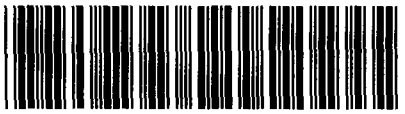

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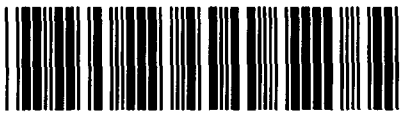

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SOAH DOCKET NO. 473-19-3864
PUC DOCKET NO. 49421

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

INITIAL BRIEF OF H-E-B, LP

H-E-B, LP ("H-E-B") hereby timely files its Initial Brief addressing Center Point Energy Houston Electric, LLC's proposals to substantially increase its rates, further increase the equity component of its capital structure, substantially increase its return on equity ("ROE"), and change its transmission and distribution rate design, all while failing to provide adequate service to customers such as H-E-B.

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I. Introduction/Summary [Preliminary Order (PO) Issues 1, 2, 3]

On April 5, 2019, CenterPoint Energy Houston Electric, LLC ("CenterPoint") filed an application ("Application") for authority to change its rates. CenterPoint seeks, among other things, to increase its transmission and distribution rates significantly, increase the equity component of its capital structure, increase its return on equity ("ROE") from 10.0% to 10.4%, change its transmission customer class allocation to correspond to the CenterPoint four coincident peak "CenterPoint 4CP" rather than ERCOT four coincident peak ("4CP"), and change its customer class allocation and rate design for demand related distribution costs from Non-Coincident Peak ("NCP") to the CenterPoint 4CP.

H-E-B, LP ("H-E-B") operates many stores, gas stations, and other facilities that provide groceries and other products to customers in CenterPoint's service area. As a commercial customer of CenterPoint, H-E-B pays CenterPoint's current retail rates. H-E-B has had ongoing concerns with CenterPoint's electrical service and has made CenterPoint aware of frequent outages over the last several years at its existing and newly developed facilities located within CenterPoint's service area. Unfortunately, H-E-B has been unsuccessful in its attempts to have CenterPoint correct the reliability issues that resulted in outages of far longer duration and far greater magnitude than the average customer outage described in the Application. To date, H-E-B continues to receive intermittent service from CenterPoint at H-E-B's multiple facilities. The lack of reliability from CenterPoint has resulted in substantial losses to perishable product causing economic losses to H-E-B in H-E-B's core business. CenterPoint's failure to provide reliable service required H-E-B to make significant capital investments at many H-E-B locations within CenterPoint's service territory.

H-E-B does not support the proposed rate increase for distribution service customers. H-E-B does not support, CenterPoint's proposal to increase the equity component of its capital structure. H-E-B does not support the proposed increase to CenterPoint's ROE. CenterPoint has not demonstrated that the ample revenues received by CenterPoint are resulting in the provision of reliable electric service. CenterPoint should not be rewarded for providing poor quality, unreliable, and sporadic service. Thus, CenterPoint's proposals for a rate increase, an increase in the equity component of its capital structure, and a higher return on equity ("ROE") should be rejected.

A. Procedural History

On April 5, 2019, CenterPoint filed an application for authority to change its rates. CenterPoint requested an increase in its annual transmission and distribution revenues by approximately $161 million, from approximately $2.1 billion to approximately $2.3 billion.[1] CenterPoint's application reflects an increase in total rate base from approximately $3.47 billion[2] in its last base-rate case to approximately $6.4 billion[3]. CenterPoint also requested a 10.4% ROE, proposed to change its debt-to-equity ratio from 55% debt and 45% equity to 50% debt and 50% equity, and requested a weighted average cost of capital of 7.39%[4]. In addition, CenterPoint requested a prudency determination for all capital investments made since January 1, 2010 and requested to update its depreciation rates and its property insurance reserve. CenterPoint also seeks to establish a rider to refund to customers for the unprotected excess deferred federal income

[1] Application, CEHE Ex. 1 at 3 (Apr. 5, 2019); Direct Testimony of Kenny M. Mercado, CEHE Ex. 6 at 3:11-12 (Apr. 5, 2019).

[2] *Application of CenterPoint Electric Delivery Company, LLC for Authority to Change Rates*, Docket No. 38339, Order on Rehearing (Jun. 23, 2011).

[3] CEHE Ex. 6 at 17:17.

[4] CEHE Ex. 1 at 2:1–2:3.

tax balance that resulted from the Tax Cuts and Jobs Act of 2017 and to update and clarify language throughout its tariffs.

CenterPoint filed its direct testimony with its Application on April 5, 2019. On June 6, 2019, intervenors filed their direct testimony. Commission Staff filed its direct testimony on June 12, 2019. CenterPoint filed its rebuttal testimony and Staff and intervenors filed their cross-rebuttal testimony on June 19, 2019. A hearing on the merits was conducted at the State Office of Administrative Hearings on June 24, 2019 through June 28, 2019.

B. Factual Background

1. Purpose of Intervention

H-E-B intervened in this proceeding to make the Commission aware of the reliability issues that H-E-B has experienced in CenterPoint's service area and to provide a more representative picture to the Commission about CenterPoint's service quality than the one presented in CenterPoint's Application. CenterPoint maintains that it has consistently provided reliable and adequate service. H-E-B disagrees. Intermittent electric service reliability has been a consistent problem for H-E-B, and CenterPoint has failed to timely, or adequately, address the frequency and duration of outages occurring at H-E-B's facilities. Records of customer communications with CenterPoint reveal that other CenterPoint customers have experienced similar reliability problems and a lack of responsiveness from CenterPoint in effectively addressing such issues.[5] H-E-B's purpose in intervening is to make sure that these critical reliability issues are not lost in the discussion of rates and that H-E-B's employees, whom we refer to as our Partners, and H-E-B's customers are not penalized a second time through higher rates for poor service.

[5] *See* CEHE's Response to HEB01-03U, H-E-B Ex. 31.

2. History of H-E-B's Reliability Issues

The Direct Testimony of Mr. Presses shows that H-E-B experienced frequent outages at its facilities located within CenterPoint's service area.[6] These outages ranged from brief interruptions lasting less than one minute to long-standing outages lasting more than 17 hours. These outages occurred at both older, existing facilities and newly developed facilities. In his testimony, Mr. Presses stated that the outages of primary concern to H-E-B were not related to severe weather events. Instead, the outages H-E-B expressed the most concern about were routine disruptions that are everyday events for many hours, and in some cases more than one outage in a day at a single location.

3. Preserving the Cold Chain

Maintaining reliable electric service to its facilities is a critical component of H-E-B's core business. H-E-B procures, produces, and sells groceries and as a result has a great deal of perishable product which must be maintained at appropriate temperatures at all times or it is no longer suitable for customer consumption. H-E-B is responsible for maintaining the cold chain for perishable product at an appropriate temperature through the use of refrigeration equipment. The term "cold chain" refers to a temperature-controlled supply chain that must remain in operation and uninterrupted to keep temperatures at appropriate levels at all times for perishable product. If electric service is interrupted, H-E-B loses the ability to control temperatures, the cold chain is disrupted, perishable product is rapidly lost, and perishable product must be discarded because it cannot be sold to H-E-B's customers. The value of the loss of electricity to H-E-B is four-fold: the cost of the loss of the perishable product in the cold chain, the cost of removing the

[6] Direct Testimony of George W. Presses, H-E-B Ex. 1 at 16-23 (Jun. 6, 2019).

lost perishable product, the inability to be available to customers during the period of the outage, and the cost to replace the lost perishable product.

It is critically important to H-E-B to protect the "cold chain" for H-E-B's perishable product. Anytime the "cold chain" is broken and perishable items are not maintained in their prescribed temperature range, the perishable product must be discarded. As shown in Mr. Presses' testimony, in 2018 alone H-E-B incurred losses of [redacted] in CenterPoint's service territory due to outages at H-E-B locations without on-site generation.

4. CenterPoint Failed to Address Its Service Quality Problems

H-E-B first made CenterPoint aware of the service quality problems at its facilities in 2015. When the issues remained unaddressed, H-E-B began to consider ways in which H-E-B could resolve the reliability issues on its own. In 2016, H-E-B made the decision to invest in the installation of on-site generation at facilities experiencing the highest rates of outages from CenterPoint. The installation of on-site generation has mitigated the impact of the outages experienced at H-E-B facilities, but the underlying problem of CenterPoint's lack of reliable service remains. H-E-B facilities without on-site generation still experience frequent outages from CenterPoint. Additionally, H-E-B asserts that customers should not have to install their own generation facilities in order to have reliable service.

II. Rate Base [PO Issues 4, 5, 10, 11, 12, 15, 16, 17, 18, 19]

A. Transmission and Distribution Capital Investment [PO Issues 4, 5, 10, 11, 12]

1. Capital Project Prudence

CenterPoint has invested approximately $1.25 billion in reliability improvement and service restoration investments and related programs.[7] The City of Houston's testimony shows

[7] Tr. at 157-158 (Pryor Cross) (Jun. 24, 2019).

that CenterPoint has not used any effective analysis to address system reliability. The City of Houston witness Mr. Norwood discusses CenterPoint's specific expenditures on the Underground Cable Assessment and Life Extension Program ("Project ABCA") and the Major Underground Rehabilitation Program ("Project CE1B") that are intended to improve distribution reliability.[8] He concludes that the "$111.5 million investment in the two projects is not justified by reliability or monetary benefits to customers."[9] Mr. Norwood further concludes that "it is questionable whether customers would even notice the reliability effects of the two underground projects." Mr. Norwood's analysis aligns with H-E-B's conclusions that CenterPoint has not efficiently or effectively invested in distribution system projects that improve system reliability for ratepayers. CenterPoint even admits that the "benefits should be returned [to customers] from investments made [by CenterPoint],"[10] although that has not been put into practice.

CenterPoint's reliability improvement projects have not benefitted H-E-B. H-E-B received no indication that the reliability programs described in CenterPoint's Application were to be used to target the reliability outage problems identified by H-E-B going back to 2015. To the extent such programs were used to address H-E-B's frequent outages, the programs were not effective because there was no discernible improvement in the quality of service.

Further, the City of Houston finds that CenterPoint's investments in reliability projects should have resulted in lower future Operation and Maintenance ("O&M") expenses.[11] That has not been the case. CenterPoint is seeking an *increase* in O&M expenses in its Application. It is not appropriate for ratepayers to bear an increased burden when CenterPoint has not demonstrated that its investments are effective in meeting reliability needs. H-E-B supports the City of

[8] Direct Testimony of Scott Norwood, COH/HCC Ex. 1 at 15:17–15:21 (Jun. 6, 2019).
[9] *Id.* at 17:19–18:3.
[10] Tr. at 1185:1–7 at (Nardendorf Cross) (Jun. 27, 2019).
[11] COH/HCC Ex. 1 at 12:13–12:22.

Houston's conclusions that CenterPoint should be required to provide justification for why its reliability investments have not produced the expected O&M cost reductions or increased reliability.

H-E-B supports the City of Houston's recommendation that CenterPoint be required to refund all costs for unnecessary and unjustified projects. The existing CenterPoint reliability programs are not resulting in increased reliability to customers such as H-E-B.

2. Capital Project Accounting/Capitalization Policy Changes

This issue is not addressed.

3. Land Costs

This issue is not addressed.

B. – H.

These issues are not addressed.

III. Rate of Return [PO Issues 4, 5, 7, 8, 9]

A. Return on Equity [PO Issue 8]

CenterPoint proposes a return on equity of 10.40%, a 4% increase from its current ROE of 10.0%.[12] H-E-B recommends a reduction in CenterPoint's return on equity because of CenterPoint's poor service quality.

CenterPoint's current ROE of 10.0% is high compared to other ERCOT transmission and distribution providers ("TDSPs") and especially so, given CenterPoint's failure to provide reliable service to its customers. PURA § 36.052 requires that a utility's rate of return be calculated based in part on whether the utility provides reliable electric service.[13] Thus, in no event should CenterPoint be granted its proposed 4% increase to a 10.4% ROE. The Commission should not

[12] Direct Testimony of Robert Hevert, CEHE Ex. 26 at 1:17–1:18 (Apr. 5, 2019).
[13] PURA § 36.052(2).

reward CenterPoint with a higher ROE for poor service quality. H-E-B and other ratepayers should not have to pay higher rates until CenterPoint has demonstrated that it can effectively use the revenue it collects to address reliability issues and provide reliable service to its customers. Because CenterPoint has not demonstrated that it is providing reliable service to its customers, it should not be rewarded with a higher ROE. Instead, CenterPoint's ROE should be reduced for providing intermittent service.

1. CenterPoint's Intermittent Service Quality

The evidence in this proceeding demonstrates the very large number of outages that have occurred and continue to occur, at H-E-B's facilities located in CenterPoint's service area. H-E-B provided records for each outage that occurred at its facilities with on-site generation since H-E-B began installing on-site generation in January of 2017. The [redacted] facilities with on-site generation experienced 521 outages from January 2017 through May 2019 for a total duration of approximately 20,000 minutes, or just over 333 hours. H-E-B's facilities experienced repeated, consistent outages. For example, H-E-B Store [redacted], [redacted], experienced 33 outages during the timeframe, with the longest outage lasting 670 minutes, more than 11 hours.

H-E-B's witness, Mr. Presses, attached Highly Sensitive Confidential Exhibit. GWP-1 to his testimony to demonstrate the outages where voltage dropped on CenterPoint's side of the meter at stores now protected with on-site generation. Exhibit GWP-1 does not include the outage records for H-E-B's stores that do not have on-site generation within CenterPoint's service area. Although H-E-B does not maintain as granular a data set for these locations, outages at these facilities have occurred frequently and continue to damage H-E-B as evidenced by the significant losses attributable to outages as described above. Even H-E-B's outage data in Exhibit GWP-1 is not reflective of the total number and duration of outages that have occurred at the locations with

on-site generation since January 2017. Due to the fact that H-E-B's on-site generation came online gradually over the last two and half years, H-E-B only provided the granular data at each site as the on-site generator came on line. For example, only H-E-B Store [redacted] contains data for the entire period because it was H-E-B's first on-site generation project in CenterPoint's service area.

2. Duration of Outages at H-E-B Facilities

The duration of H-E-B's outages range from brief interruptions that last less than one minute to sustained outages that last more than 17 hours. It is important to note that even short outages can cause significant harm. Outages of less than one minute may negatively impact H-E-B's cold chain by causing H-E-B's equipment to malfunction. For example, H-E-B has experienced instances when refrigeration equipment shuts down during a momentary interruption and will not restart when power is restored. CenterPoint's failure to correct the reliability issues identified by H-E-B has resulted in outages of far longer duration and far greater magnitude than the "average customer" outages described by CenterPoint in its Application.

CenterPoint witness Ms. Bodden asserts that CenterPoint's System Average Interruption Duration Index ("SAIDI") levels indicate that an "average customer" experienced "less than two hours of outage minutes" during the entire year.[14] While this may be true for CenterPoint's hypothetical average customer, this is not true for H-E-B, as H-E-B has experienced 45 separate outages over two-hours in duration over the last three years, just at the locations supported by on-site generation, and not including the remaining multiple locations for which H-E-B's data is not as granular because those locations are not protected by on-site generation. Stated differently, there were 45 separate instances where H-E-B experienced a longer outage in a single day than the

[14] Direct Testimony of Dale Bodden, CEHE Ex. 9 at 33:15–33:16 (Apr. 5, 2019).

outage duration experienced by an "average customer" for an entire year. These outages pose a significant threat to the preservation of H-E-B's cold chain and its perishable product.

3. H-E-B Requests to Meet with CenterPoint

H-E-B first raised these issues with CenterPoint in 2015 and requested a meeting with CenterPoint to discuss the problems that H-E-B was encountering and options to resolve the reliability issues.[15] CenterPoint's records reflect that H-E-B contacted CenterPoint on June 18, 2015 with concerns about reliability at H-E-B locations.[16] Further discussions between H-E-B and CenterPoint led to a meeting between H-E-B and CenterPoint on July 22, 2015, where H-E-B again expressed concern about the frequent, lengthy outages that H-E-B was experiencing, and sought CenterPoint's assistance in mitigating the reliability problems.

CenterPoint did not make any commitments to take any action to address the reliability concerns raised by H-E-B. After the meeting, H-E-B facilities continued to experience frequent, lengthy outages. When it became clear that CenterPoint was not going to take action to prevent H-E-B stores from experiencing further outages, H-E-B began to explore options to unilaterally address the issues, including through the use of on-site generation at its stores and facilities.

For example, the frequency and duration of outages at Store [redacted], which experienced [redacted] outages over a period of [redacted] months, led H-E-B to select Store [redacted] as the first site for installing on-site generation. H-E-B made the business decision that it was more cost-efficient for the company to spend more than $[redacted] to install on-site generation at H-E-B Store [redacted] than to continue to accrue the costs incurred by CenterPoint's frequent power outages. In order to fix the problems, H-E-B had to make significant capital investments to obtain reliable service from on-site

[15] Tr. at 1190:21–1190:24 (Sugarek Cross) (Jun. 27, 2019).
[16] Rebuttal Testimony of Julienne P. Sugarek, CEHE Ex. 33 at 9:6–9:7 (Jun. 19, 2019).

generation. H-E-B would not have undertaken this expense if not for the lack of reliable service provided by CenterPoint.

H-E-B's installation of on-site generation at H-E-B Store [redacted] between H-E-B's facilities and the CenterPoint system was so successful at resolving the issues caused by CenterPoint's frequent outages that H-E-B decided to expand the installation of on-site generation to additional stores to protect them from CenterPoint outages. H-E-B began installing on-site generation at its facilities that were determined to have the highest economic risk associated with outages. The generators come on virtually instantaneously, in a matter of seconds, whenever an outage occurs on CenterPoint's distribution system, ensuring that H-E-B is insulated from CenterPoint's reliability problems. Because of the intermittent service from CenterPoint, [redacted]

4. H-E-B's Outage Data

After the 2015 meeting with CenterPoint, H-E-B did not hear from CenterPoint regarding H-E-B's reliability concerns until Ms. Sugarek contacted Mr. Presses on January 17, 2019, only after CenterPoint learned that Mr. Presses met with the Commission to discuss H-E-B's issues.[17] CenterPoint requested data from H-E-B regarding H-E-B's outages and H-E-B provided the requested data to CenterPoint on February 26, 2019. CenterPoint asserts that after reviewing H-E-B's data and comparing it to its own data, CenterPoint identified a "mismatch" between its 2018 data and H-E-B's 2018 data.[18] Specifically, CenterPoint disagrees with the outage numbers that H-E-B provided in Mr. Presses' Direct Testimony for H-E-B locations in CenterPoint's service territory.[19] CenterPoint data showed 8,345 total outage minutes for 2018, which is 24%

[17] *Id.* at 11:11–11:13.
[18] *Id.* at 12:3–12:5.
[19] Tr. 1201:3–1201:6 (Sugarek Cross) (Jun. 27, 2019).

less than the data provided by H-E-B.[20] CenterPoint attributed the data discrepancy to H-E-B because it was "unclear . . . how that outage data was captured, quantified, and defined."[21] However, CenterPoint's data is unverified and is wrong.

H-E-B disagrees with CenterPoint's data regarding H-E-B's outages. H-E-B, not CenterPoint, is in the best position to identify when an H-E-B location is experiencing a power outage. Mr. Presses testified that H-E-B's outages are captured by H-E-B's system on the distributed generation side that records a decrease in voltage from CenterPoint at H-E-B's meters.[22] Further, H-E-B's customers and Partners experience these outages in real time and report the outages.[23] In addition, despite its responsibility for 8,345 total outage minutes in 2018 according to its own data, CenterPoint maintains that H-E-B is receiving reliable service from CenterPoint.[24] To this day, H-E-B continues to receive poor service from CenterPoint. Further, CenterPoint acknowledges that even its own data shows that many H-E-B locations have experienced outages for at least two hours or more for 48 days out of the year for 2018, alone.[25] If CenterPoint believes such service is in fact reliable service, it is no wonder that CenterPoint states with confidence that it "ranks as the most reliable investor-owned utility in the State of Texas."[26] The data CenterPoint uses to make these assertions, as H-E-B has shown, is demonstrably false.

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[20] CEHE Ex. 33 at 12:22–12:24.

[21] *Id.* at 12:10–12:11.

[22] Tr. at 417:4–417:10 (Presses Recross) (Jun. 25, 2019).

[23] Tr. at 417:10–417:12 (Presses Recross) (Jun. 25, 2019).

[24] Tr. at 1202:1–1202:4 (Sugarek Cross) (Jun. 27, 2019) ("Q. My question to you is: the outages that H-E-B is suffering at those locations, under your data, do you think that service is reliable service? A. Yes, I do.").

[25] Tr. 1218:22–1219:2 (Sugarek Cross) (Jun. 27, 2019).

[26] CEHE Ex. 33 at 5:11–5:12.

5. CenterPoint's Stated Reasons for H-E-B Outages

a. Storm Events

CenterPoint claims that its data also shows that a significant amount of H-E-B's outages were due to storm events.[27] Specifically, CenterPoint states that its data reveals that [redacted] of the outages on H-E-B premises occurred on storm days.[28]

H-E-B disagrees with CenterPoint's conclusions; while H-E-B is aware that severe weather events will impact electric service reliability, the outages that prompted the need to meet with CenterPoint were routine disruptions that were everyday events lasting for many hours, not outages related to storm events. First, CenterPoint acknowledged that the word "storm" is used in Ms. Sugarek's testimony as if it were a defined term when it in fact is not a defined term.[29] Conversely, CenterPoint admitted that the more outages it sees on its system, the more likely it is to call that event a storm event.[30] Specifically, CenterPoint admitted that "the number of outages that are caused" is what CenterPoint uses to define a storm event.[31] This ambiguous, unclear, and subjective standard undermines the reliability of CenterPoint's storm-related data. However, even under CenterPoint's data, H-E-B's outages that are not storm-related are well over 50 percent.[32] Regardless of CenterPoint uses to define a storm event, CenterPoint acknowledges that customers should be able to maintain electricity in some storms.[33]

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[27] Highly Sensitive Rebuttal Testimony and Exhibits of Julienne P. Sugarek, CEHE Ex. 33A at 10:5–10:7.

[28] CEHE Ex. 33 at 8:20–8:21.

[29] Tr. 1223:6–1223:9 (Sugarek Cross) (Jun. 27, 2019).

[30] Tr. 1223:17–1223:19 (Sugarek Cross) (Jun. 27, 2019) ("Q. My question was: if you end up getting more outages, you call that a storm? A. Yes.").

[31] Tr. 1223:11–1223:12 (Sugarek Cross) (Jun. 27, 2019).

[32] Tr. 1223:3–1223:5 (Sugarek Cross) (Jun. 27, 2019) ("Q. So the - - the outages that are not storm related are well over 50 percent? A. That's true.").

[33] Tr. 1223:20–1223:22 (Sugarek Cross) (Jun. 27, 2019).

b. H-E-B's Equipment

H-E-B sent data to CenterPoint to review in February 2019. However, CenterPoint states that shortly after CenterPoint's review of H-E-B's data, Ms. Sugarek informed H-E-B on April 12, 2019 that CenterPoint concluded that some of H-E-B's outages were caused by an issue with H-E-B's equipment and were due to issues on H-E-B's side of the meter.[34] It took CenterPoint two months to review H-E-B's data. Further, CenterPoint stated that the outages were caused by H-E-B, without knowing what was actually causing the outages.[35]

H-E-B disagrees with CenterPoint's conclusion. While H-E-B does occasionally experience outages that are due to failures of H-E-B's equipment, H-E-B's on-site generation allows H-E-B to easily detect when a problem is occurring on H-E-B's side of the meter. If an outage occurs and H-E-B is unable to take power from the H-E-B facility's on-site generation, that demonstrates that the issue lies with H-E-B's equipment. However, problems with H-E-B's facilities are outliers and were not included in the data in Mr. Presses' testimony. At facilities where H-E-B has installed on-site generation, the vast majority of outages are caused by CenterPoint' s facilities and all of the outages described in Mr. Presses testimony were caused by CenterPoint.[36] That is why H-E-B has seen such dramatic improvement in electric service reliability at its facilities that have on-site generation between CenterPoint and H-E-B's facilities. It is the reason that H-E-B has chosen to replicate that successful, albeit capital intensive, remedial action at facilities throughout CenterPoint's service area.

[34] Tr. at 1191:25–1192:4 (Sugarek Cross) (Jun. 27, 2019).
[35] Tr. at 1262:25—:9 (Sugarek Cross) (Jun. 27, 2019).
[36] Tr. 413:14–414:9 (Presses Redirect) (Jun. 25, 2019).

c. Blown and Melted Fuses

In its rebuttal testimony, CenterPoint introduced the claims that H-E-B's on-site generation "appears to be generating a substantial amount of its own outages" by causing the "blowing" or melting of fuses.[37] Although H-E-B has installed on-site generation facilities within CenterPoint's service area since 2016, CenterPoint has never informed H-E-B that its facilities cause any issues with fuses or any other equipment. H-E-B vehemently disagrees with CenterPoint's conclusion that H-E-B's on-site generation are the cause of reliability issues at H-E-B's facilities. H-E-B's issues with outages in CenterPoint's service territory began well before H-E-B's decision to install on-site generation at its facilities. When H-E-B first approached CenterPoint in 2015 about its frequent and sustained outages, H-E-B had no on-site generation. In fact, as stated in the Direct Testimony of Mr. Presses, CenterPoint's lack of attention to the issues raised by H-E-B and CenterPoint's failure to address H-E-B's problems led H-E-B to make the capital-intensive decision to begin installing on-site generation at its locations.[38] H-E-B did not install its first on-site generator until 2016. H-E-B does not experience service quality, reliability issues, voltage fluctuations, or power outages when its on-site generators are running. In fact, CenterPoint has acknowledged that H-E-B's on-site generators for H-E-B's stores in CenterPoint's service territory have insulated H-E-B from the effects of CenterPoint's continuing outages.[39] CenterPoint further admits that it is aware that there are several H-E-B locations in CenterPoint's service territory without on-site generation that suffer routine outages.[40]

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[37] CEHE Ex. 33 at 14:5–14:6.

[38] H-E-B Ex. 1 at 24:15–24:17 ("H-E-B would not have pursued on-site generation if not for the consistent, frequent outages that continued to occur at H-E-B's facilities within CenterPoint's service territory.").

[39] Tr. 1194:8–1194:15 (Sugarek Cross) (Jun. 27, 2019).

[40] Tr. at 1221:9–1221:11 (Sugarek Cross) (Jun. 27, 2019); Tr. at 1217:7–1217:11 (Jun. 27, 2019).

Furthermore, H-E-B's generators have been operating in CenterPoint's service territory since 2016 without issue. CenterPoint never communicated to H-E-B's on-site generation developer its concerns regarding blown or melted fuses.[41] CenterPoint is not even sure about what types of fuses are installed at each H-E-B facility.[42] CenterPoint also admitted that it isn't sure that blown fuses or melted fuses are the actual cause of H-E-B's outages from CenterPoint.[43] In addition, CenterPoint admitted that a fuse can fail under a number of conditions, including "through an insurgence of voltage,"[44] most commonly caused by lightning strikes.[45] Further, CenterPoint acknowledged that H-E-B has on-site generation at locations within the service territories of other utilities in ERCOT and operates them without issues related to so-called blown or melted fuses.[46]

H-E-B also proposed bringing its on-site generation developer to a May 2019 meeting with CenterPoint to address these issues. However, CenterPoint did not want H-E-B's on-site generation developer at the meeting. It is baffling why CenterPoint would not want to meet with H-E-B's on-site generation developer to discuss H-E-B's reliability issues or at the very least, discuss the alleged damage to its fuses and equipment.[47]

Further, CenterPoint admits that if there were any equipment or mechanical issues with the generators, CenterPoint is required to notify H-E-B of such issues in accordance with CenterPoint's interconnection policies and Interconnection Agreement.[48] CenterPoint, through its interconnection polices and Interconnection Agreement, governs the types of equipment that can

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[41] Tr. 1220:18–1220:24 (Sugarek Cross (Jun. 27, 2019).
[42] Tr. 1255:1–1255:8 (Sugarek Redirect) (Jun. 27, 2019).
[43] Tr. at 1262:25–1263:5 (Sugarek Recross) (Jun. 27, 2019).
[44] Tr. 1260:7–1260:8 (Sugarek Redirect) (Jun. 27, 2019).
[45] *Id.* at 1260:12.
[46] Tr. 1220:25–1221:4 (Sugarek Cross) (Jun. 27, 2019).
[47] Tr. at 1193:8–1193:17 (Sugarek Cross) (Jun. 27, 2019).
[48] Tr. 1215:11–1215:24 (Sugarek Cross) (Jun. 27, 2019).

be used by any interconnecting distributed generator and specifies exactly how such generator will be interconnected to the CenterPoint system, all in accordance with CenterPoint's own rules. It is CenterPoint's policy that all equipment must be approved by CenterPoint before any equipment or generator can be connected to CenterPoint's system. When a customer's on-site generation is to be interconnected to the CenterPoint system, the generator must be inspected and must receive a "Permission to Operate Granted" notice from CenterPoint before it can connect to CenterPoint's system. Despite CenterPoint's unsupported claim that H-E-B's on-site generation could be the cause of H-E-B's outages, CenterPoint continues to approve H-E-B's requests to interconnect the generators to CenterPoint's system. For example, an H-E-B facility was approved as recently as June 21, 2019.[49] In addition, the record reflects that CenterPoint has been signing Interconnection Agreements with H-E-B for all of H-E-B's on-generation and issuing "Permission to Operate Granted" notices to H-E-B for all of these facilities since 2016.[50]

Further, CenterPoint's Interconnection Agreement requires CenterPoint to notify a customer if there is evidence that the operation of the facilities cause "disruption or deterioration of service to other utility customers or if the operation of [f]acilities causes damages to [CenterPoint's] facilities or other facilities with which [CenterPoint] is interconnected."[51] However, no notice has ever been given to H-E-B in the three years that H-E-B's generators have been operating. If in fact CenterPoint believed that on-site generators were causing outages, CenterPoint's failure to provide notice is in violation of CenterPoint's own interconnection policies and its Interconnection Agreement. CenterPoint failed to notify H-E-B of any issues or any evidence that the operation or interconnection of H-E-B's on-site generators caused

[49] *See* Highly Sensitive Confidential Letter Granting Permission to Operate, H-E-B Ex. 33; Tr. at 1214:1–1214:3 (Sugarek Cross) (Jun. 27, 2019).

[50] Tr. at 1214:10–1214:12 (Sugarek Cross) (Jun. 27, 2019).

[51] Highly Sensitive Confidential Interconnection Agreement, H-E-B Ex. 32 at 3.

disruptions or deterioration of service to other customers or caused damage to CenterPoint facilities. In fact, CenterPoint did not provide any notice to H-E-B with respect to H-E-B's interconnection agreements that H-E-B's on-site generators caused any damage to CenterPoint facilities until Ms. Sugarek's rebuttal testimony.[52] Finally what is clear is that CenterPoint knows these outages have been reoccurring at H-E-B locations with and without on-site generation. Further, CenterPoint does not know what fuses are at the H-E-B locations. However, in the absence of any legitimate defense to the poor service H-E-B has received, CenterPoint is more than willing to blame the customer.

6. CenterPoint's Reliability Programs.

CenterPoint claims that is has utilized several major programs and initiatives to increase the reliability of the electric delivery system for H-E-B. Specifically, CenterPoint asserts that it has several programs that it utilizes to address the reliability of its distribution system, including the Infra-red Program, the Root Cause Analysis Program, the Hot Fuse Program, and the Distribution Automation Program.

However, CenterPoint never mentioned these programs to H-E-B or any other programs designed to address reliability issues to H-E-B. CenterPoint never informed H-E-B of these programs during the discussions of H-E-B's concerns about the poor quality of service H-E-B received from CenterPoint. H-E-B did not learn about these programs until the filing of the Direct Testimony of Ms. Sugarek. There is no indication that any of the CenterPoint programs, initiatives, or analysis regarding reliability were ever used to benefit H-E-B. CenterPoint never indicated to H-E-B that these initiatives were being utilized to address H-E-B's issues. Even if CenterPoint had undertaken efforts under these programs and initiatives to address H-E-B's issues, the various

[52] Tr. at 1214:24–1215:5; Tr. at 1216:23–12:17:1 (Sugarek Cross) (Jun. 27, 2019).

identified processes to resolve customer reliability issues set forth in CenterPoint's Application failed to address H-E-B's intermittent level of service, as evidenced by the continued frequency of outages experienced by H-E-B. CenterPoint either has not performed the proper analysis to identify problems with reliability, or its identified programs have failed to effectively address the underlying issues. As previously stated, H-E-B would not have made the significant capital expenditures associated with the installation of on-site generation but for CenterPoint's unreliable, poor service.

7. Service Quality & Customer Satisfaction

CenterPoint has not demonstrated that it has provided reliable service to its customers. Some intervenors have relied upon CenterPoint's SAIDI and SAIFI numbers and the number of formal complaints to the Public Utility Commission of Texas ("PUCT" or "Commission") to draw a conclusion regarding CenterPoint's quality of service.[53] However, these metrics should not be the only measure of whether CenterPoint is providing reliable service to its customers. While the SAIDI, SAIFI, and PUCT formal customer complaint percentages identified in Mr. Norwood's testimony are useful data points, the aggregate numbers do not reflect the individual experience of CenterPoint's customers and should be examined in context with other evidence regarding CenterPoint's quality of service.

Although the SAIDI and SAIFI numbers reported by CenterPoint do not demonstrate poor service quality, that has not been H-E-B's experience. H-E-B disagrees with the presumption that these are the sole metrics to be used when considering whether CenterPoint is providing reliable and adequate service to its customers. The frequency and duration of outages that H-E-B has

[53] COH/HCC Ex. 1 at 9:1-5 (June 6, 2019).

experienced are not reflected in the data provided in CenterPoint's Application or in the data described in the direct testimony of Mr. Norwood or Mr. Nalepa.

In his Direct testimony, City of Houston witness Mr. Norwood identifies the percentage of CenterPoint customers who complain to the Commission to support the conclusion that CenterPoint is providing adequate service to its customers.[54] However, the number of formal PUCT complaints does not provide a complete representation of customer complaints which were later provided in discovery. As acknowledged by CenterPoint witness Ms. Sugarek, not all customers who complain to CenterPoint file formal complaints with the Commission.[55] H-E-B Exhibit 31 shows CenterPoint's internal communication with customers that complained of on-going reliability issues. The internal communications were provided by CenterPoint in response to a discovery request.[56] Ms. Sugarek was unable to identify whether any of the customers who complained to CenterPoint had also filed formal complaints with the Commission.[57] Further, Ms. Sugarek conceded that, to her knowledge, CenterPoint has no internal policy to inform customers of their right to complain to the Commission, nor were any such instructions included in any of the customer communications provided by CenterPoint.[58]

The limited CenterPoint correspondence obtained through discovery demonstrates that the frequent outages that H-E-B has experienced as a CenterPoint customer, and the frustration in the failure of CenterPoint to effectively address reliability issues in a timely manner, are not isolated incidents of customer dissatisfaction. The records also show a lack of responsiveness from CenterPoint, customer frustration with CenterPoint's inaction, and even show that CenterPoint

[54] *Id.* at 9:7-10:2.
[55] Tr. at 1196:1-1197:4 (Sugarek Cross) (Jun. 27, 2019).
[56] H-E-B Ex. 31 at 1.
[57] Tr. at 1196:1-1197:4 (Sugarek Cross) (Jun. 27, 2019).
[58] Tr. at 1199:19-1200:1 (Sugarek Cross) (Jun. 27, 2019).

acknowledged its own failure to adequately address customer complaints.[59] Moreover, the communications included in H-E-B Exhibit 31 only represent the communication records of a very small number of individuals within Ms. Sugarek's group CenterPoint and only include communications records for the prior three years. The communications clearly do not encompass all communications of customer complaints, as CenterPoint's communications with H-E-B regarding reliability problems that occurred in the last several months are absent from the response.[60]

CenterPoint has been aware that its customers have experienced repeated, sustained, and frequent outages over long times that have impacted those customers' core businesses.[61] These customer outages resulted in damage to customer facilities and equipment, caused customers to incur significant financial loss, and led to customer reliance on back-up generation.[62] The complaints of H-E-B and the complaints included in CenterPoint's communication records shed light on the reliability issues that are not captured in the statistics regarding SAIDI and SAIFI numbers and formal complaints. What is clear is that the programs CenterPoint is using are not benefitting customers and increased payments to CenterPoint will only mean that CenterPoint's poor-quality service will be more expensive.

8. H-E-B's ROE Recommendation

CenterPoint has not demonstrated that it is providing reliable service to its customers and should not be rewarded for providing poor service. Instead, as recommended by other intervenors, CenterPoint's ROE should be reduced below its current ROE. For example, TCUC recommended

[59] H-E-B Ex. 31.
[60] *See* Tr. at 1262:20-24; *see also* H-E-B Ex. 31.
[61] *See* Sugarek Tr. 1199:5-1200:18.
[62] *See* Exhibit 1: Excerpt of CenterPoint's Response to H-E-B 01-03.; Sugarek Tr. at 1199:12-18.

an ROE of 9.00%,[63] OPUC recommended an ROE of 9.15%,[64] and TIEC recommended an ROE of 9.25%.[65] As noted by TCUC, state utility commissions have begun to trend towards setting lower ROEs for utilities and "the norm now is below ten percent."[66] An ROE below 10% would be "more in line with what electric delivery companies are [being] granted in the U.S. today."[67] H-E-B urges the Commission to continue this trend[68] and set CenterPoint's ROE at the low end of the range recommended by other intervenors given CenterPoint's failure to reliably serve its customers. An ROE at the low end of the range recommended by other intervenors would best balance ratepayer interests with a reasonable opportunity for CenterPoint to earn a reasonable return in accordance with PURA.

At the very least, the Commission should reject CenterPoint's request for a 10.4% ROE. CenterPoint witness Mr. Hevert's ROE analysis is not supported by the record evidence and is contrary to current market conditions and expectations. In addition, his inputs and selected variables for his ROE analysis are flawed, unrealistic, and yield anomalous results given today's market conditions. For example, Mr. Hevert projects that earnings will be growing at the unrealistic and unsustainable rate of 15%, in perpetuity.[69] As explained by Dr. Woolridge, that means that under Mr. Hevert's assumptions, the profit of the S&P 500 will be equal to GDP.[70] Using unrealistic and unsustainable growth rates is the norm for Mr. Hevert. TIEC Ex. 22 indicates that there are no electric utility rate cases in which Mr. Hevert's final ROE recommendation was

[63] Direct Testimony of J. Randall Woolridge, TCUC Ex. 1 at 4:6–4:7 (Jun. 6, 2019).
[64] Direct Testimony of Anjuli Winker, OPUC Ex. 3 at 4:14 (Jun. 6, 2019).
[65] Direct Testimony of Michael P. Gorman, TIEC Ex. 5 at 5:14–5:16 (Jun. 6, 2019).
[66] TCUC Ex. 1 at 50:17–50:20.
[67] Tr. at 523:25–524:4 (Woolridge Cross) (Jun. 26, 2019).
[68] Tr. at 714:25–715:4 (Hevert Cross) (Jun. 26, 2019) ("Q. It states, for electric distribution-only utilities, the average ROE authorized in the first half of 2018 was 9.18% versus 9.43% in all of 2017. Is that correct? A. It - - it does.").
[69] Tr. at 546:1–546:2 (Woolridge Cross) (Jun. 26, 2019).
[70] Tr. at 546:4–546:6 (Woolridge Cross) (Jun. 26, 2019).

adopted by any state commission.[71] In addition, Mr. Hevert's ROE recommendations have often been rejected for using growth rates that are "significantly higher,"[72] "too high,"[73] "inflated,"[74] "optimistic,"[75] "unsustainable,"[76] or "unreasonably high"[77] and "would upwardly skew the Company's [ROE] results."[78] In other instances, his recommendations were found to be "demonstrably unreasonable"[79] or "excessive."[80]

The Commission should reject Mr. Hevert's recommendations for CenterPoint's ROE as his recommendation would yield an anomalous result given the current trend in utility ROEs. Further, CenterPoint should not be rewarded by keeping or increasing its current ROE. CenterPoint's ROE should be reduced due to its failure to provide reliable service. H-E-B, its customers and Partners should not have to pay higher rates when CenterPoint has not demonstrated that it is effectively using the revenue it collects to address reliability issues and provide reliable service to its customers. As noted by CenterPoint, "we have to provide service to customers and a good quality of service to customers."[81]

B. Cost of Debt [PO Issue 8]

Although H-E-B does not recommend a specific cost of debt for CenterPoint in its testimony, H-E-B agrees with Mr. Gorman's statement that a "utility can finance with greater

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[71] *See* Entergy New Orleans Response to APC 2-14, TIEC Ex. 22.
[72] Tr. at 729:11–729:12 (Hevert Cross) (Jun. 26, 2019).
[73] Tr. at 729:2–729:5 (Hevert Cross) (Jun. 26, 2019).
[74] Tr. at 733:1–733:2 (Hevert Cross) (Jun. 26, 2019).
[75] Tr. at 731:10–731:12 (Hevert Cross) (Jun. 26, 2019).
[76] Tr. at 732:22–732:25 (Hevert Cross) (Jun. 26, 2019).
[77] Tr. at 727:5–729:7 (Hevert Cross) (Jun. 26, 2019).
[78] Tr. at 727:7 (Hevert Cross) (Jun. 26, 2019).
[79] Tr. at 727:10–727:11 (Hevert Cross) (Jun. 26, 2019).
[80] *Id.* at 731:8 (Hevert Cross) (Jun. 26, 2019); 732:21–732:22 (Hevert Cross) (Jun. 26, 2019); 734:23–734:24 (Hevert Cross) (Jun. 26, 2019).
[81] Tr. at 1138:19–11:38:20 (Pryor Cross) (Jun. 27, 2019).

amounts of financial risk or financial leverage and still maintain their bond rating because of the existence of the favorable regulatory treatment in Texas."[82]

C. Capital Structure [PO Issue 7]

CenterPoint seeks Commission approval of a capital structure of 50% debt and 50% equity, a significant deviation from its current 55% debt to 45% equity capital structure approved by the Commission in Docket No. 38339,[83] CenterPoint's last base-rate case, which is in and of itself higher than the Commission's standard of 60% debit to 40% equity. CenterPoint requests a higher amount of equity in its capital structure to return to, and maintain, a higher credit rating than its current credit rating and to hedge against regulatory and business risks.[84] CenterPoint argues that this "will finance more of CenterPoint []'s capital investment with equity and improve metrics,"[85] and benefit customers.

The Commission should reject CenterPoint's proposal because CenterPoint has not demonstrated an increase in CenterPoint's credit rating is warranted, CenterPoint has little business and regulatory risk, and CenterPoint's proposal will result in increased costs to ratepayers without a corresponding benefit or increase in the reliability of service provided by CenterPoint.

1. CenterPoint's Ratepayers Should Not Bear the Burden of CenterPoint's Credit Downgrade.

CenterPoint is requesting a higher amount of equity in its capital structure (and a higher ROE) based in part on CenterPoint's hope to return to, and maintain, a higher credit rating than its current credit rating.[86] CenterPoint's credit rating was recently downgraded in February 2019

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[82] Tr. at 562:22–563:1 (Gorman Cross) (Jun. 26, 2019).

[83] *Application of CenterPoint Electric Delivery Company, LLC, for Authority to Change Rates*, Docket No. 38339, Order on Rehearing at 21, Finding of Fact No. 67 (Jun. 23, 2011).

[84] Direct Testimony of Robert B. McRae, CEHE Ex. 27 at 14:6–14:20 (Apr. 5, 2019).

[85] *Id.* at 36:13–36:14.

[86] *Id.* at 14:12–14:15.

because of "the risks associated" with CenterPoint's parent company, CenterPoint Energy Inc.'s, acquisition of Vectren, and not related to the risks associated with CenterPoint as CenterPoint claims.[87] In fact, CenterPoint's credit rating downgrade "had nothing to do with . . . . [CenterPoint]."[88]

The Commission should reject CenterPoint's proposal to increase its credit rating by changing its capital structure to 50% debt and 50% equity. CenterPoint's ratepayers, including H-E-B, H-E-B's customers and Partners, should not bear the burden of CenterPoint's credit downgrade. CenterPoint has not demonstrated that ratepayers will benefit by increased reliability with an increase in CenterPoint's credit rating. Further, CenterPoint has not attempted to quantify the costs and benefits to ratepayers of a higher credit rating compared to a lower rating.[89]

If CenterPoint's request to change its capital structure is approved, ratepayers will see an increase in costs without a corresponding increase in reliability or quality of service. Because an increase in CenterPoint's credit rating due to a change in capital structure will not affect its ability to provide reliable service, the Commission should not permit CenterPoint to use its customers to achieve a higher credit rating when the reasons for its credit rating are unrelated to CenterPoint's business. CenterPoint has not demonstrated that a change in its credit rating would improve service to, or benefit, customers. CenterPoint is currently able to raise capital based on its Commission-approved capital structure of capital structure of 55% debt to 45% equity.[90] CenterPoint's current credit rating is sufficient. Further, as noted by Commission Staff "it is not the role of regulation to serve as a guarantor of a particular utility's creditworthiness."[91] Instead, "it is the

[87] TCUC Ex. 1 at 16 Fn. 11; 21:10–21:12.

[88] *Id.* at 21:10–21:12.

[89] Direct Testimony of Charles S. Griffey, TIEC Ex. 4 at 9:18–9:19 (Jun. 6, 2019).

[90] TCUC Ex. 1 at 21:1–21:2; *See also* TIEC Ex. 5 at 29:5–29:6 ("[CenterPoint]'s approved regulatory capital structure has supported its credit rating and financial integrity for many years.").

[91] Direct Testimony of Jorge Ordonez, Staff Ex. 3A at 33:18–33:19 (Jun. 12, 2019).

Commission's function to set just and reasonable rates based on PURA and the Commission's rules, and that it is the responsibility of [CenterPoint's] management to conduct operations in a manner that maintains its investment-grade rating and enhances overall creditworthiness."[92] H-E-B agrees with Commission Staff that it is CenterPoint's obligation—not the Commission's—to manage CenterPoint's operations and finances economically and efficiently to maintain its creditworthiness. Accordingly, the Commission should reject CenterPoint's proposal and instead adopt the Commission's preferred, standard 60% debt to 40% equity capital structure.

2. CenterPoint's Exposure to Business and Regulatory Risk is Minimal.

CenterPoint also seeks a change in its capital structure because it is "exposed to business and regulatory risks."[93] However, CenterPoint's concerns related to its business and regulatory risks are overstated and misplaced. CenterPoint has "extraordinarily low business risk."[94] CenterPoint, as a regulated transmission and distribution utility, faces less risk than that faced by vertically integrated utilities that own generation. For example, several intervenors note that CenterPoint faces low business and operational risk as a regulated transmission and distribution utility in Texas.[95] Texas transmission and distribution utilities have no commodity risk, resulting in low operating risks.[96]

In addition, the Commission's regulatory oversight and rate-setting power create a low-risk environment for CenterPoint. PURA § 31.001(b) states that "[e]lectric utilities are by

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[92] *Id.* at 33:15–33:17.

[93] CEHE Ex. 27 at 14:10–14:11 (Apr. 5, 2019).

[94] Tr. 565:21–565:24 (Gorman Cross) (Jun. 26, 2019).

[95] *See* OPUC Ex. 3 at 40:6–40:8 ("My [] recommendation includes my consideration of . . . CenterPoint[]'s low business and operating risk as a T&D utility in Texas."); *See also* TCUC Ex. 1 at 49:26–49:27 ("[CenterPoint]'s investment risk . . . . is a little below the averages of the Electric and Hevert Proxy Groups."); Tr. at 561:21–561:23 (Gorman Cross) (Jun. 26, 2019); Tr. at 679:1–679:10 (Ordonez Cross) (Jun. 26, 2019).

[96] Tr. at 561:21–561:23 (Gorman Cross) (Jun. 26, 2019); Tr. at 679:1–679:10 (Ordonez Cross) (Jun. 26, 2019).

definition monopolies in many of the services provided and areas they serve."[97] In Texas, transmission and distribution utilities are monopolies that operate with a set customer base in their established service territory. As a monopoly, CenterPoint is subject to regulatory oversight and the utility's earnings, revenue requirement, and its rates are set by the Commission and the ratemaking process. Transmission and distribution utilities can charge rates at levels that will allow recovery of just and reasonable costs and a reasonable return. Indeed, under PURA § 36.051, the Commission must set a utility's overall revenues, and by extension, its rates, at a level 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.[98] CenterPoint will always be insulated from its perceived business and regulatory risks because of the Commission's rate-setting power and PURA's mandate that the Commission set CenterPoint's revenues and rates at a level that will permit CenterPoint to earn a reasonable return on the its invested capital used and useful in providing service to the public in excess of the CenterPoint's reasonable and necessary operating expenses.[99]

In addition, CenterPoint's ability to utilize regulatory cost-recovery mechanisms, like the Transmission Cost Recovery Factor, Distribution Cost Recovery Factor, and interim Transmission Cost of Service , reduce regulatory lag and allow CenterPoint to adjust its charges to customers to "fully recover its cost of service in a stable, predictable manner."[100] Thus, the implementation of these regulatory cost-recovery mechanisms reduces the investment risk to CenterPoint and its investors, and instead shifts the cost recovery risk from investors to ratepayers.[101]

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[97] PURA § 31.001(b).
[98] *Id.* at § 36.051.
[99] *See Id.*
[100] Tr. 565:20–565:21 (Gorman Cross) (Jun. 26, 2019).
[101] Tr. 616:13–616:16 (Gorman Cross) (Jun. 26, 2019).

Accordingly, the Commission should adopt a 60% debt to 40% equity capital structure consistent with the capital structures approved by the Commission for other, similarly situated transmission only and transmission and distribution utilities in Texas.[102]

3. CenterPoint's Proposal Will Result in Higher Rates Charged to Ratepayers.

The Commission should also reject CenterPoint's proposal to change its capital structure to 50% debt and 50% equity because this change to CenterPoint's capital structure would significantly and unnecessarily increase costs to customers.[103] As noted by TCUC:

> [T]here is a direct correlation between the amount of equity in the capital structure and the revenue requirements that customers are called on to bear. . . . Not only does equity command a higher cost rate, it also adds more to the income tax burden that ratepayers are required to pay through rates. As the equity ratio increases, the utility's revenue requirements increase, and the rates paid by customers increase.[104]

Therefore, the Commission should reject CenterPoint's proposal because a capital structure with a higher equity percentage would impose a burden on ratepayers. CenterPoint claims that a change in its capital structure would benefit ratepayers; however, intervenor testimony shows that CenterPoint's proposal would significantly increase costs to customers. As noted by TIEC, even if the Commission approves CenterPoint's request for a capital structure change, ratepayers will not see a reduction in costs but will instead see CenterPoint's revenue requirement rise by approximately $39.2 million.[105] Thus, CenterPoint's proposal would artificially increase the company's revenue requirement and the rates charged to ratepayers without any corresponding

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[102] *See* Docket No. 33310, *Application of AEP Texas North Company for Authority to Change Rates*, Order (May 29, 2007); Docket No. 33734, *Application of Electric Transmission Texas, LLC for a Certificate of Convenience and Necessity, for Regulatory Approvals, and Initial Rates*, Order on Rehearing (Dec. 21, 2007); Docket No. 33309, *Application of AEP Texas Central Company for Authority to Change Rates*, Order on Rehearing (Mar. 4, 2008); Docket No. 43950, *Application of Cross Texas Transmission, LLC for Authority to Change Rates and Tariffs*, Order (May 1, 2015); Docket No. 44746, *Application of Wind Energy Transmission Texas, LLC for Authority to Change Rates and Tariffs*, Order (Sept. 25, 2015).

[103] OPUC Ex. 3 at 43:16–43:19; TCUC Ex. 1 at 19:9–19:21; TIEC Ex. 5 at 6:1–6:3.

[104] TCUC Ex. 1 at 19:11–19:18.

[105] TIEC Ex. 5 at 31:5–31:6.

reliability benefit to ratepayers. The Commission should reject CenterPoint's proposal and adopt the 60% debt to 40% equity capital structure proposed by TCUC, TIEC, and Commission Staff because CenterPoint is not allocating its ample resources to provide reliable service to its customers. CenterPoint has not demonstrated that its proposed increase in capital is warranted or will increase reliable service to its customers. As noted by TIEC, "it may very well be in customers' interest for [CenterPoint] to maintain higher debt and the risk of a slight increase in interest rates to avoid the costs of additional equity."[106]

D. Overall Rate of Return [PO Issue 8]

E. Financial Integrity [PO Issue 9]

The Commission has in the past demonstrated its commitment to protecting customers from having to subsidize the poor financial decisions of a parent company by establishing and maintaining ring-fencing requirements for a utility and its parent company and affiliates.[107] The actions taken by a company at the parent level can and do have financial impacts on its affiliates. As previously discussed, CenterPoint's credit downgrade was based on its parent's acquisition of Vectren, illustrating that CenterPoint's credit rating can be, and is affected by the financial and business risks and decisions of its parent. As noted by TIEC, "[u]tility credit ratings are often linked to the credit rating of the parent corporation and its subsidiaries unless the utility is protected

[106] TIEC Ex. 4 at 7:18–7:20.

[107] *See* Docket No. 34077, *Joint Report and Application of Oncor Electric Delivery Company and Texas Energy Future Holdings Limited Partnership Pursuant to PURA § 14.101*, Order on Rehearing (Apr. 24, 2008); Docket No. 45188, *Joint Report and Application of Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262(l)-(m), and 39.915*, Order (Mar. 24, 2016); Docket No. 47675, *Joint Report and Application of Oncor Electric Delivery Company LLC and Sempra Energy for Regulatory Approvals Pursuant to PURA §§ 14.101, 39.262, and 39.915*, Order (Mar. 8, 2018); Docket No. 48929, *Joint Report and Application of Oncor Electric Delivery Company LLC, Sharyland Distribution & Transmission Services, L.L.C., Sharyland Utilities, L.P., and Sempra Energy for Regulatory Approvals Under PURA §§ 14.101, 37.154, 39.262, and 39.915*, Order (May 9, 2019).

by a strong ring-fence—i.e., restrictions that insulate the utility financially or provide independent governance." In addition, Commission Staff notes that:

> [T]he transactions, business, operations, and leveraging activities of a parent company and its subsidiaries can have wide-ranging effects, not only on the credit profile and financial exposure of the parent, but on regulated utility affiliates as well. This, in turn, can affect certain of the regulated utility's rate-related elements such as capital structure and cost of capital (both equity costs and debt costs). If these circumstances lead to a higher cost of providing service for the regulated utility, it is possible—or likely—that the utility in its next rate proceeding will request that ratepayers bear the higher costs.[108]

As a result, it is imperative that the Commission impose the financial, business, and corporate governance restrictions that accompany ring-fencing on CenterPoint to protect CenterPoint, and ultimately, CenterPoint's ratepayers, from these impactful, unilateral actions taken by its corporate parent. Just as the Commission has adopted and imposed ring-fencing requirements for a utility and its parent and affiliates in prior decisions, the Commission should once again do so in this proceeding to protect CenterPoint's ratepayers from decisions made at the parent company level that negatively impact CenterPoint. Ring-fencing CenterPoint would insulate CenterPoint from its parent's or its affiliates' financial turmoil and would protect CenterPoint's ability to provide reliable service at just and reasonable rates in accordance with its regulatory purpose. H-E-B agrees with Commission's Staff's conclusion that "a basic regulatory function is the maintenance of a utility's financial ability to deliver reliable service at reasonable

[108] Direct Testimony of Darryl Tietjen, Staff Ex. 1A at 11:39–12:6 (Jun. 12, 2019).

rates, and ring-fencing provisions are a tool that the Commission can use to carry out this most fundamental public interest goal."[109]

Furthermore, H-E-B agrees with Commission Staff's recommendation that the Commission implement the financial protections discussed in Commission Staff's testimony along with requiring CenterPoint to commit to maintaining its existing policies to the extent they comply with Commission Staff's proposed recommendations.[110] H-E-B also agrees with TIEC that requiring CenterPoint to adopt financial protections is a superior solution for CenterPoint to hedge against its perceived financial and business risks rather than seeking to increase the equity percentage of its capital structure.[111] Accordingly, the Commission should establish and maintain ring-fencing requirements for CenterPoint in this proceeding to adequately protect ratepayers.

IV. Operating and Maintenance Expenses [PO Issues 4, 5, 21, 22, 25, 26, 28, 29, 33, 35, 36, 38, 39, 54, 55]

A. Transmission and Distribution O&M Expenses [PO Issue 21]

This issue is not addressed.

B. Labor Expenses

1. Incentive Compensation

The City of Houston addresses how CenterPoint's short-term incentive ("STI") and long-term incentive ("LTI") programs are not tied to the level of reliability of service CenterPoint customers receive.[112] The City of Houston concludes that the STIs and LTIs should not be recoverable from ratepayers because they are based on financial performance measures, which

[109] Staff Ex. 1A at 7:7–7:10.
[110] *See* Staff Ex. 1A at 14:3–15:33.
[111] TIEC Ex. 4 at 12:17–12:19.
[112] *See generally* Direct Testimony of Mark Garrett, COH/HCC Ex. 2 at 7:16-42:5 (Jun. 6,2019).

directly benefit shareholders rather than ratepayers.[113] Instead, the City of Houston suggests that operational performance incentives would directly benefit ratepayers and would create a positive correlation between the reliability received by customers and the level of compensation received by CenterPoint employees.[114] H-E-B supports the City of Houston's recommendation to disallow recovery of CenterPoint's STI and LTI expenses on the basis that the incentives are not tied to reliability or customer satisfaction.

2. Executive Employee Related Expenses

This issue is not addressed.

3. Payroll Adjustments

This issue is not addressed.

4. Pension and Other Postemployment Benefits (OPEB) Expense

This issue is not addressed.

5. Other Benefits

This issue is not addressed.

C. – L.

These issues are not addressed.

V. Wholesale Transmission Cost of Service [PO Issue 4, 5, 6, 37]

This issue is not addressed.

VI. Billing Determinants [PO Issue 4, 5, 45]

This issue is not addressed.

VII. Functionalization and Cost Allocation [PO Issues 4, 5, 43, 44, 46]

A. Functionalization

[113] *Id.*
[114] *Id.* at 24:10-24:18.

This issue is not addressed.

B. Class Allocation

1. Class Allocation of Transmission and Distribution Costs

H-E-B favors allocating transmission and distribution costs using the Non-Coincident Peak ("NCP") methodology rather than a Four Coincident Peak ("4CP") methodology because using the NCP more fairly allocates costs among customer classes and better aligns with the market principles of ERCOT's energy-only market.[115] For the same reasons, H-E-B asserts that using an NCP rate design to apportion system-wide costs to CenterPoint, as well as apportioning billing determinant costs to customers, is the most equitable manner for transmission system users to pay for transmission system costs and for distribution system users to pay for distribution system costs.

H-E-B disagrees with CenterPoint's proposal to allocate transmission and distribution costs using a 4CP allocation methodology. H-E-B also disagrees with CenterPoint's customer class allocation and rate design for demand related distribution costs from Non-Coincident Peak ("NCP") to the CenterPoint 4CP. Further, H-E-B disagrees with Commission Staff's recommendation regarding transmission system costs. Commission Staff provides much evidence in support of the need to align rate making principles with cost-causation.[116] H-E-B agrees with this philosophy but does not agree with Commission Staff's assessment that using an ERCOT 4CP rate design and cost allocation methodology for transmission system costs accomplishes the goal of aligning ratepayer payments with cost causation for transmission system costs. Fundamentally, H-E-B believes that all users of the transmission and distribution systems that make up the ERCOT electric grid should pay their fair share of system costs.

a. 4CP Rate Design versus NCP Rate Design

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[115] H-E-B Ex. 1 at 19.
[116] Staff Ex. 2A at 22-24; Staff Ex. 7B at 35-36.

i. Transmission System Costs

Commission Staff asserts that peak demands on the transmission system are the primary drivers of the size, and therefore cost, of the transmission system.[117] Consequently, Staff argues, load reductions during the coincident peaks reduce the incurrence of transmission system costs for the whole system.[118] This argument suggests that a reduction in ERCOT 4CP load directly correlates to a reduction in system-wide transmission system costs. This argument is flawed because it fails to recognize that transmission system costs are incurred through various means other than coincident peak demand.[119] For example, CenterPoint's application denotes that much of its costs were incurred due to load growth within its service area.[120] CenterPoint also seeks recovery for its costs spent on vegetation management, cybersecurity investments,, labor expenses, and various other costs that were not entirely incurred within the coincident peak timeframe.[121]

The transmission system costs of each individual Transmission Service Provider ("TSP") are incorporated into the ERCOT TCOS, which represents the cost of the entire ERCOT transmission system.[122] These total costs are then apportioned to companies such as CenterPoint that serve retail customers pursuant to the Commission's annual Cost of Service Matrix. As noted by Mr. Troxle, the total ERCOT TCOS is "essentially fixed" and "the total amount must be collected."[123] A reduction in ERCOT 4CP demand does not result in a system-wide reduction of the total ERCOT TCOS that will be apportioned among TSPs. Thus, system-wide costs are not "avoided" when customers strategically reduce their load during ERCOT 4CP intervals to avoid paying transmission costs.

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[117] Staff Ex. 7B at 34.
[118] *Id.*
[119] Tr. at 902:9-903:23 (Abbott Cross) (Jun. 26, 2019).
[120] CEHE Ex. 6 at 50-51.
[121] *Id.* at 56.
[122] Tr. at 1005:17-1006:5 (Troxle Cross) (Jun. 27, 2019).
[123] *Id.*

CenterPoint's Application recommends use of the "CenterPoint" 4CP methodology to apportion system-wide costs among TSPs and for use as customer billing determinants. This methodology is problematic and is not in alignment with cost-causation principles. When the Commission approved the use of the 4CP methodology in adopting 16 Texas Administrative Code ("TAC") § 25.192, the Commission acknowledged concerns that use of a 4CP billing determinant would lead to cost shifting and intraclass subsidies.[124] "Gaming" the system refers to customers that reduce load during the 4CP intervals to avoid paying the costs associated with use of the transmission system.[125] This is also referred to as the "free-rider problem."[126] The result is that some customers do not pay their fair share for using the transmission system. Although H-E-B could economically benefit from the use of a 4CP billing determinant, H-E-B prefers the NCP because any 4CP mechanism incentivizes gaming of the system and disproportionately benefits the type of businesses that are able to drastically reduce their load on certain days of the year. Because the NCP represents the highest demand of an individual customer regardless of when the peak demand occurs, the NCP is more difficult to "game" through strategic avoidance.[127]

Commission Staff dismisses concerns of "gaming" of the 4CP and states that no cost-shifting occurs because the total costs for CenterPoint customers are reduced when customers reduce their load to avoid the ERCOT 4CP.[128] However, CenterPoint witness Mr. Troxle clearly articulates that this line of reasoning is only "one side of the equation."[129] When customers within

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[124] *Generic Issues Associated with Applications for Approval of Unbundles Costs of Service Rate Pursuant to PURA § 30.201 and Public Utility Commission Substantive Rule § 25.*344, Docket No. 22344, Order No. 40: Interim Order Establishing Generic Customer Classification and Rate Design at 1 (Nov. 22, 2000).

[125] Tr. at 1000:2-16 (Troxle Cross) (Jun. 27, 2019)..

[126] *Id.*

[127] *See* CEHE Ex. 31 at 7.

[128] Tr. at 925:13-19 (Abbot Cross) (Jun. 26, 2019). (...because the 4CP rate design perfectly aligns with cost causations, the costs that customers avoid by reducing their 4CP load are avoided for the Company and they're avoided for the system. So there is no shifting of costs when it comes to transmission."

[129] Tr. at 1010:9-1011:2 (Troxle Cross) (Jun. 27, 2019).

CenterPoint's service area avoid the ERCOT 4CP, costs are reduced for CenterPoint, but are apportioned to customers of other distribution service providers.[130] Thus, costs are *shifted* between ratepayers rather than *avoided* on the system.

Commission Staff further asserts that the ERCOT 4CP rate design aligns with cost-causation principles because 16 TAC § 25.192 "mandates how cost causation occurs" among distribution service providers.[131] H-E-B disagrees and finds that cost-causation analysis should focus on the actual accrual of costs to operate the transmission system, not the Commission's definition for how costs are apportioned among distribution service providers. Commission Staff's reasoning leads to a circular, conclusory argument in which any rate design that the Commission approves will be a "cost-causation" methodology.[132] It ironically leads to the type of cross-subsidization that Commission Staff opposes.[133]

H-E-B supports the use of the NCP rate design because it reduces the incentive to "game the system" and shift costs to other ratepayers. While the 4CP methodology is currently proscribed in 16 TAC § 25.192, H-E-B finds it to be prudent to advocate for a fairer rate design that charges all customers for using the system. An NCP rate design would benefit H-E-B's customers and Partners, as well as support for the long-term goal of aligning rate design with the ERCOT energy-only market design.

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[130] *Id.*

[131] Tr. at 924:3-25 (Abbott Cross) (June 26, 2019).("Substantive Rule 25.192 mandates how cost causation occurs in this situation. It says wholesale transmission charges are charged to distribution service providers based upon their 4CP – their ERCOT 4CP load. So this is the most clear-cut case of cost causation I think there is. The rules say how those costs are incurred.").

[132] Tr. at 930:24-931:5 (Abbott Cross) (Jun. 26, 2019). ("[I]f the Commission modified Substantive Rule 25.192 to establish a different rate design methodology for how wholesale transmission charges are charged to distribution service providers like CenterPoint, then I think that modified – whatever modified rate design they approve would be what causes the costs to be incurred by.)

[133] *See* Staff Ex. 2A at 22-24; *See also* Staff Ex. 7B at 35-36.

ii. Distribution System Costs

NCP is the appropriate rate design for distribution costs. As described in the above section, the 4CP incentivizes gaming and results in cost-shifting among customer classes. Use of an NCP methodology for distribution charges is consistent with the methodology approved by the Commission in previous CenterPoint rate cases and in rate cases of other Transmission and Distribution Utilities ("TDU"). CenterPoint has not demonstrated that a change in the methodology is necessary or beneficial to customers. Therefore, CenterPoint's proposal to use a 4CP rate design should be rejected.

b. 4CP Class Allocation versus NCP Class Allocation

H-E-B recommends that the Commission approve an NCP class allocation methodology for both transmission and distribution related costs. H-E-B contends that an NCP customer class allocation is the preferred allocation methodology because it most fairly attributes transmission costs to ratepayers that use the transmission system, as described in detail in the above sections. Using an NCP class allocation for distribution costs is consistent with Commission precedent for CenterPoint and other TDUs. Regarding transmission related costs, 16 TAC § 25.192 dictates the use of the 4CP to set the transmission rate that all TSPs in ERCOT must charge and all Distribution Service Providers ("DSP") in ERCOT must pay for wholesale transmission service, but it does not mandate how those costs are to be allocated among a DSP's customer classes.[134] Thus, the Commission has the authority to approve an NCP customer class allocation for transmission and distribution related costs in this proceeding.[135]

[134] CEHE Ex. 31 at 6-7.
[135] Tr. at 999:1-9 (Troxle Cross) (Jun. 27, 3019).

c. CenterPoint 4CP versus ERCOT 4CP Class Allocation

CenterPoint proposes to allocate costs among customer classes using the coincident peaks of the CenterPoint system ("CenterPoint 4CP"), rather than the ERCOT system.[136] If the Commission declines to adopt an NCP class allocation methodology, H-E-B recommends that the Commission approve the CenterPoint 4CP demand allocator. In comparison to the ERCOT 4CP, the CenterPoint 4CP reduces cost shifting among classes that occurs due to ERCOT 4CP avoidance. For transmission related costs, this is evident by the lower level of costs allocated to the residential and commercial customer classes under the CenterPoint 4CP proposal compared to the ERCOT 4CP proposal provided by TIEC witness, Mr. Jeffry Pollock.[137] Using the CenterPoint 4CP is more aligned with cost-causation principles than using the ERCOT 4CP because the CenterPoint 4CP correlates to peak demand on the CenterPoint system and its use reduces the ability for customer's to "game the system" to influence class allocation.[138] The problem of "free-riders" on the transmission system is most appropriately addressed through modification of billing determinant incentives, but adopting a demand allocator that reduces some aspects of cost-shifting is a positive step that the Commission can take to address fairness to ratepayers without the need for a rule change.

d. Moderating the Update to the 4CP Class Allocation Factor

This issue is not addressed.

2. – 4.]

These issues are not addressed.

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[136] CEHE Ex. 31 at 7.
[137] TIEC Ex 1 at 13 CEHE Ex. 31 at 8-9.
[138] CEHE Ex. 31 at 10.

VIII. Revenue Distribution and Rate Design [PO Issues 4, 5, 43, 49, 50]

These issues are not addressed.

IX. Riders [PO Issues 4, 5, 43, 51, 52]

These issues are not addressed.

X. Baselines for Cost-Recovery Factors [PO Issue 4, 5, 43, 53]

These issues are not addressed.

XI. Other Issues [including but not limited to PO Issues 13, 14, 20, 30, 31, 32, 40, 41, 42, 47, 48, 57, 58, 59]

These issues are not addressed.

XII. Conclusion

Whereas, premises considered, H-E-B hereby recommends that the Commission approve CenterPoint's Application in accordance with the modifications described herein. CenterPoint has not demonstrated that it is providing adequate and reliable service to its customers, nor has it demonstrated that it is efficiently spending the revenues it currently collects. Until such demonstration is made, ratepayers should not be required to pay increased rates and CenterPoint should not be rewarded with a higher ROE.

XIII. Exhibit

HIGHLY SENSITIVE CONFIDENTIAL PROTECTED MATERIALS FILED SEPARATELY PURSUANT TO PROTECTIVE ORDER IN SOAH DOCKET NO. 473-19-3864, PUC DOCKET NO. 49421