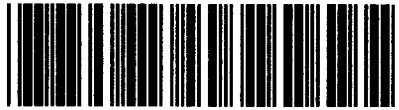


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SOAH DOCKET NO. 473-10-5001
PUC DOCKET NO. 38339

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

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BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS

10/11/14

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC'S
RESPONSE TO THE TEXAS COAST UTILITIES COALITION'S
OBJECTION TO AND MOTION TO STRIKE PORTIONS OF THE
REBUTTAL TESTIMONIES OF DANE A. WATSON AND
WALTER L. FITZGERALD**

CenterPoint Energy Houston Electric, LLC ("CenterPoint Houston" or the "Company") files this response to the Texas Coast Utilities Coalition's ("TCUC") Objection to and Motion to Strike Portions of the Rebuttal Testimonies of Dane A. Watson and Walter L. Fitzgerald ("TCUC's Motion") filed on October 5, 2010. For the reasons discussed below, TCUC's Objection and Motion to Strike should be rejected in its entirety.

I. INTRODUCTION

On October 1, 2010, CenterPoint Houston filed its rebuttal case. The rebuttal case filed by CenterPoint Houston included the rebuttal testimonies of Mr. Dane Watson and Mr. Walter Fitzgerald. Importantly, *TCUC does not dispute that the rebuttal testimonies submitted by Mr. Watson or Mr. Fitzgerald are directly responsive to claims raised by TCUC witness Mr. Jacob Pous in his pre-filed testimony.* Rather, TCUC seeks to impose an unprecedented standard that would limit the development of CenterPoint Houston's rebuttal case to the evidence introduced in its direct case.¹ First, it strains credibility to believe that CenterPoint Houston could anticipate every argument that the Intervenors would raise in this case so as to develop *all* evidence responsive to each of these points as part of its direct case. More importantly, this is not the legal standard in Texas. TCUC's Motion should be denied in its entirety.

¹ TCUC Motion at 2.

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II. RESPONSE TO TESTIMONY-SPECIFIC PASSAGES

TCUC freely admits in its Motion that CenterPoint Houston has the burden of proof in this case.² Yet, TCUC, through its motion, seeks to eviscerate the purpose of rebuttal testimony, which, by definition, is a form of evidence that is presented to contradict or nullify other evidence that has been presented by an adverse party.³ TCUC does not dispute that CenterPoint Houston, as the party having the burden of proof, is entitled to offer rebuttal evidence.⁴ On rebuttal, a party is entitled to introduce evidence that directly answers or disproves the last round of the other party's evidence.⁵ This is the exact purpose of the challenged passages of Mr. Watson's and Mr. Fitzgerald's rebuttal testimonies. As such, the testimonies are admissible as rebuttal evidence in their entirety.

The inference in TCUC's Motion that CenterPoint Houston's discovery responses should have anticipated the positions that TCUC would take in its filed testimony is equally flawed. A review of the discovery requests that TCUC relies on to support its Motion reveals that the Company fully and completely responded to the questions asked. In fact, in several instances, the discovery cited in TCUC's Motion is unrelated to either the time period addressed or the actual contention that is the subject of Company witnesses Mr. Watson's or Mr. Fitzgerald's rebuttal testimony.

Finally, TCUC's suggestion that it will have no opportunity to address the points and issues raised in Company witness Mr. Watson's and Mr. Fitzgerald's rebuttal testimonies is also

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *In re Bledsoe*, 41 S.W.3d 807, 813 (Tex. App.-Ft. Worth 2001, orig. proceeding); *see also Gendke v. Travelers, Co.*, 368 S.W.2d 3 (Tex. App.-Waco 1963).

false.⁶ TCUC will have ample opportunity to explore the merits of the evidence and arguments set forth in the Company's rebuttal case during cross examination at hearing.

Dane A Watson

a. Page 29, lines 5-8

In seeking to strike the above referenced passage of Mr. Watson's rebuttal testimony, TCUC argues that Mr. Watson was asked "very particular RFIs about his direct testimony" and that Mr. Watson's rebuttal testimony "has expanded and/or changed his rationale from the RFI."⁷ This is not true. First, TCUC provides no substantive support for its claim that Mr. Watson's rationale or opinions have changed since the filing of his direct testimony. Rather, it is clear from both Mr. Watson's direct and rebuttal testimonies that a negative 35 percent net salvage rate for Account 355 should be adopted by the Commission. Second, TCUC misrepresents Mr. Watson's rebuttal testimony. In rebuttal, on page 29, lines 5-8, Mr. Watson testifies that he has "taken the Company's more recent retirement experience into account, as well as the most recent 5-year to 15-year moving average, to develop a net salvage rate for this account that is reflective of both the Company's historic data and expected future net salvage." TCUC again misrepresents the facts when it states that the Company's response to TCUC RFI No. 1-25 does not reflect Mr. Watson's "reliance on anything other than the longer service band."⁸ TCUC's contention is demonstrably false. The Company's response to TCUC RFI No. 1-25 specifically states that the information contained in Mr. Watson's direct testimony, his depreciation study and his supporting workpapers were relied on by Mr. Watson to develop his net salvage recommendation for Account 355.⁹ This information reflects all historical data, interview notes and other information reviewed and/or relied on by Mr. Watson, *including the results of the most*

⁶ TCUC Motion at 2.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ *See Id.* at Attachment 1.

*recent five-year band for this account.*¹⁰ Page 29, lines 5-8 of Mr. Watson's rebuttal testimony simply refers to data previously produced as part of the Company's direct case as confirmatory proof that Mr. Watson's proposed net salvage rate is reasonable and should be adopted. TCUC's Motion to strike this testimony should be denied.

b. Page 30, lines 7-20

With respect to Mr. Watson's rebuttal testimony at page 30, lines 7-20, TCUC also misrepresents the information provided in the Company's response to TCUC Nos. 2-7 and 2-8. While TCUC states that "the Company's response simply pointed to the listed work orders without providing any actual description of the response," one need only review the actual RFI response to find that the contrary is true. The Company's response to TCUC Nos. 2-7 and 2-8 refers not only to a prior RFI that provided detailed retirement activity for the years requested, but also explains the primary drivers of the retirement activity contributing to the cost of removal and the resulting net salvage rate in those years.¹¹ First, it is worth noting that TCUC has at no time prior to this motion ever suggested, either informally or through a formal motion to compel, that the Company's response to TCUC Nos. 2-7 and 2-8 was insufficient or non-responsive. More importantly, these responses are consistent with Mr. Watson's rebuttal testimony. Page 30, lines 7-20 of Mr. Watson's rebuttal testimony makes two points. First, that fiber optic cable in 2008 and 2009 produced an overall net salvage rate in 2008 and 2009 that was far lower than the overall experience for this account. This testimony clearly rebuts Mr. Pous' contention on page 18, lines 9-13, wherein he contends that the Company's net salvage data has been skewed as a result of retirements of fiber optics in 2009 and 2008. If Mr. Pous had reviewed the Company's response to TCUC Nos. 2-7 and 2-8, Mr. Pous would have been able to correctly identify the

¹⁰ See Direct Testimony of Dane Watson, Exhibit DAW-1, page 77.

¹¹ See TCUC Motion at Attachment 2.

primary drivers of retirements and the net salvage levels in those responses; none of which are attributable to fiber optic cable retirement. Second, Mr. Watson's testimony beginning on page 30, lines 9-20 refutes Mr. Pous' critique of 2005 Company data; a year which was not the subject of TCUC's RFI Nos. 2-7 (2008) and 2-8 (2009). There can be no reasonable dispute that Mr. Watson's rebuttal testimony is directly responsive to arguments made by TCUC witness Mr. Pous. A review of the Company's responses to TCUC No. 2-7 and 2-8 makes equally clear that the Company's answers were fully responsive and, in fact, have nothing to do with the 2005 discussion that is the subject of Mr. Watson's rebuttal testimony on page 30, lines 9-20. TCUC's Motion should be denied.

c. Page 31, lines 1-5

TCUC's reliance on the Company's response to TCUC No. 1-42 as the basis on which to strike page 31, lines 1-5 of Mr. Watson's rebuttal testimony is equally misplaced and should be rejected. A review of the Company's response to TCUC No. 1-42 reveals that it is entirely consistent with Mr. Watson's rebuttal testimony.¹² TCUC No. 1-42 asks *how* costs for removal and costs for replacements are assigned to the replacement asset.¹³ CenterPoint Houston states in response to TCUC No. 1-42 that "CenterPoint allocates the costs to installation and removal based on a percentage split that is deemed appropriate by the individual who is responsible for the work effort." Mr. Watson, on page 31, lines 1-5, simply reiterates these facts. Mr. Watson further responds to Mr. Pous' suggestion that the Company's employees are unqualified to perform this cost assignment by noting that "Company personnel are trained in the process and recognition of construction versus removal activities." Clearly, this evidence is introduced to

¹² See *Id.* at Attachment 3.

¹³ *Id.*

respond and discredit Mr. Pous' allegations regarding the qualifications of the Company's employees to properly assign removal costs. As such, it is admissible rebuttal evidence.

Finally, it is unclear why TCUC argues that the Company's failure to produce documents in response to TCUC No. 1-42 provides any basis for striking the subject testimony.¹⁴ In response to TCUC No. 1-42, the Company clearly stated that there were no responsive documents. Mr. Watson's rebuttal testimony does not suggest otherwise. TCUC's Motion should be denied.

Walter Fitzgerald

a. Page 24, line 15 – Page 25, line 5

With respect to the portions of Mr. Fitzgerald's rebuttal testimony that TCUC seeks to strike, it again relies on the Company's discovery responses and misstates the facts. In particular, TCUC contends that the Company failed to provide responsive answers to TCUC No. 1-26 and 3-1. Again, TCUC is incorrect. In particular, TCUC represents that TCUC RFI No. 1-26 asked the Company to "provide all support and justification for its actions associated with the treatment of gain on sale."¹⁵ In reality, TCUC RFI No. 1-26 asked the Company whether the gain or loss associated with the sale of utility property is contained in the accumulated provision for depreciation.¹⁶ In response, the Company: (1) provided a detailed listing of sales occurring since the Company's last fully litigated rate case, (2) identified that depreciable assets were included in the accumulated provision for depreciation; (3) identified that non-depreciable assets were not included in the accumulated provision for depreciation, and; (4) explained that non-

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.* at Attachment 4.

depreciable assets were not included in because they were recorded as non-operating revenues or expenses.¹⁷

Similarly, TCUC RFI No. 3-1 sought information on whether and why gains on sale of land had or had not been passed through to customers.¹⁸ In response, the Company indicated that gain on sale of land had not been passed through to customers, and that the reason for this was because gain on land sales were recorded in FERC account 421.1, which is not included in the Cost of Service.¹⁹

As discussed above, Texas law does not require the party with the burden of proof to develop evidence in *anticipation* of arguments as TCUC's Motion suggests. Rather, the law provides that the party with the burden of proof may introduce confirmatory proof to fortify the positions taken in the opening case once the party with the burden learns what points are under attack.²⁰ Further, the discovery relied on by TCUC in support of its Motion does not, as shown above, inquire about customer benefits or burdens associated with the sale of property. This is, however, the basis on which TCUC witness Mr. Pous challenges the Company's treatment of land sales. Mr. Fitzgerald's testimony on page 24, lines 15 – page 25, line 5 is directly responsive to Mr. Pous' arguments. In particular, Mr. Fitzgerald disputes the benefit/burden arguments raised by Mr. Pous and explains why shareholders, not customers, have borne the burden or financial risk associated with land ownership.²¹ Mr. Fitzgerald further explains that land is a non-depreciable asset and the Company does not recover a return of that asset.²² This testimony is consistent with the responses provided in TCUC RFI Nos. 1-25 and 3-1. Finally, Mr. Fitzgerald responds to Mr. Pous' proposed adjustments and challenges his inclusion sales

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Gendke v. Travelers, Co.*, 368 S.W.2d 3 at 5 (Tex. App.-Waco 1963)

²¹ Rebuttal Testimony of Walter Fitzgerald at 24, lines 15-20.

²² *Id.* at lines 20-21.

occurring outside the test year. Again, this is an issue that CenterPoint Houston could not have anticipated in responding to the discovery cited by TCUC in its Motion. TCUC's Motion should be denied.

III. CONCLUSION

At heart, TCUC's Motion appears to be another complaint about the procedural schedule, rather than one based on merit. TCUC makes no effort to hide the undisputed fact that the Mr. Watson's and Mr. Fitzgerald's rebuttal testimonies are directly responsive to claims raised by TCUC witness Mr. Jacob Pous in his pre-filed testimony. The passages of Mr. Watson's and Mr. Fitzgerald's rebuttal testimonies that are at issue are narrowly tailored to disprove the evidence introduced by TCUC witness Mr. Pous. This is consistent with the legal standard enunciated by the Texas courts. As such, the testimony is properly admitted into evidence and TCUC's Motion should be denied in its entirety.

WHEREFORE, PREMISES CONSIDERED, CenterPoint Houston respectfully requests that the Administrative Law Judge deny TCUC's Objection to and Motion to Strike Portions of the Rebuttal Testimonies of Dane A. Watson and Walter L. Fitzgerald. CenterPoint Houston also requests such further relief to which it may be entitled.

Respectfully submitted,



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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 7th of October 2010.

