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SOAH DOCKET NO. 473-19-3864
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APPLICATION OF CENTERPOINT § BEFORE THE STATE OFFICE
ENERGY HOUSTON ELECTRIC, LLC §
FOR AUTHORITY TO CHANGE § OF
RATES §
§ ADMINISTRATIVE HEARINGS

ALLIANCE FOR RETAIL MARKETS' LIST OF ISSUES

Pursuant to the Order of Referral issued on April 8, 2019, the Alliance for Retail Markets ("ARM") timely files its List of Issues to be addressed in this docket initiated by CenterPoint Energy Houston Electric, LLC ("CenterPoint") pursuant to Texas Administrative Code ("TAC") 25.247(c)(2)(B).

I. List of Issues

ARM submits the following issues for inclusion in the preliminary order in this proceeding. This list of issues is not intended to be exhaustive. ARM reserves the right to raise or address any issue in this docket as it deems necessary.

1. Does CenterPoint have any competitive affiliates, as defined by 16 TAC § 25.272(c)(2)? If so, has CenterPoint conducted any transactions with its competitive affiliates? If so, what are these transactions; have all transactions with any competitive affiliates been conducted at arm's length; and has CenterPoint met all of the requirements of 16 TAC § 25.272 regarding such transactions? If not, what amount of expenses should be disallowed?
2. Has CenterPoint proposed any rate riders? If so, should any of the proposed rate riders be approved? If so, what are the appropriate costs to be recovered through each rate rider? Are the proposed rates in each rider just and reasonable? What are the appropriate terms and conditions to be included in each rate rider?
 - a. Should the Commission approve CenterPoint's proposed updated rate case expense ("RCE") rider?
 - b. Should the Commission approve CenterPoint's proposed unprotected excess deferred income tax ("UEDIT") rider?

3. Has CenterPoint proposed any new or revised discretionary services charges? If so, what are the appropriate costs to be recovered through each new or revised discretionary services charge? Is the proposed rate for each new or revised discretionary service just and reasonable? Should the Commission approve CenterPoint's proposed new and revised discretionary services charges?
4. Should the Commission adopt CenterPoint's proposed reorganization of certain non-rate provisions in Chapters 2 and 6 of its Tariff for Retail Delivery Service?
5. Should the Commission approve CenterPoint's proposed Electric Vehicle Construction Allowance ("EVCA") for a customer-requested facility extension for an electric vehicle charging station available to the public?
 - a. Is limiting the proposed EVCA to electric charging vehicles on a customer's premise but available for public use reasonably discriminatory or preferential?

II. Issue Not be Addressed

CenterPoint Energy's application requests "permission to install voltage regulation battery assets when necessary and cost-effective situations permit."¹ To grant this request, the Commission must first conclude that a transmission and distribution utility ("TDU") operating within the Electric Reliability Council of Texas ("ERCOT") region can own and operate battery storage devices as a matter of law. To date, the Commission has not reached that legal conclusion in either a contested case or rulemaking project.² As a matter of policy, CenterPoint's rate case is not the appropriate forum for resolving this critical question of law, given the constraints of the statutory timeline in which the docket must be processed and decided. In view of the importance of the issue to a cross-section of ERCOT market participants, the Commission should resolve the issue in a forum in which all interested parties may participate to create an

¹ Statement of Intent and Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates at 3 (Apr. 5, 2019).

² The legal question of whether an ERCOT TDU can lawfully own and operate battery assets has been raised, but not decided, in two Commission proceedings. *Application of AEP Texas North Company for Regulatory Approvals Related to the Installation of Utility-Scale Battery Facilities*, Docket No. 46368, Final Order (Feb. 15, 2018) ("Docket No. 46368"); *Rulemaking to Address the Use of Non-Traditional Technologies in Electric Delivery Service*, Project No. 48023 (pending).

adequate record upon which the Commission can make its decision.³ Notably, in a prior docket in which an ERCOT TDU requested permission to install battery assets, the Commission determined that a rulemaking project should be initiated to develop the facts necessary to establish a regulatory framework that will allow for the efficient and appropriate use of energy-storage devices and other technologies within the limits of PURA.⁴ The rulemaking project subsequently opened for this purpose is currently pending.⁵

In the absence of a Commission decision concluding that an ERCOT TDU can own and operate battery storage devices as a matter of law, CenterPoint's request for permission to install battery assets in this docket in effect is a request for an advisory opinion with no legal effect. Setting aside whether it is appropriate for the Commission to issue such an advisory opinion, CenterPoint Energy's request may become moot depending on the outcome of pending legislation relating to the ownership of battery storage devices.⁶

Furthermore, if the Commission decides to issue an advisory opinion addressing the legal issue regarding ERCOT TDU ownership and operation of battery assets in this proceeding, it would need to establish reasonable parameters for CenterPoint Energy's investment in those assets (*e.g.*, whether each battery asset installation should require the issuance Certificate of Convenience and Necessity ("CCN") amendment). The establishment of parameters specific to CenterPoint's investment in battery assets would impact all TDUs as a practical matter, given the need for uniformity and non-discriminatory treatment of those implementational issues on an ERCOT-wide basis. For these reasons, CenterPoint's request in effect would require the Commission to engage in ad hoc rulemaking, which Commission should not do as a matter of policy.

³ See Docket No. 46368, Final Order at 1 ("[T]he Commission determines that this case does not provide sufficient information to allow the Commission to make the declarations sought by AEP with respect to the proposed battery installations.").

⁴ *Id.* at 1-2 (Feb. 15, 2018).

⁵ *Rulemaking to Address the Use of Non-Traditional Technologies in Electric Delivery Service*, Project No. 48023 (pending).

⁶ Tex. S.B. 1941, 86th Leg., R.S. (pending).

In light of the above, ARM requests that the Commission include the following as an issue not to be addressed in this proceeding:

1. Whether CenterPoint Energy should be granted permission to install battery assets, including, but not limited to, voltage regulation battery assets.

III. Threshold Legal/Policy Issue for Briefing

If the Commission declines to include ARM's requested issue not to be addressed in the preliminary order, ARM respectfully requests that the Commission consider the following threshold legal/policy issue for briefing for purposes of the preliminary order:

1. Is CenterPoint Energy's request for permission to install voltage regulation battery assets appropriate for consideration in this docket?

The basis for requesting briefing on the above proposed threshold legal/policy issue are set forth in Section II of this pleading.

Respectfully submitted,



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**ATTORNEY FOR
ALLIANCE FOR RETAIL MARKETS**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all parties on April 24, 2019 by first class mail.

By: Stephen J. Davis
Stephen J. Davis