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APPLICATION OF SOUTHWESTERN
PUBLIC SERVICE COMPANY FOR
AUTHORITY TO CHANGE RATES

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PUBLIC UTILITY COMMISSION
OF TEXAS

**COMMISSION STAFF'S RESPONSE TO SOUTHWESTERN PUBLIC SERVICE
COMPANY'S MOTION FOR APPROVAL OF TEMPORARY RATES**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to Southwestern Public Service Company's (SPS's) Motion for Approval of Temporary Rates and would show the following:

I. BACKGROUND

On December 8, 2014, SPS filed an application for authority to change its rates pursuant to PURA¹ § 36.102.² By a separate motion filed the same day, SPS requested that the Commission make SPS's current rates³ temporary for usage on or after January 12, 2015 and that the final rates set in this case be made effective retroactive for usage on or after January 12, 2015.⁴ SPS also asked for a hearing on its motion, requesting that a hearing be set during the week of January 5-9, 2015.⁵

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2014) (PURA).

² Application of Southwestern Public Service Company for Authority to Change Rates (Dec. 8, 2014) (Application).

³ When SPS refers to its current rates, it refers to the requested rates pending approval in *Application of Southwestern Public Service Company for Authority to Change Rates and to Reconcile Fuel and Purchased Power Costs for the Period of July 1, 2012 through June 30, 2013*, Docket No. 42004, which SPS expects will be approved at the December 18, 2014 open meeting. Application at Attachment TR 1, page 27, fn. 3 (hereinafter, Attachment TR 1 will be referred to as "Evans TR Direct").

⁴ SPS's Motion for Approval of Temporary Rates (Dec. 9, 2014) (hereinafter Motion).

⁵ Motion at 7.

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Pursuant to P.U.C. PROC. R. 22.78(a), the deadline to respond to a motion, unless otherwise specified, is five working days after receipt of the motion. Therefore, this response is timely filed.

II. RESPONSE

Staff opposes the request by SPS to implement interim rates. SPS has failed to meet its burden to demonstrate “good cause” for its request to implement interim rates. SPS’s rate case and testimony on interim rates do not present any novel or time sensitive issue requiring the implementation of interim rates. SPS is requesting that the rates agreed to by SPS, and expected to be approved by the Commission on December 18, 2014, be made temporary. Therefore, SPS should not be permitted to complain that the rates SPS agreed to are insufficient or that the rates SPS is requesting that the Commission approve this month, December 2014, are unreasonable to be charged next month, January 2015.

Furthermore, SPS’s proposed timeline for holding a hearing on interim rates the week of January 5 effectively denies parties the opportunity to develop the record on this issue. January 5 is more than two weeks prior to the intervention deadline for this proceeding. Setting a hearing on interim rates prior to the intervention deadline would deprive potential intervenors of the ability to contest the interim rates. Staff also requests additional time to develop the record on whether good cause exists to implement interim rates. A hearing on SPS’s request to implement interim rates should be delayed until parties have sufficient time to develop the record through requests for information and filing of testimony.

A. SPS has not demonstrated that the facts of this proceeding warrant the approval of SPS’s request for temporary rates.

SPS has the burden of demonstrating that there is good cause to grant its request to implement “temporary rates.” P.U.C. PROC. R. 22.125 governs this request for “temporary” rates,⁶ and places the burden on the utility to demonstrate the proposed interim rates are just and

⁶ The Commission has held that the requirements of P.U.C. PROC. R. 22.125, which relates to requests for interim relief, govern a request for the establishment of temporary rates. *See Application of Lone Star Transmission, LLC for Authority to Establish Interim and Final Rates and Tariffs*, Docket No. 40020, Preliminary Order at 8 (Feb. 24, 2012) (citing PURA § 36.003(a)). The Commission also held that “PURA does not explicitly provide any standards or criteria that must be met for the Commission to establish temporary rates” but that a request for the establishment of temporary rates is subject to PURA’s requirement that rates established by the Commission be just and reasonable. *Id.*

reasonable.⁷ In deciding on this matter, presiding office must weigh, *inter alia*, the effect of granting the request on the parties and the **public interest**.⁸ Staff is tasked with representing the public interest and is not convinced that the evidence presented by SPS establishes that SPS's request for interim rates benefits the public.⁹

SPS is arguing that the very rates it agreed to in Docket No. 42004 – in September 2014 – are so unjust and unreasonable as to warrant its current, extraordinary request for interim rates. Yet it puts forth only vague arguments of negative impacts on its credit rating as the bases for its request.¹⁰ SPS does not contend that its present cash flow and access to capital do not permit the continued operation of SPS's facilities or harm the utility's financial strength. SPS only requests to continue to collect the rates it expects it will be charging in January of 2015. However, interim rates are not necessary for SPS's current rates to remain the same. To the extent the further development of facts regarding SPS's financial condition might warrant interim rates, the current rates are a result of SPS's own decision to settle its recent base rate case for less than half the amount originally requested in the application.¹¹

B. Any Hearing on Interim Rates Should Be Postponed Until After the Intervention Deadline and the Opportunity for Parties to Develop the Record.

SPS's request for interim rates with a retroactive effect, if approved, will have a significant impact on ratepayers. P.U.C. Proc. R. 22.125(c) provides that parties shall have an opportunity for a hearing when interim rates are contested. If SPS insists on a hearing, Staff urges sufficient time for meaningful development of the record prior to any hearing on interim rates. At a minimum, a hearing on this extraordinary request should be delayed until after the intervention period concludes and intervenors have adequate time to hire experts and conduct

⁷ P.U.C. PROC. R. 22.125(d).

⁸ P.U.C. PROC. R. 22.125(c)(4).

⁹ P.U.C. PROC. R. 22.013(a).

¹⁰ See Evans TR Direct at 7-10.

¹¹ See Docket No. 42004, Application (Jan. 7, 2014) (requesting a base rate increase of \$81.5 million); Docket No. 42004, Non-Unanimous Stipulation (Sept. 2, 2014) (agreeing to a base rate increase of \$37.0 million).

discovery. A more appropriate timeline for a hearing would set the hearing date no earlier than sixty (60) days from the application.¹²

C. Notice Must Be Completed to Determine the Applicable Date for Implementing Interim Rates.

Another factor weighing in favor of postponing the hearing on interim rates is that the earliest potential effective date may be later than the January 12, 2014, date requested by SPS. SPS is requesting interim rates to take effect on January 12, 2015.¹³ However, SPS must publish four (4) consecutive weeks of notice prior to temporary rates taking effect.¹⁴ Given that SPS has not yet begun publication notice, the earliest potential date for interim rates cannot be determined and may be after the proposed January 12, 2014 date.¹⁵

III. CONCLUSION

For the reasons stated above, Staff opposes SPS's request for the establishment of temporary rates at this time. To the extent a hearing is necessary, Staff requests sufficient time for parties to develop the record with testimony prior to holding a hearing. In addition, Staff reserves the right to present additional arguments at the prehearing conference scheduled on December 19, 2014.¹⁶

¹² See e.g. *Application of Lone Star Transmission, LLC for Authority to Establish Interim and Final Rates and Tariffs*, Docket No. 40020 (Jan. 9, 2012); Docket No. 40020, SOAH Order No. 4 (Feb. 14, 2012) (setting the hearing on interim rates for March 6-7, 2012).

¹³ Motion at 1.

¹⁴ See PURA § 36.103(a)(1).

¹⁵ See SPS's Response to SOAH Order No. 1 (Dec. 12, 2014) (stating that it would wait to publish notice until after the prehearing conference scheduled for Friday, Dec. 19).

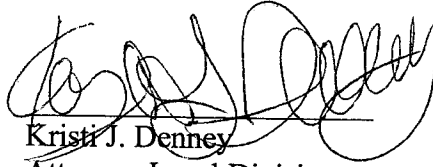
¹⁶ SOAH Order No. 1 (Dec. 10, 2014).

Date: December 15, 2014

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

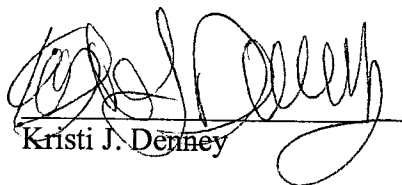


Kristi J. Denney
Attorney-Legal Division
State Bar No. 24074129
A. J. Smullen
Attorney-Legal Division
State Bar No. 24083881
(512) 936-7290
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 15, 2014 in accordance with P.U.C. PROC. R. 22.74.



Kristi J. Denney