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PUBLIC UTILITY COMMISSION
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PETITION OF EL PASO ELECTRIC COMPANY FOR REVIEW OF THE CITY OF EL PASO'S RATE RESOLUTIONS	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF'S RESPONSE TO ORDER NO. 1

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this response to Order No. 1 regarding El Paso Electric Company's (EPEC) petition for review of the City of El Paso's (the City) resolutions.

I. BACKGROUND

EPEC complains of the City's actions regarding its electricity rates in the City's jurisdiction. The origins of this proceeding began with the July 31, 2010 Commission approved settlement between EPEC, the City, and other parties establishing new electricity rates in EPEC's service territory. On October 4, 2011, the City passed a resolution requiring EPEC to show cause as to why its base rates for electric service based on the July 31, 2010 settlement should not be lowered within the City's jurisdiction. The resolution further required EPEC to file a rate filing package with the City no later than February 1, 2012. In a second resolution on October 4, 2011, the City further scheduled a hearing on October 25, 2011 to establish temporary rates for EPEC. At the October 25 hearing, the City received comments from EPEC and the public regarding temporary rates. The City then scheduled a further meeting on November 15, 2011 to set temporary rates for EPEC. On October 27, 2011, EPEC filed its petition requesting that the Commission set aside the City's October 4, 2011 show cause and temporary rate hearing resolutions or, in the alternative, that the Commission issue an order staying the City's resolutions and corresponding jurisdictional deadlines. On October 28, 2011 in Order No. 1, the presiding officer ordered Staff to file comments/recommendations regarding the petition, notice, and a proposed procedural schedule for processing this docket, including an intervention deadline by November 8, 2011. Accordingly, Staff's response is timely filed.

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II. PETITION SUFFICIENCY AND JURISDICTION

EPEC's petition requests that the Commission review the City's two October 4, 2011 resolutions pursuant to PURA¹ § 32.001(b).² This provision provides the Commission with "exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising original jurisdiction. . ." PURA § 32.001(b). EPEC subsequently filed a letter supplementing their petition on November 4, 2011.

Pursuant to P.U.C. PROC. R. 22.2(6), the filing of an appeal constitutes an "application" to the Commission to initiate a proceeding. Accordingly, EPEC's petition for review must satisfy the procedural requirements for an application as set forth in P.U.C. PROC. R. 22.73. Staff has determined that EPEC's petition for review, as supplemented, does satisfy the requirements for applications under P.U.C. PROC. R. 22.73 and is therefore sufficient to initiate this proceeding before the Commission.

III. NOTICE

Staff believes that there has been sufficient notice of this appeal. EPEC served a copy of its petition for review upon the City on October 27, 2011. Based on discussions with the City, the City also has actual notice of the proceeding and is prepared to respond to EPEC's appeal. In addition, based on discussions with the City and EPEC, as well as the declarations in EPEC's supplement to its petition filed on November 4, 2011, Staff understands that there are no other parties to the October 4, 2011 resolutions that are the subject of this appeal.

IV. PROPOSED PROCEDURAL SCHEDULE AND INTERVENTION DEADLINE

The presiding officer has further ordered Staff to propose a procedural schedule for processing this docket, including setting an intervention deadline. Staff recommends that the Commission set **November 18, 2011** as the deadline for any interventions into this proceeding. The proposed intervention deadline is 22 days from the filing of EPEC's initial petition for review in this docket. Staff believes this intervention deadline is appropriate given that this proceeding is an appeal of municipal resolutions and the issues before the Commission are

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2011) (PURA).

² El Paso Electric Company's Petition for Review of the City of El Paso's Rate Resolutions and Request for Expedited Relief at 5 (October 27, 2011).

narrow in scope. This intervention deadline is also consistent with Commission practice in other proceedings of a limited and/or expedited nature.³

On November 7, 2011, the City filed a Motion to Dismiss for Lack of Jurisdiction in this docket. Staff recommends that the Commission require Staff and Intervenor responses to the City's Motion to Dismiss by **November 18, 2011**. Pursuant to P.U.C. PROC. R. 22.181(a)(2), EPEC has 20 days to respond to the City's motion. Under the proposed procedural schedule, however, EPEC would have to file its response on the Monday following the Thanksgiving holiday. In light of the Thanksgiving holiday and in order to allow EPEC sufficient time to respond to Staff and Intervenor responses, Staff recommends that the presiding officer grant a good cause exception to the 20-day filing requirement in order to permit proper briefing on the threshold jurisdictional issues in this docket raised by City's Motion to Dismiss.⁴ Accordingly, Staff recommends EPEC's response be due on **December 5, 2011**.

In order to develop a list of contested issues to be addressed in this docket, as well as any statement of Commission policy, precedent, and/or position on a threshold legal issue relevant to this proceeding, Staff further recommends that the Commission permit any party to this proceeding to file with the Commission a list of issues to be addressed in this docket by **December 5, 2011**. In addition to proposing the issues to be addressed, Staff recommends that the parties also identify (1) any issues that should not be addressed, and (2) any threshold legal and/or policy issues that should be briefed for purposes of a preliminary order. Specific explanations should support the proposals included in any pleadings.

This case presents several issues of first impression. Moreover, given that the City's October 4, 2011 show cause resolution contemplates EPEC filing a rate package with the City by February 1, 2012, Staff believes that an expeditious resolution of threshold legal questions is important. Under Staff's proposed procedural schedule, the Commission can chose to first decide the threshold jurisdictional issues raised in the City's Motion to Dismiss, or decide the jurisdictional issues in conjunction with the other threshold legal and/or policy issues that the

³ See, e.g., P.U.C. SUBST. R. 25.192(h)(4)(A) establishing a 21-day intervention deadline from the date "service of notice is completed" in proceedings for an interim update of transmission rates.

⁴ See P.U.C. SUBST. R. 25.5(b).

parties identify. Staff will work with the other parties to develop a joint list of issues. Once framed by the parties, the Commission can then establish a briefing schedule on these issues.⁵

As explained above, Staff recommends the following procedural schedule:

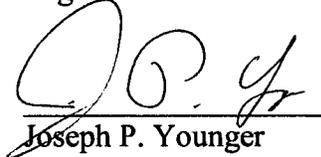
Action:	Deadline:
City's response to EPEC's petition, pursuant to Order No. 1	November 17, 2011
Deadline to intervene	November 18, 2011
Intervenors' and Staff's Responses to City's Motion to Dismiss	November 18, 2011
EPEC's Response to City's Motion to Dismiss and to Intervenors' and Staff's Responses to City's Motion to Dismiss	December 5, 2011
Lists of issues to be addressed, issues not to be addressed, and threshold legal and/or policy issues	December 5, 2011

⁵ See, e.g., *Remand of Docket No. 29526 (Application of CenterPoint Energy Houston Electric LLC, Texas Genco, LP, and Reliant Energy Retail Services, LLC to Determine Stranded Costs and Other Balances)*, Docket 39504, Order Requesting Briefing (August 8, 2011).

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division

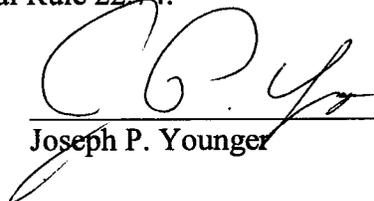


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DOCKET NO. 39868

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 8th of November in accordance with P.U.C. Procedural Rule 22.74.



Joseph P. Younger