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Julie Parsley
Commissioner

Paul Hudson
Chairman

Barry T. Smitherman
Commissioner

W. Lane Lanford
Executive Director



Public Utility Commission of Texas

TO: State Office of Administrative Hearings

FROM: Stephen Journeay, Senior Legal Counsel
Policy Development Division

RE: Order of Referral
P.U.C. Docket No. 30999; SOAH Docket No. 473-05-5202 - *Application of First Choice Power Special Purpose, LP to Increase It's Price to Beat Fuel Factors*

DATE: April 14, 2005

Enclosed herewith are the following documents related to the above referenced application:

1. Application and Commission file in the above referenced docket*
2. Request for assignment of Administrative Law Judge
3. Order of Referral

cc: without Items 1 and 2: All Parties of Record

*Referred file contains all filings through April 13, 2005.

/as



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P.U.C. DOCKET NO. 30999
SOAH DOCKET NO. 473-05-5202

APPLICATION OF FIRST CHOICE	§	PUBLIC UTILITY COMMISSION
POWER SPECIAL PURPOSE, L P TO	§	
INCREASE ITS PRICE TO BEAT FUEL	§	OF TEXAS
FACTORS	§	

**ORDER OF REFERRAL
AND PRELIMINARY ORDER**

The Public Utility Commission of Texas (Commission) refers this docket to the State Office of Administrative Hearings (SOAH) and requests the assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision, if such is necessary in the event one or more issues are contested by the parties. The Commission has delegated authority to the Policy Development Division to issue this Preliminary Order, which is required under TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000 & Supp. 2005).

All subsequent pleadings in this docket must contain both the SOAH and PUC docket numbers to allow for efficient processing. Parties shall make filings in accordance with P.U.C. PROC. R. 22.71(c) regarding the number of copies to be filed or P.U.C. PROC. R. 22.71(d)(c) regarding the number of confidential items to be provided.

I. Procedural History

On April 11, 2005, First Choice Power Special Purpose, L P (First Choice) filed an application to increase its price-to-beat (PTB) fuel factors pursuant to PURA¹ § 39.202(l) and P.U.C. SUBST. R. 25.41. First Choice Power Special Purpose, L P asserts that natural gas prices have increased by 5.30%, which exceeds the 5% threshold in P.U.C. SUBST. R. 25.41(g)(1)(C), and has requested to adjust its current PTB fuel factors on that basis. According to First Choice Power Special Purpose, L P, the only adjustment to the PTB fuel factors requested in the application is to reflect the increase in natural gas prices.

¹ Public Utility Regulatory Act, Tex. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 1998 & Supp. 2005) (PURA).

II. Discussion

Pursuant to P.U.C. SUBST. R. 25.41(g)(1)(D), if a hearing is requested, the Commission shall render a decision approving or denying an application within 45 days, or as soon as practicable thereafter, of the date of filing of a complete application to adjust current fuel factor(s). In this case, 45 days after filing is May 26, 2005.

III. Issues to be Addressed

Pursuant to TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000 & Supp. 2005), the Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to the SOAH. The Commission identifies the following issues that must be addressed in this docket:

1. Does First Choice Power Special Purpose, L P's application comply with PURA § 39.202(l) and P.U.C. SUBST. R. 25.41(g)(1)(A)-(D)? Specifically:
 - a. Did First Choice Power Special Purpose, L P demonstrate that its existing fuel factors do not adequately reflect significant changes in the market price of natural gas and purchased energy to serve retail customers?
 - b. Based on the methodology set forth in P.U.C. Subst. R. 25.41(g)(1)(A)-(C), is the percentage increase in natural gas prices (5%) or more?
 - c. If the (5%) threshold has been met, did First Choice Power Special Purpose, L P calculate the adjustment to its current PTB fuel factors in accordance with P.U.C. SUBST. R. 25.41(g)(1)(A)-(D)?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed Section IV of this Order, by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

IV. Issues Not to be Addressed

The Commission takes the position that the following issues need not be addressed in this proceeding for the reasons stated.

1. Whether First Choice Power Special Purpose, L P's application complies with P.U.C. SUBST. R. 25.41(g)(1)(E).

P.U.C. SUBST. R. 25.41(g)(1)(E) provides an alternative basis to adjust a company's PTB fuel factors based on a demonstration that headroom has decreased as a result of significant changes in the price of purchased energy. A company's request to change its PTB fuel factor may be based on either basis, or both. First Choice Power Special Purpose, L P has chosen to proceed only under P.U.C. SUBST. R. 25.41(g)(1)(A)-(D). Therefore, it is not necessary for First Choice Power Special Purpose, L P to demonstrate in this proceeding that headroom under the PTB has decreased in order to be granted the requested relief.


V. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues and issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, this Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal

of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the 14th day of April 2005.

PUBLIC UTILITY COMMISSION OF TEXAS



STEPHEN JOURNEYAY
SENIOR LEGAL COUNSEL
POLICY DEVELOPMENT DIVISION

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