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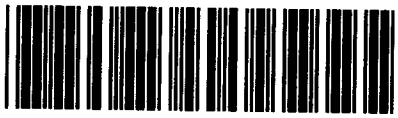

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SOAH DOCKET NO. 473-10-5001
PUC DOCKET NO. 38339

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

SOAH ORDER NO. 9
RULING ON MOTION TO FIND STATEMENT OF INTENT AND NOTICE DEFICIENT; RULING ON MOTIONS TO INTERVENE

I. RULING ON MOTION TO FIND STATEMENT OF INTENT AND NOTICE DEFICIENT

On August 12, 2010, the Staff (Staff) of the public Utility Commission of Texas (Commission), the City of Houston and the Houston Coalition of Cities, Texas Industrial Energy Consumers, the Gulf Coast Coalition of Cities, the Texas Coast Utilities Coalition, the Texas agencies and institutions of higher education, the Alliance of Retail Markets, and the Office of Public Counsel (collectively, the Moving Parties) filed a motion to find CenterPoint Energy Houston Electric, LLP's (CenterPoint) application and notice deficient because both the application and notice failed to accurately state the effect of CenterPoint's proposed rate change on current revenues.

As a part of their motion, the Moving Parties asked that CenterPoint be required to file a revised statement of intent with all proper regulatory authorities, publish and mail revised notices that include a new intervention deadline, and set an effective date for CenterPoint's proposed rate change to a date no earlier than 35 days after CenterPoint files its corrected statement of intent.

CenterPoint filed a reply to this motion, stating that the error in describing the increase was simply that – an error that does not affect the overall impact of its filing; that the Moving Parties' motion was filed beyond the 21 day deadline established by P.U.C. PROC. R. 22.75 and was, therefore, untimely; and that neither the Administrative Law Judges (ALJs) nor the Commission have the authority to grant the relief requested by the Moving Parties.

For the reasons discussed below, the ALJs find that the arguments of the Moving Parties are not well placed and deny their motion.

CenterPoint is correct when it states that P.U.C PROC. R. 22.75 establishes a deadline of 21 days after filing for the filing of claims of material deficiency. CenterPoint filed its application on June 30, which means that claims of material deficiency should have been filed no later than July 21 to comply with P.U.C. PROC. R. 22.75. The Moving Parties filed their claim 40 days beyond the application filing date; therefore, the Moving Parties' motion in not timely filed.

Assuming for purposes of argument that there exists reason to excuse the Moving Parties' late filing, the question still exists: Does the error in CenterPoint's application and notice rise to the level of a material deficiency that would require the actions requested by the Moving Parties? It is important at this juncture to examine the error made by CenterPoint. In both its application and its notice, it stated that the new revenue requirement that would result from approval of its application would be $1,534 million. It is undisputed that this is the correct amount. The error in CenterPoint's application and notice comes from its calculation of the revenue requirement from existing rates, which it calculated as being $1,458 million, resulting in an increase of $76 million as the result of new rates ($1,534 million minus $1,458 million). The actual revenue requirement from its existing rates was $1,442 million, which creates an increase of $92 million if its application is approved ($1,534 million minus $1,442 million). While this error of $16 million represents a large amount of money, it is difficult to see how it can be characterized as a "material" amount of money. As CenterPoint noted in its response to the Moving Parties' motion, it is unlikely that a person would view a rate case requesting an increase of $76 million as not being worth their time while viewing a rate increase requesting $92 million as being worth their time to participate.

To require a restart of the process, a mistake in a statement of intent must rise to the level of a material deficiency.[1] A materially deficient statement of intent is one in which some element of the statutory requirements is not met or the rate-filing package is incomplete.[2] The review of an application for material deficiencies is designed to "address the absence of information that materially impedes the other parties' ability to review the filing."[3] It is difficult for the ALJs to envision how the error committed by CenterPoint would impede the other parties' review of the filing when it did not require supplemental testimony or the presentation of additional evidence by CenterPoint; did not change any methodology relied on by CenterPoint in the calculation of its new rates; did not change a discovery response sent by CenterPoint in response to requests from other parties; and did not interject any new policy into this proceeding.

The Moving Parties cite to Docket No. 9563[4] as being supportive of their request. The ALJs do not read Docket No. 9563 as expansively as do the Moving Parties. In Docket No. 9563, the issue that faced the Examiner was whether the notice, which suggested that all customers would receive a rate decrease when certain of the customer classes would actually see their rates increase, was deficient. Not surprisingly, the Examiner held that the notice was materially deficient.[5] Here, the case is markedly different. Both CenterPoint's application and its notice correctly apprise customers of the expected effect of the rate increase; it is only the quantification of the increase that is in error. That is a significant difference between this case and Docket No. 9563, and one that renders Docket No. 9563 inapplicable to the current situation.

As CenterPoint, noted in its response, the error in the quantification of the impact of its rate increase request is simply that, an error that should be corrected through an errata.

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

[2] 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).

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

[4] *Petition of Dickens County 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).

[5] *Id.*

CenterPoint has corrected the error and has apprised all parties of the error and the correction. Neither the error nor the correction impedes the other parties' review of the application. The error is not a material deficiency.[6]

II. RULING ON MOTIONS TO INTERVENE

Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy; Direct Energy, L.P.; and Oncor Electric Delivery Company, LLC all filed motions to intervene. No party filed in opposition to the requests to intervene. Accordingly, the requests to intervene are granted.

SIGNED August 27, 2010.

STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

[6] As the ALJs are able to determine that the Moving Parties' motion should be denied on the first two grounds alleged by CenterPoint, it is unnecessary to address the third point dealing with the authority to the ALJs and the Commission to grant the requested relief.