



Control Number: 38339



Item Number: 786

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

APPLICATION OF CENTER POINT ENERGY § BEFORE THE STATE OFFICE  
HOUSTON ELECTRIC, LLC FOR AUTHORITY § OF  
TO CHANGE RATES § ADMINISTRATIVE HEARINGS

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TEXAS LEGAL SERVICES CENTER'S AND  
TEXAS RATEPAYERS' ORGANIZATION TO SAVE ENERGY'S  
POST HEARING BRIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES ARNOLD AND WILFONG:

COMES NOW, Texas Legal Services Center ("TLSC") and Texas Ratepayers' Organization To Save Energy ("Texas ROSE") setting out its post hearing brief as follows:

I. Introduction [Issue 1]

This is first the system wide base rate case for CenterPoint Energy Houston Electric, LLC. ("CenterPoint" or "company") since PUC Docket No. 32093<sup>1</sup> more than three years ago. Even then, CenterPoint contends that a rate case should not have been required to be filed so soon.<sup>2</sup> Yet, paradoxically, the company urges the commission to approve more riders in this case claiming its need for more timely recovery of expenses. These requests should be considered in view of the company's position that it should not have been required to file a rate case so soon.

A multitude of entities intervened in this case<sup>3</sup> reflecting the substantial effect electric rates have upon the customers CenterPoint serves. But perhaps the customer class most

<sup>1</sup> Re: *Petition By Commission Staff for A Review Of The Rates Of CenterPoint Energy Houston Electric, LLC Pursuant To PURA §36151, et al*, PUC Docket NO. 32093, Final Order (Texas PUC September 5, 2006).

<sup>2</sup> CenterPoint Ex. No. p, Dir. Test., Scott Prochazka, p. 2.

<sup>3</sup> Intervenor in this case are City of Houston and Houston Coalition of Cities ("COH"), Gulf Coast Coalition of Cities ("GCCC"), Office of Public Utility Counsel ("OPC"), Reliant Energy Retail Services, LLC ("Reliant"), The State of Texas' Agencies and Institutions of Higher Education Served by CenterPoint Energy Houston Electric, LLC ("State Agencies"), Oncor Electric Delivery Company, LLC ("Oncor"), Staff of the Public Utility Commission of Texas ("Staff") Texas Coast Utilities Coalition ("TCUC"), Texas Energy Association for Marketers ("TEAM"), Texas Industrial

affected by CenterPoint's rate case presentation is the residential customer class. The residential customer class was the only customer class whose test year revenues were adjusted for energy efficiency.<sup>4</sup> The residential class was the only customer class where the company is proposing a drastic increase in the customer charge component of the class's rate design.<sup>5</sup> Both of these adjustments made to one customer class and not consistently with the other customer classes have the effect of increasing residential rates, and in the case of the customer charge substantially raising the rates of low use customers, many of which are low income families, persons with disabilities, and seniors with fixed incomes.

TLSC and Texas ROSE in the following pages will be addressing the company's requested cost of capital, its cost of service and its residential rate design. What our discussions will reveal is that CenterPoint supports its rate request by an excessive rate of return and an unreasonable capital structure. Further, our discussion of the evidence will reveal that the cost of service methods relied upon by CenterPoint to allocate costs among the various customer classes is flawed and is contrary to current commission decisions involving the issue of allocations based on the number of customers. In addition, this brief will show that CenterPoint is applying rate design principles inconsistently among the customer classes resulting in substantial rate increases to residential consumers that use small amounts of electricity. Our brief additionally addresses rate case expenses, charitable contributions and

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Energy Consumers ("TIEC") Marketers ("TEAM"), Texas Industrial Energy Consumers ("TIEC"), TXU Energy Retail Company LLC ("TXU Energy"), Direct Energy, LP ("Direct Energy"), Alliance for Retail Markets ("ARM"), and Texas Port Recycling, LP ("Texas Port Recycling")(This company requested that it be allowed to withdraw its intervention.)

<sup>4</sup> See CenterPoint Ex. No. 31, Dir. Test., Robert William Sumners, Jr., Exhibit RWS-1, p.1

<sup>5</sup> CenterPoint Ex. No. 30, Dir. Test., Matthew Troxle, p. 37.

the regulatory liability accrued by CenterPoint due to a prior case commitment to fund bill payment assistance programs for low income customers.

TLSC and Texas ROSE will not be addressing many of the issues that arose in this case. This should not be considered an indication of agreement with the company or other intervenors. Our requested adjustments in this case will result in rates lower than the company's proposal. Moreover, rates for residential customers who use small amounts of electricity will be substantially reduced from the company's proposal.

**II. Executive Summary[Issue 5]**

**III. Rate Base[Issues 7 and 9]**

**A. Capital Investment**

- 1. Transmission**
- 2. Distribution**

**B. Adjustments[Issue 6]**

- 1. Post-Test Year Adjustments**
- 2. AMS**

**C. Accumulated Deferred Federal Income Tax (ADFIT")**

- 1. FIN 48 Liabilities[Issue 24]**
- 2. Intervenors' Proposed Rate Base Items**

**D. Cash Working Capital**

**E. Materials and Supplies**

**F. Electric Plant In Service ("EPIS")[Issue 18]**

**G. Electric Plant Held for Future Use("PHFU")**

## **H. Injuries and Damages Reserve**

## **I. Prepayments**

## **J. Regulatory Assets[Issue 10]**

### **1. Pension Asset**

### **2. Other Regulatory Assets**

## **IV. Rate of Return**

A utility incurs costs in financing its capital. For this utility and this rate case, financing comes from two sources: the borrowing of money for which the utility is charged interest for the use of the money; and the financial investment in the utility made by the utility's owners (shareholders) who expect to receive a profit or return on their investments. Thus, capital is part debt financed by borrowing and part equity financed by shareholder investment. Equity financing costs are generally higher than debt financing costs. The two costs added together represent the financial costs the utility incurs. That cost is expressed as a percentage of the capital and is called the rate of return. The balancing of the debt/equity relationship of financial funding of the utility's capital is necessary to prevent excessive costs.

The ratemaking issues in this case address two questions: 1) what should the appropriate debt/equity/ratio ("CAPITAL STRUCTURE") be for CenterPoint; and, 2) what rate of return on equity ("RROE") should be set for CenterPoint's shareholders? The overriding guideline is that the RROE and the capital structure be established at a level sufficient "to maintain the utility's credit rating and attract capital."<sup>6</sup>

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<sup>6</sup> *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591,602, 64 S. Ct. 281, 288(1944)

### A. Capital Structure[Issue 3]

The capital structure chosen by the commission may or may not reflect the actual capital structure of the utility during the historical test year, but should be one that along with the RROE will allow CenterPoint to access the credit in the market and attract capital. CenterPoint in this case is seeking a capital structure of 50% debt and 50% equity.<sup>7</sup> The actual capital structure during the historical test year was 54.8% debt and 45.2% equity.<sup>8</sup> CenterPoint's requested capital structure is the same as it requested in its last fully litigated rate case-- the UCOS case.<sup>9</sup> In that case the commission rejected CenterPoint's request and determined that a 60% debt and 40% equity capital structure was reasonable for setting rates.<sup>10</sup>

Since the UCOS case, CenterPoint has been able to access the credit market even at a time when Hurricane Ike coincided with what CenterPoint witness Kilbride characterized as "the worst moments of the recent crisis in the financial markets."<sup>11</sup> Further, as brought out by Texas Industrial Electric Consumers ("TIEC") at the hearing, CenterPoint is joined at the financial hip with its parent company, CenterPoint Energy, Inc. ("CNP"), for purposes of establishing CenterPoint's credit rating.<sup>12</sup> Consequently, the level of debt at a total corporate consolidated basis is relevant to the financial risk of lending to CenterPoint. According to CenterPoint witness Kilbride, CNP's consolidated capital structure for the year ended December 31, 2009 was 74.1% debt and 25.9%

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<sup>7</sup> See CenterPoint Ex. No. 36, Dir.Test., Marc Kilbride, p. 15.

<sup>8</sup> *Ibid.*, p. 5.

<sup>9</sup> *Ibid.*, p. 14

<sup>10</sup> *Ibid.*, p. 13.

<sup>11</sup> *Ibid.*, p. 7

<sup>12</sup> See TIEC Ex. No. 38

equity.<sup>13</sup> The consolidated corporate capital structure is significantly more debt laden than any other party in this case is recommending for the purpose of setting rates.

CenterPoint is a wholly owned subsidiary of CNP. The significance of the source of equity for CenterPoint is apparent. CenterPoint's parent company is leveraging its debt to acquire profit on the return on CenterPoint's equity. The commission could utilize a double leverage source of funds approach in determining CenterPoint's capital structure for purposes of ratemaking. This approach "assumes the parent corporation finances its subsidiary's equity capital in proportion to its own debt and equity and imputes that leveraged cost of equity as the cost of equity to (CenterPoint)."<sup>14</sup> Unfortunately, the record evidence does not address the double leverage approach. However, three witnesses did recommend that the current regulatory capital structure remain the same.<sup>15</sup>

TLSC and Texas ROSE urge the Administrative Law Judges (ALJs) to recommend the commission determine that a 60% debt and 40% equity capital structure be used for purposes of setting rates. It is a capital structure that has allowed CenterPoint to access the credit market—even at the time of the most strident disruption in the financial markets since the Great Depression. The 60:40 capital structure is more conservative than the actual consolidated capital structure of CNP's holding company that is evaluated for credit rating purposes involving CenterPoint. And, the current regulatory capital structure has allowed CenterPoint to receive an upgrade to its bond rating by at

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<sup>13</sup> See CenterPoint Ex. No. 36, Dir. Test., Marc Kilbride, p. 5

<sup>14</sup> *General Telephone Company of the Southwest v. Public Utility Commission*, 628 S.W. 2d 832, 838 (Tex. App. – Austin 1982, no writ)

<sup>15</sup> See, COH Ex. No. 3, Dir. Test., J. Bertram Solomon, p. 17; OPC Ex. No. 1, Dir. Test. Carol Szerszen, p. 38; and TIEC Ex. No. 2, p. 15.

least one credit reporting agency.<sup>16</sup> In addition, rating agencies report that CenterPoint is intending to internally generate funding for the majority of its capital expenditures<sup>17</sup>, thereby decreasing the utility's exposure to external financing in the credit and capital markets.

#### **B. Return on Equity[Issue 4]**

To derive a return on equity experts turned to a series of cost of capital models. The resulting recommended returns on equity derived from these models showed that the intervenor witness calculations produced RROEs whose results produced a lowest rate within 40 basis points of the highest rate. The recommended RROEs were 9.67% (staff), 9.75 (TIEC), 10% (COH) and 9.6% (OPC).<sup>18</sup> This narrow range is in contrast to the 125 point difference between CenterPoint's RROE of 11.25% and the highest intervenor recommended RROE of 10%. The major difference between CenterPoint and the intervenors' derivations was the input of financial data. Mr. Hevert testifying on behalf of CenterPoint relied upon growth rates in excess of the gross domestic product ("GDP") growth rates, a calculation reflecting the growth in the nation's economy, for two of his financial models, the DCF and CAPM.<sup>19,20</sup> As Mr. Gorman testified, RROE models rely upon growth rates that are sustainable in the long term.<sup>21</sup> Growth rates exceeding the GDP are not sustainable in the long term as evidenced by analyses performed by the

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<sup>16</sup> COH Ex. No. 3, p. 11

<sup>17</sup> CenterPoint Ex. No. 36, Dir. Test., Marc Kilbride, Exhibit MK-3, p. 3

<sup>18</sup> See summary at CenterPoint Ex. No. 69, Rebut. Test., Robert B. Hevert, p. 12.

<sup>19</sup> TIEC Ex. No. 2, Dir. Test., Michael Gorman, pp. 44-47.

<sup>20</sup> TLSC and Texas ROSE note that the financial data was further skewed by the inclusion of a company whose financial operating data proved to be an outlier to the other companies data relied upon for the parties' DCF analyses. See TIEC Ex. No. 2, Dir. Test., Michael Gorman, p. 25. See also, OPC Ex. No. 1, Dir. Test. Carol Szeszen at p. 9 who discusses the problems of outliers in smaller samples of company data used in DCF analyses.

<sup>21</sup> *Ibid.*, p. 21



Energy Information Administration involving the observation of utility sales growth with GDP growth<sup>22</sup> and a study performed by Morningstar's *Stocks, Bonds, Bills and Inflation 2009 Yearbook Valuation Edition*.<sup>23</sup> The use of a GDP as a reality check to the reasonableness of long term growth rates was to some extent conceded by Mr. Hevert in his rebuttal testimony when he stated, "While I do not disagree that in the long-run companies may grow at a rate approximating that of the general economy. . ." <sup>24</sup> Excessive growth rates lead to excessive RROE.<sup>25</sup>

An additional problem with Mr. Hevert's RROE analyses is his use of short term beta estimates in his CAPM model. Beta is a measure of an individual company's risk that cannot be diluted in a mixed portfolio of stocks<sup>26</sup> and is used to modify a market risk premium. Mr. Hevert used a short term beta estimate which was substantially higher than the beta estimates relied upon by intervenor RROE witnesses who used published beta estimates published by Value Line and Bloomberg that rely upon independent security analysts and are widely available to the investment community.<sup>27</sup> The consequence of using a non-standard Beta was to overstate the RROE.

The last RROE model performed by Mr. Hevert was a bond yield plus risk premium. Once again, as in Mr. Hevert's Discounted Cash Flow (DCF) and Capital Asset Pricing Model (CAPM) analyses, he measures using the relationship between interest rate and average risk premium that assumes a relationship that was not proven to exist

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<sup>22</sup> *Ibid.*, p22. See also, OPC Ex. No. 1, Dir. Test., Carol Szerszen, p. 21 and 22.

<sup>23</sup> *Ibid.*, p. 23.

<sup>24</sup> CenterPoint Ex. No. 69, Rebut. Test., Robert B. Hevert, p.33.

<sup>25</sup> TIEC Ex. No. 2, Dir. Test., Michael Gorman, p. 42.

<sup>26</sup> See e.g., TIEC Ex. No. 2, Dir. Test., Michael Gorman, p. 33.

<sup>27</sup> See TIEC Ex. No. 2, Dir. Test., Michael Gorman, p. 49; See also COH Ex. No. 3, Dir. Test., J. Bertram Solomon, p. 23, and Staff Ex. No. 1, Dir. Test., Slade Cutter, p. 17 & 18.

and cannot be used reliably in the model for calculating a RROE.<sup>28</sup> The result of his assumed inputs into this model was to overstate the RROE.

As an additional reasonableness check on Mr. Hevert's calculated RROEs a review of studies performed by the Federal Reserve Bank of Philadelphia, by CFO Magazine and Ibbotson found expected long term (at least ten year) returns ranged from 6.85% to 9.8%.<sup>29</sup> CenterPoint's requested RROE is overstated.

TLSC and Texas ROSE urge the ALJs to recommend the Commission determine that a reasonable RROE be within the range of intervenor-recommended RROEs of 9.6% to 10%.

**C. Cost of Debt[Issue 4]**

**D. Overall Rate of Return[Issue 4]**

**V. Cost of Service and Operations and Maintenance[Issues 2 and 12]**

**A. Transmission and Substation Operations**

**B. Distribution Operations[Issue 29]**

**C. Labor Expenses**

**D. Pension and OPEB Expense[Issue 13]**

**E. Self-Insurance Reserve[Issues 16 and 20]**

**F. Affiliate Expenses[Issue 17]**

**G. Customer Service**

**H. Electric Market Operations**

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<sup>28</sup> TIEC Ex. No. 2, Dir. Test. Michael Gorman, p. 51. See also COH Ex. No. 3, Dir. Test., J. Bertram Solomon, pp. 24 & 25, and OPC Ex. No. 1, Dir. Test., Carol Szerszen, pp. 29 & 30.

<sup>29</sup> See OPC Ex. NO. 1, Dir. Test., Carol Szerszen, p. 28.

- I. **Energy Efficiency Expenses and Programs[Issue 31]**
  - J. **Amortization Expense[Issue 19]**
  - K. **Depreciation[Issue 11]**
    - 1. **Accumulated Depreciation Reserve**
    - 2. **Service Lives**
    - 3. **Net Salvage**
    - 4. **Gain on Sale of Land**
  - L. **Federal Income Taxes[Issue 23]**
    - 1. **Consolidated Tax Savings Adjustment[Issue 22]**
    - 2. **Medicare Part D Subsidy**
  - M. **Taxes Other Than Income Taxes[Issue 23]**
    - 1. **Ad Valorem (Property) Taxes**
    - 2. **Texas Gross Margin Tax**
    - 3. **Payroll Taxes**
  - N. **Municipal Franchise Fees[Issue 21]**
- VI. ERCOT Transmission Cost of Service**
- A. **Wholesale Transmission Cost of Service Tariff Changes**
  - B. **Rider UCOS Wholesale Credit (“RUWC”)**
- VII. Cost Allocation and Rate Design**

Cost allocation involves as the term implies allocating the costs the utility incurs in providing utility costs to its customers. Some costs can be identified as directly caused by a particular customer class and those costs are then directly assigned to that class for utility

recovery of those costs. But the bulk of costs incurred by the utility relate to costs that are caused by all or almost all customer classes. In these instances where there is no direct relationship to a quantified cost and who caused the cost to be incurred, formulas or methods are developed to try to mete out portions of the costs incurred by all customer classes so that each customer class pays its fair share of the common costs. Once a formula or methodology is introduced into cost assignments among the customer classes, judgment figures in as opposed to scientific certainty. To that end, the challenge in a rate proceeding involving cost allocation is to determine whether utility judgments involving how costs should be allocated and the inputs utilized in the various methods chosen fairly allocate common costs among the customer classes. CenterPoint's direct and allocated assignment costs are calculated within a cost of service study.

In this case, CenterPoint's cost of service study has several flaws that will be addressed below.

**A. Cost Allocation[Issues 14 and 25]**

**1. Capacity Allocation (Minimum System)**

CenterPoint allocated a portion of its distribution system based on number of customers. Because residential customers are the most numerous, any cost allocated based on the number of customers causes the lion's share of those costs to be improperly allocated to residential which includes many low-income customers. Consequently, this improper allocation method will substantially increase residential and low-income customers' rates. In this proceeding, CenterPoint defined customer costs as those that "arise as a result

of incrementally adding a customer to the system, but vary little or not at all with the customer's actual electrical usage."<sup>37</sup> CenterPoint contends its distribution and transmission plant costs are fixed.<sup>38</sup> Since incremental costs are those costs incurred over and above fixed costs, CenterPoint's definition of customer costs precludes any of the fixed distribution and transmission plant costs to be allocated as customer costs. This logic was recognized in PUC Docket No. 33309<sup>39</sup> in rebuttal testimony filed by the utility witness, stating, "If a new customer is added to the distribution system, the only direct new investments will be services (such as service drops) and meters, not usually additional poles, conductors or transformers."<sup>40</sup> CenterPoint erred in creating a hypothetical minimum plant for purposes of allocating a portion of the fixed distribution costs as customer costs. This decision is contrary to the company's own definition of what constitutes a customer cost and it is contrary to the most recent rate case treatment of this cost by major Texas electric utilities.<sup>41</sup>

Distribution and transmission costs are incurred to meet customer demand and energy use. CenterPoint recognizes this fact when it allocates the majority of transmission and distribution costs on demand. Unfortunately, CenterPoint continues to hold to a minimum plant theory that is simply a

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<sup>37</sup> CenterPoint Ex. No. 30, Dir. Test., Matthew A. Troxle p.9.

<sup>38</sup> *Ibid.* pp. 34 & 35.

<sup>39</sup> *Application of AEP Texas Central Company for Authority to Change Rates*, PUC Docket No. 33309. ("Docket 33309).

<sup>40</sup> See Docket No. 33309, Rebuttal Testimony of Donald R. Moncrief at 11 (April 3, 2007) cited in GCCC Ex. No. 2, Dir. Test., Clarence Johnson, pp.25 & 26. See also, GCCC Ex. No. 2, pp. 20-21 where Mr. Johnson discusses other experts opining on this issue.

<sup>41</sup> See GCCC Ex. No. 2, Dir. Test., Clarence Johnson at p. 26.

creation of a fiction for the purposes of allocating the majority of these costs to its residential and low-income customers. This created, minimum plant does not match reality<sup>42</sup>--even to the point of creating a fictional transformer whose cost for purposes of the minimum plant was approximately 37% greater than the cost of the smallest transformer on CenterPoint's system.<sup>43</sup> Most Texas utilities in recent years have moved away from this fictional system.

TLSC and Texas ROSE urge the ALJs to recommend the Commission determine that a minimum plant should not be used for cost allocation purposes.

**2. Class Cost of Service**

**3. 4CP Transmission Cost Allocation**

**4. Municipal Franchise Fees**

**B. Rate Design[Issues 26 and 32]**

**1. Alternative Customer Charge[Issue 8]**

In this case, CenterPoint is proposing increasing the monthly customer charge component of its residential base rates by 800% from the current \$1.68 to \$18.12.<sup>44</sup> This high monthly customer charge is contrary to Commission precedent that sets customer charges to recover only costs that vary directly

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<sup>42</sup> See GCCC Ex. No. 2, Dir. Test., Clarence Johnson at pp. 23-27 which discusses the problems with the minimum plant created by CenterPoint in this case. See also, Staff Ex. No. 6, Dir. Test., Richard Lain, pp. 15-17 where he testifies about CenterPoint's approach on this issue to be inconsistent with Commission's most recently decided rate cases.

<sup>43</sup> GCCC Ex. No. 2, Dir. Test., Clarence Johnson, p. 22.

<sup>44</sup> See GCCC Ex. No. 2, Dir. Test., Clarence Johnson, p. 40, CenterPoint Ex. No. 30, Dir. Test., Matthew Troxle, p. 37.

with the number of customers such as billing and collecting.<sup>45</sup> The major reason provided by CenterPoint for its stark departure from Commission precedent is that almost all distribution and transmission costs are fixed.<sup>46</sup> But this factor is really no different than base rate issues under the integrated former monopoly utilities where base rates were recovering the fixed, i.e. embedded costs of power plants as well as transmission and distribution costs. Moreover, as a Gulf Coast Coalition of Cities witness pointed out, regulated cost of service ratemaking is based upon “sunk embedded costs.”<sup>47</sup> The \$18 customer charge is simply a red herring thrown out to have parties not focus on one of the key elements of rate design—that is to reflect how costs are incurred within the customer class. CenterPoint concedes that its cost of service study relies upon the usage characteristics of the various customer classes to assign costs to each class.<sup>48</sup> Yet, it fails to follow through with that same principle in its residential rate design. Instead, in rebuttal to City of Houston witness Daniel’s criticism that CenterPoint’s residential rate design proposal created intraclass subsidies, CenterPoint states that the only way to allocate costs within a customer class is to “keep designing new customer classes to reflect smaller and smaller groups of similarly situated customers.”<sup>49</sup> However, that statement is rebutted in CenterPoint’s discussion of its proposed tariff changes to its transmission service

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<sup>45</sup> See GCCC Ex. No. 2, Dir. Test., Clarence Johnson, p. 41.

<sup>46</sup> CenterPoint Ex. No. 30, Dir. Test., Matthew Troxle, p. 34 & 35.

<sup>47</sup> GCCC Ex. No. 2, Dir. Test., Clarence Johnson, p. 43.

<sup>48</sup> See e.g. CenterPoint Ex. No. 30, Dir. Test., Matthew Troxle, p 14 where Mr. Troxle discusses allocating transmission and distribution based on demand characteristics.

<sup>49</sup> CenterPoint Ex. No. 61., Rebut. Test., Matthew Troxle, p. 19.

tariff. In that discussion CenterPoint was proposing a rate design change that “more closely follows cost causation principles.”<sup>50</sup>

Obviously, CenterPoint knows that the residential class need not be broken up into smaller and smaller classes for purposes of avoiding intraclass subsidies. CenterPoint’s current rate design properly recognizes the different costs CenterPoint incurs in providing service among the residential sub groups of customers. Yet, in this case through a high proposed customer charge CenterPoint’s rate design perversely proportionately allocates more costs to low users than the costs allocated to the higher usage level customers. CenterPoint recognized this stating, “[t]his means that at higher usage levels customers are better off with a higher fixed Customer Charge.”<sup>51</sup> As Mr. Johnson noted, a small user , one using 500 kWh per month, would incur a 45% increase in TDU charges under CenterPoint’s proposed rate design.<sup>52</sup> This level is substantially higher than the residential class rate increase proposed by CenterPoint. And, again, as Mr. Johnson noted, these small users probably use no or little air conditioning.<sup>53</sup> Yet, these small users are being asked to bear costs under CenterPoint’s proposed rate design that should be borne by those customers who utilize large amounts of electricity during the peak months of the year when usage is utilized by CenterPoint for class cost allocation purposes.

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<sup>50</sup> CenterPoint Ex. No. 30, Dir. Test., Matthew Troxle, p. 26.

<sup>51</sup> *Ibid.* p. 37.

<sup>52</sup> GCCC Ex. No., 2, Dir. Test., Clarence Johnson, p. 42

<sup>53</sup> *Ibid.*, p. 42



TLSC and Texas ROSE urge the ALJs to recommend that the commission determine that the residential customer charge should only recover those costs that vary by the number of customers and not the fixed costs of the utility.

**2. Demand Ratchets**

**3. Street Lighting**

**4. Additional Issues**

**C. Billing Determinants**

**1. Weather Normalization[Issue 15]**

**2. Energy Efficiency Adjustment**

**D. Riders[Issue 28]**

**1. Storm Hardening Rider[Issue 29]**

**2. Energy Efficiency Cost Recovery Factor("EECRF")[Issue 31]**

**3. State Colleges and Universities Discount("SCUD")[Issue 30]**

**4. Deferred Tax Riders**

**5. Other Riders**

**VIII. Advanced Metering System("AMS")[Issue 37]**

**A. AMS Deployment Plan and Costs[Issues 33 and 36]**

**B. AMS Reconciliation[Issue 34]**

**C. AMS Surcharge[Issues 34 and 35]**

**D. AMS Legal Expenses**

**IX. Rate Case Expenses[Issue 27]**

TLSC and Texas ROSE understand that the rate case expenses identified in CenterPoint witnesses Andrien and Hedges testimonies will be adjusted to reduce the witnesses' supported expenses by \$104,000 and by \$250,000. With this understanding, TLSC and Texas ROSE have no comment.

**X. Austerity Adjustment**

**XI. Miscellaneous**

**A. Disconnect/Reconnect for Pre-pay Customers**

**B. Docket 32093 Low-Income Program Funds**

As a part of the settlement in PUC Docket No. 32093, CenterPoint agreed to provide funding for bill payment assistance programs "through the date on which new CenterPoint Houston system-wide base rates first become effective pursuant to a general system-wide rate case filed after the date this Order becomes final (Low-Income Funds)." <sup>54</sup> This proceeding is the first case addressing system-wide base rates since PUC Docket No. 32093. No new system-wide base rates have become effective since the final order in Docket No. 32093. At the end of its 2009 test year, CenterPoint had a regulatory liability of \$504,858.00 related to the low-income funds program. <sup>55</sup> Instead of using this money to fund bill payment assistant programs in 2010 up until the new rates established in this case become effective as promised in Docket No. 32093, CenterPoint determined to refund the monies back to all residential customers and not just to low-income customers for whose benefit the monies had been committed by

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<sup>54</sup> See *Petition By Commission Staff For a Review of the Rates of CenterPoint Energy Houston Electric, LLC Pursuant to PURA §36.151, et al*, PUC Docket No. 32093, Final Order, FOF No. 53, COL Nos. 5-9 (TX. PUC—September 5, 2006), a copy of which was introduced as OPC Ex. No.10. ("Docket No. 32093")

<sup>55</sup> CenterPoint Ex. No.28, Dir. Test., Walther L. Fitzgerald, p. 12; CenterPoint Ex. No. 30, Dir. Test., Matthew A. Troxle, p.43.

CenterPoint.<sup>56</sup> These monies should not be diluted through a refund to all residential customers but should instead be used as promised by CenterPoint in Docket No. 32093 to fund a low income bill payment assistant program. Since CenterPoint failed to continue the funding of these programs in 2010, the only fair and reasonable approach would be to determine and find that these monies accounted for by CenterPoint as monies related to funding low income bill payment assistance be spent on a low-income bill payment assistance program. Otherwise the promise CenterPoint made to low income in Docket No. 32093 will be broken. The harm to low income customers is substantial. Without bill payment assistance, low income customers electric service could be disconnected. Electric service is not a luxury. It is an essential service necessary to maintain the safety, health and well-being of low income customers.

TLSC and Texas ROSE are urging the ALJs to recommend that the Commission direct CenterPoint to fulfill its Docket 32093 commitment to funding low income bill payment assistance programs with the monies recorded as a regulatory liability in CenterPoint's books and records as identified by CenterPoint witnesses Fitzgerald and Troxle.

### **C. Charitable Contributions**

Under CenterPoint's guidelines, only charitable organizations that have a federal income tax exemption status qualify.<sup>57</sup> An entity that may qualify for a charitable contribution is one that is nonprofit.<sup>58</sup> Legislative advocacy expenses are not to be

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<sup>56</sup> *Ibid.*

<sup>57</sup> See CenterPoint Ex. No. 14, Dir Test., Karen Dominguez, Exhibit KCD-9, pp 11-13.

<sup>58</sup> See CenterPoint Ex. No. 20, Dir. Test., Sharon Michael Owens, p. 2.

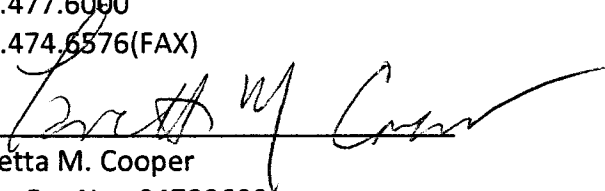
included in a utility's cost of service for purposes of ratemaking.<sup>59</sup> TLSC/Texas ROSE Ex. No. 4 is the list of contributions CenterPoint made during the test year. Within the list were payments for a "Legislative trip to Austin" (p. 5), liquor purchases (p. 3), monies paid to a Drake Marketing Inc. (p. 13), several payments to Frontier Associates LLC, and a payment to Incuity Software Inc. None of these payments are shown to be for charitable purposes. One –"the legislative trip to Austin" is prohibited by PURA. For the corporations identified above there was either no description of the services purchased or the description described non-charitable activities. TLSC and Texas ROSE urge the ALJs to recommend the Commission disallow these expenses as inappropriate charitable contributions.<sup>60</sup>

## **XII. Conclusion and Prayer**

WHEREFORE, PREMISES CONSIDERED, TLSC and Texas ROSE respectfully ask that the ALJs grant the relief requested herein and for such other relief in law or in equity to which they are entitled.

### **Respectfully Submitted,**

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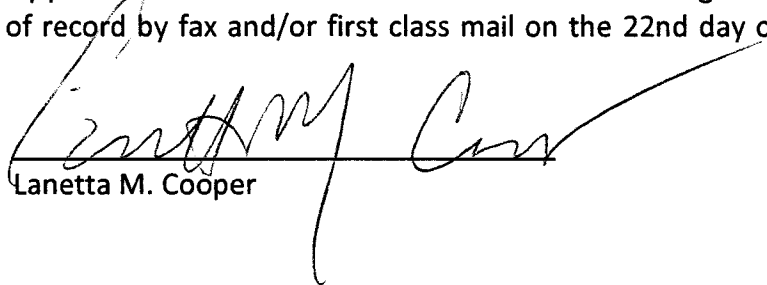
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<sup>59</sup> Public Utility Regulatory Act, TEX. UTIL. CODE, §36.062 (Vernon 2007).

<sup>60</sup> In the case of Frontier Associates LLC, the company may have actually double counted this cost. Nevertheless the costs identified are not proper charitable contributions.

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of TLSC's and Texas ROSE's attached Post Hearing Brief was served upon all known parties of record by fax and/or first class mail on the 22nd day of October 2010

  
Lanetta M. Cooper

**Appendices:**

**Appendix 1—Proposed Findings of Fact and Conclusions of Law**

**TLSC/Texas ROSE PROPOSED FINDINGS OF FACT**

1. Legislative expenses are not allowed in a utility's cost of service.
2. CenterPoint's charitable expenses include a legislative trip to Austin.
3. The legislative trip to Austin expense included in CenterPoint's charitable expenses is disallowed.
4. CenterPoint payments to for-profit entities are not allowable charitable expenses.
5. CenterPoint has included payments to for-profit entities in its charitable expenses for which it is seeking reimbursement.
6. CenterPoint payments to for-profit entities without any indication the expenses were for a charitable purpose are disallowed from the company's regulatory cost of service.
7. It is not in the public interest for ratepayers to reimburse CenterPoint for liquor expenses in the name of economic development.
8. All liquor expenses listed in CenterPoint's charitable contributions are disallowed from the company's regulatory cost of service.
9. At the end of the test year CenterPoint had unspent funds booked as a regulatory liability relating to its settlement agreement in PUC Docket No. 32093 to fund bill payment assistance for low-income consumers.
10. The unspent funds should be expended to fund a bill payment assistance program for low-income consumers consistent with CenterPoint's commitment in PUC Docket No. 32093.

11. The capital structure of 60% debt and 40% equity will allow CenterPoint to access the credit market.
12. In its cost of service study CenterPoint allocated a portion of its distribution system on customer count utilizing a minimum plant theory.
13. Use of a minimum plant to allocate costs on customer count is inconsistent with Commission precedent.
14. CenterPoint's distribution system is to be allocated on demand.
15. The residential customer charge should only recover those costs that vary with the addition of a customer.
16. CenterPoint's requested increase to its residential customer charge inappropriately recovers a portion of the company's fixed costs.
17. Center Point's requested increase to its residential customer charge is denied.

**Appendix 2—Procedural History**

**Appendix 3—List of Acronyms**