



# ***LEGAL REVIEW OF LAWS GOVERNING MOU RATES***

*PRESENTED BY:*

**Shanna M. Ramirez**

CLEO, General Counsel & Board Secretary

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*Informational Update*

# AGENDA



- **PROCESS AND PRINCIPLES**
- **STATUTORY REQUIREMENTS**
- **REGULATORY GUIDELINES**
- **RATE APPEALS**
- **CUSTOMER CLASSES**

**CPS Energy must establish a rate structure that aligns with legal principles in Texas.**

# SETTING CPS ENERGY'S RATE STRUCTURE PROCESS AND PRINCIPLES



- CPS Energy Board of Trustees adopts a resolution to approve and adopt our rate structure and submit to City of San Antonio (CoSA).
- CoSA City Council establishes our rates as our regulator.
  - CoSA City Council sets “terms” for selling utility services via ordinance. (§552.002(c) TEX. LOC. GOV’T CODE)
    - Terms include setting the rates, rate classification, and terms of service.
    - The term “rate” is synonymous with “tariff” under the law.
  - As a home-rule municipality, CoSA may pass any ordinance that does not conflict with state law. (Tex. const. art. XI § 5)
  - CoSA may “regulate the system in a manner that protects the interests of the municipality.” (§552.001(b) TEX. LOC. GOV’T CODE)
- Public Utility Commission does not have authority to establish rates for a municipally-owned utility (MOU), but has authority to review our rates on appeal by ratepayers that reside outside CoSA, more later...

# STATUTORY REQUIREMENTS



## §1502.057 TEX. GOV'T CODE

- Must impose and collect charges for services in amounts at least sufficient to cover the cost of:
  1. providing service - including all operating, maintenance, depreciation, replacement, improvement and interest charges; and
  2. paying all debt obligations.
- Must have rates that are "equal and uniform."
  - Rates may be "equal and uniform" in application to residential customers within the same class and provide "unequal treatment" to customers in another residential class, provided there is a reasonable basis for the different treatment.
- Cannot allow any free service.
- May establish bill payment assistance program for low-income customers or military veterans who cannot regulate their body temperature because of severe burns caused in combat.
  - Bill payment assistance program is an operating expense that is recoverable as a first lien against the system revenues, which come from rates.

# REGULATORY GUIDELINES



## §36.003 TEX. UTIL. CODE (PURA)

- Chapter 36 of the Public Utility Regulatory Act (PURA) does not directly apply to CPS Energy as an MOU, but these factors would apply if our rates are reviewed by the PUC if a petition is filed or by a court.
  - These are generally the common law standards adopted by most states.
  - CPS Energy must comply with these standards for our rate structure to be legal.

# RATE APPEALS



## §33.101, ET. SEQ. TEX. UTIL. CODE (PURA)

- CoSA must issue written report on effects of a rate change on each class of ratepayers → not later the 14<sup>th</sup> day after ordinance adopted.
  - CoSA must provide, on request, a list of names and addresses of ratepayers outside of CoSA but within CPS Energy service territory.
- To file an appeal, must submit a petition signed by the lesser of 10,000 or 5% of the ratepayers served by CPS Energy that reside outside of CoSA → not later the 45<sup>th</sup> day after written report.
  - The lower number is 10,000 for CPS Energy.
  - 25-30% of customers are outside CoSA = 225,000-270,000.

# REGULATORY GUIDELINES



## §36.003 TEX. UTIL. CODE (PURA)

1. Rates must be “just and reasonable.”
2. Rates cannot be “unreasonably preferential, prejudicial, or discriminatory” and must be “sufficient, equitable, and consistent in application to each class of consumer. ”
3. An electric utility may not:
  - grant an unreasonable preference or advantage to a person in a classification;
  - subject a person in a classification to an unreasonable prejudice or disadvantage; or
  - establish or maintain an unreasonable difference concerning rates between localities or between classes of service.
4. May charge an individual customer for retail or wholesale electric service less than the approved rate provided it does not constitute an impermissible difference, preference, or advantage.

# REGULATORY GUIDELINES

## JUST AND REASONABLE



- There is no single methodology for determining “just and reasonable” rates.
  - Courts will evaluate ratemaking process end-product.
- Reasonable rates yield a “fair return” on fair value – “fair return” continues to evolve as energy generation, distribution, and transmission continue to evolve.



# REGULATORY GUIDELINES

## EQUITABLE AND NON-DISCRIMINATORY



- May not discriminate in charges or services between similarly situated customers.
- MOU rates must be sufficient to cover the cost of service and all debt obligations.
- MOU rates must be equal and uniform.
- Generally, rates must recover the cost of serving each customer class.

# REGULATORY GUIDELINES



## DIFFERENT TREATMENT - CLASSES

- Different treatment in rates or service may be allowed if there is a reasonable basis for the distinction.
- Unequal treatment does not produce unlawful discrimination, provided a substantial and reasonable basis exists for the distinction in treatment among customer classes.
- It is not discriminatory for current customer rates to account for future expenditures.

# CUSTOMER CLASSES

## GUIDELINES



- Customer classes are the different categories of customers that are grouped together based on shared characteristics under each rate schedule and are charged identically for their electricity use. (Arthur Abal, et.al., *Nat'l Ass'n of Regul. Comm'rs, Tariff Toolkit: Primer on Rate Design for Cost-Reflective Tariffs*, 12 (2021)).
- The distinction may rest on the following factors:
  - the cost of service
  - the purpose for which the service or product is received
  - the quantity or amount received
  - the different character of the service furnished
  - the time of its use
  - or any other matter which presents a substantial difference as a ground of distinction.

*Caldwell v. City of Abilene*, 260 S.W.2d 712, 714 (Tex.Civ.App. 1953, writ ref'd).

# CUSTOMER CLASSES

## GUIDELINES



- Example: Higher connection charge for non-resident service determined to be illegal when no evidence presented that the costs to connect a resident vs. non-resident differed to justify the higher charge.

*City of Texarkana v. Wiggins*, 246 S.W.2d 622, 624 (Tex. 1952)).

- Example: A 30% higher rate for non-residents upheld because water utility could provide evidence that costs were substantially higher to provide water to the area.

*Town of Terrell Hills, et. al. v. City of San Antonio*, 318 S.W.2d 85 (Tex. App. – San Antonio, 1958)

## AFFORDABILITY DISCOUNTS

- Courts have upheld distinction in rates based on certain public benefits.
  - Example: Discounted rate for low-income ratepayers.
- These rates are upheld when:
  - There is objective criteria, such as:
    - Poverty status in relation to federal poverty level
    - Energy burden – Percent of customer's income spent on energy
    - Age and income – 60/65 years of age and fixed income/poverty status
  - The average cost shared among all customers is small.
  - The program is relatively easy to administer and does not create a significant cost.
- These have been upheld because low-income discounts create a public benefit by:
  - Reducing the costs of service shutoffs
  - Reducing the costs of collecting arrears
  - Spreading insufficiency in revenue across *all* customers which minimizes burden

## AFFORDABILITY DISCOUNTS

- “Freezing” rates for customers based on elderly status (>65 years of age) or disability (other than burned veterans) would be illegal. It does not provide any discernible public benefit.
  - Texas Constitution prohibits gifts/grants of public resources for private benefits. It violates the Texas Constitution if it: a) does not accomplish a clear public purpose, b) does not provide a clear public benefit received in return, and c) does not have adequate controls to ensure the public purpose is accomplished. (*Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 383-84 (Tex. 2002)).
    - A person may be >65 or disabled but have the financial ability to pay → no reduction in disconnects/bill collection; no minimizing burden.



***Thank You***