

PUC'S "REGULATORY GOTCHA" FORCES COLLEGE STATION TO REFUND \$26.3 MILLION TO CENTERPOINT AND OTHER MAJOR UTILITIES

The Public Utility Commission of Texas (PUC) has ordered the City of College Station to issue an arbitrary \$26.3 million refund to 34 major utility systems that pay to use the City's transmission system. No College Station Utilities ratepayers were overcharged.

The order concerns the city's inclusion of a General Fund Transfer (GFT) in its interim Transmission Cost of Service (TCOS) applications in 2007, 2008, and 2017. The PUC upheld the order despite the State Office of Administrative Hearings Administrative Law Judges (SOAH ALJs) ruling that the refund amount was excessive and unwarranted.

The decision has no basis in any PUC rule or order and amounts to a "regulatory gotcha." Most of the refund will be paid to Oncor (\$9.6 million) and CenterPoint (\$6.85 million).

The order arbitrarily and capriciously punishes College Station and lacks an established legal basis. It also disregards the facts in the administrative record and the mitigating factors, including three PUC orders approving the City's inclusion of a GFT in TCOS rates.

While the payment from the College Station Utilities Electric Fund will not increase the city's electric rates, it will thwart any foreseeable rate reductions. The City Council is scheduled to authorize payment of the full refund on Sept. 26 to stop the punitive accrual of an additional \$15 million in interest over 15 years.

Background

In 1996, the City did not include a GFT in the initial TCOS case to the benefit of ratepayers. In a draft interim filing in 2007, the GFT was again not included. Following the PUC staff's explicit and documented instructions, PUC approved its inclusion in three interim filings and for other Municipally Owned Utilities.

The City followed the PUC's rules and orders transparently and openly, detailing its actions in testimony.

All parties agree that the City could have asked for a GFT in its initial TCOS case. However, no legal or logical basis exists for not allowing the City to exclude the GFT in its interim filings simply because it failed to ask for it in the initial TCOS case.

The City is trying to follow the rules, but they keep changing. The City of College Station did not intentionally or willfully attempt to deceive the PUC or ratepayers, and complete mitigation of the refund is warranted since it penalizes an innocent actor. PUC staff and the state Administrative Law Judges support that outcome.

The only articulated legal basis for the decision is that College Station violated 16 TAC § 25.192 (the TCOS rule) since including the GFT was not first approved in a comprehensive rate case. However, the TCOS rule has no such requirement, making the PUC's decision an error of law.

The order from the City's last comprehensive TCOS filing with the PUC contains no prohibition against including a GFT in subsequent interim TCOS filings. The PUC's Final Order establishes a new "effective rate" policy for evaluating the inclusion of a GFT that did not exist in any prior PUC rule or order and is not grounded in any known legal requirement.

The City could not reasonably have known that the PUC would adopt and enforce this policy to impose a retroactive penalty. PUC precedent is to approve the inclusion of a GFT in TCOS rates as "other associated taxes" under the TCOS rule. The PUC followed this precedent by approving the City's GFT as "other associated taxes" in separate orders in 2007, 2008, and 2017.

The PUC's decision now arbitrarily disclaims its prior orders.

The City, PUC Staff, and the Office of Public Utilities Counsel executed a settlement, but the PUC arbitrarily rejected it based on no law or fact. The PUC then asked the SOAH ALJs to resolve all issues, and the SOAH ALJs provided a reasonable solution: the City would refund only \$900,000 because of the numerous mitigating factors, including the prior PUC orders and the PUC Staff's explicit direction.

The PUC disregarded the recommendation. Instead, it burdened College Station Utilities and its ratepayers with the full \$26.3 million refund.

Timeline of Events

- 1.** On Nov. 3, 2021, the City applied to update its transmission system cost of service with the PUCT due to maintenance, upgrades, and the installation of new transmission infrastructure.
- 2.** After administrative proceedings and discovery before the State Office of Administrative Hearings (SOAH), PUCT staff filed the direct testimony of PUCT Staff witness Ruth Stark on June 23, 2022. Stark recommended that the City be ordered to issue a \$31.5 million refund, asserting that the City's inclusion of General Fund Transfers ("GFT") in its interim TCOS applications in 2007, 2008, and 2017 were impermissible.
- 3.** On July 13, 2022, the City filed rebuttal testimony, including correspondence demonstrating that it began including a GFT in its TCOS rates at the specific instruction of PUC staff dating back to 2007 and that including a GFT was subsequently and repeatedly approved by the PUCT through three official orders during open PUCT meetings.

4. In response to the evidence included in the City's rebuttal testimony, PUC staff filed the supplemental direct testimony of Stark on July 29, 2022. She endorsed an alternative recommendation for the City to refund only \$6.6 million for its GFT inclusions.
5. On Aug. 16, 2022, before an evidentiary hearing, the City, PUC Staff, and the Office of Public Utility Counsel (OPUC), an intervenor, filed an Uncontested Stipulation and Settlement Agreement resolving all issues and requiring a refund of \$3.9 million. Texas Industrial Energy Consumers (TIEC), an intervenor, was unopposed to the settlement and refund amount.
6. During its open meeting on Jan. 26, 2023, the PUC declined to accept the settlement and remanded the proceeding to SOAH after finding that the City was not authorized to include a GFT in its TCOS rates.
7. After a hearing on remand, the SOAH Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) on July 27, 2023. The ALJ found that the PUC had already determined the key issue of GFT recoverability in TCOS rates and recommended a partial refund.
8. On Sept. 14, 2023, the PUC rescinded the previous order issued on Jan. 26, 2023, and ordered the SOAH ALJs to address all issues, including the permissibility of the City's GFT inclusion.
9. After an additional briefing on Dec. 21, 2023, the SOAH ALJs issued a second PFD recommending that, based on the unique circumstances of the case, the PUC should order a partial \$900,000 refund for the City's inclusion of a GFT in its interim TCOS filings.
10. During an open meeting on March 7, 2024, the PUC considered the second PFD. It disregarded the ALJ's findings, ordering the City to refund \$26.3 million, plus over \$15 million in carrying charges over 15 years.
11. After subsequent administrative proceedings, a briefing, and a PUC Final Order, on Aug. 14, 2024, the City filed – per the Final Order – a notice of its intent to prepay the outstanding refund balance on Oct. 15, 2024, saving about \$15 million in carrying charges.
12. On Sept. 3, 2024, the City appealed the PUC's Final Order in Travis County District Court, defining the decision as arbitrary, capricious, and lacking any basis in PUC rules or orders.

13. As permitted under Ordering Paragraph No. 10 of the PUC's Final Order issued on July 11, 2024, the City intends to prepay the outstanding refund balance without penalty to transmission customers.