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

APPLICATION OF CENTERPOINT § BEFORE THE
ENERGY HOUSTON ELECTRIC, LLC § PUBLIC UTILITY COMMISSION
FOR AUTHORITY TO CHANGE RATES § OF TEXAS

SECOND ERRATA
TO
CROSS-REBUTTAL TESTIMONY AND EXHIBITS
OF
JAMES W. DANIEL

ON BEHALF OF
THE CITY OF HOUSTON
AND
THE COALITION OF CITIES

September 28, 2010

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SECOND ERRATA TO THE CROSS-REBUTTAL TESTIMONY OF JAMES DANIEL

Page 12, line 02 – Underlined “absence”

Page 12, line 14 – Inserted “may be the” after “While I agree that”

Page 12, line 14 – Deleted “is” after “the appropriate standard”

Page 12, line 14 – Inserted “in the absence of PURA § 33.008(c)” after “the appropriate standard”

Page 12, line 22 – Deleted “Accordingly, if” before “if the staff were to...”

Page 12, line 22 – Inserted “However,” before “if the staff were to”

Page 12, line 23 – Inserted “ignore Section 33.008(c) and” before “challenge the level of...”

Page 13, line 01 – Inserted “would” before “needs to apply on an...”

Page 13, line 01 – Changed “needs” to “need”

Page 13, line 01 – Inserted “Absent § 33.008(c) and 33.008(f),” before “in my opinion,”

Page 13, line 11 – Inserted “absent § 33.008(c),” before “one must also look...”

1 If one wanted to independently determine the reasonableness of a franchise fee
2 amount in the absence of PURA §§33.008(c), then one should not apply the standard
3 used by PUC Staff witness Ms. Jacobs. The reasonableness of the level of the
4 franchise fee payments should be determined based on all of the terms of the
5 franchise agreement, and not based on the narrow application of a formula that was
6 simply intended to maintain revenue neutrality for municipalities with regard to
7 franchise fees after the implementation of retail competition. As I will discuss later in
8 my cross-rebuttal testimony, that formula has failed in its intent to maintain revenue
9 neutrality for municipals with regard to franchise fees.

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10 **Q. WOULD YOU EXPLAIN WHY YOU DISAGREE WITH THE PUC STAFF'S**
11 **INTERPRETATION OF SUBSTANTIVE RULE §§25.231(b)?**

12 A. Yes. That section of the PUC Substantive Rules generally describes that a utility may
13 only include “reasonable and necessary” expenses in its cost of service or revenue
14 requirement. While I agree that ~~may be the~~ the appropriate standard ~~in the absence of~~
15 PURA § 33.008(c), Ms. Jacobs incorrectly applies that standard in determining her
16 recommended disallowance of a portion of the test year municipal franchise fees. Per
17 pages 14 and 15 of the direct testimony of PUC Staff witness Ms. Jacobs, the PUC
18 Staff incorrectly equates “reasonable and necessary” with the level of franchise fees
19 provided for in PURA §§33.008(b). As previously discussed, since PURA
20 §§33.008(f) provides for municipal franchise fees in excess of the §§33.008(b) level,
21 then certainly the Legislature intended for higher franchise fees to also be reasonable
22 and necessary, and indeed §§33.008(c) states that. However, if the Staff were to
23 ignore Section 33.008(c) and challenge the level of municipal franchise fees, then it

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1 | would need to apply an appropriate test or benchmark. Absent § 33.008(c) and
2 | ~~33.008(d), in my opinion,~~ the appropriate test would be to determine if the overall
3 | level of the franchise fees are reasonable in consideration of the benefits and the
4 | rights received by the utility under the terms of the franchise agreement. While PURA
5 | §33.008 sets the initial franchise fee level upon implementation of retail competition,
6 | it does not state the “standard” for determining the benefits and rights the utility
7 | should receive for that initial franchise fee level. Without any guidance in PURA as
8 | to what the standard should be to evaluate benefits and rights the utility should
9 | receive for the franchise fees paid pursuant to §§33.008(b), it is nonsensical to just
10 | assume the level of franchise fees determined per §§33.008(b) as reasonable and
11 | necessary. In my opinion, ~~absent § 33.008(c),~~ one must also look at all of the terms of
12 | the franchise agreement to determine if the franchise fee level, including the level
13 | determined pursuant to PURA §33.008(b), is reasonable and necessary. The PUC
14 | Staff has not attempted this analysis.

15 | **Q. DID CEHE SUPPORT THE OVERALL LEVEL OF FRANCHISE FEES IT**
16 | **PAYS BASED ON THE GENERAL TERMS OF ITS MUNICIPAL**
17 | **FRANCHISE AGREEMENTS**

18 | A. Yes, I believe the Company has generally provided this support.

19 | **Q. DO YOU BELIEVE THE COMMISSION SHOULD DEFER TO**
20 | **MUNICIPALITIES TO DETERMINE THE APPROPRIATE LEVEL OF**
21 | **FRANCHISE FEES THAT THE UTILITY SHOULD BE CHARGED AND**
22 | **ALLOWED TO RECOVER IN BASE RATES?**

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5 franchise agreement, and not based on the narrow application of a formula that was
6 simply intended to maintain revenue neutrality for municipalities with regard to
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8 my cross-rebuttal testimony, that formula has failed in its intent to maintain revenue
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22 and necessary, and indeed §§33.008(c) states that. However, if the Staff were to
23 ignore Section 33.008(c) and challenge the level of municipal franchise fees, then it

1 would need to apply an appropriate test or benchmark. Absent § 33.008(c) and
2 33.008(f), in my opinion, the appropriate test would be to determine if the overall
3 level of the franchise fees are reasonable in consideration of the benefits and the
4 rights received by the utility under the terms of the franchise agreement. While PURA
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11 necessary. In my opinion, absent § 33.008(c), one must also look at all of the terms of
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