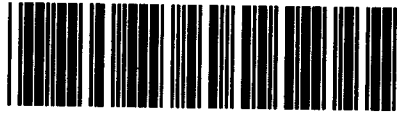




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APPLICATION OF CENTERPOINT §
ENERGY HOUSTON ELECTRIC, LLC §
FOR AUTHORITY TO CHANGE §
RATES §

BEFORE THE STATE OFFICE
OF PUBLIC UTILITY REGULATION
AND SAFETY
FILING CLERK

ADMINISTRATIVE HEARINGS

TEXAS INDUSTRIAL ENERGY CONSUMERS' MOTION TO COMPEL RESPONSES TO TIEC'S SIXTH REQUESTS FOR INFORMATION

Texas Industrial Energy Consumers ("TIEC") moves to compel responses to TIEC's requests for information (RFIs) 6-17, 6-18, 6-19, and 6-29 from CenterPoint Energy Houston Electric, LLC ("CEHE"). TIEC submitted its RFIs on August 30, 2010; CEHE filed objections on September 9, 2010. TIEC attempted to negotiate with CEHE regarding this matter to no avail. Pursuant to P.U.C. Proc. R. 22.144(e), this motion to compel is timely filed. For the reasons discussed in this motion, CEHE's objections should be overruled and CEHE should be compelled to produce the requested items. TIEC also moves the ALJs to compel CEHE to produce a privilege log as required by P.U.C. Proc. R. 22.144(d)(2).

INTRODUCTION

CEHE's objections to TIEC's 6th set of RFIs are without basis. TIEC's questions are clearly relevant and seek information that is not protected by the attorney client or attorney work product privileges. CEHE should be compelled to provide the requested information. Moreover, the Commission's procedural rules permit a party to fail to produce a privilege log only when the requested information is irrelevant, and the party objects to producing a log on that basis. TIEC's request for all "documents, studies, reports, and communications" that support the amount of "FIN 48 liability reclassifications" of which CEHE seeks recovery in this rate case are clearly relevant. Even though the ALJs may agree with CEHE's privilege objection, CEHE must be compelled to produce a privilege log.

A. CEHE should be compelled to produce the requested information.

CEHE objects to producing documents responsive to the following RFIs on the basis of relevance and privilege:

TIEC 6-17 Refer to the section that begins on page 59, line 14. Please provide copies of all communications between CEHE and the third parties referenced in this section concerning the UTP liabilities for which CEHE seeks recognition in this rate case.

TIEC 6-18 Refer to the section that begins on page 59, line 14. Please provide all documents provided by CEHE to third parties referenced in this section relating to UTP liabilities for which CEHE seeks recognition in this rate case.

TIEC 6-19 Refer to page 61, lines 1-2. Please state whether CEHE took into account the IRS's dealings with it or similar enterprises when determining the FIN 48 claimed in this rate case. If so, please provide all documents and communications reflecting such dealings.

TIEC 6-29 Regarding Schedule II-E-3.7, please provide all documents, studies, reports, and communications that support the amount of "FIN 48 liability reclassifications" described in that schedule.¹

1. *TIEC 6-17, 6-18, 6-19, and 6-29 are relevant.*

These questions are clearly relevant. Contrary to what CEHE alleges, whether or not the Commission should reverse course and deem FIN 48 liabilities applicable as offsets to ADFIT is not the only FIN 48 issue in this case. CEHE put the amount of its alleged FIN 48 liabilities at issue by seeking to reduce its ADFIT balance by a specific amount. CEHE appears to take the astonishing position that the Commission is bound to increase rates by the amount put forward by CEHE. The Commission has the authority and responsibility under PURA to ensure that the rates CEHE charges are just and reasonable. If the Commission decides to reverse course and apply a FIN 48 adjustment, the only way to ensure that CEHE has accurately calculated its FIN 48 liabilities is to examine the underlying information. Thus, CEHE's claim that the dollar amount by which it seeks to raise rates under a novel FIN 48 accounting procedure is irrelevant, is meritless.

2. *The requested items are not protected by the attorney client or attorney work-product privileges.*

CEHE's contention that the documents are protected by the attorney client and attorney work product privileges is without merit. As the objecting party, CEHE is required to prove the basis for its objection, yet has failed to do so. CEHE makes the conclusory statement that the

¹ CEHE's Objections to TIEC's 6th Set of RFIs at 1.

FIN 48 analyses involve conversations between CEHE and its lawyers, but fails to make any showing of this whatsoever. Regarding the attorney work product privilege, CEHE flatly states that the FIN 48 “analysis is conducted in anticipation of litigation with the IRS for purposes of defending the Company’s UTPs in an audit.”² CEHE is mischaracterizing the purpose of the FIN 48 analysis, solely for the purpose of resisting discovery. CEHE has already offered testimony regarding the purpose of the FIN 48 analysis. As Mr. Felsenthal testifies, companies conduct FIN 48 analyses in order to comply with a Financial Accounting Standard, namely Financial Interpretation No. 48. The purposes for implementation and adoption of the standard is not in order to prepare for battle with the IRS, rather “FIN 48 was issued to address the comparability of accounting for UTPs across companies.”³ Mr. Felsenthal also notes that a pending change in tax reporting requirements will mean that CEHE’s FIN 48 analyses will be disclosed to the IRS.⁴

CEHE conducts its FIN 48 analyses because it is required to do so under a new accounting standard. It does not do so in order to advance a litigation position that is pending or reasonably anticipated. In fact, FIN 48 requires that the company *ignore* the likelihood of litigation when it determines its UTP liabilities. CEHE’s position that the documents and communications underlying its FIN 48 calculations is protected by the attorney work product privilege is simply false.

Also, even if the underlying information were protected by privilege, CEHE’s reliance on it to obtain affirmative relief in this proceeding waives the privilege. Because the information sought by TIEC 6-17, 6-18, 6-19, and 6-29 is relevant, and not protected, it must be disclosed.

B. CEHE should be compelled to produce a privilege log.

For the reasons discussed in A.1., above, TIEC’s questions seek relevant information. Therefore, CEHE must produce a privilege log. *See* PUC Proc. R. 22.144(d).

² CEHE’s Objections at 3.

³ Direct Testimony of Alan Felsenthal at 55.

⁴ *Id.* at 62-63.

CONCLUSION

For the reasons set forth herein, TIEC requests that CEHE's objections be overruled and that it be compelled to produce the items requested by TIEC TIEC 6-17, 6-18, 6-19, and 6-29. TIEC also requests that CEHE be required to produce a privilege log. TIEC requests all other relief to which it is justly entitled.

Respectfully submitted,

ANDREWS KURTH LLP

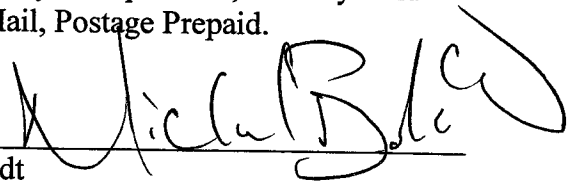


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CERTIFICATE OF SERVICE

I, Michael Boldt, Attorney for TIEC, hereby certify that a copy of this document was served on all parties of record in this proceeding on this 16th day of September, 2010 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.



Michael Boldt