

September 26, 2024
Item No. 9.1.
TCOS Refund Payment Resolution

Sponsor: Bryan Woods, City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a resolution delegating to the City Manager the authority to make an electric utility Transmission Cost of Service (TCOS) refund payment in the amount of \$27,416,135.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff respectfully recommends the City Council approve the resolution.

Summary: The Public Utility Commission of Texas (PUC) has ordered the City of College Station to issue an arbitrary \$27.4 million refund to 34 major utility systems that pay to use the City's transmission system. The order concerns the city's inclusion of a General Fund Transfer (GFT) in its interim Transmission Cost of Service (TCOS) applications in 2007, 2008, and 2017. The PUC upheld the order despite the State Office of Administrative Hearings Administrative Law Judges (SOAH ALJs) ruling that the refund amount was excessive and unwarranted. The attached resolution will authorize the City Manager to prepay the full refund now, in order to stop the punitive accrual of an additional \$15 million in interest over 15 years.

Budget & Financial Summary: This payment will reduce the fund balance in the Electric Utilities Fund by \$27.4 million.

Attachments:

1. College Station TCOS Resolution 9-26-24

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS, FINDING THE PUBLIC UTILITY COMMISSION OF TEXAS ARBITRARILY AND CAPRICIOUSLY ORDERED THE CITY TO REFUND REVENUE FROM ITS WHOLESALE TRANSMISSION RATES AND THAT THIS ACTION LACKS ANY ESTABLISHED LEGAL BASIS AND DISREGARDS THE FACTS AND THE MITIGATING FACTORS IN THE ADMINISTRATIVE RECORD REGARDING THE CITY'S 2021 TRANSMISSION COST OF SERVICE APPLICATION AND AUTHORIZING THE CITY MANAGER TO MAKE ANY PAYMENTS RELATED TO THE REFUND IN THE CITY'S TCOS CASE THAT ARE FROM APPROVED AND BUDGETED FUNDS.

WHEREAS, the City of College Station ("City") operates a municipally owned electric utility ("MOU") as allowed by law; and

WHEREAS, the City owns and operates as part of its electric utility both a transmission system for longer distances and higher voltages and a distribution system for local electric distribution for shorter distances and lower voltages with rates set by the City Council; and

WHEREAS, the Public Utility Commission of Texas ("PUC") is a state administrative agency appointed by the Governor of the State of Texas charged with the primary responsibility of implementing the Constitution and Texas laws relating to the setting of certain electric rates, including Transmission Cost of Service ("TCOS") rates for MOUs; and

WHEREAS, the City needed to update its transmission system cost of service with the PUC because of maintenance, upgrades, and the installation of new transmission infrastructure and submitted its application for Update of Wholesale Transmission Rates on November 3, 2021; and

WHEREAS, after administrative proceedings and discovery before the State Office of Administrative Hearings ("SOAH"), on June 23, 2022, PUC Staff filed the direct testimony of PUC Staff witness Ruth Stark. Ms. Stark's testimony recommended the City be ordered to issue a \$31.5 million refund, asserting that the City's inclusions of a General Fund Transfer ("GFT") in its interim TCOS applications in 2007, 2008, and 2017 were impermissible; and

WHEREAS, at no time did the City overcharge its College Station Utility customers (distribution customers). The refund the PUC alleges the City owes is only related to the City's transmission system and is owed to other utility companies who pay to use the City's transmission system; and

WHEREAS, on July 13, 2022, the City filed rebuttal testimony including evidence of correspondence demonstrating that the City began including a GFT in its TCOS rates at the specific instruction of PUC Staff dating back to 2007 and that the inclusion of a GFT was subsequently and repeatedly approved by the PUC, through three official orders of the PUC, during open meetings of the PUC; and

WHEREAS, in response to the City’s evidence included in the City’s rebuttal testimony, PUC Staff filed the supplemental direct testimony of Ruth Stark on July 29, 2022. Ms. Stark endorsed an alternative recommendation for the City to refund only \$6.6 million for its GFT inclusions; and

WHEREAS, on August 16, 2022, prior to an evidentiary hearing, the City, PUC Staff, and the Office of Public Utility Counsel (“OPUC”), an intervenor, filed an Uncontested Stipulation and Settlement Agreement (“Settlement”) resolving all issues and requiring a refund of \$3.9 million, and Texas Industrial Energy Consumers (“TIEC”), an intervenor, was unopposed to the Settlement and refund amount; and

WHEREAS, the PUC during its Open Meeting on January 26, 2023, declined to accept the Settlement and remanded the proceeding back to SOAH, finding that the City was not authorized to include a GFT in its TCOS rates; and

WHEREAS, after a hearing on remand, the SOAH ALJs issued a Proposal for Decision (“PFD”) on July 27, 2023, finding that the PUC had already determined the key issue of GFT recoverability in TCOS rates and recommending a partial refund; and

WHEREAS, on September 14, 2023, the PUC rescinded its previous order issued on January 26, 2023, and ordered the SOAH ALJs to address all issues, including the permissibility of the City’s GFT inclusion; and

WHEREAS, after additional briefing, on December 21, 2023, the SOAH ALJs issued a second PFD recommending that, based on the unique circumstances of the case, the PUC should order a partial \$900,000 refund for the City’s inclusion of a GFT in its interim TCOS filings; and

WHEREAS, the PUC during its Open Meeting on March 7, 2024, considered the second PFD and disregarded the ALJ’s findings, ultimately ordering the City to refund \$26.3 million, plus over \$15 million in carrying charges, over a period of 15 years; and

WHEREAS, after subsequent administrative proceedings, briefing, and a PUC Final Order, on August 14, 2024, the City filed, in accordance with the PUC’s Final Order, a notice of its intent to prepay the outstanding refund balance on October 15, 2024, saving the City approximately \$15 million in carrying charges; and

WHEREAS, on September 3, 2024, the City appealed the PUC’s Final Order in Travis County District Court because the PUC’s decision is arbitrary, capricious, and lacks any basis in PUC rules or orders; and

WHEREAS, as permitted under Ordering Paragraph No. 10 of the PUC’s Final Order issued on July 11, 2024, the City intends to prepay the outstanding refund balance without penalty to transmission customers; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1:** The above recitals are adopted as findings of the City Council.
- PART 2:** The PUC’s decision has no basis in a PUC rule or order. The PUC’s only articulated legal basis for its decision is that College Station violated 16 TAC § 25.192 (the TCOS rule) because College Station’s inclusion of the GFT was not first approved in a comprehensive rate case, but the TCOS rule has no such requirement. Therefore, the Commission’s decision is an error of law.
- PART 3:** The order from the City’s last comprehensive TCOS filing with the PUC contains no prohibition against inclusion of a GFT in subsequent interim TCOS filings. The PUC’s Final Order establishes a new “effective rate” policy for evaluating inclusion of a GFT that did not exist in any prior PUC rule or order and is not grounded in any known legal requirement. The City could not have reasonably been on notice that the PUC would adopt and enforce this policy to retroactively penalize College Station.
- PART 4:** PUC precedent is to approve inclusion of a GFT in TCOS rates as “other associated taxes” under the TCOS rule. The PUC followed this precedent by approving inclusion of the City’s GFT as “other associated taxes” in three separate orders in 2007, 2008, and 2017. The PUC’s decision now arbitrarily disclaims its own prior orders.
- PART 5:** In an effort to settle this matter, the City, PUC Staff, and OPUC executed the Settlement and, with no reason based in law or fact, the PUC arbitrarily rejected the Settlement.
- PART 6:** After the PUC rejected the Settlement, the PUC asked the SOAH ALJs to resolve all issues and the SOAH ALJs brought some clarity to the case and provided a reasonable solution of the City refunding only \$900,000 based on numerous mitigating factors, including prior PUC orders and explicit direction from PUC Staff.
- PART 7:** The PUC’s Final Order arbitrarily and capriciously punishes College Station and lacks any established legal basis. The PUC’s Final Order also disregards the facts in the administrative record and the numerous mitigating factors that are inextricably tied to those facts, such as three orders issued by the PUC approving the City’s inclusion of a GFT in TCOS rates.
- PART 8:** That to prevent the excessive and punitive interest rate from accruing, the City Council authorizes the City Manager to pay from budgeted and approved funds the outstanding refund balance as permitted under Ordering Paragraph No. 10 of the PUC’s Final Order issued on July 11, 2024, in PUC Docket No. 52728.

PART 9: That this Resolution shall become effective immediately after passage and approval.

ADOPTED this 26th day of September 2024.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney