

**REGULAR MEETING OF CITY COUNCIL  
DECEMBER 21, 2010 - 1:30 P.M.**

<b>PRESENT:</b>	Jeff Brain	Mayor
	Leon DeWeese	Council Member
	Robert Vinyard	Council Member
	Marvin Dickson	Council Member
	Charles Gillingham	Council Member

<b>STAFF:</b>	Eddie Edwards	City Manager
	Danny Richards	E.O.C. Director
	Stella E. Sauls	City Secretary
	Bob Watson	Chief, Fire Department
	Jerry Langwell	Fire Marshal
	Jimmy Adams	Chief, Police Department
	Bruce Roberts	Captain, Police Department

<b>VISITORS:</b>	Rick Nichols	Central Baptist Church
	Tom Winegar	

<b>NEWS MEDIA:</b>	Michelle Berry	Borger News Herald
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**QUESTIONS AND COMMENTS FROM CITIZENS:** Citizens who have indicated their desire to speak to the City Council will be heard at this time. In compliance with the Texas Open Meetings Act, unless the subject matter is on the agenda, City Council members are prevented from acting on the subject and may respond only with statements of factual information or existing city policy; however, City Council members may request city staff to place the subject matter on a future agenda. Citizens are limited to three (3) minutes for their presentation to the City Council.

No comments were heard.

**MINUTES APPROVED:** Following review of the minutes of the regular meeting of December 7, 2010, motion was made by Council Member Gillingham, seconded by Council Member Dickson, to approve the minutes as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.  
Nays: None.

**PAYMENT OF EXPENDITURES APPROVED:** The expenditures for the first half of December were submitted for the consideration of the Council. Following discussion, motion was made by Council Member DeWeese, seconded by Council Member Gillingham, to approve

payment of the expenditures for the first half of December as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

**RESOLUTION R-019-10 DENYING SOUTHWESTERN PUBLIC SERVICE COMPANY'S PROPOSED RATE INCREASE APPROVED:**

City Manager Eddie Edwards explained a request made by Southwestern Public Service Company ("SPS") to increase rates. Following discussion, motion was made by Council Member Dickson, seconded by Council Member Vinyard, to approve Resolution R-019-10 denying Southwestern Public Service Company's proposed rate increase. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

Resolution R-019-10 reads as follows:

**RESOLUTION R-019-10**

**A RESOLUTION BY THE CITY OF BORGER, TEXAS DENYING SOUTHWESTERN PUBLIC SERVICE COMPANY'S PROPOSED RATE INCREASE FILED ON OR ABOUT MAY 17, 2010; REQUIRING THE REIMBURSEMENT OF MUNICIPAL RATE CASE EXPENSES; DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS PASSED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE**

**WHEREAS**, Southwestern Public Service Company ("SPS") filed a Statement of Intent with the City of Borger, Texas ("City") on or about May 17, 2010 to increase its system-wide, annual revenue requirement, by approximately \$62 million excluding franchise fees, and to reconcile its fuel cost for the years of calendar years 2008 and 2009; and,

**WHEREAS**, the City is a regulatory authority under the Public Utility Regulatory Act ("PURA") and under Chapter 33, §33.001 et seq. of PURA has exclusive original jurisdiction over SPS' rates, operations, and services of a utility within the municipality; and,

**WHEREAS**, the original effective date for the SPS rate increase request was June 21, 2010, the City suspended the effective date for the City to take final action until September 19, 2010, and SPS voluntarily agreed to extend the time for the City to take final action on SPS' proposed increase to December 31, 2010; and,

**WHEREAS**, the City, acting in concert with other cities known as the Alliance of Xcel Municipalities ("AXM"), has employed rate experts to review the testimony, schedules, workpapers and other documents provided by SPS in its Statement of Intent and in response to discovery requests; and,

**WHEREAS**, the City's rate experts have reviewed the books and records of SPS and additional voluminous data provided by SPS and the review is on-going; and,

**WHEREAS**, based upon the review of the rate experts, the request to increase rates should be denied.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS THAT:**

**PART 1. FINDINGS**

- (A) On or about May 17, 2010, SPS filed a rate-filing package with the City based on a test year ending December 31, 2009, seeking to increase base rates by approximately \$62 million with a proposed effective date of June 21, 2010, which the City suspended, to September 19, 2010.
- (B) SPS also proposed to recover franchise fees through a separate surcharge applicable only to in-city ratepayers, and when franchise fees are included in base rates, SPS' base increase is approximately \$71 million.
- (C) To allow the City and other interested parties the opportunity to review the effect of the sale of certain distribution-plant assets by SPS to Lubbock Power & Light,

SPS agreed to that the City would have until December 31, 2010 to take final action on SPS' proposed increase in rates.

- (D) SPS' requested increase represents an increase in base-rate revenue of approximately 17%.
- (E) The City has exclusive original jurisdiction under the Public Utility Regulatory Act, Texas Utilities Code Chapter 33, §33.001 et seq. to evaluate SPS' proposed rate increase.
- (F) The City has joined a coalition of cities, known as the Alliance of Xcel Municipalities ("AXM").
- (G) AXM has hired experts to evaluate and make recommendations regarding the proposed rate increase.
- (H) Based on the procedural schedule agreed to by SPS and all the parties in the SPS' rate case before the Public Utility Commission of Texas (PUCT) in Docket No. 38147, AXM's experts' final report and recommendations, including their recommendations regarding fuel expenses will not be concluded until January 18, 2011. Nonetheless, based on information received and evaluated to date, AXM's experts believe that SPS is not entitled to its requested increase in rates. These experts' preliminary analysis shows that the base rate increase proposed by SPS is not just and reasonable based upon, but not limited to, the following factors:
  - SPS has failed to reasonably calculate its consolidated tax savings adjustment, thereby significantly overstating its asserted revenue requirement.
  - SPS' request includes excessive amounts of payroll expense and executive incentive compensation that should be removed from its operations and maintenance (O&M) expenses.
  - SPS has overstated its asserted cost of equity by seeking an excessive return on equity of 11.35%;
  - The request seeks an excessive level of depreciation expenses in rates and understates the net salvage value of its production plant; and
  - The request proposes a marked departure from SPS' historic rate design by directly assigning and surcharging all municipal franchise fees to in-city ratepayers only, which change is unreasonable;

- SPS' proposed amortization of its gain on sale of assets to Lubbock Power & Light should be shortened to provide existing ratepayers with the benefits of that sale. A longer amortization period for gain on the sale of these assets has the effect of understating its revenue.
- SPS has understated the on-going savings associated with the sale of assets to Lubbock Power & Light, which has the effect of overstating its on-going O&M expenses.

(I) The meeting at which this Resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

**PART 2.** Based upon the foregoing findings the rate increase proposed by SPS and filed with the City on or about May 17, 2010, is denied.

**PART 3.** SPS is directed to reimburse all municipal rate case expenses incurred by the City in relation to the filing and to continue to do so in the event SPS appeals the City's actions on SPS' rate application, or appeals the PUCT's final order in Docket No. 38147 on a monthly basis.

**PART 4.** A copy of this Resolution shall be sent to Mr. James Bagley, Manager, Regulatory Administration, Xcel Energy, P.O. Box 1261, Amarillo, Texas 79105, and to Mr. Marcus W. Norris, City Attorney, City of Amarillo, 509 E. 7<sup>th</sup>, P.O. Box 1971, Amarillo, Texas 79105-1971.

**PART 5.** This resolution shall become effective from and after its passage.

**PASSED, APPROVED, AND ADOPTED,** on this the 21<sup>st</sup> day of December, 2010, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

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**MEETING ADJOURNED:** There being no further business, motion was made by Council

Member Gillingham, seconded by Council Member DeWeese, to adjourn. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

**WORK SESSION CONDUCTED:** Mayor Brain opened a work session and stated that no official action could be taken. The following topics were discussed:

1. Discussed proposed Interlocal Agreement with Carson County and the necessity for this document.
2. Discussed acceptance of a Type 6 Fire Engine from Texas Forest Service.
3. Discussed changes to Itinerate Merchant Ordinance.

**MEETING ADJOURNED:** Motion was made to adjourn the meeting. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

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Mayor

**ATTEST:**

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City Secretary