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PETITION TO INQUIRE INTO THE §
REASONABLENESS OF THE RATES §
AND SERVICES OF CAP ROCK §
ENERGY CORPORATION §

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**CAP ROCK'S RESPONSE TO GREENVILLE'S
MOTION TO COMPEL ANSWERS TO ITS
SEVENTH SET OF REQUESTS FOR INFORMATION**

Cap Rock Energy Corporation ("Cap Rock" or "the Company") files this its Response to the City of Greenville's ("Greenville") Motion to Compel Answers to Its Seventh Set of Requests for Information ("RFIs"). Cap Rock received Greenville's Motion on April 20, 2004, and this Response is timely filed.

I. INTRODUCTION

Cap Rock objected to and Greenville has moved to compel responses to its complete Seventh Set of RFIs. Cap Rock objected to these RFIs as irrelevant and unreasonably calculated to lead to the discovery of admissible evidence. Greenville asserts that these questions go to issues surrounding Cap Rock management and future tax liabilities. However, because this proceeding is for the purpose of reviewing Cap Rock's present rates, its cost of service based on a historic test year, and its requested rate of return, Greenville's requests seek information that is unrelated to these issues and beyond the scope of this proceeding.

II. DISCUSSION

A. General to all RFIs

The RFIs at issue and Greenville's Motion to Compel on their face indicate that Greenville is seeking information that is beyond the scope of this proceeding. The Preliminary Order in this case has specifically limited issues here to Cap Rock's proposed cost of service and

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prospective rates based on a historic test year.¹ Although the Preliminary Order recognizes that issues concerning affiliates and management practices may be considered in determining a proper rate of return and reviewing Cap Rock's cost of service, none of the requests in Greenville's seventh RFIs pertain to issues that are even remotely relevant to these issues. Instead, Greenville creates hypothetical situations then asserts that these hypotheticals could result somehow from management practices. In addition, Greenville refers to laws and regulations that are beyond the area of the Commission's expertise. None of the claims asserted by Greenville, however, assert that the information requested is actually relevant to the issues here.

Greenville's Motion to Compel is latent with misrepresentations. First, the Commission has *not* ordered the issues referred to by Greenville to be addressed in its Preliminary Order. On the contrary, the Preliminary Order states that one issue is: "Is the rate of return proposed by Cap Rock reasonable, in view of such factors as Cap Rock's capital structure, *current* management practices, and quality of service?"² There is nothing in the Preliminary Order that allows the parties to review past management decisions or actions, certainly not actions related to the conversion. Clearly, Greenville is concerned with issues surrounding the conversion and the requests are targeted at collecting information in that regard. These are not "current management practices." Further, they are not related to the proposed rate of return.

Second, Greenville raises a number of issues regarding tax implications, SEC compliance, and other statutory compliance that are irrelevant to a rate review. These are not only beyond the scope of review here, but they are untrue and pure speculation for which no

¹ Preliminary Order at 3 (Mar. 30, 2004).

² *Id.*

foundation exists. For instance, in an attempt to demonstrate relevance to an issue in the Preliminary Order, Greenville creates a hypothetical situation, (“If Greenville’s investigation shows this to be true...”), creates a hypothetical result, (“...then NewCorp Cooperative would be subject to significant tax liabilities for the period of time in which it failed to meet the federal tax definition of a cooperative”), creates a hypothetical implication to this case, (“these future tax liabilities would then automatically flow through to CRE and its ratepayers”) and finally, draws a relationship between the situation, the result, the implications, and the prudence of Cap Rock’s management (this issue is “germane to determining whether Cap rock’s management was prudent in handling of the distribution patronage”).³ The Commission cannot base a finding of relevance on mere speculation.

Further, many of the hypothetical situations and assumptions are based on Greenville’s misunderstanding of laws and regulations applicable to Cap Rock. For example, there is no guarantee that, even if Greenville’s hypothetical turned out to be right, which it wouldn’t, FERC would let NewCorp pass through any taxes that all of a sudden were said to be owed. Additionally, Greenville makes allegations regarding Cap Rock’s SEC filings or lack thereof. Greenville simply does not understand SEC regulations. No SEC Form 8-K is necessary for many reasons beyond the issues here. In any event, such laws and regulations are irrelevant to the setting of Cap Rock’s rates. Certainly, the imaginary implications raised by Greenville are not known and measurable and thus cannot support proposed adjustments in this matter.

B. Specific RFIs

Specifically, RFI Nos. 7-1 and 7-2 relate to NewCorp. Greenville asserts that they relate to “the quality of Cap Rock’s current management and the reasonableness of affiliate payments.”

³ See Greenville’s Motion to Compel at 5-8.

Greenville appears to seek information to support its belief that an affiliate of Cap Rock, NewCorp, *could* be subject to certain tax liabilities that *could* flow through to Cap Rock and its ratepayers. Again, Greenville relies on language in the Preliminary Order in its attempt to bring these issues within the scope of this proceeding. However, the Preliminary Order cannot be so broadly interpreted so as to bring in every possible management decision or practice that could potentially have an undeterminable affect on Cap Rock and its ratepayers at some unforeseeable time in the future. Cap Rock's rates and its requested rate of return should be reviewed taking into consideration the historic test year information and any known and measurable changes. Greenville's requests Nos. 7-1 and 7-2 seek only information unrelated to a review of Cap Rock's present rates, its proposed rate increase, or management practices on either. Therefore, they are irrelevant.

RFI Nos. 7-3 and 7-4 also request information that Greenville alleges is relevant to management practices, and therefore, as Greenville asserts, within the scope of this proceeding. These requests seek information about the Cooperative, information about NewCorp, copies of escheat or unclaimed property filings, audited financial statements from 1996 through the final year, fairness opinions related to the conversion, forecasts relied upon in the conversion, and implications of the conversion. Greenville attempts to tie this information to this proceeding by again insisting that the information is pertinent to addressing "prudent management."

Again, simply because management practices may be considered when setting a proper rate of return in this proceeding does not mean that every past decision or every effect of any decision made by management that may resonate somehow into the future is relevant here. Greenville raises issues concerning Texas escheat laws and SEC regulations. Whether Cap Rock has complied with or how Cap Rock has complied with these laws and regulations are not issues

for consideration here. In addition, it would be difficult for the parties and the commission to determine proper compliance because these issues are beyond the nature of this proceeding and the expertise normally applied.

Furthermore, Greenville fails to establish what this information or the prudence of past management decisions has to do with Cap Rock's cost of service based on a historic test year or on Cap Rock's requested rate of return. How Cap Rock managed unclaimed property or reported any of its business information to the SEC does not affect its cost of service or requested rate of return. To the extent these things may impact Cap Rock or reflect management practices, such information would be limited to that reflected in the test year. However, the questions seek information specifically about Cap Rock's predecessor, Cap Rock Electric Cooperative, Inc., and the conversion process. Issues surrounding the conversion and the implications of the conversion to the extent they are not reflected in the test year are beyond the scope of this proceeding. Therefore, they are irrelevant to this proceeding.

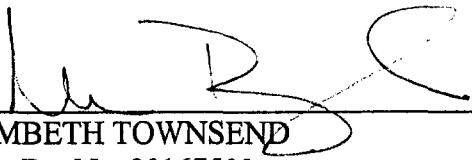
Further, any information that could be provided in response to these requests would only lead to unknown and immeasurable adjustments, which cannot be applied to the rates in this case. Again, Cap Rock's rates are to be reviewed considering information gathered during the historical test year adjusted only for known and measurable changes. To the extent any impact of any action of Cap Rock's management actually affects the Company in the future, the Commission or Cap Rock itself or any other affected party may petition the Commission for further review of Cap Rock's rates. At this time and in this proceeding, however, "future liabilities" and compliance with laws and regulations other than those enforced by the PUC are not issues relevant to this proceeding.

III. CONCLUSION

As is evident from the substance of Greenville's RFIs, Greenville's Motion to Compel, and this Response to Greenville's Motion to Compel, Greenville is attempting to bog down this proceeding with requests and information that are irrelevant to Cap Rock's rates, its current management, its cost of service based on a historic test year, or its requested rate of return. Cap Rock requests that the Administrative Law Judge sustain Cap Rock's relevancy objections and deny Greenville's Motion to Compel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, MELISSA E. RAMIREZ, Attorney, certify that a copy of this document was served on all parties of record in this proceeding on the 27th day of April, 2004, in the following manner: hand delivered, via facsimile, or by First Class Mail.



MELISSA E. RAMIREZ