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PUC DOCKET NO. 49726

**REQUEST OF THE CITY OF
SEYMOUR FOR A DECLARATORY
ORDER REGARDING SERVICE BY
TRI-COUNTY ELECTRIC
COOPERATIVE**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**TRI-COUNTY ELECTRIC COOPERATIVE'S
SECOND SUPPLEMENTAL REPLY TO THE CITY OF SEYMOUR'S OBJECTION
TO TRI-COUNTY'S REQUEST FOR HEARING ON THE MERITS**

Tri-County Electric Cooperative, Inc. (TCEC) hereby files its second supplemental reply to the objection by the City of Seymour (City) to TCEC's request for a contested case hearing on the merits. While TCEC would ordinarily not file an additional pleading in regard to its request for hearing, the City raises an issue for the first time in its most recent pleading that necessitates an additional limited response by TCEC.

TCEC will not restate here all of its prior arguments, which cite to the clear rules granting it a right to a hearing and providing the specific fact issues it believes are in dispute necessitating a hearing. However, TCEC will respond to a specific issue raised in the City's recent filing.

I. THE CITY'S "PHASED" PROCEEDING CIRCUMVENTS THE PUC'S RULES

In its filing of May 18, 2020, the City argues for a "phased" proceeding under PUC Proc. R. 22.121, whereby "legal" issues are addressed first and then any remaining factual issues can be determined. As noted previously, PUC Procedural Rule 22.121 addresses only prehearing conferences, which the presiding officer may use to efficiently manage the case. It does not mention a "phased" proceeding nor does it provide a method by which legal issues are decided first and then factual issues are decided in a later proceeding. In fact, in its filing, the City cites to only two prior PUC dockets, each of which involved a complaint

related to determining the right to provide service—which is the same basic issue raised by the City in this case. Interestingly enough, in both of those dockets the Commission referred the cases to SOAH for hearing, demonstrating the clear propriety of deciding the supposed “legal” issues raised by the City through a contested case hearing.¹ Thus, those cases cited by the City support TCEC’s right to a hearing in this case.

Moreover, the Commission does have a specific rule that addresses the very issue the City is arguing: **PUC Proc. R. 22.184**. That rule allows a party to move for summary decision, providing specifically that:

The presiding officer, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed in accordance with §22.222 of this title (relating to Official Notice), or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.²

If a party believes that legal issues may resolve a case, then it may file a motion under the Commission’s summary decision rule. It may not, however, obtain the same result by making the bare assertion that no fact issues exist—without making the proper showing required by PUC Proc. R. 22.184. But that is what the City is attempting to do here. The Administrative Law Judge (ALJ) should not allow such brazen disregard of the Commission’s rules.

Denying TCEC’s hearing request disregards the Commission’s rules, directly conflicts with the authorities cited by TCEC in its prior filings on this issue, and would

¹ To be clear, TCEC continues to maintain that the fact issues in dispute, which were set forth in its previous filings for a request for a hearing, need to be resolved in a hearing on the merits, and nothing in the City’s May 18 filing obviate the need for such fact issues to be resolved.

² 16 Tex. Admin. Code (TAC) § 22.184(a).

violate TCEC's due process rights. The ALJ should follow the Commission's rules and refer this case to the State Office of Administrative Hearings (SOAH) for a hearing or set it for a hearing before the Commission. Then, if the City believes there are no fact issues necessitating a hearing, it may move for summary decision under the Commission's rules. That is the proper procedure to follow.

II. REQUEST FOR HEARING

In conclusion, TCEC re-urges its right to a hearing and requests that this matter be set for contested case hearing before the Commission or referred to SOAH.

Respectfully submitted,

/s/ Stephanie C. Sparks

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**ATTORNEYS FOR TRI-COUNTY
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2020, a true and correct copy of the foregoing document was transmitted to the parties of record in accordance with 16 Tex. Admin. Code § 22.74.

/s/ Stephanie C. Sparks
Counsel for TCEC