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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

December 21, 2023

Shelah Cisneros, Commission Counsel
Commission Advising and Docketing Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

VIA EFILE TEXAS

RE: SOAH Docket No. 473-22-2464; PUC Docket No. 52728;
Application of the City of College Station to Change Rates for
Wholesale Transmission Service

Dear Ms. Cisneros:

Please find attached a Proposal for Decision (PFD) in this case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. Please notify the Administrative Law Judges and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Enclosure

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION OF THE CITY OF COLLEGE STATION
TO CHANGE RATES FOR WHOLESALE
TRANSMISSION SERVICE**

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LIST OF ACRONYMS AND ABBREVIATIONS

TERM	DEFINITION
4CP	4 Coincident Peak
Application	College Station’s application filed on November 3, 2021
ALJ	Administrative Law Judge
City or College Station	City of College Station
COL	Conclusion of Law
Commission	Public Utility Commission of Texas
EMR	Earnings Monitoring Report
ERCOT	Electric Reliability Council of Texas
FERC	Federal Energy Regulatory Commission
First Remand Order	Commission’s Order Remanding Proceeding dated January 26, 2023
FOF	Finding of Fact
GFT	General Fund Transfer
Initial PFD	Proposal for Decision issued on July 27, 2023
MOU	Municipally Owned Utility
MW	Megawatt
OP	Ordering Paragraph
OPUC	Office of Public Utility Counsel
PFD	Proposal for Decision
PILOT	Payment In Lieu of Taxes
PURA	Public Utility Regulatory Act
RCEs	Rate-Case Expenses
ROI	Return on Investment
Rule	16 Texas Administrative Code §
Second Remand Order	Commission’s Order Remanding Proceeding dated September 14, 2023
Settlement	Uncontested Stipulation and Settlement Agreement dated

TERM	DEFINITION
	August 16, 2022
SOAH	State Office of Administrative Hearings
Staff	Staff of the Public Utility Commission of Texas
TAC	Texas Administrative Code
TCOS	Transmission Cost of Service
TIEC	Texas Industrial Energy Consumers
TSP	Transmission Service Provider

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION OF THE CITY OF COLLEGE STATION
TO CHANGE RATES FOR WHOLESALE
TRANSMISSION SERVICE**

PROPOSAL FOR DECISION ON SECOND REMAND

The City of College Station (College Station or City) filed an application (Application) with the Public Utility Commission of Texas (Commission) for authority to change its transmission cost of service (TCOS) and wholesale transmission rates. College Station requests an annual TCOS of \$6,006,601 and an annual wholesale transmission rate of \$84.67 per megawatt (MW).¹ The Commission last set College Station's transmission rates in a comprehensive TCOS

¹ College Station Ex. 1 (Application) at 3. Citations to College Station's exhibits are to the Bates page numbers.

proceeding in Docket No. 15762.² College Station also seeks to recover its reasonable rate-case expenses (RCEs) for this proceeding.

As discussed further below, the Commission has remanded this case to the State Office of Administrative Hearings (SOAH) for a second time to address all issues identified in the Commission’s Preliminary Order.³ On second remand, the sole contested issue was whether College Station could recover general fund transfers (GFTs) in interim rates, and if not, the amount of any refund due to customers and the period over which it should be provided by College Station. The parties reached an agreement that would resolve all other remaining issues in this proceeding.

For the reasons discussed below, the Administrative Law Judges (ALJs) find that Commission policy and precedent does not support the recoverability of the GFTs included in College Station’s interim rates and therefore a refund is due. However, based on the unique circumstances of this case, the ALJs recommend that the Commission exercise its discretion to order a *partial* refund of the over-collected amounts. Specifically, the ALJs find good cause to require a refund of approximately \$900,000, to be returned through a temporary rate rider over 24 months. Further, the ALJs recommend that the Commission adopt the parties’ settlement agreement on the remaining issues in this case and authorize College Station to recover its reasonable RCEs incurred for this proceeding.

² See *City of College Station Filing Pursuant to Subst. R. 23.67*, Docket No. 15762, Order (July 8, 1997).

³ Order Remanding Proceeding (Sept. 14, 2023) (Second Remand Order); see also Preliminary Order (Apr. 21, 2022).

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction and authority over the Application under Public Utility Regulatory Act (PURA)⁴ §§ 35.004, 35.006, and 40.004(1), and 16 Texas Administrative Code § (Rule) 25.192. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter under Texas Government Code § 2003.049 and PURA § 14.053.

College Station filed its Application on November 3, 2021,⁵ and its proof of notice attesting to the method and recipients of notice on November 12, 2021.⁶ The Commission ALJ found the Application sufficient but required College Station to submit additional proof of notice.⁷ College Station filed its proof of notice by publication on December 17, 2021.⁸ The Commission ALJ thereafter found the notice sufficient.⁹ The Office of Public Utility Counsel (OPUC) was granted intervenor status on November 17, 2021.¹⁰ OPUC filed a request for hearing on February 22, 2022. The Commission referred this case to SOAH on April 19, 2022.¹¹ The Commission issued a Preliminary Order on April 21, 2022, identifying 29 issues

⁴ Tex. Util. Code §§ 11.001-66.016.

⁵ College Station Ex. 1 (Application).

⁶ College Station Ex. 2 (Proof of Notice).

⁷ Commission Order No. 3 (Nov. 30, 2021).

⁸ College Station Ex. 3 (Proof of Notice by Publication).

⁹ Commission Order No. 4 (Jan. 12, 2022).

¹⁰ Commission Order No. 2 (Nov. 17, 2021).

¹¹ Order of Referral (Apr. 19, 2022).

to be addressed in this proceeding.¹² On July 22, 2022, Texas Industrial Energy Consumers (TIEC) was granted intervenor status.¹³

College Station, OPUC, and Commission staff (Staff) filed a Joint Motion to Admit Evidence and an Uncontested Stipulation and Settlement Agreement (Settlement) on August 16, 2022. College Station filed a Supplement to the Joint Motion to Admit Evidence the following day. TIEC was unopposed to the Settlement. On August 18, 2022, the ALJs issued SOAH Order No. 7 admitting evidence, remanding the case to the Commission, and dismissing the case from SOAH's docket.

On January 26, 2023, after considering the Settlement at its open meeting, the Commission issued an Order Remanding Proceeding (First Remand Order),¹⁴ declining to accept the Settlement. The First Remand Order stated that College Station had improperly included GFTs in its interim TCOS proceedings and remanded this case to SOAH “for further processing in accordance with this Order.”¹⁵ Following the First Remand Order, the parties to the Settlement agreed that its terms would remain in place for all issues except the recoverability of GFTs

¹² Preliminary Order (Apr. 21, 2022).

¹³ SOAH Order No. 4 (July 22, 2022).

¹⁴ Order Remanding Proceeding (Jan. 26, 2023) (First Remand Order). While this order was later rescinded, the ALJs refer to it as the First Remand Order to distinguish it from the Commission's subsequent order with the same title.

¹⁵ First Remand Order at 2.

in College Station’s interim rates.¹⁶ TIEC remained unopposed to the remaining terms of the Settlement.¹⁷

A hearing on remand was held on May 2, 2023, by videoconference before ALJs Cassandra Quinn and Daniel Wiseman. College Station, OPUC, TIEC, and Staff participated in the hearing. The record closed on May 31, 2023, with the filing of the parties’ post-hearing briefs. The ALJs issued a Proposal for Decision (PFD) on July 27, 2023 (Initial PFD),¹⁸ finding that the Commission had already determined that the GFTs were not recoverable in its First Remand Order and recommending a refund amount.

On September 14, 2023, the Commission rejected the Initial 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.”¹⁹ The Commission also rescinded its First Remand Order and issued a new Order Remanding Proceeding (Second Remand Order). The Second Remand Order provided that:

The Commission remands this 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’

¹⁶ Remand Hearing Transcript (R. Tr.) at 27-29.

¹⁷ TIEC First Initial Brief at 1 n.3. This PFD refers to the parties’ post-hearing briefs from the first remand as their “First Initial Brief” and “First Reply Brief” to distinguish them from the subsequent briefs on second remand, which are referred to as their “Second Initial Brief” and “Second Reply Brief.” This PFD cites to both sets of briefing because the parties incorporate arguments from their first round of briefing in this second remand.

¹⁸ Proposal for Decision (July 27, 2023) (Initial PFD).

¹⁹ Order Remanding Proceeding at 1 (Sept. 14, 2023) (Second Remand Order).

unopposed agreement filed on August 16, 2022 and the proposed order based on the agreement, all issues in the Commission’s preliminary order, in addition to the general transfer issue, must be addressed.²⁰

On second remand, a prehearing conference convened on October 16, 2023, by videoconference before ALJs Quinn and Wiseman. The parties agreed that an additional evidentiary hearing was unnecessary; the sole remaining contested issue to be decided related to the recoverability of the GFTs; and the Settlement should be resubmitted to the Commission, but with the PFD making specific findings regarding its reasonableness.²¹ The parties also agreed to a briefing schedule. They filed their second initial briefs on October 30, 2023, and second reply briefs and proposed findings of fact (FOFs), conclusions of law (COLs), and ordering paragraphs (OPs) on November 6, 2023, on which date the record closed.

College Station subsequently filed uncontested updates to its RCEs incurred in this proceeding. On December 1, 2023, two additional College Station exhibits regarding RCEs were admitted.²² On December 8, 2023, College Station filed a motion to admit an additional uncontested exhibit related to RCEs. The motion is granted, and the evidentiary record is reopened for the limited purpose of admitting the exhibit.²³

²⁰ Second Remand Order at 1.

²¹ Second Remand Prehearing Conference Transcript at 4-8, 13.

²² SOAH Order No. 14 (Dec. 1, 2023).

²³ The specific exhibit is College Station’s Response to SOAH Order No. 14 and all corresponding attachments. This exhibit is designated as College Station Exhibit 21. To ensure that the record is complete, the ALJs also admit the Fourth Supplemental Direct Testimony of Ruth Stark filed on December 18, 2023, even though no party offered it as an exhibit. The ALJs designate this exhibit as Staff Exhibit 13.

II. APPLICABLE LAW

College Station is a municipally owned utility (MOU) providing electric transmission service within the Electric Reliability Council of Texas (ERCOT) region and a transmission service provider (TSP) as defined in the Commission's rules.²⁴ Under Rule 25.192 (the TCOS rule), "[e]ach TSP in the ERCOT region shall periodically revise its transmission service rates to reflect changes in the cost of providing such services."²⁵ In between these cases considering the TSP's full cost of service, the TCOS rule authorizes a TSP to update its transmission rates on an interim basis to reflect changes in invested capital, as provided below:

(h) Interim Updates of Transmission rates.

(1) Frequency. Each TSP in the ERCOT region may apply to update its transmission rates on an interim basis not more than once per calendar year to reflect changes in its invested capital. Upon the effective date of an amendment to §25.193 pursuant to an order in Project Number 37909, *Rulemaking Proceeding to Amend P.U.C. Subst. R. 25.193, Relating to Distribution Service Provider Transmission Cost Recovery factors (TCRF)*, that allows a distribution service provider to recover, through its transmission cost recovery factor, all transmission costs charged to the distribution service provider by TSPs, each TSP in the ERCOT region may apply to update its transmission rates on an interim basis not more than twice per calendar year to reflect changes in its invested capital. If the TSP elects to update its transmission rates, 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. If the TSP does not have a

²⁴ 16 Tex. Admin. Code § 25.5(141).

²⁵ 16 Tex. Admin. Code § 25.192(g).

commission-authorized rate of return, an appropriate rate of return shall be used.

Subsection (h) of the rule also provides for a reconciliation of rates established in the interim proceedings:

(2) Reconciliation. An update of transmission rates under paragraph (1) of this subsection shall be subject to reconciliation at the next complete review of the TSP's transmission cost of service, at which time the commission shall review the costs of the interim transmission plant additions to determine if they were reasonable and necessary. Any amounts resulting from an update that are found to have been unreasonable or unnecessary, plus the corresponding return and taxes, shall be refunded with carrying costs determined as follows: for the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the TSP's rates set in that complete review of the TSP's transmission cost of service, carrying costs shall be calculated using the same rate of return that was applied to the transmission investments included in the update. For the time period beginning with the effective date of the TSP's rates set in that complete review of the TSP's transmission cost of service, carrying charges shall be calculated using the TSP's rate of return authorized in that complete review.

Section 1502.059 of the Texas Government Code provides the authority for MOUs like College Station to make transfers to the city's general fund:

Notwithstanding Section 1502.058(a) [setting limits on a municipality's use of revenue] or a similar law or municipal charter provision, a municipality and its officers and utility trustees may transfer to the municipality's general fund and may use for general or special purposes revenue of any municipally owned utility system in the amount and to the extent authorized in the indenture, deed of trust, or ordinance providing for and securing payment of public securities issued under this chapter or similar law.

College Station is governed by a set of approved financial policies entitled “Fiscal and Budgetary Policy Statements.”²⁶ The policies related to utility transfers to the City’s general fund are found in section 3.9, which provides as follows:

3.9. Utility Transfer to General Fund

The intent of this transfer is to provide a benefit to the citizens for their ownership of the various utility operations.

An in-lieu-of-franchise fee is included as part of the rate computation of the transfer and is consistent with the franchise rates charged to investor owned utilities franchised to operate within the City.

1. Electric Fund In-Lieu-of-Franchise Fee – The in-lieu-of-franchise fee will be calculated based on kWh [kilowatt-hour] usage at a rate of that [sic] would equate to an approximate 9.0% franchise fee. The final total transfer amount will not exceed 9.0% of total estimated operating revenues.²⁷

III. DISCUSSION

A. BACKGROUND

College Station, like most cities that own utilities, makes annual fund transfers from its municipal utility into the City’s general fund to be used for general purposes.²⁸ These payments, which provide compensation to a city for its ownership of the utility, are referred to by many names, including GFTs, Payment in Lieu of

²⁶ College Station Ex. 12 (Dreyfus Rebuttal Testimony (Reb.)) at 7.

²⁷ College Station Ex. 12 (Dreyfus Reb.) at 55 (MKD-2 at 6).

²⁸ Staff Ex. 3 (Stark Direct Testimony (Dir.)) at 6-7; College Station Ex. 12 (Dreyfus Reb.) at 7-8. Citations to Staff’s exhibits are to the Bates page numbers.

Taxes (PILOT), Return on Investment (ROI), Payment in Lieu of Franchise Fees, and Taxes Other Than Income Taxes.²⁹ This PFD will refer to these transfers as GFTs, except where quoting from exhibits or testimony that include a different reference. GFTs historically have been included in an MOU's comprehensive TCOS cases either as part of the return calculation or as Taxes Other Than Income Taxes.³⁰

On May 2, 1996, College Station filed its first comprehensive TCOS application in Docket No. 15762.³¹ The application included a request for \$1.44 million categorized as “taxes other than income tax,” but the case was resolved by a settlement that provided for \$0 in tax expense allocated to the transmission function.³² Thus, no GFT was included in the approved rates.

Since that time, College Station has filed three interim TCOS updates in 2007, 2008, and 2017.³³ In each of those updates, College Station included GFTs, relying on the advice of Staff. Before the City's first interim TCOS filing in 2007, Timothy Crabb, the Director of College Station's Electric Utility Department,

²⁹ R. Tr. at 39-40; Staff Ex. 3 (Stark Dir.) at 7; College Station Ex. 12 (Dreyfus Reb.) at 8.

³⁰ Staff Ex. 3 (Stark Dir.) at 14.

³¹ *City of College Station Filing Pursuant to Subst. R. 23.67*, Docket No. 15762 (May 2, 1996).

³² College Station Ex. 12 (Dreyfus Reb.) at 16-17; Docket No. 15762, PUC Order No. 15 (Dec. 30, 1996) (adopting rates on an interim basis); Docket No. 15762, Order (July 7, 1997) (adopting rates set in Order No. 15 as final rates).

³³ *Application of the City of College Station for Interim Update of Wholesale Transmission Rates*, Docket No. 46847, Notice of Approval (Mar. 17, 2017); *Application of the City of College Station for Interim Update of Wholesale Transmission Rates Pursuant to P.U.C. Subst. R. 25.192(g)(1)*, Docket No. 35837, Order (Sept. 12, 2008); *Application of the City of College Station for Interim Update of Wholesale Transmission Rates Pursuant to P.U.C. Subst. R. 25.192(g)(1)*, Docket No. 34230, Order (July 23, 2007).

contacted Staff member Glenda Spence³⁴ to ensure he was compiling the correct information for the filing. In his contemporaneous notes of the communications, Mr. Crabb wrote:

When talking to Glenda on 3/15/07, she said that I needed to remember to include PILOT (Payment in Lieu of Taxes). I could not find any PILOT amount in the original filing, so I talked to [then-Director of Electric Utilities] David Massey and he said for College Station the amount is called ROI. Glenda said to include this amount, even if it was not in the original filing, and they would make the call as to whether it would be allowed.³⁵

Mr. Crabb spoke with Ms. Spence regarding GFTs (which he refers to as PILOT) again before filing the interim TCOS update the following month and shared annotated schedules that included GFT numbers. Because a GFT was not included in the 1996 TCOS application, Mr. Crabb used numbers from February 2007 for the schedules, and the annotation for those numbers states that Ms. Spence agreed that using the most recent numbers was the best, most conservative approach.³⁶

In his testimony accompanying the first interim TCOS update, Docket No. 34230, which was filed on May 1, 2007, Mr. Crabb stated that “the filing includes payments in lieu of taxes [PILOT] that are transfers by the Electric Department to the general revenues of the City of College Station” and that the

³⁴ Ms. Spence was an Accountant in the Rate Regulation Division, who at that time, had over 15 years’ experience at the Commission. College Station Ex. 10 (Crabb Reb.) at 7; R. Tr. at 48.

³⁵ College Station Ex. 10 (Crabb Reb.), Attachment TRC-1.

³⁶ College Station Ex. 10 (Crabb Reb.), Attachment TRC-2.

adjustment was “based on total transmission revenue requirements since Docket No. 15762 did not include a payment in lieu of taxes [PILOT] amount.”³⁷

The Commission approved College Station’s first interim TCOS update, including the GFT, on July 23, 2007.³⁸

College Station filed its second interim TCOS update, Docket No. 35837, on July 1, 2008. Before filing, on June 4, 2008, Mr. Crabb emailed Ms. Spence to ask about including a GFT, here referred to as ROI or PILOT:

In our submission last year (Docket 34230) I included a Schedule F-1 to calculate the distribution of the ROI (or PILOT) between the Transmission and Distribution areas. Because this was not included in the original TCOS filing, I used the Transmission and Distribution assets as of 2/28/07 as the basis for the distribution For this year’s filing, should I also make this information as up-to-date as possible by using the current (05/31/08) Transmission and Distribution assets as the basis for the distribution, or should I use the percentages calculated last year?³⁹

The following day, Ms. Spence responded: “I got your message but I’m going to forward your question to my boss, Darryl Tietjen. He’d have the definitive word on this so rather than go through me I’ll let him answer you directly.”⁴⁰ Mr. Tietjen, the Director of the Rate Regulation Division at the Commission, replied: “I would

³⁷ College Station Ex. 10 (Crabb Reb.), Attachment TRC-3.

³⁸ College Station Ex. 10 (Crabb Reb.), Attachment TRC-6.

³⁹ College Station Ex. 10 (Crabb Reb.), Attachment TRC-7.

⁴⁰ College Station Ex. 10 (Crabb Reb.), Attachment TRC-7.

say go ahead with your inclination to use current numbers. I would suggest, however, that you be sure and fully explain the issue in any testimony you include with your filing.”⁴¹ Mr. Crabb did discuss the inclusion of the GFT in his testimony.⁴²

The Commission approved College Station’s second interim TCOS update, including the GFT, on September 12, 2008.⁴³

College Station filed its third interim TCOS update, Docket No. 46847, in 2017. Mr. Crabb explained that “[g]iven that our practice in the two previous interim filings had been based on instructions and guidance from Staff, we included PILOT in the same manner we had done in Docket Nos. 34230 and 35837.”⁴⁴ Mr. Crabb again included testimony regarding PILOT, and again the Commission approved the interim TCOS update, including the GFT.⁴⁵

In total, College Station recovered approximately \$19.2 million in GFTs through its Commission-approved interim rates.⁴⁶

⁴¹ College Station Ex. 10 (Crabb Reb.), Attachment TRC-7.

⁴² College Station Ex. 10 (Crabb Reb.), Attachment TRC-8.

⁴³ College Station Ex. 10 (Crabb Reb.), Attachment TRC-10.

⁴⁴ College Station Ex. 10 (Crabb Reb.) at 12.

⁴⁵ College Station Ex. 10 (Crabb Reb.), Attachments TRC-11, 12.

⁴⁶ Staff Ex. 3 (Stark Dir.) at 20. This amount is calculated through June 30, 2022, the end of the month that Ms. Stark’s direct testimony was filed in this docket.

The instant proceeding is the next comprehensive review of College Station’s TCOS and therefore is the proceeding in which the City’s interim TCOS rates will be reconciled pursuant to Rule 25.192(h). Staff’s witness in this proceeding, Ruth Stark, testified that College Station was not authorized to include a GFT in its interim TCOS cases because it had not included a GFT in its comprehensive TCOS case in 1996.⁴⁷ Ms. Stark initially recommended that the Commission require College Station to refund all amounts recovered through the interim TCOS cases associated with GFTs. The proposed refund amount with carrying costs was \$31.5 million as of June 30, 2022, when she filed her testimony.⁴⁸ However, after College Station filed rebuttal testimony describing the procedural history set forth above regarding why it included GFTs in its interim updates, Ms. Stark filed supplemental direct testimony recommending that the Commission find good cause to require a lesser refund of \$6.6 million.⁴⁹

Until Ms. Stark’s direct testimony in this proceeding, according to Mr. Crabb, College Station had never received or heard any indication from the Commission that it had been overearning, despite filing annual Earnings Monitoring Reports (EMRs).⁵⁰

In the instant case, College Station proposes a change to how it recovers its GFT by moving it from “Taxes Other Than Income Taxes” to the calculation of

⁴⁷ Staff Ex. 3 (Stark Dir.) at 10-21.

⁴⁸ Staff Ex. 3 (Stark Dir.) at 20.

⁴⁹ Staff Ex. 3A (Stark Supplemental Direct Testimony (Supp. Dir.)) at 4-5.

⁵⁰ College Station Ex. 10 (Crabb Reb.) at 14.

return.⁵¹ The GFT included in the proposed return calculation is based on 9% of operating revenues, consistent with the requirements for an in-lieu-of-franchise fee in Section 3.9 of the City’s financial policies.⁵²

As noted above, the sole contested issue on remand is the recoverability of the GFTs included in the interim TCOS proceedings. This PFD begins by addressing that issue, followed by a discussion of the uncontested issues, including the City’s requested RCEs.

B. RECOVERABILITY OF GENERAL FUND TRANSFERS

1. College Station’s Position

College Station argues that, for several reasons, it would be unlawful and inequitable to order College Station to make a refund. First, according to College Station, there is no authority requiring that GFTs must first be included in an MOU’s comprehensive TCOS filing before they can be included in an interim TCOS proceeding. Indeed, College Station was expressly advised to do just that by Staff. Second, it is the Commission’s precedent to approve the inclusion of a GFT as “Other Associated Taxes” under the TCOS rule, which College Station did in its interim TCOS cases. Additionally, College Station argues that requiring a refund would constitute retroactive ratemaking and, ultimately, be unjust.

⁵¹ College Station Ex. 1 (Application) at 42 (Rabon Dir.).

⁵² College Station Ex. 1 (Application) at 44 (Rabon Dir.).

College Station contends that no basis exists under Texas law, the Commission’s TCOS rule, or any relevant order to allege that its inclusion of a GFT in the 2007, 2008, and 2017 interim TCOS filings violated the final order in Docket No. 15762.⁵³ This contention was first raised in Staff witness Stark’s testimony in this case,⁵⁴ but she acknowledged that it is not supported by any specific authority.⁵⁵ College Station emphasizes that it conferred with Staff before including a GFT in its interim filings, referenced the inclusion of a GFT in its testimonies, and received Commission orders approving it. None of the Commission’s orders reflected that including a GFT was impermissible or could be disallowed in a subsequent comprehensive TCOS filing.

Moreover, College Station contends that it did not violate any Commission rule because the Commission’s longstanding practice has been to include GFTs in interim TCOS filings as “other associated taxes,” as demonstrated by the approval of College Station’s interim TCOS applications.⁵⁶ Ms. Stark confirmed this practice, explaining that MOUs may include a GFT in TCOS filings in one of two ways— (1) as Taxes Other Than Income Taxes, or (2) as part of the return calculation.⁵⁷ She also acknowledged that a GFT may be referred to as “other associated taxes” or

⁵³ College Station First Initial Brief at 7-8.

⁵⁴ Staff Ex. 3 (Stark Dir.) at 10-21.

⁵⁵ College Station Ex. 9 (Staff Response to College Station RFI 1-5(b) at 9 (“There is no rule, statute, precedent, or other authority that specifically requires that a municipal utility must include PILOT in its initial comprehensive rate case in order to include it in subsequent interim filings.”)); R. Tr. at 43, 72 (Ms. Stark testifying that there is nothing specifically in the Commission’s rules, orders, rate-filing package, or elsewhere that says a utility can only update if it had a GFT in its initial TCOS case).

⁵⁶ College Station First Initial Brief at 8-11.

⁵⁷ R. Tr. at 40, 62.

“Taxes Other Than Income Taxes” even though it is not a tax.⁵⁸ No legal or logical basis exists, according to College Station, to distinguish the City from other MOUs simply because it did not include a GFT in its initial TCOS case. College Station warns that, if the Commission’s new interpretation is adopted, the many prior approvals of GFTs in interim filings for MOUs as “other associated taxes” would suddenly be in violation of the Commission’s rules and potentially subject to refunds.

College Station argues that, per the language of the TCOS rule and the Commission’s orders resulting from the interim update proceedings, it can reasonably expect that its approved *rates* will be subject to a later reconciliation, but not the exclusion of an entire category of costs. For example, if College Station includes the costs of a new transformer in an interim TCOS filing, the costs, interest, and other expense components of that transformer will be subject to a later prudence review. However, the entire category of invested capital would not be excluded since it is expressly listed as a category that may be included in an interim TCOS filing.

College Station recognizes that if the *amount* of GFTs in its interim filings was inaccurate, it could be subject to a later refund. However, College Station relied on three Commission orders over the span of 10 years and had no reason to know that the inclusion of a GFT as an entire category would later be disallowed. College Station witness Crabb testified that, if College Station had known the

⁵⁸ R. Tr. at 40.

inclusion was inappropriate or could only be incorporated through a comprehensive case first, the City would have either excluded the GFTs or filed a full TCOS case.⁵⁹

Further, College Station contends that requiring it to make a refund would constitute retroactive ratemaking. Under the concept of retroactive ratemaking, utility regulators are prohibited from “making a retrospective inquiry to determine whether a prior rate was reasonable and imposing a . . . refund when rates were too high.”⁶⁰ PURA also prohibits retroactive ratemaking, providing that “[t]he rates established in the order shall be observed thereafter until changed as provided by this title.”⁶¹ Because, as College Station argues above, there is no rule, statute, or authority prohibiting College Station from including GFTs in its interim TCOS filings, applying a new rule to invalidate those rates would be impermissibly retroactive.

Nor, College Station contends, did the inclusion of GFTs in its interim filings increase the rate of return beyond the 6.71% that was authorized in its initial TCOS proceeding. Because College Station used the weighted average cost of capital in its initial TCOS filing, any GFT in that filing would have been included within “Taxes Other Than Income Taxes.” Not until the instant proceeding did College Station begin to use the cash flow method. Calculation of the authorized 6.71% in its interim TCOS filings did not include any transfers, and the GFT was an expense item classified under “Taxes Other Than Income Taxes.” If College Station had used a

⁵⁹ College Station Ex. 10 (Crabb Reb.) at 12.

⁶⁰ *State v. Pub. Util. Comm’n of Tex.*, 883 S.W.2d 190, 199 (Tex. 1994).

⁶¹ PURA § 36.111(b).

cash flow approach in Docket No. 15762, any transfers would have been included as a component of return, but that was not the case.⁶² According to College Station witness Grant Rabon, “[B]ased on the method of developing the return in Docket No. 15762, the inclusion of the transfer to the general fund [via College Station’s three interim updates] cannot increase the City’s rate of return beyond what the Commission authorized in the City’s last comprehensive rate case.”⁶³

Finally, College Station argues that ordering a refund under these circumstances would be unjust. College Station maintains it acted transparently on three separate occasions when seeking guidance about the inclusion of GFTs in its filings and consistently followed Staff’s directives. College Station asserts that, in relying on the advice of Staff, it took the steps any reasonable MOU would take. Moreover, on each occasion the Commission approved College Station’s treatment of GFTs, and thus, according to College Station, it reasonably expected that the *rates* approved in its interim filings would be subject to later review, not the exclusion of an entire category of expenses. College Station asserts that, as Staff witness Stark herself acknowledged, the citizens of College Station should not have to pay for this abrupt reversal of Commission policy.⁶⁴

⁶² College Station First Initial Brief at 12.

⁶³ College Station Ex. 11 (Rabon Reb.) at 9.

⁶⁴ R. Tr. at 64.

2. Staff's Position

Staff explains that, when it recommended in its direct testimony that College Station make a substantial refund of amounts collected through interim TCOS rates, it was unaware of certain facts that College Station subsequently provided in its rebuttal testimony.⁶⁵ While Staff continues to argue College Station was not authorized to recover the GFTs in its interim TCOS proceedings, its objective has veered away from requiring a substantial refund and toward ensuring that SOAH and the Commission have all pertinent information when making important precedential decisions that will impact all MOUs.⁶⁶

Initially, Staff agrees with College Station that no rule explicitly requires a GFT to be included in a comprehensive TCOS case before it can be included in an interim TCOS case; however, Staff argues it is equally true that no rule permits *any* update of a GFT in an interim case.⁶⁷

Staff argues that an MOU must apply the same proportional allocation, or “effective rate,” attributed to its GFTs in its last comprehensive TCOS proceeding to its GFTs in any subsequent interim TCOS filings. In other words, Staff contends that because none of College Station’s GFT was allocated to the transmission

⁶⁵ Staff First Reply Brief at 1. Staff’s First Reply Brief does not contain page numbers. Citations in this PFD presume that the page numbering begins after the title page, with the Introduction being on page 1.

⁶⁶ Staff First Reply Brief at 1; *see also* Staff First Reply Brief at 15 (“Staff’s position changed from recommending a correct course of action (as in the technically correct application of 16 TAC § 25.192(h)(2) which would result in a significant refund by College Station) to recommending the right course of action (as in a fair outcome based on all of the facts and circumstances) when it became aware of how its informal communications with College Station may have played a role in the erroneous updates to College Station’s general fund transfers in the interim TCOS proceedings.”).

⁶⁷ Staff First Reply Brief at 4.

function in its previous comprehensive TCOS case (Docket No. 15762), none should have been allocated in College Station’s interim TCOS filings.⁶⁸ To illustrate this point, Staff highlights the four interim TCOS cases that College Station witness Dr. Mark Dreyfus cited as examples where the Commission authorized MOUs to recover GFTs in interim TCOS proceedings.⁶⁹ In each example, the MOU maintained the proportionate relationship between the GFT and the revenue requirement from the MOU’s last comprehensive TCOS proceeding.⁷⁰ College Station rejects this argument, noting there is no rule that imposes such a requirement and the only authority that does require allocation percentage—the Commission’s Rate Filing Package—does not address GFTs.⁷¹

However, maintaining this proportional relationship, Staff argues, avoids introducing a potentially contentious calculation into the expedited process of setting interim rates.⁷² Staff notes that the Commission has consistently rejected proposed changes to the interim TCOS process that would “complicate and undermine the purpose of and process for interim TCOS filings” or “substantially alter the nature of interim TCOS filings and significantly complicate and lengthen

⁶⁸ See College Station First Reply Brief at 12.

⁶⁹ Staff First Initial Brief at 8-9; see College Station Ex. 12 (Dreyfus Reb.) at 21-22 (citing *Application of the City of Garland for Interim Update of Wholesale Transmission Rates*, Docket No. 51798, Application (Feb. 5, 2021); *Application of Bryan Texas Utilities for Interim Update of Wholesale Transmission Rates*, Docket No. 51623, Application (Dec. 15, 2020); *Application of CPS Energy for Interim Update of Wholesale Transmission Rates*, Docket No. 51550, Application (Nov. 23, 2020); *Application of CPS Energy for Interim Update of Wholesale Transmission Rates Pursuant to PUC Subst. R. §25.192(h)(1)*, Docket No. 42579, Application (June 3, 2014)).

⁷⁰ R. Tr. at 106-07.

⁷¹ College Station Second Reply Brief at 4-5.

⁷² Staff First Reply Brief at 4.

their processing.”⁷³ Staff concedes there is no rule that explicitly requires maintaining the proportional relationship between the GFT and the revenue requirement, but argues the lack of such a rule is unsurprising because the rule is silent on updating GFTs.⁷⁴

Staff also concedes that it has previously interpreted the TCOS rule more favorably toward MOUs by not opposing interim updates to GFTs included in “other associated taxes” or as a separate expense item.⁷⁵ Staff explains that its position was based on a broad and liberal interpretation of the rule that treated GFTs as if they were akin to taxes that were allowed to be updated because they were based on a specified percentage of either plant or revenues, both of which change in an interim TCOS update. Yet, Staff notes that the Commission had not previously considered Staff’s interpretation for formal approval and is not bound to follow it.⁷⁶

Further, Staff disagrees with the City’s contention that requiring a refund would constitute retroactive ratemaking, noting that refunds resulting from a review and reconciliation of the interim rates are permissible under PURA and Rule 25.192(h).⁷⁷ The determination of whether a GFT is permitted to be updated in an interim TCOS proceeding is well within the Commission’s authority. The rule

⁷³ Staff First Initial Brief at 8 (citing *Rulemaking Proceeding to Amend PUC Subst. R. §25.192(g) Related to Transmission Service Rates*, Project No. 37519, Order Adopting Amendment to §25.192 as Approved at the July 30, 2010 Open Meeting at 17, 19 (Aug. 4, 2010)).

⁷⁴ See Staff First Reply Brief at 4.

⁷⁵ Staff First Reply Brief at 6.

⁷⁶ Staff First Reply Brief at 7.

⁷⁷ Staff First Reply Brief at 3.

expressly states that an “update of transmission rates . . . shall be subject to reconciliation” and “any amounts from an update that are found to be unreasonable or unnecessary . . . shall be refunded with carrying costs.” Thus, the application of this long-standing rule is not retroactive ratemaking, given that the interim rates were always subject to review and reconciliation.

Regarding College Station’s claim that it could not have increased its rate of return through its interim TCOS updates, Staff responds that the City is arguing form over substance.⁷⁸ The mere presentation of GFT in the category of “other associated taxes” does not make it an actual tax. Staff argues that College Station itself has deemed the payment as “return on investment” regardless of which component it was included in for the interim TCOS cases.⁷⁹ Staff also notes that the City’s financial policies state that the intent of the GFT is to provide a benefit to the citizens for the ownership of the various utility operations. Staff contends that the combination in the interim TCOS cases of the 6.71% return on plant additions with the amounts included for GFT, resulted in an *effective* rate of return of well over the 6.71% authorized in Docket No. 15762. While no over-earning was found in College Station’s annual EMRs, Staff witness Stark testified that the inclusion of the GFTs as an expense item coupled with College Station’s misunderstanding of the appropriate functionalization of certain expenses in those reports precluded Staff’s identification of this issue.⁸⁰

⁷⁸ Staff First Reply Brief at 9.

⁷⁹ Staff First Reply Brief at 10 (citing College Station Ex. 10 (Crabb Reb.) at 5, 6, 7, 9, & Attachment TRC-1 at 2).

⁸⁰ Staff Ex. 3A (Stark Supp. Dir.) at 2.

For these reasons, Staff recommends that the Commission find that College Station should not have included the GFTs in its interim TCOS rates. However, Staff agrees with College Station that ordering a full refund may be unjust in this proceeding, given College Station’s reliance on Staff guidance. Accordingly, as discussed below, Staff argues that good cause exists for an exception to the full refund provisions of Rule 25.192(h) that allows the Commission to approve a refund less than the total amount authorized under the rule.

Alternatively, if the Commission determines that GFTs are categorically prohibited, Staff asks that the Commission only preclude updates to GFTs in *future* interim TCOS updates, as there are other MOUs that have included updates in their GFTs in interim TCOS proceedings consistent with the effective rate methodology.⁸¹ According to Staff, “[a] ruling that is applicable to past interim TCOS updates that are still in effect and subject to reconciliation and refund because the MOU has not yet come in for a comprehensive base rate case could place them in the position of facing significant refunds of over-collected interim TCOS rates even though they were following a long-standing practice.”⁸²

3. TIEC’s and OPUC’s Positions

TIEC and OPUC contend that College Station’s GFTs were unauthorized and must be refunded.⁸³ Rule 25.192(h) only provides for interim updates to TCOS

⁸¹ Staff First Reply Brief at 15.

⁸² Staff First Reply Brief at 15.

⁸³ TIEC First Initial Brief at 1-3; OPUC First Initial Brief at 5-7.

rates to reflect changes in invested capital and appropriate changes to depreciation expense, income taxes, and other taxes that are associated with change to invested capital. College Station acknowledges that \$0 of GFT was included in its initial TCOS filing, and the Commission approved a 0% proportional allocation of GFTs to College Station’s transmission function. TIEC and OPUC assert that by including GFTs in its interim TCOS filings College Station deviated from the Commission-approved allocation of 0%, thereby violating the Commission’s order and Rule 25.192(h).

Interim TCOS proceedings are designed to be formulaic to allow a utility to quickly update its rates “to reflect changes in invested capital.”⁸⁴ TIEC asserts that to allow utilities to deviate from the approved rate structure, as College Station did, would “be contrary to the intention of the rule and make the expedited TCOS updates ripe for abuse because the process involves strict time limitations that preclude a full review of each interim application.”⁸⁵

Additionally, TIEC notes that, in each interim order at issue, the Commission stated the rate “was subject to reconciliation at the next complete review of [College Station’s] TCOS,” and that “[a]ny over recovery of costs, as a result of update, is subject to refund.”⁸⁶ Accordingly, OPUC and TIEC argue, the full amount of \$31.5 million should be refunded to ratepayers. While noting that this is a large figure, OPUC relies on Staff witness Stark’s testimony that “it is important to

⁸⁴ Staff First Initial Brief at 8-9; *see also* R. Tr. at 106-07.

⁸⁵ TIEC Second Initial Brief at 4-5.

⁸⁶ TIEC Second Initial Brief at 5.

recognize that College Station opted to forego comprehensive rate cases since 1997 [and] [t]his is what can happen to a utility when it chooses not to apply for a comprehensive rate case for many years.”⁸⁷

4. ALJs’ Analysis

The ALJs conclude that College Station improperly included GFTs in its interim TCOS filings and that those amounts, plus carrying costs, may be subject to refund. However, as discussed in the next section below, the ALJs recommend that the Commission exercise its discretion to find good cause to reduce the refund amount.

As an initial matter, although the TCOS rule is silent regarding the recoverability of GFTs, the parties do not dispute that College Station could have included a GFT in its initial comprehensive TCOS case or that it can include one in the instant case. Nevertheless, College Station appears to be in the unique position of not including a GFT in its comprehensive TCOS case, but subsequently including GFTs in its interim TCOS cases. The rule is likewise silent on this issue, and the recoverability of a GFT in this circumstance appears to be an issue of first impression for the Commission.

Notably, Rule 25.192(h)(1) provides only for interim updates to TCOS rates to reflect changes in invested capital; appropriate changes to depreciation expense, income taxes, and other taxes associated with the change to invested capital; and the

⁸⁷ OPUC Second Initial Brief at 7 (citing Staff Ex. 3 (Stark Dir.) at 18).

Commission-authorized rate of return on such facilities. Here, College Station did not “update” any of these items but included a new category of expense—GFTs—that had not been approved in its initial TCOS. It is appropriate for the Commission to review these expenses in this proceeding, as the interim proceedings in which the GFTs were allowed are expressly subject to reconciliation. Therefore, reviewing College Station’s expenses recovered in its interim proceedings does not constitute retroactive ratemaking. Nor is the Commission bound, as College Station argues, by the interim TCOS orders in which recovery of GFTs was allowed. If that were the case, the review of any expenses in a subsequent comprehensive TCOS proceeding would be meaningless, as the Commission would be bound by its approvals of the interim TCOS.

Moreover, the purpose of the Commission’s interim TCOS rule is to provide an expedited process to reflect changes in invested capital, not to set a new rate structure. Although College Station argues that recovery of GFTs in interim TCOS proceedings is commonplace, the orders it relies on reflect that the MOUs in those cases first incorporated a GFT in their comprehensive TCOS case and maintained the transmission function’s proportional allocation in the subsequent interim TCOS cases.⁸⁸ Although this standard practice is not captured in a Commission rule or policy document, Staff showed that it has been applied consistently in other cases. Additionally, allowing deviations from this approach would undermine

⁸⁸ See College Station Ex. 12 (Dreyfus Reb.) at 21-22 (citing *Application of the City of Garland for Interim Update of Wholesale Transmission Rates*, Docket No. 51798, Application (Feb. 12, 2021); *Application of Bryan Texas Utilities for Interim Update of Wholesale Transmission Rates*, Docket No. 51623, Application (Dec. 15, 2020); *Application of CPS Energy for Interim Update of Wholesale Transmission Rates*, Docket No. 51550, Application (Nov. 23, 2020); *Application of CPS Energy for Interim Update of Wholesale Transmission Rates Pursuant to PUC Subst. R. §25.192(h)(1)*, Docket No. 42579, Application (June 3, 2014)).

Rule 25.192's purpose to allow for a formulaic and expedited update to reflect only changes to invested capital. The fact that the introduction of a new category of expenses like GFTs and a new effective rate in interim proceedings would be contentious is demonstrated by this proceeding, and is incompatible with the expedited review for interim proceedings intended by Rule 25.192.

For those reasons, the ALJs conclude that, for a GFT to be included as an expense item in an interim TCOS case, the MOU must have first included a GFT as an expense item in its prior comprehensive TCOS case and must maintain the transmission function's proportional allocation approved in that case. Because College Station did not do so, the GFTs it recovered through its three interim TCOS cases are subject to reconciliation and refund in this case. Therefore, the only remaining issues are the calculation of any refund and the period over which it should be made.

C. CALCULATION OF REFUND AMOUNT

In direct testimony, Ms. Stark calculated that, as of June 30, 2022, when her testimony was filed, the total amount of the GFTs included in College Station's rates over the 15 years that interim rates were in effect was \$19.2 million.⁸⁹ With the addition of carrying costs calculated using College Station's approved rate of return, the total over-recovery would be \$31.5 million.⁹⁰ Ms. Stark initially recommended a

⁸⁹ Staff Ex. 3 (Stark Dir.) at 18.

⁹⁰ Staff Ex. 3 (Stark Dir.) at 18. This amount is also as of June 30, 2022.

refund in that amount over 15 years.⁹¹ Alternatively, if the Commission found that College Station was authorized to include the GFTs in its interim TCOS rates, Ms. Stark recommended a refund of \$6.6 million.⁹² This amount reflects Ms. Stark's view that, because the interim TCOS rule only permits increases in the revenue requirement resulting from additions of new plant, it was inappropriate for College Station to include GFTs associated with transmission plant that was included in Docket No. 15762, where the Commission had assigned a value of \$0 to the plant as of the end of the test year in that case.⁹³ Under this alternative, the over-collected amount would be \$3.9 million through June 30, 2022, and would be \$6.6 million with carrying costs calculated using College Station's approved rate of return.

After College Station filed rebuttal testimony explaining the circumstances behind why it included the GFTs in the interim proceedings, Ms. Stark filed supplemental direct testimony recommending that the Commission adopt her alternative refund amount of \$6.6 million.⁹⁴ Staff ultimately presented six various refund proposals, which are discussed below.

⁹¹ Staff Ex. 3 (Stark Dir.) at 19.

⁹² Staff Ex. 3 (Stark Dir.) at 20-21.

⁹³ Staff Ex. 3 (Stark Dir.) at 20-21.

⁹⁴ Staff Ex. 3A (Stark Supp. Dir.) at 4-5.

1. TIEC's and OPUC's Positions

Based on their contentions discussed above that it was improper for College Station to include the GFTs in its interim TCOS cases, TIEC and OPUC seek a refund of the total amount College Station recovered for the GFTs, plus carrying costs, which as of June 30, 2022, totaled \$31.5 million.⁹⁵ They contend that the size of the refund is controlled by Rule 25.192(h)(2), which requires College Station to refund all of the over-recovery, plus carrying costs calculated using the authorized rate of return. TIEC and OPUC acknowledge that the refund amount is large compared to College Station's revenue requirement.⁹⁶ In their view, however, that was a risk the City took by failing to come in for a full rate review since 1997, and a utility should not be allowed to avoid refunding inappropriately recovered amounts just because the refund amount is comparatively large. TIEC supports refunding the amount over 15 years as Ms. Stark initially proposed, but acknowledges that the Commission may find a longer period is necessary given the amount.⁹⁷ OPUC leaves the refund period to the Commission's discretion.⁹⁸

⁹⁵ TIEC Second Initial Brief at 3, 9; OPUC Second Initial Brief at 7-8; *see also* TIEC First Initial Brief at 3-4; OPUC First Initial Brief at 7-8.

⁹⁶ TIEC First Initial Brief at 2, 4; OPUC Second Initial Brief at 7.

⁹⁷ TIEC First Initial Brief at 4; *see also* TIEC Second Initial Brief at 9 (requesting that the refund be made "over a reasonable amount of time.").

⁹⁸ OPUC Second Initial Brief at 6.

2. Staff's Position

Staff contends that mitigating factors support a refund of less than \$31.5 million.⁹⁹ Staff offers six potential methods of calculating a refund based on three factors.¹⁰⁰

For the first factor, Staff agrees with College Station that the depreciation expense included in each of the interim TCOS cases was calculated incorrectly, resulting in the City collecting less than it should have when those rates were in effect.¹⁰¹ The undercollected depreciation expense is approximately \$3.0 million.¹⁰² While the TCOS rule does not permit a surcharge for under-recovered interim TCOS rates, Staff believes the rule does not preclude netting over- and under-recoveries. In this case, Staff supports reducing the over-recovery resulting from the inclusion of the GFTs by the under-collected depreciation expense.

⁹⁹ Staff Second Initial Brief at 2; Staff First Initial Brief at 17-21.

¹⁰⁰ Staff First Initial Brief at 16-17.

¹⁰¹ Staff First Initial Brief at 16. College Station witness Rabon testified that:

[T]he City relied on the Commission provided template for the determination of depreciation expense in each interim filing. However, despite the formula provided in the header of Schedule E-1 of the template that indicates the depreciation rates should be multiplied by net plant, depreciation rates should always be multiplied by gross plant in service, rather than net plant in service. Thus, the City understated its depreciation expense in each of its interim filings based on the erroneous formula in the provided template.

College Station Ex. 11 (Rabon Reb.) at 10.

¹⁰² College Station Ex. 11 (Rabon Reb.), Attachment GSR-2.

The second factor relates to the appropriate method for calculating carrying costs.¹⁰³ Ms. Stark's direct testimony calculated the carrying costs using College Station's approved rate of return, which is consistent with the current version of the TCOS rule.¹⁰⁴ However, Staff explains that this version of the rule was only in effect at the time of the City's third interim TCOS filing. Prior to 2010, when the first and second interim TCOS filings were made, the TCOS rule did not provide for carry charges at that rate, or any rate.¹⁰⁵ As a result, Staff contends that the Commission could conclude that carrying costs at College Station's rate of return during that time period is not appropriate because it was not provided for in the rule.¹⁰⁶

Finally, as a third factor, Staff notes that the Commission has "complete discretion to forego any carrying charges if it finds it in the public interest to do so."¹⁰⁷

¹⁰³ Staff First Initial Brief at 14-15.

¹⁰⁴ See 16 TAC § 25.192(h)(2).

¹⁰⁵ See *Rulemaking Proceeding to Revise PUC Transmission Rules Consistent with the New ERCOT Market Design*, Project No. 23157, Order Adopting New and Amended Transmission Rules and Repealing Certain Rules Consistent with the New ERCOT Market Design as Approved at the May 24, 2001 Open Meeting (May 25, 2001). At the time of College Station's first and second interim TCOS filings, the reconciliation language was contained in Rule 25.192(g)(2), which provided:

An update of transmission rates under paragraph (1) of this subsection shall be subject to reconciliation at the next complete review of the TSP's transmission cost of service. The commission shall review whether the cost of transmission plant additions are reasonable and necessary at the next complete review of the TSP's transmission cost of service. Any over-recovery of costs, as a result of the update, is subject to refund.

¹⁰⁶ Staff First Initial Brief at 14.

¹⁰⁷ Staff First Initial Brief at 15-16.

Together, these three factors result in the following six options, listed from largest to smallest potential refund:¹⁰⁸

1. The total over-collection, *without* reduction for the under-recovery of depreciation expense, and with carrying charges calculated at College Station's approved rate of return of 6.71% (i.e., the full \$31.5 million);
2. The total over-collection, *with* reduction for the under-recovery of depreciation expense, and with carrying charges on the net amount calculated at College Station's approved rate of return of 6.71%;
3. The total over-collection, *without* reduction for the under-recovery of depreciation expense, and with carrying charges calculated: (i) at the Commission's interest rate for over- and under-billings applicable for each year from when the first interim TCOS (Docket No. 34230) went into effect until the third interim TCOS (Docket No. 46847) went into effect, and (ii) at College Station's approved rate of return of 6.71% for the period thereafter;
4. The total over-collection, *with* reduction for the under-recovery of depreciation expense, and with carrying charges on the net amount calculated: (i) at the Commission's interest rate for over- and under-billings applicable for each year from when the first interim TCOS (Docket No. 34230) went into effect until the third interim TCOS (Docket No. 46847) went into effect, and (ii) at College Station's approved rate of return of 6.71% for the period thereafter;
5. The total over-collection, *without* reduction for the under-recovery of depreciation expense, and with no carrying charges; or
6. The total over-collection, *with* reduction for the under-recovery of depreciation expense, and with no carrying charges.

¹⁰⁸ Staff has not calculated the refund amount under these various scenarios, but states that it can do so as requested by the ALJs or Commissioners.

Staff does not recommend a particular approach, but explains that Commission precedent supports a refund of less than the total over-recovered amount.¹⁰⁹ In support, Staff cites past cases where the Commission has declined to order refunds of “unlawful” rates for various reasons. In those cases, the Commission found that:

- The Commission has absolute discretion to order the refund or surcharge of any difference between the final rate and interim rate.¹¹⁰
- The Commission has discretion to order no refund, partial refund, or complete refund of unlawful rates.¹¹¹
- In considering whether to require refunds, the Commission may consider: (1) the intent of the utility in assessing the unlawful charge; (2) the character of unlawful charge; (3) the utility’s difficulty in making the refund of unlawfully collected amounts; (4) the realization of any excess profits due to the unlawful charge; and (5) the genesis of the proceeding in which the refund issue arose, i.e., whether it arose as a result of a customer complaint.¹¹²
- With regard to cooperatives, adverse effects on financial condition are more detrimental to the public interest than a failure to pay a portion, or even all, of a refund. Adverse effects to financial condition increase the utility’s cost of capital, which can cause its rates to increase. The net effect is that investors, who are not members of the cooperative, benefit at the expense of ratepayers, who are members.¹¹³ A refund amount was determined by estimating the amount of money the cooperative could

¹⁰⁹ Staff First Initial Brief at 19-21.

¹¹⁰ *Application of Southwestern Bell Telephone Company for Approval of Call Control Options and Selective Call Forwarding Pursuant to P.U.C. Subst. R. 23.26*, Docket No. 9695, 18 Tex. P.U.C. Bull. 1591, 1992 WL 528504 (Aug. 27, 1992).

¹¹¹ *Application of Guadalupe Valley Electric Cooperative, Inc. to Revise G-3, G-4, and G-5 Service Tariffs*, Docket No. 13168, 20 Tex. P.U.C. Bull. 970, 1994 WL 932806 (Nov. 4, 1994).

¹¹² *Id.*

¹¹³ *Inquiry into the Legality of Certain Rates Charged by Pedernales Electric Cooperative, Inc.*, Docket No. 5411, 15 Tex. P.U.C. Bull. 1867, 1989 WL 610290 (Nov. 30, 1989).

refund without exceeding the limits of its debt service coverage and impairing its financial condition.¹¹⁴

- Refunds will not be ordered if it is not in the public interest to do so.¹¹⁵

Considering the factors in the third bullet point above, Staff first concludes that College Station's actions were not the result of a willful disregard for the Commission's rules nor a covert attempt to recover the GFTs through an interim, rather than comprehensive, TCOS proceeding.¹¹⁶ Staff points out that the initial GFT was not included in College Station's draft interim TCOS request and was only added at the suggestion and with the agreement of Staff.¹¹⁷ Staff also recognizes the potential for adverse effects on the cost of capital for the City and similar TSPs and "does not believe it would be in the public interest to subject College Station to what could be misconstrued as a regulatory 'gotcha' by some (including rating agencies)."¹¹⁸ Given these factors, Staff also believes the Commission should weigh the potential financial onus to College Station of making a refund against the minimal impact the overcollection had on any particular ERCOT TSP or customer. Staff notes that a full refund would be over 500% of College Station's annual transmission revenue requirement, while the annual over-collected amount was only 0.03% of ERCOT's total TCOS revenue requirement for 2022. The per-customer impact would be even less considering College Station's *under*-collection of depreciation

¹¹⁴ *Id.*

¹¹⁵ *Complaint of Toby Smith Water Co.*, Docket No. 3173, 6 Tex. P.U.C. Bull. 413, 1981 WL 178980 (Jan. 8, 1981).

¹¹⁶ Staff First Initial Brief at 10.

¹¹⁷ College Station Ex. 10 (Crabb Reb.) at 10.

¹¹⁸ Staff First Initial Brief at 20.

expense discussed above. Finally, Staff notes that the over-collection was identified as part of the review in this case, not through a customer complaint.

For these reasons, Staff asks that the Commission find good cause, under these particular facts and circumstances, for an exception to the full refund provision of Rule 25.192(h)(2).¹¹⁹ Additionally, Staff continues to support the recommendation of Ms. Stark in her supplemental direct testimony,¹²⁰ which provided that good cause supported a refund of \$6.6 million through June of 2022.¹²¹ In its reply brief, Staff clarifies that it recommends this refund amount without further reductions for waiving carrying charges or offsetting the over-collection of depreciation.¹²²

Finally, Staff addresses the mechanism for implementing the refund.¹²³ After issuance of the Initial PFD, Staff conducted a number run presenting three potential refund options.¹²⁴ First, the refund could be made consistent with the Settlement, which anticipated a refund “over a 24-month period via a credit (similar to the

¹¹⁹ Staff First Initial Brief at 21.

¹²⁰ See Commission Staff’s Exceptions to the Proposal for Decision at 4 (Aug. 14, 2023) (“Although not explicitly stated in its post-hearing briefings, Staff’s position remains as described in the supplemental direct testimony of Ms. Stark. The amount of the general fund transfer included in College Station’s interim TCOS rates that is associated with the plant in service as of the test year end in Docket No. 15762 should be the amount refunded”); see also Commission Staff’s Proposed Findings of Fact at FOF No. 19 (May 31, 2023) (proposing the following FOF: “The Commission orders College Station to refund \$3.9 million based on the alternative recommendation of Commission Staff, plus carrying charges at the 10% rate of return adopted in this order over a period of one year.”).

¹²¹ Staff Ex. 3A (Stark Supp. Dir.) at 4-5.

¹²² Staff Second Reply Brief at 5-6.

¹²³ Staff Second Initial Brief at 3.

¹²⁴ Commission Staff’s Exceptions to the Proposal for Decision at 6-8 (Aug. 14, 2023)

mechanics of a rate case expense surcharge).”¹²⁵ However, Staff notes that this mechanism was based on a refund amount of \$3.9 million and may not be best for a larger refund.¹²⁶ Staff therefore presented two alternative mechanisms: (1) using the refund to reduce College Station’s agreed-upon TCOS to be reflected in the wholesale transmission rate; or (2) applying the refund in one-month refunds of the annual refund amount based on the newly approved 4 Coincident Peak (4CP) applicable to wholesale transmission billings that year to be provided annually. Staff contends that the second alternative mechanism for annual one-month refunds would be administratively simple and allow for the precise amount of refund to be credited to wholesale transmission customers. However, Staff acknowledges that there is no testimony in the evidentiary record for these mechanisms, and thus, Staff defers to the ALJs on whether to address the refund mechanism.

3. College Station’s Position

College Station disagrees that a refund should be ordered, as it would be an inequitable penalty.¹²⁷ The City emphasizes the procedural history described in the Background section above that led to the inclusion of the GFTs in its interim TCOS filings. In particular, the initial inclusion of the GFT was prompted by an experienced Staff member, who advised Mr. Crabb that the GFT should be included even if it was not in the original filing and the Commission would make the call as to

¹²⁵ Joint Ex. 1 (Settlement) at 2, para. 3.

¹²⁶ Staff Second Initial Brief at 3.

¹²⁷ College Station Second Initial Brief at 11-13; *see also* College Station First Initial Brief at 13-16.

whether it would be allowed.¹²⁸ College Station did as directed and explained the inclusion of the GFT in its testimony, and the Commission approved it. For the second interim TCOS filing, the City again conferred with Staff, including the Director of Rate Regulation, Mr. Tietjen, who would have the “definitive” word on the question, according to Staff. Mr. Tietjen directed Mr. Crabb to use current numbers and “be sure and fully explain the issue in any testimony you include with your filing.”¹²⁹ College Station again followed Staff’s instruction and explained the inclusion of the GFT in its testimony, and the Commission approved it. For the third interim TCOS filing, College Station again explained the GFT in its testimony, and the Commission again approved it. Accordingly, College Station maintains that it acted innocently and transparently on three separate occasions at the direction of Staff, and on each occasion, the Commission approved College Station’s request. In addition, but for the specific direction of Staff, College Station may not have even included a GFT in its first interim filing.¹³⁰

As discussed above, College Station also argues that a refund would constitute retroactive ratemaking as there is no rule, statute, or other authority that prohibited the inclusion of the GFTS in its interim TCOS filings.¹³¹ College Station maintains that regulated entities must have some degree of certainty from their regulator. In College Station’s view, ordering a refund here would effectively mean the

¹²⁸ College Station Ex. 10 (Crabb Reb.) at 16, 22.

¹²⁹ College Station Ex. 10 (Crabb Reb.), Attachment TRC-7 (email from Darryl Tietjen to Timothy Crabb dated June 6, 2008).

¹³⁰ College Station Ex. 10 (Crabb Reb.) at 12.

¹³¹ College Station Second Initial Brief at 13-14.

Commission is retroactively applying a new regulatory standard to invalidate the rates set by the Commission's prior orders.

Alternatively, if the Commission orders a refund, College Station argues that the evidence does not support a refund greater than \$900,000, and, in fact, mitigating factors support a lesser amount.¹³² As an initial matter, College Station notes that, although Staff's original \$31.5 million recommendation remains in evidence, the witness who initially made that recommendation, Ms. Stark, no longer supports it. Thus, according to the City, the evidence supports a maximum refund of \$6.6 million, the amount supported by Ms. Stark in her supplemental direct testimony.

Nevertheless, College Station argues that mitigating factors support a lesser amount. These factors include the following:

- College Station had no malicious intent in including a GFT in its interim TCOS filings and was specifically instructed to do so by Staff.
- College Station acted in good faith and transparently throughout all of its TCOS filings.
- Inclusion of a GFT in TCOS rates as "other associated taxes" is routine and consistent with Commission precedent and practice.
- Three Commission orders approved inclusion of a GFT in College Station's TCOS rates.
- Ordering a refund would have a significant financial impact on College Station. If College Station is ordered to refund \$31.5 million over 15 years, the annual refund would represent over 63% of the City's annual requested revenue requirement.

¹³² College Station Second Initial Brief at 14-17.

- College Station’s inclusion of a GFT did not increase College Station’s rate of return because GFT was never included as a component of return.
- The refund issue did not arise as the result of a customer complaint.

College Station notes that the Initial PFD found that mitigating factors weigh in favor of lowering the refund amount and that waiving carrying costs is reasonable.¹³³ College Station states that the facts underlying that analysis have not changed. Removal of carrying charges would reduce Staff’s recommended \$6.6 million disallowance to \$3.9 million.¹³⁴ In addition, College Station argues that the record supports an additional \$3.0 million reduction to offset a depreciation expense error in College Station’s interim TCOS filings. As Mr. Rabon explained in rebuttal testimony, College Station understated its depreciation expense in each of its interim TCOS filings based on an incorrect formula provided in a Commission template, resulting in a total under-recovery of roughly \$3 million.¹³⁵ College Station concludes that, based on Staff’s testimony, the reduction for carrying charges, and the reduction for the depreciation expense error, the maximum refund amount supported by the record is \$900,000, but due to mitigating circumstances, a significantly lower amount is in the public interest.

Finally, regarding the mechanism for implementing any refund, College Station recommends using the method the parties agreed to in the Settlement—a temporary rate rider that would be reflected as a separate line-item

¹³³ Initial PFD at 40.

¹³⁴ Staff Ex. 3 (Stark Dir.) at 22.

¹³⁵ College Station Ex. 11 (Rabon Reb.) at 12 & Attachment GSR-2.

credit.¹³⁶ College Station maintains that this approach would provide full transparency and allow College Station to eliminate the line-item credit once the prescribed amount has been refunded.

4. ALJs' Analysis

Under the TCOS rule, any amounts resulting from an interim TCOS update that are found to have been unreasonable or unnecessary must be refunded with carrying costs.¹³⁷ As stated in the previous section, the ALJs find that College Station's interim TCOS proceedings resulted in an over-recovery of costs because College Station did not maintain the transmission function's proportional allocation in its initial comprehensive TCOS case. Therefore, a refund is due under the rule. However, the Commission has discretion on whether to require a full, partial, or no refund.¹³⁸ As discussed below, the ALJs agree with Staff that mitigating circumstances support a refund of less than \$31.5 million in this case. The issue then is what refund amount, if any, is appropriate.

As an initial matter, the ALJs disagree with College Station's contention that no refund amount should be ordered. While the City makes compelling arguments as to why it included the GFTs and that it acted in good faith, that does not change the fact that its interim TCOS rates recovered amounts that are inconsistent with Commission policy and precedent. Staff does not speak for the Commission, and its

¹³⁶ College Station Second Initial Brief at 12.

¹³⁷ 16 TAC § 25.192(h)(2).

¹³⁸ 16 TAC § 22.5(b); *Application of Guadalupe Valley Electric Cooperative, Inc. to Revise G-3, G-4, and G-5 Service Tariffs*, Docket No. 13168, 20 Tex. P.U.C. Bull. 970, 1994 WL 932806 (Nov. 4, 1994).

interpretation of the law may be fallible. Complying with Staff advice does not excuse non-compliance with the law. Under the TCOS rule and the orders issued in each of College Station's interim TCOS cases, the interim rates were subject to later review and reconciliation.¹³⁹ As discussed above, because the reconciliation of interim rates is expressly authorized by the TCOS rule and the Commission's orders in College Station's interim TCOS proceedings, ordering a refund in this case is not prohibited as retroactive ratemaking.

In recommending a refund amount, the ALJs consider the five factors identified in the precedent cited by Staff.¹⁴⁰ First, regarding College Station's intent, the ALJs find that the City did not willfully or intentionally violate the Commission's rules. In fact, the evidence overwhelmingly shows that College Station acted in good faith. College Station witness Crabb's documentation of his conversations with Staff demonstrates that the GFT in the initial interim TCOS filing was included at the prompting of an experienced Staff member.¹⁴¹ Each time College Station sought to include the GFT in an interim TCOS case, it was transparent in its testimony, underwent a review by Staff, and received Commission approval. Mr. Crabb also testified persuasively that if the City had known the GFT was not recoverable in an

¹³⁹ 16 TAC § 25.192(h)(2).

¹⁴⁰ See Docket No. 13168, 20 Tex. P.U.C. Bull. 970, 1994 WL 932806 (Nov. 4, 1994) ("In each case considering refunds, the Commission provides a case-specific listing of factors evaluated in the Commission's decision. Throughout these cases five broad considerations emerge: (1) the intent of the utility; (2) the character of the illegal charge; (3) the difficulty to make a refund; (4) whether the utility (or shareholders) received excess profits due to the illegal charge; and (5) whether the case arose as a result of a customer complaint.")

¹⁴¹ College Station Ex. 10 (Crabb Reb.) at 5 & Attachment TRC-1.

interim TCOS case, it either would have excluded it or would have filed a comprehensive TCOS case.¹⁴²

Second, regarding the character of the charge, the Commission has previously looked at whether a rate was reasonable to the customer and whether a valid business reason existed for the charge.¹⁴³ Here, the parties do not dispute that College Station could have included a GFT in its initial comprehensive TCOS case or that it can include one in the instant case. Additionally, as Ms. Stark testified, the Commission's longstanding practice has been to allow MOUs to recover GFTs in interim TCOS proceedings as either part of the return or as "Taxes Other Than Income Taxes" (even though it is not technically a tax).¹⁴⁴ Thus, the ALJs find that the recovery of a GFT in general is not unreasonable, nor was it unreasonable for College Station to believe it could be included in an interim TCOS filing. College Station also has statutory authority authorizing GFTs and has adopted a financial policy identifying that "[t]he intent of this transfer is to provide a benefit to the citizens for their ownership of the various utility operations."¹⁴⁵ Therefore, a valid business purpose was also shown.

The third factor considers the utility's difficulty in making the refund. In this case, College Station requested a revenue requirement of \$6.0 million. As Staff

¹⁴² College Station Ex. 10 (Crabb Reb.) at 12.

¹⁴³ Docket No. 13168, 20 Tex. P.U.C. Bull. 970, 1994 WL 932806.

¹⁴⁴ Staff Ex. 3 (Stark Dir.) at 5.

¹⁴⁵ Tex. Gov't Code § 1502.059; College Station Ex. 12 (Dreyfus Reb.), Attachment MKD-2 at 6.

points out, a refund of \$31.5 million would be many multiples of that.¹⁴⁶ Likewise, College Station witness Dreyfus testified that recovering this amount over 15 years, as Ms. Stark initially recommended, would be \$3.8 million annually, representing over 63% of the City's requested annual revenue requirement.¹⁴⁷ Thus, a refund of that magnitude would have a significant impact on the City.

The fourth factor addresses whether the utility realized any excess profits due to the charge. Although College Station maintains that it could not have earned a rate of return greater than the 6.71% authorized in Docket No. 15762 because it included that same rate in each of the interim updates, the ALJs agree with Staff that this argument is a matter of form over substance. As Ms. Stark testified, College Station's *effective* rate of return was higher in each of the interim updates because it included both the 6.71% return on rate base, plus the GFTs as an expense item. Including the GFTs, which as discussed above is not consistent with Commission precedent, resulted in College Station collecting rates that were higher than they otherwise would have been, which effectively increased its return.

The final factor looks at whether the refund issue arose incidentally or as a result of a customer complaint. Here, no customer initially complained about the GFTs included in rates, though OPUC and TIEC on remand take positions opposing the GFTs.

¹⁴⁶ Staff First Initial Brief at 20-21.

¹⁴⁷ College Station Ex. 14 (Dreyfus Reb.) at 19.

The ALJs find that, with the exception of the “excess profits” factor, these factors weigh in favor of mitigating the refund amount. Staff was the only party that presented options on how the Commission might calculate a mitigated refund amount. However, the Commission has considerable discretion on this issue and is not bound by these options.

In determining a refund amount, the ALJs recommend starting with Staff witness Stark’s recommended refund amount of \$6.6 million.¹⁴⁸ Ms. Stark testified that this amount reflects that the Commission adopted an order in Docket No. 15762 that assigned \$0 of the GFT to the plant in service as of the end of the test year based on a stipulation between College Station and the other parties.¹⁴⁹ She explained that the TCOS rule allows interim updates to transmission rates that reflect changes associated with additions and retirements of transmission facilities, but that changing the allocation of the GFT to the Docket No. 15762 plant from \$0 to another amount was not related to the addition or retirement of transmission facilities. Therefore, she believed a refund in this amount would be reasonable given the unique circumstances in this case.

However, the ALJs find that other factors in this case weigh in favor of an even lower refund amount. Most notably, College Station reasonably relied on repeated advice of Staff, the Commission’s three prior orders in its interim TCOS cases approving interim rates that included the GFTs, and the Commission’s precedent

¹⁴⁸ See Staff Ex. 3A (Stark Supp. Dir.) at 4-5.

¹⁴⁹ Staff Ex. 3A (Stark Supp. Dir.) at 5.

in other MOU interim TCOS cases authorizing recovery of GFTs. Furthermore, although Commission precedent in other MOU TCOS cases indicates that the Commission's standard practice has been to maintain the transmission function's proportional allocation in interim TCOS proceedings, the instant case appears to be the first opportunity for the Commission to expressly articulate that policy. The ALJs conclude that it would be inequitable to require a significant refund due to a policy that had not previously been memorialized in an applicable statute or Commission rule, order, or policy document.

The ALJs therefore recommend two further reductions. First, given the unique circumstances of this case, the ALJs conclude that waiving carrying costs is reasonable. This adjustment reduces the \$6.6 million to \$3.9 million.¹⁵⁰ Second, as Staff points out, the TCOS rule does not preclude the Commission from netting an over-recovery against an under-recovery, such as the under-recovered depreciation expense here. Notably, College Station's under-recovery of depreciation expense stemmed from an error in a Commission form. Thus, it would be one-sided to recognize an *over-recovery* resulting from incorrect advice from Commission Staff, but not to recognize an *under-recovery* resulting from incorrect instructions in a Commission form. This adjustment further reduces the refund amount by approximately \$3.0 million.¹⁵¹ Thus, in total, the ALJs recommend a refund of approximately \$900,000. However, this amount will need to be updated because the over- and under-recoveries were calculated as of mid-2022.

¹⁵⁰ Staff Ex. 3 (Stark Dir.) at 22.

¹⁵¹ College Station Ex. 11 (Rabon Reb.) at 12 & Attachment GSR-2.

To implement the refund, the ALJs recommend using a temporary rate rider over a 24-month period, as contemplated by the parties' Settlement. With the refund amount that the ALJs recommend, the alternative refund mechanisms proposed by Staff are unnecessary. Additionally, a rider has the benefit of being transparent and simple to apply.

In sum, the ALJs recommend that the Commission grant a good-cause exception to the TCOS rule's requirement that over-recovered amounts be refunded with carrying costs,¹⁵² and instead require a total refund of approximately \$900,000 (to be updated with current numbers) over a 24-month period through a rate rider. The ALJs further recommend that Staff submit number running consistent with the above recommendation to be available for the Commission open meeting to consider this matter.¹⁵³

¹⁵² See 16 TAC § 22.5(b).

¹⁵³ During the first remand, College Station identified an error in Staff's calculation of the \$6.6 million where interest expense was counted twice for September 2008 and March 2017. See Initial PFD at 36. Staff agreed that interest was double counted and calculated that correcting the error would reduce the refund amount by \$46,059. Staff First Reply Brief at 13-14. The parties did not address this issue in their briefing on second remand, but because it is an acknowledged error, the number running should make the necessary correction.

D. UNCONTESTED ISSUES

1. Extent of Issues Raised in this Case

No party contested College Station's position on any of the following issues identified in the Commission's Preliminary Order, and therefore these issues are addressed exclusively in the FOFs and COLs below:

- Issue Nos. 1-3: Sufficiency of the Application and notice
- Issue No. 10: Invested capital
- Issue No. 11: Cash working capital
- Issue No. 12: Cost-free capital
- Issue Nos. 13-14: Regulatory assets and liabilities
- Issue No. 24: Export power from the ERCOT region
- Issue No. 25: Tariff revisions
- Issue Nos. 26-27: Existing rate riders
- Issue No. 28: Waivers

The remaining Preliminary Order issues were addressed in testimonies filed by OPUC and Staff before they entered into the Settlement. Specifically, OPUC and Staff witnesses recommended the following adjustments to College Station's proposed revenue requirement:

- OPUC: Federal Energy Regulatory Commission (FERC) Account 570, Maintenance of Station Equipment: Disallow \$154,112 attributable to a contractor maintenance schedule that appears non-recurring.¹⁵⁴

¹⁵⁴ OPUC Ex. 1 (Nalepa Dir.) at 8-10.

- OPUC: FERC Account 935, Maintenance of General Plant: Disallow \$1,936 to make the test-year expense consistent with the three-year average.¹⁵⁵
- Staff: GFT Included in Return: Disallow \$263,701 to reflect that the franchise rate charged to other utilities operating within the City is 5%, rather than the 9% identified in the City’s financial policies.¹⁵⁶
- Staff: Prepayments: Exclude \$6,130 from the transmission prepayments balance to reflect that it was recorded in the last month of fiscal year 2020 and then immediately reversed in the next month.¹⁵⁷
- Staff: Depreciation: Use the depreciation rates for transmission plant included in the City’s last interim TCOS, resulting in an increase in depreciation expense of \$166,588 and an increase in accumulated depreciation of \$1,602,999.¹⁵⁸ Staff also recommended that College Station perform a depreciation study and a salvage and cost of removal study before filing its next comprehensive rate case.¹⁵⁹
- Staff: Debt Service: Reduce debt service allocated to transmission by \$203,180 to remove a known and measurable change for the debt service for a new Series 2021 debt issuance.¹⁶⁰

¹⁵⁵ OPUC Ex. 1 (Nalepa Dir.) at 10-11.

¹⁵⁶ Staff Ex. 3 (Stark Dir.) at 6-10.

¹⁵⁷ Staff Ex. 3 (Stark Dir.) at 23.

¹⁵⁸ Staff Ex. 2 (Graham Dir.) at 10-11.

¹⁵⁹ Staff Ex. 2 (Graham Dir.) at 6.

¹⁶⁰ Staff Ex. 1 (Sears Dir.) at 11-12.

- Staff: Return: After flowing through Staff’s proposed adjustments to debt service, the GFT, depreciation expense, and rate base, the fallout return would be 8.9%,¹⁶¹ rather than the 10.7% return requested by the City.¹⁶²
- Staff: Rate-Case Expenses: Disallow College Station’s recovery of its RCEs for its interim TCOS proceedings in Docket Nos. 34230 and 46847 in the amounts of \$11,229 and \$10,637, respectively.¹⁶³

Staff calculated that its proposed adjustments would result in a reduction to College Station’s revenue requirement of \$466,880,¹⁶⁴ which when combined with OPUC’s proposed adjustments totals \$622,928.¹⁶⁵ OPUC also recommended that College Station’s RCEs be recovered over 12 months rather than the six months requested by the City.¹⁶⁶

In rebuttal testimony, College Station explained why it disagreed with each of OPUC’s and Staff’s recommendations listed above.¹⁶⁷ However, College Station

¹⁶¹ Staff Ex. 1 (Sears Dir.) at 13-14 & Attachment ES-3. Staff witness Emily Sears recommended that the Commission approve College Station’s use of the cash flow methodology to calculate its return. She explained that “[u]nlike a typical overall ROR [rate of return] calculated in a base rate case proceeding that is determined by market analysis and then applied to rate base, the overall ROR in this proceeding is calculated by taking the Cash Flow Return in dollars divided by the rate base. This means that if there are any changes to the dollar amounts of the inputs in the Cash Flow method or the rate base, the fallout ROR could change.” *Id.* at 13-14.

¹⁶² College Station Ex. 1 (Application) at 43 (Rabon Dir.).

¹⁶³ Staff Ex. 3 (Stark Dir.) at 23-25.

¹⁶⁴ Staff Ex. 3 (Stark Dir.), Attachment RS-1.

¹⁶⁵ This amount does not include Staff’s proposed disallowances for rate-case expenses, which would be recovered through a rider.

¹⁶⁶ OPUC Ex. 1 (Nalepa Dir.) at 11-12.

¹⁶⁷ College Station Ex. 11 (Rabon Reb.) at 4-23.

proposed two adjustments to its revenue requirement to address the two expense issues raised by OPUC witness Karl Nalepa.¹⁶⁸

College Station, OPUC, and Staff ultimately entered into the Settlement, which resolved all issues in this case, and TIEC was unopposed, as discussed below.¹⁶⁹

2. Parties' Settlement

After the Commission rejected the GFT portion of the Settlement in the First Remand Order, College Station, Staff, and OPUC did not withdraw from the Settlement and agreed to limit the hearing on remand to that single issue.¹⁷⁰ TIEC, while not a party to the Settlement, remained unopposed to this approach.¹⁷¹ The parties continue to take these positions in this second remand.¹⁷²

The key components of the Settlement are as follows:

- College Station's TCOS shall be \$5,875,259 and its wholesale transmission rate shall be \$82.82 per MW.¹⁷³
- College Station's transmission rate base shall be \$26,864,373 and does not include prepayments.

¹⁶⁸ College Station Ex. 11 (Rabon Reb.) at 18-23.

¹⁶⁹ Joint Ex. 1 (Settlement).

¹⁷⁰ R. Tr. at 27-29.

¹⁷¹ *Id.*

¹⁷² Second Remand Prehearing Conference Transcript at 4-8, 13; College Station Second Initial Brief at 17-18; Staff Second Initial Brief at 2; OPUC Second Initial Brief at 4; TIEC Second Initial Brief at 1.

¹⁷³ The revenue requirement is a reduction of \$131,342 from the amount requested in College Station's Application.

- College Station’s rate of return shall be 10.00%.
- College Station’s depreciation rates and expense shall be as originally filed in the Application.
- College Station agrees to include a depreciation study in its next application for a complete TCOS review.
- College Station will update its financial policies to minimize confusion about the authorization of transfers to the city’s general fund.
- College Station withdraws its request for RCEs from two of its previous interim TCOS filings, Docket Nos. 34230 and 46847.
- College Station will recover the reasonable and necessary RCEs incurred through a 24-month surcharge.¹⁷⁴
- The rate-case expense rider shall be calculated based on 70,938 MW (ERCOT’s 4CP for calendar year 2020).¹⁷⁵

Although the Settlement is a black-box agreement, College Station explains how the parties arrived at the agreement’s terms.¹⁷⁶ College Station represents that the revenue requirement reduction is based on the adjustments to FERC Accounts 570 and 935 recommended by OPUC witness Nalepa and evaluated further by College Station witness Rabon in rebuttal testimony. Additionally, according to College Station, the change from the requested 10.7% return is a result of adding \$166,587.84 in depreciation expense, as recommended by Staff witness Heidi Graham. College Station states that, when this adjustment is made, the fallout

¹⁷⁴ College Station has incurred additional rate-case expenses since executing the Settlement, as discussed below.

¹⁷⁵ See Joint Ex. 3 (Testimony of Ruth Stark in Support of Stipulation) at 4-5.

¹⁷⁶ College Station Second Initial Brief at 19; Joint Ex. 2 (Testimony of Mark K. Dreyfus in Support of Stipulation) at 2-3. However, the Settlement states that: “The Agreement is the result of compromise and was arrived at only for the purposes of settling this case. The Agreement is not intended to be precedential. A Signatory’s agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.” Joint Ex. 1 (Settlement) at 3, para. B.2.

rate of return is 10.08%, and “[a]s a compromise, the signatories agreed to an even 10.0% rate of return.”¹⁷⁷

Staff witness Stark and College Station witness Dreyfus filed testimony in support of the Settlement.¹⁷⁸ Mr. Dreyfus opined that the Settlement is reasonable, in the public interest, and incorporates compromise because no party receives its comprehensive preferred outcome.¹⁷⁹ Ms. Stark testified that, based on her review and analysis of the Application, testimony, discovery, PURA, and the TCOS rule, the Settlement represents a fair and equitable resolution and is in the public interest.¹⁸⁰ Both witnesses maintained that the Settlement was within the reasonable range of likely results from continued litigation.¹⁸¹

The ALJs find that the parties demonstrated that the Settlement is a reasonable resolution of the contested issues in this case. The Settlement is a reasonable compromise of the parties’ positions on those issues, without any single party’s position dominating the others’ positions. Notably, the parties in this case represent diverse interests, yet no party is opposed to the outcome. Additionally, Ms. Stark and Mr. Dreyfus testified that the Settlement is in the public interest and the outcome is within the range of expected results if this case were to be fully

¹⁷⁷ College Station Second Initial Brief at 19.

¹⁷⁸ Joint Exs. 2 (Testimony of Mark K. Dreyfus in Support of Stipulation) and 3 (Testimony of Ruth Stark in Support of Stipulation).

¹⁷⁹ Joint Ex. 2 (Testimony of Mark K. Dreyfus in Support of Stipulation) at 6.

¹⁸⁰ Joint Ex. 3 (Testimony of Ruth Stark in Support of Stipulation) at 6-7.

¹⁸¹ Joint Ex. 2 (Testimony of Mark K. Dreyfus in Support of Stipulation) at 6; Joint Ex. 3 (Testimony of Ruth Stark in Support of Stipulation) at 6.

litigated. Adopting the Settlement would also be consistent with public policy, which favors the peaceable resolution of disputes.¹⁸² Accordingly, the ALJs recommend that the Commission adopt the Settlement on all issues except (1) the recoverability of the GFTs in the interim TCOS cases, which is addressed above, and (2) the amount of recoverable RCEs, which should be updated, as discussed in the next section, to address College Station’s incurrence of additional RCEs after execution of the Settlement.

3. Rate-Case Expenses

The Settlement provides for the recovery of RCEs incurred in this proceeding through August 31, 2022, through a 24-month surcharge.¹⁸³ The signatories also agreed that the August cutoff date would be extended if additional RCEs were incurred beyond that date due to the Commission’s decision on the Settlement.¹⁸⁴ Because the Commission rejected the Settlement and twice remanded the case to SOAH, College Station incurred additional RCEs for this proceeding after that date.

College Station provided the following updates to its RCEs, which were each reviewed by Staff:

¹⁸² See Tex. Civ. Prac. & Rem. Code § 154.002 (“It is the policy of this state to encourage the peaceable resolution of disputes[.]”); *Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 178 (Tex. 1997) (“Texas law favors and encourages voluntary settlements and orderly dispute resolution.”); *Transport Ins. v. Faircloth*, 898 S.W.2d 269, 280 (Tex. 1995) (noting that “[p]ublic policy favors the amicable settlement of controversies” because settlement “avoid[s] the uncertainties regarding the outcome of litigation, and the often exorbitant amounts of time and money to prosecute or defend claims at trial”).

¹⁸³ Joint Ex. 1 (Settlement) at 2, paras. A.9-A.10.

¹⁸⁴ *Id.*

- On April 18, 2023, College Station filed an update of RCEs incurred in this proceeding totaling \$320,154.85,¹⁸⁵ and on April 27, 2023, an affidavit supporting the updated expenses.¹⁸⁶ The following day, Staff filed supplemental testimony finding this amount to be reasonable and recoverable.¹⁸⁷
- On July 14, 2023, College Station filed an additional update of RCEs incurred through June 30, 2023, totaling \$429,151.82, along with a supporting affidavit.¹⁸⁸ On July 21, 2023, Staff filed supplemental testimony finding this amount to be reasonable and recoverable.¹⁸⁹
- On December 8, 2023, College Station filed an additional update of RCEs incurred through November 30, 2023, totaling \$487,904.95, along with a supporting affidavit.¹⁹⁰ On December 18, 2023, Staff filed supplemental testimony finding this amount to be reasonable and recoverable.¹⁹¹

College Station requests that it be authorized to recover its RCEs incurred through the conclusion of this proceeding.¹⁹² Similarly, Staff recommends that, consistent with the Settlement, College Station be authorized to recover its

¹⁸⁵ College Station Ex. 15 (College Station Fifth Supplemental Response to Staff Second Request for Information).

¹⁸⁶ College Station Ex. 16 (College Station Sixth Supplemental Response to Staff Second Request for Information).

¹⁸⁷ Staff Ex. 3B (Stark Second Supp. Dir.) at 3.

¹⁸⁸ College Station Exs. 17, 18. In SOAH Order No. 10, the ALJs allowed post-hearing filings updating College Station's rate-case expenses through June 30, 2023. College Station also requests that it be allowed to recover in this proceeding rate-case expenses incurred after that date. College Station's Response to Third Supplemental Direct Testimony of Ruth Stark (July 26, 2023).

¹⁸⁹ Staff Ex. 12 (Stark Third Supp. Dir.).

¹⁹⁰ College Station Ex. 21 (College Station Response to SOAH Order No. 14).

¹⁹¹ Staff Ex. 13 (Stark Fourth Supp. Dir.).

¹⁹² College Station Second Initial Brief at 20.

reasonable RCEs incurred in this proceeding.¹⁹³ Staff further recommends that the Commission authorize College Station to establish a regulatory asset to record its trailing RCEs from this proceeding.¹⁹⁴

Given that no party opposes College Station’s recovery of the RCEs incurred through November 30, 2023, and Staff specifically finds such expenses are reasonable and recoverable, the ALJs recommend that the Commission authorize College Station to recover those RCEs in the amount of \$487,904.95. Consistent with the Settlement, the ALJs recommend that this amount be recovered through a 24-month surcharge.¹⁹⁵ The ALJs also recommend that the Commission authorize College Station to establish a regulatory asset to record its trailing RCEs for this case.

IV. CONCLUSION

For the reasons discussed above, the ALJs recommend 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 GFTs in College Station’s interim TCOS proceedings; (2) incorporate the terms of the parties’ Settlement; and (3) authorize College Station to recover \$487,904.95 in

¹⁹³ Staff Second Initial Brief at 3-4. To limit the amount of trailing rate-case expenses that could be subject to review and recovery in a future proceeding, Staff requested that College Station be authorized to update its rate-case expenses through November 30, 2023. In SOAH Order No. 14, the ALJs established a procedure for such an update, which resulted in College Station’s most recent rate-case-expense total listed above.

¹⁹⁴ Staff Second Initial Brief at 4. Staff also notes that “because it is likely that the Commission will require a compliance filing to effectuate any refund amount that it orders as a result of this proceeding, it is possible that the trailing rate-case expense regulatory asset could be reviewed in that compliance filing and used as an offset to any potential regulatory liability that College Station establishes as a result of any refund ordered.”

¹⁹⁵ See also Staff Ex. 13 (Stark Fourth Supp. Dir.) at 3 (recommending recovery over a 24-month period).

RCEs incurred through November 30, 2023, through a 24-month surcharge, with any additional RCEs recorded in a regulatory asset for recovery in a future proceeding. In support of these recommendations, the ALJs provide the following FOFs, COLs, and proposed OPs.

V. FINDINGS OF FACT

Applicant

1. The City of College Station (College Station) is a municipally owned utility (MOU) 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 Public Utility Commission of Texas (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 (RCEs) through a six-month surcharge.
5. In Commission Order No. 3 issued 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 (1) all transmission and distribution providers listed on the Commission's transmission charge matrix; (2) Commission staff (Staff); (3) the parties still operating in Texas that participated in Docket No. 15762; and (4) the Office of Public Utility Counsel (OPUC).
8. On November 23, 2021, 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. 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. On January 12, 2022, the Commission ALJ issued Order No. 4 finding notice sufficient.

Intervenors

11. On November 17, 2021, the Commission ALJ issued Commission Order No. 2 granting OPUC's motion to intervene.
12. On July 22, 2022, the State Office of Administrative Hearings (SOAH) ALJs issued SOAH Order No. 4 granting 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 Zoom videoconference.
17. In SOAH Order No. 2, issued on May 16, 2022, the SOAH ALJs adopted a procedural schedule.

Uncontested Stipulation and Settlement Agreement

18. On August 16, 2022, College Station, OPUC, and Staff filed a Joint Motion to Admit Evidence and an Uncontested Stipulation and Settlement Agreement (Settlement). TIEC was unopposed to the Settlement.
19. On August 16, 2022, College Station filed the testimony of Mark K. Dreyfus in support of the Settlement.
20. On August 17, 2022, Staff filed the testimony of Ruth Stark in support of the Settlement.
21. On August 17, 2022, College Station filed a Supplement to the Joint Motion to Admit Evidence.
22. On August 18, 2022, the SOAH ALJs issued SOAH Order No. 7 admitting 34 joint exhibits into evidence, remanding the case to the Commission, and dismissing 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 Settlement.
25. On November 15, 2022, College Station filed the supplemental testimony of Grant Rabon in response to the Commission Counsel's memo.

26. On November 15, 2022, the Commission ALJ issued Order No. 5 admitting two joint exhibits into evidence.
27. During the Open Meeting on January 26, 2023, the Commission considered the Settlement.
28. On January 26, 2023, the Commission issued an Order Remanding Proceeding (First Remand Order), declining to accept the Settlement and remanding the case to SOAH for further processing in accordance with its order.
29. The First Remand Order addressed whether College Station was permitted to include a General Fund Transfer (GFT) in its interim TCOS filings.

First Remand

30. On March 21, 2023, the SOAH ALJs convened a prehearing conference via Zoom videoconference.
31. On May 2, 2023, the SOAH ALJs convened a hearing on remand via Zoom videoconference. The hearing concluded the same day.
32. The following parties appeared through legal counsel and participated in the hearing on remand: College Station, 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 GFT in its interim TCOS proceedings. No other terms of the Settlement 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 RCEs through June 30, 2023.
37. The SOAH ALJs admitted into evidence at the hearing three joint exhibits, 17 exhibits offered by College Station, one exhibit offered by OPUC, and 11 exhibits offered by Staff.

38. On July 27, 2023, the SOAH ALJs issued a Proposal for Decision (Initial PFD).
39. In the Initial PFD, the SOAH ALJs admitted three additional exhibits regarding RCEs.

Second Remand

40. On September 14, 2023, the Commission rejected the Initial PFD, rescinded its First Remand Order, and issued a new Order Remanding Proceeding (Second Remand Order) remanding the proceeding to SOAH a second time and instructing the 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 Zoom 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 GFTs; and the Settlement should be resubmitted to the Commission, but with the PFD 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 RCEs through November 30, 2023.
45. In SOAH Order No. 14, issued on December 4, 2023, the SOAH ALJs admitted two additional exhibits regarding RCEs.
46. In the Proposal for Decision on Second Remand, the SOAH ALJs admitted two additional exhibits regarding RCEs.

College Station's GFTs in Interim TCOS Filings

47. GFTs may be reflected in the revenue requirement as a component of an MOU'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 a settlement 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 GFT was included in the approved rates.
49. College Station included a GFT in its interim TCOS filings in 2007, 2008, and 2017 in Docket Nos. 34230, 35837, and 46847, respectively, as an expense item under "other taxes."
50. College Station began including a GFT in its interim TCOS filings at the direction of 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 GFT, and its filings were reviewed by Staff.
52. The Commission issued orders approving inclusion of a GFT in College Station's interim TCOS filings in Docket Nos. 34230, 35837, and 46847.
53. Using the effective rate for the separate expense item GFT from an MOU's last comprehensive rate case to update the MOU's GFT in a later interim TCOS filing is a reasonable method of determining the appropriate amount of the GFT associated with interim transmission plant additions and retirements.
54. The effective rate for the GFT from an MOU's last comprehensive rate case has been consistently used to update the MOU's GFTs in later interim TCOS proceedings.
55. The effective rate of College Station's GFT for its transmission function in Docket No. 15762 was 0%.

56. Despite having a GFT 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 an MOU's effective rate for the GFT from its last comprehensive rate case to update the MOU's later interim TCOS proceedings.
58. The amount College Station recovered in its interim TCOS cases associated with the GFTs is \$19.2 million as of June 30, 2022. With carrying costs calculated at College Station's authorized rate of return, the total over-recovery is \$31.5 million as of June 30, 2022.
59. The over-recovered amount includes \$3.9 million associated with the plant in service as of the test-year end in Docket No. 15762. With carrying costs, this portion of the over-recovered amount totals \$6.6 million as of June 30, 2022.
60. The current proceeding is the next complete review of College Station's TCOS and the first opportunity for the Commission to review and reconcile College Station's interim TCOS rates.
61. In including the GFTs 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. If College Station had known the GFT was not recoverable in an interim TCOS case, it would have excluded it or would have filed a comprehensive TCOS case.
63. Recovery of a GFT in general is not unreasonable, nor was it unreasonable for College Station to believe it could be included in an interim TCOS filing.
64. College Station has statutory authority to adopt a GFT 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 because it is more than five times College Station's total revenue requirement.
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 GFTs 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, but based on the particular facts in this case, good cause exists to mitigate the refund amount due.
69. In determining a refund amount, it is reasonable to start with the over-recovered amount associated with the plant in service as of the test-year end in Docket No. 15762, with carrying costs, which was \$6.6 million as of June 30, 2022.
70. College Station's under-collection of depreciation expense through the interim TCOS rates of approximately \$3.0 million should be netted against the \$6.6 million.
71. College Station should not be required to apply carrying costs to the refund amount.
72. The refund amount as of June 30, 2022, is approximately \$900,000.
73. A refund amount of approximately \$900,000 is reasonable due to the mitigating factors.
74. It is reasonable for College Station to make the refund over 24 months through a rider.

Adoption of Settlement

75. The terms of the Settlement should be adopted, except for the term requiring College Station to refund \$3.9 million related to the GFTs in its interim TCOS

proceedings. The RCE term should be adopted with modification to account for recovery of RCEs incurred beyond August 31, 2022.

76. The adopted terms of the Settlement 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 Settlement represent a reasonable compromise that reflects adjustments from diverse parties.

Rate Base, Return, and Depreciation

78. Under the Settlement, 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 Settlement.
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 Settlement. 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 Settlement, 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 RCEs.
87. In the Settlement, the parties agreed to extend recovery of RCEs as necessary due to the Commission's processing of the case.
88. College Station will continue to incur RCEs through the conclusion of the proceeding.
89. College Station's RCEs 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 RCEs incurred for this case for recovery in a future proceeding.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding under Public Utility Regulatory Act (PURA) §§ 35.004 and 40.004(1).
2. College Station is a MOU as defined in PURA § 11.003(11) and an electric utility as defined in PURA § 35.001 for the purpose of wholesale transmission service.
3. College Station is a transmission service provider (TSP) as defined in 16 Texas Administrative Code (Rule) § 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, and Commission rules.
5. College Station provided notice of the application that complies with Rule 22.55.
6. College Station's application complies with the requirements of Rule 25.192.
7. A TSP in the ERCOT region may seek authority to change its transmission rates under Rule 25.192(g).
8. A TSP may apply to update its transmission rates on an interim basis to reflect changes in its invested capital. Rule 25.192(h)(1).
9. Interim updates of transmission rates are subject to reconciliation at the next complete review of the TSP's TCOS, at which time the Commission shall review the costs of the interim transmission plant additions to determine if they were reasonable and necessary. Rule 25.192(h)(2).
10. Any amounts resulting from an interim TCOS update that are found to have been unreasonable or unnecessary, plus the corresponding return and taxes, shall be refunded with carrying costs. Rule 25.192(h)(2).
11. The Commission may grant exceptions to any requirement in its rules for good cause. Rule 22.5(b).
12. The Commission has absolute discretion to order the refund or surcharge of any difference between the final rate and interim rate. *Application of Southwestern Bell Telephone Company for Approval of Call Control Options and Selective Call Forwarding Pursuant to P.U.C. Subst. R. 23.26*, Docket No. 9695, 18 Tex. P.U.C. Bull. 1591, 1992 WL 528504 (Aug. 27, 1992).
13. In considering whether to require refunds, the Commission may consider: (1) the intent of the utility in assessing the unlawful charge; (2) the character of unlawful charge; (3) the utility's difficulty in making the refund of unlawfully collected amounts; (4) the realization of any excess profits due to the unlawful charge; and (5) the genesis of the proceeding in which the refund issue arose, i.e., whether it arose as a result of a customer complaint.

Application of Guadalupe Valley Electric Cooperative, Inc. to Revise G-3, G-4, and G-5 Service Tariffs, Docket No. 13168, 20 Tex. P.U.C. Bull. 970, 1994 WL 932806 (Nov. 4, 1994).

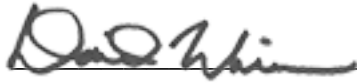
14. Ordering College Station to issue a refund for its inclusion of a GFT in Docket Nos. 34230, 35837, and 46847 is appropriate.
15. Based on the particular facts and mitigating circumstances in this case, good cause exists for an exception to the full refund provision of Rule 25.192(h)(2).
16. College Station's annual TCOS revenue requirement in the amount of \$5,875,259 is reasonable and necessary and calculated in accordance with Rule 25.192(c).
17. College Station's annual wholesale transmission rate of \$82.82 per MW is properly calculated under Rule 25.192.
18. College Station's transmission-related investment is reasonable and necessary and is used and useful, consistent with the requirements of Rule 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 Rule 25.192 and were prudently incurred.
20. It is appropriate for College Station to recover its reasonable and necessary RCEs incurred through November 30, 2023, in this proceeding. Rule 25.245.
21. College Station should recover any trailing RCEs through a regulatory asset for review and recovery in a separate docket.

VII. PROPOSED ORDERING PARAGRAPHS

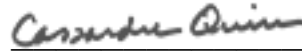
1. The Commission adopts the Proposal for Decision on Second Remand, including findings of fact and conclusions of law, to the extent provided in this Order.
2. The Commission approves College Station's TCOS and wholesale transmission rates to the extent provided by this Order.

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 a total of \$900,000 over a 24-month period via a credit.
6. College Station may recover its reasonable and necessary RCEs incurred in this proceeding through November 30, 2023, in the amount of \$487,904.95.
7. College Station must recover its RCEs through a separate surcharge over a period not to exceed 24 months, and such surcharge should be calculated based on 70,938 MW (ERCOT's 4 Coincident Peak for calendar year 2020).
8. College Station must record any additional RCEs incurred in this docket in a regulatory asset. College Station may seek recovery of those additional amounts in a future proceeding.
9. The Commission approves the depreciation rates described in Finding of Fact No. 81.
10. 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 Rule 25.192(h)(2).
11. Within 10 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.
12. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

SIGNED December 21, 2023.



Daniel Wiseman,
Administrative Law Judge



Cassandra Quinn,
Administrative Law Judge

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Status as of 12/21/2023 11:14 AM CST

Associated Case Party: PUC

Name	BarNumber	Email	TimestampSubmitted	Status
SCOTT MILES		Scott.Miles@puc.texas.gov	12/21/2023 11:07:59 AM	SENT

Associated Case Party: OPUC

Name	BarNumber	Email	TimestampSubmitted	Status
RENEE LWIERSEMA		renee.wiersema@opuc.texas.gov	12/21/2023 11:07:59 AM	SENT

Associated Case Party: CITY OF COLLEGE STATION

Name	BarNumber	Email	TimestampSubmitted	Status
THOMAS BROCATO		TBROCATO@LGLAWFIRM.COM	12/21/2023 11:07:59 AM	SENT
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JOHN RHUBBARD		jhubbard@omm.com	12/21/2023 11:07:59 AM	SENT

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Name	BarNumber	Email	TimestampSubmitted	Status
ORDER KENNEDY		order@kennedyreporting.com	12/21/2023 11:07:59 AM	SENT