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SOAH DOCKET NO. 473-15-5257
PUC DOCKET NO. 44941

APPLICATION OF EL PASO
ELECTRIC COMPANY TO CHANGE
RATES

§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 473-16-1685
PUC DOCKET NO. 45475

REVIEW OF RATE CASE EXPENSES
INCURRED BY EL PASO ELECTRIC
COMPANY AND MUNICIPALITIES IN
DOCKET NO. 44941

§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS



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DIRECT TESTIMONY OF
MARK FILAROWICZ
RATE REGULATION DIVISION
PUBLIC UTILITY COMMISSION OF TEXAS
JULY 21, 2016

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DIRECT TESTIMONY OF MARK FILAROWICZ

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1 **I. STATEMENT OF QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 A. My name is Mark Filarowicz. My business address is 1701 N. Congress Avenue,
4 Austin, Texas.

5 **Q. By whom are you employed and in what position?**

6 A. I am employed by the Public Utility Commission of Texas ("PUCT" or "Commission")
7 as a Regulatory Accountant in the Rate Regulation Division.

8 **Q. What are your principal responsibilities as a Regulatory Accountant for the Public**
9 **Utility Commission?**

10 A. My responsibilities include testifying as an expert witness on accounting matters in rate
11 cases and other applications filed with the Commission and participating in the overall
12 examination, review, and analysis of such applications.

13 **Q. Please describe your professional and educational background.**

14 A. In December 2003, I graduated *summa cum laude* from the University of Texas at
15 Austin with a Bachelor of Science degree in Actuarial Mathematics and a Bachelor of
16 Arts degree in Philosophy.

17 I am licensed as a Certified Public Accountant ("CPA") in the State of Texas.

18 From June 2009 to June 2015, I was employed by the Railroad Commission of Texas in
19 varying capacities as a legal assistant and researcher, as an accountant, and as a budget
20 analyst. In July 2015, I began employment with the Public Utility Commission of Texas
21 in my current position as a regulatory accountant.

22 **Q. Have you previously filed testimony in regulatory proceedings before the**
23 **Commission?**

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1 A. Yes. I filed testimony before the Public Utility Commission in Docket Nos. 45083¹ and
2 45084.² I have also filed memoranda and other documents in myriad other dockets
3 before the Commission.

4 **II. PURPOSE AND SCOPE OF TESTIMONY**

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to present Staff's recommendation related to the review
7 of rate-case expenses incurred by El Paso Electric Company ("EPE" or the "Company")
8 and by the Coalition of Cities Served by El Paso Electric ("Coalition"), the City of
9 Socorro, and the City of El Paso (collectively, "the Cities") in Docket Nos. 44941 and
10 45475, and to present Staff's recommendation on the reasonableness of the Amended
11 and Restated Stipulation and Agreement ("Stipulation") with regard to rate-case
12 expenses.

13 **Q. What is the basis your recommendation?**

14 A. The basis of my recommendation is my review of the Company's and the Cities'
15 testimony, workpapers, supporting documentation, and affidavits concerning rate-case
16 expenses as filed in Docket Nos. 44941 and 45475. My review included verification of
17 invoices and other documentation to support each requested rate-case expense,
18 consideration as to the reasonableness of each rate-case expense item included in the
19 Company's and the Cities' requests, and recalculations of all expense totals.

20 **Q. What is the standard that you are using to make your determination concerning**
21 **the overall reasonableness, or not, of the rate-case expenses?**

22 A. The standard that I am using is 16 Tex. Admin. Code § 25.245(b) ("TAC") which states:
23 Requirements for claiming recovery of or reimbursement for rate-case expenses.

¹ Application of Entergy Texas, Inc. to Amend its Distribution Cost Recovery Factor, Docket No. 45083 (Feb. 17, 2016).

² Application of Entergy Texas, Inc. for Approval of a Transmission Cost Recovery Factor, Docket No. 45084 (Jul. 20, 2016).

1 A utility or municipality requesting recovery of or reimbursement for its
2 rate-case expenses shall have the burden to prove the reasonableness of
3 such rate-case expenses by a preponderance of the evidence. A utility or
4 municipality seeking recovery of or reimbursement for rate-case expenses
5 shall file sufficient information that details and itemizes all rate-case
6 expenses, including, but not limited to, evidence verified by testimony or
7 affidavit, showing:

8 (1) the nature, extent, and difficulty of the work done by the attorney or
9 other professional in the rate case;

10 (2) the time and labor required and expended by the attorney or other
11 professional;

12 (3) the fees or other consideration paid to the attorney or other
13 professional for the services rendered;

14 (4) the expenses incurred for lodging, meals and beverages,
15 transportation, or other services or materials;

16 (5) the nature and scope of the rate case, including:

17 (A) the size of the utility and number and type of consumers served;

18 (B) the amount of money or value of property or interest at stake;

19 (C) the novelty or complexity of the issues addressed;

20 (D) the amount and complexity of discovery;

21 (E) the occurrence and length of a hearing; and

22 (6) the specific issue or issues in the rate case and the amount of rate-case
23 expenses reasonably associated with each issue.

24 **Q. Are you using an additional standard to make your recommendation concerning**
25 **the overall reasonableness of rate-case expenses?**

26 **A. Yes. I am also using 16 TAC § 25.245(c), which states:**

27 Criteria for review and determination of reasonableness. In determining
28 the reasonableness of the rate-case expenses, the presiding officer shall
29 consider the relevant factors listed in subsection (b) of this section and
30 any other factor shown to be relevant to the specific case. The presiding
31 officer shall decide whether and the extent to which the evidence shows
32 that:

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(1) the fees paid to, tasks performed by, or time spent on a task by an attorney or other professional were extreme or excessive;

(2) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials were extreme or excessive;

(3) there was duplication of services or testimony;

(4) the utility's or municipality's proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of commission precedent;

(5) rate-case expenses as a whole were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section; or

(6) the utility or municipality failed to comply with the requirements for providing sufficient information pursuant to subsection (b) of this section.

III. DISCUSSION OF RATE-CASE EXPENSES FILED AND THE STIPULATION

Q. Please describe the Company's requested rate-case expenses filed to date.

A. As of July 20, 2016, the Company has filed documentation to support its total request of \$3,370,046.39 for rate-case expenses incurred through June 30, 2016.³ However, \$586,860.62 of the expenses submitted were a duplication of expenses already directly submitted or required to be directly submitted in the future by the City of El Paso in its own request. Because the City of El Paso must file its own rate-case expenses and bears the burden of proof for such expenses, Commission Staff has and will consider those expenses under the City of El Paso's filings in the rate-case expense docket. Therefore, the Company's amount of original rate-case expenses submitted through June 30, 2016, is \$2,783,185.77.

³ Docket No. 45475. *Affidavit of Curtis Hutcheson on Requested Updated Rate Case Expenses*, Page 4, Jul. 14, 2016.

1 An affidavit of Curtis Hutcheson accompanies the Company's rate-case expense request
2 and attests to the truth and correctness of all invoices supporting the request.⁴

3 **Q. Please provide the composition of the Company's total request.**

4 A. After removal of the duplicate billings for expenses already submitted or required to be
5 submitted directly by the City of El Paso, the Company's request included
6 \$2,172,628.11 for direct legal expenses, \$559,677.17 of consulting charges, and
7 \$50,880.49 for notice publication, printing, travel, and other expenses.

8 **Q. Please describe the Cities' requested rate-case expenses filed to date.**

9 A. As of July 20, 2016, the City of El Paso has filed documentation supporting a total
10 request of \$583,339.34 for rate-case expenses incurred through March 15, 2016.⁵

11 As of July 20, 2016, the Coalition has filed documentation supporting a total request of
12 \$15,052.00 for rate-case expenses incurred through June 30, 2016.⁶

13 An affidavit of Elizabeth Elleson accompanies the Coalition's rate-case expense request
14 and attests to the truth and correctness of all invoices supporting the request and to the
15 reasonableness and necessity of all amounts requested.⁷

16 As of July 20, 2016, the City of Socorro has not filed any documentation supporting a
17 request for rate-case expenses incurred in Docket Nos. 44941 and 45475.

18 As of July 20, 2016, the Cities total request for rate-case expenses is \$598,391.34.

19 **Q. Please provide the composition of the Cities' total request.**

⁴ Docket No. 45475. *Affidavit of Curtis Hutcheson on Requested Updated Rate Case Expenses*, Pages 1 and 2, Jul. 14, 2016.

⁵ Docket No. 45475. *City of El Paso's Notice of Filing of Rate Case Expenses*, City of El Paso Rate Case Expense Summary, Page 5, Mar. 31, 2016.

⁶ Docket No. 45475. *Notice of Rate Case Expenses by Coalition of Cities*, Exhibit 1 to Attachment A, Page 3 of 3, Jul. 15, 2016.

⁷ Docket No. 45475. *Notice of Rate Case Expenses by Coalition of Cities*, Affidavit of Elizabeth Elleson on Rate Case Expenses, Jul. 15, 2016.

1 A. The City of El Paso's request included \$322,553.00 for direct legal expenses,
2 \$246,759.38 of consulting charges, and \$14,026.96 for printing, travel, and other
3 expenses.

4 The Coalition's request included \$15,052.00 for direct legal expenses.

5 **Q. Please provide the total amount of non-duplicated rate-case expenses for which the**
6 **Company and the Cities have filed supporting documentation in Docket Nos. 44941**
7 **and 45475.**

8 A. After removing the \$586,860.62 of duplicated expenses, the Company's and Cities' total
9 amount of original, non-duplicated rate-case expenses submitted in Docket Nos. 44941
10 and 45475 as of July 20, 2016, is \$3,381,577.11.

11 **Q. Please describe the Stipulation's terms regarding rate-case expenses for Docket**
12 **Nos. 44941 and 45475.**

13 A. Concerning rate-case expense recovery for those expenses incurred by the Company and
14 the Cities in Docket Nos. 44941 and 45475, the Stipulation provides:

15
16 K. Stipulation Regarding Docket No. 45475--Rate Case Expense Review and
17 Recovery

18 1. SOAH Order No. 9 severed the issue of rate case expense review and recovery
19 into a new proceeding, Docket No. 45475, *Review of Rate Case Expenses*
20 *Incurred by El Paso Electric Company and Municipalities in Docket No. 44941*.
21 The Signatories agree that Docket No. 45475 should be consolidated with this
22 Docket No. 44941. After this consolidation occurs, the issue of rate case
23 expense review and recovery will be addressed in this Docket No. 44941 and
24 resolved in accordance with this Amended and Restated Agreement.

25 2. EPE shall be entitled to rate recovery of its and its municipalities' reasonable rate
26 case expenses incurred through the later of (i) July 8, 2016, or (ii) 14 days prior
27 to the date of the open meeting in which the Commission first considers a final
28 order implementing this Amended and Restated Agreement (Rate Case Expense
29 Deadline) less \$600,000. However, as for the Rate Case Expense Deadline, if
30 the Commission considers a final order in more than one Open Meeting and
31 requires the parties to brief a matter, the Rate Case Expense Deadline shall be

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1 fourteen days prior to the date of the Open Meeting in which the Commission
2 adopts a final order. There will be no recovery from ratepayers of rate case
3 expenses incurred by EPE after the Rate Case Expense Deadline.

4 3. Notwithstanding the previous paragraph, EPE will reimburse the reasonable rate
5 case expenses of a municipality entitled to reimbursement of rate case expenses
6 under Section 33.023 of PURA (in this Docket No. 44941, those parties being
7 the City of El Paso, Coalition of Cities Served by El Paso Electric, and the City
8 of Socorro) incurred after the Rate Case Expense Deadline. There will be no
9 recovery from ratepayers of rate case expenses reimbursed by EPE pursuant to
10 this paragraph.

11 4. So that the invoices will be available for review and EPE can calculate the rate
12 case expense surcharge compliance filing, which is typically 20 days after the
13 Final Order, EPE and the municipalities shall submit their final invoices for rate
14 case expenses incurred by the Rate Case Expense Deadline no later than 10 days
15 after the Open Meeting in which the Commission first considers a Final Order in
16 this proceeding.

17 5. Subject to Article I.K.3, recoverable rate case expenses in this Article shall be
18 collected through a separate surcharge that will be based on the expenses being
19 amortized over two years and allocated to customer classes as shown in
20 Attachment E. EPE shall cease billing of the rate case expense surcharge in the
21 month that the total approved amount has been collected. The amount of any
22 over-recovery or under-recovery of the approved rate case expense surcharge by
23 class shall be included in the deferred fuel balance for that class as a refund or
24 surcharge, respectively.

25 IV. SUMMARY OF RECOMMENDATION

26 Q. As a result of your examination of the Company's and the Cities' requested rate-
27 case expenses, do you have a general recommendation concerning rate-case
28 expenses in Docket Nos. 44941 and 45475?

29 A. Yes. At this point, Staff can comment on the reasonableness of the Stipulation's
30 proposed \$600,000 reduction to rate-case expenses with respect to the amounts of rate-
31 case expenses as filed by the Company and the Cities as of July 20, 2016. Having
32 reviewed the rate-case expenses filed in the dockets as of July 20, 2016, it is Staff's

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1 position that the Stipulation's proposed reduction of \$600,000 is reasonable and in the
2 public interest.

3 Staff is unable, however, to make a final recommendation on the reasonableness of the
4 Stipulation's proposed \$600,000 reduction until Staff sees the final, complete filings for
5 all rate-case expenses and reviews the entire documentation supporting the Company's
6 and the Cities' rate-case expense requests.

7 It is Staff's position that the settlement of Docket No. 45475 (the severed rate-case
8 expense docket) in this Stipulation is in the public interest and will provide benefit to all
9 parties and ratepayers.

10 **Q. Please explain your recommendation concerning the reasonableness of the**
11 **Stipulation's proposed reduction of \$600,000 given the documentation filed as of**
12 **July 20, 2016.**

13 **A.** As explained above, the Company and the Cities have filed documents supporting a rate-
14 case expense total of \$3,381,577.11 as of July 20, 2016. After performing a thorough
15 review on the supporting documentation for the requested rate-case expenses submitted
16 to date, if the rate-case expense docket were not settled, Staff would testify to further
17 recommended disallowances, for reasons including insufficient documentation,
18 inappropriate categories of expenses, and lack of meeting the burden of proof on
19 showing the necessity of expenses incurred. The amount of additional disallowances for
20 rate-cases expenses requested to date, however, would be expected to be minimal
21 (estimated at approximately 1 to 2% of the total filed to date) and would be subsumed in
22 the proposed \$600,000 reduction of the Stipulation. Therefore, it is Staff's position that
23 the Stipulation's provisions for the treatment of rate-case expenses are reasonable when
24 considering only the supporting documentation filed as of July 20, 2016.

25 **Q. To the best of your knowledge, will there be time to review the further submissions**
26 **of documents supporting rate-case expenses for the Company and the Cities?**

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1 A. Yes. The Stipulation provides the Company is authorized to seek recovery of reasonable
2 rate-case expenses incurred by the Company and the Cities up to the later of July 8,
3 2016, or 14 days before the Commission first considers the final order in these dockets.
4 Assuming that the Commission does not request briefing and first considers a final order
5 for Docket Nos. 44941 and 45475 on its Open Meeting on August 18, 2016, the
6 Company would be authorized to seek recovery of expenses incurred through August 4,
7 2016. Although the Stipulation in Section K.4 provides that the Cities will have 10 days
8 after the Open Meeting at which the final order is first considered to file their rate-case
9 expense documentation, it is my understanding that the Company and the Cities will file
10 their final rate-case expenses affidavits and supporting documents by August 5, 2016, so
11 as to allow Staff time to file supplemental testimony shortly thereafter regarding its final
12 recommendation concerning rate-case expenses. At this point, Staff anticipates being
13 able to review all rate-case expenses through a date certain of August 4, 2016. It is also
14 my expectation that the Company and the Cities will file updated supporting affidavits
15 with their final submission of rate-case expense documentation.

16 At this time, Staff feels comfortable filing testimony as to the reasonableness of all rate-
17 case expense amounts and supporting documentation filed by the Company and the
18 Cities as of July 20, 2016.

19 **Q. Do you anticipate the remaining rate-case expenses filings to materially affect the**
20 **reasonableness of the Stipulation's \$600,000 reduction to rate-case expenses?**

21 A. No. It is my understanding that implicit as part of the settlement was that rate-case
22 expenses post June 30, 2016, for the Company and the Coalition, and post March 15,
23 2016, for the City of El Paso would be reasonable and not significantly exceed the
24 percentage of minimal disallowances identified thus far, which would result in a total
25 disallowance well below the Stipulation's \$600,000 reduction. Furthermore, Staff
26 anticipates that, if the City of Socorro files its expenses in Docket No. 45475, the

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1 amount of Staff's potential disallowances relating to the City of Socorro's expenses
2 would not materially affect the reasonableness of the Stipulation's overall \$600,000
3 reduction to rate-case expenses.

4 **Q. Please describe the procedures Staff used to evaluate the rate-case expenses for the**
5 **Company and the Cities in Docket Nos. 44941 and 45475 submitted as of July 20,**
6 **2016.**

7 **A.** I performed procedures to make certain that all rate-case expenses requested by the
8 Company and the Cities met the requirements of 16 TAC § 25.245(b) and (c), including
9 the following:

- 10 1. All rate-case expenses were supported with appropriate third party
11 documentation.
- 12 2. The hourly rates for each attorney or professional were reasonable.
- 13 3. The daily billable hours for each attorney or professional were reasonable.
- 14 4. The calculation in computing the fee was accurate.
- 15 5. The total request in rate-case expenses was reasonable when compared to the
16 individual invoices.
- 17 6. Expenses incurred for lodging, meals and beverages, transportation, or other
18 services or materials were reasonable.
- 19 7. The description of the service and work performed demonstrated reasonableness
20 and necessity within the nature and scope of the base rate case.
- 21 8. The time and labor required and expended by the attorney or other professional
22 were reasonable.
- 23 9. No duplication of service occurred.

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1 As noted above, Staff found some small amounts that did not meet the criteria of 16
2 TAC § 25.245(b) and (c), to which Staff would testify if the rate-case expense docket
3 were not settled. That amount, however, is minimal when compared to the proposed
4 \$600,000 reduction in the Stipulation.

5 **Q. Please explain your inability to make a final recommendation concerning the**
6 **reasonableness of the total amount of rate-case expenses in Docket Nos. 44941 and**
7 **45475.**

8 **A.** As described above, the Company has filed supporting documentation for expenses
9 incurred through June 30, 2016, the City of El Paso has filed supporting documentation
10 for expenses incurred through March 15, 2016, and the Coalition has filed supporting
11 documentation for expenses incurred through June 30, 2016. As of July 20, 2016, the
12 City of Socorro has not filed any documents to support a request of rate-case expenses.
13 The Stipulation provides that the Company and the Cities will be allowed to recover
14 reasonable rate-case expenses incurred through the later of July 8, 2016, or 14 days prior
15 to the date of the Open Meeting in which the Commission considers a Final Order for
16 Docket Nos. 44941 and 45475. Therefore, there is an unknown amount of further rate-
17 case expenses to be filed by both the Company and the Cities. Thus, Staff is unable to
18 make a final recommendation on the reasonableness of the Stipulation's provisions
19 concerning rate-case expenses until Staff is able to review the documentation provided
20 in the subsequent filings.

21 Staff believes that it is very likely that the Stipulation's proposed exclusion of \$600,000
22 of rate-case expenses will still be reasonable after the submission of the final
23 documentation for rate-case expenses requested. Without knowing the final total
24 amounts of requested rate-case expenses and seeing the invoices and supporting
25 documentation, however, Staff cannot make a final determination as to the
26 reasonableness of the additional rate-case expenses that have not yet been submitted.

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1 Q. Please explain your recommendation that it would be beneficial to all parties and
2 ratepayers and in the public interest to settle the rate-case expenses from Docket
3 No. 45475 in the combined Stipulation.

4 A. It is Staff's position that settling Docket No. 45475 (the severed rate-case expenses
5 docket) in the combined Stipulation would provide benefit to all parties and to
6 ratepayers, and therefore would be in the public interest. If Docket No. 45475 were not
7 settled in the Stipulation, all parties would continue to devote time and resources to the
8 severed rate-case expenses docket. Furthermore, the Company and the Cities would
9 continue to incur rate-case expenses which could ultimately lead to higher rates for
10 ratepayers.

11 The individual nature of each base rate proceeding determines the size and complexity
12 of each rate-case expense docket. In general, though, rate-case expense dockets for fully
13 litigated base rate cases for vertically integrated utilities will be of a substantial size and
14 complexity to generate further material costs. For example, in the most recent rate-case
15 expense docket for a vertically integrated utility, Docket No. 44498 *Review of Rate Case*
16 *Expense Incurred by Southwestern Public Service Company and Municipalities in*
17 *Docket No. 43695*, Southwestern Public Service Company represented that it incurred
18 \$334,000 of rate case expenses related to processing Docket No. 44498, which amount
19 does not include the expenses (and time and other resources) expended by the
20 Municipalities.⁸

21 The outcome of a continued rate-case expenses docket would be uncertain, and
22 ratepayers could end up faced with more expenses and/or a lesser disallowance built into
23 rates. Therefore, it is Staff's position that it is in the public interest and the interest of
24 the parties and ratepayers to settle the rate-case expenses in the Stipulation, subject to

⁸ *Review of Rate Case Expense Incurred by Southwestern Public Service Company and Municipalities in Docket No. 43695, Docket No. 44498, Southwestern Public Service Company's Second Supplemental Response to Commission Staff's Third Request for Information, Staff 3-1, Page 5, Apr. 28, 2016.*

1 Staff's final recommendation after reviewing the final testimony and documentation
2 supporting all rate-case expenses for which recovery is sought.

3 **Q. Does this conclude your testimony?**

4 **A. Yes.**

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