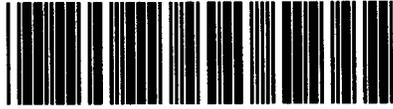




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SOAH DOCKET NO. 473-10-5001  
DOCKET NO. 38339

APPLICATION OF CENTERPOINT §  
ENERGY HOUSTON ELECTRIC, LLC §  
FOR AUTHORITY TO CHANGE §  
RATES §

BEFORE THE  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

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**OBJECTIONS OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC TO  
CITY OF HOUSTON'S TWENTY-THIRD REQUEST FOR INFORMATION**

CenterPoint Energy Houston Electric, LLC ("CenterPoint Houston") received City of Houston's ("COH") Twenty-Third Request for Information ("RFI") on August 20, 2010. Counsel for CenterPoint Houston and COH negotiated diligently and in good faith but were unable to reach agreement concerning the objections below. Therefore, in order to preserve its rights, CenterPoint Houston objects to the following RFIs on the grounds stated below. These objections are timely filed within 10 days of receipt of the RFIs.

COH Requests for Information

- COH 23-2. Refer to WP II-E-3.9. The FIN 48 liability on excel line 31 indicates it was reduced by \$21.653 million for the settlement of issues as a result of the 2004 and 2005 audit. For each issue settled for which a FIN 48 liability was included, provide the FIN 48 liability amount, the tax assessed in the audit and a description of how the tax issue was resolved.
- COH 23-3. Refer to WP II-E-3.9. Provide a description of the ADIT reclassified at line 20 of this workpaper. Include the calculations for each of the ADIT items included in the \$150,496,000 adjusted balance. Show all calculations.
- COH 23-3. Refer to WP II-E-3.9. Provide a description of the ADIT reclassified at line 62 of this workpaper. Include the calculations for each of the ADIT items included in the \$13,818,000 adjusted balance. Show all calculations.

CenterPoint Houston's Objections

CenterPoint Houston has determined that the information responsive to these requests is protected by the attorney-client, work product, and/or Internal Revenue Code Section 7525

privileges and is withholding privileged information from its response to the RFIs.<sup>1</sup> The seriousness with which the Company protects the privileged FIN 48 analysis cannot be overstated. Waiving the privilege associated with the analysis would severely disadvantage the Company with regard to its dealings with the Internal Revenue Service (“IRS”).

Information responsive to these requests includes analyses about FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes (“FIN 48”), which prescribes the income tax accounting and financial statement presentation for positions taken by taxpayers on income tax returns where the ultimate taxability or deductibility of amounts is uncertain. FIN 48 prescribes how a company must analyze, quantify, and report benefits and liabilities associated with uncertain tax positions (“UTPs”). Providing this analysis would constitute a violation of the attorney-client and work product privileges because CenterPoint Houston consults with counsel to determine how it will analyze, quantify, and report benefits and liabilities associated with UTPs. Additionally, as a secondary ground, CenterPoint Houston questions whether the information requested has relevance to whether certain FIN 48 liabilities should or should not be added to accumulated deferred income taxes (“ADIT”) with the resulting amount excluded from rate base.

Texas Rule of Civil Procedure 193.2 states that a party should not object to a request for written discovery on the grounds that it calls for production of material that is privileged but instead should comply with Rule 193.3, which includes specific instructions for asserting a

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<sup>1</sup> TEX. R. EVID. 503(b); TEX. R. CIV. PROC. 192.5.

privilege.<sup>2</sup> However, the Commission's rules may require an objection in this instance and, thus, out of an abundance of caution, CenterPoint Houston hereby files this objection.<sup>3</sup>

Each of the objectionable requests seeks details related to the components of the Company's FIN 48 liability, which was reclassified from ADIT. The analysis that would be responsive to these requests involves privileged attorney-client communications and attorney work product related to the determination of the UTPs included in the FIN 48 amount. That analysis is conducted in anticipation of litigation with the IRS for purposes of defending the Company's UTPs in an audit. CenterPoint Houston is protecting the responsive information because, if it produced the information, it would be waiving the privileged nature of the Company's FIN 48 analysis.

The privilege in Internal Revenue Code Section 7525 bolsters the Company's position because it protects tax advice between a taxpayer and a tax practitioner to the same extent that tax advice between a taxpayer and tax attorney is protected by the attorney-client privilege.<sup>4</sup> This privilege, which applies in proceedings before the Internal Revenue Service and in federal court, highlights the extent to which the information COH seeks is protected from disclosure.

Notwithstanding the application of the privileges, the information COH seeks is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Company has provided the total amount of its FIN 48 adjustment in Mr. Felsenthal's direct testimony. COH does not need access to the underlying privileged analysis of each UTP to verify the Company's FIN 48 calculation especially because knowing the component parts of the FIN 48 adjustment is not relevant to whether a FIN 48 adjustment should be made to rate base.

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<sup>2</sup> Tex. R. Civ. Proc. 193.2(f) and 193.3; *See also In re Monsanto Co.*, 998 S.W.2d 917, 924 (Tex. App.—Waco 1999, no pet.) (holding that a party should no longer “object” to a request for privileged information, but should instead simply comply with the requirements of TRCP 193.3).

<sup>3</sup> *See* P.U.C. PROC. R. 22.144(d).

<sup>4</sup> 26 U.S.C. § 7525.

The relevant issue to be decided in this case related to FIN 48 and its effect on ADIT is whether to make an adjustment to rate base for the FIN 48 amount. For example, in the recent Oncor rate case, the Commission determined that Oncor was required to add the FIN 48 amount to ADIT and thus exclude the FIN 48 amount from rate base, without separately analyzing any component of the FIN 48 amount.<sup>5</sup> A quantification of individual UTPs or a breakdown of the FIN 48 components will shed no light on whether to include FIN 48 liabilities in ADIT and is therefore not relevant to the issues in this proceeding.

Respectfully submitted,



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COUNSEL FOR CENTERPOINT ENERGY  
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<sup>5</sup> Docket No. 35717, *Application of Oncor Electric Delivery Company for Authority to Change Rates at Findings of Fact 54-60* (Nov. 30, 2009).

**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, courier, hand delivery, or United States first class mail on this the 30th of August 2010.

Linda M Johnston