



Control Number: 40094



Item Number: 217

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SOAH DOCKET NO. 473-12-4275
DOCKET NO. 40094

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PUBLIC UTILITY COMMISSION
FILED CLERK

**APPLICATION OF EL PASO
ELECTRIC COMPANY TO CHANGE
RATES AND TO RECONCILE FUEL
COSTS**

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

**MOTION TO INTERVENE OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION
AND OF THE EL PASO SOLAR ENERGY ASSOCIATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Solar Energy Industries Association (“SEIA”) and the El Paso Solar Energy Association (“EPSEA”) move to intervene in the above-styled and -docketed proceeding pursuant to the Public Utility Regulatory Act, Title II, TEX. UTIL. CODE (Vernon 2007 & Supp. 2010-2011) (“PURA”) and Sections 22.101 through 22.104 of the Rules of Practice and Procedure of the Public Utility Commission of Texas (“Procedural Rule”). This motion is timely filed on or before the deadline for motions to intervene in this case.

1. SEIA’s and EPSEA’s copy of all communications, filings and other documents in this case should be served on its attorney and authorized representative:

J. Christopher Hughes
Brown McCarroll, L.L.P.
111 Congress Avenue, Suite 1400
Austin, Texas 78701
Phone: (512) 479-1173
Facsimile: (512) 481-4836
chughes@brownmccarroll.com

2. As provided in Procedural Rule 22.103(b), SEIA and EPSEA have standing to intervene because they have or represent persons with a justiciable interest which may be adversely affected by the outcome of the proceeding, as described below.

3. EPSEA members include El Paso Electric Company (“EPE”) retail customers. EPE retail customers who are EPSEA members for this case include Border Solar, which has an

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El Paso office, and Robert and Blanca Gardner-Moss, who filed a protest letter in this case dated February 22, 2012, and attached to this motion to intervene. SEIA members for this case include Borrego Solar Systems Inc., Solar City®, and Solar Smart Living, LLC (an EPE retail customer).

4. In its application in this case, EPE proposed a new surcharge (“DRG Surcharge”) on certain EPE retail customers with distributed renewable generation (“DRG”) at their customer premises.¹ EPE supplies retail electric service using its rate-based generation capacity, of which no more than a minute portion is DRG. SEIA and EPSEA members include solar energy manufacturers, distributors, contractors, installers and project developers who offer DRG and DRG-related products and services in EPE’s service area. Thus their business interests, including as competitors of EPE, may be adversely affected by the outcome of this proceeding.² EPE retail customers would be less likely to install DRG or additional DRG at their customer premises using SEIA and EPSEA members’ solar energy products and services if doing so would require those retail customers to pay EPE’s proposed new DRG Surcharge.

5. Granting this motion is also important to address significant issues arising from EPE’s proposed new DRG Surcharge. Examples of those issues include: (1) EPE’s proposal to impose the DRG Surcharge directly on individual retail customers with DRG at their premises in direct contradiction to PURA § 39.354(h), which provides for allocating any additional cost to

¹ SEIA and EPSEA do not oppose EPE’s proposed waiver of EPE’s proposed new DRG Surcharge for certain customers (described in EPE witness David G. Carpenter’s prefiled direct testimony pp. 12-13, Bates 69-70) if EPE’s proposed new DRG Surcharge were to be approved. Rather, they urge that the surcharge be rejected.

² In *Application of Entergy Texas, Inc. for Authority to Change Rates and to Reconcile Fuel Costs*, Docket No. 37744, Order on Appeal of Order No. 3 (Mar. 11, 2010), the Commission considered whether Cottonwood Energy Company, L.P., which was not a retail customer of Entergy, had a justiciable interest to intervene in that retail rate case. Noting that “Entergy included a proposed competitive generation tariff as part of its application in this docket,” (*Id.* at 1) the Commission concluded: “The Commission determines that Cottonwood has asserted a justiciable interest in this proceeding because the language of the competitive generation tariff, as proposed, would preclude Cottonwood from providing service as a competitive generation supplier.”

retail customer classes that contain such retail customers;³ (2) whether EPE's proposed new DRG Surcharge would recover *any additional cost associated with the metering and payment options* as required by § 39.354(h) as opposed to EPE lost revenues; and (3) whether EPE's proposed new DRG Surcharge is discriminatory, anti-competitive or otherwise contrary to PURA.

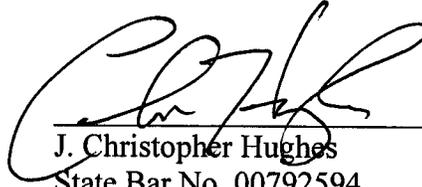
6. The above-described adverse impacts of EPE's proposed new DRG Surcharge on affected solar energy companies and retail customers with DRG are out of proportion to the revenues EPE expects to receive. EPE estimates that if its proposed DRG Surcharge were approved and fully implemented, EPE would receive additional revenue of \$11,384.⁴

WHEREFORE, PREMISES CONSIDERED, SEIA and EPSEA respectfully request that their motion to intervene be granted, that they be allowed to participate in this proceeding to the full extent that they desire to do so, and any other relief to which they may be entitled.

³ PURA § 39.554(h) states: "In a base rate proceeding or fuel cost recovery proceeding conducted under Chapter 36, the commission shall ensure that any additional cost associated with the metering and payment options described by Subsections (e), (f), and (g) is allocated only to customer classes that include distributed renewable generation owners who have chosen those metering options." See also PURA §§ 39.551(a) ("This subchapter applies only to an investor-owned electric utility: (1) that is operating solely outside of ERCOT in areas of this state that were included in the Western Electricity Coordinating Council on January 1, 2011; . . .") and 39.554.

⁴ See p. 11 of EPE witness Evan D. Evans' direct testimony p. 11, Bates 1093.

Respectfully submitted,



J. Christopher Hughes

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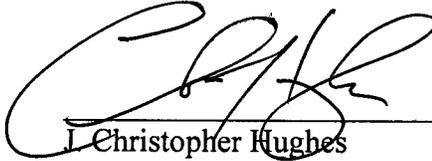
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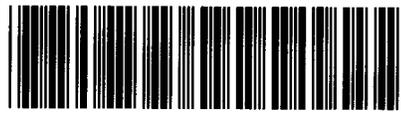
ATTORNEY FOR THE SOLAR ENERGY
INDUSTRIES ASSOCIATION AND THE EL
PASO SOLAR ENERGY ASSOCIATION

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading has been forwarded by fax, U.S. first class mail, hand-delivery, or by courier service to all parties of record on the 13th day of April, 2012.



J. Christopher Hughes



Control Number: 40094



Item Number: 222

Addendum StartPage: 0

April 16, 2012

RECEIVED
12 APR 16 AM 11:40
PUBLIC UTILITY COMMISSION
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Tracy Lowry
Filing Clerk
Central Records
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78701

Re: Docket No. 40094, *APPLICATION OF EL PASO ELECTRIC COMPANY TO CHANGE RATES AND TO RECONCILE FUEL COSTS*

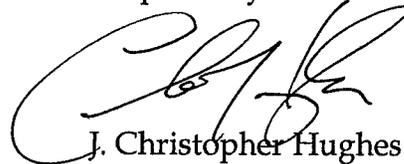
Dear Ms. Lowry:

On Friday, April 13, 2012, a Motion to Intervene of the Solar Energy Industries Association and of the El Paso Solar Energy Association was filed under the referenced docket but the attachment to same was inadvertently left off the Motion.

Attached to this letter is the attachment that should be added to said motion.

Thank you for your attention to this matter. If you have questions, please let me know.

Respectfully submitted,



J. Christopher Hughes

Austin

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Dallas

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Encls.

Houston

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Public Utility Commission of Texas
Attn: Filing Clerk
1701 N. Congress Ave.
Austin, TX 78711-3326

February 22, 2012

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RE: Formal Protest of Specific Matters related to the El Paso Electric Rate Case filing, Case #40094

Dear Public Utility Commission,

Our names are Robert Moss and Blanca Gadney-Moss. We are residents of El Paso, Texas and have a residential account with El Paso Electric Company. We are writing this letter as a Protestor to the proposed rate structure submitted by El Paso Electric in its current rate case filing. Our concerns are regarding the rates proposed by EPE as they relate to the company's intent to recover revenues it claims to have lost due to energy efficiency measures taken by customers through home and business efficiency measures. Specifically EPE is claiming that customer-side generation through solar and wind is costing EPE revenues it believes it is due. Of this we can all be sure, individual actions taken by customers of EPE to reduce their demand upon the electric grid are in fact reducing both peak demand and the number of kWh units EPE can sell to those customers in its Texas and New Mexico markets. But the extent to which EPE can claim these as legitimate costs and pass them on to its customers is highly suspect and should be scrutinized extensively by the PUCT and other interveners in the rate case.

We assert to you that the proposed methodology of EPE to offset its claimed lost revenue due to Distributed Renewable Generation is not in compliance with the law or the rules of the PUCT. To be specific, in Chapter 39, section 39.554(h) it states: *In a base rate proceeding or fuel cost recovery proceeding conducted under Chapter 36, the commission shall ensure that any additional cost associated with the metering and payment options described by Subsections (e), (f), and (g) is allocated only to customer classes that include distributed renewable generation owners who have chosen those metering options.* Through its rate case filing, EPE is identifying costs related to DRG as being a new additional cost and is attempting to recover its claimed costs by levying additional charges solely upon the DRGOs within the customer classes, which is not compliant with 39.554(h) which requires the cost to be spread to the customers classes.

A traditional means the PUCT has allowed to recover claimed efficiency costs (if truly valid) is through an Energy Efficiency Cost Recovery factor (EECRF). Instead of handling these claims as part of an EECRF case or spreading claimed costs in accordance with the law, EPE is attempting to create what amounts to a penalty charge for conservation efforts by the customers. If these costs are found legitimate, then they should be recovered in accordance with the traditional means allowed by the PUCT, or at the very least, in compliance with the law created by SB 1910 via allocation to all customers in the rate classes. Not exclusively from customers having solar or wind.

The recovery methodology, as proposed by EPE, results in significant new charges for customers who have installed solar and wind energy devices at their residences and places of business. As an example, residential customers having solar can expect on average a new annual premium of \$141.78 added to their electric bills. If these claimed costs were instead allocated in accordance with current PUCT practices and/or 39.554(h) then the resulting charge would amount to an average \$0.035 per customer per year.

The same discouraging misallocations of the claimed "costs" are proposed to be levied on DRG customers in several other rate classes as well besides the Residential tariff. Examples for solar efficiency measures are as follows: Irrigation \$3.39/kW-DC/month, Small Commercial Business \$2.88/kW-DC/month, Outdoor Recreational Lighting \$10.10/kW-DC/month, Traffic Lighting \$0.90/kW-DC/month, Municipal Water Pumping \$1.25/kW-DC/month and as previously mention Residential \$2.55/kW-DC/month.

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The pervasiveness of this cost allocation approach throughout the filing, contrary to the requirements of 39.554(h), leads us to believe the proposal by EPE is a deliberate construct designed not to recapture the revenue costs of the customer-side generation and metering in question, but instead to create a financial disincentive aimed to reverse current growth trends in the adoption of Distributed Renewable Generation. It would seem by the rate structure proposed that customer-side DRG is contrary to the preferred business model of EPE. And so it appears to us in its effort to discourage this trend, EPE will levy excessive fees upon its captive customers who do choose to generate some of their own energy through customer-side efficiency measures.

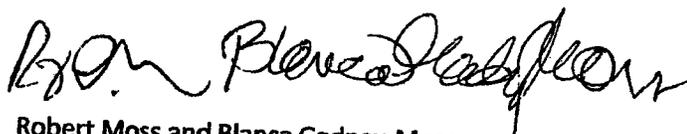
To strengthen its case for these new fees EPE went so far as to include in its filing divisive language that suggest the customers who install solar and wind generation are relatively wealthy and should therefore justifiably pay added premiums, otherwise "system costs ... will be borne by other customers who cannot afford a renewable generating facility or who choose not to install such a facility." While on the surface this language may give the appearance that EPE is concerned for its lower wage customers, but offered into testimony in this manner it is a veiled attempt to set customers against each other. It totally neglects mention that customers having DRG installed are spending portions of their own shrinking retirement money in an effort to rely less upon EPE's generation and to lower their monthly bills to levels they can tolerate in retirement.

Regardless of the rate class of a DRG customer, the customers shouldn't have to pay a recurring monthly penalty for using less energy from the company. The PUCT should elect instead to protect the rights of individuals, small businesses and corporations to produce the energy they require for living and doing their business. To make a small but meaningful analogy, in this day and age we all need to encourage victory gardens. As a nation we don't penalize home gardeners for growing their own tomatoes when they go to purchase lettuce at the market. They have a right to grow those tomatoes for their own use. Likewise, conservation minded customers shouldn't be expected to subsidize the high salaries and bonuses of electric company executives, especially when these customers, through their efficiency and conservation efforts, are relying less upon the energy the electric company is selling.

The current growth in DRG in West Texas amounts to new job creation for Texans. The PUCT should act to preserve this in a market where competition has yet to be introduced. Because there is no utility competition in the El Paso market, customers have no other option to El Paso Electric other than their own conservation efforts to reduce their bills. Don't allow for the single utility in the region to discourage customer side renewable and energy efficiency measures.

Thank you for your time and consideration of the positions taken in this Protest. We hope that it has offered insight and serves to inform the Commission as it considers the current rate case before you.

Respectfully,



Robert Moss and Blanca Gadney-Moss
4312 Marcus Uribe
El Paso, TX 79934

Cc: El Paso County Commissioners; Council members and Mayors of the Cities and Townships of El Paso, Socorro, Dell City, Anthony, Canutillo, Van Horn, Tornillo, Sparks, Vinton, Sierra Blanca, Fort Hancock and Fabens; the Governor and Tribal Council of the Ysleta Del Sur Pueblo; the Garrison Commander of Fort Bliss, TX; and the School Boards of EPISD, YISD and SISD