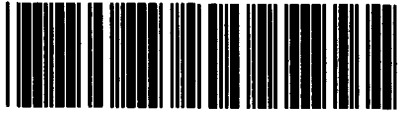


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APPLICATION OF ELECTRIC	§	BEFORE THE
TRANSMISSION TEXAS, LLC FOR	§	
A CERTIFICATE OF	§	PUBLIC UTILITY COMMISSION
CONVENIENCE AND NECESSITY,	§	
FOR REGULATORY APPROVALS	§	OF TEXAS
AND INITIAL RATES	§	

**OFFICE OF PUBLIC UTILITY COUNSEL'S**  
**MOTION FOR REHEARING**

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS:

COMES NOW, the Office of Public Utility Counsel ("OPC"), and files this Motion for Rehearing. By this motion, OPC requests rehearing on issues on which the Commission erred in its Order on Rehearing received on December 21, 2007. OPC presents arguments on two issues in this Motion for Rehearing; the failure to address any issue, however, should not be interpreted as acquiescence on that issue. The errors to which OPC takes exception and seeks rehearing on are presented in the assignments of error set forth below.

**ASSIGNMENTS OF ERROR AND DISCUSSION**

The Commission should amend its Order, to correct those errors set forth below, which are in violation of the Commission's constitutional and statutory authority, made upon unlawful procedure, affected by error of law, and are arbitrary, capricious and an abuse of discretion or a clearly unwarranted exercise of discretion.

### **ASSIGNMENT OF ERROR NO. 1**

**The Commission's Order on Rehearing erroneously holds that ETT, as a transmission-only company, is not required to comply with the emergency operations plan requirements of PUC Substantive Rule 25.53. (Contesting Findings of Fact No. 95 and Conclusions of Law No. 20.)**

The Commission's findings and conclusions state that the emergency plan requirements found in the Commission's substantive rules do not apply to ETT because they address generation and service to end-use customers. OPC respectfully disagrees with the Commission's holding. As acknowledged by ETT in its post-hearing reply brief, an emergency operation plan is important. The Company's argument against the application of Rule 25.53 to ETT is that the information to be included in the plan relates to generation and service to end-use customers. However, the principle purpose of Rule 25.53, to require that a utility have an emergency operations plan that will be followed in the event of a system or local emergency, is not mooted merely because the itemized list of what should be in the plan contemplates a more traditional transmission and distribution utility.

The requirements regarding what information is to be included in the plan is found in subsection (c) of the rule while subsections (a) and (b) relate to the general filing requirements of the plan the utility will follow in the event of a system or local emergency, and the availability of the plan for inspection by the public and the Commission. OPC recommends that the Commission amend its Order on Rehearing and find that while subsection (c) does not apply to ETT, the Company must comply with subsections (a) and (b) of Rule 25.53; the existence

and availability of an emergency operations plan, as required by those subsections, are important customer protections and are vital to the reliability of electric service in this state. OPC further recommends that the Commission order the initiation of a rulemaking proceeding to determine what information should be included in a transmission-only company's emergency operations plan. Accordingly, rehearing should be granted.

### **ASSIGNMENT OF ERROR NO. 2**

**The Commission erred in disallowing Cities' rate case expenses and concluding that Cities are not entitled under PURA § 33.023 to recover rate case expenses in this proceeding. (Contesting Conclusions of Law No. 11.)**

On page ten of the Order on Rehearing, the Commission adopts Commission Staff's interpretation of PURA Section 33.023 and holds that Cities are not entitled to recover their requested rate case expenses in this docket. OPC disagrees. The language of PURA § 33.023 is plain and unambiguous, and no restrictive phrases are used to limit the recovery of rate case expenses to retail rates alone. Nor does PURA § 33.023 contain language to support Commission Staff's contention that municipal jurisdiction is a prerequisite to rate case expense reimbursement. PURA Section 33.023 instead ties the reimbursement of expenses to those incurred when engaged in a ratemaking proceeding. PURA Section 11.003(17) defines the phrase "ratemaking proceeding" as a "proceeding in which a rate is changed." Texas courts have interpreted this

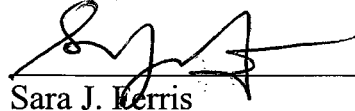
definition broadly. In *Southwestern Public Service Company v. Public Utility Commission of Texas*, 962 S.W.2d 207 (Tex. App.—Austin 1998, pet. denied), the Third Court of Appeals found that the City of Amarillo was entitled to reimbursement of the reasonable expenses they incurred as a result of engaging in the fuel reconciliation proceeding in question because fuel reconciliations constitute ratemaking proceedings as that phrase is defined and used in PURA. Municipalities do not have original jurisdiction over fuel reconciliations, and in light of the court's holding that fuel reconciliations are ratemaking proceedings in which cities are entitled under PURA to recover reasonable expenses, it is clear that a city's right to recover rate case expenses under PURA § 33.023(b) is not limited to cases in which the city had original jurisdiction. The Commission's disallowance of Cities reasonable rate case expenses in this proceeding violates PURA § 33.023, constitutes an act in excess of the Commission's statutory authority and arbitrary and capricious decision-making. Accordingly, rehearing should be granted.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Office of Public Utility Counsel respectfully prays that the Commission grant rehearing on the assignments of error identified by OPC in the above paragraphs, and adopt the recommendations of OPC as described herein. Finally, OPC prays that the Commission grant OPC such other and further relief to which it may be justly entitled.

Respectfully submitted,

Don Ballard  
Public Counsel  
State Bar No. 00790259

A handwritten signature in black ink, appearing to read 'Sara J. Ferris', is written over a horizontal line.

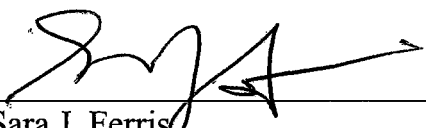
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ATTORNEYS FOR THE  
OFFICE OF PUBLIC UTILITY COUNSEL

**CERTIFICATE OF SERVICE**

Docket No. 33734

I hereby certify that today, January 9, 2008, a true copy of the Office of Public Utility Counsel's Motion for Rehearing was served on all parties of record via United States First-Class Mail, hand-delivery, e-mail or facsimile.

  
\_\_\_\_\_  
Sara J. Ferris