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SOAH DOCKET NO. 473-22-1801
PUC DOCKET NO. 53034

APPLICATION OF SOUTHWESTERN	§	BEFORE THE STATE OFFICE
PUBLIC SERVICE COMPANY FOR	§	
AUTHORITY TO RECONCILE FUEL	§	OF
AND PURCHASED POWER COSTS	§	
FOR THE PERIOD JULY 1, 2018	§	
THROUGH JUNE 30, 2021	§	ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 2
MEMORIALIZING PREHEARING CONFERENCE; ADOPTING AGREED
PROCEDURAL SCHEDULE; SETTING HEARING ON THE MERITS; PREHEARING
PROCEDURES; AND RULING ON AXM'S AND OPUC'S MOTIONS TO COMPEL

I. MEMORIALIZING PREHEARING CONFERENCE AND
ADOPTING AGREED PROCEDURAL SCHEDULE

A prehearing conference convened on March 21, 2022, and the following parties appeared and were represented by counsel: Southwestern Public Service Company (SPS); Alliance of Xcel Municipalities (AXM); Texas Industrial Energy Consumers (TIEC); the Office of Public Utility Counsel (OPUC), and staff (Staff) of the Public Utility Commission of Texas (Commission). During the prehearing conference, the parties discussed the two competing procedural schedules that were proposed by SPS and Staff and by AXM, TIEC, and OPUC (collectively, the Intervenor). The main dispute between the parties concerned whether the time period between the deadlines for the Intervenor's direct testimony and Staff's direct testimony should be one week or two weeks, and the parties requested a ruling on the matter. After hearing the parties' arguments, Administrative Law Judge (ALJ) Meaghan Bailey concluded the time period between the Intervenor's and Staff's direct testimony deadlines should be one week. Following that ruling, the parties agreed to and proposed the procedural schedule detailed below.

Accordingly, the following procedural schedule, with modifications to address pre-filed exhibit deadlines, is **ADOPTED** and shall govern in this proceeding unless otherwise ordered by the ALJs:

Event	Date or Deadline
Deadline for Intervention	Friday, April 8, 2022

Objections to SPS's Direct Testimony	Friday, April 8, 2022
Replies to Objections to SPS's Direct Testimony	Friday, April 29, 2022
Deadline for Discovery on SPS's Direct Testimony	Friday, June 3, 2022* (Each party may serve an additional 5 questions with no subparts between June 4, 2022, and July 6, 2022)
Intervenors' Direct Testimony	Wednesday, July 6, 2022
Objections to Intervenors' Direct Testimony	Wednesday, July 13, 2022
Staff's Direct Testimony	Wednesday, July 13, 2022
Deadline for Replies to Objections to Intervenors' Direct Testimony	Wednesday, July 20, 2022
Deadline for Objections to Staff's Direct Testimony	Wednesday, July 20, 2022
Deadline for Replies to Objections to Staff's Direct Testimony	Wednesday, July 27, 2022
Deadline for Discovery on Intervenors' Direct Testimony	Wednesday, August 3, 2022
Staff's and Intervenors' Cross-Rebuttal Testimony	Friday, August 5, 2022
SPS's Rebuttal Testimony	Wednesday, August 10, 2022
Objections to Staff's and Intervenors' Cross Rebuttal Testimony	Friday, August 12, 2022
Objections to SPS's Rebuttal Testimony	Wednesday, August 17, 2022
Replies to Objections to Staff's and Intervenors' Cross-Rebuttal Testimony	Friday, August 19, 2022
Discovery Deadline for Staff's and Intervenors' Cross Rebuttal Testimony	Friday, August 19, 2022
Discovery Deadline for SPS's Rebuttal Testimony	Monday, August 22, 2022

Deadline for Depositions	Thursday, August 25, 2022
Replies to Objections to SPS Rebuttal Testimony	Friday, August 26, 2022
Deadline to Exchange and Deliver Hearing Exhibits ¹	Friday, August 26, 2022
Hearing on the Merits (3-4 days)	Tuesday, August 30, 2022
Initial Briefs	Friday, September 16, 2022
Reply Briefs, Findings of Fact & Conclusions of Law	Friday, September 30, 2022

Additionally, the parties' agreed special provisions, as outlined below, are **ADOPTED** and shall govern in this proceeding unless otherwise ordered by the ALJs:

1. Workpapers for all testimony are due in native format one working day after the testimony is filed.
2. For written discovery on Intervenor and Staff direct testimony: (1) responses will be filed within 10 calendar days of receipt of the discovery; (2) objections will be filed within four working days of receipt of the discovery; (3) motions to compel will be filed within four working days of the objections; and (4) responses to motions to compel will be filed three working days from receipt of the motion to compel.
3. For written discovery on Intervenor and Staff cross-rebuttal testimony and SPS rebuttal testimony: (1) responses will be filed within five working days of receipt of the discovery (or no later than 3 p.m. on the day before the witness is scheduled to take the stand, whichever is earlier); (2) objections will be filed within four working days of the receipt of discovery (or at the hearing, whichever is earlier); (3) motions to compel will be filed within four working days of receipt of the objections; and (4) responses to motions to compel will be filed within three working days.
4. Discovery received after 3 p.m. will be deemed to have been received the following business day.
5. Drafts of testimony and emails that include drafts of testimony as attachments are not discoverable.
6. Parties will provide their written discovery requests in Word format.

¹ Instructions for delivering and exchanging hearing exhibits are detailed below.

II. SETTING HEARING ON THE MERITS

It is **ORDERED** that the hearing will be held **August 30, 2022, at 9:00 a.m. via Zoom**. The hearing is expected to last four days and will begin at 9:00 a.m. each day. The parties may access the videoconference hearing by going to <https://soah-texas.zoomgov.com/> and entering the following meeting ID and passcode:

Meeting ID: 161 870 2306
Passcode: SPS1801

Or by calling **(669) 254-5252** and entering the following meeting ID and passcode.

Meeting ID: 161 870 2306
Passcode: 0400605

If any party objects to holding the hearing by Zoom, that party may file an objection **no later than July 1, 2022**, showing good cause as to why the use of remote technologies in this proceeding is not feasible or in the interest of justice.

III. PREHEARING PROCEDURES

In anticipation of the remote hearing, it is further **ORDERED** that the following prehearing instructions shall be followed:

1. Unless otherwise noted, the following must be completed by **August 26, 2022**. Failure to meet the following requirements without good cause will result in the exhibit not being admitted in evidence.
 - a. **Exhibits.** The parties **SHALL** exchange and deliver exhibits as follows:
 - i. **To the court reporter:** unless otherwise directed by the court reporter, provide a copy of all marked exhibits the party intends to offer at any time during the hearing in an electronic format (by email, USB, or CD), and a physical hard copy of marked exhibits directly to the court reporter service (the record copy);
 - ii. **To the Parties:** in an electronic format (by email, USB, or CD) to each party's attorney. Alternatively, the parties may agree to exchange exhibits through a file-sharing site. If the parties agree to exchange exhibits via an online shared site, the parties **SHALL**

provide the ALJs with access to the shared site by the August 26, 2022 deadline;² and

- iii. **To SOAH:** in an electronic format (by USB or CD) and two physical hard copies (the appeals copies) delivered to: State Office of Administrative Hearings, Docketing Room 504, 5th Floor, William P. Clements Building, 300 West 15th Street, Austin, Texas 78701.
- b. **Exhibit List.** Each party **SHALL** file a list of all exhibits that party intends to offer at the hearing (including cross-examination, impeachment, and rebuttal).
- c. **Witnesses.** The parties **SHALL**:
 - i. file a list of witnesses the party intends to call to testify during the hearing, listed in the order that the party intends to call them, as well as a list of witnesses for whom cross-examination has been waived;
 - ii. file Notice of an agreed order of presentation and cross-examination; and
 - iii. provide witnesses with all documents necessary for their effective participation in the hearing. Parties should advise witnesses that they need not attend the duration of the hearing but should be on standby to appear when called to testify using the Zoom information above.

IV. RULINGS ON MOTIONS TO COMPEL

AXM's Motion to Compel

On February 7, 2022, AXM filed a motion to compel SPS to respond to AXM's first request for information (RFI). SPS filed a response on February 15, 2022.³ For the reasons set out below, AXM's motion to compel is **DENIED**.

AXM RFI Nos. 1-2, 1-3, 1-5, 1-6, 1-10, 1-18, 1-38, and 1-46 seek information related to the costs SPS incurred as a result of Winter Storm Uri and proceedings in other jurisdictions involving those costs. SPS states that it has responded to these requests to the extent that they relate

² SPS may coordinate providing access to the ALJs by contacting the ALJs' administrative assistance Nadia Martinez at nadia.martinez@soah.texas.gov or 512-936-0724.

³ The response states that AXM had agreed to grant SPS a one-day extension to file its response. The response further states that the parties have narrowed the disputed RFIs to AXM RFI Nos. 1-2, 1-3, 1-5, 1-6, 1-10, 1-18, 1-24, 1-25, 1-38, and 1-46.

to eligible fuel and purchased power expenses. SPS objects insofar as the requests seek information regarding operation and maintenance expenses, capacity charges, demand-related costs, and capital expenditures, or proceedings that address those categories of expenses, arguing that such information is irrelevant and outside the scope of this fuel reconciliation proceeding.

AXM contends that information concerning these costs is essential to determining whether the amounts included as fuel expenses are proper and to address questions concerning the prudence of SPS's management of Winter Storm Uri. However, as SPS asserts, whether its claimed fuel expenses are eligible for recovery should be decided by reviewing those expenses themselves, and the other costs referenced above would be more appropriately addressed in a future base rate proceeding. Thus, the ALJs agree that these RFIs are not reasonably calculated to lead to the discovery of admissible evidence and decline to compel SPS to further respond.

AXM RFI Nos. 1-24 and 1-25 seek information concerning the total volume and average price of SPS's natural gas and natural gas burned purchases for each of the last three calendar years and for each month of 2021. SPS argues that these requests require SPS to extract data that has already been provided to AXM and to perform additional calculations and analysis in a way that cannot be easily performed. SPS states that answering these RFIs would require at least 288 employee hours and that there is only a single employee employed by Xcel Energy Services (XES), SPS's affiliated service company, capable of running the database queries necessary to answer these requests. SPS further states that this sole employee is responsible for operating the gas management system for all of the utilities owned by XES, including SPS, and therefore requiring him to exert hundreds of hours running the necessary queries to answer AXM's RFIs would interfere with his duties and responsibilities and be unduly burdensome.

AXM argues that this assertion is based only on conclusory statements and that the amount in controversy and the issues at stake in this proceeding outweigh any burden on SPS. But AXM does not adequately demonstrate the specific connection between the information sought and the importance of the issues and amount in controversy here. In its initial objections to these RFIs, SPS stated that "it would take significant resources and more than a month of employee time to

gather the information.” This explanation, along with the more detailed description of the effort needed to answer these RFIs in SPS’s response to the motion to compel, is more than conclusory and sufficient to support its claim of undue burden. Given this and SPS’s representation that the information sought may be obtained from data already provided to AXM, the ALJs decline to compel SPS to respond to RFI Nos. 1-24 and 1-25.

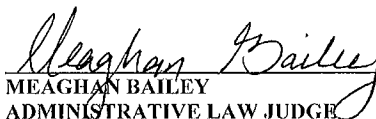
OPUC’s Motion to Compel

On March 1, 2022, OPUC filed a motion to compel SPS to respond to OPUC’s RFI Nos. 2-7 and 2-10. On March 3, 2022, SPS provided the requested information⁴ and, on March 8, 2022, filed a response to the motion to compel, explaining the basis for its objections. Moreover, on March 14, 2022, SPS withdrew its objection to OPUC RFI No. 2-10. Because SPS has already responded to the disputed RFIs and SPS’s objections to RFI No. 2-10 were withdrawn, OPUC’s motion is **DENIED** as moot.

SIGNED March 29, 2022.



DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



MEAGHAN BAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

⁴ See Southwestern Public Service Company’s Response to Office of Public Utility Counsel’s Second Request for Information Question Nos. 2-1 through 2-20 at RFI Nos. 2-7 and 2-10 (Mar. 3, 2022).