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Filing Date - 2023-09-01 01:34:16 PM

Control Number - 53267

Item Number - 50

**SOAH DOCKET NO. 473-22-09196
PUC DOCKET NO. 53267**

APPLICATION OF AEP TEXAS INC.	§	BEFORE THE STATE OFFICE
FOR APPROVAL OF A WHOLESALE	§	
DISTRIBUTION SERVICE	§	OF
DISTRIBUTED GENERATION	§	
ENERGY STORAGE TARIFF	§	ADMINISTRATIVE HEARINGS

**HUNT ENERGY NETWORK, L.L.C. AND BROAD REACH POWER LLC’S
RESPONSE IN OPPOSITION TO AEP TEXAS’S MOTION TO LIFT ABATEMENT,
SCHEDULE A PREHEARING CONFERENCE,
AND REESTABLISH A PROCEDURAL SCHEDULE**

The parties agreed to abate this proceeding in light of an open rulemaking that will address the cost recovery issues presented by AEP Texas Inc.’s (“AEP Texas”) application for approval of a new Wholesale Distribution Service Distributed Generation Energy Storage Tariff. The reasons for the abatement have not changed, and this proceeding should remain abated until the broader policy issues are addressed by the Public Utility Commission of Texas (“Commission”). In the alternative, Hunt Energy Network, L.L.C. (“HEN”) and Broad Reach Power LLC (“Broad Reach”) request that the Administrative Law Judges (“ALJs”) either certify an issue to the Commission or request a supplemental Preliminary Order to provide policy guidance for resolving this docket.

1. This Docket Should Remain Abated Until the Commission Concludes Its Rulemaking Process on Energy Storage Resource Distribution Cost Issues.

As noted in the parties’ joint motion to abate,¹ in October 2022 the Commission opened Project No. 54224 to explicitly consider cost recovery for service to distributed energy resources (“DERs”), which include battery energy storage resources (“ESRs”) like HEN and Broad Reach.² Project No. 54224 is a companion project to Project No. 54233, which involves the technical requirements and interconnection processes for DERs.³ As justification to lift the abatement in this case, AEP Texas points to Commission Staff’s March 31, 2023 plan for pending projects related to DERs filed in Project No. 54224, which suggests the cost recovery rulemaking be

¹ Agreed Motion to Abate Proceeding at 1 (Oct. 27, 2022).

² See *Cost Recovery for Service to Distributed Energy Resources (DERs)*, Project No. 54224 (pending).

³ See *Technical Requirements and Interconnection Processes for Distributed Energy Resources (DERs)*, Project No. 54233 (pending).

addressed after the technical requirements and interconnection processes rulemaking is completed.⁴ Commission Staff plans to file proposed rules regarding technical requirements and interconnection processes in two months (November 2023), and a proposed rule on DER cost recovery issues will follow.⁵ This two-step approach is logical because the two projects are inter-related in that decisions in the first could impact the second.⁶

Commission Staff is undoubtedly moving as swiftly as possible through its many pending rulemakings. That the DER cost recovery rulemaking is delayed slightly longer than AEP Texas may have initially anticipated is not a reason to unabate this proceeding. Nothing about the substance of why this proceeding was abated has changed – the cost recovery issues arising out of AEP Texas’s application will still be addressed in Project No. 54224 and will apply to AEP Texas and other utilities in ERCOT.

Under AEP Texas’s proposed procedural schedule a final order is likely to be issued no earlier than late May of 2024.⁷ It is very possible that by that time, a proposed DER cost recovery rule will be published and available for comment. Unless AEP Texas’s tariff perfectly aligns with that new rule, AEP Texas will have to update its new tariff immediately.⁸ If this case moves forward now, HEN and Broad Reach will incur several hundred thousand dollars in expense to put on a full case addressing both the broad policy issues regarding imposition of distribution delivery costs on ESRs and the specific issues regarding the design of AEP Texas’s tariff. HEN and Broad Reach could incur even more costs if a different form of tariff is required by the new cost recovery rule once adopted. If no tariff is required by the new rule, then the costs incurred in this docket

⁴ AEP Texas Inc.’s Motion to Lift Abatement, Schedule a Prehearing Conference, and Reestablish a Procedural Schedule at 2 (Aug. 25, 2023); *see also* Project No. 54224, Commission Staff’s DER Plan for Pending Projects (Mar. 31, 2023).

⁵ *See* Rulemaking Calendar, Docket No. 54455 (July 28, 2023); Project No. 54224, Commission Staff’s DER Plan for Pending Projects (Mar. 31, 2023).

⁶ *See* Open Meeting Discussion on *Cost Recovery for Service to Distributed Energy Resources (DESRs)* (Project No. 54224) at 2:10 (Mar. 23, 2023) (David Smeltzer noting that interconnection-related questions are important inputs into cost recovery issues).

⁷ AEP Texas Inc.’s Motion to Lift Abatement, Schedule a Prehearing Conference, and Reestablish a Procedural Schedule at Attachment A (Aug. 25, 2023) (AEP Texas’s proposed schedule includes February 23, 2024 for filing of reply briefs. Assuming sixty days for a proposal for decision and at least five weeks for exceptions and replies to exceptions, the Commission would not consider AEP Texas’s application until the second half of May).

⁸ *See* Project No. 54224, Commission Staff’s DER Plan for Pending Projects (Mar. 31, 2023) (Commission Staff noting cost recovery issues contemplated by Project No. 54224 will require transmission and distribution utilities’ tariff updates).

will have been wasted. Similar costs will be incurred by the other parties as well. Proceeding with AEP Texas's application now would therefore be an inefficient use of resources for the parties, the Commission, and the ALJs given that the Commission plans to address the broader policy issues in the near future.

Furthermore, as recently as the March 9, 2023 Open Meeting during the discussion of the Oncor Electric Delivery Company LLC ("Oncor") rate case in Docket No. 53601, the Commission expressed a preference for addressing these specific policy issues relating to whether and how wholesale distribution tariffs should apply to ESRs in a rulemaking rather than on a case by case basis.⁹ Moving forward with this proceeding now would be contrary to the Commission's expressed desire to address these issues for all utilities in a rulemaking.

Finally and importantly, AEP Texas is not harmed by continued abatement because interim rates were already established in this proceeding.¹⁰ AEP Texas's motion to lift abatement should be denied, and the case should continue abated.

2. In the Alternative, Intervenors Request a Supplemental Preliminary Order or Certified Issue to the Commission.

If the ALJs decide to unabate this proceeding, then additional policy guidance should be requested from the Commission in either a Supplemental Preliminary Order or a Certified Issue. The Commission has made clear, both in Project No. 54224 and in discussions in the Oncor rate case noted above, it intends to consider the broader policy issues surrounding whether and how ESRs should be required to pay for wholesale transmission service provided at distribution voltage. Project No. 54224 was opened for precisely this purpose. If these important policy issues are to instead be decided in this proceeding, effectively setting precedent for the treatment of other utilities, then the Commission should be asked to provide policy guidance in this proceeding on whether wholesale distribution tariffs should apply to ESRs and if so, what costs should be recovered. Parties to this proceeding should be permitted to brief these policy issues before the

⁹ See Open Meeting Discussion on *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates* (Docket No. 53601) at 3:16 – 3:29 (Mar. 9, 2023) (Chairman Lake, Commissioner McAdams, and Commissioner Cobos expressing preference to keep status quo in place for distributed energy storage resources and continue with all alacrity in resolving interconnection and cost recovery issues in rulemakings already underway, rather than addressing piecemeal in individual proceedings).

¹⁰ Commission Order No. 5 (Mar. 30, 2022).

Commission. A supplemental Preliminary Order or Certified Issue would permit a litigated process to move forward now that conserves all parties' resources.

3. If the Proceeding Is Unabated, AEP Texas's Proposed Procedural Schedule Should not be Adopted.

In the event the ALJs are inclined to lift the abatement, it would be premature to approve AEP Texas's proposed procedural schedule. If this case is unabated, HEN and Broad Reach request that the ALJs not adopt AEP Texas's proposed procedural schedule. The proposed schedule requires intervenors to file direct testimony in a little over a month.¹¹ Given the posture of this case when it was abated, HEN and Broad Reach need additional time to conduct discovery, engage consultants and experts, and develop direct testimony. Approximately one month is certainly insufficient for HEN and Broad Reach to prepare their direct case. The ALJs should allow the parties to negotiate a mutually agreeable procedural schedule if the abatement is lifted.

Respectfully Submitted,

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¹¹ AEP Texas Inc.'s Motion to Lift Abatement, Schedule a Prehearing Conference, and Reestablish a Procedural Schedule at Attachment A (Aug. 25, 2023) (proposing October 9, 2023 as the deadline for intervenors' direct testimony).

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading has been forwarded to all parties of record via electronic mail on September 1, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Jeffrey B. Stuart _____
Jeffrey B. Stuart