



Control Number: 37744



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APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES AND TO RECONCILE FUEL COSTS	§	BEFORE THE STATE OFFICE
	§	
	§	OF
	§	
	§	ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S MOTION TO SEVER, OR IN THE  
ALTERNATIVE, MOTION TO LITIGATE RATE CASE EXPENSES IN A  
SEPARATE PHASE OF THE RATE CASE PROCEEDING AND MOTION  
TO FILE SUPPLEMENTAL TESTIMONY AND MODIFY DISCOVERY  
DEADLINES**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Motion to Sever, or Alternatively, Motion to Litigate Rate Case Expenses in Separate Phase of the Rate Case Proceeding and Motion to File Supplemental Testimony and Modify Discovery Deadlines, and would show the following:

**Introduction**

Commission Staff files this motion to request that all issues relating to the reasonableness of Entergy Texas, Inc.'s (ETI) request for reimbursement of its rate case expenses be severed from Docket No. 37744 and addressed in a separate, companion docket. Staff makes this request, as more fully explained below, to allow Staff to review documentation supporting the claim for reimbursement of rate case expenses which has not yet been provided to Staff at the time of the filing of this motion. This request is also consistent with recent Commission practice. Severance is also more efficient because it reduces the need for estimates and updates of rate case expenses before they are finalized and before a substantial portion of the expenses will be incurred. Rate case expenses issues should therefore be severed from the underlying rate and fuel reconciliation case pursuant to P.U.C. PROC. R. 22.34(b) because it would serve the interests of efficiency. Alternatively, Staff requests that rate case expense issues be made part of a separate phase of the rate case and fuel reconciliation proceeding. Staff further requests that if its request to sever rate case expense issues is denied, that it be permitted leave to file supplemental testimony on rate case expenses and time to conduct discovery with respect to the

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invoices supporting ETI's claim for reimbursement of rate case expenses and which have yet to be provided to Staff.

### **Argument**

All issues relating to ETI's claim for reimbursement of rate case expenses should be severed into a separate companion docket in order to allow Staff the opportunity to review invoices supporting ETI's claim to reimbursement of rate case expenses and which have not yet been provided to Staff, to conduct discovery on those invoices, and to formulate an opinion with respect to the reasonableness of the expenses. On April 20, 2010, Staff filed a Request for Information (RFI) to ETI for information relating to rate case expenses.<sup>1</sup> On May 10, 2010, ETI filed a partial response stating that vendor invoices supporting its claim for reimbursement of rate case expenses would be provided at some unspecified future time once the information had been compiled.<sup>2</sup> ETI filed no objections or claim of confidentiality or privilege. Staff and counsel for ETI discussed the vendor invoices early in the week of May 24. During the course of those discussions, ETI's counsel stated that ETI would submit the invoices on rate case expenses as part of its rebuttal testimony. On May 28, 2010, Staff filed a motion to compel ETI to provide the supporting documentation.<sup>3</sup> At approximately the same time that Staff filed the motion, ETI's counsel left a voice message with Staff stating that ETI would provide all of the responsive invoices that it currently has in its possession on June 1, 2010. ETI's counsel also stated that ETI is opposed to severing rate case expenses issues.

As explained in Staff's motion to compel, Staff must be in possession of all documentation supporting ETI's claim for reimbursement of rate case expenses so that it can properly review the reasonableness of the request. Since ETI has requested reimbursement for 14.8 million in rate case expenses,<sup>4</sup> there is likely to be a significant amount of supporting documentation that needs to be reviewed. Staff's testimony is due on June 16. Even if ETI does provide the requested documents on June 1, 2010, that would not provide Staff with sufficient time to review what is likely to be a significant amount of documentation, to serve RFI's on the documentation, to formulate an opinion on the reasonableness of the request, draft testimony

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<sup>1</sup> Commission Staff's 16<sup>th</sup> RFI to Entergy, AG-16-10 (April 20, 2010).

<sup>2</sup> Entergy's Response to Commission Staff's 16<sup>th</sup> RFI (May 10, 2010).

<sup>3</sup> Commission Staff's Motion to Compel (May 28, 2010).

<sup>4</sup> Direct Testimony of J. David Wright at 59 (December 30 2009).

making a recommendation on the request, and to have that testimony filed on June 16. Even if Staff had asked for the requested documentation prior to serving an RFI on April 20, that most likely would not have made a difference since, until pressed by Staff, ETI's strategy seems to have been to wait until the filing of its rebuttal testimony to provide the documentation. It is ETI's burden to show that its expenses are reasonable and should have provided the information sooner regardless of if or when Staff asked for the information. Staff therefore requests that all issues relating to rate case expenses be severed into a separate proceeding to allow Staff to properly review the request for reimbursement of rate case expenses.

In addition, severance of rate case expenses issues would be consistent with recent Commission practice. In AEP – Texas Central Company and AEP – Texas North Company's last rate case, rate case expenses were severed into a separate docket.<sup>5</sup> This is what also happened in Oncor's and Texas – New Mexico Power Company's recent rate cases.<sup>6</sup> Implicit in the decisions to have rate case expenses addressed in a separate docket is that severance is reasonable because it is more efficient and will reduce the need for estimates and updates of rate case expenses before they are finalized and before a substantial portion of the expenses will be incurred. The rate case expenses issues in this case should therefore be severed because it would be consistent with recent Commission practice and would avoid the need to estimate rate case expenses. Consequently, Staff requests that it be relieved of any obligation to file testimony on June 16<sup>th</sup> regarding rate case expenses in this docket and that ETI or any other party be relieved of an obligation to file testimony or otherwise address rate case expenses in this docket.

In the event that the Administrative Law Judge (ALJ) decides not sever the rate case expenses issues, then Staff requests that the ALJ allow the parties to address the rate case expenses issues in a separate phase of this proceeding. The general concept would be that Staff and other parties wishing to address rate case expenses would file testimony shortly after the

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<sup>5</sup> *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 33309, Order on Rehearing at 16 (Mar. 4, 2008) (finding that it is "reasonable to sever from this proceeding issues related to . . . recovery of rate case expenses"); *Application of AEP Texas North Company for Authority to Change Rates*, Docket No. 33310, Order at 6 (May 29, 2007) (approving settlement providing in part that rate case expenses will be severed and calculated in a separate proceeding).

<sup>6</sup> *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 35717, Order No. 21 at 1 (January 2, 2009) (granting Oncor's unopposed motion to sever rate case expenses into a separate proceeding); *Application of Texas New Mexico Power Company for Authority to Change Rates*, Docket No. 36025, Order at 9 (August 21, 2009) (approving stipulation addressing rate case expenses which had been severed into a separate proceeding).

conclusion of the hearing on the merits scheduled for July 13-23 and that ETI would be allowed to file rebuttal testimony on rate case expenses shortly after that. There would be an opportunity to have a brief hearing if needed and then the parties would then file separate briefs on rate case expenses. For this approach to be workable, ETI would need to promptly to Staff provide all documentation supporting its rate case expense request and Staff must have the opportunity for additional discovery on this documentation. If the ALJ believes that this course of action is preferable to severance, then Staff suggests that an additional prehearing conference be scheduled to work out the specific procedural details of this proposal.

If the ALJ determines that neither severance nor addressing rate case expenses in a separate phase of this proceeding is warranted, then Staff requests that it be permitted to file supplemental testimony on rate case expenses pursuant to P.U.C. Proc. R. 22.225(c). Staff further requests that it be permitted to serve RFIs with respect to the supporting documentation ETI represents will be provided to Staff on June 1 notwithstanding the fact that the deadline for serving RFIs on ETI's direct testimony was May 26, 2010 pursuant to the procedural schedule and that responses to such RFIs be provided to Staff within calendar days which is consistent with RFIs served regarding intervenor cross-rebuttal and ETI rebuttal testimony.

### **Conclusion**

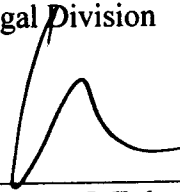
**Based on the foregoing,** Staff requests that rate case expense issues be severed into a separate docket. In the alternative, Staff requests that rate case expenses be addressed as a separate phase in this proceeding with sufficient time to conduct additional discovery on any documentation that ETI may provide. If neither of these alternatives is granted, Staff requests permission to file supplemental direct testimony on rate case expenses in this proceeding, with the opportunity to conduct expedited discovery on documentation provided by ETI.

**Dated: June 1, 2010**

Respectfully Submitted,

Thomas S. Hunter  
Division Director  
Legal Division

Keith Rogas  
Deputy Division Director  
Legal Division

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

Brennan J. Foley  
Attorney – Legal Division  
State Bar No. 24055490  
512-936-7163 (telephone)  
512-936-7268 (facsimile)  
Susan Stith  
State Bar No. 24014269  
Scottie Aplin  
State Bar No. 24001664  
Margaret Pemberton  
State Bar No. 20371150  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P. O. Box 13326  
Austin, Texas 78711-3326

### **CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on June 1, 2010 in accordance with P.U.C. Procedural Rule 22.74.



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Brennan J. Foley