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PUC DOCKET NO. 50731
SOAH DOCKET NO. 473-20-3299

APPLICATION OF TEXAS-NEW	§	PUBLIC UTILITY COMMISSION
MEXICO POWER COMPANY FOR A	§	
DISTRIBUTION COST RECOVERY	§	OF TEXAS
FACTOR	§	

PRELIMINARY ORDER

Texas-New Mexico Power Company (TNMP) filed an application for approval of a distribution cost recovery factor (DCRF). This preliminary order identifies the issues that must be addressed in this proceeding.

TNMP is seeking new retail and wholesale DCRF riders to include additional distribution invested capital placed in service from January 1, 2018 through December 31, 2019. (January 1, 2018 is the day after the end of the test year in TNMP's last rate case, Docket No. 48401.¹) This is TNMP's first DCRF application since its last rate case in Docket No. 48401. TNMP states that it invested \$149,229,784 in net distribution system invested capital during the period of January 1, 2018 through December 31, 2019. After adjusting for load growth, TNMP is seeking a total distribution revenue requirement of \$14,673,176.

TNMP filed the application on April 6, 2020, and the Commission referred the docket to the State Office of Administrative Hearings (SOAH) on April 6, 2020. The Alliance for Retail Markets, the Alliance of Texas-New Mexico Power Municipalities, the Cities Served by Texas-New Mexico Power Company, and Texas Industrial Energy Consumers have filed motions to intervene, which are pending as of April 23, 2020.

TNMP's DCRF baselines were established in Docket No. 48401. TNMP states that the initial baseline DCRF billing determinants specified in the base-rate-case settlement documents in Docket No. 48401 inadvertently failed to address the required demand ratchet exclusion for nonresidential secondary-voltage greater than five-kilowatt (kW) customers with load factors less

¹ *Application of Texas-New Mexico Power Company to Change Rates*, Docket No. 48401, Order (Dec. 20, 2018).

than or equal to 25%.² The proposed DCRF in this docket includes adjustments to the DCRF baselines approved in Docket No. 48401 to eliminate the ratchet effect for nonresidential secondary-voltage greater than five-kW customers with load factors less than or equal to 25%.

TNMP was directed, and Commission Staff and other interested persons were allowed, to file by April 17, 2020 a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. TNMP, the Alliance of Texas-New Mexico Power Municipalities, the Cities Served by Texas-New Mexico Power Company, and Commission Staff each timely filed a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.³ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Does TNMP's earnings monitoring report included in the application show that TNMP is earning more than its authorized rate of return, using weather-normalized data, such that the application must be denied under 16 Texas Administrative Code (TAC) § 25.243(e)(4)?
2. If not, what is TNMP's properly calculated DCRF in accordance with Public Utility Regulatory Act (PURA)⁴ § 36.210 and 16 TAC § 25.243(d)? In making the determination, the following issues should be addressed:
 - a. What were the DCRF-related baseline costs established in TNMP's most recent base-rate proceeding, Docket No. 48401, to be used in the DCRF calculation under 16 TAC § 25.243(d)(1)?

² 16 Texas Administrative Code (TAC) § 25.244(c).

³ Tex. Gov't Code § 2003.049(e).

⁴ Public Utility Regulatory Act, Tex. Util. Code §§ 11.013–66.017 (PURA).

- b. Under PURA § 36.210(a) and the definition of distribution invested capital in 16 TAC § 25.243(b)(3), what items should be categorized as TNMP's distribution invested capital, and what are TNMP's costs for distribution invested capital?
 - c. Under the definition in 16 TAC §§ 25.243(b)(4), what is TNMP's net distribution invested capital that is to be used in the DCRF calculation in 16 TAC § 25.243(d)(1)?
 - d. What is the appropriate weather normalization adjustment using weather data for the most recent ten calendar years in accordance with PURA § 36.210(a)(2) and 16 TAC § 25.243(b)(5)?
 - e. Did TNMP appropriately account for load growth under PURA § 36.210(a)(2) and 16 TAC § 25.243(d)(1)?
 - f. What is TNMP's appropriate rate of return under 16 TAC § 25.243(d)(2)?
 - g. In accordance with 16 TAC § 25.243(d)(3), has TNMP clearly identified costs, if any, included as distribution invested capital because of a change in accounting rules or practices since the test year in TNMP's most recent base-rate proceeding, Docket No. 48401? If so, has TNMP proven that those costs are appropriate for recovery through the DCRF?
 - h. Has TNMP included any costs in its proposed DCRF revenue requirement that were previously recovered from TNMP's existing base rates or other rates such as transmission cost of service or transmission cost recovery factor? If so, does the proposed treatment result in improper double recovery of costs?
 - i. What is TNMP's incremental revenue requirement to be collected through the DCRF as calculated under 16 TAC § 25.243(d)?
- 3. Are the DCRF rates to be applied by TNMP on a system-wide basis in accordance with PURA § 36.210(a)(5) and 16 TAC § 25.243(e)(6)(C)?
 - 4. What are the appropriate class allocations to set the DCRF rates, if any, in accordance with PURA § 36.210(a)(3) and 16 TAC § 25.243(d)(1)?
 - 5. Does the proposed DCRF comply with PURA § 36.210(c) by not including an adjustment to the portion of a nonfuel rate relating to the generation of electricity?

6. Does the DCRF application comply with the requirements of PURA § 36.210(a)(6) and 16 TAC § 25.243(e)(1), including being supported by the sworn statement of an appropriate employee of TNMP?
7. What rates, if any, should the Commission approve in TNMP's DCRF rate schedule?
8. What is the appropriate effective date for the DCRF rider in compliance with 16 TAC § 25.243(e)(6)(C)?
9. Should any party recover the cost of participating in this proceeding? If so, the following issues should be addressed.
 - a. What are the reasonable costs of participating municipalities in this proceeding under PURA § 33.023 and 16 TAC § 25.245?
 - b. What are the reasonable costs of participation incurred by TNMP that should be allowed as a cost or expense in this proceeding under PURA § 36.061(b)(2) and 16 TAC § 25.245?
 - c. Should these costs be addressed in this proceeding or deferred to a subsequent proceeding?
 - d. In what manner should these costs be recovered?
10. Did TNMP properly account for the effects of the Tax Cuts and Jobs Act of 2017?⁵
11. Did TNMP properly calculate its proposed wholesale DCRF rider?
12. Should the Commission approve TNMP's adjustments to its DCRF baselines established in TNMP's most recent base-rate proceeding, Docket No. 48401?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

⁵ *Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018*, Pub. L. No. 115-97, 113 Stat. 2054 (Dec. 22, 2017).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the 1st day of May 2020.

PUBLIC UTILITY COMMISSION OF TEXAS


DEANN T. WALKER, CHAIRMAN


ARTHUR C. D'ANDREA, COMMISSIONER


SHELLY BOTKIN, COMMISSIONER

