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PUBLIC UTILITY COMMISSION
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APPLICATION OF CENTERPOINT
ENERGY HOUSTON ELECTRIC, LLC
FOR APPROVAL OF AN
ADJUSTMENT TO ITS ENERGY
EFFICIENCY COST RECOVERY
FACTOR

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PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSION STAFF'S BRIEF ON CERTIFIED ISSUE

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Brief on Certified Issue and would show the following:

I. Background

On May 1, 2012, CenterPoint Energy Houston Electric (CenterPoint) filed its Application for its 2013 Energy Efficiency Cost Recovery Factor (EECRF). The Commission subsequently issued a Supplemental Preliminary Order wherein the Commission determined that the rate case expenses incurred by municipalities in an EECRF proceeding should be recovered from only ratepayers residing within those municipalities. The parties were able to resolve all issues by means of settlement except for the rate case expense issue. Thereafter, the Gulf Coast Coalition of Cities (GCCC), Reliant Energy Services, LLC (Reliant), and TXU Energy Retail Company, LLC (TXU Energy) filed a motion to certify the rate case expense recovery issue to the Commission. The Administrative Law Judge (ALJ) granted the motion to certify, which the Commission is scheduled to consider at the August 17, 2012 open meeting. This Brief is timely filed pursuant to the memorandum issued by Commission Advising and Docket Management setting August 9, 2012 as the deadline for parties to file briefs on the certified issue.

II. Discussion

The specific issue certified by the ALJ is as follows:

Whether the allocation of municipal rate case expenses to ratepayers in the cities that have intervened is (sic) Energy Efficiency Cost Recovery Factor cases is consistent with the relevant law and represents appropriate policy.

Staff's response to the issue, as explained in further detail below, is that the recovery of the municipalities' rate case expenses in EECRF proceedings from ratepayers within those municipalities is consistent with the relevant law. However, the issue is not ripe in this

particular case. Nevertheless, if in a case in which the issue is ripe, the Commission decides that the municipalities' expenses for an EECRF proceeding should be recovered from ratepayers residing within those municipalities, then the Commission should explain its decision since such an allocation is different from the allocation of municipalities' rate case expenses in prior rate-making proceedings, i.e. base rate and fuel proceedings.

The allocation of the municipalities' rate case expenses to ratepayers that reside in the municipalities that have intervened in an EECRF proceeding is consistent with applicable law. Indeed, the courts have upheld a previous Commission decision to impose a separate surcharge to recover municipalities' rate case expenses from ratepayers within those municipalities. In *West Texas Utilities Co. v. Office of Public Utility Counsel*,¹ the Austin Court of Appeals determined, over the objection of two intervening sets of municipalities, that the Commission's "policy decision to impose a surcharge on the two sets of cities that generated the expenses falls within its discretion to pass through ratemaking costs to the customer."² In so finding, the Court noted that the Commission's decision on allocating costs is within its discretion³ and that rate design is a complex problem and may be based on many factors.⁴ In this case, allocation of the municipalities' rate case expense costs incurred for an EECRF proceeding to ratepayers within those municipalities is no different in basic concept from what the Court upheld in the *West Texas Utilities Co.* case as a valid exercise of the Commission's discretion in approving a particular rate design and is thus consistent with the applicable law.

Although the Commission determination that municipal rate case expenses shall be recovered only from ratepayers within those municipalities would be consistent with the applicable law, it should not do so in this case because the issue is not ripe. While the Cities filed a List of Issues, which included the reasonableness of the municipalities' rate case expenses incurred in this proceeding,⁵ the Preliminary Order does not include this issue in the list of issues to be addressed. Further, the Commission determined in its Supplemental Preliminary Order that the municipalities' rate case expenses in this proceeding will be reviewed in a subsequent EECRF proceeding, and a determination of the reasonableness of those expenses will be made at

¹ *West Texas Utilities Co. v. Office of Public Util. Counsel*, 896 S.W.2d 261 (Tex. App.—Austin 1995, writ dism'd by agr.).

² *Id.* at 271.

³ *Id.* (citing to *Texas Alarm & Signal v. Public Util. Comm'n*, 603 S.W.2d 766, 772 (Tex. 1980)).

⁴ *Id.* (citing to *Public Util. Comm'n v. AT&T Communications*, 777 S.W.2d 363, 366 (Tex. 1989)).

⁵ GCCC's List of Issues at 2 (May 8, 2012).

that time.⁶ The parties that sought certification of this issue did not challenge that part of the Order in their motion to certify. Furthermore, in this proceeding no party has requested or filed testimony on GCCC's rate case expenses for this proceeding or a previous proceeding. Thus, the issue is not ripe for consideration in this docket, but may become so in a future CenterPoint EECRF proceeding. Staff notes that this issue is ripe in the pending Texas-New Mexico Power Company (TNMP) EECRF proceeding, Docket No. 40348, where TNMP and the municipalities in that proceeding seek to recover the municipalities' rate case expenses incurred as a result of TNMP's previous 2011 EECRF case. The allocation issue is thus properly addressed in the context of that proceeding.

If the Commission decides to maintain its decision as set forth in its Supplemental Preliminary Order that the municipalities' rate case expenses incurred in an EECRF proceeding should be recovered only from those municipalities' ratepayers, then the Commission should provide its reasons for the decision so since such an allocation is different from the allocation of municipalities' rate case expenses in prior rate-making proceedings, i.e. base rate and fuel proceedings. It has been the case for some time that the Commission's policy with respect to the recovery of municipalities' rate case expenses in base rate and fuel proceedings is that those expenses are recoverable from all ratepayers within a utility's service area and not just from ratepayers that reside in certain municipalities within that service area.⁷ Although the Commission is addressing an issue of first impression – the allocation of municipalities' rate case expenses for an EECRF proceeding – Staff recommends that the Commission explain its reasoning for this particular allocation of such expenses, including why such expenses should be allocated differently than such expenses have been allocated in prior base rate and fuel proceedings.⁸

⁶ Supplemental Preliminary Order at 4.

⁷ See e.g. *Application of Oncor Electric Delivery Company for Rate Case Expense Severed from Docket No. 38929 and SOAH Docket No. 473-11-2330*, Docket No. 39239, Order at Finding of Fact 17 and Ordering Paragraph No. 2 (Dec. 9, 2011); *Application of Southwestern Electric Power Company for Severed Rate Case Expenses*, Docket No. 38614, Order at Finding of Fact 23B and Ordering Paragraph 2 (Feb. 25, 2012).

⁸ See *West Texas Utilities*, 896 S.W.2d at 272-273 (allocation method for rate case expenses chosen by the Commission in a proceeding is an ad hoc policy decision reviewed under the arbitrary and capricious standard of review; the Commission met the standard by stating a rational basis for its decision; nevertheless, assuming *arguendo* that the Commission's decision on this issue required evidentiary support, such support existed in the record); *City of El Paso v. El Paso Electric Company*, 851 S.W.2d 896, 900-901 (Tex. App. – Austin 1993, pet.

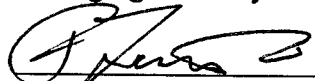
Dated: August 9, 2012

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 9, 2012, in accordance with P.U.C. Procedural Rule 22.74.



John M. Zerwas, Jr.

denied) (an administrative agency must supply explanations or reasons when these are necessary to an intelligent understanding of its final order).