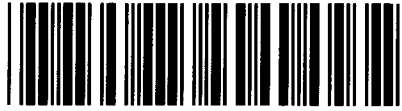


Control Number: 44572



Item Number: 69

Addendum StartPage: 0

2015 MAY 11 PM 2:23
STATE CLERK

APPLICATION OF CENTERPOINT
ENERGY HOUSTON ELECTRIC, LLC
FOR APPROVAL OF DISTRIBUTION
COST RECOVERY FACTOR
PURSUANT TO PUC SUBT. R. 25.243

§
§
§
§
§
§

BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS

**TEXAS COAST UTILITIES COALITION'S MOTION TO COMPEL RESPONSES TO
TEXAS COAST UTILITIES COALITION'S FIRST SET OF REQUESTS FOR
INFORMATION TO CENTERPOINT**

On April 27, 2015, Texas Coast Utilities Coalition ("TCUC") served CenterPoint Energy Houston Electric, LLC ("CenterPoint") with its First Set of Requests for Information ("RFIs"). Responses to those RFIs are due on May 11, 2015. CenterPoint filed objections to TCUC's RFIs on May 4, 2015. A motion to compel responses to RFIs is due no later than five working days after an objection is received.¹ This motion to compel is timely.

CenterPoint objected to TCUC's First Set of RFIs, TCUC RFI No. 1-6. The following is TCUC's Motion to Compel a response to TCUC's RFI No. 1-6.

I. BACKGROUND AND LEGAL STANDARDS

A party must state specifically the legal or factual basis for an objection and the extent to which the party is refusing to comply with the request.² The Texas Rules of Civil Procedure (TEX. R. CIV. P. 192.3(a)) and Commission's Procedural rules,³ permit discovery regarding any matter not privileged and relevant to the subject matter of the pending action. "It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." TEX. R. CIV. P. 192.3(a). "Relevant evidence" means having any tendency to make the existence of any fact that is consequence to the determination of the action more probable or less probable than it would be

¹ PUC PROC. R. 22.144(e). ("The party seeking discovery shall file a motion to compel no later than five working days after the objection is received.")

² TEX. R. CIV. P. 193.2(a).

³ PUC PROC. R. 22.141(a).

69

without the evidence.⁴ A party may discover the existence, description, nature, custody, condition, location, and contents of documents and tangible thing that constitute or contain matters relevant to the subject matter of the action.⁵ Texas Rules of Civil Procedure protect parties only from an undue burden of discovery.

II. SPECIFIC REQUEST AND OBJECTION

TCUC RFI No. 1-6:

Please provide all internal discussion, including presentations, emails, and internal reports subsequent to the effective date of the DCRF rule, which consider the potential for filing a CEHE DCRF application during a particular annual period.

CenterPoint's Objection:

CenterPoint's objected to this RFI and asserted that this question, "seeks information that is beyond the scope of this proceeding and, therefore, is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence that is relevant to the subject matter of this proceeding."⁶ CenterPoint also claimed the RFI is unduly burdensome.

TCUC's Response to CenterPoint's Objection:

TCUC RFI No. 1-6 is within the scope of this proceeding and seeks relevant information because *why* an accounting change is made is relevant in a DCRF proceeding. PUC SUBST. R. 24.245(d)(3) requires CenterPoint to:

clearly identify any costs included as distribution invested capital because of a change in accounting rules or practices since the test year in the electric utility's most recent comprehensive base-rate proceeding. The Commission shall exclude such costs if the electric utility does not prove that the costs are appropriate for recovery through the DRCF.

The Commission was concerned that an electric utility could change how it accounts for certain expenditures in order to increase recovery through a DCRF. The Commission adopted

⁴ TEX. EVID. 401.

⁵ TEX. R. CIV. P. 192.3(b).

⁶ CenterPoint Objection at 1 (May 4, 2015).

PUC SUBST. R. 24.245(d)(3) to address this concern. The Commission, when adopting (d)(3) stated:⁷

To address Representative Turner's and Oncor Cities' concern about an electric utility changing the way that it accounts for O&M expenditures in order to increase recovery through its DCRF, the commission has added subsection (d)(3), which provides that the electric utility must clearly identify any costs included as distribution invested capital because of a change in accounting rules or practices since the test year in the electric utility's most recent comprehensive base-rate proceeding. The commission shall exclude such costs if the electric utility does not prove that the costs are appropriate for recovery through the DCRF.

The Commission's concern is at the heart of TCUC RFI No. 1-6. CenterPoint has made several changes to accounting practices and accounting-related matters subsequent to its most recent base rate case,⁸ which had a 2009 test year.⁹ The DCRF rules require inquiry into accounting changes since 2009,¹⁰ however TCUC RFI No. 1-6 only asks CenterPoint to provide information subsequent to the approval of the DCRF rule, which was adopted September 27, 2011.¹¹ The scope of TCUC's inquiry is therefore narrower than the scope of inquiry required by the DRCF rule.

Also, this is CenterPoint's first DCRF filing and therefore the first opportunity to review changes made after CenterPoint's most recent base rate case that impacts its DCRF filing. If CenterPoint discussed making changes to its practices or procedures as it related to filing a DCRF and those changes or considerations permitted CenterPoint to be eligible to file this DCRF or increase recovery in this DCRF, those discussions and decisions are relevant to CenterPoint's

⁷ *Rulemaking Relating to Periodic Rate Adjustments*, Project No. 39465, Order at 9 (Sep. 27, 2011).

⁸ Direct Testimony of Mary A. Kirk at 18 ("While the only changes to CNP's accounting practices are the two items mentioned above, I want to make the Commission aware of two new accounting-related matters that have occurred since Docket No. 38339.")

⁹ *Application of CenterPoint Energy Houston Electric, LLC For Authority to Change Rates*, Docket No. 38339, Statement of Intent and Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates at 17 (Jun. 30, 2010).

¹⁰ PUC SUBST. R. 24.245(d)(3)

¹¹ *Rulemaking Relating to Periodic Rate Adjustments*, Project No. 39465, Order (Sep. 27, 2011).

2015 DCRF filing.¹² In fact, PUC SUBST. R. 24.245(d)(3) requires the Commission to exclude such costs if the utility does not prove that the costs are appropriate for recovery in a DCRF.

Absent the information sought in TCUC RFI No. 1-6, Intervenors and Staff have no independent insight into CenterPoint's actions and rationale, other than the information CenterPoint chooses to include in its testimony. TCUC RFI No. 1-6 seeks information directly related to the 2015 DCRF filing, as well as for previous annual periods in which CenterPoint did not file a DCRF. This information is relevant to the Commission because the Commission may only permit the recovery of appropriate costs and this type of information could shed light on the appropriateness of those costs.

Shielding CenterPoint from inquiry regarding its decision to file a DCRF in any given year and decisions related to increasing its DCRF recovery in future years would undermine the requirements of PUC SUBST. R. 24.245(d)(3). It would mean that CenterPoint met its burden to "prove the costs are appropriate for recovery through a DCRF" the day it filed its application. That cannot possibly be the standard and is inconsistent with the rule¹³ and Order adopting the DCRF.¹⁴ Parties must be given the opportunity to inquire about whether certain costs are appropriately included in a DCRF and the decisions and discussions CenterPoint had in previous years that increased costs in CenterPoint's 2015 DCRF filing are relevant and properly within the scope of a DRCF proceeding.

Finally, CenterPoint's claim that the RFI is unduly burdensome because it has already provided information in its application and the scope of a DRCF proceeding is limited, is overstated. Every discovery request seeks information beyond CenterPoint's application and supporting workpapers. The fact that TCUC RFI No. 1-6 seeks information that CenterPoint did not yet provide does not make it burdensome. Also, the scope of discovery in a DCRF is already very narrow. Parties are only permitted to ask 20 RFIs.¹⁵ TCUC, as of today, has asked a total

¹² TCUC RFI No. 1-4 asked for similar information, but the scope of the questions is much narrower. It only asks for information related to certain accounting changes in Ms. Kirk's testimony on page 12. TCUC RFI No. 1-6 seeks information beyond No. 1-4, that includes CenterPoint's decision to file a DCRF in any particular year and the related accounting changes, accounting-related matters, or other considerations related to a DCRF filing. This includes not just previous potential filings of a DCRF, but also the current 2015 DCRF.

¹³ PUC SUBST. R. 24.245(d)(3).

¹⁴ *Rulemaking Relating to Periodic Rate Adjustments*, Project No. 39465, Order at 9 (Sep. 27, 2011).

¹⁵ PUC SUBST. R. 24.245(e)(6)(B).

of 13 questions, including TCUC RFI No. 1-6. CenterPoint's applications requests \$16.7 million.¹⁶

CenterPoint's objections to how burdensome this inquiry does not appear to be linked to the specific information sought in RFI. While CenterPoint is a large Company, the universe of employees that would present a report or presentation on a DCRF filing in any given year would be a very small subset of that larger number of employees. The number of employees that may have communicated via email or in some other manner may be larger than the group that would present a report or presentation on a DCRF filing, but it would still exclude the vast majority of employees at CenterPoint. However, even if large swaths of CenterPoint employees were engaged in annual reviews and discussions of the potential to file a DCRF in a given year, that information would still be relevant and not excessively burdensome because it is directly linked to and impacts CenterPoint's 2015 DCRF filing. CenterPoint has not made a showing that producing this information is unduly burdensome or that the burden of producing the information outweighs the benefit achieved by producing it.

TCUC's RFI No. 1-6 does not seek privileged information, is relevant to the subject of this proceeding, and reasonably calculated to lead to the discovery of admissible evidence.¹⁷ TCUC urges the ALJ to compel CenterPoint to answer TCUC's RFI No. 1-6.

III. CONCLUSION

TCUC respectfully urges the Administrative Law Judge to compel CenterPoint to respond to TCUC's RFI No. 1-6. TCUC further requests any and all other relief to which it is justly entitled.

¹⁶ *Application of CenterPoint Energy Houston Electric, LLC For Approval of a Distribution Cost Recovery Factor Pursuant to P.U.C. SUBST. R. 25.243*, Docket No. 44572 (Apr. 6, 2015).

¹⁷ TEX. R. CIV. P. 192.3(b).

Respectfully submitted,

HERRERA & BOYLE, PLLC
816 Congress Avenue, Suite 1250
Austin, Texas 78701
(512) 474-1492 (voice)
(512) 474-2507 (Fax)

By: Felipe Alonso III by permission
mcd

Alfred R. Herrera
State Bar No. 09529600

Felipe Alonso III
State Bar No. 24045400

**ATTORNEYS FOR TEXAS COAST
UTILITIES COALITION**

CERTIFICATE OF SERVICE

I certify that I have served a copy of the **TCUC's Motion to Compel Responses to TCUC's First Set of Requests for Information**, upon all known parties of record by fax and/or first class mail on this the 11th day of May 2015.

Felipe Alonso III by permission
Felipe Alonso III *mcd*