

Cindy Karch

From: Alfred Herrera <aherrera@herreralawpllc.com>
Sent: Thursday, October 22, 2020 10:57 AM
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Cc: Brennan Foley; Sergio Herrera; Leslie Lindsey; Mariann Wood
Subject: Re: SWEPCO 2020 Rate Case - Suspension Resolution

To All CARD Cities:

Yesterday, you may have attended a conference call hosted by SWEPCO in which according to what SWEPCO informed me, it was simply going to explain to the cities the basis for SWEPCO's proposed increase of 26% in its rates, equating to an increase of over \$90 million, and that no attorneys were invited or would be present. In fact, SWEPCO initially included me in the invite, but then quickly called to un-invite me to the meeting.

However, based on the information SWEPCO provided at or following that conference, it appears that SWEPCO is providing the cities legal advice, particularly with regard to what action the cities should take. **As I did in my email of Oct. 20, we strongly urge you not to take SWEPCO's advice on the action your council should take and not to adopt SWEPCO's proposed resolutions/ordinances.**

SWEPCO is not merely asking you to deny its request, but is also asking that your city cede its authority over SWEPCO's rates and its services and operations in your city, to the State. If your city cedes its rate jurisdiction over electric/gas utility rates, services, and operations, it's effectively turning over its authority to the State via the Public Utility Commission of Texas ("PUC").

While certainly, given the utility's ability to appeal a city's decision on *rates*, the PUC has the final word on rates, but the same is not true with regard to quality of the utility's *services and operations*. A city's authority over a utility's services and operations is generally not appealable to the PUC and retaining jurisdiction provides the city a tool to ensure high quality of service in the city should things begin to falter.

Plus, ceding jurisdiction to the state is highly likely a *decision to last in perpetuity* because the city would need to hold an election to reinstate the city's jurisdiction.

The Public Utility Regulatory Act §33.003 states:

Sec. 33.003. REINSTATEMENT OF MUNICIPAL JURISDICTION.

(a) A municipality that surrenders its jurisdiction to the commission may at any time **reinstate its jurisdiction by a vote of the electorate.**

(b) A municipality that reinstates its jurisdiction under Subsection (a) may not surrender that jurisdiction before the fifth anniversary of the date of the election in which the municipality elected to reinstate its jurisdiction.

(c) A municipality may not, by a vote of the electorate, reinstate the jurisdiction of the governing body during the time a case involving the municipality is pending before the commission.

For gas-utility rates, Gas Utility Regulatory Act, §103.003, states:

Sec. 103.003. SURRENDER OF MUNICIPAL JURISDICTION TO RAILROAD COMMISSION; REINSTATEMENT OF JURISDICTION.

(a) A municipality may elect to have the railroad commission exercise exclusive original jurisdiction over gas utility rates, operations, and

services in the municipality by ordinance or by submitting the question of the surrender of its jurisdiction to the voters at a municipal election.

(b) The governing body of a **municipality shall submit at a municipal election the question of surrendering its jurisdiction to the railroad**

commission if the governing body receives a petition signed by a number of qualified voters of the municipality equal to at least the lesser of 20,000 or 10 percent of the number of voters voting in the last preceding general election in the municipality.

(c) A municipality may not elect to surrender its jurisdiction while a case involving the municipality is pending.

(d) A municipality that surrenders its jurisdiction to the railroad commission may reinstate its jurisdiction. **The provisions of this section governing the surrender of jurisdiction apply to the reinstatement of jurisdiction.**

Surrendering jurisdiction can have a negative effect and minimize even more a city's ability to have a say in the quality of the utility's services and operations.

We again urge your city to decline to adopt the ordinance/resolution SWEPCO provided you and to instead adopt the "suspension" resolution we sent you.

Best regards,

Arh
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From: Alfred Herrera

Sent: Tuesday, October 20, 2020 10:51 AM

To: jfinley@longviewtexas.gov; lkaczmarek@longviewtexas.gov; kbonds@longviewtexas.gov; rray@longviewtexas.gov; dporter@atlantatexas.org; dcockrell@atlantatexas.org; cityofavery@yahoo.com; gmothershed@valornet.com; cityofbig sandy@yahoo.com; citysecretary@swat.coop; citymayor@swat.coop; dclark@carthagetexas.com;

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Cc: Brennan Foley; Sergio Herrera; Leslie Lindsey; Mariann Wood

Subject: Re: SWEPCO 2020 Rate Case - Suspension Resolution

All:

I am in receipt of a proposed ordinance that SWEPCO provided you when it filed its application to increase rates.

PLEASE DO NOT ADOPT SWEPCO'S PROPOSED ORDINANCE.

SWEPCO's proposed ordinance would strip your City of its jurisdiction and turn matters over to the State to control.

Instead, we ask that you adopt the Resolution we sent you yesterday. This is our office's and the CARD Steering Committee's recommendation.

If you have any questions on this, please do not hesitate calling me or sending me an email.

Best regards,

ARH
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On Oct 19, 2020, at 3:28 PM, Alfred Herrera <aherrera@herreralawpllc.com> wrote:

To All CARD Cities:

By now you should have received SWEPCO's rate-filing package in which it seeks approval to increase its rates.

Attached is an Agenda Information Sheet (AIS) and a proposed "Suspension" Resolution for your council's consideration. CARD's Steering Committee recommends that your council adopt the attached Resolution.

It is imperative that your council take action to adopt the attached Resolution by no later than November 17, 2020. Failure to take action by Nov. 17, 2020 means that SWEPCO's proposed increase in rates is deemed approved by law.

If adopted the Resolution:

Suspends SWEPCO's proposed effective date for the statutory time period allowed by law related to its statement of intent to increase rates submitted to the City on about October 13, 2020;

Authorizes engaging special counsel to represent the City with regard to SWEPCO's statement of intent;

Authorizes intervention in proceedings related to SWEPCO's statement of intent through a coalition of cities known as Cities Advocating Reasonable Deregulation ("CARD"); and

Directs SWEPCO to reimburse the City's reasonable rate case expenses related to SWEPCO's statement of intent.

Also attached is suggested language for your agenda related to SWEPCO's application to increase rates, but please confer with your city attorney on the attached suggested wording.

SWEPCO is seeking a 20% increase in its base rates, which equates to an increase of about \$90 million. The attached agenda-information sheet (AIS) provides more details on SWEPCO's proposed increase.

If approved, a **residential customer** using 2,000 kWh per month would see a **jump of over \$42 in their monthly bill** (about 28%) in the Summer months and almost \$30 per month in the Winter months (about 29%).

For a **small business** using 3,000 kWh per month would see an **increase of almost \$90 per month in their electric bill**, an increase of about 46%.

Your city's participation is crucial to CARD's success. Through your support in the past, **CARD has successfully saved your citizens about \$54.7 million in their electric bills** over the course of recent applications SWEPCO filed seeking to increase its rates. These savings break out as follows:

- \$49.7 million in SWEPCO's most recent full-fledged rate cases.
- \$2.6 million in its series of "transmission cost recovery factor" (TCRF) cases.
- \$1 million more, in SWEPCO's recent "distribution cost recovery factor" (DCRF) case.
- \$1.5 million in additional fuel cost refunds.

These savings are a direct product of CARD's involvement and we urge you to continue your participation and involvement. It is truly valued and impactful.

Our office and the CARD Steering Committee ask that you place the attached Resolution on your council's agenda in time to take action by no later than November 17, 2020. Failure to take action by Nov. 17, 2020 means that SWEPCO's proposed increase in rates is deemed approved by law.

If for any reason your council will not hold a meeting by November 17, 2020, please let me know immediately so that I can contact SWEPCO's attorneys to see if they're agreeable to an extension. If SWEPCO does not agree, your council may need to hold a special called meeting.

We also ask that your council *not* adopt any resolution that SWEPCO may present to you.

Lastly, it's my understanding that SWEPCO is making a presentation to several cities regarding SWEPCO's proposed increase in rates. If you attend, I ask that you send me a copy of any materials SWEPCO may hand out, and that your city withhold making any commitments to SWEPCO regarding its application to increase rates until we've had an opportunity to review SWEPCO's application.

As always, if you have any questions regarding SWEPCO's rate case, please do not hesitate contacting me. Please call my mobile number listed below, or send me an email.

Sincerely,

Arh
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