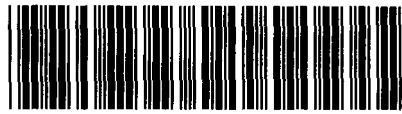

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APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR AUTHORITY TO CHANGE RATES	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

City of Houston and Houston Coalition of Cities'
Reply Brief

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To the Honorable Administrative Law Judges ("ALJs"):

The City of Houston and Houston Coalition of Cities ("COH/HCC") respectfully submit the following reply brief in the above referenced matter and, in support thereof, respectfully show the Public Utility Commission of Texas ("Commission" or "PUC") the following:

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

In its initial brief, CenterPoint Energy Houston Electric, LLC (the "Company" or "CEHE") fails to identify the evidence needed to carry its burden of proof in establishing the reasonableness of its requested increase of $188.86 million in retail base rates. CEHE goes to great lengths to point out the number of witnesses it presented and the volume of documents provided, both in its application and in responses to discovery. Nowhere, however, does the Company acknowledge its burden of proof on each and every aspect of its rate request. Nor does it explain how the number of documents provided somehow meets the Company's burden.

The manner in which CEHE views its burden of proof is best exemplified by the position taken by its counsel during cross-examination of one of the Company's in-house expert witnesses.[1] Counsel initially argued—vehemently—that Company employees were only providing fact testimony and not expert opinions under Texas Rule of Evidence 702.[2] If that were the case, however, CEHE would have offered no expert testimony on most of the issues supporting its request, because 19 of the 26 witnesses proffered by the Company are Company employees.

Evidently, CEHE realized the import of its absurd position because, shortly after making the argument and hearing from Intervenors and Staff that the Company would have to designate

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[1] *See* Tr. at 1098:18–1106:19.
[2] *Id.* at 1098:18–1105:25.

the precise portions of the testimony that were not expert opinions, the Company did an abrupt about-face and stipulated that Company employees were offering expert testimony.[3]

This approach merely demonstrates CEHE's apparent belief that all that is required of it as the Applicant is to present test year expenses, state that they are justified and reasonable and nothing more. Such a view is totally inconsistent with Public Utility Regulatory Act ("PURA"),[4] the Commission's Substantive Rules and Commission precedent. CenterPoint has the burden of proof to establish the reasonableness and prudence of capital investments, an appropriate rate of return on that investment, reasonableness and necessity of its cost of service and the reasonableness and non-discriminatory nature of its proposed cost allocation and rate design.

In the application, CEHE presents a test year that in many respects is totally inconsistent with its historical performance since its last rate case (Docket No. 38339) in 2010. Company Witness Kristie Colvin recognized that a test year should be normalized to account for known and measurable changes, including abnormally high or low expenses.[5] Yet, she conceded that the Company made no adjustments to its test year to exclude, or reduce, any abnormally high expenses. This concession alone brings into question the accuracy of the Company's application.

The arguments contained in the Company's Initial Brief, based on a highly inflated test year and inadequate evidence presented, wholly fails to meet this burden on several aspects of its Application. For that reason, COH/HCC continues to support the adjustments to CEHE's Application set forth in its Initial Brief. In addition, this Reply Brief will address certain recommendations made by Staff and other intervenors.

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[3] *Id.* at 1106:1–19.
[4] Public Utility Regulatory Act, Tex. Util. Code § 11.001 *et seq.* ("PURA").
[5] Tr. at 269:22– 270:6, 273:7–12.

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]

In its Initial Brief, CEHE makes a telling statement: together customer/load growth and reliability/system improvement comprise 80% of the Company's total plant investments.[6] Despite this glaring admission, nowhere in its Application (which the Company proudly points out included 26 witnesses and 7,000 printed pages) did CEHE provide testimony or other support demonstrating that it conducted a cost-benefit analysis to establish the prudence of the $6 billion in additional transmission and distribution investment.

Even when asked to identify any analysis supporting its investments, CEHE could only direct the parties and ALJs to cursory references in its direct testimony.[7] In discovery, the Company provided studies and reports, all of which failed to establish the prudence of its projects and all of which CEHE disavowed as having any relevance to a prudence review.[8]

Only in rebuttal testimony did the Company even attempt to meet its burden to establish that these projects (and only the ones challenged by Intervenors and Staff) are reasonable and prudent investments.[9] Again, none of these arguments is supported by a cost-benefit analysis demonstrating that the cost borne by CEHE is justified by a measured benefit.[10]

Indirect Corporate Costs

The Company conclusively postulates that it did not include indirect corporate costs in its prior distribution cost recovery factor ("DCRF") filings but then provides no actual evidence in support thereof.[11] CEHE's response to COH/HCC Request for Information 15-6 provided the

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[6] CEHE Initial Brief, p. 11.
[7] Tr. at 1107:22–1108:20
[8] *Id.* at 159:2–162:24.
[9] *Id.* at 1157:22–1167:4
[10] *Id.*
[11] CEHE Initial Brief, p. 21–22.

corporate costs it charged to distribution capital investments and included in the Company's DCRF filings: $2,602,580.[12] Nevertheless, CEHE has failed to present any evidence that such costs exclusively related to distribution. The three costs identified by the Company as "Capitalized Overhead for Distribution," accounts payable, property accounting, and call center, are not exclusively distribution. The Company presents no evidence, only conclusory statements, for how the three costs could be utilized exclusively for distribution. These statements are not sufficient to meet the heavy burden placed on CEHE to justify such significant costs. Therefore, the $2.6 million of indirect corporate costs must be excluded from rate base. In addition, these disallowed costs (which have been previously included in the DCRF) should be refunded to ratepayers with carrying costs pursuant to PUC Substantive Rule 25.243(f).

1. Capital Project Prudence

a. HEB

COH/HCC wholly agrees with HEB's conclusion that the Company should not be rewarded for inefficient and imprudent investments. Only costs that are demonstrated to improve reliability and address specific improvements in a cost-effective manner should be included in base rates.

b. CEHE

CEHE argues its nine-figure investment in the Underground Cable Assessment and Life Extension Program (Project No. ABCA) and Major Underground Rehabilitation Program (Project No. CE1B) (the "Programs") is necessary. However, despite the Programs' statuses as the fifth and sixth most expensive Company projects,[13] the Company provided no evidence in its direct

[12] COH/HCC Hearing Exhibit No.1, Direct Testimony of Witness S. Norwood, Exhibit SN-13, CEHE's Response to COH/HCC 15-6, Attachment 2.
[13] Tr. at 195:9–15; 1108:21–1109:3.

testimony and no evidence in its responses to requests for information to support, or even related to, its justification for the Programs. Instead, it was not until its rebuttal testimony that CEHE announced that the alleged justifications for the Programs were to meet increased load growth and reliability concerns. Even then, as set forth in COH/HCC's Initial Brief, the Company has experienced minimal positive (and even sometimes negative) load growth,[14] and its reliability is undisputed between CEHE and COH/HCC to be "very good."[15]

Nevertheless, the Company attempts to justify the exorbitant costs of the Underground Cable Assessment and Life Extension Program (labeled the "CLEP Program" by CEHE) by labeling it as a proactive, not reactive, program.[16] CEHE argues that the CLEP Program is a "one-time assessment of each of the Company's loops that have cable in excess of 3 years of age" and, thus, not a routine maintenance program.[17] The Company fails to address the program's lack of necessity in light of its System Average Interruption Duration Index ("SAIDI") performance, which is higher than the PUC standard, higher than other ERCOT utilities, and averaging 99.98 percent over the last three years.[18]

Moreover, the reliability index for underground cables is even higher than the system average.[19] CEHE's justification provides for how the CLEP Program *may* extend the life of its underground cables, but fails to present evidence of the economic benefit to customers. Nor is there evidence anywhere in the record that the $54 million investment will be offset by customer savings equal to or in excess of the investment amount. There is no evidence that the $54 million investment provides any reliability above and beyond CEHE's existing programs. That the CLEP

[14] *Id.* at 197:10–15; 212:15–18, 213:5–17.
[15] CEHE Initial Brief, p.12.
[16] *Id.*
[17] *Id.* at p. 12–13.
[18] Tr. at 1248:22–1249:3.
[19] *Id.* at 1116:11–17, 1250:10–25

program is "proactive in nature" does not explain away that the Company's "reactive" programs are exceedingly sufficient in maintaining the Company's high service reliability.

Regarding the Major Underground Rehabilitation Program, the Company conflates its burden with the non-existent burden on the other parties. Specifically, as its first point of "evidence," CEHE attacks that "Mr. Norwood made no effort during the discovery process to obtain information regarding CEHE's Major Underground Rehabilitation Program."[20] As a brief reminder to the Company, PURA Section 36.006 places and keeps the burden on the utility.[21] The burden does not shift to COH/HCC to make any effort and the burden is not satisfied when COH/HCC does not gather evidence to contradict the Company. Moreover, the record is replete with discovery requests from COH/HCC in which COH/HCC sought all information justifying the exorbitant costs of these Programs from a cost-benefit standpoint, or otherwise.[22] The only information provided was the SAP report and the SAIDI results, neither of which addresses a cost-benefit or prudence analysis.[23] The Company, in fact, nullifies the value of the SAIDI results to this analysis, despite having provided it to "support" the prudence of its decision to investment in the Programs.[24] CEHE Witness Martin Narendorf testified that Company's AIS tool does not evaluate the prudence of undertaking a capital project.[25]

As a secondary point, the Company argues that, like the CLEP Program, the Major Underground Rehabilitation Program is "proactive" because it identifies "potential failures in aged underground cable."[26] This reasoning is insufficient for two reasons. First, by their stated

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[20] CEHE Initial Brief, p. 14.
[21] Public Utility Regulatory Act ("PURA"), TEX. UTIL. CODE § 36.006.
[22] *E.g.* Tr. at 159:2–162:24, 1163:14–1165:3.
[23] *Id.* at 1107:22–1108:20, 1157:22–1167:4; *see also* COH/HCC Hearing Exhibit No. 1, Direct Testimony of Witness S. Norwood, 14:5–15:15.
[24] *See id.* at 1157:22–1158:7.
[25] *Id.*
[26] CEHE Initial Brief, p. 14.

purposes, the Major Underground Rehabilitation Program and the CLEP Program are redundant, serving the same purpose for exorbitant costs.[27] Second, that the Company does not provide evidence of how the proactive replacement is more cost effective than the replacement of a cable after failure. There is no evidence that the $57.5 million investment will be offset by customer savings equal to or in excess of the investment amount. There is no evidence that the $57.5 million investment provides any reliability above and beyond CEHE's existing programs or that any associated reliability improvement is justified by the hefty cost of the programs.

The Company attempts to dilute this lack of evidence by noting it serves "critical and highly important . . . customers" such as "the Houston Medical Center, which provides patients with life-saving care."[28] While COH/HCC certainly acknowledges the importance of medical and health facilities, this emotive argument is insufficient to meet the Company's burden of proof in these Programs. The fact that a utility supports a hospital network, or "important businesses,"[29] is not evidence that the Programs—which are unproven to increase reliability—are prudent investments. CEHE provided no evidence that there are any reliability concerns with any of these businesses or medical facilities, or that they have reliability ratings below the 99.98 percent SAIDI index the Company's system holds as a whole. In fact, as stated above, given that all of the cables for these facilities are underground, as explained by CEHE Witness Julienne Sugarek, their reliability is even higher than the 99.98 percent average.[30]

The Company has woefully failed to meet its burden to prove that these investments are reasonable and prudent. COH/HCC recommends the $111.5 million invested in the Programs be disallowed and removed from rate base. COH/HCC further recommends that the portion of the

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[27] *See generally* CEHE Initial Brief, p. 12–14.
[28] CEHE Initial Brief, p. 10, 14.
[29] *Id.*
[30] Tr. at 1116:11–17, 1250:10–25.

DCRF related to these Programs be refunded to distribution customers pursuant to PUC Substantive Rule 25.243. More specifically, COH/HCC recommends that distribution customers be refunded in this case, and not in a subsequent proceeding, pursuant to PUC Substantive Rule 25.243(f).

2. Capital Project Accounting/Capitalization Policy Changes

N/A.

3. Land Costs

N/A.

B. Line Clearance Project

N/A.

C. Prepaid Pension Asset

N/A.

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

N/A.

E. Cash Working Capital [PO Issue 15]

N/A.

F. Other Prepayments

N/A.

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

1. Unprotected Excess Deferred Income Tax (UEDIT)

N/A.

2. Hurricane Harvey

COH/HCC support the recommendations of GCCC on this issue.[31]

3. Medicare Part D

N/A.

4. Texas Margin Tax

N/A.

5. Smart Meter Texas

N/A.

6. REP Bad Debt

N/A.

7. BRP Pension and Postretirement

N/A.

8. Other Regulatory Assets and Liabilities

N/A.

H. Capitalized Incentive Compensation

See Section IV.B.1.

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

A. Return on Equity [PO Issue 8]

COH/HCC support the recommendations of TCUC on this issue.[32] Woolridge recommends 9.0 percent as the primary Return on Equity in this case.[33]

B. Cost of Debt [PO Issue 8]

COH/HCC support the recommendations of TCUC on this issue.[34]

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[31] GCCC Initial Brief, p. 26–28.
[32] TCUC Initial Brief, p. 5–29.
[33] *Id.* at p. 8–9.
[34] *Id.* at p. 29–30.

C. Capital Structure [PO Issue 7]

COH/HCC support the recommendations of TCUC on this issue.[35] Woolridge recommends a capital structure of 40 percent common equity and 60 percent debt in this case.[36]

D. Overall Rate of Return [PO Issue 8]

COH/HCC support the recommendations of TCUC on this issue.[37]

E. Financial Integrity [PO Issue 9]

N/A.

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

CEHE relies on its singular, and abnormal, test year to justify its incredibly high O&M expenses. Even further, CEHE attacks Intervenors and Staff's proposals, naming them "simplistic, overcharging disallowances," again without providing sufficient evidence for its own arguments.[38] The Company thereafter argues that its expenses are reasonable because, essentially, CEHE says they are, relying on its own budgeting and internal practices as "evidence."[39] But when it comes to actually providing evidence in the form of any supporting data or studies, the Company fails to present much of anything. While it has consistently argued customer and load growth, it has equally consistently failed to provide evidence of any such growth to support the exorbitant increases in O&M expenses.

The Company explains that over seven years the City of Houston's customer population grew from 5.9 million to 6.9 million and, of those customers, it now serves 359,525 new residential

[35] *Id.* at p. 30–38.
[36] *Id.*
[37] *Id.* at p. 38.
[38] CEHE Initial Brief, p. 74.
[39] *Id.* at p. 75.

customers and 41,991 new commercial customers.[40] Due to customer growth, CEHE claims its system has also grown, citing to miles of additional distribution pole, new substation feeder positions, transformers, and so on.[41] Again, the Company fails to make its argument come full circle. The evidence that its customer base has grown, and therefore also its infrastructure, is not—in it of itself—sufficient to justify any given level of increase in expenses. This is especially true when the load growth—the increase in kWh sales—has stagnated or grown at a historically low rate.[42] Moreover, it does not show that the requested increase in expenses is reasonable in relation to the increased customer base. The Company conceded that it has done no such studies.[43]

Notably, Company Witness Kristie Colvin testified that CEHE purportedly adjusted test year amounts "to remove items that are not allowed to be included in cost of service for known and measureable changes"[44] but then acknowledged that no adjustments were made for extraordinarily high or extraordinarily low expenses from the test year.[45] In other words, the Company failed to adjust out those abnormal expenses as unknown and un-measureable changes.[46]

As provided by Norwood, the Company's test year O&M expense was abnormally high and unrepresentative of CEHE's historical O&M expenses.[47] The test year O&M request of $650.7 million is 12.5 percent higher than the Company's average O&M expenses over the four years preceding 2018.[48] The Company attempts to support the increase in cost on the basis that it is necessary, in part, to address reliability concerns.[49] COH/HCC recommends that CEHE's

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[40] *Id.* at p. 75.
[41] *Id.* at p. 75.
[42] Tr. at Tr. at 197:10–15, 212:15–18, 213:5–17.
[43] *Id.* at 1145:23–1147:5.
[44] Tr. at 269:22– 270:6.
[45] *Id.* at 273:7–12.
[46] *See id.*
[47] COH/HCC Hearing Exhibit No.1, Direct Testimony of Witness S. Norwood, 7:4–13.
[48] *Id.* at 10:4–12.
[49] *Id.* at 7:4–13.

requested level of O&M expenses be reduced by $44.3 million for a total allowable O&M cost (excluding ERCOT charges) of $606.4 million.

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

N/A.

B. Labor Expenses

1. Incentive Compensation

CEHE's assertions in support of its financially based incentive compensation are equally inadequate. The Company's argument for why financially-based incentives should be included in rates is essentially that it justifiably uses "market studies to determine pay base, incentive opportunities and benefits."[50] But the question presented for the Commission on this issue is not whether the Company is properly compensating its employees. The question is whether the full breadth of compensation costs sought should be borne by CEHE's customers. Nevertheless, CEHE appears to argue its financially-based incentive compensation costs should be included in its rates because (1) of a competitive market for candidate employees and (2) House Bill 1767. The Company's arguments related to the former do not explain why the cost must be bore by customers and its arguments for the latter are contrary to common sense, much less to the clear language of House Bill 1767.

CEHE utilizes two full pages to explain the Houston-area's economy and the pool of qualified candidates.[51] The Company provides it must offer its compensation plans in order "[t]o attract and retain employees."[52] This does not explain why costs for financially-based incentive compensation should be borne by the customer—the Company could just as easily fund its

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[50] CEHE Initial Brief, p. 78.
[51] *Id.* at p. 76–77.
[52] *Id.* at p. 78.

financially-based incentives off of its increased earnings that year.[53] CEHE's explanations fail to take-on the historical Commission precedent excluding financially-based incentives on the basis that they benefit shareholders *more* than customers.

CEHE's rendition of Intervenors and Staff's "pitting" of shareholder interests against customer interests as it relates to incentive costs tied to financial measures[54] is both inaccurate and irrelevant. The issue with financial based incentives is that they benefit shareholders *more*, not that they only benefit shareholders or only benefit customers.[55] Indeed, customers and shareholders could be generally aligned in the sense that both benefit. But where there is a disparate benefit to the shareholders over customers, the allocation of the cost resulting from that disparate benefit should reflect the disparity. Even further, in every instance wherein the customer benefits, so does the shareholder. In contrast, shareholders may benefit in instances when customers do not—after all, shareholders are paid a proportion of the Company's profits regardless of whether any benefit is tangible to a customer. As explained by COH/HCC Witness Mark Garrett, shareholders benefit more than ratepayers for a multitude of reasons, including that many factors exist that impact earnings that are entirely out of the control of employees and have limited value to customers—a hot summer, customer growth, high ROE.[56]

Intervenors and Staff are **all aligned** on this issue and support COH/HCC's position. Curiously, CEHE labels their collective position as "seriously flawed and misguided" when that positive is astutely in line with Commission precedent, as seen in Docket Nos. 28840, 33309, 35717, 39896, 40443, 43695, and 46449,[57] that "a utility cannot recover the cost of financially-

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[53] *See* COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 21:24–31.
[54] CEHE Initial Brief, p. 80.
[55] *See* COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 10–14.
[56] *Id.* at 20:18–21:7.
[57] *Id.* at 12.

based incentive compensation because financial measures are of more immediate benefit to shareholders."[58] The Company suggests that the Commission's orders, stating its consistent rulings, are unpersuasive because they preceded House Bill 1767.[59]

The Company's heavy reliance on House Bill 1767,[60] an act explicitly applicable to **only** gas utilities, is misplaced—specifically, in the wrong type of case.[61] The Company fails to address the glaring issue with its reliance: this case relates exclusively to an electric utility. In blind denial of this indisputable truth, CEHE dubs House Bill 1767 "a 'triggering event' that gives the Commission an opportunity to evaluate and potentially reconsider the way it has viewed . . . incentive compensation[] in a rate proceeding."[62] The Company states it "is not arguing that the law . . . applies to CEHE as an electric utility," but only that it "reflect[s] a new policy . . . which confirms it is reasonable for a utility to rely on recent market compensation studies."[63] CEHE then proceeds to outline its witnesses' testimonies for why the presumption provided to gas utilities should also apply to electric.[64]

The Company's argument holds no ground in this proceeding. The Commission cannot deviate from governing statutes. If any dispute exists as to whether a law applicable to a gas utility can control an electric utility, we may look to the Legislature's clear intent in passing House Bill 1767 while also failing or refusing to even present House Bill 1766 (the same bill, but applicable to electric utilities) for hearing.[65] CEHE argues that House Bill 1767 is a "new policy

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[58] *Id.* at 10:11–11:2 (citing *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Finding No. 194, Order on Rehearing at p.34 (March 19, 2018))
[59] CEHE Initial Brief, p. 78.
[60] *See generally* CEHE Initial Brief, p. 78–80, 97.
[61] Tr. at 1351:20–1352:3.
[62] CEHE Initial Brief, p. 78.
[63] *Id.* at p. 79.
[64] *Id.* at p. 79.
[65] Tr. at 1352:4-1353:11.

pronouncement," which nonsensically ignores that the Legislature was presented with an opportunity to extend this "new policy" to electric utilities and it declined to do so.[66]

CEHE fails to explain how, legally or even logically, the PUC, governing body over electric utilities, should abandon its precedent and governing law in form of PURA for a gas utility law. As such, COH/HCC recommends that the 83 percent of CEHE's annual short-term incentive plan costs and 100 percent of its long-term incentive plan costs, dedicated to financially based incentives, be excluded from rate base.

a. Short-Term Incentive Compensation

CEHE seeks to include $29.462 million in rates for STI plan costs on the basis that, as discussed above,[67] it operates in a competitive market and the "new policy" of HB 1767 should supersede Commission precedent.[68] COH/HCC recommends that the Company's request for annual short-term incentive plan costs be reduced by 83 percent for a total decrease to the proposed adjustment by $14,759,000. The Company recognized that 55 percent of its goals were financial goals.[69] In 2018, the Company paid out 69 percent of its plan to those financial goals. In other words, CEHE recognizes that 69 percent of its short-term incentive compensation costs are financially based. Even further, however, is an additional 14 percent that was paid out for O&M expenditures.[70] While CEHE conveniently categorizes it as an operational goal, it is more appropriately a financial based goal. Ratepayers ultimately reap some benefit from successful O&M cost control but the utility retains all benefits generated from such goals until its next rate

[66] *See generally id.*
[67] COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 7:16–8:1.
[68] CEHE Initial Brief, p. 76, 79–80.
[69] Tr. at 306:25–308:5.
[70] COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 25:14–23.

case.[71] Thus, CEHE's O&M expenditures payout is also a financially based goal and should be excluded, along with the rest of the Company's financially based goals.

CEHE earnestly relies on Docket No. 38339, stating that the Commission found the STI costs to be reasonable and necessary.[72] This is misleading. As laid out by COH/HCC Witness Garrett, the ALJs Proposal for Decision in that case only recommended that the Commission find STI expenses recoverable because TIEC "presented no evidence as to the nature of the goals it contended constituted impermissible financial goals" and was, thus, undisputed.[73] In addition to presenting no evidence, TIEC was the single party to argue (and, even then, only in its briefing), against the STI plan costs.[74] As a result, the ALJs found TIEC's challenge in briefings insufficient "and, therefore, recommend[ed] that the Commission" find CEHE's STI expenses recoverable.[75]

The Company fails to address this reasoning and suggests that the ALJs recommendation as "only . . . an evidentiary issue."[76] To be clear, whether the Commission allows the Company to recover any given expense will always be an issue of evidence. That *no parties* proffered any evidence, and the fact that even the argument against STI costs was not presented until post-hearing briefings, is exceedingly significant.[77] As highlighted by the Commission's prior orders in Docket Nos. 28840, 33309, 35717, 39896, 40443, 43695, and 46449, the Commission excludes financially-based incentives when and where evidence is presented to dispute the necessity of those incentives.[78]

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[71] *See id.*
[72] CEHE Initial Brief, p. 84.
[73] *See* COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 15:5–26.
[74] *Id.*
[75] *Id.*
[76] CEHE Initial Brief, p. 84.
[77] *See* COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 15:5–26.
[78] *Id.* at 12.

This treatment is shared, almost unanimously, by surrounding western states.[79] Specifically, of the 24 states surveyed by Garrett, none allow full recovery of incentive compensation through rates.[80]

The exclusion of financially based short term incentives has been consistent by this Commission and among the surrounding states. That precedent should be followed in this case. CEHE has offered no justification to deviate from this long-held precedent. COH/HCC recommends that the Company's request for annual short-term incentive plan costs be reduced by $14,759,000 to the proposed adjustment.

b. Long-Term Incentive Compensation

The Company attempts to categorize portions of its long-term incentive ("LTI") costs as "time based" and therefore, somehow, could not be financially-based incentives.[81] The Company's LTI plan may be broken down into two categories: performance shares and restricted stock units ("RSUs").[82] CEHE admits that the performance shares, which are 70 percent of its LTI, are financially based.[83] The LTI awards are based on operating income and total shareholder return.[84] As argued above in sections IV.B.1. and IV.B.1.a., such financial based incentives should be excluded from rates.

The Company also argues that the RSUs, the remaining 30 percent of its LTI, are "purely time-based" and, thus, are operational and not financial goals "and is geared towards retaining eligible employees."[85] However, the Company fails to acknowledge that the value and degree of compensation in the RSUs depends on CEHE's parent company's stock price over the vesting

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[79] *Id.* at 23.
[80] *Id.* at 22:5–11.
[81] CEHE Initial Brief, p. 88.
[82] *Id.* at p. 89.
[83] *Id.* at p. 88–89.
[84] COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 34:7–19.
[85] CEHE Initial Brief, p. 89.

period.[86] In other words, employee's benefit from the RSU is based on the Company's financial success in the form of common stock—this is a financially-based incentive.[87] The Company's written objective for its LTI plans are to "give Participants in the Plan an interest in the Company parallel to that of shareholders."[88] COH/HCC recommends that the Company's request for annual LTI plan costs be completely excluded from rates, resulting in a proposed adjustment of $11,250,000. This is consistent with Commission precedent, as related to Docket Nos. 28840, 33309, 35717, 39896, 40443, 43695, and 46449.[89] This precedent in Texas is substantiated by treatment in other states wherein long term, stock-based incentives are not allowed in almost every state surveyed by COH/HCC Witness Garrett: Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Missouri, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.[90]

2. Executive Employee Related Expenses

The Commission has consistently found that "non-qualified supplemental executive retirement benefits . . . are not reasonable or necessary to provide utility service to the public, not in the public interest, and should not be included in . . . cost of service."[91] Nevertheless, CEHE provides that its Benefit Restoration Plan ("BRP") relate to "a non-qualified plan for the retirement (or pension) plan for certain employees whose retirement benefits under the traditional plan have been negatively impacted by reaching certain limits contained in the" Internal Revenue Code.[92] In

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[86] CEHE Hearing Exhibit No. 22, Direct Testimony of CEHE Witness L. Harkel-Rumford, 30
[87] COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 34:7–19.
[88] *Id.* at 34:20–35:17.
[89] *Id.* at 12.
[90] *Id.* at 37:8–38:2.
[91] COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 44:7–45:25 (citing *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Findings of Fact Nos. 202–204, Order on Rehearing at 34 (March 19, 2018); *Application of SWEPO for Authority to Change Rates,* Docket No. 40443, Findings of Fact No. 227, Order on Rehearing at 40 (March 6, 2014); and *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 39386, Findings of Fact Nos. 140–142, Order on Rehearing at 25–26 (November 2, 2012)).
[92] CEHE Initial Brief, p. 98.

other words, the Company seeks to be compensated for a non-qualified plan that is most often equal to what the executive would have received but for the Code's limitations.[93] The Company argues, similar to its arguments related to its STI and LTI plans, that these costs are "critical" to CEHE's parent company to retain and maintain its employees.[94] However, again, the Company fails to provide any evidence of why it is a cost that should be borne by ratepayers instead of the shareholders of its parent company. The supplemental plans are exactly that—supplemental to CEHE's regular pension plans.[95]

These plans have been consistently excluded by the Commission for the same reason as financially-based incentives—they benefit shareholders more than customers.[96] CEHE's hypothetical situation wherein "CNP did not offer a BRP" is inconsequential here—no party contests that the Company is permitted to compensate its employees by way of a BRP. The issue is that through this case, CEHE attempts to put the financial burden on ratepayers for expenses that are not necessary to the provision of electric services. COH/HCC recommends that the Company's supplemental retirement plan benefits be completely excluded from rates, for a 100 percent total decrease to the proposed adjustment by $1,783,000.

3. Payroll Adjustments

The Company's proposed payroll adjustments involves three components: (1) CEHE annualizes the pay increases from the test year (2018), (2) CEHE applies a 3 percent prospective increase for the year following (2019), the Competitive Pay Adjustments ("CPA"), and (3) CEHE proposes an adjustment to STI for pay increases and average goal achievements for the last three

[93] COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 42:6–19.
[94] CEHE Initial Brief, p. 99.
[95] COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 43:6–21.
[96] *Id.* at 44:7–45:24.

years.[97] As explained by COH/HCC Witness Mark Garrett, CEHE's proposed first and second components are not supported by the evidence.[98] Beyond conclusory statements, CEHE fails to provide evidence of how its annualization of test year salaries and CPA were adjusted based on known and measureable changes.

Regarding the first component, CEHE fails to measure its annualization to ensure that the resulting payroll represents its end of year expense levels.[99] Regarding the second component, CEHE's projected additional increase for future pay raises ignores offsetting factors.[100] The Company's projected increase is based on nominal pay raises, which are not known and measureable changes in light of the numerous other impacting factors (e.g. turnover, workforce reorganization, gains in productivity, and capitalization ratio changes).[101] It would be more appropriate to measure all revenue requirement components at the same point in time.[102]

As such, COH/HCC recommends rejecting a post-test year adjustment, as estimated by the Company's CPA, and that it be removed from the requested expenses. The removal would reduce CEHE's direct payroll expense increase requested by $2,965,000 and reduce the direct payroll tax expense requested by $227,000.[103] The removal would also reduce CNP (affiliate) payroll expense increase requested by $1,414,000 and CNP (affiliate) payroll tax expense increase requested by $108,000.[104] The total would be a decrease to the proposed adjustment by $3,192,000 for direct payroll and for a total decrease to the proposed adjustment by $1,522,000 for allocated payroll from CNP.

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[97] *Id.* at 48:1–10.
[98] *See generally id.* at 48:1–50:21.
[99] *Id.* at 48:12–18.
[100] *Id.* at 48:12–18.
[101] *Id.* at 48:12–49:12.
[102] *Id.* at 49:14–22.
[103] *Id.* at 50:9–21.
[104] *Id.*

4. Pension and Other Postemployment Benefits (OPEB) Expense

N/A.

5. Other Benefits

The Company fails to provide evidence that its executive salaries in excess of $1 million are necessary to providing service. CEHE provides no evidence for why the portion of an executive's salary in excess of $1 million is actually necessary to the providing utilities, as opposed to benefiting the Company's stock. As explained by Garrett, executives of investor-owned utilities are compensated to provide electricity and to maintain and increase the utility's stock.[105] COH/HCC recommends that the Company's non-qualified compensation expenses in the form of executive salaries in excess of $1 million be excluded from rates, for a 100 percent for a total decrease to the proposed adjustment by $1,143,619, identified by CEHE as non-deductible salaries.[106]

C. Depreciation and Amortization Expense [PO Issue 25]

CEHE's brief fails to explain how its study and the methodology of its witness, Dane Watson, are reasonable and reliable as the basis for the calculation of its expenses.[107] CEHE utilizes the entirety of its briefing on this section dedicated to combating the testimony of other witnesses, without focus on its own burden. COH/HCC support the recommendations of GCCC[108] and TCUC[109] on this issue. GCCC Witness Lane Kollen recommends, based on TCUC Witness David J. Garrett's proposal, that transmission depreciation expense and revenue requirement be reduced by $5.491 million and reductions in the distribution depreciation expense and revenue

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[105] *Id.* at 46:20–47:4.
[106] *Id.* at 46:1–18.
[107] CEHE Initial Brief, p. 99.
[108] GCCC Initial Brief, p. 22.
[109] TCUC Initial Brief, p. 39–48.

requirement of $31.025 million.[110] COH/HCC also supports the recommendations of GCCC on amortization expense.[111]

D. Affiliate Expenses [PO Issue 35, 36]

N/A.

1. Vectren Issues

2. Compensation for Use of Capital

3. Service Company Pension and Benefit Costs

4. Affiliate Carrying Charges

E. Injuries and Damages

N/A.

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

COH/HCC support the recommendations of GCCC[112] on this issue. COH/HCC also supports CEHE's proposal, but only to the extent the Company should recover its restoration costs.[113].

G. Self-Insurance Reserve [PO Issues 16, 33]

CEHE's current reserve is at a $5.79 million deficit resultant from the eight-year delay between rate cases.[114] The Company's proposed increase includes $4.11 million to eliminate the reserve deficiency and the remaining portion to provide for average annual losses for a target reserve of $6.55 million within three years.[115] This proposal, if granted, would result in significant overfunding to the Company, up to $20.55 million, if CEHE does not also file another rate case at

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[110] GCCC Hearing Exhibit No. 1, Direct Testimony of Witness L. Kollen, 50:11–23.
[111] GCCC Initial Brief, p. 22.
[112] GCCC Initial Brief, p. 26–28.
[113] *Id.*
[114] COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 53:12–54:2.
[115] *Id.* at 53:1–10.

the expiration of three years.[116] As such, COH/HCC recommends either that the Commission require the Company to file another rate case at the end of the three-year period or that the self-insurance expense proposed adjustment be reduced by $2,570,000. In lieu of either option, ratepayers will pay an extra $20.55 million over the next eight years.[117] The Company fails to address why this excess burden to customers is necessary to the provision of its services.

H. Vegetation Management

The Company fails to provide evidence for why its test year is representative of its historical tree trimming and removal costs and, thus, also fails to provide evidence for its costs related to the same. Instead, it labels the three-year average plan, proposed by the others, as outdated without providing evidence for why the proposal is outdated.[118] The Company argues that COH/HCC's proposals "were shown to be understated and unrepresentative" of CEHE's ongoing expenditures.[119] The Company makes such conclusory statements without providing any evidence for why using, exclusively, the abnormally high test year data would be representative of a known and measureable expense. COH/HCC recommends that CEHE's costs included in rates be based on the average expense from the years 2014-2017—$2,683,000.

I. Smart Meter Texas Expense

N/A.

J. Loss on Sale of Land

N/A.

K. Federal Income Tax Expense [PO Issues 28, 29]

N/A.

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[116] *Id.*
[117] *Id.* at 53:12–54:2.
[118] CEHE Initial Brief, p. 110.
[119] *Id.* at p. 110.

L. Taxes Other Than Income Tax [PO Issue 26]

N/A.

1. Ad Valorem (Property) Taxes

2. Texas Margin Tax

3. Payroll Taxes

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

N/A.

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

N/A.

1. Weather Normalization

2. Energy Efficiency Program Adjustment

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

A. Functionalization

CEHE failed to properly allocate FERC Accounts 586, related to operation of meters, and 597, related to the maintenance of meters, to the meter function. As acknowledged by the Company, it now agrees that those accounts should be assigned to the meter function when determining the payroll allocator.[120]

1. Texas Gross Margins Tax Expense (and associated accounts)

COH/HCC support CEHE's initial recommendations on this issue, which are consistent with the Commission's order in the Company's last rate case, Docket No. 38339, and its orders preceding that case. As explained by COH/HCC Witness Pevoto, the Company's initial proposed allocated was determined based on revenues that would be collected from retail customers for

[120] *Id.* at p. 123.

taking the transmission service and distribution services, respectively.[121] This methodology reflects a total $942.5 million as the total transmission revenues paid by CEHE customers for taking transmission delivery.[122] The $942.5 million consists of a $395.8 million total revenue requirement of CEHE's owned transmission facilities and a total $546.7 of payments CEHE customers to other transmission owners in the system wide ERCOT transmission system.[123] CEHE's proposed allocator also includes a total of $1.333 billion revenue paid by CEHE customers for taking the distribution delivery service.[124]

In its rebuttal testimony and initial brief, the Company now supports Staff's proposal, which is flawed. Staff fails to explain how its witness, Brian Murphy, came to count the $395.8 million figure in his proposal twice. Murphy argues that the Company's proposal would uplift certain transmission costs to wholesale that should be assigned to retail.[125] The relevant transmission costs are $395.8 million and $546.7 million.[126] Murphy assigns the $546.7 million to retail, but then also adds in the $395.8 million to retail despite still accounting for that amount in wholesale without any explanation for where this second $395.8 million in costs from. Staff provides no evidence for why it accounts for the figure two times—once in wholesale and again in retail. Similarly, CEHE provides no evidence for its adoption of Staff's new allocation.

2. Miscellaneous General Expense (account 930.2)

The Company originally proposed that the costs of FERC Account 930.2 be allocated mostly (96.4 percent) to payroll, and the remaining 3.6 percent to customer service.[127] In its rebuttal, CEHE thereafter adopted Staff's position, functionalizing customer-related expenses

[121] COH/HCC Hearing Exhibit No. 4, Cross-Rebuttal Testimony of Witness K. Pevoto, 6:18–7:16.
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] Tr. at 854:11–855:5.
[126] *Id.* at 854:11–855:5
[127] CEHE Initial Brief, p. 122.

based on total O&M expense and telecommunication services expenses to be assigned to retail cost of service.[128] However, the entire account is more appropriately functionalized based on payroll.[129] The account and its expenses are either payroll, and recognized by the Company,[130] or a general expenses that cannot be directly assigned.

Regarding the general expenses, most Texas utilities use a payroll allocator for general expenses, which was admitted by CEHE's Witness Matthew Troxle.[131] This is because the general expenses cannot be directly assigned to specific classes or allocated based on a particular allocation methodology.[132] This is the industry standard.[133] The Company does not provide any evidence for why it utilizes any other allocator for its miscellaneous expenses. CEHE's sole argument appears to be "this is the way we've done it in the past." If the allocation were based on sound cost-causation principles and support by past practices that would be persuasive. However, a past practice that is not supported by cost-causation principles, as demonstrated by COH/HCC Witness Pevoto, should not be followed.[134] COH/HCC recommend that the costs of FERC Account 930.2 be allocated based on payroll.

3. Unprotected Excess Deferred Income Tax

All distribution related UEDIT, as determined in Docket No. 48226, should be allocated to distribution ratepayers. COH/HCC support the recommendations of GCCC[135] on this issue. COH/HCC recommends that the Commission reject Staff's recommendation, which is inconsistent with the Commission's prior orders. Staff conjures its own ratio based on a blend of two dockets

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[128] *Id.*
[129] *Id.* at p. 122.
[130] *Id.* at p. 122.
[131] Tr. at. 1036:17–1037:15, 1038:13–1042:7.
[132] COH/HCC Hearing Exhibit No. 3, Direct Testimony of Witness K. Pevoto, 15:12–16:9.
[133] *Id.* at 16:10–17:22.
[134] *Id.* at 12:2–13:11.
[135] GCCC Initial Brief, p. 29–39.

[one transmission ("TCOS") and one DCRF case], allocating 25 percent of the UEDIT to transmission.[136]

However, as explained by COH/HCC Witness Pevoto, "Staff fails to prove that the two amounts of UEDIT refunds" from those two cases "are directly related and can be used together to form a reasonable base for allocating the UEDIT credit in this case between the transmission and distribution functions."[137] Specifically, Pevoto explains Staff's method: it took the $5.1 million refund of unprotected transmission plant related EDIT from the transmission case and the $15.7 million refund for the unprotected transmission plant related EDIT from the DCRF cases, added them together, and calculated that the $5.1 million was 25 percent of the sum of those two figures.[138] Staff, in this cases, proposes to use its self-made 25 percent to allocate 25 percent of CEHE's UEDIT to transmission, despite it all being distribution. This is inconsistent with prior orders and should be rejected. All distribution related UEDIT, as agreed to by the parties, and found by the Commission in Docket No. 48226, should be returned to distribution customers in this case.

B. Class Allocation [PO Issue 46]

COH/HCC recommends that FERC Accounts 303.02, 389–398, 920, 1650, 1823, 2282, 2283, 2540, 9210, 9250, 9260, 9301, 9302, 9310, 9350 and Federal Income Tax Accounts 4073 and 4081 ("Subject FERC Accounts") be allocated to CEHE's Texas retail customers based on payroll rather than O&M expenses. The Company states that the allocation factors used for the accounts are consistent with the NARUC Cost Allocation Manual presented and relied on by COH/HCC Witness Kit Pevoto and then states that Pevoto "presents no evidence that the costs in

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[136] *Id.* at 11:4–12:4
[137] *Id.* at 11:1–8.
[138] *Id.* at 10:23–11:18.

these accounts vary directly with payroll expense."[139] This argument totally ignores the evidence in this case. In her direct testimony, Pevoto explained how each of the Subject FERC Accounts are primarily based in payroll.[140]

The Company, however, offered no evidence to establish that its treatment of the Subject FERC Accounts is cost based. It merely relies on the fact that it has "done it this way in the past." As stated previously, historical rate treatment prevails only when it is demonstrated to be cost-based. The only evidence on this issue shows that it is no cost-based. Therefore, COH/HCC's proposed treatment, which was demonstrated by Pevoto to be more consistent with cost-causation principles, should be adopted.

1. Class Allocation of Transmission Costs

N/A.

a. "CenterPoint 4CP" versus "ERCOT 4CP" Class Allocation (separately for both transmission and for distribution)

b. Transmission and Distribution Demand Allocation Factors (4CP vs NCP class allocation (separately for both transmission and for distribution)

c. 4CP Rate Design versus NCP Rate Design (separately for both transmission and for distribution)

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

2. Municipal Franchise Fees [PO Issue 27]

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[139] CEHE Initial Brief, p. 129.

[140] COH/HCC Hearing Exhibit No. 3, Direct Testimony of Witness K. Pevoto, 12:2–17:22.

COH/HCC support the proposal of CEHE on this issue,[141] which is consistent with cost causation principles and Commission precedent. The only party to propose a different allocation is TIEC. TIEC incorrectly suggest that its method is consistent with the "direct method" that has been previously approved by the Commission.[142] TIEC Witness Jeffrey Pollock's method drastically distorts the first step of the direct method: allocation.[143]

The direct method allocates municipal franchise fees based on kWh sales to customer classes for customers residing within cities, when establishing transmission and distribution rates in ERCOT.[144] In contrast, Pollock's method multiplies the class's in-city kWh sales for that city by the city's municipal franchise fee rate—basing allocators specifically developed for each city to assign municipal franchisee fees among rate classes for each city.[145] TIEC provides no evidence for this deviation or for how or why this proposal is warranted, which will ultimately "shift $4 million of the fees from the transmission rate class to all of the other rate classes. It would additionally assign $1.5 million municipal franchise fees to the Residential class."[146] COH/HCC recommends that the Commission continue with its precedent and utilize the direct method.

3. Transmission and Key Accounts

N/A.

4. Allocation of Hurricane Harvey Restoration Costs [PO Issue 56]

N/A.

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[141] CEHE Initial Brief, p. 127.
[142] *See* TIEC Initial Brief, p. 65; *see also* COH/HCC Hearing Exhibit No. 4, Cross-Rebuttal Testimony of Witness K. Pevoto, 4:9–22.
[143] Tr. at. 460:18–461:1.
[144] COH/HCC Hearing Exhibit No. 4, Cross-Rebuttal Testimony of Witness K. Pevoto, 4:1–22.
[145] *Id.*
[146] *Id.* at 5:11–17.

5. Other Cost Allocation issues [PO Issue 46]

CEHE's assertion in its initial brief regarding FERC Account 907-10 is unsupported. Relying on the testimony of Company Witness Troxle, the company argues that these accounts should be allocated to the street lighting class based on lamp count versus customer count (as it is for all other costs). CEHE's only support for this proposal is Troxle's conclusory statement that the cost to serve customers with more lamps will be higher.[147]

The Company ignores the testimony from Troxle, immediately following his conclusory statement, that CEHE has conducted no studies to support his conclusion.[148] Without such a study, the Company should not, and cannot, be allowed to impose on street lighting (a vital safety and security tool)[149] an allocation assigning to this class 26 percent of these costs.[150] This is in stark contrast to the allocation method used for all other classes. If this per customer allocation were used for street lighting, the percentage of these costs assigned to the street lighting class would be only 1 to 2 percent.[151] This allocation is the only one that is supported by the evidence and not unjust and discriminatory.

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

A. Residential Customer Charge

CEHE's proposed T&D rate of $2.48 per residential class customer charge is excessive and an increase in customer rates, if any, should be gradual and proportionally equal to the base rate revenue requirement increase. CEHE argues that, when combined with the meter charge, the customer charge it proposes is a decrease from current customer charges.[152] This fails to address

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[147] Tr. at 1047:5–25.
[148] *Id.*
[149] *Id.* at 1048:1–8.
[150] *Id.* at 1046:11–1047:4.
[151] *Id.*
[152] CEHE Initial Brief, p. 131.

the issue. Each change in the tariff must be examined independently. Pevoto recommends increasing the customer charge by no more than the percentage increase for the base rate revenue requirement for the residential class, or a $1.75, whichever is lower.[153]

B. Customer Charge on Per Meter Basis vs. Per Customer Basis

The Company's proposed charge to residential customers on per a meter basis is unsupported by witness testimony. CEHE Witness Troxle admitted that a per meter charge will cause changes to customers with multiple meters—specifically, its multiple-meter customers will experience an increase in their bills.[154] As agreed to by Troxle, tailoring or designing the rates to the fullest extent possible in a manner that is clear and understandable for Retail Electric Providers, and ultimately the customer, so they understand for what they are being billed and paying for is a primary consideration in setting rates.[155]

Nevertheless, Troxle admits that there would be confusion in switching to per-meter charges.[156] This is because CEHE's proposal will go one of two ways: customers with multiple meters would receive multiple bills or, alternatively, retail electric providers would be required to consolidate the bills for the customers.[157] COH/HCC recommends that customers continue to be charged on a per customer basis and, as such, that CEHE's proposal to switch to per meter basis charging be rejected.

C. Transmission Service Rate

COH/HCC support the recommendations of TIEC, requiring CEHE to remove all wholesale transmission costs from base rates and recover them through the Transmission Cost

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[153] COH/HCC Hearing Exhibit No. 3, Direct Testimony of Witness K. Pevoto, 29:5–17.
[154] Tr. at 974:14–21, 1030:11–1031:2.
[155] *Id.* at 1030:1–8.
[156] *Id.* at 1029:19–25.
[157] *Id.* at 30:3–13.

Recovery Factor ("TCRF").[158] Similarly, COH/HCC recommends rejecting the proposal presented by the Company to zero out its TCRF charge and recover all wholesale transmission costs through base rates. CEHE should not be allowed to over-recover TCRF charges in this case.

D. Transmission Service Facility Extensions

N/A.

E. Street Lighting Service

As with CEHE's proposed T&D residential customer charge, its proposed T&D rates for light emitting diode ("LED") street lighting are also excessive and would result in a windfall to the Company. In its brief, CEHE does not address its excessive charges for its street lighting, only its shift to new LED lighting as its standard.[159] As provided by COH/HCC witness Pevoto, the Company has no O&M costs for 15 years after its conversion to LED lights, and such conversion costs are capital costs for the conversion, not O&M costs.[160] Company witness Troxle provides that the "vast majority" of the Company's proposed LED costs relate to replacing the HPS lights and installing the new LED lights.[161] Nevertheless, the Company seeks $2.73 million in O&M expenses when there is no operation or maintenance to be conducted by CEHE on its own dollar. Not only do the LED lights require less maintenance, the Company's ten-year warranty for all purchased LED lights also means that CEHE would have no expenses for the first ten years to replace a bulb or replace an LED light.[162]

The Company provides no evidence for why the new LED lights will require the significant cost in O&M equivalent to the rates requested. To the contrary, the Company will incur little to

[158] TIEC Initial Brief, p. 71.
[159] CEHE Initial Brief, p. 134.
[160] COH/HCC Hearing Exhibit No. 4, Cross-Rebuttal Testimony of Witness K. Pevoto, 12:22–13:22.
[161] Tr. at. 1053:13–1054:25.
[162] *Id.* at 231:25–232:10.

no costs for the first decade of their use. Therefore, COH/HCC recommends that the Company's O&M expenses related to street lighting excluded, thereby reducing the Company's LED street lighting rates by $2.73 million.

F. Other Rate Design Issues

N/A.

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

N/A.

A. Rider UEDIT [PO Issue 51]

B. Merger Savings Rider

C. Other Riders

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

N/A.

A. Transmission Cost of Service

B. Transmission Cost Recovery Factor

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

N/A.

A. Contested Issues

B. Uncontested Issues

XII. Conclusion and Prayer

COH/HCC recommend a $131 million rate decrease in CEHE's retail base rates, and the cost allocation and rate design set forth by their witnesses' testimonies and their Initial Brief. In furtherance thereof, COH/HCC provide the attached proposed Findings of Fact and Conclusions of Law. COH/HCC request all other relief, legal and equitable, to which they are justly entitled.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

Rate Base

1. CEHE did not sustain its burden of proof to establish the reasonableness and prudence of two capital investment projects: Underground Cable Assessment and Life Extension Program (Project No. ABCA) and Major Underground Rehabilitation Program (Project No. CE1B).

2. These programs should be excluded from the Company's rate base, resulting in a reduction to rate base of $111.5 million.

3. These programs were also included in the Distribution Cost Recovery Factor and, therefore, must be refunded to customers.

4. The Company also inappropriate included $2.6 million in indirect corporate costs in the Distribution Cost Recovery Factor. These must also be refunded to customers.

5. 83 percent of capitalized incentive compensation should be removed from rate base. This portion of the Company's capitalized incentive compensation is financial-performance base and should not be included in base rates.

Cost of Service

6. CEHE's O&M expenses should be reduced by $44.3 million. The total amount requested by the Company was not supported by the evidence.

7. The evidence demonstrates that 83 percent of the Company's Short Term Incentive Compensation Plan (STI) is financial based and benefitting only CEHE's shareholders and, therefore, not a reasonable and necessary component of its total compensation package.

8. CEHE's Long Term Incentive Compensation Plan (LTI) is not a reasonable and necessary component of the Company's total compensation package.

9. CEHE's Executive Employee Related Expenses are not a reasonable and necessary component of the Company's total compensation package.

10. The Company's post-test year adjustment for estimated Competitive Pay Adjustments are not known and measurable changes and, as such, should not be included in the test year.

11. CEHE's non-qualified compensation expenses for executive salaries in excess of $1 million are not reasonable and necessary.

12. CEHE's self-insurance reserve is not reasonable and necessary. It should be reduced by $2,570,000.

11. The Company's test year vegetation management expense is excessive in comparison with recent historical expenses with no reasonable justification. Accordingly, it is reasonable to us an average of the previous three years 2014-2017. This reduces test year expense by $2,683,000.

Cost Allocation and Rate Design

12. FERC Accounts 586 and 586 should be assigned to the meter function when determining the payroll allocator.

13. FERC Account 930.2 (Miscellaneous General Expense) should be allocated based on the payroll allocator.

14. All of the Unprotected Excess Deferred Income Tax identified in Docket No. 48226 as being distribution-related should be allocated to distribution ratepayers and returned through the UEDIT Rider.

15. FERC Accounts 303.02, 389-398, 920, 1650, 1823, 2282, 2283, 2540, 9210, 9250, 9260, 9301, 9302, 9310, 9350 and Federal Income Tax Accounts 4072 and 4081 should be allocated on a payroll allocator.

16. CEHE's allocation of municipal franchise fees to the customer classes based upon in-city kilowatt-hour (kWh) sales and collection of the fees from all customers within the customer class is reasonable and consistent with Commission precedent.

17. CEHE's proposed residential class charge is not reasonable and should be capped at $1.75.

18. CEHE's proposed customer charge on a per meter basis is not reasonable and necessary and should not be approved.

19. The Company's costs for the Street Lighting Class if overstated by $2.73 million, because it erroneously includes O&M costs for this class that were not experienced during the test year and will not be incurred in the future.

20. CEHE's allocation of FERC Accounts 907-910 to the Street Lighting Class on a per lamp basis as opposed to a per customer basis, as they are allocated to all other classes is unsupported and unreasonable based on the evidence presented. Those costs should be allocated to all customer classes based on a per customer basis.

B. Conclusions of Law

1. CEHE has the burden of proving that the rate change it is requesting is just and reasonable pursuant to PURA Sec. 36.006.

2. Pursuant to PUC Substantive Rule 25.243(f), all capital investments included in the Distribution Cost Recovery Factor must be reviewed for prudence in this proceeding.

3. All costs included in the Distribution Cost Recovery Factor not found to be reasonable and prudent in this proceeding must be refunded to distribution customers in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of July, 2019, a true and correct copy of the foregoing document was served upon the parties of record by email, facsimile and/or First Class Mail.

/s/ Alton J. Hall
Alton J. Hall, Jr.