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

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

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**COMMISSION STAFF'S LIST OF ISSUES**

COMES NOW the Staff ("Staff") of the Public Utility Commission of Texas ("Commission"), representing the public interest and files this List of Issues and would show the following:

**I. PROPOSED LIST OF ISSUES**

**1. Staff's proposed list of issues.**

Staff has identified the following issues that should be addressed in this proceeding.

*Application*

1. Does the Energy Efficiency Cost Recovery Factor ("EECRF") application of Southwestern Public Service Company ("SPS") comply with 16 Tex. Admin. Code § 25.181(f) ("TAC") and contain the testimony and schedules required and address the factors required by 16 TAC § 25.181(f)(11)?

*2016 Program Year*

2. Are the utility's appropriate demand reduction goals and energy savings goal for program year 2016 consistent with 16 TAC § 25.181(e)?
  - A. Has the utility requested a lower demand reduction goal under 16 TAC § 25.181(e)(2)? If so, has the utility demonstrated that compliance with the goal specified in 16 TAC § 25.181(e)(1) is not reasonably possible and demonstrated that good cause supports the lower demand reduction goal proposed by the utility?
  - B. Has the utility received any identification notices under 16 TAC § 25.181(w)? If so, has the utility's demand reduction goal for program year 2016 been properly adjusted to

remove any load that is lost as a result of identification notices submitted to the utility under that rule?

3. What is the appropriate amount of projected energy-efficiency-program costs to be recovered through the utility's 2016 EECRF?
  - A. Are these costs reasonable estimates of the costs necessary to provide energy-efficiency programs and to meet the utility's goals under 16 TAC § 25.181?
  - B. Does the utility currently recover any energy-efficiency costs in its base rates? If so, what is the amount of projected program costs in excess of revenues collected through base rates?
  - C. Are the projected costs of administration and costs of research and development in compliance with the administrative spending caps in 16 TAC § 25.181(i)? If not, has the utility requested an exception to those caps under 16 TAC § 25.181(e)(2)? If the utility has requested an exception to the caps under 16 TAC § 25.181(e)(2), has the utility demonstrated that compliance with the administrative spending cap is not reasonably possible and that good cause supports the higher administrative spending cap proposed by the utility?
4. What are the EM&V costs assigned to the utility for program years 2015 and 2016, and have any of these costs already been recovered in a prior EECRF proceeding?<sup>1</sup>

Program Year 2014 and 2014 EECRF proceeding

5. Did the costs recovered by the utility through its EECRF for program year 2014 comply with PURA<sup>2</sup> § 39.905 and 16 TAC § 25.181 and were the costs reasonable and necessary to reduce energy and demand costs?
  - A. Were the actual costs of administration and costs of research and development for program year 2014 in compliance with the administrative spending caps in 16 TAC § 25.181(i) or higher spending caps otherwise established by the Commission? If

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<sup>1</sup> 16 TAC § 25.181(q)(10).

<sup>2</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (Vernon 2007 & Supp. 2014) ("PURA").

otherwise established by the Commission, in which docket were the higher spending caps established?

- B. Did any costs for program year 2014 result from payments to an affiliate? If so, do those costs meet the requirements for affiliate expenses in PURA § 36.058?
  - C. What are the reasonable and necessary utility rate-case expenses for the utility's immediately previous EECRF proceeding?
  - D. What are the reasonable and necessary municipality rate-case expenses for the utility's immediately previous EECRF proceeding?
6. For each EECRF rate class, what is the appropriate amount, if any, of under- or over-recovered EECRF costs consistent with 16 TAC § 25.181 for program year 2014?
- A. Did the utility recover any of its energy-efficiency costs through base rates for program year 2014? If so, what is the actual amount of energy-efficiency revenues collected through base rates consistent with 16 TAC § 25.181(f)(2)?
  - B. What was the actual revenue collected through the utility's EECRF for program year 2014?
  - C. What were the actual costs that comply with 16 TAC § 25.181(f)(12) of the utility's energy-efficiency programs for program year 2014?

Performance Bonus

7. What were the utility's demand and energy reduction goals for program year 2014? If the Commission granted an exception for a lower demand goal, in what docket was the lower goal established?
8. What is the appropriate energy-efficiency performance bonus, if any, consistent with 16 TAC § 25.181(h) for program year 2014?
- A. Did the utility exceed its demand and energy reduction goals for program year 2014? If so, by what amounts?
  - B. What are the net benefits of the utility's energy-efficiency program for program year 2014?

- C. Did the utility exceed the EECRF cost caps in 16 TAC § 25.181(f)(7)?
- D. Did the Commission establish a lower demand reduction goal, higher administrative spending cap, or higher EECRF cost cap for the utility for program year 2014? If so, should the Commission reduce the utility's performance bonus?

EECRF Design

- 9. What are the appropriate 2016 EECRFs for each rate class consistent with 16 TAC § 25.181(f)?
  - A. What is the total cost that should be recovered through the utility's 2016 EECRFs?
  - B. What are the appropriate EECRF rate classes for the utility's 2016 EECRFs?
  - C. Has the utility requested a good-cause exception under 16 TAC § 25.181(f)(2) to combine one or more rate classes? If so, for each rate class that is proposed to be combined, does it have fewer than 20 customers, is it similar to the other rate classes, and does it receive services under the same energy-efficiency programs as the other rate classes?
  - D. Are the costs assigned or allocated to rate classes reasonable and consistent with 16 TAC § 25.181?
    - i. Are the utility's program costs directly assigned to each EECRF rate class that receives services under the programs to the maximum extent reasonably possible as required by 16 TAC § 25.181(f)(2)?
    - ii. Is any bonus allocated consistent with 16 TAC § 25.181(h)(6)?
    - iii. Are administrative costs, including rate-case expenses and research and development costs allocated consistent with 16 TAC § 25.181(i)?
    - iv. How are the EM&V costs assigned to the rate classes and is the assignment consistent with PURA § 39.905 and 16 TAC § 25.181?
    - v. Are any under- or over-recovered EECRF costs allocated to the rate classes consistent with 16 TAC § 25.181(f)(2)?

- E. Does the utility propose an EECRF for any commercial rate classes as a demand charge?  
If so, for each such rate class, do the base rates for that class contain demand charges?  
For each such rate class, should the EECRF for that rate class be an energy charge or a demand charge?
- F. What is the appropriate estimate of billing determinants for the 2016 program?
- G. What are the appropriate calculated or estimated system losses and line losses that should be used in calculating the 2016 EECRF charges?
10. Do the total 2016 EECRF costs, excluding EM&V costs and municipal rate-case expenses, exceed the EECRF cost caps prescribed in 16 TAC § 25.181(f)(7)? If so, did the utility request an exception to the EECRF cost caps pursuant to 16 TAC § 25.181(e)(2) and, if so, has the utility demonstrated that compliance with the EECRF cost caps is not reasonably possible and demonstrated that good cause supports the higher EECRF cost caps?
11. Do the incentive payments for each customer class in program year 2014 comply with 16 TAC § 25.181(g)?

Tariff

12. What tariff schedule should be adopted for the utility in compliance with 16 TAC § 25.181?

**2. Issues not to be addressed.**

Staff does not identify any issues not to be addressed.

## II. PROPOSED THRESHOLD ISSUES

Staff has identified a threshold or policy issue that should be briefed for the purposes of a preliminary order. Specifically, Staff respectfully requests that the Commission address the following questions:

1. Does the definition of *rate class* in 16 TAC § 25.5(100) control when determining the retail rate classes approved in a utility's most recent base-rate proceeding, as required by 16 TAC § 25.181(c)(49)?
2. What are the retail rate classes approved in Docket No. 42004<sup>3</sup> that should be used in this proceeding?

As discussed below, these questions should be addressed during this proceeding in order for the Commission to determine the proper EECRF rate classes for which to adopt EECRFs in this proceeding. Addressing these questions in the Commission's preliminary order will ensure the efficient processing of this matter and provide a more focused resolution of this case, thereby lowering litigation costs and providing savings to ratepayers.

### 1. Background and discussion of the threshold issues.

The Commission may approve an EECRF for each eligible rate class.<sup>4</sup> For the purposes of an EECRF proceeding, "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> Accordingly, in order to ascertain a utility's EECRF rate classes, the Commission must determine the retail rate classes approved in a utility's most recent base-rate proceeding. SPS's most recent base-rate proceeding, Docket No. 42004, was concluded on December 19, 2014. The Commission has not determined the rate classes approved by its Docket No. 42004 Base-Rate Order in the context of an EECRF proceeding, and, as discussed below, the Docket No. 42004 Base-Rate Order does not state on its face what retail rate classes have been approved by the Commission. This issue is

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<sup>3</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").

<sup>4</sup> 16 TAC § 25.181(f)(2).

<sup>5</sup> 16 TAC § 25.181(c)(49).

similar to but distinct from an issue that caused significant confusion and disagreement in SPS's prior EECRF.<sup>6</sup>

The Commission's order adopting the energy efficiency rule states that "the [C]ommission's use of rate class versus customer class in this rule is intentional" because the term *rate class* "has a specific meaning" compared to *customer class*'s "more fluid meaning."<sup>7</sup> The definition of *rate class* in 16 TAC § 25.5(100) provides explicit instructions for determining a utility's rate classes. Specifically, 16 TAC § 25.5(100) defines a *rate class* as "[a] group of customers taking electric service under *the same* rate schedule."<sup>8</sup> The Commission's definition of a *rate class* stands in contradistinction to the Commission's definition of the looser concept *customer class*, which means "[a] group of customers . . . taking service under *one or more* rate schedules."<sup>9</sup> Because the Commission has stated that the energy efficiency rule's use of the term *rate class* is intentional, Staff respectfully requests that the Commission clarify the role that 16 TAC § 25.5(100) should play when interpreting the energy efficiency rule's use of the term *rate class*.

In SPS's most recent EECRF proceeding, Docket No. 42454,<sup>10</sup> the Commission noted that the Docket No. 40824 Base-Rate Order refers to five major rate classes.<sup>11</sup> Specifically, even though the Commission's rules define a rate class as a group of customers taking service under a particular rate schedule,<sup>12</sup> the Commission did not address the recognition of an EECRF rate class for each of SPS's base-rate rate schedules, holding that the Docket No. 40824 Base-Rate

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<sup>6</sup> *Application of Southwestern Public Service Company to Adjust Its Energy Efficiency Cost Recovery Factor*, Docket No. 42454, Proposal for Decision at 21 (Oct. 24, 2014).

<sup>7</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).

<sup>8</sup> 16 TAC § 25.5(100) (emphasis added). Although this definition refers to rate schedules generally, the only reasonable interpretation is that the rule refers to *base-rate* rate schedules.

<sup>9</sup> 16 TAC § 25.5(23) (emphasis added).

<sup>10</sup> Docket No. 42454, Order (Nov. 24, 2014) ("Docket No. 42454 EECRF Order").

<sup>11</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 at 8, Finding of Fact 26 (Jun. 19, 2013) ("Docket No. 40824 Base-Rate Order").

<sup>12</sup> 16 TAC § 25.5(100).



Order acknowledged “five major rate classes.”<sup>13</sup> Staff interprets the Docket No. 42454 EECRF Order as standing for the proposition that, when the relevant base-rate order states on its face the rate classes approved by the Commission, the base-rate order’s plain language is determinative, superseding consideration of the definition of *rate class* in 16 TAC § 25.5(100).<sup>14</sup>

However, Staff is not certain what outcome the Commission would order if the Docket No. 42454 principle is applied to the facts of this proceeding. The Docket No. 42004 Base-Rate Order does not state on its face what rate classes were approved by the Commission in that case. The language in the Docket No. 40824 Base-Rate Order referring to five major rate classes<sup>15</sup> is not present in the Docket No. 42004 Base-Rate Order. Furthermore, the Docket No. 40824 Base-Rate Order stated that “SPS will file its [Docket No. 42004] class cost of service study showing the detail of the five major rate classes *unbundled into the sub-classes within each of the major rate classes*.”<sup>16</sup> The Commission adopted the Docket No. 40824 parties’ unanimous proposal that SPS should file the Docket No. 42004 rate filing package with enough information to provide for more granular rate design than that achieved in Docket No. 40824. Because the Commission has adopted an order—based on a more granular application—that does not state on its face the retail rate classes approved by that order, the principle set out in the Docket No. 42454 EECRF Order is not dispositive here. Accordingly, Staff respectfully requests that the Commission provide guidance regarding how to determine the retail rate classes approved by the Docket No. 42004 Base-Rate Order.

**2. Addressing these questions as a preliminary matter will ensure the efficient processing of this matter and provide a more focused resolution of this case, thereby lowering litigation costs and providing savings to ratepayers.**

Addressing these questions as a preliminary matter will ensure the efficient processing of this matter and provide a more focused resolution of this case, thereby lowering litigation costs and providing savings to ratepayers.

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<sup>13</sup> Docket No. 42454 EECRF Order at 5, Finding of Fact No. 39.

<sup>14</sup> See Docket No. 42454, Proposal for Decision at 21 (Oct. 24, 2014) (“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>15</sup> See Docket No. 40824 Base-Rate Order at 8, Finding of Fact 26.

<sup>16</sup> *Id.*

In Docket No. 42454, the Administrative Law Judge (“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>17</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 would be able to dictate in its application what rate classes are to be used.

If the Commission addresses this issue as a preliminary matter, the parties will be provided ample time to properly calculate SPS’s EECRFs, which would address the timing concerns stated by the ALJ last year. Further, the calculation of SPS’s EECRFs has been the subject of significant disagreement between the parties,<sup>18</sup> but this disagreement can be avoided if the Commission addresses this issue in its preliminary order.

Deciding this issue as a threshold issue provides certainty that the case will proceed in a manner acceptable to the Commission. Accordingly, Staff respectfully requests that this issue be addressed as a preliminary matter, which will ensure the efficient processing of this matter and provide a more focused resolution of this case, thereby lowering litigation costs and providing savings to ratepayers.

### **III. CONCLUSION**

Staff respectfully requests that the Commission entertain briefing on Staff’s requested threshold issue and address the threshold issue in the Commission’s preliminary order.

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<sup>17</sup> Docket No. 42454, Proposal for Decision at 21 (Oct. 24, 2014).

<sup>18</sup> The ALJ summarized the Docket No. 42454 parties’ disparate positions in the Proposal for Decision. *Id.* at 18–20.

Date: May 11, 2015

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

**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 11, 2015 in accordance with 16 TAC § 22.74.



A. J. Smullen