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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S MOTION TO DECLASSIFY CONFIDENTIAL MATERIALS

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Motion to Declassify Confidential Materials. In support thereof, Staff shows the following:

I. BACKGROUND

On April 5, 2019, CenterPoint Energy Houston Electric, LLC (CEHE) filed an application for authority to change rates. (Application). On April 5, 2019, the Administrative Law Judge (ALJ) issued a standard Protective Order governing the designation and use of information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials). Paragraph 2 of the Protective Order states that Protected Materials:

must not include any information or document contained in the public files of the commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act. Protected Materials also must not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

Paragraph 6 of the Protective Order states that the term "Highly Sensitive Protected Materials" refers to documents or information that are:

of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act¹; (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-

sensitive marketing plans; and (d) business operations or financial information that is commercially sensitive.

The Protective Order also provides certain procedures for parties seeking to re-designate such materials. Paragraph 25 provides that if a Reviewing Party wishes to change the designation of the materials, the party “must first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party will at any time be able to file a written motion to challenge the designation of information as Protected Materials.” Paragraph 26 provides procedures for the party asserting confidentiality to contest the motion to challenge the designation. Paragraph 27 provides procedures, including a prehearing conference, by which the presiding officer may consider the motion. Additionally, Paragraph 26 and 27, construed together, place the burden of proof on the party asserting confidentiality to prove its confidential nature.¹

II. DISCUSSION

During the course of this proceeding, CEHE has designated a number of documents as protected materials. These documents include schedules and workpapers submitted as part of the Application as well as discovery responses to Staff’s requests for information (RFIs). Staff used certain of these documents or information contained therein in its direct testimony and attached schedules and workpapers.

Staff believes that CEHE has not met its burden of proof under the Public Information Act (PIA). The PIA provides for a number of exceptions, which includes information confidential under other law, certain personnel information related to competition or bidding, trade secrets, certain commercial or financial information, public power utility competitive matters, and others.² Specifically though, Section 552.110(b) of the PIA requires “specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained” before financial or commercial information can be excepted. CenterPoint has the burden, as the party claiming documents are confidential or highly sensitive, to provide specific factual evidence, not conclusory or generalized allegations, that the

¹ *Order 1 Suspending Effective Date and Entering Protective Order*, Attachment 1 at 1-3, 10, 11 (Apr. 5, 2019).

² PIA §§ 552.101 – 552.158.

release of the information would cause substantial competitive harm.³ Rather than providing specific factual evidence, CenterPoint provides a boilerplate statement that the “information [is] related to energy service providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CenterPoint Houston and the persons from whom the information is obtained.”⁴ This statement is provided in the filed confidentiality statements and while it does list exceptions under the PIA, it does not provide specific factual evidence that disclosure would cause substantial competitive harm. By filing this important documentation confidentially without the required specific factual evidence, CenterPoint has possibly withheld information the public is entitled to, and has assuredly deprived the public from the specific, articulated reasons as to why some documentation may not be accessed.

Overall, Staff believes that the protected material designation has been applied to certain documents unnecessarily. While portions of materials submitted by companies in rate cases are filed confidentially when appropriate, the default should be to provide the information publicly absent conflicting with the requirements of the protective order and applicable law. Staff intends to use certain of these documents or the information contained therein that it referenced in its direct testimony, schedules, and workpapers during the hearing on the merits. As such, Staff provides a chart below showing the documents Staff filed as confidential or redacted based on CEHE’s designation in order to challenge the designation of those documents as confidential or protected materials:

³ See Tex. Att’y Gen. OR1999-661.

⁴ Staff could not locate the confidentiality statement for testimony, schedules, and workpapers filed with CEHE’s application. The quoted language is found in CEHE’s confidentiality statements for responses to RFIs. See *Confidentiality Statement Under Section 4 of the Protective Order* (Item Nos: 83, 96, 129, 153, 154, 169, 181, 183, 185, 186, 197, 202, 211, 214, 218, 222, 226, 228, 241, 245, 255, 257, 273, 276, 282, 291, 294, 308, 311, 317, 324, 327, 333, 345, 347, 373, 378, 391, 440, 503).

Item	Contents/Description	Rational for Confidentiality
Attachment to the Direct Testimony of Jorge Ordonez (Item No. 514)	Attachment JO-11: SNL Major Rate Case Decisions	Sections 552.101, 552.104, and 552.110 of the Public Information Act – Materials consist of information related to energy services providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CEHE and persons from whom information as obtained.
Confidential – Attachment to the Direct Testimony of Darryl Tietjen Bate Stamp: 1-30 (Item No. 516)	Pages 11 and 12 of Direct Testimony; Workpapers: Moody's January 28, 2019 Report; Fitch Ratings' November 2, 2018 Report; S&P Global Ratings February 1, 2019 Report.	Sections 552.101, 552.104, and 552.110 of the Public Information Act – Materials consist of information related to energy services providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CEHE and persons from whom information as obtained.

Redacted Direct Testimony and Workpapers of Darryl Tietjen (Item No. 517)	Page 10 and 11 of Direct Testimony.	Sections 552.101, 552.104, and 552.110 of the Public Information Act – Materials consist of information related to energy services providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CEHE and persons from whom information as obtained.
Confidential – Direct Testimony of Brian T. Murphy (Item No. 521)	Pages 58-66 of Direct Testimony or Bates Stamped Pages 1-5 of Confidential Filing.	Sections 552.101, 552.104, and 552.110 of the Public Information Act – Materials consist of information related to energy services providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CEHE and persons from whom information as obtained.

Redacted Direct Testimony of Brian T. Murphy (Item No. 525)	Pages 58, 59, 63, 65, and 66.	Sections 552.101, 552.104, and 552.110 of the Public Information Act – Materials consist of information related to energy services providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CEHE and persons from whom information as obtained.
Redacted Direct Testimony of Mark Filarowicz (Item No. 526)	Redactions occur on Attachment MF-13 pgs. 6, 8, 10, 12, 14, 16, 18, 22, 24 (or 76,78, 80, 82, 84, 86, 88, 92, 94 of Direct Testimony).	Sections 552.101, 552.104, and 552.110 of the Public Information Act – Materials consist of information related to energy services providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CEHE and persons from whom information as obtained.

PUC 9-3 Workpapers of Brian Murphy (Item No. 534)	PUC 09-03 Confidential Attachment	Sections 552.101, 552.104, and 552.110 of the Public Information Act – Materials consist of information related to energy services providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CEHE and persons from whom information as obtained.
Workpapers to the Direct Testimony of Jorge Ordonez (Item No. 541).	Conf. WP 1, 2, 3, 4, 5, 6, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6-12, 6-13, 6-14, 6-15, 6-16, 7	Sections 552.101, 552.104, and 552.110 of the Public Information Act – Materials consist of information related to energy services providers that is commercially sensitive and/or consists of trade secret information. The public disclosure of this information would cause substantial competitive harm to CEHE and persons from whom information as obtained.

III. CONCLUSION

Staff requests that, absent specific factual evidence that disclosure would cause substantial competitive harm to CEHE, the Administrative Law Judges designate the above referenced materials as public materials.

**PUBLIC UTILITY COMMISSION OF
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**SOAH DOCKET NO. 473-19-3864
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on June 17, 2019 in accordance with 16 TAC § 22.74.



Rashmin J. Asher