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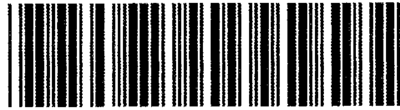

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APPLICATION OF ENTERGY TEXAS, INC. FOR APPROVAL OF A TRANSMISSION COST RECOVERY FACTOR	§ § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

CITIES' REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION

I.	INTRODUCTION	1
II.	REPLY TO EXCEPTIONS	2
	PFD Section V.A. TEMPORARY RATES	2
	PFD Section VI.A. SKYLINING/HAZARD TREE BLANKET PROJECT COSTS	3
	PFD Section IX.A. GROSS MARGIN TAX	5
	PFD Section IX.B. BAD DEBT EXPENSE	6
III.	PRAYER	6

The Cities of Anahuac, Beaumont, Bridge City, Cleveland, Conroe, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Rose City, Shenandoah, Silsbee, Sour Lake, Splendora, Vidor, and West Orange ("Cities") file this Reply to Exceptions to the Proposal for Decision ("PFD") in the above referenced proceeding and would respectfully show as follows:

I. INTRODUCTION

As to the issues addressed by Cities in these proceedings, the ALJ's reasoning is sound and correct in all but the few areas discussed in Cities' Exceptions to the PFD. The Commission should disregard the inconsistent and incorrect arguments presented in the Company's Exceptions to the PFD and adopt the PFD except as modified by the Cities' Exceptions.

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II. REPLY TO EXCEPTIONS

PFD Section V.A. TEMPORARY RATES

In its exceptions, ETI presents its request for temporary rates as a matter of correcting a perceived deficiency (the lack of a deadline) in the TCRF Rule on policy grounds. The Company concedes that the Commission could have, but did not include an implementation deadline in the TCRF Rule, but argues that the Commission should allow temporary rates in order to promote the policy goals of making TCRF proceedings streamlined and reducing regulatory lag.[1] But any request for temporary rates is subject to the Commission's already-existing procedural rule governing interim relief.[2] The ALJ properly concluded that ETI did not meet its burden to show good cause for adopting temporary rates, and therefore the Commission should reject ETI's request for temporary rates.

ETI's appeal to the legislative and Commission objective of reducing regulatory lag might be more sympathetic if the Company had not fueled its own need for temporary rates by prematurely withdrawing its filing in Docket No. 44704.[3] If ETI had not withdrawn its previous base rate filing, rates from that case would have gone into effect in December 2015, and ETI's requested relief through December 31, 2014, would have been reflected in rates from that time forward.[4] Therefore, the Company's TCRF request would only have reflected the last six months of ETI's asserted transmission-related costs, if it had been filed at all, not the twenty-seven months requested in this proceeding.[5] Because ETI had ample opportunity to obtain earlier rate relief through its previous withdrawn base rate proceeding, its request for temporary rates in this proceeding should be denied.

ETI argues that the conclusion reached by the ALJ would require a utility to demonstrate that filing a TCRF proceeding is more appropriate than filing a base rate case.[6] This is not the case at all. No party has argued that ETI should have filed another base rate case instead of its

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[1] ETI's Exceptions to the PFD at 2-4.

[2] *See* 16 TAC § 22.125(c).

[3] *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 44704, (Jun. 12, 2015).

[4] Direct Testimony of Karl J. Nalepa, Cities Exhibit 1 at 25:13-15.

[5] *Id.* at 25:15-17.

[6] ETI's Exceptions to PFD at 4.

TCRF Request, and a rejection of ETI's request would not create that precedent. The Company's dismissal of its last base rate case is relevant only to the extent it now seeks early implementation of the approved TCRF.

When determining whether good cause for interim relief exists, the presiding officer is to consider: (1) the utility's ability to anticipate the need for and obtain final approval of relief prior to the time relief is reasonably needed; (2) other remedies available under law; (3) changed circumstances; (4) the effect of granting the request on the parties and the public interest; (5) whether interim relief is necessary to effect uniform system-wide rates; and (6) any other relevant factors as determined by the presiding officer.[7] ETI's decision not to pursue its previous base rate case is directly relevant to the first two factors and weighs against the appropriateness of establishing temporary rates. The ALJ noted that there is scant evidence of the third factor, changed circumstances, between the filing of the base rate case in May 2015 and the filing of the Company's Application four months later.[8] Finally, ETI's analysis willfully ignores the fourth factor, or the effect on the parties and the public interest, and fails to explain why it is more equitable for customers to bear a retroactive rate increase of $2.37 million than for the Company to wait a "modest" sixty-five days longer than it would like to start collecting its rate increase.[9] The Company failed to meet its burden to show good cause for implementing temporary rates, and therefore the Commission should reject its request for interim relief as recommended in the PFD.

PFD Section VI.A. SKYLINING/HAZARD TREE BLANKET PROJECT COSTS

The Company asks the Commission to agree to consider an unspecified means of recovery of its 2013 Skylining/Hazard Tree Blanket project costs in the Company's next base rate case. The Commission should reject the Company's request for three different reasons. First, because it was raised for the first time in the Company's exceptions to the PFD and is unsupported by the Company's application and the evidence on the record for this case. Second,

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[7] 16 TAC § 22.125(c).

[8] PFD at 9.

[9] See ETI's Exceptions to the PFD at 4.

it is an invitation to render an impermissible advisory opinion.[10] Third, the Company's request is at odds with longstanding ratemaking principles. The Company is not guaranteed recovery of all expenses that occur outside of a test year; rather, the Company is guaranteed a reasonable opportunity to earn a reasonable return in excess of its reasonable and necessary expenses as represented in a historical test year.[11]

Furthermore, the Company again complains that the ALJ's recommendation to exclude these expenses is a retrospective application that penalizes the Company for its "reasonable" interpretation of FERC USoA Electric Plant Instruction 9.[12] The Company has argued repeatedly that it is reasonable to capitalize expenses for activities "akin to" or "synonymous with" the first clearing of a right-of-way. In the ATSI audit, the FERC specifically rejected this interpretation of its accounting regulations, and the Company changed its policy accordingly. Without even reaching the question of whether the Company's expansive interpretation of the word "first" was ever reasonable, the PFD does not have any retrospective effect and is not a penalty. The PFD does not recommend and no party has advocated for the reversal of vegetation management expenses that have already been included in rate base. Excluding such expenses on a going-forward basis to reflect the Company's current policy is no more a penalty to the Company than it is a penalty to customers that they will continue to pay a return on vegetation management expenses that were improperly capitalized prior to the Company's policy change. If the Company is unable collect sufficient revenue from current rates to cover the cost of its vegetation management program under its new policy, it can and should file a base rate case to set rates at an amount sufficient to recoup such expenses. The Company has failed to show that any special rate treatment of the 2013 Skylining/Hazard Tree Blanket project costs is warranted, and thus the Commission should adopt the ALJ's recommendation to exclude them from the Company's TCRF and reject the Company's request for a commitment to take up this issue in the next base rate case.

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[10] *See, e.g., Pub. Util. Comm'n of Texas v. Houston Lighting & Power Co.*, 748 S.W.2d 439, 442 (Tex. 1987).

[11] See PURA § 36.051; 16 TAC § 25.231(a).

[12] ETI's Exceptions to the PFD at 7. FERC Uniform System of Accounts Electric Plant Instruction 9 provides: "The cost of equipment chargeable to the electric plant accounts, unless otherwise indicated in the text of an equipment account...(a)lso include(s) those costs incurred in connection with *the first clearing and grading of land and rights-of-way* and the damage costs associated with construction and installation of plant." (emphasis added).

PFD Section IX.A. GROSS MARGIN TAX

The Company's interpretation of the Commission's findings regarding post-test-year and pro-forma adjustments in SWEPCO Docket No. 42448 would require the Commission to disregard as meaningless surplusage its Finding of Fact No. 41 and Conclusion of Law No. 9:

FoF 41. SWEPCO's proposed post-test-year and pro-forma adjustments to its SPP charges are not known and measurable.

CoL 9. Under the Commission's cost-of-service rule, post-test-year adjustments are only permissible to the extent they are known and measurable, and where all "attendant impacts on all aspects of a utility's operations (including but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched."[13]

When there are conflicting or ambiguous provisions in a contract or statute, courts consider the context and the consequences that would follow from a certain interpretation and avoid interpretations that would produce absurd results or render other language mere surplusage.[14] The Commission should apply the same standard when considering its prior order and not ignore the context under which the prior findings and conclusions were made. Here, the Commission has before it a certain, simple, known and measurable change that has already occurred, as opposed to the unsubstantiated and complex estimates and projections presented by SWEPCO. It is reasonable to interpret the Commission's prior findings to prohibit post-test-year and pro-forma adjustments that are based on speculative, unsubstantiated, or estimated information, but to allow adjustments based on known and measurable changes.

Furthermore, unlike in the SWEPCO case, if the Commission ignores the known and measurable change to the Company's gross margin tax rate, the result will be an immediate and certain over-collection of revenue from customers, which is a direct violation of PURA § 36.209.

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[13] Application of Southwestern Electric Power Company for Approval of a Transmission Cost Recovery Factor, Docket No. 42448, Order (Nov. 24, 2014).

[14] *See, e.g., R & P Enterprises v. LaGuarta, Gavrel & Kirk, Inc.* 596 S.W.2d 517, 518-19 (Tex. 1980); *City of Amarillo v. Martin*, 971 S.W.2d 426, 430 (Tex. 1998).

The Commission should avoid this result and adopt the ALJ's recommendation regarding the proper gross margin tax rate to be used in its TCRF calculation.

PFD Section IX.B. BAD DEBT EXPENSE

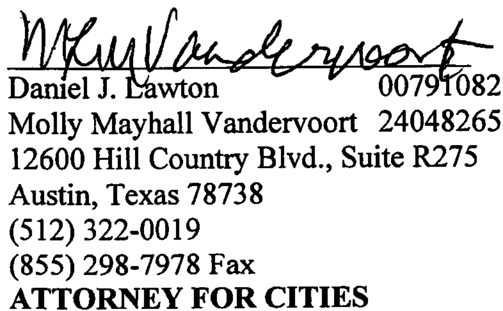
With regard to the gross margin tax expense, the Company argued firmly that the Commission should disregard all costs except those actually incurred during a historical test year. Yet, it argues that bad debt expense should be included, not based on what is recorded in its books and records for the historical test year, but based on a five-year average of the Company's bad debt expense.[15] Rule 25.239(e) clearly and unambiguously defines each capital and expense cost of service component allowed for inclusion in the TCRF revenue requirement. Bad debt expense is not included in this list. The ALJ properly concluded that bad debt is neither TIC nor ATC, and that it is only transmission-related in the broad sense of that term.[16] The Commission should adopt the ALJ's recommendation to reject the Company's bad debt expense in the TCRF Rate.

III. PRAYER

For the above stated reasons, Cities respectfully request that the Commission adopt the Proposal for Decision except as modified in Cities' Exceptions to the PFD.

Respectfully submitted,

LAWTON LAW FIRM, P.C.



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[15] Tr. at 68:4-5 (McCloskey Cross) (Dec. 11, 2015).

[16] PFD at 48.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on all parties of record in this proceeding on this the 29th day of March, 2016, by First Class, U.S. Mail, facsimile transmission, or hand delivery.

Molly Mayhall Vandervoort