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SOAH DOCKET NO. 473-21-2606
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APPLICATION OF EL PASO ELECTRIC COMPANY TO CHANGE RATES	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**COMMISSION STAFF’S RESPONSE TO CITY OF EL PASO’S REQUEST FOR
MEDIATION**

The Staff (Staff) of the Public Utility Commission of Texas (Commission) files this response to the City of El Paso’s (CEP) request for mediation filed on February 7, 2022 (Request for Meditation). Under 16 Texas Administrative Code § 22.78 a responsive pleading must be made within five working days after receipt of the pleading to which the response is made. Therefore, this pleading is timely filed.

I. RESPONSE TO CITY OF EL PASO REQUEST FOR MEDIATION

Under 1 Texas Administrative Code (TAC) § 155.351(a)(1) a party may request mediation in writing or orally during a prehearing conference or hearing. Further, under 1 TAC § 155.351(a)(3) a party may object to a request for mediation orally or in writing. Staff makes this written objection to CEP’s request for mediation.

CEP, El Paso Electric Company (EPE) and other parties have requested mediation, presumably, based upon their belief that such mediation will facilitate the resolution of certain settlement issues that remain unresolved. However, Staff notes that this case was filed on June 1, 2021. For the last eight months, Staff has negotiated in good faith with CEP, EPE, and the other intervening parties (Intervenors) to attempt to resolve this case. During that time a settlement did not occur and at no point did any party request mediation to resolve disputes related to settlement. Instead, pursuant to the procedural schedule agreed to by all parties and adopted by the State Office of Administrative Hearings (SOAH) in Order No. 2, a hearing was commenced on January 10, 2022. Staff further notes that Intervenors, CEP, and EPE incurred over six-months of rate case expenses associated with preparation for the hearing and six days of rate-cases expenses during the actual hearing. Notably, for CEP and EPE, it is the customers who will have to foot the bill for these rate case expenses. At this point, with only two days of hearing left, CEP and EPE, who were apparently unsatisfied with how the hearing was progressing, requested that the parties abate the

proceeding to continue further settlement negotiations. This request was granted over the objection of Staff, even though Staff is unaware of any previous rate case hearing being abated during the middle of a hearing. Staff's position at that time was that, if eight months of good faith negotiations had not resulted in resolution, the more judicially efficient path is to finish the hearing and allow this case to be resolved pursuant to the previously agreed upon procedural schedule. Nevertheless, Staff, EPE, CPE, and the Intervenor have engaged in three additional weeks of good faith settlement negotiations without reasonable compromise being struck on any of the remaining issues needed to settle the case. In fact, it seems the parties are not closer to a final settlement today than they were a month ago when the hearing began. That is three additional weeks of EPE and CEP rate case expenses being charged to the rate payers with little to nothing to show for it. Despite this lack of progress and the fact that the hearing on the merits could be concluded in two days' time, EPE and CEP are now asking for mediation, over eight months after the filing of the rate proceeding.

Under 1 TAC 155.351(a)(2) a request for mediation must be based upon a good faith belief that the parties may be able to resolve all or a portion of their disputes in mediation. Staff does not believe that mediation will resolve the disputes between the parties on the remaining issues. The only entities benefitting from this unnecessary and protracted delay are the private law firms engaged to represent EPE and CEP that continue to incur rate case expenses that will be passed on to the ratepayers for every day that passes without resolution of this docket. Staff is concerned that this continued acquiescence to the desire to delay the resolution of this case will only increase rate case expenses and therefore increase costs to the rate payers.

Next, under 1 TAC 155.351(a)(4) mediation may not be used as a delay or discovery tactic. Staff believes that mediation would only serve to delay this proceeding and increase costs to rate payers, without any meaningful resolution of the issues yet to be resolved. Further, all parties to this docket are highly sophisticated and many have been practicing in the utility regulation industry for multiple decades. As these sophisticated parties have not been able to resolve the remaining issues after seven months of this proceeding, it is unlikely that a mediator, no matter how experienced, will be able to facilitate a resolution of the remaining issues in a timely manner. Instead, this will only delay the proceeding and harm the rate payers. However, to resolve these concerns, Staff would withdraw its objection to mediation if, in the event that mediation was unsuccessful at resolving all of the remaining issues in this case in the next 30 days, both CEP and

EPE agree to: (1) forego any rate case expenses associated with preparation or attendance at said mediation, and (2) join Staff in requesting that the hearing be reconvened immediately.

Lastly, to the extent that parties attempt to paint Staff as obstructionist for not supporting these delays, Staff notes that, of the last 11 electric base rate proceedings before the Commission, Staff has been able to reach settlement in all but one of those proceedings¹ and has a history of being generally supportive to alternative dispute resolution. Further, Staff has agreed to settle all four of EPE's previous base rate proceedings going back to 2009.² Staff has no intent to obstruct mutual agreement and will always attempt to settle proceedings in which settlement is in the public interest. However, not all cases lend themselves to settlement and not all settlement proposals are in the public interest. This is one of those cases. As outlined in the joint report regarding status of settlement negotiations filed by EPE on February 2, 2022, Staff has worked diligently with the other parties toward a goal of reaching potential settlement of the case, has exchanged multiple cost allocation and rate design proposals, and has participated in multiple video conference calls to discuss these proposals. These efforts have been unsuccessful, and there is not a likelihood further discussion or mediation will resolve the remaining issues, and it's time to stop throwing good money after bad. Extending a proceeding long after a hearing to continue unfruitful settlement negotiations is not in the public interest and is costing the rate payers thousands of dollars in billable hours to private law firms while providing no benefit to the rate payers.

Therefore, for the reasons outlined above, Staff objects to the Request for Mediation because it is not in the public interest and urges the ALJ to un-abate this proceeding and allow the hearing to come to completion.

¹ *Application of Southwest Public Service Company for Authority to Change Rates*, Docket No. 51802; *Application of Sharyland Utilities, L.L.C for Authority to Change Rates*, Docket No. 51611; *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415; *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 49831; *Application of AEP Texas Inc. for Authority to Change Rates*, Docket No. 49494; *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 49421; *Application of Texas-New Mexico Power Company for Authority to Change Rates*, Docket No. 48401; *Entergy Texas Inc's Statement of Intent and Application for Authority to Change Rates*, Docket No. 48371; *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 47527; *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 46957; *Application of El Paso Electric Company to Change Rates*, Docket No. 46831.

² Docket No. 46831; *Application of El Paso Electric Company to Change Rates*, Docket No. 44941; *Application of El Paso Electric Company to Change Rates*, Docket No. 40094; *Application of El Paso Electric Company to Change Rates*, Docket No. 37690.

II. CONCLUSION

Staff respectfully objects to the Request for Mediation for the reasons outlined above.

Dated: February 7, 2022

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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Division Director

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on February 7, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish
Robert Dakota Parish