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PROJECT NO. 41622

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

PUBLIC UTILITY COMMISSION  
OF TEXAS

CITY OF EL PASO'S COMMENTS

The City of El Paso ("City") appreciates the opportunity to file comments on the proposed rule.

**I. Overview**

In any discussion about municipal rate case expenses, the Commission must consider that pursuant to Chapter 33 of the Utilities Code, the municipalities have original jurisdiction over the rates, operations and services of electric utilities in areas in the municipality. As a regulatory authority, a rate case must be filed with the municipality and it has the obligation to evaluate the rate increase request. Thus, the analysis and consideration of a rate increase request filed in the municipality. Therefore, it is improper to characterize the statutory role of the municipality as challenging or opposing portions of the request, and similarly inappropriate to provide guidance on the reasonableness of municipal expenses on the basis of either issues or amounts successfully or unsuccessfully challenged. (Results Oriented or Issue Specific Method). Because the Commission has the authority, currently to disallow expenses that it does not find reasonable, portions of the rule other than those portions which codify prior commission practices and precedents are unnecessary.

**II. Specific Questions posed by the Proposal**

1. Should the proposed rule, if adopted, explicitly allow for allocation of rate-case expenses to a utility's shareholders?

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**Response:**

The City will not address this issue in these comments, but may reply to the comments of others.

2. Should rate-case expenses incurred for purposes of reducing a utility's commission-authorized Texas-jurisdictional retail revenue requirement be allocated to and collected from ratepayers in a manner different from the allocation and collection of rate-case expenses incurred for the purpose of shifting costs among Texas-jurisdictional retail customer groups? If so, how should the commission determine the amount and recovery method of the costs associated with these categories of expenses?

**Response:**

No. This question is predicated on two incorrect assumptions. The first incorrect unstated basis of this question assumes that a municipality represents an interest or interest of particular classes over other classes, rather than a fair allocation of costs among all customer classes. The only statutory party with charged with representing the interest of a particular class is the Office of Public Utility Counsel, which is charged with representing the interest of residential and small commercial customers. Cities, particularly when considered with the statutory function of the regulator with original jurisdiction, do not specifically represent one class or group of customer classes. The second incorrect unstated basis assumes that a party that disagrees with the position put forward by the company is attempting to shift costs among customer classes or groups, and that the utility is itself not attempting to shift costs. The assumption that one party or another is attempting to “shift costs” rather than recommend or pursue an allocation of costs that results in just and reasonable rates is never explicitly in any evidentiary

proceeding. Moreover, it is probable that no witness on allocation of costs ever testifies that the proposed allocation results in anything other than just and reasonable rates.

3. Should the commission require that rate-case expenses be evaluated in the proceeding in which they are incurred unless the commission authorizes their consideration in a future proceeding?

**Response:**

Yes. It should be less costly to determine the expenses in the context of the proceeding for which they are incurred, rather than an additional proceeding convened expressly for that purpose. If the expenses are deferred to some future proceeding which is not filed annually (such as an EECRF), the timing of the recovery of expenses potentially by the municipality or the utility, when deferred are deferred to an unknown date and are not recovered in proximity to the case for which they were incurred.

4. Is it appropriate for intervening municipalities to be subject to P.U.C. SUBST. R. §25.245(d)(3)(B) as proposed?

**Response:**

No. As stated above the statutory position of municipalities as the regulatory authority. For example, would recovery be denied for investigation of an issue that was not raised as a “challenge” to the utility’s position? Since the municipality has the obligation to evaluate all the issues, such a rule controverts the statutory responsibility of the Cities. Moreover, as addressed in the discussion related to the specific issue, the complexity of the case as well as determination of rate case expenses will actually cause more expense to keep track of issue by issue expenses and justifications. Moreover, the methods used by courts for attorneys fees in Texas (when recoverable), which include estimated costs

for appeals as parts of final judgments; show the way to complete the expense amounts for each proceeding as a part of that proceeding.

### **III. Specific portions of the Proposed Rule**

At this point the City's Comments are limited to Section (d) of the proposed rule. The City may reply to comments by others on the other sections.

(a), (b), (c). No comment at this time

#### **(d) Methodologies for calculating rate-case expenses.**

The City appreciates the Commission's concern with the magnitude and amount of rate case expenses which are ultimately born by ratepayers. The City also appreciates the concern of the Commission over needless litigation of issues that have been well determined in the past. However, the proposed rule contemplates two methods that could be applied to municipal expenses which should not be adopted at least to apply to municipalities in the rule which the Commission adopts

#### **(d) (2) (B) Results Oriented Method.**

This section should be deleted from the final rule. For the reasons stated in the City's overview, a solely results oriented approach should not be applied to municipalities. First, as stated above municipalities exercising their original jurisdiction (as well as other parties) have a duty to review the entire file, and are not simply opposing an increase. The municipality is interested in just and reasonable rates, not challenging a request. The concept inappropriately ties reasonableness only to final results. In addition, the concept has the potential to give a wrong motivation. Instead of encouraging a robust investigation and evaluation of the utility's filing, and attempting to bring to light for decision issues which deserve careful evaluation. The concept also ignores issues which

may not be related to amounts of a revenue requirement, such as the structure and design of rates. Finally, since the statutory requirement for reimbursement of the municipality's reasonable expenses, the option ignores the statute.

(d)(3)(B) **Issue Specific Method.**

This section should be deleted from the final rule. The City addressed this issue in part in the response to general question No. 4 as well as the policy issues discussed in Section (2)(B). The success or not on a specific issue is not a measure of reasonableness. In addition, the issue specific method is difficult to apply. For example, if the utility requests \$1 million for a particular item, the item is challenged and the ultimate decision is \$500,000, is that success or lack of success. In another example, if the utility requests a specific rate of return and the municipality recommends a lower rate of return, and the decision is somewhere between the two, is that success or lack of success in the issue. The rule almost contemplates not only judgment, but accurate prediction of what the final Commission decision will be. The impact of appeals also affects this concept. Whether the Commission judgment is success or lack of success, if the decision on the issue is changed on appeal, is there necessarily another proceeding on the rate case expense portion? If adopted for utilities, Section 3 should not apply to municipalities.

**IV. Conclusion**

The Commission has the current ability to determine whether expenses are reasonable in the context of the case, based upon the standards that are contained in proposed Sections (a) and (b) and its prior history. Sections (c) (2) and (c) (3) should not be applied to municipalities.

Respectfully submitted,

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