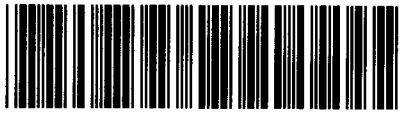

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PROJECT NO. 41622

RULEMAKING TO PROPOSE NEW SUBSTANTIVE RULE 25.245, RELATING TO RECOVERY OF EXPENSES FOR RATEMAKING PROCEEDINGS	§ § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

REPLY COMMENTS OF SOUTHWESTERN PUBLIC SERVICE COMPANY

On September 6, 2013, Southwestern Public Service Company ("SPS") filed initial comments in response to questions of the Public Utility Commission of Texas ("Commission") Staff ("Staff") in the above mentioned project. Several other parties also filed responses to Staff's questions and provided recommendations on ways to reduce rate case expenses in ratemaking proceedings. SPS appreciates the opportunity to now file reply comments in response to recommendations made by other commenters.

I. Comments on Specific Recommendations

A. Issues regarding the contents of the rate filing package should be further explored in a separate proceeding.

A number of parties recommended amending or expanding the rate filing package ("RFP"). As SPS noted in its Initial Comments, there are revisions to the RFP that would result in reduced costs for ratemaking purposes, but the revisions for vertically integrated utilities are best addressed in the open Project No. 39547, Project to Revise Rate Filing Package for Vertically Integrated Utilities. However, if the Commission determines that amendments to the RFP should be undertaken as a part of this rulemaking, then SPS respectfully requests the Commission hold technical conferences and/or allow additional

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rounds of comments to address the multiple ideas proposed for amending the RFP. Below SPS lists some of the ideas that could be further considered:

(1) Periodic review of the RFP (City of Houston);

(2) Include historic information in addition to test year information (City of Houston, Alliance of Local Regulatory Authorities ("ALRA");

(3) A uniform working cost of service model (Cities in Entergy's Service Area ("Entergy Cities") and ALRA);

(4) File a non-restricted and fully executable class cost allocation/unbundling model in Excel format (ALRA);

(5) A new schedule describing rate-case expenses (State Agencies[1]);

(6) Copies of the utility's FERC Form 1 and SEC 10-K (Steering Committee of Cities Served by Oncor ("Oncor Cities"));

(7) Include standard protective order (ALRA and Entergy Texas Inc. ("ETI"));

(8) Eliminate Schedules N and S (ETI and AEP[2]);

(9) Remove duplicative sections and schedules (Lone Star Transmission, LLC ("Lone Star") and El Paso Electric Company ("EPE")).

The goal of amending the RFP would be to reduce rate case expense and/or reduce discovery. In SPS's view, the a proper implementation of the ideas above could ultimately lead to a reduction in rate case expenses by reducing discovery and making the review of rate applications more efficient.

[1] Office of the Attorney General on behalf of the State of Texas' Agencies and Institutions of Higher Education.

[2] AEP Texas Central Company, AEP Texas North Company, Southwestern Electric Power Company, and Electric Transmission Texas, LLC.

However, parties also proposed other ideas that SPS does not believe would reduce rate case expense, discovery, or make the review more efficient. Such ideas included:

(1) Additional supporting documentation for all rate-case expenses incurred prior to the date of filing (State Agencies);

(2) Detailed information about all employees and outside consultants who bill to the case; (State Agencies);

(3) Additional documentation describing pro forma adjustments (State Agencies);

(4) Additional documentation describing affiliate costs (State Agencies);

(5) More detailed information on incentive compensation and contract labor, and the most recent capital and operational budgets in RFP (City of Houston);

(6) Copies of all "source" materials (Oncor Cities); and

(7) Copies of the final orders from the most recent rate case from each jurisdiction in which a utility operates (Oncor Cities).

Some of the information listed above is already publicly available and thus does not need to be included in the RFP.

B. Recommendations that shareholders pay a portion of rate case expenses or that portions of rate case expenses be disallowed upfront should be rejected.

A number of parties, such as Texas Industrial Energy Consumers ("TIEC"), Office of Public Utility Counsel ("OPUC"), and the State Agencies, propose that utility shareholders should pay a portion of rate case expenses. These parties claim that such a disallowance would provide an incentive for utilities to avoid challenging well-established Commission precedent or decrease frivolous discovery disputes. An

upfront disallowance of rate case expenses should be rejected by the Commission. First, these parties appear to recommend an upfront disallowance regardless of: (1) whether a utility intends to challenge well-established Commission precedent; or (2) discovery disputes arise as a part of the rate case proceeding. Thus, the proposals lack a connection to their stated purpose(s) because the disallowances would occur even in the absence of such circumstances. Furthermore, such a disallowance is unnecessary given the widely-cited authority of the Commission to disallow rate case expenses, on a case-by-case basis, if it finds a reasonable basis to do so.

Second, such proposals are contrary to fundamental rate-making principles. Rate case expenses, like other costs incurred by the utility, are legitimate costs of providing service to customers. Under fundamental rate-making principles, utilities are allowed to recover reasonable costs of service through rates—including rate case expenses.[3] None of the parties requesting an upfront disallowance have provided a reasonable basis to require utility shareholders to pay reasonable costs of service.

C. Disallowance of rate case expenses pending the outcome of the rate case should be rejected.

In its Initial Comments, OPUC cites the Texas Commission on Environmental Quality ("TCEQ") rule regarding rate case expenses. In particular, OPUC suggests the Commission consider the TCEQ's rule that denies recovery of all rate case expenses if the utility is granted an increase in revenue that is not at least 51 percent of the utility's proposed increase.[4] For similar reasons discussed above in Section B of these Reply

[3] State Agencies' claim that "Shareholders arguably benefit more than customers when rates are adjusted upward..." indicates a lack of knowledge of rate-making fundamentals and further invalidates the basis for their recommendation.
[4] OPUC Initial Comments at p. 3.

Comments, such a proposal should be rejected. First, as discussed above, reasonable rate case expenses are a legitimate costs of service, which a utility should recover through rates. To the extent the Commission determines that a portion of rate case expense is unreasonable, it can make a determination of whether a disallowance is necessary on a case-by-case basis.

In addition, establishing a hard rule of disallowance based upon the outcome of a rate case could lead to further litigation as some parties might seek to further reduce an increase in rates based solely on potential disallowance of rate case expense. Finally, an outcome of a rate case does not necessarily represent the complexity of issues raised or the degree of work and time spent to respond to arguments. In urging the Commission to not establish discovery limitations, OPUC discusses at length the complexity of issues that can arise in rate cases, but then fails to note the same complexity, and degree of work required to analyze and respond to such issues, in recommending adoption of the TCEQ disallowance.[5] Thus, the outcome of a rate case does not necessarily reflect the reasonableness of the rate case expense incurred and there is no basis to implement the TCEQ rule as OPUC recommends.

D. Reducing the cost of participating in a ratemaking proceeding is possible by limiting the use of discovery in ratemaking proceedings.

Several parties state that: (1) a limitation on the number of discovery requests could actually lead to higher rate case expenses as issues may not be fully vetted before a hearing; (2) a limitation on discovery would hinder a party's ability to fully analyze potentially complex rate case issues; and (3) the Commission's Rules already provide sufficient protections against unwarranted or excessive discovery. While these points

[5] *Id.* at 9.

have some merit, it is also reasonable to recognize that utilities expend a significant amount of time and expense in reviewing and responding to discovery. As evidenced by the utilities' responses to Question Number 7, utilities respond to thousands of discovery responses each rate case, which can cost millions of dollars. Thus, significant costs could be lowered by reducing discovery. In addition, as discussed in SPS's Initial Comments, discovery itself could be reduced through a redesign of the rate filing package, which would provide parties with the needed information, while reducing discovery.

In addition, while the Commission rules allow a party to seek protection from excessive or unwarranted discovery, reducing discovery at the outset would reduce the need for parties to seek such protections, which in turn would save the time and expense associated with filing such motions and engaging in related discovery disputes. Thus, the mere existence of the protections against excessive or unwarranted discovery should not serve as a barrier to considering reductions in discovery.

E. Rate case expenses should not be automatically severed to a separate proceeding.

SPS disagrees with AEP's recommendation that rate case expenses be immediately severed into a separate proceeding. The extra time and resource requirements of a severed proceeding can be eliminated with the efficient review of rate case expenses in a base rate case. Additionally, TIEC's recommendation to have utilities present expert testimony in these severed rate case expense proceedings would only add to the cost of these extra proceedings.

F. The recommendation that all witnesses should be declared experts conflicts with established rules of evidence.

The State Agencies request the Commission amend P.U.C. PROC. R. 22.225 to make clear that all witnesses providing testimony in rate cases are deemed expert witnesses. While expert witnesses routinely provide testimony as a part of rate cases, having an upfront declaration by the Commission that all witnesses are "experts" without any consideration of the witnesses' qualifications may not be allowed under the Rules of Evidence. In particular, Rule 702 of the Texas Rules of Civil Evidence states:

> "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness *qualified as an expert by knowledge, skill, experience, training, or education,* may testify thereto in the form of an opinion or otherwise." (emphasis added).

Thus, before a witness can be declared an expert, certain qualifications are required. The State Agencies appear to recommend this step be skipped and instead have all witnesses declared experts independent of their qualifications.

However, to the extent witnesses are determined to be experts, then SPS recommends that utilities not be required to provide through discovery e-mails reviewed by expert witnesses or unfiled/non-final drafts of expert's testimony. Such discovery is not within the scope of discovery under the Commission's procedural rules and is excessive and burdensome. Thus, an upfront prohibition to such discovery requests would streamline the discovery process and help reduce rate case expense.

G. Retaining a consultant or auditor to review rate case expenses is unnecessary.

SPS agrees with State Agencies, Oncor Electric Delivery Company, LLC, and Texas New Mexico Power Company that the review of rate case expenses should be performed by the Staff. It appeared that no party fully supported this suggestion except in the event the Staff needs additional expertise. It has been SPS's experience that Staff

has the needed expertise to review the appropriateness of rate case expenses. To the extent that changes, then SPS agrees with the City of El Paso that expenses related to such assistance should be collected along with other rate case expenses.

H. The Commission should continue to permit updates to the rate filing package subsequent to the 45 day update.

ALRA recommends that, with exceptions of reductions to their filed request, the utility be barred from filing material "errata" and "updates" after the initial 45-day period.[6] SPS disagrees with ALRA's position as invariably in rate cases, the utility files changes to its initial data to correct errors it finds when answering discovery questions, to reflect changes in laws or rules, to reflect changes in circumstances that render proposed adjustments inaccurate or that warrant adjustment to ensure accuracy, etc. In some cases, the net effect of these changes decreases the utility's revenue requirement, and in other cases the net effect shows that the utility could have justified a larger increase[7]. Allowing for errata or update filings after the 45 day update recognizes that these types of changes occur and brings some order to the process for filing these types of changes and having them incorporated into the rate case.

[6] ALRA Comments at p. 3

[7] Historically, SPS has presented all errata or update items but has not altered its originally filed request if the net effect shows SPS could have justified a larger increase.

II. Conclusion

SPS appreciates the opportunity to provide these Reply Comments and encourages the Commission and parties to consider and evaluate suggestions for other types of ratemaking advancements (*i.e.*, multi-year rate plans) in a separate proceeding.

Respectfully submitted,

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