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**SOAH DOCKET NO. 473-21-2606
PUC DOCKET NO. 52195**

APPLICATION OF EL PASO ELECTRIC COMPANY TO CHANGE RATES	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**OFFICE OF PUBLIC UTILITY COUNSEL’S
RESPONSE TO TEXAS INDUSTRIAL ENERGY CONSUMERS’
FIRST REQUEST FOR INFORMATION**

The Office of Public Utility Counsel (“OPUC”) submits this response to Texas Industrial Energy Consumers’ (“TIEC”) First Request for Information that was received on December 15, 2021. Pursuant to State Office of Administrative Hearings Order No. 2, OPUC’s response is timely filed within 5 working days of receipt of TIEC’s discovery request. OPUC stipulates that all parties may treat this response as if it were filed under oath.

Dated: December 22, 2021

SOAH Docket No. 473-21-2606
PUC Docket No. 52195
OPUC's Response to Texas Industrial Energy Consumers'
First Request for Information

TIEC 1-1:

Please provide all documents Mr. Evans cited in, or relied upon in connection with, his cross-rebuttal testimony.

RESPONSE:

Mr. Evans cited and referred to the NARUC Electric Utility Cost Allocation Manual, which is a copyrighted document. However, Mr. Higgins also referred to this document at page 18, footnote 55, at 20:5-8 and at page 20, footnote 59. Therefore, it should be assumed that Mr. Higgins and TIEC has a copy of that document.

The Principles of Public Utility Rates 2nd. Edition by James C. Bonbright, Albert L. Daniels, David R. Kamerschen (March 1988) is a copyrighted document. Pages 382 – 388 that were referenced on page 24 of the Cross-Rebuttal Testimony and Workpapers of Evan D. Evans is provided as TIEC 1-1 Attachment 1.

The filed version of SB 1524 from the 74th Regular Texas Legislative Session is available from Texas Legislature Online at:

<https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=74R&Bill=SB1524>

Mr. Evans also referred to or relied on testimony, attachments, workpapers and discovery responses filed in this docket. All documents from other dockets cited by Mr. Evans are available from the PUC interchange.

Prepared by: Evan D. Evans

Sponsored by: Evan D. Evans

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TIEC 1-2:

To the extent not provided in his testimony or in response to TIEC-OPUC 1-1, please provide all documents concerning customer, operational, or load characteristics for Entergy Texas, Inc, Southwestern Electric Power Company, and Southwestern Public Service Company that Mr. Evans reviewed in connection with his cross-rebuttal testimony.

RESPONSE:

Mr. Evans has extensive knowledge of customer, operational and load characteristics for Southwestern Public Service Company ("SPS") and other electric utilities due to his long time employment with several utilities and familiarity with the electric utility industry and his testimony and work in SPS's current Texas retail base rate case, Docket No. 51802. Mr. Evans relied on this knowledge in connection with the preparation of his cross-rebuttal testimony.

Mr. Evans also has knowledge of customer, operational and load characteristics for Southwestern Electric Power Company ("SWEPCO") due to his testimony and work in SWEPCO's recent Texas retail base rate case, Docket No. 51415. Mr. Evans relied on this knowledge in connection with the preparation of his cross-rebuttal testimony.

Mr. Evans also reviewed the filed Federal Energy Regulatory Commission ("FERC") Form 1 Reports for the years 2016 through 2020 for Entergy Texas, SWEPCO and SPS in the preparation of his cross-rebuttal testimony and attachments. The filed annual FERC Form 1 reports are available at FERC's eLibrary website at: <https://elibrary.ferc.gov/eLibrary/search>

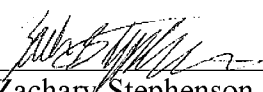
Prepared by: Evan D. Evans

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December 22, 2021

Respectfully submitted,

Chris Ekoh
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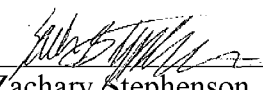


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ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE
SOAH DOCKET NO. 473-21-2606
PUC DOCKET NO. 52195

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 22nd day of December 2021 by facsimile, electronic mail, and/or first class, U.S. Mail.



Zachary Stephenson

instance, regulation should allow a fair rate of return, but not guarantee or protect a regulatee against mismanagement or adverse business conditions. Sound rate relationships are essential to the attainment of these desirable ends, but criteria are required to judge whether, and to what extent, these objectives have been attained. In our attempt to put the competing criteria into an explicit form we recognize that we are violating the sage advice of Charlie Brown that: "No problem is so big that it can't be run away from."

Attributes of a Sound Rate Structure

What are the attributes to be sought in the development of a sound rate structure? Many different answers have been suggested in the technical economics literature and in the reported opinions by courts and commissions. A number of writers have summarized their answers in the form of a list of desirable attributes of a rate structure, comparable to the canons of taxation found in Adam Smith's *Wealth of Nations* (1937 — originally 1776) and subsequent treatises on public finance. In very general terms (see e.g., Federal Energy Regulatory Commission, Order No. 436, October 9, 1985) optimal rates: should provide clear, efficient, effective, informative, and cost-effective market signals about the present and the future cost of service to buyers and sellers, (which requires that prices track costs); should embody strong incentives for optimal present and future cost and service quality configurations; should give buyers and sellers optimal flexibility in selecting sellers and buyers respectively; should allow utilities to serve as agents of progress; should maintain or improve distributive equity, and should allow for the attainment and maintenance of a flexible (non *ad hoc*) regulatory framework with a modicum of necessary delay and obfuscation (and even a willingness of a commission to dissolve itself under the appropriate competitive or contestable conditions!). But this is a pretty general menu, and more specific direction is needed when applying them to an empirical world. As someone once said, "the real world is only a special case of the theoretical world, and not a very interesting one at that." But many practical-minded people would disagree, so let us push on to greater specificity.

The list that follows is fairly typical, although we have derived it from a variety of sources, instead of relying on any one presentation. Of the ten proposed attributes enumerated in this section, the first three relate to the provision of adequate stable and predictable revenues and rates; the next five are based on cost, efficiency, and equity considerations, and the remaining two deal with matters of practicality

and acceptability. However, the sequence in which the ten attributes are presented is not meant to suggest any order of importance. Moreover, there is, perforce, some inconsistency and redundancy in any such listing. We are simply trying to identify the desirable characteristics of utility performance that regulators should seek to compel through edict.

Revenue-related Attributes:

1. Effectiveness in yielding total revenue requirements under the fair-return standard without any socially undesirable expansion of the rate base or socially undesirable level of product quality and safety.
2. Revenue stability and predictability, with a minimum of unexpected changes seriously adverse to utility companies.
3. Stability and predictability of the rates themselves, with a minimum of unexpected changes seriously adverse to rate-payers and with a sense of historical continuity. (Compare "The best tax is an old tax.")

Cost-related Attributes:

4. Static efficiency of the rate classes and rate blocks in discouraging wasteful use of service while promoting all justified types and amounts of use:
 - (a) in the control of the total amounts of service supplied by the company;
 - (b) in the control of the relative uses of alternative types of service by ratepayers (on-peak versus off-peak service or higher quality versus lower quality service).
5. Reflection of all of the present and future private and social costs and benefits occasioned by a service's provision (i.e., all internalities and externalities).
6. Fairness of the specific rates in the apportionment of total costs of service among the different ratepayers so as to avoid arbitrariness and capriciousness and to attain equity in three

dimensions: (1) *horizontal* (i.e., equals treated equally); (2) *vertical* (i.e., unequals treated unequally); and (3) *anonymous* (i.e., no ratepayer's demands can be diverted away uneconomically from an incumbent by a potential entrant).

7. Avoidance of undue discrimination in rate relationships so as to be, if possible, compensatory (i.e., subsidy free with no intercustomer burdens).
8. Dynamic efficiency in promoting innovation and responding economically to changing demand and supply patterns.

Practical-related Attributes:

9. The related, practical attributes of simplicity, certainty, convenience of payment, economy in collection, understandability, public acceptability, and feasibility of application.
10. Freedom from controversies as to proper interpretation.

Lists of this nature are useful in reminding the ratemaker of considerations that might otherwise be neglected, and also useful in suggesting important reasons why problems of practical rate design do not yield readily to scientific principles of optimum pricing. But they are unqualified to serve as a base on which to build these principles because of their ambiguities (how, for example, does one define "undue discrimination"?), their overlapping character, their inconsistencies, and their failure to offer any basis for establishing priorities in the event of a conflict. For such a basis, we must start with a simpler and more fundamental classification of ratemaking functions and objectives.

Some of these attributes in the aforementioned list are based directly on the primary functions of public utility rates first presented in Chapter 4, and the related objectives to be sought in the establishment of a cost-based standard of ratemaking (Chapter 5). These objectives provided the basis for development of the criteria of a fair return (Chapter 10). These same objectives, derived from the four primary functions, can now be used to specify the criteria of a sound rate structure discussed in the following section.

The Primary Criteria Are Based on the Objectives of Regulation

General principles of public utility rates and rate differentials are necessarily based on simplified assumptions both as to the objectives

of ratemaking policy and as to the factual circumstances under which these objectives are sought to be attained. Attempts to make these stated principles subserve all special objectives and cover all specific conditions would be hopeless. Writers on the theory of rates are therefore at liberty to base their analyses on the acceptance of those objectives which are of wide application and the attainment of which may be aided by whatever tests or measures of sound rate structure the analyses suggest.

Among these objectives, the following three may be called primary, not only because of their widespread acceptance, but also because most of the more detailed objectives discussed in the literature are ancillary thereto: (1) the revenue-requirement, production-motivation, or financial-need objective; (2) the optimum-use, demand control, or consumer-rationing objective; and (3) the compensatory income transfer function or fair-cost-apportionment objective. Based on these objectives we propose the following three primary criteria by which to judge the soundness and desirability of a rate structure for public utility enterprises. As outlined below, these objectives are related closely to five of the ten attributes specified above.

Criterion 1 - Capital Attraction

(Attribute 1): based on the revenue-requirement objective, with due regard to potential problems of socially undesirable levels of rate base, product quality, and safety; it takes the form of a fair-return standard with respect to private utility companies;

Criterion 2 - Consumer Rationing

(Attributes 4 and 5): based on the consumer-rationing objective, under which the rates are designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationships between the private and social costs incurred and benefits received;

Criterion 3 - Fairness to Ratepayers

(Attributes 6 and 7): fair-cost-apportionment objective, which invokes the principle that the burden of meeting total revenue requirements must be distributed *fairly* and without arbitrariness, capriciousness, and inequities among the beneficiaries of the service and so as, if possible, to avoid undue discrimination.

The objectives specified above correspond to three of the four primary functions of utility rates set forth in Chapter 4. The efficiency-incentive function, or that of encouraging managerial efficiency, is

omitted because of its more direct bearing on the desirable criteria for a fair rate of return. Some writers, especially the older ones, e.g., Wallace (1941, pp. 475-478) would add a fifth objective: that of benefitting specific classes of ratepayers, such as customers of substandard income or a depressed industry. This objective comes under the heading of social principles of ratemaking as we have used the term in Chapter 8.

In actual rate cases, these three objectives of reasonable rates and rate relationships, and particularly the last two, are by no means always sharply distinguished. But the distinction may be illustrated by the imagined example of a request, submitted to a regulating commission by a group of ratepayers, that an electric (gas or tele-communications) company be ordered forthwith to abandon its present, somewhat elaborate, schedule of class rates, block rates, and two-part or three-part tariffs in favor of a uniform kilowatt-hour (therm or message minute) rate for all customers throughout its franchise territory. Almost certainly this proposal would be held subject to the threefold objection:

- (a) that no uniform rate, however high, could be made to yield a fair return on the company's invested capital;
- (b) that, even if it could do so, rate uniformity despite lack of cost uniformity in the supply of different types of service would impose *unfair* and discriminatory burdens on the consumers of the less costly services; and
- (c) that, quite aside from its unfairness, the uniform rate would result in a serious underutilization of plant capacity because it would cut down the demand for services (especially, for off-peak services) that could be supplied at incremental costs materially below average unit costs, while stimulating a wasteful on-peak demand for services that can be supplied only at incremental costs higher than average costs and it does not reflect any differential social costs and benefits in different areas.

Some writers who confine their attention to what they call the "economic" principles of public utility rates have ignored the third criterion of a sound rate structure in their development of their principles of public utility rates on the ground that fairness questions are beyond the competence of professional economists (on the general issue of fairness, see Zajac, 1985, and Baumol, 1986). Instead, they have centered attention on the second criterion, often with special reference to its application under the constraint of a revenue-require-

ment constraint. But a refusal to recognize fairness issues as relevant to the design of a sound rate structure would so far remove the analysis from the objectives of Chapter 5 and divorce theory from practice that these issues will not be completely ignored in the discussion that follows.

Stability and Predictability of Rates: A Secondary Criterion

Attributes 2 and 3 on stability and predictability have been neglected relative to those associated with the three primary criteria, and deserves further consideration. In ratemaking, the attribute of *predictability*, is more important than *stability* per se. Time-of-use rates, for example, are not stable (in a strict sense), but are predictable and, most would agree, desirable. One could certainly argue that ratepayers should be given the information they need to *predict* rates accurately. However, this does not imply a necessary need to keep rates stable at the expense of otherwise efficient pricing. For instance, in the case of rate base valuation, most jurisdictions opted for the rate stability associated with original costs (also for the popular understanding and administrative practicality) even though this method has an economic cost in terms of ideal resource allocation and use during periods of changing price levels. In that case, the presumably intelligent choice between the merits and demerits of the alternatives led decisionmakers to conclude that the price society pays for this stability is reasonable.

Stability, like freedom, is not free. Utility regulation can and does affect the social cost of risk bearing (Schmalensee, 1979, p. 36-37). The bearers of risks have real costs imposed on them. Economic efficiency calls for the one's best able to bear risk to do so. Ideally, the regulatory process only redistributes and does not increase total risks. Erratic regulation can increase a firm's real costs, including capital costs. Stabilized rates (returns) shift risks from ratepayers (shareholders) to shareholders (ratepayers). Utilities need revenue stability to mitigate the sunk costs of their highly specialized systems that make them prime candidates for expropriation or opportunism. However, as Yandle (1987) puts it: "You can fleece a sheep many times, but you can only skin him once."

A monolithic critic might ask: why place such great importance on revenue and rate stability and predictability when no such constraints operate in the unregulated sector (especially in light of the business cycle)? The answer to this question is provided in great detail in the next two chapters. For the moment, let it suffice to note five major considerations. First, some users have a strong preference for rate stability in planning even if it means some sacrifice in the (higher)

level of initial rates. This is especially true of customers who use the utility in the production of other goods and services and who fear that rivals may obtain advantages by acquiring the service more cheaply and reliably elsewhere (Baldwin, 1987, p. 225). Second, there are transaction costs involved in the determination, administration, and publicity of a rate structure; these include advertising, publishing and distributing price lists, issuing new catalogs, etc. Third, since the greater asset-specificity in regulated markets provides more scope for opportunistic behavior, assurances of predictable revenues are appropriate in a regulated industry. Fourth, rate stability and more particularly predictability, are needed to allow the users to secure a rational control of demand. We want to make sure that regulation does not increase, but only redistributes the total and real risk. Therefore, a fourth criterion, although of a somewhat lower rank than the three primary ones discussed earlier, is that of stability and predictability of specific rates and of revenues.

Some Simplifying Assumptions

In the remainder of this Part Four, except for the sections in Chapter 17, the principles governing the development of a sound rate structure will be discussed under the assumption that rates are designed primarily to subserve the four primary objectives of rate-making policy specified earlier. But in order to avoid extreme complexities, the following four explicit assumptions are made, all of which are implicit in much of the literature on public utility rates. Some of these are reiterations of the criteria, whereas others are additional assumptions required for clarity.

In the first place, we shall impute an unqualified priority to the fair-return standard of reasonable rate levels despite the fact, noted in Chapter 10, that no such priority is accorded either by legal doctrine or by ratemaking practice. That is to say, we shall assume that the rates of any given utility enterprise, taken as a whole, must be designed as far as possible to cover costs as a whole including (or plus) a fair return on capital investment.

In the second place, we shall assume the availability of a wide range of alternative rate structures, any one of which could be made to yield the allowed fair return on whatever capital investment is required in order to supply the services demanded. This assumption, which implies that the utility enterprise in question enjoys a substantial degree of monopoly power, permits us to center attention on a choice among rate structures, any one of which would be equally fair to investors and equally effective in maintaining corporate credit.

In the third place, throughout this handbook, we operate under a general presumption that pricing at marginal cost would lead to a revenue shortfall; i.e., the firm operates in the range of declining unit costs. However, there is evidence now to suggest that there are certain aspects of utility operations, such as the generation of electricity, which are in the range of increasing unit costs. Thus, the possibility exists that a company could find itself overall in the increasing cost range. This nontrivial possibility should be kept in mind in discussions of the problem of revenue reconciliation.

And in the fourth place, except for incidental references, we shall rule out all of those social principles of ratemaking, discussed in Chapter 8, which may justify the sale of some utility services at less than even marginal costs. While the rate structure may be used as a tool for redistributing income, economists in general prefer alternative fiscal policies, such as taxation and direct subsidies. This is so primarily because of the limited span over which any single regulatory body may exercise control. Thus, the positive realities impinge on our normative analyses.

IMPORTANCE AND LIMITATIONS OF THE PRINCIPLE OF COST OF SERVICE

Cost-of-service as a Basic Standard

Without doubt the most widely accepted measure of reasonable public utility rates and rate relationships is cost of service. For example, based on their extensive research associated with the Electric Power Research Institute (EPRI) rate design study, Malko, Smith and Uhler (1981, Chapter 4) conclude that "In general, cost-based rates satisfy the commonly held multidimensional, sometimes conflicting, pricing objectives better than noncost-based rates". In the literature, the cost-of-service measure is generally given a dominant position even by writers who insist upon, or reluctantly concede, the necessity for deviations from cost in the direction of value-of-service principles or of various social objectives of ratemaking. However, Stanley (1984) argues that because of the interdependency among ratepayers of basic service and the deterrence effects of the connection charges — e.g., access to the telephone network — the optimal price would be set *below* marginal cost with subsidization by nonbasic services such as the Yellow Pages, Touch-Tone service, long-distance service, etc. Be that as it may, in actual practice there is usually an obvious, marked