

Control Number: 29526



Item Number: 483

Addendum StartPage: 0

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

APR 30 PM 3:00

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

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BEFORE THE STATE OFFICE

PUBLIC UTILITY COMMISSION

OF

ADMINISTRATIVE HEARINGS

**MOTION TO COMPEL RESPONSE TO CENTERPOINT'S FIRST REQUEST FOR
INFORMATION TO HOUSTON COUNCIL FOR HEALTH AND EDUCATION**

On April 27, 2004, Houston Council for Health and Education ("HCHE") specifically objected to all but two of the questions in CenterPoint's¹ First Request for Information. Those objections are included as Attachment 1 to this motion. Counsel for CenterPoint and counsel for HCHE have negotiated CenterPoint's objections diligently and in good faith, but have not reached a resolution. CenterPoint therefore files this motion to compel responses to its first request for information. As set forth herein, CenterPoint is entitled to discover the information requested from HCHE so that the parties and the Commission have complete information prior to the hearing. *See Black v. Texas Dep't of Labor and Standards*, 816 S.W.2d 496, 499 (Tex.App.—Texarkana 1991), *writ denied*, 835 S.W.2d 635 (Tex. 1991) (per curium) (stating that the purpose of discovery "is to provide parties with complete information so that the case may proceed on the merits with discoverable facts known to all parties").

CenterPoint notes that HCHE has joined Ratepayer Advocates in their April 27, 2004, general objection to responding to any RFI before intervenor testimony is filed.

Thus, the two questions not objected to in HCHE's individual objections are objected to in Ratepayer Advocate's general objection. CenterPoint is addressing the Ratepayer Advocates' general objection in a separate pleading, but some of the issues are repeated by HCHE in its individual objections and will be addressed here as well. CenterPoint addresses each of HCHE's individual objections in the order they were listed by HCHE.

I. HCHE'S GENERAL OBJECTIONS

1. Timeframe

HCHE objects to the time limits used by CenterPoint in its RFIs and unilaterally and improperly adopts new time limits – (1) January 1, 2003 for questions without a specified time frame and (2) the latter of the time frame specified or January 1, 1999 all other questions. HCHE provides no rational basis, in fact no specific reason at all, for this limitation. Nor does HCHE cite to any legal authority authorizing this unilateral adjustment to RFIs. HCHE's actions are wholly arbitrary and improper.

The January 1, 2003 default time frame proposed by HCHE is unsupportable. HCHE does not tie the date to any regulatory activity and, in fact, does not state any justification for that date. It appears to be just a random date. CenterPoint concedes that time limits should have been included, and offers to adopt the default time frame listed in HCHE's RFIs to CenterPoint – January 1, 1998 – for all RFIs that fail to specify a time frame.² For all remaining questions, HCHE should be required to respond using CenterPoint's specified time frames.

¹ CenterPoint Energy Houston Electric, LLC and Texas Genco, LP.

² See HCHE's First request for Information to CenterPoint at 3 (Instruction No. 12) (April 7, 2004) (stating, "Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 1998 through and including the date of your response.").

2. Definition of "Study."

HCHE claims this definition is vague and overbroad because it includes the phrase "where the author thereof reached an objective or subjective conclusion or presented information upon which others could or did reach an objective or subjective conclusion."³ While CenterPoint does not agree that this definition is either vague or overbroad, in the interest of facilitating discovery CenterPoint offers to remove the quoted language from the definition. This should alleviate HCHE's concerns that the definition reaches every magazine and newspaper article containing a pairing of assertions related to the subject matter of the question. Further, as to all requests, CenterPoint clarifies that its RFI questions requesting studies are intended to reach only those studies in the possession and/or control of HCHE.

3. Definition of "HCHE."

HCHE objects that in the definition of HCHE, CenterPoint includes the member entities that collectively make up HCHE.⁴ HCHE claims that HCHE alone is the party in this docket, not its members.

HCHE is absolutely wrong in its assertion that its members are immune from discovery merely because they have formed an ad hoc association to advocate their positions in this proceeding.⁵ While the Commission does allow entities to form associations like HCHE "in the interest of administrative efficiency and economy,"⁶ it does not permit member entities to evade the obligations of participation by hiding behind the facade of a trade

³ See *Objections of Houston Council for Health and Education to First Set of Requests for Information of CenterPoint Energy Houston Electric, LLC and Texas Genco, LP at 2* (April 27, 2004) (hereafter cited as "Objections").

⁴ *Id.*

⁵ *Id.*

⁶ *Application of Southwestern Public Service Company for Authority to: (1) Revise Its Fixed Voltage Level Fuel Factors; (2) Surcharge Its Historical Fuel Under-Recoveries; (3) Surcharge Its Estimated Fuel Under-Recoveries; and (4) Related Good-Cause Waivers*, Docket No. 23718, Order No. 9 (May 2, 2001).

association. On the contrary, the Commission requires such associations to file updated lists of those member entities that have a justiciable interest in the outcome of the proceeding, recognizing that "an organization's standing to intervene...depends in part upon the members of the organization having standing in their own right."⁷ The associations are merely shells with no substance, therefore meaningful discovery can be conducted only when member entities are subject to the same participation obligations as any other party to the proceeding.

The ALJ in Docket No. 23718 affirmed this notion by explicitly refusing to distinguish the discovery obligations of member entities from those of the associations that represented them.⁸ That case involved discovery requests propounded by SPS upon Texas Industrial Energy Consumers ("TIEC"), an organization similar to HCHE and one that is also an intervenor in this proceeding, and the members being represented by TIEC. Much like HCHE does here, TIEC objected, claiming SPS was not authorized to seek discovery of information that TIEC did not rely on and that was in the possession of members but not TIEC. TIEC further alleged that discovery on its members was unfair because it was too burdensome and expensive.⁹ The ALJ summarily dismissed TIEC's reasoning and issued an order compelling TIEC's member entities to answer the RFIs.¹⁰ The ALJ denied TIEC's

⁷ *Petition to Inquire into the Reasonableness of the Rates and Services of Cap Rock Energy Corporation*, Docket No. 28813, Order Granting in Part and Denying in Part St. Lawrence Cotton Growers Association's Appeal of Disclosure Ruling in Order No. 4 (April 19, 2004). *See also* PUC PROC. R. § 22.103(b) ("A person has standing to intervene if that person...(2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.")

⁸ Docket No. 23718, Order No. 10 Denying Motion for Reconsideration and Denying Request for Stay Pending Appeal (May 7, 2001).

⁹ Docket No. 23718, TIEC's Objections to SPS's First Request for Information, at 2 (April 20, 2001).

¹⁰ Docket No. 23718, Order No. 9 Ruling Granting Motion to Compel and Allowing SPS to Supplement Rebuttal Testimony at Hearing, at 3 (May 2, 2001).

motion for reconsideration, explaining further that individual members of a representative association are not protected from discovery.¹¹

HCHE now alleges some of the same failed arguments while conveniently omitting discussion of this recent precedent. Instead, HCHE bases its claims on two older cases, neither of which supports its views and one of which, Docket No. 11487, actually supports the opposite proposition.

Docket No. 11487, *Inquiry of the General Counsel into the Marketing and Business Practices of Southwestern Bell Telephone Company*, was a 1992 proceeding where the ALJ allowed representative associations to intervene on behalf of their members because the justiciable interest of their members gave the associations standing. Among Southwestern Bell's objections to allowing associations to intervene was concern that not requiring individual intervention would "deny [Southwestern Bell] a fair opportunity to conduct discovery and prepare its defense." The ALJ allowed associations to intervene but required them to list their members with a justiciable interest, explaining that "this identification of members should alleviate, at least in part, the procedural concerns expressed by Southwestern Bell in its pleading." This requirement has since been codified by PUC Procedural Rule § 22.103(b), reflecting the Commission's intention that the members of an ad hoc association be recognized as parties to the proceeding and thus subject to the same obligations of participation as any other party.

Docket No. 4627, *Inquiry into the Rates and Services of Pedernales Electric Cooperative, Inc.*, a 1983 case, held that an ad hoc, unincorporated association may represent

¹¹ Docket No. 23718, Order No. 10 Denying Motion for Reconsideration and Denying Request for Stay Pending

others who have a justiciable interest in the proceeding. The ruling confirmed that members of such an association do not have to show some individualized harm to gain standing. The PUC procedural rules now clearly explain what gives a party standing, so this case adds nothing to the discussion of the issue of whether association members are subject to discovery. Furthermore, this case concerned individual ratepayers, who are now expressly exempted from the requirement that associations list their members. Clearly, the Commission recognized that individuals should be treated differently from larger institutional ratepayers like the member entities of HCHE.

HCHE itself admits to being an *ad hoc* coalition of ratepayers.¹² Ad hoc associations like HCHE have no substance; they are merely the sum of their individual members. They are little more than cost sharing vehicles. The members of the association, not the association itself, reap the benefits of furthering their positions and are bound by the results of the proceeding. Therefore, it is the justiciable interests of the members, not the association, that entitle the association to intervene. Indeed, that is the very basis HCHE used to intervene in this proceeding.¹³ CenterPoint does not dispute that entities have the right to form these associations, however, groups of entities with a justiciable interest in a proceeding simply cannot form *ad hoc* coalitions and adopt a new name in order to circumvent their discovery obligations and hinder the entire discovery process.

Finally, HCHE's contention that the requested information for its member entities is not in the "possession and control" of HCHE is without merit.¹⁴ The Commission's

Appeal, at 1 (May 7, 2001).

¹² Objections at 2.

¹³ See HCHE Motion to Intervene in Docket No. 29526 at 2 (April 5, 2004).

¹⁴ Objections at 3.

rules define what constitutes “possession and control” stating “[a] person has possession, custody or control of a document or tangible thing as long as the person has a superior right to compel the production from a third party and can obtain possession of the document or tangible thing with reasonable effort.” PUC PROC. R. 22.141(a). HCHE, as an *ad hoc* organization without any independent identity outside that of its members, clearly has the right to obtain the requested documents and information from its member entities. In essence, HCHE will be compelling production from itself. Moreover, HCHE has not asserted that obtaining this information requires anything more than “reasonable effort.” HCHE should be compelled to gather and produce the requested information for its member entities.

4. “Contention” RFIs.

HCHE objects to providing any information concerning HCHE’s “contentions” in this case. The single-sentence justification for this objection reiterates the arguments HCHE and the other members of Ratepayer Advocates made in their general objection to answering any RFIs. Therefore, CenterPoint incorporates and includes (see Attachment 2) its response to Ratepayer Advocates’ general objections and urges the ALJ to reject HCHE’s flawed objection. Contrary to HCHE’s claims, to the extent HCHE has formed opinions on the issues addressed in the “contention” RFIs and is going to make specific contentions, those contentions are not the subject of the attorney-client or work product privileges. If they were, no party could ever obtain discovery in the form of contention interrogatories before trial. Of course, contention interrogatories are a normal part of pre-trial discovery and are specifically contemplated in the Texas Rules of Civil Procedure.¹⁵

5. Privileged Documents

¹⁵ See TEX. R. CIV. PROC. §197.

HCHE objects to the information requested in CenterPoint's Instruction No. 19 regarding privileged documents. CenterPoint notes that its Instruction No. 19 was actually derived from HCHE's Instruction No. 2 in its RFIs to CenterPoint and, in fact, has a narrower scope than HCHE's instruction.¹⁶ However, in the interest of facilitating discovery, CenterPoint hereby withdraws Instruction No. 19. HCHE must still comply with the requirements in the Commission's rules regarding the assertion of privilege and production of privileged documents.

6. Form of Requested Information.

CenterPoint's Instruction No. 20 requires HCHE to provide requested information in the format in which it currently exists, and to inform CenterPoint in the answer why the information cannot be converted and how much work would be required to perform the conversion. HCHE has objected to providing any explanation of why the information is not available in the requested format or estimate of the amount of work necessary to put it in the requested format. CenterPoint notes that Instruction No. 20 was derived from HCHE's Instruction No. 4 in its RFIs to CenterPoint, uses the same language as HCHE's instruction and is actually narrower in scope than HCHE's instruction.¹⁷ However, in the interest of facilitating discovery, CenterPoint proposes that HCHE be required to simply provide the requested information in the form it currently exists and inform CenterPoint in the response that the information is not available in the form requested.

II. SPECIFIC OBJECTIONS

CenterPoint RFI-1

¹⁶ See HCHE's First request for Information to CenterPoint at 2 (Instruction No. 2) (April 7, 2004).

¹⁷ *Id.* at Instruction No. 4.

What type of entity is the Houston Council for Health and Education (HCHE)? Please provide copies of the corporate charter and other organizational documents, the by-laws, and any other document describing the management structure of HCHE.

CenterPoint's Response

HCHE objects to this RFI on the basis of relevance alone. In its general objection No. 3, HCHE implies it is not a trade organization but an *ad hoc* group of industrial clients brought together by a law firm. HCHE then seeks to avoid discovery on its group members based on this status. The information requested in this RFI is necessary to validate HCHE's claims and is, therefore, directly relevant to this proceeding. It may also lead to the discovery of additional admissible evidence regarding HCHE's motivations in this proceeding and the credibility of its witnesses.

CenterPoint RFI-2

Please produce all documents reflecting the purpose or mission of HCHE.

CenterPoint's Response

HCHE objects to this RFI solely on the basis of relevance. The requested information is relevant for the same reasons listed above for RFI-1. CenterPoint needs the requested information to properly analyze the "contentions advanced by ratepayer representatives."¹⁸ Whether or not these contentions are consistent with HCHE's purpose and mission statement is a relevant inquiry and may lead to the discovery of additional admissible evidence. The absence of a mission statement provides further evidence that HCHE is nothing more than an attempt to use an assumed name to avoid discovery.

CenterPoint RFI-4

¹⁸ Objections at 4.

How do the entities participating in the HCHE intervention in this docket, or those to whom such responsibility is delegated, make decisions regarding the strategies, arguments or testimony advanced in the name of HCHE?

CenterPoint's Response

HCHE again objects on grounds of relevance. For the reasons stated above in response to RFI-1 and 2, the requested information is directly relevant to proper inquiries in this proceeding, and may lead to the discovery of additional admissible evidence.

HCHE also objects on grounds that the requested information is privileged. CenterPoint recognizes that HCHE is not required to produce any document or information that is truly privileged. However, HCHE should be compelled to provide an index of privileged documents to allow CenterPoint and the ALJs to properly analyze whether privilege actually exists. PUC Proc. R. 22.144(d)(3) requires a party to specifically object to providing a privileged documents index and show good cause why the index should not be produced within 2 days of the objection filing date. HCHE has done neither and should, therefore, be compelled to produce a privileged document index immediately.

CenterPoint RFI-5

Please produce all board minutes, correspondence, emails, and other documents reflecting any analysis or decision making with regard to the decision by HCHE to participate in this docket.

CenterPoint's Response

HCHE objects on grounds of relevance. The contents of board minutes, correspondence, emails and other documents regarding the decision to enter this proceeding are directly relevant to the issues in this proceeding. The decision of HCHE to participate in this docket presumably was based on information that is directly related to the issues in this

proceeding. That is the information sought in this question. The requested information may also lead to the discovery of additional admissible evidence.

HCHE also objects on grounds that the requested information is privileged. CenterPoint recognizes that HCHE is not required to produce any document or information that is truly privileged. However, HCHE should be compelled to provide an index of privileged documents to allow CenterPoint and the ALJs to properly analyze whether privilege actually exists. PUC Proc. R. 22.144(d)(3) requires a party to specifically object to providing a privileged documents index and show good cause why the index should not be produced within 2 days of the objection filing date. HCHE has done neither and should, therefore, be compelled to produce a privileged document index immediately.

CenterPoint RFI-6

- 1 For each entity participating as part of HCHE in this proceeding, please
 - a) identify the name of the retail electric provider that provided service to the entity during each month of the period from January 1, 2002 through April 2004; and
 - b) for each retail electric provider identified in response to item a, please state whether and how such retail electric provider was affiliated with the entity.

CenterPoint's Response

HCHE objects to this RFI on grounds that its individual members are not subject to discovery. Please see CenterPoint's response to this flawed argument in general objection No. 3 above.

HCHE also objects on grounds of relevance. HCHE's objection focuses on stranded cost calculations and ignores the fact that CenterPoint's stranded costs have been

directly affected by excess mitigation credits (“EMC”) and that CenterPoint has requested termination of EMCs in this docket. *See* Draft Preliminary Order at 14 (April 22, 2004). Whether and how EMCs are flowed through to ultimate consumers is an issue that a number of parties in this case apparently believe it is relevant. CenterPoint has been asked several questions regarding the flow through of EMCs. *See e.g.*, HCHE 3-4, TIEC 3-9, TIEC 4-28, TIEC 6-1, COH 11-6, COH 11-7, COH 11-8, COH 14-11. The requested information goes directly to this flow through analysis and is, therefore, relevant. This information is also likely to lead to the discovery of additional admissible evidence. The EMC issue is addressed more directly in later RFIs in this set (*see e.g.*, RFI-9).

CenterPoint RFI-7

Please provide copies of any analyses, position papers, invitations to participate or other documents provided by HCHE, its consultants, lawyers or other representatives to entities *other than those that have elected to participate in the HCHE intervention* in conjunction with the preparations to participate in the true-up proceedings of CenterPoint and Texas Genco.

CenterPoint’s Response

HCHE objects on a number of grounds, all of which appear to be based on a misreading of the question. This question asks for documents *provided to third parties that are not participating in this proceeding as part of HCHE*. Thus, the requested information cannot possibly fall under the attorney-client or work product privileges because it has been intentionally disclosed to third parties. TEX. R. EVID. 503(b)(1); TEX. R. CIV. PROC. 192.5(b)(3). CenterPoint does not seek any documents that are truly privileged, but the scope of this question, by definition, excludes such documents.

Similarly, HCHE does not state a sufficient basis for its objection to providing information generated by its experts. Assuming, for the sake of argument, that the documents in question were produced by a person who meets the standard of a “consulting expert,”¹⁹ the privilege associated with those documents was waived when HCHE provided the documents to third parties. *Tom L. Scott, Inc. v. McIlhany*, 753 S.W.2d 214, 219 (Tex. App.—Amarillo 1988, orig. proceeding) (noting that disclosure of a consulting expert’s mental impressions and opinions waives the consulting-expert privilege), *mand. granted*, 798 S.W.2d 556, 560 (Tex. 1990) (holding that defendants’ redesignation of testifying experts as consulting experts after defendants settled with some of the plaintiffs was itself sufficient to waive the consulting-expert privilege); *see also Jordan v. Fourth Court of Appeals*, 701 S.W.2d 644, 649 (Tex. 1985) (orig. proceeding) (“It is the rule in Texas that the protections afforded by a privilege are waived by voluntary disclosure of the privileged documents.”); *In re Carbo Ceramics, Inc.*, 81 S.W.3d 369, 377 (Tex. App.—Houston [14th Dist.] 2002, orig. proceeding) (explaining that a party waives a privilege when it “voluntarily discloses or consents to the disclosure of any significant part of the privileged matter . . .”) (quoting TEX. R. EVID. 511). Moreover, any information generated by testifying experts (defined in TEX. R. CIV. PROC. 192.7(c) as an expert who actually testifies or who *might* be called to testify) is discoverable. TEX. R. CIV. PROC. 192.3(e).

HCHE also objects on relevance grounds. The statements made by HCHE and the associated material presented to third parties to elicit their participation in this proceeding almost certainly contain information that is directly relevant to issues in this proceeding, and

¹⁹ To qualify as a consulting expert, HCHE must have made an affirmative decision that the expert will not testify, and that the work product of that expert will not be relied upon by testifying experts. TEX. R. CIV. PROC. 192.7(d).

are likely to lead to the discovery of additional relevant information. HCHE undoubtedly discussed the values it projected for stranded costs and the reasons, if any, it believes CenterPoint's requested recovery should be challenged. It is difficult to imagine anything more relevant to this proceeding. HCHE cannot hide behind privilege for these documents that were intentionally disclosed to third parties. This information is relevant whether or not HCHE ultimately files testimony in this proceeding. HCHE should be compelled to answer this RFI immediately.

CenterPoint RFI-8

If CenterPoint is determined to have stranded costs in excess of \$2 billion, does HCHE contend that CenterPoint is not entitled to recover all of the excess mitigation credits and interest that CenterPoint has credited to retail electric providers.

- a) if the answer to the above question is "yes," please explain in detail why HCHE takes this position.

CenterPoint's Response

HCHE objects to this question *solely* on grounds that it should not be required to answer "contention" questions until after it files its testimony. Please see CenterPoint's response to this flawed argument in general objection No. 4 above and in Attachment 2.

CenterPoint notes that HCHE has not objected on grounds of relevance. CenterPoint requests that the ALJs overrule the general objection to "contention" questions and require HCHE to provide this relevant information immediately.

CenterPoint RFI-9

For each entity participating as part of HCHE in this proceeding and each retail electric provider that served such entity during the period from

January 1, 2002 through April 2004 please state whether the retail electric provider flowed through to the entity the excess mitigation credits the retail electric provider received.

a) for each retail electric provider that you claim did not flow through excess mitigation credits, please produce copies of all documents that support your contention that the excess mitigation credits were not flowed through to the entity.

b) please list the amount of excess mitigation credits received to date by any such entity (you may mask the identity of specific entities by labeling the amounts "A," "B," etc.).

CenterPoint's Response

HCHE objects to this RFI on grounds that its individual members are not subject to discovery. Please see CenterPoint's response to this flawed argument in general objection No. 3 above.

HCHE also objects on grounds of relevance. HCHE's objection focuses on stranded cost calculations and ignores the fact that CenterPoint's stranded costs have been directly affected by excess mitigation credits ("EMC") and that CenterPoint has requested termination of EMCs in this docket. *See* Draft Preliminary Order at 14 (April 22, 2004). Whether and how EMCs are flowed through to ultimate consumers is an issue that a number of parties in this case apparently believe it is relevant. CenterPoint has been asked several questions regarding the flow through of EMCs. *See e.g.*, HCHE 3-4, TIEC 3-9, TIEC 4-28, TIEC 6-1, COH 11-6, COH 11-7, COH 11-8, COH 14-11. The requested information goes directly to this flow through analysis and is, therefore, relevant. This information is also likely to lead to the discovery of additional admissible evidence.

HCHE's arguments regarding "better or more comprehensive sources" of such information goes to the weight of evidence, not the issue of relevance. Those comments do not support a relevance objection or any other objection submitted by HCHE.

CenterPoint RFI-10

For each entity participating as part of HCHE in this proceeding please produce all documents created since January 1, 1997 containing or discussing projections of electricity cost savings the entity could achieve through deregulation and customer choice.

CenterPoint's Response

HCHE objects to this RFI on grounds that its individual members are not subject to discovery. Please see CenterPoint's response to this flawed argument in general objection No. 3 above.

HCHE also objects on relevance grounds. The requested information (and related information requested in RFI-11) is relevant to CenterPoint's position that customers like the members of HCHE both expected to and have received significant benefits from competition, which can be considered when weighing their efforts in this docket to avoid paying the costs associated with the transition to a competitive market. The requested information is also likely to lead to the discovery of additional admissible evidence on this same subject. If HCHE is unwilling to produce information about the savings its members have received, then it should be prohibited from making any argument regarding the benefits or lack of benefits its members or other users of electricity received as a result of Senate Bill 7 and retail competition.

HCHE's argument that information from "a small number of CenterPoint customers will [not] produce any probative information" actually goes to the weight of evidence, not the issue of relevance. Those comments do not support a relevance objection or any other objection submitted by HCHE.

CenterPoint RFI-11

For each entity participating as part of HCHE in this proceeding please produce all documents quantifying or discussing actual electricity cost savings the entity has achieved as a result of the implementation of the customer choice provisions of the Texas Electric Choice Act (Senate Bill 7 as enacted in the 1999 Legislative Session).

- a) If no such documents exist, please quantify, by month, the actual electricity cost savings the entity has achieved as a result of the implementation of the customer choice provisions of the Texas Electric Choice Act.
- b) Please produce copies of all workpapers that support any quantification provided under item a.

CenterPoint's Response

HCHE objects to this RFI on grounds that its individual members are not subject to discovery. Please see CenterPoint's response to this flawed argument in general objection No. 3 above.

HCHE also objects on relevance grounds. For the same reasons listed in the response to RFI-10 above, the requested information from HCHE's members is directly relevant to the issues in this proceeding and is likely to lead to the discovery of additional admissible evidence.

CenterPoint RFI-12

For each entity participating as part of HCHE in this proceeding, please produce all documents prepared by or provided to the entity since January 1, 1999 containing or discussing estimates of CenterPoint's stranded costs as defined in Chapter 39 of the Public Utility Regulatory Act.

CenterPoint's Response

HCHE objects to this RFI on grounds that its individual members are not subject to discovery. Please see CenterPoint's response to this flawed argument in general objection No. 3 above.

HCHE also objects on grounds that some of the requested information is privileged. However, HCHE has not objected on grounds of relevance and, therefore, HCHE must produce a privileged log within 2 days of filing this objection (i.e., by April 29, 2004). PUC PROC. R. 22.144(d)(2). No such log appears on the Interchange on that date or any other date as of this filing. CenterPoint recognizes that HCHE is not required to produce any document or information that is truly privileged. But HCHE has a duty to produce an index that allows parties and the ALJs to verify privilege exists. HCHE should, therefore, be compelled to produce a privileged document index immediately.²⁰

CenterPoint RFI-14

For each entity participating as part of HCHE in this proceeding, please produce all documents provided by or on behalf of the entity to any person or other entity containing or discussing estimates of CenterPoint's stranded costs as defined in Chapter 39 of the Public Utility Regulatory Act.

CenterPoint's Response

²⁰ CenterPoint acknowledges that HCHE and the other members of Ratepayer Advocates have requested a stay regarding production of privileged indexes until after the ALJs rule on their general objections to all RFIs. However, HCHE should be required to produce the an index immediately upon that ruling.

HCHE objects to this RFI *solely* on grounds that its individual members are not subject to discovery. Please see CenterPoint's response to this flawed argument in general objection No. 3 above. HCHE has not objected on grounds of relevance or privilege.

CenterPoint RFI-15

For HCHE as an organization, please produce all documents provided by or on behalf of HCHE or its members to any person or entity that is not a member of HCHE containing or discussing estimates of CenterPoint's stranded costs as defined in Chapter 39 of the Public Utility Regulatory Act.

CenterPoint's Response

HCHE objects to this RFI *solely* on grounds that its individual members are not subject to discovery. Please see CenterPoint's response to this flawed argument in general objection No. 3 above. Moreover, this objection is misplaced because the requested information is limited to documents in HCHE's possession, not those solely in the hands of its members. The objection illustrates that HCHE is not even willing to produce documents *that it possesses itself*. HCHE has not objected to the relevance of the requested information. HCHE's objection should be overruled and HCHE should be compelled to produce the requested documents immediately.

CenterPoint RFI-16

For each entity participating as a member of HCHE in this proceeding, please produce all contracts for purchase of electricity for use in the entity's facilities located in the former HL&P service territory that have been in effect for all or part of the period since January 1, 2002.

CenterPoint's Response

HCHE objects to this RFI on grounds that its individual members are not subject to discovery. Please see CenterPoint's response to this flawed argument in general objection No. 3 above.

HCHE also objects on grounds that some of the requested information is irrelevant. However, as explained in the response to HCHE's objection to RFI-10 and RFI-11 regarding the savings received by each of HCHE's members, the information requested in this RFI is relevant and likely to lead to the discovery of additional admissible evidence. In fact, the requested information is relevant to verify the cost savings requested in those earlier questions. HCHE's comments that information from "a handful of former HL&P customers will not shed reliable light on the entire customer base" and the availability of similar information in other sources actually go to the weight of evidence, not the issue of relevance. Those comments do not support a relevance objection or any other objection submitted by HCHE.

CenterPoint RFI-17

With reference to request for information HCHE 1-12 propounded on CenterPoint, do you contend that Texas Genco should have considered acquiring or operating assets other than those that were owned by the former integrated utility? If so, please provide a detailed explanation, including a description of the asset[s], the timing of the consideration that you contend should have occurred, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

CenterPoint's Response

HCHE objects to this question *solely* on grounds that it should not be required to answer "contention" questions until after it files its testimony. Please see CenterPoint's response to this flawed argument in general objection No. 4 above and in Attachment 2.

CenterPoint notes that HCHE has not objected on grounds of relevance. Indeed, HCHE could not do so without admitting that its own discovery sought irrelevant material. CenterPoint requests that the ALJs overrule the general objection to “contention” questions and require HCHE to provide this relevant information immediately.

CenterPoint RFI-18

With reference to request for information HCHE 1-14 and 1-5 propounded on CenterPoint, do you contend that, since the enactment of the Texas Electric Choice Act (Senate Bill 7 enacted during the 1999 Legislative Session), CenterPoint should have considered selling some or all of the Companies’ generating assets within ERCOT? If so, please provide a detailed explanation, including a description of the asset[s], the timing of the consideration that you contend should have occurred, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

CenterPoint’s Response

HCHE objects to this question *solely* on grounds that it should not be required to answer “contention” questions until after it files its testimony. Please see CenterPoint’s response to this flawed argument in general objection No. 4 above and in Attachment 2.

CenterPoint notes that HCHE has not objected on grounds of relevance. Indeed, HCHE could not do so without admitting that its own discovery sought irrelevant material. CenterPoint requests that the ALJs overrule the general objection to “contention” questions and require HCHE to provide this relevant information immediately.

CenterPoint RFI-19

With reference to request for information HCHE 1-16 propounded on CenterPoint, do you contend that, since the enactment of the Texas Electric Choice Act, CenterPoint should have affirmatively decided to sell some or all of the Companies’ generating assets within ERCOT? If so, please

provide a detailed explanation, including a description of the asset[s], the timing of the decision that you contend should have occurred, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

CenterPoint's Response

HCHE objects to this question *solely* on grounds that it should not be required to answer "contention" questions until after it files its testimony. Please see CenterPoint's response to this flawed argument in general objection No. 4 above and in Attachment 2.

CenterPoint notes that HCHE has not objected on grounds of relevance. Indeed, HCHE could not do so without admitting that its own discovery sought irrelevant material. CenterPoint requests that the ALJs overrule the general objection to "contention" questions and require HCHE to provide this relevant information immediately.

CenterPoint RFI-20

With reference to request for information HCHE 1-17 propounded on CenterPoint, please provide all analysis, studies, notes, emails, any other correspondence, and any other documents generated since January 1, 1997, other than those produced by CenterPoint in discovery, that relate directly or indirectly to valuations of one or more of the generating assets of Texas Genco, or any other generating assets in ERCOT.

CenterPoint's Response

HCHE objects to this request as overbroad. The scope of this question is intended to be (and is) identical to the scope of HCHE 1-17,²¹ which HCHE propounded on CenterPoint. It is disingenuous for HCHE to now complain of this scope. HCHE 1-17 asked for "all documents that constitute, discuss or refer to" valuations of one or more of Texas

²¹ HCHE 1-17 states, "Please produce all documents that constitute, discuss or refer to valuations that have been done of one or more of the generation plants or other generation-related assets currently owned by Texas Genco."

Genco's generating plants. The general instructions to HCHE's First RFI to CenterPoint defined "documents" broadly enough to include every type of document requested in RFI 1-20. As a result, HCHE 1-17 is just as broad as, if not broader than, RFI-20's request for specific types of documents that relate "directly or indirectly" to valuations of one or more of Texas Genco's generating plants. RFI-20 and HCHE 1-17 are both limited to the time period January 1, 1997 forward. The only substantive difference between HCHE 1-17 and RFI 1-20 is that RFI 1-20 requests information relating to valuations of other generating assets in ERCOT. The information about these analyses and studies of other plants is necessary to permit CenterPoint to challenge both the methods that intervenors use to value Texas Genco's plants and the values they ascribe to TGN or other plants. HCHE should be compelled to answer this RFI.

CenterPoint RFI-21

With reference to request for information HCHE 1-18 propounded on CenterPoint, please provide a description of all measures that you contend CenterPoint or Texas Genco should have taken to mitigate stranded costs. Please rank the measures by order of importance, provide a detailed explanation of each, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

CenterPoint's Response

HCHE objects to this question *solely* on grounds that it should not be required to answer "contention" questions until after it files its testimony. Please see CenterPoint's response to this flawed argument in general objection No. 4 above and in Attachment 2.

Such documents should include all documents generated since January 1, 1997."

CenterPoint notes that HCHE has not objected on grounds of relevance. CenterPoint requests that the ALJs overrule the general objection to “contention” questions and require HCHE to provide this relevant information immediately.

CenterPoint RFI-22

With reference to request for information HCHE 1-19 propounded on CenterPoint, do you contend that the Company’s decision to use the partial stock valuation method for determining stranded costs is relevant to any issue[s] to be decided in the true up proceeding? If so, please identify the issue[s] and provide a detailed explanation, including an explanation of relevance under SB7.

CenterPoint’s Response

HCHE objects to this question *solely* on grounds that it should not be required to answer “contention” questions until after it files its testimony. Please see CenterPoint’s response to this flawed argument in general objection No. 4 above and in Attachment 2.

CenterPoint notes that HCHE has not objected on grounds of relevance. CenterPoint requests that the ALJs overrule the general objection to “contention” questions and require HCHE to provide this relevant information immediately.

CenterPoint RFI-23

With reference to request for information HCHE 1-20 propounded on CenterPoint, please provide all analysis, studies, notes, emails, any other correspondence, and any other documents, other than those produced by CenterPoint in discovery, that relate directly or indirectly to the valuation options available and the market valuations that were estimated to result.

CenterPoint’s Response

HCHE objects to this request as overbroad. The scope of this question is intended to be (and is) identical to the scope of HCHE 1-20, which HCHE propounded on CenterPoint.²² It is disingenuous for HCHE to now complain of this scope. HCHE 1-20 asked for "all documents that study, analyze, address or compare in any manner" the valuation options available to CenterPoint and the market valuations that were estimated to result. That is just as broad as, if not broader than, RFI-23's request for specific types of documents that relate "directly or indirectly" to valuation options available to CenterPoint and the market valuations that were estimated to result. As noted in its response to HCHE's general objection No. 1, CenterPoint offers to limit the period of this RFI-23 to January 1, 1998 forward. That is narrower than HCHE 1-20, which asks for documents back to January 1, 1997. HCHE should be compelled to answer this RFI. In the interest of facilitating discovery, and to the extent HCHE contends that the scope of RFI-23 is broader than the scope of HCHE 1-20, CenterPoint is willing to limit the scope of this question to the scope of HCHE 1-20.

CenterPoint RFI-24

With reference to request for information HCHE 1-21 propounded on CenterPoint, do you contend that Texas Genco should have expanded into other businesses? If so, please provide a detailed explanation, including a description of the business[es], the timing of the expansion that you contend should have occurred, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

CenterPoint's Response

²² HCHE 1-20 states "Please produce all documents that study, analyze, address, or compare in any manner the valuation options available to CenterPoint and the market valuations that were estimated to result prepared by or on behalf of CenterPoint and/or any affiliate since January 1, 1997."

HCHE objects to this question *solely* on grounds that it should not be required to answer “contention” questions until after it files its testimony. Please see CenterPoint’s response to this flawed argument in general objection No. 4 above and in Attachment 2.

CenterPoint notes that HCHE has not objected on grounds of relevance. CenterPoint requests that the ALJs overrule the general objection to “contention” questions and require HCHE to provide this relevant information immediately.

CenterPoint RFI-25

With reference to request for information HCHE 1-43 propounded on CenterPoint, do you contend that there are any circumstances under which it would be inappropriate to apply a control premium in valuing an enterprise? If so, please provide a detailed explanation, including a description of the circumstances, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

CenterPoint’s Response

HCHE objects to this question *solely* on grounds that it should not be required to answer “contention” questions until after it files its testimony. Please see CenterPoint’s response to this flawed argument in general objection No. 4 above and in Attachment 2.

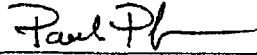
CenterPoint notes that HCHE has not objected on grounds of relevance. CenterPoint requests that the ALJs overrule the general objection to “contention” questions and require HCHE to provide this relevant information immediately.

For the reasons stated herein, CenterPoint respectfully requests the that its motion to compel be granted as to each of the discovery requests identified above, that

HCHE's objections be overruled with respect to each of those requests, and that HCHE be required to immediately provide CenterPoint with complete responses to each request.

April 30, 2004

Respectfully submitted,



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

The parties have conferred and negotiated these objections diligently and in good faith, but have not reached a resolution. The parties therefore 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 30th day of April, 2004.

Bunny Browning

ATTACHMENT 1

COPY OF OBJECTIONS

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

RECEIVED

2004 APR 27 PM 2:48

PUBLIC UTILITY COMMISSION
FILING CLERK

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

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

OBJECTIONS OF HOUSTON COUNCIL FOR HEALTH AND
EDUCATION TO FIRST SET OF REQUESTS FOR INFORMATION
OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
AND TEXAS GENCO, LP

Contact: Kenneth L. Wiseman
(202) 662-2700

April 27, 2004

Table of Contents

	Pages
Houston Council For Health and Education Objections to First Set Of Requests For Information of CenterPoint Energy Houston Electric, LLC and Texas Genco, LP	2
Signature and Certificate of Service	15

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

APPLICATION OF CENTERPOINT	§	
ENERGY HOUSTON ELECTRIC LLC,	§	BEFORE THE
RELIANT ENERGY RETAIL	§	PUBLIC UTILITY COMMISSION
SERVICES, LLC, AND TEXAS GENCO,	§	OF TEXAS
LP TO DETERMINE STRANDED	§	
COSTS AND OTHER BALANCES	§	
PURSUANT TO PURA § 39.262	§	

OBJECTIONS OF HOUSTON COUNCIL FOR HEALTH AND
EDUCATION TO FIRST SET OF REQUESTS FOR INFORMATION
OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
AND TEXAS GENCO, LP

I.
General Objections

The following objections apply generally to CenterPoint Energy Houston Electric, LLC's and Texas Genco, LP's ("CenterPoint") First Set of Requests for Information to the Houston Council for Health and Education ("HCHE").

1. HCHE objects to those requests for information that contain no limit with respect to the timeframe of the information to be produced. Such an open ended obligation on HCHE is over broad and unduly burdensome. For those requests for information for which no time limit is specified, HCHE will impute a reasonable cut-off date of January 1, 2003. For any other Request, HCHE will respond based on the later of the date specified in the Request or June 1, 1999.

2. In Definition No. 5, the terms "study" and "studies" are defined to include, *inter alia*, any analysis, investigation, summary of data, listing or report "where the author thereof reached an objective or subjective conclusion or presented information upon which others could or did reach an objective or subjective conclusion." HCHE objects to Definition No. 5 on the grounds that it is vague and overbroad. As written, the request could apply to virtually any document, including virtually any magazine or newspaper article or editorial on a "subjective conclusion" basis, any pairing of assertions (whether or not related) could be deemed to justify a conclusion. The requests should be reformulated to articulate with reasonable clarity the type of studies sought. HCHE cannot be responsible for trying to locate documents that would fit within this facially overbroad and nonsensical request.

3. HCHE objects to Definition No. 16 to the extent it seeks to define "Houston Council for Health and Education" to include members of HCHE who are not parties to this proceeding. HCHE, an *ad hoc* coalition of hospitals and universities in the greater Houston area,

was granted party status in this proceeding pursuant to "Order No. 2 Memorializing Prehearing Conference, Approving Notice, Adopting Procedural Schedule and Issuing Amended Protective Order" issued April 16, 2004. Thus, HCHE is a party of record in this proceeding; HCHE's individual members are not. See *Inquiry Into the Rates and Services of Pedernales Electric Cooperative, Inc.*, Docket No. 4627, 8 P.U.C. Bull. 396, 397-398 (Mar. 23, 1983) (Texas PUC permitted an *ad hoc*, unincorporated association to represent the interests of a group of individuals with a common justiciable interest); *Inquiry of the General Counsel Into the Marketing and Business Practices of Southwestern Bell Telephone Co.*, Docket No. 11487, 18 P.U.C. Bull. 1156 (November 4, 1992) (a trade association may represent its members possessing a common justiciable interest as a group). Therefore, to the extent CenterPoint seeks to utilize this over broad definition of "Houston Council for Health and Education" as an attempt to obtain information from the individual members of HCHE who are not parties to this proceeding, HCHE objects to Definition No. 16. If the members of HCHE are subject to the kind of burdensome requests posed here by CenterPoint, are individual customers subject to other group representations (e.g., by OPC) also subject to harassing and overbroad requests? There is no conceivable relevance to much of the individual customer-specific data sought under such requests.

Moreover, the information generally requested by CenterPoint is not in the possession and control of HCHE, its lawyers and consultants. Therefore, requests of this type are objectionable for this reason as well.

4. HCHE objects to all RFIs that seek information concerning HCHE's "contentions" in this case. HCHE is in the process of developing its positions and thus, inquiries to those positions are premature. HCHE's deliberations also are protected by the attorney-client and attorney work product privileges.

5. For any information for which HCHE claims privileged treatment, Instruction No. 19 would require HCHE to not only identify such information, but also to determine (a) who received a copy, read, or examined the information or knows of its substance; (b) the present location of the information and all copies of it; and (c) each person having custody or control of the information or any of the copies. HCHE objects to such a requirement as unduly burdensome. Moreover, to conduct the requested inquiry concerning each individual document for which privilege is asserted would be wholly impractical. HCHE will identify the information necessary for HCHE to claim the attorney-client or attorney work product privilege. However, HCHE will not comply with the remainder of Instruction No. 19 to the extent it conflicts with HCHE's foregoing obligation. HCHE reserves the right to identify documents subject to privilege as they are identified. In the event of inadvertent disclosure of privileged material, HCHE reserves the right to retrieve all copies of such materials.

6. For requested information that is not in HCHE's possession in the form requested, Instruction No. 20 directs HCHE to not only provide the information in the form that it currently exists, but to explain why the data cannot be provided in the form requested and to describe the work or process needed to provide the information in the form requested. HCHE objects to Instruction No. 20 as unduly burdensome. HCHE will provide requested information in the manner in which it currently exists. However, HCHE will not undertake to explain why the

existing information cannot be converted to the form requested, nor will HCHE conjecture as to the work or processes needed to convert the existing information to the form requested.

II. Specific Objections

CenterPoint RFI-1

What type of entity is the Houston Council for Health and Education ("HCHE")? Please provide copies of the corporate charter and other organizational documents, the by-laws, and any other document describing the management structure of HCHE.

HCHE's Objection

HCHE objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. The issue in this case is to determine the amount, if any, of CenterPoint's stranded costs, and whether CenterPoint's claim comports with applicable statutory standards. Information concerning HCHE's organizational structure will not shed any light upon this issue.

CenterPoint RFI-2

Please produce all documents reflecting the purpose or mission of HCHE.

HCHE Objection

HCHE objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. *See* Objection to RFI No. 1 concerning HCHE's purpose and mission is wholly irrelevant to the issues to be resolved in this case. Contentions advanced by ratepayer representatives will stand or fall on their own merits, not based on mission statements or the like.

CenterPoint RFI-4

How do the entities participating in the HCHE intervention in this docket or those to whom such responsibility is delegated, make decisions regarding the strategies, arguments or testimony advanced in the name of HCHE?

HCHE Objection

HCHE objects to this request on the following grounds:

- a. HCHE objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. *See* Objections to RFI Nos. 1 and 2.

- b. The information requested is subject to the attorney-client and work product privileges. The manner in which the entities supporting HCHE make decisions regarding litigation strategy, arguments or testimony in this proceeding are matters of internal administration, the result of *inter alia* discussions between HCHE and its counsel, and thus reflect the deliberations and discussions of a client and its attorneys.

CenterPoint RFI-5

Please produce all board minutes, correspondence, emails, and other documents reflecting any analysis or decision making with regard to the decision by HCHE to participate in this docket.

HCHE Objection

HCHE objects to this request on the following grounds:

- a. HCHE objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. See Objections to RFI Nos. 1, 2 and 4.
- b. The information requested also may be subject to the attorney-client and work product privileges. Documentation, if any, reflecting any analysis or decision making with regard to the determination by HCHE to participate in this proceeding are matters of internal administration, the result of *inter alia* discussions between HCHE and its attorneys, and may reflect the deliberations and discussions of a client and its attorneys.

CenterPoint RFI-6

For each entity participating as part of HCHE in this proceeding, please

- a. identify the name of the retail electric provider that provided service to the entity during each month of the period from January 1, 2002 through April 2004; and
- b. for each retail electric provider identified in response to item a, please state whether and how such retail electric provider was affiliated with the entity.

HCHE Objection

See General Objection No. 3. HCHE also objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. The identity of the retail electric provider of each of HCHE's members is irrelevant to determinations of whether CenterPoint has stranded costs and, if so, in what amount, or if any such stranded costs satisfy the statutory requirements for recovery by CenterPoint.

CenterPoint RFI-7

Please provide copies of any analyses, position papers, invitations to participate or other documents provided by HCHE, its consultants, lawyers or other representatives to entities *other than those that have elected to participate in the HCHE intervention* in conjunction with the preparations to participate in the true-up proceedings of CenterPoint and Texas Genco.

HCHE's Objection

HCHE objects on the grounds of relevance and that the request is overbroad. Whatever may have been conveyed to entities that are not members of HCHE is not relevant to this case. HCHE will be presenting its case in accordance with the procedural schedule adopted herein. HCHE's position will be articulated at the appropriate time in evidence and legal argument. Invitations to participate that ultimately were not accepted cast little light on this case. Such an invitation may be declined for many reasons. Moreover, the request is overbroad in seeking discovery from HCHE's consultants, lawyers or other representatives. HCHE is the party in this proceeding. Discovery is appropriately directed, at an appropriate time, to HCHE concerning (1) its positions and relevant information and documents within its position, and (2) relevant information and documents of its witnesses. Requests for information are not properly directed to HCHE's non-testifying consultants or lawyers. Section 22.141(a) of the Procedural Rules of the Public Utility Commission of Texas expressly states that parties may not obtain discovery of matters privileged or exempted under, *inter alia*, the Texas Rules of Civil Procedure. Rule 192.3(e) of the Texas Rules of Civil Procedure provides that a party is not required to disclose the "identity, mental impressions and opinions of a consulting expert whose mental impressions and opinions have not been reviewed by the testifying expert." TEX. R. CIV. P. 192.3(e) (2004). *General Motors Corp. v. Gayle*, 951 S.W.2d 469, 474 (Tex. 1997)(the consulting expert privilege, like the work-product privilege, grants parties and their attorneys a sphere of protection and privacy in which to develop their case); *Tom L. Scott, Inc. v. McIlhenny*, 798 S.W.2d 556, 559 (Tex. 1990)(the policy behind the consulting expert privilege is to encourage parties to seek expert advice in evaluating their case and to prevent a party from receiving undue benefit from an adversary's efforts and diligence). In addition, federal courts have long discouraged a party from seeking discovery from opposing party's counsel. See, e.g., *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986)(taking the deposition of opposing counsel is a practice that has long been discouraged as disruptive of the adversarial system and one which should be employed only in limited circumstances). In order for a party to depose an opposing attorney, courts generally require the following: (1) no other means exist to obtain the information than to depose the opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case. See *id.* Those prerequisites have clearly not been satisfied here. As a result, this RFI is not properly directed to HCHE's lawyers

CenterPoint RFI-8

If CenterPoint is determined to have stranded costs in excess of \$2 billion, does HCHE contend that CenterPoint is not entitled to recover all of the excess mitigation credits and interest that CenterPoint has credited to retail electric providers.

- a. if the answer to the above question is "yes," please explain in detail by HCHE takes this position.

HCHE Objection

See General Objection No. 4.

CenterPoint RFI-9

For each entity participating as part of HCHE in this proceeding and each retail electric provider that served such entity during the period from January 1, 2002 through April 2004 please state whether the retail electric provider flowed through to the entity the excess mitigation credits the retail electric provider received.

- a. for each retail electric provider that you claim did not flow through excess mitigation credits, please produce copies of all documents that support your contention that the excess mitigation credits were not flowed to the entity.
- b. please list the amount of excess mitigation credits received to date by any such entity (you may mask the identity of specific entities by labeling the amounts "A," "B," etc.).

HCHE Objection

See General Objection No. 3. HCHE also objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. The flow through of excess mitigation credits, or lack thereof, will not produce evidence relevant to the stranded cost determination that must be made in this case.

To the extent that CenterPoint argues that such information is relevant, there are better and more comprehensive sources of such data (e.g., REPs themselves). Further, CenterPoint has made no effort to explain how such information from only a small subset of all customers is relevant or will lead to meaningful conclusions pertinent to the issues here.

CenterPoint RFI-10

For each entity participating as part of HCHE in this proceeding, please produce all documents created since January 1, 1997 containing or discussing projections of electricity cost savings the entity could achieve through deregulation and customer choice.

HCHE Objection

See General Objection No. 3. HCHE also objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. Whether or not there have been cost savings is irrelevant to the stranded cost determination that must be made in this case. Moreover, projections of savings may or may not have been realized. Further, there is no reason why such information from a small number of CenterPoint customers will produce any probative information that relates to a larger universe.

CenterPoint RFI-11

For each entity participating as part of HCHE in this proceeding please produce all documents quantifying or discussing actual electricity cost savings the entity has achieved as a result of the implementation of the customer choice provisions of the Texas Electric Choice Act (Senate Bill 7 as enacted in the 1999 Legislative Session).

- a. If no such documents exist, please quantify, by month, the actual electricity cost savings the entity has achieved as a result of the implementation of the customer choice provisions of the Texas Electric Choice Act.
- b. Please produce copies of all workpapers that support any quantification provided under item a.

HCHE Objection

See General Objection No. 3. HCHE also objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. See also Objection to RFI No. 10.

CenterPoint RFI-12

For each entity participating as part of HCHE in this proceeding, please produce all documents prepared by or provided to the entity since January 1, 1999 containing or discussing estimates of CenterPoint's stranded costs as defined in Chapter 39 of the Public Utility Regulatory Act.

HCHE Objection

See General Objection No. 3. Additionally, certain documents may fall within the attorney-client and work product privileges, and HCHE asserts privilege with respect to those documents.

CenterPoint RFI-14

For each entity participating as part of HCHE in this proceeding, please produce all documents provided by or on behalf of the entity to any person or other entity containing or discussing estimates of CenterPoint's stranded cost as defined in Chapter 39 of the Public Utility Regulatory Act.

HCHE Objection

See General Objection No. 3.

CenterPoint RFI-15

For HCHE as an organization, please produce all documents provided by or on behalf of HCHE or its members to any person or entity that is not a member of HCHE containing or discussing estimates of CenterPoint's stranded costs as defined in Chapter 39 of the Public Utility Regulatory Act .

HCHE Objection

See General Objection No. 3.

CenterPoint RFI-16

For each entity participating as a member of HCHE in this proceeding, please produce all contracts for purchase of electricity for use in the entity's facilities located in the former HL&P service territory that have been in effect for all or part of the period since January 1, 2002.

HCHE Objection

See General Objection No. 3. HCHE also objects to this request as seeking irrelevant information that is not reasonably calculated to lead to the production of admissible evidence. Information contained in contracts for retail electric service will not assist the Commission in resolving any issue related to the stranded cost determination that must be made in this proceeding. Further, individual information related to a handful of former HL&P customers will not shed reliable light on the entire customer base, should such information even be relevant. Once again, this is the type of information better obtained from entities (*e.g.* REPs) with access to a broader array of the requested data. The data possessed by the entities subject to this request will not be usable for any reasonable purpose in this proceeding.

CenterPoint RFI-17

With reference to request for information HCHE 1-12 propounded on CenterPoint, do you contend that Texas Genco should have considered acquiring or operating assets other than those that were owned by the former integrated utility? If so, please provide a detailed explanation, including a description of the asset[s], the timing of the consideration that you contend should have occurred, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

HCHE Objection

See General Objection No. 4.

CenterPoint RFI-18

With reference to request for information HCHE 1-14 and 1-5 propounded on CenterPoint, do you contend that, since the enactment of the Texas Electric Choice Act (Senate Bill 7 enacted during the 1999 Legislative Session), CenterPoint should have considered selling some or all of the Companies' generating assets within ERCOT? If so, please provide a detailed explanation, including a description of the asset[s], the timing of the consideration that you contend should have occurred, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

HCHE Objection

See General Objection No. 4.

CenterPoint RFI-19

With reference to request for information HCHE 1-16 propounded on CenterPoint, do you contend that, since the enactment of the Texas Electric Choice Act, CenterPoint should have affirmatively decided to sell some or all of the Companies' generating assets within ERCOT? If so, please provide a detailed explanation, including a description of the asset[s], the timing of the decision that you contend should have occurred, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

HCHE Objection

See General Objection No. 4.

CenterPoint RFI-20

With reference to request for information HCHE1-17 propounded on CenterPoint, please provide all analysis, studies, notes, emails, any other correspondence, and any other documents generated since January 1, 1997, other than those produced by CenterPoint in discovery, that relate directly or indirectly to valuations of one or more of the generating assets of Texas Genco, or any other generating assets in ERCOT.

HCHE's Objection

HCHE objects to the request as overbroad. The request is absurdly overreaching. Every document that "relate[s] directly or indirectly to valuations of one or more of the generating assets of Texas Genco, or any other generating assets in ERCOT" could include:

- power price projections for any future period
- projected new generation capacity construction data
- projected generation facility retirements
- projected new transmission facility construction
- projected retirement of transmission facilities
- projected gas price data
- projected gas production data
- forward gas price data
- projected coal price data
- projected coal production data
- forward coal price data
- projected lignite price data
- projected oil price data
- projected oil production
- forward oil price data
- projected uranium production data
- projected costs of storing spent nuclear fuel
- projected levels of electricity demand, during both peak and off-peak periods
- impacts of potential new environmental standards
- emission credit values
- population and electricity consumption trends in ERCOT

- sale prices for facilities in Texas
- future interest rates and capital costs
- ECOM results from 1997 simulations
- ECOM results from initial stranded cost quantifications during administrative litigation during 2000-01, and testimony, workpapers, exhibits, briefs, motions, orders, and transcripts related thereto
- other ECOM runs
- documents discussing potential implementation of nodal congestion pricing
- documents related to impacts of potential nodal congestion pricing
- documents related to impacts of alternatives to potential nodal congestion pricing
- documents concerning long range weather and climatic predictions or trends
- documents concerning remaining service lives of existing generation facilities
- documents containing cost of replacement parts for existing facilities
- scope, cost and rules of access regarding fuel delivery systems (e.g., gas or oil pipelines) serving generation plants
- documents related to water rights of generating facilities
- costs of labor involved in operation and maintenance of generating facilities

The list could be continued at much greater length, but the foregoing represents a fair initial sampling.

Additionally, some of the information is subject to intellectual property protections (e.g., reporting in the trade press of present and future fuel and power prices). Duplication of such information could subject HCHE to claims, especially of copyright violations. HCHE is not willing to expose itself to such claims when the information is readily available to the requestor from sources the requestor may acquire.

The request is so overbroad that it would include public disclosure filings of owners of generation in Texas (e.g., AEP), fuel cost filings, earnings reports, emissions reports and the like. "[A]ny documents" that "relate" "directly or indirectly" to the value of ERCOT generating assets would include, for starters:

- Senate Bill 7
- regulations under that statute

- filings made with the PUC by utilities in 1999-2001 regarding stranded costs
- papers filed in litigation with DOE regarding spent fuel disposition
- license renewals issued by the NRC generally for nuclear plants
- documents relating to prices offered or accepted for generation assets at any time since January 1, 1997
- documents recounting prices for gas combined cycle and combustion turbine generation equipment (including prices as of February 1, 1997 on equipment that is no longer even sold by manufacturers)
- ERCOT-ISO tariffs
- outage schedules

Because the request does not address for what purpose the valuations would have been made, this request could sweep in valuations for property tax, ad valorem tax, or other, unrelated purposes. It could include publicly-available information from credit rating agencies and similar material to which the requestor has equal, if not better, access

One is forced to ask what is the real reason for a request of this type by CenterPoint? It appears to be simply to interfere with HCHE's review of discovery obtained from CenterPoint and preparation of HCHE's direct testimony.

As a consequence, this request is a model of overbroad and burdensome discovery requests. HCHE objects and respectfully seeks rejection of this request.

CenterPoint RFI-21

With reference to request for information HCHE 1-18 propounded on CenterPoint, please provide a description of all measures that you contend CenterPoint or Texas Genco should have taken to mitigate stranded costs. Please rank the measures by order of importance, provide a detailed explanation of each, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

HCHE Objection

See General Objection No. 4.

CenterPoint RFI-22

With reference to request for information HCHE 1-19 propounded on CenterPoint, do you contend that the Company's decision to use the partial stock valuation method for determining stranded costs is relevant to any issue[s] to be

decided in the true up proceeding? If so, please identify the issue[s] and provide a detailed explanation, including an explanation of relevance under SB7.

HCHE Objection

See General Objection No. 4.

CenterPoint RFI-23

With reference to request for information HCHE 1-20 propounded on CenterPoint, please provide all analysis, studies, notes, emails, any other correspondence, and any other documents, other than those produced by CenterPoint, that relate directly or indirectly to the valuation options available and the market valuations that were estimated to result.

HCHE's Objection

Request No. 23 seeks "any . . . documents . . . that relate directly or indirectly to the valuation options available and the market valuations that were estimated to result." This request also is ridiculously overbroad. The request would produce documents related to market valuations that have been estimated to result from different valuation methods in other states where restructuring was implemented and, *inter alia*, successful sales of generating assets produced revenue in excess of net book value, reducing stranded costs otherwise imposed on ratepayers. In that case, entire administrative records of stranded cost proceedings of multiple utilities in each of the states such as Pennsylvania, New Jersey, Maine, Connecticut, New York, Ohio, Montana and the like would have to be produced. Just those materials would fill several trucks (not to mention the volume of materials furnished in discovery in those proceedings). Similarly, valuations pursuant to ECOM in Texas would fall within this request as crafted. Thus, the records of administrative proceedings of utilities in Texas from 1999-2001 would be elicited.

The request fails to specify what market valuation criteria are to be applied. Does that include valuation alternatives included in competing legislation, never enacted, to SB7? The request is unduly burdensome, overbroad, and should be rejected.

CenterPoint RFI-24

With reference to request for information HCHE 1-21 propounded on CenterPoint, do you contend that Texas Genco should have expanded into other businesses? If so, please provide a detailed explanation, including a description of the business[es], the timing of the expansion that you contend should have occurred, and all analysis, studies, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention

HCHE Objection

See General Objection No. 4.

CenterPoint RFI-25

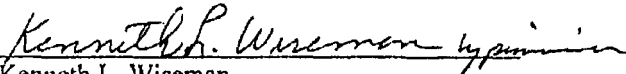
With reference to request for information HCHE 1-43 propounded on CenterPoint, do you contend that there are any circumstances under which it would be inappropriate to apply a control premium in valuing an enterprise? If so, please provide a detailed explanation, including a description of the circumstances, and all analysis, notes, emails, any other correspondence, and any other documents that relate directly or indirectly to your contention.

HCHE Objection

See General Objection No. 4.

Respectfully submitted;

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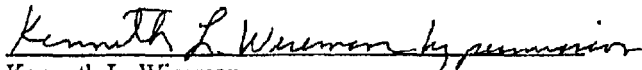
(202) 662-2700

(202) 662-2739 (fax)

ATTORNEYS FOR HOUSTON COUNCIL FOR
HEALTH AND EDUCATION

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 facsimile or first class mail on this 27th day of April, 2004.


Kenneth L. Wiseman

ATTACHMENT 2

COPY OF CENTERPOINT'S RESPONSE TO RATEPAYER ADVOCATES' APRIL 27,
2004 GENERAL OBJECTIONS, AND MOTION TO COMPEL

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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**CENTERPOINT'S RESPONSE TO RATEPAYER ADVOCATES' GENERAL
OBJECTIONS TO CENTERPOINT'S FIRST SET OF REQUESTS FOR
INFORMATION, AND MOTION TO COMPEL**

Ratepayer Advocates¹ have taken the extraordinary and unsupportable position that intervenors are the only parties in this proceeding entitled to any meaningful discovery.² To that end, they have filed a joint objection to *all* RFIs propounded by CenterPoint.³ Their alleged justification is that intervenors need "sufficient time for parties to examine, review, investigate through discovery, and formulate opinions" on the cases of their opposing parties.⁴ Ratepayer Advocates ignore the fact that CenterPoint needs and is legally entitled to the same consideration in preparing for the intervenors' cases. Ratepayer Advocates' position is contrary to the Texas Rules of Civil Procedure, the Commission's rules and past Commission precedent.⁵ It is also contrary to the comments of Chairman Hudson at the April 29, 2004,

¹ The City of Houston, Texas Industrial Energy Consumers, Coalition of Commercial Ratepayers and the Houston Council for Health and Education.

² The individual members of Ratepayer Advocates have each filed separate specific objections to these RFIs as well. CenterPoint will address those objections in separate filings.

³ Referring to CenterPoint Energy Houston Electric, LLC and Texas Genco, LP.

⁴ *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*, Docket No. 29526, Ratepayers Advocates' General Objections to CenterPoint's First Set Of Requests For Information at 2 (April 27, 2004) (hereafter cited "Objections").

⁵ The parties has conferred and negotiated Ratepayer Advocates' objections diligently and in good faith, but have not reached a resolution.

open meeting, where he stated that the Commission would look unfavorably on tactics that delay the discovery process and prevent the development of a full and complete record in this docket.

Ratepayer Advocates urge the ALJs to order that they be shielded from all discovery requests until they file their testimony. That is completely unworkable under the current procedural schedule, which contains the following deadlines:

June 1, 2004	-	Intervenor Testimony Due
June 8, 2004	-	Discovery on Intervenor Testimony Ends
June 14, 2004	-	CenterPoint's Rebuttal Testimony Due
June 21, 2004	-	Hearing on the Merits

Ratepayer Advocates' proposal allows only 7 days for CenterPoint's discovery, and creates a situation where it will be impossible for CenterPoint to incorporate RFI responses, which will be received no earlier than June 14, 2004, into its rebuttal testimony which must be filed by noon that same day. This effectively eliminates all written discovery for CenterPoint. The need for meaningful discovery is apparently a critical issue for Ratepayer Advocates' members when it applies to perceived limitations on their discovery rights.

[CenterPoint's request for a 10 day discovery turnaround] could completely eliminate meaningful discovery on some of CenterPoint's rebuttal witnesses. Docket No. 29526, *TIEC's Response to CenterPoint's Appeal of Discovery Deadlines In Order No. 2* at 3 (April 29, 2004).

The same is true of CenterPoint's discovery rights. The parties on whom CenterPoint served requests for information should be compelled to respond to those requests for the reasons listed herein.

1. **Ratepayer Advocates' motion is an impermissible collateral attack on PUC Order No. 2.**