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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

2004 APR 23 AM 11:10  
PUBLIC UTILITY COMMISSION  
CLERK

RECEIVED

CENTERPOINT'S RESPONSE TO SOAH ORDER NO. 1 AND UPDATE REGARDING  
DISCUSSIONS WITH TIEC

SOAH Order No. 1 required parties to file by noon today any objections to CenterPoint's<sup>1</sup> request for non-disclosure of information related to the publicly announced Texas Genco bidding process. CenterPoint takes this opportunity to inform the ALJ that its discussions with TIEC regarding the form of affidavit applicable to CenterPoint's non-disclosure request have been unsuccessful to date,<sup>2</sup> and to point out why the affidavit that CenterPoint expects TIEC to propose today, and the accompanying arguments TIEC and other parties opposing CenterPoint's request may make, are wholly inadequate and should be rejected.

TIEC has informed CenterPoint that it may propose an affidavit with restrictions similar to those offered in discussions with CenterPoint. Other parties may propose something similar. Such alternative proposals eliminate the protection offered by CenterPoint's proposed affidavit and essentially reduce the affidavit to little more than a promise to abide by the terms of the protective order as they apply to Highly Sensitive Protected Material. Given the extremely sensitive nature of the information at issue and the potential harm if this information is released.

<sup>1</sup> For purposes of this pleading CenterPoint Energy Houston Electric, LLC and Texas Genco, LP.

<sup>2</sup> CenterPoint has also discussed these issues with City of Houston, but the parties have not reached agreement. CenterPoint is willing to continue these discussions, but feels compelled to file this notice to protect its rights.

particularly to parties involved in the Texas Genco bidding process,<sup>3</sup> anything short of the affidavit CenterPoint originally proposed is wholly inadequate. Parties that are involved in the Texas Genco bidding process should not be allowed to view the Texas Genco bidding information, which potentially includes the actual bids received from all bidders, because such disclosure would provide such parties an unfair advantage. Such disclosure certainly violates the most basic principles of a sealed bidding process and may disrupt the entire bidding process.

Paragraph 36 of the Protective Order is intended to provide a higher level of protection than the Highly Sensitive Protective Material designation. It contemplates non-disclosure to certain competitors or other parties in situations like this where the risk of harm from such disclosure outweighs the potential benefit to the Reviewing Party. Paragraph 36 specifically mentions the Texas Genco bidding information at issue here. CenterPoint simply asks that it not be required to disclose sensitive information in an ongoing sealed bidding process to any party not willing to attest that it is not involved in that bidding process. This is a reasonable request. The proposal TIEC discussed with CenterPoint and apparently plans to file today is not a reasonable compromise at all, but rather an attempt to eliminate any substantive added protection under Paragraph 36 and to essentially treat the Texas Genco bidding information as Highly Sensitive Protected Material.

CenterPoint's proposed affidavit contains the following characteristics that are essential to adequately protect the Texas Genco bidding information. Any proposed alternative affidavit that does not contain these characteristics should be rejected.

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<sup>3</sup> These issues are discussed in detail in CenterPoint's original request (filed April 12, 2004) and its revised request (filed April 20, 2004). Those arguments are incorporated herein by reference.

1. **A statement that the party requesting to view the Texas Genco bidding information is not involved in the Texas Genco bidding process, and will not become involved in that process.**

A party that is unwilling to make this statement should be presumed to be involved in the Texas Genco bidding process and should not be allowed to view the Texas Genco bidding information.

2. **An obligation to run a conflicts check and inform CenterPoint if a conflict exists.**

An obligation to merely run the conflicts check without reporting whether a conflict exists is inadequate. CenterPoint's proposed affidavit does not require the Reviewing Party divulge the identity of the client or any other client information. It merely requires a statement that the conflict does not exist. Any proposed affidavit that simply requires a conflicts check without any obligation to report the conflict (for instance, with an obligation merely to implement a "Chinese wall") actually implies that a conflict does exist and should be rejected. Any proposal to run a conflicts check only for certain regional offices of a firm is also unacceptable unless it is accompanied by a sworn statement that the firm's other offices do not represent a party in the Texas Genco bidding process.

As CenterPoint explained in its revised request, conflicts checks are a necessary and normal daily practice in all large law firms, and presumably in consulting firms as well. They prevent potentially damaging conflicts of interest, just as CenterPoint is attempting to do in this request. It is inconceivable that the law firm(s) and consulting firm(s) representing TIEC and other parties are not already running such checks.

3. **A continuing obligation to check for and report conflicts that occur in the future.**

This requirement prevents a Reviewing Party from simply hiding his/her head in the sand and remaining purposefully ignorant of potential conflicts. This continued conflicts check is also a normal and necessary practice for law firms and consulting firms. The parties in

this proceeding should already be performing such conflicts checks. Without this obligation, how can a Reviewing Party reasonably claim to have implemented adequate measures to ensure that the information will not be inadvertently disclosed to people in his/her law firm or consulting firm who later develop a conflict of interest.

**4. An obligation to prevent disclosure to any person who represents any of the potential bidders in the Texas Genco bidding process on any matters.**

The extremely sensitive nature of the Texas Genco bidding information warrants an obligation not to divulge the information to any party involved in the Texas Genco bidding process, or any person who represents such a party on any matter. Again, this does not require the Reviewing Party to divulge any information about the identity of its client, or even to divulge whether the Reviewing Party represents such a client on matters unrelated to the Texas Genco bidding process. It merely requires that they not disclose the Texas Genco bidding information to such parties or to people in their firm representing such parties.

For the reasons stated herein and in its prior pleadings on this issue, CenterPoint respectfully requests an order that the only parties allowed to view the Texas Genco bidding information are those willing to execute the affidavit proposed by CenterPoint. Absent such an order, CenterPoint respectfully requests that its objections to TIEC 1-14 be sustained.

Date: April 23, 2004

Respectfully submitted,



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

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been hand-delivered, sent overnight mail or sent by U.S. mail to all parties of record, on the 23<sup>rd</sup> day of April, 2004.

Benny Browning