



Control Number: 38339



Item Number: 186

Addendum StartPage: 0

P.U.C. DOCKET NO. 38339  
SOAH DOCKET NO. 473-10-5001

APPLICATION OF CENTERPOINT § BEFORE THE  
ENERGY HOUSTON ELECTRIC, LLC § PUBLIC UTILITY COMMISSION  
FOR AUTHORITY TO CHANGE RATES § OF TEXAS

CITY OF HOUSTON AND HOUSTON COALITION OF CITIES' RESPONSE TO  
APPEAL OF CENTERPOINT ENERGY  
HOUSTON ELECTRIC, LLC FROM THE DENIAL OF ITS MOTION TO  
ALIGN AND CONSOLIDATE INTERVENOR CITIES

RECEIVED  
APR 13 PM 2:51  
CITY OF HOUSTON  
ENERGY HOUSTON ELECTRIC, LLC

The City of Houston and Houston Coalition of Cities file this response to CenterPoint Energy Houston Electric LLC's ("CEHE" or "CenterPoint") Appeal from the Denial of Its Motion to Align and Consolidate Intervenor Cities and, in support thereof, shows as follows:

CenterPoint's strategy in this case is clear. CenterPoint's Application contains 45 *different pieces of testimony*—an unprecedented volume of testimony for a CenterPoint rate case. At the same time, CenterPoint began a campaign to limit the ability of municipalities to scrutinize rates and, ironically, claims to be overburdened by discovery and potential intervenor testimony. CenterPoint's various motions in this case (motion asking the Commission to adopt a distribution cost recovery factor, motion to limit discovery to only 50 requests per party, and motion to align parties) make clear its motives—tax the intervenors with an insurmountable volume of testimony and then limit their participation in order to reduce scrutiny of its filing and divert the Commission's attention from the real issue—that CenterPoint is significantly overearning. The Administrative Law Judges ("ALJs") correctly determined that CenterPoint's request to align was premature at this point in the case when the parties are still analyzing the filing and formulating positions. The Commission should affirm the ALJs' order denying alignment at this time.

**A. CenterPoint Ignores Standards for Consolidation Adopted by Commission**

CenterPoint's sole *legal* argument in support of consolidation is its claim that the cities share "common interests" and, therefore, must be consolidated. In so arguing, CenterPoint ignores both the language of the statute, which allows consolidation on *issues of* common interests, as well as the interpreting rule, which allows consolidation only "*if the parties have the same positions on issues of fact or law.*" Clearly, the Commission by rule has interpreted "issues of common interest" to mean that parties "have the same positions on issues of fact or law."<sup>1</sup>

Moreover, the language of the statute contemplates consolidation on certain "issues" not wholesale consolidation of cities for all purposes. CenterPoint presumes that because cities generally seek to ensure that rates are reasonable, they all must, therefore, have the same exact position on facts or law in a proceeding. But, the same would be true for Commission Staff, in its role as a regulator. As regulators, Commission Staff and municipalities seek to determine whether CenterPoint's rates are just and reasonable. Yet, these parties have never been aligned for the purposes of discovery, briefing, testimony and hearings.

Further, CenterPoint glosses over the fact that the cities generally do have some divergence of opinions on issues. For example, as CenterPoint is well aware, in Docket 32093, the city groups were not in agreement on the allocation of funds to low income and energy efficiency programs versus rate decreases. The effect of granting CenterPoint's request would be to force cities to abandon positions that may not be consistent with other city groups. The Commission clearly has never taken the position that it can force cities to change their positions on issues of fact or law in a case.

---

<sup>1</sup> CenterPoint recognizes this and appears to attack the validity of the Rule in footnote 12.

CenterPoint cites the Commission to PURA 33.025(b)(2) to argue that city intervenors may participate only “subject to the right of the commission to...consolidate municipalities on issues of common interest.”<sup>2</sup> First, CenterPoint misquotes the language of Section 33.025(b)(2). This provision clearly states that the Commission can consolidate municipalities on *an issue* of common interest, and does not contemplate wholesale consolidation on all issues. Second, P.U.C. Proc. R. 22.105 contemplates that a party would have formulated its opinion on an issue before determining whether alignment is appropriate. The rule acknowledges this reality by allowing alignment at the hearing on the merits **for the purposes of participating in a hearing or portions of a hearing if the parties have the same positions on issues of fact or law.**”

Discovery is not yet complete, and intervenor testimony has not yet been prepared or filed in this case. Intervenor parties are still in the process of analyzing the filing and formulating opinions. Therefore, it would be inappropriate to assume at this early stage that there will be no divergence of opinion on any issues of fact or law between the city groups. At this juncture, no one can state that the municipalities that have intervened share the same positions on every issue in this case.

#### **B. City Groups Routinely Coordinate and Divide Issues in Rate Cases**

The Commission has a long history of handling cases in which more than one municipal intervenor participates, and past Commission alignment of interests for the purposes of the hearing on the merits has proceeded very efficiently. CenterPoint’s entire motion is premised on the claim that there will be significant duplication of efforts. That is simply not true. As in past cases, the Cities have met to address discovery and testimony in an effort to avoid duplication of efforts and have, in fact, *already conducted discussions to determine if there are areas of commonality on issues.* There may be commonality on some issues; but, there may also be

---

<sup>2</sup> CenterPoint Motion at 1.

differing positions among the cities on other issues. To the extent that the municipalities share common positions and methodologies, the municipalities have coordinated testimony and witnesses so as to avoid cumulative evidence. This is in the best interests of all parties—ratepayers, including cities, do not benefit from unnecessary and needless duplication of effort.

**C. CenterPoint’s Request is Overly Broad**

CenterPoint’s request for alignment goes far beyond simply aligning parties for the purposes of the hearing on the merits. Rather, CenterPoint’s Motion appears to request that the Commission align the city groups for purposes of discovery, briefing and testimony. (*See* Motion to Align and Consolidate Intervenor Cities at 2.) The potential impact of granting the requested relief far exceeds the clear intent and meaning of P.U.C. Subst. R. 22.105, *i.e.* to align parties for the purposes of the hearing on the merits. *See* P.U.C. Subst. R. 22.105 (“**Parties . . . may be aligned for the purposes of participating in a hearing or portions of a hearing if the parties have the same positions on issues of fact or law . . . The presiding officer may limit the number of representatives of aligned parties who conduct cross-examination of any particular witness during the hearing on the merits.**”).

CenterPoint would ask the Commission to deny Cities their due process rights by compelling cities to participate essentially as a single party for the purposes of discovery, motions, hearings, and pleadings, effectively crippling their ability to determine from the outset whether party alignment based on a position on any particular issue is appropriate. CenterPoint seeks relief that would further impinge on the Cities’ right to hire counsel of their own choosing. The Cities, respectfully submit that this was not the Commission’s intent in adopting P.U.C. Proc. R. 22.105, allowing alignment for the purposes of the hearing on the merits.

CenterPoint claims in its appeal that cities are still allowed to hire counsel of their choosing, and that they can “easily allocate individual issues among themselves.” However, this is exactly what the Houston Coalition of Cities has done in every case, and, to the extent that the cities share the same position on issues, they have already coordinated issues in this case. In fact, given the expedited time frame in which large complex rate cases are decided, it would be extremely difficult for one city group to handle all the issues that come up in a rate proceeding. Cities simply do not have the army of lawyers and consultants available that utilities have to process and litigate rate cases. Coordination among city groups on common issues takes place in every case out of necessity.

**D. Alignment Will Not Reduce Costs**

Further, although CenterPoint claims that its interest is in reduction of costs, CenterPoint fails to identify any cost savings that would take place. The number of issues to be addressed would not change if there were to be alignment of the parties, nor would the volume of discovery, the number of witnesses, or the number of lawyers. Simply put, the city groups would still have to address the same issues, hire the same consultants, and send out the same discovery regardless of whether they are aligned.

**E. CenterPoint’s Actions Are Not Demonstrative of a Party Seeking to Reduce Costs**

CenterPoint’s claimed interest in reducing costs is not borne out by the fact that at the July 22, 2010 procedural conference, CenterPoint assembled numerous lawyers and consultants on its behalf for a simple procedural conference, while the City of Houston had only one lawyer present. Clearly, CenterPoint would have the Commission control costs by limiting only municipal representation at hearings while continuing to deploy an army of lawyers and experts on its behalf. CenterPoint’s actions makes clear that its true intent is to limit effective scrutiny of

its filing. Further, CenterPoint's apparent desire to have cities represented as a single entity and perhaps even by a single lawyer is contrary to the way CenterPoint itself is represented at hearings. CenterPoint has numerous lawyers handling this case. To date, counsel for the Houston Coalition of Cities has spoken to at least five different lawyers on various issues. CenterPoint also has 41 witnesses that filed 45 pieces of testimony. A large part of this testimony is unnecessary and cumulative.<sup>3</sup> It is ironic that CenterPoint is claiming to be overburdened; yet it is the intervenors that have to analyze and respond to this unprecedented volume of testimony. To the extent that intervenors have a number of consultants addressing the issues in this case it is of the Company's own making. CenterPoint's choice to file testimony of 41 witnesses in this case has dictated the volume of discovery and responsive testimony

**F. It is the Role of the ALJ to Conduct Hearing and Streamline Procedures**

Finally, it should be noted that the Commission referred this case to the State Office of Administrative Hearing for processing. Therefore, it is the role of the ALJs to process the case, conduct the hearing on the merits, make rulings on various motions, and issue a proposal for decision. Clearly, the ALJ's are not concerned that the cities are duplicating efforts, would overburden the Commission, or would otherwise cause any delay in the proceedings. As it is the ALJ's that have been assigned the task of processing this case by the Commission, the Commission should defer to the ALJ's decisions regarding the coordination and procedural aspects of this proceeding.

In sum, the City of Houston believes that CenterPoint is overearning and that a rate reduction is appropriate. To this end, the City of Houston believes it is in the best interest of its ratepayers to conclude this matter within the 185 day statutory deadline set out in PURA. The

---

<sup>3</sup> For example, the CenterPoint filed testimony of several witnesses addressing a distribution cost recovery factor—an issue that was clearly inappropriate to consider in the context of this rate proceeding. CenterPoint also has cumulative testimony on a number of issues such as rate or return and tax issues.

relief CenterPoint seeks, however, will prevent a thorough review of its rates and does nothing to serve the interests of ratepayers.

Respectfully submitted,

DAVID FELDMAN  
City Attorney

MELBA T. POURTEAU  
Senior Assistant City Attorney  
P.O. Box 1562  
Houston, Texas 77251  
(832) 393-6320  
(832) 393-6259 (Fax)

ALTON J. HALL, JR.  
State Bar No. 08743740  
TAMMY WAVLE-SHEA  
State Bar No. 24008908  
Epstein Becker Green Wickliff & Hall, P.C.  
1000 Louisiana, Suite 5400  
Houston, Texas 77002  
(713) 750-3114  
(713) 750-3101 (Fax)  
email: [ahall@ebglaw.com](mailto:ahall@ebglaw.com)  
[tshea@ebglaw.com](mailto:tshea@ebglaw.com)

By: Tammy Wavle-Shea with permission  
Tammy Wavle-Shea *Mary E. Murphy*

**ATTORNEYS FOR CITY OF HOUSTON**



**CERTIFICATE OF SERVICE**

On this the 13<sup>th</sup> day of August, 2010, a true and correct copy of the City of Houston and Coalition of Cities' Response to Appeal of CenterPoint Energy Houston, LLC from the Denial of Its Motion to Align and Consolidate Intervenor Cities was served upon all parties of record by facsimile, email and/or U.S. mail, postage paid.

Tammy Wavle-Shea with permission  
Tammy Wavle-Shea Mary E Murphy