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SOAH DOCKET NO. 473-22-04394

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PUBLIC UTILITY COMMISSION
CLERK

**APPLICATION OF ENTERGY TEXAS,
INC. FOR AUTHORITY TO CHANGE
RATES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER ON APPEAL OF SOAH ORDER NO. 4

This Order addresses the appeal of State Office of Administrative Hearings (SOAH) Order No. 4 by Southwestern Public Service Company (SPS) in this proceeding, which is a base-rate proceeding for Entergy Texas, Inc. In SOAH Order No. 4, the SOAH administrative law judges (ALJs) denied SPS's motion to intervene because SPS had "not established that it has a particularized justiciable interest, such that it should be conferred intervenor status in this case, a base-rate case for another electric utility."¹ SPS timely appealed SOAH Order No. 4, and the Commission grants SPS's appeal. The Commission reverses the SOAH ALJs' decision because SPS does have a justiciable interest that may be adversely affected by the outcome of this proceeding, and the Commission grants SPS's late motion to intervene filed on August 18, 2022.

I. Standing to Intervene

Under the Commission's procedural rules, a person has standing to intervene in a Commission proceeding if the person has "a justiciable interest [that] may be adversely affected by the outcome of the proceeding."² The SOAH ALJs found that SPS has no particularized justiciable interest such that it would have standing to intervene. The Commission disagrees.

As reflected in the Commission's preliminary order, this base-rate proceeding for Entergy involves issues related to Entergy, as a vertically integrated electric utility outside of the Electric Reliability Council of Texas (ERCOT) region, owning transportation electrification and charging infrastructure.³ These issues are novel in Texas, and the Commission's decision on these issues in this proceeding may affect the regulatory landscape with respect to these issues for other vertically integrated electric utilities outside the ERCOT region such as SPS. Therefore, SPS's interest in

¹ SOAH Order No. 4 at 2 (Sept. 6, 2022).

² 16 Tex. Admin. Code § 22.103(b)(2).

³ Preliminary Order at 15, Issues to be Addressed Nos. 68 and 69 (Aug. 4, 2022).

this proceeding is peculiar to the small subset of vertically integrated electric utilities outside of the ERCOT region and is distinct from an interest held by the general public.

Further, the Austin court of appeals has long held that “one’s right to appear in an agency proceeding should be liberally recognized since an agency should be apprised of diverse viewpoints in order to determine where the public interest lies and how it should be furthered.”⁴ Moreover, “[s]ince administrative proceedings are different from judicial proceedings in purpose, nature, procedural rules, evidence rules, relief available and the availability of review, it is understandable that one’s right to appear in an agency proceeding should be liberally recognized.”⁵ Especially in light of the novel issues in this proceeding, the Commission values SPS’s intervention in this proceeding to apprise the Commission of another viewpoint on vertically integrated electric utilities owning transportation electrification and charging infrastructure.

II. Conclusion

The Commission determines that SPS has standing to intervene because it has a justiciable interest that may be adversely affected by the outcome of this proceeding. Accordingly, the Commission grants SPS’s appeal of SOAH Order No. 4, overturns the SOAH ALJs’ decision in that order, and grants SPS’s late motion to intervene.

⁴ *Railroad Comm’n of Tex. v. Ennis Transportation Co., Inc.*, 695 S.W.2d 706, 710 (Tex. App.—Austin 1985) (citing to *Texas Industrial Traffic League v. Railroad Comm’n of Tex.*, 628 S.W.2d 187, 197 (Tex. App.—Austin 1982)).

⁵ 628 S.W.2d at 197.

Signed at Austin, Texas the 20th day of October 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



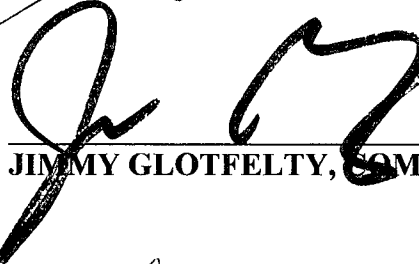
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