

Control Number: 45084



Item Number: 132

Addendum StartPage: 0

PUCT DOCKET NO. 45084 RECEIVED
SOAH DOCKET NO. 473-16-0581

2016 AUG 29 PM 2:08

APPLICATION OF ENTERGY §
TEXAS, INC. FOR APPROVAL OF §
A TRANSMISSION COST §
RECOVERY FACTOR §

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS
FILED CLERK

**REPLY OF ENTERGY TEXAS, INC. TO
TEXAS INDUSTRIAL ENERGY CONSUMERS' MOTION FOR REHEARING**

Entergy Texas, Inc. files this Reply to the Motion for Rehearing of Texas Industrial Energy Consumers (TIEC) regarding the Commission's July 20, 2016 order (Order) in this docket. TIEC requested rehearing with regard to one issue, its proposed load growth adjustment. TIEC's motion should be denied; as detailed below, the Commission correctly rejected the proposed load growth adjustment.

I. TIEC's New Arguments For a Load Growth Adjustment Are Without Merit.

TIEC's primary new argument attempting to justify a load growth adjustment in this case defies logic and precedent. In particular, TIEC argues that "[A]s Commissioner Anderson pointed out, and as the Commission's Order has now affirmatively found, the Commission's non-ERCOT rule does not apply to ETI, and this case is not precedential. It follows that prior Commission orders that were based on that rule are not precedential with respect to this case. . . . [T]he Commission may apply the plain language of PURA § 36.209's prohibition on over-recovery unfettered by its decision in the prior case."¹

TIEC's argument provides no basis for reversing the Commission's decision. First, as a mere matter of logic, it does not follow that, just because the Commission has determined that this case is not precedential, prior precedent does not then apply to this docket. No strain of logic supports such a proposition. For example, if the proposition were correct, then parties

¹ TIEC Motion for Rehearing at 2-3.

132

could reach non-unanimous settlement agreements that were not bound by Commission rules or prior Commission cases simply because an NUS itself is not precedential. A NUS must comply with Commission rules and precedent even though it is itself not precedential.

Moreover, although the Commission concluded that the TCRF Rule, 16 TAC § 25.239, does not expressly apply to ETI, the Commission also determined that it is “appropriate for the Commission to use the parameters of 16 TAC § 25.239 in this case.”² It would be arbitrary and capricious to apply just some of the parameters of the TCRF Rule and not to apply others, and the Order makes no finding to support such an inequitable result. TIEC presents no reason for picking and choosing in that manner, let alone any persuasive or legally viable reason. TIEC likewise presents no reason for why the reasoning that led the Commission to reject load growth adjustments as an element of the rule is somehow not applicable here. TIEC’s request that the rule and precedent related to the rule be ignored should not be granted.

In addition to its primary new argument that precedent does not apply to this case, TIEC also argues that this case can be distinguished from the precedent of Docket No. 42448 because in that case there were no express findings regarding the alleged over-recovery of transmission-related revenues and the order in that case merely referenced “the potential for over-recovery of transmission costs.”³ TIEC’s argument in this regard is without merit. First, the PFD in Docket No. 42448, as adopted by the Commission, expressly documented the alleged over-recovery amounts as ranging from \$134,581 to \$266,072.⁴ There is no indication by the PFD that the utility offered any evidence to recalculate these proposed amounts of the alleged over-recovery. The fact that the ALJ in that case did not choose to pick among the alleged over-recovery

² Docket No. 45084, Order at 3 and Finding of Fact 11B.

³ TIEC Motion for Rehearing at 3.

⁴ Docket No. 42448, Proposal for Decision at 19 (Oct. 9, 2014).

amounts for inclusion in a finding of fact is mere form over substance and provides no legitimate basis for distinguishing Docket No. 42448 from this case because it is irrelevant to the ultimate conclusion that the Commission had previously decided the issue.

Moreover, Docket No. 42448 is not the only relevant precedent. The Commission first rejected a load growth adjustment in its order in the TCRF rulemaking, Project No. 33253.⁵ Thus, in addition to failing to persuasively distinguish Docket No. 42448, TIEC cannot, and does not attempt to distinguish the Commission's decision in Project No. 33253 to reject TIEC's proposed load growth adjustment.

II. TIEC's Restatement of Previous Arguments Should Again Be Rejected.

In addition to the "new" arguments addressed above, TIEC's motion for rehearing repeats one of its primary old arguments for requesting the Commission to abandon precedent and impose a load growth adjustment in this case: the size of the alleged over-recovery.⁶

As is obvious from the record, this argument presents a distinction without a difference, and it is an unprincipled standard as well because, in Docket No. 42448, SWEPCO's first TCRF proceeding, no party suggested that it was acceptable for the Commission to forego a load growth adjustment due to the fact that the adjustment would have been "small." Rather, TIEC and other parties in that case insisted that a load growth adjustment be adopted in Docket No. 42448 that was in no way tied to its magnitude. Likewise, the Commission's rejection of a load growth adjustment in Docket No. 42448 had nothing to do with its relative magnitude: "Neither PURA § 36.209 nor P.U.C. Subst. R. 25.239 require the use of a load-growth adjustment to

⁵ Docket No. 33253, *Rulemaking Relating to Transmission Cost Recovery Factor for Non-ERCOT Utilities*, Order Adopting New § 25.239 at 14 (Dec. 14, 2007).

⁶ TIEC Motion for Rehearing at 1 and 2.

baseline TCRF values. The Commission rejected just such an adjustment in its order adopting P.U.C. Subst. R. 25.239.”⁷

The Commission has rejected altogether the load growth adjustment proposed by TIEC, whether small, medium, or large. The size of the adjustment had and has nothing whatsoever do with the rationale for rejecting the adjustment, described above.⁸ Moreover, such a distinction would provide no rational basis for administering the rule. What level of load growth would be sufficient to trigger an adjustment? It is anyone’s guess. In all likelihood the result would be discrimination among the non-ERCOT utilities subject to the rule, with some companies able to take full advantage of the cost recovery authorized by the TCRF, others less so. It is hard to imagine an approach more at odds with the TCRF Statute’s and Rule’s objectives to “encourage timely investment in non-ERCOT transmission infrastructure.”⁹

The Commission has in two prior proceedings expressly rejected proposals for load growth adjustments in all material respects identical to the load growth adjustment proposed here. The Commission’s policy to instead assess transmission cost over-recovery in the context of a base rate proceeding is reasonable and consistent with the requirements of PURA § 36.209. The Commission should maintain the policy for ETI, as it has already done for similarly situated non-ERCOT utilities.

III. The Commission Correctly Rejected the Proposed Load Growth Adjustment.

The PFD, as adopted by the Order, accurately and succinctly lays out the current state of Commission law and policy unmistakably rejecting, on two prior occasions, the load growth

⁷ Docket No. 42448, Order at Conclusion of Law 22 (Nov. 24, 2014).

⁸ As Mr. Totten explained, “this argument ignores the Commission’s conclusion in adopting the rule that load growth should be addressed in a general rate case.” *See* Rebuttal Testimony of Jess K. Totten, ETI Ex. 9, at 14, lines 11-16.

⁹ Project No. 33253, Final Order at 14.

adjustment proposed by TIEC and other parties. In doing so, the Order properly rejected the attempts of TIEC and other parties to have the Commission reject its precedent and in essence amend the requirements of its own rule in this case:

[T]he TCRF Rule does not call for a load growth adjustment in the TCRF calculation. ETI is correct that in the TCRF rulemaking project, the Commission rejected essentially the same load growth adjustment that Staff, TIEC, and OPUC propose in this proceeding. The Commission clearly stated in the order adopting the TCRF that the TCRF calculation as adopted “properly accounts for load growth for the purpose of the TCRF.” The Commission also found that load growth and revenue increases should be addressed through a base rate case and not a TCRF proceeding.

The PFD in SWEPCO’s TCRF case (Docket No. 42448) relied upon these pronouncements in recommending that the Commission not impose a load-growth adjustment... The Commission order in SWEPCO adopted the ALJ’s PFD without modification.¹⁰

TIEC has failed to state any colorable basis for arriving at a different result in this case, and has provided no reasonable explanation for why a TCRF approved for some utilities, such as ETI, should be subject to a load growth adjustment, while other utilities applying the same rule, such as SWEPCO, should not be subject to a load growth adjustment. As a result, TIEC can only take the position that the Commission has adopted and applied the TCRF Rule without understanding the requirements of PURA § 36.209.

These claims are baseless. The Commission’s TCRF Rule, correctly applied by ETI in its application of the TCRF formula in this case, gives appropriate effect to the requirements of PURA § 36.209, including its requirement that the TCRF not result in the over-recovery of costs. TIEC’s position depends on the erroneous premise that its proposals provide the one and only way to address potential over-recovery of costs. The Commission, however, has followed a different path in addressing this issue, one that is lawful, reasonable, and perfectly adequate to

¹⁰ Docket No. 45084, PFD at 42-43 (citations omitted).

carry out the requirements of PURA § 36.209. The Commission expressly addressed the over-recovery of transmission costs and TCRF revenues in the true-up prescribed by subsection (f) of the TCRF rule. The Commission further addressed the issue in its Order adopting the TCRF Rule, by rejecting requests for any additional load growth adjustment and concluding that: 1) “[i]ncreases in load, revenue, and non-transmission costs should be addressed through a general rate case,”¹¹ and 2) that “[t]he commission staff’s monitoring of Earnings Monitoring Reports are the appropriate mechanisms for addressing potential over-recovery.”¹² This approach is reasonable and appropriate and should not be altered based on the arguments raised in TIEC’s motion for rehearing.

IV. Conclusion

ETI requests that the Commission deny TIEC’s Motion for Rehearing and grant such further relief to which ETI may be entitled.

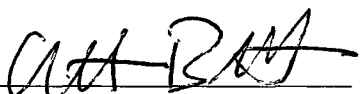
¹¹ Project No. 33253, Order at 14.

¹² *Id.* at 26.

Respectfully submitted,

Steven H. Neinast
Assistant General Counsel
Wajiha Rizvi
Counsel
ENTERGY SERVICES, INC.
919 Congress Avenue, Suite 701
Austin, Texas 78701
(512) 487-3957 telephone
(512) 487-3958 facsimile

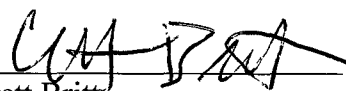
John F. Williams
Everett Britt
DUGGINS WREN MANN & ROMERO, LLP
600 Congress Avenue, Suite 1900
P.O. Box 1149
Austin, Texas 78767-1149
(512) 744-9300 telephone
(512) 744-9399 facsimile

By: 
Everett Britt
State Bar No. 24001789

ATTORNEYS FOR
ENTERGY TEXAS, INC.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by electronic mail, facsimile, hand-delivery, overnight delivery, 1st Class U.S. Mail, or Certified Mail - Return Receipt Requested on all parties of record in this proceeding on August 29, 2016.


Everett Britt