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SOAH DOCKET NO. 473-19-3864
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APPLICATION OF CENTERPOINT
ENERGY HOUSTON ELECTRIC, LLC
FOR AUTHORITY TO CHANGE
RATES

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

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FILING CLERK

ALLIANCE FOR RETAIL MARKETS' INITIAL BRIEF

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July 9, 2019

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ALLIANCE FOR RETAIL MARKETS' INITIAL BRIEF

The Alliance for Retail Markets (ARM) timely files this Initial Brief pursuant to SOAH Order No. 10.¹ Consistent with its Statement of Position,² ARM requests that the Commission (1) reject the proposal of CenterPoint Energy Houston Electric, LLC (CenterPoint) witness Mr. Matthew A. Troxle to apply an Energy Efficiency Program (EEP) adjustment to reduce the test-year kilowatt-hour (kWh) billing determinants for those rate classes that participated in CenterPoint's 2018 energy efficiency programs; (2) deny Mr. Troxle's proposal to assess both the Customer Charge and Metering Charge on a per Meter basis for each rate class, except Lighting Services; and (3) establish a single effective date for all approved rates that falls, at a minimum, on the 45th day after the issuance of the final order, is aligned with the initial date of a CenterPoint monthly billing cycle, and (if possible) coincides with another CenterPoint rate change. ARM reserves the right to submit a reply brief responding to additional issues addressed in other parties' initial briefs, as necessary.

VI. Billing Determinants [Preliminary Order Issue No. 45]

B. Energy Efficiency Program Adjustment

CenterPoint witness Mr. Troxle proposes an EEP adjustment to reflect a purported known and measurable reduction in kWh billing determinants for those rate classes that participated in the energy efficiency programs implemented by CenterPoint during the test year pursuant to 16 Texas Administrative Code (TAC) § 25.181, the Commission's energy efficiency rule.³ He contends this annualized adjustment is necessary to fully capture the energy savings attributable

¹ SOAH Order No. 10 at 1 (July 2, 2019).

² Alliance for Retail Markets' Statement of Position (June 12, 2018).

³ Direct Testimony of Matthew A. Troxle, CenterPoint Ex. 30 at 10:12-18.

to those test-year programs on a going-forward basis, similar to the standard customer adjustment that annualizes test-year data based on a year-end customer count to more accurately represent billing and usage on a going-forward basis.⁴

Mr. Troxle calculated the EEP adjustment using a relatively laborious process. First, he referenced the deemed savings values for each program in the Technical Reference Manual (TRM) authorized by 16 TAC § 25.181(q), segregating those savings estimates by test-year month for each month during which the program was in effect. For weather-dependent energy efficiency measures, he used weather data to determine the program's energy savings by month; for non-weather-dependent measures, he divided the energy savings by 12 to compute the kWh savings by month. Mr. Troxle then used the weather data and the length of time the program operated during the test year to determine the test-year energy savings that would have hypothetically occurred if the measure had been in place during the entire 12-month period.⁵

The Commission should reject this extraordinary proposal based on three compelling reasons offered by Commission Staff witness Mr. William B. Abbott, who justifiably views the proposed billing determinant reduction as “substantively identical to a recommendation to [instead] increase revenue requirements”.⁶ First, the proposed adjustment does not qualify as a “known and measurable” change under 16 TAC § 25.234(b), which states that “[r]ates will be determined using revenues, billing and usage data for a historical test year adjusted for known and measurable changes, and costs of service as defined in [16 TAC] §25.231 of this title (relating to Cost of Service).” A transmission and distribution utility (TDU) such as CenterPoint may rely upon the deemed savings values in the TRM to satisfy the energy efficiency mandates in PURA § 39.905 and 16 TAC § 25.181, but those same values do not likewise suffice to meet the TDU's burden of proof of legitimizing a known and measurable change to historical test-year data for ratemaking purposes. The energy efficiency rule defines a “deemed savings value” as an *estimate* “developed from data sources and analytical methods that are widely considered

⁴ *Id.* at 11:2-9, 11-22.

⁵ *Id.* at 12:9-21, WP H-1.2.

⁶ Direct Testimony of William B. Abbott, Staff Ex. 7 at 8:1-5.

acceptable for *the measure and purpose, and is applicable to the situation being evaluated.*”⁷ (Emphasis added) As Staff witness Mr. Abbott noted, the deemed savings values for energy efficiency measures in the TRM are inherently imprecise and imperfect estimates. They do not represent actual known quantities upon which a TDU can rely to justify an adjustment under 16 TAC § 25.234(b) in a rate proceeding, particularly when the adjustment has the effect of increasing rates.⁸

Second, Mr. Troxle’s comparison of his proposed EEP adjustment to the year-end customer adjustment routinely employed in base rate proceedings is flawed for similar reasons. The number of customers served by a TDU at the end of the test year is an easily determinable known and measurable quantity, in contrast to the annualized energy savings Mr. Troxle calculated using the rather complicated and hypothetically based process described earlier.⁹ Moreover, the Commission-approved rate filing package (RFP) for investor-owned TDUs (*e.g.*, CenterPoint) includes schedules for standardized customer and weather adjustments for use in calculating base rates, but it does not similarly include a schedule for an energy efficiency program-based adjustment such as Mr. Troxle’s EEP proposal. While the lack of a specific schedule in the RFP does not preclude a TDU from requesting a non-standard adjustment in a base rate case, the absence of one nevertheless underscores the exceptional nature of any such adjustment.¹⁰ The fundamental distinctions between the standard year-end customer adjustment routinely used in base rate proceedings and CenterPoint’s unique EEP proposal refute Mr. Troxle’s contention they are comparable modifications. The lack of any Commission precedent in support of a billing determinant adjustment similar to the type advocated by Mr. Troxle further highlights the fallacy of his apples-to-oranges comparison.¹¹

Third, along those same lines, the Commission has previously rejected similarly purposed CenterPoint proposals to recover “lost revenues” allegedly resulting from energy efficiency

⁷ 16 TAC § 25.181(c)(8).

⁸ Staff Ex. 7 at 9:2-10:28, 13:9-15.

⁹ *Id.* at 13:17-14:8.

¹⁰ *Id.* at 14:9-17.

¹¹ *Id.* at 14:17-19.

programs implemented pursuant to PURA¹² § 39.905 and 16 TAC § 25.181 through its energy efficiency cost recovery factor (EECRF). In Docket Nos. 38213 and 39363, the Commission issued preliminary orders concluding that neither PURA nor its energy efficiency rule authorized the lost revenue adjustment mechanism (LRAM) requested by CenterPoint in those EECRF dockets as a matter of law.¹³ As Mr. Abbott points out, the Commission relied upon the precedent established in Docket No. 38213 to exclude a LRAM proposal from the scope of CenterPoint's last base rate case, Docket No. 38339.¹⁴ Almost ten years later, Mr. Troxle's proposed EEP adjustment is a veiled attempt to resurrect the failed objective of the LRAM proposal to increase rates based upon an alleged adverse impact of energy efficiency programs on CenterPoint's revenue stream, although the similarly purposed proposal takes a different form this time around. Given the long-standing Commission precedent equally applicable in this instance, the Commission should decline to approve the proposed EEP adjustment.

VIII. Revenue Distribution and Rate Design

A. Customer and Metering Charges on Per Meter Basis vs. Per Customer Basis¹⁵

CenterPoint witness Mr. Troxle proposes to assess the Customer Charge and Metering Charge on a per-meter basis for each rate class except Lighting Services, contending this assessment will provide “an accurate representation of billed customers”, with each meter representing one Electric Service Identifier (ESI ID)¹⁶ account.¹⁷ The Customer Charge and Metering Charge are monthly flat base rates, expressed in dollar amounts, that do not vary with

¹² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (West 2016).

¹³ *Application of CenterPoint Energy Houston Electric, LLC for Approval of an Adjustment to its Energy Efficiency Cost Recovery Factor*, Docket No. 38213, Supplemental Preliminary Order at 2-6 (June 23, 2010); *Application of CenterPoint Energy Houston Electric, LLC for Approval of an Adjustment to its Energy Efficiency Cost Recovery Factor*, Docket No. 39363, Preliminary Order at 3 (June 6, 2011). ARM opposed the inclusion of lost revenues in the calculation of CenterPoint's EECRF in Docket No. 38213. *See* Docket No. 38213, Joint Brief of Reliant Energy Retail Services LLC, TXU Energy Retail Company LLC, and Alliance for Retail Markets in Response to Order Requesting Brief on Threshold Legal/Policy Issues (May 21, 2010).

¹⁴ *Application of CenterPoint Electric Delivery Co. to Change Rates*, Docket No. 38339, Preliminary Order at 10 (July 30, 2010).

¹⁵ Note: ARM has modified this subheading in the briefing outline to properly include Metering Charges.

¹⁶ The Commission's electric substantive rules define an “electric service identifier” as “[t]he basic identifier assigned to each point of delivery used in the registration system and settlement system managed by the Electric Reliability Council of Texas (ERCOT) or another independent organization.” 16 TAC § 25.5(40).

¹⁷ CenterPoint Ex. 30 at 28:19-24; Tr. at 972:23-973:2 (Troxle Cross) (June 27, 2019).

the customer's consumption.¹⁸ CenterPoint has assessed these two charges to its Residential, Secondary, Primary, and Transmission customers on a per-retail customer basis since retail competition began in 2002.¹⁹

In his rebuttal testimony, Mr. Troxle explained that the proposed per-meter assessment for the Customer Charge and Metering Charge will recover the costs associated with the acquisition, operation, and maintenance of *each meter* on a retail customer's premise, clarifying that additional charges will apply to a single retail customer served by multiple meters under the proposal.²⁰ He stated his proposed per-meter assessment would not qualify as a "fundamental" change to the manner in which TDUs have traditionally assessed Customer Charges (and by extension, Metering Charges) because 99.976 percent of CenterPoint's retail customers are currently served by single meter.²¹ Stated another way, 71 Transmission Service customers, 59 Primary Service customers, 452 Secondary > 10kVa Service customers, and 6 Secondary ≤ 10kVa customers—or approximately 600 total customers—are currently served by multiple meters assigned to a single ESI ID, although the actual number of additional meters serving those customers does not appear in the record.²² Assuming each of these customers is served by a minimum of one additional meter, however, the proposed per-meter assessment would at least double the Customer Charges and Meter Charges appearing on their monthly bills.²³

These statistics are telling. After 17 years of assessing the two charges on a per-retail customer basis, CenterPoint now seeks to reverse the assessment to address an inequity purportedly caused by a handful of customers with multiple meters today. In view of those miniscule customer counts, it does not appear any noteworthy customer gaming has occurred during the significant period of time during which CenterPoint has assessed its Customer Charge

¹⁸ *Id.* at 28:19-20; Tr. at 975:1-7 (Troxle Cross) (June 27, 2019).

¹⁹ CenterPoint Ex. 45 at 45:20-22; Tr. at 972:14-22 (Troxle Cross) (June 27, 2019).

²⁰ *Id.* at 45:13-18, 46:2-4.

²¹ *Id.* at 46:20-22.

²² ARM Ex. 2; Tr. at 974:18-19, 988:19-989:2 (Troxle Cross) (June 27, 2019).

²³ Tr. at 974:14-21 (Troxle Cross) (June 27, 2019); *see also* ARM Ex. 3 (the Customer Charge and Meter Charge entries on the monthly 810_02 invoice remitted to a REP serving a customer with multiple meters would include a numerical value corresponding to the number of meters under CenterPoint's proposal.)

and Metering Charges on a per-retail customer basis. To the extent any alleged subsidization under the current per-retail customer assessment for the two charges is occurring, it is negligible. Moreover, the current assessment methodology has not harmed CenterPoint financially. As Mr. Troxle repeatedly stated on cross-examination, the adoption of the per-meter assessment proposal will not generate any additional revenue overall for CenterPoint or impact its revenue requirement.²⁴

What is perhaps more telling is that no other ERCOT TDU currently assesses its Customer Charge on a per-meter basis.²⁵ (On cross-examination, Mr. Troxle clarified that a per-retail customer assessment and a per-ESI ID assessment are one and the same.)²⁶ Only one of them—Texas New-Mexico Power Company (TNMP)—currently assesses a Metering Charge on a per-meter basis, and it limits the assessment to its Primary and Transmission customers. While Mr. Troxle indicated he began investigating the multiple meter/same ESI ID issue approximately four years ago and discovered through discussions with other ERCOT TDUs they have experienced the same issue, he acknowledged on cross-examination that CenterPoint is the first TDU to pursue the matter in a base rate case.²⁷ Neither Oncor Electric Delivery Company (Oncor) or TNMP requested a similar per-meter assessment for Customer Charges and Metering Charges for all rate classes (except Lighting Services) in their most recent base rate cases, and AEP Texas Inc. has not requested such relief in its pending rate case either.²⁸

On cross-examination, Mr. Troxle expressed concern that the number of customers served by multiple meters may increase and consequently result in a greater level of alleged subsidization unless the current per-retail customer assessment for its Customer Charges and

²⁴ Tr. at 973:12-14, 24-25; Tr. at 974:9-13 (Troxle Cross) (June 27, 2019).

²⁵ Tr. at 986:21-24 (Troxle Cross) (June 27, 2019). Current ERCOT TDU tariffs appear on the Commission's website at <http://www.puc.texas.gov/industry/electric/rates/TDR.aspx>. See Tr. at 986:14-19 (Troxle Cross) (June 27, 2019).

²⁶ Tr. at 987:24-988:4 (Troxle Cross) (June 27, 2019); see also ARM Ex. 1.

²⁷ Tr. at 986:10-13, 986:24-987:5, 13-14 (Troxle Cross) (June 27, 2019).

²⁸ See generally *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 46957, Application (March 17, 2017); *Application of Texas-New Mexico Power Company for Authority to Change Rates*, Docket No. 48401, Application (May 30, 2018); *Application of AEP Texas Inc. for Authority to Change Rates*, Docket No. 49494, Application (May 1, 2019).

Metering Charges is modified.²⁹ The solution to his concern, however, already exists in CenterPoint's Retail Delivery Tariff (Tariff), obviating the need to modify the assessment to a per-meter basis for the purpose of addressing a fairly insignificant legacy issue.

In § 6.1.2.2 (Construction Services Policy and Charges), Section 7 of the Tariff, CenterPoint specifies its "Metering Practices", beginning with this statement:

Delivery Service is provided to an individual Retail Customer Premises at only one Point of Delivery, with the Retail Customer's service entrance arranged so that the Company can measure the Retail Customer's service with one meter.³⁰

Mr. Troxle acknowledged that this provision provides CenterPoint with the authority to condition the installation of a requested additional meter on a retail customer's premises upon the additional meter's assignment to a new and separate ESI ID, as opposed to the existing ESI ID assigned to the initial meter at the premises.³¹

In ARM's view, this provision in the CenterPoint Tariff provides a prospective solution to the issue CenterPoint seeks to address through its per-meter assessment proposal.³² To the extent CenterPoint continues to install requested additional meters on a retail customer's premises and assign them to the same ESI ID for the premises, it only perpetuates the alleged inequity it proposes to remedy by abandoning a long-standing method used by ERCOT TDUs for assessing Customer Charges and Metering Charges. For all these reasons, the Commission should decline to adopt Mr. Troxle's per-meter assessment proposal.

²⁹ Tr. at 990:13-23 (Troxle Cross) (June 27, 2019).

³⁰ CenterPoint Ex. 30, MAT-9 at 284. This exhibit to Mr. Troxle's direct testimony is the clean version of the proposed Tariff in this proceeding. On cross-examination, Mr. Troxle verified that CenterPoint's proposed modifications to the first sentence in Section 7, as reflected in the redlined version of the proposed Tariff, are non-substantive in nature and unchallenged by any party in the docket. Tr. at 990:24-993:12 (Troxle Cross) (June 27, 2019).

³¹ Tr. at 993:13-25 (Troxle Cross) (June 27, 2019); *see also* CenterPoint Ex. 45 at 45:22-46:2.

³² To be clear, ARM does not recommend that CenterPoint now require the legacy retail customers referenced in ARM Exhibit 2 be assigned a separate ESI ID for each existing meter on their premises.

XI. Other Issues

B. Uncontested Issues

In its Statement of Position, ARM requested certain procedural relief relating to the competitive retail electric market's implementation of any new and revised rates approved in this docket.³³ Although it is unclear at this time whether any party opposes one or more elements of this requested procedural relief, ARM reiterates its position on these matters in this Initial Brief.

A retail electric provider must provide an Electricity Facts Label (EFL) to each residential or small commercial customer subject to the Commission's customer protection rules upon the customer's enrollment in a retail product, as required by 16 TAC § 25.475(c)(1)(C). Under 16 TAC § 25.475(g)(2)(A)-(D), the EFL for each retail product must include certain pricing disclosures, including average or sample price calculations³⁴ expressed as cents per kWh that reflect all "recurring charges" assessed to the customer, as that term is defined by 16 TAC § 25.475(b)(9). A TDU charge that is expected to appear on the customer's bill in every billing period meets this definition. The EFL must disclose the average or sample prices for the retail product at specific monthly consumption levels. For example, 16 TAC § 25.475(g)(2)(D)(i) requires the disclosure of average or sample price calculations at monthly consumption levels of 500, 1000, and 2,000 kWh for each residential retail product the REP offers in the TDU's service area.

Upon the effective date of any new or revised rates approved in this docket, a REP offering one or more retail products to residential and small commercial customers in the CenterPoint service area must engage in a recalculation of the average or sample prices in the EFL for each offered product to ensure that an up-to-date and accurate EFL reflecting the approved rates is provided to any new or renewing customer upon enrollment. Currently, the jurisdictional deadline by which the Commission must issue a final order in this docket is October 12, 2019.³⁵ Assuming this docket remains contested, unless the final order specifies *all*

³³ Alliance for Retail Markets' Statement of Position at 1-2 (June 12, 2018).

³⁴ The EFLs for fixed rate products and variable rate products must include average price calculations consistent with the requirements of the rule. 16 TAC § 25.475(g)(2)(A), (C). The EFLs for indexed products must include sample price calculations consistent with the requirements of the rule. 16 TAC § 25.475(g)(2)(B).

³⁵ SOAH Order No. 10 at 1 (July 2, 2019).

of the rates (*i.e.*, retail base rates, retail rider rates, and any other retail non-bypassable charges) approved by the Commission, a REP will not know with certainty what the actual approved rates are until CenterPoint Houston files the necessary compliance tariffs calculating those rates subsequent to the issuance of the final order. On cross-examination, CenterPoint witness Mr. Troxle agreed that any such compliance tariffs will be filed by CenterPoint by the deadline specified in the final order, and will be subsequently subject to Commission Staff review and an administrative approval process before the approved rates are assessed to REPs. Until the administrative approval process is complete, Mr. Troxle concurred that 100 percent certainty regarding the levels of the final rates approved in this docket will not exist.³⁶

A REP will need a reasonable notice of the approved rates in this docket to timely incorporate those new and revised recurring TDU charges in its EFL pricing disclosures. A 45-day notice period would be consistent with the notice periods codified in the Commission's rules for Distribution Cost Recovery Factor (DCRF) rates (16 TAC § 25.243(e)(6)(C)), Transmission Cost Recovery Factor (TCRF) rates (16 TAC § 25.193(b)(1)), and Energy Efficiency Cost Recovery Factor (EECRF) rates (16 TAC § 25.181(f)(9)(B)). Accordingly, ARM requests that the effective date of all rates approved in this proceeding be, at a minimum, the 45th day following the issuance date of the final order in this docket. This notice period takes into consideration the period of time in which compliance tariffs are filed, reviewed, and approved.

³⁶ Tr. at 372:14-374:10 (Troxle Cross) (June 25, 2019). In CenterPoint's last rate case—a fully contested proceeding—the Commission included the following ordering paragraphs in its final order:

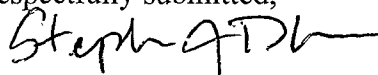
4. CenterPoint shall file tariffs consistent with this Order within 20 days of the date of this Order. No later than ten days after the date of the tariff filings, Staff shall file its comments recommending approval, modification, or rejection of the individual sheets of the tariff proposal. Responses to the Staff's recommendation shall be filed no later than 15 days after the filing of the tariff. The Commission shall by letter approve, modify, or reject each tariff sheet. The tariff sheets shall become effective 30 days after approval by Commission letter or deemed approved pursuant to paragraph 5.

5. The tariff sheets shall be deemed approved on the expiration of 20 days from the date of filing, in the absence of written notification of modification or rejection by the Commission. If any sheets are modified or rejected, CenterPoint shall file proposed revisions of those sheets in accordance with the Commission's letter within ten days of the date of that letter, and the review procedure set out above shall apply to the revised sheets. The tariff sheets shall become effective 30 days after approval.

Application of CenterPoint Electric Delivery Co. to Change Rates, Docket No. 38339, Order on Rehearing at 45-46, Ordering Paragraph Nos. 4-5 (June 23, 2011).

Furthermore, ARM requests that the effective date coincide with the first day of a CenterPoint monthly billing cycle, which Mr. Troxle acknowledged will likely fall on a date preceding the first day of the calendar month.³⁷ Aligning the effective date in this manner will result in each customer in a rate class being assessed the same approved rates during the billing month. In contrast, an effective date occurring mid-billing month would result in disparate rate treatment of customers during the billing month.³⁸ Finally, ARM requests that the effective date align with another CenterPoint rate change, if possible, to facilitate greater efficiency in the recalculation of EFL pricing disclosures.

Respectfully submitted,

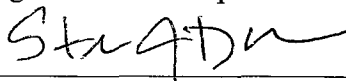


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all parties on July 9, 2019 by email per the agreement of the parties.

By: 

Stephen J. Davis

³⁷ Tr. at 375:20-376:1 (Troxle Cross) (June 25, 2019).

³⁸ Tr. at 376:21-377:22 (Troxle Cross) (June 25, 2019).