



Control Number: 28840



Item Number: 833

Addendum StartPage: 0

SOAH DOCKET NO. 473-04-1033
PUC DOCKET NO. 28840

05 APR -1 PM 2:27

APPLICATION OF AEP TEXAS
CENTRAL COMPANY FOR
AUTHORITY TO CHANGE RATES

§
§
§
§
§

BEFORE THE
PUBLIC UTILITY COMMISSION
FILED CLERK

PUBLIC UTILITY COMMISSION
OF TEXAS

**OFFICE OF PUBLIC UTILITY COUNSEL'S
REPLY BRIEF FOLLOWING
COMMISSION HEARING ON
MERGER SAVINGS AND
AFFILIATE EXPENSES**

Suzi Ray McClellan
Public Counsel
State Bar No. 16607620

James K. Rourke, Jr.
Assistant Public Counsel
State Bar No. 17323700

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress Avenue, Suite 9-180
P. O. Box 12397
Austin, Texas 78711-2397
(512) 936-7500 (Telephone)
(512) 936-7525 (Facsimile)

April 1, 2005

**SOAH DOCKET NO. 473-04-1033
PUC DOCKET NO. 28840**

APPLICATION OF AEP TEXAS CENTRAL COMPANY FOR AUTHORITY TO CHANGE RATES	§ § § § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
---	-----------------------	--

**OFFICE OF PUBLIC UTILITY COUNSEL'S
REPLY BRIEF FOLLOWING
COMMISSION HEARING ON
MERGER SAVINGS AND
AFFILIATE EXPENSES**

The Office of Public Utility Counsel ("OPC") presents this reply brief in response to the March 24, 2005 Closing Statement of AEP Texas Central Company ("TCC" or the "Company").

I. Merger Savings

The Commissioners have repeatedly emphasized that the purpose of the March 3-7, 2005 hearing was *not* to admit new evidence but only to have the witnesses, who testified in the hearing on the merits before the State Office of Administrative Hearings ("SOAH"), answer Commissioners' questions about evidence already admitted into the record in the SOAH hearing. The principal areas on which the Commissioners had questions are merger savings and affiliate expenses. The Commissioners identified and gave notice of only one merger savings issue to be addressed in the "mini-hearing", namely: Under section 3F(3)(a)(ii) of the merger Integrated Stipulation and Agreement ("ISA"), did TCC demonstrate that it had achieved at least \$22,513,700 in merger savings by Year 3, the test year? It is clear from TCC's Closing Statement and the evidentiary record that the totality of TCC's evidence on this issue is the prefiled direct and rebuttal testimonies of David Carpenter and Michael Heyeck. This is the only evidence proffered by TCC that the Commission should consider. Contrary to the Commission's admonitions, TCC's Closing

Statement cites extensively to the testimony of several of its witnesses during the mini-hearing, not just for clarifying information, but for actual substantive support of its position on the merger savings issue. The Commission should reject TCC's attempt to supplement the evidentiary record and re-try the case.

TCC begins its argument by noting that the ISA rejected the tracking of merger savings. This aspect of the ISA is not detrimental to TCC; it is an advantage. Moreover, none of the Texas operating companies, including TCC, is prohibited from tracking merger savings if it so desires. For the purpose of ISA section 3F(3)(a)(ii), TCC is not limited on how to demonstrate its achievement of the required amount of merger savings, but it is required to demonstrate that it had actually achieved the amount specified in the ISA's Attachment D by the applicable year.

TCC claims that its demonstration of merger savings has two prongs. But, neither prong of TCC's evidence supports its position. TCC's first prong, concerning how AEP pursued savings, does not address the issue before the Commission. The issue is not whether the merged AEP, on a corporate-wide level, took some action to obtain savings. The issue is not whether the merged AEP used its best efforts or some other measure of diligence to save. The ISA does not require any investigation into which actions the merged AEP took to pursue merger savings. TCC's information about how AEP pursued savings is relevant and useful to the Commission as explanatory information *only if* TCC can also demonstrate that TCC (not AEP as a whole or some other subsidiaries of AEP such as the AEPSC) actually achieved at least \$22.5 million in merger savings by the test year. Absent a direct demonstration of a valid analysis that quantifies at least \$22.5 million in actual merger savings within TCC by the test year, information on AEP's overall pursuit of savings does not address the issue presented by section 3F(3)(a)(ii) of the merger ISA. Furthermore, the Commissioners should not be left to surmise about savings at TCC and attempting

to calculate on their own how much AEP, as a whole, may have achieved in savings as a result of employee reductions company-wide or employees being re-assigned from an operating company to the AEPSC in a reorganization unrelated to the merger.

As part of its first prong evidence, TCC relies upon the testimony of Mr. Flaherty in Docket No. 19265, the merger docket.¹ But, Mr. Flaherty's testimony, regarding his 1997 projection of possible merger savings, does not address the issue before the Commission. Consequently, in the last paragraph on page 2 of its Closing Statement, TCC tries to build a case for its position with testimony provided by Messrs. Carpenter and Heyeck at the Commissioners' mini-hearing. Again, this is not background or explanatory testimony. TCC proffered the testimony at the mini-hearing and then tries to use it in its Closing Statement to show that it (TCC) achieved merger savings of at least \$22.5 million as of the test year. The Commissioners should not consider this testimony and should reject TCC's argument. Not only is TCC's use of the testimony improper, but Mr. Flaherty's testimony addresses only the merged CSW-AEP overall, at the corporate level. There is nothing in Mr. Flaherty's testimony that projected merger savings particularly for TCC.² TCC's Closing Statement admits it.³ The meager testimony at the mini-hearing regarding employee reductions at TCC fails to quantify any merger savings amount. It also assumes, without any demonstration, that all of the asserted employee reduction was attributable to the merger, and not to another reorganization involving employee reassignments from TCC to the AEPSC. Once again, TCC's mini-hearing evidence only invites the Commissioners to speculate on a merger savings amount for TCC.

¹ *Application of Central and Southwest Corporation and American Electric Power Company, Inc. Regarding Proposed Business Combination*, Docket No. 19265.

² See, Exhibit CCR-12.

³ TCC's Closing Statement, at page 2, last paragraph.

TCC says that its second prong of proof consisted of Mr. Heyeck's analysis, which was presented in his prefiled direct testimony. OPC's initial brief examines the serious flaws in Mr. Heyeck's study, beginning on page 8 of the brief. Consistent with OPC's initial brief, TCC's Closing Statement clearly shows that Mr. Heyeck did not analyze whether TCC actually achieved any merger savings. Instead, as manifested in TCC's Closing Statement, Mr. Heyeck's study made a projection of costs for TCC based upon a composite of Mr. Flaherty's escalators that were applicable to the entire AEP and CSW systems. Mr. Heyeck then assumed, without any analysis, that the Flaherty escalators and his derivative composite escalator would aptly apply to TCC and its service territory. Even though it had the burden of proof, TCC offered no evidence that this assumption was valid. In fact, TCC's only alleged check was to superficially compare Mr. Heyeck's composite escalator to an average cost growth of a group of unidentified utilities elsewhere in the country and "growth rates in the economy generally." Mr. Heyeck made no cost trend study of TCC or any other CSW operating company prior to 1997 that he could have used as a point of comparison. He made no comparison of the economy or costs specifically in the TCC area, or in Texas, or among the CSW operating companies prior to the merger. Mr. Heyeck's testimony in this regard was shallow and conclusory. It provided no objective analysis or detail.

TCC's Closing Statement, at page 3, also explicitly affirms TCC's erroneous assumption that the entire difference between Mr. Heyeck's estimation of TCC's costs absent the merger and TCC's actual test-year costs can be classified as "merger savings." There is absolutely nothing in the record to support such an assumption, and TCC's reliance upon this assumption should clearly tell the Commission that TCC's "study" is inadequate, unrealistic and unreliable.

TCC tries to claim that Mr. Heyeck's approach was conservative. But, it was not. Mr. Heyeck had to exclude factoring costs and capital costs because Mr. Flaherty had done so. Without

excluding these costs, Mr. Heyeck's study could not have utilized the Flaherty escalators to derive Mr. Heyeck's escalator.

TCC's Closing Statement asserts that Mr. Heyeck used his composite escalator in order to make an "apples-to-apples" comparison. The result of Mr. Heyeck's study was anything but an "apples-to-apples" comparison. Mr. Heyeck compared a re-configured 1997 *projection* to TCC's *actual* test year expenses. If Mr. Heyeck wanted to make an "apples-to-apples" comparison, he should have used actual escalators for the 1997-2003 period that specifically applied to TCC in order to calculate TCC's actual costs absent the merger and compare the costs to TCC's actual test-year expenses.

Finally, TCC tries to interject another issue into the mini-hearing: the amount of the merger savings revenue credit. This issue was not noticed for the Commission's consideration. The Commission should disregard TCC's argument at pages 4-5 of its Closing Statement.

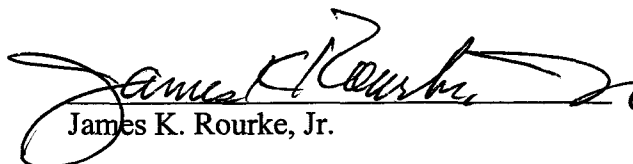
II. Affiliate Expenses

OPC requests that the Commission consider Dr. Szerszen's testimony, and OPC's Initial Brief⁴ and Reply Brief.⁵ OPC also referenced its testimony in the matrix.

THEREFORE, the OPC prays that the Commission adopt the recommendations of OPC, and grant OPC such other and further relief to which it may be justly entitled.

Respectfully submitted,

Suzi Ray McClellan
Public Counsel
State Bar No. 16607620


James K. Rourke, Jr.

⁴ Filed on April 5, 2004. PUC Interchange, Docket No. 28840, Item # 590.

⁵ Filed on April 15, 2004. PUC Interchange, Docket No. 28840, Item # 616.

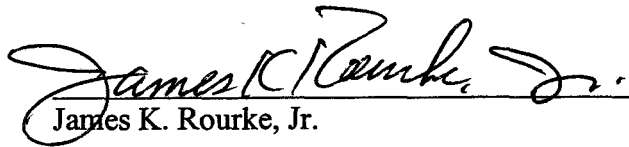
Assistant Public Counsel
State Bar No. 17323700

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500
512/936-7525 (Facsimile)

CERTIFICATE OF SERVICE

SOAH Docket No. 473-04-1033
PUC Docket No. 28840

I certify that on April 1, 2005, I served a true copy of the foregoing Office of Public Utility Counsel's Reply Brief Following Commission Hearing On Merger Savings And Affiliate Expenses on all parties of record via United States First-Class Mail, hand-delivery or facsimile.


James K. Rourke, Jr.