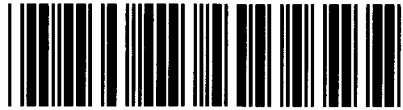




Control Number: 44698



Item Number: 17

Addendum StartPage: 0

**PUC DOCKET NO. 44698**  
**SOAH DOCKET NO. 473-15-3686**

RECEIVED  
2015 MAY 27 AM 11:17  
PUBLIC UTILITY COMMISSION  
FILING CLERK

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

§  
§  
§  
§

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**COMMISSION STAFF'S BRIEF ON THRESHOLD ISSUES**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Karen S. Hubbard  
Managing Attorney  
Legal Division



A. J. Smullen  
Attorney-Legal Division  
State Bar No. 24083881  
(512) 936-7289  
(512) 936-7268 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

Date: May 27, 2015

## TABLE OF CONTENTS

I. INTRODUCTION .....	3
II. PROCEDURAL HISTORY .....	5
A. 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 the purposes of this proceeding? .....	5
1. The Commission approved retail rate classes in Docket No. 42004. ....	5
2. The retail rate classes approved in Docket No. 42004 are the rate classes that should be used in this proceeding.....	6
3. The retail rate classes approved for the purposes of this proceeding correspond to the rate schedules under which SPS's customers receive base-rate services. ....	7
B. Can the agreement of the parties regarding the 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 class in 16 TAC § 25.181(c)(49) and its applicability to 16 TAC § 25.282(f). ....	10
1. The parties in Docket No. 42004 did not reach any agreement regarding the future applicability of retail rate classes approved in that docket. ....	10
2. The rate classes that are referenced in 16 TAC § 25.181(f) must be consistent with the definition of rate class set out in 16 TAC § 25.181(c)(49). ....	12
C. 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 the purposes of this proceeding? .....	13
IV. CONCLUSION.....	14

**PUC DOCKET NO. 44698**  
**SOAH DOCKET NO. 473-15-3686**

<b>APPLICATION OF SOUTHWESTERN</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>PUBLIC SERVICE COMPANY TO</b>	<b>§</b>	
<b>ADJUST ITS ENERGY EFFICIENCY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>COST RECOVERY FACTOR</b>	<b>§</b>	

**COMMISSION STAFF'S BRIEF ON THRESHOLD ISSUES**

**I. INTRODUCTION**

The concept of retail rate classes underpins all ratemaking decisions authorized by the Public Utility Regulatory Act,<sup>1</sup> including the ratemaking provisions contained in the Public Utility Commission of Texas's ("Commission") energy efficiency rule.<sup>2</sup> The Commission's rule emphasizes the role that rate classes play in the energy efficiency scheme, stating the importance of assigning energy efficiency costs "*to each rate class* that receives services under the programs to the *maximum* extent reasonably possible."<sup>3</sup> Further, the Commission stated in 16 Tex. Admin. Code § 25.181(c)(49) ("TAC") that the rate classes relevant to an energy efficiency cost recovery factor ("EECRF") proceeding are the retail rate classes approved in the utility's most recent base-rate proceeding.<sup>4</sup> As such, the requirements of 16 TAC § 25.181(c)(49) are predicated on the reasonable assumption that the Commission adopts the relevant retail rate classes when it approves a utility's base rates.

As with all base-rate proceedings, the Commission approved certain retail rate classes in Southwest Public Service Company's ("SPS") most recent base-rate proceeding, Docket No. 42004.<sup>5</sup> Further, absent an explicit waiver of the requirements of 16 TAC § 25.181(c)(49), the

---

<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016 (West 2007 and Supp. 2014) ("PURA")

<sup>2</sup> 16 Tex. Admin Code § 25.181 ("TAC").

<sup>3</sup> 16 TAC § 25.181(f)(2) (emphasis added).

<sup>4</sup> 16 TAC § 25.181(c)(49) ("For the purpose of calculating EECRF rates, a utility's rate classes are those retail rate classes approved in the utility's most recent base-rate proceeding, excluding non-eligible customers.").

<sup>5</sup> *Application of Southwestern Public Service Company for Authority to Change Rates and to Reconcile Fuel and Purchased Power Costs for the Period July 1, 2012 through June 30, 2013*, Docket No. 42004, Order (Dec. 19, 2014) ("Docket No. 42004 Base-Rate Order").

retail rate classes approved in Docket No. 42004 are the ones that should be used in this proceeding. Consistent with the Commission's definition of the term *rate class*,<sup>6</sup> the following retail rate classes are applicable to this proceeding:<sup>7</sup>

<b>Retail rate classes corresponding to SPS's base-rate rate schedules</b>	<b>Tariff Sheet Number</b>
Residential Service	IV-3
Secondary General Service	IV-18
Service Agreement Summary (Bishop Hills Property Owners)	IV-56
Service Agreement Summary (Cal Farley's Boys Ranch)	IV-58
Service Agreement Summary (Canadian River Municipal Water Authority) (sometimes known as SAS-4)	IV-61
Guard Lighting Service	IV-65
Municipal and State Street Lighting Service	IV-91
Service Agreement Summary (Orion Engineered Carbons) (sometimes known as SAS-8)	IV-99
Large General Service—Transmission	IV-108
Service Agreement Summary (WRB Refining L.P.)	IV-109
Flood Light Service	IV-118
Service Agreement Summary (City of Amarillo)	IV-144
Restricted Outdoor Lighting Service	IV-150
Small General Service	IV-172
Primary General Service	IV-173
Small Municipal and School Service	IV-174
Large Municipal Service	IV-175
Primary Standby Service	IV-179
Secondary Standby Service	IV-180
Transmission Standby Service	IV-181
Large School Service	IV-182
Transmission Qualifying Facility Non-Firm Standby Service	IV-183

<sup>6</sup> As discussed below, a retail rate class is a "group of customers taking electric service under the same rate schedule." 16 TAC § 25.5(100).

<sup>7</sup> Retail rate classes shaded in gray likely do not contain any eligible customers and, accordingly, the Commission likely would not set an EECRF for those classes. Staff may revise this list if it discovers that additional retail rate classes contain eligible customers that receive services under SPS's energy efficiency programs.

Residential Service with Electric Space Heating	IV-184
Service Agreement Summary (Amarillo Recycling Company) (sometimes known as SAS-13)	IV-199

## II. PROCEDURAL HISTORY

On May 13, 2015, an Order Requesting Briefing on Threshold Legal/Policy Issues was entered, requiring the filing of briefs that address identified threshold issues. Briefs are to be filed no later than noon, May 27, 2015. Therefore, this brief is timely filed.

## III. ARGUMENT

### A. 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 the purposes of this proceeding?

#### 1. The Commission approved retail rate classes in Docket No. 42004.

It can be shown that retail rate classes were approved in Docket No. 42004 because the ratemaking scheme set out in PURA relies on the existence of retail rate classes. In his direct testimony, SPS witness Jeffrey L. Comer responds "no" to the question of whether "Docket No. 42004 approve[d] retail rate classes for the purposes of SPS's EECRF."<sup>8</sup> However, even if the Docket No. 42004 Base-Rate Order does not list SPS's rate classes with specificity, it is erroneous to contend the Commission adopted a final order in a base-rate proceeding without approving some set of retail rate classes.

As an initial matter, it is inherent in the definition of *rate class* that SPS has Commission-approved retail rate classes. A rate class is "[a] group of customers taking service under the same rate schedule."<sup>9</sup> Accordingly, to the extent that SPS provides retail service in accordance with the rate schedules in its tariff, SPS must be providing retail service to its retail rate classes by virtue of the Commission's definition of *rate class*. In fact, the compliance filing provided by SPS in accordance with the Docket No. 42004 Base-Rate Order includes a "table of service

<sup>8</sup> Direct Testimony of Jeffrey L. Comer at 15 (May 1, 2015) ("Comer Direct").

<sup>9</sup> 16 TAC § 25.5(100).

schedules,”<sup>10</sup> which means, by virtue of the meaning of the definition of *rate class*, that the Commission approved retail rate classes in that proceeding.

Further, the use of rate classes in ratemaking is required by the ratemaking scheme set out in PURA, which requires that when setting rates “[a] rate . . . must be sufficient, equitable, and consistent in application to each class of customer.”<sup>11</sup> Further, PURA requires that a statement of intent to change a utility’s base rates include a detailed statement of each rate class and number of utility consumers affected.<sup>12</sup> The clear language of PURA indicates that a utility is required to organize its customers into rate classes and that those rate classes must be taken into consideration when designing the utility’s rates. PURA provides no guidance that suggests a base-rate proceeding could proceed without consideration of a utility’s rate classes. Accordingly, for each EECRF proceeding, the relevant base-rate order must have approved some set of retail rate classes.

**2. The retail rate classes approved in Docket No. 42004 are the rate classes that should be used in this proceeding.**

The Commission’s briefing order asks not only whether the Commission approved retail rate classes in Docket No. 42004, but also whether the Commission approved retail rate classes *that should be used in this proceeding*. The Commission’s energy efficiency rule squarely addresses the issue of whether the retail rate classes approved in Docket No. 42004 should be used in this proceeding. Specifically, 16 TAC § 25.181(c)(49) states that “[f]or the purpose of calculating EECRF rates, a utility’s rate classes are those retail rate classes approved in the utility’s most recent base-rate proceeding, excluding non-eligible customers.” The Commission has stated that its use of *rate class* “in th[e] [energy efficiency] rule is intentional” because the term “has a specific meaning.”<sup>13</sup> As such, great weight should be given to Commission’s reliance on the fact that the relevant retail rate classes are approved in the relevant base-rate proceeding.

---

<sup>10</sup> Docket No. 42004, Clean Record Copies of Tariffs Approved in Docket NO. 42004 by Southwestern Public Service Company at Section No. IV, Sheet No. IV-1 (Dec. 29, 2014).

<sup>11</sup> PURA § 36.003(a)–(b).

<sup>12</sup> PURA § 36.102(c)(2)(C).

<sup>13</sup> *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Project No. 39674, Order Adopting Amendments to §25.181 as Approved at the September 28, 2012 Open Meeting at 60 (Oct. 17, 2012).

Accordingly, the retail rate classes approved in Docket No. 42004—excluding non-eligible customers—are the rate classes that should be used in this proceeding.

**3. The retail rate classes approved for the purposes of this proceeding correspond to the rate schedules under which SPS's customers receive base-rate services.**

The retail rate classes that should be used in this proceeding correspond to the rate schedules under which SPS's customers receive base-rate services. Neither the parties' stipulation<sup>14</sup> nor the Docket No. 42004 Base-Rate Order state with specificity the retail rate classes that were used in the development of SPS's base rates.<sup>15</sup> However, 16 TAC § 25.5(100) provides explicit guidance that is useful for ascertaining SPS's retail rate classes. Specifically, a retail rate class is a "group of customers taking electric service under the same rate schedule."<sup>16</sup> As such, each base-rate rate schedule approved by the Commission in Docket No. 42004 corresponds to one of SPS's retail rate classes.<sup>17</sup>

Staff's position is confirmed by SPS's own discovery responses from Docket No. 42004. When SPS was asked to "list the Company's rate classes," SPS witness Jeffrey L. Comer prepared a response listing "SPS's retail rate classes" in a manner that confirms Staff's position in this proceeding.<sup>18</sup> Further, when asked to provide a definition of *rate class*, SPS responded that its "definition of rate class is consistent with [16 TAC §] 25.5(100): A group of customers

---

<sup>14</sup> Docket No. 42004, Non-Unanimous Stipulation (Sept. 2, 2014) ("Docket No. 42004 Stipulation").

<sup>15</sup> As discussed below, where the Docket No. 42004 Stipulation does list SPS's retail rate classes, the parties agreed that those summary schedules are not indicative of the definition of *rate class*. Docket No. 42004 Stipulation at Exhibit A, pp. 28–30.

<sup>16</sup> 16 TAC § 25.5(100).

<sup>17</sup> *Id.* Although this definition refers to rate schedules generally, the only reasonable interpretation is that the rule refers to **base-rate** rate schedules. While customers pay additional charges under miscellaneous rate schedules, customers only **take service** under SPS's base-rate rate schedules. *See, e.g.*, SPS Tariff Sheet No. IV-177 (describing an Interruptible Credit Option as available as an optional service to "Customers who **receive electric service under**" certain base-rate rate schedules (emphasis added)) and SPS Tariff Sheet No. IV-189 (describing an optional rider as "[a]vailable to non-residential Customers **taking service under**" certain base-rate rate schedules (emphasis added)). Further, the Commission likely does not intend to create a new retail rate class every time it approves a miscellaneous rate rider schedule.

<sup>18</sup> Docket No. 42004, Southwestern Public Service Company's Response to Staff's Ninth Request for Information Question Nos. 9-1 through 9-41 at 30 (Mar. 20, 2014) (responding to Staff 9-21). SPS's response to Staff 9-21 is an identical list of retail rate classes as provided by Staff except that SPS erroneously lists each of Large General Service and Transmission Standby Service as two retail rate classes, differentiated by voltage. The relevant page of this discovery request is attached to this brief as Attachment A.



taking service under the same rate schedule.”<sup>19</sup> As discussed below, Mr. Comer not only prepared SPS’s response to Staff’s discovery request Staff 9-21 but has also filed testimony in this proceeding suggesting that SPS’s EECRF rate classes should differ from the base-rate retail rate classes that SPS believes it serves.

If anything, this correspondence between schedules and rate classes was not just SPS’s understanding, but it was the common understanding of the term *rate class* among all of the signatories to the Docket No. 42004 Stipulation. In the Docket No. 42004 Stipulation, the parties referred interchangeably to “customers who take service under SPS’s Large General Service—Transmission (LGS-T) tariff” and “the LGS-T class,” without the need for any additional language describing the connection between a tariff—or base-rate rate schedule—and a retail rate class.<sup>20</sup> Therefore, the parties’ ordinary use of these terms confirms Staff’s position that a retail rate class corresponds with a base-rate rate schedule.

In SPS’s prior EECRF proceeding, Docket No. 42454,<sup>21</sup> the Commission did not require SPS to charge an EECRF for each of the rate classes that would have corresponded to each of SPS’s base-rate rate schedules. However, Docket No. 42454 was based on facts that differ substantially from this proceeding’s facts. The base-rate proceeding prior to Docket No. 42454 was Docket No. 40824,<sup>22</sup> and the Commission’s order in that proceeding explicitly recognized five “major rate classes,” which divided customers into groups that did not expressly correspond to a particular rate schedule.<sup>23</sup> When faced with the apparent conflict between the definition of *rate class* and the classes stated on the face of the Docket No. 40824 Base-Rate Order, the Administrative Law Judge (“ALJ”) in the Docket No. 42454 EECRF proceeding stated:

---

<sup>19</sup> *Id* at 34 (responding to Staff 9-24). The relevant page of this discovery request is included in Attachment A to this pleading.

<sup>20</sup> Docket No. 42004 Stipulation at 8.

<sup>21</sup> *Application of Southwestern Public Service Company to Adjust Its Energy Efficiency Cost Recovery Factor*, Docket No. 42454, Order (Nov. 24, 2014) (“Docket No. 42454 EECRF Order”).

<sup>22</sup> *Application of Southwestern Public Service Company for Authority to Change Rates and Reconcile Fuel and Purchased Power Costs for the Period January 1, 2010 Through June 30, 2012*, Docket No. 40824, Order (Jun. 19, 2013) (“Docket No. 40824 Base-Rate Order”).

<sup>23</sup> Docket No. 40824 Base-Rate Order at 8, Finding of Fact 26.

So, the question the Commission must decide is whether the five major rate classes identified in the Commission's final order in Docket No. 40824 are determinative, or whether the different rate schedules . . . are to be considered the 'rate classes' to be used in setting EECRF rates in this proceeding.<sup>24</sup>

The ALJ ultimately recommended that the five major rate classes explicitly recognized in the Docket No. 40824 Base-Rate Order are determinative, superseding consideration of the definition of *rate class* in the Commission's rules.<sup>25</sup> Although the Docket No. 42454 EECRF Order does not discuss this conflict, the Commission ultimately adopted findings of fact indicating that the Docket No. 40824 Base-Rate Order approved "five major rate classes" and used those five "major rate classes" as the basis for the customer classification for SPS's EECRF.<sup>26</sup> As a result, the Docket No. 42454 EECRF Order stands for the proposition that, when the relevant base-rate order states on its face the rate classes that are approved by the Commission, the base-rate order's plain language is determinative and supersedes consideration of the definition of *rate class* in 16 TAC § 25.5(100).

However, unlike in Docket No. 40824, the Docket No. 42004 Base-Rate Order does not state on its face that SPS serves any rate classes that would be inconsistent with the definition of *rate class* in the Commission's rules. Accordingly, there is no conflict in this case similar to the conflict between the relevant base-rate order and the Commission's definitions that the ALJ was forced to resolve in Docket No. 42454. As a result, if the Commission were to apply the same logic in this proceeding as the ALJ applied last year, SPS's retail rate classes that should be used in this proceeding would be those rate classes that correspond to the base-rate rate schedules approved in Docket No. 42004.

The following table shows the rate classes advocated by Staff in this proceeding—excluding retail rate classes for which an EECRF is not necessary—and shows how some of these rate classes are inappropriately bundled together in SPS's application:

---

<sup>24</sup> Docket No. 42454, Proposal for Decision at 21 (Oct. 24, 2014).

<sup>25</sup> *Id.*

<sup>26</sup> Docket No. 40824 Base-Rate Order at Findings of Fact Nos. 39–46.

<b>Retail rate classes corresponding to SPS's base-rate rate schedules for purposes of the EECRF<sup>27</sup></b>	<b>Treatment in SPS's application</b>
Residential Service	Inappropriately bundled with Residential Service with Electric Space Heating
Residential Service with Electric Space Heating	Inappropriately bundled with Residential Service
Small General Service	<i>Agree with Staff</i>
Secondary General Service	<i>Agree with Staff</i>
Primary General Service	Inappropriately bundled with Service Agreement Summary customers
Service Agreement Summary (Canadian River Municipal Water Authority) (sometimes known as SAS-4)	Inappropriately bundled with Primary General Service
Service Agreement Summary (Orion Engineered Carbons) (sometimes known as SAS-8)	Inappropriately bundled with Primary General Service
Service Agreement Summary (Amarillo Recycling Company) (sometimes known as SAS-13)	Inappropriately bundled with Primary General Service
Small Municipal and School Service	<i>Agree with Staff</i>
Large Municipal Service	<i>Agree with Staff</i>
Large School Service	<i>Agree with Staff</i>

**B. Can the agreement of the parties regarding the 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 class in 16 TAC § 25.181(c)(49) and its applicability to 16 TAC § 25.282(f).**

**1. The parties in Docket No. 42004 did not reach any agreement regarding the future applicability of retail rate classes approved in that docket.**

The parties never actually reached an agreement regarding the future applicability of retail rate classes approved by the Commission in Docket No. 42004. Rather, the parties reached an agreement regarding the precedential value of certain summary schedules.

<sup>27</sup> This list excludes those retail rate classes that likely do not contain any eligible customers and for which, accordingly, the Commission likely would not set an EECRF rate. Staff may revise this list if it discovers that additional retail rate classes contain eligible customers that receive services under SPS's energy efficiency programs.

In Docket No. 42004, the parties entered into a stipulation<sup>28</sup> that was approved by the Commission.<sup>29</sup> SPS witness Jeffrey L. Comer erroneously suggests that the parties agreed that the retail rate classes approved in Docket No. 42004 would not be applicable to future proceedings.<sup>30</sup> On the contrary, there is no agreement of the parties regarding the future applicability of retail rate classes reflected in the main text of the stipulation, but the parties did agree regarding the precedential value of the manner in which information is listed in certain summary schedules.<sup>31</sup> These summary schedules, which are attached to the stipulation, bear a disclaimer stating:<sup>32</sup>

The listing of 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 in future SPS proceedings.

The disclaimer language unambiguously relates to the non-precedential nature of the “listing and organization of rates on th[at] exhibit”<sup>33</sup> and does not relate generally to the future applicability of the rate classes approved in Docket No. 42004. Mr. Comer relies on precisely this disclaimer to support his claim that the retail rate classes approved in Docket No. 42004 may not be used in this proceeding.<sup>34</sup> However, because the parties only agreed as to the non-precedential nature of the manner in which information is listed in the summary schedule—rather than agreeing as to the future applicability of the rate classes themselves—Mr. Comer’s claim that the parties reached the agreement he suggests is inaccurate.

Accordingly, nothing reflected in the Docket No. 42004 Stipulation would preclude the use of the retail rate classes approved in Docket No. 42004 in this proceeding, consistent with the requirements of 16 TAC § 25.181(c)(49).

---

<sup>28</sup> See generally Docket No 42004 Stipulation. Although the agreement is captioned as a non-unanimous stipulation, the only party opposed to the stipulation was Lawrence Kriegel. *Id.* at 3.

<sup>29</sup> Docket No. 42004 Base-Rate Order at Ordering Paragraph No. 1.

<sup>30</sup> Comer Direct at 15.

<sup>31</sup> Staff also notes that, regardless of the parties’ agreement regarding the precedential value of these schedules, it is these schedules that reflect the rate design through which SPS’s “base rate revenue increases . . . will be allocated and implemented.” Docket No. 42004 Stipulation at 9.

<sup>32</sup> Docket No. 42004 Stipulation at Exhibit A, pp. 28–29 (emphasis added).

<sup>33</sup> *Id.*

<sup>34</sup> Comer Direct at 15.

**2. The rate classes that are referenced in 16 TAC § 25.181(f) must be consistent with the definition of rate class set out in 16 TAC § 25.181(c)(49).**

The definition of *rate class* in the energy efficiency rule states that that definition is applicable “[f]or the purpose of calculating EECRF rates.”<sup>35</sup> Further, the order adopting the energy efficiency rule states that *rate class* “is defined because it has a specific meaning and is used for cost recovery purposes in [16 TAC § 25.181(f) and (h)].”<sup>36</sup> Consequently, the Commission has ordered that 16 TAC § 25.181(f) must be interpreted in a manner consistent with the definition set out in 16 TAC § 25.181(c)(49).

Public policy favors this reading of the energy efficiency rule. Subsection (f) of the energy efficiency rule requires that “costs shall be directly assigned to each *rate class* that receives services under the programs to the maximum extent reasonably possible,”<sup>37</sup> and the Commission has “emphasize[d] the importance of *rate classes* paying for programs from which they actually received services . . . .”<sup>38</sup> The Commission has stated that, “as a matter of public policy, direct assignment of actual energy efficiency expenditures *to the rate classes established in the utility’s most recent base rate proceeding* is appropriate, because a broader allocation methodology would result in some rate classes subsidizing programs for other rate classes.”<sup>39</sup> In fact, because of the effect of energy efficiency programs on a rate class’s load profile and energy usage, customers who are inappropriately joined with a separate rate class “would be doubly harmed, because they would subsidize the other rate classes for the cost of energy efficiency programs and would receive a greater portion of the utility’s cost of service in the next base rate proceeding.”<sup>40</sup> Great weight is placed on the specific level of granularity set out in its energy efficiency rule.<sup>41</sup> Further, the energy efficiency rule permits a finding of good cause to combine

---

<sup>35</sup> 16 TAC § 25.181(c)(49).

<sup>36</sup> Project No. 39674, Order Adopting Amendments to §25.181 as Approved at the September 28, 2012 Open Meeting at 60 (Oct. 17, 2012).

<sup>37</sup> 16 TAC § 25.181(f)(2) (emphasis added).

<sup>38</sup> Project No. 39674, Order Adopting Amendments to §25.181 as Approved at the September 28, 2012 Open Meeting at 96 (Oct. 17, 2012) (emphasis added).

<sup>39</sup> *Id.* at 93 (emphasis added).

<sup>40</sup> *Id.*

<sup>41</sup> Staff recognizes that the Commission has also counseled against too much granularity in the direct assignment of energy efficiency costs. *Id.* at 90 (“[The proposed rule does not directly assign costs to the customers who benefit, but to those *rate classes* that have customers that receive services under the program.” (emphasis in

rate classes under certain *very specific* circumstances, but SPS has made no such request in this proceeding.<sup>42</sup>

Further, a decision recognizing the specificity with which 16 TAC §§ 25.5(100) and 25.181(c)(49) are set out would provide necessary guidance for the preparation of EECRF applications. In Docket No. 42454, the ALJ noted that the Docket No. 40824 Base-Rate Order's major rate classes "were used by SPS in making all of the calculations in [that] proceeding to set EECRF rates" and that using different rate classes "w[ould] require a recalculation of costs and usage to determine appropriate rates."<sup>43</sup> In effect, the ALJ expressed concern that, by the time of the Proposal for Decision, it was too late in that proceeding to calculate SPS's EECRF rates using the rate classes supported by Staff. However, the practical effect of reliance on this consideration is that the utility dictates through its application what EECRF rate classes are to be used. On the other hand, if the Commission's preliminary order in this proceeding were to recognize the clear guidance set out in 16 TAC §§ 25.5(100) and 25.181(c)(49), the parties would be afforded ample opportunity to provide for the proper calculation of SPS's EECRF rates in this proceeding. In addition, SPS and other utilities would be provided guidance regarding how future applications should be prepared.

Accordingly, public policy strongly favors recognition of Staff's position regarding how 16 TAC § 25.181(c)(49) and (f) interrelate.

**C. 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 the purposes of this proceeding?**

If the premise of this question is true, then SPS's retail rate classes should be defined by referring to the base-rate rate schedules in SPS's currently effective tariff.<sup>44</sup> If the Commission finds that it conducted the necessary rate design in Docket No. 42004 but also finds that it did so

---

original)). However, the Commission's preamble to the energy efficiency rule makes it abundantly clear that assignment on the rate-class level represents an appropriate degree of granularity. *Id.*

<sup>42</sup> 16 TAC § 25.181(f)(2).

<sup>43</sup> Docket No. 42454, Proposal for Decision at 21 (Oct. 24, 2014).

<sup>44</sup> The relevant base-rate rate schedules in SPS's currently effective tariff, which are available on SPS's website, are the ones approved in SPS's most recent base-rate proceeding, Docket No. 42004. *Compare Electric Tariff*, Excel Energy, [http://www.xcelenergy.com/staticfiles/xcel/Regulatory/Regulatory%20PDFs/rates/TX/tx\\_sps\\_e\\_entire.pdf](http://www.xcelenergy.com/staticfiles/xcel/Regulatory/Regulatory%20PDFs/rates/TX/tx_sps_e_entire.pdf), with Docket No. 42004, Clean Record Copies of Tariffs Approved in Docket No. 42004 by Southwestern Public Service Company at Section No. IV, Sheet No. IV-1 (Dec. 29, 2014).

without approving retail rate classes—or if the Commission finds that the agreement of the parties regarding the information reflected in a summary schedule is sufficient to preclude the use of those rate classes—then it will not be possible to look to the prior base-rate proceeding to determine SPS’s retail rate classes. However, in order to ascertain the actual retail rate classes into which SPS’s customers are currently organized, it remains possible to look to the base-rate rate schedules in SPS’s currently effective tariff. It is pursuant to these base-rate rate schedules that SPS actually provides services to its customers, so the Commission may look to these base-rate rate schedules to see how SPS’s customers are organized.

In this scenario, Staff recommends *against* the adoption of the same EECRF rate classes used in the Docket No. 42454 EECRF Order. As discussed above, the Docket No. 42454 EECRF Order looked to the major rate classes stated on the face of the relevant base-rate order.<sup>45</sup> In light of the substantially different facts present in the Docket No. 42454, which are discussed above, the rate classes used in the Docket No. 42454 EECRF Order would not be applicable to this proceeding.

For the reasons outlined above, public policy favors Staff’s position in this proceeding, which best comports with the Commission’s preferred level of granularity in the direct assignment of energy efficiency costs. Further, requiring explicit compliance with 16 TAC § 25.181(c)(49), as read in the context of 16 TAC § 25.5(100), provides utilities with specific instructions regarding how to prepare an EECRF application and will prevent confusion in future cases. Therefore, Staff respectfully recommends that, if necessary, the Commission refer to the base-rate rate schedules in SPS’s currently effective tariff to define *retail rate classes* for the purposes of this proceeding.

#### IV. CONCLUSION

Staff respectfully requests that the Commission order that SPS’s EECRF rate classes for the purposes of this proceeding are the retail rate classes approved in Docket No. 42004, which correspond to the base-rate rate schedules approved in that proceeding and in SPS’s currently effective tariff.

---

<sup>45</sup> Docket No. 42454 EECRF Order at Finding of Fact No. 39.

**PUC DOCKET NO. 44698**  
**SOAH DOCKET NO. 473-15-3686**  
**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on May 27, 2015 in accordance with 16 TAC § 22.74.

A handwritten signature in black ink, appearing to read 'A. J. Smullen', written over a horizontal line.

A. J. Smullen



# Attachment A

FILED  
MAR 20 PM 2:47  
FILING CLERK

SOAH DOCKET NO. 473-14-1665  
DOCKET NO. 42004

APPLICATION OF SOUTHWESTERN § BEFORE THE STATE OFFICE  
PUBLIC SERVICE COMPANY FOR §  
AUTHORITY TO CHANGE RATES AND §  
TO RECONCILE FUEL AND § OF  
PURCHASED POWER COSTS FOR THE §  
PERIOD JULY 1, 2012 THROUGH §  
JUNE 30, 2013 § ADMINISTRATIVE HEARINGS

SOUTHWESTERN PUBLIC SERVICE COMPANY'S  
RESPONSE TO STAFF'S  
NINTH REQUEST FOR INFORMATION  
QUESTION NOS. 9-1 THROUGH 9-41  
(Filename: SPSRespStaff9th.doc; Total Pages: 72)

I. WRITTEN RESPONSES ..... 3

II. INSPECTIONS. .... 4

RESPONSES ..... 7

QUESTION NO. STAFF 9-1: ..... 7

QUESTION NO. STAFF 9-2: ..... 8

QUESTION NO. STAFF 9-3: ..... 9

QUESTION NO. STAFF 9-4: ..... 10

QUESTION NO. STAFF 9-5: ..... 11

QUESTION NO. STAFF 9-6: ..... 12

QUESTION NO. STAFF 9-7: ..... 13

QUESTION NO. STAFF 9-8: ..... 14

QUESTION NO. STAFF 9-9: ..... 15

QUESTION NO. STAFF 9-10: ..... 16

QUESTION NO. STAFF 9-11: ..... 19

QUESTION NO. STAFF 9-12: ..... 20

QUESTION NO. STAFF 9-13: ..... 21

QUESTION NO. STAFF 9-14: ..... 22

QUESTION NO. STAFF 9-15: ..... 23

277

**QUESTION NO. STAFF 9-21:**

Please list the Company's rate classes.

**RESPONSE:**

SPS's Texas retail rate classes are:

- Residential Service
- Residential Space Heating Service
- Small General Service
- Secondary General Service
- Secondary QF Standby Service
- Primary General Service
- Primary QF Standby Service
- Service Agreement Summary 4 (SAS-4) – commercial and industrial customer served at primary voltage
- Service Agreement Summary 8 (SAS-8) – commercial and industrial customer served at primary voltage
- Service Agreement Summary 12 (SAS-12) – commercial and industrial customer served at transmission voltage
- Service Agreement Summary 13 (SAS-13) – commercial and industrial customer served at primary voltage
- Large General Service Transmission 69 to 115 kV
- Transmission QF Standby Service 69 to 115 kV
- Large General Service Backbone Transmission 115 kV+
- Backbone Transmission QF Standby Service 115 kV+
- Small Municipal and School Service
- Large Municipal Service
- Large School Service
- Guard Lighting Service

- Flood Light Systems
- Municipal and State Street Lighting Service
- Restricted Outdoor Lighting Service
- Service Agreement – Lighting: WRB Refining L.P., Bishop Hills Property Owners, Chase Bank, Texas State Park Board (Palo Duro Canyon)
- Service Agreement – Lighting: Cal Farley's Boys Ranch
- Service Agreement – Highway Sign Lighting

Preparer: Jeff Comer  
Sponsor: Richard M. Luth

**QUESTION NO. STAFF 9-24:**

Please provide the Company's definition of "rate class." Please contrast the Company's definition within PUC Substantive Rule 25.5(100).

**RESPONSE:**

SPS's definition of rate class is consistent with P.U.C. SUBST. R. 25.5(100): A group of customers taking electric service under the same rate schedule.

Preparer: Richard M. Luth  
Sponsor: Richard M. Luth