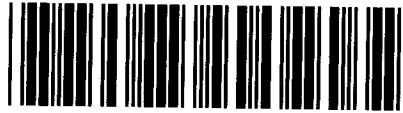


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PUC DOCKET NO. 40358
SOAH DOCKET NO. 473-12-6079

APPLICATION OF AEP TEXAS	§	BEFORE THE
NORTH COMPANY TO ADJUST	§	
ENERGY EFFICIENCY COST	§	PUBLIC UTILITY COMMISSION
RECOVERY FACTOR AND RELATED	§	
RELIEF	§	OF TEXAS

12 MAY 20 4:11:08 PM
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**STEERING COMMITTEE OF CITIES SERVED BY
AEP TEXAS NORTH COMPANY'S
BRIEF ON THRESHOLD LEGAL/POLICY ISSUES**

The Steering Committee of Cities Served by AEP Texas North Company ("Cities") files this brief in response to the Public Utility Commission's ("PUC" or "Commission") Order Requesting Briefing on Threshold Legal/Policy Issues filed on May 10, 2012.

At the outset, Cities note that the Commission has previously determined that an energy efficiency cost recovery factor ("EECRF") case is subject to municipal rate case expense reimbursement, consistent with a stipulation to that effect related to the prior EECRF case of Oncor Electric Delivery Company, LLC.¹ As such, this brief focuses on the proper mechanisms for considering and recovering municipal rate case expenses, as requested by the Commission. Accordingly, Cities address the following issues:

Are rate-case expenses for EECRF proceedings properly classified as EECRF administrative costs?

Yes, inclusion of rate case expenses in the EECRF administrative cost category is one of a number of appropriate ways that a utility may recover rate cases expenses for an EECRF proceeding.

As the Commission is aware, the energy efficiency rule – a rule which, among other issues, addresses the permissible scope of costs to be recovered by the EECRF – is currently under review in Project No. 39674.² At this time, however, the currently-effective P.U.C. SUBST. R. 25.181(i) defines administrative costs as "all reasonable and necessary costs incurred by a utility in carrying out its responsibilities under this section," including:

¹ *Application of Oncor Electric Delivery Company for Rate Case Expense Severed from Docket No. 38929 and SOAH Docket No. 473-11-2330, Docket No. 39239, Order at FoF Nos. 13 and 14, Ordering Paragraph No. 1 (Dec. 9, 2011).*

² *Rulemaking Proceeding to Amend Energy Efficiency Rules, Project No. 39674.*

(A) conducting informational activities designed to explain the standard offer programs and market transformation programs to energy efficiency service providers, retail electric providers, and vendors;

(B) providing informational programs to improve customer awareness of energy efficiency programs and measures;

(C) reviewing and selecting energy efficiency programs in accordance with this section;

(D) providing regular and special reports to the commission, including reports of energy and demand savings; and

(E) any other activities that are necessary and appropriate for successful program implementation.

Rate case expenses of both the utility and of participating municipalities meet this definition. Once reviewed and approved by the Commission, rate case expenses clearly are “reasonable and necessary costs incurred by a utility in carrying out [the utility’s] responsibilities under this section.” The “responsibilities under this section” to which rate case expenses pertain are found in P.U.C. SUBST. R. 25.181(f)(4), the provision requiring that by May 1 of every year, a utility with an EECRF must apply to adjust it to be effective in January of the following year.

Furthermore, the enumeration of the specific cost items stated in subsections (A) through (D) of the above-quoted portion of the rule should not be construed as completely defining the universe of appropriate costs to be included in a utility’s administrative costs categories. As noted above, the definition makes clear that it applies to the cost of carrying out the utility’s responsibilities under the energy efficiency rule, *including* (but not limited to) those specifically enumerated items in subsections (A) through (D). Those specifically enumerated items are stated as examples of what may be included, and should not be interpreted in a restrictive manner. Indeed, subsection (E) is a general description of any other items necessary for energy efficiency program implementation.

As noted above, the Commission is currently undertaking Project No. 39674 to revise its energy efficiency rules. Under the draft rule, reimbursed municipal rate case expenses may be recovered by the utility as part of its administrative cost category.

Proposed Rule 25.181(i) states, in relevant part:

Administrative costs include all reasonable and necessary costs incurred by a utility in carrying out its responsibilities under this section, including:

.....

- (G) the costs paid by a utility pursuant to PURA §33.023(b) for an EECRF proceeding conducted pursuant to subsection (f) of this section; however, these costs are not included in the administrative caps applied in this paragraph; and

Cities support this proposed provision. Inclusion of municipal rate case expenses in the administrative cost category is reasonable on a number of grounds. Inclusion of those expenses in the EECRF – rather than a separate rider – minimizes the number of rate changes in each transmission and distribution utility (“TDU”) service territory. A short-lived rate case expense surcharge rider that is approved but then expires does not present this advantage. Furthermore, reimbursement of reasonable municipal rate case expenses is a requirement that springs from the utility’s filing of an EECRF ratemaking proceeding. It is therefore reasonable to include it in the EECRF as an administrative expense.

If not, should the rate-case expenses for EECRF proceedings be addressed in an EECRF rate proceeding or in a utility’s base rate case?

To the extent possible, rate case expenses for a given EECRF proceeding should be addressed in that proceeding. Even if the Commission were to find that inclusion of rate case expenses in the EECRF administrative cost category was not permissible or appropriate, those expenses are still best addressed in the context of the case in which the expenses were incurred, through either the establishment of a new rate case expense surcharge rider, or by opening an existing rate case expense surcharge rider and adding the EECRF case’s reimbursed rate case expenses to it.

Requiring municipalities to wait to address their rate case expenses until the utility’s next full base rate proceeding could represent a significant hardship. With the creation of a number of special-purpose ratemaking constructs in recent years, including the EECRF, Advanced Metering System (“AMS”) reconciliation cases, the interim Transmission Cost of Service (“TCOS”) update process, and now the new Distribution Cost Recovery Factor (“DCRF”) mechanism, Cities expect that base rate cases will become exceedingly rare since meaningful avenues for significant rate relief outside of a full base rate case now exist.

If it is appropriate to consider rate-case expenses for an EECRF proceeding in an EECRF rate proceeding, is it appropriate to consider rate-case expenses from a prior year's EECRF proceeding?

Yes; it is appropriate for the Commission to consider rate case expenses from a previous EECRF proceeding if those expenses were not addressed in that prior proceeding. As the Commission is aware, starting with Docket No. 38339,³ municipalities have not been permitted to quantify an estimated amount of rate case expenses associated with concluding a ratemaking proceeding. Instead, municipalities are required to quantify their actual, incurred expenses in their direct case, and then provide an update at some later point in the proceeding. However, one result of this decision is that, in every ratemaking proceeding since, there is some portion of the municipalities' total expenses that is incurred after the update and is therefore not addressed. Because proceedings differ greatly in the quantity of work required late in the proceeding, in some instances the remaining amount of rate case expenses is substantial. The Commission has not made clear how municipalities are to proceed with respect to the remaining amount of rate case expenses associated with concluding a ratemaking proceeding.

However, because EECRF cases occur each year, this can be straightforwardly addressed in each such proceeding. In each EECRF proceeding, municipal rate case expenses that were incurred in the prior EECRF case but after the quantification date should be considered and decided upon.

Cities are aware that the details of municipal rate case expense reimbursement and recovery are currently being contemplated in the draft energy efficiency rule proposed by the Commission Staff in Project No. 39674.⁴ That proposed rule suggests the helpful clarification that an EECRF proceeding is a ratemaking proceeding for purposes of PURA § 33.023,⁵ and also would authorize a utility to recover reimbursed municipal rate case expenses as part of its administrative cost budget.⁶ For the reasons stated in response to Issue No. 1, above, Cities believe that these proposals are consistent with the law and are appropriate as a policy matter.

³ *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 38339.

⁴ Project No. 39674, Proposal for Publication of Amendments to §25.181 as Approved at the April 12, 2012 Open Meeting (Apr. 20, 2012).

⁵ *Id.* at 29-30, Proposed Rule 25.181(f)(5).

⁶ *Id.* at 45, Proposed Rule 25.181(i)(1)(G).

However, the proposed rule appears to contemplate a schedule for quantification and recovery of municipal rate case expenses that is much different than the Commission's current practice in other kinds of ratemaking proceedings. The proposed rule would authorize utilities to include in their EECRF application municipal rate case expenses paid or owed for the immediately previous EECRF proceeding as well as any such costs since the conclusion of that prior proceeding.⁷ Presumably, the usual course of cities quantifying their current rate case expenses in their direct case, and then providing an update would not apply. Instead, cities would need to wait until the subsequent EECRF case to support their expenses. Under such an arrangement, when the reimbursement of cities' expenses would actually occur is unclear.

Postponing the finding of reasonableness of cities' rate case expenses to a future case presents a significant risk that the entirety of cities' expenses for a given EECRF case could go unreimbursed for more than one year. Cities are unlike utilities in that they do not receive regulated rates that provide for a return to compensate them for a number of risks, including regulatory lag. Furthermore, it is difficult to understand how postponing consideration of municipal rate case expenses to the following year produces a more efficient process. Cities submit that it is more practical to consider the expenses in the context of the proceeding in which they occurred, while memories and documentary evidence of what occurred in the case are still fresh.

As noted above, the Commission's recent practice is to not permit the quantification of an estimate of the municipal rate case expenses necessary to complete a ratemaking proceeding. However, the Commission may wish to revisit this decision in the context of EECRF cases. In these cases, utilities seek to recover projected energy efficiency costs, subject to true-up in a later proceeding. It would be anomalous for estimates to be a permissible basis for recovery of all costs in an EECRF proceeding *except* municipal rate case expenses.

However, in the event that the Commission decides against revisiting its recent precedent on estimated rate case expenses, Cities urge the Commission to address municipal expenses in EECRF cases in line with its typical recent practice – that cities quantify their rate case expenses in their direct case, provide an update at some later point in the proceeding prior to the decision in the case being made, and then be able to prove the reasonableness of any remaining expenses in the next EECRF case.

⁷ *Id.* at 29, Proposed Rule 25.181(f)(2)(B).

CONCLUSION

As set forth in the discussion of the three foregoing issues, Cities respectfully request that the Commission find that municipal rate case expenses are properly considered in this matter and are recoverable by the utility as described above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 30th day of May, 2012 to the parties of record.



CHRISTOPHER L. BREWSTER