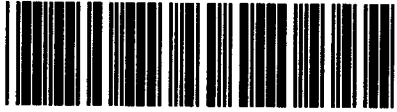




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SOAH DOCKET NO. 473-10-5001
PUC DOCKET NO. 38339

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

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BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OF

ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 10
RULING ON MOTIONS TO COMPEL**

On August 18, 2010, the Gulf Coast Coalition of Cities (GCCC) filed a motion to compel CenterPoint Energy Houston Electric, LLC (CenterPoint) to respond to Questions 5-1, 5-2, 5-8, 5-9 and 5-12 of GCCC's Fifth Set of Requests for Information. CenterPoint timely filed its response.

Questions 5-1 and 5-2

These Questions seek detailed information regarding CenterPoint's analysis of the FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes. CenterPoint objects on the grounds that such analysis involves confidential attorney-client communications and attorney work product. CenterPoint argues that Internal Revenue Code Section 7525 bolsters its privilege claim because it protects tax advice between a taxpayer and a tax practitioner. CenterPoint further claims that Mr. Felsenthal's testimony does not address the calculation of and accounting for UTP's, rather he only supports CenterPoint's position as to whether ADFIT should be reduced to account for UTP liabilities. Having considered the arguments of the parties the Administrative Law Judges (ALJ) find CenterPoint's arguments most persuasive. Accordingly, GCCC's motion to compel CenterPoint to respond to Questions 5-1 and 5-2 is **denied**.

Question 5-8

This Question seeks documents that address the possibility of CenterPoint being required to file a rate case as required by the settlement in PUC Docket No. 32093. The ALJs find CenterPoint's response somewhat convoluted. It first suggests that GCCC needs only look at the Rate Filing Package to find responsive documents. It then argues that the requested information

is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. It then further argues that the only possible source of responsive documents would be e-mail records, but it is too burdensome to have to search e-mail records because of the lack of relevance. As a compromise, CenterPoint offers to provide internal presentations and documents provided to management that are responsive to this request. Having considered the parties' arguments the ALJs find the requested information is relevant and reasonably calculated to lead to the discovery of admissible evidence. Accordingly, GCCC's motion to compel CenterPoint to respond to Question 5-8 is **granted**.

Question 5-9

This Question seeks all documents produced by CenterPoint in 2010 concerning contacts with officials of any city. CenterPoint responds that the request is overly broad by seeking all documents *whether or not those documents relate to this rate case*. CenterPoint says it has already provided all responsive documents *relating to this rate proceeding* in its response to the City of Houston (COH) Question 11-6. Having considered the parties' arguments the ALJs find CenterPoint's response to COH Question 11-6 to be sufficient. Accordingly, GCCC's motion to compel CenterPoint to respond to Question 5-9 is **denied**.

Question 5-12

This Question seeks salary information for every CenterPoint employee during the test year, including name and title. CenterPoint says it will provide all the requested salary information except the employee's names. Having considered the parties' arguments the ALJs find that providing all the requested information except names is sufficient. Accordingly, GCCC's motion to compel CenterPoint to respond to Question 5-12, including employee names, is **denied**.

* * * * *

On August 25, 2010, COH filed a motion seeking to compel CenterPoint to respond to Questions 11-1 and 11-7 of COH's Eleventh Set of Requests for Information. CenterPoint timely filed its response.

Question 11-1

This Question seeks all documents and other items provided to, reviewed by, or prepared by or for CenterPoint's expert witnesses. In responding to this request CenterPoint indicated that it was withholding two documents on the basis of attorney-client and work product privileges. CenterPoint further explained that these privileged items had only been given to Advanced Metering System (AMS) employee witnesses who are not testifying as experts. The sole issue is whether the testimony of these AMS employees is expert testimony. CenterPoint provided the two documents to the ALJs for *in camera* review. The ALJs have reviewed the prefiled testimony of the AMS witnesses to whom the privileged documents were given. Based on this review of the witnesses testimony, the privileged documents at issue and the arguments of the parties', the ALJs find that the testimony of the AMS witnesses is fact testimony rather than expert testimony, notwithstanding that in a few instances the witnesses state that a certain monetary amount that they are sponsoring is *reasonable and necessary*. Accordingly COH's motion to compel CenterPoint to produce the two privileged documents is **denied**.

Question 11-7

This Question seeks all correspondence with any employee or member of the PUC related to this rate proceeding. CenterPoint objects to the production of e-mail communications exchanged with PUC Staff on August 10 and 11, 2010, regarding settlement of a procedural schedule issue. CenterPoint claims that subsequent filings have rendered the communications moot and, therefore, irrelevant. CenterPoint requests, in the alternative, that if it is ordered to produce the e-mail communications, the ALJs should rule that they are not admissible at the hearing except in accordance with Texas Rule of Evidence (TRE) 408 dealing with settlement negotiations. Having considered the arguments of the parties the ALJs find that the e-mail

communications with PUC Staff are relevant and not exempt from discovery. Accordingly, COH's motion to compel CenterPoint to respond to Question 11-7 is **granted**. Regarding CenterPoint's alternative request that the ALJs rule that the communications are admissible only in accordance with TRE Rule 408, the ALJs find this request is premature and will be considered if and when it comes up at the hearing.

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On September 7, 2010, COH filed a motion to compel CenterPoint to respond to Question 23-2 of COH's Twenty-Third Request for Information. CenterPoint timely filed its response.

Question 23-2

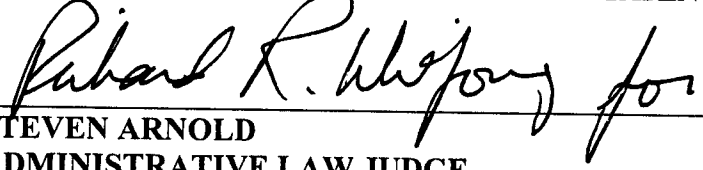
This Question seeks detailed information regarding FIN 48, and involves the same issues and arguments addressed above concerning GCCC's Questions 5-1 and 5-2. Having considered the arguments of the parties the ALJs find that COH's motion to compel CenterPoint to respond to Question 23-1 is **denied**.

SO ORDERED.

SIGNED September 15, 2010.



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



STEVEN ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS