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Filing Date - 2023-09-06 03:02:31 PM

Control Number - 53267

Item Number - 54

**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 TARIFF	§	
	§	ADMINISTRATIVE HEARINGS

**AEP TEXAS’ REPLY TO
HEN/BROAD REACH AND SMT’S OPPOSITION TO LIFTING ABATEMENT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

AEP Texas Inc. (“AEP Texas”) files this reply to 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 (“HEN/Broad Reach Response”) and SMT McAllen LLC’s Response to AEP Texas Inc.’s Motion to Lift Abatement, Schedule a Prehearing Conference, and Reestablish a Procedural Schedule (“SMT Response”) (collectively “the Responses”). The Responses make questionable assertions and omit important factors that merit this reply.

Earlier today AEP Texas filed a revised proposed procedural schedule for this case that has been agreed upon with Commission Staff and delays the Company’s previously proposed schedule by approximately three weeks to accommodate conflicts.

I. OVERVIEW OF REPLY

The Responses filed by HEN/Broad Reach and SMT make questionable assertions and omit key factors that support lifting the abatement and reestablishing the procedural schedule in this case. For example:

- 1) both the motion to abate and the order granting abatement recognize that the abatement may be lifted on motion of any party;
- 2) Commission enactment of a rule addressing cost recovery from distributed energy storage resources (“DESRs”) is neither certain nor imminent;
- 3) the Commission has previously rejected DESR provider arguments and moved ahead to set DESR rates for both San Antonio City Public Service (“CPS”) and Oncor;

- 4) under Order No. 5, rates established in this case will relate back to May 24, 2022, but AEP Texas is not currently authorized to charge interim rates and is providing service to several DESR facilities without receiving any payment; and
- 5) HEN/Broad Reach and SMT will have the opportunity to appeal an order lifting the abatement and to urge the Commission to delay this proceeding, so a certified issue or supplemental preliminary order is unnecessary and unwarranted.

II. REPLY TO DESR PROVIDERS

A. The abatement may be lifted on motion of any party.

The motion to abate this proceeding contains the parties' agreement that the abatement may be lifted on motion of any party that concludes this proceeding should move ahead to address AEP Texas' application.¹ The order granting the abatement incorporates that agreement.² Although the HEN/Broad Reach Response does not address the agreement, the SMT Response suggests that SMT may oppose lifting the abatement despite its previous agreement in the motion to abate. AEP Texas would not have agreed to the motion to abate on the premise that the abatement could last indefinitely. The agreement that any party could lift the abatement was an integral part of that motion and should be upheld.

B. Enactment of a DESR cost recovery rule is neither certain nor imminent.

Contrary to the Responses, a rule addressing cost recovery from DESRs is neither certain nor imminent. The Commission maintains a rulemaking calendar, and the DESR cost recovery rulemaking is the only project on that calendar listed as "TBD" rather than having a schedule or at least being listed as "scoping." See Attachment A.³ As the HEN/Broad Reach Response recognizes,⁴ Staff's plan is that any DESR cost recovery rulemaking will follow the predecessor DESR interconnection requirements rulemaking.⁵ Although the rulemaking schedule shows a November 2023 date for the predecessor project, it does not indicate that a proposed rule will be filed at that time or that a cost recovery rulemaking will follow. As a result, there is no assurance

¹ Docket No. 53267, Agreed Motion to Abate Proceeding at 1 (Oct. 27, 2022).

² Docket No. 53267, SOAI Order No. 3 - Granting Motion to Abate at 1 (Oct. 28, 2022).

³ *Rulemaking Calendar*, Project No. 54455, PUC Rulemaking Calendar August 03, 2023 (July 28, 2023).

⁴ See HEN/Broad Reach Response at 1-2.

⁵ See *Review of Distributed Energy Resources*, Project No. 51603, Commission Staff's DESR Plan for Pending Projects at 2-3, 5 (March 31, 2023).

that a DESR cost recovery rule will be adopted or even proposed any time soon, if at all. This case should not be abated indefinitely because it is uncertain if or when the Commission will enact a rule addressing DESR cost recovery.

When this case was abated last October, it appeared that the Commission was ready to move forward with a rulemaking to address cost recovery from DESRs. It is now more than ten months later and no DESR cost recovery rule has been proposed or is even on the horizon. Instead, we know that any cost recovery rule will follow a predecessor rule on DESR interconnection technical requirements. That predecessor rulemaking also does not have a start or completion date other than an unclear reference to November 2023. This case should not continue to be abated for an uncertain DESR cost recovery rule that may or may not happen at some unknown date in the future.

C. The Commission has recently set rates for service to DESRs.

The Responses omit the fact that the Commission has moved ahead with setting rates for DESRs for both San Antonio City Public Service (“CPS”)⁶ and in the recent Oncor rate case.⁷ Although the HEN/Broad Reach Response cites the Oncor case for the proposition that this case should be delayed for a possible rulemaking,⁸ in fact the Commission set a rate for DESRs in that case.⁹ In doing so, it declined to adopt HEN’s position regarding rates for distribution-level batteries.¹⁰

In fact, rate filings for DESRs are required by Commission rule. Commission Rule 16 TAC § 25.191(d)(2)(C) requires a distribution service provider to file a tariff with the Commission for wholesale service at distribution level voltage if the distribution service provider receives a

⁶ *Application of the City of San Antonio, Acting by and Through the City Public Service Board, to Amend its Wholesale Transmission Customer Primary Distribution Voltage Service Tariff*, Docket No. 51409, Order (Sept. 15, 2022).

⁷ *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 53601, Order on Rehearing (June 30, 2023).

⁸ See HEN/Broad Reach Response at 3.

⁹ Docket No. 53601, Order on Rehearing at 50 (Findings of Fact 290-294) (June 30, 2023).

¹⁰ See e.g., Docket No. 53601, HEN’s Motion for Rehearing (May 1, 2023); HEN’s Second Motion for Rehearing (July 25, 2023).

valid request for such service. AEP Texas filed this case pursuant to that rule,¹¹ has received several requests for service from DESRs, and is currently serving several DESR facilities without receiving payment for that service.

D. AEP Texas' proposed DESR rate has a "relate back" provision, not interim rates.

AEP Texas does not have interim rates in effect under which DESRs are paying and the Company is collecting charges for service to those facilities; instead Order No. 5 provides that once rates are set in this proceeding they will relate back to May 24, 2022.¹² As a result, several DESR facilities are currently receiving service from AEP Texas without payment while imposing costs on the distribution system. While AEP Texas appreciates the Responses' recognition that Order No. 5's relate back provision offers the Company some protection, delaying establishment of a rate indefinitely while accruing a potentially-large relate back amount is not a reasonable solution. For the relate back provision to have any meaning, this case needs to move forward to set a rate that will relate back.

E. HEN/Broad Reach's suggested supplemental preliminary order or certified issue is unnecessary and unwarranted; the DESR providers may re-urge their delay arguments to the Commission by appealing an order lifting the abatement.

HEN/Broad Reach's suggestion that the ALJs request a supplemental preliminary order or certify an issue to the Commission should be rejected. The Commission recently declined to adopt HEN's rate arguments in the Oncor rate case. It has also already issued a preliminary order in this case that, among other things, identifies as an "issue not to be addressed" whether a transmission and distribution provider is allowed to charge a DESR for service.¹³ If HEN/Broad Reach or SMT want to re-urge their delay arguments to the Commission, they can appeal an ALJ order lifting the abatement and reestablishing the procedural schedule. Further delay of this proceeding to pursue a supplemental preliminary order or certified issue is unnecessary and unwarranted.

¹¹ See AEP Texas' Application at 1.

¹² Docket No. 53627, Order No. 5 at 1 (March 30, 2022). Order No. 5 states: "The ALJ grants AEP Texas's request for temporary rates, with modification. The ALJ establishes May 24, 2022, as the effective date for interim rates, subject to true-up upon final order of the Commission. Once the Commission issues a final order in this docket, AEP Texas will be able to surcharge customers for the period between May 24, 2022, the relate back date, and the date of the final order."

¹³ Docket No. 53267, Preliminary Order at 4 (Aug. 25, 2022).

III. CONCLUSION

AEP Texas respectfully renews its request that the ALJs issue an order lifting the abatement in this proceeding, scheduling a prehearing conference if necessary, and reestablishing the procedural schedule based on the agreed schedule of AEP Texas and Commission Staff filed earlier today in this proceeding.

Dated: September 6, 2023

Respectfully submitted,

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By: Kerry McGrath

ATTORNEYS FOR AEP TEXAS INC.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on all parties of record on this 6th day of September, 2023 via email in accordance with the Commission's order in Docket No. 50664 suspending 16 TAC § 22.74.

/s/ Kerry McGrath

Kerry McGrath



Filing Receipt

Filing Date - 2023-07-28 05:13:38 PM

Control Number - 54455

Item Number - 17

Public Utility Commission of Texas

Memorandum

TO: Interested Persons

FROM: David Smeltzer, Director, Rules and Projects
Rama S. Rastogi, Project Manager, Rules and Projects

DATE: July 28, 2023

RE: **Project No. 54455, *Rulemaking Calendar***

Attached, please find Commission Staff's updated rulemaking calendar.

This calendar does not capture the full breadth of Staff's rulemaking and other legislative implementation activities. Staff is currently engaged in scoping and scheduling a number of rulemaking projects that are not yet reflected on this calendar. The dates provided are Staff's current projections and are subject to change at the discretion of Staff or direction of the Commission. These adjustments will be reflected on future iterations of this calendar document.

PUC Rulemaking Calendar - August 03, 2023 Open Meeting					
Project No.	Description	Key Dates- 2023			
		August-September			
			3-Aug	24-Aug	14-Sep
55250	Transmission and Distribution System Resiliency Plans				PFP
55153	Review of §22.52	Written comments due August 7, 2023		PFA	
54589	Rule Review of Chapter 26			PFP	
54932	Review of §24.101, Water Rate Appeals			PFA	
53924	Water and Sewer Utility Rates after Acquisition			PFP	
53404	Power Restoration Facilities and Energy Storage Resources for Reliability			PFP	
52059	Review of Commission's Filing Requirements	DD			
55182	Circuit Segmentation Study	Preparing Draft Order for Comment			Final Order
TBD	Renewal Energy Credit Program			PFP	
54585	Emergency Pricing Program	Reply to Questions due August 15, 2023			PFP
Schedule To Be Determined					
54233	Technical Requirements and Interconnection Processes for Distributed Energy Resources (DERs)	November, 2023			
55249	Regional Transmission Reliability Plans	Scoping			
54999	Texas Energy Fund	Scoping			
54584	Reliability Standard for the ERCOT Market	Ongoing			
52301	ERCOT Governance and Related Issues	Scoping			
51888	Critical Load Standards and Processes	Scoping			
53981	Review of Wholesale Water and Sewer Rate Appeals	Scoping			
54224	Cost Recovery for Service to Distributed Energy Resources (DERs)	TBD			

Key

PFP - Proposal for Publication

PFA - Proposal for Adoption

DD - Discussion Draft

E- Expires under Texas Government Code - Administrative Procedure and Practice

PN - Preliminary Notice for a Rule Review

Note- Rules calendar is created by Commission Staff for discussion purposes. Listed dates are projections and subject to change.