

RESOLUTION NO. 11-30

A RESOLUTION OF THE CITY OF COMMERCE APPROVING A MODIFICATION TO THE STIPULATION MADE A PART OF THE SETTLEMENT AGREEMENT BETWEEN THE ALLIANCE OF ONCOR CITIES ("AOC") AND ONCOR ELECTRIC DELIVERY COMPANY LLC ("ONCOR" OR "COMPANY") REGARDING THE COMPANY'S STATEMENT OF INTENT TO CHANGE ELECTRIC RATES IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETING ACT; DECLARING AN EFFECTIVE DATE; REPEALING ANY PRIOR RESOLUTIONS INCONSISTENT WITH THIS RESOLUTION AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall on the 16th day of August 2011, at 6:00 p.m.; a majority of Council Members being present and constituting a quorum, the following resolution was adopted;

WHEREAS, the City of Commerce, Texas, hereinafter referred to as "City", has exclusive original jurisdiction as a regulatory authority over Oncor electric Delivery Company LLC's ("Oncor" or "Company") rates, operations, and services within the City; and

WHEREAS, the City is also an electric utility customer and has an interest in Oncor's rates and charges;

WHEREAS, Oncor filed a Statement of intent with the City on or about January 7, 2011 to increase its annual revenue requirement by approximately \$353 million on a system-wide basis, which included an increase in residential base rates of approximately 15%, and in Lighting rates of approximately 26%; and

WHEREAS, the City took action on or before February 14, 2011 to suspend Oncor's proposed effective date and to coordinate a response to Oncor's filing with other similarly situated municipalities (such participating cities are referred to herein as Alliance of Oncor Cities ("AOC")); and

WHEREAS, AOC continues its interest in minimizing rate-case expenses that would result from a lengthy contested rate case proceeding before the Public utility Commission of Texas ("PUCT") and through the appellate process; and

WHEREAS, AOC authorized its attorneys and experts to formulate and review reasonable settlement positions to resolve the pending rate increase request; and

WHEREAS, AOC's attorneys met and numerous times with the Company to negotiate a Settlement Agreement resolving the issues raised in the Company's Statement of Intent filing; and

WHEREAS, the City has previously approved rates arrived at by way of settlement that produces an increase of approximately \$136.7 million; and

WHEREAS, intervening events now require a modification to the Stipulation made a part of the Settlement Agreement upon which rates the City previously approved are based; and

WHEREAS, AOC's attorneys and experts recommend that AOC's members approve a modification to the Stipulation made a part of the Settlement Agreement upon which the rates the City previously approved were based; and

WHEREAS, the rates previously approved by the City included approval for Oncor to recover from

customers certain retrospective franchise fees; and

WHEREAS, the Public Utility Commission of Texas ("Commission") in Docket No. 35717 involving Oncor's prior rate application, determined that Oncor could not recover through rates an increase in franchise fees agreed to by Oncor and the City; and

WHEREAS, the City as part of the Alliance of Oncor Cities ("AOC") sought judicial review of the Commissions' determination that Oncor could not recover in rates the increased franchise fees Oncor agreed to pay the cities; and

WHEREAS, the AOC cities sought review of the Commission's decision with regard to recovery of the increased franchise fees and upon judicial review, the Travis County District Court entered its judgment and concluded that the Commission erred in concluding that Oncor could not recover the increased franchise fees from customers, which issue the Commission has appealed to the Third Court of Appeals where the issue is presently pending; and

WHEREAS, as part of the Stipulation and Settlement arrived at earlier with regard to Oncor's application to increase rates, the parties to that Stipulation agreed to withdraw from the appeal pending before the Third Court of Appeals, the issue related to recovery through rates of the retrospective franchise fees, as is currently contemplated by Paragraph I.D. of the Stipulation; and

WHEREAS, the Commission considered the Stipulation and Settlement at its June 17 and July 8, 2011 Open Meetings and while the Commission has not yet taken any formal action with respect to the Settlement, the Commission has indicated that it will not withdraw its appeal of the franchise fee issue from pending before the Third Court of appeals, and that the Commission will not support those portions of the Stipulation relating to the payment and recovery of what is has referred to as "retrospective franchise fees", as set forth in Paragraph I.E. of the Stipulation; and

WHEREAS, the Commission also indicated that it viewed favorably the remainder of the Stipulation and Settlement and asked the Signatories to the Stipulation to indicate whether they would support the Stipulation if it were modified to remove the provisions regarding "retrospective franchise fees"; and

WHEREAS, considering the commission's comments, and to avoid the time, expense, and uncertainty associated with further litigating Oncor's pending rate case at the commission in Docket No. 38929, the more expedient course of action is to modify the Stipulation to remove the reference to the retrospective franchise fees; and

WHEREAS, under a modified Stipulation, Oncor would nonetheless pay the cities each city's share of the \$21.8 million in retrospective franchise fees but would not recover those fees from customers; and

WHEREAS, under a modified Stipulation, should the courts ultimately confirm that it is proper for Oncor to recover through rates the retrospective franchise fees, Oncor would be allowed to recover those fees in future rates; and

WHEREAS, under a modified Stipulation, should the courts ultimately confirm the Commissions' position that Oncor may not recover the retrospective franchise fees, then, with regard to any amounts of retrospective franchise fees that are paid to a city, but found to be not recoverable from customers, then the franchise fees then due the city would be reduced for a three-year period, until the total amount of franchise fees retained by Oncor from that city equals the amount of retrospective franchise fees paid to a city; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE,

TEXAS:

SECTION 1. That the findings set out in the preamble to this resolution are hereby in all things approved and adopted.

SECTION 2. That the City Council finds that the Stipulation that forms part of the Settlement Agreement previously approved by the City, should be modified such that the issue of recovery of the retrospective franchise fees is removed from the Stipulation and the issue be retained in the appeal pending before the third Court of Appeals.

SECTION 3. That under a modified Stipulation, should the courts ultimately confirm that it is proper for Oncor to recover through rates the retrospective franchise fees, Oncor would be allowed to recover those fees in future rates.

SECTION 4. That under a modified Stipulation, should the courts ultimately confirm the Commission's position that Oncor may not recover the retrospective franchise fees, then, with regard to any amounts of retrospective franchise fees that are paid to a city, but found to be not recoverable from customers, then the franchise fees then due the city would be reduced for a three-year period, until the total amount of franchise fees retained by Oncor from that city equals the amount of retrospective franchise fees paid to a city.

SECTION 5. That to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Resolution it is hereby repealed to the extent of any such inconsistency.

SECTION 6. That the meeting at which the aforesaid resolution was adopted was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

SECTION 7. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provision of this Resolution and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

SECTION 8. That this Resolution shall become effective from and after its passage.

SECTION 9. That a copy of this Resolution shall be sent to the Company, care of Don J. Clevenger, Oncor Electric Delivery Company LLC, 1601 Bryan Street, Suite 22-070, Dallas, Texas 75201-3411 and to Mr. Alfred R. Herrera, Herrera & Boyle, PLLC, 816 Congress Ave., Suite 1250, Austin, Texas 78701.

PASSED BY THE GOVERNING BODY of the City of Commerce, Texas, at a regular meeting of the City Council of the City of Commerce, Texas, on the 16th day of August 2011.

ATTEST:

Marty Cunningham

Marty Cunningham
City Secretary

(Seal)

CITY OF COMMERCE, TEXAS

Quay Throgmorton

Quay Throgmorton
Mayor

APPROVED AS TO FORM:

Jim McLeroy

Jim McLeroy
City Attorney

I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a resolution and that the same has not been repealed and is in full force and effect.

(seal)

Marty Cunningham

City Secretary
City of Commerce, Texas

Sworn to and subscribed before me, on this the 17th day of August, 2011 to certify which witness my hand and seal of office.

(seal)

Becky Pattillo

Notary Public
State of Texas

