

Control Number: 49726



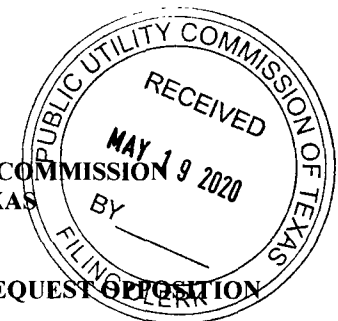
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DOCKET NO. 49726

REQUEST OF THE CITY OF SEYMOUR §  
FOR A DECL. ORDER REGARDING §  
SERVICE BY TRI-COUNTY ELEC. COOP. §

PUBLIC UTILITY COMMISSION  
OF TEXAS



**CITY'S RESPONSE TO THE SUPPLEMENTAL REPLY TO THE HEARING REQUEST**

City of Seymour ("City") timely submits this short response to the Tri-County Electric Cooperative, Inc. ("TCEC") supplemental reply regarding the TCEC evidentiary hearing request:<sup>1</sup>

Without regard to whether any "evidentiary issues" truly exist, the case can be "phased" under Rule 22.121 so that the legal question – the interpretation of Docket No. 57's 1976 Final Order on the corridor rights issue – is resolved by legal briefing, based on that Final Order and its underlying Examiner's Report (already officially-noticed by Order No. 3 herein). In other word, (1) no factual stipulation is needed to decide the legal issue, (2) any fact questions arising after the legal ruling can be addressed in a subsequent phase, and (3) TCEC will thereby have a reasonable opportunity to be heard.

The City's prior response (Interchange Filer, or "IF," #46) indicated its willingness to stipulate to TCEC's supplemental discovery responses to Staff showing TCEC's facilities in place, existing customers, and points of service. The City so stipulates now. So TCEC's speculation that there might not be such a stipulation does not make an evidentiary hearing necessary on those TCEC factual matters.

TCEC claims it has tried to obtain City information on those TCEC factual matters. TCEC did ask the City the agreed-upon-and-ordered-scope-of-discovery questions (IF #21 & #22), the City answered (IF #26), and discovery is now closed (IF #22 & #38). In discovery the City stated it had no knowledge of those TCEC factual matters and, given TCEC's superior knowledge thereof, deferred to TCEC's discovery responses thereon (IF #26, at TCEC 1-6). TCEC then provided such factual information in supplemental discovery responses to Staff (IF #39 & #41). Of course, as a result of TCEC's supplemental discovery responses, the City is now aware from those responses what TCEC, due to its superior knowledge of its own facts, indicates is the factual situation – and as stated above, the City so stipulates to that information.<sup>2</sup> So TCEC speculation that the City somehow might know more than TCEC does about TCEC's factual matters does not make an evidentiary hearing necessary.

TCEC claims: the parties have "not agreed on many facts"; TCEC has "little hope" there will be

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<sup>1</sup> TCEC filed its supplemental reply Mar. 25<sup>th</sup> (Interchange Filer, or "IF," #49); by the parties' agreements on Mar. 27<sup>th</sup> and Apr. 22<sup>nd</sup> (IF #50 & #51) and Order No. 8 (IF #52), all procedural deadlines are suspended until Staff responds to the hearing request and it is ruled on. This response is thus timely, and filed at a time which allows TCEC to submit any supplemental surreply.

<sup>2</sup> If needed, the City hereby supplements its TCEC 1-6 discovery response (and stipulates it may be treated as if filed under oath) to say, given TCEC's supplemental discovery responses, the City is now aware that TCEC indicates: (1) its predecessor was providing service starting in 1971 to 1 customer within the 1976 City limits, and (2) between 1987-2012 its predecessor or TCEC extended service to 9 locations within the 1976 City limits.

a stipulation of facts; and the parties are unlikely to agree on authenticity or relevancy of third-party documents. To the contrary: the City indicated its prior willingness to stipulate (and hereby does stipulate) to TCEC's supplemental discovery responses on the very same TCEC factual matters which TCEC alleges necessitate a hearing; no stipulation is actually needed in this case (discussed before) since the corridor rights question is a legal one and the Docket No. 57 Final Order and underlying Examiner's Report have been officially noticed; and the City hereby stipulates it will agree to the taking of official notice of the Docket No. 57 filings which TCEC sought and received in third-party discovery from other Docket No. 57 parties, making their authenticity and relevance no longer a reason for having a hearing.<sup>3</sup>

TCEC asserts it has a right to "put on its own evidence that the City did have knowledge and information" about TCEC's existing customers. If TCEC has such evidence, it is obligated to further supplement Staff's discovery requests with such information. TCEC has not done so, and it appears it will not be doing so, despite being directly asked to do so when it made that "evidence" assertion. More importantly, any alleged City knowledge is legally irrelevant, as set forth in the City's prior response and the cases noted below.<sup>4</sup> So no evidentiary hearing is necessary to prove up legally irrelevant facts.

TCEC attempts to sidestep such legal irrelevance by saying it hasn't asserted "equitable defenses." It may not have uttered those exact words, but it argues knowledge is relevant, and implies that any such knowledge somehow changes things. As the cases noted below make clear, what matters is only PURA § 37.051 and the Commission's orders granting service territory rights. And the question this case presents is the interpretation of the 1976 Final Order as to any corridor service rights. Which, in turn, is a legal question based on the language in the Final Order and its underlying Examiner's Report.

TCEC "also disputes the City's argument that TCEC has never served within the original city limits." It is unclear what argument is being referenced, but the City's prior response (IF #46) made clear that due to TCEC's supplemental discovery responses: (1) TCEC's predecessor was providing service in 1971 to a customer within the 1976 City limits, and (2) in 1987-2012 its predecessor or TCEC extended service to 9 locations in the 1976 City limits. Thus, TCEC's assertion about what the City argues appears to be inaccurate, and in any event TCEC's assertion does not make an evidentiary hearing necessary.

Accordingly, it is administratively efficient to "phase" the case and order briefing on the legal issue based on the Docket No. 57 documents (either already or to be officially noticed).

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<sup>3</sup> This would include (1) the Texas Electric Service Company ("TESCO") letter to the Hearing Examiner explaining the TCEC predecessor's stipulation to getting no corridor rights within the City's 1976 limits, (2) the relevant 1976 hearing transcript excerpt which includes testimony from TESCO, TCEC's predecessor, and the City, and (3) any additional Docket No. 57 documents garnered in third-party discovery that the parties desire.

<sup>4</sup> See cases discussed in IF #46: *Appl. of Rio Grande Elec. Coop., Inc. for a Cease & Desist Order Against AEP Tex., Inc.*, Docket No. 47186, Prelim. Order (2017); *Complaint of Rusk County Elec. Coop., Inc. Against TXU Elec. Del. Co. & TXU Power*, Docket No. 30037, Prop. for Dec. (2010) & Order on Reh. (2010).

Respectfully submitted,

By: /s/ Thomas K. Anson

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LEGAL COUNSEL TO THE AUTHORIZED  
REPRESENTATIVE OF THE REQUESTOR

**CERTIFICATE OF SERVICE**

I certify I served the foregoing on all parties by email this May 18, 2020.

/s/ Thomas K. Anson

Thomas K. Anson