

PUC DOCKET NO. 26249

PETITION OF CENTERPOINT § PUBLIC UTILITY COMMISSION
ENERGY HOUSTON ELECTRIC §
FOR UPDATE TO ITS §
TRANSMISSION COST § OF TEXAS
RECOVERY FACTOR PURSUANT §
TO PUC SUBST. R. 25.193(b) §

PUC DOCKET NO. 26278

PETITION OF CENTRAL POWER § PUBLIC UTILITY COMMISSION
AND LIGHT COMPANY FOR §
ADMINISTRATIVE APPROVAL OF §
TRANSMISSION COST § OF TEXAS
RECOVERY FACTOR §

PUC DOCKET NO. 26279

PETITION OF WEST TEXAS § PUBLIC UTILITY COMMISSION
UTILITIES FOR §
ADMINISTRATIVE APPROVAL OF §
TRANSMISSION COST § OF TEXAS
RECOVERY FACTOR §

PUC DOCKET NO. 26353

PETITION OF ONCOR ELECTRIC § PUBLIC UTILITY COMMISSION
DELIVERY COMPANY FOR §
APPROVAL OF TRANSMISSION §
COST RECOVERY FACTOR § OF TEXAS
UPDATE PURSUANT TO SUBST. R. §
25.193 §

PUC DOCKET NO. 26397

PETITION OF TEXAS-NEW § PUBLIC UTILITY COMMISSION
MEXICO POWER COMPANY FOR §
APPROVAL OF TRANSMISSION §
COST RECOVERY FACTOR § OF TEXAS

ORDER ON CERTIFIED ISSUE

The Commission concludes that the provisions of P.U.C. SUBST. R. 25.193 allow the transmission cost recovery factor (TCRF) update filed by the applicants in these proceedings to include the Lower Colorado River Authority Transmission Services Corporation's (LCRA) interim transmission costs granted by the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) in Docket No. 25421. The updated TCRF is subject to refund or surcharge upon a final determination of LCRA's rates pursuant to P.U.C. PROC. R. 22.125.

I. BACKGROUND

On February 7, 2002, LCRA Transmission Services Corporation filed a petition initiating Docket No. 25421¹ to conform its transmission service rates to its previously approved 2002 cost of service. On February 14, 2002, LCRA filed a motion for interim relief. The Commission referred that case to the State Office of Administrative Hearings (SOAH) on March 1, 2002 and issued a Preliminary Order on March 22, 2002 noting that a rate case was the proper vehicle for LCRA to use to obtain relief and directed LCRA to file a complete rate package. The Commission also concluded that LCRA's existing filing was sufficient to confer jurisdiction to consider interim relief and the Commission directed SOAH to address the issue of whether interim relief was appropriate.²

Prior to a SOAH hearing on interim relief, the parties reached an agreement and filed the Unanimous Stipulation on April 4, 2002 setting the interim wholesale

¹ *Petition of LCRA Transmission Services Corporation to Conform its Transmission Service Rates to its Previously Approved 2002 Cost of Service*, Docket No. 25421 (*pending*).

² *Id.*, Preliminary Order (Mar. 22, 2001)

transmission rate for LCRA.³ The SOAH ALJ issued Order No. 6⁴ on April 12, 2002 pursuant to P.U.C. PROC. R. 22.125 approving the interim rate and providing LCRA with interim relief. The ALJ's Order stated that the interim rate would be subject to refund or surcharge upon a final order in the rate case and would be effective on the date that LCRA filed its rate case in Docket No. 25421. The distribution service providers (DSPs) have been paying to LCRA the increased, interim, wholesale transmission rate since it was approved on April 4, 2002.

In the above numbered and referenced dockets, five distribution service providers (DPSs) have applied to update their respective transmission cost recovery factor (TCRF) pursuant to P.U.C. SUBST. R. 25.193 to include the LCRA's interim increase to become effective for billings on and after September 1, 2002. Three of the five applications explicitly specified that the TCRF would be subject to refund or surcharge depending on the final rates established. P.U.C. SUBST. R. 25.193 allows a DSP to update its TCRF only on March 1st and September 1st of each year in order to pass through the wholesale transmission cost charges from the transmission service providers (TSPs).

On August 6, 2002, the Commission ALJ certified the following question to the Commission in all five dockets for consideration at the August 23, 2002 open meeting.

Do the provisions of PUC SUBST. R. 25.193 permit the TCRF update filed by the applicants in these proceedings to include the LCRA interim transmission costs granted by the SOAH ALJ in Docket No. 25421 (Order No. 6 dated April 4, 2002)? If yes, are there any terms, conditions or limitations that the Commission should place on the approved TCRF updates given the interim status of the approval granted the LCRA transmission costs?

II. DISCUSSION

The Commission concludes that the provisions of P.U.C. SUBST. R. 25.193 allow the TCRF update filed by the applicants in these proceedings to include the LCRA

³ *Id.*, Motion for Entry of an Interim Order Approving Stipulated Rates, Attachment A Stipulation and Agreement Regarding Interim Rates (Apr. 4, 2002).

⁴ *Id.*, Order No. 6 Granting Interim Relief and Abating Case (Apr. 12, 2002).

interim transmission costs granted by the SOAH ALJ in Docket No. 25421, subject to the reconciliation and refund of any transmission cost of service over-recovery as provided under P.U.C. PROC. R. 22.125.

Commission Staff, the Office of Public Utility Counsel, and Alliance for Retail Markets opposed the applications that requested inclusion of the interim TCOS change for LCRA and argued that the DSPs should not be able to pass through the increased TCRF because the interim rate is a temporary revision. Staff argued that because the Commission has not entered a final order, the interim wholesale transmission cost change has not been *approved or allowed* in accordance with the requirements of P.U.C. SUBST. R. 25.193(b) and therefore argued that the DSPs should not be allowed to increase its rates.

The Commission, however, disagrees with that position; “approved” or “allowed” does not expressly necessitate a final Commission Order as suggested by staff. The phrase “or allowed” was included in the promulgation of P.U.C. SUBST. R. 25.193 for just such a situation. In rulemaking Project No. 23157, TSPs were allowed to reflect changes in invested capital on an annual basis without prior Commission approval and utilities serving retail load were allowed to establish mechanisms to expeditiously pass through to retail customers the changes in wholesale charges that were due to adjustments allowed by that rule. Therefore, the terminology “or allowed” by the Commission was added.

The interim increase was granted by the SOAH ALJ pursuant to the Preliminary Order issued by the Commission which directed SOAH to address whether the interim relief was appropriate on an expedited basis. Therefore, the interim increase is a TCOS change that is approved or allowed by the Commission under P.U.C. SUBST. R. 25.193.

P.U.C. SUBST. R. 25.193 provides that the DSP may only update its TCRF twice a year on March 1st and September 1st of each year to pass through the wholesale transmission cost changes billed for by a TSP. As a matter of sound policy, this interim

increase should be passed through to the REP as intended. DSPs are already paying LCRA's interim, increased rate. P.U.C. SUBST. R. 25.192(g)(4) provides that the DSP may expeditiously pass through to its customers the changes in the wholesale transmission rates approved by the Commission pursuant to P.U.C. SUBST. R. 25.193. It would be inherently unfair to deny the DSPs' applications thereby preventing the DSPs from passing the interim increase along to the REPs. Denying the DSPs' applications would require DSPs to continue paying for costs that will not be recovered. DSPs have been paying the interim rate since it was approved on April 4, 2002. If the DSPs are not allowed to pass along this interim rate as of September 1, 2002, then the DSPs would have to wait until March 1, 2003 or possibly even later to pass through the increase.

Good Cause Waiver of P.U.C. PROC. R. 22.127(c)

Pursuant to P.U.C. PROC. R. 22.5(b), the Commission finds that good cause exists to waive the provision requiring that certified issues be taken up no sooner than 20 days after submission and grants a good cause exception to the procedural requirement under P.U.C. PROC. R. 22.127(c). As a matter of policy, the provision assures that parties and the Commission have ample time to consider their respective positions. The ALJ submitted the certified issue on August 6, 2002. The Commission considered this matter during the August 23, 2002 open meeting. Seventeen days allowed the Commission ample opportunity to consider and decide this matter. Furthermore, since there is no additional open meeting after the 20th day following submission but before the P.U.C. Subst. R 25.193(b) September 1, 2002 deadline, the good cause waiver is needed to effectuate the ruling of the Commission on the Certified Issue thereby allowing DSPs to pass through LCRA's increased interim charges. Otherwise the next possible opportunity would not be until March 1, 2003.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

REBECCA KLEIN, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER