS COTTON GINNERS' ASSOCIATION'S MOTION FOR REHEARING

COMES NOW Texas Cotton Ginners' Association (TCGA), and files this, its Motion for Rehearing the above-styled cause. TCGA asks the Commission to reconsider its decisions on the following points:

I. Point of Error 1: Capital Structure

The Commission chose to allow Cap Rock to over-recover by imposing a hypothetical 75/25 capital structure. TCGA supports the arguments of Staff in its Motion for Rehearing advocating a actual capital structure. For the reasons set out by Staff and those below, the decision of the Commission is error.

1. There is no evidence regarding the desirability of such a structure. In fact, no evidence in the record is even probative regarding the propriety of the 75/25 structure.

2. Increasing Cap Rock's Equity ratio above actual at the end of the test-year will not force the Company to reduce debt, but will provide a bonus to shareholders and management of approximately $700,000 per year, and this adjustment will effectively provide Cap Rock a 17.8% ROE (11.75%*(25/16.5)).

3. It is not reasonable to expect Cap Rock to abide by a Commission request to report their progress in reducing debt, since Cap Rock has failed to submit several PUCT required filings, including the following:

   a. Annual Earnings Report § 25.73(b)

   b. Annual Report on Payments, Compensation, and Other Expenditures § 25.77

c. Annual Report on Historically Underutilized Businesses § 25.80

d. Report of Affiliate Transactions for Electric Utilities § 25.84

e. Report of Workforce Diversity and Other Business Practices § 25.85

4. In several sections of the Proposal for Decision, the ALJs thoroughly discussed the evidence that proved Cap Rock's poor management and quality of service. However, this action provides a windfall to Cap Rock when a downward adjustment penalty to return on equity is warranted.

For example, PURA § 36.052 provides that, in Establishing a Reasonable Return on invested capital the regulatory authority shall consider applicable factors including:

a. the efforts and achievements of utility and conserving resources;

b. the quality of the utility's services;

c. the efficiency of the utility's operations; and

d. the quality of the utility's management.[1]

None of these factors mitigate for a rate of return increase for Cap Rock Energy. In fact, Cap Rock either put on no evidence or there was evidence of a failure to meet the statutory goals set out by the Legislature for each of the four factors. First, there was no evidence that Cap Rock has made any efforts or lodged any achievements in conserving resources. Second, the quality of the utility service is suspect. As was explained more fully in TCGA Exhibit 1, Testimony of Evan Evans, Page 7, line 13 – Page 9, line 15, several Cap Rock feeders are extremely poor performers when evaluated using the System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI). Further, Cap Rock seemed to take such performance issues less than seriously. Mr. Lee Atkins testified that he was the Quality of Service witness for the Company "in general terms" but was unable to identify a more specific quality of service witness. Additionally,

1 Utilities Code § 36.052.

while in his rebuttal testimony Mr. Atkins attempted to rebut Mr. Evans' testimony by commenting on the remoteness of the feeders in question to service crews, he was unaware on cross-examination how such remoteness would impact SAIFI.[2]

Of course, while remoteness to service crews may impact the *duration* of an outage, such remoteness will not impact *frequency* of outages. Mr. Atkins offered no testimony to rebut Mr. Evans' assertions regarding SAIFI, and his SAIDI testimony was anecdotal at best.

Third, as recognized on several occasions by the ALJs and the Commission, the management of the Company is anything but efficient. These factors, taken together, call for a *reduction* in the Company's rate of return.

Therefore, finding of fact 62 should be reinstated and findings of fact 62A and 62B should be deleted, and conclusion of law 18 should be modified accordingly.

II. Point of Error 2: Delinea

The Commission's decision to allow a 50% recovery of costs associated with the Oracle system during the test year is error.

First, there is no evidence the system was "used and useful" during the last year. Although the system was claimed to be 50% operational as of July 30, 2004, Cap Rock admitted it was still not fully operational at the time of the hearing. However, Cap Rock included $3,139,558 of investment as Electric Plant In Service. Due to the fact that this system was not operational at the end of the test-year and was not fully operational at the time of the hearing, over a year later, the entire amount should have been deemed to be CWIP and should be required to meet PURA § 36.054 and PUCT Substantive Rule § 25.231(c)(2)(D) before it can be included in rate base.

Therefore, the entire amount should be viewed as a post-test-year adjustment.

2 *Transcript* Page 1253, line 33 – Page 1254, line 19.

The inclusion of 50% of the cost for the Delinea system as Post Test-Year Adjustment is in violation of PUCT Substantive Rule § 25.231(c)(2)(F), which states:

> (F) Requirements for post test year adjustments.
>
> (i) Post test year adjustments for known and measurable rate base additions (increases) to historical test year data will be considered only as set out in subclauses (I) – (IV) of this clause.
>
> (I) Where the addition represents plant which would appropriately be recorded:
>
> (a) for investor-owned electric utilities in FERC account 101 or 102;
>
> (b) for electric cooperatives, the equivalent of FERC accounts 101 or 102.
>
> (II) Where each addition comprises at least 10% of the electric utility's requested rate base, exclusive of post test year adjustments and CWIP.
>
> (III) Where the plant addition is deemed by this commission to be in-service before the rate year begins.
>
> (IV) Where the attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably follow as a consequence of the post test year adjustment being proposed.

The Delinea system was not fully operational at the time of the hearing, which was over a year after the end of the test-year. Furthermore, even according to Cap Rock's claims, that as of July 30, 2004, 10 months after the end of the test-year, only 50% of the Delinea System had been installed. However, Cap Rock erroneously included $3,139,558, which had been paid during the test-year, as plant in service, and included another $1,244,214 in invested intangible plant for post-test-year adjustments. The total investment of $4,383,772 is approximately 3% of $138,014,000 which is Cap Rock's requested rate base, exclusive of post test year adjustments, including the total costs of the Delinea system and CWIP. Therefore, the system does not meet the 10% minimum criteria under § 25.231(c)(2)(F)(i)(II).

There has been no testimony or evidence that the system is fully operational yet. Therefore, the requirements of § 25.231(c)(2)(F)(i)(III) have not been satisfied.

Further, the investment and expenses related to the current, Daffron system have not been correspondingly excluded.

Further, the inclusion of 50% of the cost for the Delinea system as Construction Work in Progress is in violation of Public Utility Regulatory Act § 36.054 and PUCT Substantive Rule § 25.231(c)(2)(D). PURA § 36.054 states:

> Sec. 36.054. CONSTRUCTION WORK IN PROGRESS.
> (a) Construction work in progress, at cost as recorded on the electric utility's books, may be included in the utility's rate base. The inclusion of construction work in progress is an exceptional form of rate relief that the regulatory authority may grant only if the utility demonstrates that inclusion is necessary to the utility's financial integrity.

PUCT Sub. Rule § 25.231(c)(2)(D) states:

> Construction work in progress (CWIP). The inclusion of construction work in progress is an exceptional form of rate relief. Under ordinary circumstances the rate base shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission will include construction work in progress in rate base to the extent that the electric utility has proven that:
> (i) the inclusion is necessary to the financial integrity of the electric utility; **and**
> (ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress shall not be allowed for any portion of a major project which the electric utility has failed to prove was efficiently and prudently planned and managed. (Emphasis added)

Cap Rock did not meet the requirements in PURA § 36.054(a) and PUCT Sub. Rule § 25.231(c)(2)(D)(i). Specifically, Cap Rock never proved that the inclusion of this CWIP was necessary to its financial integrity. Consequently, these costs cannot be included as CWIP.

Further, even if the Delinea expenditures are not treated as CWIP, or a post test year adjustment, there is no evidence in the record as to the prudence of the investment, as required by PURA and the commission's substantive rules.

Therefore, finding of fact 121 should be modified accordingly, and all amounts relating to Delinea and the Oracle system excluded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all parties known of record via facsimile, U.S. mail, or electronically on this 26th day of August, 2005.

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Zachary S. Brady