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

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FILED

**H-E-B, LP'S OBJECTIONS TO CENTERPOINT ENERGY HOUSTON
ELECTRIC, LLC'S SECOND REQUEST FOR INFORMATION**

H-E-B, LP ("H-E-B") received CenterPoint Energy Houston Electric, LLC's ("CenterPoint") Second Set of Requests for Information on June 10, 2019. Counsel for H-E-B and CenterPoint negotiated diligently and in good faith to resolve all discovery disputes but were unable to reach agreement on all matters. Pursuant to the procedural schedule adopted in SOAH Order No. 6, the deadline for filing objections is June 14, 2019 and these objections are timely filed.

I. GENERAL OBJECTIONS

H-E-B objects to the numerous unnecessary discovery requests issued by CenterPoint that seek commercially sensitive materials of H-E-B that is in no way related to the merits of this proceeding. CenterPoint's requests are a burdensome distraction that serve no purpose. The burdensomeness of discovery production in this proceeding is escalated by the constricted procedural schedules that CenterPoint has insisted upon in this proceeding. For the following reasons, H-E-B requests that the Administrative Law Judges ("ALJs") grant its objections to CenterPoint's discovery requests.

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II. SPECIFIC OBJECTIONS

2-1. How many H-E-B facilities in CenterPoint Houston's service area have on-site generation facilities and how many do not?

(No objection.)

a. What type of transfer scheme is used at these locations?

1. High Speed Closed Transition
2. Parallelling Scheme
3. Open transition

Objection.

H-E-B objects to CenterPoint 2-1(a) on the basis that this request is overly broad, seeks irrelevant information beyond the scope of this proceeding, and is not reasonably tailored to lead to the discovery of admissible evidence.¹ This is a base rate proceeding in which the Public Utility Commission of Texas must establish just and reasonable rates for CenterPoint. In addition, the infrastructure and design of H-E-B's on-site generation has no bearing on the issues to be determined in this proceeding, including whether CenterPoint has provided reliable and adequate service to its customers.

Further the request is unreasonably and overly burdensome and the expense of the request outweighs its likely benefit. This request would require H-E-B to analyze and gather information about each of its on-site generation facilities with little to no benefit to the outcome of this proceeding.

¹ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

b. Has H-E-B correlated the type of transfer scheme to outage records at each location?

Objection.

H-E-B objects to CenterPoint 2-1(b) on the basis that this request seeks irrelevant information beyond the scope of this proceeding and is not reasonably tailored to lead to the discovery of admissible evidence.² The infrastructure and design of H-E-B's on-site generation has no bearing on the issues to be determined in this proceeding. H-E-B's facilities are backup generation and are only in use when power is not supplied from the grid by CenterPoint.

f. Are all the generators owned by H-E-B? If not, then who owns them?

Objection.

H-E-B objects to CenterPoint 2-1(f) on the basis that this request seeks irrelevant information beyond the scope of this proceeding and is not reasonably tailored to lead to the discovery of admissible evidence.³ The infrastructure and design of H-E-B's on-site generation has no bearing on the issues to be determined in this proceeding. The information sought is not relevant to the issues identified in the Preliminary Order.⁴ Discovery must be reasonably tailored to the subject matter of the case without allowing the discovery process to turn into an impermissible fishing expedition.⁵

² Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

³ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

⁴ Preliminary Order (May 9, 2019).

⁵ See *In re Lowe's Companies, Inc.*, 134 S.W.3d 876, 879 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (regarding the impermissibility of fishing expeditions in discovery).

h. Are they part of a legally required standby system?

Objection.

H-E-B objects to CenterPoint 2-1(h) on the basis that H-E-B this request seeks irrelevant information beyond the scope of this proceeding and is not reasonably tailored to lead to the discovery of admissible evidence.⁶ The infrastructure and design of H-E-B's on-site generation has no bearing on the issues to be determined in this proceeding. Discovery must be reasonably tailored to the subject matter of the case without allowing the discovery process to turn into an impermissible fishing expedition.⁷

i. Are they part of an optional standby system?

Objection.

H-E-B objects to CenterPoint 2-1(i) on the basis that this request seeks irrelevant information beyond the scope of this proceeding and is not reasonably tailored to lead to the discovery of admissible evidence.⁸ The infrastructure and design of H-E-B's on-site generation has no bearing on the issues to be determined in this proceeding. Discovery must be reasonably tailored to the subject matter of the case without allowing the discovery process to turn into an impermissible fishing expedition.⁹

j. Are the generators used for shifting load and/or demand response?

Objection.

H-E-B objects to CenterPoint 2-1(j) on the basis that this request seeks information beyond the scope of this proceeding and is not reasonably tailored to lead to the discovery

⁶ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

⁷ See *In re Lowe's Companies, Inc.*, 134 S.W.3d 876, 879 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (regarding the impermissibility of fishing expeditions in discovery).

⁸ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

⁹ See *In re Lowe's Companies, Inc.*, 134 S.W.3d 876, 879 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (regarding the impermissibility of fishing expeditions in discovery).

of admissible evidence.¹⁰ The infrastructure and design of H-E-B's on-site generation has no bearing on the issues to be determined in this proceeding. Further, the direct testimony of Mr. Presses discusses H-E-B's use of on-site generation facilities for reliability purposes. Whether or not such facilities are used for any other purpose has no impact on CenterPoint's provision of reliable electric service and is beyond the issues identified in the Preliminary Order.

k. How many times did H-E-B use its onsite generation to curtail their load in 2018?

Objection.

H-E-B objects to CenterPoint 2-1(k) on the basis that this request seeks irrelevant information beyond the scope of this proceeding and is not reasonably tailored to lead to the discovery of admissible evidence.¹¹ The infrastructure and design of H-E-B's on-site generation has no bearing on the issues to be determined in this proceeding. Further, the direct testimony of Mr. Presses discusses H-E-B's use of on-site generation facilities for reliability purposes. Whether or not such facilities are used for any other purpose has no impact on CenterPoint's provision of reliable electric service and is beyond the issues identified in the Preliminary Order.

¹⁰ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

¹¹ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

- 2-2. Does H-E-B install on-site generators in other service areas?**
- a. Do those areas segregate commercial from residential circuits?**
 - b. What are the standard services these other service areas?**
 - c. Are the generators used solely for reliability?**
 - d. Are they part of a legally required standby system?**
 - e. Are they part of an optional standby system?**
 - f. Are the generators used for shifting load and/or demand response?**
 - g. How many times did H-E-B use its onsite generation to curtail their load in 2018?**
 - h. Does H-E-B track outages in other areas of Texas? If so, please provide the number of outages and duration in 2018, how outages are tracked, how H-E-B determines outage lengths, all generator run records, and the identity of any person who compiles the H-E-B outage records.**

Objection.

H-E-B objects to the entirety of CenterPoint 2-2 and 2-2(a)-(h) on the basis that it seeks irrelevant information beyond the scope of this proceeding and is not reasonably tailored to lead to the discovery of admissible evidence.¹² This is a base rate proceeding for CenterPoint; not for another utility. H-E-B's operations and whether H-E-B install on-site generators in other service areas has no bearing on the outcome of this proceeding or the issues identified in the Preliminary Order. Discovery must be reasonably tailored to the subject matter of the case without allowing the discovery process to turn into an impermissible fishing expedition.¹³ H-E-B further objects on the basis that the request is

¹² Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

¹³ See *In re Lowe's Companies, Inc.*, 134 S.W.3d 876, 879 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (regarding the impermissibility of fishing expeditions in discovery).

unreasonably cumulative or duplicative and the burden and expense of the proposed discovery outweighs its likely benefit.¹⁴

2-4. Please provide all presentations, communications, email and contracts associated with the installation of onsite generation.

Objection.

H-E-B objects to CenterPoint 2-4 on the basis that this request is overly broad, seeks irrelevant information beyond the scope of this proceeding, and is not reasonably tailored to lead to the discovery of admissible evidence.¹⁵ This request is unreasonably and overly burdensome and the expense of the request outweighs its likely benefit. This request would require H-E-B to conduct a comprehensive search of H-E-B's electronic files and email systems to produce information that has little to no benefit to the outcome of this proceeding. Further, H-E-B's contracts with third party vendors are of no importance to the matters at issue in this rate case and the production of materials responsive to this request will unnecessarily reveal H-E-B's commercially and competitively sensitive documents, materials, and communications.

H-E-B also objects to this request on the basis that the request seeks information protected by work product privilege and attorney-client privilege.¹⁶

2-6. Please indicate all stores outside of CenterPoint Houston's service territory that are currently served by onsite generation, in the process of having onsite generation installed or planned to have onsite generation installed.

Objection.

H-E-B objects to the entirety of CenterPoint 2-6 on the basis that it seeks irrelevant information beyond the scope of this proceeding and is not reasonably tailored to lead to

¹⁴ Tex. R. Civ. Proc. 192.4(a)-(b).

¹⁵ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

¹⁶ See Tex. R. Evid. 503(b)(1)(C).

the discovery of admissible evidence.¹⁷ H-E-B further objects on the basis that the request is unreasonably cumulative or duplicative and the burden and expense of the proposed discovery outweighs its likely benefit.¹⁸ This is a base rate proceeding for CenterPoint; not for another utility. H-E-B's operations and H-E-B future plans to install on-site generators in other service areas has no bearing on the outcome of this proceeding or the issues identified in the Preliminary Order. Discovery must be reasonably tailored to the subject matter of the case without allowing the discovery process to turn into an impermissible fishing expedition.¹⁹

2-7. Please provide all presentations, whitepapers, cost-benefit analysis, emails between H-E-B and any third party that is currently working with, proposed to work with, and/or initiated conversations with H-E-B concerning onsite generation options.

Objection.

H-E-B objects to CenterPoint 2-8 on the basis that this request is overly broad, seeks irrelevant information beyond the scope of this proceeding, and is not reasonably tailored to lead to the discovery of admissible evidence.²⁰ Further the request is unreasonably duplicative and overly burdensome, and the expense of the request outweighs its likely benefit. This request would require H-E-B to conduct a comprehensive search and analysis to gather information with little to no benefit to the outcome of this proceeding. This request encompasses every email communication that H-E-B has ever conducted with any third-party vendor related to installation of on-site generation. Production of such information has little to no benefit to this proceeding. In addition,

¹⁷ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

¹⁸ Tex. R. Civ. Proc. 192.4(a)-(b).

¹⁹ See *In re Lowe's Companies, Inc.*, 134 S.W.3d 876, 879 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (regarding the impermissibility of fishing expeditions in discovery).

²⁰ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

production of materials responsive to this request will unnecessarily reveal H-E-B's commercially and competitively sensitive documents, materials, and communications. H-E-B also objects to this request on the basis that the request seeks information protected by work product privilege and attorney-client privilege.²¹

2-8. Please provide the most recent schedule or plan for adding additional on-site generation at stores in the CenterPoint Houston service territory or the service territory of any other electric utility.

Objection.

H-E-B objects to the entirety of CenterPoint 2-8 on the basis that it seeks irrelevant information beyond the scope of this proceeding and is not reasonably tailored to lead to the discovery of admissible evidence.²² H-E-B further objects on the basis that the request is unreasonably cumulative or duplicative and the burden and expense of the proposed discovery outweighs its likely benefit.²³ H-E-B's operations and H-E-B future plans to install on-site generators in other service areas has no bearing on the outcome of this proceeding or the issues identified in the Preliminary Order. Additionally, H-E-B's future plans for installing on-site generation are not relevant to the past investments that H-E-B has made to address reliability issues in CenterPoint's service area, which is the issue addressed by Mr. Presses in his direct testimony.

2-10. Please provide any internal memoranda, reports, or studies on which H-E-B based its decision to contract with Texas Microgrid, LLC and/or Enchanted Rock for the installation of on-site generation at its stores.

Objection.

²¹ See Tex. R. Evid. 503(b)(1)(C).

²² Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

²³ Tex. R. Civ. Proc. 192.4(a)-(b).

H-E-B objects to CenterPoint 2-10 on the basis that this request is overly broad, seeks irrelevant information beyond the scope of this proceeding, and is not reasonably tailored to lead to the discovery of admissible evidence.²⁴ H-E-B's internal memoranda, reports, studies, or analysis are of no importance to the outcome of this proceeding and the production of materials responsive to this request will unnecessarily reveal H-E-B's commercially and competitively sensitive documents, materials, and communications. H-E-B also objects to this request on the basis that the request seeks information protected by work product privilege and attorney-client privilege.²⁵

2-11. Please provide a copy of H-E-B's agreement(s) with Texas Microgrid, LLC and/or Enchanted Rock for the installation of on-site generation.

Objection.

H-E-B objects to CenterPoint 2-11 on the basis that this request is not relevant, seeks information beyond the scope of this proceeding, and is not reasonably tailored to lead to the discovery of admissible evidence.²⁶ H-E-B's contracts with third party vendors are of no importance to the outcome of this proceeding and the production of materials responsive to this request will unnecessarily reveal H-E-B's commercially and competitively sensitive documents, materials, and communications. H-E-B also objects to this request on the basis that the request seeks information protected by work product privilege and attorney-client privilege.²⁷

2-12. Please provide all documents, studies, and communications that analyze any reliability issues associated with H-E-B's on-site generation facilities.

²⁴ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

²⁵ See Tex. R. Evid. 503(b)(1)(C).

²⁶ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

²⁷ See Tex. R. Evid. 503(b)(1)(C).

Objection.

H-E-B objects to CenterPoint 2-1(a) on the basis that this request is overly broad, seeks irrelevant information beyond the scope of this proceeding, and is not reasonably tailored to lead to the discovery of admissible evidence.²⁸ The issues addressed in the direct testimony of Mr. Presses relate to H-E-B's use of on-site generation facilities on occasions when H-E-B experiences power outages on CenterPoint facilities. Whether or not H-E-B's on-site generation facilities have reliability issues is not relevant to the discussion in Mr. Presses' direct testimony or to the outcome of this proceeding.

Further the request is unreasonably duplicative and overly burdensome, and the expense of the request outweighs its likely benefit. This request would require H-E-B to conduct a comprehensive search and analysis to gather information with little to no benefit to the outcome of this proceeding. This request encompasses every maintenance issue that H-E-B has experienced regarding its multiple on-site generation facilities. Production of such information has little to no benefit to this proceeding. In addition, production of materials responsive to this request will unnecessarily reveal competitively sensitive materials.

2-17. What is the maximum amount of time the “cold chain” can be without power before product must be discarded? Provide documentation to support your response.

Objection.

H-E-B objects that this request is unreasonably duplicative and overly burdensome, and the expense of the request outweighs its likely benefit. H-E-B would have to

²⁸ Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401.

aggregate, sort, and identify the respective “cold chain” lives of thousands of products in H-E-B’s “cold chain” to respond to this request and such products vary by type of facility and between like facilities such as store locations. Production of such information has little to no benefit to this proceeding.

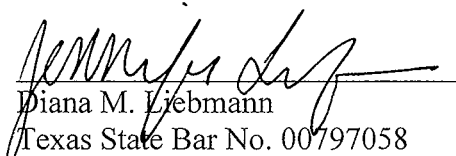
2-18. Please provide a copy of H-E-B’s guidelines, rules, or policies that govern the disposal of product from the “cold chain” as a result of a power loss.

Objection.

H-E-B objects that this request is unreasonably duplicative and overly burdensome, and the expense of the request outweighs its likely benefit. H-E-B would have to aggregate, sort, and identify the respective “cold chain” lives of thousands of products in H-E-B’s “cold chain” to respond to this request and such products vary by type of facility and between like facilities such as store locations. Production of such information has little to no benefit to this proceeding.

III. CONCLUSION

Whereas, premises considered, H-E-B hereby requests that the Administrative Law Judges grant H-E-B’s objections to the above-mentioned discovery requests.


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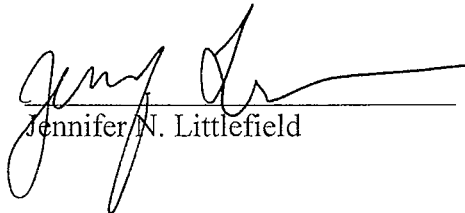
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served on counsel for the parties of record on June 14, 2019.


Jennifer N. Littlefield