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APPLICATION OF CENTERPOINT
ENERGY HOUSTON ELECTRIC, LLC
FOR AUTHORITY TO CHANGE RATES

RECEIVED
PUBLIC UTILITY COMMISSION
§ BEFORE THE STATE OFFICES
§
§ OF
§
§ ADMINISTRATIVE HEARINGS
§

COMMISSION STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Staff (Staff) of the Public Utility Commission (Commission) proposes the following findings of fact and conclusions of law, which are organized in a manner consistent with the briefing outline in this proceeding. To the extent an issue in this proceeding is not specifically addressed below, Staff respectfully requests the entry of findings of fact and conclusions of law that are consistent with Staff's positions in this proceeding.

PROPOSED FINDINGS OF FACT

II. Rate Base

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

1. Capital Project Prudence

- CEHE has the burden of proving that any costs incurred for capital investments since the test year end in CEHE's last rate case were prudently incurred.
- CEHE had several capital investments that exceeded the original estimate of costs by more than 10%.
- Just as CEHE has the burden of proof on the entire investment, CEHE also has the burden of proof on portions of the investment resulting in final costs that exceed its original cost estimates.

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- *Alexander Island Substation:* The filed initial estimated project cost for this substation was \$358,000; the actual final cost was \$732,052, a 104.5% variance. CEHE did not meet its burden of proof to establish the reasonableness and prudence of the variance of \$338,252, which was due to a mistake in which the foundations were located in the wrong place and subsequently had to be removed and replaced.
- The cost for CEHE's misplacement of the foundation should not be recovered from CEHE's customers.
- The variance of \$338,252 should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.
- *La Marque Substation:* The initial estimated project cost was \$1,446,000, and actual final cost was \$2,773,369, a 91.8% difference. CEHE did not meet its burden of proof to establish the reasonableness and prudence of the variance of \$1,182,769, which was due to design and location errors that were foreseeable.
- The variance of \$1,182,769 should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.
- *Sandy Point Substation:* The initial estimated project cost was \$2,619,000, and actual final cost was \$4,957,565, an 89.3% variance. CEHE did not meet its burden of proof to establish the reasonableness and prudence of the variance of \$2,076,665.
- The variance of \$2,076,665 should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.
- *Dow Substation:* The initial estimated project cost was \$48,000, and actual final cost was \$72,463, a 51.0% difference. CEHE did not meet its burden of proof to establish the reasonableness and prudence of the variance of \$19,663.
- The fact that the infrastructure may have been paid for by a single customer does not excuse CEHE's responsibility to meet its burden of proof.

- The variance of \$19,663 should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.
- *W.A. Parrish Substation*: The initial estimated project cost was \$380,000, and actual final cost was \$420,531, a 10.7% variance. CEHE did not meet its burden of proof to establish the reasonableness and prudence of the variance of \$2,531, which was due to cost differences in labor and materials.
- The variance of \$2,531 should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.
- *Jones Creek*: The initial estimated project cost was \$52,900,000, and actual final cost was \$68,422,609, a 29.3% difference. CEHE did not meet its burden of proof to establish the reasonableness and prudence of the variance of \$10,232,609 and the need for a distribution substation that was added to the project.
- The variance of \$10,232,609 should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.
- *Springwoods*: The initial estimated project cost was \$11,600,000, and actual final cost was \$13,505,096, a 15.8% variance. CEHE did not meet its burden of proof to establish the reasonableness and prudence of the variance of \$745,096.
- The variance of \$745,096 should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.
- *Tanner*: The initial estimated project cost was \$11,000,000, and actual final cost was \$12,790,474, a 16.3% difference. CEHE did not meet its burden of proof to establish the reasonableness and prudence of the variance of \$690,474.
- The variance of \$690,474 should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.

- CEHE also requested \$8,160 relating to transmission invested capital that should have been classified as an expense.
- CEHE's requested \$8,160 relating to transmission invested capital should be disallowed from invested capital and associated adjustments should be made to depreciation, the accumulated reserve for depreciation, and accumulated deferred income taxes to properly account for the disallowance.

II.A.3 Land Costs

- Staff recommended a disallowance of \$6,795,685 of land costs, as these properties are not currently used and useful.
- CEHE argues that the land costs should be reclassified as plant held for future use and included for cost recovery through rates despite the fact that the land is not currently used and useful.
- CEHE did not meet its burden of proof to establish the reasonableness and prudence of the land costs or their eligibility to be included in plant held for future use.
- CEHE may seek recovery of any investment in land once it is used and useful.

II.B. Line Clearance Project

- Staff recommended a disallowance of \$19,376,931, because CEHE inaccurately categorized Project Number HLP/00/1055 as a capitalized project.
- Because CEHE incurred these amounts for work on existing transmission and distribution lines in order to comply with National Electrical Safety Code (NESC) clearance standards, capitalizing this project would incorrectly enable CEHE to earn a rate of return on foreseeable, recurring O&M expenses, which CEHE performs on approximately 20% of its system each year.
- The modifications CEHE seeks to capitalize are ongoing and analogous to vegetation management expenses, which are classified as O&M expenses because they can be predicted in a reasonable manner.

II.G.4. Texas Margins Tax

- CEHE proposed to recover a return on and a return of a regulatory asset for Texas margins tax due to a timing difference in CEHE's method of collecting the tax.
- CEHE was never authorized to record a regulatory asset for Texas margins tax.

- CEHE has not requested, and the Commission has never authorized, the recovery of such an asset in any base rate case.
- There is no evidence that CEHE has not recovered its Texas margins taxes or gross receipts taxes on an ongoing basis through rates.
- It is inappropriate to charge customers again for Texas margins taxes that CEHE's rates were previously set to recover.

II.H. Capitalized Incentive Compensation

- Financially based incentive compensation is unreasonable and not necessary to provide utility service to the public for a TDU.
- The capitalized financially based incentive compensation identified by Staff witness Mark Filarowicz should be removed from rate base.

II.I. Capitalized Non-Qualified Pension Expense

- Non-qualified pension expense is unreasonable and not necessary to provide utility service to the public for a TDU.
- Non-qualified pension expense identified by Staff witness Mark Filarowicz should be removed from rate base.

III.A. Return on Equity

- CEHE requested a return on common equity (ROE) of 10.4%.
- CEHE's requested ROE of 10.4% is not supported by a reasonable application of the discounted cash flow and conventional risk premium methodologies used to support CEHE's requested ROE.
- The appropriate ROE for CEHE is 9.45%.
- An ROE of 9.45% will allow CEHE a reasonable opportunity to earn a reasonable return on its invested capital.
- An ROE of 9.45% is reasonable and consistent with comparable utilities taking into consideration the effects of the Tax Cuts and Jobs Act on comparable utilities.
- It is appropriate to take the impacts of the TCJA into effect in setting CEHE's ROE and depreciation rates.

- CEHE's energy conservation efforts, the quality of its services, the efficiency of its operations, and the quality of its management support a 9.45% ROE.
- The results of reasonable discounted cash flow models and a conventional risk premium approach support an ROE of 9.45%.
- A 9.45% ROE is consistent with CEHE's business and regulatory risk.
- A 9.45% ROE will support an investment grade bond rating for CEHE and provide sufficient cash flow to maintain CEHE's financial integrity.

III.B. Cost of Debt

- CEHE's cost of debt of 4.38% is reasonable.

III.C. Capital Structure

- CEHE requested a capital structure consisting of 50% debt and 50% equity.
- CEHE's proposed capital structure is not consistent with CEHE's business or regulatory risks.
- The appropriate capital structure for CEHE consists of 60% long-term debt and 40% common equity.
- TDUs operating in Texas face substantially lower risks than those currently faced by the integrated utilities or utilities in other jurisdictions.
- Ring-fencing protections will improve CEHE's credit metrics.

III.F. Financial Integrity

- CenterPoint is a large corporation that includes not only CEHE as a subsidiary, but also a number of other entities, such as CenterPoint Energy Resources (CERC), a multi-state gas distribution company; CenterPoint Energy Services (CES), a natural gas marketing business that sells non-rate-regulated natural gas and related services in 33 states (as of September 2018); Enable Midstream Partners, LP, a publicly traded master limited partnership that owns, operates, and develops strategically located natural gas and crude oil infrastructure asset; and Vectren Corporation (Vectren), which CenterPoint acquired in February 2019 and which includes natural gas operations and vertically integrated electric utility operations in Indiana and Ohio.
- The acquisition of Vectren has subjected CEHE to additional unreasonable risk from unregulated operations.

- Prior to the acquisition of Vectren, CEHE was already subject to unreasonable risks from regulated and unregulated operations of its affiliates.
- The transactions, business, operations, and leveraging activities of CEHE's parent company and its subsidiaries can have wide-ranging effects, not only on the credit profile and financial exposure of the parent, but on CEHE as well.
- The transactions, business, operations, and leveraging activities of a CEHE's parent company and its subsidiaries can affect certain of the CEHE's rate-related elements such as capital structure and cost of capital (both equity costs and debt costs).
- It is necessary to require CEHE to implement and abide by certain financial protections in order to protect CEHE's financial integrity and ensure reliable service at just and reasonable rates.
- The following financial protections are necessary to protect the financial integrity of CEHE and ensure CEHE's ability to provide reliable service at just and reasonable rates:
 - a. CEHE's credit agreements and indentures must not contain cross default provisions by which a default by CenterPoint or its other affiliates would cause a default at CEHE;
 - b. The financial covenant in CEHE's credit agreement must not be related to any entity other than CEHE;
 - c. CEHE must not pledge its assets in respect of or guarantee any debt or obligation of any of its affiliates or CenterPoint; it is prohibited from pledging, mortgaging, hypothecating, or granting a lien upon the property of CenterPoint with only a few exceptions such as the first mortgage and general mortgage;
 - d. CEHE must maintain its own stand-alone credit facility, and CEHE must not share its credit facility with any regulated or unregulated affiliate;
 - e. CEHE's first mortgage bonds and general mortgage bonds shall be secured only with CEHE's assets;
 - f. No CEHE assets may be used to secure the debt of CenterPoint or its non-CEHE affiliates;

- g. Dividend Restriction Commitment. CEHE must limit the payment of dividends by CEHE to an amount not to exceed CEHE's net income (as determined in accordance with generally accepted accounting principles).
- h. CEHE Credit Ratings and Dividends. CEHE must work to ensure that its credit ratings at all three major ratings agencies (S&P, Moody's, and Fitch) remain at or above CEHE's current credit ratings, and if CEHE's credit rating at any one of the three major ratings agencies falls below BBB+ (or its equivalent) for CEHE's senior secured debt, then CEHE must suspend payment of dividends or other distributions, except for contractual tax payments, until otherwise allowed by the Commission. CEHE must notify the Commission if its credit issuer rating or corporate rating as rated by any of the three major rating agencies falls below investment-grade level.
- i. Debt-to-Equity Ratio Commitment. CEHE's debt must be limited so that its debt-to-equity ratio is at or below the debt-to-equity ratio established from time to time by the Commission for ratemaking purposes in CEHE rate proceedings. The Commission has authority to determine what types of debt and equity are included in a utility's debt-to-equity ratio. CEHE must not make any payment of dividends or other distributions, except for contractual tax payments, where such dividends or other distributions would cause CEHE to be out of compliance with the Commission-approved debt-to-equity ratio. Additionally, neither CenterPoint nor any of its affiliates may issue stock or ownership interest that supersede the foregoing obligations of CEHE.
- j. Regulatory Return on Equity (ROE) Commitment. If CEHE's issuer credit rating is not maintained as investment grade by S&P, Moody's, and Fitch, CEHE must not use its below-investment-grade ratings to justify an argument in favor of a higher regulatory ROE.
- k. Stand-Alone Credit Rating. Except as may be otherwise ordered by the Commission, CenterPoint must take the actions necessary to ensure the existence of a CEHE stand-alone credit rating.

- l. CEHE must not hold out its credit as being available to pay the debt of any CenterPoint affiliates.
- m. CEHE must not commingle its assets with those of other CenterPoint affiliates.
- n. No Pledging of Assets Commitment. CEHE must not pledge its assets with respect to, or guarantee, any debt or obligation of CEHE affiliates.
- o. Affiliate Asset Transfer Commitment. CEHE must not transfer any material assets or facilities to any affiliates, other than a transfer that is on an arm's-length basis consistent with the Commission's affiliate standards applicable to CEHE, regardless of whether such affiliate standards would apply to the particular transaction.
- p. No Inter-Company Lending and Borrowing Commitment. CEHE must not lend money to or borrow money from CenterPoint affiliates.
- q. No Debt Disproportionally Dependent on CEHE. Without prior approval of the Commission, neither CenterPoint nor any affiliate of CenterPoint (excluding CEHE) may incur, guaranty, or pledge assets in respect of any incremental new debt that is dependent on: (1) the revenues of CEHE in more than a proportionate degree than the other revenues of CenterPoint; or (2) the stock of CEHE.
- r. Non-Consolidation Legal Opinion. CenterPoint must obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of CenterPoint or any of its affiliates, a bankruptcy court will not consolidate the assets and liabilities of CEHE with CenterPoint or any of its affiliates.
- s. No Bankruptcy Cost Commitment. CEHE must not seek to recover any costs associated with a bankruptcy of CenterPoint or any of its affiliates.

IV.B.1. Incentive Compensation

- Financially based incentive compensation should be excluded from rates charged to customers because financial measures are of more immediate benefit to shareholders and are not measures that are necessary and reasonable to provide T&D utility services.

- CEHE's short term incentive compensation based upon financial goals should be excluded from recovery through rates.
- CEHE's short term incentive compensation based upon operations and maintenance expense goals is financial in nature as it is related to maximizing profit and should be excluded from recovery.
- Compensation to employees under the short term incentive plan is based in part on a financial trigger.
- CEHE's non-financially based short term incentive compensation that relies on a financial trigger should be recovered 50% from customers and 50% from shareholders as no incentives are paid unless specified financial goals are achieved.
- CEHE's long term incentive compensation is financially based and should be excluded from recovery.
- The financially based incentives to be excluded from rates are identified by Staff witness Mark Filarowicz based upon CEHE's application workpapers and responses to requests for information.

IV.B.4. Pension and Other Postemployment Benefits (OPEB) Expense

- Non-qualified pension expense relates to amounts paid for employee-sponsored retirement plan for key executives who earn wages far in excess of average wages.
- Non-qualified pension expenses are discretionary costs designed to attract, retain, and reward highly compensated employees whose interests are more closely aligned with those of the shareholders than the customers
- Non-qualified pension expenses are not reasonable or necessary to provide utility service to the public, are not in the public interest, and should not be included in cost of service.

IV.C. Depreciation and Amortization Expense

Amortization Expense

- CEHE's regulatory assets and liabilities included in base rates should be amortized over a five-year period.

- A five-year amortization approximates the anticipated time period between the rate cases and minimizes the likelihood that CEHE over-collects amounts relating to these regulatory assets.

IV.D.1. Affiliate Expense, Vectren Issues

- CEHE identified 32 full-time equivalent (“FTE”) positions that are no longer positions with CEHE due to the acquisition of Vectren.
- The reduction in force from the Vectren acquisition should be made as a known and measurable adjustment to the request based on test-year amounts as the reduction in payroll is a reduction in expense that is apt to prevail into the future.
- Severance costs are a one-time expense relating to the termination of employee positions as a direct result of CenterPoint’s decision to acquire Vectren.
- Severance costs should not be made as a known and measurable adjustment to test-year expenses as the severance costs related to the acquisition are not an expense that is apt to prevail into the future.

IV.D.4. Affiliate Expense, Affiliate Carrying Charges

- Carrying costs paid to an affiliate are unnecessary and unreasonable and inconsistent with case law.
- The equity portion of carrying charges in the amount of \$4,942,320 should be excluded from rates.
- CEHE failed to meet its burden of proof to establish any equity portion of any charges that it charged to its affiliates on shared assets.

IV.E. Injuries and Damages

- CEHE’s requested test year amount for injuries and damages is inconsistent with CEHE’s previous years’ amounts for injuries and damages.
- Ordinarily, it is appropriate to use a three-year average to normalize expenses for injuries and damages as they are inconsistent from year to year.
- In this case, it is appropriate to average CEHE’s last 5 years of injuries and damages as the amount to be included in rates.

IV.F. Hurricane Harvey Restoration Costs

- CEHE's requested amount of \$8,742,497 for carrying costs related to restoration costs incurred to repair damage associated with Hurricane Harvey is reasonable.

IV.F. Self-Insurance Reserve

- Once the target reserve level of self-insurance reserve is reached, CEHE must continue to accrue the \$4.11 million designed to build the reserve to target levels to the self-insurance reserve even if it means that the self-insurance reserve balance exceeds its target level.
- It is unreasonable for CEHE to convert the self-insurance reserve accrual to shareholder earnings if the target reserve level is met.

IV.H. Vegetation Management

- CEHE is requesting that \$35.02 million be included in its rate base for vegetation management—the amount it spent on tree-trimming O&M expenses during the test year of 2018.
- CEHE's 2018 tree-trimming costs are not a reasonable representation of the annual tree-trimming cost apt to prevail into the future because the \$35.02 million, by CEHE's admission, included an amount of tree-trimming expenses that should have been incurred in 2017, if not for Hurricane Harvey.
- A comparison of CEHE's tree-trimming costs for the years since its last rate case demonstrates that from 2011 to 2017, its annual costs ranged from a low of approximately \$22.94 million in 2014 to a maximum of approximately \$29.45 million in 2016.
- CEHE's rates should be set to recover \$31.64 million as the reasonable level of distribution tree-trimming expense by taking the average of CEHE's pro-active tree-trimming expenses for the past three years and adding CEHE's 2018 expenses for hazard tree removal and reactive tree trimming.

VI.A. Weather Normalization

- Weather normalization is intended to adjust out the effects of abnormal weather in order that the normalized the test year usage may properly set rates based upon the usage levels apt to prevail into the future.
- There can be weather trends, including both warming and cooling trends.
- The use of 10 years of data is a reasonable means of capturing such weather trends.

- The use of 10 years of data is more sensitive to weather patterns during the test year.
- A reasonable weather normalization uses a 10 year regression model to best match the 10 year weather normalized time period to prevent a bias for any time period.
- It is reasonable to exclude the test year from the time period used to develop normal weather because including the test year creates a bias toward the actual test year weather and the weather normalization attempts to remove the impacts of weather from the test year.
- It is reasonable to include only variables statistically valid at the 95% confidence level within the weather normalization regression analysis.

VI.B. Energy Efficiency Program Adjustment

- CEHE proposed an EEP adjustment to reduce its test year kWh billing determinants for certain rate classes by an estimated amount of kWh savings due to energy efficiency measures installed during the test year under CEHE's energy efficiency programs.
- CEHE's proposed adjustment has the effect of artificially decreasing present revenues, and, if the Commission adopts CEHE's request, it would increase base rates for certain classes that participate in energy efficiency programs.
- Because the energy savings due to the energy efficiency measures are imprecise estimates, they cannot be known and measurable changes under the Commission's rules.
- CEHE's EEP adjustment is substantively identical to CEHE's lost revenue adjustment mechanism previously rejected by the Commission.
- CEHE's EEP proposal has no reasonable basis in law, policy, or fact and is not warranted by any reasonable argument for the extension, modification, or reversal of Commission precedent.

VII.A.1. Energy Efficiency Program Adjustment

- CEHE originally proposed a functionalization of Texas margins tax by netting wholesale revenues and retail transmission related revenues.
- CEHE's functionalization of the Texas margins tax is inconsistent with cost causation, due to the fact that it would collect costs associated with serving CEHE's retail customers from wholesale transmission service customers across the ERCOT grid.
- It is reasonable to functionalize Texas Gross Margins margins tax expense among retail and wholesale jurisdictions based on revenue requirements, in accordance with the direct testimony of Staff witness Brian Murphy.

VII.A.2. Miscellaneous General Expense

- Miscellaneous general expense should be directly assigned to the extent possible, and the remainder should be functionalized according to the nature of the particular expenses.
- Staff's recommended functionalization of miscellaneous general expense provides the most detailed classification of miscellaneous general expense, applies appropriate functionalization factors, and is consistent with cost causation.

VII.A.3. Unprotected Excess Deferred income Tax

- CEHE proposes assignment of UEDIT that remains to be returned to customers directly to retail distribution rates.
- The UEDIT credit was incurred and is due to be credited to both wholesale and retail customers.
- Staff's functionalization of UEDIT credits is consistent with the manner in which the credits were incurred by CEHE and properly reflects cost causation.

VII.B. Class Allocation

- CEHE's revenues for each class of customers should be set at cost.

VII.B.1. 4CP Allocation for Wholesale Transmission Charges and Rate Design

- It is appropriate to allocate wholesale transmission charges (ERCOT transmission payments) in proportion to unadjusted at-source class demand coincident with ERCOT 4CP.
- CEHE's retail cost recovery of transmission expenses should be aligned with the customer classes causing those transmission expenses to be incurred.
- The unadjusted ERCOT 4CP class allocation factor for transmission costs has been adopted in all fully litigated base rate proceedings since unbundling.
- The update to the unadjusted at-source ERCOT 4CP class allocation factor for wholesale transmission payments would not cause rate shock and should not be moderated.
- Failing to set rates at cost introduces cross-subsidization into the TDU rates, which harms competition.
- It is also appropriate to continue to charge a 4CP transmission rate design for IDR metered customers.

- The ERCOT 4CP rate design for retail transmission charges provides the customer with an incentive to reduce its load when doing so would reduce the transmission charges incurred by CEHE.

VIII.E. Street Lighting Service

- CEHE proposes to amend provisions in its Lighting Services Tariff to mandate installation and usage of LED lights for the 160 municipalities in its service territory.
- Customers should continue to have the ability to choose the type of lighting service based upon such factors as their lighting needs and the costs of the facilities.
- Customers should not be required to accept a lighting alternative that will increase utility bills.

CONCLUSIONS OF LAW

- CEHE has the burden of proving that the rate change it is requesting is just and reasonable pursuant to PURA § 36.006.
- In compliance with PURA § 36.051, CEHE's overall revenues approved in this proceeding permit CEHE a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses.
- The ROE and overall rate of return authorized in this proceeding are consistent with the requirements of PURA §§ 36.051 and 36.052.
- CEHE must implement and adhere to the financial protections ordered under PURA §§ 11.002, 14.001, and 36.051.
- CEHE's rates, as approved in this proceeding, are just and reasonable in accordance with PURA § 36.003.
- The Commission must determine a reasonable return, original cost, appropriate depreciation for utility invested capital under PURA §§ 36.051–36.053.
- Prudence is the exercise of that judgment and the choosing of one of that select range of options which a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives available at the point in time such judgment

is exercised or option is chosen. *Gulf States Utilities Company v. Public Utility Commission of Texas*, 841 S.W.2d 459, 475 (Tex. App.—Austin 1992, writ denied).

- There may be more than one prudent option within the range available to a utility in a given context. Any choice within the select range of reasonable options is prudent, and the Commission should not substitute its judgment for that of the utility. The reasonableness of an action or decision must be judged in light of the circumstances, information, and available options existing at the time, without benefit of hindsight. *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Order on Rehearing at 5 (citing *Nucor Steel v. Public Utility Commission of Texas*, 26 S.W.3d 742, 752 (Tex. App.—Austin 2000, pet. denied)).
- A utility may demonstrate the prudence of its decision-making through contemporaneous evidence. Alternatively, the utility may obtain an independent, retrospective analysis that demonstrates that a reasonable utility manager, having investigated all relevant factors and alternatives, as they existed at the time the decision was made, would have found the utility's actual decision to be a reasonably prudent course. *Gulf States*, 841 S.W.2d at 476.
- The Supreme Court of Texas has held that “the Commission possesses the authority to authorize deferred accounting treatment,” but “this authority is not unfettered.” The Commission’s discretion to use deferred accounting to alleviate regulatory lag is limited to when it is “necessary to carry out the provisions of PURA.” *Office of Pub. Util. Counsel v. Public Util. Comm’n of Texas*, 888 S.W.2d 804, 808 (Tex. 1994) (citing *State v. Pub. Util. Comm’n of Texas*, 883 S.W.2d 190, 196 (Tex. 1994)).
- The Commission’s rules provide for truing-up and refunding over-collected Interim TCOS and DCRF revenues.
- 16 TAC § 25.231(b)(1)(B) states that depreciation expense based on original cost and computed on a straight-line basis as approved by the Commission shall be used; it also provides that other methods may be used when the Commission determines such depreciation methodology is a more reasonable means of recovering the costs of plant.
- Affiliate expenses to be included in CEHE’s rates must meet the standards articulated in PURA §§ 36.051 and 36.058 and in *Railroad Commission of Texas v. Rio Grande Valley Gas Co.*, 683 S.W. 2d 783 (Tex. App.—Austin 1984, no writ).

ORDERING PARAGRAPHS

- CEHE must file a separate proceeding to address any disallowances to transmission related or distribution related invested capital ordered above in order to reflect the true-up of the Commission's disallowance for the time period between the date rates are set in this proceeding and the effective date of rates in the Interim TCOS or DCRF in which the capital investment was initially placed into rates.
- CEHE must implement and adhere to the financial protections listed in finding of fact ##.
- Within 30 days of the Final Order, CEHE must file in a compliance docket its non-consolidation opinion in accordance with finding of fact ##.

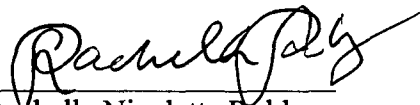
Date: July 16, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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**SOAH DOCKET NO. 473-19-3864
PUC DOCKET NO. 49421**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 16, 2019 in accordance with 16 TAC § 22.74.



Rachelle Nicolette Robles