Filing Receipt

Received - 2022-11-16 02:13:53 PM
Control Number - 53719
ItemNumber - 329

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

APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

REBUTTAL TESTIMONY

OF

DAVID C. BATTEN

ON BEHALF OF

ENTERGY TEXAS, INC.

NOVEMBER 2022

ENTERGY TEXAS, INC.
REBUTTAL TESTIMONY OF DAVID C. BATTEN
SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

TABLE OF CONTENTS

I. INTRODUCTION AND PURPOSE

Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.

A. My name is David C. Batten. My business address is 639 Loyola Avenue, New Orleans, Louisiana 70113.

Q2. ARE YOU THE SAME DAVID C. BATTEN WHO FILED DIRECT TESTIMONY IN THIS CASE ON BEHALF OF ENTERGY TEXAS, INC. ("ETI")?

A. Yes.

Q3. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the arguments relating to ETI's pension and other post-employment benefit ("OPEB") reserve made by Office of Public Utility Counsel ("OPUC") witness Constance T. Cannady.

II. RESPONSE TO INTERVENORS

Q4. PLEASE SUMMARIZE THE POSITION MS. CANNADY HAS TAKEN IN HER DIRECT TESTIMONY WITH RESPECT TO THE TREATMENT OF ETI'S OPEB COSTS.

A. Ms. Cannady recommends reinstating ETI's negative OPEB costs for rate making, including both the negative balance recorded in ETI's reserve account and the negative operations and maintenance ("O&M") expense. She argues that

ETI's removal of negative OPEB costs (1) does not comply with PURA § 36.065, (2) is inconsistent with ETI's request regarding pension costs, and (3) is inconsistent with ETI's previous treatment of OPEB costs.

Q5. DO YOU AGREE THE REMOVAL OF THE NEGATIVE OPEB EXPENSE RECORDED IN THE OPEB RESERVE IS A VIOLATION OF PURA 36.065?

A. No. PURA 36.065(d)(2) gives the Commission authority to determine whether the amount recorded in ETI's OPEB reserve represents a surplus that must be subtracted from ETI's rate base. Based on the circumstances resulting in ETI's negative OPEB expense, it is my opinion that the Commission should determine that ETI does not have a surplus that should be subtracted from ETI's rate base at this time.

Q6. IS IT UNUSUAL TO RECORD NEGATIVE OPEB EXPENSE?

A. Yes. In general, OPEB expense represents the accretion of the expected cost of OPEB benefits to be provided to employees in the future, net of the accretion in assets contributed to a trust established to pay those benefits. Providing these benefits is a net cost to employers, and thus OPEB expense is typically positive. As described in my Direct Testimony,[1] ETI's OPEB plan is currently generating income (i.e. negative expense) because ETI made changes to its plan such that the OPEB trust assets exceed the value of the OPEB liability that ETI expects to pay.

---

[1] Direct Testimony of David C. Batten at 8.

The negative OPEB expense equals the amount by which the expected result of returns on assets held in the OPEB trusts exceeds the annual increase in the OPEB obligation.

Q7. DOES ETI HAVE ACCESS TO THE EXCESS GAINS IN THE OPEB TRUST?

A. No, it does not. 16 Texas Administrative Code ("TAC") § 25.231(b)(1)(H)(v) directs that,

> OPEB amounts included in rates shall be placed in an irrevocable external trust fund dedicated to the payment of OPEB expenses. . . . To the extent permitted by the Internal Revenue Code, establish a postretirement benefit plan that allows for current federal income tax deductions for contributions and allows earnings on the trust funds to accumulate tax free.

Accordingly, ETI has contributed all amounts collected for OPEB expenses to a trust qualifying as a Voluntary Employees' Beneficiary Association ("VEBA"), which has the relevant tax advantages on contributions and gains within the trust. The funds in the VEBA may only be used to pay for the OPEB expenses of Entergy's current and former employees. Under Internal Revenue Code 4976, the IRS will impose a 100% excise tax on any funds reverting from the VEBA for the benefit of the employer. Thus, because ETI contributed the funds collected for OPEB expense to the VEBA, ETI is now unable to withdraw or otherwise access the excess trust gains recorded as the OPEB credit.

Q8. HAS THE COMMISSION GIVEN DIRECTION ON WHAT TO DO WITH EXCESS FUNDS IN THE OPEB TRUST?

A. Yes. 16 TAC § 25.231(b)(1)(h)(vi) directs that:

> When an electric utility terminates an OPEB trust fund established pursuant to clause (v) of this subparagraph, it shall notify the commission in writing. If excess assets remain after the OPEB trust fund is terminated and all trust related liabilities are satisfied, the electric utility shall file, for commission approval, a proposed plan for the distribution of the excess assets. The electric utility shall not distribute any excess assets until the commission approves the disbursement plan.

Q9. WOULD IT BE DOUBLE COUNTING TO REDUCE RATES FOR NEGATIVE OPEB EXPENSE IN THE CURRENT PERIOD AND TO REFUND EXCESS ASSETS AT THE TERMINATION OF THE OPEB TRUST?

Yes. Excess assets existing at the termination of the OPEB trust will be made up of the excess contributions and gains on the assets held in the trust over OPEB payments made to former employees. Those excess trust gains are the same gains resulting in ETI’s negative OPEB expense. Because the accumulated balance of excess gains must be refunded at the termination of the trust, it would be double counting to also require ETI to credit customers for the recognition of those gains in current period income.

Q10. DO YOU AGREE THAT ETI'S EXCLUSION OF THE NEGATIVE OPEB EXPENSE FROM THE RESERVE IS INCONSISTENT WITH ITS INCLUSION OF PENSION COSTS IN THE RESERVE?

A. No. The inclusion of incremental pension costs and the exclusion of negative OPEB expense are both based on ETI's incremental cash deficit or surplus related to Pension and OPEB expense. The increase in pension costs from those included in the last filed rate case represents the need to contribute additional funds to the pension trust to fund the expected future payment of pension benefits. However, as previously described, ETI does not have access to the excess gains recorded on assets held in the OPEB trust and cannot withdraw those funds to refund them to customers at this time. Therefore, ETI's treatments are consistent with the Commission rules governing the establishment of an irrevocable external trust fund dedicated to the payment of OPEB expenses.

Q11. ON PAGE 26 OF HER TESTIMONY, MS. CANNADY RECOMMENDS THAT ETI'S RATE BASE REFLECT A BALANCE IN THE PENSION AND OPEB RESERVE ACCOUNTS BASED ON AN "AVERAGE BALANCE OVER THE NEXT FOUR YEARS." IS HER RECOMMENDATION CONSISTENT WITH THE COMMISSION'S COST OF SERVICE RULE?

A. No. Ms. Cannady concedes that rate base components "typically" reflect test year-end balances. In fact, pursuant to the Commission's Cost of Service rule (16 TAC § 25.231), rates are to be based upon a utility's cost of rendering service to the public during a historical test year, adjusted for known and measurable changes. A utility's invested capital used to provide service to customers (referred to as "rate base" in the Cost of Service rule) is measured at the end of the test year. The Cost of Service rule does allow post-test year adjustments to rate base, but only when very specific circumstances are met. Ms. Cannady's recommended adjustment to Test Year-end reserve account balances does not meet those requirements. Further, Ms. Cannady's recommended adjustment does not represent a known and measurable change to those reserve account balances. The balances in the reserve accounts will continue to change over time as the amount of pension and OPEB expense approved in base rates differs from the actual pension and OPEB expense incurred, as they have since the reserve was established. As noted by Ms. Cannady,[2] ETI expects that the increased volatility in pension costs relating to the lump sum distributions will continue in the near term. These settlement charges would likely result in increases to net periodic pension expense that increase the pension and OPEB reserve account, as they have done since the reserve was established. Therefore, the magnitude and direction of net changes to the pension and OPEB reserve are not known or measurable at this time.

Q12. ON PAGE 48 OF HER TESTIMONY, MS. CANNADY RECOMMENDS A TEN-YEAR AMORTIZATION PERIOD FOR THE PENSION SETTLEMENT

---

2 Direct Testimony of Constance T. Cannady at 49.

COSTS INCLUDED IN THE PENSION AND OPEB RESERVE ACCOUNT. DO YOU AGREE?

A. No, I do not. She bases her recommendation on the projected decline in ETI's net periodic pension expense from 2023 through 2026, which is significantly shorter and bears no relation to the ten-year amortization period recommended.

III. CONCLUSION

Q13. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

AFFIDAVIT OF DAVID C. BATTEN

THE STATE OF LOUISIANA	)
	)
ORLEANS PARISH	)

This day, David C. Batten the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under oath:

My name is David C. Batten. I am of legal age and a resident of the State of Louisiana. The foregoing testimony and exhibits offered by me are true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.

David C. Batten

David C. Batten

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 14th day of November 2022.

Notary Public, State of Louisiana

My Commission expires:

Donald P. DiMaggio
LA Notary Public# 33195
My Commission is for Life