



**DOCKET NO. 50110**

**APPLICATION OF DENTON  
MUNICIPAL ELECTRIC UTILITY FOR  
INTERIM UPDATE OF WHOLESALE  
TRANSMISSION RATES**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**ORDER NO. 8  
ADDRESSING DENTON MUNICIPAL ELECTRIC UTILITY'S MOTION FOR GOOD  
CAUSE EXCEPTION**

In this matter, Denton Municipal Electric Utility seeks an interim update of its transmission rates under 16 Texas Administrative Code (TAC) § 25.192(h). Denton has requested a good cause exception from a requirement of that rule or from a requirement in Commission Staff's form that is used by applicants who are applying for an interim update. For the reasons set forth in this Order, the request for a good cause exception is denied.

Under 16 TAC § 25.192(h)(1), if a transmission service provider, such as Denton, elects to obtain an interim update of its transmission rates, "the new rates shall reflect the addition and retirement of transmission facilities and include *appropriate depreciation . . .*"<sup>1</sup> Commission Staff has developed a form, the TCOS Rate Filing Package, that applicants must use when applying for an interim update. A portion of that form, Schedule E-1, addresses the depreciation requirements of the interim update application.

Denton seeks to recover, among other things, certain "catch-up" depreciation expenses. Commission Staff has taken the position that the "catch-up" depreciation expenses are not allowed under 16 TAC § 25.192(h)(1) and that, by including the "catch-up" depreciation expenses, Denton completed Schedule E-1 in a manner that is inconsistent with the instructions of the TCOS Rate Filing Package.

Denton maintains that it is appropriate to recoup the "catch-up" depreciation expenses as a part of its interim update. Because Denton and Commission Staff disagree, Denton has requested, in its second amended application filed on April 16, 2020, a good cause exception, as follows:

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<sup>1</sup> Emphasis added.

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To the extent the “catch-up” expense in [Denton’s application] is no longer interpreted as “appropriate depreciation,” [Denton] moves for a good cause exception to allow for the inclusion of these amounts for purposes of this application. . . . Therefore, good cause exists for an exception to the Interim TCOS Rate Filing Package instructions regarding Schedule E-1 and its narrow interpretation of “appropriate depreciation” as applied to the rate updates otherwise allowed pursuant to the language in 16 TAC § 25.192(h).”<sup>2</sup>

To the extent Denton is asking for a good cause exception from 16 TAC § 25.192(h)(1), the request is denied. As noted above, under 16 TAC § 25.192(h)(1), interim transmission rates may only include “appropriate depreciation.” Thus, if Denton is asking for a good cause exception from this requirement it is necessarily asking to be allowed to recover, through its interim rates, “inappropriate depreciation.” This is something that the administrative law judge (ALJ) cannot authorize.

To the extent Denton is asking for a good cause exception from the Interim TCOS Rate Filing Package instructions regarding Schedule E-1, such an exception is unnecessary. The Commission’s rule, 16 TAC § 25.192(h)(1), requires “appropriate depreciation.” The Interim TCOS Rate Filing Package instructions regarding Schedule E-1 merely reflect Commission Staff’s interpretation of how to identify appropriate depreciation. The rule has the force of law, the rate filing package and instructions do not. Denton is free to offer a different legal theory as to what constitutes appropriate depreciation. Such differing legal theories are the kinds of things that contested cases are designed to resolve. Thus, if it so chooses, Denton is allowed to pursue as a part of its application the recovery of “catch-up” depreciation expenses, without first obtaining a good cause exception from the rate filing package. And Commission Staff is allowed to oppose recovery of such expenses.<sup>3</sup> Accordingly, Denton’s request for good cause exception from the rate filing package and instructions is denied because it is unnecessary.

The procedural schedule adopted in Order No. 7 remains in effect.

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<sup>2</sup> Denton’s Second Amended Application at 5-7.

<sup>3</sup> Candidly, having read Denton’s testimony and briefing on the issue, and Commission Staff’s response, the ALJ believes Commission Staff has the better argument. The question need not, however, be decided at this stage of the proceeding.

Signed the 22nd day of May 2020.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
**HUNTER BURKHALTER**  
**CHIEF ADMINISTRATIVE LAW JUDGE**

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