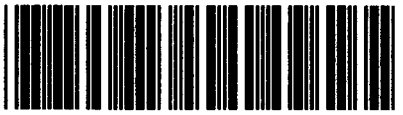
Control Number: 33309



Item Number: 690

Addendum StartPage: 0

SOAH DOCKET NO. 473-07-0833
PUC DOCKET NO. 33309

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

COMMISSION STAFF'S REPLY BRIEF

COMES NOW, the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files its reply brief in the above-referenced proceeding.

DATED: June 18, 2007

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division

Patrick J. Sullivan
Attorney – Legal Division
State Bar No. 19488600
(512) 936-7125
(512) 936-7268 (facsimile)

Sonya Batchelor
State Bar No. 00797852

Gary L. Mann
State Bar No. 12924700

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

SOAH DOCKET NO. 473-07-0833
PUC DOCKET NO. 33309

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on June 18, 2007 in accordance with Public Utility Commission of Texas Procedural Rule 22.74.

Patrick J. Sullivan

TABLE OF CONTENTS

COMMISSION STAFF'S REPLY BRIEF

COMES NOW, the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files its reply brief and would show the following:

I. PROCEDURAL HISTORY

On May 31, 2007, Staff filed its initial brief in this proceeding. Initial briefs also were filed by AEP Texas Central Company (TCC or "the Company"), a coalition of Cities served by TCC (Cities), Federal Executive Agencies, Office of Public Utility Counsel (OPC), the State of Texas, Commercial Customers Group (CCG), Texas Industrial Energy Consumers (TIEC), Texas Legal Services Corporation (TLSC), Texas Ratepayers Organization to Save Energy (Texas ROSE), CPL Retail Energy, L.P. (CPL), and Wal-Mart Stores Texas, L.P. (Walmart). In this reply brief, Staff is responding primarily to the initial brief filed by AEP. Staff is not responding to most of the revenue requirement recommendations made by the other parties and is addressing only certain rate design issues raised by other parties. Staff's failure to address the recommendations of other parties should not be interpreted as Staff's agreement or acquiescence to those recommendations.

II. OVERVIEW OF THE CASE

See Staff's Initial Brief.

III. RATE BASE

1. *Prepaid Pensions*

TCC argues that it should be allowed to include the pre-2004 portion of its pension payments based upon its interpretation of Financial Accounting Standards No. 87 (SFAS 87) and its assertion that ratepayers do not acquire any ownership interest in utility property as the result of paying for service. TCC's arguments do not respond to Staff's recommendation to disallow the pre-2004 pension payments. Staff does not contend that ratepayers have become owners of TCC, so TCC's case citations and legal argument on this point are superfluous to Staff's position. Rather, Staff contends that ratepayers should not be required to essentially pay twice for the pre-2004 pension payments. The evidence establishes that the funding for the pension expenses for the pre-2004 period was supplied through ratepayers as a result of the Commission including those costs in the calculation of rates (the "funding method").[1] Any amount in excess of the amount included in rates is excessive and cannot be included at this time or ratepayers will have been required to pay twice for the same utility expense.

Staff's position is best understood in the context of the history of TCC's pension payments. TCC witness McCoy acknowledges that during the 1990's several years of above normal investments returns resulted in a total pension cost that was substantially negative (pension income instead of pension expense).[2] These investment returns plus the additional annual contributions to the fund created a prepaid asset on the balance sheet. During this period the Commission allowed the company to use the funding method to determine pension expense, so cash contributions to the pension plan were included in the Company's revenue requirement for setting rates. Mr. McCoy further states that the years 2000 through 2002 represent the worst

[1] Staff Exhibit 5, p. 11.

three–year period in pension plan financing ever.[3] The resulting decline in pension fund assets and the increase in pension obligations caused even well funded plans such as the TCC's to become significantly underfunded. Mr. McCoy states that the 2004 and 2005 additional contributions that were made did not serve to pre-fund the Company's plan but were made to address substantial underfunding that would still exist if the contribution had not been made.[4]

AEP was required under SFAS 87 to record an additional minimum liability due to the significant underfunding in the pension plan. The additional liability should equal the excess of the accumulated benefit obligation over the fair value of the plan assets, plus any prepaid pension expense recognized on the balance sheet. In December 2002 and December 2003, AEP reclassified the prepaid pension balances to the other side of the balance sheet against the larger minimum pension liability and the amount included on the balance sheet for prepaid pension was zero.[5] Subsequent funding to the plan was used to reduce the additional minimum liability recognized in the financial statement. If TCC wanted these funds included in its rates it should have either filed a rate case to include these costs pursuant to the Commission's funding method or sought designation of these funds as a regulatory asset. Instead, it did neither and is now attempting to require ratepayer to reimburse it for past losses by disguising these payments as a prepaid asset.

2. ADFIT

Not addressed.

3. Reclassification of CWIP

Not addressed.

---

[2] TCC Exhibit 37, p. 34.
[3] *Id.*, p. 32.
[4] *Id.*, p. 29.

4. *Affiliate Capital Costs*

Not addressed.

5. *Debt Restructuring Costs*

Not addressed.

6. *Cash Working Capital*

See Staff's Initial Brief.

7. *SFAS 143 AROs*

Not addressed.

8. *Uncontested Issues*

Not addressed.

V. RETURN

1. *Rate of Return on Equity*

Section 36.051 of PURA[6] allows utilities an opportunity to earn a reasonable return on invested capital. There is no precise measurement of a reasonable return; however, there are models that are routinely used to determine rate of return.[7] Staff witness Richard Lain used the Discounted Cash Flow (DCF) model and the Capital Asset Pricing Model (CAPM). As a result of those approaches, Staff witness Lain recommended a return on equity of 9.75%.[8] TCC wrongly criticizes Staff's DCF model claiming the model contains a small number of comparable companies, that it does not consider financial risk, and that the growth component is

[5] Staff Exhibit 10.
[6] Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2007).
[7] Staff Exhibit 2, pp. 16-17, Transcript, pp. 1299-1300.
[8] *Id.*, p. 32 at lines 15-18.

not accurate.[9] Moreover, TCC wrongly criticizes Staff's Capital Asset Pricing Model (CAPM) for using a current long-term T-bond yield as the risk free rate as opposed to a short-term T-bill. TCC's arguments are erroneous for the reasons set forth below.[10]

Staff's criteria for choosing comparable companies

For its DCF and CAPM methods, Staff used a strict set of criteria in choosing comparable companies. Staff witness Lain's criteria included the following:

- Value Line financial strength ratings of B, B+, or B++;
- A capital structure with no less than 42% or more than 70% debt;
- Total market capitalization in excess of one billion dollars;
- An investment-grade credit rating from Standard and Poor's no higher than BBB+, and a business risk score between 1 and 8;
- At least 70 % of revenues from domestic regulated utility sales;
- A Value Line beta no greater than one; and
- No recent or potential merger.[11]

TCC's lists its criteria as:

- Standard & Poor's (S&P) or Moody's credit ratings of at least BBB or Baa;
- At least 70 % (for electric) and 60% (for local distribution companies (LDCs)) of revenues from domestic regulated utility sales; and
- Consistent data from Value Line with no extraordinary financial effects.[12]

Staff witness Lain chose 14 comparable companies, but none are pure Transmission and Distribution (T&D) firms. Combined, these companies actually have higher average business

[9] TCC Initial Brief at 34-36.
[10] *Id.* at 52.
[11] Staff Exhibit 2, pp. 25-27.
[12] TCC Exhibit 85, pp. 5-6.

risk than TCC.[13] Because of the positive correlation between risk and return, if Mr. Lain erred at all, he erred in favor of TCC in his recommended cost of equity.[14]

TCC criticizes Staff's comparable groups as being too small and therefore yielding inaccurate results. In reality, Staff's stricter criteria in choosing comparable companies resulted in a more accurate and precise calculation of the estimated cost of equity. As indicated above, TCC used a larger group of comparable companies with less strict criteria. There were a large number of companies in each TCC group resulting in at least two quantifiable differences: lower debt-ratio averages and higher credit-ratings.[15] The normal relationship between stronger financial ratios and the cost of capital is an inverse one, but Dr. Hadaway's analysis led to *higher* cost-of-equity estimates compared to Staff's.[16] Thus, TCC's chosen companies cannot be the reason its requested cost of equity is so much higher than Staff's. TCC's argument is a red herring. On the contrary, it is TCC's *assumptions* that lead to a significant jump in TCC's requested cost of equity from its traditional constant growth models (both TCC's integrated electric utility and LDC groups yielded an estimated cost of equity of 9.5%).[17]

Business and financial risk

Staff witness Lain took fully considered both business and financial risk in calculating TCC's return on equity. The normal relationship between business risk and financial risk is an inverse one. A firm with high business risk will offset it by using a minimal amount of financial

[13] Staff Exhibit 2, p. 24 at lines 21-24.
[14] *Id.*, p. 24 at lines 17-24.
[15] *Id.*, p. 32 at lines 22-25; p. 33 at lines 1-2.
[16] *Id.*, p. 33, lines 2-4.
[17] *Id.*, p. 33, lines 4-10.

leverage. Conversely, a firm with low business risk can boost net income by using more financial leverage.[18]

When Staff witness Lain chose comparable companies, one of his criteria was an investment-grade credit rating from Standard and Poor's no higher than BBB+, and a business risk score between 1 and 8.[19] Consistent with the above principle, Mr. Lain's comparable companies that made the cut had lower financial risk and higher business risk compared to TCC. This is represented by the lower debt ratio averages of 54% and 53% for each group compared to TCC's actual 61% debt ratio.[20] The higher business risk is represented by higher business risk averages of "5" and "4" for each group as compared to TCC's "3."[21] Contrary to TCC's claim that the utility business is risky, Staff witness Lain points out several sources indicating that investors perceive the utility business as a low risk industry.[22] For example, Standard and Poor's places TCC in the strong profile category with a ranking of 3 on a scale of 1 to 10 with 10 being the most risky.[23]

Mr. Lain gives careful consideration to the fact that the T&D industry in general, and T&D utilities in particular, operate in a low risk business environment in which arguably the biggest risk is regulatory risk. With the passage of Senate Bill 7 into law in 1999, the Texas legislature decided that the business of generating electricity no longer constituted a natural monopoly and granted customers the option to choose their own supplier. By contrast, the transmission and distribution of electricity remains a regulated natural monopoly in which the recovery of costs incurred by providers is relatively certain. That is, as long as a T&D utility can

[18] *Id.*, p. 10, lines 2-4.
[19] *Id.*, pp. 25-26.
[20] *Id.*, p. 49.
[21] *Id.*
[22] *Id.*, pp. 7-14.
[23] *Id.*, p. 13.

demonstrate that its costs are reasonable and necessary, it can recover them in full.[24] TCC is no different.[25]

Mr. Lain also relied upon the benchmark debt ratio ranges recommended by S&P for companies with certain levels of business risk and certain credit ratings and recommends an appropriate debt ratio fully consistent with S&P.[26] While Mr. Lain's comparable companies have less leverage than TCC, S&P has affirmed that additional leverage is acceptable for lower risk companies. TCC's actual highly leveraged capital structure is completely consistent with its lower S&P business risk ranking of "3." Therefore, Staff's recommended cost of equity is, if anything, too high since, as a proxy for TCC, Staff had to rely on companies that, as a whole, are riskier with higher business risk rankings.

Long-term earnings growth

Staff relied on the Value Line Investment Survey (Value Line) and Zacks Investment Service (Zacks) for its long-term dividend growth estimates.[27] Consensus forecasts are the most appropriate growth indicator because security analysts use extensive and sophisticated financial models to make these forecasts.[28] Incorporated into these forecasts are historical growth rates (like the GDP growth rate TCC relies on), earnings, book values, general economic projections, the impacts of new legislation, regulatory actions, and technological advancements, which are all relevant to future growth.[29] It is unrealistic for investors to assume that historical earnings and dividends will be repeated each year.[30] Furthermore, empirical academic research by authorities

[24] *Id.*, p. 15, lines 2-9.
[25] *Id.*, p. 15, lines 2-9.
[26] *Id.*, p. 44, lines 1-6.
[27] *Id.*, p. 22, lines 16-20.
[28] *Id.*, p. 23, lines 3-12.
[29] *Id.*, p. 23, lines 3-12.
[30] *Id.*, p. 23, lines 13-19.

has consistently shown that consensus forecasts from professional financial analysts do a better job of predicting the valuation of common stocks than mechanically derived forecasts from historical data.[31]

TCC used an estimated growth rate based on a 6.6% Gross Domestic Product (GDP) estimate in its DCF models.[32] TCC based its use of the GDP on an article authored by Louis Chan.[33] This article concludes that the GDP could be a good growth indicator of the companies that it studied.[34] According to TCC, the GDP growth rate is based on data from the 1990s and up until 2001.[35] The extent of the study's use and/or focus on T&D utilities is not known.[36] For this reason the GDP growth rate, as applied by TCC, is an inappropriate indicator. It doesn't take into account current capital market data or even utility companies. Value Line and Zacks, used by Staff, take into account many additional factors presently influencing investors' expectations for investment returns on utilities, and as such, are more accurate and reliable methods to determine long-term earnings' growth rate. Reports and studies support Staff's position that forecasts made by security analysts are reasonable indicators of investor expectations.[37]

ROEs in other jurisdictions

TCC places great emphasis on returns on equity awarded by other regulatory agencies.[38] TCC wrongly asserts that Staff's return on equity is inconsistent with these awards and fails to

[31] *Id.*, p. 23 and footnote 9 (White, G., Sondhi, A., and Fried, D., *The Analysis and Use of Financial Statements*, Third Edition, John Wiley & Sons, Inc., 2003, pp. 714-724).
[32] TCC Exhibit 35, p. 39.
[33] *Id.*, p. 37.
[34] Transcript, p. 369.
[35] Transcript, p. 374, lines 2-11.
[36] Transcript, p. 369, lines 8-13.
[37] Staff Exhibit 2, p. 35, lines 19-21; and p. 36, lines 1-5.
[38] TCC Exhibit 85, pp. 4-5.

consider the differences in jurisdictions. The Commission recognized in Docket No. 22344 that the Texas market is significantly different from other jurisdictions and concluded that favorable market and regulatory conditions in Texas should result in a lower business risk.[39] In support of this contention for lower business risk, the Commission noted the following: (1) complete separation of generation and transmission and distribution function, thus virtual elimination of commodity risk; (2) a requirement of retail electric providers (REPs) to be the point of sales for retail customers; (3) Commission-approved substantive rules related to registration and financial requirements to minimize a possibility of a REP default on payments for contracted services; and (4) P.U.C. SUBST. R. § 25.193 to ensure speedy recovery of transmission expenditures related to expansion of the transmission network.[40] Texas continues to feature an agreeable regulatory environment today that supports lower business risk.[41]

TCC cites TCC Exhibit 85, Exhibit SCH-1R which purports to be a comparison of returns on equity for electric and gas utilities.[42] There are only three Texas companies included in the electric utility analysis for 2005: Texas-New Mexico Power, Cap Rock Energy, and AEP Texas Central. Besides the different regulatory environments in which those companies operate, the data from other jurisdictions are completely historical, based on the prior regulation of integrated utilities, and contain *authorized* rates of return for companies that may not be sufficiently comparable to the *earned* rates of return for transmission and distribution companies of today.[43]

The most important distinction is that these companies contain generation operations, which TCC does not. In a deregulated market, generation is considered more risky because

[39] *Generic Issues Associated With Applications for Approval of Unbundled Cost of Service Rate Pursuant to PRA 39.201 and Public Utility Commission Substantive Rule § 25.344*, Docket No. 22344, Order No. 42 at 9-10.
[40] Docket No. 22344, Order No. 42 at 11-12.
[41] Staff Exhibit 2, p. 15.

owners are not guaranteed a rate of return and may not be able to find customers for their service. Due to these major differences, the blanket comparison of other regulatory markets and companies does not accurately represent the Texas market and TCC.

Comparable results

The required return on equity for an electric utility or for any publicly traded company is ultimately determined in the capital markets. Through the interaction of the buyers and sellers of a company's common stock, the company's equity cost is established. Given the market price for a share of common stock, the analyst desiring to measure the cost of equity must accurately gauge the sum of all investor expectations for the company in question, or for a group of comparable companies, or for both. However, because various methodologies can be employed to estimate the cost of equity, and because each methodology has strengths and weaknesses, any cost-of-equity estimate involves professional judgment.[44] Because of this, at various stages of the analysis, there is no single, infallible approach that can be used in all circumstances. The opinions of experts can differ widely on many factors relevant to the cost of equity, such as basic assumptions about risk, economic conditions, company prospects, and investor expectations. Variations in the chosen approaches and even in the application of the same approach by different analysts are commonplace, and are to be expected. To rely solely on one approach for all companies, or give greater weight to one over another, under all market conditions and economic environments would not be appropriate. Generally, however, the results of various methods should be close to each other or their estimates should have overlapping ranges.[45] Other

[42] TCC Initial Brief, p. 36.
[43] Staff Exhibit 2, p. 36, lines 18-22.
[44] *Id.*, pp. 17-18.
[45] *Id.*

intervening parties have recommended returns on equity as follow: TIEC – 9.70%, OPC – 9.60%, and Cities 9.00%. These results are in line and cover ranges consistent with Mr. Lain's recommendation. In that respect, Mr. Lain's equal weighting of the DCF model and CAPM demonstrates prudence and the careful consideration required to estimate the cost of equity.

Appropriate risk-free rate input

The 30-year maturity of the Treasury bond is appropriate to use for the risk-free rate input in the CAPM equation rather than a shorter-maturity yield as TCC asserts. First, a longer investment time horizon is more comparable to the typical investment time frame for equity securities, especially utility stocks.[46] Second, longer-term rates are less volatile and less likely to be influenced by random, short-term phenomena than are short-term rates.[47] TCC's assertion ignores the time frame of the investment by inserting a short-term, volatile Treasury bill rate into its CAPM equation. By using a short-term Treasury bill taken from today's abnormal Treasuries market in which the Treasury yield curve is inverted, meaning short-term rates are higher than long-term rates, TCC's calculation results in a higher estimate for the cost of equity because the Treasury yield curve is not in its normal positive slope position.

Conclusion

The evidence in the record clearly establishes that the ROE and resulting rate of return requested by TCC is excessive. The recommendation of Staff witness Lain is supported by the evidence and is consistent with the range of returns recommended by other non-Company

[46] *Id.*, p. 29, lines 8-17.
[47] Staff Exhibit 2, p. 29, lines 12-17.

witnesses. Accordingly, Mr. Lain's recommendation should be used in establishing TCC's authorized rate of return in this proceeding.

2. Cost of Debt

Staff agrees with TCC's request and has incorporated a 5.859% cost of debt in calculating TCC's overall rate of return.

3. Cost of Capital

TCC's actual capital structure, contained in Schedule II-C-2.1, should be used in calculating its rate of return. If the hypothetical capital structure established in Docket No. 28840 is used, TCC will reap a windfall of $1,165,229. TCC cites Docket No. 22344 as its authority for the 60% debt and 40% common equity ratio.[48] In that docket, the Commission noted that the hypothetical capital structure was for newly unbundled TDUs during the transition period.[49] This hypothetical capital structure would be applied until operations could be established, uncertainties resolved,[50] and TDUs appropriately capitalized their companies commensurate with the lower risks they would face. TCC has been in business now for over four years and has received a credit rating by all three major credit rating agencies. TCC is now an established company. There are no overall market, industry, or company-specific uncertainties that would justify using the hypothetical capital structure.

[48] *Generic Issues Associated With Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Docket No. 22344 (December 18, 2000).
[49] *Application of Central Power and Light Company for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Docket No. 22352, Order at 23 (October 5, 2001).
[50] Transcript, p.1311 at lines 17-21; p.1312 at lines 7-12.

Moreover, TCC *voluntarily* reduced its equity by paying its parent company a $585 million dividend in 2006.[51] TCC calls it "managing its capital structure to achieve those target levels (60/40) of debt and equity."[52] The Commission, in Docket No. 28840, did not assess "target levels" for TCC to "maintain." As stated earlier, the purpose of the hypothetical capital structure was to allow companies to become properly capitalized during a period of uncertainty. In that respect, TCC offers no legitimate reasoning behind using the hypothetical capital structure. It is appropriate, at this time, to use TCC actual capital structure.

4. Overall Rate of Return

Based on Staff Witness Richard Lain's recommendations of TCC's cost of equity (9.75%), cost of debt (5.859%), and capital structure (38.29% common equity, .58% preferred stock, and 61.13% debt), the overall recommended rate of return is 7.34%.[53]

V. COST OF SERVICE

1. Affiliate Costs

Incentive Compensation

In its Initial Brief, TCC contends that Staff and other parties "have an outdated understanding of the role incentive compensation plays in today's business environment,"[54] and that incentive compensation plans "are widespread in the electric, gas and similar industries."[55] However, TCC's arguments in favor of incentive compensation plans ignore two important matters. First, Staff and the other parties are not arguing that TCC has to eliminate all incentive

[51] Staff Exhibit 2, p. 43 at lines 12-20.
[52] TCC Initial Brief, p. 59.
[53] Staff Exhibit 2, p. 6.
[54] TCC Initial Brief, p. 73.
[55] *Id*, p. 75.

compensation plans. Instead they are only addressing whether the costs of such plans should be included in setting rates for TCC's customers. TCC is free to continue to provide incentive compensation to its employees based upon meeting certain financial goals, but it is unreasonable to charge the expenses for such programs to ratepayers. Second, TCC totally ignores the Commission's decision in Docket No. 28840, TCC's last rate case, where the Commission made the following findings of fact:

> 169. The financial measures are of more immediate benefit to shareholders, and the operating measures are of more immediate benefit to ratepayers.
>
> 170. Incentives to achieve operational measures are necessary and reasonable to provide T&D utility services, but those to achieve financial measures are not.[56]

It is amazing that TCC would spend over five pages of its lengthy brief on this subject and never even acknowledge the fact that the Commission's most recent pronouncement on the issue of incentive compensation is directly contrary to TCC's position in this case. It appears that TCC "has an outdated understanding of the role [Commission review of] incentive compensation plays in today's [regulated] business environment."

Allocation Factor 58 (Total Assets Allocator)

Under its proposed Allocation Factor 58 TCC is requesting that approximately $16,018,171 be allocated to TCC as an affiliate cost.[57] In contrast, Staff witness Candice Romines recommended that TCC's portion of affiliate costs should be reduced by "at least $6,587,740,"[58] while Cities proposed a reduction of $6,305,000[59] and OPC proposed a reduction

[56] *Application of AEP Texas Central Company for Authority to Change Rates,* Docket No. 28840, Order (Aug. 15, 2005).
[57] *Id.*, Exhibit CJR-5B-1
[58] Transcript, p. 1394.
[59] Direct Testimony of Gerald W. Tucker, Cities Exhibit 5, p. 33.

of $6,566,000.[60] The primary difference between TCC and the other parties concerns the inclusion of securitized assets in the calculation of the total assets allocator. Contrary to TCC's assertion, the issue here concerns the reasonableness of the calculation, not whether it was applied to all other TCC affiliates.[61] Under PURA §36.058, the Commission must determine that the payment is reasonable before allowing its inclusion in rates and before it determines whether the price charged is the same as charged to other affiliates. TCC has simply failed to meet its burden of proof as to the reasonableness of the charges incurred as the result of the application of its proposed Allocation Factor 58.

Staff asserts that it is inappropriate to include TCC's securitized assets in the calculation of the total assets allocator. The magnitude of the charges themselves provides the clearest indication of their unreasonableness. TCC has requested a total of approximately $53.3 million in service company costs be used as the base to calculate its share of the total affiliate costs.[62] Using Allocation Factor 58, 30% of the $53.3 million, approximately $16.0 million, would be allocated to TCC for financial, regulatory, and management oversight activities.[63] The securitized assets included in the calculation total approximately $2.1 billion out of the total of approximately $5.3 billion included as TCC's total assets.[64] This is by far the largest "asset" included in TCC's total asset calculation and is about 1.5 times the second largest TCC asset included in the calculation. Thus, almost 40% of the amount allocated to TCC using Allocation Factor 58 is due to the inclusion of the securitized assets.[65] As determined in the Commission's

[60] Errata to Direct Testimony of Ellen Blumenthal, OPC Exhibit 5, Exhibit EB-1.
[61] TCC's Initial Brief, p. 65.
[62] Transcript, p.1706.
[63] *Id.*
[64] Staff Exhibit 22.
[65] Transcript, pp. 1703-1704.

Financing Order in Docket No. 32475,[66] TCC's annual on-going cost of servicing the securitization bonds is approximately $1.2 million.[67] By including the securitized assets in the total asset allocator, TCC's allocated portion of the total service company costs is approximately $6.6 million greater than it would be without the inclusion of the securitized assets.[68] As a result, TCC is allocated an amount that is more than five times greater than its annual costs of servicing as found in Docket No. 32475. These factors alone justify the conclusion that the level of costs allocated to TCC through its proposed Allocation Factor 58 is excessive and unreasonable.

TCC argues that its inclusion of the securitized assets is consistent with generally accepted accounting principles (GAAP).[69] However, the Commission is not bound by GAAP in considering affiliate transactions. Indeed, PURA §36.058 is clear that affiliate transaction are held to a higher standard than other costs that may be recorded pursuant to GAAP. It is TCC's failure to comply with the affiliate standards that requires the adjustment of Allocation Factor 58, not a failure to comply with GAAP standards.

Bill Approval Process

TCC asserts that Staff's proposed reduction is based upon pure speculation. However, the record is clear that Staff witness Romines reviewed the inquiries submitted by TCC and by an affiliated company, Public Service of Oklahoma (PSO), which is also a regulated utility. The records indicated a clear discrepancy between the two utilities concerning the number of inquiries about affiliate billing and the ultimate level of affiliate costs charged to these two utilities by AEPSC. This discrepancy highlights the fact that there is not a uniform policy

[66] *Application of AEP Texas Central Company for a Financing Order*, Docket No. 32475, Financing Order (June 21, 2006).
[67] Transcript, p. 1697.
[68] Transcript, p. 1394.

concerning how such affiliate reviews are performed, a fact that TCC does not deny. Because of this lack of uniformity, TCC has failed to show that the level of affiliate charges to it are not higher than charges to other affiliates, as required by PURA §36.058.

The policy reason behind the showing required by PURA §36.058 was stated by the Austin Court of Appeals as follows:

> The desire of public utility management, evidenced by various methods, to secure the highest possible return to the ultimate owners is incompatible with the semi-public nature of the utility business. It therefore follows that the Commission should scrutinize carefully charges by affiliates, as inflated charges to the operating company may be a means to improperly increase the allowable revenue and raise the cost to consumers of utility service as well as an unwarranted source of profit to the ultimate holding company.[70]

In this case, TCC is asking the ALJ to accept at face value its assertion that TCC is diligent in reviewing its affiliate transactions. The answer to TCC was provided by the Court in the *Rio Grande* case:

> Although that may be true with respect to arms length transactions, it is not true with respect to payments to affiliates about which the Legislature has its suspicions and which to any reasonable mind are clearly tainted with the possibility of self-dealing.[71]

TCC's failure to scrutinize its billings from a third-party contactor would be viewed as unreasonable in most instances. Its failure to scrutinize billings from AEPSC, its affiliate, is even more suspect since such transactions are "clearly tainted with the possibility of self dealing." Staff's adjustment to reduce the billings from AEPSC to a level based upon the level applicable to PSO not only assures that the amount is no higher than charges to other affiliates, as required by PURA §36.058, but also provides a reasonable means of addressing the possibility of self dealing noted by the Court.

---

[69] TCC Initial Brief, p. 67.
[70] *Railroad Commission of Texas v. Rio Grande Valley Gas Company,* 683 S.W.2d 783, 786 (Tex. App.—Austin 1984, no writ), quoting, *Solar Electric Co. v. Pennsylvania Public Utilities Commission,* 137 Pa. Super. 325, 9 A.2d 447 (1939).
[71] *Id.*

2. Labor Expenses

Overtime expense

TCC disagrees with the $1,575,945 adjustment to requested overtime expenses proposed by Staff witness Mary Jacobs. TCC argues that Ms. Jacobs has overstated her adjustment due to an alleged mismatch, *i.e.* that she used the amount of overtime for the 12 months ending November 2006 and then applied the payroll O&M ratio for the 12 months ending June 2006.[72] However, Ms. Jacobs used the O&M ratio for the test year in her calculation, which is the same procedure that TCC witness Hamlett used in calculating the Company's payroll expense.[73] Any objection that the Company may have that there was a mismatch also applies to their initial calculation, which is based upon payroll expenses for a two-week period in June 2006 and an O&M ratio for the 12-month period covered by the test year data.

In any event, Ms. Jacobs also compared the results of her analysis to the level of overtime pay that was actually paid for the years 2003, 2004, and 2005. This comparison showed that TCC's proposed overtime expense was excessive and supported the level of reduction that she was recommending. After considering both her analysis and the historical data, Ms. Jacobs recommended that the test year O&M overtime expense be reduced by $1,575,945 resulting in a total amount of $3,842,147 ($5,418,092 less $1,575,945). This amount is consistent with the prior three year average of $3,689,116.[74]

TCC's arguments focus solely upon Ms. Jacobs' initial calculation and ignore both the fact that their own calculation uses a "mismatch" and the historical information that supports Ms. Jacobs' calculation. Ms. Jacobs' calculation of the overtime expense is more representative of the amount likely to be incurred by the Company during the rate year and should be adopted.

[72] TCC Initial Brief, p. 81.
[73] TCC Exhibit 24, p. 41, lines 1-8.
[74] Staff Exhibit 5, p. 8.

3. Group Insurance Expense

Not addressed.

4. Savings Plan Expense

Not addressed.

5. Pension Expense

Not addressed.

6. OPEB Expense

Not addressed.

7. Catastrophe Reserve

TCC cites to the testimony of two expert witnesses to justify its doubling of its catastrophe reserve and the four-fold increase in its annual funding amount. TCC ignores the fact that similar testimony was offered to support its catastrophe reserve in Docket No. 28840 and that testimony was rejected by the Commission. [75] The courts have held that, in an administrative hearing:

> an agency may, or may not, accept the testimony of witnesses, expert or non-expert. [Citations omitted.] Likewise, the agency is the judge of the weight accorded the witnesses' testimony. Moreover, the agency may accept part of the testimony of one witness and disregard the remainder.[76]

Having previously disregarded TCC's disaster model as a basis for determining its level of catastrophe reserve, the Commission clearly has the ability, if not the duty, to reject it when it is offered for an even more excessive increase above TCC's known and measurable expenses. The ALJ and the Commission should adopt Staff's position, which results in a reasonable annual

[75] Docket No. 28440, Order pp. 10-11.

[76] *Southern Union Gas Co. v. Railroad Commission of Texas*, 692 S.W.2d 137, 141 (Tex. App. – Austin, 1985, writ ref'd n.r.e.). These same concepts have been expressly applied to the PUCT. See, *Central Power & Light Company v. Public Utility Commission of Texas*, 36 S.W.3d 547 (Tex. App. – Austin 2000, writ denied).

accrual of $1,100,000 and a target reserve amount of $11,000,000, based upon TCC's recent costs related to catastrophic storms.[77]

8. Distribution O&M Expenses

Not addressed.

9. Transmission O&M Expenses

Not addressed.

10. Energy Efficiency Costs

Not addressed.

11. Depreciation Expense

In its brief, TCC describes its differences with Cities witness Hughes and Staff witness Srinivasa as to two aspects of depreciation rates: a) life parameters; and b) net salvage amounts.

Life parameters

TCC contends that Ms. Hughes and Mr. Srinivasa overemphasized the mathematical goodness of fit indicators instead of relying on a visual observation of the fit of the various survivor curves.[78] TCC criticized both witnesses for "relying solely on mathematical solution."[79] Such criticism is unfounded. A review of the testimonies of both Ms. Hughes and Mr. Srinivasa shows that they did not rely solely upon mathematical models. Both used visual observation as a first step and used mathematical analysis when needed to determine a better fit among competing alternatives.[80] In contrast, TCC witness Henderson apparently relied solely upon visual

[77] Staff Exhibit 1, pp. 11-12, Exhibit BA-3.
[78] TCC Initial Brief, p. 110.
[79] *Id.*
[80] See, Cities Exhibit 4, p.12; Staff Exhibit 3, Bates p. 25.

observation and failed to consider mathematical analysis that disputed his subjective visual review of the survivor curves.[81]

The procedure followed by Ms. Hughes and Mr. Srinivasa is supported by the National Association of Regulatory Utility Commissioners (NARUC) Depreciation Manual. The Manual discusses both visual and mathematical matching and states:

> While visual matching is still used, it is more time consuming than mathematical matching and so is generally used only in educational settings or as an adjunct to mathematical matching.[82]

Although this rate case may be informative, it hardly qualifies as an "educational setting." Further, the Manual notes that visual matching is "an adjunct[83] to mathematical matching," implying that mathematical matching is superior to visual matching. Thus, by using goodness of fit criterion to aid in selecting the survivor codes, Ms. Hughes and Mr. Srinivasa were following the NARUC Depreciation model. In contrast, by relying primarily on visual matching in a non-educational setting, Mr. Henderson was not complying with the current practices outlined in the Depreciation Manual.

TCC contends that Mr. Henderson's visual matching is superior to the mathematical modeling because "it is important to visually ensure that the upper portion of the curve, where the earliest retirements occur, matches closely with the selected Iowa curve."[84] However, TCC provides no support for this so-called "principle," except to cite to Mr. Henderson's testimony where he first offers this excuse. There is no citation to the Depreciation Manual or any other accepted treatise as the source of this "principle." Even a cursory review of the visual evidence shows that, by focusing on only the first part of the curve, the TCC life parameters result in

[81] Cities Exhibit 4, p. 47.
[82] Cities Exhibit 30, p. 124.
[83] Adjunct – something joined or added to another thing but not essentially a part of it. *Webster's Ninth New Collegiate Dictionary* 57 (1988).
[84] TCC Initial Brief, p. 111.

significant mis-matches for the remaining portions of the curve. These discrepancies only highlight the wisdom of the Depreciation Manual in citing visual matching as an "adjunct" to mathematical matching, not *vice versa.*

In summary, the evidence clearly establishes that the life parameters selected by Mr. Srinivasa, as set out in Staff's Initial Brief, provided the best match and should be used for determining TCC's depreciation expense.

Net salvage

The major difference between Staff's recommended level of depreciation and TCC's requested depreciation is created by the level of net salvage used in the calculations. After reviewing TCC's proposed net salvage values, Mr. Srinivasa found that they reflect past periods of very high inflation that are not representative of current conditions causing the proposed net salvage values to be many multiples of the actual costs of removal experienced by TCC. In order to avoid this situation, Mr. Srinivasa proposed a new method of determining the net salvage value, which he labeled the "modified traditional method." TCC raises a number of objections to Mr. Srinivasa's methodology, but none of them are valid.

Initially, TCC claims that Mr. Srinivasa's method is "a drastic and unwarranted modification to the Commission's traditional method to calculate net salvage."[85] While the modified traditional method is a change from the method used by Staff in the past, such change is not "unwarranted." The change in methodology is clearly warranted by the evidence in this proceeding, which demonstrates that, under the prior methodology, the total cost of removal amounts requested by TCC on a going forward basis are an order of magnitude higher than its

[85] *Id.*

actual historical experience during 1984-2005 time period.[86] Reviewing the Company filed data, TCC is requesting amounts for the cost of removal for the transmission, distribution and general plant that are 642%, 358% and 302% higher than the average actual cost of removal TCC experienced during 1984-2005. Financial Accounting Standards No. 143 (SFAS No.143) requires tracking and reporting of the cost of removal of the legal and non-legal asset removal obligation as a regulatory liability to the SEC (see Srinivasa direct page 32), which is another good reason to estimate the cost of removal that resembles the actual experience rather than overly inflating the amount. Also, as stated in Srinivasa direct page 33, the company's historical salvage data may not be very reliable to study the trend as contemplated in the traditional method, because it is typically sporadic and also has been subject to adjustment by TCC's accounting department.

TCC notes that Mr. Srinivasa has never recommended in a prior case the methodology for calculating net salvage that he proposes in this case, and that neither the Commission nor any other regulatory authority has ever previously adopted that methodology to the best of Mr. Srinivasa's knowledge. As Mr. Srinivasa pointed out, his decision to propose the modified traditional method was based upon his review of TCC's study. Based upon company specific studies that he reviewed in other dockets, he did not recommend a modification to the traditional method.[87] Therefore, the Commission has not previously approved the modified traditional method because it has not been presented to them for consideration. For the same reason, there is no evidence that it has ever been rejected by the Commission. However it is important to note that the NARUC depreciation manual recognizes approaches other than the traditional method

[86] Staff Exhibit 3, Bates pp. 30-31.
[87] Transcript, p. 1376.

for estimating the future net salvage values.[88] Given the fact that, in this particular case, application of the traditional method results in future net salvage values that are many multiples higher than TCC's actual historical cost of removal amounts, a modification to the traditional method is not only appropriate, it is required.

TCC contends that Mr. Srinivasa's proposed method is contrary to the objectives of depreciation accounting and will improperly shift cost responsibility from current customers to future customers. TCC also claims that Mr. Srinivasa's recommendation is contrary to the straight-line pattern for depreciation contemplated by P.U.C. SUBST. R. 25.231(b)(1)(B). These arguments are specious. The fundamental question in analyzing the Company's depreciation request is whether TCC will actually incur the costs that the traditional methodology anticipates. TCC's historical records show that its actual spending pattern is an order of magnitude lower than the traditional methodology's indicated pattern and that the inflation element implicit in the methodology is grossly overstated. Revising the salvage values to more accurately reflect actual experience, as in the modified traditional method, benefits both current and future customers by excluding phantom costs. It does not shift cost responsibility because overall costs to both groups are lowered. It is also misleading to suggest that Mr. Srinivasa is recommending a methodology that is contrary to the straight-line pattern for depreciation contemplated by P.U.C. SUBST. R 25.231(b)(1)(B). As Mr. Srinivasa testified, the methodology used to calculate the depreciation rate is straight-line remaining life, which is consistent with the P.U.C Sub Rule 25.231(b)(1)(B).[89] Merely eliminating the excessive net salvage values does not change the straight-line methodology to a different method. The depreciation rates resulting from Mr.

[88] Staff Exhibit 3, Bates pp. 32-33.
[89] *Id.*, Bates pp. 16 and 23.

Srinivasa's calculations still evenly recover the costs of an asset over its life as required by the NARUC Depreciation Manual.

TCC contends that Mr. Srinivasa's method departs from the Company's historical information and, therefore, is inconsistent with the Commission's determinations in Docket No. 28840 that the net salvage calculation should be based on the Company's historical information. Again the company mischaracterizes Mr. Srinivasa's testimony, which clearly indicates that he used the company provided historical data to calculate the cost of removal and gross salvage value for each account[90] Each of Mr. Srinivasa's calculations begins with the surviving plant balance as of December 31, 2005, the Company's proposed gross salvage ratio, and the cost of removal ratio, all of which were obtained from the Company's historical salvage value data. However, rather than using the Company's *proposed* gross salvage and cost of removal ratios, Mr. Srinivasa has made adjustments to the inflation rate used by the Company to calculate new gross salvage and cost of removal amounts on a going forward basis. Like Mr. Srinivasa's modified traditional method, the Company's *proposed* traditional calculation is a projection of future events, not a recitation of historical fact. Mr. Srinivasa's modified traditional method effectively tempers the future expected inflation for the cost of removal and gross salvage value by basing those calculations on the most recent five-year average of the employment cost index and consumer price index. As discussed in Staff's Initial Brief, it is more reasonable to use the inflation rate that reflects the most recent five -year average rate rather than the past double digit inflation rates of the late 70s and the early 80s that are embedded in the Company's estimate.[91]

None of TCC's complaints about Mr. Srinivasa's calculations have merit. TCC's attempt to saddle ratepayers with inflated net salvage values, based upon ancient inflationary trends,

[90] *See*, Staff Exhibit 3, Bates pp. 38-40, and Staff Exhibit 3c, Appendix C, Bates pp. 128-159.
[91] Staff's Initial Brief, pp. 25-28.

should be rejected in favor of the modified traditional method, which more closely reflects currently prevailing market conditions.

12. Amortization of Gain from Sale of Buildings

Not addressed.

13. SFAS 143 Accretion

Not addressed.

14. Late Payment Penalties

Not addressed.

15. Third-Party Construction Margins

Not addressed.

16. Federal Tax Issues

See Staff's Initial Brief.

17. Ad Valorem Property Taxes

Not addressed.

18. TCOS Synchronization

Not addressed.

19. Bad Debt Expense

See Staff's Initial Brief.

20. Rate Case Expenses

See Staff's Initial Brief.

A. Cities

See Staff's Initial Brief.

B. Company

See Staff's Initial Brief.

21. Uncontested Issues

Not addressed.

VI. ENERGY EFFICIENCY FUNDING

Not addressed.

VII. LOAD RESEARCH

Not addressed.

VIII. COST-OF-SERVICE STUDY

1. Accounts 364-368 (Distribution Plant)

Not addressed.

A. 100% Demand Allocation – Distribution Plant

B. Minimum Distribution Study – Distribution Plant

2. Staff's Cost-of-Service Study

See Staff's Initial Brief.

3. IDR Issues

Not addressed.

IX. RATE DESIGN

1. *Gradualism*

CCG insists that gradualism be applied to this proceeding.[92] Moreover, it refers to Docket No. 28840 to support its contentions.[93] Nevertheless, in its initial brief, Staff restated Finding of Fact No. 282 in Docket No. 28840 wherein the Commission determined that gradualism should apply to total system revenue not to individual functions.[94] When moving rates to cost, the Commission may disregard gradualism. In this proceeding, TCC is moving its rates to cost.[95]

Staff agrees with TIEC and Federal Executive Agencies that gradualism should be rejected in this instance, and rates should be based upon costs.[96] TIEC believes that "[r]ates that reflect the cost-of-service not only promote efficient use of the transmission and distribution system, they are also equitable because each customer pays what it costs the utility to serve him."[97] The FEA believes that gradualism should be rejected and that rates should be based upon costs for several reasons including (1) cost-based rates are fair, (2) cost-based rates enhance economic efficiency by sending the correct price signals to consumers, (3) cost-based rates would be more stable over time, and (5) cost-based rates eliminate the need for arbitrary

[92] CCG Initial Brief, pp. 4, 116-22.
[93] CCG cited several cases in its effort to support gradualism, however all of those cases preceded the Commission's ruling in Docket No. 28840.
[94] In Docket No. 28440 the Commission held that gradualism should not be abandoned, but that it should apply to total system revenue not to individual functions, Docket No. 28840 *Order* at 7; Finding of Fact No. 282.
[95] TCC Exhibit 45, p. 9-41; Transcript, pp. 492, 514, 517-18.
[96] TIEC Initial Brief, Federal Executive Agencies Initial Brief.
[97] TIEC Initial Brief, p. 11.

judgments in setting rates.[98] Setting rates at cost sends the proper price signals in a competitive environment and eliminates cross subsidies.[99]

A. Inter Class

TCC is correct when it states that "[a]pplying an across-the-board increase when actual cost data is available is contrary to Commission precedent, unjustified, and should be rejected."[100] See Staff's comments above under Gradualism, and its comments below under Intra Class.

B. Intra Class

OPC wants to moderate the increase in the fixed customer charge portion of the residential class by limiting the percentage increase to the metering and customer service charges to no more than the overall percentage revenue increase ordered for the residential class.[101] OPC believes that the retail electric providers (REPs) will be discouraged from marketing to low use customers, particularly if the REPs equate lower income with higher credit risk,[102] but OPC cites no authority or evidence to support its proposal. Moreover, customers that are a high credit risk will continue to be so regardless of the rate charged.

Furthermore, OPC maintains that a usage-sensitive rate is a meaningful price signal. While this is true, it is an incorrect argument since the proper price signal is to have all rate components based upon cost-causation[103] regardless of whether the rate is a flat rate per month

[98] Federal Executive Agencies Initial Brief, pp. 5-10.
[99] Federal Executive Agencies Initial Brief, p. 7.
[100] TCC Initial Brief, pp. 140-41 citing TCC Exhibit 93, pp. 6-7.
[101] OPC Initial Brief, p. 57.
[102] *Id.*, p. 58.
[103] TIEC Initial Brief, p. 11.

or usage sensitive. Here, the costs that are associated with the fixed customer charge (metering and customer service) are caused, not on a usage sensitive basis, but on a flat-rate basis.[104]

OPC also states that a "high customer charge tends to inhibit energy conservation... and can promote wasteful energy consumption."[105] In effect this claim is that a high customer charge will not send the correct price signal, which can promote wasteful energy consumption. Such a claim is inconsistent with the commonly understood economic principle that the lower the price the more that is sold, or used. A rate based upon cost-causation will not distort the price signal; it is the correct price signal.

2. *Riders*

TCC again attempts to raise its proposed riders from the ashes like a phoenix, claiming that they are not automatic adjustment clauses, not piecemeal ratemaking, will not shift regulatory risk, will not allow TCC to over-earn, will not complicate the billing process, do not violate PURA § 36.201, and will permit regulatory review.[106] TCC also claims circumstances have changed since August 15, 2005, when the Commission rejected riders in Docket No. 28840. Circumstances have not changed sufficiently to reverse an order that is less than two years old. Staff continues to disagree with TCC's arguments just as it did in its initial brief. Additionally, Staff observes that PURA § 36.201 was in effect when the Commission rejected riders in Docket No. 28840.

TCC's proposed riders would shift the risk of expense recovery from shareholders to customers.[107] Accordingly, any change in TCC's risk profile should be accompanied by a

[104] "TCC relied on the equalized cost-of-service study class allocations by function (*i.e.*, all costs assigned to a class are recovered from that class)," TCC Initial Brief, p. 142, citing TCC Exhibit 94, pp. 16-17.
[105] OPC Initial Brief, p. 59.
[106] TCC Initial Brief, pp. 143-52.
[107] Federal Executive Agencies Initial Brief, p. 13.

corresponding reduction it its rate of return.[108] For the many reasons stated in the Federal Executive Agencies' Initial Brief and for those stated in Staff's Initial Brief,[109] the riders should be rejected.

A. Municipal Franchise Fee Adjustment – City (MFFA-C)

Cities claims that the MFFA-C Rider is not a prohibited automatic adjustment clause under PURA § 36.201.[110] Staff disagrees as explained in the Direct Testimony of Christine Wright.[111] Moreover, the Commission was aware of PURA § 36.201 when it specifically rejected the MFFA-C rider in Docket No. 28840.[112] Staff agrees with the Federal Executive Agencies and TIEC. Allowing the rider would "violate the Commission's established policy of evaluating the sufficiency of a utility's rates in the context of a full rate proceeding"[113] and eliminate any incentive for the Company (or the Cities) to mitigate the impact of changes in the municipal franchise fees.[114]

TCC states that "[a]bsent opportunity for timely recovery of changes in franchise fees, it would be substantially more difficult to agree to cities' requests for such adjustments" because it would not have a means of recovering its increased costs.[115] Such a statement points out the importance of maintaining the *status quo*, to assure that both parties to such agreements have the requisite incentive to negotiate reasonable fees. Such incentive is eliminated by a flow-through mechanism that guarantees TCC a recovery of any cost increase to which it agrees. TCC's statement also ignores the fact that TCC has the ability to seek recovery of increased franchise

[108] *Id.*
[109] *Id.*, pp. 10-16.
[110] Cities Initial Brief, pp. 110-12.
[111] Staff Exhibit 7, pp. 9-10 (discussion concerning the application of PURA §§ 36.201 and 36.051).
[112] Docket No. 28840, *Order*, Finding of Fact No. 254. All riders were rejected under Finding of Fact No. 261.
[113] To establish a revenue deficiency, the utility must account for all of its costs and revenues, both increases and decreases in a full rate proceeding. Federal Executive Agencies Initial Brief, pp. 11-12.
[114] TIEC Initial Brief, p. 14.
[115] TCC Initial Brief, p. 149.

fees in the same manner as an increase in any of its other operating costs – through a rate proceeding in which both cost increases and cost *decreases* will be considered. This is the standard expressed by PURA §36.051, which directs the Commission to consider the utility's "overall revenues."

Both Cities and TCC have ignored the impact that the municipal franchise rider can have on retail electric competition in Texas. The Commission has previously rejected TCC's request for a municipal franchise fee adjustment rider. In Docket No. 28840, the Commission found:

> 253. Municipal franchise fees should be collected through base rates and not through a separate rider.
>
> 254. TCC's proposal to implement the Municipal Franchise Fee Adjustment Rider should be rejected as it would create confusion with potentially over 100 different rates resulting.
>
> 255. Simple rates and uniform customer classifications promote competition. Having different rates in each of the municipalities in TCC's service territory is contrary to the Commission's desire for uniform, simple rates.

Neither Cities nor TCC presented any evidence to justify a change from the policy decisions made by the Commission in Docket No. 28840. Accordingly, the proposed MFFA should be rejected again.

B. Energy Efficiency Cost Recovery (EECR)

Staff agrees with FEA and IEC that the EECR should be rejected.[116] See Staff's comments above and those in its initial brief.[117]

C. Rate Case Expense

See Staff's Initial Brief.

[116] TIEC Initial Brief, pp. 14-16.
[117] Staff's Initial Brief, pp. 27-28. *See*, Docket No. 28840, *Order*, Finding of Fact No. 261 that rejects all riders.

3. *Discretionary Service Fees*

CPL Energy, L.P. (CPL) and TLSC/Texas Rose oppose various discretionary fees because they assert that TCC failed to demonstrate that its costs were valid.[118] TCC proposes rates that are related to the costs of providing such services, both increases and decreases.[119] CPL and TLSC/Texas Rose presented no cost witnesses and no evidence to contradict TCC's studies.

X. TARIFF FORMATTING AND LANGUAGE

See Staff's Initial Brief.

XI. TERMINATION OF THE ISA RIDERS

See Staff's Initial Brief.

[118] CPL Retail Energy Initial Brief, pp. 2-11.
[119] TCC Exhibit 45, pp. 37-40.