



## Filing Receipt

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**SOAH DOCKET NO. 473-22-04394  
PUC DOCKET NO. 53719**

<b>APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES</b>	<b>§ § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**COMMISSION STAFF’S RESPONSE TO APPEAL OF SOAH ORDER NO. 4**

**I. INTRODUCTION**

The Staff (Staff) of the Public Utility Commission of Texas (Texas) recommends that Southwestern Public Service Company’s (SPS) appeal be denied, because it has not shown that it has a justiciable interest in the proceeding and, if allowed to intervene, it would be able to argue on any of the issues in the docket. In addition, allowing SPS to intervene on the basis that the precedent set in this docket could affect other dockets not involving Entergy Texas, Inc. (ETI) would set a very low bar for interventions such that it could precipitate large increases in the number of intervenors in dockets who have no direct interest in the dockets.

**II. BACKGROUND**

On July 1, 2022, Entergy Texas, Inc. (ETI) filed its application for approval to change base rates with the Commission. On August 18, 2022, SPS filed a motion for leave to intervene. On September 6, the administrative law judge (ALJ) for the State Office of Administrative Hearings (SOAH) filed SOAH Order No. 4, denying SPS’s motion to intervene. On September 16, 2022, SPS filed an appeal of SOAH Order No. 4. Therefore, pursuant to 16 Texas Administrative Code (TAC) § 22.123(a)(4), this pleading is timely filed.

**III. DISCUSSION**

SPS alleges that it “has a clear justiciable interest in the resolution of issues 68 and 69 in the Preliminary Order since the Commission’s decision on those issues in this matter may be considered binding precedent affecting SPS in its own future cases before the Commission.” Staff recommends that SPS has not sufficiently demonstrated that it has a justiciable interest in this proceeding. Importantly, “Commission precedent is routinely established in cases that affect other similarly established utilities [and] [s]uch commonality—essentially being affected by

precedent—fails to reach the level of justiciable interest.”<sup>1</sup> The fact that the Commission may set precedent on these issues and that SPS is similarly situated to ETI as a vertically integrated utility, does not equate to SPS having a justiciable interest on the issues. Additionally, the Commission has previously denied intervention where the potential effect of the Commission’s decisions in the proceeding upon the movant is remote.<sup>2</sup> Under SPS’s reasoning, not only could a utility intervene in any other utility’s proceeding if that proceeding could affect the intervening utility’s future proceedings, but also a customer of the intervening utility or any other entity that could have a justiciable interest in the intervening utility’s future proceedings should be allowed to intervene, thereby opening the floodgates to intervention in Commission proceedings.

Further, if allowed to intervene, SPS would be allowed to make arguments on all issues in the proceeding, even on issues outside of the ones in which SPS claims it has a justiciable interest.<sup>3</sup> Instead of intervention, SPS can file amicus briefs in the docket if it wants the Commission to consider its opinions in this proceeding.<sup>4</sup>

#### IV. CONCLUSION

For the reasons stated above, Staff respectfully recommends that SPS’s appeal be denied.

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<sup>1</sup> *Application of Cross Texas Transmission, LLC to Establish Initial Rates and Tariffs*, Docket No. 40604, SOAH Order No. 5 Granting Motion for Service By Electronic Mail; Denying Cities Motion to Compel; and Denying Intervention at 3 (Oct. 24, 2012).

<sup>2</sup> *Application of Time Warner Cable Information Services (Texas), LLC D/B/A Time Warner Cable for Amendment to a Service Provider Certificate of Operating Authority*, Docket No. 42832, Order No. 3 Accepting Dish's Motion as Timely Filed and Denying Dish's Motion to Intervene and Modification Of Procedural Schedule at 3 (May 15, 2014) (citing to *Inquiry into the Reasonableness of the Rates, Services, and Sale of Facilities by Gulf States Utilities Company*, Docket No. 12423, Order No. 6, Order Ruling On Motion to Intervene of Pamela J. Webb at 3 (Dec. 21, 1993)).

<sup>3</sup> *City of Frisco v. Texas Water Rights Commission*, 579 S.W.2d 66, 69 (Tex.Civ.App.—Austin 1979, writ ref'd n.r.e.).

<sup>4</sup> Docket No. 40604, SOAH Order No. 5 Granting Motion for Service By Electronic Mail; Denying Cities Motion to Compel; and Denying Intervention at 3.

Dated: September 23, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
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**CERTIFICATE OF SERVICE**

I hereby certify that, unless otherwise ordered by the presiding officer, a true and correct copy of the foregoing document was transmitted by electronic mail to the parties of record on September 23, 2022 in accordance with the Order Suspending Rules issued in Docket No. 50664.

/s/ Scott Miles  
Scott Miles