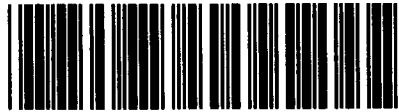




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APPLICATION OF CENTERPOINT	§	BEFORE THE
ENERGY HOUSTON ELECTRIC,	§	PUBLIC UTILITY COMMISSION
LLC FOR AUTHORITY TO CHANGE	§	OF TEXAS
RATES	§	

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC's REPLY TO INTERVENORS' RESPONSES TO THE APPEAL OF SOAH ORDER NO. 6

CenterPoint Energy Houston Electric, LLC (“CenterPoint Houston” or the “Company”) submits this reply to the intervenors’ responses to CenterPoint Houston’s appeal from SOAH Order No. 6, which denied the Company’s motion to align and consolidate intervenor cities. In its appeal, CenterPoint Houston has explained why the Commission should reverse SOAH Order No. 6 and order that the intervenor cities in this rate case be aligned and consolidated pursuant to PURA § 33.025(b)(2) and Commission Procedural Rules 22.105 and 22.102 for purposes of any remaining discovery, testimony, hearing, and briefing. Below, CenterPoint Houston responds briefly to the latest arguments made by the cities.

I. THE COMMISSION’S AUTHORITY TO ALIGN AT THIS STAGE IS CLEAR

The same statutory provision (PURA § 33.025(b)) that grants municipalities the authority to intervene in a utility’s rate case expressly conditions that right to participate on the Commission’s authority to consolidate multiple city groups with common interest. The three city groups in their various responses raise numerous red herrings (*i.e.*, CenterPoint Houston filed too much testimony, CenterPoint Houston sought to control the amount of discovery) but fail to address this fundamental issue. These groups clearly share common interests. They each share the same statutory role that is spelled out in PURA. They each have the same interest with respect to protecting their budget from increases to street lighting rates and decreases to franchise

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fee revenue. They each have a political interest in lowering rates for the residential class. And each of their expenses is ultimately borne by the ratepayers.

It is this last trait that makes municipal groups different than every other intervenor in this case that must pay its own way, and it is this last trait that triggers the statutory authority to consolidate the cities so as to avoid causing ratepayers to absorb unnecessary and duplicative expenses. Significantly, the cities attempt to interpret away the statutory requirement that cities with common interests be aligned by pointing to the Commission's rule on alignment which speaks to "positions on issues of fact or law," rather than a common interest. This argument lacks merit because the rule speaks to all "parties," while the statute speaks specifically to municipalities who can charge their rate case expenses back to ratepayers. The fact that the Commission reserves the right to align any party that shares the "same position" does not affect the Commission's authority and obligation to align cities with "common interests" in order to prevent ratepayers from having to pay for duplicative rate case expense. The logical extension of the cities' argument is that each of the ninety-five cities in CenterPoint Houston's service area has an absolute right to hire independent counsel and has an absolute right to have the ratepayers reimburse expenses incurred by each one. This is not what the statute says, and this is not what the Commission should allow.

II. ALIGNMENT AT THIS STAGE OF THE PROCEEDING IS NOT PREMATURE

The Commission's procedural rules make clear that the cities' participation in a rate case is subject to alignment at *any* stage of the proceeding.¹ Commission rules further state that "the presiding officer shall order alignment of the parties at the earliest reasonable opportunity to avoid unnecessary duplication of effort."² Although the cities represent in their responses that they are coordinating with each other to self-determine which issues each city group will address

¹ P.U.C. PROC. R. 22.102(b).

² *Id.* at 22.105.

to avoid duplication,³ the fact remains that one or more city groups are propounding discovery on the same issues, including capital structure (GCCC 1st set; COH 3rd set), return on equity (GCCC 1st set; COH 3rd set), income taxes (GCCC 4th set; COH 5th set), accumulated deferred income tax (GCCC 6th set; COH 5th set) and energy efficiency (GCCC 2nd set; COH 17th set). Under the current procedural schedule, aligning the cities at this stage may have minimal effect on controlling discovery on the direct case, but it will prevent further duplication on rebuttal discovery. Alignment at this stage should also prevent further duplication for purposes of witness testimony, hearing and briefing. There is simply no reason for cities with common interests to hire, and ratepayers to pay for, separate consultants to address issues of common interest to cities, such as capital structure, rate of return, franchise fees, and taxes.

Although the City of Houston remarkably asserts that aligning the cities would not result in any reduction in witnesses, issues, or lawyers,⁴ CenterPoint Houston disagrees. Alignment at this stage at least *should* prevent further duplication of cities' witness testimony, hearing preparation, and briefing. Moreover, as CenterPoint Houston noted in its appeal, consolidating the cities also reduces the expenses incurred by CenterPoint Houston in responding to multiple city groups. To the extent the various city groups continue to duplicate efforts even after alignment, the Commission may want to take that into consideration in an evaluation of rate case expenses.

³ See COH Response to Appeal of CenterPoint Energy Houston Electric, LLC from the Denial of its Motion to Align and Consolidate Intervenor Cities at 3-4; TCUC's Response to Appeal of CenterPoint Energy Houston, LLC from the Denial of Its Motion to Align and Consolidate Intervenor Cities at 3-4; GCCC Response to CenterPoint Energy Electric, LLC's Appeal of the Denial of its Motion to Align and Consolidate Intervenor Cities at 10.

⁴ COH Response to Appeal of CenterPoint Energy Houston Electric, LLC from the Denial of its Motion to Align and Consolidate Intervenor Cities at 5.

III. THE CITIES' ARGUMENTS RING HOLLOW

The cities raise a series of complaints that, not only fail to address the fundamental issue with regard to alignment, but that frankly make no sense.⁵ For instance, the City of Houston complains that the Company filed too much testimony and alleges that this is some tactic by the Company to overwhelm the intervenors.⁶ This is nonsense. The wealth of information provided with the rate filing package is intended to demonstrate in detailed fashion why the Company is entitled to the revenue requirement it has requested. As the party with the burden of proof, it is incumbent on the utility to carry its burden with its direct case. The Company should be applauded, not derided, for documenting its request with extensive proof.

The cities continue their effort to obfuscate their shared common interest by arguing that the Company should not have sought to impose reasonable limits on discovery.⁷ Again, this does not really address the fundamental issue presented to the Commission that the cities share common interests. Virtually every adjudicative proceeding in this state, from the very large to the very small, must abide by some sort of discovery control plan. It is required in the Rules of Civil Procedure. It is also required by the rules of SOAH. CenterPoint Houston merely sought

⁵ The City of Houston continues to complain that the Company brought an "army" of lawyers to the prehearing conference convened to consider the several then-outstanding motions and establish a procedural schedule. *See* COH Response to Appeal of CenterPoint Energy Houston Electric, LLC from the Denial of its Motion to Align and Consolidate Intervenor Cities at 5-6. In point of fact, five representatives of the Company attended, three of which were Company employees (one attorney and two non-attorneys) who do not add to the Company's rate case expenses. The two remaining were outside counsel (only one of which billed time for the prehearing conference). Both the Gulf Coast Coalition of Cities and the Texas Coast Utilities Coalition had two outside counsel in attendance. Accordingly, to the extent the City of Houston's complaint has any merit, it applies equally to the other two city groups.

⁶ *See* COH Response to Appeal of CenterPoint Energy Houston Electric, LLC from the Denial of its Motion to Align and Consolidate Intervenor Cities at 1, 6. CenterPoint Houston notes that approximately 25% of its witnesses are devoted to AMS issues, which were not a part of previous cases. Thus, Houston's comparison of the number of witnesses between this case and prior cases is flawed.

⁷ *See* COH Response to Appeal of CenterPoint Energy Houston Electric, LLC from the Denial of its Motion to Align and Consolidate Intervenor Cities at 1; GCCC Response to CenterPoint Energy Electric, LLC's Appeal of the Denial of its Motion to Align and Consolidate Intervenor Cities at 3.

to impose some measure of control on the discovery process, and in fact proposed establishing limits that actually doubled those established in SOAH's rules.⁸

Finally, the Cities throughout their comments contend that multiple municipal groups are necessary to adequately examine CenterPoint Houston's rate request.⁹ The reality is that 14 parties, in addition to Commission Staff, have been granted or sought intervention. These parties represent a variety of interests, from industrial groups to REPs to consumer groups. These parties are entirely capable of propounding discovery, offering witness testimony, participating in a hearing, and briefing their recommendations. Further, because these parties represent diverse interests rather than common interests, they aid the ALJ and Commission in rendering a decision in ways that duplicative representation cannot. It is not necessary that ratepayers fund multiple municipal groups in order to ensure that CenterPoint's rates are just and reasonable.¹⁰

IV. CONCLUSION AND PRAYER

For these reasons, CenterPoint Houston respectfully requests that the intervenor cities be aligned and consolidated pursuant to PURA § 33.025(b)(2) and Commission Procedural Rules 22.105 and 22.102 for purposes of any remaining discovery, testimony, hearing, and briefing.

⁸ The cities are incorrect in their characterization that CenterPoint Houston withdrew its motion. In fact, the transcript clearly indicates that CenterPoint Houston expressly stated that it was not withdrawing its motion. *See* Tr. at 16 (July 22, 2010). Instead of pursuing that motion, the Company took the parties at their word at the prehearing conference that they would impose self-discipline in the discovery process. Since that date, the City of Houston has propounded 23 sets of RFIs, GCCC 9 sets of RFIs, and TCUC 3 sets of RFIs, for a total of more than 1400 RFIs, inclusive of sub-parts.

⁹ Curiously, the State also supports the idea that multiple city groups billing ratepayers for duplicative representation is necessary to the ratemaking process. *See* State of Texas Response to Appeal of CenterPoint Energy Houston Electric, LLC from the Denial of its Motion to Align and Consolidate Intervenor Cities at 1.

¹⁰ In fact, it is not unusual for the Commission to approve rates where a single city group participates. For instance, in each of PUC Docket No. 33309, *Application of AEP Texas Central Company for Authority to Change Rates*, and PUC Docket No. 33310; *Application of AEP Texas North Company for Authority to Change Rates*, the cities were represented by a single group of attorneys and consultants.

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 in this proceeding, by facsimile, hand delivery, e-mail, or United States first class mail on this 20th day of August, 2010.

Linda A. Johnston