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Addendum StartPage: 0

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

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PUBLIC UTILITY COMMISSION

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC'S RESPONSE TO TEXAS  
INDUSTRIAL ENERGY CONSUMERS' AND GULF COAST COALITION OF CITIES  
AND CITY OF HOUSTON'S MOTIONS TO STRIKE**

CenterPoint Energy Houston Electric, LLC ("CenterPoint Houston" or the "Company") submits the following response to the Texas Industrial Energy Consumer's ("TIEC") and Gulf Coast Coalition of Cities and City of Houston's (the "Cities") (collectively "Movants") Motions to Strike portions of the Company's direct testimony. The first Motion to Strike was filed by the Cities and received by the Company on August 20, 2010. Therefore, pursuant to Order No. 1, this response is timely filed.

**I. INTRODUCTION**

As the Cities' Motion to Strike notes, the Company has worked with parties in this case to identify portions of its testimony and supporting documents that would be affected by the Commission's Preliminary Order.<sup>1</sup> To this end, CenterPoint Houston identified those portions of its rate-filing package testimony that are clearly impacted by the Commission's Preliminary Order.<sup>2</sup> The testimony identified by CenterPoint Houston addressed issues of whether the Company: (1) is entitled to its proposed distribution cost recovery factor ("DCRF") mechanism; (2) may include \$10 million spent pursuant to the settlement in Docket No. 32093 in its calculation of its performance bonus; or (3) is entitled to its proposed lost revenue adjustment mechanism ("LRAM"). In working with the parties and identifying this testimony, the Company

<sup>1</sup> Movants' Motion to Strike at 2 (Aug. 20, 2010).  
<sup>2</sup> While the Company disagrees with these Preliminary Order findings, it understands that it will be allowed to make an offer of proof on these issues in order to preserve its rights on appeal.

273  
1

was also mindful of the ruling of the administrative law judge (“ALJ”) under similar circumstances in Docket No. 38213, *Application of CenterPoint Energy Houston Electric, LLC for Approval of an Adjustment to its Energy Efficiency Cost Recovery Factor*.

Unfortunately, Movants’ Motions to Strike paints with too broad a brush and goes beyond the directive in the Commission’s Preliminary Order and the ALJ’s ruling in Docket No. 38213. Specifically, in addition to requesting that the ALJs strike testimony and exhibits supporting the Company’s proposed DCRF, LRAM, and bonus calculation, Movants seek to strike policy testimony addressing: (1) the impact of regulatory lag on the Company’s ability to achieve its authorized rate of return; (2) alternative mechanisms that other jurisdictions have considered to address the impact of regulatory lag and revenue erosion; and (3) how investors view utilities that are burdened by traditional rate regulation. Put differently, Movants ask the ALJs to strike testimony that is relevant to other contested issues, such as the cost of equity that was offered by the Company in the exact event that the Commission decided not to address DCRF and LRAM issues in this case.

CenterPoint Houston does not dispute that the Commission’s Preliminary Order in this case limits the scope of this proceeding. It orders the ALJs not to address: (1) “[W]hether to permit a lost revenue adjustment mechanism through an EECRF;” (2) “[W]hether CenterPoint may include money spent pursuant to the settlement in Docket No. 32093 in its calculation of its performance bonus;” and (3) “Whether CenterPoint should be authorized to implement a DCRF rider.” The Preliminary Order does not, however, instruct the ALJs to strike each portion of the Company’s testimony that includes the acronyms “DCRF” and “LRAM”. Nor does it suggest that the ALJs should ignore overarching policy testimony that remains relevant to issues that will be addressed in this case. The point of the “Issues Not to be Addressed” section of the Commission’s Preliminary Order is to keep parties from litigating *whether* DCRF or LRAM

mechanisms should be adopted and *whether* the Company may include settlement dollars in its bonus calculation. It is not to interfere with the Company's right to offer testimony relevant to other issues that will be litigated in this case.

That it was not the intent of the Commission to exclude, through issuance of the Preliminary Order, all testimony relating to alternative rate mechanisms and regulatory lag from this proceeding is evidenced by the recent comments at the June 11, 2010 Open Meeting. Specifically, when deciding not to address LRAM directly in Docket No. 38213, Commissioner Anderson noted:

...one issue that I think the Legislature will need to face at some point is that if you go down the road of ever more stringent and expansive energy efficiency programs...without the ability of the distribution companies to recover that lost revenue...the effect will be that they will have to come in much more frequently for rate cases and there are costs that are involved there...there are the costs of the cases themselves...*you will also have the effect on costs, which ultimately the rate payers will bear, of what will likely be downgrades in the credit rating so the interest rates go up... and that you will also I think get, as a consequence or in order to mitigate that effect, there will be changes in the capital structure...*which again has a dramatic impact on rates.<sup>3</sup>

Thus, while the Commissioners decided not to address the LRAM issue in Docket No. 38213, they recognized that other, frequently litigated, rate case issues might be impacted by their inability to adopt an LRAM. These other issues are at the very heart of much of the testimony Movants now seek to exclude.

CenterPoint Houston has identified portions of its testimony in which Movants' Motions to Strike go beyond the Commission's Preliminary Order. These portions are:

Prochazka: Page 4, line 1 – page 7, line 7 (ending with “today”);  
Page 7, line 12 – line 14 (ending with “pace.”);  
Page 8, line 7 (starting with “Moreover) – page 9, line 2;  
Page 10, line 4 – line 10; and  
Page 10, line 12 (starting with “Customers”) – line 18 (ending with “costs.”).

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<sup>3</sup> See June 11, 2010 Open Meeting Discussion at 1:05:49 (Commissioner Anderson's comments available at <http://www.puc.state.tx.us/openmeet/Broadcasts.aspx>) (emphasis added).

Reed: Page 9, line 10 – page 14, line 2; and  
Page 16, line 6 – page 21, line 10.

Hevert: Page 53, line 15 – page 55, line 14;  
Page 55, line 26 – page 56, line 1 (ending with “structures”); and  
Page 57, line 11 – page 59, line 2.

Kilbride: Page 26, line 17 – page 27, line 13.

Hedges: All portions TIEC moves to strike.

While CenterPoint Houston objects to the exclusion of any of its pre-filed testimony or exhibits, at a minimum, the above referenced portions of Movants’ Motions to Strike should be denied.

## **II. ARGUMENT**

### **The Movants’ Motions to Strike Erroneously Seek to Exclude Testimony Relevant to the Company’s Advanced Meter Reconciliation, Proposed Return on Equity, Capital Structure, Rate Case Expenses, and Storm Hardening Rider.**

Evidence is relevant if there is some logical connection either directly or by inference between the evidence and a fact to be proved.<sup>4</sup> This is the especially the case with the testimony identified by the Company above. Evidence of the overreaching nature of Movants’ Motions are clearly illustrated by their request to strike certain portions from the testimony of the Company’s central policy witness, Scott Prochazka. Specifically, Movants seek to strike portions of Mr. Prochazka’s testimony at page 4 that simply describes the electricity market in which CenterPoint Houston operates:

Competition among retail electric providers is not only successful, but is more robust than ever. Utilities and the Commission are showing unprecedented innovation, for instance, by implementing advanced metering systems, which provide retail electric customers with feedback on their electric consumption and allow for remote operations related to connections and move-outs, quicker retail electric customer switches to another retail electric provider (“REP”) of its choice, and the remote reading of meters. CenterPoint Houston itself has deployed more than 300,000 advanced meters, and will ultimately have installed over 2 million advanced meters when the deployment is complete...As I explain later in my

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<sup>4</sup> *PPC Transp. v. Metcalf*, 254 S.W.3d 636, 642 (Tex. App.—Tyler 2008, no pet.) (referencing the definition of “relevant evidence” in Texas Rule of Evidence 401).

testimony, the Company is developing an Intelligent Grid program that will complement its AMS Deployment. The Company has actively pursued and received federal funds to supplement both of these programs.<sup>5</sup>

This piece of testimony, which Movants would have stricken from the record, clearly addresses issues in the case that are not affected by the Commission's Preliminary Order. This case involves an advance meter systems ("AMS") reconciliation component—no portion of which the Commission has ordered not be addressed. Further, the market in which the Company operates is relevant to multiple issues in this case, including but not limited to return on equity and capital structure.

Likewise, Movants seek to exclude testimony describing customer bill impact, the typical length of rate cases, rate case expenses, and the effect of regulatory lag on the Company. For instance, Movants seek to strike page 6 of Mr. Prochazka's testimony wherein he notes that recent transmission distribution utility rate cases have lasted anywhere from 18 to 23 months and that rate case expenses for those cases ranged from \$4.3 million to \$8.6 million.<sup>6</sup> This testimony goes directly to rate case expenses and investor expectations—issues that remain live controversies in this proceeding. In the same manner, Mr. Prochazka's breakdown of the typical residential customer's bill on page 7, which notes that approximately 30% of the customer's bill is under consideration in this proceeding, goes directly to the question of the overall reasonableness of CenterPoint Houston's rate request.<sup>7</sup> Similarly, Movants seek to exclude testimony noting that the Commission should be forward looking on major policy decisions related to advanced meters, energy efficiency, and storm hardening.<sup>8</sup> None of these topics were excluded from litigation as part of the Commission's Preliminary Order. In fact, the

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<sup>5</sup> Direct Testimony of Scott Prochazka at 4.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 8-9.

Commission has ordered that all of these issues be addressed.<sup>9</sup> This testimony should be retained.

Similar flaws plague Movants' Motions in seeking to exclude portions of John Reed's testimony on pages 9 through 21. Mr. Reed presents overarching policy testimony that describes the detrimental effect of regulatory lag on utilities like CenterPoint Energy Houston and explains what other utilities and regulators are doing to solve this problem.<sup>10</sup> The seminal point of these passages in Mr. Reed's testimony is to demonstrate the effect that regulatory lag and alternative rate mechanisms have on return on equity ("ROE") requirements and investor expectations. As Mr. Reed points out:

Like many electric utilities today, CenterPoint Houston's costs are increasing while sales volumes are static or decreasing. Given the incremental costs associated with increased energy efficiency, potential carbon regulation and mitigation, system hardening, intelligent grid, reliability enhancement, and a general increasing trend of operations and maintenance expenses, weather-normalized revenues are increasingly insufficient to ensure cost recovery in the current revenue/cost paradigm. This occurs at a time when investors have a diminished appetite for risk and are seeking regulatory protection of their investment.<sup>11</sup>

Mr. Reed then goes on to quote Moody's credit concerns in rating regulated electric utilities.<sup>12</sup>

While CenterPoint Houston does not dispute that this testimony was relevant to the Company's proposed DCRF and LRAM, the fact remains that the testimony remains relevant to other issues in this case, such as rate of return and the Company's Storm Hardening Rider (a mechanism which would reduce the effect of regulatory lag on the Company with respect to system hardening costs).

TIEC's request to strike portions of Daniel Hedge's testimony further exemplifies the

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<sup>9</sup> See Preliminary Order at Issues to be Addressed at Nos. 1-2 (reasonableness of rates and cost of service), 3-4 (return on equity and capital structure), 28-29 (storm hardening), 31 (energy efficiency), and 33-37 (AMS reconciliation).

<sup>10</sup> Direct Testimony of John J. Reed at 9 – 14.

<sup>11</sup> *Id.* at 20.

<sup>12</sup> *Id.*

over-reactive nature of TIEC's Motion to Strike. Mr. Hedges testifies to the reasonableness of the Company's rate case expenses. He does not support the adoption of any alternative rate mechanism. He does not support the Company's proposed energy efficiency bonus. Yet, TIEC requests that each reference to "DCRF" in Mr. Hedges' testimony be struck. TIEC would even exclude Mr. Hedge's statement that: "The legal questions presented in this case are truly novel."<sup>13</sup> TIEC's Motion to Strike with respect to all of Mr. Hedges' testimony should be denied.

The Commission required threshold briefing from all parties on the DCRF issue and addressed that briefing at Open Meeting. Legal expenses associated with that briefing and with the appeal of the Commission's decision will be considered in this case. Additionally, CenterPoint Houston suspects that parties may argue the Company's proposed Storm Hardening Rider is an "alternative rate mechanism." The Commission has ordered the Company's Storm Hardening Rider be addressed in the proceeding. Therefore, the experience of Company counsel with respect to alternative rate design remains relevant to whether: (1) they are qualified to represent the Company, and (2) rate expenses associated with their retention and work are reasonable.

Finally, Movants overreach in their effort to strike portions of Company Witnesses Robert Hevert's and Marc Kilbride's testimony. For example, Movants seek to exclude a portion of Mr. Hevert's testimony that describes the effect of a Commission decision *not to approve* the Company's LRAM request on return on equity and capital structure:

From the perspective of equity investors, the near-certain reduction in earnings would reduce expected returns and cash flows relative to otherwise-comparable investments. Thus, a clear consequence of the Commission's denial of the D38213 LRAM is the need to increase the authorized rate of return for debt and equity investors. In my view, therefore, the denial of D38213 LRAM or the proposed LRAM would support the selection of an ROE toward the upper end of

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<sup>13</sup> Direct Testimony of Daniel Hedges at 16.



the range of analytical results, as well as a capital structure including 50.00 percent common equity, as discussed in Mr. Kilbride's direct testimony.<sup>14</sup>

In a nutshell, Mr. Hevert's testimony speaks directly to the rate of return and capital structure that should be adopted for the Company in the event that the Commission refuses to adopt an LRAM mechanism. Mr. Kilbride's testimony at pages 26-27 does the same as he notes: "In the absence of an LRAM, fixed income and equity investors will have concerns about both the revenue erosion and the uncertainty associated with more frequent rate cases that they would expect CenterPoint Houston to file as a consequence of revenue erosion."<sup>15</sup> This testimony speaks directly to *the current status* of the case as the Commission has effectively already denied the Company's LRAM request through its Preliminary Order. Moreover, it is entirely consistent with Commissioner Anderson's Open Meeting comments referenced above. That is, Mr. Hevert, Mr. Kilbride, and Commission Anderson all recognize that a consequence of not adopting an LRAM is the potential increase in costs to the company and to the customer.

In sum, CenterPoint Houston understands that the Commission's Preliminary Order in this case limits the scope of this proceeding. However, that limitation was not intended to interfere with the Company's right to offer testimony relevant to other issues that will be litigated in this case. The Motions to Strike should be denied.

### III. CONCLUSION

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

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<sup>14</sup> Direct Testimony of Robert Hevert at 58-59.

<sup>15</sup> Direct Testimony of Marc Kilbride at 27.

Respectfully submitted,



Jason M. Ryan  
Assistant General Counsel  
State Bar No. 24033150  
CenterPoint Energy, Inc.  
P.O. Box 61867  
Houston, Texas 77208  
713.207.7261  
713.574.2661 (fax)

Ann Coffin  
State Bar No. 00787941  
Parsley Coffin Renner LLP  
P.O. Box 13366  
Austin, TX 78711  
512.879.0900  
512.879.0912 (fax)

**COUNSEL FOR CENTERPOINT ENERGY  
HOUSTON ELECTRIC, LLC**

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 26<sup>th</sup> day of August, 2010.

Linda A Johnston