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SOAH DOCKET NO. 473-19-3864

PUC DOCKET NO. 49421

2019 MAY 28 PM 2:04

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

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BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OF
ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 4

**ESTABLISHING DEADLINES AND PROCEDURES REGARDING AMENDED
MOTION TO SEVER RATE CASE EXPENSE ISSUES, MOTION TO COMPEL,
STATEMENTS OF POSITION, AND OTHER MATTERS; CONFIRMING EFFECTIVE
DATE AND SUFFICIENCY OF APPLICATION**

I. AMENDED MOTION TO SEVER RATE CASE EXPENSE ISSUES

On May 24, 2019, CenterPoint Energy Houston Electric, LLC (CenterPoint) filed an amended motion to sever rate case expense issues. It states that CenterPoint has consulted with the parties to this case but does not state that it is unopposed. The Administrative Law Judges (ALJs) cannot rule on the amended motion until either: (1) CenterPoint files a pleading stating that the amended motion is unopposed; or (2) the deadline to respond to the amended motion expires. An expedited ruling on CenterPoint's revised motion is advisable because intervenors' direct testimony is due June 3, 2019. The ALJs will grant the amended motion if it is unopposed, but an order granting it would require the ALJs to obtain new SOAH and PUC docket numbers for the severed rate case expense case, which can take time. Accordingly, any responses to the amended motion **SHALL** be filed **no later than NOON on May 30, 2019**. In addition, after conferring with the parties as needed, if the amended motion is unopposed, CenterPoint **SHALL** file a pleading, as soon as possible before that response deadline, stating that the amended motion is unopposed.

II. EFFECTIVE DATE

On May 14, 2019, CenterPoint filed affidavits confirming that the required notice of the application, including published notice, was completed no later than May 9, 2019. Accordingly, the effective date remains May 10, 2019.

III. APPLICATION

Objections that CenterPoint's application is materially deficient were due April 26, 2019. No such objections were filed. The application is deemed to be sufficient.

On May 9, 2019, the Public Utility Commission of Texas (Commission) issued its Preliminary Order, which included determinations that certain issues raised in CenterPoint's application would not be considered in this case.¹ **No later than June 5, 2019**, CenterPoint **SHALL** file a statement specifying which parts of its application (including but not limited to its direct testimony) it will not offer in evidence because they address those issues. If rate case expenses issues have been severed, the statement **SHALL** also specify which parts of the application (including but not limited to its direct testimony) CenterPoint will not offer in evidence in this case because they address the severed rate case expense issues.

IV. MOTION TO COMPEL

On May 14, 2019, Texas Industrial Energy Consumers (TIEC) filed a motion to compel CenterPoint to respond to TIEC's Request for Information (RFI) 2-11. On May 16, 2019, CenterPoint filed a response stating that no ruling on that motion is necessary. CenterPoint's response states in part:

As [CenterPoint] indicated it would in its objection to TIEC RFI 2-11, [CenterPoint] has responded to TIEC's request notwithstanding its objection. On May 13, 2019, [CenterPoint] 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. Accordingly, there is no relief to be granted by TIEC's Motion to Compel – [CenterPoint] has already provided TIEC with the documents that are the subject of its motion.

If TIEC does not, **within two working days of this order**, file a short pleading clarifying that a ruling on the motion to compel is still necessary, the ALJs will assume no ruling is necessary.

¹ Preliminary Order (May 9, 2019) at 11.

V. STATEMENTS OF POSITION

Pursuant to 16 Texas Administrative Code § 22.124, any party that intends to litigate issues not addressed in its prefiled direct case **SHALL** file a statement of position addressing those issues **no later than June 10, 2019**. **Any party that has filed neither direct testimony nor a statement of position by that deadline is subject to being stricken as a party.** The hearing on whether to strike such a party, if any, will occur at the June 24, 2019 prehearing conference.

VI. OTHER DEADLINES AND PROCEDURAL MATTERS

The parties are encouraged to limit any objections to prefiled testimony to identifying the part of the testimony objected to (such as page __, lines __ to __) and for each such part of the testimony, the objection (such as “hearsay”) and corresponding Texas Rule of Evidence. The parties are encouraged to limit responses to such objections to citing the Texas Rule of Evidence that is the basis for admitting the testimony.

For the ALJs to prepare for a contested hearing in a case like this is a major undertaking. **No later than June 13, 2019, and promptly thereafter if the information changes**, the parties **SHALL** file a status report apprising the ALJs in broad terms whether the parties are engaging in settlement negotiations or expect a contested hearing.²

No later than June 17, 2019, each party that will cross-examine at the hearing **SHALL** email every party whose witnesses it will cross-examine a list of all of that party’s witnesses that the emailing party will cross-examine. **No later than June 19, 2019**, the parties **SHALL** file any requests regarding scheduling of their witnesses and a list of their witnesses for whom all parties waived cross-examination by not sending such an email. **No later than June 21, 2019**, CenterPoint **SHALL** file a proposed schedule of when all witnesses will testify and a proposed

² SOAH mediators are available to facilitate settlement of any disputed issues. If, after conferring with the other parties, a party believes mediation might be helpful, a request to assign SOAH mediators to the case should be filed.

order of cross-examination. The ALJs will address any disputes regarding those matters at the June 24, 2019 prehearing conference. The parties are expected to take reasonable steps to reduce each other's litigation expenses.³

At the June 24, 2019 prehearing conference, any party may offer, and the ALJs may admit, all of the party's marked prefiled testimony for which there is no pending objection, subject to the witness appearing (unless cross-examination has been waived) and to any changes to the prefiled testimony at the hearing (to which a party may object at that time). Witnesses need not attend the prehearing conference.

Witnesses for whom all parties waived cross-examination need not appear. For the witness's testimony to be admitted, the sponsoring party may simply offer it and provide the required number of copies.

At the time a party offers its prefiled evidence, it **SHALL** provide four copies (the record copy, a copy for the court reporter, and two appeals copies). A party offering an exhibit that was not prefiled **SHALL**, in addition to those four copies, provide three copies for the ALJs and all other parties at the hearing.

No later than the start of the hearing, all parties **SHALL** provide the ALJs and other parties a numbered list of exhibits they plan to offer in evidence.

The ALJs will establish a page or word limit for initial and reply briefs.⁴ CenterPoint **SHALL** circulate to the other parties **no later than the first day of the hearing** proposed page limits and a proposed issue outline for all parties to use for the briefs. Near the end of the hearing, the ALJs will discuss with the parties the page limits and briefing outline to use.


³ For example, in some electric utilities' rate cases, the parties agree to present all rate of return witnesses on the same day. The parties should assume the ALJs will approve such agreements.


⁴ Briefs should not be lengthy repetition of testimony but rather concise legal argument with correct, complete citations to evidence and law on each issue addressed. A party may be deemed to have waived (1) any position not included in its briefs; and (2) any argument made in its reply brief that should have been made in its initial brief.

ALJ Elizabeth Drews is now co-assigned to this case and notifies the parties of the following. Immediately before returning to the State Office of Administrative Hearings at the beginning of January 2014, she was a partner at Husch Blackwell, L.L.P. At times during her 17 years in private practice with various law firms, she did considerable legal work for Calpine Corporation (Calpine) and Texas Competitive Power Advocates (TCPA). Most of her law practice involved matters within the Commission's jurisdiction, but she does not recall representing these entities in a rate case or a case involving CenterPoint. Judge Drews has not participated in ruling on the motions to intervene of Calpine or TCPA, and will not participate in deciding any procedural issue specific to them (such as a motion to compel or a motion to strike that they file or that concerns their discovery or testimony). Although she does not yet know what issues on the merits they will raise, she will not participate in deciding those issues. If she learns of a conflict on an issue involving any former client, she will not participate in deciding that issue. The other ALJs assigned to this case will decide those issues without discussion with Judge Drews. If any party has questions or concerns relating to these matters, it should raise them at the earliest practicable time.⁵

SIGNED May 28, 2019.


STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS


MEAGHAN BAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS


ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

⁵ See 1 Tex. Admin. Code § 155.152.