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PUBLIC UTILITY COMMISSION
REGULATORY SERVICES DIVISION

APPLICATION OF ENTERGY § BEFORE THE STATE OFFICE
TEXAS, INC. FOR AUTHORITY TO § OF
CHANGE RATES § ADMINISTRATIVE HEARINGS

REVENUE REQUIREMENT
REBUTTAL TESTIMONY
OF
RORY L. ROBERTS
ON BEHALF OF
ENTERGY TEXAS, INC.

August 16, 2018

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PUC DOCKET NO. 48371**

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1 **REBUTTAL TESTIMONY OF RORY L. ROBERTS**

2 **I. Introduction**

3 **Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Rory L. Roberts. My business address is 639 Loyola Avenue, New
5 Orleans, Louisiana 70113.

6
7 **Q2. ARE YOU THE SAME RORY L. ROBERTS WHO PREVIOUSLY FILED**
8 **DIRECT TESTIMONY IN THIS PROCEEDING?**

9 A. Yes, I provided direct testimony on behalf of Entergy Texas, Inc.
10

11 **Q3. PLEASE STATE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.**

12 A. The purpose of my Rebuttal testimony is to (1) respond to Cities’ witness Mark
13 Garrett’s and TIEC witness Jeffrey Pollock’s recommendation regarding the
14 calculation of the regulatory liability required by the Commission’s deferred
15 accounting order in Project No. 47945, (2) respond to TIEC witness Jeffrey
16 Pollock’s recommendation regarding Rider DTA, and (3) respond to various
17 Intervenor and Staff witness recommendations relating to accumulated deferred
18 federal income taxes.

19
20 **Q4. PLEASE SUMMARIZE YOUR CONCLUSIONS.**

21 A. Mr. Garrett and Mr. Pollock miscalculate the “difference between the revenues
22 collected under existing rates and the revenues that would have been collected had
23 existing rates been set using the recently approved federal income tax rates”¹ that
24 is required by the Commission’s order in Project No. 47945. Mr. Garrett
25 incorrectly relies on the amount of federal income tax savings Entergy Texas Inc.
26 (“ETI”) is providing to customers as a result of its post test year adjustment to

¹ *Proceeding to Investigate and Address the Effects of Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-Owned Utility Companies*, Project No. 47945, Amended Order Related to Changes in Federal Income Tax Rates at 2 (Feb. 5, 2018).

1 federal income tax expense that will be used to set base rates in this case. Mr. Stack
2 provides the correct calculation of this amount in his Rebuttal testimony and
3 explains that ETI has recorded this amount as a regulatory liability. The \$38.9
4 million that Mr. Garrett relies on reflects a different calculation entirely,
5 specifically, the difference in federal income tax expense that would be charged to
6 ratepayers if the prior 35% rate were applied to the revenue requirement being
7 requested in this proceeding, instead of the new 21% rate.² Mr. Pollock makes a
8 similar error by relying on the federal income tax expense from Schedule A—Total
9 Electric Overall Cost of Service, which is included in the calculation of proposed
10 rates, whereas the Commission’s order requires that the regulatory liability reflect
11 previously collected revenues under current rates.

12 Mr. Pollock’s arguments against Rider DTA simply do not reflect the way
13 in which the rider actually functions or the relative benefits to ratepayers and the
14 utility. Rider DTA benefits customers by permitting deferred tax positions to be
15 included in ADFIT, which reduces rate base by the amount of the deferred tax
16 position, until the positions are resolved by the IRS. As explained below, it is the
17 utility—not the customer—who finances the risk of the loss of the tax position. If
18 the position is upheld, the customer retains the entirety of the associated ADFIT
19 benefit; if the position is lost, customers pay only the prospective carrying charges
20 on the reversed amount after it is actually paid to the IRS.

21 In the event the Commission adopts various Intervenor and Staff
22 recommendations to remove assets from rate base, the related ADFIT should also
23 be removed for consistency and to avoid a potential normalization violation.
24 Finally, the Commission should reject Cities’ witness Mark Garrett’s
25 recommendation to implement a tracker on protected excess ADFIT amortization.
26

² Direct Testimony of Rory L. Roberts at 4:1–5:2, Exhibit RLR-7.

1 **II. Regulatory Liability on Previously Collected Tax Expense**

2 **Q5. PLEASE DESCRIBE PROJECT NO. 47945.**

3 A. In Project No. 47945, the Commission ordered investor-owned utilities to record
4 certain regulatory liabilities in response to the recent enactment of the Tax Cuts and
5 Jobs Act (“TCJA”). As discussed in my Direct Testimony, the TCJA reduced the
6 corporate income tax rate from 35% to 21%. On January 25, 2018, the Commission
7 ordered utilities to record, as a regulatory liability:

8 (1) the difference between the revenues collected under
9 existing rates and the revenues that would have been
10 collected had the existing rates been set using the recently
11 approved federal income tax rates; and,

12 (2) the balance of excess accumulated deferred federal
13 income taxes (ADFIT) that now exists because of the
14 decrease in the federal income tax rate from 35% to 21%.³

15

16 **Q6. DID ETI RECORD THESE LIABILITIES?**

17 A. Yes. As discussed further in the rebuttal testimony of Patrick Stack, ETI has
18 recorded on its books a regulatory liability for the first item. In addition, for the
19 second item, as discussed in my Direct Testimony, ETI has recorded regulatory
20 liabilities reflecting protected and unprotected excess ADFIT. While ETI is
21 proposing to flow approximately \$427.7 million in excess ADFIT to customers,⁴ it
22 is requesting that it not be required to issue refunds of the approximately 20.1
23 million in revenues that ETI will have collected under its existing tariffs.⁵ Jess
24 Totten and Sallie Rainer discuss the policy reasons for the Company’s request
25 regarding revenue refunds on previously collected tax expense.

26

³ Project No. 47945, Amended Order Related to Changes in Federal Income Tax Rates at 2.

⁴ This amount reflects the grossed-up protected and unprotected balances.

⁵ Please see the Rebuttal Testimony of Patrick J. Stack at 4.

1 **Q7. IS MR. GARRETT’S POSITION REGARDING WHETHER ETI SHOULD**
2 **ISSUE REFUNDS ON PREVIOUSLY COLLECTED TAX EXPENSE**
3 **FLAWED?**

4 A. Yes. Mr. Garrett, like other Intervenor and Staff witnesses, contends that ETI
5 should be required to issue refunds of previously collected tax expense. While each
6 of the Intervenors’ arguments regarding whether a refund should be issued are
7 flawed, Mr. Garrett’s recommendation also contains a methodological error in the
8 calculation of the related regulatory liability. He relies on the \$38.9 million amount
9 referred to on page 5 of my Direct Testimony in calculating the amount subject to
10 the Commission’s order in Project No. 47945.⁶ Mr. Garrett’s reliance on this
11 amount is wrong in several ways. First, as my testimony and Exhibit RLR-7 make
12 clear, the \$38.9 million in tax savings shown in that exhibit is calculated based on
13 the updated revenue requirement established in ETI’s application to set rates in this
14 proceeding. The Commission’s deferred accounting order, however, requires the
15 regulatory liability to be established based on a difference in revenues collected at
16 current rates. Second, the order specifically refers to the establishment of a liability
17 reflecting revenues actually collected—not a projected amount. Mr. Garrett
18 incorrectly uses a revenue requirement amount instead of the revenues ETI has
19 actually collected. Mr. Garrett’s calculation conflicts with the Commission’s order
20 and overstates the amount of the regulatory liability. As mentioned previously, Mr.
21 Stack provides the correct calculation of this amount in his rebuttal testimony.

22

23 **Q8. DOES MR. POLLOCK’S CALCULATION OF THE PREVIOUSLY**
24 **COLLECTED TAX EXPENSE BALANCE CONTAIN A SIMILAR**
25 **ERROR?**

26 A. Yes. Mr. Pollock also incorrectly calculates the amount of the Project No. 47945
27 regulatory liability on previously collected tax expense by using adjusted operating
28 income amounts included in ETI’s calculation of proposed rates instead of
29 calculating the balance based on collections under current rates. Specifically, Mr.

⁶ Direct Testimony of Mark E. Garrett at 35:14–36:2.

1 Pollock uses the “As Adjusted” federal income tax expense from Schedule A—
2 Total Electric Overall Cost of Service to calculate the previously collected tax
3 expense. While part of his calculation relies on federal income tax expense at
4 existing rates, he relies on a federal income tax expense that is calculated on an
5 Operating Income (Line 29 of Schedule A) that includes adjustments. Because the
6 adjustments increase the Operating Income used to calculate the federal income tax
7 expense, Mr. Pollock overstates the previously collected tax expense. Moreover,
8 this methodology is inconsistent with the deferred accounting order’s requirement
9 that the calculation reflect the “difference between the revenues collected under
10 existing rates.” As mentioned previously, Mr. Stack provides the correct
11 calculation of this amount in his Rebuttal testimony.
12

13 III. Rider DTA

14 Q9. PLEASE DESCRIBE RIDER DTA.

15 A. Rider DTA will track unfavorable IRS decisions on uncertain tax positions that ETI
16 is required to record as a tax liability under FASB Interpretation No. 48 (FIN 48).
17 The rider will permit ETI to collect, on a prospective basis, the after-tax return on
18 amounts actually paid to the IRS.
19

20 Q10. WHY IS THE COMPANY PROPOSING RIDER DTA?

21 A. In Docket No. 39896, the Commission ordered ETI to include FIN 48 liabilities in
22 ADFIT as a reduction to rate base.⁷ However, to compensate ETI for lost return on
23 rate base in the event the IRS reverses an amount booked to FIN 48, the
24 Commission also ordered that ETI be permitted to include a mechanism to recover,
25 prospectively, a return on FIN 48 amounts actually paid to the IRS.⁸

⁷ *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment*, Docket No. 39896, Order on Rehearing at Finding of Fact Nos. 38–39 (Nov. 1, 2012).

⁸ Docket No. 39896, Order on Rehearing at Finding of Fact No. 40A.

1

2 **Q11. PLEASE EXPLAIN WHY RIDER DTA IS NECESSARY TO**
3 **COMPENSATE ETI FOR LOST RETURN ON RATE BASE.**

4 A. FIN 48 is a GAAP standard that requires ETI to analyze and quantify uncertain tax
5 positions that, in the opinion of its tax experts, will more likely than not be reversed
6 by the IRS during audit. Once determined, ETI must record a tax liability in the
7 amount of the position. If the position is reversed, ETI must pay the amount due
8 plus interest from the date the position was taken on its tax return. Because ETI
9 recorded a tax liability and paid interest on the amount due, the FIN 48 amount
10 never represented an interest-free loan. However, under the Commission's
11 precedent, such amounts are required to be included in ADFIT as a reduction to
12 rate base. As such, ratepayers receive a reduction in the amount of return required
13 to be paid on ETI's rate base. The rationale for such reduction is that the utility has
14 use of the ADFIT as an interest-free loan from the government. However, reversed
15 FIN 48 positions are recorded as liabilities and bear interest; thus, these amounts
16 do not represent cost-free capital. Rider DTA compensates ETI for the lost return
17 on rate base by providing a return on the reversed amount.

18

19 **Q12. DOES MR. POLLOCK'S TESTIMONY ATTEMPT TO ADDRESS THESE**
20 **ISSUES?**

21 A. No. Mr. Pollock's testimony is silent on this issue. He does not discuss the
22 fundamental purpose of the rider—to compensate ETI for lost return where the
23 underlying tax positions did not reflect cost-free capital. Instead, he argues that the
24 Commission will not have a meaningful opportunity to review Rider DTA amounts
25 and that the risk of loss of a tax position is a normal cost of doing business that
26 should not be financed by ratepayers through "piecemeal ratemaking."

27

1 **Q13. IS THERE ANY VALIDITY TO MR. POLLOCK’S CRITICISMS OF**
2 **RIDER DTA?**

3 A. No, Mr. Pollock’s criticisms of Rider DTA are unfounded and misapprehend the
4 rider’s purpose and function. Mr. Pollock appears to believe that Rider DTA
5 separately compensates ETI (outside of base rates) for federal income tax positions
6 that it loses after audit. That is not the case. Rider DTA simply provides ETI the
7 lost return on rate base that it should not have had to forego in the first place, since
8 the reversed tax position did not reflect cost-free capital. And it is not ratepayers
9 who are financing the risk of loss of the position—it is entirely the other way
10 around, since ratepayers are receiving the benefits of reduced rate base up front
11 under the assumption that the FIN 48 amounts are cost-free capital. It is only when
12 a position is ultimately reversed and all taxes and interest are paid to the federal
13 government that Rider DTA operates to compensate ETI for the lost return on rate
14 base.

15
16 **Q14. HOW DO YOU RESPOND TO MR. POLLOCK’S ASSERTION THAT**
17 **RIDER DTA REFLECTS IMPROPER PIECEMEAL RATEMAKING?**

18 A. The Commission’s decision to include FIN 48 liabilities in ADFIT, and thereby
19 reduce ETI’s rate base, unequivocally gives ratepayers a significant benefit, since
20 such amounts do not reflect cost-free capital. However, the Commission has
21 decided that ratepayers should receive all the benefits up front of any uncertain tax
22 position regardless of whether such amounts will ultimately have to be paid, with
23 interest to the IRS. Because FIN 48 amounts will more likely than not be paid to
24 the IRS, the failure to include some remedy for ETI’s lost return would be a harsh
25 result. Rider DTA simply provides a mechanism for ratepayers and the utility to
26 share the risks and benefits of the loss of FIN 48 amounts.

27 Mr. Pollock’s argument regarding piecemeal ratemaking once again
28 misapprehend the purpose of the rider. The rider does not compensate ETI for
29 “activities surrounding ETI’s federal income tax expense,” which Mr. Pollock

1 describes as a “normal cost of doing business.”⁹ Instead, the rider compensates ETI
2 for lost return on rate base that it should never have foregone.

3

4 **Q15. ARE THERE OTHER POLICY REASONS FAVORING RIDER DTA?**

5 A. Yes. Rider DTA encourages ETI to take uncertain tax positions and aggressively
6 pursue them with the IRS. If it were the case that uncertain tax positions were taken
7 as a reduction to rate base, without any potential compensation for lost return, then
8 it would be squarely against ETI’s interest to take such positions in the first place.
9 Rider DTA benefits ratepayers by incentivizing ETI to take positions that
10 immediately inure to ratepayers’ benefit, while providing some level of
11 compensation to ETI if the position is ultimately reversed.

12

13 **Q16. HOW DO YOU RESPOND TO MR. POLLOCK’S CONTENTION THAT**
14 **THE COMMISSION WILL HAVE INSUFFICIENT TIME TO REVIEW**
15 **AMOUNTS TO BE COLLECTED UNDER THE RIDER?**

16 A. I disagree. Forty-five days is more than enough time for the Commission to review
17 any amounts charged under Rider DTA. These amounts will simply be the return
18 on amounts that the IRS has determined ETI owes under the federal tax code.
19 Showing the amounts paid and the calculation of the return on the amounts will
20 produce a very simple and straightforward filing that can be reviewed
21 expeditiously. In addition, Mr. Pollock’s contention that the Commission should
22 be able to review whether a reversal was due to improper tax accounting once again
23 misses the relative costs and benefits of the Commission’s treatment of this issue.
24 When ETI takes an uncertain tax position, ratepayers benefit through reduced return
25 on rate base. If the position is reversed, which the Company’s tax experts had
26 already determined was more likely than not to occur, Rider DTA merely provides
27 ETI a portion of the lost return that it should not have foregone in the first place.
28 In short, taking uncertain tax positions can only benefit customers, while losing

⁹ Direct Testimony of Jeffrey Pollock at 24 (Revenue Requirement).

1 them merely permits ETI to break even on inappropriately foregone return. In the
2 event that there are charges under Rider DTA, prudence considerations are simply
3 not at issue or weigh very heavily in ETI's favor.

4

5 **Q17. WHAT IS YOUR RECOMMENDATION IN THE EVENT THE**
6 **COMMISSION DECIDES TO REJECT RIDER DTA?**

7 A. If the Commission wishes to reconsider its precedent on this issue, it should decide
8 that FIN 48 liabilities do not represent cost free capital and should not be included
9 as an ADFIT reduction to rate base. As mentioned, FIN 48 amounts must be
10 recorded as tax liabilities on ETI's books because they will more likely than not be
11 reversed by the IRS. In addition, ETI is required to accrue interest expense on the
12 uncertain tax positions. Ultimately, if FIN 48 tax positions are disallowed by the
13 IRS, ETI pays both the principal amount and the interest on that amount to the IRS.
14 To the extent the Commission reverses course and decides against the inclusion of
15 Rider DTA, it should exclude ETI's FIN 48 liabilities from ADFIT.

16

17

IV. ADFIT

18 **Q18. ARE YOU AWARE OF THE PROPOSALS MADE BY CITIES WITNESS**
19 **DAVID GARRETT, OPUC WITNESS CONSTANCE CANNADY, AND**
20 **STAFF WITNESS RUTH STARK REGARDING THE UNDEPRECIATED**
21 **BALANCE OF SABINE 2 AND MR. GARRETT'S RECOMMENDATION**
22 **REGARDING THE REMAINING NECHES STATION PLANT BALANCE?**

23 A. Yes. I understand that these witnesses have recommended that the undepreciated
24 balance of Sabine 2 be removed from rate base and placed in a regulatory asset that
25 would not earn a return. I understand that Mr. Garrett proposes the same treatment
26 for the undepreciated Neches Station balance.

27

1 **Q19. DO YOU HAVE ANY CONCERNS WITH THESE**
2 **RECOMMENDATIONS?**

3 A. Each of these proposals would remove the undepreciated plant balances from rate
4 base. Yet it does not appear that the witnesses removed related ADFIT from rate
5 base. If the Commission requires the removal of the Sabine 2 balance, which has a
6 net book value of \$10,708,572, from rate base the related ADFIT should also be
7 removed from rate base. Sabine 2 has a credit balance of ADFIT of \$2,373,295. It
8 is important for the plant cost and related ADFIT to be treated consistently to avoid
9 a potential normalization violation.

10 Similarly, if the Neches Power Plant net book value of \$13,807,273 is
11 removed from rate base, the related ADFIT should also be removed from rate base.
12 Neches has a credit balance of ADFIT of \$3,040,152. It is important for the plant
13 cost and related ADFIT to be treated consistently to avoid a potential normalization
14 violation.¹⁰

15

16 **Q20. HOW WILL THE ADFIT THAT IS REMOVED FROM RATE BASE BE**
17 **TREATED?**

18 A. The ADFIT will be repaid to the IRS as the company recovers the related regulatory
19 asset.

20

21 **Q21. MR. GARRETT ALSO RECOMMENDS THAT THE COMMISSION**
22 **REQUIRE ETI TO TRACK OVER OR UNDER-RECOVERIES OF**
23 **PROTECTED EXCESS ADFIT BETWEEN RATE CASES. WHAT IS**
24 **YOUR RESPONSE TO THIS PROPOSAL?**

25 A. Mr. Garrett's proposal should be rejected. Under the Company's proposal, the
26 protected excess ADFIT balance will be flowed back to customers under the
27 ARAM method, as required by normalization rules. Because the amortization of
28 this balance will have relatively little variance, a tracker mechanism that would

¹⁰ Mr. Garrett also includes an illustrative example of removing ETI's storm regulatory assets from rate base at Exhibit MG3.0. The removal of the asset from rate base would similarly require a removal of ADFIT for consistency of treatment.

1 seek to “true-up” over or under-recoveries would not be worth the administrative
2 cost of implementation. The Company’s proposed treatment is consistent with the
3 Commission’s precedent, follows IRS normalization requirements, and should be
4 adopted.

5 **V. Conclusion**

6 **Q22. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

7 A. Yes, it does.

AFFIDAVIT OF RORY L. ROBERTS

THE STATE OF LOUISIANA)
)
PARISH OF Orleans)

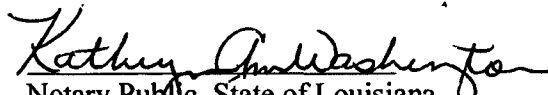
This day, Rory L. Roberts the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under oath:

My name is Rory L. Roberts. I am of legal age and a resident of the State of Louisiana. The foregoing testimony and exhibits offered by me are true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.



Rory L. Roberts

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 16th day of August 2018.


Notary Public, State of Louisiana
LASBA # 26546
Notary ID # 60366

My Commission expires:

upon my death.