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APPLICATION OF AEP TEXAS CENTRAL COMPANY FOR AUTHORITY TO CHANGE RATES	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SIGNATORIES' RESPONSE TO CITIES' AND THE COALITION OF COMMERCIAL RATEPAYERS' OBJECTIONS TO THE NON-UNANIMOUS STIPULATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

NOW COME AEP Texas Central Company (TCC), Texas Industrial Energy Consumers (TIEC), CPL Retail Energy (CPL Retail), and the Commission Staff (Staff), and file this Response to the objections of Cities and the Coalition of Commercial Ratepayers' (CCR) to the Non-Unanimous Stipulation concerning cost of capital issues. TCC, Staff, TIEC, and CPL Retail fully support the stipulation, including the provision that TCC's final rate of return on equity should be set at 10.125%. TIEC and CPL Retail take no position with respect to the specific response below concerning the merits of the argument about TCC's quality and reliability of service.

I. Procedural Background

On April 30, 2004, TCC, TIEC, CPL Retail, and the Commission Staff filed a Non-Unanimous Stipulation recommending to the ALJs that TCC's return on equity be set at 10.125%; that its capital structure be set at 60% debt and 40% equity; that its rate of return on invested capital be set at 7.475%; and that no penalty be applied to TCC's return on equity for quality or reliability of service. In addition to the signatories, the following parties expressed no opposition to the stipulation: Office of Public Utility Counsel, the State of Texas, Texas Legal Services Center/Texas Ratepayers' Organization to Save Energy, Alliance for Retail Markets, Brazos Electric Power Cooperative, South Texas Electric Cooperative, City of Garland, TXU Business Services, and Occidental Power Marketing, LP.

Pursuant to Order No. 15, the signatories filed a pleading with the ALJs specifying the record support for the Non-Unanimous Stipulation and argument in favor of it. On May 14, 2004, Cities and CCR filed objections to the Non-Unanimous Stipulation. This filing is in response to those objections.

II. Overview

The primary basis for Cities' and CCR's objections to the Non-Unanimous Stipulation is that a penalty of 25 basis points should be applied to TCC's return on equity due to alleged inadequate quality of service and reliability. Cities and CCR do not object to the proposed capital structure and appear to not object to the 10.125% return on equity. They simply allege that a 25 basis point adjustment be applied to the 10.125% to result in a return on equity of 9.875%.

The basis for Cities' and CCR's argument regarding the quality of service penalty is simply a rehash of arguments made in testimony and briefs previously filed. No new arguments are made in the several pages of repetitious objections which discuss quality of service and reliability. TCC has responded to each and every one of these arguments in its rebuttal testimony and its initial and reply briefs. However, given the latest rehash of Cities' and CCR's arguments, TCC will summarize those responses again.

At the outset, Cities and CCR repeat their arguments that TCC's quality of service and reliability has declined because "AEP focused its energy and resources on acquiring foreign utilities, cut TCC's maintenance budget and failed to have the manpower necessary to accomplish its agreements."[1] TCC pointed out in its reply brief that there is not one shred of evidence in the record to support the argument that AEP has focused its energy and resources on acquiring foreign utilities rather than on TCC's quality of service and reliability.[2] In fact, as TCC pointed out, not one witness made such a statement in testimony.

Further, TCC has not cut its maintenance budget as claimed by Cities and CCR. As pointed out in the rebuttal testimony of Mr. Harry Gordon, TCC's total spending on asset maintenance has increased in recent years when one takes into account capital and operations expenditures as well as maintenance expenditures.[3] Last, Cities' and CCR's claims that TCC does not have the manpower necessary to provide good service are simply wrong. In its testimony, Cities criticized TCC for having only 380 mechanics working on *transmission and*

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[1] Cities' and CCR's Objections at 3.
[2] TCC Reply Brief at 114.
[3] TCC Exh. 70, Rebuttal Testimony of Harry Gordon, at 25, lines 10-14.

distribution lines.[4] As TCC pointed out in its testimony, it has 380 linemen working on distribution lines only and an additional group working only on transmission lines.[5]

III. The Non-Unanimous Stipulation is Not Contrary to Applicable Law

Cities' and CCR's next argument is that the failure to include a quality of service penalty is contrary to applicable Texas law. TCC does not in the least dispute the fact that utilities are required to furnish service that is "safe, adequate, efficient and reasonable."[6] Contrary to Cities' and CCR's unsupported suggestion, the testimony of TCC witnesses Gordon and Roper address these legal requirements at length and in detail. TCC further does not dispute the fact that the Integrated Stipulation and Agreement (ISA) adopted by the Commission in Docket No. 19265, the AEP/CSW merger, requires very specific standards for a large number of quality of service and reliability requirements. The ISA also very specifically establishes penalties or rate credits which are to be provided to customers when the standards are not met by TCC.

Cities and CCR seem to take the approach that if there is any failure to comply with any of the ISA standards, such as worst performing feeders or SAIDI/SAIFI performance, the Commission "shall take appropriate enforcement action" which Cities and CCR argue must be a rate of return penalty. This argument completely ignores the fact, discussed in TCC's initial and reply briefs, that the ISA established very stringent, difficult to meet reliability and quality of service standards and provides for compensation to end-use customers when all but one of those standards are not met.[7] As also discussed at length, TCC has a docket pending before the Commission which will deal with the issue of how those rate credits should be applied to customers and whether the ISA standards should be adjusted because of improved reporting systems implemented by TCC. In essence, Cities and CCR are suggesting that the ISA be effectively rewritten so that the Commission should impose a substantial return on equity penalty in addition to the penalties or rate credits agreed upon in the ISA for each specific standard. That is not an appropriate reading of the ISA, and Cities' and CCR's argument in this regard should be rejected. The mere fact that not all standards have been met and that rate credits have been incurred does not justify an additional quality of service penalty.

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[4] Cities Exh. 6, Direct Testimony of A. D. Patton at Exh. ADP-5.
[5] TCC Exh. 70, Rebuttal Testimony of Harry Gordon, at 18, lines 3-5.
[6] PURA § 38.001.
[7] TCC Initial Brief at 128-129; TCC Reply Brief at 113-114.

Cities and CCR also list seven ISA or statutory standards which they claim TCC has not met. Not surprisingly, they fail to mention the multitude of standards which TCC has met, while either exaggerating or failing to consider relevant facts with regard to the standards TCC has not met.

The first standard Cities and CCR complain of is that TCC inaccurately reported its compliance regarding new service installations requiring no construction. Those parties fail to note that TCC is reporting exactly as required under P.U.C. SUBST. R. 25.490(c) and (e). Cities and CCR state in a footnote that this rule is not applicable because it does not include a 24-hour standard as contained in the ISA. Apparently, their argument is that TCC should ignore the reporting requirements of this rule despite the fact that there is absolutely nothing in the rule which exempts TCC from its provisions. The applicable provision of the ISA, Section 7(A)(1) states as follows:

> Service Turn On and Upgrades: On a quarterly basis, the Merged Company shall complete the installation of new service or upgrade of service as follows:
>
> a. Ninety-five percent of new service installations requiring no construction of electric facilities shall:
>
> (i) be completed within 24 hours after the customer's service location is ready for service and all necessary tariff requirements have been met;
>
> (ii) be completed by the requested installation date, when an applicant requests an installation date more than 24 hours after the customer's service location is ready for service and all necessary tariff requirements have been met.

There is nothing in this paragraph which suggests that it establishes a different type of reporting standard than is contained in P.U.C. SUBST. R. 25.490(c) and (e).

Cities and CCR next complain that TCC failed to achieve the 90% standard for new business service installations requiring construction within ten business days since the second half of 2002.[8] As pointed out in Mr. Gordon's rebuttal testimony and in TCC's reply brief, the record evidence does not contain data for the last quarter of 2003 or the first quarter of 2004.[9] Further, TCC's performance in this area was very close to the 90% standard in each of those five

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[8] Cities' and CCR's Objections at 5.

[9] TCC Reply Brief at 108.

quarters.[10] This type of performance does not in any way justify a finding that TCC's service is inadequate and deserving of a quality of service penalty.

Cities and CCR complain again of the fact that TCC has not met the provision in Section 7(A)(2) of the ISA regarding replacement of 95% of all security and street lighting outages within 72 hours. It is significant to note that this provision of the ISA very specifically does not contain rate credit requirements. As discussed in the rebuttal testimony of Mr. Gordon, this standard is extremely difficult to meet, which accounts for the fact that there are no penalties associated with failure to meet it.[11] Further, there is a provision in TCC's tariff filed in this case which provides that municipal customers receive a credit for all street lights which are not replaced within five working days.[12] Thus, Cities' and CCR's suggestion that they have no remedy when security and street light outages are not replaced within the ISA standard of 72 hours is an exaggeration. Yet again, they are attempting to rewrite the merger agreement by imposing a very substantial quality of service penalty on TCC for not meeting this extremely difficult standard despite the fact that Cities expressly agreed that there would be no penalties or rate credits for the 72-hour standard in the ISA, as opposed to the 5-working-day standard in the tariff.

Cities and CCR next contend that TCC did not meet SAIFI systemwide standards for 2002 and 2003. What they failed to note is that TCC's performance was extremely close to the existing target level and was significantly better than the proposed target level currently pending before the Commission in Docket No. 25157, as discussed in TCC's briefs.[13] They also fail to note that P.U.C. SUBST. R. 25.52(f) specifically provides for adjustments to a utility's SAIDI and SAIFI targets to account for improved reporting systems. With respect to SAIDI, TCC in 2003 performed significantly better than the proposed target. In addition, as discussed in Mr. Gordon's rebuttal testimony and in TCC's initial brief, two abnormal events in 2001 and 2002 significantly impacted TCC's SAIDI and SAIFI performance.[14]

Cities and CCR also complain of TCC's distribution feeder reliability performance. TCC pointed out in rebuttal testimony and in its initial and reply briefs that its performance is very

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[10] *See Id.*

[11] TCC Exh. 70, Rebuttal Testimony of Harry Gordon, at 34, line 14 through 35, line 22.

[12] TCC Exh. 27, Direct Testimony of Jennifer Jackson, Exh. JLJ-2 at 21 of 49.

[13] *See* TCC Initial Brief at 131; TCC Reply Brief at 114.

[14] TCC Exh. 70, Rebuttal Testimony of Harry Gordon, at 12, line 13 through 13, line 20.

strong when compared to Reliant Energy, Entergy Gulf States, and Oncor Delivery Company (TXU). In addition, even Cities' witness, Dr. Patton, agrees that it is extremely difficult to meet the commission standard of no repeat worst performing feeders.[15]

Last, Cities and CCR complain of TCC's failure to provide reasonable service to "smaller REPs."[16] This issue was discussed at length in TCC's initial and reply briefs.[17]

IV. The Non-Unanimous Stipulation is Supported by Record Evidence

Cities and CCR contend that the Non-Unanimous Stipulation is not supported by a preponderance of record evidence because it does not provide for a rate of return penalty for quality and reliability of service. As discussed above, the record contains an abundance of evidence supporting the reasonableness of TCC's performance in these areas and which justifies the conclusion reached by the signatories and not opposed by nine other parties.

Last, Cities and CCR make the argument that the 10.125% return on equity proposed in the Non-Unanimous Settlement is at the upper end of the range of reasonableness in this case. This of course ignores the evidence put on by TCC through Mr. Moul, who recommended a return on equity of 12%. The proposed return of 10.125% is well within the range of returns in evidence in this case.

V. Conclusion

Cities and CCR conclude that it is "especially galling for signatories to agree that the Commission take absolutely *no* action on TCC's lack of interest in meeting street light replacement and new installation service standards agreed to by TCC."[18] This argument ignores the fact, as discussed above, that the street light replacement standards in the ISA contain no rate credit requirements, which are addressed in TCC's tariff. Cities' and CCR's complaint that TCC has a lack of interest in meeting the new installation service standards is simply rhetoric. TCC has worked hard to meet those standards as demonstrated by the fact that its performance has been only very slightly below the 90% standard.

The entire question of quality of service and reliability of service is one which must be judged in context and only after taking into account numerous facts and external events. Cities

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[15] Tr. 8 at 1572-1573.
[16] Cities' and CCR's Objections at 6.
[17] TCC Initial Brief at 121-128; TCC Reply Brief at 110-112.
[18] Cities' and CCR's Objections at 8.

and CCR have failed to take into account the fact that SAIDI and SAIFI standards have been impacted substantially by TCC's new and improved reporting technology. Cities and CCR also ignore the fact that the ISA reliability standards were set up in order to ensure not just adequate service to end users, but exemplary service. As discussed previously, when this exemplary service standard is not met, TCC's end-use customers are rewarded with rate credits. It is not reasonable to conclude that in addition to these rate credits, TCC should be further penalized with a quality of service penalty of 25 basis points.

This proposed Non-Unanimous Stipulation is a reasonable compromise and should be adopted by the ALJs and the Commission.

Respectfully submitted,

Larry W. Brewer
State Bar No. 02965550
Rhonda Colbert Ryan
State Bar No. 17478800
AMERICAN ELECTRIC POWER COMPANY, INC.
400 West 15th Street, Suite 610
Austin, Texas 78701
(512) 481-3320 – Telephone
(512) 481-4591 – Facsimile

John F. Williams
State Bar No. 21554100
CLARK, THOMAS & WINTERS,
A Professional Corporation
300 West Sixth Street, 15th Floor
Austin, Texas 78701
(512) 472-8800 – Telephone
(512) 474-1129 – Facsimile

Philip F. Ricketts
State Bar No. 16882500
BRACEWELL & PATTERSON, L.L.P.
111 Congress Avenue, Suite 2300
Austin, Texas 78701
(512) 472-7800 – Telephone
(512) 472-9123 – Facsimile

By: _____
Philip F. Ricketts

ATTORNEYS FOR AEP TEXAS CENTRAL COMPANY

Certificate of Service

A true and correct copy of the foregoing Response has been served by facsimile transmission to all parties of record on this 19th day of May 2004.

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Philip F. Ricketts