



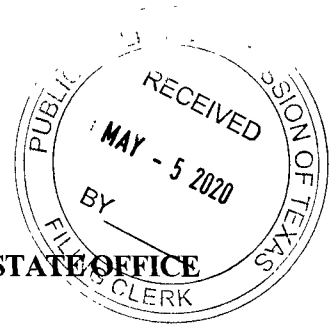
Control Number: 50277



Item Number: 61

Addendum StartPage: 0

SOAH DOCKET NO. 473-20-2278
PUC DOCKET NO. 50277



APPLICATION OF EL PASO ELECTRIC § BEFORE THE STATE OFFICE
COMPANY TO AMEND ITS §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY FOR AN § OF
ADDITIONAL GENERATING UNIT AT §
THE NEWMAN GENERATING §
STATION IN EL PASO COUNTY AND § ADMINISTRATIVE HEARINGS
THE CITY OF EL PASO §

OFFICE OF PUBLIC UTILITY COUNSEL'S STATEMENT OF POSITION

The Office of Public Utility Counsel ("OPUC"), representing the interests of residential and small commercial consumers in Texas, respectfully submits this statement of position pursuant to 16 Texas Administrative Code ("TAC") § 22.124 and State Office of Administrative Hearings ("SOAH") Order No. 3.¹ OPUC filed a motion to intervene in this proceeding on January 3, 2020,² and the motion was granted on January 21, 2020.³ Although OPUC retained an expert witness to review the key filings in this proceeding, OPUC is not filing Direct Testimony in the case.⁴ SOAH Order No. 3 adopted the parties' proposed procedural schedule that requires intervenors to file Direct Testimony or a statement of position on May 5, 2020.⁵ Therefore, pursuant to 16 TAC § 22.124 and SOAH Order No. 3, this statement of position is timely filed.

I. INTRODUCTION

On November 22, 2019, El Paso Electric Company ("EPE" or the "Company") filed an application seeking authorization to amend its certificate of convenience and necessity ("CCN") pursuant to Sections 37.053 and 37.056 of the Public Utility Regulatory Act ("PURA") to

¹ SOAH Order No. 3 setting procedural schedule, notice of hearing and granting motion to intervene (Mar. 2, 2020).

² OPUC's Motion to Intervene (Jan. 3, 2020).

³ Order No. 4 Granting Interventions at 1 (Jan. 21, 2020).

⁴ Consistent with 16 TAC § 22.124, if a party does not pre-file direct testimony or if a party's pre-filed direct testimony does not address issues that a party intends to litigate, a party may timely file a statement of position.

⁵ SOAH Order No. 3 at 1.

construct, own and operate a new 228 megawatt (“MW”) natural gas-fired generation unit at its existing Newman Generating Station in the City of El Paso in El Paso County.⁶ The proposed natural gas-fired generation unit is called Newman Unit 6 (“new generation unit” or the “Project”).⁷ The total construction cost of the Project is \$157.6 million.⁸ The new generation unit can be operated as a peaking and load following generation resource.⁹ The Project is scheduled to be in service for the summer peak season of 2023.¹⁰

The Project was selected through a competitive bidding process.¹¹ In its application, EPE states that the Project is needed to serve growth in customer demand, replace older, less efficient natural gas-fired generators that it plans to retire in the next several years, and to help meet its planning reserve margin. As a result of these factors, EPE projected a need for additional generation capacity of 50 MW in 2022 and 320 MW in 2023.¹² The Company will meet the need for additional generation capacity with the Project and purchase power agreements (“PPAs”) with three other projects that are not subject to the current proceeding.¹³

II. REVIEW OF CCN APPLICATION

In order for an electric utility to obtain Public Utility Commission of Texas (“Commission”) approval of a CCN application, the CCN application must comply with the requirements of PURA § 37.056.¹⁴ Under PURA § 37.056(a), the Commission may approve an application and grant a CCN only if it finds that the CCN is necessary for the service,

⁶ See Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for an Additional Generating Unit at the Newman Generating Station in El Paso County and the City of El Paso, Docket No. 50277 at 1 (Nov. 22, 2019) (“EPE’s CCN Application”); See also Direct Testimony of James Schichtl at 2:17-19 (Nov. 22, 2019) (“Schichtl Direct”) attached to EPE’s CCN Application.

⁷ EPE’s CCN Application at 1.

⁸ *Id.* at 4.

⁹ *Id.* at 1.

¹⁰ *Id.*

¹¹ Schichtl Direct at 5:20 – 6:6.

¹² Direct Testimony of Omar Gallegos 3:19-27, 4:9-11, 11:26 – 12:2, 15:20-22 and Exhibit OG-1 8-15 (Nov. 22, 2019) (“Gallegos Direct”).

¹³ *Id.* at 3:19-27.

¹⁴ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2014) (“PURA”).

accommodation, convenience, or safety of the public. PURA § 37.056(c) sets forth the following factors that the Commission must consider:

- (1) the adequacy of existing service;
- (2) the need for additional service;
- (3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and
- (4) other factors, such as:
 - (A) community values;
 - (B) recreational and park areas;
 - (C) historical and aesthetic values;
 - (D) environmental integrity;
 - (E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and
 - (F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.¹⁵

Of these required factors, EPE's CCN application is based on the contention that the Project will help the Company maintain the adequacy of existing service under PURA § 37.056 (c)(1) and is needed to provide additional service in EPE's service area under PURA § 37.056 (c)(2).¹⁶ In his Direct Testimony, EPE Witness Mr. James Schichtl testified that, as part of EPE's ongoing planning process in 2017, the Company assessed its future load requirements and the state of generation resources.¹⁷ Mr. Schichtl stated that, based on the 2017 planning assessments, additional resources are needed to meet increased growth in customer demand and planning reserve margin requirements, as well as to replace the capacity from generation units that will be retired in the coming years.¹⁸ Mr. Schichtl also noted that the Project will provide operational benefits, such as a lower heat rate, fuel cost savings and system-wide benefits for EPE.¹⁹ In

¹⁵ PURA § 37.056(c).

¹⁶ Schichtl Direct at 8:21 – 9:13.

¹⁷ *Id.* at 5:13-18.

¹⁸ *Id.* at 4:29 – 5:3.

¹⁹ *Id.* at 9:8-12.

addition, EPE witness Mr. Omar Gallegos testified that the Company's 2018 Loads and Resources ("L&R") analysis determined that a total of 370 MW of additional generation capacity will be required by the summer of 2023 (50 MW in 2022 and 320 MW in 2023) to meet increasing electricity demand from its customers and to replace generation capacity from the retirement of older, less efficient generation units.²⁰ Mr. Gallegos stated that EPE uses a 15 percent reserve margin for planning purposes, which was affirmed by a 2015 reserve margin study conducted by Energy Environmental Economics ("E3"), to ensure reliable resource adequacy due to the probability of forced outages and load forecast error.²¹

The Commission has broad authority in considering whether to grant a CCN application based on the factors provided in PURA § 37.056(c).²² The Commission weighs these factors on a case-by-case basis.²³ Because some of the factors may compete with one another, the Commission "may in some cases be required to adjust or accommodate the competing policies and interests involved... None of the statutory factors are intended to be absolute in the sense that any one should prevail in all possible circumstances."²⁴ In weighing these competing factors, the Commission is required to exercise its expertise to further the overall public interest.²⁵

In this proceeding, the possibility that the Project will help maintain the adequacy of existing service and provide additional service in EPE's service area must be weighed against the effect on other utilities serving the proximate area and local impacts, such as community values, recreational and park areas, historic and aesthetic values, the integrity of the environment and whether the Project will result in probable improvement in service or lowering of consumer costs.²⁶

²⁰ Direct Testimony of Omar Gallegos, Docket No. 50277, Exhibit OG-1 at 1 ("Report on Planning and Solicitation of Resources to Meet 2022 and 2023 Resource needs, EPE Resource Planning" (Dec. 26, 2018)) (Nov. 22, 2019) ("Gallegos Direct").

²¹ *Id.* at 2.

²² *Pub. Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

²³ *Id.* ("To implement in particular circumstances such broadly stated legislative objectives and standards, the Commission must necessarily decide what they mean in those circumstances.").

²⁴ *Id.* at 267.

²⁵ *Id.*

²⁶ PURA § 37.056 (c)(4)(F) (It is OPUC's understanding that renewable energy goals established in PURA § 39.904(a) have already been achieved, and as such, the factor in PURA § 37.056 (c)(4)(F), relating to the state's renewable energy goals, is not applicable to the current CCN application).

III. OPUC'S POSITION

As stated above, OPUC intervened in this proceeding on January 3, 2020. OPUC retained an expert witness to review the key filings in this proceeding.²⁷ OPUC will not file Direct Testimony in the case. Based on an extensive review of EPE's application, filed testimony, discovery responses and representations made in this proceeding, OPUC believes the CCN, as requested by EPE, appears to be necessary for the service, accommodation, convenience and safety of the public under PURA § 37.056.²⁸ OPUC, therefore, would support the Commission's approval of EPE's application, as presented, for the reasons discussed below.²⁹

Based on OPUC's review of the key filings in this proceeding, EPE's request for proposal ("RFP"), competitive bidding and selection process seems to be robust, prudent and reasonable.³⁰ EPE appears to have applied a rigorous load forecasting process to support its need for additional generation capacity in the 2022-2023 timeframe.³¹ EPE conducted life extension studies of the existing generation units planned for retirement and the studies found that the generation units were not cost effective.³² EPE subsequently issued a comprehensive all-source RFP for additional generation capacity that resulted in a broad range of resource bids.³³ During the RFP process, under the direction of Mr. Wayne Oliver who served as an independent evaluator, the Company conducted a multi-step evaluation of the submitted resource bids, which included both a quantitative and qualitative assessment of the resources.³⁴ The levelized cost of energy for each bid was calculated and the bids were ranked by cost and type of technology.³⁵ A short-list of bids was developed and EPE requested "best and final offers" from the bidders.³⁶ Finally, the short-

²⁷ OPUC retained the services of Mr. Karl Nalepa as an expert witness for this proceeding.

²⁸ See also, *Pub. Util. Comm'n v. Texland Elec. Co.*, 701 S.W.2d 261, 267.

²⁹ OPUC supports the Commission's approval of EPE's application, as presented, and reserves the right to litigate matters that were not addressed in EPE's application or OPUC's statement of position in future proceedings.

³⁰ While the overall process seems robust, prudent and reasonable at this time, OPUC reserves the right to challenge any unforeseen shortcomings in the process in future proceedings.

³¹ Direct Testimony of George Novela at 5:7-20 (Nov. 22, 2019) ("Novela Direct").

³² Gallegos Direct at 12:23-29.

³³ *Id.* at 15:27-30.

³⁴ *Id.* at 16:23 – 19:14.

³⁵ *Id.* at 18:1-2.

³⁶ *Id.* at 28:10-14.

listed bids were modeled for economic impact, and EPE selected an optimum portfolio of generation resources to meet its identified additional capacity needs, which included the Project and PPAs with three other projects that are not part of this proceeding.³⁷

Furthermore, while the Project is not proposed to reduce costs to customers but rather to maintain and improve service reliability, OPUC believes that the Project could potentially provide fuel cost savings for EPE's ratepayers.³⁸ EPE maintains that the heat rate of the new generation unit is lower than the heat rate of the generation units that will be retired by the Company.³⁹ Therefore, EPE states that the new generation unit will likely result in fuel cost savings for EPE's customers.⁴⁰ A generation unit with a lower heat rate is a more efficient unit that uses less British Thermal Units ("BTUs") of energy to produce the same amount of electricity as a generation unit with a higher heat rate. Consequently, it will take less fuel to produce the same amount of electricity with a lower heat rate generation unit, and therefore, the lower heat rate generation unit will have lower fuel costs, which translates to fuel cost savings for ratepayers.⁴¹

The Company represents that the Project's guaranteed heat rate is expected to be approximately 10,101 BTUs per kilowatt-hour compared to the average heat rate of 11,960 BTUs per kilowatt-hour for the three older, less efficient existing generation units that will be retired by the Company. EPE witness Mr. Schichtl testified that "[b]ased upon a PROMOD operating simulation to calculate an estimate of the impact of the Project on annual fuel costs, the fuel costs associated with the Project are expected to decline by approximately \$4.3 million in 2024, the first full year of operation for the new generation unit. For a typical residential customer using 642 kWh per month, this equates to a reduction in the fuel component of the customer's monthly electric bill of approximately \$0.31."⁴²

³⁷ *Id.* at 30:25-29.

³⁸ Schichtl Direct at 4:29 – 5:3.

³⁹ *Id.* at 14:3-6.

⁴⁰ *Id.* at 13:26 – 14:19.

⁴¹ *Id.* at 14:10-12.

⁴² *Id.* at 14:3-12.

Finally, according to the Company, the Project will have a minimal rate impact on its ratepayers.⁴³ EPE maintains that the inclusion of the new generation unit in the Company's rates will result in a small increase in its base rate revenue requirement in the first year of operation and a small decrease in fuel costs.⁴⁴ The Company's base rate revenue requirement will reflect the recovery of the capital and operating costs of the new generation unit and reduced fuel costs resulting from the unit's lower heat rate.⁴⁵ Stated differently, the Company anticipates that the slight increase in base rates associated with the addition of the Project will be offset by the slight decrease in fuel costs provided by the Project, resulting in a net neutral or minimal impact on its ratepayers.

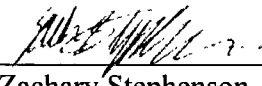
IV. CONCLUSION

For the reasons stated herein, OPUC supports the Commission's approval of EPE's application. OPUC reserves the right to participate in the hearing and to cross-examine witnesses on issues raised in the evidentiary record in this proceeding. OPUC further requests such other relief to which it may be entitled.

May 5, 2020

Respectfully submitted,

Lori Cobos
Chief Executive & Public Counsel
State Bar No. 24042276



Zachary Stephenson
Assistant Public Counsel
State Bar No. 24073402
Chris Ekoh
Senior Managing Public Counsel
State Bar No. 06507015

⁴³ *Id.* at 13:28.

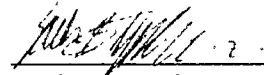
⁴⁴ *Id.* at 13:28 – 14:2.

⁴⁵ *Id.* at 13:31 - 14:2.

OFFICE OF PUBLIC UTILITY COUNSEL
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500 (Telephone)
512/936-7525 (Facsimile)
zachary.stephenson@opuc.texas.gov
chris.ekoh@opuc.texas.gov
opuc_eservice@opuc.texas.gov (Service)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 5th day of May 2020, by facsimile, electronic mail, and/or first class, U.S. Mail.



Zachary Stephenson