

D-1-GN-24-005680

CAUSE NO. \_\_\_\_\_

<b>THE CITY OF COLLEGE STATION</b> <i>Plaintiff,</i>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
	§	
v.	§	<b>TRAVIS COUNTY, TEXAS</b>
	§	
<b>PUBLIC UTILITY COMMISSION</b> <b>OF TEXAS,</b> <i>Defendant.</i>	§	200TH, DISTRICT COURT
	§	_____ <b>JUDICIAL DISTRICT</b>

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, the City of College Station (“College Station”), Plaintiff, in the above-styled cause, pursuant to the Texas Administrative Procedure Act (“APA”), Texas Government Code Sections 2001.171 and 2001.176, and Public Utility Regulatory Act<sup>1</sup> (“PURA”) Section 15.001, and files this Original Petition seeking judicial review of the Public Utility Commission of Texas’ (“PUC” or the “Commission”) July 11, 2024 Order on Rehearing (“Final Order”) in *Application of the City of College Station to Change Rates for Wholesale Transmission Service*, PUC Docket No. 52728. Plaintiff would respectfully show the Court the following:

**I. PARTIES AND SERVICE**

1. Plaintiff College Station is a municipality and home-rule city organized by city charter pursuant to Chapter 9 of the Texas Local Government Code, operating a municipally owned electric utility as allowed by law. TEX. LOC. GOV'T CODE § 552.001.

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<sup>1</sup> PURA is codified as Title II of the Texas Utilities Code.

2. Defendant Commission is an administrative agency of the State of Texas charged with the primary responsibility of implementing the Constitution and laws of this state relating to the setting of certain electric rates, including Transmission Cost of Service (“TCOS”) rates for municipally owned utilities (“MOUs”). The Commission may be served by service of citation on its Executive Director Connie Corona, 1701 N. Congress Avenue, 7<sup>th</sup> Floor Main Reception, Austin, Texas 78701. 16 TEX. ADMIN. CODE § 22.22.

3. Pursuant to the APA, Texas Government Code Section 2001.176(b)(2), a copy of this Original Petition is being served by First Class Mail on all parties of record in PUC Docket No. 52728; SOAH Docket No. 473-22-2464; *Application of the City of College Station to Change Rates for Wholesale Transmission Service*. The other parties to the underlying administrative proceeding were:

- a. PUC Staff;
- b. the Office of Public Utility Counsel (“OPUC”); and
- c. Texas Industrial Energy Consumers (“TIEC”).

## II. JURISDICTION AND VENUE

4. This suit is an appeal from the Commission’s July 11, 2024 Final Order requiring College Station to refund \$26.3 million, plus carrying charges, over a maximum period of 15 years. As a party to the proceeding before the Commission, College Station is entitled to seek judicial review of the Final Order under the substantial evidence rule pursuant to PURA Section 15.001. A copy of the Final Order is attached hereto as **Exhibit A**.

5. Pursuant to Texas Government Code Section 2001.145, a motion for rehearing is a prerequisite to appeal final Commission action on an application. A motion for rehearing is due within 25 days after the date that the decision or order that is the subject of the motion is signed. TEX. GOV'T CODE § 2001.146. The Final Order was signed on July 11, 2024. Plaintiff timely filed a Motion for Rehearing on July 26, 2024 (the "Motion"). The Motion is attached hereto as **Exhibit B**.

6. If a party files a motion for rehearing, Texas Government Code Section 2001.144 provides that a decision or order of the Commission is final and appealable on the date the order overruling the latest filed motion for rehearing is signed or on the date the latest motion for rehearing is overruled by operation of law. A motion for rehearing is overruled by operation of law if not acted on by the Commission within 55 days after the date that the decision or order that is the subject of the motion is signed. TEX. GOV'T CODE § 2001.146. On August 5, 2024, the Commission issued a memo that it voted to not add the Motion to any open meeting agenda. *See* 16 TEX. ADMIN. CODE § 22.264(e) (a motion for rehearing will not be considered unless there is an affirmative vote by at least one commissioner to take it up). Consequently, the Final Order became final and appealable on August 5, 2024 because the Commission chose not to take action.

7. This Original Petition was filed within 30 days after the Final Order became final and appealable, as required by Texas Government Code Section 2001.176.

8. Venue for this Original Petition for judicial review is in Travis County. TEX. GOV'T CODE § 2001.176.

### **III. DISCOVERY CONTROL PLAN**

9. Because this is a suit for judicial review of an agency decision, discovery is not anticipated or appropriate. However, to the extent that discovery is allowed, it should be conducted in accordance with a Level 3 discovery control plan under Texas Rule of Civil Procedure 190.4.

### **IV. REQUEST FOR PRODUCTION OF RECORD**

10. In connection with the proceeding before the State Office of Administrative Hearings (“SOAH”), there were various pleadings and documents in evidence introduced before the Commission. Thereafter, the Commission prepared its final decision (including its Findings of Fact and Conclusions of Law). Request is hereby made that the Commission transmit the original or a certified copy of the entire record of such evidence to the Court within the time permitted by law for the filing of an Answer in this cause. TEX. GOV'T CODE § 2001.175.

### **V. ADMINISTRATIVE PROCEEDINGS**

11. Defendant Commission received College Station’s Application for Update of Wholesale Transmission Rates pursuant to 16 Texas Administrative Code Section 25.192 (“Application”) in PUC Docket No. 52728 on November 3, 2021. The Application was found sufficient for further review on November 30, 2021.

12. In the Application, College Station presented testimony and schedules requesting an annual TCOS of \$6,006,601 using a test year ending September 30, 2020.

13. College Station filed proof of notice on November 12, 2021. On December 17, 2021, College Station filed proof of notice via publication. On January 12, 2022, notice was found sufficient.

14. On November 8, 2021, OPUC filed a motion to intervene in the matter on behalf of residential and small commercial consumers. OPUC's Motion to Intervene was granted on November 17, 2021.

15. The Commission referred the case to SOAH on April 19, 2022, and issued a Preliminary Order on April 21, 2022, identifying 29 issues to be addressed in the SOAH proceeding.

16. On May 27, 2022, OPUC filed the direct testimony of one witness, Karl Nalepa.

17. On June 22, 2022, PUC Staff filed the direct testimony of two witnesses, Emily Sears and Heidi Graham.

18. On June 23, 2022, PUC Staff filed the direct testimony of a third witness, Ruth Stark. Ms. Stark's testimony recommended that College Station be ordered to issue a \$31.5 million refund, asserting that College Station's inclusion of a General Fund Transfer (GFT) in its interim TCOS applications in 2007, 2008, and 2017 were impermissible.

19. Prior to filing Ms. Stark's testimony, PUC Staff filed six sets of discovery requests over five months. None of the requests inquired into College Station's inclusion of a GFT in its previous interim TCOS applications.

20. On July 12, 2022, TIEC submitted a motion to intervene in the case on behalf of industrial consumers of electricity, asserting good cause for late intervention. TIEC's request to intervene was granted on July 22, 2022.

21. On July 13, 2022, College Station filed the rebuttal testimony of Timothy R. Crabb, Grant S. Rabon, and Mark K. Dreyfus. Mr. Crabb's rebuttal testimony included evidence showing that College Station specifically explained its GFT inclusion in the testimony supporting its three interim TCOS applications and that College Station only began including a GFT in its TCOS rates at the specific instruction of PUC Staff. Mr. Crabb's rebuttal testimony additionally included three Commission orders approving inclusion of a GFT in College Station's TCOS rates.

22. In response to the evidence included in College Station's rebuttal testimony, PUC Staff filed the supplemental direct testimony of Ruth Stark on July 29, 2022. Ms. Stark endorsed an alternative recommendation for College Station to refund \$6.6 million for its GFT inclusion.

23. On August 16, 2022, prior to an evidentiary hearing, College Station, PUC Staff, and OPUC filed an Uncontested Stipulation and Settlement Agreement ("Settlement") resolving all issues. TIEC was unopposed to the Settlement.

24. On August 18, 2022, SOAH remanded the proceeding back to the Commission to consider a proposed order adopting the Settlement.

25. During its Open Meeting on January 26, 2023, the Commission declined to accept the Settlement and remanded the proceeding back to SOAH, finding that College Station was not authorized to include a GFT in its TCOS rates.

26. A hearing on remand was held by videoconference on May 2, 2023 before SOAH Administrative Law Judges (“ALJs”) Cassandra Quinn and Daniel Wiseman. College Station, OPUC, TIEC, and PUC Staff participated in the hearing.

27. After post-hearing briefing, the ALJs issued a Proposal for Decision (“PFD”) on July 27, 2023. The PFD found that, in its January 26, 2023 order, the Commission had already made a determination on the remaining issue of whether College Station’s GFT inclusion was appropriate.

28. The Commission considered the PFD at its Open Meeting on September 14, 2023. The Commission entered an Order Remanding Proceeding, rescinding its previous order issued on January 26, 2023, and ordering the SOAH ALJs to address all issues, including whether or not it was permissible for College Station to include GFT payments in its interim TCOS filings.

29. During a prehearing conference on October 16, 2023, the parties agreed that no additional evidence was necessary to address the issues on remand from the Commission. Accordingly, the ALJs ordered additional briefing to conclude on November 6, 2023.

30. On December 21, 2023, the ALJs issued a second PFD recommending that the Commission order a partial \$900,000 refund for College Station's inclusion of a GFT in its interim TCOS filings.

31. During its Open Meeting on March 7, 2024, the Commission considered the second PFD and ultimately ordered College Station to refund more than \$41 million over a period of 15 years.

32. College Station timely filed a Motion for Rehearing. The Commission granted the Motion for Rehearing for the limited purpose of clarifying and making conforming changes for accuracy and completeness. The Commission issued an Order on Rehearing on May 23, 2024.

33. On June 4, 2024, College Station filed a Motion for Rehearing on the first Order on Rehearing.

34. At its Open Meeting on July 11, 2024, the Commission granted the second Motion for Rehearing for the limited purpose of clarifying provisions related to prepayment. The Commission issued a second Order on Rehearing, the Final Order, on July 11, 2024.

35. College Station filed its third Motion for Rehearing on July 26, 2024. A copy of the Motion is attached hereto as **Exhibit B**.

36. On August 5, 2024, the Commission issued a memo stating that the Commission voted to not add the Motion for Rehearing to any open meeting agenda.



## VI. ERRORS OF THE COMMISSION

37. The Commission's decision prejudices Plaintiff's substantial rights and should be reversed and remanded because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the PUC's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and/or (6) arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. TEX. GOV'T CODE § 2001.174.

38. The Commission's specific errors are set forth and detailed in Plaintiff's Motion filed with the Commission on July 26, 2024 (**Exhibit B**), and all such errors are incorporated herein by reference for all purposes and specifically asserted as grounds for this administrative appeal.

39. The Final Order is erroneous for the following reasons:

- a. The Commission's decision lacks any basis in a Commission rule or order. The Commission's only articulated legal basis for its decision is that College Station violated the Commission's TCOS rule because College Station's GFT was not first approved in a comprehensive rate case. The TCOS rule has no such requirement. *See* 16 TEX. ADMIN. CODE § 25.192.
- b. Similarly, the Commission asserts that College Station violated the order in PUC Docket No. 15762, College Station's last comprehensive TCOS filing. However, the order from that proceeding in no way precludes inclusion of a GFT in subsequent interim TCOS filings.
- c. The Commission ignores its own longstanding precedent of approving inclusion of a GFT in TCOS rates as "other associated

taxes” under the TCOS rule. This includes violation of its own precedent related to College Station. The Commission approved College Station’s inclusion of a GFT within the “other associated taxes” category in three separate orders over a decade. As such, the Final Order arbitrarily disclaims the Commission’s own prior orders.

- d. The Commission establishes an effective rate policy for updating a GFT in interim TCOS filings that, prior to this case, did not exist in any Commission rule or order, including the order from PUC Docket No. 15762. This new policy is not grounded in any legal requirement and cannot be retroactively imposed as a vehicle for penalizing College Station.

40. More specifically, College Station asserts and seeks review of the following Commission errors in the Final Order:

41. **Erroneously finding College Station violated the Commission’s TCOS rule (Conclusion of Law Nos. 10B, 10C):** College Station requests that the Court review the Commission’s baseless conclusion that College Station violated 16 Texas Administrative Code Section 25.192, known as the TCOS rule. The Commission’s key rationale for ordering College Station to refund \$26.3 million, plus over \$15 million in interest, is that College Station’s inclusion of a GFT was not first approved in a comprehensive rate case. The Commission provides this as the sole explanation for how College Station violated the TCOS rule. But there is no specific, or even general, language in the TCOS rule imposing such a requirement.

42. **Erroneously finding College Station’s GFT inclusion was unreasonable based on the order from PUC Docket No. 15762 (Finding of Fact No. 63):** The Commission’s order from College Station’s last comprehensive TCOS filing did not prohibit inclusion of a GFT in subsequent interim TCOS

applications. The Final Order improperly relies on the order in PUC Docket No. 15762 to claim College Station's GFT inclusion as "unreasonable," but the Commission cannot establish that College Station violated that order or that College Station's inclusion was in any way unlawful based on the language of that order.

43. **Establishing a new policy related to GFT inclusions and applying it retroactively to penalize College Station (Finding of Fact No. 53, 54):** For the first time, the Commission found that the effective rate approved in MOU comprehensive TCOS cases should be used to update a GFT in subsequent interim TCOS proceedings. In the Final Order, College Station is ordered to refund an exorbitant amount based on this policy never before established in a Commission rule or order. The Commission has arbitrarily found that College Station violated a policy that could not have been known as Commission policy until the issuance of the Final Order in this case.

44. **Arbitrarily and capriciously disregarding the facts in evidence to order a punitive refund (Findings of Fact Nos. 68, 71, 73; Conclusion of Law No. 14):** The evidence shows that College Station began including a GFT in its TCOS rates at the explicit instruction of PUC Staff and that the Commission approved inclusion of a GFT in three separate orders. Moreover, the PUC Staff witness who originally recommended a maximum refund no longer supports that initial recommendation because the undisputed evidence demonstrated essential mitigating factors and unique circumstances. The Commission's decision glaringly

ignores these key facts in favor of ordering a punitive refund without a legal or factual basis.

45. **Violating the Commission’s own precedent of approving a GFT within “other associated taxes” under the TCOS rule (Finding of Fact No. 52A; Conclusion of Law No. 9):** For decades, the Commission has approved inclusion of a GFT in interim MOU TCOS rates as “other associated taxes” under the TCOS rule. The Commission has the authority to review the rates approved in an interim TCOS proceeding, but the Commission does *not* have the authority to disallow an entire category of costs expressly permitted under the TCOS rule and historically approved by the Commission. Under the logic of the Final Order, the Commission should have the authority to suddenly claw back an entire expense category contemplated under the TCOS rule and repeatedly approved by the Commission itself.

46. **Arbitrarily disclaiming three of its own prior orders approving the GFT inclusion (Finding of Fact Nos. 52, 57):** In each of College Station’s three interim TCOS filings, the Commission issued an order approving TCOS rates that included a GFT—the same GFT College Station clearly identified in undisputed testimony and only began including at the specific direction of PUC Staff. The Commission consciously allowed the inclusion of a GFT in College Station’s TCOS in three separate orders over a decade. None of the Commission’s orders indicated that a GFT was impermissible or that it could be later reviewed and disallowed. Now, the Commission is abusing its discretion by disclaiming three

of its own prior orders. Orders issued in interim TCOS cases have meaning, and College Station reasonably relied on the Commission's approval of a GFT in its TCOS rates *three* times over ten years.

47. Finally, the Final Order destroys any sense of regulatory certainty for MOUs in Texas by showing that the Commission can and will ignore its own orders, rules, PUC Staff directives, and past practices. As a result of the Defendant's haphazard and retroactive decision-making, the Final Order imposes an immense financial burden on College Station—the baseline \$26.3 million refund is over *four times* College Station's annual TCOS revenue requirement.

## VII. PRAYER FOR RELIEF

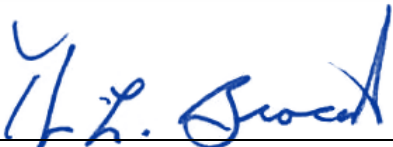
WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Defendant Commission be cited to appear and answer herein; and that, after hearing, this Honorable Court:

- (1) Reverse the Commission's Final Order for each of the reasons and errors described in the attached **Exhibit B** and this Original Petition;
- (2) Remand this matter back to the Commission with instructions consistent with applicable and controlling principles of law and this Court's decision; and
- (3) Award Plaintiff its costs of suit and such other relief to which it is entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was forwarded to the following attorneys via First Class Mail on September 3, 2024:

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\_\_\_\_\_  
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# **EXHIBIT A**





Control Number: 52728



Item Number: 211

**PUC DOCKET NO. 52728**  
**SOAH DOCKET NO. 473-22-2464**

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**APPLICATION OF THE CITY OF** § **PUBLIC UTILITY COMMISSION**  
**COLLEGE STATION TO CHANGE** §  
**RATES FOR WHOLESALE** § **OF TEXAS**  
**TRANSMISSION SERVICE** §

**ORDER ON REHEARING**

This Order addresses the application of the City of College Station to change its transmission cost of service (TCOS) and wholesale transmission service rates. On August 16, 2022, the parties filed an unopposed agreement requesting approval of College Station’s proposed annual TCOS, wholesale transmission rates, and authorization for College Station to collect rate-case expenses. The agreement included a term requiring College Station to refund \$3.9 million related to the inclusion of general fund transfers in College Station’s interim TCOS. On January 26, 2023, the Commission declined to accept the parties’ unopposed agreement and proposed order and remanded this proceeding to the State Office of Administrative Hearings (SOAH) for further processing.

On July 27, 2023, the SOAH administrative law judges (ALJs) filed a proposal for decision (PFD) addressing the contested issues in this proceeding. The Commission rejected the PFD because the ALJs failed to provide their own findings of fact and conclusions of law on all contested issues that the Commission remanded to SOAH. The Commission then rescinded its January 26, 2023 remand order and issued a new remand order. The Commission remanded the proceeding to SOAH to address all issues, including whether or not it was permissible for College Station to include general fund transfer payments in the interim TCOS filings, and if not, how to address any over or under-recovered amounts. Also, because the Commission declined to accept the entirety of the parties’ unopposed agreement filed on August 16, 2022 and the proposed order based on the agreement, the Commission ordered that all issues in the Commission’s preliminary order, in addition to the general transfer issue, must be addressed.

On December 21, 2023, the SOAH administrative law judges filed a PFD recommending that the Commission approve College Station's application, as modified to: (1) require a partial refund of approximately \$900,000 over a 24-month period for the over-recovery of general fund transfers in College Station's interim TCOS proceedings; (2) incorporate the terms of the parties' agreement as to the remainder of the application; and (3) authorize College Station to recover rate-case expenses incurred through November 30, 2023, through a 24-month surcharge. Through exceptions and replies, the ALJs also adopted the parties' recommendations that rate-case expenses incurred after November 30, 2023 be addressed in a compliance docket for this proceeding.

The Commission adopts the proposal for decision in part and rejects it in part, including findings of fact and conclusions of law, for the reasons discussed in this Order.

### I. Discussion

The Commission disagrees with the SOAH ALJs' recommendation that College Station should only be required to refund \$900,000 for the over-recovery of general fund transfers in College Station's interim TCOS proceedings and that rate-case expenses incurred after November 30, 2023 should be addressed in a compliance docket for this proceeding.

#### A. Rule Violation

College Station's most recent comprehensive TCOS review before the Commission was approved on July 8, 1997 in Docket No. 15762.<sup>1</sup> This was College Station's first and only comprehensive TCOS before the present application. As the SOAH ALJs found, College Station did not include general fund transfers in its initial TCOS, either by using the cash flow method or by including the amounts as payment in lieu of taxes. The Commission's order in that proceeding provided for \$0 in tax expense allocated to the transmission function. Thus, no general fund transfer was included in the rates approved by the Commission.

Nevertheless, as the SOAH ALJs also found, College Station included general fund transfers in its interim TCOS filings in 2007, 2008, and 2017 in Docket Nos. 34230,<sup>2</sup> 35837,<sup>3</sup> and

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<sup>1</sup> *City of College Station Filing in Compliance with Subst. R. 23.67*, Docket No. 15762, Order (July 8, 1997).

<sup>2</sup> *Application of City of College Station for Interim Update for Wholesale Transmission Rates*, Docket No. 34230, Order (Jul. 23, 2007).

<sup>3</sup> *Application of the City of College Station for Interim Update of its Wholesale Transmission Rate Pursuant to P.U.C. Subst R §25.192(g)(1)*, Docket No. 35837, Order (Sep. 12, 2008).

46847,<sup>4</sup> respectively, as an expense item under *other taxes*. By including the general fund transferred payments as an expense item in its interim review requirements, College Station has been increasing its effective rate of return above what the Commission approved in College Station's last comprehensive transmission rate case, Docket No. 15762.

The Commission disagrees with the SOAH ALJs' characterization of the Commission's orders in those interim proceedings. The Commission did not issue orders approving inclusion of a general fund transfer in College Station's interim TCOS filings in Docket Nos. 34230, 35837, and 46847. Instead, in those proceedings, the Commission issued orders approving College Station's request to make interim adjustments to its transmission revenue requirement and wholesale transmission rate in advance of a comprehensive TCOS. Further, those orders stated that the updated rates would be subject to reconciliation at the next complete review of College Station's TCOS.

Because College Station's inclusion of the general transfer funds was not first approved in a comprehensive rate case, College Station violated the Commission's TCOS rule<sup>5</sup> when it included general transfer funds as an expense item in its three interim TCOS cases. The rule permits interim updates to transmission rates set in a prior comprehensive TCOS proceeding. The prior Commission order in Docket No. 15762 did not authorize College Station to recover the amounts in rates. Nor are general transfer payments items expressly authorized for inclusion in interim TCOS updates under the Commission's rule.

#### **B. Refund**

Interim updates of transmission rates are subject to reconciliation at the next complete review of the transmission service provider's TCOS, at which time the Commission must review the costs of the interim transmission plant additions to determine if they were reasonable and necessary. Any amounts resulting from an interim TCOS update that are found to have been unreasonable or unnecessary, plus the corresponding return and taxes, must be refunded with carrying costs in accordance with 16 TAC § 25.192(h)(2).

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<sup>4</sup> *Application of the City of College Station for Interim Update of Wholesale Transmission Rates*, Docket No. 46847, Notice of Approval (Mar. 17, 2017).

<sup>5</sup> 16 TAC § 25.192.

After conducting an evidentiary hearing, the SOAH ALJs found that College Station began including a general fund transfer in its interim TCOS filings at the direction of Commission Staff, with their knowledge that it was not included in College Station's last comprehensive TCOS filing. The SOAH ALJs also found that College Station acted in good faith and did not willfully or intentionally violate the Commission's rules or policies.

The Commission rejects the PFD's recommendation that Commission Staff's communications or College Station's good faith are circumstances that constitute good cause to grant an exception to the full refund required by the rule. College Station must refund the total overcollection amount which resulted from the inclusion of the general fund transfers in its interim TCOS rates through February 14, 2024. The Commission does agree with the PFD's recommendation that the total overcollection amount should be reduced by the amount of depreciation expense that was under-recovered by College Station during that same period.

The Commission rejects the PFD's recommendation that carrying charges should not be applied. However, the Commission does grant a good-cause exception to the requirements in the TCOS rule that would require College Station to use the rate of return approved in its last comprehensive transmission cost of service to calculate carrying charges. This provision of the rule was not in effect when College Station filed its first interim TCOS proceedings. Instead, the Commission will apply carrying charges on the net amount using the Commission's interest rates for under and overbillings applicable for each year from which the first interim TCOS docket, Docket No. 34230, went into effect on January 20, 2007, until the third interim TCOS Docket No. 46847 went into effect on March 17, 2017. For the period thereafter, carrying charges should be applied using College Station's rate of return of 6.71% approved in its last comprehensive TCOS proceeding.

The Commission rejects the recommendation that the refund be made over 24 months. Because the Commission is ordering a larger refund, a longer repayment period is appropriate. College Station's over-recovery period has extended for more than 15 years. Thus, an appropriate refund period is 15 years. The 15-year repayment period is the maximum amount of time College Station has to repay the refund balance. But College Station is not precluded from paying the refund balance in less than 15 years and thereby incurring less carrying charges without incurring fees or penalties.

Contrary to the recommendation adopted through exceptions and replies, College Station should establish a regulatory asset to record any rate-case expenses incurred for this case after November 30, 2023 for recovery in a future rate-case proceeding.

The Commission adopts the PFD's recommendation to approve the parties' agreement on all other issues, except the general fund transfer issue.

### **C. Changes**

In accordance with the above discussion, the Commission makes the changes to the PFD that are described below. Finding of fact 46A is added for completeness. Finding of fact 47 is modified for accuracy. Finding of fact 52 is modified because it incorrectly describes the Commission's orders in those proceedings. Finding of fact 52A is added for completeness. Consistent with Commission Staff's number run, finding of fact 58 is changed to reflect the updated amount College Station recovered as of February 14, 2024. Finding of fact 59 is deleted because it is no longer relevant in light of the Commission's decision to require a full refund. Finding of fact 60 is modified for accuracy. Finding of fact 62 is deleted because it is an unverifiable statement and not a proper finding of fact supported by the evidentiary record; it requires the Commission to speculate about a hypothetical event. Finding of fact 63 is modified because it contains a vague generalization about conduct outside the scope of this proceeding. Finding of fact 63 is also modified because the Commission finds that the reasonableness of College Station's inclusion of general fund transfers in its interim TCOS filings must be considered in light of the Commission's order in Docket No. 15762 and the Commission's TCOS rule.

Finding of fact 65 is modified in light of the updated over-recovered amount. Finding of fact 68 is modified because the Commission does not find that good cause exists. Finding of fact 69 is deleted because of the Commission's decision to require a full refund. Finding of fact 69A is added to reflect the SOAH ALJs' decision in the exceptions letter to add a finding of fact regarding the under-recovered depreciation expense, but updated to reflect the more current amount resulting from Commission Staff's number run. Finding of fact 70 is amended to reflect the Commission's decision to require a full refund. Finding of fact 70A is added to include the new total refund amount, not including carrying charges. Finding of fact 71 is modified to reflect the Commission's decision to require carrying charges. Findings of fact 71A, 71B, and 71C are added to reflect the Commission's decisions about what carrying charge rates to apply and to

include the calculated amount. Findings of fact 72 and 73 are amended to include the new total refund amount, including carrying charges. Finding of fact 74 is modified to reflect the Commission's decision that the maximum refund period is 15 years. Findings of fact 74A and 74C are added to reflect the Commission's decisions regarding the refund mechanism. Finding of fact 74B is added to reflect the Commission's decision to apply carrying charges during the refund period.

Conclusions of law 6A and 6B are added for completeness. Conclusion of law 7 is modified for accuracy and completeness. Conclusion of law 8A is added for completeness. Conclusion of law 9 is modified for accuracy. Conclusion of law 10A and 10B are added for completeness. Conclusion of law 10C is added due to the Commission's determination that College Station violated the TCOS rule. Conclusion of law 12 and 13 are deleted as inapplicable because the Commission is not exercising discretion to order a mitigated refund and carrying charges. Conclusions of law 14 and 15 are amended to reflect the Commission's decisions regarding the refund due.

Finally, the Commission makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, readability, and conformity with the Commission's order-writing format.

## II. Findings of Fact

The Commission adopts the following findings of fact.

### Applicant

1. The City of College Station is a municipally owned utility providing electric transmission service within the Electric Reliability Council of Texas (ERCOT) region under certificate of convenience and necessity number 30035.

### Application

2. On November 3, 2021, College Station filed an application with the Commission to change its transmission cost of service (TCOS) and wholesale transmission service rates.
3. In its application, College Station requested the Commission approve an annual wholesale transmission rate of \$84.67 per megawatt (MW) based on an annual TCOS of \$6,006,601 using a test year ending September 30, 2020, the end of College Station's fiscal year.

4. College Station also requested recovery of its reasonable and necessary rate-case expenses through a six-month surcharge.
5. In Order No. 3 filed on November 30, 2021, the Commission administrative law judge (ALJ) found College Station's application administratively complete.
6. College Station's last comprehensive TCOS review was approved on July 8, 1997 in Docket No. 15762.

**Notice**

7. On November 12, 2021, College Station filed the affidavit of Thomas L. Brocato, attorney for College Station, attesting that notice of the application was mailed on November 3, 2021, to: (a) all transmission and distribution providers listed on the Commission's transmission charge matrix; (b) Commission Staff; (c) the parties still operating in Texas that participated in Docket No. 15762;<sup>6</sup> and (d) the Office of Public Utility Counsel (OPUC).
8. On November 23, 2021, Commission Staff recommended College Station be required to provide notice by publication for two consecutive weeks in newspapers of general circulation in the areas served by College Station. Commission Staff asserted notice by publication should be required because College Station's last comprehensive TCOS proceeding concluded in 1997 and because College Station requested a more-than-50% increase to its wholesale transmission rates.
9. On December 17, 2021, College Station filed proof of notice of publication, providing that notice of the application was published in a newspaper of general circulation for two consecutive weeks on December 3, 2021, and December 10, 2021, and in an online publication of general circulation from December 3, 2021, to December 16, 2021.
10. In Order No. 4 filed on January 12, 2022, the Commission ALJ found notice sufficient.

**Intervenors**

11. In Order No. 2 filed on November 17, 2021, the Commission ALJ granted OPUC's motion to intervene.

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<sup>6</sup> *City of College Station Filing Pursuant to Subst. R. 23.67*, Docket No. 15762, Final Order (Jul 8, 1997).



12. In Order No. 4 filed on July 22, 2022, the State Office of Administrative Hearings (SOAH) ALJs granted Texas Industrial Energy Consumers' (TIEC) motion to intervene.

**Initial Referral to SOAH**

13. On February 22, 2022, OPUC filed a request for hearing.
14. On April 19, 2022, the Commission referred this case to SOAH for assignment of an ALJ to conduct a hearing.
15. On April 21, 2022, the Commission issued its preliminary order identifying the issues to be addressed in this proceeding.
16. On May 13, 2022, the SOAH ALJs convened a prehearing conference via videoconference.
17. In SOAH Order No. 2 filed on May 16, 2022, the SOAH ALJs adopted a procedural schedule.

**Uncontested Stipulation and Agreement**

18. On August 16, 2022, College Station, OPUC, and Commission Staff filed a joint motion to admit evidence and an uncontested stipulation and settlement agreement (agreement). TIEC was unopposed to the agreement.
19. On August 16, 2022, College Station filed the testimony of Mark K. Dreyfus in support of the agreement.
20. On August 17, 2022, Commission Staff filed the testimony of Ruth Stark in support of the agreement.
21. On August 17, 2022, College Station filed a supplement to the joint motion to admit evidence.
22. In SOAH Order No. 7 filed on August 18, 2022, the SOAH ALJs admitted 34 joint exhibits into evidence, remanded the case to the Commission, and dismissed the case from SOAH's docket.
23. On September 8, 2022, College Station filed a second supplement to the joint motion to admit evidence.
24. On November 9, 2022, Commission Counsel issued a memo requesting clarification regarding the agreement.

25. On November 15, 2022, College Station filed the supplemental testimony of Grant Rabon in response to the Commission Counsel's memo.
26. In SOAH Order No. 5 filed on November 15, 2022, the Commission ALJ admitted two joint exhibits into evidence.
27. During the public meeting on January 26, 2023, the Commission discussed the agreement.
28. On January 26, 2023, the Commission issued an order remanding the proceeding, declining to accept the agreement and remanding the case to SOAH for further processing in accordance with its order.
29. The first order remanding the proceeding addressed whether College Station was permitted to include a general fund transfer in its interim TCOS filings.

**First Remand**

30. On March 21, 2023, the SOAH ALJs convened a prehearing conference via videoconference.
31. On May 2, 2023, the SOAH ALJs convened a hearing on remand via videoconference. The hearing concluded the same day.
32. The following parties appeared through legal counsel and participated in the hearing on remand: College Station, Commission Staff, OPUC, and TIEC.
33. The scope of the hearing on remand was limited to the issue of whether College Station was permitted to include a general fund transfer in its interim TCOS proceedings. No other terms of the agreement were contested.
34. On May 16, 2023, the parties filed initial briefs.
35. On May 31, 2023, the parties filed reply briefs and proposed findings of fact, conclusions of law, and ordering paragraphs.
36. The record closed on May 31, 2023, except that College Station was authorized to, and did, file a supplemental update concerning its requested rate-case expenses through June 30, 2023.

37. At the hearing, the SOAH ALJs admitted into evidence three joint exhibits, 17 exhibits offered by College Station, one exhibit offered by OPUC, and 11 exhibits offered by Commission Staff.
38. On July 27, 2023, the SOAH ALJs issued a proposal for decision.
39. In the initial proposal for decision, the SOAH ALJs admitted three additional exhibits regarding rate-case expenses.

**Second Remand**

40. On September 14, 2023, the Commission rejected the initial proposal for decision, rescinded its first order remanding the proceeding, and issued a new order remanding the proceeding (second remand order) remanding the proceeding to SOAH a second time and instructing the SOAH ALJs to issue findings of fact and conclusions of law on all contested issues.
41. On October 16, 2023, the SOAH ALJs convened a prehearing conference via videoconference, and the parties agreed that an additional evidentiary hearing was unnecessary; the sole remaining contested issue to be decided related to the recoverability of the general fund transfers; and the agreement should be resubmitted to the Commission, but with the proposal for decision making specific findings regarding its reasonableness.
42. On October 30, 2023, parties filed additional initial briefs.
43. On November 6, 2023, parties filed additional reply briefs and proposed findings of fact, conclusions of law, and ordering paragraphs.
44. The record closed on November 6, 2023, except that College Station was authorized to, and did, file a supplemental update concerning its requested rate-case expenses through November 30, 2023.
45. In SOAH Order No. 14, filed on December 4, 2023, the SOAH ALJs admitted two additional exhibits regarding rate-case expenses.
46. In the proposal for decision on second remand, the SOAH ALJs admitted two additional exhibits regarding rate-case expenses.

**College Station's General Fund Transfers in Interim TCOS Filings**

- 46A. The Commission's TCOS rule, 16 TAC § 25.192, does not specify whether or how a municipally owned utility can include transfers to the municipality's general fund in its transmission cost of service.
47. General fund transfers have been reflected in the revenue requirement as a component of a municipally owned utility's cash needs when using the cash flow method to determine the return component of rates or included in the revenue requirement as a separate expense item, most often appearing in the "other taxes" line item.
48. College Station's first comprehensive TCOS application in Docket No. 15762 was resolved by an agreement that provided for \$0 in tax expense allocated to the transmission function and did not use the cash flow method to determine return. Thus, no general fund transfer was included in the approved rates.
49. College Station included a general fund transfer in its interim TCOS filings in 2007, 2008, and 2017 in Docket Nos. 34230,<sup>7</sup> 35837,<sup>8</sup> and 46847,<sup>9</sup> respectively, as an expense item under "other taxes."
50. College Station began including a general fund transfer in its interim TCOS filings at the direction of Commission Staff with their knowledge that it was not included in College Station's last comprehensive TCOS filing.
51. In each of the interim TCOS cases, College Station filed testimony explaining that it was requesting a general fund transfer, and its filings were reviewed by Commission Staff.
52. The Commission issued orders adjusting College Station's transmission revenue requirement and wholesale transmission rates, on an interim basis, in Docket Nos. 34230, 35837, and 46847.

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<sup>7</sup> *Application of City of College Station for Interim Update for Wholesale Transmission Rates*, Docket No. 34230, Order (Jul. 23, 2007).

<sup>8</sup> *Application of the City of College Station for Interim Update of its Wholesale Transmission Rate Pursuant to P.U.C. Subst. R. §25.192(g)(1)*, Docket No. 35837, Order (Sep. 12, 2008).

<sup>9</sup> *Application of the City of College Station for Interim Update of Wholesale Transmission Rates*, Docket No. 46847, Notice of Approval (Mar. 17, 2017).

- 52A. In Docket Nos. 34230, 35837, and 46847, the Commission ordered that the updated wholesale transmission rates would be subject to reconciliation at the next complete review of College Station's TCOS.
53. Using the effective rate for the separate expense item general fund transfer from a municipally owned utility's last comprehensive rate case to update the municipally owned utility's general fund transfer in a later interim TCOS filing is a reasonable method of determining the appropriate amount of the general fund transfer associated with interim transmission plant additions and retirements.
54. The effective rate for the general fund transfer from a municipally owned utility's last comprehensive rate case has been consistently used to update the municipally owned utility's general fund transfers in later interim TCOS proceedings.
55. The effective rate of College Station's general fund transfer for its transmission function in Docket No. 15762 was 0%.
56. Despite having a general fund transfer effective rate of 0%, \$833,330 was included in College Station's interim TCOS rates resulting from Docket No. 34230; \$1,228,955 was included in its interim TCOS rates resulting from Docket No. 35837; and \$1,476,306 was included in the interim TCOS rates resulting from Docket No. 46847.
57. Inclusion of these amounts in College Station's interim TCOS rates is inconsistent with the Commission's precedent of using a municipally owned utility's effective rate for the general fund transfer from its last comprehensive rate case to update the municipally owned utility's later interim TCOS proceedings.
58. The amount College Station recovered in its interim TCOS cases associated with the general fund transfers is \$21,624,653 as of February 14, 2024, not including carrying charges.
59. DELETED.
60. The current proceeding is the first complete review of College Station's TCOS after Docket No. 15762 and the first opportunity for the Commission to review and reconcile College Station's interim TCOS rates.

61. In including the general fund transfers in its interim TCOS filings, College Station acted in good faith and did not willfully or intentionally violate the Commission's rules or policies.
62. DELETED.
63. College Station's inclusion of a general fund transfer in its interim TCOS filings was unreasonable in light of the Commission's order in Docket No. 15762 and the Commission's TCOS rule.
64. College Station has statutory authority to adopt a general fund transfer and has identified a valid business purpose for it.
65. Making a refund of the total over-recovered amount would have a significant impact on College Station.
66. College Station's effective rate of return was higher in each of the interim updates because it recovered both its authorized rate of return on rate base, plus the general fund transfers as an expense item.
67. The over-recovered amounts were discovered in this proceeding, not through a customer complaint.
68. A refund of the over-recovered amounts is appropriate.
69. DELETED.
- 69A. In each of its interim TCOS filings, College Station understated its depreciation expense due to an incorrect formula provided in a Commission template, which resulted in \$3,485,333 of under-recovery as of February 14, 2024, not including carrying charges.
70. College Station's under-collection of depreciation expense should be netted against the \$21,624,653.
- 70A. College Station's net over-recovery as of February 14, 2024 is \$18,139,320, not including carrying charges.
71. College Station is required to apply carrying costs to the refund amount.

- 71A. The provision of 16 TAC § 25.192(h)(2) that requires College Station to use the rate of return approved in its last comprehensive transmission cost of service to calculate carrying charge was not in effect when College Station filed its first two interim TCOS proceedings.
- 71B. Carrying charges on the net amount should be applied using the Commission's interest rates rate for under and overbillings applicable for each year from which the first interim TCOS docket, Docket No. 34230, went into effect on January 20, 2007, until the third interim TCOS Docket No. 46847 went into effect on March 17, 2017. For the period after March 17, 2017 until the beginning of the refund period, carrying charges should be applied using the 6.71% rate of return approved in College Station's last comprehensive TCOS proceeding.
- 71C. As of February 14, 2024, total carrying charges on the net over-recovered amount is \$8,114,773.
72. As of February 14, 2024, the total refund amount, including carrying charges, is \$26,254,093.
73. A refund amount of \$26,254,093 is reasonable.
74. It is reasonable for College Station to make the refund over a maximum of 15 years.
- 74A. Monthly refunds based on the annually approved coincident peak demand for the months of June, July, August and September (4CP) will address the effects of load growth or load reduction.
- 74B. Starting February 15, 2024, carrying charges should continue to be applied to the total refund amount using the 6.71% rate of return approved in College Station's last comprehensive TCOS proceeding. During the refund period, carrying charges should continue to apply to College Station's outstanding refund balance until the outstanding balance is paid in full, including the principal and any carrying charges accrued as of the payoff date.
- 74C. It is reasonable for College Station to refund the amount due via a monthly credit based on the annually approved 4CP.

**Adoption of Agreement**

75. The terms of the agreement should be adopted, except for the term requiring College Station to refund \$3.9 million related to the general fund transfers in its interim TCOS proceedings. The rate-case expense term should be adopted with modification to account for recovery of rate-case expenses incurred beyond August 31, 2022.
76. The adopted terms of the agreement are reasonable, in the public interest, supported by evidence, and provide an equitable and fair resolution of the issues presented in this case.
77. The adopted terms of the agreement represent a reasonable compromise that reflects adjustments from diverse parties.

**Rate Base, Return, and Depreciation**

78. Under the agreement, College Station's transmission rate base is \$26,864,373, and the return on transmission rate base is \$2,874,067, as shown in schedule B of exhibit 1 attached to the agreement.
79. The parties agreed to a rate of return of 10.00%. In his testimony filed on November 15, 2022, Mr. Rabon testified that the parties agreed to use a 10.70% rate of return for purposes of determining the return on transmission rate base in this proceeding, as shown in exhibit 1 attached to the agreement. Mr. Rabon further testified that the parties agreed to use a 10.00% rate of return for purposes of future interim TCOS applications and annual earnings monitoring reports.
80. The agreed rate of return will allow College Station to recover its reasonable and necessary expenses while providing sufficient incentive for continued transmission investment.
81. College Station will use the depreciation rates as originally filed in the application and as shown in the rebuttal testimony of College Station witness Rabon at table 3 in the far-right column labeled "Docket No. 52728".
82. College Station will include a depreciation study, prepared in accordance with schedule E1: depreciation expenses of the commission's transmission cost of service rate filing package for non-investor-owned transmission service providers in the Electric Reliability Council of Texas, in its next application for a complete review of its transmission cost of service.
83. College Station's transmission-related invested capital is used and useful.



**Financial Policy**

84. College Station agrees to update its financial policies to minimize confusion about the authorization of transfers to the city's general fund.

**TCOS and Wholesale Transmission Rate**

85. Under the agreement, College Station's TCOS revenue requirement is \$5,875,259, and its annual wholesale transmission rate is \$82.82 per MW.

**Rate-Case Expenses**

86. The wholesale transmission rate approved in this Order does not include rate-case expenses.
87. In the agreement, the parties agreed to extend recovery of rate-case expenses as necessary due to the Commission's processing of the case.
88. College Station will continue to incur rate-case expenses through the conclusion of the proceeding.
89. College Station's rate-case expenses for this proceeding incurred through November 30, 2023, in the amount of \$487,904.95 are reasonable and necessary. This amount should be recovered through a 24-month surcharge. College Station should establish a regulatory asset to record any additional rate-case expenses incurred for this case for recovery in a future proceeding.

**III. Conclusions of Law**

The Commission adopts the following conclusions of law.

1. The Commission has authority over this proceeding under PURA<sup>10</sup> §§ 35.004 and 40.004(1).
2. College Station is a municipally owned utility as defined in PURA § 11.003(11) and an electric utility as defined in PURA § 35.001 for the purpose of wholesale transmission service.

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<sup>10</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016 (PURA).

3. College Station is a transmission service provider as defined in 16 Texas Administrative Code (TAC) § 25.5(141) that provides transmission service as defined in PURA § 31.002(20).
4. The Commission processed the application in accordance with the requirements of PURA, the Administrative Procedure Act,<sup>11</sup> and Commission rules.
5. College Station provided notice of the application that complies with 16 TAC § 22.55.
6. College Station's application complies with the requirements of 16 TAC § 25.192.
- 6A. A transmission service provider's wholesale transmission rates are based on the Commission-approved transmission cost of service under 16 TAC § 25.192(b).
- 6B. In a comprehensive TCOS proceeding, the Commission approves a transmission service provider's transmission cost of service based on expenses functionalized to transmission, as well as depreciation, federal income tax, other associated taxes, and the Commission approved rate of return under 16 TAC § 25.192(c).
7. A transmission service provider in the ERCOT region may seek authority to revise its transmission rates to reflect the cost of providing such services under 16 TAC § 25.192(g).
8. A transmission service provider may apply to update its transmission rates on an interim basis to reflect changes in its invested capital under 16 TAC § 25.192(h)(1).
- 8A. If a transmission service provider elects to update its transmission rates, 16 TAC § 25.192(h)(1) provides that the new rates shall reflect the addition and retirement of transmission facilities and include appropriate depreciation, federal income tax and other associated taxes, and the Commission-authorized rate of return on such facilities as well as changes in loads.
9. Approved interim updates of transmission rates are subject to reconciliation at the next complete review of the transmission service provider's TCOS, at which time the Commission reviews the costs of the interim transmission plant additions to determine if they were reasonable and necessary under 16 TAC § 25.192(h)(2).

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<sup>11</sup> Tex. Gov't Code §§ 2001.001–.903.

10. Any amounts resulting from an interim TCOS update that are found to have been unreasonable or unnecessary, plus the corresponding return and taxes, must be refunded with carrying costs in accordance with 16 TAC § 25.192(h)(2).
- 10A. The Commission did not approve College Station's general fund transfers for inclusion in its transmission cost of service and wholesale transmission rates in a comprehensive TCOS proceeding under 16 TAC § 25.192(c).
- 10B. College Station was not authorized to include general fund transfers in its updated transmission rates under 16 TAC § 25.192(h)(1).
- 10C. College Station violated 16 TAC § 25.192(h) when it included general fund transfers as an expense item in its three interim TCOS cases, because College Station's inclusion of the general fund transfers was not first approved in a comprehensive rate case.
11. The Commission may grant exceptions to any requirement in its rules for good cause under 16 TAC § 22.5(b).
12. DELETED.
13. DELETED.
14. College Station must issue a refund for its inclusion of a general fund transfer in Docket Nos. 34230, 35837, and 46847.
15. Good cause exists for an exception to the provision of 16 TAC § 25.192(h)(2) that requires College Station to use the rate of return approved in its last comprehensive transmission cost of service to calculate carrying charges.
16. College Station's annual TCOS revenue requirement in the amount of \$5,875,259 is reasonable and necessary and calculated in accordance with 16 TAC § 25.192(c).
17. College Station's annual wholesale transmission rate of \$82.82 per MW is properly calculated under 16 TAC § 25.192.
18. College Station's transmission-related investment is reasonable and necessary, is used and useful, and in compliance with 16 TAC § 25.192.

19. The wholesale transmission rate base additions since College Station's last comprehensive TCOS proceeding that were included in the application have been reconciled in accordance with 16 TAC § 25.192 and were prudently incurred.
20. It is appropriate for College Station to recover its reasonable and necessary rate-case expenses incurred through November 30, 2023, in this proceeding in accordance with 16 TAC § 25.245.
21. College Station should recover any trailing rate-case expenses through a regulatory asset for review and recovery in a separate docket.

#### **IV. Ordering Paragraphs**

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

1. The Commission adopts the proposal for decision in part and rejects it in part, including findings of fact and conclusions of law, to the extent provided in this Order.
2. The Commission approves College Station's TCOS and wholesale transmission rates to the extent provided by this Order.
3. The Commission establishes College Station's annual TCOS revenue requirement as \$5,875,259, effective the date of this Order.
4. The Commission establishes College Station's annual wholesale transmission rate as \$82.82 per MW, effective the date of this Order.
5. College Station must refund \$26,254,093, plus carrying charges incurred starting February 15, 2024, via a monthly credit over a maximum period of 15 years. The monthly credit must continue until the outstanding balance, which includes the principal plus carrying charges incurred from February 15, 2024 until the payoff date, is fully refunded.
6. College Station may recover its reasonable and necessary rate-case expenses incurred in this proceeding through November 30, 2023, in the amount of \$487,904.95.
7. College Station must recover its rate-case expenses through a separate 24-month surcharge, and such surcharge must be calculated based on 70,938 MW (ERCOT's 4 Coincident Peak for calendar year 2020).

8. The refund and rate-case expense surcharge authorized by this Order must be implemented in Docket No. 54329, *Compliance Filing for Docket No. 52728 (Application of the City of College Station to Change Rates for Wholesale Transmission Service)*. College Station must file a report annually in Docket No. 54329 documenting the calculation and collection of the monthly rate-case expense surcharge from customers and the calculation and distribution of the monthly credit to customers in compliance with this Order.
9. College Station must record any additional rate-case expenses incurred in this docket in a regulatory asset. College Station may seek recovery of those additional amounts in a future rate proceeding.
10. College Station may prepay all or any part of the outstanding refund balance at any time without penalty.
11. If College Station intends to pay the outstanding refund balance in full at any time prior to the maximum period of 15 years, it must file notice in Docket No. 54329 at least 60 days in advance of the anticipated payoff date to facilitate calculation of the final refund payment due.
12. If College Station intends to pay the outstanding refund balance in full at any time prior to the maximum period of 15 years, it must file a report in Docket No. 54329 documenting the calculation and distribution of the monthly credit to customers at least 60 days in advance of the payoff date to facilitate calculation of the final refund payment due.
13. The Commission approves the depreciation rates described in finding of fact number 81.
14. College Station must include a depreciation study, prepared in accordance with schedule E-1: depreciation expense of the commission's transmission cost of service rate filing package for non-investor-owned transmission service providers in the Electric Reliability Council of Texas, in its next application for a complete review of its transmission cost of service as referenced in 16 TAC § 25.192(h)(2).
15. Until its next comprehensive TCOS, College Station must use a 10.00% rate of return for purposes of future interim TCOS applications and its annual earnings monitoring reports.

**PUC Docket No. 52728**  
**SOAH Docket No. 473-22-2464**

**Order on Rehearing**

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16. Within ten days of the date of this Order, College Station must file with the Commission a clean copy of the approved wholesale transmission service tariff to be stamped *Approved* and retained by Central Records.
17. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

PUC Docket No. 52728  
SOAH Docket No. 473-22-2464

Order on Rehearing

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Signed at Austin, Texas the 11<sup>th</sup> day of July 2024.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
\_\_\_\_\_  
LORI COBOS, COMMISSIONER

  
\_\_\_\_\_  
JIMMY GLOTFELTY, COMMISSIONER

  
\_\_\_\_\_  
KATHLEEN JACKSON, COMMISSIONER

# **EXHIBIT B**





## **Filing Receipt**

**Filing Date - 2024-07-26 04:04:04 PM**

**Control Number - 52728**

**Item Number - 214**

**PUC DOCKET NO. 52728  
SOAH DOCKET NO. 473-22-2464**

<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>BEFORE THE</b>
<b>COLLEGE STATION TO CHANGE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>RATES FOR WHOLESALE</b>	<b>§</b>	
<b>TRANSMISSION SERVICE</b>	<b>§</b>	<b>OF TEXAS</b>

**THE CITY OF COLLEGE STATION'S  
THIRD MOTION FOR REHEARING**

**JULY 26, 2024**

PUC DOCKET NO. 52728  
SOAH DOCKET NO. 473-22-2464

APPLICATION OF THE CITY OF § BEFORE THE  
COLLEGE STATION TO CHANGE § PUBLIC UTILITY COMMISSION  
RATES FOR WHOLESALE §  
TRANSMISSION SERVICE § OF TEXAS

**THE CITY OF COLLEGE STATION'S  
THIRD MOTION FOR REHEARING**

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**TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:**

The City of College Station (College Station) files this Third Motion for Rehearing (Third Motion) based on the Order on Rehearing issued by the Public Utility Commission of Texas (Commission) on July 11, 2024. Pursuant to Tex. Gov't Code §§ 2001.145 and 2001.146, and 16 Tex. Admin. Code (TAC) § 22.264, this Third Motion is timely filed. In support of this Third Motion, College Station respectfully shows as follows:

**I. INTRODUCTION & EXECUTIVE SUMMARY**

On July 11, 2024, the Commission issued an Order on Rehearing<sup>1</sup> requiring College Station to refund over \$26 million and more than \$15 million in additional carrying charges. College Station's annual transmission revenue requirement is slightly more than \$6 million. The Order on Rehearing disregards the evidence and misapplies the law. Therefore, College Station respectfully requests reconsideration of the points of error identified in the sections that follow.

In each of its three interim Transmission Cost of Service (TCOS) filings, College Station acted in good faith and had every reason to believe its actions complied with the Commission's rules. Despite this, the Commission is now looking back nearly three decades to find that College Station violated the Commission's rules and a Commission order, but the Order on Rehearing does not, and cannot, identify any specific language or requirements in the rules or a past order that College Station has violated. In addition, the Order on Rehearing adopts a "reasonable method" of relying on the proportional allocation from the utility's last comprehensive filing and finds that College Station violated this newly created method. The Commission's decision is a quintessential "regulatory gotcha."

The evidence shows that College Station began including a General Fund Transfer (GFT) in its TCOS at the specific direction of Commission Staff.<sup>2</sup> The evidence also shows that the Commission issued orders approving rates that included a GFT on three separate occasions over a decade.<sup>3</sup> The orders directed the Commission to review "whether the cost of the *transmission plant additions* included in College Station's application are reasonable and necessary at the next

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<sup>1</sup> Order on Rehearing (Jul. 11, 2024).

<sup>2</sup> Rebuttal Testimony of Timothy R. Crabb, Ex. CS-10 at 16.

<sup>3</sup> *Id.* at 53-57, 68-72, 74-77.

complete review of College Station's TCOS."<sup>4</sup> The applicable rule similarly limits subsequent review of interim TCOS filings to plant additions.<sup>5</sup> The orders contained no indication that the Commission could retroactively prohibit inclusion of an entire expense category it has historically permitted. It is undisputed that College Station could have asked for a GFT in its first comprehensive TCOS filing in Docket No. 15762. Accordingly, in 2007, when College Station filed an interim TCOS application, Commission Staff, *sua sponte*, instructed College Station to include a GFT. Commission Staff told College Station to include GFT *even if it was not in the original filing*.<sup>6</sup> As a result, College Station requested a reasonable GFT and presented testimony documenting the addition of the GFT and stating that it was not included in the initial comprehensive filing. The Commission knowingly approved inclusion of a GFT *three* times. The Administrative Law Judges' (ALJs) Proposal for Decision (PFD) appropriately considered the evidence and the incontrovertible mitigating factors present in this proceeding. In contrast, the Commission's decision disregards all such context.

College Station offers the following executive summary of its Third Motion:

- The Commission's decision has no basis in a Commission rule or order. The Commission'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 general transfer funds [sic] was not first approved in a comprehensive rate case." The TCOS rule has no such requirement. Therefore, the Commission's decision is an error of law.
- The order in Docket No. 15762, College Station's last comprehensive TCOS filing, contains no prohibition against inclusion of a GFT in subsequent interim TCOS filings.
- The Order on Rehearing establishes a "reasonable method" that did not exist in any prior Commission rule or order. Given that the method is derived only from commonalities between schedules in municipally owned utility (MOU) TCOS filings and is not grounded in any known legal requirement, College Station could not have reasonably been on notice that the Commission would adopt and enforce this method to retroactively penalize College Station.
- Commission precedent is to approve inclusion of a GFT in TCOS rates as "other associated taxes" under the TCOS rule. The Commission followed this precedent

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<sup>4</sup> *Id.* at 56, 71, 76-77 (emphasis added).

<sup>5</sup> 16 Tex. Admin. Code (TAC) § 25.192(h)(2).

<sup>6</sup> Ex. CS-10 at 16.

by approving inclusion of College Station's GFT as "other associated taxes" in three orders. The Commission's decision arbitrarily disclaims its own prior orders.

The Order on Rehearing is arbitrary and capricious because it lacks any established legal basis and disregards the facts in evidence and the mitigating factors that are inextricably tied to those facts. As such, College Station respectfully urges reconsideration of the Commission's decision.

## II. POINTS OF ERROR

### **A. The Commission's decision to order a \$26.3 million refund has no legal basis in a Commission rule or order and no factual basis considering the evidence presented. [FOFs 53, 54, 63, 68, 71, 73, COLs 10B, 10C, 14]**

#### **1. The TCOS rule does not require that a GFT must first be included in a comprehensive TCOS filing to be subsequently included in an interim TCOS filing.**

In Conclusion of Law No. 10C, the Commission asserts that College Station violated 16 TAC § 25.192(h) because College Station's inclusion of a GFT was not first approved in a comprehensive rate case.<sup>7</sup> The Commission cannot identify *any* specific or even general language in the TCOS rule that College Station has violated. This is because there is no rule, law, or other legal authority requiring that a GFT must first be approved in a comprehensive rate case. This was repeatedly confirmed in the record of this proceeding. For example, Commission Staff admitted in discovery and during the hearing that no such authority exists.<sup>8</sup> When asked during cross-examination where in the Commission's rules or filing package instruction or elsewhere there is a requirement that a utility must include a GFT in its initial full TCOS case to update GFT in an interim filing, Commission Staff witness Stark responded that there is nowhere that specifically addresses the issue.<sup>9</sup> Even so, the Order on Rehearing goes as far as to include a section titled "Rule Violation."<sup>10</sup> The Commission's decision is not grounded in any existing law and instead infuses language and meaning into the TCOS rule that is simply not there. The Commission is essentially creating new rules without the protections of the Administrative Procedure Act.

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<sup>7</sup> Order on Rehearing at Conclusion of Law (COL) No. 10C.

<sup>8</sup> Commission Staff's Response to College Station's First Request for Information, Ex. CS-9 at 9; Tr. at 43:10-20 (Stark Cross).

<sup>9</sup> Tr. at 43:10-20.

<sup>10</sup> Order on Rehearing at 2.

Moreover, there is no practical reason for making recovery of a GFT in interim TCOS filings contingent on whether it was requested in a preceding comprehensive TCOS filing. The Commission has never had such a policy, and the Commission routinely approves inclusion of a GFT in TCOS rates; in fact, the Commission has never denied a request for a GFT in TCOS rates. Transmission customers benefitted from College Station not asking for a GFT in Docket No. 15762—an ask that would have been routine and approved. The Order on Rehearing fails to identify with any degree of particularity which portion(s) of the TCOS rule College Station has violated and instead relies on a prohibition that does not exist in the rule. There is no basis for the claim that College Station had to first request a GFT in a comprehensive TCOS filing. As such, the Commission’s decision to penalize College Station with an exorbitant refund is erroneously based on an artificial requirement that does not exist under the applicable law.

**2. The order in Docket No. 15762 did not prohibit inclusion of a GFT in subsequent interim TCOS filings.**

The Order on Rehearing continues to erroneously rely on the order from Docket No. 15762 as a basis for invalidating College Station’s GFT inclusions. Finding of Fact No. 63 states that College Station’s GFT inclusion was “unreasonable in light of the Commission’s order in Docket No. 15762 and the Commission’s TCOS rule.”<sup>11</sup> Significantly, the finding is not that College Station *violated* the order in Docket No. 15762 because there is no language from the order in Docket No. 15762 that prohibited College Station’s subsequent GFT inclusions. Absent a substantiated claim of how College Station’s actions were *unlawful*, this cannot reasonably be the basis for the Commission’s decision. The order from Docket No. 15762 includes no mention of a GFT or whether a GFT may be included in College Station’s future TCOS rates.<sup>12</sup> Nor does the order place any limitation on College Station’s ability to increase its tax expense allocation in subsequent interim TCOS filings, as discussed in more detail below. In the instant case, the Commission’s Finding of Fact No. 63 is an error of law and an abuse of discretion because it provides no legal explanation for ordering College Station to refund over \$41 million.

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<sup>11</sup> *Id.* at Finding of Fact (FOF) No. 63.

<sup>12</sup> *City of College Station Filing Pursuant to Subst. R. 23.67*, Docket No. 15762, Final Order (Jun. 8, 1997).

**3. This proceeding is the first time the Commission has implemented a policy requiring a MOU to maintain the GFT effective rate from the last comprehensive TCOS filing.**

In the Order on Rehearing, the Commission finds that the effective rate approved in MOU comprehensive TCOS cases has been used to update a GFT in subsequent interim proceedings.<sup>13</sup> For the first time, the Commission memorializes this as a “reasonable method of determining the appropriate amount of the general fund transfer associated with interim transmission plant additions and retirements.”<sup>14</sup> The Commission’s rationale for its new principle is that because \$0 in tax expense was allocated to the transmission function in Docket No. 15762, College Station’s subsequent inclusions of a GFT as an expense item increased College Station’s effective rate of return above what was approved in Docket No. 15762.<sup>15</sup> The Commission has not established this principle in any previous rule or order but now finds that College Station has violated it three times beginning seventeen years ago. According to the Commission, College Station has violated a “reasonable approach” that could not have been known as Commission policy until the issuance of an order in this case. By the Commission’s rationale, MOUs filing a TCOS application should comb through the schedules of all previous MOU TCOS proceedings over the last three decades to ascertain which aspects of the schedules show the same pattern. MOUs should then deduce from these patterns which policies need to be followed in an interim TCOS proceeding. This cannot reasonably be the expectation placed upon regulated entities. Prior to the issuance of an order in this case, there was no rule, law, or other legal authority requiring that MOUs maintain the transmission function’s proportional allocation from their most recently approved comprehensive TCOS filing in subsequent interim TCOS filings.

Over nearly thirty years, the Commission has had numerous opportunities to investigate any suspected over-earning by College Station. Like other utilities, College Station has consistently filed annual Earnings Monitoring Reports (EMRs) since 2000, in addition to filing its three interim TCOS filings in 2007, 2008, and 2017.<sup>16</sup> In each of its EMR filings, College Station

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<sup>13</sup> Order on Rehearing at FOF No. 54.

<sup>14</sup> *Id.* at FOF No. 53.

<sup>15</sup> *Id.* at 2-3.

<sup>16</sup> For College Station’s most recent EMRs, see *Year-End 2020 Electric Utility Earnings Reports in Accordance with 16 TAC § 25.73*, Project No. 51718 (Jan. 14, 2021); *Year-End 2019 Electric Utility Earnings Reports in Accordance with 16 TAC § 25.73*, Project No. 50655 (Mar. 11, 2020); *Year-End 2018 Electric Utility Earnings Reports Pursuant to 16 TAC § 25.73*, Project No. 49355 (Mar. 19, 2019); *Year End 2017 Electric Utility Earnings*



complied with the instructions and provided the required materials. At no time did the Commission express to College Station any concerns of over-earning based on a GFT inclusion.<sup>17</sup> The Commission's decision to penalize College Station for failing to apply a principle that is based on mere coincidence in prior TCOS proceedings is not grounded in the law and is a clearly unwarranted exercise of discretion.

Even if a proportional allocation requirement had existed at the time of the three interim TCOS filings, College Station only increased the Commission's approved allocation at the direction of Commission Staff<sup>18</sup> and with the Commission's approval.<sup>19</sup> If the policy was in place at the time of College Station's first interim TCOS filing in 2007, it begs the question why Commission Staff specifically instructed College Station to include a GFT. Moreover, if this policy had been in place, there is simply no reasonable explanation for why the Commission would not have previously identified an increased proportional allocation—adding *anything* to the \$0 allocation from Docket No. 15762 is an increase above College Station's effective rate. Furthermore, the increase was easily observable in each of College Station's interim TCOS filings. The "Taxes Other Than Income Taxes" schedule would have included a single line-item for the GFT, and the inclusion was specifically identified in testimony.<sup>20</sup> College Station had no reason to know that maintaining a proportional allocation was the Commission's policy. Commission Staff memoranda recommending approval of College Station's interim TCOS filings provided that the appropriate rate of return from Docket No. 15762 was applied to College Station's approved rate base.<sup>21</sup> The Commission's findings based on the "proportional allocation" principle are not based on any legal requirement established prior to this docket. As such, this principle cannot justifiably be imposed on College Station for an inclusion it only made at the specific direction of Commission Staff and with the approval of three Commission orders.

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*Reports Pursuant to 16 TAC 25.73, Project No. 48158 (Mar. 13, 2018).*

<sup>17</sup> Ex. CS-10 at 14-15.

<sup>18</sup> Ex. CS-10 at 16.

<sup>19</sup> *Id.* at 53-57, 68-72, 74-77.

<sup>20</sup> *Id.* at 73, TRC-11.

<sup>21</sup> *Id.* at 79, TRC-13.

**4. The Commission's punitive decision to order a refund is contrary to the facts in evidence.**

In the Proposal for Decision on Second Remand, the ALJs reduced the recommended refund amount to \$900,000 based on the evidence.<sup>22</sup> The Commission's decision inexplicably abandons this reasoned judgment. Even if College Station had violated a Commission rule or order, significant weight should be given to the unique factual history and numerous mitigating factors. Ordering a maximum refund and requiring carrying charges, as the Commission has done in Findings of Fact Nos. 71 and 73, ignores the evidence.<sup>23</sup> For example, the only evidence directly supporting the Commission's decision to order a full refund is Commission Staff witness Stark's direct testimony. Notably, Ms. Stark *no longer endorses this testimony*. Ms. Stark originally proposed a full refund but subsequently reviewed the history, facts, and circumstances, and modified her recommendation.<sup>24</sup> The Commission's decision fails to acknowledge this important factual development. In addition, the evidence shows that College Station conferred with Commission Staff on the inclusion of a GFT, explicitly referenced the inclusion in testimony, multiple Commission Staff experts reviewed it, and the Commission issued orders approving the inclusion on three occasions.<sup>25</sup> The Order on Rehearing does not align with the undisputed evidence.

The Order on Rehearing similarly fails to recognize that ordering a refund is not in the public interest.<sup>26</sup> As Commission Staff raised in briefing, the maximum refund is over 500% of College Station's annual revenue requirement, whereas the impact of the annual amount on the 2022 total ERCOT TCOS revenue requirement would have been three one-hundredths of one percent. These numerical facts illustrate how punitive the Commission's decision is—the Order on Rehearing irreparably damages College Station's financial stability in favor of saving a negligible amount for TCOS ratepayers across ERCOT. Such a drastic decision is not in the public interest. Throughout the proceeding, College Station *and* Commission Staff demonstrated that,

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<sup>22</sup> SOAH Proposal for Decision at 2 (Dec. 21, 2023) (PFD).

<sup>23</sup> Order on Rehearing at FOF Nos. 71, 73.

<sup>24</sup> Supplemental Direct Testimony of Ruth Stark, Staff Ex. 3A at Bates 4-5, wherein Ms. Stark modifies her original recommendation based on the information provided in College Station's rebuttal testimony.

<sup>25</sup> Ex. CS-10 at 16-17; 20; 47-52; 53-63; 68-72, 74-81.

<sup>26</sup> *See* Commission Staff's Initial Brief at 20 (May 16, 2023), citing *Complaint of Toby Smith Water Co.*, Docket No. 3173, 6 P.U.C. BULL. 413 (Jan. 8, 1981).

even if inclusion of a GFT was somehow unlawful, the evidence overwhelmingly supports mitigation. The Commission’s decision shows an arbitrary and capricious disregard for the facts and history of the case.

**B. The Order on Rehearing ignores longstanding precedent of approving GFTs within “other associated taxes” under the TCOS rule and instead retroactively disallows an entire expense category permitted under the rule. [FOF 52A, COL 9]**

The Order on Rehearing contradicts the longstanding precedent of allowing inclusion of a GFT as “other associated taxes” under the TCOS rule. The Commission has the authority to review the rates approved in an interim TCOS proceeding, but the Commission does not have the authority to disallow an entire category of costs expressly permitted under the TCOS rule and historically approved by the Commission. In its findings and conclusions, the Order on Rehearing establishes that College Station’s interim transmission rates are subject to reconciliation,<sup>27</sup> but reconciliation does not equate to reconsideration of a well-established Commission policy. If the Commission recognizes a precedent of maintaining the effective rate from a previous comprehensive TCOS proceeding, then the Commission must also recognize the longstanding practice and permissibility of including GFT as “other associated taxes.” In fact, in Finding of Fact No. 47, the Order on Rehearing itself provides that GFTs have most often appeared as an “other taxes” line item.<sup>28</sup> Ordering College Station to issue a refund for its GFT inclusions is not aligned with the Commission’s well-established interpretation of the TCOS rule.

During the hearing on remand, Commission Staff’s witness Stark confirmed that GFTs have been traditionally included in interim TCOS filings as “other associated taxes,”<sup>29</sup> a category explicitly permitted in interims under the TCOS rule. Notably, new rates established in an interim TCOS filing *shall* include “other associated taxes,” signifying that the category must be included in an interim filing.<sup>30</sup> Ms. Stark also confirmed that the practice has been to allow MOUs to include a GFT as part of the return calculation if it is not included in “Taxes Other Than Income Taxes.”<sup>31</sup>

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<sup>27</sup> Order on Rehearing at FOF No. 52A; COL No. 9.

<sup>28</sup> *Id.* at FOF No. 47.

<sup>29</sup> Tr. at 62:10-23 (Stark Cross), at which point Ms. Stark confirms that MOUs have included GFT within the “other associated taxes” category of 16 TAC § 25.192(h)(1), and that the Commission issued orders authorizing that treatment.

<sup>30</sup> 16 TAC § 25.192(h)(1).

<sup>31</sup> Tr. at 40:10-23 (Stark Cross).

By Ms. Stark's own characterization of "other associated taxes" and the Commission's approval of College Station's three interim filings, there is no dispute that the Commission has repeatedly approved inclusion of a GFT within the "other associated taxes" category. Despite this, Conclusion of Law No. 10B erroneously finds that College Station was not authorized to include a GFT under the very subsection permitting updates to "other associated taxes."<sup>32</sup> The Order on Rehearing is a sudden prohibition of an inclusion and categorization the Commission has historically approved and one that Commission Staff's own witness acknowledged as correct.

Per the language of the TCOS rule, the interim orders, and the Order on Rehearing itself, College Station expects that its rates will be subject to reconciliation in a comprehensive TCOS filing.<sup>33</sup> For example, if College Station includes the costs of a new transformer in an interim TCOS filing, it is logical to expect, under the plain language of the TCOS rule, that the costs, interest, and other expense components of that transformer will be subject to a prudence review in a subsequent comprehensive filing. Under the rule, however, there is absolutely no reason to expect that the entire category of invested capital will be wholly excluded—the addition and retirement of transmission facilities is expressly listed as a category that may be reflected in an interim TCOS filing.<sup>34</sup> Similarly, the Commission rationalizes its decision in part by stating that general transfer payments are not expressly authorized for inclusion in interim TCOS updates under the Commission's rules.<sup>35</sup> The TCOS rule lists *categories* that may be updated in an interim TCOS filing. The TCOS rule is not so granular that it contemplates each and every type of expense that may fall within a given category. At the direction of Commission Staff, College Station updated its GFT within "other associated taxes" consistent with a practice the Commission has approved for decades. If the Commission intends to renege on this practice, as it has done in the Order on Rehearing, it must be done on a prospective basis and not in a manner that arbitrarily imposes a punitive decision on one party.

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<sup>32</sup> Order on Rehearing at COL No. 10B.

<sup>33</sup> 16 TAC § 25.192(h)(2) provides that interim *rates* are subject to reconciliation at the next complete review of the TSP's transmission cost of service. In addition, each of the three interim orders provided that the "updated rate" would be subject to reconciliation (*see* Ex. CS-10 at 56; 71; 76).

<sup>34</sup> 16 TAC § 25.192(h)(1).

<sup>35</sup> Order on Rehearing at 3, FOF No. 46A.

The recommendations of Commission Staff in College Station’s interim filings note that the *costs* will be subject to review and analysis.<sup>36</sup> Each interim order provided only that the “updated rate” is subject to reconciliation.<sup>37</sup> College Station recognizes that if it was determined in a comprehensive TCOS case that the *amount* of GFT included in its interim filings was inaccurate, then it could be subject to correction. But that is not the Commission’s decision in this case. The Order on Rehearing asserts that a MOU can no longer include a GFT in interim TCOS filings under the rule—a position that is undeniably contrary to longstanding practice and unsupported by the law. College Station relied on three orders issued by the Commission and had no reason to know, under the plain language of the rule and the Commission’s history of approving GFTs in interim TCOS filings, that the inclusion of the entire “other associated taxes” category would later be disallowed. Furthermore, “costs of interim plant additions” is the only category expressly subject to reconciliation under the TCOS rule. During a reconciliation, the Commission is required to review the costs of interim plant additions.<sup>38</sup> The rule specifically enumerates what *shall* be reviewed and if the Commission had intended any other required review beyond plant additions, it would have made such categories similarly explicit. The plain language of the rule limits reconciliation to interim transmission plant additions. The rule also refers to refunding the “corresponding return and taxes” on amounts found to be unreasonable or unnecessary.<sup>39</sup> Invested capital has “corresponding return and taxes” but expense items like a GFT do not. The Order on Rehearing itself provides that, under the TCOS rule, reconciliation will entail the review of interim plant additions.<sup>40</sup> Likewise, each of the Commission’s past orders approving College Station’s

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<sup>36</sup> *Application of City of College Station for Interim Update for Wholesale Transmission Rates*, Docket No. 34230, Commission Staff’s Final Recommendation at 1 (Jun. 7, 2007); *Application of the City of College Station for Interim Update of its Wholesale Transmission Rate Pursuant to P.U.C. Subst. R. §25.192(g)(1)*, Docket No. 35837, Commission Staff’s Final Recommendation at 1 (Aug. 12, 2008); *see also* Ex. CS-10 at 78. Ms. Spence’s memo in the 2008 interim filing provides that the “cost of transmission plant additions” will be reviewed at the next complete review and concludes that the “associated tax effects” were appropriately represented in the interim filing.

<sup>37</sup> Ex. CS-10 at 56 (Ordering Paragraph No. 4); Ex. CS-10 at 71 (Ordering Paragraph No. 4); Ex. CS-10 at 76 (Ordering Paragraph No. 3).

<sup>38</sup> 16 TAC § 25.192(h)(2).

<sup>39</sup> *Id.*

<sup>40</sup> Order on Rehearing at COL No. 9.

inclusion of a GFT provided that transmission plant additions would be reviewed at the next complete review and listed no other components that must be reviewed.<sup>41</sup>

**C. The Order on Rehearing arbitrarily disclaims three of the Commission's own prior orders. [FOFs 52, 57]**

Finding of Fact No. 52 from the PFD stated, “[t]he Commission issued orders approving inclusion of a GFT in College Station’s interim TCOS filings in Docket Nos. 34230, 35837, and 46847.”<sup>42</sup> Even though this is a true statement, the Commission revised the ALJs’ Finding of Fact No. 52 because it “incorrectly describes the Commission’s orders in [the three interim TCOS proceedings].”<sup>43</sup> As a result of the Commission’s change, the Order on Rehearing fails to consider that the Commission consciously allowed College Station to include a GFT in three different proceedings over a decade. Inherent in each of the Commission’s three interim orders is the Commission’s allowance of a GFT inclusion within the approved rates. Also inherent is the acknowledgement that College Station indisputably could have included a GFT in its original comprehensive TCOS filing, did not do so, and was harmed by that exclusion. College Station was unable to collect GFT revenues from the time Docket No. 15762 rates went into effect until College Station’s first interim TCOS filing in 2007. The Commission now finds that College Station should be punished for not doing something the utility *could* have done that cost only the utility money. The interim orders signify that the Commission realized this. Finding of Fact No. 57 states that inclusion of College Station’s GFT amounts in the interim filings was “inconsistent with the Commission’s precedent,” but the Commission itself approved these inclusions and made no findings that such inclusions were in violation of its own precedent.

From 1996 through 2017, not a single order issued in a College Station TCOS case reflected that inclusion of a GFT was impermissible, or that it could be reviewed and disallowed in a subsequent comprehensive filing. In the interim orders, the Commission was saying, “we are allowing this utility to include a GFT in its TCOS rates.” Orders issued in interim TCOS cases have meaning, and College Station reasonably relied on the Commission’s approval of a GFT on three different occasions over ten years. College Station’s witness even provided that had Commission Staff notified College Station that the inclusion was inappropriate or could only be

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<sup>41</sup> Ex. CS-10 at 56, 71, 76-77.

<sup>42</sup> PFD at 62.

<sup>43</sup> Order on Rehearing at 5.

incorporated through a comprehensive case first, College Station would have either filed the 2007 interim application without the GFT, as was originally done in the draft submitted to Commission Staff, or re-evaluated the filing and filed a full TCOS case.<sup>44</sup> The Commission erroneously deleted the ALJs' proposed Finding of Fact No. 62<sup>45</sup> addressing this fact even though it is supported by witness testimony. The Commission revised and deleted key findings from the PFD that are factually correct and crucial to a decision supported by the evidence. As such, the Order on Rehearing arbitrarily and capriciously fails to acknowledge the import of the Commission's own past orders.

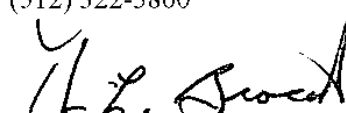
### III. CONCLUSION

College Station respectfully requests that the Commission grant this Third Motion and revise its Order on Rehearing issued on July 11, 2024, in accordance with the points of error detailed above. In addition, College Station requests any other relief to which it is entitled.

Respectfully submitted,

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<sup>44</sup> Ex. CS-10 at 14.

<sup>45</sup> Order on Rehearing at 5.

**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 July 26, 2024, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
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THOMAS L. BROCATO



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