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Addendum StartPage: 0

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APPLICATION OF EL PASO ELECTRIC
COMPANY TO CHANGE RATES

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 7
GRANTING MOTION TO CONSOLIDATE AND
RULING ON MOTIONS TO COMPEL

1. Motion to Consolidate

On June 20, 2017, El Paso Electric Company (EPE) filed a Petition for Review of Cities' Rate Decisions and Motion to Consolidate. In its motion, EPE asserts that eight enumerated cities determined that EPE's existing rates should stay in effect, and EPE appealed those decisions. EPE moved to consolidate its appeals of the cities' rate decision, and no one objected to that request. Accordingly, the Administrative Law Judges (ALJs) grant EPE's June 20, 2017 Motion to Consolidate.

2. EPE's First Motion to Compel

On July 3, 2017, EPE filed a motion to compel responses to its first requests for information (RFIs) from the Energy Freedom Coalition of America (EFCA). On July 11 and 12, 2017, EPE partially withdrew its motion to compel but requested that the ALJs compel responses to EPE 1-2 and 1-7.

EPE argues that the ALJs should compel EFCA to answer these RFIs because the requested information will assist EPE to understand the biases of the trade association and its expert witness. In addition, EPE also asserts that statements made to presiding officers, such as statements made in a Motion to Intervene, should be subject to discovery.

705

EFCA responds that the RFIs are not relevant or reasonably calculated to lead to information relevant to the issues in this proceeding; i.e. whether EPE's requested rates are just and reasonable. In addition, EFCA states that it provided the information required to be included in its motion to intervene, EPE did not object to that motion, and the ALJs have already granted the motion to intervene.

The ALJs **GRANT** EPE's motion to compel a response to EPE 1-2 because it seeks relevant information. The ALJs **DENY** EPE's motion to compel a response to EPE 1-7. However, EFCA is obliged to provide the information sought in EPE 1-7 under 16 Texas Administrative Code § 22.103(b).

3. EPE's Second Motion to Compel

On July 12, 2017, EPE filed a second motion to compel discovery responses from EFCA. EFCA filed a response on July 19, 2017. The motion concerns the following requests: EPE 2-1, 2-4, 2-5, 2-6, 2-7, 2-8, 2-9, 2-14, 2-15, 2-18, 2-21, and 2-22.

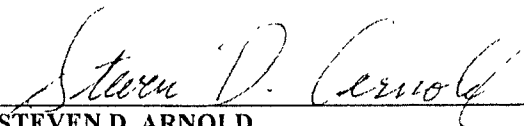
EPE argues that the ALJs should compel responses to these RFIs because they are designed to help EPE understand the motivations of EFCA and to uncover possible bias of EFCA's witness, Justin R. Barnes. EPE disputes all of EFCA's objections to providing the requested information.

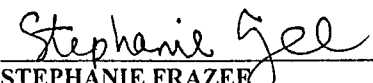
EFCA argues that the RFIs seek information that is irrelevant and not necessary to uncover bias or unknown motivations. EFCA objects that it does not have possession, custody, or control of some of the requested documents, that it would be unduly burdensome to obtain some of the documents, and that some of the documents are readily available to EPE. Additionally, EFCA asserts that some of the requested information is confidential.

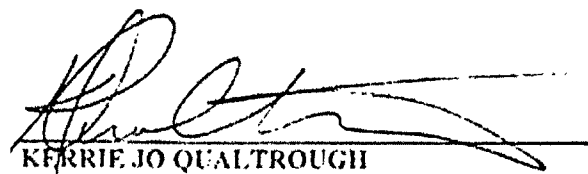
Having considered the motion and the response, the ALJs agreed with EFCA and find that the motion to compel should be **DENIED**. Matters concerning an intervenor's establishment, membership efforts, or funding are not relevant, and discovery into those matters

is not permissible.¹ Specifically, “detailed information sought to mount a broad attack on an intervenor’s effectiveness at promoting the interests of those who organized, belong to or fund it is not relevant or reasonably calculated to lead to the discovery of admissible evidence.”² Because the motion is denied based on the discovery requests seeking information that is not relevant, the ALJs need not reach the other arguments made by the parties.

SIGNED July 27, 2017.


STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS


STEPHANIE FRAZER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS


KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹ See Docket No. 13575, *Application of Texas Utilities Electric Company for Approval of Notices of Intent*, Order No. 9 (Feb. 3, 1995), and Docket No. 13749, *Application of Texas Utilities Electric Company for Approval of Demand-Side Management Programs and Contracts*, Order No. 3 (Feb. 3, 1995).

² *Id.*