CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

CITY OF HOUSTON
REQUEST NO.: COH09-10

QUESTION:

Please refer to Page 26 of 27 of WP/Streetlight Rate Design and answer the following questions:

a. Please explain in detail how the initial investments for Luminaire for the LED Lighting were determined.
b. Please explain in detail how the $36.64 initial investment for the Photovol TAIC Electric Relay (PER) for the LED Lighting was determined.
c. Please explain in detail how the $150.96 initial investment for the Mounting Bracket/ARM(8' Arm) for the LED Lighting was determined.
d. Please explain in detail how the $674 initial investment for the 30' Base Plate Type Pole for the LED Lighting was determined.
e. Please explain in detail how the $373.08 initial investment for the Foundation Rebar. Anchor Bolt Kit (SAP 243140) for the LED Lighting was determined.
f. Please explain in detail how the $37.87 initial investment for the Pole Wire/Splices/Misc. Components for the LED Lighting was determined.
g. Please explain in detail how the $63 initial investment for the UG Wire@150' - Source To Pole @.42/FT for the LED Lighting was determined.
h. Please explain in detail how the $1,067.87 initial investment for the Installation Cost (Labor) for the LED Lighting was determined.
i. Please explain in detail how the initial investments for the Overhead (Stores & Engr.) for the LED Lighting were determined.
j. Please explain in detail how the $73.28 Fixture Replacement Cost for the LED Lighting was determined.
k. Please explain in detail how the $19.95 Transportation Cost for the LED Lighting was determined.
l. Please explain in detail how the $94.89 Labor Cost/hr for the LED Lighting was determined.
m. Please explain in detail how the $109.13 Replacement Cost (Labor) for the LED Lighting was determined.
n. Please explain in detail how the $13.84 Overhead (Store) for the LED Lighting was determined.

ANSWER:

a. The initial investment for Luminaires for the LED lighting was determined by taking the cost of the initial investment of material, labor cost, and the overhead factors. The total initial investments for material and labor cost were the result of complete contract negotiations with the respective CenterPoint Houston vendors, added with the overhead factors after applied accordingly as shown in response COH09-11 (c)and (d).

b. The $36.64 initial investment for the Photovol TAIC Electric Relay (PER) for the LED Lighting was determined by taking the moving average price (MAP) from the test year 2018 and applying the number of relays required for initial installation (2). The moving average price is determined by taking the average of each individual unit purchase price over the history of the part and averaging them to produce the MAP.

c. The $150.96 initial investment for the Mounting Bracket/ARM (8' Arm) for the LED Lighting was determined by the moving average price (MAP) from the test year 2018. The moving average price is determined by taking the average of each individual unit purchase price over the history of the part and averaging them to produce the MAP.

d. The $674 initial investment for the 30' Base Plate Type Pole for the LED Lighting was determined by the moving average price (MAP) from the test year 2018. The moving average

e. The $373.08 initial investment for the Foundation Rebar. Anchor Bolt Kit (Corrected: SAP 243162) for the LED Lighting was determined by the moving average price (MAP) from the test year 2018. The moving average price is determined by taking the average of each individual unit purchase price over the history of the part and averaging them to produce the MAP.

f. The $37.87 initial investment for the Pole Wire/Splices/Misc. Components for the LED Lighting was determined by the actual costs of the Pole Wire/Splices/Misc. Components in the test year 2018.

g. The $63 initial investment for the UG Wire@150' - Source to Pole @.42/FT for the LED Lighting was determined by the actual costs of the UG Wire in the test year 2018.

h. The $1,067.87 initial investment for the Installation Cost (Labor) for the LED Lighting was determined by the total labor required to install the base plate foundation mounted type pole with 150' of bored underground service conductor. The total labor cost was determined by the rates designated because of complete contract negotiations with the respective CenterPoint Houston vendor.

i. The Overhead (stores & engineering/construction) cost is included in the initial total investment cost of each LED street light type because the Overhead is added to the purchase price of plant when it is capitalized. The Overhead initial investment cost for LED lighting is the result of applying the Test Year 2018 engineering/construction overhead factor and stores overhead factor to the established Test Year 2018 initial investment material and labor cost for each lamp type accordingly. [Please see response COH09-11 (c) and (d)].

j. The O&M fixture replacement cost $73.28 for LED Lighting was determined using the Test Year 2018 initial investment material cost for LED Photovoltaic Electric Relay ("PER") and applying the estimated number of occurrences (two) which properly reflects the expense to replace an LED PER over the used and useful life of an existing LED installation.

k. The O&M transportation cost consist of the expense associated with the use of a single bucket truck to maintain, repair, replace, and/or install a street light. The transportation cost is the result of the cost of a single bucket truck for one half manhour and applying the estimated number of occurrences (two) that properly reflect the transportation expense over the used and useful life of an existing LED installation.

Please see response COH09-12 attachment COH09-12 Assumptions for Cost Calculations at tab "Sheet 1" for a detailed explanation of the derivation of the $19.95 transportation cost. It should be noted the Test Year 2018 average transportation cost per lamp type was applied to all street light types, based on the weighted average of the used and useful life of a High-Pressure Sodium and LED lamp, to provide a reasonable and conservative basis of the total transportation cost to service each lamp.

l. The $94.89 Labor Cost/hr for the LED Lighting was determined by complete contract negotiations with the respective CenterPoint Houston vendor.

m. The O&M Replacement labor cost representative the cost of one service employee at one half manhour, and the coordination cost associated with the service dispatch for LED lighting, then applying the estimated number of occurrences (two) to properly reflect the O&M replacement labor expense to repair an LED over the used and useful life of an existing LED installation.

Due to a formula error in the WP/Streetlight Rate Design the Coordination cost factor should be $0.89 resulting in the O&M replacement labor cost value of 96.67, this will be corrected in the filed ERRATA.

n. The Overhead (Store) cost $13.84 is the result of applying the Stores Overhead factor to the O&M fixture replacement cost to properly reflect the cost of stores. [Please see response COH09-11 (d) for explanation for store overhead rate factor.]

SPONSOR (PREPARER):
Matthew Troxle/Julienne Sugarek (Matthew Troxle, Julienne Sugarek)

RESPONSIVE DOCUMENTS:
None

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

CITY OF HOUSTON
REQUEST NO.: COH09-11

QUESTION:

Please refer to Page 19 of 27 of WP/Streetlight Rate Design and answer the following questions:.

a. Please explain in detail how the $19.95 Transportation Costs (Truck w/ Single Bucket) was determined.
b. Please explain in detail how the $7.12 Coordination Cost was determined.
c. Please explain in detail how the 17.29% Engineering/Construction Overhead Rate Factor was determined.
d. Please explain in detail how the 18.88% Store Overhead Rate Factor was determined.

ANSWER:

a. The transportation value $19.95 is the Test Year 2018 average transportation cost per the weighted average life of a lamp. The transportation portion of street lighting O&M cost is the average rate per hour for use of a single bucket truck to maintain, repair, replace, and install a street light. For further details, please see document COH09-12 Assumptions for Cost Calculations response COH09-12.

b. The cost is composed of the Test Year 2018 average administrative labor cost per work order. The labor cost factor per work order should be $0.89, the value will be corrected in an ERRATA. For further details, please see document COH09-12 Assumptions for Cost Calculations response COH09-12.

c. The Engineering/Construction Overhead rate 17.29% was derived from the weighted average percentage over twelve months ending December 2018. For further details, please see document COH09-12 Assumptions for Cost Calculations response COH09-12. It should be noted that the same Engineering/Construction overhead percentage is applied consistently to all street light types.

d. Please see document COH09-12 Stores Overhead 2018 for the analysis used to determine the Stores Overhead Rate Factor. It should be noted that the same stores overhead percentage is applied consistently to all street light types.

SPONSOR (PREPARER):
Matthew Troxle (Matthew Troxle)

RESPONSIVE DOCUMENTS:
None

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

CITY OF HOUSTON
REQUEST NO.: COH10-15

QUESTION:

Provide insurance proceeds for equipment failure, storm damage or other matters by FERC account for each year since 2009 and indicate the portion of total proceeds that have been reflected in the Company's adjusted test year request.

ANSWER:

Please see COH10-15 Insurance Proceeds.xlsx for CenterPoint Houston's insurance proceeds for equipment failure, storm damage or other matters by FERC account for each year since 2009. The $47,665 for the Ulrich Substation will be removed from O&M FERC 9240 in an errata.

SPONSOR (PREPARER):
Kristie Colvin/Robert McRae (Kristie Colvin/Robert McRae)

RESPONSIVE DOCUMENTS:
COH10-15 Insurance Proceeds.xlsx

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

CITY OF HOUSTON
REQUEST NO.: COH16-14

QUESTION:

Regulatory Assets and Liabilities: The Company recorded a liability in FERC account 2540, Reg Liability Pension BRP and Postretirement in the amount of ($68,522,000) and removed ($61,612,000), leaving a balance of ($6,910,000). This balance was described in the Direct Testimony of Kristie L. Colvin as the benefit restoration plan liability. Please describe the $61,612,000 liability that was removed, and provide the test year-end balance for each separate item that was removed.

ANSWER:

As filed in the errata on May 20, 2019, the entire balance of ($68,522,000) was removed from rate base. Please see response to GCCC03-04(b) for a description of why this balance was removed from rate base.

The accrued pension liability balance of ($6,910,000) is being presented as a provision on Schedule II-B-7 in the errata.

SPONSOR (PREPARER):
Kristie Colvin (Kristie Colvin)

RESPONSIVE DOCUMENTS:
None

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

CITY OF HOUSTON
REQUEST NO.: COH16-17

QUESTION:

Regulatory Assets and Liabilities: Please provide an analysis of in FERC account 2540, Reg Liability Pension BRP and Postretirement by month for the test-year showing the beginning balance, the amounts debited and credited to the account and the offsetting entrees to other accounts during the test year, and the ending balance.

ANSWER:

As explained in the response to GCCC03-04, the balance of this Regulatory Liability Pension BRP and Postretirement in FERC account 2540 was eliminated in Schedule II-B-11, line 18 and the nonqualified pension balance of ($6,910,000) was moved to Schedule II-B-7 in the errata filed on May 20, 2019.

SPONSOR (PREPARER):
Kristie Colvin (Kristie Colvin)

RESPONSIVE DOCUMENTS:
None

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

GULF COAST COALITION OF CITIES
REQUEST NO.: GCCC01-07

QUESTION:

Refer to WP-B-10 Adj 3, which adds the 13 month average of $176.268 million in prepaid pension assets to other prepaid items in rate base. Refer also to WP II-E- 3.5.1c at cell row 151, which shows the calculation of ADIT related to this prepaid pension asset adjustment amount using same signs. Refer also to WP II-E-3.5.1a and further to the amount of the asset ADFIT adjustment added for account 283 of $37.016 million and described as "Prepaid Pension Asset Service Company." Finally, refer to Exhibit KLC-09.

a. Please describe how of CEHE's share of each component of the prepaid pension calculation on Exhibit KLC-09 was determined and identify the affiliate described as CNP.
b. Provide the source documents and the calculation of CEHE's share of each line item portrayed on Exhibit KLC-09 for 2017 and 2018 as examples for the various years. Provide annotated copies of the relevant actuarial report pages and balance sheets used in the calculations.
c. Describe which entity and in what manner the $176.268 million in prepaid pension assets is funded. In other words, did CNP fund the prepaid pension asset or did CEHE or some other entity? Provide all support relied on for your response.
d. Indicate whether CEHE was charged by CNP or CenterPoint Energy Service Company for the cost of capital necessary to fund the calculated prepaid pension asset of $176.268. Provide all support relied on for your response.
e. Indicate whether the $370.442 million in unrecognized gains/losses shown on Exhibit KLC-09 is recorded on CNP, CenterPoint Energy Service Company, or CEHE's accounting books. If so, identify the entity and the account wherein it is recorded. If it is reflected in the pension trust fund assets recorded on the accounting books of CNP, please so state. Provide a copy of all support relied on for your response.
f. Explain why the $370.442 million in unrecognized gains/losses shown on Exhibit KLC-09 is not already reflected in the negative $200.073 million net funded/unfunded status. In other words, aren't unrecognized gains/losses included in the trust fund assets used to determine the funding status?
g. Explain why the referenced ADFIT adjustment amount on WP II-E-3.5.1a described as "Prepaid Pension Asset Service Company" is being added as an asset ADFIT amount (Debit to account 283) instead of a liability ADFIT amount (Credit to account 283) if the temporary difference to which it is associated is a prepaid pension asset. If the filing contains an error, please so state.

ANSWER:

a. CenterPoint Houston's share of each component was derived by the actuary. See the actuarial reports as referenced in Schedule II-D-3.8.1. The row entitled "Pension Expense as Included in Rates" represents the amounts of pension expense previously approved by the commission. The affiliate referred to as CNP represents CenterPoint Energy, Inc.

b. Please see schedule II-D-3.8.1 for references to the source documents. Please refer to GCCC01-07 Attachment 1 (confidential) for the annotated copies of the relevant actuarial report pages requested. **The attachment is confidential and is being provided pursuant to the Protective Order issued in Docket No. 49421.**

c. CenterPoint Houston's prepaid pension asset represents the accumulated difference between the Plan contributions made by CenterPoint Energy, Inc. to the plan on behalf of CenterPoint Houston less the pension costs recognized by CenterPoint Houston. The prepaid pension asset at CenterPoint Houston was $170.369 million as of December 31, 2018 per the actuarial report. The $176.268 million is a 13-month (Dec-2017 to Dec-2018) average. Employer contributions to the CenterPoint Energy Retirement plan are funded by CenterPoint Energy, Inc.

d. CenterPoint Houston has made cash contributions to CenterPoint Energy, Inc. for plan funding equal to CenterPoint Houston's pension expense. The prepaid pension asset at CenterPoint Energy, Inc. represents the amount of cash funded by CenterPoint Energy, Inc. to the plan on behalf of CenterPoint Houston in excess of cash it received from CenterPoint Houston through pension expense. Contributions made by the parent to the plan 1) increases the plan assets and 2) generally increases the return on plan assets, both of which reduce the amount of pension expense charged to ratepayers overtime. CenterPoint Energy, Inc. has not charged CenterPoint Houston for the cost of capital necessary to fund the prepaid pension asset. Exhibit KLC-09 attached to Ms. Colvin's direct testimony outlines the expense and contributions to the prepaid pension asset since CenterPoint Houston's last base rate proceeding.

e. The $370.442 million in unrecognized gains/losses represents the impact of accumulative changes in assumptions (i.e. discount rate and mortality), plan design and plan asset performance over the years has had on CenterPoint Houston's plan obligation as of December 31, 2018 that has not yet been reflected in CenterPoint Houston's pension cost. These unrealized gains and losses are recorded on CenterPoint Energy, Inc. in General Ledger accounts 179064 and 298012. The unrecognized gains/losses in accounts 179064 and 298012 will be recognized as a component of the actuarily measured net periodic pension cost in future periods. Under GAAP, pension trust fund assets are not recognized on a company's book. Instead, ASC 715-30-25 requires the recognition of the plan's funded or unfunded status, the difference between the fair market value of the pension trust assets and the plan's projected benefit obligation, as an asset or liability, respectively.

f. The net unfunded status of ($200.073 million) represents CenterPoint Houston's portion of the plan's projected benefit obligation in excess of the fair value of its plan assets as of December 31, 2018 and is reflected as a liability on the balance sheet of CenterPoint Energy, Inc. (GL 259041). Unrecognized gains/losses represent net amounts included in the unfunded status liability on the balance sheet that (1) have not yet been reflected in the actuarily measured net pension cost and thus (2) have not yet been funded by rate payers through pension expense. These amounts may include, but are not limited to, gains or losses on the fair value of plan assets on the measurement date. Any gains or losses on plan assets will increase or decrease the net funded status of the plan on the measurement date, December 31, 2018, and will be deferred by CenterPoint Energy, Inc. as a component of the total accumulated unrealized gains/losses of the plan in accounts 179064 and 298012 until they are recognized through the future period actuarily measured net pension cost.

g. The ADFIT adjustment on WP II-E-3.5.1a was inadvertently included as a deferred tax asset instead of as a deferred tax liability in error and will be corrected in an errata filing.

SPONSOR (PREPARER):
Kristie Colvin / Charles Pringle (Kristie Colvin / Charles Pringle)

RESPONSIVE DOCUMENTS:
GCCC01-07 Attachment 1 (confidential).xlsx

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

OFFICE OF PUBLIC UTILITY COUNSEL
REQUEST NO.: OPC02-01

QUESTION:

Please refer to WP II-B-6 Adj 1 and provide all documents and analysis that support the definite plan for use of each of the assets requested to be recovered in rate base in FERC Account 360.03 and 389.03, including the actual timing of when the assets will be fully used and useful.

ANSWER:

Regarding the assets requested to be recovered in rate base in FERC Account 360.03 and 389.03 as identified in WP II-B-6, the following information is provided:
Account 360.03

- Tract of land containing 5.452 acres owned in fee in the A. R. Bodenan Survey of Harris County, Texas, acquired in the year 1985 under ER C-6110, for the site of the proposed Lee Substation. $192,075.10. It has been determined that this tract of land will not be used within the next 10 years and should be removed from the assets to be recovered in rate base.
- Tract of land containing 2.417 acres owned in fee in the H. T. & C. Railroad Company Survey in Harris County, Texas, acquired in 1982 under ER C-8255 for the site of the proposed expansion of Village Creek Substation. $49,302.96. This tract of land was utilized in the construction Village Creek Substation which was energized in 2017.

Account 389.03

- Tract of land containing 20.6 acres owned in fee pertaining to FM 1462 lots 10 and 11 purchased in 2007 for the Brazoria Service Center. $466,173.08. This tract of land and the one below are being utilized for the Brazoria Service Center, which was completed and occupied in 2018, as well as for a related water retention pond.
- Tract of land containing 14.136 acres in the Andrew Robinson League A-125, Brazoria County, Texas, Keith Jaehne, Grantor, File # 2006072872 acquired in 2017 for the Brazoria Service Center. $413,942.07. This tract of land is being utilized as described above.

For those tracts of land in Account 360.03 and Account 389.03 that are designated as beyond the ten-year horizon, the Company has not yet determined the in-service dates.

SPONSOR (PREPARER):
Randal Pryor (Randal Pryor)

RESPONSIVE DOCUMENTS:
None

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

OFFICE OF PUBLIC UTILITY COUNSEL
REQUEST NO.: OPC02-03

QUESTION:

Please provide a detailed reconciliation of the Account 1900 Deferred Credits of $106,762 shown on Schedule II-E-3.5.1 to the $171,381 shown on Schedule II-B-7, along with an explanation of the differences.

ANSWER:

In responding to this RFI it was determined that informational Schedules II-E-3.5.1 and II-E-3.5.2 filed in the RFP package have corrupted links. The corrected schedules are being provided with this response. See attached file "OPC02-03 Attachment II-E-3.5 and II-E-3.5.2 Corrected.xlsx" for the corrected schedules.

On the corrected schedules the amount shown in Schedule II-E-3.5.1 for account 1900 is $166,064. The $5,317 difference between the two schedules in account 1900 is due to accumulated deferred state income taxes which are included in II-B-7 but are not included in II-E-3.5.1. This detail of this difference is shown on file RFP Workpapers WP II-E-3.5.1a (see cell L55).

SPONSOR (PREPARER):
Charles Pringle (Charles Pringle)

RESPONSIVE DOCUMENTS:
OPC02-03 Attachment II-E-3.5 and II-E-3.5.2 Corrected.xlsx

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

PUBLIC UTILITY COMMISSION OF TEXAS
REQUEST NO.: PUC02-20U

QUESTION:

Payroll
Has the Company included any non-qualified pension payments in its request? If so, please provide by FERC account and identify as Company direct or affiliate allocated. Please provide the amounts expensed as well as the amounts capitalized.

ANSWER:

CenterPoint Houston is providing an update to PUC02-20 to identify the FERC account where capital costs for non-qualified pension is recorded:

Costs incurred in the accounting system (SAP) are first coded to primary cost elements.

In SAP, labor for capital work is billed directly to capital work orders or allocated to capital work orders through construction overhead on secondary cost elements such as Construction Overhead. The components of billed labor, base pay, short-term incentive and *benefits*, are not charged individually utilizing their individual primary cost elements. Consequently each individual component of labor loses its identity as it is coded to the capital work order or in construction overhead.

Once all charges are collected in construction overhead orders, the accounting system allocates overhead charges to each work order based on a percentage of the expenditures charged to that work order in CWIP.

For certain capital work the following are the three stages of cost coding to FERC accounts.

1. While work is being done cost are coded to capital work orders in FERC account 1070 Construction Work in Progress (1070).
2. Once the job is field complete or in use the capital work order moves to FERC account 1060 Construction Complete Not Classified (1060).
3. Once all costs are accumulated on the work order the amount is moved to FERC account 1010 Plant in Service (1010).

Due to the inability to individually track components of labor and the flow of these costs through the stages of capital work the amount can not be specifically assigned to FERC's 1010, 1060, or 1070.

In addition, CenterPoint Houston is updating the amount of estimated affiliate capital included in the adjusted test year to be $19,499 instead of the $18,294 previously reported in PUC02-20. CenterPoint Houston inadvertently included the $18,294 as a known and measurable adjustment to the test year and it will be removed in an errata.

SPONSOR (PREPARER):
Kristie Colvin / Michelle Townsend (Kristie Colvin / Michelle Townsend)

RESPONSIVE DOCUMENTS:
None

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

PUBLIC UTILITY COMMISSION OF TEXAS
REQUEST NO.: PUC03-06

QUESTION:

Regulatory Assets and Liabilities
Please provide the adjustments to CenterPoint's request in this docket, by FERC account, that would be required to reflect amortization in rates of all of CenterPoint's unprotected excess ADFIT over a five-year period.

ANSWER:

Please see PUC03-06 Attachment 1. This schedule reflects the amortization over a five-year period based on the corrected Schedule Rider UEDIT that includes the income tax gross-up.

SPONSOR (PREPARER):
Kristie Colvin / Charles Pringle (Kristie Colvin / Charles Pringle)

RESPONSIVE DOCUMENTS:
PUC03-06 Attachment 1.xlsx

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

PUBLIC UTILITY COMMISSION OF TEXAS
REQUEST NO.: PUC08-02

QUESTION:

Regulatory Assets and Liabilities

For each regulatory liability, please identify all amounts, by FERC account, included in the Company's request relating to the regulatory liability. Include both the asset and expense amounts by FERC account for each regulatory liability. Please identify the period of amortization for each regulatory liability for which amortization is included in rates in CenterPoint's request.

ANSWER:

Please see Schedule II-B-11 for the amounts of the Pension (the PURA 36.065 deferral) on Line No. 17 and the EDIT Plant on Line No. 24. The Pension BRP and Postretirement on Line No. 18 was removed in the May 20, 2019 errata filing. Please see Schedule II-B-12 for the net Excess Deferred Income Tax (EDIT) amount on Line Nos. 28 and 29. The amortization amount by FERC account for the Pension PURA 36.065 can be found on Schedule E-4.1.1. The amortization period requested is three years.

The protected plant related income tax EDIT regulatory liability is shown on schedule II-B-11 in FERC account 254 on Line No. 24. This balance has a partially offsetting Accumulated Deferred Income Tax (ADIT) balance in FERC 190 shown on WP II-B-11d EDIT excel cell J26. An additional net protected regulatory liability is also shown on schedule II-B-12 in account 182.3 on Line Nos. 28 and 29. The FERC 190 ADIT offset associated with this amount is also shown on WP II-B-11d EDIT in excel cell J41. The amortization associated with protected EDIT is in FERC 411.1 and is shown on Schedule II-E-3.15 on Line No. 82. The amortization period for the protected EDIT regulatory liability is over the regulatory book lives of the underlying assets.

The unprotected EDIT regulatory liabilities in accounts 257034 and 257037 (FERC 254) shown on schedule II-B-11 are adjusted out of the base rate revenue requirement and are being requested to be recovered in Rider UEDIT. See WP Rider UEDIT excel cells B8 and B9 for the balances. The FERC account 190 offsetting deferred tax assets are shown on the same workpaper in excel cells D8 and D9. CenterPoint Houston is proposing to refund the net UEDIT regulatory liability over three years in Rider UEDIT. As this regulatory liability is refunded an expense reduction will occur in FERC 411.1. The total amount of this expense reduction through the life of the rider will be the amounts shown on WP Rider UEDIT in excel cells C8 and C9. Please also note that there is an unprotected EDIT regulatory asset partially offsetting these liabilities on the same workpaper in excel cell B10. Please see GCCC01-06 for the corrected Schedule Rider UEDIT amortization expense.

SPONSOR (PREPARER):
Kristie Colvin / Charles Pringle (Kristie Colvin / Charles Pringle)

RESPONSIVE DOCUMENTS:
None

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864

TEXAS COAST UTILITIES COALITION
REQUEST NO.: TCUC01-04

QUESTION:

General Rate of Return Data Requests

Please provide copies of all credit reports for CenterPoint Energy, Inc. and CenterPoint Houston Electric, LLC from the major credit rating agencies (S&P, Moody's, and Fitch) published since January 1, 2016.

ANSWER:

Please see Schedule II-C-2.10 for the 2018 rating agency reports previously provided in our initial rate filing package. Attached are copies of reports for CenterPoint Energy and CenterPoint Energy Houston Electric from S&P, Moody's, and Fitch since Jan. 1, 2016.

The attachment is confidential and is being provided pursuant to the Protective Order issued in Docket No. 49421.

The requested information is also voluminous and will be provided to the propounding party only in electronic format on CD. Please contact Alice Hart at (713) 207-5322 to request a copy of the CD. Please see index of voluminous material below.

Date	Title	Preparer	Page NO (S)
Undated	TCUC01-04 Fitch CEHE 20160425	McRae	1-10
Undated	TCUC01-04 Fitch CEHE 20160628	McRae	11-13
Undated	TCUC01-04 Fitch CEHE 20170427	McRae	14-23
Undated	TCUC01-04 Fitch CNP 20160127	McRae	24-25
Undated	TCUC01-04 Fitch CNP 20160203	McRae	26-27
Undated	TCUC01-04 Fitch CNP 20160318	McRae	28-33
Undated	TCUC01-04 Fitch CNP 20161021	McRae	34-44
Undated	TCUC01-04 Fitch CNP 20170926	McRae	45-58
Undated	TCUC01-04 Fitch CNP 20171016	McRae	59-72
Undated	TCUC01-04 Fitch CNP 20180905	McRae	73-79
Undated	TCUC01-04 Fitch CNP 20181102	McRae	80-94
Undated	TCUC01-04 Moodys CEHE 20160613	McRae	95-99
Undated	TCUC01-04 Moodys CEHE 20170613	McRae	100-105
Undated	TCUC01-04 Moodys CNP 20160203	McRae	106-107
Undated	TCUC01-04 Moodys CNP 20161017	McRae	108-113
Undated	TCUC01-04 Moodys CNP 20171013	McRae	114-121
Undated	TCUC01-04 SP CEHE 20161221	McRae	122-129
Undated	TCUC01-04 SP CEHE 20171206	McRae	130-137
Undated	TCUC01-04 SP CEHE 20190322	McRae	138-145
Undated	TCUC01-04 SP CNP 20160127	McRae	146-148
Undated	TCUC01-04 SP CNP 20160202	McRae	149-151
Undated	TCUC01-04 SP CNP 20160819	McRae	152-159
Undated	TCUC01-04 SP CNP 20170804	McRae	160-167

Undated	TCUC01-04 SP CNP 20171204	McRae	168-175
Undated	TCUC01-04 SP CNP 20190321	McRae	176-191
Undated	TCUC01-04 Moodys CNP 20161103	McRae	192-196

SPONSOR:
Robert McRae (Robert McRae)

RESPONSIVE DOCUMENTS:

TCUC01-04 Attachment 1 (Confidential)

FASB Codification

Industry

980 Regulated Operations

980-10 Overall

980-10-05 Overview and Background

General

> Effect of Regulatory Accounting

5-5 Regulators sometimes include costs in allowable costs in a period other than the period in which the costs would be charged to expense by an unregulated entity. For the regulated entity, that procedure can do any of the following:

a. Create assets (future cash inflows that will result from the rate-making process)
b. Reduce assets (reductions of future cash inflows that will result from the rate-making process)
c. Create liabilities (future cash outflows that will result from the rate-making process).

145. Accrual accounting uses accrual, deferral, and allocation procedures whose goal is to relate revenues, expenses, gains, and losses to periods to reflect an entity's performance during a period instead of merely listing its cash receipts and outlays. Thus, recognition of revenues, expenses, gains, and losses and the related increments or decrements in assets and liabilities—including matching of costs and revenues, allocation, and amortization—is the essence of using accrual accounting to measure performance of entities. The goal of accrual accounting is to account in the periods in which they occur for the effects on an entity of transactions and other events and circumstances, to the extent that those financial effects are recognizable and measurable.

FASB Statement of Financial Accounting Concepts No. 6, page 36
https://www.fasb.org/pdf/aop_CON6.pdf

Name of Respondent	This Report Is:	Date of Report (Mo, Da, Yr)	Year of Report
CenterPoint Energy Houston Electric, LLC	(1) [X] An Original (2) [ ] A Resubmission	05/03/2004	Dec. 31, 2003

OTHER REGULATORY ASSETS (Account 182.3)

1. Report below the particulars (details) called for concerning other regulatory assets which are created through the rate making actions of regulatory agencies (and not includable in other accounts)
2. For regulatory assets being amortized, show period of amortization in column (a)
3. Minor items (5% of the Balance at End of Year for Account 182.3 or amounts less than $50,000, whichever is less) may be grouped by classes.

Line No	Description and Purpose of Other Regulatory Assets	Debits	CREDITS		Balance at End of Year
			Account Charged	Amount	
	(a)	(b)	(c)	(d)	(e)
1	SFAS109 - Accounting for Income Taxes				
2	Net-of-tax Debt AFUDC		282/283	-975,535	-22,218,444
3	Equity AFUDC	20,304	282/283	-4,233,506	-20,522,212
4	Excess Accumulated Deferred Taxes & Other	5,337,774	282/283		101,171,539
5	Investment Tax Credit	2,611,025	282/283	-658,884	-41,325,500
6	GAAP Equity Adjustment		282/283	-9,380,318	-9,380,319
7	TDU Call Center/Credit Severance			300,766	745,905
8	State Franchise	4,809,000		14,666,243	4,809,000
9	Property Insurance Reserve		407	1,420,000	4,259,000
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
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39					
40					
41					
42					
43					
44	TOTAL	12,778,103		1,138,766	17,538,969

118

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
2019 CEHE RATE CASE
DOCKET 49421-SOAH DOCKET NO. 473-19-3864**

**PUBLIC UTILITY COMMISSION OF TEXAS
REQUEST NO.: PUC08-01**

QUESTION:

Regulatory Assets and Liabilities

Please provide the adjustments to CenterPoint's request in this docket, by FERC account, that would be required to remove entirely CenterPoint's regulatory asset associated with Margin Tax. Include both the asset and expenses amounts by FERC account.

ANSWER:

The regulatory asset requested in this docket is the result of CenterPoint Houston proposing a change to the method of recovery of Texas Margin Tax expense. In order to remove the regulatory asset the filing must be changed back to the recovery method approved in Docket No.s 29526 and 38339. To do so the steps as outlined in Ms. Colvin's testimony on Bates pages 873 through 875 must be reversed.

To remove the regulatory asset associated with Texas Margin Tax (TMT), open the workbook "CEHE RFP Workpapers.xlsx" first and then the workbook "CEHE RFP Schedules.xlsx" to ensure all changes are updated throughout the rate filing package.

In the workbook "CEHE RFP Workpapers.xlsx", go to tab WP II-B-12 Adj 10 and zero out the cells D4 and D5. This will create the adjustment to remove the regulatory asset from rate base. The amortization on WP II-E-4.1 is then zero. On tab WP II-E-2 Adj 5 delete the amount in cell D9.

Please refer to the direct testimony of Charles Pringle and Kristie Colvin for the treatment of this asset.

SPONSOR:
Kristie Colvin / Charles Pringle (Kristie Colvin / Charles Pringle)

RESPONSIVE DOCUMENTS:

None

Competitive Retailer Bad Debt credit to Cost of Service Amount Docket No. 38339

Name	Total
NATIONAL POWER COMPANY INC	(61,237.79)
HWY 3 MHP, LLC DBA SMART CHOICE POWER	(36,030.89)
PRE-BUY ELECTRIC, LLC	(31,765.78)
SURE ELECTRIC, LLC	(7,626.84)
BLU POWER OF TEXAS LLC	(3,634.12)
GREEN MOUNTAIN ENERGY COMPANY	(2,152.16)
REACH ENERGY, LLC	(1,860.42)
TXU ENERGY RETAIL COMPANY LLC	0.49
	(144,307.51)

incurred in construction work, privileges and permits, special machine service, allowance for funds used during construction, not to exceed without prior approval of the Commission, amounts computed in accordance with the formula prescribed in paragraph (a) of paragraph (17) of this Instruction, training costs, and such portion of general engineering, administrative salaries and expenses, insurance, taxes, and other analogous items as may be properly includable in construction costs (See Operating Expense Instruction 4) The rates and balances of short and long-term debt, preferred stock, common equity and construction work in progress shall be determined as prescribed in paragraph (b) of paragraph (17) of this Instruction

4 *Overhead Construction Costs*

A All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes and interest, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit, both direct and overhead, shall be deducted from the plant accounts at the time the property is retired

B As far as practicable, the determination of pay roll charges includible in construction overheads shall be based on time card distributions thereof Where this procedure is impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities to the end that only such overhead costs as have a definite relation to construction shall be capitalized The addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted

C For Major utilities, the records supporting the entries for overhead construction costs shall be so kept as to show the total amount of each overhead for each year, the nature and amount of each overhead expenditure charged to each construction work order and to each electric plant account, and the bases of distribution of such costs

5 *Electric Plant Purchased or Sold*

A When electric plant constituting an operating unit or system is acquired by purchase, merger, consolidation, liquidation, or otherwise, after the effective date of this system of accounts, the costs of acquisition, including expenses incidental thereto properly includible in electric plant, shall be charged to account 102, Electric Plant Purchased or Sold

B The accounting for the acquisition shall then be completed as follows

(1) The original cost of plant, estimated if not known, shall be credited to account 102, Electric Plant Purchased or Sold, and concurrently charged to the appropriate electric plant in service accounts and to account 104, Electric Plant Leased to Others, account 105, Electric Plant Held for Future Use, and account 107, Construction Work in Progress—Electric, as appropriate

(2) The depreciation and amortization applicable to the original cost of the properties purchased shall be charged to account 102, Electric Plant Purchased or Sold, and concurrently credited to the appropriate account for accumulated provision for depreciation or amortization

(3) The cost to the utility of any property includible in account 121, Nonutility Property, shall be transferred thereto

(4) The amount remaining in account 102, Electric Plant Purchased or Sold, shall then be closed to account 114, Electric Plant Acquisition Adjustments

C If property acquired in the purchase of an operating unit or system is in such physical condition when acquired that it is necessary substantially to rehabilitate it in order to bring the property up to the standards of the utility, the cost of such work, except replacements, shall be accounted for as a part of the purchase price of the property

D When any property acquired as an operating unit or system includes duplicate or other plant which will be retired by the accounting utility in the reconstruction of the acquired property or its consolidation with previously owned property, the proposed accounting for such property shall be presented to the Commission

E In connection with the acquisition of electric plant constituting an operating unit or system, the utility shall procure, if possible, all existing records relating to the property acquired, or certified copies thereof, and shall preserve such records in conformity with regulations or practices governing the preservation of records of its own construction

F When electric plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate utility plant accounts, including amounts carried in account 114, Electric Plant Acquisition Adjustments The amounts (estimated if not known) carried with respect thereto in the accounts for accumulated provision for depreciation and amortization and in account 252, Customer Advances for Construction, shall be charged to such accounts and contra entries made to account 102, Electric Plant Purchased or Sold Unless otherwise ordered by the Commission, the difference, if any, between (1) the net amount of debits and credits and (2) the consideration received for the property (less commissions and other expenses of making the sale) shall be included in account 421 1 Gain on Disposition of Property, or account 421 2, Loss on Disposition of Property (See account 102, Electric Plant Purchased or Sold) incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant

B Exclude from equipment accounts hand and other portable tools, which are likely to be lost or stolen or which have relatively small value (for example, $500 or less) or short life, unless the correctness of the accounting therefor as electric plant is verified by current inventories Special tools acquired and included in the purchase price of equipment shall be included in the appropriate plant account Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plant or department, such as production, transmission, distribution, etc , or in *stores,* shall be charged to the plant account appropriate for their use

C The equipment accounts shall include angle irons and similar items which are installed at the base of an item of equipment, but piers and foundations which are designed to be as permanent as the buildings which house the equipment, or which are constructed as a part of the building and which cannot be removed without cutting into the walls, ceilings or floors or without in some way impairing the building, shall be included in the building accounts

D The equipment accounts shall include the necessary costs of testing or running a plant or parts thereof during an experimental or test period prior to such plant becoming ready for or placed in service In the case of Nonmajor utilities the utility shall pay the fee prescribed in part 381 of this chapter and shall furnish the Commission with full particulars of and justification for any test or experimental run extending beyond a period of 30 days In the case of Major utilities, the utility shall furnish the Commission with full particulars of and justification for any test or experimental run extending beyond a period of 120 days for nuclear plant, and a period of 90 days for all other plant Such particulars shall include a detailed operational and downtime log showing days of production, gross kilowatts generated by hourly increments, types, and periods of outages by hours with explanation thereof, beginning with the first date the equipment was either tested or synchronized on the line to the end of the test period

E The cost of efficiency or other tests made subsequent to the date equipment becomes available for service shall be charged to the appropriate expense accounts, except that tests to determine whether equipment meets the specifications and requirements as to efficiency, performance, etc , guaranteed by manufacturers, made after operations have commenced and within the period specified in the agreement or contract of purchase may be charged to the appropriate electric plant account

10 *Additions and Retirements of Electric Plant*

A For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of electric plant, all property will be considered as consisting of (1) retirement units and (2) minor items of property Each utility shall maintain a written property units listing for use in accounting for additions and retirements of electric plant and apply the listing consistently

B The addition and retirement of retirement units shall be accounted for as follows

(1) When a retirement unit is added to electric plant, the cost thereof shall be added to the appropriate electric plant account, except that when units are acquired in the acquisition of any electric plant constituting an operating system, they shall be accounted for as provided in electric plant instruction 5

(2) When a retirement unit is retired from electric plant, with or without replacement, the book cost thereof shall be credited to the electric plant account in which it is included, determined in the manner set forth in paragraph D, below If the retirement unit is of a depreciable class, the book cost of the unit retired and credited to electric plant shall be charged to the accumulated provision for depreciation applicable to such property The cost of removal and the salvage shall be charged or credited, as appropriate, to such depreciation account

C The addition and retirement of minor items of property shall be accounted for as follows

(1) When a minor item of property which did not previously exist is added to plant, the cost thereof shall be accounted for in the same manner as for the addition of a retirement unit, as set forth in paragraph B(1), above, if a substantial addition results, otherwise the charge shall be to the appropriate maintenance expense account

(2) When a minor item of property is retired and not replaced, the book cost thereof shall be credited to the electric plant account in which it is included; and, in the event the minor item is a part of depreciable plant, the account for accumulated provision for depreciation shall be charged with the book cost and cost of removal and credited with the salvage If, however, the book cost of the minor item retired and not replaced has been or will be accounted for by its inclusion in the retirement unit of which it is a part when such unit is retired, no separate credit to the property account is required when such minor item is retired

(3) When a minor item of depreciable property is replaced independently of the retirement unit of which it is a part, the cost of replacement shall be charged to the maintenance account appropriate for the item, except that if the replacement effects a substantial betterment (the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity), the excess cost of the replacement over the estimated cost at current prices of replacing without betterment shall be charged to the appropriate electric plant account

D The book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts, including all components of construction costs The book cost shall be determined from the utility's records and if this cannot be done it shall be estimated Utilities must furnish the particulars of such estimates to the Commission, if requested When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired

E The book cost of land retired shall be credited to the appropriate land account If the land is sold, the difference between the book cost (less any accumulated provision for depreciation or amortization therefore which has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) shall be recorded in account 411 6, Gains from Disposition of Utility Plant, or 411 7, Losses from Disposition of Utility Plant when the property has been recorded in account 105, Electric Plant Held for Future Use, otherwise to accounts 421 1, Gain on Disposition of Property or 421 2, Loss on Disposition of Property, as appropriate If the land is not used in utility service but is retained by the utility, the book cost shall be charged to account 105, Electric Plant Held for Future Use, or account 121, Nonutility Property, as appropriate

F The book cost less net salvage of depreciable electric plant retired shall be charged in its entirety to account 108 Accumulated Provision for Depreciation of Electric Plant in Service (Account 110, Accumulated Provision for Depreciation and Amortization of Electric Utility Plant, in the case of Nonmajor utilities) Any amounts which, by approval or order of the Commission, are charged to account 182 1, Extraordinary Property Losses, shall be credited to account 108 (Account 110 for Nonmajor utilities)

G In the case of Major utilities, the accounting for the retirement of amounts included in account 302, Franchises and Consents, and account 303, Miscellaneous Intangible Plant, and the items of limited-term interest in land included in the accounts for land and land rights, shall be as provided for in the text of account 111 Accumulated Provision for Amortization of Electric Plant in Service, account 404, Amortization of Limited-Term Electric Plant, and account 405, Amortization of Other Electric Plant

11 *Work Order and Property Record System Required*

A Each utility shall record all construction and retirements of electric plant by means of work orders or job orders Separate work orders may be opened for additions to and retirements of electric plant or the retirements may be included with the construction work order, provided, however, that all items relating to the retirements shall be kept separate from those relating to construction and provided, further, that any maintenance costs involved in the work shall likewise be segregated

B Each utility shall keep its work order system so as to show the nature of each addition to or retirement of electric plant, the total cost thereof, the source or sources of costs, and the electric plant account or accounts to which charged or credited Work orders covering jobs of short duration may be cleared monthly

C In the case of Major utilities, each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units

12 *Transfers of Property*

When property is transferred from one electric plant account to another, from one utility department to another, such as from electric to gas, from one operating division or area to another, to or from accounts 101, Electric Plant in Service, 104. Electric Plant Leased to Others, 105 Electric Plant Held for Future Use, and 121, Nonutility Property, the transfer shall be recorded by transferring the original cost thereof from the one account, department, or location to the other Any related amounts carried in the accounts for accumulated provision for depreciation or amortization shall be transferred in accordance with the segregation of such accounts

13 *Common Utility Plant*

A If the utility is engaged in more than one utility service, such as electric, gas, and water, and any of its utility plant is used in common for several utility services or for other purposes to such an extent and in such manner that it is impracticable to segregate it by utility services currently in the accounts, such property, with the approval of the Commission, may be designated and classified as *common utility plant*

B The book amount of utility plant designated as common plant shall be included in account 118, Other Utility Plant, and if applicable in part to the electric department, shall be segregated and accounted for in subaccounts as electric plant is accounted for in accounts 101 to 107, inclusive, and electric plant adjustments in account 116, any amounts classifiable as common plant acquisition adjustments or common plant adjustments shall be subject to disposition as provided in paragraphs C and B of accounts 114 and 116, respectively, for amounts classified in those accounts The original cost of common utility plant in service shall be classified according to detailed utility plant accounts appropriate for the property

C The utility shall be prepared to show at any time and to report to the Commission annually, or more frequently, if required, and by utility plant accounts (301 to 399) the following: (1) The book cost of common utility plant, (2) The allocation of such cost to the respective departments using the common utility plant, and (3) The basis of the allocation

D The accumulated provision for depreciation and amortization of the utility shall be segregated so as to show the amount applicable to the property classified as common utility plant

C The depreciation on plant in this account shall be charged to account 403, Depreciation expense, and account 403 1, Depreciation expense for asset retirement costs, as appropriate, and credited to account 108, Accumulated provision for depreciation of electric utility plant (Major only) The amounts herein shall be depreciated over a period which corresponds to the estimated useful life of the relevant project considering the characteristics involved However, when projects are transferred to account 101, Electric plant in service, a new depreciation rate based on the remaining service life and undepreciated amounts, will be established

D. Records shall be maintained with respect to each unit of experiment so that full details may be obtained as to the cost, depreciation and the experimental status

E Should it be determined that experimental plant recorded in this account will fail to satisfactorily perform its function, the costs thereof shall be accounted for as directed or authorized by the Commission

103.1 Electric plant in process of reclassification (Nonmajor only).

A This account shall include temporarily the balance of electric plant as of the effective date of the prior system of accounts, which has not yet been reclassified as of the effective date of this system of accounts The detail or primary accounts in support of this account employed prior to such date shall be continued pending reclassification into the electric plant accounts herein prescribed (301-399), but shall not be used for additions, betterments, or new construction

B No charges other than as provided in paragraph A, above, shall be made to this account, but retirements of such unclassified electric plant shall be credited hereto and to the supporting (old) fixed capital accounts until the reclassification shall have been accomplished

104 Electric plant leased to others.

A This account shall include the original cost of electric plant owned by the utility, but leased to others as operating units or systems, where the lessee has exclusive possession

B The property included in this account shall be classified according to the detailed accounts (301 to 399) prescribed for electric plant in service and this account shall be maintained in such detail as though the property were used by the owner in its utility operations

105 Electric plant held for future use.

A This account shall include the original cost of electric plant (except land and land rights) owned and held for future use in electric service under a definite plan for such use, to include (1) Property acquired (except land and land rights) but never used by the utility in electric service, but held for such service in the future under a definite plan, and (2) property (except land and land rights) previously used by the utility in service, but retired from such service and held pending its reuse in the future, under a definite plan, in electric service

B This account shall also include the original cost of land and land rights owned and held for future use in electric service under a plan for such use, to include land and land rights (1) Acquired but never used by the utility in electric service, but held for such service in the future under a plan, and (2) previously held by the utility in service, but retired from such service and held pending its reuse in the future under a plan, in electric service (See Electric Plant Instruction 7)

C In the event that property recorded in this account shall no longer be needed or appropriate for future utility operations, the company shall request Commission approval of journal entries to remove such property from this account when the gain realized from the sale or other disposition of the property is $100,000 or more, prior to their being recorded. Such filings shall include the description and original cost of individual properties removed from this account, the accounts charged upon removal, and any associated gains realized upon disposition of such property

D. Gains or losses from the sale of land and land rights or other disposition of such property previously recorded in this account and not placed in utility service shall be recorded directly in accounts 411 6 or 411 7, as appropriate, except when determined to be significant by the Commission Upon such a determination, the amounts shall be transferred to account 256, Deferred Gains from Disposition of Utility Plant, or account 187, Deferred Losses from Disposition of Utility Plant, and amortized to accounts 411 6, Gains from Disposition of Utility Plant, or 411 7, Losses from Disposition of Utility Plant, as appropriate

E The property included in this account shall be classified according to the detail accounts (301 to 399) prescribed for electric plant in service and the account shall be maintained in such detail as though the property were in service

NOTE. Materials and supplies, meters and transformers held in reserve, and normal spare capacity of plant in service shall not be included in this account

106 Completed construction not classified—Electric (Major only).

At the end of the year or such other date as a balance sheet may be required by the Commission, this account shall include the total of the balances of work orders for electric plant which has been completed and placed in service but which work orders have not been classified for transfer to the detailed electric plant accounts

NOTE For the purpose of reporting to the Commission the classification of electric plant in service by accounts is required, the utility shall also report the balance in this account tentatively classified as accurately as practicable according to prescribed account classifications The purpose of this provision is to avoid any significant omissions in reported amounts of electric plant in service

107 Construction work in progress—Electric.

A This account shall include the total of the balances of work orders for electric plant in process of construction

B Work orders shall be cleared from this account as soon as practicable after completion of the job Further, if a project, such as a hydroelectric project, a steam station or a transmission line, is designed to consist of two or more units or circuits which may be placed in service at different dates, any expenditures which are common to and which will be used in the operation of the project as a whole shall be included in electric plant in service upon the completion and the readiness for service of the first unit Any expenditures which are identified exclusively with units of property not yet in service shall be included in this account

C Expenditures on research, development, and demonstration projects for construction of utility facilities are to be included in a separate subdivision in this account Records must be maintained to show separately each project along with complete detail of the nature and purpose of the research, development, and demonstration project together with the related costs

108 Accumulated provision for depreciation of electric utility plant (Major only).

A This account shall be credited with the following

(1) Amounts charged to account 403, Depreciation Expense, or to clearing accounts for current depreciation expense for electric plant in service

(2) Amounts charged to account 403 1, Depreciation expense for asset retirement costs, for current depreciation expense related to asset retirement costs in electric plant in service in a separate subaccount

(3) Amounts charged to account 421, Miscellaneous Nonoperating Income, for depreciation expense on property included in account 105, Electric Plant Held for Future Use Include, also, the balance of accumulated provision for depreciation on property when transferred to account 105, Electric Plant Held for Future Use, from other property accounts Normally account 108 will not be used for current depreciation provisions because, as provided herein, the service life during which depreciation is computed commences with the date property is includible in electric plant in service, however, if special circumstances indicate the propriety of current accruals for depreciation, such charges shall be made to account 421, Miscellaneous Nonoperating Income

(4) Amounts charged to account 413, Expenses of Electric Plant Leased to Others, for electric plant included in account 104, Electric Plant Leased to Others

(5) Amounts charged to account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work, or to clearing accounts for current depreciation expense

(6) Amounts of depreciation applicable to electric properties acquired as operating units or systems (See electric plant instruction 5)

(7) Amounts charged to account 182, Extraordinary Property Losses, when authorized by the Commission.

(8) Amounts of depreciation applicable to electric plant donated to the utility

(The utility shall maintain separate subaccounts for depreciation applicable to electric plant in service, electric plant leased to others and electric plant held for future use)

B At the time of retirement of depreciable electric utility plant, this account shall be charged with the book cost of the property retired and the cost of removal and shall be credited with the salvage value and any other amounts recovered, such as insurance When retirement, costs of removal and salvage are entered originally in retirement work orders, the net total of such work orders may be included in a separate subaccount hereunder Upon completion of the work order, the proper distribution to subdivisions of this account shall be made as provided in the following paragraph

C For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for depreciation For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant

(1) Steam production,

(2) Nuclear production,

(3) Hydraulic production,

(4) Other production,

This account shall include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included herein

175 Derivative instrument assets.

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges Account 421, miscellaneous nonoperating income, shall be credited or debited, as appropriate, with the corresponding amount of the change in the fair value of the derivative instrument

176 Derivative instrument assets—Hedges.

A This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the utility as cash flow or fair value hedges

B When a utility designates a derivative instrument asset as a cash flow hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 219, accumulated other comprehensive income, with the effective portion of the gain or loss The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income

C When a utility designates a derivative instrument as a fair value hedge it shall record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income

181 Unamortized debt expense.

This account shall include expenses related to the issuance or assumption of debt securities Amounts recorded in this account shall be amortized over the life of each respective issue under a plan which will distribute the amount equitably over the life of the security The amortization shall be on a monthly basis, and the amounts thereof shall be charged to account 428, Amortization of Debt Discount and Expense Any unamortized amounts outstanding at the time that the related debt is prematurely reacquired shall be accounted for as indicated in General Instruction 17

182.1 Extraordinary property losses.

A When authorized or directed by the Commission, this account shall include extraordinary losses, which could not reasonably have been anticipated and which are not covered by insurance or other provisions, such as unforeseen damages to property

B Application to the Commission for permission to use this account shall be accompanied by a statement giving a complete explanation with respect to the items which it is proposed to include herein, the period over which, and the accounts to which it is proposed to write off the charges, and other pertinent information

182.2 Unrecovered plant and regulatory study costs.

A This account shall include (1) Nonrecurring costs of studies and analyses mandated by regulatory bodies related to plants in service, transferred from account 183, Preliminary Survey and Investigation Charges, and not resulting in construction, and (2) when authorized by the Commission, significant unrecovered costs of plant facilities where construction has been cancelled or which have been prematurely retired

B This account shall be credited and account 407, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs, shall be debited over the period specified by the Commission

C Any additional costs incurred, relative to the cancellation or premature retirement, may be included in this account and amortized over the remaining period of the original amortization period Should any gains or recoveries be realized relative to the cancelled or prematurely retired plant, such amounts shall be used to reduce the unamortized amount of the costs recorded herein

D In the event that the recovery of costs included herein is disallowed in the rate proceedings, the disallowed costs shall be charged to account 426 5, Other Deductions, or account 435, Extraordinary Deductions, in the year of such disallowance.

182.3 Other regulatory assets.

A This account shall include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies (*See* Definition No 30)

B The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, account 407 4, regulatory credits, shall be credited The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of account 407 4 shall be charged to account 407 3, regulatory debits, concurrent with the recovery in rates

C If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426 5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance

D The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account

183 Preliminary survey and investigation charges (Major only).

A This account shall be charged with all expenditures for preliminary surveys plans, investigations, etc , made for the purpose of determining the feasibility of utility projects under contemplation If construction results, this account shall be credited and the appropriate utility plant account charged If the work is abandoned, the charge shall be made to account 426 5, Other Deductions, or to the appropriate operating expense account.

B This account shall also include costs of studies and analyses mandated by regulatory bodies related to plant in service If construction results from such studies, this account shall be credited and the appropriate utility plant account charged with an equitable portion of such study costs directly attributable to new construction The portion of such study costs not attributable to new construction or the entire cost if construction does not result shall be charged to account 182 2, Unrecovered Plant and Regulatory Costs, or the appropriate operating expense account The costs of such studies relative to plant under construction shall be included directly in account 107, Construction Work in Progress-Electric

C The records supporting the entries to this account shall be so kept that the utility can furnish complete information as to the nature and the purpose of the survey, plans, or investigations and the nature and amounts of the several charges

NOTE The amount of preliminary survey and investigation charges transferred to utility plant shall not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to utility plant

184 Clearing accounts (Major only).

This caption shall include undistributed balances in clearing accounts at the date of the balance sheet Balances in clearing accounts shall be substantially cleared not later than the end of the calendar year unless items held therein relate to a future period

185 Temporary facilities (Major only).

This account shall include amounts shown by work orders for plant installed for temporary use in utility service for periods of less than one year Such work orders shall be charged with the cost of temporary facilities and credited with payments received from customers and net salvage realized on removal of the temporary facilities Any net credit or debit resulting shall be cleared to account 451, Miscellaneous Service Revenues

186 Miscellaneous deferred debits.

A For Major utilities, this account shall include all debits not elsewhere provided for, such as miscellaneous work in progress, and unusual or extraordinary expenses, not included in other accounts, which are in process of amortization and items the proper final disposition of which is uncertain

B For Nonmajor utilities, this account shall include the following classes of items

(1) Expenditures for preliminary surveys, plans, investigations, etc , made for the purpose of determining the feasibility of utility projects under contemplation If construction results, this account shall be credited with the amount applicable thereto and the appropriate plant accounts shall be charged with an amount which does not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to plant If the work is abandoned, the charge shall be to account 426 5, Other Deductions, or to the appropriate operating expense accounts

(2) Undistributed balances in clearing accounts at the date of the balance sheet Balances in clearing accounts shall be substantially cleared not later than the end of the calendar year unless items held therein related to a future period

(3) Balances representing expenditures for work in progress other than on utility plant This includes jobbing and contract work in progress

(4) Other debit balances, the proper final disposition of which is uncertain and unusual or extraordinary expenses not included in other accounts, which are in process of being written off

10 Trucks, hand and power driven

11 Wheelbarrows

394 Tools, shop and garage equipment.

This account shall include the cost of tools, implements, and equipment used in construction, repair work, general shops and garages and not specifically provided for or includible in other accounts

ITEMS

1 Air compressors

2 Anvils

3 Automobile repair shop equipment

4 Battery charging equipment

5 Belts, shafts and countershafts

6 Boilers

7 Cable pulling equipment

8 Concrete mixers

9 Drill presses

10 Derricks

11 Electric equipment

12 Engines

13 Forges

14 Furnaces

15 Foundations and settings specially constructed for and not expected to outlast the equipment for which provided

16 Gas producers

17 Gasoline pumps, oil pumps and storage tanks

18 Greasing tools and equipment

19 Hoists

20 Ladders

21 Lathes

22 Machine tools

23 Motor-driven tools

24 Motors

25 Pipe threading and cutting tools

26 Pneumatic tools

27 Pumps

28 Riveters

29 Smithing equipment

30 Tool racks

31 Vises

32 Welding apparatus

33 Work benches

395 Laboratory equipment.

This account shall include the cost installed of laboratory equipment used for general laboratory purposes and not specifically provided for or includible in other departmental or functional plant accounts

A For Nonmajor utilities, this account shall include the cost of labor, materials used and expenses incurred in the operation of street lighting and signal system plant

B For Major utilities, this account shall include the cost of labor, materials used and expenses incurred in (a) The operation of street lighting and signal system plant which is owned or leased by the utility, and (b) the operation and maintenance of such plant owned by customers where such work is done regularly as a part of the street lighting and signal system service

ITEMS

Labor

1 Supervising street lighting and signal systems operation

2 Replacing lamps and incidental cleaning of glassware and fixtures in connection therewith

3 Routine patrolling for lamp outages, extraneous nuisances or encroachments, etc

4 Testing lines and equipment including voltage and current measurement

5 Winding and inspection of time switch and other controls

Materials and Expenses

6 Street lamp renewals

7 Transportation and tool expense

8 Meals, traveling, and incidental expenses

586 Meter expenses.

This account shall include the cost of labor, materials used and expenses incurred in the operation of customer meters and associated equipment

ITEMS

Labor

1 Supervising meter operation

2 Clerical work on meter history and associated equipment record cards, test cards and reports

3 Disconnecting and reconnecting, removing and reinstalling, sealing and unsealing meters and other metering equipment in connection with initiating or terminating services including the cost of obtaining meter readings, if incidental to such operation

4 Consolidating meter installations due to elimination of separate meters for different rates of service

5 Changing or relocating meters instrument transformers, time switches, and other metering equipment

6 Resetting time controls, checking operation of demand meters and other metering equipment, when done as an independent operation

7 Inspecting and adjusting meter testing equipment

8 Inspecting and testing meters, instrument transformers, time switches, and other metering equipment on premises or in shops excluding inspecting and testing incidental to maintenance

Materials and Expenses

9 Meter seals and miscellaneous meter supplies

10 Transportation expenses

11 Meals, traveling, and incidental expenses

12 Tool expenses

NOTE The cost of the first setting and testing of a meter is chargeable to utility plant account 370, Meters

587 Customer installations expenses.

This account shall include the cost of labor, materials used and expenses incurred in work on customer installations in inspecting premises and in rendering services to customers of the nature of those indicated by the list of items hereunder

ITEMS

Labor

1 Supervising customer installations work

2 Inspecting premises, including check of wiring for code compliance

3 Investigating, locating, and clearing grounds on customers' wiring

4 Investigating service complaints, including load tests of motors and lighting and power circuits on customers' premises. field investigations of complaints on bills or of voltage

5 Installing removing, renewing, and changing lamps and fuses

6 Radio, television and similar interference work including erection of new aerials on customers' premises and patrolling of lines, testing of lightning arresters, inspection of pole hardware, etc , and examination on or off premises of customers' appliances wiring, or equipment to locate cause of interference

7 Installing, connecting, reinstalling, or removing leased property on customers' premises

8 Testing, adjusting, and repairing customers' fixtures and appliances in shop or on premises

9 Cost of changing customers' equipment due to changes in service characteristics

10 Investigation of current diversion including setting and removal of check meters and securing special readings thereon, special calls by employees in connection with discovery and settlement of current diversion, changes in customer wiring and any other labor cost identifiable as caused by current diversion

Materials and Expenses

11 Lamp and fuse renewals

12 Materials used in servicing customers' fixtures appliances and equipment

13 Power, light, heat telephone and other expenses of appliance repair department

14 Tool expense

15 Transportation expense, including pickup and delivery charges

16 Meals, traveling and incidental expenses

17 Rewards paid for discovery of current diversion

NOTE A Amounts billed customers for any work, the cost of which is charged to this account, shall be credited to this account Any excess over costs resulting therefrom shall be transferred to account 451, Miscellaneous Service Revenues

NOTE B Do not include in this account expenses incurred in connection with merchandising, jobbing and contract work

588 Miscellaneous distribution expenses.

This account shall include the cost of labor, materials used and expenses incurred in distribution system operation not provided for elsewhere

ITEMS

Labor

1 General records of physical characteristics of lines and substations, such as capacities, etc

2 Ground resistance records

3 Joint pole maps and records

4 Distribution system voltage and load records

5 Preparing maps and prints

6 Service interruption and trouble records

7 General clerical and stenographic work except that chargeable to account 586, Meter expenses

Expenses

8 Operating records covering poles, transformers manholes cables, and other distribution facilities Exclude meter records chargeable to account 586 Meter Expenses and station records chargeable to account 582, Station Expenses (For Nonmajor utilities, account 581 1, Line and Station Expenses), and stores records (For Nonmajor utilities, station records) chargeable to account 163, Stores Expense Undistributed (For Nonmajor utilities, account 581 1, Line and Station Expenses)

9 Janitor work at distribution office buildings including snow removal, cutting grass, etc

Materials and Expenses

10 Communication service

11 Building service expenses

12 Miscellaneous office supplies and expenses, printing, and stationery, maps and records and first-aid supplies

13 Research, development, and demonstration expenses (Major only)

FASB Codification: Combine Subsections Result

350-50-05 Overview and Background

General Note: The Overview and Background Section provides overview and background material for the guidance contained in the Subtopic. It does not provide the historical background or due process. It may contain certain material that users generally consider useful to understand the typical situations addressed by the standards. The Section does not summarize the accounting and reporting requirements.

General

05-1 This Subtopic provides guidance on accounting for costs incurred to develop a website, including whether to capitalize or expense the following types of costs:

a. Costs incurred in the planning stage
b. Costs incurred in the website application and infrastructure development stage
c. Costs incurred to develop graphics
d. Costs incurred to develop content

e. Costs incurred in the operating stage.

350-50-15 Scope and Scope Exceptions

General Note: The Scope and Scope Exceptions Section outlines the items (for example, the entities, transactions, instruments, or events) to which the guidance in the Subtopic does or does not apply. In some cases, the Section may contain definitional or other text to frame the scope.

General

> Overall Guidance

15-1 This Subtopic follows the same Scope and Scope Exceptions as outlined in the Overall Subtopic, see Section 350-10-15, with specific transaction qualifications noted below.

> Transactions

15-2 The guidance in this Subtopic applies to the following transactions and activities:

a. Costs incurred to develop a website.

15-3 The guidance in this Subtopic does not apply to the following transactions and activities:

a. The cost of hardware
b. Acquisitions of servers and related hardware infrastructure.

350-50-25 Recognition

General Note: The Recognition Section provides guidance on the required criteria, timing, and location (within the financial statements) for recording a particular item in the financial statements. Disclosure is not recognition.

General

25-1 The guidance in this Section refers to various website development stages. See Section 350-50-55 for details regarding the types of costs and activities incurred during those stages.

> Costs Incurred in the Planning Stage

25-2 Regardless of whether the website planning activities specifically relate to software, all costs incurred in the planning stage shall be expensed as incurred.

> Costs Incurred in the Website Application and Infrastructure Development Stage

25-3 The discussion of website application and infrastructure development assumes that any software is developed for the entity's internal needs and no plan exists or is being developed to market the software externally.

25-4 All costs relating to software used to operate a website shall be accounted for under Subtopic 350-40 unless a plan exists or is being developed to market the software externally. Software for which a plan exists or is being developed to market the software externally is subject to Subtopic 985-20, and costs associated with the development of that software shall be expensed until technological feasibility is established. See paragraph 985-20-25-2.

25-5 Fees incurred for website hosting, which involve the payment of a specified, periodic fee to an Internet service provider in return for hosting the website on its server(s) connected to the Internet, generally are expensed over the period of benefit.

25-6 Costs incurred to purchase software tools, or costs incurred during the application development stage for internally developed tools, shall be capitalized unless they are used in research and development and meet either of the following conditions:

a. They do not have any alternative future uses.
b. They are internally developed and represent a pilot project or are being used in a specific research and development project (see paragraph 350-40-15-7).

25-7 Costs to obtain and register an Internet domain shall be capitalized under Section 350-30-25.

> Costs Incurred in the Graphics Development Stage

25-8 Graphics are a component of software. The costs of developing initial graphics shall be accounted for under Subtopic 350-40 for internal-use software, and Subtopic 985-20 for software marketed externally.

25-9 Modifications to graphics after a website is launched shall be evaluated to determine whether the modifications represent maintenance or enhancements of the website.

> Costs Incurred in the Content Development Stage

25-10 Accounting for website content involves issues that also apply to other forms of content or information that are not unique to websites.

25-11 Costs to input content into a website shall be expensed as incurred.

25-12 Software used to integrate a database with a website shall be capitalized under paragraphs 350-40-25-2 through 25-4.

25-13 Data conversion costs shall be expensed as incurred (see paragraph 350-40-25-5).

> Costs Incurred in the Operating Stage

25-14 Costs of operating a website shall not be accounted for differently from the costs of other operations; that is, those costs shall be expensed as incurred.

25-15 Costs incurred in the operation stage that involve providing additional functions or features to the website shall be accounted for as, in effect, new software. That is, costs of upgrades and enhancements that add functionality shall be expensed or capitalized based on the general model of paragraph 350-40-25-7 (which requires certain costs relating to upgrades and enhancements to be capitalized if it is probable that they will result in added functionality) or, for software that is marketed, paragraphs 985-20-25-3 through 25-4 (which apply a software capitalization model to product enhancements, which include improvements that extend the life or significantly improve the marketability of a product).

25-16 The determination of whether a change to website software results in an upgrade or enhancement (if internal-use software), or a product enhancement (if externally marketed software), is a matter of judgment based on the specific facts and circumstances. Paragraph 350-40-25-10 states that entities that cannot separate internal costs on a reasonably cost-effective basis between maintenance and relatively minor upgrades and enhancements shall expense such costs as incurred.

25-17 Costs to register the website with Internet search engines represent advertising costs and shall be expensed as incurred under paragraph 720-35-25-1.

350-50-55 Implementation Guidance and Illustrations

General Note: The Implementation Guidance and Illustrations Section contains implementation guidance and illustrations that are an integral part of the Subtopic. The implementation guidance and illustrations do not address all possible variations. Users must consider carefully the actual facts and circumstances in relation to the requirements of the Subtopic.

General

> Implementation Guidance

55-1 The following guidance describes or provides examples of various activities that take place at different stages of website development. See Section 350-50-25 for the relevant accounting guidance.

>> Planning Stage

55-2 Planning stage activities include the following:

a. Develop a business, project plan, or both. This may include identification of specific goals for the website (for example, to provide information, supplant manual processes, conduct e-commerce, and so forth), a competitive analysis, identification of the target audience, creation of time and cost budgets, and estimates of the risks and benefits.
b. Determine the functionalities (for example, order placement, order and shipment tracking, search engine, email, chat rooms, and so forth) of the website.
c. Identify necessary hardware (for example, the server) and web applications. Web applications are the software needed for the website's functionalities. Examples of web applications are search engines, interfaces with inventory or other back-end systems, as well as systems for registration and authentication of users, commerce, content management, usage analysis, and so forth.
d. Determine that the technology necessary to achieve the desired functionalities exists. Factors might include, for example, target audience numbers, user traffic patterns, response time expectations, and security requirements.
e. Explore alternatives for achieving functionalities (for example, internal versus external resources, custom-developed versus licensed software, company-owned versus third-party-hosted applications and servers).
f. Conceptually formulate and/or identify graphics and content (see paragraphs 350-50-25-8 through 25-13).
g. Invite vendors to demonstrate how their web applications, hardware, or service will help achieve the website's functionalities.
h. Select external vendors or consultants.
i. Identify internal resources for work on the website design and development.
j. Identify software tools and packages required for development purposes.
k. Address legal considerations such as privacy, copyright, trademark, and compliance.

>> Application and Infrastructure Development Stage

55-3 The website application and infrastructure development stage involves acquiring or developing hardware and software to operate the website. The activities in this stage include the following:

a. Acquire or develop the software tools required for the development work (for example, HTML editor, software to convert existing data to HTML form, graphics software, multimedia software, and so forth).
b. Obtain and register an Internet domain name.
c. Acquire or develop software necessary for general website operations, including server operating system software, Internet server software, web browser software, and Internet protocol software.
d. Develop or acquire and customize code for web applications (for example, catalog software, search engines, order processing systems, sales tax calculation software, payment systems, shipment tracking applications or interfaces, email software, and related security features).
e. Develop or acquire and customize database software and software to integrate distributed applications (for example, corporate databases and accounting systems) into web applications.
f. Develop HTML web pages or develop templates and write code to automatically create HTML pages.
g. Purchase the web and application server(s), Internet connection (bandwidth), routers, staging servers (where preliminary changes to the website are made in a test environment), and production servers (accessible to customers using the website). Alternatively, these services may be provided by a third party via a hosting arrangement.
h. Install developed applications on the web server(s).
i. Create initial hypertext links to other websites or to destinations within the website. Depending on the site, links may be extensive or minimal.
j. Test the website applications (for example, stress testing).

>> Graphics Development Stage

55-4 For purposes of this Subtopic, graphics involve the overall design of the web page (use of borders, background and text colors, fonts, frames, buttons, and so forth) that affect the look and feel of the web page and generally remain consistent regardless of changes made to the content.

55-5 Graphics include the design or layout of each page (that is, the graphical user interface), color, images, and the overall look and feel and usability of the website. Creation of graphics may involve coding of software, either directly or through the use of graphic software tools. The amount of coding depends on the complexity of the graphics.

>> Content Development Stage

55-6 Content refers to information included on the website, which may be textual or graphical in nature (although the specific graphics described in paragraph 350-50-55-4 are excluded from content). For example, articles, product photos, maps, and stock quotes and charts are all forms of content. Content may reside in separate databases that are integrated into (or accessed from) the web page with software, or it may be coded directly into the web pages.

55-7 Content may be created or acquired to populate databases or web pages. Content may be acquired from unrelated parties or may be internally developed.

55-8 Content is text or graphical information (exclusive of graphics described in paragraphs 350-50-55-4 through 55-5) on the website which may include information on the entity, products offered, information sources that the user subscribes to, and so forth. Content may originate from databases that must be converted to HTML pages or databases that are linked to HTML pages through integration software. Content also may be coded directly into web pages.

>> Operating Stage

55-9 Costs incurred during the operating stage include training, administration, maintenance, and other costs to operate an existing website. Activities in the operating stage include the following:

a. Train employees involved in support of the website.
b. Register the website with Internet search engines.
c. Perform user administration activities.
d. Update site graphics (for updates of graphics related to major enhancements, see [h]).
e. Perform regular backups.
f. Create new links.
g. Verify that links are functioning properly and update existing links (that is, link management or maintenance).
h. Add additional functionalities or features.
i. Perform routine security reviews of the website and, if applicable, of the third-party host.
j. Perform usage analysis.

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Texas Coast Utilities Coalition v Railroad Com'n of Texas, Tex., January 17, 2014

344 S.W.3d 349
Supreme Court of Texas.

The STATE of Texas, et al., Petitioners,
v.
PUBLIC UTILITY COMMISSION
OF TEXAS, et al., Respondents.

No. 08–0421.
|
Argued Oct. 6, 2009.
|
Decided March 18, 2011.
|
Rehearing Denied June 10, 2011.

Synopsis
Background: Public Utility Commission entered order in "true-up" proceedings under Public Utility Regulatory Act (PURA), determining amount of stranded costs electric utilities were entitled to recover as rates charged to customers. Utilities, state, and customers appealed. The 250th Judicial District Court, Travis County, John K. Dietz, J., affirmed in part and reversed in part. Utilities, state, and customers appealed. The Austin Court of Appeals, 252 S.W.3d 1,affirmed in part and reversed in part.

Holdings: After granting petitions for review filed by utility, consumers, and the state, the Supreme Court, Willett, J., held that:

[1] PUC was required to use sale of assets method in determining market value of generating assets for purposes of determining stranded costs;

[2] excess mitigation costs PUC had required utility to pay retail electric providers could be included in stranded costs;

[3] alleged value of option utility had given to another company could not be deducted from stranded costs;

[4] post-deregulation depreciation of assets could not be deducted from stranded costs;

[5] construction work in progress (CWIP) could be included in calculating value of assets;

[6] PUC was required to use statutory capacity auction price in calculating capacity auction true-up amount; and

[7] PUC could allow utility to recover interest as stranded costs.

Affirmed in part, reversed in part, and remanded.

Procedural Posture(s): On Appeal.

West Headnotes (10)

[1] **Administrative Law and Procedure**
Substantial evidence

Under substantial evidence review of fact-based determinations, the issue for a court reviewing an agency decision is not whether the agency's decision was correct, but only whether the record demonstrates some reasonable basis for the agency's action. V.T.C.A., Government Code § 2001.172.

2 Cases that cite this headnote

[2] **Administrative Law and Procedure**
De novo review;plenary, free, or independent review

On appeal of an agency decision, questions of statutory construction are questions of law and are reviewed de novo.

3 Cases that cite this headnote

[3] **Public Utilities**
Powers and Functions

Public Utilities
Statutory basis and limitation

The Public Utilities Commission (PUC) may not exercise what is effectively a new power in addition to powers expressly conferred by statute or necessary to accomplish its express duties on the theory that such a power is expedient for administrative purposes.

2 Cases that cite this headnote

[4] **Electricity**

Regulation of Charges

Public Utility Commission (PUC) was required to use sale of assets method, not partial stock valuation (PSV) method and not extra-statutory valuation method, in determining market value of electricity generating assets, for purposes of determining amount of deregulation-related stranded costs utility was entitled to recover from customers pursuant to Public Utility Regulatory Act (PURA), where utility had sold the generating assets to an outside party; actual sale provided a better way of determining value than indirect methods, utility obtained a higher amount in sale of assets than the market value than would have been determined by indirect methods, utility's sale of assets was a bona fide third-party transaction under a competitive offering, and PURA did not give any preference to the PSV method simply because utility sought recovery of stranded costs under that method. V.T.C.A., Utilities Code § 39.262(h, i).

2 Cases that cite this headnote

[5] **Electricity**

Regulation of Charges

Excess mitigation credits (EMCs), which Public Utility Commission (PUC) had ordered electric utility to pay to retail electric providers in order to reverse a perceived over-recovery of stranded costs before true-up proceeding under Public Utility Regulatory Act (PURA), could be included, at true-up proceeding, in amount of deregulation-related stranded costs that utility was entitled to recover from customers, even though EMCs had been based on an incorrect prediction that utility would have no stranded costs and even if retailers were affiliated with utility; EMCs, by design, had the effect of increasing the net book value of utility's generation assets regardless of whether they were directed to an affiliated or unaffiliated retail electric provider, and such an increase in net book value correspondingly increased the amount of utility's stranded costs. V.T.C.A., Utilities Code § 39.262.

2 Cases that cite this headnote

[6] **Electricity**

Regulation of Charges

Alleged value of option to purchase electric utility's shares in electricity generating assets, given by utility to another company that utility had spun off from itself, could not be deducted from determining value of assets, for purposes of determining amount of deregulation-related stranded costs utility was entitled to recover from customers pursuant to Public Utility Regulatory Act (PURA), since utility had sold the assets to an outside party, allowing the actual value of assets could be determined using sale of assets method; utility's allegedly imprudent business decision in giving away option rather than selling it could not be the basis for reducing utility's stranded costs, since there was no evidence that any third party had been interested in purchasing the option. V.T.C.A., Utilities Code § 39.262.

Cases that cite this headnote

[7] **Electricity**

Valuation of property and depreciation

Public Utility Commission (PUC), in determining amount of deregulation-related stranded costs electric utility was entitled to recover from customers pursuant to Public Utility Regulatory Act (PURA), could not reduce the amount of stranded costs by the amount that the assets had depreciated in two years following deregulation, since stranded costs were defined under PURA as the difference between book value of assets "established as of December 31, 2001" and the market value of those assets; PUC could not adjust stranded costs to reflect further depreciation of power plant assets after 2001 because the PUC was not allowed to alter the statutory definition of stranded costs. V.T.C.A., Utilities Code § 39.262.

2 Cases that cite this headnote

[8] **Electricity**
Regulation of Charges

Public Utility Commission (PUC), in determining amount of deregulation-related stranded costs electric utility was entitled to recover from customers pursuant to Public Utility Regulatory Act (PURA), could include construction work in progress (CWIP) in the net book value of electricity generating assets, without requiring utility to show that inclusion of CWIP was necessary for utility's financial integrity and not inefficiently or imprudently planned or managed, since showing of necessity and efficient management were requirements of normal ratemaking proceedings, not proceedings to determine stranded costs. V.T.C.A., Utilities Code §§ 36.054, 39.262; 16 TAC § 25.263(g)(2)(A).

Cases that cite this headnote

[9] **Electricity**
Regulation of Charges

Public Utility Commission (PUC), in calculating capacity auction true-up amount for purposes of determining amount of deregulation-related stranded costs electric utility was entitled to recover from customers pursuant to Public Utility Regulatory Act (PURA), was required to use statutory capacity auction price, and could not reduce capacity auction true-up amount as a result of utility's failure to sell the amount of one product category required by PUC rules; utility made a good faith effort to sell at auction all required categories of products, and PURA did not allow capacity auction price to be ignored because of utility's trivial noncompliance with PUC rules. V.T.C.A., Utilities Code § 39.262(d); 16 TAC § 25.263(i).

Cases that cite this headnote

[10] **Electricity**
Regulation of Charges

Public Utility Commission (PUC), in calculating capacity auction true-up amount for purposes of determining amount of deregulation-related stranded costs electric utility was entitled to recover from customers pursuant to Public Utility Regulatory Act (PURA), could allow utility to recover $168 million in interest; full recovery of stranded costs was required to include interest to reflect the time value of money. V.T.C.A., Utilities Code § 39.262.

3 Cases that cite this headnote

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Opinion

Justice WILLETT delivered the opinion of the Court.

This complex case poses several vexing questions regarding Texas utility-deregulation laws and the Public Utility Commission's application of those laws. In short, numerous parties—the State of Texas, utility companies, municipal groups, consumer groups, and others—challenge the Commission's interpretations of various cost-recovery provisions in Chapter 39 of the Utilities Code. As detailed below, we affirm the court of appeals' judgment in part, reverse it in part, and remand to the PUC for further proceedings consistent with this opinion.

I. Background

A. Overview of Chapter 39 [1]

The Legislature in 1999 [2] overhauled the Public Utility Regulatory Act (PURA or Act) to create a "fully competitive electric power industry" in Texas. [3] As part of this restructuring, utilities were required, not later than January 1, 2002, to split into three distinct units: (1) a power-generation company, (2) a retail electric provider, and (3) a transmission and distribution utility. [4] After that date, retail consumers could choose among competing retail providers. [5] Rates charged by the transmission and distribution utility continue to be regulated by the Public Utility Commission (PUC or Commission). [6]

The Legislature recognized that utilities had made investments in power-generation assets that produced a reasonable return under the existing regulated environment "but might well become uneconomic and thus unrecoverable in a competitive, deregulated electric power market." [7] The Act thus allows utilities to recover these "stranded costs," which consist generally of "the portion of the book value of a utility's generation assets that is projected to be unrecovered through rates that are ***353** based on market prices." [8]

The Act deregulated the market in phases. Retail rates were frozen from September 1, 1999 until January 1, 2002. [9]

Section 39.201 directed transmission and distribution utilities to file, on or before April 1, 2000, proposed tariffs that included "nonbypassable delivery charges" to retail electric providers. [10] It also directed the PUC to approve rates as of January 1, 2002. [11] The nonbypassable delivery charges included a "competition transition charge" (CTC) based on an estimate of stranded costs projected to exist at the end of the freeze period on December 31, 2001. [12] The CTC is "nonbypassable" in "that with limited exceptions, all retail electric customers in an existing utility's service area will pay charges to allow that utility to recover stranded costs regardless of whether those customers purchase their electricity from that utility, switch to one of its competitors, or generate their own electricity." [13] In estimating stranded costs, utilities were required to use the "ECOM" model, [14] an estimation model earlier used in a 1998 PUC report to the Legislature. [15] Section 39.201(h) required the PUC to rerun the ECOM model using "updated company-specific updates." Provision is made in Section 39.201 for a utility to recover estimated stranded costs at any time after the start of the freeze period on September 1, 1999 by issuing bonds and using a "transition charge" (TC) to service the bonds, [16] or by imposing a CTC. [17] However, no such charges were imposed because the Commission concluded after the updated ECOM calculations that no utility would incur stranded costs. [18]

Under Section 39.262, utilities were required, after January 10, 2004, to file with the PUC a reconciliation of stranded costs and the previous estimate of stranded costs that had been used in determining rates under Section 39.201. [19] Section 39.262 further directed the PUC to conduct a "true-up proceeding" and enter a final order adjusting the CTC to reflect the ultimate valuation of stranded costs. [20] "If, based on the proceeding, the competition transition charge is not sufficient, the commission may extend the collection period for the charge or, if necessary, increase the charge." [21] The adjusted CTC is applied to the nonbypassable delivery rates of the transmission and distribution utility. [22]

***354** In addition to adjustments for stranded costs, the PUC is directed at the true-up proceeding to make other adjustments to the nonbypassable delivery charges of the transmission and distribution utility. The parties refer to these other costs as "non-stranded costs." These adjustments can result in an increase or decrease in the amount or collection period of the CTC. [23]

From January 1, 2002 until January 1, 2007, affiliated retail electric providers were required to charge rates six percent below average rates that were in effect on January 1, 1999, subject to certain adjustments including a fuel factor. [24] This price is known as the "price to beat." After January 1, 2002, each affiliated power-generation company is required to file a final fuel reconciliation that calculates a final fuel balance as of December 31, 2001. [25]

To foster competition, utilities or their unbundled power-generation companies were required, at least 60 days before January 1, 2002, to conduct a "capacity auction" that sold entitlements to at least 15 percent of the utilities' generation capacity. [26] The obligation continued until the earlier of 60 months after the date customer choice was introduced or the date the Commission determined "that 40 percent or more of the electric power consumed by residential and small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice [was] provided by nonaffiliated retail electric providers." [27]

Under Section 39.262(d), the Act directs the affiliated power-generation company at the true-up proceeding to reconcile and either bill or credit the transmission and distribution utility for the net sum of (1) the former integrated utility's final fuel balance, [28] and (2) a balance parties refer to as the "capacity auction true-up balance" or the "wholesale clawback," consisting of the difference between the price of power realized at the capacity auctions and the power cost projections used in the ECOM model. [29]

Section 39.262(e) directs the affiliated retail electric provider at the true-up proceeding to credit the affiliated transmission and distribution utility for "any positive difference between the price to beat under Section 39.202, reduced by the nonbypassable delivery charge established under 39.201, and the prevailing market price of electricity during the same time period." [30] This credit is sometimes called the "retail clawback."

B. Proceedings Below

Pursuant to Chapter 39, Reliant Energy, Inc., an integrated electric utility, separated into three entities:

- *CenterPoint Energy Houston Electric, LLC (CenterPoint)*—the transmission and distribution utility, [31]

- ***355** • *Reliant Energy Retail Services, LLC (RERS)*—the retail electric provider, [32] and
- *Texas Genco, LP (Genco or TGN)*—the power-generation company.

These three entities filed an application with the PUC to determine stranded costs and other true-up balances pursuant to Section 39.262. [33] Numerous parties, including the State of Texas, intervened. The intervenors consist of electricity consumers and consumer groups. In this proceeding (the true-up proceeding), the PUC made many factual and legal determinations, some of which are now before us on appeal. The PUC determined that CenterPoint was entitled to recover approximately $2.3 billion in stranded costs and other non-stranded costs. The PUC entered a final order on rehearing (Order) in the true-up proceeding. [34] One Commissioner dissented on a single issue, as discussed below.

CenterPoint and various intervenors appealed the Order to district court. The district court affirmed the Order except as to two issues, one of which, concerning the capacity auction true-up, is discussed below. Both sides appealed to the court of appeals, [35] which affirmed the district court on numerous issues, but reversed the district court on a stranded cost issue and a capacity auction issue discussed below. We granted three petitions for review filed by CenterPoint, [36] a group of intervenors [37] who filed a joint petition, and the State of Texas. The State of Texas and the other petitioner-intervenors (collectively the Intervenors) subsequently filed joint briefing on the merits.

II. Discussion

A. Standards of Review

[1] Generally, "[a]ny party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule." [38] Chapter 39 also provides that the true-up order is subject to review under Chapter 2001 of the Government Code, the Texas Administrative Procedure Act (APA). [39] The APA looks to the scope of review "as provided by the law under which review is sought," [40] which in this case is the substantial evidence standard. Under substantial evidence review of fact-based determinations, "[t]he issue for the reviewing court is not whether the agency's decision was correct, but only ***356** whether the record demonstrates some reasonable basis for the agency's action." [41]

[2] [3] The APA also provides in Section 2001.174 that, under substantial evidence review, the court may reverse the agency's order where the agency has made a prejudicial error of law, [42] or where the order is "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." [43] Questions of statutory construction are questions of law and are reviewed de novo. [44] We have noted that an agency's interpretation of the statute it administers is entitled to serious consideration so long as it is reasonable and does not conflict with the statute's language. [45] However, "the PUC may not exercise what is effectively a new power" in addition to powers expressly conferred by statute or necessary to accomplish its express duties "on the theory that such a power is expedient for administrative purposes." [46]

B. Stranded Cost True–Up

1. Market Value

[4] By statutory definition, stranded costs are based on the difference between the book value of generation assets and the market value of these assets. [47] Section 39.251(7) provides that for purposes of establishing stranded costs in the true-up proceeding, "market value is established through a market valuation method under Section 39.262(h)."

Section 39.262(h) provides that the affiliated power-generation company shall establish the market value of its generation assets using one or more of four methods: the sale of assets method, the stock valuation method, the partial stock valuation (PSV) method, and the exchange of assets method. [48]

CenterPoint complains that the PUC erred in refusing to employ the PSV method. CenterPoint attempted to establish the market value of its generation assets and resulting stranded costs under this *357 method, found in subsection (h)(3). This method may be employed if "at least 19 percent, but less than 51 percent, of the common stock of [Genco] is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year." [49] If these conditions are met, "the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days before the [stranded cost filing] shall be presumed to establish the market value of the common stock equity in [Genco]." [50] The PUC may accept this valuation or it may convene "a valuation panel of three independent financial experts to determine whether the percentage of common stock sold is fairly representative of the total common stock equity or whether a control premium exists for the retained interest." [51] As the court of appeals noted, with a partial stock spinoff, the control retained by the parent company "might increase the value of the stock privately held, rendering the average closing price of the publicly-traded stock an inaccurate measure of the true value of the stock." [52]

CenterPoint contends that the PSV method was appropriately employed because CenterPoint distributed 19.0447 percent of Genco stock to CenterPoint shareholders, and retained ownership of the rest, on January 6, 2003. CenterPoint listed Genco on the New York Stock Exchange, where the stock publicly traded. CenterPoint contends and offered evidence that it chose a stock dividend to existing shareholders in lieu of an initial public offering (IPO) because market conditions at the time would have made an IPO difficult. It further contends and offered evidence that it sold slightly over 19 percent of the stock because that percentage complied with the statute and also allowed CenterPoint and Genco to benefit from consolidated tax returns. A parent and subsidiary may file consolidated returns if the parent owns at least 80 percent of the stock in the subsidiary. [53]

The Commission conceded in its Order that it "may not substitute its judgment for a properly conducted market valuation of generation assets determined under PURA §§ 39.262(h) and (i)." It further recognized that utilities are "required to follow one of the four methods in PURA § 39.262(h) to determine the market value of generation assets for purposes of stranded-cost recovery." Section 39.252(a) indeed provides that a utility is "allowed to recover all of its net, verifiable, nonmitigable stranded costs," but Section 39.252(d) makes clear that "nothing in this section authorizes the commission to substitute its judgment for a market valuation of generation assets determined under Sections 39.262(h) and (i)."

Nevertheless, the PUC concluded that the PSV method could not be employed by CenterPoint. The PUC noted a lack of proof that 19 percent of Genco shares had ever been sold on a national exchange. Focusing on the statutory language that the PSV method relies on a block of stock that "is spun off and sold to public investors through a national stock exchange," it concluded that while the required amount of stock was "spun off" to public investors, it was not "sold" to public investors. It *358 noted that "CenterPoint did not conduct an initial public offering of [Genco] shares." It further noted that "[t]here was no public involvement in valuing the distribution of [Genco's] stock," and that "a distribution of stock is not a sale of stock."

Because the PUC found that the PSV method could not be used and that no other statutorily prescribed method was available, it embarked on an effort to establish market value based on a number of "data points," including the announced sale of Genco (discussed below), market value estimates chosen by the valuation panel convened under subsection (h)(3), and other information. The valuation reached using this hybrid method resulted in a stranded cost recovery $258 million smaller than the recovery requested by CenterPoint under the PSV method. On this issue, the trial court and the court of appeals [54] agreed with the PUC.

CenterPoint, on the other hand, reads the statute to require that (1) 19 percent of Genco's stock be spun off, and (2) this block trade on a national exchange. It contends that so long as this block is publicly traded, it is being "sold to public investors through a national exchange" under the statute, and the market value of all of Genco's stock can be determined, subject to a control premium adjustment for the retained interest as provided in the statute.

The PUC argues that CenterPoint failed to prove that 19 percent of Genco's common stock sold on a national stock exchange. Assuming that this is a statutory requirement for the partial stock valuation method, it would be satisfied if the spin-off[55] of Genco's stock is a "sale" of securities under PURA. However, PURA does not define a "sale" of securities.[56] There ***359** are no Texas cases that decide whether a stock spin-off constitutes a "sale" under Texas securities laws, and while the federal case law seems to suggest a trend, it is far from unanimous on the issue. We need not answer this question because we resolve this valuation issue utilizing the sale of assets method.

Like CenterPoint, Intervenors contend that the PUC acted outside of its statutory authority in determining fair market value under a method not prescribed in ***360** Section 39.262. They contend the PUC should have used the sale of assets method found in Section 39.262(h)(1). This provision[57] states that if the utility sells all of its generation assets "in a bona fide third-party transaction under a competitive offering, the total net value realized from the sale establishes the market value of the generation assets sold."

During the true-up proceeding, under a signed agreement dated July 21, 2004, CenterPoint agreed to sell Genco, which held all of the joint applicants' generating assets, to private equity firms. This agreement, styled the "Transaction Agreement," was made known to the PUC and admitted into the administrative record. The Genco shares held by CenterPoint were sold for $45.25 per share and other shares sold for $47 per share. These prices are higher than the value of $42.425 per share chosen by the PUC under its extra-statutory method of determining fair market value. They are also higher than the price of $36.26 (plus a control premium of up to 10 percent) applicable to the PSV method. Intervenors urged the PUC to reject the use of the PSV method and to either deny any stranded cost recovery or to use the announced sale of Genco under the Transaction Agreement to determine stranded costs. They argue that the Transaction Agreement was a definitive agreement to sell the assets and was made months before the final Order issued on December 17, 2004. They contend that if the Transaction Agreement is used to determine the market value of the generation assets under the sale of assets method, the resultant market value is $253 million higher than the market value determined by the PUC, and the stranded cost recovery should be reduced by this same amount.

Although acknowledging the existence of the Transaction Agreement, the PUC concluded that "[t]he announced sale of [Genco] does not constitute a sale of assets under PURA § 39.262(h)(1) because the sale is not final and there is not sufficient evidence in the record to establish under the statute that the sale is a bona fide third-party transaction under a competitive offering."

We agree with Intervenors and CenterPoint that the PUC should not have used the extra-statutory method it employed in calculating market value. Section 39.262(h) specifies the permitted methods for determining market value. We need not decide if the PSV method could have been used if Genco had not been sold to private investors under the Transaction Agreement. Given that Genco actually did sell under that Agreement, we hold that the PUC should have used the sale of assets method to determine market value. There is no dispute that the Transaction Agreement closed under its terms and Genco was sold to new owners.[58] Nor is there any dispute that CenterPoint was legally obliged to sell Genco under an ***361** agreement signed during the true-up proceeding. A November 9, 2004 CenterPoint press release, filed with the SEC, described the Transaction Agreement as a "definitive agreement." Nor does the PUC posit any compelling reason it could not have simply delayed issuing the Order if it felt the need for the Transaction Agreement to fully close and fund before it could serve as the basis for calculating market value. Its own rules provide that it can for good cause extend the deadline for issuing the true-up order.[59]

On remand the Commission should use the sale of assets method to determine market value. For several reasons Chapter 39 compels the use of this method in this case. First, Chapter 39 recognizes and the PUC Order repeatedly acknowledged in both its findings of fact and conclusions of law that "[m]arket value is defined as the value the assets would have if bought and sold in a bona fide third-party transaction on the open market under PURA § 39.262(h)." Section 39.251(4) indeed defines market value using these exact words. While other methods are provided to determine market value indirectly, we think the actual sale of all the generation assets under the Transaction Agreement provides the best measure of market value.

Second, since CenterPoint succeeded in selling Genco for an amount greater than the value of the company as measured by the PSV method or the extra-statutory method employed by the PUC, CenterPoint achieved a higher market value for the assets by completing the transaction than the market value derived from other methods. This higher market value translates to a lower measure of stranded costs, and is consistent with the utility's duty under Section 39.252(d) to "pursue commercially reasonable means to reduce its potential stranded costs," with Section 39.252(a)'s recognition that a utility should recover only "nonmitigable stranded costs," and with Section 39.262(a)'s requirement that utilities "may not be permitted to overrecover stranded costs through the procedures established by this section." CenterPoint reduced its stranded costs by executing and fully performing under the Transaction Agreement. The Commission should not ignore that agreement unless it had a sound factual or legal reason to do so, and none appears in this case. CenterPoint's own chief executive testified that "we're not trying to recover more money than we have on our books. And if we get it from the sale, as opposed to stranded investment, great. Matter of fact, I think that would help everybody."

Third, there is ample evidence in the record that the Transaction Agreement was indeed "a bona fide third-party transaction under a competitive offering" as specified in subsection (h)(1). A CenterPoint investment banker testified that the bidding process for Genco consisted of contacting 107 potential buyers; 90 expressed an interest in receiving a teaser letter; of those 90, confidentiality agreements were negotiated with 38; and 17 expressed an interest in bidding. Ten parties submitted "first round indicative interest proposals"; six of those ten had an opportunity to conduct a full due diligence review of Genco [60]; and three submitted final round bids. ***362** Moreover, the fact that the process resulted in a price exceeding the stock price available under the alternative PSV method or the extra-statutory price used by the PUC compels the conclusion that it was sufficiently "bona fide" and "competitive" to serve the purposes of Chapter 39. The court of appeals recognized that since "[t]he actual market value used by the Commission was lower than the price offered" in the Transaction Agreement, "the apparent purpose of the statute would seem to have been satisfied despite the lack of evidence showing sufficient competitive circumstances." [61] And the PUC stated in its Order that it considered the Transaction Agreement prices as "data points" in making its hybrid valuation.

Fourth, as we read Chapter 39, it does not give any preference to the PSV method in this case simply because CenterPoint sought recovery of stranded costs under that method. We disagree with CenterPoint and the PUC to the extent that they argue the utility may choose the valuation method even when the method results in higher stranded costs than another readily available method. In these circumstances, the utility should not be allowed to increase its stranded costs by choosing the market valuation method that results in the smaller measure of market value. While Section 39.262(h) provides that "the affiliated power generation company shall quantify its stranded costs using one or more of the following methods," other provisions make clear that the PUC ultimately determines stranded costs under Chapter 39 and the rates and charges needed to recoup them. [62] The true-up procedure set out in Chapter 39 unmistakably assigns the Commission to act as an adjudicative body in "determining the amount of the utility's stranded costs" [63] and issuing a "final order" [64] in the true-up proceeding, subject to judicial review. The PUC cannot forego use of the sale of assets method if it is otherwise readily available simply because CenterPoint prefers another method that would increase its stranded costs.

2. Net Book Value

a. Excess Mitigation Credits Paid to RERS

[5] The Act required utilities to undertake certain efforts to mitigate stranded costs in the 1998–2001 time frame. Section 39.254 directed utilities to use these efforts to reduce the book value of generation assets. Because stranded costs represent the difference between book value and market value, a reduction in the book value of generation assets had the effect of reducing stranded costs. The Act directed utilities to redirect depreciation expenses from transmission and distribution assets to generation assets, and to apply certain "excess earnings" to reduce the book value of generation assets. [65] The required mitigation ***363** is consistent with the principles that under Chapter 39 utilities "may not be permitted to overrecover stranded costs" [66] and are only allowed to recoup their "net, verifiable, nonmitigable stranded costs." [67]

Prior to January 1, 2002, CenterPoint engaged in mitigation efforts by redirecting $841 million in depreciation and applying $1.13 billion in excess earnings to reduce the net book value (NBV) of its generation assets.

Section 39.201(h) required the PUC to make a determination of estimated stranded costs based on the ECOM model using "updated company-specific inputs." As noted above, Section 39.201 provided for interim rates during the 2002–2003 period, until the calculation of final stranded costs in the Section 39.262 true-up proceeding. The projections indicated that CenterPoint would have no stranded costs. [68] As a result, the PUC concluded that CenterPoint should cease mitigation efforts and should issue "excess mitigation credits" (EMCs) to all retail electric providers, including its affiliate RERS. The EMCs were deducted from the transmission and distribution charges that retail electric providers paid CenterPoint.

The EMCs increased the NBV of CenterPoint's generation assets on a dollar-for-dollar basis. However, the PUC concedes that the ECOM model assumptions underlying the 2001 finding that CenterPoint would have no stranded costs—the finding that the PUC used to justify the EMCs—proved to be false. At the 2004 true-up proceeding, CenterPoint established that it had substantial stranded costs.

In a mandamus proceeding, CenterPoint objected to the order requiring EMCs. In that proceeding, the PUC represented to this Court in its briefing and at oral argument that CenterPoint could recoup the EMC payments in the true-up proceeding now under review if CenterPoint was ultimately determined to have stranded costs. This Court denied mandamus relief, [69] although three justices would have reached the merits and held the EMCs unlawful as unauthorized by Chapter 39. [70] The PUC terminated EMCs on April 29, 2005. In September 2005, the Third Court of Appeals held that the PUC exceeded its authority in ordering EMCs. [71]

In the true-up proceeding, CenterPoint contended all the EMCs it had already paid retailers could be recovered as stranded costs. CenterPoint argued it should not be penalized for following the PUC's mistaken decision to order the EMCs. Intervenor City of Houston argued that CenterPoint should not be allowed to recover $385 million in EMCs paid to its retail affiliate, RERS. The PUC rejected this argument, finding "no legal basis for the recommended disallowance" and declining to "penalize CenterPoint for following ***364** a Commission order." One commissioner dissented in part to the true-up Order, solely on this issue. The dissenting commissioner reasoned that the EMC payments to RERS amounted to "wealth transfers between two companies who knew they would be joint applicants in this true-up proceeding."

The trial court agreed with the PUC majority on this issue. The court of appeals, however, agreed with the dissenting commissioner and held that CenterPoint could not recoup the EMCs paid to RERS. Although the court of appeals assumed that CenterPoint and RERS are "completely separate entities," [72] it reasoned that "joint true-up applicants are prohibited from overrecovering [stranded costs] as a single unit" by Section 39.262(a), which generally prohibits the overrecovery of stranded costs. [73]

We reverse the court of appeals and affirm the PUC on this issue. We need not decide whether the PUC could ever order excess mitigation credits. Even if the PUC theoretically possessed the legal authority to order EMCs, as a factual matter the PUC should not have done so in this case. The credits were ordered only because the ECOM model incorrectly predicted that CenterPoint would have no stranded costs. CenterPoint should recover whatever stranded costs it would have recovered if the EMCs had never been paid. EMCs paid to RERS had the same dollar-for-dollar impact on CenterPoint's stranded costs as EMCs paid to unaffiliated retailers. Intervenors concede in their brief that as to EMC payments generally, "[f]or every dollar of EMC payments made, CenterPoint wrote up its NBV by one dollar, thus increasing potential stranded costs," and that as to EMC payments to RERS in particular, "every dollar that CenterPoint paid to [RERS] resulted in CenterPoint writing up NBV by an equal amount." In either case, the purpose of the EMCs was to increase the NBV of CenterPoint's generation assets. The PUC did not err, therefore, in declining to adjust stranded costs by disregarding any of the EMCs paid by CenterPoint, and Intervenors fail to demonstrate a sound legal or factual basis for deducting the EMCs that were paid to RERS.

We cannot agree with the court of appeals that the payment of EMCs to CenterPoint's affiliate RERS merits special treatment. Chapter 39, in its express measures for recovering stranded costs and preventing the over-recovery of stranded costs, makes no distinction between affiliated and unaffiliated electric retailers that would warrant special treatment of the EMCs paid to RERs. The EMCs were simply an interim and ultimately unwarranted effort to reverse what the PUC perceived to be an over-recovery of stranded costs before the final true-up. There is no express statutory provision allowing such credits, as the Third Court of Appeals noted in holding that Chapter 39 did not permit them. However, Section 39.201 does provide for the transmission and distribution utility to impose competition transition charges, based on interim estimates of stranded costs. Section 39.107(d) provides that these charges are made to "a customer's retail electric provider." These provisions make no exception or distinction for an affiliated retail electric provider. If the interim CTCs result in an over-recovery of stranded costs, Sections 39.201(*l*) and 39.262(c) provide for the transmission and distribution utility to refund stranded costs by reducing the CTCs or rates charged to retail ***365** providers. Again, in providing for these refunds Chapter 39 makes no statutory distinction between affiliated and unaffiliated retailers, and Chapter 39 indeed generally requires that such distinctions not be drawn when billing retail electric providers and their customers. [74]

Because the EMCs, by design, had the effect of increasing the NBV of generation assets regardless of whether they were directed to an affiliated or unaffiliated retail electric provider, and because such an increase in NBV correspondingly increased the amount of stranded costs under the relevant provisions of Chapter 39, the PUC did not err in refusing to reduce stranded costs by the portion of the EMCs paid to RERS.

b. The RRI Option

[6] CenterPoint and Intervenors complain that the PUC erred in its treatment of the "RRI Option." Under the business separation plan, Reliant Energy, Inc. conveyed its generation assets to a subsidiary, Genco. Reliant Energy changed its name to CenterPoint. As discussed above, CenterPoint spun off approximately 19 percent of the shares of Genco to CenterPoint's shareholders. CenterPoint also spun off a company named Reliant Resources, Inc. (RRI), by selling approximately 20 percent of the shares in RRI in an initial public offering, with CenterPoint retaining about 80 percent of RRI. [75] RRI, in turn, owned the affiliated retail electric provider, RERS.

As part of the business separation plan, which the PUC approved in a separate proceeding, RRI received an option to purchase CenterPoint's shares in Genco. The Option expired on January 24, 2004. The Option price was set at the price for Genco that was to be determined at the true-up proceeding.

Under its "primary holding" that rejected the use of the PSV method, the PUC employed an extra-statutory method that considered various "data points" for determining market value, as described above. Under this holding, the PUC concluded that its method of calculating fair market value accounted for the effect of the RRI Option. It therefore held under its primary holding that no adjustment to NBV relating to the RRI Option was necessary. The trial court and the court of appeals [76] affirmed this decision. Under its "alternative holding," the PUC calculated true-up amounts assuming that the fair market value was properly calculated under the PSV method. As explained above, we conclude that neither the primary nor the alternative holding can be sustained, because the sale of assets method must be used —and not the extra-statutory method used in the primary holding or the PSV method used in the alternative holding.

Intervenors complain that if the Court agrees with the primary holding rejecting the use of the PSV method, the PUC nevertheless erred in refusing to make a requested deduction from the NBV calculation to reflect the RRI Option. We need not reach this issue because we reject the primary holding. CenterPoint complains that if as it contends the PSV method must be used, the PUC erred in concluding under its alternative holding that an adjustment should be made to NBV to reflect the RRI option. Again, this issue is moot ***366** because we reject the use of the PSV method.

However, Intervenors argue that "[r]egardless of how market value is determined," an adjustment to NBV should be made for the RRI Option. Insofar as Intervenors argue an adjustment to NBV should be made for the RRI Option even if we agree with them that the sale of assets method should be used to determine market value,[77] we reject this argument.

The PUC reasoned in its alternative holding that if it is required to use the PSV method of calculating market value, an adjustment should be made to NBV to reflect the RRI option. It made the adjustment under PURA Section 39.252(d), which provides:

> An electric utility shall pursue commercially reasonable means to reduce its potential stranded costs, including good faith attempts to renegotiate above-cost fuel and purchased power contracts or the exercise of normal business practices to protect the value of its assets. The commission shall consider the utility's efforts under this subsection when determining the amount of the utility's stranded costs; provided, however, that nothing in this section authorizes the commission to substitute its judgment for a market valuation of generation assets determined under Sections 39.262(h) and (i).

Applying this provision, the PUC found that CenterPoint had received no compensation for the Option conveyed to RRI and that the Option placed restrictions on the management and operations of Genco that "were not commercially reasonable and did not represent normal business practices."

The PUC could consider the commercial reasonableness of the RRI Option in determining NBV. The PUC adjusted NBV in making the stranded cost determination, after finding that the conveyance of the Option was commercially unreasonable and did not represent normal business practices. Section 39.252(d) expressly directs the PUC, when making the stranded cost determination, to consider whether the utility used "commercially reasonable means" and "normal business practices" to reduce stranded costs. Since Section 39.252(d) bars the PUC from adjusting the market value component of stranded costs, it necessarily authorizes an adjustment to NBV, the other principal component of stranded costs.

CenterPoint points out that in an earlier proceeding approving the business separation plan, the PUC noted that the Option "was an integral part" of the plan and "meets the separation requirements in PURA § 39.051." Section 39.051, however, is the provision requiring the separation of the utility into three separate entities. The PUC's conclusion that the business separation plan complied with this provision did not necessarily mean that CenterPoint had taken all reasonable efforts to minimize stranded costs under Section 39.252(d). Indeed, in the earlier proceeding the PUC expressly stated that it was not approving the RRI Option and other agreements that had not yet been finalized, and that its approval of the business separation plan "does not preclude a review in the 2004 true-up proceeding of whether [CenterPoint] ***367** pursued reasonable means to reduce its potential stranded costs."

The PUC considered evidence that the grant of the RRI option was not a normal business practice and had an adverse effect on the value of the generation assets. One of Genco's own SEC filings conceded that the Option limited Genco's ability to (1) merge with another company, (2) sell assets, (3) enter into long-term contracts, (4) engage in other businesses, (5) construct or acquire new plant or capacity, (6) engage in certain hedging activities, (7) encumber assets, (8) issue new securities, (9) pay special dividends, and (10) engage in certain transactions with affiliates. The report states that these restrictions "may adversely affect our ability to compete with companies that are not subject to similar restrictions." The PUC also considered expert testimony that the Option was very unusual and did not represent normal business practices, gave RRI an incentive to reduce the value of Genco, was viewed negatively in the investment community, and limited Genco's upside potential. The last point seems obvious, since RRI could derail an outside offer for Genco above the option price by exercising the Option, assuming that RRI had the funds. CenterPoint's own financial advisor on the spinoff of Genco acknowledged in a presentation that the "RRI option limits upside potential." Michael Gorman, a witness for Intervenors, opined that the Option was unreasonable because it "essentially transferred significant control of [Genco] to RRI," which then had "an incentive to minimize the value of" Genco, an incentive "diametrically opposite of [CenterPoint's] obligation to protect the value of [Genco] and mitigate stranded costs." Another witness for Intervenors, William Purcell, testified that the Option "gave RRI in effect the right of first refusal to buy" Genco, which "acted as a deterrent for [Genco or CenterPoint] to receive independent third party purchase bids or indications of interest—and, accordingly, was a drag on [Genco's] stock price."

Gorman calculated the "intrinsic value" of the Option at approximately $330 million. He made further adjustments to this figure that the PUC rejected because they did not reflect the value the Option would have had in an arms-length transaction. The PUC valued the Option at $330,314,000 and determined the NBV should be reduced by this amount, and further grossed up this amount by an additional $177,874,089 to reflect accumulated deferred federal income taxes.

Summarizing Gorman's approach (and ignoring that the PUC only agreed with part of his methodology), the Option was priced at the market price to be determined under the PSV method, with an adjustment for a control premium of up to 10 percent to be determined by the PUC, as Section 39.262(h)(3) specifies. Gorman, however, believed that the actual control premium should be 30 percent, based on premiums over market prices paid in corporate acquisitions of similar companies. The difference between the 30 percent market premium and statutory premium was therefore 20 percent. Gorman determined that Genco's future market value at the Option exercise date would approximately equal its book value of $2.9 billion, took 20 percent of that number ($580 million) to reflect the 20 percent difference in control premiums, took 81 percent of that figure to reflect CenterPoint's ownership in Genco ($469.8 million) and then discounted that value back to the date the Option was granted to arrive at $330 million as the Option's "intrinsic value."

We have reviewed the administrative record and conclude that while substantial evidence supports the PUC's conclusions that the Option was not commercially reasonable ***368** and for a time depressed the value of Genco stock, no adjustment should be made to NBV if the sale of assets method is used.

The PUC apparently believed that the $330 million dollar figure derived from Gorman's testimony reflected the negative impact of the Option on the market value of Genco. In a subheading on "Market Value," the PUC found that "the entire [market] valuation process was not commercially reasonable," and accordingly made an adjustment to NBV as required by Section 39.252(d). Further, the PUC explained that no adjustment to market value under its primary holding was needed because the stock price selected under that method, which included consideration of the market control premium, "takes into consideration the operational constraints placed upon [Genco] by the Option and the control premium." When it turned to NBV, the PUC made an adjustment for the Option because of its effect on market value, reasoning that "Gorman calculated the amount of the option's below-market pricing by taking the difference between the 10 percent maximum control premium RRI would have had to pay if it had exercised the option, and an average industry control premium of 30 percent, which RRI would likely have had to pay in a bona fide third-party transaction." The PUC apparently concluded that the Option depressed the market value of Genco stock by $330 million, since under Gorman's testimony, as analyzed and accepted in part by the PUC, this amount arguably reflected the difference between what a third-party bid for the company might have brought and the ceiling on market value imposed by the Option.

However, this analysis breaks down if the sale of assets method is used, because the actual sale of Genco took place months after the Option expired. The Option expired in January 2004, and the sale of Genco assets occurred in December 2004 and April 2005. There is no evidence that the Option had an impact on the value of the assets sold under the Transaction Agreement. As the PUC notes in its brief to this Court, "The announced future sales price for Genco occurred months after the Option expired. Moreover, the sale itself resolved the uncertainty about the future of the company. Thus, that price was unaffected by the unreasonableness of the expired Option." The court of appeals similarly noted that the offer to purchase Genco in the Transaction Agreement "came several months after the option expired and after the restrictions placed upon Genco by the option had ended. As a result, any detrimental effect on Genco's value resulting from the option should have dissipated." [78] Further, there is some empirical support for concluding that the sale of Genco long after the Option expired was not affected by the Option, even if the market value of the company had earlier been depressed by it. As CenterPoint notes in a post-submission brief, "The $508 million deduction for the grossed-up Option under the alternate holding using the PSV method would reduce CenterPoint's stranded-cost recovery by virtually the same amount—$511 million—as the sale-of-assets method Intervenors advocate."

Intervenors nevertheless argue that if CenterPoint had sold the Option instead of imprudently giving it away, the sale of that asset could have been used to reduce net book value and thus mitigate stranded costs. But this simply assumes that the Option could have been sold. There was no evidence that RERS or any third party was interested in purchasing the Option, ***369** nor is there any evidence that any party would have actually paid the "intrinsic value" Gorman calculated if the Option had been put up for sale. On the contrary, CenterPoint offered evidence of "extremely difficult market conditions" at the time of the business separation that included the Option, which necessitated the spinoff of Genco to existing CenterPoint shareholders in lieu of an IPO. In their briefing to this Court, Intervenors criticize CenterPoint for its decision to go forward with the business separation at a time when "the wholesale energy markets were in disarray as a result of action undertaken by Enron in California. Nearly all generation company stocks had lost significant value."

Accordingly, on remand, the PUC should not make an adjustment to NBV for the RRI Option in conjunction with its use of the sale of assets method to determine market value.

c. Depreciation

[7] CenterPoint complains that the PUC erred in reducing stranded costs attributable to depreciation on generation assets. The PUC reduced CenterPoint's stranded costs by reducing the NBV of its generation assets by approximately $378 million, a figure representing depreciation on those assets for years 2002 and 2003. The PUC reasoned that this adjustment was necessary to prevent an excessive recovery of stranded costs. It noted that under Section 39.262(a), a utility "may not be permitted to overrecover stranded costs through the procedures established by this section," which governs the final stranded cost and capacity auction true-ups.

Specifically, the PUC found it inappropriate

> for the joint applicants to recover the remaining book value of generation assets through stranded-costs recovery while at the same time being guaranteed a level of revenue through the capacity auction that, by design, covers a portion of this same book value. To allow recovery of a portion of the book value through both stranded-costs recovery and the capacity auction true-up is, plain and simple, a double recovery of this portion of book value, and therefore, an overrecovery of stranded costs.

The PUC therefore held that an "adjustment" to NBV must be made in the stranded cost calculation to prevent the perceived "double recovery." The trial court and the court of appeals [79] agreed with this result.

We agree with CenterPoint that the Commission misread the relevant provisions of Chapter 39. As explained above, Chapter 39 requires both a stranded cost true-up and a capacity auction true-up. Nothing in the world of business or accounting requires both true-ups to transition a regulated industry to a more competitive market. But the Legislature provided for both and requires both. As we noted in our earlier *CenterPoint* decision, "the Legislature chose not to include the capacity auction true-up amount in its definition of stranded costs or to incorporate it into the methods it prescribes for calculating stranded costs." [80] The capacity auction true-up amount does not depend on the amount or existence of stranded costs, but on a specific formula set out in Section 39.262(d) and the Commission's rules thereunder that can result in a positive or negative number. "Stranded costs" is a different matter and a term of art defined by Chapter 39. ***370** In this case it essentially consists of the difference between the book value of the generation assets "*established as of December 31, 2001*" under Section 39.251(7) [81] and the market value of those assets, which are determined under the methods set out in Section 39.262. The PUC conceded in its Order that "stranded-costs recovery requires that book value be determined as of December 31, 2001."

On the other hand, as we have previously explained, the capacity auction true-up "guarantees consumers and power companies that the power company will receive no more and no less than a margin predetermined by the PUC in 2001 when the ECOM model was run in compliance with section 39.201." [82] This margin is determined by taking the difference between projected power sales and actual power prices "obtained through the capacity auctions." [83]

Critically, the capacity auction true-up amount is determined for the years 2002 and 2003. We have so stated, explaining that this true-up consists of "the difference between the price of power obtained through the capacity auctions and the power cost projections that were employed in the 2001 ECOM model for the years 2002 and 2003." [84] The PUC likewise recognized in its Order that the capacity auction true-up "ensures that an affiliated [power-generation company] with significant investment in generation assets will recover the power costs the PUC had projected, in the 2001 ECOM model, would be recovered for the 2002–2003 period." Its Substantive Rule 25.263(i) also defines precisely the formula for calculating the capacity auction true-up, based on "the difference between the price of power obtained through capacity auctions conducted for the years 2002 and 2003 and the power cost projections for the same time period as used in the determination of ECOM for that utility in the proceeding under PURA § 39.201." [85]

The PUC apparently reasoned that the capacity auction true-up is based on the ECOM market revenue projections used to set interim rates in the 2001 Section 39.201 proceeding. As discussed further below, we agree with the Order that these revenue projections "assumed the continuation of regulation." Under traditional rate regulation, rates are set to allow the utility to recover a reasonable return on its capital investments. [86] Since these capital assets ***371** are depreciated over time on the books, [87] depreciation affects the NBV of the utility. The PUC apparently further reasoned that stranded costs must be based on book value as of the end of 2001, and this value includes generating plant assets that have not yet been depreciated further in years 2002 and 2003. Since the capacity auction true-up is based on revenue projections under rates intended to recoup investments in plants that are further depreciated in 2002 and 2003, the PUC apparently reasoned that the capacity auction true-up and the stranded costs true-up allowed for a "double recovery" of a portion of book value.

We think the Commission erred in its analysis. Any utility will eventually retire all of its stranded costs, or any other capital investment or portion thereof, if it survives deregulation and continues to operate at a profit for a sufficient period of time. "Depreciation" is a general term referring to the accounting practice of spreading an asset's cost over the projected useful life of the asset or some other period. [88] In this case, however, "stranded costs" is a purely legal term that depends entirely on how it is defined by statute. Under Chapter 39, stranded costs depend on book value as of the end of 2001. We agree with CenterPoint that "[i]t is indisputable that the NBV of generation assets as of December 31, 2001 would not reflect a reduction for depreciation attributable to 2002 and 2003." An "adjustment" to stranded costs to reflect further depreciation of power plant assets in 2002 and 2003 is not permitted because the PUC is not allowed to alter the statutory definition of stranded costs. The PUC's view that the adjustment is necessary to prevent a "double recovery" of stranded costs necessarily depends on its conclusion, in direct contravention of the statute, that stranded costs should be redefined to incorporate further depreciation of generation assets in 2002 and 2003, thereby reducing NBV and correspondingly reducing stranded costs. Statutory stranded costs always depend on the distance between two values—NBV and market value—both of which constantly change over time. [89] The PUC is constrained to determine those values as of the time periods selected by the Legislature.

Intervenors contend in their brief: "The problem the Commission addressed in the true-up award was that because NBV was frozen as of December 31, 2001, it could not be reduced by the $378 million in depreciation expense that CenterPoint indisputably collected through the capacity auction true-up as a contribution to its fixed costs." The problem with this analysis is that, by statutory definition, the NBV component of stranded costs is frozen as of December 31, 2001, and the PUC's adjustment effectively moved that date in violation of the statute.

d. Construction Work in Progress

[8] Intervenors argue that the Commission erred in not requiring CenterPoint ***372** to meet ratemaking requirements for inclusion of construction work in progress (CWIP) in NBV. The court of appeals [90] and the district court agreed with the PUC on this issue, as do we.

Inclusion of CWIP increased stranded costs by about $110 million. The PUC's Substantive Rule 25.263(g)(2)(A) [91] provides that the NBV of generation assets includes "generation-related construction work in progress."

In addressing Intervenors' arguments, the PUC noted that "[n]o party claimed accounting mistakes or imprudence on any specific project included in CWIP," and found "there is no evidence of any accounting discrepancies or any failure to follow GAAP in connection with these balances." It recognized that under PURA § 36.054, applicable to general ratemaking, CWIP can be included in the rate base only if "(1) necessary for the utility's financial integrity and (2) not inefficiently or imprudently planned or managed." The PUC, however, declined Intervenors' request to apply these additional requirements because Chapter 39 is concerned with the unique matter of stranded costs measured by the difference between the NBV of generation assets and market value, while general ratemaking applies ratemaking standards to determine what amounts of book value may be included in the rate base and the appropriate rate of return on that rate base. It also noted that "[o]ne significant difference between a traditional rate case and this proceeding ... is that whereas under traditional regulation a utility is allowed to file rate cases on a recurring basis into the future, this proceeding is strictly a one-time phenomenon." In other words, CWIP can be recovered under Section 36.054 in the exceptional case if the requirements of that provision are met; otherwise, the utility can simply seek recovery for the construction project in a future rate case. There is no analogous recurring procedure for the recovery of stranded costs.

Intervenors argue that under Section 39.260(a), "[t]he definition and identification of invested capital and other terms ... that affect the net book value of generation assets ... shall be treated in accordance with generally accepted accounting principles as modified by regulatory accounting rules generally applicable to utilities." The PUC did not agree that in the calculation of stranded costs this provision requires the application of Section 36.054's special rules regarding CWIP. It noted that Section 39.260(a) did not expressly incorporate those particular standards. The PUC further reasoned:

> [U]nlike a traditional rate case, there will be no future opportunity for the joint applicants to recover the CWIP costs that are subsequently moved into EPS [electric plant in service]. Second, including CWIP in NBV of generating assets is necessary for an apples-to-apples comparison of book value and market value, because the market value of CWIP is reflected in TGN's stock price. These additional arguments by CenterPoint further amplify the difference between a traditional rate case and this proceeding. For [these and other reasons], the joint applicants do not need to satisfy rate-case requirements for including CWIP in NBV in this proceeding. Accordingly, the Commission declines to exclude the $109,966,000 for nonenvironmental CWIP from NBV.

We cannot say the Commission's analysis is legally or factually flawed, and we defer to the Commission on this technical issue.

*373 C. Capacity Auction True–Up

1. Capacity Auction Price

[9] CenterPoint complains that the court of appeals and the PUC erred in concluding that an adjustment to the capacity auction price should be made in calculating the capacity auction true-up under Section 39.262(d). We agree with CenterPoint.

Genco became the affiliated power-generation company of CenterPoint in 2001. Section 39.153 required Genco to auction "at least 60 days before [January 1, 2002], entitlements to at least 15 percent of [its]

Texas jurisdictional installed generation capacity." [92] The capacity auctions thus assured that power was available to new competitors in the deregulated retail electricity market. The PUC recognized in its Substantive Rule 25.381(b) that the purpose of the capacity auctions is to "promote competitiveness in the wholesale market through increased availability of generation and increased liquidity." [93]

Under Section 39.201, the PUC approved rates intended to cover expected stranded costs and other charges. Stranded costs were estimated based on "the ECOM administrative model" [94] the PUC ran in 2001.

Section 39.262(d)(2) required a capacity auction true-up at the final true-up proceeding. Section 39.262(d) states:

> The affiliated power generation company shall reconcile, and either credit or bill to the transmission and distribution utility, the net sum of:
>
> (1) the former electric utility's final fuel balance determined under Section 39.202(c); and
>
> (2) any difference between the price of power obtained through the capacity auctions under Sections 39.153 and 39.156 and the power cost projections that were employed for the same time period in the ECOM model to estimate stranded costs in the proceeding under Section 39.201.

The final fuel balance of subpart (1), which is summed with the capacity auction true-up amount, is not at issue in this appeal. Under subpart (2), the power-generation company (Genco) bills the transmission and distribution company (CenterPoint) if revenues as determined by the capacity auction price are less than the revenues predicted by the ECOM model. The amount billed to the transmission and distribution company can then be recovered from consumers through adjustment of the nonbypassable delivery rates. [95] Under the formula used by the PUC in its Substantive Rule 25.263(i), [96]

Under this formula, market revenues "as determined from capacity auctions" is a term of art and is a proxy for actual market revenues of the utility during the relevant period. Under the Rule, market revenues consist of the "capacity auction ***374** price x total 2002 and 2003 busbar sales." "Total busbar sales" refers to the total quantity of power generated for sale by Genco. The formula deems all busbar sales as being made at the average capacity auction price, since Rule 25.263(i)(1)(C) defines the capacity auction price as the affiliated power-generation company's "total capacity auction revenues derived from the capacity auctions conducted for the years 2002 and 2003 divided by that [company's] total [megawatt hour] sales of capacity auction products for the years 2002 and 2003."

In its Order the PUC stated that "the purpose of the capacity auction true-up is to ensure that utilities receive the margins predicted in the ECOM model which assumed the continuation of regulation." We agree, having previously noted that the capacity auction true-up "guarantees consumers and power companies that the power company will receive no more and no less than a margin predetermined by the Commission in 2001 when the ECOM model was run in compliance with section 39.201." [97] We further explained the underlying rationale for the capacity auction true-up as follows:

> The Legislature recognized that on the first day of deregulation, January 1, 2002, there was no way to validly quantify stranded costs, if any, because a market for electricity, both wholesale and retail, would need time to develop, and there would be interim distortions and fluctuations, perhaps severe ones. The Legislature was also concerned that distortions and fluctuations in the market price of power during the first two years of deregulation could harm consumers and generation companies alike. The Legislature accordingly designed the capacity auction true-up proceeding because of the likelihood that no stable market would exist until up to two years after the first day of deregulation. [98]

Sections 39.153(e) and (f) required the PUC to adopt rules governing the statutory capacity auctions. The PUC adopted rules governing the auctions in many particulars, covering the time of sale, the type of products sold, and the terms of the sales. [99] The PUC required Genco to sell entitlements to its generation capacity in four product categories: baseload, gas-intermediate, gas-cyclic, and gas-peaking. Due to variations of market demand, these rules contained a "safe-harbor" provision deeming the 15-percent requirement met if the affiliated power-generation company "offered products in a product category (for example, gas-intermediate) and successfully sold, at least, all of the entitlements offered in one particular month, in that product category."[100] If demand was insufficient to meet even this provision, the company was to make "a proposal to the commission" to modify the auction process, prices, or products.[101]

Genco offered the required 15 percent of its capacity in the four product categories in its statutory capacity auctions and sold all the entitlements for at least one month in 2002 and 2003 for each product category except for gas-intermediate in 2003. Genco made proposals to facilitate the auction for gas-intermediate, two of which were approved by the PUC, that included cut-rate pricing for as little as one cent for kilowatt-month, but Genco was ultimately unsuccessful in meeting the safe-harbor requirement that it sell all entitlements to ***375** gas-intermediate for at least one month in 2003.

The Commission found that Genco had sold only 65 percent of the capacity it was required to sell under the 15 percent requirement of Section 39.153, and less than half the gas-intermediate capacity required of Commission rules. However, Genco correctly points out that it would have complied with the safe harbor provisions if it had succeeded in selling additional entitlements in one product category for $5,250. Based on this failure, the PUC concluded that Genco had not complied with PURA Section 39.153(a) and therefore its formula under Rule 25.263(i) could not be used. It then proceeded to consider an alternative "proper method" for determining the capacity auction true-up amount, one that in the eyes of the PUC would avoid "the bias created by the failure of [Genco] to auction a full 15 percent of its auction products."[102]

The PUC considered various proposals but adopted the approach of an Intervenor witness, Dennis Goins, who proposed "that the capacity auction price used in the formula should be defined as the average price of all capacity products sold in the PUC and private auctions." Under this formula, the capacity auction true-up amount was reduced by $439,744,218. The district court reversed the PUC on this issue, but the court of appeals agreed with the PUC and reinstated this disallowance.[103]

We conclude that the court of appeals and the PUC erred in reducing the capacity auction true-up amount as described above. The capacity auction true-up amount should not be reduced by over $400 million because Genco was unable to sell $5000 worth of one subcategory of its generation capacity at auction. While Section 39.153 specifies that the utility sell 15 percent of its generating capacity at auction, the record indicates that Genco made a good faith effort to comply with this statute and was simply unable to sell by auction, at any price, the amount of one product category required by PUC rules. It points out that no utility was able to sell all its gas-intermediate entitlements for even one month in 2003. We avoid statutory constructions that impose an impossible condition.[104]

Further, Section 39.262 does not state that the capacity auction price specified therein should be ignored because of a trivial noncompliance with rules promulgated under Section 39.153. Nothing in Chapter 39 requires such a result. In the portion of the Order discussing the issue, the PUC conceded, "Neither PURA nor the Commission's rules specify what happens if a company fails to meet the 15 percent sales requirement or the safe-harbor provisions." The capacity auction true-up in Section 39.262 is not conditioned ***376** on compliance with the requirement, under the separate statute governing the capacity auctions themselves, that the utility *succeed* in auctioning 15 percent of its generating capacity. As discussed above, the two sections address different legislative purposes. The capacity auctions themselves were intended to provide a supply of power to new entrants in the retail electric market, while the capacity auction true-up was intended to assure that the original utilities recovered "a margin predetermined by the Commission in 2001."[105]

Section 39.262 does, however, expressly require the use of the "*price* of power obtained through the capacity auctions under Sections 39.153 and 39.156."[106] Goins conceded that CenterPoint used the statutory price as spelled out in Section 39.262 and Rule 25.263(i) in making its capacity auction true-up request. However, he believed that the statutory formula created a "downward bias" if the auction was unsuccessful in selling a relatively higher-priced product such as gas-intermediate. He therefore proposed following Rule 25.263(i) "with one major modification." He recommended calculating the capacity auction price based on the average prices of products sold in the PUC capacity auctions as well as prices obtained in so-called "TGN auctions." The TGN auctions were private auctions that did not have to comply with PUC rules. [107] Notably RERS, Genco's affiliated retail electric provider and its biggest customer, could participate in these auctions, in direct violation of the letter of Section 39.153 [108] and its essential purpose in making capacity available to new competitors. Not surprisingly, the prices obtained in the TGN auctions were sometimes higher than those obtained in the Chapter 39 auctions, since an additional, established competitor was allowed to bid. The chief executive of Genco testified that since RERS "had the majority of the load in the Houston area ... there was a lot more competition, I believe, in the TGN than there was in the PUC auction." Goins agreed that the TGN auctions were "somewhat more successful" in selling products because RERS was eligible to participate in those auctions. Goins's "major modification" was inconsistent with Chapter 39 and the PUC should not have adopted it.

Section 39.262 unambiguously specifies that the statutory capacity auction price, not some other blended price the PUC finds more appropriate, must be used in calculating the capacity auction true-up amount. The PUC's Rule 25.263(i), the validity of which is not challenged by any party, [109] provides the correct method for calculating the capacity auction price, and it should have been used. Parties, experts, and the PUC can look to the formula derived from Section 39.262(d)(2) and question why it chooses the capacity auction price instead of some other price in calculating market revenues, why sales in 2002 and 2003 are used instead of sales in some other time period, or indeed why a capacity auction true-up is necessary at all ***377** in light of other provisions providing for the recovery of stranded costs. But the statute is clear enough and we apply it as written. [110]

2. Carrying Costs on Capacity Auction True–Up

[10] Intervenors complain that the PUC erred in allowing CenterPoint to recover $168 million in interest on the capacity auction true-up award. The trial court and court of appeals [111] agreed with the PUC on this issue, as do we.

In *Texas Industrial Energy Consumers v. CenterPoint Houston Electric, LLC,* we recently held that interest on the capacity auction true-up and other non-stranded costs awarded in a Section 39.262 true-up proceeding was recoverable. [112] We upheld the validity of the portion of PUC Rule 25.263(*l*)(3) providing for "carrying costs on the true-up balance," even though in *CenterPoint Energy* we had invalidated another portion of the Rule specifying the date at which interest begins to accrue. [113] We noted that "invalidating the whole rule and barring any recovery of interest whatsoever would *contradict* our view in *CenterPoint Energy* 'that the Legislature intended electric utilities to recover carrying costs on stranded costs to compensate for the financial costs incurred during the stranded cost recovery period,' consistent with the prior ratemaking principle that 'carrying costs on investments in generation plants were included in rates.' " [114]

While, as discussed above, general ratemaking principles need not always be applied to a Chapter 39 true-up proceeding, we again see no valid reason the PUC cannot provide for interest on true-up balances under Rule 25.263(*l*)(3), including interest on the capacity auction true-up balance. The parties in *TIEC* challenged the amount of interest specified under Rule 25.263 (*l*)(3), and did not necessarily question the authority vel non of the PUC to award interest, but in today's case we see no error in the PUC's decision to award interest on the capacity auction true-up to reflect the time value of money. Since, as discussed above, this true-up award is designed to assure the recovery of revenues projected in the ECOM model for 2002 and 2003, the PUC reasonably concluded that a full recovery of this amount must include interest to reflect the time value of money. It correctly found in its Order: "Awarding the time value of the capacity auction true-up award puts the joint applicants in the same economic position they would have been in had they received this amount in 2002 and 2003." Intervenors provide no persuasive reason that interest on the capacity auction true-up cannot be awarded in this case as in other cases where utilities are allowed to recover costs with interest.

III. Conclusion

We affirm the court of appeals' judgment in part and reverse it in part. We remand this case to the Commission for ***378** further proceedings consistent with this decision.

All Citations

344 S.W.3d 349, 54 Tex. Sup. Ct. J. 690

Footnotes

1 This overview closely tracks the overview set out in our recent decision in a related Chapter 39 case, *Texas Industrial Energy Consumers v. CenterPoint Energy Houston Electric, LLC,* 324 S.W.3d 95, 97–100 (Tex.2010).

2 Act of May 27, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543–2625; *see also* *City of Corpus Christi v. Pub. Util. Comm'n,* 51 S.W.3d 231, 237 (Tex.2001).

3 TEX. UTIL.CODE § 39.001(a). *See also* *City of Corpus Christi,* 51 S.W.3d at 237.

4 TEX. UTIL.CODE § 39.051(b).

5 *Id.* § 39.102(a).

6 *See id.* §§ 39.201–.205; *In re TXU Elec. Co.,* 67 S.W.3d 130, 132 (Tex.2001) (Phillips, C.J., concurring) ("Because the generating companies and retail electric providers must use the existing power lines to move electricity from the plant to the retail customer's home or business, the transmission and delivery companies will remain regulated monopolies.").

7 *CenterPoint Energy, Inc. v. Pub. Util. Comm'n,* 143 S.W.3d 81, 82 (Tex.2004).

8 *City of Corpus Christi,* 51 S.W.3d at 237–38; *see also* TEX. UTIL.CODE §§ 39.001(b)(2), .251(7), .252(a).

9 TEX. UTIL.CODE § 39.052.

10 *Id.* § 39.201(a), (b).

11 *Id.* § 39.201(d).

12 *Id.* § 39.201(b), (d), (g).

13 *City of Corpus Christi,* 51 S.W.3d at 238 (citing TEX. UTIL.CODE § 39.252).

14 TEX. UTIL.CODE § 39.201(h).

15 *See id.* § 39.262(i). "ECOM" stands for excess costs over market, *see id.* § 39.254, and is another term for stranded costs. The PUC began using an ECOM computer model in 1996. *See In re TXU Elec. Co.,* 67 S.W.3d 130, 160 (Tex.2001) (Hecht, J., dissenting). The PUC presented a 1998 ECOM Report to the Legislature. *See id.;* TEX. UTIL.CODE §§ 39.254, .262(i).

16 *See* TEX. UTIL.CODE §§ 39.201(i), .262(c), .301.

17 *Id.* § 39.201(i).

18 *CenterPoint Energy,* 143 S.W.3d at 91.

19 TEX. UTIL.CODE § 39.262(c).

20 *Id.* § 39.201(*l*), .262(c).

21 *Id.* § 39.201(*l*).

22 *Id.* §§ 39.201(*l*), .262(c). Alternatively, stranded costs may be securitized. *Id.* § 39.262(c).

23 *Id.* § 39.262(g).

24 *Id.* § 39.202(a).

25 *Id.* § 39.202(c).

26 *Id.* § 39.153(a).

27 *Id.* § 39.153(b).

28 *Id.* §§ 39.202(c), .262(d)(1).

29 *Id.* § 39.262(d)(2).

30 *Id.* § 39.262(e). This credit is subject to a cap. *Id.*

31 More specifically, under the business separation plan, Reliant Energy, Inc. survives as CenterPoint Energy, Inc., a publicly traded holding company. CenterPoint Energy, Inc. owns CenterPoint Energy Houston Electric, LLC, the transmission and distribution utility.

32 More specifically and as discussed below, under the business separation plan, Reliant Energy, Inc. created Reliant Resources, Inc., a publicly traded company that became the parent of Reliant Energy Retail Services, LLC, the retail electric provider.

33 CenterPoint and Genco remain petitioners to this appeal, and for convenience are sometimes referred to collectively as CenterPoint.

34 *Application of CenterPoint Energy Houston Electric, LLC, Reliant Energy Retail Servs., LLC, and Tex. Genco, LP to Determine Stranded Costs and Other True–Up Balances Pursuant to PURA § 39.262,* PUC Docket No. 29526 (Dec. 17, 2004) (Order), *available at* http.// interchange.puc.state.tx.us (item no. 2286).

35 252 S.W.3d 1.

36 Issues determined in the Order pertinent to the retail electric provider, RERS, such as the retail clawback, are not appealed to this Court, and hence that entity is not a party.

37 Gulf Coast Coalition of Cities, Houston Council for Health and Education, City of Houston and Coalition of Cities, and Texas Industrial Energy Consumers.

38 TEX. UTIL.CODE § 15.001.

39 *Id.* § 39.262(j).

40 TEX. GOV'T CODE § 2001.172.

41 *Mireles v. Tex. Dep't of Pub. Safety,* 9 S.W.3d 128, 131 (Tex.1999).

42 Section 2001.174(2) authorizes the court to reverse the agency decision if it is "in violation of a constitutional or statutory provision," "in excess of the agency's statutory authority," or "affected by other error of law."

43 TEX. GOV'T CODE § 2001.174(2)(F).

44 *First Am. Title Ins. Co. v. Combs,* 258 S.W.3d 627, 631 (Tex.2008).

45 *Id.* at 632.

46 *City of Austin v. Sw. Bell Tel. Co.,* 92 S.W.3d 434, 441 (Tex.2002).

47 More precisely, Section 39.251(7) defines stranded costs as

> the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards No. 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of this chapter. For purposes of Section 39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under Section 39.262(h), whichever is earlier, and shall include stranded costs incurred under Section 39.263.

Section 39.263 pertains to certain environmental cleanup costs.

48 A fifth method, found in Section 39.262(i), pertains to the valuation of certain nuclear assets.

49 TEX. UTIL.CODE § 39.262(h)(3).

50 *Id.*

51 *Id.*

52 252 S.W.3d at 17.

53 *See* 26 U.S.C. § 1504. According to CenterPoint, one advantage of a consolidated return is that the parent can offset one subsidiary's losses against another subsidiary's gains.

54 252 S.W.3d at 16–34.

55 The SEC explains, "In a 'spin-off,' a parent company distributes shares of a subsidiary to the parent company's shareholders." SEC Staff Legal Bulletin No. 4 (Sept. 16, 1997). "[A] spin-off is effected by the parent's board of directors declaring a dividend of the subsidiary shares payable to the parent's stockholders." Bruce Hawthorn et al., *Planning and Structuring Spin–Offs and Subsidiary Offerings, in* CORPORATE LAW AND PRACTICE COURSE HANDBOOK SERIES 185, 209 (2001). "[I]n its purest form, a spinoff involves the creation of a separate ownership structure for a business through the distribution of stock of a subsidiary to the existing stockholders of a parent corporation as a dividend." Steven Ostner, *Spinoffs Discover New Life: Energized Shareholders Seek Enhanced Value,* 210 N.Y. L.J. 11, 11 (1993). "[T]he spin-off device involves the distribution by a corporation to its shareholders of another corporation's securities held by

the distributing corporation." Simon M. Lorne, *The Portfolio Spin–Off and Securities Registration,* 52 TEX. L.REV. 918, 919 (1974) (footnote omitted).

56 The Texas Securities Act, TEX.REV.CIV. STAT. art. 581–4(E), defines "sale" as follows:

> The terms "sale" or "offer for sale" or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise.

As with the federal securities statutes, the Texas definition of "sale" of a security is broad, including "every disposition" and "any transfer or agreement to transfer." *See* *Tex. Capital Sec., Inc. v. Sandefer,* 58 S.W.3d 760, 775 (Tex.App.-Houston [1st Dist.] 2001, pet. denied) ("[The Texas Legislature] broadly defined 'sale,' 'sell,' and 'security.' "); 11 WILLIAM V. DORSANEO & PETER WINSHIP, TEXAS LITIGATION GUIDE § 171.03[1][a] (interpreting the statute as including a "for value" requirement). No Texas court has addressed whether a stock distribution though a stock dividend constitutes a "sale," although a court has said that the exercise of a stock option will constitute a "sale" under the Texas Act. *See Key Energy Servs., Inc. v. Eustace,* 290 S.W.3d 332, 342–43 (Tex.App.-Eastland 2009, no pet.) ("[T]he grant of an employee stock option on a covered security is a sale of that security.").

The Securities Act of 1933 defines "sale" of a security as including "every contract of sale or disposition of a security or interest in a security, for value." 15 U.S.C § 77b(a)(3). "The term 'offer to sell', 'offer for sale', or 'offer' shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." *Id.* The Securities Exchange Act of 1934 defines "sale" of a security to include "any contract to sell or otherwise dispose of." *Id.* § 78c(a)(14).

Some federal courts have determined that a spin-off through a stock distribution constitutes a "sale" under both the 1933 Securities Act and the 1934 Securities Exchange Act. *Int'l Controls Corp. v. Vesco,* 490 F.2d 1334, 1343–44 (2d Cir.1974) (discussing 1934 Act); *S.E.C. v. Datronics Eng'rs, Inc.,* 490 F.2d 250, 253–54 (4th Cir.1973) (discussing 1933 Act); *S.E.C. v. Harwyn Indus. Corp.,* 326 F.Supp. 943, 953–54 (S.D.N.Y.1971) (same); *see also S.E.C. v. Sierra Brokerage Servs. Inc.,* 608 F.Supp.2d 923, 940–44 (S.D.Ohio 2009) (considering "gifts" of securities to former directors and shareholders as "sales" where defendant schemed to create public companies without registration and then later transfer control for a fee). Other federal circuits have held to the contrary. The Fifth Circuit has held that an asset-for-stock exchange is not a "sale" within the meaning of Section 10(b) of the 1934 Act where the parties are not at arms length. *Rathborne v. Rathborne,* 683 F.2d 914, 918 (5th Cir.1982) ("[A] transfer of securities from a wholly controlled subsidiary to its parent or between two corporations wholly controlled by a third does not amount to a statutory purchase or sale."); *see also* *Blau v. Mission Corp.,* 212 F.2d 77, 80 (2d Cir.1954) (determining stock-exchanges between corporations with shared ownership were not "sales" within the meaning of Section 16(b) of the 1934 Act because the transaction was "a mere transfer between corporate pockets"). Several more recent cases declined to characterize spin-offs as sales, often considering the earlier cases' reasoning as a means to prevent backdoor IPOs without registration and making information available to the public. *See Isquith v. Caremark Int'l, Inc.,* No. 94 C 5534, 1997 WL 162881, at *6 (N.D.Ill. March 26, 1997) (distinguishing *Harwyn* and *Datronics* as SEC enforcement actions, as opposed to shareholder suits), *aff'd,* 136 F.3d 531 (7th Cir.1998); *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.,* 676 F.Supp. 458, 475 (S.D.N.Y.1987) (noting that outside *Harwyn* and its progeny, "[t]here has been no other case demonstrating acceptance of such a broad view of 'value' "); *Fed. Ins. Co. v. Campbell Soup Co.,* No. Civ.A. 131–04, 2004 WL 1631405, at *9–13 (N.J.Sup.Ct. Law Div. July 2, 2004) ("Notwithstanding the[ ] broad statutory definition[ ], however, courts have still found that spin-offs generally do not constitute a sale of securities.... [T]his court finds that in all of the cases cited, the courts which did find a purchase and sale were struggling to do so in order to insure a remedy for a wrong ... or the mischief of an unsympathetic defendant ... would not go without a federal remedy."); *see also* *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.,* 398 F.Supp.2d 244, 260 (S.D.N.Y.2005).

In 1997, the SEC issued a Staff Legal Bulletin No. 4, which attempted to explain the SEC's view of spin-offs in regards to registration under the 1933 Act. SEC Staff Legal Bulletin No. 4 (Sept. 16, 1997). The Bulletin begins by stating the general requirement that a subsidiary must register if the spin-off is a "sale." *Id.* The subsidiary does not have to register, and thus it logically follows no "sale" occurs, if: (1) the parent shareholders do not provide consideration for the spun-off shares; (2) the spin-off is pro-rata to the parent shareholders; (3) the parent provides adequate information about the spin-off and the subsidiary to its shareholders and the trading markets; (4) the parent has a valid business purpose for the spin-off; and (5) if the parent spins off "restricted securities," it held those securities for at least two years. *Id.*

57 In its entirety Section 39.262(h)(1) states:

> Sale of Assets. If, at any time after December 31, 1999, an electric utility or its affiliated power generation company has sold some or all of its generation assets, which sale shall include all generating assets associated with each generating plant that is sold, in a bona fide third-party transaction under a competitive offering, the total net value realized from the sale establishes the market value of the generation assets sold. If not all assets are sold, the market value of the remaining generation assets shall be established by one or more of the other methods in this section.

58 According to an SEC filing by CenterPoint, the sale of Genco's fossil generation assets was completed on December 15, 2004, two days before the PUC's Order was signed, and the sale of Genco's nuclear assets concluded in April 2005.

59 16 TEX. ADMIN. CODE § 25.263(e)(6).

60 The banker testified that the six potential bidders

> had the opportunity to meet the management team. They had the opportunity to visit the sites. They had the opportunity to participate and review all the data in the data room. They had the opportunity to ask detailed questions, and they did ask lots of detailed questions. And they basically had the opportunity to do as much due diligence as needed to get to a final round proposal.

61 252 S.W.3d at 26 n. 20.

62 *See* TEX. UTIL.CODE §§ 39.201(*l*), .252(d), .262(g).

63 *Id.* § 39.252(d).

64 *Id.* § 39.262(j).

65 *See id.* §§ 39.254, .256, .257. Chapter 39 does not actually use the term "excess earnings," but the parties, the PUC, and this Court have used the term as a shorthand expression for the earnings that are applied to reduce stranded costs under Sections 39.254 and other provisions. *See, e.g., CenterPoint Energy,* 143 S.W.3d at 88. According to the PUC's brief, the excess earnings concept is tied to the Legislature's decision to freeze retail rates under Section 39.052: "Recognizing that a utility might earn more under those frozen rates than if new rates had been set using more current information," Section 39.254 "addressed those excess earnings" by providing that "excess earnings would be credited against stranded costs."

66 TEX. UTIL.CODE § 39.262(a).

67 *Id.* § 39.252(a).

68 Courts have noted that a surge in natural gas prices was one reason projections of stranded costs changed after the 1998 ECOM report. *E.g., In re TXU Elec. Co.,* 67 S.W.3d at 134 (Phillips, C.J., concurring) ("TXU's investment in the Comanche Peak nuclear plant, once a liability, had now become profitable because the cost of generating electricity from natural gas plants exceeded that of generating electricity from nuclear plants.").

69 *In re TXU Elec. Co.,* 67 S.W.3d at 131.

70 *Id.* at 150 (Hecht, J., dissenting).

71 *City of Corpus Christi v. Pub. Util. Comm'n,* 188 S.W.3d 681, 684, 691 (Tex.App.-Austin 2005, pet. denied).

72 252 S.W.3d at 38.

73 *Id.* at 39.

74 *See, e.g.,* TEX. UTIL.CODE §§ 39.107(e), .203.

75 In 2002, CenterPoint distributed its remaining ownership in RRI to CenterPoint's shareholders.

76 252 S.W.3d at 32–34.

77 Intervenors repeatedly complain that an NBV adjustment should be made for the RRI Option under the primary holding as well as the alternative holding. However, they also argue more generally that this adjustment should be made "regardless of how market value is determined." In their brief on the merits and petition for review, they ask that we sum dollar amounts for the alleged errors of the PUC in failing to use the sale of assets method and to adjust for the RRI Option, suggesting that these amounts should be stacked if the sale of assets method is used.

78 252 S.W.3d at 34.

79 252 S.W.3d at 62–70.

80 *CenterPoint Energy,* 143 S.W.3d at 99 (brackets omitted).

81 TEX. UTIL.CODE § 39.251(7) (emphasis added).

82 *CenterPoint Energy,* 143 S.W.3d at 96.

83 TEX. UTIL.CODE § 39.262(d)(2).

84 *CenterPoint Energy,* 143 S.W.3d at 96.

85 16 TEX. ADMIN. CODE § 25.263(i). By way of further explanation, years 2002 and 2003 are used in the capacity true-up calculation because PURA Section 39.262(d)(2) requires a comparison of a revenue figure based on the capacity auctions and ECOM power cost projections "for the same time period." The capacity auctions were required to begin at least 60 days before the date of consumer choice, January 1, 2002. *See* TEX. UTIL.CODE § 39.153(a). ECOM power cost projections were run to determine interim tariffs in 2002 and 2003 under Section 39.201. *See id.* § 39.201(b)(1),(d), (g), (h), (*l*). The final true-up filing was initiated and completed in 2004. *See id.* § 39.262(c), (j). Therefore, the years 2002 and 2003 are the years that data are compared for purposes of the capacity auction true-up calculation.

86 *See* TEX. UTIL.CODE § 36.051 ("In establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.").

87 *See, e.g., id.* § 36.053 ("Electric utility rates shall be based on the original cost, less depreciation, of property used by and useful to the utility in providing service.").

88 As the PUC noted in its Order, "Stranded-costs recovery is simply a method to recover the book value of generation assets that would have been recovered through depreciation and amortization ordinarily over the life of the asset under traditional rate regulation."

89 *See* *CenterPoint Energy,* 143 S.W.3d at 102 (Brister, J., dissenting) ("[W]ith stranded costs, a more apt analogy would be a system in which a jury returns a different verdict every day for a period of years, each one very different from the verdict the day before, and each one correct.").

90 252 S.W.3d at 45–48.

91 16 TEX. ADMIN. CODE § 25.263(g)(2)(A).

92 TEX. UTIL.CODE § 39.153(a).

93 16 TEX. ADMIN. CODE § 25.381(b).

94 TEX. UTIL.CODE § 39.201(h).

95 *See id.* § 39.262(g).

96 16 TEX. ADMIN. CODE § 25.263(i).

(ECOM market revenues—ECOM fuel costs)
less
(market revenues (as determined from capacity auctions)—actual fuel costs)
equals
capacity auction true-up

97 *CenterPoint Energy,* 143 S.W.3d at 96.

98 *Id.*

99 16 TEX. ADMIN. CODE § 25.381.

100 *Id.* § 25.381(h)(1)(B)(iv).

101 *Id.* § 25.381(h)(7)(C).

102 In addressing the "bias" created by Genco's inability to auction the required quantity of product, the PUC stated in its Order that "[t]he absence of capacity products produces a downward bias in the market price derived from capacity auction sales, thereby overstating the capacity auction true-up." However, under the formula described above for calculating the capacity auction true-up, if Genco had succeeded in selling an additional 21 gas-intermediate entitlements for 1 cent per kilowatt-month, under a proposal approved by the PUC under its safe-harbor rules, the effect on the capacity auction true-up would have been negligible.

103 252 S.W.3d at 48–59.

104 *See* TEX. GOV'T CODE § 311.021(4) (recognizing that courts, in construing statutory codes, should presume that "a result feasible of execution is intended"); *Barshop v. Medina Cnty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 629 (Tex.1996) (avoiding construction that would subject parties to an impossible condition).

105 *CenterPoint Energy,* 143 S.W.3d at 96.

106 TEX. UTIL.CODE § 39.262(d)(2) (emphasis added).

107 *See id.* § 39.153(d).

108 *See id.* § 39.153(c) ("An affiliate of the electric utility selling entitlements in the auction required by this section may not purchase entitlements from the affiliated electric utility at the auction.").

109 *See id.* § 39.001(f) ("A person who challenges the validity of a competition rule must file a notice of appeal with the court of appeals and serve the notice on the commission not later than the 15th day after the date on which the rule as adopted is published in the Texas Register.").

110 *See City of Rockwall v. Hughes,* 246 S.W.3d 621, 625 (Tex.2008) ("In construing statutes, we ascertain and give effect to the Legislature's intent as expressed by the language of the statute.").

111 252 S.W.3d at 59–62.

112 324 S.W.3d 95, 101–05 (Tex.2010) (hereinafter *TIEC*).

113 The current version of the Rule complies with *CenterPoint Energy.* 16 TEX. ADMIN. CODE § 25.263(*l*)(3).

114 *Id.* at 103–04 (quoting *CenterPoint Energy,* 143 S.W.3d at 83).

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