



Control Number: 46936



Item Number: 145

Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION
STATE OFFICE

APPLICATION OF SOUTHWESTERN §
PUBLIC SERVICE COMPANY FOR §
APPROVAL OF TRANSACTIONS WITH §
ESI ENERGY, LLC AND INVENERGY §
WIND DEVELOPMENT NORTH §
AMERICA, LLC, TO AMEND A §
CERTIFICATE OF CONVENIENCE AND §
NECESSITY FOR WIND GENERATION §
PROJECTS AND ASSOCIATED §
FACILITIES IN HALE COUNTY, TEXAS §
AND ROOSEVELT COUNTY, NEW §
MEXICO, AND FOR RELATED §
APPROVALS §

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ALLIANCE OF XCEL MUNICIPALITIES' BRIEF ON CERTIFIED ISSUES

The Alliance of Xcel Municipalities ("AXM") timely files its Brief on Certified Issues in accordance with Order Nos. 4 and 10 and 16 Texas Administrative Code § 22.127(c).

AXM appreciates the Administrative Law Judge's ("ALJ") issuance of Order Nos. 4 and 10, certifying certain issues to the Commission. For the most part, however, the Certified Issues pose questions that require additional discovery and that are fact dependent and cannot and should not be answered absent a full record. Below AXM provides its responses to the Certified Issues.

Creation of Deferred-Accounting Assets and Cost-Reconciliation Mechanisms

17. Can the Commission permit recovery of costs before their inclusion in rate base through a mechanism other than construction work in progress under PURA § 36.054?

As a creature of the Legislature, the Commission has only that express authority granted it by the Legislature and implicit authority necessary to carry out an express grant of authority.¹

¹ *Sexton v. Mt. Olivet Cemetery Ass'n*, 720 S.W.2d 129, 137 (Tex. App. – Austin 1986, writ refused n.r.e).

145

The only mechanism available under the Public Utility Regulatory Act (PURA) that allows for recovery of costs before their inclusion in rate base is PURA § 36.054 as construction work in progress. Allowance of recovery of CWIP is an extraordinary form of rate relief granted only if necessary for the financial integrity of the utility.² To the extent SPS meets its burden of proof regarding CWIP, the Commission may allow recovery of costs before such costs are accounted for as plant in service that is used and useful in providing service to ratepayers.

18. Would the Commission's approval allowing recovery of costs before their inclusion in rate base constitute an incentive for renewable resources under PURA § 36.204(2)?

AXM respectfully submits that a response to Question 18 is highly fact dependent and requires additional information to be obtained through the discovery process that cannot and should not be answered in the abstract.

19. If the Commission can allow recovery of costs related to the wind facilities before their inclusion in rate base, should it choose to do so? If so, what is a reasonable mechanism for this recovery? In determining this mechanism, what are the appropriate 'costs attributable to, the wind facilities? What are the appropriate revenues, production-tax credits, avoided costs, or other items of value attributable to the wind facilities?

See AXM's response to Question 17. Further, AXM respectfully submits that a response to Question 19 is highly fact dependent and requires additional information to be obtained through the discovery process that cannot and should not be answered in the abstract.

² PURA § 36.054(a).

Production-Tax Credits

- 22. Should the Commission approve a proposal to credit the value of production-tax credits to customers before the wind facilities are placed in rate base in this docket?**

AXM respectfully submits that a response to Question 22 is highly fact dependent and requires additional information to be obtained through the discovery process that cannot and should not be answered in the abstract.

- 23. Should the Commission approve a proposal to create a deferred tax asset relating to unused production-tax credits for the period between the date the wind facilities are included in rate base and December 31, 2025 in this docket?**

AXM respectfully submits that a response to Question 22 is highly fact dependent and requires additional information to be obtained through the discovery process that cannot and should not be answered in the abstract.

- 24. Should the Commission address SPS's request for a good cause exception to 16 TAC § 25.26 to allow SPS to refund production-tax credits to customers through eligible fuel expense for the period after the wind facility is placed in base rates in this docket?**

AXM respectfully submits that a response to Question 24 is highly fact dependent and requires additional information to be obtained through the discovery process that cannot and should not be answered in the abstract.

Jurisdictional Allocation

- 28. Should the Commission address the jurisdictional allocation methodology to be applied to the wind facilities in this docket, when the allocation methodology requested may be altered by future determinations of the Southwest Power Pool?**

AXM respectfully submits that a response to Question 28 is highly fact dependent and requires additional information to be obtained through the discovery process that cannot and should not be answered in the abstract. Moreover, as a general proposition, irrespective of where the Commission addresses issues that affect SPS' rates, including approval of any particular rate

mechanism, the Commission should not approve any change in rates or approve a new rate unless SPS presents its overall cost of service. To do otherwise would comprise piecemeal ratemaking.³ Thus, ultimately, irrespective of when and in what context the Commission addresses SPS' ratemaking proposals, the Commission should approve such proposals only if it can also establish SPS' overall revenue as required by PURA § 36.051.⁴ In its response to AXM 1-2(a) in the instant docket, the Company states, "To be clear, SPS is not asking the Commission to approve specific numbers for the Cost Reconciliation Mechanism, but instead is asking the Commission to authorize SPS to record an asset or liability as part of the Cost Recovery Mechanism, which would then be subject to review and recovery in a future base rate case." It may be possible to address any piecemeal ratemaking concerns within the context of future SPS base rate cases through modification of any Cost Recovery Mechanism deferrals as part of the rate case treatment of such amounts.

Depreciation Rates

30. Should the Commission set depreciation rates for the production-related assets to be included in the wind facilities in this docket?

AXM respectfully submits that a response to Question 30 is highly fact dependent and requires additional information to be obtained through the discovery process that cannot and should not be answered in the abstract. Moreover, as a general proposition, irrespective of where the Commission addresses issues that affect SPS' rates, including approval of any particular rate mechanism, the Commission should not approve any change in rates or approve a new rate

³ See, e.g. *Application of Southwestern Power Company for Authority to Change Rates*, Docket No. 37364, Supplemental Preliminary Order at 7-8 (Oct. 12, 2009).

⁴ PURA § 36.051 requires: "In establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses."

unless SPS presents its overall cost of service. To do otherwise would comprise piecemeal ratemaking.⁵ Thus, ultimately, irrespective of when and in what context the Commission addresses SPS' ratemaking proposals, the Commission should approve such proposals only if it can also establish SPS' overall revenue as required by PURA § 36.051. In its response to AXM 1-2(a) in the instant docket, the Company states, "To be clear, SPS is not asking the Commission to approve specific numbers for the Cost Reconciliation Mechanism, but instead is asking the Commission to authorize SPS to record an asset or liability as part of the Cost Recovery Mechanism, which would then be subject to review and recovery in a future base rate case." It may be possible to address any piecemeal ratemaking concerns within the context of future SPS base rate cases through modification of any Cost Recovery Mechanism deferrals as part of the rate case treatment of such amounts.

Renewable-Energy Credits

32. Should the Commission determine the appropriate treatment of sales of renewable-energy credits in this docket?

AXM respectfully submits that a response to Question 32 is highly fact dependent and requires additional information to be obtained through the discovery process that cannot and should not be answered in the abstract. Moreover, as a general proposition, irrespective of where the Commission addresses issues that affect SPS' rates, including approval of any particular rate mechanism, the Commission should not approve any change in rates or approve a new rate unless SPS presents its overall cost of service. To do otherwise would comprise piecemeal ratemaking.⁶ Thus, ultimately, irrespective of when and in what context the Commission addresses SPS' ratemaking proposals, the Commission should approve such proposals only if it

⁵ Docket No. 37364, Supplemental Preliminary Order at 7-8.

⁶ *Id.*

can also establish SPS' overall revenue as required by PURA § 36.051. In its response to AXM 1-2(a) in the instant docket, the Company states, "To be clear, SPS is not asking the Commission to approve specific numbers for the Cost Reconciliation Mechanism, but instead is asking the Commission to authorize SPS to record an asset or liability as part of the Cost Recovery Mechanism, which would then be subject to review and recovery in a future base rate case." It may be possible to address any piecemeal ratemaking concerns within the context of future SPS base rate cases through modification of any Cost Recovery Mechanism deferrals as part of the rate case treatment of such amounts.

Affiliate Issues

- 34. Should the Commission address whether the agreement between SPS and its affiliate, Capital Services, LLC for SPS to purchase Wind turbines from Capital Service meets the affiliate transaction requirements under PURA § 36.058 in this docket?**

AXM is not taking a position on Issue No. 34.

Power-Purchase Agreement

- 37. Should the Commission address SPS's power-purchase agreement with Bonita Wind Energy in this docket? Under what statute and criteria should the Commission review the purchased-power agreement?**

AXM does not take a position on whether the Commission should address SPS's power-purchase agreement with Bonita Wind Energy in this docket. Irrespective of where the Commission addresses issues that affect SPS' rates, including approval of any particular rate mechanism, the Commission should not approve any change in rates or approve a new rate unless SPS presents its overall cost of service. To do otherwise would comprise piecemeal ratemaking.⁷ Thus, ultimately, irrespective of where the Commission addresses SPS' ratemaking

⁷ *Id.*

proposals, the Commission should approve such proposals only if it can also establish SPS' overall revenue as required by PURA § 36.051.

Further, SPS' purchased power agreement is and should be subject to the same criteria PURA sets out for recovery of a utility's expenses; the utility's expenses must be just and reasonable and the agreement must have been prudently entered.

Respectfully submitted,

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**ATTORNEYS FOR ALLIANCE OF XCEL
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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of July 2017, a true and correct copy of the *Alliance of Xcel Municipalities' ("AXM") Brief on Certified Issues* was served upon all parties of record by facsimile and/or First-class mail United States mail, postage paid.

By: _____

Brennan Foley