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

APPLICATION OF CENTERPOINT § BEFORE THE STATE OFFICE
ENERGY HOUSTON ELECTRIC, LLC § OF THE PUBLIC UTILITY COMMISSION
FOR AUTHORITY TO CHANGE RATES § FILING CLERK
ADMINISTRATIVE HEARINGS

RESPONSE OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
TO TEXAS INDUSTRIAL ENERGY CONSUMERS'
MOTION TO COMPEL A RESPONSE TO TIEC'S RFI 2-11

CenterPoint Energy Houston Electric, LLC ("CenterPoint Houston" or the "Company") received Texas Industrial Energy Consumers' ("TIEC") Motion to Compel CenterPoint Houston to Respond to TIEC's RFI 2-11 ("Motion to Compel") on May 13, 2019. In accordance with SOAH Order No. 2's deadline for responses to motions to compel, this response is timely filed and the Company respectfully responds as follows:

I. NO RULING ON TIEC'S MOTION IS NECESSARY

As the Company indicated it would in its objection to TIEC RFI 2-11,¹ the Company has responded to TIEC's request notwithstanding its objection.² On May 13, 2019, the Company served TIEC with a response to TIEC 2-11 and produced all responsive documents (two requested non-consolidation legal opinions) within CenterPoint Houston's possession.³ Accordingly, there is no relief to be granted by TIEC's Motion to Compel—CenterPoint Houston has already provided TIEC with the documents that are the subject of its motion.

II. REPLY TO TIEC'S ARGUMENT

Despite the fact that TIEC's requested relief is now moot, certain assertions within TIEC's Motion to Compel merit a response—specifically, TIEC's representations that (1) the Commission's Preliminary Order contemplates a final order that would take "steps to secure"

¹ Objection of CenterPoint Energy Houston Electric, LLC to Texas Industrial Energy Consumers' Second Request for Information at 2 (May 7, 2019).

² See CenterPoint Houston's Response to TIEC's Request for Information 2-11 (May 13, 2019).

³ *Id.*

CenterPoint Houston’s financial integrity and (2) that PURA⁴ grants the Commission authority to take such action as part of a base rate proceeding initiated under PURA Chapter 36.⁵ As detailed below, PURA expressly limits the scope of this proceeding to the establishment of just and reasonable *rates*.⁶ The imposition of “protections” or “steps to manage” CenterPoint Houston’s financial risk by the Commission is, as a matter of law, not permitted.⁷ Accordingly, discovery aimed at developing positions that, if ultimately adopted by the Commission, would exceed the scope of the Commission’s statutory authority in this case, should be denied.

A. The Commission does not have authority to impose “financial protections” upon CenterPoint Houston in the context of a PURA Chapter 36 rate proceeding.

The scope of the Commission’s authority is clear—the Commission “is a creature of the Legislature and has no inherent authority.”⁸ Like other state administrative agencies, the Commission “has only those powers that the Legislature expressly confers upon it” and “any implied powers that are necessary to carry out the express responsibilities given to it by the Legislature.”⁹ The Texas Courts have also made clear that an agency may not “exercise what is effectively a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes.”¹⁰ To this end, TIEC cites no provision within Chapter 36 that expressly authorizes the Commission to impose financial integrity conditions on a utility in the context of a Chapter 36 Rate Proceeding. Rather, TIEC merely surmises that the Commission may act “to take other, alternative actions to protect a utility’s financial integrity” as

⁴ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (“PURA”).

⁵ Motion to Compel at 2 and 3

⁶ PURA § 36.003.

⁷ Motion to Compel at 4.

⁸ *Public Util. Comm’n v. GTE–Southwest, Inc.*, 901 S.W.2d 401, 407 (Tex. 1995).

⁹ *Public Util. Comm’n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 316 (Tex. 2001).

¹⁰ *Id.* In fact, the Commission’s Preliminary Order in this case recognizes the agency’s limited grant of power in the “Issues Not to be Addressed” section addressing voltage regulation battery assets—citing the Legislature’s current consideration of battery issues as a reason not to address the approval of battery assets in this docket. Preliminary Order at 11 (May 9, 2019).

part of a rate proceeding.¹¹ TIEC's argument is, however, directly contradicted by the results of countless prior rate cases, which did not contemplate or impose financial integrity conditions as part of the rate setting process. Stated differently, any decision to impose such conditions in this rate proceeding should be viewed as the exercise of a new power that has not been conferred on the Commission by the Legislature. As such, it is unlawful and subject to reversal on appeal.

It is likewise undisputed that this case is a rate proceeding brought in accordance with Chapter 36 of PURA. No section of Chapter 36 speaks to the imposition of "restrictions" on a utility's operations or the adoption of "additional protections" or "steps to secure" a utility's financial integrity in the context of a base rate proceeding. Rather, Chapter 36 addresses the regulatory authority's ability to establish and regulate the *rates* of an electric utility, how to establish overall revenues, and how to evaluate different aspects of a utility's cost of service.¹² In establishing Final Rates in a Chapter 36 rate proceeding, PURA provides only that the Commission shall: "enter an order establishing the *rates* the utility shall *charge or apply* for the service in question."¹³ Put differently, there is no statutory support for inclusion of "financial protections" in a final order entered pursuant to a Chapter 36 proceeding.

In sum, neither the Preliminary Order nor TIEC's interpretation of that order may make relevant an issue over which the Commission has no authority in the instant proceeding. This is a PURA Chapter 36 base rate proceeding. The Legislature has given the Commission plain and clear direction on its limited powers when setting electric utility rates—none of which includes the ability to impose "financial protections."

¹¹ Motion to Compel at 4 (citing §§ 11.002, 14.001 and 31.001 of PURA).

¹² See e.g. PURA §§ 36.001, 36.051, and 36.052-065.

¹³ PURA § 36.111.

B. Where the Commission lacks the statutory authority to impose “protections” related to CenterPoint Houston’s financial integrity, discovery designed to develop theories on such “protections” is not relevant.

Discovery is limited to matters that are relevant to this proceeding.¹⁴ As a consequence of this general rule, if the Commission lacks the statutory authority to take a certain action, discovery related to that action is irrelevant. This limit on discovery is consistent with recent Commission practice and was upheld by the Third Court of Appeals in *Nucor Steel-Texas v. Public Utility Comm’n of Texas*.¹⁵ Specifically, the Commission denied several of Nucor’s discovery requests because they were aimed at the enforcement of stipulations made by unregulated entities over which the Commission had previously ruled it had no jurisdiction—a topic that fell outside the scope of the Commission’s statutory authority and therefore fell outside the scope of the proceeding.¹⁶ Nucor appealed that decision, among others, to the Third Court of Appeals, and lost.¹⁷ The same principle applies in this case: the scope of discovery in a proceeding is limited by what the Commission can accomplish in that proceeding pursuant to its statutory authority.

III. CONCLUSION

For the reasons discussed herein, CenterPoint Houston respectfully requests that TIEC’s Motion to Compel be denied as moot and that CenterPoint Houston be granted such other relief to which it has shown itself entitled.

¹⁴ Tex. R. Civ. P. 192.3(a).

¹⁵ 363 S.W.3d 871 (Tex. App.—Austin 2012).

¹⁶ *Joint Report and Application of Oncor Elec. Delivery Co. and Texas Energy Futures Holdings L.P. Pursuant to PURA § 14.101*, Docket No. 34077, Order No. 27 at 5 (Sept. 11, 2007).

¹⁷ 363 S.W.3d at 884 (affirming the denial of discovery because Commission had reasonably determined that “the governing statutes only authorized the Commission to review and enforce stipulations that bear upon a regulated utility.”).

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May 2019, a true and correct copy of the foregoing document was served on all parties of record in accordance with 16 Tex. Admin. Code § 22.74.


Mark A. Santos