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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	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

INITIAL BRIEF

OF

THE GULF COAST COALITION OF CITIES

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ATTORNEYS FOR THE GULF COAST COALITION OF CITIES

JULY 9, 2019

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GULF COAST COALITION OF CITIES'
INITIAL BRIEF

COMES NOW, the Gulf Coast Coalition of Cities (GCCC) and files this Initial Brief in the above-referenced proceeding. The GCCC is a standing coalition of 40 cities that are located in CenterPoint Energy Houston Electric LLC's (CenterPoint, CEHE, or Company) service area and that are directly impacted by this application.[1] As regulatory authorities in their own right, GCCC's members with original jurisdiction over the rates and operations of CenterPoint within their communities share a concern that CenterPoint's request in this proceeding represents an overreach, and that, in fact, ratepayers within their municipal boundaries (and elsewhere) are due a rate decrease. On the pages that follow, GCCC will demonstrate that, taken together, the combined adjustments proposed by GCCC, the City of Houston (COH), and the Texas Coast Utilities Coalition (TCUC) mean that customers in the Houston area are entitled to a decrease in the wires charges they pay as part of their monthly electric bills.

I. INTRODUCTION/SUMMARY [Preliminary Order (PO) Issues 1, 2, 3]

For CenterPoint, this case should represent the opening of a new era. Prior to late 2018, CenterPoint, along with other investor-owned electric utilities in ERCOT, had discretion to initiate, or decline to initiate, a rate review under chapter 36 of the Public Utility Regulatory (PURA) as it saw fit. In their roles as regulatory authorities, Cities and the Public Utility Commission of Texas (Commission) also have the authority to initiate a rate proceeding, pursuant to PURA Chapter 36, subchapter D. However, in 2018, the Commission adopted new rule language[2] that established a

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[1] GCCC is comprised of the cities listed in Attachment 1.

[2] *See Rulemaking Proceeding to Amend 16 TAC §25.247 to Establish a Filing Schedule for Non Investor Owned Transmission Service Providers Operating Within ERCOT*, Project No. 48337, Order Adopting Amendment to §25.247 (Nov. 19, 2018).

schedule for the investor-owned electric utilities within ERCOT, requiring them to "file for a comprehensive rate review" and to undergo periodic, comprehensive rate reviews thereafter.[3] In accordance with that rule, CenterPoint filed its first such case in accordance with the rule on April 6, 2019. The fact that this case was not voluntary should provide context for CenterPoint's assertion that, notwithstanding that fact, it claims a net revenue deficiency and seeks a net increase of $161 million.

As mentioned above, GCCC, COH, and TCUC divided the issues in this case to present a single, comprehensive revenue requirement. Accordingly, GCCC witness Lane Kollen's testimony incorporates the work of COH and TCUC's witnesses. Mr. Kollen is a utility accounting expert whose testimony has been accepted and relied upon by the Commission for many years. He provided testimony on a variety of accounting-related issues, including pension and Other Post-Employment Benefits (OPEB), federal income tax issues, issues related to the recently consummated merger of CenterPoint with Vectren, the recovery of Hurricane Harvey restoration costs, and the propriety of a number of proposed regulatory assets.

An overview of that combined revenue requirement is provided in Table 1, below. The table also appears in Mr. Kollen's testimony. As it illustrates, CenterPoint's net annual revenue requirement should be reduced by $210 million, which includes a $64 million decrease to transmission revenues and a $145 million decrease to distribution revenues, excluding the effects of GCCC's recommendation to timely flow through savings due to the CenterPoint Energy, Inc. acquisition of Vectren Energy, Inc., which the Company provided, but has designated as highly sensitive protected material (HSPM). The table also identifies which municipal intervenor witnesses address each issue presented by the cities this case.

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[3] 16 TAC § 25.247(b)(1).

Table 1

CenterPoint Energy Houston Electric, LLC
Revenue Requirement
Summary of Cities Recommendations
PUCT Docket No. 49421
($ Millions)

Issue	Wholesale Transmission	Retail Dist/Met/CS	Total	Sponsor	Witness
Company's Requested Change in Base Rates - As Filed	6.829	728.500	735.329		
TCRF Revenues Rolled Into Base Rates - As Filed		(509.908)	(509.908)		
DCRF Revenues Rolled Into Base Rates - As Filed		(31.989)	(31.989)		
Company's Requested Rider UEDIT - As Filed	-	(32.359)	(32.359)		
Company's Requested Overall Change in Rates - As Filed	6.829	154.245	161.073		
Rate Base Adjustments					
Correct Company Errors Contained in Errata *	-	(0.013)	(0.013)	GCCC	Kollen
Adjust Plant in Service, Net of Accum Depreciation	(0.005)	(9.134)	(9.140)	COH	Norwood
Remove Capitalized Financial Based Short Term Incentive Compensation	(0.309)	(0.537)	(0.846)	COH	M. Garrett
Correct Prepaid Pension Asset Balance from 13 Mo Avg to Year End	(0.081)	(0.328)	(0.409)	GCCC	Kollen
Correct Prepaid Pension Asset to Remove Capitalized Portion	(1.256)	(5.083)	(6.339)	GCCC	Kollen
Correct Prepaid Pension Asset to Remove Unrealized Losses	(1.084)	(4.384)	(5.468)	GCCC	Kollen
Exclude Medicare Part D Regulatory Asset	(0.456)	(1.845)	(2.301)	GCCC	Kollen
Exclude Texas Margin Tax Regulatory Asset	(0.562)	(0.798)	(1.360)	GCCC	Kollen
Exclude Hurricane Harvey Regulatory Asset	(0.057)	(4.407)	(4.463)	GCCC	Kollen
Correct ADFIT Related to Prepaid Pension Asset	(1.287)	(5.207)	(6.494)	GCCC	Kollen
Operating Income Adjustments					
Correct Company Errors Contained in Errata Not Identified by GCCC *	(1.828)	5.053	3.225	GCCC	Kollen
Reduce Direct And Affiliate Payroll and Payroll Taxes Expense	(0.768)	(3.946)	(4.714)	COH	M. Garrett
Reduce Short-Term Incentive Compensation and Payroll Taxes Expense	(2.640)	(13.562)	(16.202)	COH	M. Garrett
Reduce Long-Term Incentive Compensation Expense	(1.833)	(9.417)	(11.250)	COH	M. Garrett
Reduce Non-Qualified Pension Expense	(0.290)	(1.492)	(1.783)	COH	M. Garrett
Remove Non-Deductible Compensation	(0.186)	(0.957)	(1.144)	COH	M. Garrett
Reduce Self Insurance Expense	(0.419)	(2.152)	(2.570)	COH	M. Garrett
Reduce O&M and A&G Expense	(7.218)	(37.082)	(44.300)	COH	Norwood
Remove Capitalized Portion of Allocated Service Company Pension Expense	(0.151)	(0.617)	(0.768)	GCCC	Kollen
Reduce Affiliate Expense for Compensation of Service Company Capital	(2.611)	(4.538)	(7.149)	GCCC	Kollen
Remove Increase CNP Service Company Costs Related to Vectren Merger Transition	(0.312)	(1.261)	(1.573)	GCCC	Kollen
Remove Amortization of Medicare Part D Regulatory Asset	(2.193)	(8.875)	(11.068)	GCCC	Kollen
Remove Texas Margin Tax Expense Increase and Amortization of Regulatory Asset	(2.867)	(4.075)	(6.942)	GCCC	Kollen
Remove Amortization of Hurricane Harvey Regulatory Asset	-	(21.469)	(21.469)	GCCC	Kollen
Reduce Depreciation Expense for Plant In Service Adjustments	(0.077)	(4.015)	(4.092)	GCCC	Kollen
Reduce Ad Valorem Expense for Plant In Service Adjustments	(0.369)	(0.669)	(1.038)	GCCC	Kollen
Reduce Depreciation Expense Related to Depreciation Rate Adjustments	(5.491)	(31.025)	(36.516)	TCUC	D. Garrett
Reduce TCOS Matrix Charges in Retail Distribution Expenses		(17.722)	(17.722)	GCCC	Kollen
Rate of Return Adjustments					
Reflect Capital Structure of 40% Equity and 60% Debt	(20.242)	(32.894)	(53.136)	TCUC	Woolridge
Reflect Return on Equity of 9.0%	(16.371)	(26.604)	(42.976)	TCUC	Woolridge
Total Adjustments to Base Rates	(70.964)	(249.055)	(320.020)		
Requested Rider UEDIT Adjustments					
Correct Amortization to Reflect Income Tax Gross-Up		(7.295)	(7.295)	GCCC	Kollen
Reflect Year 1 Instead of Year 2 Revenue Requirement		(2.918)	(2.918)	GCCC	Kollen
Reflect Woolridge Rate of Return Recommendations		1.292	1.292	TCUC	Woolridge
Include Amortization of UEDIT Related to Stranded Costs		(66.783)	(66.783)	GCCC	Kollen
Total Adjustments to Requested Rider UEDIT	-	(75.704)	(75.704)		
Recommended Hurricane Harvey Rider *					
Reflect Year 1 Revenue Requirement Using As Filed Rate of Return		25.266	25.266	GCCC	Kollen
Reflect Woolridge Rate of Return Recommendations		(0.656)	(0.656)	TCUC	Woolridge
Total Adjustments to Recommended Hurricane Harvey Rider	-	24.610	24.610		
Total Recommended Change In Base Rates	(64.136)	479.445	415.309		
TCRF Revenues Rolled Into Base Rates	-	(509.908)	(509.908)		
DCRF Revenues Rolled Into Base Rates	-	(31.989)	(31.989)		
Recommended Rate Change for Requested Rider UEDIT	-	(108.063)	(108.063)		
Recommended Rate Change for Hurricane Harvey Rider	-	24.610	24.610		
Recommended Rate Change for Merger Savings Rider	**	**	**		
Total Recommended Overall Change in Rates	(64.136)	(145.905)	(210.041)		

* Excludes Company's New Request for Hurricane Harvey Carrying Charges
** No Quantification Shown on Table Due to Company's Assertion that Its Quantification of Merger Savings is HSPM

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]

GCCC relies upon and supports the rate base (capital investment) adjustments proposed by Mr. Mark Garrett and Mr. Scott Norwood for COH, but provides no further testimony on this issue.

C. Prepaid Pension Asset

CenterPoint seeks approval for a prepaid pension asset of $176.27 million as part of its proposed rate base.[4] Lane Kollen found three errors with regard to calculation of a prepaid pension asset.[5] He separately quantified the effects of each error. Correction of all three errors reduces the prepaid pension asset to $0.[6]

First, the Company failed to calculate the prepaid pension *asset* in a manner consistent with its calculation of pension *expense*. In calculating pension expense, the Company started with actual 2018 year-ending expense and then proposed a known and measurable change based on an "actuarially determined pension expense for 2019."[7] The pension expense consists of multiple components. One component is a return on the pension fund assets (reduction to pension expense), which is based on the December 31, 2018 balance sheet amount. Another component is a return on the accumulated pension benefit obligation (increase to pension expense), which also is based on the December 31, 2018 balance sheet amount. Since the pro forma 2019 pension expense was calculated based on the December 31, 2018 balance sheet amounts, then the prepaid pension asset should be the amount at December 31, 2018, if, in fact, the prepaid pension asset is included in rate base. The components should be calculated consistently as a practical matter and should match as an equitable matter.

Instead of using rate base and expense, which match each other, in its pro forma adjustments, the Company used a 13-month average for the historic test year (December 2017

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4 Direct Testimony of Lane Kollen, GCCC Ex. 1 at 15.

5 *Id.* at 18.

6 *Id.*

7 *Id.*

through December 2018) to calculate the prepaid pension asset in conjunction with its proposed 2019 pension expense. The Company's rebuttal relies solely on its claim that the 13-month average is based on a Commission rule. It failed to address the substance of Mr. Kollen's criticism and recommendation.[8] The Company's reliance on the 13-month average pursuant to Commission rule may be appropriate if the Company had not sought to adjust the per books pension expense in the test year to reflect the 2019 forecast. However, those are not the facts in this case. Neither the Commission rule nor common sense dictate that rate base be limited to a 13-month average during the historic test year while adjusting the pension expense to reflect the 2019 forecast.

CEHE witness Sanger begins his rebuttal of Mr. Kollen by defining a prepaid pension asset as "the accumulation of past plan contributions minus the accumulation of Pension Expense *recorded over the same period.*"[9] But Mr. Kollen's point is that the Company's calculations of pension expense and prepaid pension asset are not based on the same time period. In addressing Mr. Kollen's claim that the Company should have used the December 31, 2018 value, CEHE witness Colvin ignores Mr. Sanger's definition of prepaid pension asset and Mr. Kollen's criticism of the mismatched time periods. Ms. Colvin's rebuttal acts as if Mr. Kollen simply has a preference for test year ending data rather than 13-month average data authorized by the Commission's Rate Filing Package instructions.[10] Ms. Colvin does not reconcile the Company's use of different time periods, nor does she address Mr. Kollen's criticism of the Company's inconsistency. But Mr. Sanger agreed with Mr. Kollen's assertion that the Prepaid Pension Asset as of December 31, 2018 was $170.369 million.[11] Use of the December 31, 2018 value rather than the 13-month average value would reduce transmission revenue requirement by $0.081 million and distribution revenue requirement by $0.328 million.[12]

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[8] Rebuttal Testimony of George C. Sanger, CEHE Ex. 46 at 5-13.

[9] *Id.* at 15, emphasis added.

[10] Rebuttal Testimony of Kristie L. Colvin, CEHE Ex. 35 at 50.

[11] CEHE Ex. 46 at 8.

[12] GCCC Ex. 1 at 20.

The second error made by the Company in its prepaid pension asset calculation was the failure to remove the capitalized portion of the prepaid pension asset. Mr. Kollen noted that consistency with the requirements of PURA § 36.065 and Commission Orders in Docket Nos. 33309 and 39896 compels exclusion of the capital component of the prepaid pension asset.[13] The Company concurs with Mr. Kollen's analysis on this point and agrees that this error should be corrected. Ms. Colvin stated, "If the prepaid pension asset is included in rate case, the Company accepts Mr. Kollen's recommendation to bifurcate the prepaid pension asset between O&M and capital components identified as construction work in progress ('CWIP') by Mr. Kollen."[14]

Correction of the Company's error would reduce the transmission revenue requirement by $1.256 million and reduce the distribution revenue requirement by $5.083 million.[15] The Company did not dispute the quantification of the revenue requirement adjustments.

The third error that Mr. Kollen identified regarding the Company's calculation of a prepaid pension asset relates to the adjustment for unrealized losses that are not recorded or financed by CEHE.[16] Mr. Kollen noted that CenterPoint Energy, Inc. recorded $370.442 million in unrealized losses at December 31, 2018 in Accumulated Other Comprehensive Income (AOCI).[17] As Mr. Kollen states, "However, CenterPoint Energy, Inc. then removes the deferred losses from common equity, thereby increasing common equity, and records them as a 'regulatory asset'. It is the Company's 'share' of this so-called 'regulatory asset' that it seeks to include as a prepaid pension asset in rate base."[18] This so-called regulatory asset was never authorized or approved by the Commission.

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[13] *Id.*

[14] CEHE Ex. 35 at 50.

[15] GCCC Ex. 1 at 21.

[16] *Id.*

[17] *Id.* at 22; *see also*, Kollen Attachment C at bates page 107.

[18] *Id.*

Mr. Kollen emphasized that the Company experiences no adverse effect from exclusion of the Company's adjustment related to the so-called regulatory asset. The unrealized losses recorded by the parent—the so-called regulatory asset—is "merely an accounting entry that has no economic effect."[19] That accounting entry "will reverse over time as the unrealized gains and losses are recognized in pension cost in future years through the return on the plan assets and the amortization of the unrealized gains and losses."[20]

The reflection of gains and losses over time is "an ongoing process as CenterPoint Energy, Inc. seeks to match the pension assets to the accumulated pension benefit obligation."[21] While this is an ongoing process, the Company did not request and was not authorized to include a prepaid pension asset in rate base in Docket No. 38339, its last base rate case proceeding.[22]

Company witness Sanger proclaimed that the fact that the Company has not previously requested that a prepaid pension asset be included in rate base is "irrelevant."[23] Such a proclamation does not a burden of proof meet, considering that exclusion of an alleged prepaid pension asset does not harm the Company. Presumably, the Company believes that it could have calculated a prepaid pension asset prior to 2018.[24] What changed facts and circumstances related to pension expense or to CenterPoint Energy, Inc.'s accounting entries would suggest a need for a prepaid pension asset in 2018 that did not exist in 2010? GCCC believes the Company had the burden to prove that changed facts and circumstances justify inclusion of a prepaid pension asset now, when such inclusion was not previously needed. The Company failed to meet that burden of proof.

Mr. Kollen stated, "The Company did not issue common equity or debt to finance the prepaid pension asset on CenterPoint Energy, Inc.'s accounting books, nor has it recorded an

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19 *Id.*

20 *Id.* at 22-23; *see also* Kollen Attachment C at bates pages 106-107.

21 *Id.* at 23.

22 *Id.* at 18; *see also* Kollen Attachment D at bates page 109.

23 CEHE Ex. 46 at 10-11.

24 *Id.* at 11, wherein he offers the gratuitous and irrelevant statement that "the Company is not seeking uncollected return on the Prepaid Pension Asset prior to December 31, 2018.

intercompany liability to pay CenterPoint Energy, Inc. for its unrealized losses."[25] Mr. Sanger acknowledged that "the Company is not 'charged' a return by CNP"[26] with regard to unrealized losses on the CenterPoint Energy, Inc.'s so-called regulatory asset. Mr. Sanger attempts to obfuscate the Company's lack of harm with abstraction and hypotheticals.[27] The Company does not specifically explain how it is harmed if it is not allowed to include a prepaid pension asset in rate base for a cost that CenterPoint Energy, Inc. does not incur, does not charge to CEHE, and thus, CEHE, by definition, does not incur. The Company failed to meet its burden of proof.

Correction of the Company's error by removing the adjustment to increase the prepaid pension asset for unrealized losses reduces transmission revenue requirement by $1.084 million and reduces distribution revenue requirement by $4.384 million. The Company did not contest Mr. Kollen's quantification of the impact of correcting this error in the Company's adjustment.

Correction of the three errors identified by Mr. Kollen will eliminate the entirety of the Company's alleged need for inclusion of a prepaid pension asset in rate base. The existence of a prepaid pension asset had not been asserted prior to this proceeding. It was not needed in 2011 during consideration of Docket No. 38339. It is not justified now. As noted by Mr. Kollen, the Company "pays" for unrealized losses "through its allocated share of the CenterPoint, Inc. pension cost, which includes an amortization of those unrealized losses."[28] Adding a prepaid pension asset to rate base would be duplicative and unfair to ratepayers.

D. Accumulated Deferred Federal Income Tax [PO Issues 17, 19]

1. Correct Error in Sign Related to Prepaid Pension Asset

In the discovery phase of this proceeding, GCCC witness Lane Kollen identified a mathematical error in its presentation of ADFIT related to the prepaid pension asset included in rate

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[25] GCCC Ex. 1 at 23.

[26] CEHE Ex. 46 at 9.

[27] *Id.* at 10:3 "consider the hypothetical case where Contributions always equal Pension Expense (and therefore cost recovery)."

[28] GCCC Ex. 1 at 23.

base. As Mr. Kollen notes, the Company included an approximately $37 million ADFIT asset in rate base, when it should have properly been presented as a liability.[29] The result is an overstatement of rate base by about $74 million.[30] In response to a GCCC request for information (RFI) that identified the issue, the Company conceded that it should have subtracted the ADFIT from rate base, not added it.[31] CenterPoint corrected the error in its May 20, 2019 errata filing.

The result is a $1.287 million reduction in the transmission revenue requirement and $5.207 million reduction in the distribution revenue requirement.[32] Mr. Kollen recommends that in calculating the prepaid pension asset (should one be permitted), the ADFIT liability associated with that asset should be netted; in that section of his testimony, that netting is already performed. In any event, the error in the ADFIT should be corrected and the Company concurs.

G. Regulatory Assets and Liabilities [PO Issues 18, 19, 59]

1. Unprotected Excess Deferred Income Tax (UEDIT)

See Section IX.A. of this Brief for a discussion of GCCC's position on UEDIT.

3. Medicare Part D

a. Correct Medicare Part D Regulatory Asset

In a move that is a reprise of a failed attempt in its last rate case, CenterPoint again seeks to include a regulatory asset for lost income tax savings related to the taxability of the Medicare Part D subsidy in its rate base, and amortization of this amount over three years.[33]

As the Commission discussed in its order in that prior case, "[t]he Medicare Prescription Drug Improvement and Modernization Act of 2003 expanded Medicare to include prescription drug

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29 *Id.* at 39.

30 *Id.* at 40.

31 *Id.*, citing CenterPoint's response to GCCC RFI No. 01-07(g), Kollen Attachment G at bates page 114.

32 *Id.* at 40.

33 *Id.* at 27, citing CEHE Workspapers (Redacted) Tab WP CWP-01 (Summary).

benefits for retirees equivalent to Medicare Part D benefits."[34] The Commission further concluded that:

> This Act also provides for a 28% non-taxable subsidy for an employer's cost for providing prescription drugs to its retirees and this subsidy did not diminish the tax deductibility of the subsidized prescription drug benefits paid by CenterPoint. The Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act of 2010 will eliminate the non-taxable status of the subsidy beginning January 1, 2013.[35]

In the prior case and in advance of the date at which the subsidy would become taxable, CenterPoint sought to include $9.3 million (grossed-up) in rate base for the increase in income tax expense related to the years 2004 through 2009, net of the income tax expense effect of cash receipts forecast for the years 2010 through 2012. The Commission rejected CenterPoint's request, stating "The Commission rejects the ALJs' recommendation on this point and does not allow recovery of the three-year amortization of the $9.3 million regulatory asset in the rates set in this proceeding."[36]

In this case, CenterPoint now seeks to include $33.2 million (grossed-up) in rate base and $11.0 million in amortization expense over three years.[37] The Commission should reject the Company's request in this proceeding as well. The Company's calculation of this regulatory asset is fundamentally flawed. As discussed in the Direct Testimony of Lane Kollen, the Company's request includes a retroactive component covering the years 2004 through 2012. The Commission rejected this component in Docket No. 38339 on the basis that the expiration of the subsidy had not yet occurred and would not occur until two years into the future.[38]

The Company's calculation in this proceeding also includes another component covering the years 2013 through 2018. However, this second component relies on the same methodology

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[34] *Application of CenterPoint Electric Delivery Company, LLC, for Authority to Change Rates*, Docket No. 38339, Order on Rehearing at 8 (Jun. 23, 2011).

[35] *Id.*

[36] *Id.* at 9.

[37] GCCC Ex. 1 at 27-28.

[38] Docket No. 38339, Order on Rehearing at 9.

that the Commission rejected in Docket No. 38339 and fails to comply with the methodology specified by the Commission for prospective deferral of a regulatory asset in that prior docket. More specifically, the Commission provided CenterPoint with instruction as to how to calculate a regulatory asset for this item in the future after the Medicare Part D subsidy became taxable in 2013, stating:

> It is appropriate for CenterPoint to monitor and accrue the difference between what its rates assume the Medicare Part [D] subsidy tax expense will be and what CenterPoint is required to pay as a regulatory asset to be addressed in CenterPoint's next rate case.[39]

Mr. Kollen paraphrased the Commission's instruction in his direct testimony in this proceeding, stating: "In other words, starting in January 2013, the Company was authorized to defer the increase in income tax expense due to the taxability of the Medicare Part D subsidies, which became effective on January 1, 2013."[40] However, as Mr. Kollen describes in his direct testimony, the Company never made the calculation authorized by the Commission in the prior docket. Instead, it reverted to the same methodology the Commission previously rejected, including a retroactive deferral for the years 2004 through 2012, which the Commission also previously rejected.[41]

Mr. Kollen points out the myriad ways that CenterPoint has failed to abide by the Commission's instructions in Docket No. 38339. These failures include:[42]

- CenterPoint included the years 2004 through 2012 for this item, a proposal that the Commission considered and rejected in that previous docket;
- CenterPoint did not offset the income tax expense allowed in rates in Docket No. 38339 by the changes in the temporary differences for each year of 2013 through 2018;
- The Company failed to update the Medicare Part D subsidy based on actual reports for each of those years;

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[39] *Id.* at Finding of Fact No. 159A.

[40] GCCC Ex. 1 at 29.

[41] *Id.* at 27.

[42] *Id.* at 29-30.

- CenterPoint did not reflect the offset for the actual cash subsidies received from the federal government for 2013-2018 as it did for 2004-2012; and
- CenterPoint failed to remove the portion of this amount that was capitalized to Construction Work in Progress (CWIP).

In his direct testimony, Mr. Kollen attempted to calculate what the Medicare Part D regulatory asset would have been had the Company performed its calculation correctly. However, the Company failed to provide Mr. Kollen all of the components necessary to fully calculate the amount in response to GCCC discovery. For example, it did not provide him with the actuarial calculation of the Medicare Part D subsidies or the actual Medicare Part D subsidies received in the years 2013 through 2018,[43] both of which are necessary to calculate the increase in income tax expense due to the taxability of the Medicare Part D subsidy starting in 2013.

Even so, Mr. Kollen was able to calculate a $5.572 million regulatory asset using the data that the Company *did* provide.[44] GCCC recommends that, based on the errors, inconsistencies, and failures to abide by the Docket No. 38339 Order on Rehearing present in the Company's calculation, no regulatory asset for Medicare Part D be permitted. If a regulatory asset is permitted, it should be at no more than the figure proposed by Mr. Kollen, recognizing that he was provided with insufficient data to perform a complete calculation for this item.

CenterPoint's witness, Mr. Pringle responded to Mr. Kollen's recommendations and continued to argue the Company's request.[45] First, he claimed that the Company's calculation complied with the Commission's instructions in Docket No. 38339.[46] Nothing could be further from the truth. The Commission authorized a prospective deferral starting in 2013. It did not authorize a retroactive deferral covering the years 2004 through 2012. It only authorized a prospective deferral starting in 2013.[47]

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[43] *Id.* at 27, citing CenterPoint's response to GCCC RFI No. 03-12, Kollen Attachment G at bates pages 113-114.

[44] *Id.* at 30.

[45] *See* Rebuttal Testimony of Charles W. Pringle, CEHE Ex. 36 at 5-14.

[46] *Id.* at 6.

[47] Docket No. 38339, Order on Rehearing at 9-10.

Second, for the prospective deferral, the Commission's instructions required a calculation of income tax expense with and without the taxability of the Medicare Part D subsidy compared to the amount included in taxable income in the test year in Docket No. 38339. In its simplest form, that calculation requires an annual quantification of the subsidy due less the subsidy actually received from the federal government each year from 2013 through 2018, compared to the same two amounts reflected in the 2009 test year used in Docket No. 38339. The Company failed to provide this information when requested by GCCC through discovery.[48] Mr. Pringle incorrectly describes the nature of this calculation. Mr. Pringle claims that this calculation relates to "the amount of tax expense benefit actually realized by CenterPoint Houston for the cash received while those amounts were not subject to tax for years 2004 through 2012."[49] Pringle further states, "The cash receipts for 2013 through 2018 (when the receipts are taxable) have no impact on the computation of the regulatory asset."[50] That is not correct. The calculation specified by the Commission in Docket No. 38339 requires that the Company calculate the difference in the Medicare Part D subsidy accrued less the cash receipts each year starting in 2013 be compared to the net of these two components in the calculation of taxable income in the 2009 test year in Docket No. 38339. Then the Company must quantify the difference in taxable income each year times the federal income tax rate to determine the effect on income tax expense.

Third, Company witness Mr. Pringle claims that the Commission should not apply an expense ratio to the proposed regulatory asset because it is an income tax expense amount related to the Medicare Part D subsidy.[51] This claim is suspect, since the income tax expense always follows the allocation between expense and CWIP/plant. A portion of the Medicare Part D subsidy was and continues to be allocated to expense and a portion to CWIP/plant. The tax consequences of the allocation of OPEB costs to CWIP/plant instead of to expense should not be deferred as a

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[48] GCCC Ex. 1 at 30, CenterPoint's response to GCCC RFI No. 03-12.

[49] CEHE Ex. 36 at 12.

[50] *Id.*

[51] *Id.* at 14.

regulatory asset, but rather addressed through rate base and the calculation of income tax expense related to the return of and on the plant component of rate base.

4. Texas Margin Tax

a. Texas Margin Tax Regulatory Asset Should Be Rejected

In this case, the Company proposes a significant change in its accounting and the ratemaking recovery of its Texas Margin Tax expense. GCCC, Staff, and the Office of Public Utility Counsel (OPUC) each raised questions about the propriety of this change.[52] The Company seeks to include the Texas Margin Tax regulatory asset in rate base, without offset for the Texas Margin Tax Payable liability, recover Texas Margin Tax expense in the year that the liability is accrued, and recover the regulatory asset over a three year amortization period.[53] GCCC recommends that the Commission reject all components of the Company's proposal. The Company incurs no financing cost on the regulatory asset, and the Company's request will allow it to recover an additional year of Texas Margin Tax expense over a three year period that is unnecessary and unreasonable.

As Mr. Kollen describes, CenterPoint presently recovers its margin tax expense as an amortization expense in the year that the tax is paid—essentially, CenterPoint recovers a Texas Margin Tax regulatory asset on a one-year amortization period.[54] The regulatory asset is accrued in the same year that the Texas Margin Tax Payable liability is accrued.[55] Both the regulatory asset and the liability are reversed in the following year when the tax is paid and the amortization expense is recorded.[56] In this case, the Company now requests that the regulatory asset be included in rate base even though the Company financed the regulatory asset through the liability, without carrying cost. Mr. Kollen observes that no such regulatory asset was requested by the Company or included

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[52] *See* Direct Testimony of June Dively, OPUC Ex. 1 at 12; Direct Testimony of Mark Filarowicz, Staff Ex. 4A at 29-30.

[53] GCCC Ex. 1 at 32.

[54] *Id.* at 31.

[55] *Id.*

[56] *Id.*

in rate base in CenterPoint's last rate case, Docket No. 38339.[57] In contrast, CenterPoint's current practice is to record a liability for the Texas Margin Tax Payable and an equivalent and offsetting Texas Margin Tax regulatory asset each year on a quarterly basis. The Company then amortizes the regulatory asset and reverses the Texas Margin Tax Payable in the following year when it pays the tax.[58]

This approach fully compensates the Company for its Texas Margin Tax expense. In contrast, the Company's proposal will significantly overcompensate the Company for this expense. While the differences between these methods might appear somewhat technical, they have real impacts on the amount that CenterPoint recovers for this tax. As Mr. Kollen quantifies, the effect of CenterPoint's change is a $3.429 million increase in the transmission revenue requirement, and a $4.873 million increase in the distribution revenue requirement.[59]

Mr. Kollen testifies that the Company's proposed Texas Margin Tax should not be included in rate base, because it is offset by a Texas Margin Tax Payable in an equivalent amount.[60] To emphasize the point, Mr. Kollen notes that this supposed regulatory asset that CenterPoint wishes to create was not financed by an increase in common equity, long-term debt, or short-term debt. It was instead financed through the related liability, so there is no financing cost that the Company actually incurs.[61] The Company now concedes this point. In her rebuttal testimony, Ms. Colvin agrees that the regulatory asset should not be included in rate base.[62]

There is no compelling reason for the Commission to authorize CenterPoint to change the way that it recovers the Texas Margin Tax expense in its rates. There *is* a compelling reason to

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57 GCCC Ex. 1 at 32.

58 Direct Testimony of Charles W. Pringle, CEHE Ex. 13 at 37.

59 GCCC Ex. 1 at 33. Note that Mr. Kollen's testimony provides a further breakdown of these figures by return, amortization, and expense changes.

60 *Id.*

61 *Id.*

62 CEHE Ex. 35 at 29. Ms. Colvin states that CenterPoint is willing to forego a return on the regulatory asset.

reject the Company's request—the harm to customers from the proposed amortization of the regulatory asset in the form of amortization expense in addition to the expense accrued in the same year as the liability is accrued. Further, there is no compelling reason to use the expense accrued in the same year as the liability is accrued, because this does not change materially from year to year. As Mr. Kollen noted, the expense has remained relatively constant at about $20 million annually.[63]

In any event, if the Commission authorizes the use of the expense accrued in the same year the liability is accrued, rather than the amortization expense when the liability is paid in the following year, then it should deny recovery of the regulatory asset over three years. As Mr. Kollen noted, the Company has a history of retaining the benefit of other changes in accounting, such as the change in revenue accounting from billed revenues to unbilled revenues.[64] The income from this change in accounting was recorded by the Company below the line and retained.[65] Customers were not provided the benefit. Similarly, if the Commission authorizes the change in accounting for the Texas Margin Tax expense, then it should deny the Company's request to recover the regulatory asset. The Company then will be required to write off that regulatory asset below the line.

The Company's proposal is complex, changes a longstanding practice, fixes a problem that does not exist, is without any credible basis, and harms customers. For these reasons, GCCC recommends that it be rejected.

7. BRP Pension and Postretirement

a. BRP (Benefit Restoration Plan) Pension and Postretirement Regulatory Liability Should Be Corrected

If the Company is permitted to include a prepaid pension *asset* against GCCC's recommendation (as discussed in Section II.C., above), Mr. Kollen testified that the subtraction of

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63 GCCC Ex. 1 at 34, citing CenterPoint workpapers (Redacted) Tab WP-II-E-2 Adj 5.

64 *Id.* at 36.

65 *Id.* at 35.

the post-retirement benefit regulatory *liability* that appeared on the Company's trial balance should be deducted from the revenue requirement, not just the $6.910 million that it proposes in its filing.[66] In an effort to avoid filing a separate Confidential/Highly Sensitive Initial Brief, GCCC will not recite the number that forms the basis of Mr. Kollen's recommendation here, but refers the ALJs to his Confidential Direct Testimony for that figure.[67] Should the ALJs recommend that Mr. Kollen's adjustment be adopted, GCCC would request that the number be declassified so that it can be included in the Commission order that will ultimately be issued.

As Mr. Kollen testified, the Company recorded a Benefit Restoration Plan (BRP) pension and postretirement regulatory liability of approximately $68.5 million on its accounting books as of December 31, 2018. Notably, this amount is explicitly identified in the Company's trial balance as a regulatory liability bearing the title "RegLiab-AOCI Offset."[68]

The Company denies that the $68.522 million is a regulatory liability, even though it is explicitly recorded on its accounting books as a regulatory liability.[69] The Company instead claims that the $68.5 million is the BRP pension and postretirement regulatory liability analog (for unrealized gains) recorded to the pension regulatory asset (for unrealized losses) that appears on CenterPoint Energy, Inc.'s accounting books.[70] The Company does not claim that the $68.522 million is calculated in accordance with its calculation of the prepaid pension asset. Rather, it provided a different calculation that it claims is consistent with its calculation of the prepaid pension asset.[71]

Even though it had previously characterized the $68.5 million figure as a regulatory liability, CenterPoint deducted only $6.9 million from rate base for this item. Notably the Company had

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[66] *Id.* at 27.

[67] Confidential pages to the Direct Testimony of Lane Kollen, GCCC Ex. 1A at 2.

[68] GCCC Ex. 1 at 25, citing CEHE RFP Workpapers (Redacted).xlsx on Tab "TB-Year to Date."

[69] GCCC Ex. 1, Kollen Attachment E at bates page 110.

[70] *Id.*

[71] *Id.* at 25.

calculated a different figure for this regulatory liability, a confidential number that it disclosed in discovery in this case and that is referred to in Mr. Kollen's Confidential/Highly Sensitive Direct Testimony.[72]

As Mr. Kollen explained, that figure—for the prepaid BRP pension and postretirement benefit *liability*—appeared to be calculated in a manner consistent with that of the Company's proposed prepaid pension *asset*.[73] Yet CenterPoint did not subtract that figure from its proposed rate base, on the grounds that "the cash collected in rates for the postretirement portion has been placed in an irrevocable trust."[74] But as Mr. Kollen noted in his direct testimony, this is not a meaningful distinction. *All* cash collected in rates for the Company's pension costs is placed in an irrevocable trust fund.[75] In any event, it is not clear why the Company's claim on this point justifies not subtracting either the entire regulatory liability or this item, as recommended by Mr. Kollen. For this reason, GCCC recommends that this regulatory liability be subtracted from rate base if any amount for a prepaid pension asset is added to rate base. Consistency requires this parallel treatment.

III. RATE OF RETURN [PO ISSUES 4, 5, 7, 8, 9]

To avoid duplication of effort, GCCC relies upon and supports the recommendations of TCUC witness Dr. Woolridge, but does not provide testimony of its own on this issue.

IV. OPERATING AND MAINTENANCE EXPENSES [PO Issues 4, 5, 21, 22, 25, 26, 28, 29, 33, 35, 36, 38, 39, 54, 55]

B. Labor Expenses

GCCC supports the recommendation of COH witness Mark Garrett on this issue, and reflects his recommendation in its quantification of the revenue requirement in this case.

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[72] GCCC Ex 1A at 1, and Confidential Kollen Attachment F on CD.

[73] GCCC Ex. 1 at 26.

[74] *Id.* at 26, citing Kollen Attachment F at bates page 111.

[75] *Id.* at 27.

C. Depreciation and Amortization Expense [PO Issue 25]

1. Quantification of Depreciation Expense Using Depreciation Rates Sponsored by TCUC Witness Garrett

GCCC supports the testimony and positions taken by TCUC witness David Garrett regarding appropriate depreciation rates for CenterPoint in this case. GCCC witness Lane Kollen calculated a reduction in transmission depreciation expense of $5.941 million and a reduction in distribution depreciation expense of $31.025 million using Mr. Garrett's recommended depreciation rates.[76] Mr. Kollen calculated the effect on depreciation expense using CenterPoint's December 31, 2018 plant balance less the adjustments to plant recommended by COH witnesses Mark Garrett and Scott Norwood. To the extent that the Commission does not adopt any or all of COH's recommended adjustments to plant, Mr. Kollen's calculated amounts would need to be revised.

a. Other Taxes Expense

As noted elsewhere in this brief, recommendations on transmission and distribution plant reductions were made by Mr. Garrett and Mr. Norwood for the COH. Mr. Kollen testified that those proposed disallowances necessitate a corresponding reduction in ad valorem tax expenses, which he quantifies at $369,000 for the transmission revenue requirement, and $669,000 for distribution.[77] Mr. Kollen notes that this calculation should be adjusted if the ALJs or Commission does not adopt the full recommendation of Mr. Garrett and Mr. Norwood related to plant in service.

D. Affiliate Expenses [PO Issues 35, 36]

1. Vectren Issues

a. Service Company Vectren Acquisition Transition Expense

The Company claims that it avoided $1.573 million in test year Service Company charges as a result of the Vectren merger. The Company claimed that this occurrence was abnormal and

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[76] *Id.* at 50.

[77] *Id.* at 51.

non-recurring[78] and thus increased the Company's expense to remove this reduction. However, as Mr. Kollen testified, such savings would be expected to be recurring until the merger results in "steady-state" synergy savings.[79] As savings that are likely to recur—if not be exceeded—until the merger achieves steady-state, the $1.573 million in test-year Service Company savings should not be removed and the Company's expenses should not be increased.[80]

b. Vectren Merger Savings

CenterPoint expects that its recent merger with Vectren will result in significant ongoing cost savings. The Company's own annual targets for those savings are contained in its response to GCCC RFI No. 01-14. The Company also provided more detailed annual savings targets for CenterPoint and Vectren, as well as the regulated utilities, including CEHE, which is HSPM.[81] Mr. Kollen's testimony contains certain HSPM that was filed under seal, but is available to the ALJs and to the Commission in its unredacted form. However, in the interest of filing this Brief in a publicly-accessible manner without redaction, the discussion that follows will not disclose the HSPM annual savings targets and calculations. Nonetheless, the savings targets have been quantified by the Company, and GCCC urges a review of CenterPoint's full response to RFI No. 01-14.

Notably, however, CenterPoint's direct case makes no proposal to share the benefit of these savings with CenterPoint's ratepayers even though such savings targets have, in fact, been calculated by the Company and are in process of implementation. GCCC witness Kollen proposes a Merger Savings Rider that would remain in effect until the savings associated with the Vectren merger can be included in base rates in the Company's next base rate case. In the alternative, Mr. Kollen proposes a known-and-measurable adjustment to the Company's test year to reflect

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78 *Id.* at 47, citing CenterPoint's response to GCCC RFI No. 01-13, and the Direct Testimony of Michelle M. Townsend, CEHE Ex. 15 at 46.

79 *Id.* at 47.

80 *Id.*

81 Highly Sensitive GCCC RFI No. 01-14 and Attachments, including updates 01-14U and 01-14U3, GCCC Ex. 5, CenterPoint's response to RFI No. 01-14, *see also* Highly Sensitive Kollen Attachment M.

CenterPoint's share of the merger savings calculated by the Service Company in the years subsequent to the merger closing.[82]

Mr. Kollen's proposal would share the benefit that will arise from the Vectren transaction between the Company and its ratepayers. Under the proposal, 75% of the annual gross merger expense savings targets, less the estimated expenses incurred to achieve those savings targets, as calculated by Service Company, would be shared through the Merger Savings Rider. [83] Mr. Kollen would permit CenterPoint to retain the remaining 25% until base rates are reset in its next rate case.[84] Mr. Kollen's unredacted direct testimony states the annual revenue requirement figure for his proposed Merger Savings Rider, but that figure is currently confidential.[85]

In response, CenterPoint witness Colvin asserts that any such a mechanism is unnecessary, as the Commission's earnings monitoring process is sufficient to ensure that the Company is not overearning as the Vectren savings materialize.[86] CenterPoint witness Mr. Myerson argues that, "it has been less than 140 days since the closing" of the transaction and thus Mr. Kollen's proposal is premature, and that CenterPoint will outlay costs to achieve the Vectren integration that will offset any savings in the near term.[87]

Neither of these arguments provide a rationale for not sharing the Vectren savings with CenterPoint's customers, as Mr. Kollen proposes. While Ms. Colvin is correct that CenterPoint will remain subject to earnings monitoring, putting the Merger Savings Rider in place now will ensure the timely flow of savings to customers. If earnings monitoring indicates that savings are resulting from the transaction (as CenterPoint has projected in response to GCCC RFI No. 01-14),

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[82] GCCC Ex. 1 at 48.

[83] *Id.*

[84] *Id.*

[85] GCCC Ex. 1A at 4.

[86] CEHE Ex. 35 at 62-63.

[87] Rebuttal Testimony of Jeffrey S. Myerson, CEHE Ex. 47 at 9.

customers will still need to wait for those savings to be reflected in rates. And importantly, it is *CenterPoint's* own projection that there will be savings, not GCCC's.

Mr. Myerson's claims are unavailing, as well. GCCC's proposed Merger Savings Rider would include a deduction for the ongoing expenses of the merger, and so is balanced in way that Mr. Myerson fails to acknowledge. The merger closed nearly six months ago and CenterPoint is moving aggressively to achieve the savings targets. It certainly has not been too early for CenterPoint to target certain savings levels. For these reasons, GCCC's proposed Merger Savings Rider should be approved in this case.

3. Service Company Pension and Benefit Costs

CenterPoint's Service Company charges CenterPoint the Company's allocated share of its pension and OPEB costs.[88] However, in its proposed revenue requirement, the Company failed to exclude the capital component of the pension and OPEB costs included in the affiliate charges from Service Company.[89] When this issue was highlighted by GCCC in discovery, CenterPoint acknowledged that this was an error that it would correct in an errata.[90] It ultimately did so in an errata filed on May 20, 2019. The impact is a \$0.151 million reduction in the transmission revenue requirement, and a \$0.617 million reduction in the distribution revenue requirement; Mr. Kollen's previous independent calculation verified that the Company's errata corrections are correct.[91]

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[88] GCCC Ex. 1 at 43-44.

[89] *Id.* at 44.

[90] *Id.* at 44, citing CenterPoint's response to GCCC RFI No. 03-08, Kollen Attachment J at bates page 118.

[91] *Id.* at 44.

4. Affiliate Carrying Charges

a. Service Company Cost of Capital

In its proposed revenue requirement, the Company included $7.786 million for a return on Service Company assets using an 11.37%, grossed-up weighted cost of capital.[92] This represents an allocation of 59.4% of the Service Company's total "compensation for the use of capital."[93]

However, CenterPoint disclosed that Service Company's cost of capital is actually $1.073 million, comprised only of interest expense on short-term debt.[94] Using this actual cost of capital, CenterPoint's share (using the same 59.4% allocator) was only $637,000.[95]

There is no reason to permit CenterPoint to recover a "phantom" Service Company return so far in excess of the Service Company's cost of capital. The Company did not finance the Service Company's plant-in-service or other assets, such that the use of the Company's grossed-up rate of return would be appropriate. GCCC therefore recommends that the Commission only allow recovery of $637,000 for the Company's share of the Service Company's actual cost of short-term interest.

F. Hurricane Harvey Restoration Costs [PO Issues 54, 55]

1. Exclude Hurricane Harvey Regulatory Asset from Base Revenue Requirement; Instead, Recover Through Hurricane Harvey Rider.

At the outset, GCCC notes that it does not take issue with CenterPoint's recovery of its requested Hurricane Harvey restoration costs, and does not challenge any component of that cost or the underlying restoration effort. However, GCCC does contest the vehicle by which CenterPoint proposes to recover those costs—the Company proposes to include $64.39 million in rate base, less the associated ADFIT, for Hurricane Harvey costs that otherwise would have been expensed but that were instead deferred as a regulatory asset. The Company proposes to recover $21.469 million in amortization expense based on a three-year amortization of this total.

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92 GCCC Ex. 1, Kollen Attachment K at bates page 120.

93 *Id.*

94 *Id.* at 45.

95 *Id.*

GCCC opposes the recovery of CenterPoint's Hurricane Harvey restoration costs through base rates, and instead urges that the Company be directed to use a separate Hurricane Harvey Rider for this purpose. As Mr. Kollen testified, recovery of these costs through a rider ensures that CenterPoint recovers *only* the costs deferred to the regulatory asset and the related return on that regulatory asset, net of ADFIT.[96] Mr. Kollen observed that recovery of these costs through base rates will result in excessive recovery of up to tens of millions of dollars. This will occur if base rates are not reset to exclude the amortization expense immediately after the regulatory asset is fully amortized, as the expense will still be included in base rates, and will be until rates are ultimately reset by the Commission. Overrecovery will also occur because base rates are not reduced to reflect the reduction in the return on the related regulatory asset as it is amortized.[97] Both of these concerns can be properly addressed if a separate Hurricane Harvey Rider is adopted for this purpose.

Recovery of the cost through a rider does not present this hazard to ratepayers. Indeed, the sense of this can be seen by looking to the Company's proposed Rider UEDIT. That Rider is designed to return to customers certain Excess Deferred Income Taxes. Presumably, CenterPoint chose a rider to achieve this, as that mechanism will refund only the relevant amount of EDIT, no more and no less, and the refund will decline to reflect the decline in the return on the EDIT balance as the EDIT is refunded. The same logic should animate CenterPoint's Hurricane Harvey recovery—use of a rider will mean that customers will pay for the discrete cost of Harvey restoration, no more and no less.

The effect of removing Hurricane Harvey restoration costs from base rates is $29.9 million, consisting of $4.463 million for the return on the Hurricane Harvey regulatory assets, net of the related ADFIT, the amortization expense of $21.5 million.[98] In his testimony, Mr. Kollen recommended that the Hurricane Harvey Rider initially be set at $24.6 million, the first-year

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[96] *Id.* at 37.

[97] *Id.*

[98] *Id.* at 38.

revenue requirement, and then be revised annually for three more years.[99] The fourth and final year of the Rider conceptually would be set to $0, but would reflect a final true-up of the amounts recovered in the prior three years, the same as the Company's proposed Rider UEDIT.

2. Interest on Hurricane Harvey Recovery

In a purported "correction" included in its May 20, 2019 errata, CenterPoint added carrying costs on its Hurricane Harvey regulatory asset. CenterPoint filed no direct testimony in support of this request, a fact confirmed at the June 4, 2019 technical conference on the errata.[100] CenterPoint also claimed that it identified this supposed errata in response to a discovery question propounded by Staff.[101] In that response, CenterPoint stated that it inadvertently excluded the carrying charges from its initial testimony,[102] but offered no support or rationale for its request and no evidence whatsoever that its failure to record carrying costs for accounting purposes or to request recovery in its rate filing were errors.

The Company can point to no statutory authority for this recovery. While PURA allows for interest on a recovery amount that qualifies for securitization,[103] the amount at issue in this case does not—that threshold is $100 million, a level well in excess of CenterPoint's Hurricane Harvey costs. And while CenterPoint might point to its Hurricane Ike recovery as a precedent for it recovering interest on its Harvey balance, Ike was a different circumstance—that storm recovery qualified for securitization at $677 million,[104] compared to CenterPoint's Hurricane Harvey balance of $64 million without carrying costs. While PURA § 36.064 separately provides for self-insurance to address a storm or other similar event, it, too, makes no provision for interest. As Mr. Kollen noted, the Company deferred its Hurricane Harvey expenses as a component of the self-insurance

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[99] *Id.* at 39.

[100] *Id.* at 10.

[101] *Id.* at 11, and CenterPoint's response to Staff RFI No. 08-14, Kollen Attachment B at bates page 99.

[102] *Id.* at 98.

[103] PURA §§ 36.401–36.403.

[104] GCCC Ex. 1 at 12.

reserve, although it separately identified the deferral.[105] As a factual matter, the Company did not defer its Hurricane Harvey expenses pursuant to PURA §§ 36.401–36.403. If it had done so, those statutes require that the Company defer carrying costs.[106] The Company did not. This so-called errata is nothing more than an attempt to increase its claimed revenue deficiency on the basis of an irrelevant statute that the Company itself did not believe applied until it filed its so-called errata.

In short, the Company's proposal to include interest on its Hurricane Harvey recovery in its May 20 errata should be rejected. It is not errata. It is a new proposal outside the bounds of the available statutes, and should not be permitted for that reason. GCCC recommends that CenterPoint's requested $9 million in Hurricane Harvey carrying costs not be permitted.

VII. FUNCTIONALIZATION AND COST ALLOCATION [PO Issues 4, 5, 43, 44, 46]

Not addressed. GCCC supports the testimony of Kit Pevoto, for COH, that has been filed in this case.

VIII. REVENUE DISTRIBUTION AND RATE DESIGN [PO Issues 4, 5, 43, 49, 50]

Not addressed. GCCC supports the testimony of Kit Pevoto, for COH, on these issues.

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

A. Rider UEDIT [PO Issue 51]

1. Background

In this section, GCCC addresses several issues that stem from the federal Tax Cut and Jobs Act (TCJA) of 2017. The relevant portion of the TCJA established a single corporate tax rate of 21%,[107] compared to the previous, bracketed tax rates, the highest of which was 35%. The ratemaking concept that reflects and captures this tax decrease is termed Excess Accumulate Deferred Federal Income Taxes (EDFIT, or sometimes EDIT or EADIT), which is related to Accumulated Deferred Federal Income Tax (ADFIT), both of which have been spoken to by the Commission on a number of previous occasions.

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105 *Id.*

106 *Id.* at 10.

107 *Id.* at 61.

To understand EADIT, one must first understand ADFIT. As the Commission explained in PUC Docket No. 29526, CenterPoint's own stranded cost true-up proceeding:

> The ADFIT balance, as it pertains to depreciation, arose from the ability to use accelerated depreciation deductions for tax purposes while using straight-line depreciation for regulatory purposes. The joint applicants ... were required to apply differing useful (or depreciable) lives to their assets under regulatory and tax accounting methods. The result of these differences is that taxable income was less than income for regulatory purposes during the early years of the asset's useful life, whereas the opposite is true during the later years. The ADFIT account represents the taxes that the utility knows will be due to the government as the amount reverses in the later years of its assets' depreciable lives.[108]

In short, ADFIT represents an amount on a utility's books that the utility knowns will ultimately become due to the Federal government, but that the Commission has permitted it to recover in the meantime. GCCC does not contest this long-standing ratemaking practice of the Commission.

EADIT arises when federal income tax rates decrease. As the ALJs are aware, and as stated at the outset of this section, the TCJA represented such an event in late 2017. The Commission had previously grappled with what to do about EADIT during the stranded cost true-up cases, because utilities' books continued to reflect the effect of the federal income tax decrease of 1986. As the Commission explained in CenterPoint's stranded cost true-up case:

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[108] *Application of CenterPoint Energy Houston Electric, LLC, Reliant Energy Retail Services, LLC, and Texas Genco, LP to Determine Stranded Costs and Other True-Up Balances Pursuant to PURA § 39.262,* Docket No. 29526, Order on Rehearing at 76 (Dec. 17, 2004).

> EADIT results from a downward adjustment to a company's tax rate. An EADIT balance exists because accounting rules require an entity to accrue its deferred taxes at a higher rate before the tax rate adjustment than it is required to do afterwards. In CenterPoint's case, the company's EADIT balance of $51,136,153 is the result of its tax rate decreasing from 46 percent to 34 percent in 1987. The EADIT account represents the excess of the deferred taxes accrued at this higher rate, over the amount required to be accrued at the new, lower rate.[109]

Because the balance of the EADIT account was collected from ratepayers and would not reverse, the PUC determined that it was to be deducted from CenterPoint's stranded costs balance—in other words, returned to ratepayers.[110]

Early in 2018, in the weeks following the passage of the TCJA, the Commission issued a directive to utilities, as follows:

> Late last year, an act was passed that, in part, amends the Internal Revenue Code by, among other things, reducing the federal income tax rate to be imposed on C corporations from 35% to 21%, effective January 1, 2018, as well as reducing the federal income tax rate on certain other entities.[111]
>
> Until a rate change may be approved to adjust charges to Texas customers, the Commission issues this accounting order under its statutory authority to preserve any changes in the federal income tax expense charged by utilities until rates can be changed.[112]

The utilities were instructed to record as a regulatory liability the ADFIT that now exists as a result of the decrease in the tax rate under the TCJA—in essence, to preserve EADIT for further review.[113] As the following discussion will demonstrate, CenterPoint appropriately proposes to

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[109] *Id.* at 81.

[110] *Id.* at 84.

[111] *Proceeding to Investigate and Address the Effects of Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-Owned Utility Companies*, Project No. 47945, Amended Order Related to Changes in Federal Income Tax Rates at 1 (Feb. 15, 2019).

[112] *Id.*

[113] *Id.*

return certain of its EADIT balances to customers (though errs in the details of those proposals), but wrongly declines to return other such balances.

2. Excess ADFIT and Treatments Proposed in Distribution Cost Recovery Factor (DCRF) for Protected and in Rider UEDIT for Unprotected

In its application, CenterPoint proposed to amortize transmission-related protected EDIT using the average rate assumption method (ARAM), and to include the resulting amount in its base revenue requirement—not through Rider UEDIT.[114] The Company proposes to amortize distribution-related protected EDIT using ARAM in the distribution base revenue requirement, and the amortization of the distribution unprotected EDIT over a three-year period. The vehicle for this amortization would be the proposed rider UEDIT.[115] GCCC agrees that this basic refund approach—a refund of distribution–related, protected UEDIT through the base revenue requirement, and of unprotected EDIT through Rider UEDIT—is appropriate.

However, CenterPoint has structured rider UEDIT in an unusual manner that should not be adopted in this case. As Mr. Kollen testified, "Rider UEDIT should reflect the annual revenue requirement over each of the three years" of CenterPoint's proposed period.[116] Instead, CenterPoint proposes to use the second year of the Rider's revenue requirement for all three years, subject to true-up in the final year.[117] Mr. Kollen testified that there was no compelling reason for this unusual Rider structure.

In addressing Mr. Kollen's concern, CenterPoint witness Matthew Troxle mischaracterizes the Company's proposal on this point.[118] He claims that Mr. Kollen does not understand CenterPoint's proposed structure of the three-year rider, and that a three-year amortization is indeed

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[114] GCCC Ex. 1 at 53.

[115] *Id.* at 54.

[116] *Id.* at 55.

[117] *Id.* at 54, citing CenterPoint's response to COH RFI No. 03-06, Kollen Attachment N at bates pages 134-135.

[118] Rebuttal Testimony of Matthew Troxle, CEHE Ex. 45 at 44.

what is proposed.[119] Mr. Troxle either appears to not understand the Company's proposal, or to be ignoring the declining return on the UEDIT, as it is refunded over the three-year amortization period. More specifically, the Company's Rider UEDIT proposal includes the return *on* the unamortized EDIT *as well* as the amortization of the principal over three years. The Company proposes to use the second year of the three years of the declining refund revenue requirement to calculate the amount returned to ratepayers for all three years, subject to true-up. The annual amortization is the same, but the return on the unamortized EDIT declines each year.

As Mr. Kollen testifies, Rider UEDIT should simply reflect the annual revenue requirement over each of the proposed three years, subject to true-up.[120] Mr. Troxle's testimony may be intended to mean that the Company is amenable to this approach as well. In any event, GCCC recommends that Mr. Kollen's modification to the Company's proposal be adopted in this case, which is consistent with Mr. Kollen's recommendation for the structure of the GCCC proposal for the Hurricane Harvey Rider.

3. Error in Calculation of Unprotected Excess ADFIT in Rider UEDIT

In its original filing, the Company failed to gross-up the annual amortization of the unprotected EDIT; this step is necessary to ensure that the amortization correctly accounts for income tax effects. In response to a Request for Information (RFI) from GCCC, CenterPoint agreed that it was an error to fail to gross-up the annual amortization of the unprotected EDIT.[121] Correction of this error was reflected in CenterPoint's May 20, 2019 errata filing. GCCC seeks no further decision on this point.

4. Excess ADFIT Related to Stranded Generation Costs

While the Company's presentation of its ADFIT balances as described above was erroneous in certain particulars, the Company has proposed that the ALJs and Commission ignore a far greater

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[119] *Id.*

[120] GCCC Ex. 1 at 55.

[121] *Id.* at 56, citing CenterPoint's response to GCCC RFI No. 01-06, Kollen Attachment O at bates pages 136-138.

ADFIT-related balance in this case—the EDIT associated with CenterPoint's stranded generation costs and system restoration charges. This EDIT totals $158.275 million (before gross-up to a revenue equivalent), as detailed in the testimony of Lane Kollen[122] and acknowledged by the Company.[123] Upon passage of the TCJA, in December of 2017, CenterPoint unilaterally removed this EDIT from its balance sheet and reflected it as income,[124] a fact confirmed by the Company at the hearing.[125] In short, the Company simply took these ratepayer-supplied dollars for itself.

CenterPoint's direct case said nothing specific about these EDIT amounts, and only claimed that ADFIT, as opposed to EDIT, amounts had "already been considered in previous proceedings" and that the "deferred taxes are not associated with ongoing utility operations."[126] Given that this EDIT only arose after the passage of the TCJA in December of 2017, this claim raised questions. When asked in discovery for its support for its treatment of these EDIT amounts, CenterPoint failed to cite to any authority, and instead pointed to an email from PriceWaterhouse Coopers (PWC)[127] that purported to sanction the Company's proposed recognition of the relevant EDIT amount as income. Yet, PWC cites to "regulatory"—presumably, CenterPoint's regulatory division—for the proposition that this EDIT "would not be passed back to the ratepayers and therefore the benefit would hit the P&L," or profit and loss, in other words.[128] PWC simply took, as a given, that the amount would flow to CenterPoint's bottom line, and received this direction from CenterPoint itself.

Notably, there was a great deal of activity surrounding the passage of TCJA in late 2017, both at the PUC and within CenterPoint. The President signed the TCJA into law on December 22,

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[122] *Id.* at 56.

[123] GCCC Ex. 1, Kollen Attachment P at bates page 139.

[124] GCCC Ex. 1 at 56.

[125] Tr. at 288:22-23 (Colvin Direct) (June 24, 2019).

[126] GCCC Ex. 1 at 56, citing CEHE Ex. 13 at 29.

[127] GCCC Ex. 1 at 57. The email from Price WaterHouse Coopers is included in Kollen Attachment Q at bates pages 142-143.

[128] GCCC Ex. 1, Kollen Attachment Q at bates page 142.

2017.[129] The PWC email discussed above was sent the next day, on December 23; in it, PWC indicated CenterPoint's desire to close the amount to income, an event which CenterPoint witness Colvin confirmed at the hearing actually occurred.[130] Three weeks later, on January 11, 2018, in a specially-called project to consider the effects of the TCJA on utility ratemaking, the Commission directed its Staff to solicit responses to a number of questions related to the TCJA on all investor-owned utilities under its jurisdiction.[131] Then, later that month, in the same project, as noted at the outset of this section, the Commission issued its *Order Related to Changes in Federal Income Tax Rates*. In it, the Commission ordered that "[E]ach electric…investor-owned utility, except as later state in this Order, to record as regulatory liability the following: ...(2) the balance of excess accumulated deferred federal income taxes (ADFIT) that now exists because of the decrease in the federal income tax rate from 35% to 21%."[132]

Yet the $158 million in EDIT now at issue was not preserved; it was not recorded as a regulatory liability. In fact, it was no longer on the Company's accounting books after it was reflected in income in December 2017. As Mr. Kollen put it, "the Company acted unilaterally without seeking authorization from the Commission."[133] Instead, in the month after the TCJA was passed, and as the Commission contended with the ramifications of the new law, CenterPoint simply took the amount to income.

As Mr. Kollen observed, the Commission authorized the Company to recover its approved stranded costs balance, and reflected ADFIT in that balance by calculating the present value of the return *on* (notably, not *of*) the ADFIT associated with stranded costs, and required that this amount be returned to ratepayers through an amortization over the stranded costs recovery period.[134] At

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[129] Pub. L. 115-97.

[130] Tr. at 1281:8 (Colvin Rebuttal) (June 28, 2019).

[131] Project No. 47945, Memorandum at 1-3 (filed Jan. 12, 2018 but dated Dec. 12, 2018).

[132] Project No. 47945, Order Related to Changes in Federal Income Tax Rates at 1-2 (Jan. 25, 2018).

[133] GCCC Ex. 1 at 58.

[134] *Id.* at 58, citing *Application of CenterPoint Energy Houston Electric LLC for a Financing Order*, Docket No. 30485, Order Quantifying Benefit Derived from ADFIT (May 16, 2005).

that time—in 2005—the Commission made no provision for a future income tax rate reduction, and the issue was not in any manner foreclosed by the Commission at that time and in those orders. The disposition of the $156 million in EDIT associated with CenterPoint's stranded costs and storm recovery balances remains an open question, a question that GCCC urges be resolved here, in this rate case. In a sense, CenterPoint has already conceded that the question *can* be resolved—it believes the money is its own, to enjoy as income, as it admits it has already done.

Mr. Kollen recommends that this EDIT amount be refunded to ratepayers who have paid, through rates, for the stranded costs and storm recovery balances. GCCC proposes to simply add this amount to the unprotected EDIT balance that the Company calculated for refund through the Rider UEDIT. This results in an increase of $52.758 million in annual amortization over the three-year amortization period before gross-up to a revenue equivalent, or an additional annual refund through the Rider UEDIT of $66.783 million after gross-up to a revenue equivalent.[135]

The Company's response to GCCC's proposal on this point consists of multiple attempts to cloud the issue. For instance, CenterPoint witness Ms. Colvin points out that ratepayers are currently paying bondholders for the amounts that give rise to this EADFIT, that CenterPoint earns nothing other than a servicing fee for collecting dollars in rates and paying them to the bondholders, and that only funds for payment of the bonds may be collected through the relevant riders.[136] How these statements are a defense of CenterPoint simply claiming for itself the $156 million at issue is unclear.

At the hearing, CenterPoint witness Colvin confirmed key basic details about this EDIT. As Ms. Colvin testified, accounting entries for the various "BondCos" that have issued the securitization bonds that relate to these EADIT amounts simply flow to CenterPoint itself and appear on CenterPoint's own books.[137] These BondCos are wholly-owned by CenterPoint, and

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[135] *Id.* at 61.

[136] CEHE Ex. 35 at 67.

[137] Tr. at 1281:11-15 (Colvin Rebuttal) (June 28, 2019).

were created by CenterPoint.[138] All of their debt, assets, revenues, expenses, and ADFIT, including EDIT, are consolidated with CenterPoint's for accounting purposes.[139] Once the TCJA was signed into law, CenterPoint was faced with the decision of how to treat the EDIT that the law had created on its books. As Ms. Colvin confirmed, CenterPoint decided to take the amount related to its securitized stranded costs and storm costs to income.[140] Given the activity surrounding the TCJA for ratemaking purposes at the Commission in late 2017 and early 2018, it is surprising that CenterPoint unilaterally decided to recognize this EDIT as income without any engagement with the Commission or the project that the Commission had established at the turn of the year. At the hearing, Ms. Colvin attempted to clarify that CenterPoint did indeed notify the Commission and interested parties of the relevant EDIT balance.[141] But it did so at some point in 2018—well after the Company had closed the EDIT to income in late 2017.[142]

Ms. Colvin's rebuttal testimony urges that consideration of the system restoration EDIT is precluded by settlement language regarding finality in prior Commission proceedings, arguing that any disallowance based on the $156 million in EDIT that was closed to income would be barred by that language.[143] But CenterPoint does not dispute that this particular EDIT balance did not exist prior to the passage of the TCJA. That legislation was signed into law on December 22, 2017; the next day, an individual with Price Waterhouse Cooper corresponded with CenterPoint staff regarding taking the EDIT to income.[144] Accordingly, this EDIT did not exist, and therefore has not been considered, in any proceeding prior to this time.

Staff witness Darryl Tietjen confirmed the basics of EDIT as recited in this section of this Brief—that the TCJA left CenterPoint with a quantity of EDIT on its books, and that it will never

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[138] Tr. at 1281:5-10 (Colvin Rebuttal) (June 28, 2019).

[139] *Id.*

[140] Tr. at 1281:8 (Colvin Rebuttal) (June 28, 2019).

[141] Tr. at 1326:23 (Colvin Rebuttal) (June 28, 2019).

[142] *Id.*

[143] CEHE Ex. 35 at 72-73.

[144] GCCC Ex. 1, Kollen Attachment Q at bates pages 142-143.

be paid to the federal government.[145] Mr. Tietejn also described his belief that the Company increased its income by this EDIT balance for this reason—that is, because it was no longer payable to the federal government.[146] Mr. Tietjen raises several technical issues surrounding the quantification of the EDIT at issue, considering the interaction of the Commission's treatment of ADFIT in the stranded cost securitization context, and questioning whether the EDIT associated with system restoration costs (in contrast to stranded cost balances) arises from ratepayer-supplied dollars at all.[147]

Given these concerns, Mr. Tietjen recommended that, if the Commission is interested in this issue, it should explore it in a separate proceeding, and require CenterPoint to file certain specified information to initiate a new, follow-up proceeding focused only on this issue.[148] However, this proposal overlooks the fact that the instant case is a Chapter 36 rate proceeding filed by CenterPoint, the applicant in this matter who must bear the burden of proof. To the extent CenterPoint provided insufficient information to fully explore the issues noted by Mr. Tietjen, that is a problem of CenterPoint's own making. Indeed, CenterPoint had the opportunity on rebuttal to provide a fully detailed accounting of the points raised by Mr. Tietjen in his rebuttal testimony, but did not. The procedural schedule in this case was compressed to an unprecedented degree, with the time between the Company's application and hearing being only 80 days. This compares to Docket No. 38339, CenterPoint's previous rate case, in which there were 103 days between the Company's application and hearing.[149] As CenterPoint was the advocate for such a schedule in the face of serious procedural concerns from the other parties, it should not now have the opportunity for another bite at the apple on this issue in a follow-on proceeding.

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[145] Redacted Direct Testimony of Darryl Tietjen, Staff Ex. 1A at 22.

[146] *Id.* at 23.

[147] *Id.* at 24-25.

[148] *Id.*

[149] Docket No. 38339, SOAH Order No. 5 (Jul. 26, 2010).

In 2005, when faced with a similar (though distinct) EDIT balance resulting from the 1986 tax decrease, the Commission, in CenterPoint's true-up case, did not permit CenterPoint to retain that balance. Then, as now, the Company had closed the previous EDIT balance to income. The Commission found that:

> In the instance of EADIT, the amount at issue was collected from ratepayers for a tax liability that, as a result of changing tax rates, will never become due and has already been recognized as company income.[150]
>
> Indeed, CenterPoint stated that it has already closed this account and recognized the balance as income.[151]

For the same reasons cited by the Commission in 2005, GCCC now urges that CenterPoint's EDIT be returned to ratepayers through Rider UEDIT, as recommended by GCCC witness Lane Kollen.

XII. CONCLUSION

GCCC requests that rates be established for CenterPoint consistent with its recommendations stated in this Brief, and those stated by COH and TCUC in this case. GCCC further requests any and all relief to which it may be entitled.

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150 Docket No. 29526, Order on Rehearing at 84.

151 *Id.* at 81.

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2019, a true and correct copy of the foregoing document was served on all parties of record in compliance with SOAH Order Nos. 2 and 10.

CHRISTOPHER L. BREWSTER

GULF COAST
COALITION OF
CITIES

Gulf Coast Coalition of Cities (40 Members)

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Brazos Country
Brookshire
Bunker Hill Village
Clear Lake Shores
Deer Park
Dickinson
Friendswood
Fulshear
Galveston
Hedwig Village
Hilshire Village
Hunters Creek
Iowa Colony
Jersey Village
Kemah
La Marque
Lake Jackson
Manvel
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