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PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION TO INQUIRE INTO THE	§	BEFORE THE STATE OFFICE
REASONABLENESS OF THE RATES	§	OF
AND SERVICES OF CAP ROCK	§	
ENERGY CORPORATION	§	ADMINISTRATIVE HEARINGS

**CITY OF GREENVILLE'S
RESPONSE IN OPPOSITION TO CAP
ROCK'S MOTION TO LIMIT DISCOVERY**

TO THE HONORABLE CRAIG BENNETT:

NOW COMES the City of Greenville (City), which files this Response in Opposition to Cap Rock's Motion to Limit Discovery and in support thereof would show as follows:

A. THE NUMBER OF RFIS ARE FAR LESS THAN IN THE RECENT AEP/TCC CASE

Cap Rock refers to the recent AEP/TCC wires case, Docket No. 28840 in its Motion. The size of the increase in base rates (that is all that can be dealt with in a wires case) in Docket No. 28840 is far less than what Cap Rock requested in this proceeding. A comparison of the two cases is instructive.

- The Cities asked 1575 RFIs in the AEP/TCC case and the total of all parties was in excess of 2000 RFIs.
- The increase request in base rates in the AEP/TCC case was 19.2%.
- The requested base rate increase by Cap Rock in this proceeding is 36.56%.
- The percentage increase in base rates by Cap Rock is 90% higher than what was requested by AEP/TCC in Docket No. 28840.

- No protest letters were filed in the AEP/TCC case and in this proceeding more than 500 individual (non-form) letters were filed in opposition to the increase. This is the largest number of protest letters in the history of the PUC.

Cap Rock argues that the number of requests it has received is disproportionate to the case and the size of the company. Even though the AEP case involves a much larger territory, more customers and a larger amount of money, there are characteristics of the Cap Rock case, which require the number of RFIs Greenville and Pioneer have filed.

Cap Rock's predecessor was last before the Commission in 1992 as a cooperative. Since its conversion to an investor owned utility, this is the first time that Cap Rock has been before the Commission for a rate case. Accordingly, this is the first opportunity that the Commission and parties will have had to review the company's cost of service and its affiliate transactions. Hence, there is no base line for Cap Rock upon which parties can analyze the current application. This should be contrasted to AEP, which has been before the Commission for numerous rate cases. In the instance of AEP, the parties are familiar with AEP's structure and business relationships. Therefore, there is not a need for as extensive discovery as there is with Cap Rock.

The uncommonly large number of public comments filed with the Commission in this case shows the importance of this proposed rate increase to the ratepayers and the concern they have with Cap Rock's rates. Contrary to Counsel for Cap Rock's assertion, these comments are not form letters. The great majority are individual letters written by individual ratepayers pleading for the Commission not to raise their rates.

Even though Cap Rock has only 108 meters in the City of Greenville, the rate increase has a full impact on each individual customer. Just because they have only 108 of the 33,000

meters, does not mean that these customers are entitled to less than full representation in this rate case. Further, the discovery in which Greenville and Pioneer are engaged will inure to the benefit of all ratepayers. At the prehearing conference on April 28, 2004, Mr. Patrick Sullivan, representing the staff, acknowledged that the staff is relying on Greenville's and Pioneer's discovery efforts.

B. CAP ROCK HAS KNOWN FOR ALMOST A YEAR IT WOULD BE SUBJECT TO PUC JURISDICTION

SB 1280 bringing Cap Rock under the jurisdiction of the Commission passed the Texas Senate on April 15, 2003 — without a single dissenting vote. SB 1280 passed the Texas House of Representatives on May 16, 2003 — without a single dissenting vote. At about this time, Cap Rock began imposing a regulatory surcharge, which has raised \$2.3 million.

Cap Rock complains that it has had an inadequate time to prepare for this rate case, noting that it was not subject to the Commission's rate setting jurisdiction prior to September 1, 2003, and that in 1976, companies that become subject to the Commission's initial rate setting jurisdiction were given a full year to prepare for ratemaking proceedings and requirements. Insofar as this relates to the company's difficulty in responding to discovery, the solution is simple. Cap Rock can extend its effective date, and the intervenors would likely extend an offer similar to that presented at the prehearing conference of the 28th of April to impose a moratorium on discovery requests to allow the company to catch up on its discovery. Instead, the company refused to extend its effective date, and even though it received five extra days to respond to RFIs with no concomitant accommodation made to the intervenors and staff, has instead asked that discovery be limited.

Furthermore, Cap Rock has “taken the law into its own hands” in regard to pending discovery. It is over a week late in responding to the 11th set of RFIs.

C. CAP ROCK HAS FAILED TO MAKE REQUIRED FILINGS

1. Cap Rock has failed to file the monthly Power Cost Recovery Factor (PCRF) reports.

Pursuant to PUC Subst. R. 25.238 Cap Rock is required to file the monthly PCRF reports with the Commission. Cap Rock has totally failed to file these reports in spite of having several months to get ready to make these filings.

2. Cap Rock has failed to file the Monthly Balances of Short Term Assets and Inventories for October and November.

Cap Rock is required to file Schedule E-1, Monthly Balances of Short Term Assets and Inventories. Cap Rock has failed to file the required information for October and November 2003 for Schedule E-1.

3. Cap Rock has failed to file the Schedule on Postretirement Benefits Other than Pension.

Cap Rock has not filed Schedule G-2 on Postretirement Benefits Other Than Pensions. According to Cap Rock it was going to file this schedule in mid-March but the City has yet to see this filing.

4. Cap Rock has failed to file the Payroll Expense Distribution.

Cap Rock has not filed Schedule P-10 with the Rate Filing Package. Cap Rock claims that the requested distribution has not been completed because it is mapping GAAP accounts to

appropriate FERC accounts. This is mumbo/jumbo. The mapping of “GAAP accounts” is a red herring. What “GAAP accounts” is Cap Rock talking about? This is a required schedule of the Rate Filing Package.

5. Cap Rock has failed to file Schedule S.

Schedule S is an essential part of the Rate Filing Package. Failure to file Schedule S is per se a material deficiency.

6. Cap Rock has yet to file the workpapers of Larry A. Crowley.

Cap Rock indicated it did not file these workpapers because of an illness in Mr. Crowley’s family but it has been almost three months since the RFP was filed and the City has yet to see Mr. Crowley’s workpapers.

7. Cap Rock failed to file current tariffs in order to calculate current revenues.

In Cap Rock’s filing of April 23, 2004 in Docket No. 28466 there are numerous changes from its tariff filings of September 2, 2003. Neither the filings of September 2, 2003 or April 27, 2004 match the Proof of Revenues filings in Schedule Q-7.2.

D. FAILURE TO MAKE REQUIRED FILINGS HAS LED TO ADDITIONAL DISCOVERY

The failure to make required filings has meant that Staff and Intervenors have had to ask additional RFIs. The filing failures are serious and on-going.

E. THE KEY TO EFFECTIVE REGULATION IS INFORMATION

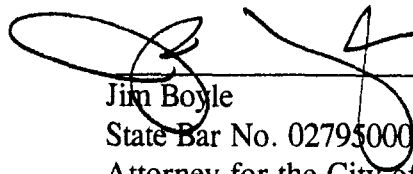
It is the utility that has access to all of the information. In order for the parties to participate effectively in a proceeding, they must have access to this information. It is for this reason that the Commission has enacted rules to allow discovery in rate cases. Under the Commission's discovery procedures, the parties "may obtain discovery regarding any matter, not privileged or exempted ...that is relevant to the subject matter in the proceeding." Section 22.142. Greenville recognizes that the examiner may limit the number of RFIs — the factors relevant to limiting the number of RFIs include, among others, the type of proceeding, the number and complexity of the issues in the proceeding, any material deficiencies in the application, and the novelty of the issues in the proceeding.

This case is a complex major rate case, involving an investor owned utility that has not been subject before to the Commission's rate regulation. It is a utility with a complex business history. It only recently converted from being a cooperative to being investor-owned. Cap Rock also has an affiliate relationship with NewCorp, which recently converted from an investor owned utility to a cooperative. Cap Rock purchases power and transmission service from NewCorp and rents space for its headquarters from NewCorp. Cap Rock provides a portion of the operation and maintenance service, all administrative services, and personnel to NewCorp to operate its West Texas Transmission System, its CapStar Division, and its management of the City of Farmerville's system because New Corp does not have any employees. Further complicating the relationship between Cap Rock and NewCorp is the fact that Cap Rock is under PUC regulation while NewCorp is under FERC jurisdiction.

For the reasons set forth above Cap Rock's motion to limit discovery should be DENIED.

Respectfully submitted,

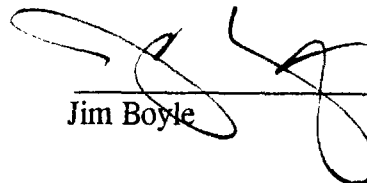
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all known parties of record by fax and/or first class mail on this the 11th day of May 2004.



Jim Boyle