Control Number: 38339

Item Number: 534

Addendum StartPage: 0

PUC DOCKET NO. 38339
SOAH DOCKET NO. 473-10-5001

APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR AUTHORITY TO CHANGE RATES	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

CROSS-REBUTTAL TESTIMONY

OF

LANE KOLLEN

ON BEHALF OF

THE GULF COAST COALITION OF CITIES

SEPTEMBER 24, 2010

534

Table of Contents

I. SUMMARY

Q. PLEASE STATE YOUR NAME, OCCUPATION AND ADDRESS.

A. My name is Lane Kollen. I am a Vice President and Principal of J. Kennedy and Associates, Inc., an economic consulting firm specializing in utility ratemaking and planning issues. My business address is 570 Colonial Park Drive, Suite 305, Roswell, Georgia 30075.

Q. HAVE YOU PROVIDED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, in my direct testimony, I provided a summary of the Gulf Coast Coalition of Cities' ("GCCC") revenue requirement recommendations and addressed numerous revenue requirement issues that are included in those recommendations.

Q. WHAT IS THE PURPOSE OF YOUR CROSS-REBUTTAL TESTIMONY?

A. The purpose of my cross-rebuttal testimony is to respond to Staff witness Ms. Mary Jacobs on her recommendation to disallow a portion of the municipal franchise fees expense, Staff witness Ms. Christine Wright on her recommendations to set the discretionary service charges to $0 for disconnection and reconnection of service for all customers regardless of whether all advanced meters have been deployed, and Staff witness Mr. Brian Almon on storm damage expense and target reserve levels.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. I recommend that the Public Utility Commission ("PUC" or "Commission") reject Ms. Jacobs' recommendation to disallow a portion of the municipal franchise fees expense. I recommend that the Commission reject Ms. Wright's recommendations to set the discretionary service charges to $0 for disconnection and reconnection of

service and to recover the remaining costs to provide these services through an undefined mechanism. Finally, I recommend that the Commission reject Mr. Almon's proposal for storm damage expense and instead adopt the GCCC recommendation, which I described in my direct testimony in this case.

II. MUNICIPAL FRANCHISE FEES EXPENSE

Q. PLEASE DESCRIBE MS. JACOBS' PROPOSAL TO DISALLOW A PORTION OF THE MUNICIPAL FRANCHISE FEES EXPENSE.

A. Ms. Jacobs recommends that the Commission disallow $24.1 million in municipal franchise fees expense.[1] Ms. Jacobs claims that the $24.1 million in municipal franchise fees expense does not meet the P.U.C. SUBST. R. 25.231(b) requirement that expenses be reasonable and necessary to provide service to the public.[2] The sole basis for her position is her contention that the amount requested does not meet the requirements of Texas Tax Code § 182.025 or the Public Utility Regulatory Act ("PURA") § 33.008(b).[3]

Q. MS. JACOBS CITES THE LANGUAGE OF TEXAS TAX CODE § 182.025(c) IN SUPPORT OF THE STAFF'S POSITION THAT $24.1 MILLION OF THE FRANCHISE FEES ARE NOT REASONABLE OR NECESSARY. DOES THE LANGUAGE OF § 182.025(c) PROVIDE ANY INDEPENDENT SUPPORT OR AN INDEPENDENT ARGUMENT FOR THE STAFF'S POSITION ON THIS ISSUE?

---

1 Direct Testimony of Mary Jacobs at 14 (Sept. 17, 2010).

2 *Id.*

3 *Id.* at 14-16.

A. No. This provision of the Texas Tax Code is irrelevant to the issue of the franchise fee expense amount that is recoverable for ratemaking purposes. This provision addresses the charges that a city may lawfully levy, not the amount that is recoverable by the utility in a ratemaking proceeding. This provision does not even prescribe the amount of the fees or the manner of calculation, let alone the amount of the fees recoverable through the ratemaking process.

In addition, Texas Tax Code § 182.025(c) provides no independent standard for the review and/or recovery of these fees through the ratemaking process. Even if one were to assume that the provisions of the Texas Tax Code affect the franchise fees recoverable through the ratemaking process, it still is irrelevant because Texas Tax Code § 182.025(c) simply defers to PURA § 33.008 for the determination of the amount of such fees.

The provision of Texas Tax Code § 182.025(c) cited by Ms. Jacobs states: "[t]he total charges, however designated or measured, relating to distribution service of an electric utility or transmission and distribution utility within the city may not exceed the amount or amounts prescribed by Section 33.008, Utilities Code."

Q. DOES THE STAFF'S POSITION ON THE FRANCHISE FEE EXPENSE RECOVERABLE THROUGH THE RATEMAKING PROCESS RELY ON THE LEGAL INTERPRETATION AND APPLICABILITY OF PURA § 33.008 FOR THIS PURPOSE?

A. Yes. The interpretation and applicability of PURA § 33.008 and its various subsections are legal issues that were extensively addressed in the Oncor Electric

Delivery Company, LLC Docket No. 35717 proceeding.[4] Those issues are now on appeal before the 98th Judicial District Court in Travis County.

Q. MS. JACOBS CITES ONLY TO PURA § 33.008(b) FOR THE PROPOSITION THAT "THE COMPENSATION A MUNICIPALITY MAY COLLECT FROM EACH TRANSMISSION AND DISTRIBUTION UTILITY PROVIDING DISTRIBUTION SERVICE SHALL BE EQUAL TO THE CHARGE PER KILOWATT HOUR DETERMINED FOR 1998 MULTIPLIED TIMES THE NUMBER OF KILOWATT HOURS DELIVERED WITHIN THE MUNICIPALITY'S BOUNDARIES."[5] PLEASE RESPOND.

A. At the very heart of the Staff's argument is the premise that franchise fees in excess of the calculations set forth in PURA § 33.008(b) are not lawful and thus, are not recoverable. Setting aside whether the Commission has the authority to make this determination, the Staff's position is based on only one subsection of PURA § 33.008. Ms. Jacobs has ignored another subsection, PURA § 33.008(f), which specifically authorizes the municipality and the utility to agree to a different level of compensation or a different method of computing the fees, other than the method specified in PURA § 33.008(b). PURA § 33.008(f) states:

> Notwithstanding any other provision of this section, on the expiration of a franchise agreement existing on September 1, 1999, an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative and a municipality may mutually agree to a different level of compensation or to a different method for determining the amount the municipality may charge for the use of a

---

[4] *Application of Oncor Electric Delivery Company, LLC for Authority to Change Rates,* Docket No. 35717.

[5] Direct Testimony of Mary Jacobs at 15.

> municipal street, alley, or public way in connection with the delivery of electricity at retail within the municipality.

Q. DOES PURA § 33.008(c) LIMIT THE AMOUNT OF RATEMAKING RECOVERY OF THE FRANCHISE FEES TO ONLY THE AMOUNT CALCULATED PURSUANT TO PURA § 33.008(b)?

A. No. Contrary to the Staff's position, if the franchise fees are lawful, they are recoverable. Subsection (c) states that the franchise fees authorized by "this section" shall be considered a reasonable and necessary operating expense. Subsection (c) does not reference any specific *sub*sections within "this section." Logically, subsection (c) would apply to all subsections, including both subsections (b) and (f). If the charges are authorized by "this section," then regardless of the subsection, the amounts are recoverable because they are considered a "reasonable and necessary operating expense." Specifically, subsection (c) states:

> The municipal franchise charges authorized by this section shall be considered a reasonable and necessary operating expense of each electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative that is subject to a charge under this section.

The franchise fees reflected in the test year in this case were lawfully implemented as the result of negotiations between cities and CenterPoint Houston Electric, LLC ("CEHE" or "Company") on expiration of the previously existing franchise fees and thus, fall within the provisions of PURA § 33.008(f). Since the franchise fees were appropriately established under PURA, they are a reasonable and necessary operating expense of the Company and recoverable in rates.

Q. SHOULD THE COMMISSION ADOPT THE STAFF'S RECOMMENDATION TO DISALLOW $24.1 MILLION IN FRANCHISE FEES EXPENSE ACTUALLY INCURRED BY CEHE?

A. No. The proposed disallowance of $24.1 million in franchise fees expense should be rejected. The Staff has misinterpreted PURA § 33.008(c) and ignored PURA § 33.008(f). Notwithstanding the statute's clear and unambiguous language, the Staff takes the position that *any* franchise fees in excess of the formula set out in PURA § 33.008(b) are *per se* unreasonable. The Staff's position is in direct conflict with PURA § 33.008(c). Moreover, as detailed below, if Staff's position was adopted, it would render PURA § 33.008(f) meaningless.

As explained above, the sole argument advanced by the Staff for denying franchise fees paid pursuant to PURA § 33.008(f) is that the Staff disagrees with the requirement in subsection (c) that such expenses be considered as reasonable and necessary operating expenses. Yet subsection (c) is clear that such amounts are recoverable. The franchise fees actually incurred by the Company and included in this case are the result of negotiations between cities and the Company upon the expiration of the previously existing franchise fees. Since the franchise fees were appropriately established under PURA, they are lawful and are reasonable and necessary operating expenses of the Company recoverable in rates.

Adoption of the Staff's position would render subsection (f) meaningless because no utility would ever agree to franchise fee payments in excess of those set out in subsection (b) if they could not recover the fees in rates. Significantly, the Staff does not provide a substantive explanation for why such fees are unreasonable.

Instead, the Staff second guesses the intentions of the Legislature in adopting PURA § 33.008(c) and seeks to impose criteria that are not set forth in the statute.

It is important to emphasize that the cities, like the Commission, are regulatory authorities with jurisdiction over the Company's rates. By adopting PURA § 33.008, the Legislature entrusted the cities with the ability to agree to a different level of compensation than set forth in subsection (b). If ratepayers are concerned about any amounts agreed to under subsection (f) then they have recourse with their city councils.

Even assuming that Staff's recommended approach to this issue is otherwise proper, the Staff also has not supported it claim that the franchise fees incurred by the Company in the test year, as a substantive matter, are unreasonable or that they were unnecessary to the provision of utility service. The Staff cannot simply claim that $24.1 million of these fees were not reasonable or necessary without any substantive review. The Staff offered no evidence that it had performed a substantive and comprehensive review of the services provided by the cities to the Company or the costs incurred by the cities to provide these services and administer the franchise agreements. To the contrary, the Staff stated that it could "not make a determination as to whether the additional benefits are reasonable and necessary to provide service to the public" without further information.[6] This is a conundrum created not by the legislature, cities or the Company, but rather by the Staff itself as the result of its insistence that any franchise fee amounts in excess of the amounts calculated pursuant

[6] Direct Testimony of Mary Jacobs at 17.

to subsection (b) are *per se* not reasonable or necessary unless the additional amounts are justified within the franchise agreements themselves.

In addition, the Commission should reject the Staff's attempt to establish a new set of review criteria necessary for recovery that is not found in the statute or the Substantive Rule. For the first time, Staff asserts that amounts in excess of the franchise fees calculated pursuant to subsection (b) must run a gamut of proof never before articulated: they are recoverable only if they are "paid in exchange for certain additional benefits," that must be "explicitly identified and quantified in the franchise ordinance, along with other supporting documentation."[7] These criteria are not stated in PURA or the Commission's rules and should not be applied in this proceeding.

III. DISCRETIONARY SERVICE CHARGES

Q. PLEASE DESCRIBE MS. WRIGHT'S PROPOSALS FOR DISCRETIONARY SERVICE CHARGES TO DISCONNECT AND RECONNECT SERVICE.

A. Ms. Wright proposes to set the discretionary service charges to $0 for disconnect and reconnect services for all customers, ostensibly in response to TXU Energy and Direct Energy LP's assertions that such charges are barriers to providing prepay products in the CEHE territory.[8] Ms. Wright proposes an alternative in which the retail electric providers ("REPs") would identify which customers they serve as prepay customers, and then CEHE would charge those customers $0 for disconnect and reconnect services, while retaining a separate charge for all other customers.[9]

---

7 *Id.* 16.

8 Direct Testimony of Christine L. Wright at 9 (Sept. 17, 2010).

9 *Id.* 10.

In addition, Ms. Wright proposes that CEHE be provided recovery of "the cost of disconnection and reconnection for customers without an advanced meter into rates through some mechanism."[10]

Q. SHOULD THE COMMISSION SET THE DISCRETIONARY SERVICE CHARGES FOR DISCONNECT AND RECONNECT SERVICE AT $0 FOR ALL CUSTOMERS?

A. No. The Staff proposal is premature, unnecessary and inconsistent with the Stipulation and Proposed Order in the Company's advanced metering system ("AMS") proceeding in Docket No. 35639. In that proceeding, the Commission determined the manner in which the discretionary service charges would be reduced when it approved the terms set forth in the Stipulation and Proposed Order.[11] The Staff and the Alliance for Retail Markets ("ARM") were signatories to the Stipulation in Docket No. 35639, and Direct Energy LP was a member of ARM in the Company's AMS proceeding.

The proposal by TXU Energy and Direct Energy LP, now joined by the Staff, is a direct attack on one term of the Stipulation to which two of these parties agreed in conjunction with a settlement of all issues in the AMS deployment and surcharge proceeding. As a matter of public policy, the Commission should reject the proposal to upset a carefully confected Stipulation that it adopted, unless there are changed

---

[10] *Id.*

[11] *Application of CenterPoint Energy Houston Electric, LLC for Approval of Deployment Plan and Request for Surcharge for an Advanced Metering System,* Docket No. 35639, Final Order at 16-17 (Dec. 22, 2008).

circumstances, and then only if those changed circumstances could not reasonably have been anticipated when the Stipulation was signed.

More specifically, TXU Energy, Direct Energy LP, and the Staff seek to modify the terms set forth in Finding of Fact No. 103 of the Final Order in Docket No. 35639, in which the Commission affirmed the agreement of the parties in that proceeding that the discretionary service charges would be reduced "annually over a period of six years to reflect the progressive reduction in costs resulting from AMS deployment." The Commission found that "[i]t is reasonable for the Commission and all other regulatory authorities to approve the New DSC Charges on an annual basis and CEHE shall apply to update the New DSC Charges on an annual basis to reflect the then current mix of AMS and non-AMS meters. Such a yearly update mechanism will reasonably capture the cost savings associated with the deployment of advanced metering and provide customers with the cost savings that should result from the use of advanced metering technology."[12]

The AMS deployment now is proceeding on an expedited schedule due to the receipt of the Department of Energy's ("DOE") grant for that purpose. The accelerated deployment will result in an accelerated reduction in the discretionary service charges for disconnection and reconnection services. The discretionary service charges for these services will be reduced to $0 after the accelerated deployment is completed in 2012.

[12] *Id.* at 17.

Q. MS. WRIGHT PROPOSES TO "ROLL THE COST OF DISCONNECTION AND RECONNECTION FOR CUSTOMERS WITHOUT AN ADVANCED METER INTO RATES THROUGH SOME MECHANISM."[13] PLEASE RESPOND TO THIS PROPOSAL.

A. The Commission should reject this proposal. Ms. Wright has misstated the recovery issue. The issue is not the recovery of the *costs* for these services because the *costs* are already included in the test year revenue requirement in this proceeding. Rather, the problem correctly stated from a recovery perspective is that the effect of Ms. Wright's proposal is a reduction in the *miscellaneous revenues* that are used to offset the cost of service. In other words, the effect of Ms. Wright's proposal is to prematurely create an incremental revenue requirement that must be recovered through an increase or increases in some other charge or charges that are unrelated to the disconnection or reconnection of service.

The other problem with the Staff's proposal is that it further highlights the apparent fallacy of the savings assumption or premise underlying the reduction in the discretionary service charges. In fact, the Company does not project any actual savings in its costs due to the AMS meter remote disconnect and reconnect capability in either the base revenue requirement or the AMS revenue requirement. The fallacy of the savings assumption was demonstrated by the Company's failure to include a proforma reduction to expenses to offset its proposed proforma post-test year

[13] Direct Testimony of Christine L. Wright at 10.

reduction in miscellaneous service revenues, an issue that I addressed in my direct testimony.[14]

Q. IF THE COMMISSION DOES AGREE WITH MS. WRIGHT'S PROPOSAL TO REDUCE THE DISCRETIONARY SERVICE CHARGES TO $0 FOR DISCONNECT AND RECONNECT SERVICE, SHOULD THE COMMISSION ALSO REFLECT A REDUCTION IN THE COSTS TO PROVIDE THESE SERVICES?

A. Yes, if the Commission does adopt Staff's approach, the Commission should also assume that there is a concomitant reduction in expenses. In that manner, there will be a matching between the reduction in discretionary services revenues and the assumption of a reduction in the underlying costs reflected in the base revenue requirement. In conjunction with a proforma reduction to expenses reflected in the base revenue requirement and to the extent that the Company temporarily will continue to incur a portion of these expenses for the non-AMS meters that have not yet been converted to AMS meters, the Commission could authorize a temporary deferral of these expenses. The amount deferred each month would be equal to the reduction in revenues that month using the methodology set forth in Finding of Fact No. 103 of the Commission's Final Order in Docket No. 35639 applied on a monthly basis rather than on the annual basis set forth in that Finding of Fact. Under this methodology, the expenses will decline each month and be eliminated entirely upon the full deployment of AMS meters. The Company could pursue recovery of these deferred amounts in a future rate proceeding.

---

[14] Direct Testimony of Lane Kollen at 62-63.

IV. STORM DAMAGE EXPENSE AND TARGET RESERVE

Q. PLEASE DESCRIBE THE STAFF'S RECOMMENDATIONS FOR STORM DAMAGE EXPENSE AND TARGET RESERVE.

A. The Staff recommends that the Commission in crease the storm damage expense accrual from the present $2.4 million to $4.11 million annually, the amount the Company proposed for annual storm losses, but rejects the Company's proposal to increase this amount by another $1.10 million to build the storm reserve to a target reserve level of $13.21 million over ten years.[15]

Q. PLEASE DESCRIBE THE ANALYSIS PERFORMED BY STAFF WITNESS MR. ALMON TO DETERMINE THAT THE COMPANY'S REQUEST FOR $4.11 MILLION FOR ANNUAL STORM LOSSES IS REASONABLE.

A. Mr. Almon used the trended historical losses as presented by Company witness Mr. Wilson on his Exhibit GSW-3. However, Mr. Almon removed the $37.770 million in Hurricane Rita losses included in the 2005 data and substituted a hypothetical loss of $13.21 million calculated by Mr. Wilson to be the expected operation and maintenance ("O&M") damage from a 25-year storm with total losses under $100 million.

Q. DO YOU AGREE WITH MR. ALMON'S ANALYSIS?

A. No. Although I agree with the removal of the Hurricane Rita losses included in the 2005 data, I do not agree with the substitution of a hypothetical loss amount in the computation. The trended loss history should be based on actual data, adjusted to

---

[15] Direct Testimony of T. Brian Almon at 12-13 (Sept. 17, 2010).

remove the costs of major storms regardless of whether the damage costs of the storm exceed $100 million, as I described in my direct testimony.[16] The Commission should use actual data excluding the costs of major storms because these costs are extremely difficult to predict. The use of a Monte Carlo simulation model for this purpose does not improve the accuracy of the prediction; it only quantifies a hypothetical or expected value based on potential losses under varying assumptions. The better public policy is to allow the utility to defer the actual costs of such storms and recover those costs in arrears once they are known and measurable rather than guess at what those costs might be or the frequency of those costs in future years.

Q. WHAT IS YOUR RECOMMENDATION ON THE REASONABLE AND NECESSARY STORM DAMAGE EXPENSE?

A. I recommend that storm damage expense to be set at $2.303 million, consisting of $1.627 million for distribution and $0.676 million for transmission, a recommendation I describe in more detail in my direct testimony.[17]

Q. DOES THIS COMPLETE YOUR CROSS-REBUTTAL TESTIMONY?

A. Yes.

---

16 Direct Testimony of Lane Kollen at 61.

17 *Id.*