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SOAH DOCKET NO. 473-10-5001
PUC DOCKET NO. 38339

APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR AUTHORITY TO CHANGE RATES	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC'S RESPONSE TO THE JOINT MOTION OF COMMISSION STAFF, ET AL. TO FIND STATEMENT OF INTENT AND NOTICE DEFICIENT, TO SET REVISED EFFECTIVE DATE FOR RATES, AND REQUEST FOR EXPEDITED RULING

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CenterPoint Energy Houston Electric, LLC ("CenterPoint Houston" or the "Company") files this response to the Joint Motion of Commission Staff, *et al.* (collectively "Movants") to find the Company's Statement of Intent and Notice Deficient, to Set Revised Effective Date for Rates, and Request for Expedited Ruling. CenterPoint Houston respectfully requests that the administrative law judges ("ALJs") deny the motion.

I. INTRODUCTION

In Order No. 5, the ALJs set a procedural schedule that fairly balances the requirement of completing this proceeding within the 185-day statutory time period with the desire to provide all parties adequate time to prepare testimony, present evidence at hearing, and conduct briefing. Unfortunately, Movants remain unhappy with the established procedural schedule and, in lieu of appealing the ALJs' ruling in Order No. 7 that upheld the original procedural schedule in this case, they have decided to employ a different delay tactic. Specifically, Movants seek to re-start the jurisdictional deadline in this proceeding by having the ALJs find that the Company's Statement of Intent and Notice were deficient as a result of a single mathematical error related to the Company's ***current*** rates, not the requested rates that are the subject of this proceeding. The Company submits that this simple error, which has no substantive effect on the Company's requested revenue requirement, direct testimony, or discovery responses, does not render the

Company's filing materially deficient nor does it offer an excuse to arbitrarily extend the statutorily imposed jurisdictional deadline in this case.

To be clear, the error committed by the Company was a simple misstatement of the amount it currently collects in retail rates versus the amount it is requesting in this case.[1] While Movants make much of the fact that correction of the error serves to increase the revenues requested by the Company, the reality is that this misstatement has no effect on the Company's actual, requested revenue requirement; the revenue requirement requested by the Company in its Statement of Intent filing was $1,534 million originally and after the error is corrected, it remains $1,534 million. Rather, the only effect of this simple reporting error is that the Company's Statement of Intent, Notice, and two witnesses' testimony misstate the approximate amount of the proposed rate increase as compared to current rates.[2] The Company's notice has already been corrected. Similarly, all parties to this case have received notice of the mathematical error and the correct amount of current revenues. While Movants may be unhappy with the existing procedural schedule, the fact remains that the Company's errata is no different than other errata filings in other rate proceedings (although errata often do impact the new proposed rates unlike here). In those cases and in this case, the correction does not function to re-set the statutory deadline. Movants request for this extraordinary relief should be denied in favor of allowing this case to continue within the existing procedural schedule.

[1] The error was in the estimate of current revenues which was originally estimated at $1,458 million, resulting in a $76 million increase. The correction estimates current revenues at $1,442 million, which when subtracted from the same $1,534 million results in a $92 million increase.

[2] The witnesses' testimony has already been corrected, and the Company's notice, which had not yet been completed when the error was spotted, has been corrected as well. Had notice been complete, the Company would not have felt compelled to correct it because the notice was already sufficient.

II. ARGUMENT

A. THE MATHEMATICAL ERROR COMPLAINED OF BY MOVANTS IS NOT A MATERIAL DEFICIENCY.

For a mistake in a Statement of Intent to rise to the level of such significance that it must be corrected and the timelines restarted, it must be a material deficiency.[3] A materially deficient Statement of Intent is one in which some element of the statutory requirements are not met or the rate-filing package is incomplete.[4] "[T]he purpose of the material deficiency process . . . is to address the absence of information that materially impedes the other parties' ability to review the filing."[5] Unfortunately for Movants, the errata filed by the Company more than a week ago:

- Does not require supplemental testimony or the presentation of additional evidence by the Company.
- Does not change any methodology upon which the Company's application relies.
- Does not change a single discovery response made by the Company to Intervenors or Staff
- Does not interject any new policy issues into the case.

As Staff stated in prior briefing, the material deficiency requirement is an "admittedly low standard," that only requires a review of whether the utility "had submitted information for each required portion of the [Rate Filing Package] or had requested a waiver."[6] "Based on the timeframe required by §22.75, it seems clear that the determination of whether there are material deficiencies in an application must be based on a cursory review of the filing, not an in-depth

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[3] P.U.C. PROC. R. 22.75(c).

[4] A rate filing submitted by Southwestern Bell was found to be materially defective because it did not contain all of the proposed tariffs and schedules that were statutorily required. OP. TEX. ATT'Y GEN. NO. JM-127 (1984).

[5] *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 37364, Order No. 6 at 6 (Sep. 30, 2009).

[6] *Petition to Inquire into the Reasonableness of the Rates and Services of CapRock Energy Corporation*, Docket No. 28813, Staff's Response to Order No. 26 at 5 (Aug. 31, 2004). This brief is attached to the Company's Response as Attachment 1.

analysis of the data and supporting information."[7] Thus, when reviewing a Rate Filing Package for material deficiencies, parties are ***not*** required to

> determine whether or not the information was complete, correct, and consistent or whether the information was sufficient to meet [the utility's] burden of proof in th[e] proceeding. A determination on those matters generally can only be made after discovery and the results of such review will be addressed in testimony filed by Staff and other parties.[8]

This is consistent with Staff's prior briefing on this issue, wherein Staff argued that the question that must be asked when making a material deficiency determination is simply: Is the information filed by the utility "sufficient to allow Staff and Intervenors to begin their review of the utility's rates?"[9] Unquestionably, the answer to this question in this case is "Yes." The error is not material, the Statement of Intent is not materially deficient, and the motion must be denied.

CenterPoint Houston's Statement of Intent contains a recitation, as required by PURA §36.102(c)(2)(B), of the "effect the proposed change is expected to have on the revenues of the utility." That recitation is found at page 23 of CenterPoint Houston's Statement of Intent, in a paragraph entitled "Effect of Proposed Change on Company's Revenues." Movants' only complaint is that instead of stating that the increase would be "approximately $76 million," it should have said "approximately $92 million." Had the Statement of Intent not contained any recitation of the effect of the proposed change on the utility's revenues, that omission could arguably be deemed a material deficiency. This is not, however, the case. CenterPoint Houston complied with the statutory requirement and included in its Statement of Intent the ***expected*** effect the rate change would have on its revenues. Only later did CenterPoint Houston learn that its estimate was off by 1.5%. This is not a material deficiency. In fact, it is the type of error that

[7] *Id.* at 2.
[8] *Id.* at 3.
[9] Docket No. 28813, Staff's Response to Order No. 26 at 5.

is routinely handled through the filing of errata, with no change in the procedural schedule or filing package.

To date, Intervenors and Staff have served 615 requests for information (around 1,000 requests when subparts are included) on the Company. No party has alleged that its review of the filing package has been impeded by the Company's misstatement of its current revenues. No party has alleged that the Company's application is incomplete, missing a schedule, or fails to cover a topic required under the Commission's rules or by statute. No party has even asked on request for information about the error since it was noticed on August 4, and the errata was filed on August 9. The Movants' motion also fails to state a single aspect of the Company's error that would impede their ability to prepare direct testimony or evidence.

The Movants do, however, generally assert that "there is the possibility that one or more persons may have based their decision on whether or not to intervene in this proceeding on inaccurate information." This is speculative at best, particularly since the intervention deadline has not yet passed.[10] More importantly, this purported "harm" is irrelevant under the correct legal test for material deficiency: The omission of information in the rate filing package, not a simple mistake in the rate filing package. In sum, the Movants make no substantive allegation of harm that rises to the level of a material deficiency. This is because this mistake is not material. This mistake was simply that, a mistake.

Movants' reliance on the order in Docket No. 9563 is equally misplaced. The deficiency issue in Docket No. 9563 was that the utility suggested in its notice that there would be a decrease in rates, when it was actually seeking an increase.[11] Clearly, that is not the case in here. In fact, as the Examiner in Docket No. 9563 pointed out "it is important to distinguish between

[10] Indeed, it is difficult to imagine an intervenor that would believe that a $76 million dollar rate increase is not worth their time, but a $92 million dollar increase requires their intervention.

[11] *Petition of Dickens Electric Cooperative, Inc. for New Load Retention Rate and to Revise the Power Cost Recovery Factor*, Docket No. 9563, Examiner's Order No. 5 (Oct. 18, 1990).

amending good and sufficient notice and correcting notice that is deficient *ab initio*."[12] All parties and customers have been noticed that the Company is seeking a rate increase. Moreover, CenterPoint Houston's updated notice was in publication for over one week as of the date of Movants' motion and the Company has already begun the process of providing four weeks of updated notice to correct its error. CenterPoint Houston's actions do not serve as evidence that its notice was defective, but rather simply demonstrates that CenterPoint Houston is committed to providing the most accurate information available.

B. THE MOVANTS' REQUEST IS AN IMPROPER ATTEMPT TO AVOID THE REQUIREMENTS OF PROCEDURAL RULE 22.75(C) RELATING TO NOTICE OF MATERIAL DEFICIENCIES.

The time for notice of material deficiencies in rate change applications is expressly and unambiguously stated in Commission Procedural Rule 22.75. Motions to find a rate change application materially deficient must be filed no later than 21 days after the application is filed.[13] The Company's application in this proceeding was filed on June 30, 2010. And, as of the date of this filing, this case has been pending now for over 40 days. Accordingly, Movants' motion in this case violates the Commission's material deficiency rule.

Moreover, the policy considerations for adhering to the 21-day time limit in Rule 22.75 are also well-recognized and have been clearly expressed on at least one previous occasion by Staff. In *Petition to Inquire into the Reasonableness of the Rates and Services of CapRock Energy Corporation*, Docket No. 28813, Staff briefed the specific issue of whether to find an application materially deficient after the deadline under Rule 22.75 had passed.[14] Staff's briefing in Docket No. 28813 notes that the 21-day time-limit contained in Procedural Rule 22.75 balances two concerns. First, "by making the determination of material deficiency early in a utility-initiated rate proceeding, the rule enables the utility to cure the deficiencies, if any, and

[12] *Id.*
[13] *Id.*
[14] *See* Docket No. 28813, Staff's Response to Order No. 26.

still proceed to a final resolution without too much delay in the schedule."[15] Staff reasoned in Docket No. 28813 that this first policy consideration helps to lessen regulatory lag—an especially important consideration if the utility is in need of a rate increase such as CenterPoint Houston in this case.[16] In this case, Movants' motion seeks a complete restart to the 185-day timeline. In fact, CenterPoint Houston estimates that if Movants' request is granted this proceeding case will be delayed 60 to 90 days past the 185-day statutory deadline, if not more. Simply put, if Movants motion is granted the first policy objective of Procedural Rule 22.75 fails.

Secondly, as Staff noted in Docket No. 28813, "the rule helps to ensure that at least the information required by the RFP (rate filing package) is provided at the earliest possible time so that Staff and other parties can begin their analysis with the goal of completing the analysis within the generally applicable 185-day review period mandated by statute."[17] It is uncontroverted that this policy goal has been met in this proceeding. Movants do not suggest otherwise. Staff came to the final conclusion in Docket No 28813 that "allowing allegations of material deficiency to be raised at a late state of the proceeding only serves to delay the hearing on the merits."[18] The same is true in this case.

C. THE COMMISSION, AND THEREFORE THE ALJS, DO NOT HAVE STATUTORY AUTHORITY TO GRANT THE EXTRAORDINARY RELIEF THAT MOVANTS REQUEST.

The risk of granting the Movants' request cannot be overstated. It is CenterPoint Houston's position that its Statement of Intent and Notice are sufficient. If CenterPoint Houston is correct in its position and yet the relief sought by the Movants is granted, the Commission will be prevented from rendering a final determination within the statutorily-imposed 185-day

[15] *Id.* at 4.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 5.

deadline. This would result in CenterPoint Houston's proposed rates becoming effective by operation of law on January 3, 2011.

Movants' requested relief is further complicated by the jurisdictional aspects of this rate case. Under §32.001 of PURA, the Commission has jurisdiction over a rate case in two ways: First, the Commission has appellate jurisdiction over the cities' rate decisions regarding electricity rates within their municipal boundaries, and second, the Commission has original jurisdiction over electric rates outside any municipal boundary (also called the environs) or in any municipality that has ceded its original jurisdiction to the Commission.[19] The present rate case was filed with the Commission and the original jurisdiction cities at the same time, on June 30, 2010. Several cities have already denied CenterPoint Houston's rate increase, and the Company has appealed those denials to the Commission as a part of this docket.

In light of the pending appeals in this case, any determination that the Statement of Intent is materially deficient necessarily means that the Company's application before the approximately 60 original jurisdiction cities was similarly deficient for purposes of establishing new rates within each municipality. This could, in turn, require dismissal of the appeal in order to allow the filing of a new, materially sufficient Statement of Intent with the cities having original jurisdiction over the Company's rates. The Commission, however, cannot require the Company to re-file with the cities as Movants demand, because the cities have exclusive jurisdiction over rates within their municipality, not the Commission. To do so, would be akin to the Commission issuing a show cause order requiring CenterPoint Houston to change rates within a municipality—an act that clearly violates the bifurcated jurisdiction established in PURA.

[19] *See* TEX. UTIL. CODE §32.001.

III. CONCLUSION

The Company has tried to work with parties in this case to avoid the filing of this motion. The Company filed a letter with the Commission advising the parties of its error the day after it was detected.[20] Interestingly, the Company's letter was provided to parties and filed the day after Movants requested a second prehearing conference. However, the Movants made no attempt to amend their request for a second prehearing conference or raise the issue prior to the ALJs' issuance of Order No. 7. Instead, Movants have chosen to raise the issue of material deficiency only after the ALJs denied their second request to change the procedural schedule in this case instead of appealing that order.[21] The purpose of Movants' motion is transparent: this is another attack on the procedural schedule in this case in an attempt to buy more time.

For the foregoing reasons, CenterPoint Houston respectfully requests that the ALJs deny Movants' motion and grant CenterPoint Houston such other relief to which it may show itself entitled.

[20] *See* Docket No. 38339, Letter Advising Parties of Error (Aug. 4, 2010).
[21] *See* Order No. 7 (Aug. 6, 2010).

Respectfully submitted,

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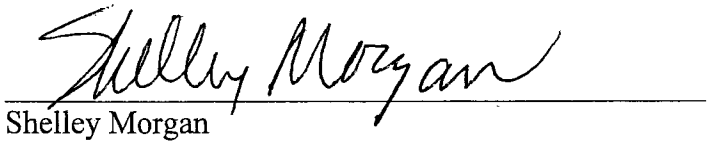
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record on this 16th day of August 2010 by United States first-class mail, hand delivery, or facsimile.



Shelley Morgan

P.U.C. DOCKET NO. 28813
SOAH DOCKET NO. 473-04-3554

PETITION TO INQUIRE INTO THE REASONABLENESS OF THE RATES AND SERVICES OF CAP ROCK ENERGY CORPORATION	§ § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

STAFF'S RESPONSE TO ORDER NO. 26

COMES NOW, the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this response to Order No. 26 and would show the following:

I. Introduction

On May 19, 2004, and again on August 13, 2004, Pioneer Natural Resources, USA, Inc. (Pioneer) filed a motion requesting that the administrative Law Judge (ALJ) issue an order finding that the rate filing package submitted by Cap Rock Energy Corporation, Inc. (Cap Rock) was materially deficient and requiring that Cap Rock cure such deficiencies before this matter proceeds to hearing. Pioneer has also filed objections to Cap Rock's request for waivers of certain requirements of the rate filing package (RFP). Other Intervenors have indicated their support for the motions filed by Pioneer. In Order No. 26, the ALJ noted that Staff has not previously taken a position on this matter and ordered that the Staff file a pleading indicating "whether it believes that Cap Rock's rate filing package is materially deficient and also addressing whether good cause exceptions should be granted, if applicable." Staff's response is presented below.

II. Material deficiency

This proceeding was initiated by a petition, filed by Staff, asserting that Cap Rock's existing rates and services were unreasonable and discriminatory, accompanied by a request that the Commission establish reasonable rates for Cap Rock's services pursuant to its authority under PURA[1] §36.151. As specified in PURA §36.153, the Commission issued Order No. 1, requiring that Cap Rock file its RFP by February 26, 2004. After preparing its RFP, Cap Rock decided that its existing rates were too low and that its cost of service could justify a rate increase. Accordingly, when it filed its RFP on February 26, Cap Rock also submitted a statement of intent to change rates as allowed by PURA §36.102. As a result, Cap Rock's RFP was in the unusual procedural posture of being both the basis for a statement of intent to raise rates under PURA Chapter 36, Subchapter C and a response to a petition to reduce rates under PURA Chapter 36, Subchapter D.

P.U.C. PROC. R. §22.75(c) requires that a motion to declare a rate change application materially deficient must be filed within 21 days after the application is filed, before the end of the 45-day intervention period. Staff followed this procedure in reviewing the RFP submitted by Cap Rock. Based upon the time frame required by §22.75, it seems clear that the determination of whether there are material deficiencies in an application must be based upon a cursory review of the filing, not an in-depth analysis of the data and supporting information. Indeed, there is no way Staff, or any other party, could have made an in-depth analysis to determine whether each part of the application

[1] Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§11.001 – 64.158 (Vernon 1998 and Supp. 2004) (PURA).

was complete, correct, and consistent, since it could not have completed even one round of RFI discovery before a motion would be due. Basically, in its review for material deficiencies, Staff reviewed the application (along with the requests for waiver) and determined that Cap Rock had provided sufficient information to allow Staff to begin to review the RFP. That review merely confirmed that Cap Rock had submitted information for each required portion of the RFP or had requested a waiver of the requirement. In other words, Cap Rock has provided information for each part of the application.

In its review, Staff did not attempt to determine whether or not the information was complete, correct, and consistent or whether the information was sufficient to meet Cap Rock's burden of proof in this proceeding. A determination on those matters generally can only be made after discovery and the results of such review will be addressed in testimony filed by Staff and other parties. For that reason, Staff's failure to file a motion to find the application materially deficient should not be interpreted as Staff's agreement that Cap Rock's application should be granted or that Cap Rock has met its burden of proof on any of the issues in this case.

Because this proceeding also involves an inquiry under PURA Chapter 36, Subchapter D, the 21-day time-limit specified in P.U.C. PROC. R. §22.75(c) is not expressly applicable to that portion of the case. However, since there is only one RFP intended to cover both aspects of this case, Staff believes that it is appropriate to review material deficiency in the same cursory manner as contemplated in §22.75. The ALJ has allowed an extended time period before the motions to find the application materially deficient were due. As a result of this delay, the parties were able to conduct extensive

discovery and have raised some of their objections to the application as a request to find the application materially deficient. Rather than treating the objections as material deficiencies in the application, the objections should be viewed as assertions that Cap Rock's application is in error or that Cap Rock has failed to carry its burden of proof as to some or all issues. These objections can be raised and addressed through motions for summary decision or in direct testimony or in cross examination by the Intervenors.

Policy considerations also support this view of determining material deficiency. The 21-day time-limit contained in §22.75 balances two concerns. First, by making the determination of material deficiency early in a utility-initiated rate proceeding, the rule enables the utility to cure the deficiencies, if any, and still proceed to a final resolution without too much delay in the schedule. This helps lessen any regulatory lag, which could be important if the utility is in need of a rate increase in order to protect its financial integrity. Because it is seeking a rate increase, the utility certainly has an incentive to submit the information with its application or to cure any deficiencies as quickly as possible. Secondly, the rule helps to ensure that at least the information required by the RFP is provided at the earliest possible time so that Staff and other parties can begin their analysis with the goal of completing the analysis within the generally applicable 185-day review period mandated by statute. The Commission and the other parties would simply be unable to meet this deadline if they had to spend much of their discovery period trying to reconstruct information that should have been part of the RFP. Thus the 21-day time limit for identifying material deficiencies, as contained in §22.75, is appropriate for cases involving a rate change requested by the utility.

In a case involving an inquiry into a utility's rates under PURA Chapter 36, Subchapter D, there is still a generally applicable 185-day time period for a final Commission decision in the case.[2] So the need for a complete RFP early in the proceeding still exists. However, unlike a Subchapter C case, in which delay potentially harms a utility, delay in a Subchapter D case potentially helps the utility by allowing it to continue to charge unreasonable rates for a longer period of time. In such a situation, the utility has much less incentive to ensure a complete RFP or to cure deficiencies quickly. Allowing allegations of material deficiency to be raised at a late stage of the proceeding only serves to delay the hearing on the merits. For this reason, although a more detailed review for material deficiencies is possible in a Subchapter D case, such review is counter to the ultimate goal of the case – timely implementation of reasonable rates for ratepayers. Therefore, Staff believes that the review in this case should be the same as that conducted in a Subchapter C case –is the information sufficient to allow Staff and Intervenors to begin their review of the utility's rates? Staff believes that Cap Rock's application has met this admittedly low standard.

As noted previously, by agreeing that Cap Rock's application is not materially deficient, Staff is not agreeing that Cap Rock's filing is sufficient to meet its overall burden of proof to support its current rates, much less its burden to support the rate increase it has requested in this case.

[2] PURA §36.156.

III. Waivers

Staff has no objections to the waivers requested by Cap Rock. Because of Cap Rock's unique history, it has not been continuously subject to Commission jurisdiction as have the other investor owned utilities (IOUs) in this state. The record keeping requirements applicable to IOUs became applicable to Cap Rock on September 1, 2003. Prior to that time, Cap Rock was free to adopt other methods and forms for recording and reporting its revenues and expenses. It is understandable that the records it kept during the test year may not conform to the requirements of the Commission's rules and may prevent it from providing the information in the form required by the RFP. Even if Cap Rock immediately conformed to the Commission's rules on September 1, 2003, only one month of the test year would have been affected. For the remainder of the test year, Cap Rock would have needed to convert its existing records into the form required by the RFP. Cap Rock has asserted that it was not able to do this in all instances and so has requested various waivers.

Cap Rock's request for waivers basically presents the ALJ and the Commission with a choice of either moving forward at this time or delaying the proceeding for a lengthy period. If the Commission insists upon a test year that is based entirely upon information that conforms to the record keeping requirements of the Commission's rules, such a test year will not exist until the calendar quarter ending September 30, 2004. Following the conclusion of the test year, Cap Rock would need a reasonable period of time to prepare the RFP based upon that information. A time period of 120 days, as previously used in this proceeding, would probably be appropriate, meaning that a new RFP would not be filed until approximately one-year after the current RFP was filed, or

approximately February, 2005. Starting the procedural schedule at that time would probably result in a hearing on the merits in June 2005 and a final order would be delayed until August 2005. Staff believes that such delay is not in the public interest. Instead, by granting Cap Rock's waivers and reviewing Cap Rock's proposed substitute information, this case could proceed to hearing on the current schedule.

Granting of Cap Rock's waivers does not constitute a finding that Cap Rock has met its burden of proof on those issues. Because Cap Rock is the party with the burden of proof in this proceeding, it bears the risk that its proposed substitute information is sufficient to meet that burden. If the ALJ determines that the proposed information is not sufficient, then the questioned costs can be excluded from the cost of service and Cap Rock's rates can be reduced accordingly. Because the risk is borne solely by Cap Rock, Staff has no objections to the waivers in this particular case.[3]

[3] Staff emphasizes that its agreement is limited to the facts of this case. Some of the waivers requested by Cap Rock (*e.g.*, the waiver of Schedule S) would be strenuously opposed by Staff in cases involving other IOUs that had not been subject to the unique set of facts applicable to Cap Rock. Accordingly, this pleading should not be cited in other cases as expressing Staff's view of the appropriateness of similar waivers in the future.

P.U.C. DOCKET NO. 28813 **Staff's Response to Order No. 26**
SOAH DOCKET NO. 473-04-3554

WHEREFORE, PREMISES CONSIDERED, Staff respectfully requests that the ALJ consider these comments in ruling on the sufficiency of the application.

Respectfully Submitted,

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P.U.C. DOCKET NO. 28813
SOAH DOCKET NO. 473-04-3554
CERTIFICATE OF SERVICE

I, Patrick J. Sullivan, Attorney, certify that a copy of this document was served on all parties of record in this proceeding on August 31, 2004, via facsimile and/or ordinary U.S. Mail in accordance with Public Utility Commission of Texas Procedural Rule 22.74.

Patrick J. Sullivan
Attorney