



# City of Pflugerville

## Legislation Text

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**File #:** RES-1042, **Version:** 1

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Approving a resolution denying Oncor Electric Deliver Company LLCs application to increase rates related to Oncor's statement of intent to increase rates filed on or about May 13, 2022; requiring the reimbursement of municipal rate case expenses; finding that the meeting complies with the open meetings act; making other findings and provides related to the subject; and declaring an effective date.

On or about May 13, 2022, Oncor Electric Delivery Company LLC ("Oncor" or "Company") filed a Statement of Intent to increase its revenues by approximately \$251 million, which equates to a net increase of approximately 4.5% in Oncor's overall revenue. Oncor proposes to implement its proposed increase in rates effective June 17, 2022.

Earlier, sometime in June, 2022, the City took its initial action on Oncor's application and suspended Oncor's proposed effective date to keep Oncor's proposed rates from going into effect.

Oncor filed its Statement of Intent to raise rates with the City and with the Public Utility Commission of Texas ("PUC") on the same date, May 13, 2022. Because Oncor filed its application with the City and with the PUC on the same date, the City, as part of the Alliance of Oncor Cities ("AOC") intervened in the proceedings before the PUC.

During the suspension period, through AOC the City participated in the proceedings, including hearings, at the PUC. AOC through its Special Counsel, Herrera Law & Associates, PLLC, engaged rate consultants to evaluate Oncor's proposal to increase rates and is participating in the hearings being held as directed by the PUC. The hearings regarding Oncor's application to increase rates are expected to run through October 5, 2022, after which the administrative law judges' ("ALJs") will issue a proposal for decision ("PFD"). The ALJs' proposal for decision will be presented to the PUC commissioners likely some time in February, 2023, for a final decision.

While there were numerous issues raised by Oncor's application to increase rates, AOC focused on several key issues that standing alone have the greater effect on Oncor's proposed increase: Oncor's rate of return, its depreciation expense, Oncor's funding for its self-insurance reserve and its incentive compensation for its employees including its executives, and Oncor's post Test Year adjustment to its payroll expense.

Regarding Oncor's rate of return, AOC's rate expert concluded that a rate of return of 6.31% was a reasonable return that would allow Oncor continued access to the capital markets to raise financing for its ongoing operations. By comparison, Oncor proposed a rate of return of 7.05%.

AOC's rate expert's proposed rate of return is comprised of 57.20% long-term debt and 42.50% common equity; a cost of long-term debt of 4.39%; and a cost of equity (aka, return on equity) of 8.90%. By comparison, Oncor's rate of return is based on a capital structure of 55.00% long-term debt and 45.00% common equity; the same cost of long-term debt of 4.39%; and a cost of equity of

10.30%. The effect of AOC's expert's conclusion regarding Oncor's rate of return is a decrease of about \$177.8 million to Oncor's requested increase in rates.

With regard to Oncor's depreciation expense, Oncor's rate expert concluded that Oncor's depreciation expense should be decreased by about \$75.0 million.

Regarding Oncor's self-insurance reserve, though AOC's expert did not disagree with the amount of Oncor's funding for its self-insurance reserve, AOC's expert recommended amortization of 10 years (versus Oncor's proposed 5-year amortization). The effect of a longer amortization period is to reduce Oncor's request for self-insurance reserve is a decrease of \$58.9 million to Oncor's proposed increase.

With regard to Oncor's incentive compensation expense, AOC's expert recommended a decrease of \$29.8 million to Oncor's proposed amount for incentive compensation.

With regard to Oncor's proposed post Test Year adjustment to increase its payroll expense, AOC's expert recommended a decrease of \$9.2 million to Oncor's proposed increase.

Combined, AOC's experts' conclusions regarding Oncor's rate of return, depreciation expense, self-insurance reserves, incentive compensation, and payroll adjustment combined equate to a decrease of about \$211.7 million to Oncor's *proposed increase* of about \$251 million.

In addition to AOC's analysis, parties representing other municipalities in the proceeding before the PUCT also concluded that Oncor's requested increase was too high. Those parties proposed a decrease of about \$314 million to Oncor's proposed increase in rates. Added to AOC's findings, AOC and the other cities participating in the proceeding before the PUCT recommended that the PUCT reduce Oncor's proposed increase of \$251 million, by about \$525.7 million.

The effect of these recommendations is that AOC and the other cities participating in Oncor's rate case at the PUCT, recommended to the PUCT that Oncor's present revenue be decreased by about \$275 million.

**CITY JURISDICTION TO SET ONCOR'S RATES:** Municipalities have exclusive, original jurisdiction over an electric utility's rates, services, and operations within a city's boundaries. This means that for a utility like Oncor to change its rates it must seek approval to do so from the city in which it provides its service. Even if a city has ceded its jurisdiction to the PUCT, a city nonetheless has the statutory right to participate in rate proceedings before the PUCT.

But, the PUCT has appellate jurisdiction over rate-setting decisions a city makes. This means that Oncor may appeal to the PUCT, a city's decision regarding rates. And to be clear: Oncor will appeal to the PUCT, the City's decision regarding rates.

**RATE CASE EXPENSES:** Cities, by statute, are entitled to recover their reasonable rate case expenses from the utility. The accompanying Resolution directs Oncor to continue to reimburse AOC's rate case expenses on a monthly basis based on presentation of approved invoices from the cities.

**DENIAL:** The attached Resolution denies Oncor's proposed increase in revenue and changes in

rates and directs Oncor to reimburse AOC's rate case expenses.

AOC's Special Counsel and consultants' analyses found that Oncor's rates should be decreased. However, because: (1) the PUCT has appellate jurisdiction over the City's actions setting Oncor's rates; and (2) the rates the City sets would be in effect for only a short period, AOC's Special Counsel recommends that the City deny Oncor's proposed increase in rates.

Additionally, to do otherwise could cause significant confusion in the pricing of electricity by retail electric providers ("REPs"). The REPs are the entities that sell electricity service to end-use customers and have a direct relationship with the end-use customer. The REPs generally need from four to six weeks to change their billings to customers. Thus, requiring Oncor to change its rates consistent with Oncor's and the other cities' rate experts' findings pending Oncor's appeal to the PUCT, likely would not provide the REPs sufficient time to adjust their billings to end-use customers, and likely would require the REPs to change their billings twice: once to conform their billings to the City's decision and again to conform their billings to the PUCT's decision.

A denial of Oncor's proposed increase maintains the status quo until the PUCT issues its final order regarding Oncor's rates and provides the REPs adequate time for the REPs to change their billings to end-use customers.

### **Prior City Council Action**

The City Council previously acted on June 14, 2022, to suspend the effective date of Oncor's requested rate increase by 90 days. Contemporaneously with the City's prior action to suspend the rate increase, the City also: (1) authorized intervention in proceedings related to Oncor's proposed rate increase as a member of the coalition of cities known as the Alliance of Oncor Cities; (2) directed Oncor to reimburse AOC's rate case expenses; and (3) retained the law firm of Herrera Law and Associates, PLLC with respect to rate proceedings involving Oncor before the Public Utility Commission of Texas and courts of law and to retain consultants to review Oncor's rate application subject to AOC's approval.

### **Deadline for City Council Action**

Action on this item is requested by October 30, 2022. If action is not taken by October 30, 2022, Oncor's proposed rates will be deemed approved by operation of law.

**Funding Expected:** Revenue \_\_\_ Expenditure \_\_\_ N/A

**Budgeted Item:** Yes \_\_\_ No \_\_\_ N/A

**Amount:** N/A

**1295 Form Required?** Yes \_\_\_ No

**Legal Review Required:** N/A \_\_\_ Required  Date Completed: October 3, 2022

### **Supporting documents attached:**

Resolution

### **Recommended Action**

Motion to approve resolution as presented.