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

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BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OF
ADMINISTRATIVE HEARINGS

**OFFICE OF PUBLIC UTILITY COUNSEL'S
POST HEARING REPLY BRIEF**

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**OFFICE OF PUBLIC UTILITY COUNSEL'S
POST-HEARING INITIAL BRIEF**

The Office of Public Utility Counsel (OPUC) respectfully submits this Post-Hearing Reply Brief in the above-referenced proceeding. Rather than repeat arguments made in the initial brief, OPUC limits this brief to replying to additional points and emphasis made by Entergy Texas, Inc. (ETI), that were not already fully addressed in the initial brief, and providing additional recommendations based upon a review of other parties' briefing, where appropriate. OPUC respectfully refers the Administrative Law Judges (ALJs) to OPUC's initial brief for OPUC's arguments on the inclusion of Skylining Project costs; the applicability of the 2016 margin tax rate; and additional arguments on adjustments needed to the transmission baseline related to load growth. The fact that OPUC does not address an issue, whether here in reply, or in our initial post-hearing brief, should not be interpreted as agreement with any particular position on the issue. OPUC respectfully shows the following:

II. PRELIMINARY ISSUES

A. Temporary Rates

ETI argues in this section of its initial brief that the “TCRF Rule gives non-ERCOT utilities the option to request a TCRF, and ETI has met all the requirements in the Rule for doing so.”¹ ETI further argues on the same page that “[t]emporary rates would be an effective vehicle to *improve* on the status quo period of regulatory lag that would otherwise be the outcome of this case.”² Neither of these arguments, even if taken as true, justifies granting temporary rates in this proceeding. In general, TCRF proceedings themselves are “improvements” on regulatory lag periods, therefore, the outcome of this proceeding reduces regulatory lag for the Company. Second, if additional “improvements” were needed for run-of-the-mill TCRF scenarios like ETI’s, then the Commission would have written a tighter timeline into the TCRF Rule, 16 TAC § 25.239, or the Legislature would have done so when enacting the TCRF statute, PURA § 39.209. Neither the Legislature nor the Commission saw the need to automatically apply a shortened period to TCRFs. Instead, the Company must meet the existing standards for interim relief under 16 TAC § 22.125 to be granted temporary rates. The Company has failed to satisfy these standards and its request for temporary rates should be rejected.

The standards for interim relief such as temporary rates are clear cut. The Commission’s rule, 16 TAC § 22.125S(c) states in pertinent part that, “the presiding

¹ ETI Initial Brief at 5.

² *Id.* (Emphasis added).

officer may, after notice and opportunity for hearing, grant a contested request for interim relief *only on a showing of good cause*. (Emphasis added). The rule continues and specifically states what is to be considered when deciding the question of good cause.

In determining whether good cause exists, the presiding officer shall take into account:

- (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.

16 TAC § 22.125(c). Subsection (d) of the rule goes on to specify that “in any proceeding involving a proposed interim change in rates, the burden of proof to show that the change proposed by the utility . . . is just and reasonable shall be on the utility.”

As Staff noted in its Initial Brief on this issue, in order to obtain temporary rates under PURA § 36.109, ETI must show good cause exists for this exceptional relief by meeting the requirements of 16 TAC§ 22.125. OPUC agrees with Staff and TIEC that ETI has not established good cause for temporary rates because ETI has not shown a need that “is in addition to the typical facts and circumstances that the Commission would have been aware of when creating the TCRF rule.”³ ETI argues in its initial brief

³ Staff Initial Brief at 4; TIEC Initial Brief at 5.

that Cities' witness, Mr. Nalepa, only challenged the "other remedies available under law" criteria. ETI's reading is too narrow. As shown in Cities' initial brief, Cities actually challenge two criteria, the "other remedies available under law" and the "utility's ability to anticipate the need for and obtain final approval of relief prior to the time the relief is reasonably needed" criteria.⁴ OPUC concurs with Cities, Staff, and TIEC that ETI fail to meet either of these criteria because they deliberately chose to cease pursuing rate relief that would have otherwise been ruled on before now. To the extent that ETI exercised its right to withdraw its application for a change in rates (which included transmission cost recovery), it was proper. However, ETI cannot now credibly argue that they are aggrieved by the effects of regulatory lag when 1) they already had a vehicle in motion to receive rate relief and chose to no longer pursue it; and 2) the TCRF itself provides relief from regulatory lag.

Further, ETI continues to argue that it should be granted temporary rates because the TCRF process is intended to be streamlined, and temporary rates would effectuate that goal. OPUC disagrees with ETI's interpretation of what streamlining was intended in the TCRF process. ETI argues that the TCRF is meant to be a streamlined proceeding in that it is to be conducted on a faster timeline and include an earlier implementation of the surcharge. In contrast, OPUC agrees with TIEC that the TCRF is meant to be "a streamlined cost-recovery mechanism in that it allows a utility to apply for a rate increase

⁴ OPUC submits that ETI has failed to carry its burden of proof on each of the criteria that is considered when determining good cause.

based on an isolated component of its business (i.e., transmission).”⁵ In other words, the streamlining in the TCRF has to deal with the limited number of issues involved (transmission costs only) compared to a base rate case, not the timeline in which it is processed. Without the TCRF mechanism, transmission costs would only be considered within a full base rate case in which all aspects of ETI’s operations would be considered. This is the streamlining envisioned and adopted by the Legislature and Commission. The need for temporary rates remains a separate matter that must be supported by good cause actually shown by the Company. Good cause is not shown when, as here, the circumstances and arguments of the utility have not been proven to be out of the ordinary. For the above reasons, ETI’s request for temporary rates should be denied.

V. LOAD GROWTH AND THE AMOUNT OF COSTS AND CHARGES OTHERWISE RECOVERED IN ETI’S BASE RATES

OPUC disagrees with ETI’s contention that the only load growth to be considered in the TCRF context is the load growth that occurs in the TCRF’s effective period.⁶ ETI argues that in the true-up, the actual revenues are compared to the costs intended to be recovered. The flaw in ETI’s argument is that it underestimates the amount calculated as already being recovered in base rates by failing to consider the load growth between the base rate case and the TCRF proceeding. Thus, the costs that are “intended to be recovered” are already artificially high. Essentially, ETI’s interpretation sets up an intentional over-recovery that is never addressed. The true-up, under ETI’s interpretation

⁵ TIEC Initial Brief, at 4-5.

⁶ ETI Initial Brief at 38.

would be the remedy for increased revenue due to new load growth that occurs after the TCRF is set. ETI does not give a reason as to why this load growth should be taken into account in order to avoid over-recovery but the load growth that occurred before the TCRF was set should not. ETI's arguments should be rejected and the Commission should adopt the \$3,443,825 load growth adjustment recommended by intervenors and Staff.⁷

VI. OTHER ISSUES

B. Bad Debt

ETI argues that it should be allowed to include a bad debt expense adjustment in its TCRF. ETI argues that even though bad debt expense is not provided for in the TCRF formula, including a bad debt expense adjustment is "consistent with the objectives of the TCRF statute."⁸ OPUC disagrees. As Staff notes in its initial brief, PURA § 36.209 only allows for the recovery of two specific categories of costs: invested transmission capital and approved wholesale transmission charges.⁹ Bad debt expense is neither. ETI has the burden of proof in this proceeding under PURA § 36.006 and must show that its requested costs meet the definitions for Transmission Invested Costs (TIC) or Approved Transmission Charges (ATC) under 16 TAC § 25.239(b), and it has failed to do so. ETI has also failed to show that it has properly calculated the TCRF revenue requirement under 16 TAC § 25.239(e). The Commission was specific with regard to what revenue

⁷ TIEC Ex. 1; Staff Ex. 1, Direct Testimony and Workpapers of William B. Abbott at 13:1-19.

⁸ ETI Initial Brief, at 37.

⁹ Staff Initial Brief, at 14.

requirements could be included in the revenue requirement calculation of the TCRF, and bad debt expense was not included. Moreover, as noted by TIEC in its initial brief, even if it would otherwise be appropriate to include a bad debt expense adjustment in the TCRF (which it isn't), including one in this proceeding would be inappropriate because as ETI witness Richard Lain admitted, ETI did not include the offsetting revenues from late-payment charges. As a result, the amount of expenses ETI is claiming is overstated, in violation of PURA § 36.209. For these reasons, ETI's requested \$32,510 bad debt expense adjustment should be rejected.

C. True Up Mechanism

OPUC agrees generally with Staff that the true up mechanism is more properly addressed in another proceeding. It is unclear why ETI is attempting to address the issue at this time. ETI did not include a true-up mechanism proposal in its application, nor has it requested any specific relief related to the true up mechanism in its post-hearing initial brief.¹⁰ Further, other non-ERCOT TCRF proceedings, including SWEPCO's Docket No. 42448, have not addressed the true-up mechanism. In addition, this is ETI's first TCRF, so there is no prior TCRF recovery to true-up in this proceeding. To the extent that ETI could be interpreted as seeking an advisory opinion from the Commission as to the scope of a future true up, it is inappropriate to do so here. Any ambiguity that ETI may feel is present with regard to the Commission's true-up mechanism could be remedied through a rulemaking where all non-ERCOT utilities and all other interested

¹⁰ While ETI witness Mr. Lain testified in rebuttal about the true up mechanism, it was in rebuttal to an issue in Cities' testimony related to Entergy's System Agreement that Cities withdrew prior to the hearing on the merits.

parties could address the issue. Company-specific issues are more properly addressed when an ETI true up is actually before the Commission. For these reasons, OPUC recommends that, in this docket, the Commission not address the true up mechanism.

VII. CONCLUSION AND PRAYER

For the above reasons, and those set forth in OPUC's initial brief, OPUC respectfully prays that the ALJ and Commission:

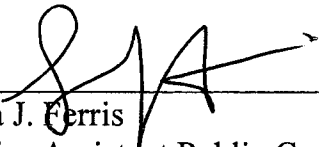
1. Reject ETI's request for Temporary Rates;
2. Disallow ETI's proposed costs related to the Skylining Project;
3. Adjust ETI's baseline to take into account the transmission-related growth the company has experienced;
4. Adjust ETI's proposed TCRF to apply the 0.75 percent margin tax rate which the Company will pay at the time the TCRF is in effect;
5. Reject ETI's proposed bad debt expense adjustment; and
6. Decline to address the true-up mechanism in this proceeding.

Finally, OPUC prays that it be granted such other and further relief to which it may be justly entitled.

Dated: January 15, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

SOAH Docket No. 473-16-0581

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I hereby certify that today, January 15, 2016, a true copy of the Office of Public Utility Counsel's Post-Hearing Reply Brief was served on all parties of record via hand delivery, facsimile, or United States First-Class Mail.



Sara J. Ferris