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SOAH DOCKET NO. 473-05-7455
PUC DOCKET NO. 31056

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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

APPLICATION OF AEP TEXAS §
CENTRAL COMPANY AND §
CPL RETAIL ENERGY, LP TO §
DETERMINE TRUE-UP BALANCES §
PURSUANT TO PURA § 39.262 §

OFFICE OF PUBLIC UTILITY COUNSEL'S
MOTION TO COMPEL RESPONSES FROM
AEP TCC TO OPC'S FIFTEENTH SET OF RFIS,
QUESTIONS 18 AND 19

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Office of Public Utility Counsel ("OPC") and files the Office of Public Utility Counsel's Motion To Compel responses from AEP Texas Central Company ("TCC") to Questions 18 and 19 in OPC's Fifteenth Set of Requests For Information ("RFIs"). OPC received TCC's objections to Questions 18 and 19 on August 4, 2005. Therefore, this motion is timely filed. Despite good faith efforts to resolve the objection through negotiation, OPC and TCC have been unable to resolve this discovery dispute.

OPC duly submitted the following questions to TCC in OPC's Fifteenth Set of RFIs:

18. Provide a calculation or TCC's best estimate of EMC's credited to or paid by TCC to CPL Retail Energy, LP related to service for residential PTB customers on a monthly basis.
19. Provide a calculation or TCC's best estimate of EMC's credited to or paid by TCC to CPL Retail Energy, LP related to service for commercial PTB customers on a monthly basis.

TCC objected to these questions, asserting that the requested information is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. TCC further asserted the objections that TCC and CPL Retail Energy, LP ("CPL

Retail”) previously posed in response to questions propounded by Cities in its Seventeenth RFI to TCC and its First and Third RFIs to CPL Retail.

In SOAH Order No. 5, the Administrative Law Judge (“ALJ”) determined that information on the monthly amount of excess mitigation credits (“EMCs”) received by CPL Retail from TCC, since January 2002 to present, is relevant to the issues in this case and is certainly reasonably calculated to lead to the discovery of admissible evidence.¹ OPC incorporates the reasoning and justification of Order No. 5 into this motion to compel.

Indeed, the ALJ’s ruling is correct. EMCs are excess earnings of the former bundled electric utility during the 1999-2001 period. The excess earnings were to be used for mitigation of stranded costs. In the bundled utility’s UCOS case,² the Commission determined there were no stranded costs based upon an updated ECOM model run and ordered the excess earnings to be refunded to retail customers. However, as recognized in the UCOS case final order, price-to-beat (“PTB”) customers, particularly customers of the affiliated retail electric provider (“AREP”), CPL Retail, would not (and did not) receive the excess earnings refund because refund was made solely as a credit to nonbypassable charges without any corresponding reduction in the PTB. Consequently, the excess earnings, which were supposed to be used for mitigation of stranded costs, were simply transferred (as EMCs) from TCC to CPL Retail, the AREP, and other retail electric providers. PURA § 39.262(a) requires the Commission to prevent both TCC and CPL Retail Energy, LP from over-recovering stranded costs. Therefore, it is relevant to determine the amount of excess earnings or EMCs, which otherwise would have

¹ Docket No. 31056, SOAH Order No. 5 (Aug. 5, 2005).

² *Application of Central Power And Light Company For Approval Of Unbundled Cost Of Service Rate Pursuant To PURA § 39.201 And Public Utility Commission Substantive Rule § 25.344*, Docket No. 22352.

been used for stranded cost mitigation, that were retained by TCC and CPL Retail Energy, LP, collectively, although transferred from TCC to CPL Retail as EMCs. TCC and CPL Retail Energy, LP will over-recover stranded costs to the extent that CPL Retail Energy, LP received EMCs from TCC since January 1, 2002, without reducing stranded costs, if any, by the amount of the transferred EMCs.

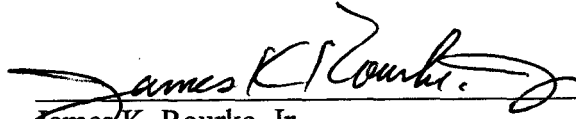
Responding to Questions 18 and 19 is not unduly burdensome for TCC. TCC electronically deducted the EMCs from the nonbypassable charges to CPL Retail in each billing. TCC has the information available in an electronic computer database format. Indeed, in its request for a date certain to terminate the EMCs a few weeks ago in this case, TCC knew precisely that it would exceed the amount of excess earnings if it continued crediting the EMCs by a couple of weeks in August or stopped the EMCs in July, 2005. TCC's objection is not credible and cannot be justified. It is made solely for delay. The "burdensome" objection made by CPL Retail, even if it were valid (which OPC disputes), does not apply to TCC.

Responding to Questions 18 and 19 does not request for any privileged or exempt information from TCC. The information sought in Questions 18 and 19 can be provided under the existing protective order in this case to preserve its confidentiality, if the requested information is actually determined to be confidential.

THEREFORE, the Office of Public Utility Counsel prays that the ALJ and Commission will require TCC to fully respond to Questions 18 and 19: forthwith. OPC further prays that the Administrative Law Judge and Commission will grant the Office of Public Utility Counsel such other and further relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I certify that on August 9, 2005, I served a true copy of the foregoing Office of Public Utility Counsel's Motion To Compel Responses From AEP TCC To OPC's Fifteenth Set Of RFIs, Questions 18 And 19 on all parties of record via United States First-Class Mail, hand-delivery or facsimile.


James K. Rourke, Jr.