

DOCKET NO. _____

APPLICATION OF SOUTHWESTERN § PUBLIC UTILITY COMMISSION
PUBLIC SERVICE COMPANY TO §
CHANGE RATES § OF TEXAS

DIRECT TESTIMONY

OF

THOMAS K. ANSON

on behalf of

SOUTHWESTERN PUBLIC SERVICE COMPANY

February 8, 2021

Initial Direct Testimony of
Thomas K. Anson

Docket No. _____

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

<u>Acronym/Defined Term</u>	<u>Meaning</u>
Baker Botts	Baker Botts L.L.P.
Coffin	Coffin Renner LLP
Commission or PUCT	Public Utility Commission of Texas
Courtney	Courtney, Countiss, Brian & Bailey, L.L.P.
Eversheds	Eversheds Sutherland (US) LLP
Hinkle	Hinkle Shanor LLP
PURA	Public Utility Regulatory Act
Sharyland	Sharyland Utilities, L.P.
SPS	Southwestern Public Service Company, a New Mexico corporation
TAC	16 Tex. Admin. Code § 25.245
Winstead	Winstead PC

LIST OF ATTACHMENTS

Attachment

Description

TKA-RR-1(V)

Workpapers
(*Provided on CD*)

Initial Direct Testimony of
Thomas K. Anson

Docket No. _____

**DIRECT TESTIMONY
OF
THOMAS K. ANSON**

I. INTRODUCTION

1

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Thomas K. Anson. My business address is 720 Brazos Street, Suite
4 700, Austin, Texas 78701.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am a member at the law firm of Clark Hill PLC.

7 **Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?**

8 A. I am testifying on behalf of Southwestern Public Service Company, a New Mexico
9 corporation (“SPS”) and wholly-owned electric utility subsidiary of Xcel Energy
10 Inc.

11 **Q. ARE YOU A LICENSED ATTORNEY?**

12 A. Yes. I am licensed as an attorney in the State of Texas, as well as in the Federal
13 District Court for the Western District of Texas and in the United States Court of
14 Appeals for the Fifth Circuit.

15 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL AND**
16 **PROFESSIONAL QUALIFICATIONS.**

17 A. I have a Juris Doctorate from the University of Texas School of Law and a Bachelor
18 of Science degree from Oklahoma State University, which included minors in
19 accounting, finance, and business administration. I have been involved with energy
20 and utility law for more than 40 years, including before the Public Utility
21 Commission of Texas (“Commission” or “PUCT”). This includes regulatory,
22 litigation, and transactional matters. Additional information regarding my
23 background and experience is available at my law firm’s website:
24 <http://www.clarkhill.com/people/tom-anson>.

1 **Q. HAVE YOU PREVIOUSLY PROVIDED DIRECT OR REBUTTAL**
2 **TESTIMONY ON THE SUBJECT OF RATE CASE EXPENSES?**

3 A. Yes. I provided rebuttal testimony on behalf of Entergy Texas, Inc. in Docket No.
4 48439, direct and rebuttal testimony on behalf of Sharyland Utilities, L.P.
5 (“Sharyland”) and Sharyland Distribution & Transmission Services, L.L.C. in
6 Docket No. 45979, and direct testimony on behalf of Sharyland in Docket No.
7 45414.

1 **III. SUMMARY OF INITIAL DIRECT TESTIMONY**

2 **Q. PLEASE SUMMARIZE THIS INITIAL DIRECT TESTIMONY.**

3 A. This direct testimony is my initial testimony regarding rate case expenses, given
4 the limited information available for review at the preliminary stage of this rate case
5 and the two other pending rate cases. After due diligence including review of the
6 rate case expense information in the workpapers relating to each law firm or outside
7 consultant that is working on these rate cases, and based upon the complexity of
8 electric rate cases and the issues to be addressed therein, the scope and quality of
9 the services being provided, and the importance of the rate cases for SPS, it is my
10 opinion that the services of the law firms and outside consultants are necessary and
11 that their rates are reasonable.

1 **IV. SCOPE OF REVIEW AND STANDARD APPLIED**

2 **Q. HOW DID YOU PREPARE TO TESTIFY IN THIS CASE?**

3 A. I undertook several activities to prepare my initial testimony in this case. This
4 included discussing with Jeffrey Stuart and Catherine Garza at the law firm of
5 Eversheds Sutherland (US) LLP (“Eversheds”), and with Mark Walker, Jeremiah
6 W. Cunningham, and others with SPS regarding the rate cases and the attorneys
7 and consultants that are involved. I reviewed the direct testimony of William A.
8 Grant regarding rate case expenses in Docket No. 49831, the last SPS
9 comprehensive rate case³ and the 2019 settlement testimony of Mr. Cunningham in
10 a severed SPS rate case expense docket.⁴ Further, I re-reviewed the Commission’s
11 rate case expense rule, 16 Tex. Admin. Code (“TAC”) § 25.245,⁵ and the
12 rulemaking order adopting that rule.⁶ In addition, I also familiarized myself with
13 the background, experience, and billing rates of the outside attorneys and
14 consultants working on these rate cases so that I could form an opinion regarding
15 the necessity of their services and the reasonableness of their rates.

16 Given the preliminary stage of this case and the other two pending dockets,
17 I did not review any invoices. Instead, I expect to review and address invoices in
18 connection with supplemental or updated testimony on rate case expenses.

³ *Application of Southwestern Pub. Serv. Co. for Authority to Change Rates*, Docket No. 49831, Direct Testimony of William A. Grant (Aug. 8, 2019), available at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=49831&itemNumber=1>.

⁴ *Review of Rate Case Expenses Incurred by Southwestern Pub. Serv. Co. in Docket No. 47527*, Docket No. 47588, Settlement Testimony of Jeremiah W. Cunningham (May 22, 2019), available at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=47588&itemNumber=37>.

⁵ 16 TAC § 25.245, available at <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/Electric.aspx>.

⁶ *Rulemaking to Propose New Subst. R. §25.245, Relating to Recovery of Expenses For Ratemaking Proceedings*, Project No. 41622, Order Adopting New §25.245 as Approved at the July 10, 2014 Open Meeting (Aug. 6, 2014), available at <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.245/25.245ei.aspx>.

1 **Q. IS A UTILITY ENTITLED TO RECOVER THE REASONABLE RATE**
2 **CASE EXPENSES IT INCURS?**

3 A. Yes. Under the Public Utility Regulatory Act (“PURA”) § 36.051, an electric
4 utility is entitled to a reasonable opportunity to earn a reasonable return on its
5 invested capital used and useful in providing service to the public in excess of the
6 utility’s reasonable and necessary operating expenses.⁷ Rate case expenses are part
7 of the utility’s operating expenses and the reasonable costs of participating in a rate
8 proceeding may be allowed as a cost or expense under PURA § 36.061(b).⁸ The
9 Commission has therefore traditionally allowed recovery of reasonable rate case
10 expenses; the Commission-prescribed rate filing package contemplates recovery of
11 rate case expenses by requiring a schedule of rate case expenses that have been or
12 will be incurred for the rate case;⁹ and Rule 25.245 expressly addressing rate case
13 expenses confirms that if the utility meets its burden of proof under the rule its rate
14 case expenses should be allowed. The propriety of allowing utility recovery of
15 reasonable rate case expenses is, and has long been, also judicially recognized.¹⁰

16 **Q. WHAT STANDARDS ARE GENERALLY APPLIED TO DETERMINE**
17 **WHETHER SPECIFIC RATE CASE EXPENSES ARE REASONABLE**
18 **AND NECESSARY OPERATING EXPENSES?**

19 A. The Commission has established standards that must be met before regulatory
20 expenses are found reasonable and allowed as a recoverable expense for ratemaking
21 purposes. The current standard is set forth in the fairly recently adopted Substantive
22 Rule 25.245. Subsection (b) of this rule requires a utility, in seeking recovery of
23 rate case expenses, to file sufficient information that details and itemizes all rate

⁷ PURA § 36.051.

⁸ PURA § 36.061(b).

⁹ *Electric Utility Rate Filing Package for Generating Utilities*, Instructions for Schedule G-14.1, available at http://www.puc.texas.gov/industry/electric/forms/rfp/1992_VI_IOU.pdf.

¹⁰ *E.g., West Ohio Gas Co. v. Ohio Pub. Util. Comm’n*, 294 U.S. 63, 73 (1935); *Oncor Elec. Delivery Co. LLC v. Pub. Util. Comm’n of Tex.*, 406 S.W.3d 253 (Tex. App. – Austin 2013, no pet.); *City of El Paso v. Pub. Util. Comm’n of Tex.*, 916 S.W.2d 515 (Tex. App. – Austin 1995, writ dismissed by agr.).

1 case expenses, including, but not limited to, evidence verified by testimony or
2 affidavit showing:

- 3 (1) the nature, extent, and difficulty of the work done by the
4 attorney or other professional in the rate case;
- 5 (2) the time and labor required and expended by the attorney or
6 other professional;
- 7 (3) the fees or other consideration paid to the attorney or other
8 professional for the services rendered;
- 9 (4) the expenses incurred for lodging, meals and beverages,
10 transportation, or other services or materials;
- 11 (5) the nature and scope of the rate case, including:
 - 12 (A) the utility's size and number and type of consumers
13 served;
 - 14 (B) the amount of money or value of property or interest
15 at stake;
 - 16 (C) the novelty or complexity of the issues addressed;
 - 17 (D) the amount and complexity of discovery;
 - 18 (E) the occurrence and length of a hearing; and
- 19 (6) the specific issue or issues in the rate case and the amount of
20 rate-case expenses reasonably associated with each issue.

21 The rate case expense rule goes on in Subsection (c) to provide that, in
22 determining the reasonableness of the rate case expenses, the foregoing and any
23 other factor shown to be relevant to the specific case are to be considered, and that
24 the determination is to be made of whether and the extent to which the evidence
25 shows that:

- 26 (1) the fees paid to, tasks performed by, or time spent on a task
27 by an attorney or other professional were extreme or
28 excessive;
- 29 (2) the expenses incurred for lodging, meals and beverages,
30 transportation, or other services or materials were extreme
31 or excessive;
- 32 (3) there was duplication of services or testimony;
- 33 (4) the utility's or municipality's proposal on an issue in the rate
34 case had no reasonable basis in law, policy, or fact and was

1 not warranted by any reasonable argument for the extension,
2 modification, or reversal of Commission precedent;

3 (5) rate-case expenses as a whole were disproportionate,
4 excessive, or unwarranted in relation to the nature and scope
5 of the rate case addressed by the evidence pursuant to
6 subsection (b)(5) of this section; or

7 (6) the utility or municipality failed to comply with the
8 requirements for providing sufficient information pursuant
9 to subsection (b) of this section.

10 The factors listed in the rate case expense rule are non-exhaustive.
11 Specifically, the rule provides that “*any other factor shown to be relevant* to the
12 specific case” is to be considered.¹¹ Further, the order adopting the rule—in
13 response to a proposal to explicitly include all factors from the Texas Disciplinary
14 Rule of Professional Conduct 1.04(b) and the Texas Supreme Court’s decision in
15 the *Arthur Andersen* case—explained that the rule “should not hinder or limit the
16 [C]ommission’s broad discretion under PURA § 36.061(b) and § 33.023(b) with
17 respect to rate-case expenses. The adopted rule maintains the [C]ommission’s
18 discretion in this regard while also articulating more specific criteria by which the
19 [C]ommission may determine disallowances.”¹² As the Commission further
20 reiterated in response to proposals to add further specificity to express criteria for
21 review, “the factors listed therein are non-exhaustive and nothing in the rule should
22 be interpreted to prevent a party from presenting evidence on any relevant factor in
23 order to establish the reasonableness or unreasonableness of a particular rate-case
24 expense request.”¹³ Therefore, the rate case expense rule’s explicit non-exclusivity
25 and the Commission’s comments regarding its desire to maintain its broad
26 discretion mean the Commission will consider, in addition to those factors

¹¹ 16 TAC § 25.245(c) (emphasis added).

¹² *Rulemaking to Propose New Subst. R. § 25.245, Relating to Recovery of Expenses for Ratemaking Proceedings*, Project No. 41622, Order at 11 (Aug. 6, 2014).

¹³ *Id.*, Order at 94.

1 specifically enumerated in the rate case expense rule, any relevant factor in
2 determining whether rate case expenses are reasonable.

3 Prior to that rule's adoption, the *City of El Paso* case (cited above) agreed
4 with the Commission that its determination of the reasonableness of rate case
5 expenses is analogous to a trial court's determination of attorneys' fees and costs
6 of litigation. The factors considered by trial courts are: (1) time and labor required;
7 (2) nature and complexities of the case; (3) amount of money or value of property
8 or interest at stake; (4) extent of responsibilities the attorney assumes; (5) whether
9 the attorney loses other employment because of the undertaking; and (6) benefits
10 to the client from the services.¹⁴ The Court of Appeals found that the Commission
11 can consider other factors in addition to, or in place of, those factors.

12 The Commission, also prior to its adoption of the rate case expense rule,
13 required the informal auditing of invoices and other documentation to determine if:
14 (a) the individual charges and rates are reasonable as compared to the usual charges
15 for similar services; (b) the number of hours billed is reasonable; (c) the calculation
16 of the charges is correct; (d) there is no double-billing of charges; (e) none of the
17 charges has been recovered through reimbursement for other expenses; (f) none of
18 the charges should have been assigned to other matters; (g) there was no occasion
19 on which there was billing by any attorney or associated legal personnel in excess
20 of 12 hours in a single day; and (h) no luxury or personal items were included, such
21 as first class travel, alcohol, valet parking, dry cleaning, designer coffee, meals in
22 excess of \$25 per person, or hotel room rates in excess of \$150 per night before

¹⁴ *City of El Paso*, 916 S.W.2d at 522 ("A utility's requested rate case expenses will be reimbursed if the Commission finds them to be reasonable."). See also *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019) (discussing how the reasonable hours worked multiplied by a reasonable hourly rate equals the base amount which can then be adjusted up or down if relevant factors indicate an adjustment is necessary to reach a reasonable fee); *Arthur Andersen v. Perry Equipment Corp.*, 945 S.W.2d 812 (Tex. 1997) (discussing various non-exclusive factors for determining the reasonableness of attorneys' fees); Tex. Disciplinary R. Prof'l Conduct 1.04(b) (listing various non-exclusive factors that may be considered in determining the reasonableness of a legal fee).

1 tax.¹⁵ Some of what was in those precedents appears to be generally incorporated
2 by certain language of the rate case expense rule, while other aspects of those
3 precedents may have been superseded by that rule, but even the aspects potentially
4 superseded can still provide useful tools in conducting an informal audit of rate case
5 expenses, as I explain later.

6 **Q. IS SPS ALLOWED TO RECOVER ESTIMATED RATE CASE EXPENSES?**

7 A. It has typically been necessary to estimate some level of rate case expenses to
8 complete a contested case proceeding before the Commission, and the rate filing
9 package calls for a schedule to include such an estimate. Historically, the
10 Commission had allowed utilities to recover estimated rate case expenses incurred
11 up to a certain date and amount as long as the expenses were actually incurred prior
12 to recovery. The Commission had also allowed utilities to recover the cost of an
13 appeal of the Commission's final order either when new rates become effective or
14 by recording the expense as a regulatory asset to be recovered in the utility's next
15 base rate case.

16 However, in light of the adoption of Rule 25.245 specifically on rate case
17 expenses, it appears that rate case expenses need to be reviewed near the conclusion
18 of the rate case to comply with the specific requirements in that rule, or be carried
19 over as a deferred asset into the next rate case. This is because the rate case expense
20 rule does not talk about estimated rate case expenses at all.

21 The rate case expense rule instead requires the utility to file sufficient
22 information about the "work done," the "time and labor required and expended,"
23 the "fees or other consideration paid," the "expenses incurred," the "issues
24 addressed," the "amount and complexity of discovery," the "occurrence and length
25 of a hearing," and "the "amount of rate-case expenses reasonably associated with"

¹⁵ See *Application of El Paso Elec. Co. for Authority to Change Rates*, Docket No. 8363, 14 P.U.C. BULL. 2834, 2977-78 (May 5, 1989); see also *Application of CenterPoint Energy Houston Elec., LLC for a Competition Transition Charge*, Docket No. 30706, Final Order (Jul. 14, 2005), available at <http://interchange.puc.texas.gov/search/documents/?controlNumber=30706&itemNumber=327>.

1 each specific rate case issue. In addition to using the past tense in discussing what
2 information the utility must provide, the rate case expense rule similarly uses the
3 past tense in specifying what the rate case expense recovery decision should be
4 based upon: the “fees paid,” the “tasks performed,” the “time spent,” the “expenses
5 incurred,” whether “there was duplication of services or testimony,” whether a
6 proposal on an issue “had no reasonable basis” and “was not warranted by any
7 reasonable argument,” whether the rate case expenses as a whole “were
8 disproportionate, excessive, or unwarranted,” and whether the utility or
9 municipality “failed to comply” with the sufficient information requirements.

10 Under the rate filing package and its instructions, rate case expenses that
11 have not been reviewed under Rule 25.245 can be deferred (i.e., as a regulatory
12 asset) and reviewed at a later date.¹⁶ In relatively recent open meetings of the
13 Commission, concern has been expressed about the procedural approach of
14 severing rate case expenses into a separate docket for later review.¹⁷ SPS has not
15 requested that the rate case expenses in this proceeding be severed into a separate
16 docket, and will later provide supplemental or updated information regarding its
17 actual rate case expenses as they are incurred. Rule 25.245 and the rate filing
18 package have not been amended since those open meeting discussions with regard
19 to how to review and allow recovery of rate case expenses. My understanding is
20 that SPS remains flexible as to how to best address rate expenses in a manner that
21 allows them to be both properly reviewed by the Commission and recovered by the
22 utility.

23 SPS is proposing to include its requested rate case expenses in its annual
24 revenue requirement to be recovered in the rate year. The one-year time period

¹⁶ *Electric Utility Rate Filing Package for Generating Utilities*, Instructions for Schedule G-11, available at http://www.puc.texas.gov/industry/electric/forms/rfp/1992_VI_IOU.pdf.

¹⁷ *Review of Rate Case Expenses Incurred by Southwestern Elec. Power Co. and Municipalities in Docket No. 46449*, Docket 47141, Open Meeting of July 18, 2019, available at http://texasadmin.com/tx/puct/open_meeting/20190718/; *Application of Oncor Elec. Del. Co. LLC for Approval to Amend its Distribution Cost Recovery Factor*, Docket No. 50734, Open Meeting of July 31, 2020, available at http://texasadmin.com/tx/puct/open_meeting/202007312/.

1 reflects the amount of time SPS anticipates between when the rates are approved in
2 this proceeding and the filing of its next base rate case.

3 **Q. WHAT STANDARDS DO YOU AND WILL YOU APPLY TO DETERMINE**
4 **WHETHER SPECIFIC RATE CASE EXPENSES ARE REASONABLE**
5 **AND RECOVERABLE?**

6 A. I follow the Commission's Rule 25.245 in light of the rulemaking order adopting
7 it, and with guidance from the precedent referenced above, with regard to the
8 expenses incurred to date for this rate case.

9 **Q. DO YOU AND WILL YOU AUTOMATICALLY DISALLOW ANY**
10 **EXPENSE THAT FAILS TO MEET THE CRITERIA YOU JUST**
11 **RECITED?**

12 A. No. Commission precedent does not require the automatic disallowance of an
13 expense when it is not consistent with one of the quantitative criteria announced in
14 prior precedent. For example, if there was a hotel room charge in excess of \$150
15 per night, but upon further investigation it is determined that it was reasonable and
16 warranted under the circumstances, then such expenses have been allowed.

17 Under the PUCT's rate case expense rule, the standard is a qualitative one,
18 in which "extreme or excessive" fees or expenses are to be determined in the
19 context of the evidence, rather than prescriptively setting numeric or dollar
20 thresholds. Therefore, if an item appears to call for further scrutiny, including as a
21 result of using as an aid to reviewing the invoices the dollar and numeric thresholds
22 utilized in prior precedent but not specifically set forth in Rule 25.245, the item is
23 investigated further to determine whether the item is necessary, reasonable, and
24 warranted under the circumstances.

1 **V. INITIAL TESTIMONY OPINIONS**

2 **Q. PLEASE DESCRIBE THE NATURE AND SCOPE OF THIS RATE CASE**
3 **BY SPS.**

4 A. This rate case is a comprehensive electric rate case, in which all of SPS retail
5 electric rates in Texas will be subject to review and adjustment by the Commission.
6 This means that the total amount of its revenue requirement for Texas retail
7 operations are at stake. As a vertically integrated utility, this involves generation,
8 transmission, distribution, and retail sales matters. As a utility that serves not only
9 a broad portion of Texas, namely the Panhandle and the South Plains regions, but
10 also parts of New Mexico, as well as providing wholesale services regulated by the
11 federal government, there are jurisdictional allocation issues in this case. As one
12 of several operating companies within a large utility holding company system,
13 affiliate issues must also be addressed.

14 As a rate proceeding, SPS, as the utility, by law has the burden of proof.¹⁸
15 This means that it must address multiple factual and legal matters regarding its cost
16 of providing retail electric service in its rate filing package, its direct testimony, its
17 rebuttal testimony, in discovery requests from Commission Staff and intervening
18 parties, and in questions and requests from the Commissioners in the open meetings
19 in which the rate case is deliberated. This requires utilizing highly qualified
20 attorneys, witnesses, and consulting experts able to capably address the various
21 substantive areas of utility operations, management, accounting, finance, etc. As a
22 comprehensive rate case, the ratemaking issues that typically are complex will be
23 present, including rate of return on equity, capital structure, affiliate transactions,
24 recovery of deferred costs, prudence of investment and expenses, and cost
25 allocation and rate design.

26 In addition, this comprehensive rate case is being filed and pursued in
27 tandem with a comprehensive rate case in New Mexico for its retail electric rates

¹⁸ PURA § 36.006.

1 in that state. This allows SPS to address common issues and matters in a more cost
2 efficient manner than if it filed and pursued rate cases in each jurisdiction on a
3 stand-alone basis.

4 **Q. PLEASE DESCRIBE THE NATURE AND SCOPE OF THE TWO OTHER**
5 **PENDING RATE PROCEEDINGS BY SPS.**

6 A. Docket No. 51625 is a retail rate fuel factor proceeding, in which SPS is seeking to
7 revise its fuel factor formula and to implement new fuel factors derived therefrom.
8 The revisions are due to the addition of the Sagamore Wind Project into SPS's
9 owned-resource mix, as well as overall changes in system-average fuel and
10 purchased power costs. The fuel factor proceeding was filed on December 15,
11 2020. Docket No. 51644 is a retail rate proceeding in which SPS is seeking to
12 implement a net surcharge pursuant to the unopposed stipulation approved in the
13 final order in its last comprehensive rate case, Docket No. 49831. The net surcharge
14 case was filed on December 18, 2020. Again, as rate proceedings, SPS, as the
15 utility, by law has the burden of proof. Given the narrower scope of these pending
16 proceedings, SPS has retained outside legal counsel but has not needed to retain
17 outside consultants.

18 **Q. HOW DOES SPS MANAGE ITS RATE CASE EXPENSES?**

19 A. SPS internally and actively monitors and reviews legal and consulting invoices to
20 ensure that they are correctly calculated and properly billed to the particular rate
21 case, and that the activities performed and billed are, from its perspective, necessary
22 and reasonable. This process was described in detail in 2019 by Mr. Grant in his
23 direct testimony regarding rate case expenses in Docket No. 49831.¹⁹ The
24 utilization of that process was described by Mr. Cunningham as part of his 2019

¹⁹ *Application of Southwestern Pub. Serv. Co. for Authority to Change Rates*, Docket No. 49831, Direct Testimony of William A. Grant at 133-34 (Application Bates pp. 258-59) (Aug. 8, 2019), available at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=49831&itemNumber=1>.

1 settlement testimony in a SPS severed rate case expense docket.²⁰ The current use
2 of that process was confirmed to me by Mr. Cunningham with regard to the costs
3 being incurred for this case.

4 **Q. WHAT LAW FIRMS ARE PROVIDING LEGAL SERVICES TO SPS?**

5 A. Legal services are being provided to SPS for this comprehensive rate case by the
6 following law firms: Eversheds; Winstead PC (“Winstead”); Courtney, Countiss,
7 Brian & Bailey, L.L.P. (“Courtney”); and Hinkle Shanor LLP (“Hinkle”). Legal
8 services in the fuel factor proceeding are being provided to SPS by the law firm of
9 Baker Botts L.L.P. (“Baker Botts”). Legal services in the net surcharge case are
10 being provided to SPS by the law firm of Coffin Renner LLP (“Coffin”). The law
11 firms’ engagement documents are included in my workpapers.

12 **Q. PLEASE DESCRIBE THE LAW FIRMS PROVIDING THOSE LEGAL**
13 **SERVICES.**

14 A. The attorneys at the Eversheds, Courtney, Hinkle, Winstead, Baker Botts, and
15 Coffin law firms have many years of experience representing SPS or other electric
16 utilities (as well as other participants in the electric industry) before state and
17 federal regulatory agencies including this Commission. This allows these firms to
18 understand SPS and to efficiently perform the necessary work with a minimum
19 amount of research. I know most of the attorneys professionally involved in this
20 case and the other two pending rate proceedings by personal experience, and have
21 knowledge of the high reputation of these law firms.

²⁰ *Review of Rate Case Expenses Incurred by Southwestern Pub. Serv. Co. in Docket No. 47527*,
Docket No. 47588, Settlement Testimony of Jeremiah W. Cunningham at 13-14, 17, 20-21, 24-25, 28-29, &
31-32 (May 22, 2019), available at
<http://interchange.puc.texas.gov/Search/Documents?controlNumber=47588&itemNumber=37>.

1 **Q. IS IT REASONABLE AND NECESSARY FOR SPS TO RETAIN THESE**
2 **OUTSIDE LEGAL COUNSEL FOR THIS CASE AND THE TWO OTHER**
3 **PENDING RATE PROCEEDINGS?**

4 A. Yes. A rate case is a “contested case” under the Texas Administrative Procedure
5 Act,²¹ and therefore a form of litigation, as well as a proceeding which must be
6 litigated within the statutory deadline for deciding the case. It is standard practice
7 for investor-owned electric utilities in Texas, including SPS, to use outside legal
8 counsel for rate proceedings, given that rate case work is highly specialized and
9 requires significant resources to address various accounting, operation, finance, tax,
10 or other issues and aspects that pertain to the electric industry and electric utility
11 ratemaking.

12 As previously mentioned, the utility has the burden of proof in a rate
13 proceeding. This requires the utility to prepare for and address multiple issues in
14 its direct and rebuttal testimony, at the hearing on the merits, and in the post-hearing
15 briefing and exceptions processes, including issues raised by intervening parties
16 and the Commission Staff. Issues in a rate case, especially a comprehensive one,
17 can be the subject of controversy and thus involve a higher level of litigation
18 activity. In addition, the utility must timely respond to discovery requests, which
19 has deadlines and can be voluminous and complex, as well as have its witnesses
20 subject to possible depositions.

21 SPS does have internal legal staff available through its parent company, and
22 those internal legal resources are utilized in its rate cases, so that the legal activities
23 in the rate case are not solely conducted by outside counsel. Nevertheless, that
24 internal legal staff is limited in size, limited in the time available beyond the day-
25 to-day activities necessary for utility operations, and thus limited in the ability to
26 be the sole resource for litigating rate cases within the applicable deadlines.

27 The law firms representing SPS on this rate case and the two other pending
28 ones have attorneys who possess extensive rate case experience and their firms are

²¹ Tex. Gov’t Code ch. 2001.

1 able to provide them with the necessary supporting resources. The law firms have
2 represented SPS or other electric utilities in prior regulatory proceedings including
3 comprehensive rate cases in Texas and other jurisdictions. As a result, SPS is
4 utilizing attorneys with proven knowledge of a wide breath of regulatory issues that
5 could affect the utility, and who can provide advice to SPS without performing the
6 extensive research that less experienced firms might have to undertake.

7 Major litigation is a matter in which a company should ensure that it has all
8 reasonable resources available and properly deployed in order to be prudent. This
9 is especially true when the case has deadlines that are difficult to modify. A
10 comprehensive electric rate case is indeed a major litigation matter and with
11 deadlines difficult to modify. Just as the SPS internal legal department cannot by
12 itself take on the sole responsibility for a comprehensive rate case, a single outside
13 law firm may not necessarily be able to take on the sole responsibility for a
14 comprehensive rate case, depending on its situation. This is because the lawyers in
15 a law firm with utility rate case experience are limited in number, and other lawyers
16 in the law firm no matter its size are not fungible substitutes. Other investor-owned
17 electric utilities in Texas, not just SPS, use more than one law firm for
18 comprehensive rate cases, given the highly specialized and significant matters
19 involved and the limited number of attorneys with the depth of necessary
20 experience.²²

21 Other kinds of rate cases, though narrower in scope than a comprehensive
22 rate case, can also be major litigation, depending on the circumstances regarding
23 how the case arose and the nature of the issues in the case. As a rate case, even a
24 non-comprehensive one is subject to deadlines that are difficult to modify. When
25 a utility has multiple rate cases pending simultaneously, the need for the utility to
26 rely on outside legal counsel is increased.

²² E.g., *Application of CenterPoint Energy Houston Elec. LLC for Authority to Change Rates*,
Docket No. 49421, Direct Testimony of Myles F. Reynolds, Application at 3744-88 (Apr. 5, 2019), available
at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=49421&itemNumber=1>.

1 SPS retained Eversheds as an experienced and well-regarded law firm to
2 provide a significant portion of the legal services in this rate case. SPS is further
3 relying on certain attorneys from the Winstead, Courtney, and Hinkle law firms in
4 this rate case. These attorneys have all served SPS counsel for many years
5 including in past SPS rate cases. Therefore, while Eversheds has only recently
6 begun representing SPS, it does so based not only upon its experience and
7 reputation but with the continued involvement of those other law firms that have
8 done so for SPS in the past. This preserves institutional, legal, factual, and other
9 knowledge useful in the provision of the legal services in this case.

10 SPS is relying on Baker Botts for its fuel factor case and on the Coffin law
11 firm for its net surcharge case. The lead attorneys at those firms also have prior
12 experience representing SPS on rate matters as well as extensive experience on rate
13 matters for other utilities. This allows firms that are experienced with rate cases
14 and familiar with SPS to take care of these other pending rate cases so that the law
15 firms dealing with the comprehensive rate cases in Texas and New Mexico can
16 focus on those.

17 All of these law firms will be involved with the direct case, discovery, the
18 rebuttal case, the hearing on the merits, post-hearing briefing, and other post-
19 hearing matters through the end of rehearing in the respective rate cases. As law
20 firms experienced with rate cases that are now under Rule 25.245 regarding rate
21 case expenses, they are aware of the need to avoid duplication of services, and to
22 instead coordinate with SPS and with each other on this marshalling of legal
23 resources so as to be efficient and effective. That is one of the matters which I will
24 be considering when I review the invoices and which will be addressed in
25 supplemental or updated testimony.

26 The outside law firms use a team approach so that higher-cost and more
27 experienced attorneys can address more difficult, complex, or unique tasks, while
28 the lower-cost attorneys with less experience and legal assistants can address more

1 basic, but necessary, tasks. This allows quality legal services to be provided overall
2 on a more cost-effective basis.

3 In my opinion, all of the law firms that SPS selected to work on this
4 comprehensive electric rate case and which it has engaged on the various rate case
5 activities are well positioned to represent SPS in an efficient and professional
6 manner. It is reasonable and necessary to retain them and utilize them in this case.

7 **Q. HOW ARE HOURLY RATES ESTABLISHED BY A LAW FIRM?**

8 A. In my experience, hourly rates are largely a function of the nature of the work, the
9 relevant experience and knowledge of the attorneys within the law firm, the length
10 of the relationship with the client, and the current and anticipated workload of the
11 relevant attorneys relative to the time commitment of an engagement that may limit
12 the ability to undertake other legal work (consistent with the factors considered by
13 the courts, discussed above). Rate cases, for example, involve not only complicated
14 and highly technical questions, but a large number of issues that have to be
15 addressed within the procedural schedule for completion of the case, which requires
16 a large time commitment from lawyers with the experience and capability to handle
17 all the regulatory issues. Some consideration is often given in recognition of the
18 ongoing relationship with the client and the nature of the work to be performed.
19 Obviously, the greater the demand for legal services, the higher the rates tend to be.
20 Hourly rates also tend to increase over time, just as hourly rates of non-legal
21 consultants tend to increase over time, as the underlying costs of providing services
22 also tend to increase over time.

23 **Q. HOW DID YOU EVALUATE THE RATES THE LAW FIRMS ARE**
24 **CHARGING?**

25 A. Based on my understanding of the issues in this comprehensive rate case, my
26 discussions with the Eversheds attorneys, and my knowledge of the experience,
27 credibility, and competence of the law firms providing legal services to SPS, I was

1 able to evaluate their rates. I also compared their rates to the rates charged by other
2 attorneys providing similar services.

3 **Q. HOW WERE YOU ABLE TO COMPARE THE ATTORNEYS' RATES FOR**
4 **SERVICES WITH THOSE OF OTHER ATTORNEYS PROVIDING**
5 **SIMILAR SERVICES?**

6 A. I have utilized testimony or other information available in other Commission
7 proceedings. I also have familiarity in general with hourly rates from my own
8 experience and from working with other lawyers. While there can be and is
9 variation in the hourly rates that different lawyers and law firms charge for working
10 on rate cases, as well as variation in hourly rates over time, the upper end of the
11 legal rates charged in rate cases appears to be in the \$600 to \$800-plus range.²³

12 **Q. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS**
13 **OF THE RATES BEING CHARGED BY THE ATTORNEYS IN THIS CASE**
14 **AND THE TWO OTHER PENDING RATE CASES?**

15 A. While there is generally a competitive market for regulatory counsel, only a few
16 law firms could meet SPS's requirements for this comprehensive rate case and the
17 two other pending rate proceedings. Given their high level of expertise and
18 knowledge of electric utility regulation in Texas and rate cases in particular, the
19 extensive time commitment necessary to complete a rate case (especially a
20 comprehensive one), and the vital value and importance of rate cases to a utility
21 (especially a comprehensive one), it is my opinion that the rates charged by the

²³ See, e.g., *Application of Cross Texas Trans., LLC for Authority to Change Rates and Tariffs*, Docket No. 43950, Direct Testimony of Casey Wren, Application at 571-612 esp. 594-95 & 608-09 (Dec. 23, 2014), available at <http://interchange.puc.texas.gov/search/documents/?controlNumber=43950&itemNumber=2>; *Application of Oncor Elec. Delivery Co. LLC for Authority to Change Rates*, Docket No. 46957, Application at 1554-71 & 1572-95 (Mar. 17, 2017), available at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=46957&itemNumber=1>; *Review of Rate Case Expenses Incurred by CenterPoint Energy Houston Elec. LLC in Docket Nos. 38339, et al.*, Docket No. 49595, CenterPoint Energy Houston Elec. LLC's Rate Case Expense Report at Exh. C (Nov. 22, 2019), available at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=49595&itemNumber=23>, and *Application of CenterPoint Energy Houston Elec. LLC for Authority to Change Rates*, Docket No. 49421, Direct Testimony of Myles F. Reynolds, Application at 3744-88 (Apr. 5, 2019), available at <http://interchange.puc.texas.gov/Search/Documents?controlNumber=49421&itemNumber=1>.

1 attorneys are reasonable. In addition, those rates are generally comparable to rates
2 charged by other practitioners providing similar services, which further confirms
3 that the attorneys' hourly rates are reasonable.

4 **Q. IS SPS USING OUTSIDE CONSULTANTS TO SUPPORT AND PREPARE**
5 **PORTIONS OF THIS RATE CASE?**

6 A. Yes. Even though SPS relies heavily on internal resources, which defrays costs for
7 external resources, it has also retained outside consultants and expert witnesses to
8 assist with and prepare portions of its comprehensive rate case application.

9 **Q. IS IT NECESSARY AND REASONABLE FOR SPS TO EMPLOY OUTSIDE**
10 **CONSULTANTS FOR THIS CASE?**

11 A. Yes. It is common for electric utilities, including SPS, to employ outside experts
12 and non-testifying consultants to support and prepare portions of comprehensive
13 rate cases filed at the Commission. There are many rate case subjects for which
14 expertise is not necessarily found within a utility's employees. SPS utilizes
15 qualified outside consultants when it does not have the internal expertise necessary
16 to properly and adequately address particular issues in a rate case. Those subjects
17 for which SPS is obtaining outside assistance in this case include return on equity,
18 depreciation, affiliate expenses, regulatory accounting, and rate case expenses.

19 **Q. WHAT FIRMS ARE PROVIDING CONSULTING SERVICES TO SPS IN**
20 **THIS RATE CASE?**

21 A. The following consulting firms, in addition to my firm as to rate case expenses, are
22 providing services in connection with this case:

- 23 • Alliance Consulting Group (depreciation study);
- 24 • Utility Credit Consultancy, LLC (credit ratings);
- 25 • ScottMadden, Inc. (return on equity and capital structure; benchmarking
- 26 study and corporate aviation study);
- 27 • Osprey Energy Group (return on equity policy aspects);
- 28 • Management Applications Consulting, Inc. (rate case cost of service
- 29 support); and

1 • Deloitte & Touche LLP (regulatory accounting review).

2 If any other consulting firm or vendor subsequently provides services to SPS in
3 connection with this rate case, I will address such services in supplemental or
4 updated testimony at a later date.

5 **Q. HOW DID YOU EVALUATE WHAT IS BEING CHARGED BY THOSE**
6 **CONSULTANTS?**

7 A. Based on my understanding of the issues in this rate case, prior and current
8 testimony regarding a testifying consultant's experience, credibility, and
9 competence, including in some cases prior SPS cases (e.g., Alliance Consulting,
10 ScottMadden, and Utility Credit Consultancy), my awareness of the professional
11 reputation of the consulting firms, and additional due diligence when necessary, I
12 was able to evaluate the reasonableness of what is being charged by the outside
13 consultants for this rate case.

14 **Q. WHAT IS YOUR CONCLUSION REGARDING WHAT IS BEING**
15 **CHARGED BY THE OUTSIDE CONSULTANTS IN THIS CASE?**

16 A. The outside consultants are qualified and have experience in the various technical
17 issues in which they are providing consulting services, and in my opinion what they
18 are charging is reasonable for these types of rate case services, and thus not extreme
19 or excessive.

20 **Q. IS SPS PROPOSING ANYTHING IN THIS RATE CASE THAT HAS NO**
21 **REASONABLE BASIS IN LAW, POLICY, OR FACT AND IS NOT**
22 **WARRANTED BY ANY REASONABLE ARGUMENT FOR THE**
23 **EXTENSION, MODIFICATION, OR REVERSAL OF COMMISSION**
24 **PRECEDENT?**

25 A. No. Based on my discussions with Mr. Stuart, Ms. Garza, Mr. Walker, and Mr.
26 Cunningham, the application and direct testimony for this rate case are consistent
27 with what the rate filing package calls for and with the prior PUCT orders that have
28 established or revised the rates of SPS. As far as a comprehensive electric rate case
29 for a large investor-owned utility goes, there does not appear to be anything specific
30 that is unusual. Of course, other parties to this case could potentially raise other

1 issues to which SPS will have to respond. The reasonableness of SPS's position on
2 any issues other parties raise is something that will have to be addressed later after
3 this rate case has progressed.

4 **Q. IS SPS PROPOSING ANYTHING IN THE OTHER TWO PENDING RATE**
5 **CASES THAT HAS NO REASONABLE BASIS IN LAW, POLICY, OR**
6 **FACT AND IS NOT WARRANTED BY ANY REASONABLE ARGUMENT**
7 **FOR THE EXTENSION, MODIFICATION, OR REVERSAL OF**
8 **COMMISSION PRECEDENT?**

9 A. No. Based on the pending applications and my discussions with Eversheds counsel
10 and SPS personnel, those filings are consistent, respectively, with SPS's fuel factor
11 practice and the provision of certain benefits to its ratepayers on a timely basis, and
12 with the prior PUCT order in the last comprehensive rate case regarding the net
13 surcharge. Of course, other parties to those cases could potentially raise issues to
14 which SPS will have to respond. The reasonableness of SPS's position on any
15 issues other parties raise in those other cases is something that will have to be
16 addressed later after those rate cases have progressed.

1 **VI. CONCLUSION**

2 **Q. DO YOU HAVE AN OVERALL INITIAL OPINION REGARDING**
3 **EXTERNAL RATE CASE EXPENSES BEING INCURRED BY SPS?**

4 A. Yes. The external rate case expenses being incurred by SPS and for which it seeks
5 recovery are necessary. What the law firms and outside consultants are charging
6 SPS for the rate case services are reasonable. Thus, such rate case expenses are
7 warranted rather than extreme or excessive. SPS is being prudent in retaining
8 highly qualified and experienced counsel and consultants. SPS management also
9 has a process for reviewing the invoices received from the attorneys and the
10 consultants to ensure the amounts charged are appropriate under the terms of the
11 engagement letters and are reasonable. Again, the specific rate case expenses
12 themselves will be addressed at a later date.

13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY IN THIS CASE?**

14 A. Yes, it does.

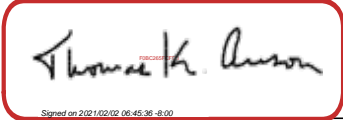
AFFIDAVIT OF THOMAS K. ANSON

THE STATE OF TEXAS)

COUNTY OF TRAVIS)

This day, Thomas K. Anson, the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under oath:

“My name is Thomas K. Anson. I am of legal age and a resident of the State of Texas. The foregoing testimony and exhibits offered by me are true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true, and correct.”


Signed on 2021/02/02 06:45:36 -8:00

Thomas K. Anson

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 2
day of February 2021.



Notary Public, State of Texas



Southwestern Public Service Company

Workpapers of Thoma K. Anson

2021 TX Rate Case

**APPLICATION OF
SOUTHWESTERN PUBLIC SERVICE COMPANY
FOR AUTHORITY TO CHANGE RATES**

TKA-RR-1(V) is provided in electronic format