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Received - 2022-02-07 10:30:23 AM
Control Number - 52195
ItemNumber - 564

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

APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
	§	
ELECTRIC COMPANY TO	§	OF
	§	
CHANGE RATES	§	ADMINISTRATIVE HEARINGS

CITY OF EL PASO’S MOTION TO REQUEST MEDIATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Comes now the City of El Paso (“City”), intervenor in the above styled and numbered docket, pursuant to §155.351 SOAH Rules of Procedure¹ and requests that the Administrative Law Judges refer the case for mediation, and as grounds respectfully shows as follows:

1. Procedural History.

El Paso Electric Company (“EPE” or “Company”) filed this case with the Public Utility Commission (“PUC” or “Commission”) on June 1, 2021. The Commission referred the case to the State Office of Administrative Hearings on June 10, 2021. The procedural schedule was set in SOAH Order No. 2 which noted that the effective date was reset to May 31, 2022 by agreement.² The hearing in this cause commenced on January 10, 2022, and testimony continued through January 13, 2022. On January 19, 2022, the ALJ’s abated the hearing to allow the parties to engage in further settlement discussions.³ Since January 19, 2022 the parties have been meeting daily to attempt to arrive at a settlement. Although the parties continue to meet, no settlement has yet been reached.

2. SOAH Mediation Rule

SOAH Rule §155.351 provides that a request for mediation be based on a good faith belief that the parties may be able to resolve all or a portion of their dispute in mediation.⁴ Counsel for the

¹ 1 TEX. ADMIN. CODE §155.351 (State Office of Administrative Hearings)

² SOAH Order No. 2, Paragraph IV, page 2, Item No. 34

³ SOAH Order No. 10. Item No. 550

⁴ 1 TEX. ADMIN CODE §155.351 a) (2)

City of El Paso believes in good faith that the with the assistance of a mediator, the parties may be able to reach a settlement of all issues in the case. Without disclosing any details of the discussions, there are a small number of issues which have thus far not been resolved by discussions among the parties by themselves, which could be closed in a mediation. If the parties are not successful in reaching a settlement, the remaining process of the case will involve, completion of the rate design phase of the hearing which involves the presentation of 23 testimonies, post hearing briefs and reply briefs, issuance of a proposal for decision, exceptions and replies to exceptions prior to presentation of the case to the Commissioners. Given the number of parties in the case, considerable time an expense to all parties can be saved if a settlement is reached. In addition, given the number of issues left to be resolved before a settlement may be reached, the additional time and expense for a mediation is not significant in the overall context of this case. A mediation could assist in the process, provide the certainty of a settlement to the parties and save resources. Since the discovery has ended, all, direct testimony, cross-rebuttal testimony and rebuttal testimony has been filed, and the hearing commenced, the case is ripe for mediation. This request is not sought either for delay or discovery.⁵

3. Positions of the Parties

Prior to the filing of this motion, Counsel for the City of El Paso conferred with the Applicant, PUC Staff and other intervenors.

The following parties indicated no objection to the motion:

El Paso Electric Company
Texas Industrial Energy Consumers
Freeport McMoRan
Office of Public Utility Counsel
Department of Defense and Federal Executive Agencies
Texas Cotton Ginners Association
International Brotherhood of Electrical Workers, Local 960
Vinton Steel
Walmart
W. Silver, Inc.

The following parties indicated objection to the motion:
Public Utility Commission Staff)

Counsel has not received a response from

⁵ 1 TEX. ADMIN. CODE §155.351(a)(4)

4. Relief Requested

SOAH rule §155.351 provides some options for the presiding Administrative Law Judge. It also provides for referral to mediation without agreement of all parties.⁶

The City requests:

- a) The Presiding Judge or Judges refer the case to Mediation by referral to the SOAH ADR Team Leader for assignment of a mediator.
- b) In the alternative refer the case to the SOAH ADR Team leader for the assignment of a mediation evaluator, and act upon the written recommendation of the mediation evaluator.
- c) Continue the abatement of the case during the course of a mediation or evaluation for mediation.

The City prays for such other and further relief to which it may be entitled.

Dated: February 7, 2022

Respectfully submitted,

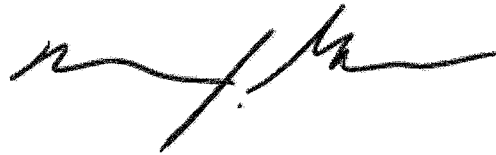
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⁶ 1 TEX. ADMIN. CODE §155.351(a)(6)

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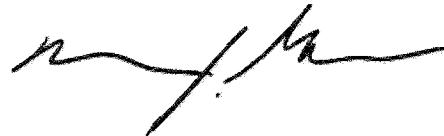
Attorneys for the City of El Paso



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 February 7, 2022.



Norman J. Gordon