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APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES AND RECONCILE FUEL COSTS	§ § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

ENTERGY TEXAS, INC.'S

EXCEPTIONS TO THE

PROPOSAL FOR DECISION

OCTOBER 18, 2010

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ENTERGY TEXAS, INC.'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

Entergy Texas, Inc. ("ETI" or "the Company") files these Exceptions to the Proposal for Decision ("PFD") issued in this proceeding. ETI does not except to the ALJ's primary recommendation to reject the CGS program proposal. ETI's exceptions are limited to those alternative portions of the PFD that discuss the potential design of the CGS program, only should the Commission determine not to adopt the ALJ's primary recommendation.

I. INTRODUCTION

Not addressed.

II. PROCEDURAL HISTORY

Not addressed.

III. SUMMARY

The ALJ has correctly determined that if the CGS program is implemented consistent with the requirements of PURA § 39.452(b) (as it must be), and if the program is attractive to Large Industrial Power Service ("LIPS") customers, ETI will experience substantial unrecovered generation-related production costs that result from these customers migrating to the CGS program. The ALJ also correctly determined that PURA § 39.452(b) does not permit Company shareholders to be put at risk for these costs, and that ETI is entitled to recover these "unrecovered costs" from ratepayers. In light of these determinations, the critical decision point becomes whether it is sound public policy to require the Company's non-participating customers to subsidize the costs of the CGS program for the purpose of allowing participating CGS customers an opportunity to choose a competitive generation supplier. This is the very type of policy question the Legislature delegated to the Commission with the instruction that the

Commission "accept, reject, or modify" the CGS program. The ALJ answered this question "no," and therefore recommends rejection of the CGS program.

As the ALJ has determined, the Company has proposed a CGS program that is a reasonable and good faith effort to comply with PURA § 39.452 and to balance competing, and in some cases, arguably irreconcilable statutory requirements. ETI, however, does not advocate the adoption of its CGS program regardless of cost, or in the face of legitimate concern over non-participant subsidization of the CGS program. Nor does the statute require that any form of CGS program be adopted. Accordingly, ETI has determined not to except to the ALJ's primary recommendation that the CGS proposal be rejected.

ETI, however, does have concerns, set forth below, with the ALJ's recommendations to modify the Company's CGS proposal in the event that the Commission does not adopt the ALJ's primary recommendation. Obviously, any such concerns are mooted by the Commission's adoption of the ALJ's primary recommendation, and these exceptions in that instance need not be addressed at all. To the extent the Commission addresses the ALJ's alternative recommendations, the Company urges the Commission not to modify its CGS program. The ALJ characterized ETI's program as "a good faith attempt to navigate the conflicting interplay of its status within the Entergy system, principles of traditional ratemaking, and the competitive goals of the CGS legislation."[1] Several of the ALJ's suggested modifications to the CGS program, however, give rise to the conflicts and obstacles that the ALJ recognized in other portions of the PFD. Such modifications, along with the ALJ's proposed deferral of a number of substantive issues to the true-up proceeding, are not authorized by PURA, inconsistent with the record evidence, and would upset the careful balance achieved by the Company's proposal. The ALJ's attempts to expand the true-up process in an effort to ameliorate the subsidization of CGS customers by the non-participating customers are understandable. However, it is not possible to modify the program, including the true-up, in a way that avoids the key policy issue of subsidization without conflicting with the express requirements of PURA § 39.452(b).

IV. BACKGROUND

Not addressed.

[1] PFD at 2.

V. ARGUMENT AND ANALYSIS

B. Cost Recovery Riders

1. CGSC Rider

The ALJ recommended that, in the event that the Commission rejects his recommendation to reject the CGS program, Rider CGSC initially be implemented as proposed by the Company, but that costs later be redirected only to those eligible CGS program participants that elect to participate and a refund be given to non-participating eligible CGS customers.[2] ETI respectfully disagrees with the merits and workability of the ALJ's recommendation. As the ALJ recognized, no party proposed such an approach and there is no evidence or other discussion in the record as to how or if that recommendation could be designed and implemented, or whether the additional burden and expense of implementing a reallocation and refund mechanism were justifiable.

2. CGSUSC Rider

a. Cost Estimates

The PFD correctly finds that rates must be set in this case to account for unrecovered costs to meet the requirements of PURA § 39.452(b), but does not address the specifics of the Company's proposed CGSUSC rider. The Company clarifies that, under its CGS proposal, its estimate of unrecovered costs that would form the basis of the Rider CGSUSC portion of the CGS program would be provided only once the Company has determined a good estimate of the level of CGS participation. Accordingly, the Company's testimony provides the rider design, but not the specific rate. This is consistent with the ALJ's recognition that it would not be practical to develop a rate when the level of participation is not yet known.[3] The Company's intent is to provide the estimate of the unrecovered costs that would be recovered through Rider CGSUSC and the resulting rate at the earliest practical time after a CGS program has been approved by the Commission in a final order.[4]

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2 PFD at 21.

3 PFD at 26.

4 Direct Testimony of Phillip May, ETI Ex. 9 at 20-21.

b. Annual True-ups Should Account for Load Growth

The ALJ acknowledges that the Company's base rates should be set in a manner honoring fundamental rate setting principles; that is, in a manner that provides the Company's shareholders with an opportunity to earn a fair return on the historical test year-based cost of service approved in this case.[5] PURA and U.S. Supreme Court precedent requires that "[i]n establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses."[6] Since it is uncertain what the future holds for the Company's base rate revenues and costs, it is improper to confiscate in advance shareholder revenues that should be devoted to providing an opportunity to earn a fair return.

The ALJ recognizes this fundamental principle and agrees that the function of load growth is to preserve the utility's ability to earn a return between base rate cases as an offset to rising costs. His alternative recommendation, however, that the Commission "explore" and in some as yet unidentified manner account for load growth in the annual CGS program true-up proceeding, is inconsistent with his recognition of a utility's right to an opportunity to earn a fair return. The Company recognizes and indeed shares the cost causation concerns expressed by the ALJ, but concerns about allocation do not justify the use of potential load growth as a way for shareholders to subsidize the statutorily mandated CGS program.

The ALJ's recommendation to explore load growth in the true-up proceeding is also contrary to Commission policy as expressed in its order adopting the non-ERCOT Transmission Cost Recovery Factor ("TCRF") rule, P.U.C. SUBST. R. 25.239. The Commission's order clearly rejected consideration of growth in base rate revenues outside the context of a base rate case:

> The commission finds that the ***proposed calculation*** properly accounts for load growth for the purpose of the TCRF. The commission concludes that it is not necessary or appropriate to require that the calculation of the TCRF account for growth in overall revenue as a means to reduce the amount of transmission costs eligible for recovery through the TCRF. To do so would undermine the underlying purpose of HB 989 to encourage timely investment in non-ERCOT transmission infrastructure. ***In addition, such an approach would not recognize that non-transmission costs could be growing faster than the increased revenues. Increases in***

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5 PFD at 22-23.

6 PURA § 36.051; *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

load, revenue, and non-transmission costs should be addressed through a general rate case.[7]

The Commission did not determine that the TCRF rule should incorporate any adjustment for base rate load growth, such as is proposed by the ALJ. Rather, the Commission agreed with participant comments that the use of current billing determinants adequately accounted for load growth by spreading costs among increased customer usage in order to lower overall rate impact. The TCRF rule, unlike the ALJ's recommendation for the CGS program, did not purport to transfer shareholder revenue under existing rates from shareholders to customers. Rather, the Commission determined in the TCRF rule that load growth is properly accounted for by its consideration in the context of base rate cases. Under this approach, load growth is then available to ameliorate changes in a company's overall cost of service rather than being devoted to a single program, like CGS, which has no relationship to the load growth or the cost increases.

The Company further excepts to the ALJ's reading of PURA § 39.452(b) as authorizing the Commission to account for load growth.[8] The CGS legislation specifies that the CGS rate shall be set "to recover any costs unrecovered as a result of the implementation of the tariff." There is no reasonable reading of this provision that would include accounting for future load growth. Whereas the costs that the Company seeks to recover in the event that the CGS program is adopted are those incurred "as a result of" the program, any load growth occurs entirely independently of the implementation of the CGS tariff. There is no causal relationship between the CGS program and load growth.

If the legislature had intended load growth to be considered as a potential offset to CGS costs, it would have expressly stated that intent, as it did in the 2005 legislation adopting the initial CGS requirement and the accompanying provision for recovery of costs through the Incremental Purchased Capacity Rider ("IPCR"). As the ALJ recognizes, load growth adjustments outside of the context of a full base rate case are contrary to fundamental ratesetting principles as set forth in PURA.[9] The TCRF Rule further reflects the Commission's observance of these rate setting principles. Given this background, it is to be expected that the Legislature deemed it necessary to explicitly include reference to load growth in the IPCR section of the statute, and it likewise makes no sense to imply a load growth adjustment requirement in another

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[7] Project No. 33253, Order Adopting New § 25.239 as Approved at the December 7, 2007 Open Meeting (Dec. 14, 2007) at 14 (emphasis added).

[8] PFD at 30.

[9] PFD at 22-23.

section of the same statute. Indeed, to imply a load growth adjustment in the CGS provisions of H.B. 1567, which were silent as to that issue, when the IPCR provisions of that same legislation expressly included such a provision, violates the basic tenets of statutory construction.[10]

c. Potential Benefits of the CGS Program

i. Capacity Savings

The ALJ correctly determined that TIEC's claim that the CGS program will yield capacity savings is faulty, because QF put cannot be treated as capacity.[11] Yet having agreed with the Company and Staff in finding that the Company cannot treat QF put as firm capacity, the ALJ's alternative discussion of the CGS program design nevertheless includes a recommendation that potential savings from reduced capacity purchased by the Company be explored in the true-up should the Commission approve the CGS program. The ALJ's recommendation to explore capacity savings cannot be squared with his accurate findings regarding the nature of QF put.

TIEC's argument regarding the potential for a possible reduction in reserve equalization payments made by ETI under Service Schedule MSS-1 that may result from customer migration to CGS appears to have been given some weight by the ALJ in reaching his determination that capacity savings should be explored in a true-up.[12] TIEC's theory regarding potential reduced MSS-1 costs depends on the same assumption, correctly rejected by the ALJ, that the QF power could provide capacity to displace MSS-1 payments. Second, meeting capacity obligations through MSS-1 payments is not inherently a negative for ETI and its ratepayers, as the ALJ seems to assume.

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[10] "Ordinarily when the Legislature has used a term in the section of a statute and excluded it in another, we will not imply the term where it has been excluded." *Meritor Automotive, Inc. v. Ruan Leasing*, 44 S.W.3d 86, 90 (Tex. 2001): *Accord, Steering Committees v. Public Util. Comm'n*, 42 S.W.3d 296, 302 (Tex. App. —Austin 2001, no pet.).

[11] PFD at 32.

[12] The ALJ also seems to have placed some reliance on the fact that the Company is at this point capacity short. The evidence regarding this situation, however, is simply a snapshot at a single point in time. Tr. at 109. The Company has undertaken and continues to undertake a number of steps to add capacity to its resource portfolio following the increased regulatory certainty reflected in House Bill 1492. *See, e.g.*, Rebuttal Testimony of Robert Cooper, ETI Ex. 59 at 13,16, 22 (addressing the new capacity purchase from the Entergy Arkansas, Inc. Wholesale Baseload, the new Frontier long-term purchase, and the purchase from East Texas Electric Cooperative).

ii. Potential Average Fuel Cost Savings

The Company also excepts to the ALJ's alternative recommendation that potential fuel cost savings be made part of the annual true-up proceeding.[13] As an initial matter, and as acknowledged by intervenor testimony, any potential fuel cost savings or increases in fuel costs associated with the implementation of the CGS program would flow through to customers through the Company's fixed fuel factor.[14] Irrespective of the effect of CGS customer migration on fuel costs,[15] because those costs flow to customers through the Company's fixed fuel factor formula, they have no bearing or relationship to the Company's embedded fixed production costs that form the vast majority of "unrecovered costs" that are the subject of the true-up. Therefore, there is no reason to consider fuel cost impacts as part of the true-up proceeding.

E. Deferral of Contested Issues Until True-up

There is no reason to adopt the ALJ's alternative proposal to defer until the true-up the resolution of issues relating to the implementation of the CGSUSC rider. For the reasons set forth above in ETI's Exceptions, and its Initial and Reply Briefs, the answers to the questions deferred by the ALJ (consideration of load growth, alleged capacity benefits, fuel cost savings) are presented in the record already before the Commission. Furthermore, deferral would be poor policy because the CGS program would then move forward without any standards governing the future treatment of what are controversial and disputed components of the true-up. The parties would have no guidance on how to conduct their business or mitigate the risk of unexpected outcomes. As a result, ETI, indeed all stakeholders, are put at risk for unanticipated outcomes and costs.

Leaving such matters completely open for future litigation could turn the annual true-up from the largely ministerial and accounting proceeding that it is intended to be into costly litigation regarding what categories of costs should be included and excluded in the true-up, and how and whether those costs should be adjusted, ultimately putting at risk the very costs that the CGS legislation mandates for Company recovery.

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13 PFD at 38.

14 *E.g.*, Tr. at 234-35 (Nalepa cross).

15 The evidence demonstrates that the CGS program could lead to either increases or decreases in average fuel costs paid by customers under ETI's fuel factor, depending on the relationship between average and avoided costs. Tr. at 232-33.

There is no sound policy reason to defer the issue of whether capacity savings should be considered because the ALJ has already correctly determined that there will be no capacity savings. There is no sound policy reason to defer the issue of whether load growth should be considered because the legislation has not authorized a load growth adjustment. There is no sound policy for considering fuel cost savings because those savings do not offset the unrecovered production costs that are the focus of the true-up. In the event that the Commission adopts the Company's proposed CGS program, the Commission should affirmatively rule that these items are not to be considered in the true-up proceeding.

VII. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact on ETI's CGS Proposal

19. Rider CGSC and Rider CGSUSC may harm the competitiveness of manufacturers that choose not to take advantage of competitive generation.

The Company excepts to Finding of Fact 19 because this finding is not supported by the record evidence.

22. Rider CGSUSC is deficient because it does not account for potential load growth. Load growth should be accounted for because load growth could mitigate ETI's unrecovered generation related costs.

The Company excepts to Finding of Fact 22 for the reasons stated in Section V.B.2.b., above.

B. Conclusions of Law on ETI's CGS Proposal

5. PURA § 39.452(b) permits ETI to account for load growth in the design of the CGS tariff.

6. ETI has not met its burden of proof to establish a rate regarding the unrecovered cost of implementing the CGS program.

8. P.U.C. SUBST. R. 25.239 accounts for load growth.

The Company excepts to Conclusions of Law 5, 6 and 8 for the reasons stated in Section V.B.2. V.E, above. ETI has designed a tariff that will recover its unrecovered costs consistent with PURA § 39.452(b). There is no deficiency in the evidence. Rather, it is a policy question

for the Commission whether to adopt the CGS program and impose the unrecovered costs on non-participating customers.

CONCLUSION

Entergy Texas, Inc. respectfully requests that the Company's Exceptions to the Proposal for Decision be granted, and that the Company be granted such other relief to which it has shown itself entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by facsimile, hand-delivery, overnight delivery, or 1st Class U.S. Mail on all parties of record in this proceeding on October 18, 2010.