



Filing Receipt

Received - 2021-08-10 11:55:05 AM

Control Number - 52081

ItemNumber - 24

**SOHA DOCKET NO. 473-21-2427
PUC DOCKET NO. 52081**

APPLICATION OF EL PASO	§	
ELECTRIC COMPANY FOR	§	BEFORE THE STATE OFFICE
APPROVAL TO REVISE ITS ENERGY	§	
EFFICIENCY COST RECOVERY	§	OF
FACTOR AND REQUEST TO	§	
ESTABLISH REVISED COST CAPS	§	ADMINISTRATIVE HEARINGS
OF TEXAS		

**CITY OF EL PASO'S RESPONSE TO EL PASO ELECTRIC COMPANY'S
OBJECTION TO PORTIONS OF THE TESTIMONY OF KARL J. NALEPA**

The City of El Paso (“City”) files this response to an Objections filed by El Paso Electric Company (“EPE” or “Company”) to portions of the testimony of City of El Paso witness Karl J. Nalepa and asks that the objection be denied or overruled as they are not well taken. The portions of the testimony which are the subject of EPE’s objection address the issues identified in the preliminary order¹ in this case as well as allegations raised in the direct testimony of EPE witnesses, and is, therefore, relevant. The ALJ should overrule EPE’s objection.

1. Procedural Background.

On July 19, 2021, the City filed the direct testimony and Exhibits of Karl J. Nalepa in this docket. The testimony EPE filed its objection on August 3, 2021. Pursuant to the schedule contained in SOAH Order No. 2² this response is due on August 10, 2021. Therefore, this response is timely filed.

2. EPE Objection

EPE objected to two portions of Mr. Nalepa’s testimony. First it objected to the portion of his testimony which addressed a new program described by EPE witness Crystal Enoch as part

¹ *Application of El Paso Electric Company for Approval to Revise Its Energy Efficiency Cost Recovery Factor and Request to Establish Revised Cost Caps*. Docket No. 52081, Order of Referral and Preliminary Order (May 25, 2021).

² Docket No 52081, SOAH Order No. 2, June 23, 2021

of the significant changes to EPE's proposed energy efficiency portfolio for 2022.³ EPE also objected to the portion of Mr. Nalepa's testimony which addressed EPE's claim for a performance bonus for year 2020 of \$3,649,575 (adjusted to \$2,783,387), an increase in performance bonus over that claimed for 2019 of \$1,607,829⁴, or a 137 % increase.⁵ EPE states that the issues and testimony are beyond the scope of an EECRF proceeding and not relevant. As the City will demonstrate below, the recommendations in Mr. Nalepa's testimony are not only responsive to EPE claims in this proceeding; they are also relevant as they address issues identified in the preliminary order as issues to be addressed.

3. Legal Standard

EPE's objection is expressed in terms of relevance. Evidence in this proceeding is governed by the Administrative Procedure Act §2001.081⁶ and SOAH Procedural Rule §155.429.⁷ Both the statute and the rule apply the Texas Rules of Evidence for non-jury trials. Rule 401, Tex. R. Evid. sets out the test for relevant evidence. Evidence is relevant if it has any tendency to make a fact for or less probably than it would be without the evidence; and the fact is of consequence in determining the action.

4. FutureWise[®] Pilot MTP (EPE's First Objection)

EPE witness Enoch describes a new program in her testimony, a program called FutureWise[®]. She describes the program as a significant change, and includes the Errata 2021 Energy Efficiency Plan and Report dated April 28, 2021 (one business day before the filing in this docket) as an Exhibit to her testimony.⁸ After describing these programs, Ms. Enoch made the assertion, “. . . the Company's proposed incentive costs are reasonable.”⁹ The FutureWise[®] program according to Ms. Enoch is a program that prepares high school students for the future, and is designed to provide non-energy benefits to the students, such as learning how to read utility bills. In addition

³ Direct Testimony of Crystal A. Enoch at 9

⁴ Direct Testimony of Rene F. Gonzalez at 5 line 11

⁵ 2019 bonus identified as \$1,175,558, Direct Testimony of Rene F. Gonzalez at 5 line 12

⁶ TEX. GOV'T CODE §2001.081 (a)

⁷ 7 TEX. ADMIN. CODE. §155.429 (SOAH)

⁸ Direct Testimony of Crystal A. Enoch, Exhibit CAE-01

⁹ Direct Testimony of Crystal A. Enoch at 11 line 29

Ms. Enoch testified the program introduces students to employment and career opportunities through the emerging green sector.¹⁰

EPE ignores the issues it raised in this case, and the issues defined by the Commission in the Preliminary Order. First, as explained in the preceding paragraph, Ms. Enoch's testimony described this as a new program, and within her definition identified issues that are not related to meeting or exceeding the utility's energy efficiency goals. Moreover, Ms. Enoch testifies that the proposed budget, including this program is reasonable. On page 3 of the objection, EPE identifies in its third bullet point the issue in the case to be a determination of whether *the costs to be recovered are reasonable estimates of the costs necessary to provide energy efficiency programs to meet or exceed the utility's energy efficiency goals*. In the preliminary order, the Commission identified the exact issue in paragraph 5a and 5b of the reasonableness of the estimates of the costs to provide energy efficiency programs to meet the utility's goals and the cost being equal to or less than the benefits of the programs. In Section IV of the objection¹¹ EPE actually argues the merits of the issue, that is the merits of the issue as raised in Mr. Nalepa's testimony. That argument, itself, raises the issues of reasonableness as defined in the Preliminary Order. Mr. Nalepa's testimony addresses those exact issues as they relate to the FutureWise[®] Pilot MTP program discussed by Ms. Enoch. Does Mr. Nalepa's testimony tend to make a fact more or less probable (the relationship of the program to energy efficiency goals? Yes. Does Mr. Nalepa's testimony relate to an issue of consequence? Yes. The evidence is relevant. The question is not whether a program to educate high school students constitutes a worthwhile activity for EPE, but whether the costs of such a program is a reasonable cost for the 2022 EECRF surcharge to customers. The ALJ should overrule and deny EPE's objection 1

5. **EPE's Claimed Performance Bonus.**

EPE's second objection is similarly misplaced. EPE's second objection is to the portion of Mr. Nalepa's testimony which addresses the proper adjustment to EPE's requested performance bonus for 2020. The underlying facts deserve some discussion here. First, EPE

¹⁰ Direct Testimony of Crystal A. Enoch at 9

¹¹ Docket No. 52081, EPE Objection at 7

received an exception to the Commission's cost caps, as revised cost caps for year 2020. Pursuant to the Rule, the Commission may reduce the bonus otherwise permitted under the Rule for a utility with a lower goal, higher administrative spending cap, or higher cost cap established by the Commission. The bonus shall be considered in the EECRF proceeding in which the bonus is requested.¹² Thus, the issue of the amount of EPE's claimed bonus for year 2020 and a method for reducing the bonus is an issue in controversy in this case. EPE does not provide a basis for its relevance objection; nor does it explain how the fact would support such an objection. The issue of EPE's claimed bonus is an issue of consequence in this proceeding, as is the question of whether EPE's claimed bonus claim should be reduced, and if so by how much. Mr. Nalepa's testimony squarely addresses both of these issues and as such is relevant.

EPE's objection actually argues the merits of its bonus claim, not the relevancy of Mr. Nalepa's testimony.¹³ First, EPE admitted in its direct case that its bonus should be adjusted as it had permission to exceed the cost caps.¹⁴ In its second argument on the merits of its claim EPE argued that it utilized the ERCOT avoided energy costs (EPE is not in ERCOT). EPE then asserts that it is not required to petition for a different avoided cost.¹⁵ EPE admits that it had the ability ask for a different avoided cost, but deliberately chose not to use its avoided costs of \$0.01605 per kWh instead of the instead of the \$0.11366 per kWh ERCOT cost. It chose not to file a petition to use its avoided costs and subsequently claims that to do so would violate the Rule. The totality of EPE's argument does not address relevance; rather it is an argument on the merits of the bonus issue. Since, EPE decided to enhance its bonus, with no real improvement in benefits, the proper adjustment is an issue in controversy evidence relating to that issue tends to prove or disprove EPE's claims. The ALJ should overrule and deny EPE's second objection.

Wherefore, premises considered the City of El Paso prays that the Administrative Law Judge overrule and deny both EPE objections and for such other and further relief to which the City may be entitled.

¹² 16 Texas Admin Code § 25.182(e)(4).

¹³ EPE Objection Section III, page 6

¹⁴ Direct testimony of Rene F. Gonzalez at 12

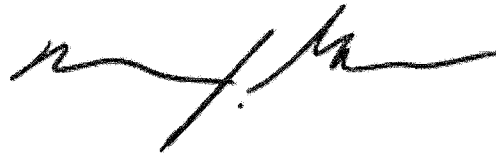
¹⁵ Objection page 6 "The rule does not require a utility to petition the Commission. . ."

Respectfully submitted,

Norman J. Gordon (ngordon@ngordonlaw.com)
State Bar No. 08203700
P.O. Box 8
El Paso, Texas, 79940
221 N. Kansas, Suite 700
El Paso, Texas, 79901
(915) 203 4883

Karla M. Nieman, City Attorney
State Bar No. 24048542
Manuel Arambula, Senior Assistant City Attorney
State Bar No. 24047423
Frances M. Maldonado Engelbaum
State Bar No. 24094272
City of El Paso
300 N. Campbell, 2nd Floor
El Paso, Texas 79901
(915) 212-0033
(915) 212-0034 (fax)
Arambulam1@elpasotexas.gov
Niemankm@elpasotexas.gov
Engelbaumfm@elpasotexas.gov

Attorneys for the City of El Paso



By: _____
Norman J. Gordon

Certificate of Service

I certify that a true and correct copy of this document was served by e-mail and/or US mail on all parties of record in this proceeding on August 10, 2021.