



Control Number: 50669



Item Number: 19

Addendum StartPage: 0

PUC DOCKET NO. 50669

**APPLICATION OF SOUTHWESTERN §
ELECTRIC POWER COMPANY TO §
AMEND ITS CERTIFICATE OF §
CONVENIENCE AND NECESSITY FOR §
THE SWEPCO MORTON CUT-IN TO §
THE WOOD COUNTY ELECTRIC §
COOPERATIVE E BURGESS CUT-IN §
138-KV TRANSMISSION LINE IN VAN §
ZANDT COUNTY §**

BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS



MALLAT FARMS LLC'S REQUEST FOR HEARING ON THE MERITS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES, Mallat Farms LLC ("Mallat Farms") and files this, their Request for a Hearing on the Merits in PUC Docket No. 50669. In support of this Mallat Farms would show the following:

On March 31, 2020, Southwestern Electric Power Company ("SWEPCO"), filed their application to amend a certificate of convenience and necessity ("CCN") for the Morton Cut-In to the Wood County Electric Cooperative E Burgess Cut-In 138-kV Transmission Line Project in Van Zandt County, Texas.

Mallat Farms owns property in Van Zandt County that would be affected by the proposed transmission line; as a result, Mallat Farms filed a Motion to Intervene in the above-referenced docket.

Other parties have filed motions or requests to intervene in this proceeding. It is appropriate that this matter be set for a hearing to determine the best route. A Hearing on the Merits and the associated preparation for that Hearing on the Merits, including conducting discovery and submission of written testimony or statements of position, may be necessary to fairly adjudicate this matter, and determine which route best complies with PURA § 37.056.

NOW THEREFORE, for the above-mentioned reasons, Mallat Farms respectfully requests that the above-captioned case be set for a Hearing on the Merits, a revised procedural schedule be drafted for consideration by the parties and ordered, and requests any other relief to which it may show itself entitled.

Respectfully submitted,

BRAUN & GRESHAM, PLLC

P.O. Box 1148 (Mailing)
Dripping Springs, Texas 78620
14101 Hwy. 290 W., Bldg. 1100 (Physical)
Austin, Texas 78737
512-894-5426 (telephone)
512-894-3405 (fax)

/s/Patrick L. Reznik

Patrick L. Reznik
State Bar No. 16806780
preznik@braungresham.com
Carly Barton
State Bar No. 24086063
cbarton@braungresham.com

ATTORNEYS FOR MALLAT FARMS LLC

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on May 8, 2020, in accordance with Public Utility Commission Procedural Rule 22.74.

/s/Patrick L. Reznik

Patrick L. Reznik

DOCKET NO. 50441

APPLICATION OF MID-PLAINS	§	PUBLIC UTILITY COMMISSION
RURAL TELEPHONE	§	
COOPERATIVE, INC. TO ADJUST	§	OF TEXAS
HIGH COST SUPPORT UNDER 16	§	
TAC § 26.407(h)	§	

**JOINT PROPOSED NOTICE OF APPROVAL
AND MOTION TO ADMIT EVIDENCE**

COMES NOW Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains) and the Staff (Staff) of the Public Utility Commission of Texas (Commission) (collectively, Parties) and hereby file this Joint Proposed Notice of Approval and Motion to Admit Evidence. In support thereof, the Parties would show the following:

I. INTRODUCTION

On January 13, 2020, Mid-Plains filed an application to adjust the support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan (high-cost support) without effect to its current rates under 16 Texas Administrative Code (TAC) § 26.407(h). Mid-Plains is a Category 1 small incumbent local exchange company (ILEC) with an adjusted 2017 rate of return of 0.57%. In its application, Mid-Plains requested to increase the high-cost support it receives by \$295,915 per year. On May 5, 2020, Staff filed its Recommendation on Final Disposition, recommending that the application be approved in the amount of an additional \$295,915 per year.

On April 28, 2020, Order No. 3 in this proceeding was issued, requiring the Parties to file a joint proposed notice of approval, including proposed findings of fact, conclusions of law, and ordering paragraphs by May 8, 2020. Therefore, this Joint Proposed Notice of Approval and Motion to Admit Evidence is timely filed.

Mid-Plains and Staff are the only parties to this docket, and no party requested a hearing on the merits. Based on Staff's recommendation of approval of the application, the Parties jointly propose that the Notice of Approval attached to this pleading as Attachment 1 be approved.

II. MOTION TO ADMIT EVIDENCE

The Parties request that the following evidence be admitted into the record:

- (1) Mid-Plains' Application and accompanying attachments, partially under confidential seal, filed January 13, 2020 (AIS Item Nos. 1 and 2);

- (2) Mid-Plains' Acknowledgment of Receipt, confirming that notice would be published in the *Texas Register* January 31, 2020, filed January 21, 2020 (AIS Item No. 6);
- (3) Staff's Recommendation on Sufficiency of the Application and Notice, filed February 12, 2020 (AIS Item No. 7);
- (4) Mid-Plains' Affidavit of Notice, affirming that notice was properly given to customers and to the Office of Public Utility Counsel (OPUC), filed February 14, 2020 (AIS Item No. 8);
- (5) Staff's Recommendation on Sufficiency of Notice, filed March 17, 2020 (AIS Item No. 10); and
- (6) Staff's Recommendation on Final Disposition, filed May 5, 2020 (AIS Item No. 12).

III. JOINT PROPOSED NOTICE OF APPROVAL

The Parties have agreed to the attached Joint Proposed Notice of Approval, which would approve Mid-Plains' application to adjust its high-cost support, resulting in an increase of \$295,915 per year. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the attached Joint Proposed Notice of Approval.

IV. PRAYER

The Parties respectfully request that all items requested above be admitted into the record of this proceeding as evidence and that the Commission approve the attached Joint Proposed Notice of Approval.

Dated: May 8, 2020

Respectfully submitted,

Richards, Elder and Gibson, PLLC
12223 Quaker Avenue (79424)
P.O. Box 64657
Lubbock, Texas 79464-4657
Telephone: (806) 798-8868
Facsimile: (806) 798-8878
Email: dgibson@regllp.com

By /s/ D. Daniel Gibson
D. Daniel Gibson, State Bar No. 24045939

Attorneys for Mid-Plains Telephone Cooperative, Inc

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Eleanor D'Ambrosio
Managing Attorney

/s/ John Harrison

John Harrison
State Bar No. 24097806
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7277
(512) 936-7268 (facsimile)
John.harrison@puc.texas.gov

**DOCKET NO. 50441
CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 8, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ D. Daniel Gibson

D. Daniel Gibson

DOCKET NO. 50441

APPLICATION OF MID-PLAINS	§	PUBLIC UTILITY COMMISSION
RURAL TELEPHONE	§	
COOPERATIVE, INC. TO ADJUST	§	OF TEXAS
HIGH COST SUPPORT UNDER 16	§	
TAC § 26.407(h)	§	

JOINT PROPOSED NOTICE OF APPROVAL

This Notice of Approval approves the application of Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains) for an adjustment to the annual high-cost support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan (high-cost support) in accordance with 16 Texas Administrative Code (TAC) § 26.407 without effect to its current rates. The Commission approves the application.

I. Findings of Fact

The Commission makes the following findings of fact:

Applicant

1. Mid-Plains is a corporation registered with the Texas Secretary of State under file number 10484101 and holds certificate of convenience and necessity number 40055.
2. Mid-Plains is not an incumbent local exchange company (ILEC) that has elected for an infrastructure commitment and corresponding regulation under the Public Utility Regulatory Act (PURA)¹ Chapter 58 or 59.
3. Mid-Plains is an ILEC who on September 1, 2013, together with all local exchange companies affiliated with the company or cooperative on that date, served 31,000 or fewer access lines in this state and, therefore, a Small Provider as set forth in PURA § 56.032(a)(2).
4. Mid-Plains is a small ILEC that has been designated as an eligible telecommunications provider (ETP) by the Commission in accordance with 16 TAC § 26.417 and is a small independent local exchange carrier as defined in 16 TAC § 26.407(b)(1).

Application

5. On January 13, 2020, Mid-Plains filed the application at issue in this docket to adjust the high-cost support it receives under 16 TAC § 26.404 in accordance with 16 TAC § 26.407 without effect to its current rates. Mid-Plains seeks an annual high-cost support

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016.

increase of \$295,915 above the \$739,788 received for the consecutive 12 months ending January 1, 2020, which equates to an increase of \$24,660 per month, for a new annualized amount of \$1,035,703.

6. With its application filed on January 13, 2020, Mid-Plains included: (a) its 2017 annual report and the complete set of documents and workpapers that Mid-Plains submitted with its 2017 annual report; (b) Mid-Plains' request to increase its high-cost support; (c) Commission Staff's amended final recommendation in Project No. 48993;² and (d) the testimonies and workpapers of Andrew Vargas, of Mid-Plains, and Douglas Meredith, in support of Mid-Plains' request to increase its high-cost support.
7. In Order No. 2 issued on February 14, 2020, the administrative law judge (ALJ) found the application sufficient for further review.

Eligibility – Project No. 48993

8. On December 13, 2018, Mid-Plains opted to have its high-cost support determined under 16 TAC § 26.407(d) in Project No. 48993.
9. On February 11, 2019, Mid-Plains filed its 2017 annual report under 16 TAC § 26.407(d) in Project No. 48993.
10. In its amended final recommendation filed on June 19, 2019 in Project No. 48993, Commission Staff classified Mid-Plains as an under-earning small ILEC (category 1 small ILEC).
11. Mid-Plains is eligible for a high-cost support adjustment as a category 1 small ILEC with a 2017 adjusted rate of return of 0.57%, which is more than three percentage points below the 9.75% rate of return set forth in PURA § 56.032(a)(1).

Rate of Return

12. The minimum reasonable rate of return for a category 1 small ILEC is 6.75%, as provided by 16 TAC §§ 26.407(c)(2) and (3).
13. Mid-Plains' requested increase of \$295,915 in high-cost support will result in a projected rate of return of 2.16% which is still well below 6.75%, the minimum reasonable rate of return.

² Notice of Mid-Plains Rural Telephone Cooperative, Inc. for Texas Universal Service Fund Election Under 16 TAC § 26.407, Project No. 48993 (Jun. 21, 2019).

14. Mid-Plains' requested annual increase of \$295,915 in high-cost support to a new annualized amount of \$1,035,703 is 140% of the \$739,788 in high-cost support it received for the consecutive 12 months ending January 1, 2020.

Notice

15. On February 14, 2020, Mid-Plains filed the affidavit of Andrew Vargas, Mid-Plains' authorized representative, attesting that notice and a full copy of the application was delivered to the Office of Public Utility Counsel (OPUC) on January 21, 2020, and sent to customers via a bill message included with the February 2020 bills.
16. Notice of the application was published in the *Texas Register* on January 31, 2020.
17. In Order No. 3 issued on April 28, 2020, the ALJ found the notice sufficient.

Evidentiary Record

18. On May 8, 2020, Mid-Plains and Commission Staff filed a motion to admit evidence.
19. In Order No. ___ issued on _____, the ALJ admitted the following evidence into the record: (1) Mid-Plains' Application and accompanying attachments, partially under confidential seal, filed on January 13, 2020; (2) Mid-Plains' Acknowledgment of Receipt, confirming that notice would be published in the *Texas Register* on January 31, 2020, filed on January 21, 2020; (3) Commission Staff's Recommendation on Sufficiency and Proposed Procedural Schedule, filed on February 12, 2020 (4) Mid-Plains' Affidavit of Notice affirming that notice was properly given to customers and to the Office of Public Utility Counsel (OPUC), filed on February 14, 2020; (5) Staff's Recommendation on Sufficiency of Notice, filed on March 17, 2020; and (6) Commission Staff's Recommendation on Final Disposition, filed on May 5, 2020.

Informal Disposition

20. At least 15 days have passed since the completion of all notice requirements.
21. Commission Staff and Mid-Plains are the only parties to this proceeding.
22. No protests or motions to intervene were filed.
23. No party requested a hearing and no hearing is necessary.
24. Commission Staff recommended approval of the application.
25. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law:

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 52.002, 56.021, and 56.032.
2. Mid-Plains is a public utility as defined in PURA § 51.002(8) and telecommunications utility as defined in PURA § 51.002(11).
3. Mid-Plains is a small provider as set forth in PURA § 56.032(a)(2) and a small ILEC as defined in 16 TAC § 26.407(b)(1).
4. Mid-Plains is not an electing company as defined in PURA §§ 58.002 or 59.021.
5. Notice of the application was provided in compliance with 16 TAC §§ 22.55 and 26.407(h)(3).
6. Mid-Plains' requested increase of \$295,915 in annual high-cost support complies with the cap of 140% of the annualized support it received in the consecutive 12 months ending January 1, 2020, in accordance with PURA § 56.032(h) and 16 TAC § 26.407(g)(1).
7. Mid-Plains' application meets the requirements for approval under PURA § 56.032(h) and 16 TAC §§ 26.407(g) and (h).
8. This application was processed in accordance with the requirements of PURA, the Administrative Procedure Act,³ and Commission rules.
9. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves the application.
2. Mid-Plains will receive an annual increase to its high-cost support that it collects under 16 TAC § 26.404 in the amount of \$295,915, or \$24,660 per month. The total annual high-cost support amount will be \$1,035,703.
3. The Texas Universal Service Fund (TUSF) administrator must distribute to Mid-Plains TUSF funds consistent with this Notice of Approval promptly and efficiently, effective as of the date of signature of this Notice of Approval.

³ Tex. Gov't Code ch. 2001.

4. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

SIGNED AT AUSTIN, TEXAS the ____ day of _____, 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

**CHRISTOPHER OAKLEY
ADMINISTRATIVE LAW JUDGE**