

Control Number: 29526



Item Number: 1568

Addendum StartPage: 0

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APPLICATION OF CENTERPOINT ENERGY §
HOUSTON ELECTRIC, LLC, RELIANT §
ENERGY RETAIL SERVICES, LLC, AND §
TEXAS GENCO, LP TO DETERMINE §
STRANDED COSTS AND OTHER TRUE-UP §
BALANCES PURSUANT TO PURA § 39.262 §

BEFORE THE STATE OFFICE OF PUBLIC UTILITY
COMMISSION
FILING CLERK
OF ADMINISTRATIVE
HEARINGS

**RESPONSE OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC AND TEXAS
GENCO, LP TO TEXAS INDUSTRIAL ENERGY CONSUMERS' MOTION TO
COMPEL PRODUCTION OR AN IN CAMERA INSPECTION OF DOCUMENTS
CLAIMED AS PRIVILEGED IN RESPONSE TO TIEC'S FIRST REQUEST FOR
INFORMATION, AND REQUEST FOR IN CAMERA INSPECTION**

On April 1, 2004, CenterPoint Energy Houston Electric, LLC and Texas Genco, LP (together, "CenterPoint") received Texas Industrial Energy Consumers' ("TIEC") First Request for Information ("RFI"). On April 9, 2004, CenterPoint objected to the RFI on the basis that certain documents responsive to requests in the RFI were protected by the attorney-client privilege and produced an Index of those privileged documents. CenterPoint located additional documents responsive to requests in the RFI and produced them in supplemental responses filed on May 26 and 27, 2004. Certain additional responsive documents were also determined to be protected from discovery by the attorney-client privilege, and CenterPoint filed an additional objection to the RFI in connection with these documents on June 1, 2004 and a corresponding Index (Second) (the "Index") detailing these documents on June 3, 2004. On June 8, 2004, TIEC filed a Motion to Compel production of the Documents (the "Motion")¹ arguing, first, that CenterPoint is abusing attorney-client privilege; second, that CenterPoint cannot claim privilege for documents that do not contain the legal advice of an attorney; third, that disclosure of certain of the Documents to testifying witnesses waived privilege as to those documents; fourth, that

disclosure of certain of the Documents to third parties waived privilege as to those Documents; and fifth, that the offensive use doctrine requires CenterPoint to produce the Documents. On June 10, 2004, TIEC filed a Supplemental Motion to Compel Production of Documents (the "Supplemental Motion"),² additionally arguing that the Index is inadequate, and seeking to compel production of documents from ten (10) additional Privileged Logs that were not listed in TIEC's original motion to compel. In this Response, CenterPoint will demonstrate that none of these arguments is correct and that the Motion, and the portion of the Supplemental Motion addressed in this Response, should be denied.

PRELIMINARY MATTER

At 5:39 p.m. on June 10, 2004 (less than 22 hours before this response was due), TIEC served CenterPoint with the Supplemental Motion, which clarifies certain aspects of the Motion but also violates the time limits established in this docket in attempting to compel the production of documents claimed as privileged by CenterPoint more than three days ago. Under the Commission's rules, this Supplemental Motion is deemed received on June 11, the same day this response was due. To the extent the Supplemental Motion is violative of the Rules established in this docket, CenterPoint has filed on even date herewith its Motion to Strike TIEC's Supplemental Motion to Compel, and Motion for Protective Order (the "Motion to

¹ Texas Industrial Energy Consumers' Motion to Compel Production or an In Camera Inspection of Documents Claimed as Privileged by CenterPoint in Response to TIEC's First Request for Information (June 8, 2004) (hereinafter, "Motion").

² Texas Industrial Energy Consumers' Supplemental Motion to Compel Production of Documents Claimed as Privileged by CenterPoint (June 10, 2004).

Strike”).³ The portions of the Supplemental Motion addressing the Documents claimed as privileged in the Index are addressed in this Response.

If the Motion to Strike is not granted in the meantime, CenterPoint will file a supplemental response addressing the remaining portions of the Supplemental Motion within three working days of CenterPoint’s receipt of the Supplemental Motion.

While the Motion provided only examples of Documents TIEC claimed were improperly withheld and appeared to be requesting the production of the entire 307 Documents included in the Index, the Supplemental Motion details precisely which Documents TIEC claims must be produced. While CenterPoint addresses in Attachment 1 each Document provided in the Motion as an example, CenterPoint only received the Supplemental Motion late in the afternoon on the day before this Response is required, and it is therefore impossible for CenterPoint to respond to each of the approximately 100 Documents now listed by TIEC (i.e., those listed on the Index) on a document-by-document basis. TIEC and CenterPoint have agreed that should Your Honors require a document-by-document response to TIEC’s claims regarding these Documents, it would be due no earlier than next week.

DISCUSSION

1. TIEC’s allegation that CenterPoint is abusing the attorney-client privilege is false and outrageous.

There is no evidence that CenterPoint is “attempt[ing] to hide behind cursory assertions of privilege . . . in order to shield critical facts contained in email correspondence.”⁴

³ If the Motion to Strike is not granted in the meantime, CenterPoint will file a supplemental response addressing the

CenterPoint has produced thousands of pages of documents in response to the approximately 1800 RFIs it has answered to date (approximately 300 of which were propounded by TIEC). Before filing the Index, CenterPoint had claimed privilege for 78 documents responsive to TIEC requests, an inconsequentially miniscule fraction of the documents produced. The number of documents listed on the Index does not change this situation. The amount claimed as privileged is still inconsequential. Thousands of pages of responsive e-mails have been produced, and, contrary to TIEC's allegations that CenterPoint is improperly claiming privilege for any e-mail having an attorney's name on it, many e-mails sent by, received from, or copied to a CenterPoint attorney have been produced. It should also be noted that many of the privileged e-mails were authored long ago, before the nature of TIEC's requests could have been anticipated and the alleged scheme implemented.

Not only is there *no* evidence that CenterPoint is abusing privilege rules, there *is* evidence that such is *not* the case. On three occasions Your Honors have reviewed *in camera* documents for which CenterPoint has claimed privilege and on all three occasions have agreed that *every single one of the documents* was, in fact, privileged. For TIEC to suggest that CenterPoint is abusing the privilege rules with no evidence to support such a claim, and, in fact, in the face of evidence refuting such a claim, is outrageous.

2. The Texas Rules of Evidence do not require that a communication contain legal advice to be privileged.

remaining portions of the Supplemental Motion within the time frame indicated by SOAH.

⁴ Motion at 1.

TIEC claims that only documents containing the legal advice of an attorney are protected by the attorney-client privilege.⁵ The Texas Rules of Evidence, however, contain no such requirement. As Your Honors noted in SOAH Order No. 9, all that is required for a communication to be privileged is that it be made in confidence to facilitate the rendition of professional legal services.⁶ Attorney-client privilege protects more than just the actual advice provided by an attorney. It also protects the communications that seek the advice, or transmit information to the attorney in order to facilitate the advice. What use the attorney makes of the facts, if any, does not determine whether the communication was privileged.⁷ The Documents fit within the scope of the privilege afforded by the rules.

3. Privilege regarding documents previously seen by testifying witnesses has not been waived.

TIEC asserts that privilege as to Documents “where testifying experts are also included either as the preparer, the custodian, or the recipient” has been waived.⁸ Assuming *arguendo* that the three individuals named by TIEC (*i.e.*, James Brian, Joseph McGoldrick, and David Tees) are testifying expert witnesses, even the more expansive discovery requirements for testifying expert witnesses do not compel production of these Documents. The Texas Rules of Civil Procedure allow a party to discover “all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in

⁵ Motion at 4-5. TIEC cites for its proposition a case applying federal common law.

⁶ TRE 503(b); SOAH Order No. 9 at 3.

⁷ See *Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (1981).

⁸ Motion at 2, 5.

anticipation of a testifying expert's testimony."⁹ Note that the benchmark is that documents sought must have been prepared by or for the expert "in anticipation of [the] expert's testimony."

TIEC argues that the benchmark for discovering documents seen by a testifying witness is not whether the document was reviewed for the particular case, but rather whether the document "forms part of the mix of information upon which a testifying expert has reached his or her opinions or mental impressions."¹⁰ None of the cases cited by TIEC for this expansive view of the discovery burden regarding testifying witnesses actually supports TIEC's view. *In re Learject, Inc.*,¹¹ for instance, dealt with videotapes of testifying witnesses expressly made in preparation for the case.¹² In *Aetna Casualty & Surety Company v. Blackman*,¹³ the court rejected a claim that all documents in an expert's possession were automatically discoverable.¹⁴ Finally, *In re American Home Products Corporation*¹⁵ dealt with an expert briefly employed as a consulting expert by the defendants in the case, and later as a testifying expert for the plaintiffs in the same litigation. The court ruled that facts learned by the expert while employed by the defendants were discoverable.¹⁶

Cases and PUC proceedings that have considered the question actually presented here, that is, the extent to which any document a testifying expert has ever seen is subject to discovery, have uniformly distinguished between documents a party-employee reviews in the normal course of business and those the party-employee reviews in anticipation of testifying,

⁹ Tex. R. Civ. P. 192.3(e)(6).

¹⁰ Motion at 5-6.

¹¹ 59 S.W.3d 842 (Tex. App.—Texarkana 2001, no pet.).

¹² *Id.* at 844.

¹³ 810 S.W.2d 438 (Tex. App.—Corpus Christi 1991, no pet.).

¹⁴ *Id.* at 440.

¹⁵ 985 S.W.2d 68 (Tex. 1998).

¹⁶ *Id.* at 73-74.

protecting the former and producing the latter.¹⁷ Perhaps Administrative Law Judge Sanford explained it best:

Witnesses and consultants, particularly when employees of the utility, testify in numerous cases over time. Also over that time, in the normal course of their employment, they come into contact with reports prepared by various consultants, experts, and other employees. In such instances, it makes little sense to require discovery of all documents a witness may have seen 'over time' just because he or she has seen or reviewed them. There must be some nexus between the seeing and the testimony.¹⁸

The titles of the contested documents alone give indication that each of the contested Documents was prepared in the normal course of business and not in preparation for testimony in this proceeding. The ALJs' *in camera* review of the documents themselves will confirm this. Most of them are dated long before any testimony was filed in this proceeding. Each of Mr. Brian, Mr. McGoldrick, and Mr. Tees attests in his attached affidavit that he has not reviewed any of the listed Documents since approximately the date listed on the Index, and that the documents were not "provided to, reviewed by, or prepared by or for" him in anticipation of his testimony. Clearly there is not the required nexus between any of the Documents and Mr. Brian's, Mr. McGoldrick's, or Mr. Tees' testimony that would compel production of these otherwise privileged documents.

¹⁷ E.g., *Application of Sharyland Utilities, L.P. for a Certificate of Convenience and Necessity in Hidalgo County, Texas*, Docket No. 20292, Order No. 8 Ruling on Central Power and Light Company's Motion to Compel a Response to Its First Request for Information at 5-6 (Mar. 9, 1999); *Application of Central Power and Light Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 14965, Order No. 42 Ruling on CPL's Motion to Compel Cities to Respond to CPL's 1st RFI (Mar. 13, 1996); see, e.g., *Aetna Casualty & Surety Company v. Blackmon*, 810 S.W.2d 438, 440 (Tex. App.—Corpus Christi 1991, no writ) (stating "[w]e are unwilling at this time to hold that the designation of a person as an expert witness automatically waives all such privileges" and requiring the segregation of documents the expert relied on and should be produced from those the expert did not rely on and should be protected); *El Paso Electric Company*, Docket No. 12700, Order No. 16 (Apr. 16, 1994) (requiring the segregation of documents the expert relied on from those he did not rely on).

¹⁸ *Application of Entergy Texas for Approval of Its Transition to Competition Plan and the Tariffs Implementing the Plan and for the Authority to Reconcile Fuel Costs, to Set Revised Fuel Factors, and to recover a Surcharge for Underrecovered Fuel Costs*, Docket 16705, Order No. 75 Ruling on General Counsel's Motion to Compel EGS' Responses to RFI No. 83-SJL-1024—Documents Submitted for In Camera Review at 7-8 (May 19, 1997).

4. That third parties were involved in an e-mail chain does not waive privilege as to a communication with an attorney.

TIEC argues that the presence of third parties in an e-mail chain waives privilege as to the chain. This is incorrect. CenterPoint has produced many e-mails containing communications between its attorneys and third parties; the e-mail chains withheld, however, comprise a distinct set of circumstances. These withheld e-mail chains each contain a communication between a CenterPoint employee or attorney and third parties which was ultimately transmitted by e-mail to an attorney for review by the attorney in order to facilitate the rendition of professional legal services.

This situation is analogous to an employee printing an e-mail containing the employee's communication with a third party and attaching that print-out to a memo to an attorney asking the attorney to review the communication and provide advice. In this situation, the memo and the email essentially become one document for the purposes of privilege analysis. Case law clearly establishes that if a document constitutes a confidential communication between a client and an attorney made to facilitate the rendition of professional legal services, the *entire document* is protected from production, regardless of whether facts in the document are otherwise discoverable, or, for that matter, even if those facts are not otherwise discoverable.¹⁹ The court in *In re Union Carbide Corp.*²⁰ ordered that an entire document be protected, even

¹⁹ *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) ("[T]he privilege extends to the entire communication, including facts contained therein."); *In re Exxonmobil Corp.*, 97 S.W.3d 353, 357 (Tex. App.—Houston [14th Dist] 2003 no pet.) ("The attorney-client privilege, however, attaches to the complete communication between attorney and client, including both legal advice and factual information. . . . [I]f a document is a confidential communication, the privilege extends to the entire document and not merely to the portion of the document containing legal advice, opinions, or analysis.").

²⁰ No. 01-02-01153-CV, 2003 WL 22682301 (Tex. App.—Houston [1st Dist.] 2003, no pet.).

though “seven pages attached to the memo were not the work product of any legal department.”²¹ Because information, in this case the content of a communication with a third party, is being transmitted to an attorney through the e-mail mechanism does not somehow waive privilege as to the contents of the communication.

5. The “Offensive Use” doctrine is not applicable.

“Privileges . . . represent society’s desire to protect certain relationships, and an offensive use waiver of a privilege should not lightly be found.”²² The Supreme Court of Texas has established that three factors must be present before the offensive use doctrine can be found to waive a privilege. First, the party asserting the privilege must have sought affirmative relief. Second, the privileged information must be such that, if believed by the fact finder, in all probability it would be outcome determinative of the cause of action asserted. And third, waiving of the privilege must be the only means by which the party challenging the privilege can obtain the information.²³ “If any one of these requirements is lacking, the trial court must uphold the privilege.”²⁴

At least two of the requirements are missing with regard to the Documents. First, the privileged information sought is not outcome determinative of the issues TIEC seems to be asserting. TIEC variously claims that CenterPoint’s invocation of attorney-client privilege does “not [allow] the affected parties to scrutinize the validity and reasonableness of its applications”²⁵ or envelops “the very manner in which CenterPoint may not have mitigated its

²¹ *Id.* at *5.

²² *Republic Ins. Co. v. Davis*, 856 S.W.2d 158, 163 (Tex. 1993).

²³ *Id.*

²⁴ *Id.*

²⁵ Motion at 7.

costs properly.”²⁶ TIEC has made no showing that any particular Document would be “outcome determinative” of any issue. Demanding on this basis an *in camera* inspection of, and moving to compel the production of, documents described in the Index as, for example, “enhanced summary opinion (Moody’s),” “CenterPoint bank meeting – possible questions,” or “Re: B of A” is not a search for outcome determinative documents but is rather nothing more than a fishing expedition and a burden on this tribunal. Assuming *arguendo* that responsive documents are relevant, the Documents may be relevant but they are not outcome determinative, and “[m]ere relevance is insufficient” to invoke the offensive use doctrine.²⁷

Second, the requirement that waiving the privilege be the only means by which the party challenging the privilege can obtain the information is clearly not satisfied. The Index was filed before the close of the discovery period on Applicant’s direct testimony. TIEC could have sought whatever information it believes may be in the Documents in discovery. Indeed, given the approximately 1800 RFIs answered to date, it is extremely likely that all of the facts TIEC seeks from these privileged documents have already been produced in response to other discovery requests. Many of the Documents TIEC now seeks are simply drafts of agreements for which the final versions have, in fact, already been produced. TIEC can also obtain whatever information it believes may be in the Documents through examination of witnesses.

The Supreme Court of Texas has noted that “[o]ne of the principles behind privileges is that the harm to the relationship protected by the privilege is greater than the benefit gained through complete disclosure.”²⁸ TIEC has not demonstrated that the stringent benefit that the court requires, that the information sought be outcome determinative, is present here. Nor

²⁶ *Id.* at 8.

²⁷ 856 S.W.2d at 163.

has TIEC shown that it cannot obtain the information it desires by less intrusive means. The fact that TIEC leaves these issues unaddressed is a fatal flaw in its request. The offensive use doctrine thus cannot be invoked to waive attorney client privilege.

²⁹ *Id.* at n.8.

6. The Index fully conforms with PUC Rules.

P.U.C. Procedural Rule 22.144(d)(2) requires a party objecting to the production of documents based on a claim of privilege to file, within two working days of the filing of the objections, an index listing for each document:

- the date of the document;
- the title of the document;
- the preparer or custodian of the document;
- to whom the document was sent;
- from whom the document was received; and
- the privilege claimed.²⁹

The index “shall be sufficiently detailed to enable the presiding officer to identify the documents from the list provided.”³⁰ These requirements are satisfied in the Index. Each document is uniquely identified by the information provided in the Index. As attorney-client privilege is the basis for protecting each document, the Index indicates that each document contains a confidential communication made to facilitate the rendition of professional legal services and describes the nature of the communication.³¹

²⁹ P.U.C. PROC. R. 22.144(d)(2).

³⁰ *Id.*

³¹ TEX. R. EVID. 503(b)(1) provides, in relevant part, that:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of legal services to the client:

(A) between the client or a representative of the client and the client’s lawyer or a representative of the lawyer;

(D) between representatives of the client or between the client and a representative of the client

On three previous occasions in this Docket, Your Honors have considered indexes filed by CenterPoint containing an identical scope of information and found each index adequate.³²

CONCLUSION

TIEC's claim that CenterPoint is abusing the privilege rules flies in the face of contrary evidence and is false and outrageous.

TIEC's claim that only communications containing the legal advice of an attorney can be protected misstates the law of attorney-client privilege in Texas.

The presence of third parties in an e-mail chain has not waived privilege as to the particular Documents withheld, because the ultimate transmission in the e-mail chain was to an attorney, providing the earlier communication with the third party for the attorney's review.

Privilege has not been waived as to Document sent from, received by, or copied to testifying witnesses because there is no nexus between their review of the document in the normal course of business and their testimony. The document was not provided to, reviewed by, or prepared by or for the testifying witnesses in anticipation of their testimony.

TIEC insists that the offensive use doctrine compels production of the Documents. But the Supreme Court of Texas has three absolute requirements for invoking the doctrine, and TIEC failed to establish two of them. The Documents are not outcome determinative, and TIEC can obtain the information it needs by less intrusive methods. TIEC's

³² SOAH Order No. 6 (May 21, 2004); SOAH Order No. 9 (May 26, 2004).

attempt to compel the production of more than 100 e-mails, claiming that each and every one of them is "outcome determinative," is an egregious misuse of the offensive use doctrine.

Finally, the Index conforms to PUC Rules, and Your Honors have found previously filed indexes containing the identical scope of information to be adequate.

CenterPoint raises no objection to an *in camera* inspection of the Documents. CenterPoint stands ready to appropriately redact and produce any portion of a Document Your Honors find to be not privileged. However, to the extent the Motion, as clarified by the Supplemental Motion, seeks to compel the production of otherwise privileged documents, CenterPoint prays that Your Honors deny the Motion, as none of the arguments TIEC has raised are correct.

June 11, 2004

Respectfully submitted,



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**ATTORNEYS FOR CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC AND
TEXAS GENCO, LP**

The parties have met and negotiated these items in good faith, but now request a ruling by the ALJs.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding by hand delivery, overnight delivery, or United States first class mail on this 11th day of June, 2004.

Bunny Browning

ATTACHMENT 1

Location on Log	Reason Document is Privileged
p. 4 No. 1 (documents responsive to TIEC1-3)	This e-mail chain begins with communications between a Moody's employee and Marc Kilbride, a CenterPoint employee, regarding a Moody's opinion. Marc Kilbride, in turn, forwards the communication to Rufus Scott, a CenterPoint in-house attorney, two other CenterPoint employees, and no others. In the message forwarding the communication, Mr. Kilbride explicitly requests the attorney to review the communication and to provide him advice. This is clearly a confidential communication made to facilitate the rendition of professional legal services, and the information forwarded by Mr. Kilbride to the attorney is part of that privileged communication.
p. 34 No. 107 (documents responsive to TIEC1-7)	This e-mail chain begins with a JP Morgan employee transmitting to Marc Kilbride and others at CenterPoint, and to other JP Morgan and CitiGroup employees, drafts of slides being prepared for a CenterPoint lenders meeting. Marc Kilbride, in turn, forwards the slides to Rufus Scott and Scott Rozzell, both CenterPoint in-house attorneys, three other CenterPoint employees, and no others. In the message forwarding the slides, Mr. Kilbride explicitly requests the attorneys to review legal issues presented in the slides and to provide him advice. This is clearly a confidential communication made to facilitate the rendition of professional legal services, and the information forwarded by Mr. Kilbride to the attorneys is part of that privileged communication.
p. 40 No. 145 (documents responsive to TIEC1-7)	This e-mail chain begins with a communication between CitiGroup employees and Marc Kilbride and others at CenterPoint regarding a loan provision. Marc Kilbride, in turn, forwards the communication to Stephen Krebs, a CenterPoint outside attorney, two other CenterPoint employees, and no others. In the message forwarding the communication, Mr. Kilbride explicitly requests the attorney to consider the communication in light of other documents being prepared. This is clearly a confidential communication made to facilitate the rendition of professional legal services, and the information forwarded by Mr. Kilbride to the attorneys is part of that privileged communication.

Location on Log	Reason Document is Privileged
p. 50 No. 7 (documents responsive to TIEC1-21)	This e-mail chain begins with communications between a JP Morgan employee and Marc Kilbride, a CenterPoint employee, regarding a potential financing. Marc Kilbride, in turn, forwards the communication to Rufus Scott, a CenterPoint in-house attorney, one other CenterPoint employee, and no others. In the message forwarding the communication, Mr. Kilbride explicitly requests the attorney to review the communication and to provide him assistance. This is clearly a confidential communication made to facilitate the rendition of professional legal services, and the information forwarded by Mr. Kilbride to the attorney is part of that privileged communication.
p. 50 No. 18 (documents responsive to TIEC1-21)	This e-mail chain begins with communications between JP Morgan employees and Marc Kilbride, a CenterPoint employee, regarding an Information Memorandum being prepared. Marc Kilbride, in turn, copies the communication to Rufus Scott, a CenterPoint in-house attorney, two other CenterPoint employee, and no others. In copying the communication to the attorney, Mr. Kilbride was apprising the attorney of events regarding the preparation of the Memorandum that it was important for the attorney to know. This is clearly a confidential communication made to facilitate the rendition of professional legal services, and the information forwarded by Mr. Kilbride to the attorney is part of that privileged communication.
p. 53 No. 1 (documents responsive to TIEC1-22)	Each e-mail in this chain contains communications between Marc Kilbride, a CenterPoint employee, and other CenterPoint senior employees. Mr. Kilbride copies both Rufus Scott, a CenterPoint in-house attorney, and Margo Scholin, an outside attorney, on the communications. In the message forwarding the communication, Mr. Kilbride details a number of issues that need review, with several of them being legal issues. He clearly intends a direct communication to the attorneys. This is clearly a confidential communication made to facilitate the rendition of professional legal services, and the information forwarded by Mr. Kilbride to the attorney is part of that privileged communication.

**SOAH DOCKET NO. 473-04-4555
PUC DOCKET NO. 29526**

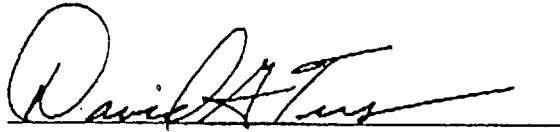
APPLICATION OF CENTERPOINT ENERGY § HOUSTON ELECTRIC, LLC, RELIANT § ENERGY RETAIL SERVICES, LLC, AND § TEXAS GENCO, LP TO DETERMINE § STRANDED COSTS AND OTHER TRUE-UP § BALANCES PURSUANT TO PURA § 39.262 §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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AFFIDAVIT OF DAVID G. TEES

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

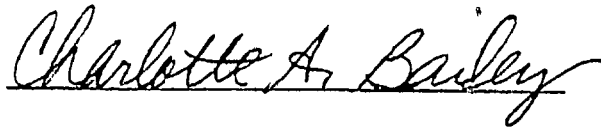
Before me, the undersigned notary public, this day personally appeared David G. Tees, to me known, who being duly sworn according to the law deposes and says:

“My name is David G. Tees. I am of legal age and a resident of the State of Texas. I am employed by Texas Genco, L.P. as President and Chief Executive Officer. I have personally reviewed each entry within the document entitled Index (Second) of Privileged Documents Responsive to Texas Industrial Energy Consumers’ First Request for Information for which I am listed as sending, receiving, or being copied on the indicated e-mail. I did not review any of the referenced e-mails for the purpose of making this affidavit, but by reviewing the date, title, distribution list, and description of the privilege asserted with reference to the document, I can attest that to the best of my recollection I have not reviewed any of the referenced documents since approximately the date of the respective document and that none of the documents were provided to, reviewed by, or prepared for or by me in anticipation of my testimony in this docket.”



David G. Tees

Subscribed and sworn before me on this 10th day of June, 2004.



Notary Public in and for Harris County, Texas

My Commission expires on 1-21, 2005.

**SOAH DOCKET NO. 473-04-4555
PUC DOCKET NO. 29526**

APPLICATION OF CENTERPOINT ENERGY § HOUSTON ELECTRIC, LLC, RELIANT § ENERGY RETAIL SERVICES, LLC, AND § TEXAS GENCO, LP TO DETERMINE § STRANDED COSTS AND OTHER TRUE-UP § BALANCES PURSUANT TO PURA § 39.262 §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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AFFIDAVIT OF JOSEPH B. MCGOLDRICK

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned notary public, this day personally appeared Joseph B. McGoldrick, to me known, who being duly sworn according to the law deposes and says:

“My name is Joseph B. McGoldrick. I am of legal age and a resident of the State of Texas. I am employed by CenterPoint Energy Services Company, LLC as Vice President of Strategic Planning. I have personally reviewed each entry within the document entitled Index (Second) of Privileged Documents Responsive to Texas Industrial Energy Consumers’ First Request for Information for which I am listed as sending, receiving, or being copied on the indicated e-mail. I did not review any of the referenced e-mails for the purpose of making this affidavit, but by reviewing the date, title, distribution list, and description of the privilege asserted with reference to the document, I can attest that to the best of my recollection I have not reviewed any of the referenced documents since approximately the date of the respective document and that none of the documents were provided to, reviewed by, or prepared for or by me in anticipation of my testimony in this docket.”

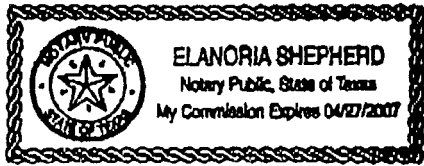
Joseph B. McGoldrick
Joseph B. McGoldrick

Subscribed and sworn before me on this 10th day of June, 2004.

Elanoria Shepherd

Notary Public in and for Harris County, Texas

My Commission expires on 4/27/07.



**SOAH DOCKET NO. 473-04-4555
PUC DOCKET NO. 29526**

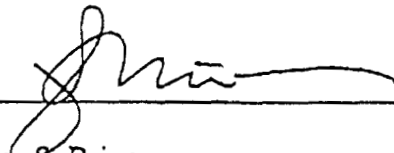
APPLICATION OF CENTERPOINT ENERGY §	BEFORE THE STATE OFFICE
HOUSTON ELECTRIC, LLC, RELIANT §	
ENERGY RETAIL SERVICES, LLC, AND §	OF ADMINISTRATIVE
TEXAS GENCO, LP TO DETERMINE §	
STRANDED COSTS AND OTHER TRUE-UP §	HEARINGS
BALANCES PURSUANT TO PURA § 39.262 §	

AFFIDAVIT OF JAMES S. BRIAN

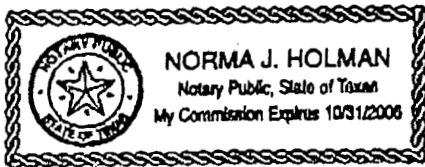
STATE OF TEXAS §
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COUNTY OF HARRIS §

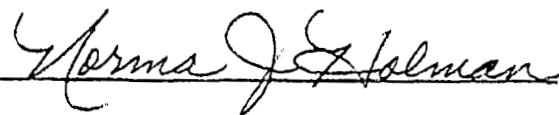
Before me, the undersigned notary public, this day personally appeared James S. Brian, to me known, who being duly sworn according to the law deposes and says:

“My name is James S. Brian. I am of legal age and a resident of the State of Texas. I am employed by CenterPoint Energy Services Company, LLC as Senior Vice President and Chief Accounting Officer. I have personally reviewed each entry within the document entitled Index (Second) of Privileged Documents Responsive to Texas Industrial Energy Consumers’ First Request for Information for which I am listed as sending, receiving, or being copied on the indicated e-mail. I did not review any of the referenced e-mails for the purpose of making this affidavit, but by reviewing the date, title, distribution list, and description of the privilege asserted with reference to the document, I can attest that to the best of my recollection I have not reviewed any of the referenced documents since approximately the date of the respective document and that none of the documents were provided to, reviewed by, or prepared for or by me in anticipation of my testimony in this docket.”


James S. Brian

Subscribed and sworn before me on this 10th day of June, 2004.




Notary Public in and for Harris County, Texas

My Commission expires on October 31, 2006.