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SOAH DOCKET NO. 473-19-3864  
PUC DOCKET NO. 49421

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

2019 MAY 13 PM 2:50  
BEFORE THE STATE OFFICE  
OF PUBLIC UTILITY COMMISSION  
ADMINISTRATIVE HEARINGS

**TEXAS INDUSTRIAL ENERGY CONSUMERS' MOTION  
TO COMPEL CENTERPOINT ENERGY HOUSTON  
ELECTRIC, LLC TO RESPOND TO TIEC'S RFI 2-11**

**I. INTRODUCTION**

Texas Industrial Energy Consumers (TIEC) moves to compel CenterPoint Energy Houston Electric, LLC (CenterPoint) to respond to TIEC's Request for Information (RFI) 2-11. This RFI is reasonably calculated to lead to the discovery of evidence relevant to potential financial protections that should be required for CenterPoint, consistent with the Commission's Preliminary Order. In any rate proceeding, a utility's financial exposure directly impacts its potential credit rating and, in turn, rate items such as the utility's capital structure and return on equity. TIEC's request solicits information necessary to assess CenterPoint's financial exposure and options to ensure that CenterPoint and its customers are reasonably protected from the activities of competitive affiliates.

**II. BACKGROUND**

TIEC's RFI 2-11 reads as follows:<sup>1</sup>

***TIEC 2-11*** *Within the last ten years, has CenterPoint ever requested a non-consolidation legal opinion that a bankruptcy court would not consolidate the assets and liabilities of CenterPoint with CNP and/or any of CenterPoint's affiliates? If so, please provide all such opinions.*

This request is intended to assess CenterPoint's financial exposure to the activities of its competitive affiliates, which will inform potential protections that may be necessary in this case. Risky transactions and leveraging tactics by competitive affiliates can have a direct impact on a utility's creditworthiness and its ability to access capital markets. Non-consolidation legal opinions indicate whether a company is vulnerable to financial exposure in a bankruptcy

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<sup>1</sup> Docket No. 49421, Texas Industrial Energy Consumers' Second Set of Requests for Information to CenterPoint Energy Houston Electric, LLC (TIEC's Second Set of RFIs) at 7 (Apr. 25, 2019).

proceeding if its parent or affiliates become financially distressed. These opinions are generally issued to evaluate how financially insulated a utility is from its parent companies and affiliates.<sup>2</sup> The existence and findings of any non-consolidation legal opinions for CenterPoint will help the Commission assess CenterPoint’s financial risk and identify any requirements that may be necessary to protect CenterPoint and its customers.

CenterPoint objected to TIEC 2-11 on relevance grounds, arguing that whether CenterPoint could be consolidated with its parent or affiliates in bankruptcy is not at issue in this case.<sup>3</sup> However, CenterPoint’s requested return on equity and capital structure are based on assessments of its creditworthiness and access to capital markets, given its leverage and cash flows.<sup>4</sup> The Commission is entitled to examine *all* factors that may contribute to CenterPoint’s financial circumstances, including the activities of its parent and competitive affiliates, and to consider all options to address those factors, such as potential financial protections to insulate CenterPoint. Accordingly, CenterPoint’s objections should be overruled.

### III. LEGAL STANDARD

Relevance in discovery is a low bar to facilitate a full factual record. A party may obtain discovery regarding any matter that is “relevant to the subject matter of the pending action” as long as the information is not privileged.<sup>5</sup> The Texas Supreme Court has held that the phrase “relevant to the subject matter” is to be “liberally construed to allow the litigants to obtain the fullest knowledge of the facts and issues prior to trial.”<sup>6</sup> Those principles extend to the

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<sup>2</sup> See, e.g., *Joint Report And Application Of Oncor Electric Delivery Company LLC, Sharyland Distribution & Transmission Services L.L.C., Sharyland Utilities L.P., And Sempra Energy For Regulatory Approvals Under PURA §§ 14.101, 37.154, 39.262 and 39.915*, Docket No. 48929, Final Order at 26 (May 9, 2019).

<sup>3</sup> Docket No. 49421, Objection of CenterPoint Energy Houston Electric, LLC to Texas Industrial Energy Consumers’ Second Request for Information (CenterPoint’s Objection) at 1-2.

<sup>4</sup> Docket No. 49421, Application at 2; see also Docket No. 49421, Direct Testimony of Kenny M. Mercado at 15-16 (“[T]wo factors outside the Company’s control—growth in the Company’s service territory, which has materially increased the level of capital investment required on an annual basis and the TCJA, which has significantly reduced the Company’s cash flow—are materially impacting CenterPoint Houston’s credit metrics. In particular, reduced cash from operations and earnings before interest, taxes, depreciation, and amortization metrics have the strong potential to cause rating agencies to issue lower credit ratings for CenterPoint absent a constructive response from the Commission that includes an increase in the Company’s authorized equity ratio and ROE.”).

<sup>5</sup> Tex. R. Civ. P. 192.3(a).

<sup>6</sup> *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009).

administrative context, and the Commission has consistently found that “[t]he scope of relevance for purposes of discovery is far broader than it is for admission of documents into evidence. To be relevant, a document must only be reasonably calculated to lead to the discovery of admissible evidence.”<sup>7</sup> Under the Texas Rules of Evidence, information is admissibly “relevant” if it has “*any* tendency to make a fact more or less probable than it would be without the evidence.”<sup>8</sup> In short, preemptive denial of discovery is improper unless there exists “no possible relevant, discoverable testimony, facts, or material to support or lead to evidence” that would support a claim or defense at issue in this case.<sup>9</sup>

#### IV. ARGUMENT AND AUTHORITIES

**A. The Commission’s Preliminary Order explicitly asks whether financial protections are necessary to protect CenterPoint’s financial integrity and ability to provide reliable service at reasonable rates.**

The Commission has explicitly indicated that it intends to address the type of financial risks raised by TIEC 2-11. During the Commission’s May 9, 2019 Open Meeting, the Commissioners discussed CenterPoint’s parent company’s recent \$6 billion acquisition of Vectren Corp.,<sup>10</sup> and expressed concern about the potential impact of that transaction on CenterPoint’s financial exposure.<sup>11</sup> The Commission then approved adding the following “Issue To Be Addressed” to its Preliminary Order:

9. *Are any protections, such as financial protections, appropriate to protect CenterPoint’s financial integrity and ability to provide reliable service at just and reasonable rates?*<sup>12</sup>

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<sup>7</sup> *Joint Report and Application of Oncor Electric Delivery Company, LLC and NextEra Energy, Inc. for Regulatory Approvals Pursuant to PURA §§ 14.101, 39.262, 39.915*. Docket No. 46238, SOAH Discovery Order No. 1 Ruling on Oncor Electric Delivery Company LLC’s Objections to Texas Industrial Energy Consumers’ First Request for Information at 3 (Dec. 9, 2016); *see also* Tex. R. Civ. P. 192.3(a).

<sup>8</sup> Tex. R. Evid. 401 (emphasis added).

<sup>9</sup> *Castillo*, 279 S.W.3d at 664; *see also State v. Lowry*, 802 S.W.2d 669, 671 (Tex. 1991) (“Only in certain narrow circumstances is it appropriate to obstruct the search for truth by denying discovery.”).

<sup>10</sup> *See* <https://www.houstonchronicle.com/business/energy/article/CenterPoint-completes-deal-with-Vectren-13582043.php>.

<sup>11</sup> *See* PUC Open Meeting Video Archives: May 9, 2019 Meeting at Item 12 (*available at* [http://www.adminmonitor.com/tx/puct/open\\_meeting/20190509/](http://www.adminmonitor.com/tx/puct/open_meeting/20190509/)).

<sup>12</sup> Docket No. 49421, Preliminary Order at 3 (May 9, 2019).

Any non-consolidation legal opinions evaluating CenterPoint's exposure in a bankruptcy proceeding of its parent and/or affiliates would have a direct bearing on CenterPoint's financial integrity and its ability to provide reliable service. The Commission has explicitly recognized that the type of information sought by TIEC 2-11 is relevant, and has stated that it intends to consider CenterPoint's financial risk within the context of this case and potentially take steps to secure its financial integrity. CenterPoint's relevance objection should therefore be overruled.

**B. PURA gives the Commission broad authority over CenterPoint's operations and management, and that authority extends to ensuring its continued financial security.**

Consistent with the Commission's recent preliminary order discussion, PURA grants the Commission broad authority over investor-owned utilities' operations and management. That authority extends to reviewing a utility's financial risk and taking steps to manage it when appropriate.

PURA was "enacted to protect the public interest inherent in the rates and services of public utilities,"<sup>13</sup> and to "establish a *comprehensive and adequate regulatory system for public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.*"<sup>14</sup> The authority and obligation to ensure just and reasonable rates and service is vested in the Commission, which "has the *general power to regulate and supervise the business of each public utility within its jurisdiction* and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction."<sup>15</sup> The default assumption is that "[p]ublic agencies regulate electric utility rates, operations, and services, *except as otherwise provided*"<sup>16</sup> in PURA. The authority to set a utility's capital structure and return on equity, in light of its financial risk, directly reflects this authority. Similarly, the Commission has authority to take other, alternative actions to protect a utility's financial integrity.

CenterPoint's Application acknowledges that the Commission has authority to consider whether certain factors—such as load growth and the cash flow impacts of tax reform—could

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<sup>13</sup> PURA § 11.002(a).

<sup>14</sup> *Id.* (emphasis added); *see also* PURA 31.001(a).

<sup>15</sup> PURA § 14.001 (emphasis added).

<sup>16</sup> PURA § 31.001(b) (emphasis added).

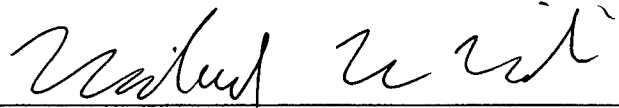
“negatively impact the Company’s financial condition,”<sup>17</sup> even though those issues are not explicitly addressed in PURA Chapter 36. It is unreasonable and self-serving for CenterPoint to claim that the Commission is authorized to evaluate and remedy threats to a utility’s financial condition *only if* the solution to those threats is to increase CenterPoint’s WACC. The Commission has equal authority to consider the financial impacts of CenterPoint’s affiliates’ competitive endeavors to determine whether additional protections are necessary to ensure CenterPoint’s financial integrity and ability to provide reliable service.

## V. CONCLUSION

For these reasons, discovery about CenterPoint’s potential financial exposure in a bankruptcy of its parent or affiliates is reasonably calculated to lead to the discovery of admissible evidence, and easily surpasses the bar for relevance. CenterPoint’s objection to TIEC 2-11 should therefore be overruled. TIEC also request any other relief to which it is entitled.

Respectfully submitted,

THOMPSON & KNIGHT LLP



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<sup>17</sup> Docket No. 49421, Application at 2; *see also* Docket No. 49421, Direct Testimony of Kenny M. Mercado at 15-16.

**CERTIFICATE OF SERVICE**

I, Michael McMillin, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 13th day of May, 2019, by facsimile, electronic mail and/or first Class, U.S. Mail, Postage Prepaid.



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Michael McMillin