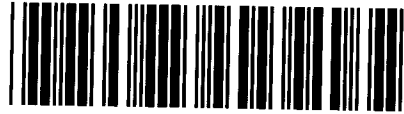


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APPLICATION OF  
SOUTHWESTERN PUBLIC  
SERVICE COMPANY TO ADJUST  
ITS ENERGY EFFICIENCY COST  
RECOVERY FACTOR

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§

BEFORE THE PUBLIC UTILITY  
COMMISSION OF TEXAS

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S  
BRIEF ON THRESHOLD/POLICY ISSUES**

Southwestern Public Service Company ("SPS") respectfully files this Brief on the Threshold/Policy Issues identified in the Commission's May 13, 2015 "Order Requesting Briefing on Threshold Legal/Policy Issues." In support thereof SPS respectfully shows the following:

**I. SPS' RESPONSES TO IDENTIFIED ISSUES**

- (1) In SPS's most recent base-rate case, did the Commission approve retail rate classes that should be used in this proceeding? If so, which retail rate classes did the Commission approve for purposes of this proceeding?

In SPS's most recent base-rate case, the Commission did not approve retail rate classes. In particular, in Docket No. 42004 the Commission approved a non-unanimous stipulation ("NUS").<sup>1</sup> Exhibit A to the NUS provided the rate increase by class and revenue proof. Exhibit A states, "The listing and organization of rates on this exhibit does not represent an agreement on what is a 'rate class' and is not precedential on what 'rate classes' were used in this case and is not precedential on how to define the terms 'rate' and 'rate class' in SPS's next base rate case or

<sup>1</sup> The only party who opposed the stipulation was Mr. Laurance Kriegel.

in future SPS proceedings.”<sup>2</sup> In addition, the NUS intentionally refers to “rates”—not to “rate classes”—because there was no agreement on how to define or designate *rate* “classes” or *customer* “classes.”

Thus, the signatories to the NUS did not agree to any methodology—such as the definition of rate classes—for the underlying rates. Finding of Fact Paragraph Number 49 of the Commission’s Order approving the NUS (the “December 19<sup>th</sup> Order”) reflected this agreement of the signatories.<sup>3</sup> The Staff was a signatory to the NUS.

(2) Can the agreement of the parties regarding future applicability of retail rate classes approved by the Commission in Docket No. 42004 preclude the use of those retail rate classes in SPS’s next EECRF proceeding? In answering this question, please address the definition of rate classes in P.U.C. SUBST. R. 25.181(c)(49) and its applicability to Rule 25.181(f).

Yes. First, as noted above, it is important to note that there were no rate classes approved by the Commission in Docket No. 42004, SPS’s most recent base rate proceeding.<sup>4</sup> The December 19<sup>th</sup> Order approving the NUS precludes the use of the listing and organization of rates to calculate SPS’s 2016 EECRF rates.<sup>5</sup>

Fundamentally, the question is whether a rate case stipulation that is approved by the Commission can govern for EECRF purposes. This issue was addressed by the presiding Administrative Law Judge (“ALJ”) in Docket No. 42454. In particular, the Staff asserted that stipulations (and the Commission orders approving them) are non-precedential for EECRF

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<sup>2</sup> The NUS can be viewed at:  
[http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/42004\\_536\\_809325.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/42004_536_809325.PDF)

<sup>3</sup> The Commission’s December 19<sup>th</sup> Order can be viewed at:  
[http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/42004\\_597\\_829860.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/42004_597_829860.PDF)

<sup>4</sup> December 19<sup>th</sup> Order at Finding of Fact No. 49.

<sup>5</sup> *Id.*

purposes. The presiding ALJ rejected this assertion. With respect to the fact that the Commission approved a stipulation in Docket No. 40824, the ALJ found,

“That the last proceeding was the result of a settlement is not dispositive in the ALJ’s opinion. The rules do not distinguish between a settlement and a contested proceeding. While the methodologies used in a final order resulting from a settlement might not be precedential, the methodologies are not at issue in this case. Rather, the only issue is determining what “rate classes” were approved in the base rate proceeding.”<sup>6</sup>

The Commission approved the ALJ’s proposal for decision. Consistent with the ALJ’s finding, the NUS is binding for purposes of this EECRF proceeding. Thus, the Commission should find that its order in Docket No. 42004 did not approve any rate classes for use in this EECRF proceeding.

Rule 25.181(f)(2) allows the Commission to set an EECRF for “each eligible rate class” and requires that costs be directly assigned to each rate class that receives services under the energy efficiency program to the maximum extent reasonably possible. Rule 25.181(c)(49) defines “rate class” for the purpose of calculating EECRF rates as “those retail rate classes approved in the utility’s most recent base rate proceeding, excluding non-eligible customers.” The definition is unambiguous.

SPS’s most recent base rate proceeding was Docket No. 42004, but the Commission did not approve retail rate classes in that case—nor did the signatories to the NUS. As noted earlier, the signatories consciously crafted the wording of the stipulation, including the attachments, to avoid any specification of rate classes. Thus, Docket No. 42004 is not the most recent base rate proceeding in which the Commission approved retail rate classes. Instead, Docket No. 40824, which was SPS’s preceding base rate case to Docket No. 42004, is the most recent base rate case

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<sup>6</sup> See Proposal For Decision, Docket No. 42454 at 20 and 21.  
[http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/42454\\_84\\_819117.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/42454_84_819117.PDF)

proceeding in which the Commission approved retail rate classes. The Commission previously authorized the use of the five rate classes approved in Docket No. 40824 to calculate SPS's 2015 EECRF rates (Docket No. 42454).<sup>7</sup> The November 24<sup>th</sup> Order was a result of a contested proceeding.

Compliance with Rule 25.181(c)(49) and (f)(2) requires the use of the rate classes approved in Docket No. 40824 for purposes of establishing SPS's 2016 EECRF rates in this proceeding. This is precisely the approach SPS has proposed in its application and supported in its pre-filed direct testimony.<sup>8</sup>

(3) If the Commission did not approve retail rate classes in Docket No. 42004, or cannot use the retail rate classes referenced in Docket No. 42004, how should retail rate classes be defined for purposes of this proceeding?

The Commission should continue to apply the definition of "rate class" provided under Rule 25.181(c)(49) for the purposes of this proceeding. In conformity with that definition, the EECRF rate classes should be based on the retail rate classes approved in in Docket No. 40824, which is the most recent proceeding in which the Commission approved retail rate classes for SPS. Using the retail rate classes approved in Docket No. 40824 as the basis for EECRF rates in this instant proceeding will: (1) comply with Rule 25.181(c)(49); (2) be consistent with the Commission's authorization in SPS's last EECRF proceeding (Docket No. 42454); and (3) promote efficiency and judicial economy in this proceeding.

The Staff advocates using the definition of "rate class" in Rule 25.5(100). Using the definition of "rate class" in Rule 25.5(100) would be inappropriate as Rule 25.181 already defines "rate class." Relying on a separate, unrelated definition would also be contrary to the

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<sup>7</sup> See *Application of Southwestern Public Service Company To Adjust its Energy Efficiency Cost Recovery Factor*, Docket No. 42454, Final Order (November 24, 2014), Conclusion of Law Paragraph Number 21 ("November 24<sup>th</sup> Order") [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/42454\\_96\\_824015.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/42454_96_824015.PDF)

rules of statutory construction. In particular, because the definition of “rate class” as provided under Rule 25.181(c)(49) is unambiguous, the Commission is not free to vary its terms and rely upon an alternative definition of “rate class.” See *Quantum Chem. Corp. v. Toennies*, 47 S.W.3d 473, 479 (Tex.2001) (“A basic rule of statutory construction is that we enforce the plain meaning of an unambiguous statute.”) See also *Republic Bank Dallas, N.A. v. Interkal, Inc.* 691 S.W.2d 605, 607 (Tex. 1985). See also *Cail v. Service Motors, Inc.*, 660 S.W.2d 814 (Tex. 1983) (“If the disputed statute is clear and unambiguous, extrinsic aids and rules of statutory construction are inappropriate and the statute should be given its common, everyday meaning”).

The definition of rate class in Rule 25.5(100) is irrelevant to the determination of EECRF rate classes. The Commission has clearly set forth a specific definition of rate class for the purpose of calculating EECRF rates, which supersedes any other generally applicable definition in the Commission’s rules. See *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254 (Tex. 1999); *Gomez v. Tex. Educ. Agency*, 354 S.W.3d 905, 912 (Tex. App.—Austin 2011, pet denied).

Rather than attempting to infer rate classes from Docket No. 42004 using the irrelevant definition in Rule 25.5(100), the Commission should continue to apply the definition of rate class in Rule 25.181(c)(49) as that definition is specifically applicable to the present circumstances.

## **II. CONCLUSION**

SPS appreciates the opportunity to provide the comments in this brief in response to the Threshold Legal/Policy Issues. SPS respectfully recommends the Commission require the use of the definition of “rate class” provided under Rule 25.181(c)(49) as the basis for establishing EECRF rates in this proceeding. In particular, SPS respectfully recommends the Commission

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<sup>8</sup> Direct Testimony of Jeffrey L. Comer at 14-18, Docket No. 44698 (May 1, 2015).

require the use of the rate classes approved in Docket No. 40824 as the basis for establishing EECRF rates in this proceeding.

Respectfully submitted,



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WINSTEAD PC

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### **CERTIFICATE OF SERVICE**

I certify that on 27<sup>th</sup> day of May 2013, this instrument was filed with the Public Utility Commission of Texas a true and correct copy of it was served on the parties of record in this proceeding, by electronic mail, hand delivery, Federal Express, certified mail, or facsimile transmission.

A handwritten signature in cursive script, appearing to read "G. Maw", is written above a horizontal line.