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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	§ § § § § § §	**PUBLIC UTILITY COMMISSION** **OF TEXAS**

MOTION TO TERMINATE EXCESS MITIGATION CREDITS

CenterPoint Energy Houston Electric, LLC, ("CEHE") moves to terminate excess mitigation credits ("EMCs") in order to mitigate stranded costs. Between April 1, 2004, and August 31, 2004, CEHE will pay retail electric providers ("REPs") approximately $114 million in EMCs. These payments will provide no benefits to the vast majority of retail electric customers and *will increase stranded cost payments* by approximately $172 million, assuming recovery through a securitization over 15 years at 5% per annum interest. It is now clear beyond reasonable dispute that CEHE's stranded costs will greatly exceed $114 million and, thus, stranded costs should be mitigated by ceasing EMCs as soon as possible. In support of this motion, CEHE would show the following:

REQUEST FOR EXPEDITED CONSIDERATION

CEHE's motion to terminate EMCs is time sensitive. If CEHE's stranded costs are securitized and recovered over 15 years at 5% per annum interest, **each month** of delay in ending EMCs **adds** approximately **$34.4 million** to the total payments required to retire stranded costs. Each day of delay will ultimately increase stranded cost payments by over $1 million. Thus, CEHE seeks expedited consideration of this motion in order to mitigate stranded costs.

I. NOTICE & AFFECTED PERSONS AND TERRITORIES

If this motion is granted, all REPs who use the CEHE system for transmission or distribution of electricity will be affected. This motion has been provided to all REPs listed on the Commission's web site and all parties in Docket No. 22355.

II. STATEMENT OF FACTS

A. It Is Now Clear That CEHE Has Stranded Costs

For true-up purposes, the net book value of Texas Genco, LP's ("TGN's") assets as of December 31, 2001, is approximately $5.35 billion.[1] The market value of TGN is approximately $2.91 billion.[2] Thus, stranded costs, without consideration of interest, are approximately $2.44 billion. Even without considering the other true-up balances, it is now clear beyond reasonable dispute that CEHE's stranded costs significantly exceed the $114 million in EMCs payable from April 1, 2004, through August 31, 2004.[3]

B. Public Policy Favors Using Excess Earnings To Mitigate Stranded Costs

PURA §39.254 required that certain utilities, including CEHE, use earnings calculated pursuant to PURA §39.257 - §39.261 for each year from 1999 through 2001 ("excess earnings") to accelerate the recovery of stranded costs. Obviously, the Legislature's policy was to use excess earnings to reduce the stranded costs that must be paid in the future.

The Commission departed from the Legislature's plan for using excess earnings upon the expectation that CEHE might have no stranded costs. Now that it is clear that CEHE's stranded costs will be significant, the Commission should use the maximum amount of CEHE's remaining 1999 - 2001 excess earnings in the manner PURA intended.

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[1] Direct Testimony of James S. Brian filed March 31, 2004 (Brian Testimony"), at Exec. Sum. P. 2 and pp. 8-21.
[2] Direct Testimony of Joseph B. McGoldrick filed March 31, 2004 ("McGoldrick Testimony"), at pp. 9 and 21-23.
[3] CEHE assumes a final order in this docket will be issued by August 31, 2004, and that it will terminate EMCs. The adverse impact to customers only increases if EMCs continue beyond August 31, 2004.

C. Continuation of EMCs Increases Stranded Costs By Almost $23 Million a Month

In Docket No. 22355, the Commission ordered CEHE to pay estimated excess earnings of $1,242,638,069 to REPs over 7 years, with interest at 7.5%.[4] The total EMCs paid in any given month vary because they are the product of fixed sums multiplied by electricity usage (kWh) for residential and non-metered lighting customers and electricity demand (kW or kVa) for all other customer classes.[5] Thus, high usage and demand months, *e.g.* April through August, generate larger EMCs than months such as October through March.

Consistent with Substantive Rule §25.263(g)(2)(i), CEHE in this docket uses excess earnings that have <u>not</u> been distributed as EMCs and interest thereon to offset stranded costs. Thus, the longer EMCs continue, the smaller the sum of remaining excess earnings available to offset stranded costs, and the higher the amount of such costs that must be paid by customers. CEHE estimates that if EMCs were discontinued April 1, 2004, instead of upon issuance of a final order at the end of August 2004, CEHE would have an additional $114,009,238 of excess earnings available to reduce stranded costs.[6] Thus, each month of delay in terminating EMCs between April and August 2004 increases stranded costs by an expected average of about $23 million per month.

D. EMCs Serve No Purpose But To Exacerbate Stranded Cost Payments

When created, EMCs were thought to reduce the magnitude of rate changes necessary in 2004 to true-up stranded costs. In addition, they created "head-room" in a nascent retail market, and thus encouraged REPs to enter the market. In today's environment, however, the

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[4] *Application of Reliant Energy HL&P to Establish Tariffs for Transmission and Distribution Utility Service Pursuant to PURA Section 39.201*, PUC Docket No. 22355, Order at 138-141 and 163, Transmission and Distribution Findings of Fact 160-168, Transmission and Distribution Conclusion of Law 9-21; Brian Testimony at Fig. JSB-9. The excess earnings amount in the Docket No. 22355 Order was an estimate; Mr. Brian's Figure JSB-9 presents the actual excess earnings.

[5] CEHE Tariff, Rider EMC – Excess Mitigation Credit, Sheet No. 6.12.

continuation of EMCs serves no purpose but to exacerbate stranded costs by *increasing* the ultimate payments customers must make. If stranded costs are securitized and recovered over 15 years at 5% per annum interest, customers will have to pay approximately $172 million more than they otherwise would simply because stranded costs will be $114 million higher than they otherwise would be due to continuation of EMCs. This is a conservative estimate; a higher interest rate would increase the unnecessary additional payments.

EMCs are no longer needed to stimulate a competitive retail market in CEHE's service area. There are approximately 8 REPs offering residential retail service in the CEHE service area at rates below the price to beat. The lowest residential rates are 14% below the price to beat.[7] Reliant Retail Energy Services, LLC, the affiliated REP in CEHE's service area, has lost more than 40% of its small commercial load.[8] The Commission estimates that commercial and industrial customers saved $645 million in just the first eight months of competition and that this estimate is probably understated.[9] Clearly, the retail market in CEHE's service territory is competitive, and EMCs are not necessary to ensure customer choice.

Moreover, EMCs will end when a final order is issued in this docket, which should occur in August 2004. It is highly unlikely that continuing EMCs for an additional 5 months will accomplish anything in terms of encouraging new market entrants that the past 27 months of EMCs have not already accomplished. Continuing EMCs for five more months will merely result in customers paying approximately $172 million more than is necessary.

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[6] Brian Testimony at Fig. JSB-9 ($114,009,238 is the difference between excess earnings remaining as of 3/31/04 of $595,565,739 and excess earnings remaining as of 8/31/04 of $481,556,501).
[7] McGoldrick Testimony at p. 26.
[8] *Petition of CenterPoint Energy Houston Electric, LLC for Finding That the 40% Threshold Under PURA §39.202(e) Has Been Met For Small Commercial Customers*, Docket No. 28980, Order (March 15, 2004).
[9] McGoldrick Testimony at p. 27.

III. RELIEF SOUGHT

CEHE seeks termination of EMC's on an interim basis pending a final determination of its stranded costs and other true-up balances. In the highly unlikely event that CEHE's stranded costs are less than $114 million, the Commission can take corrective action pursuant to PURA §39.262(g).

EMCs are credits that are applied to CEHE's rates approved by the Commission in Docket No. 22355. They are implemented through Sheet No. 6.12 of CEHE's tariff, entitled "Rider EMC – Excess Mitigation Credit." EMCs can easily be terminated simply by canceling Sheet No. 6.12 of CEHE's tariff. CEHE's rates would then equal the amounts found to be just and reasonable in Docket No. 22355.

WHEREFORE PREMISES CONSIDERED, CEHE requests that the Commission cancel its tariff Sheet No. 6.12 as soon as possible in order to mitigate stranded costs.

Respectfully submitted,

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