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

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

H-E-B, LP'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

H-E-B, LP ("H-E-B") files these *Exceptions to the Proposal for Decision* ("Exceptions") with respect only to capital structure. On September 16, 2019, the State Office of Administrative Hearings ("SOAH") Administrative Law Judges ("ALJs") issued a Proposal for Decision ("PFD") in this proceeding. H-E-B appreciates the work and efforts of the ALJs in putting together the PFD. The deadline for filing exceptions is October 10, 2019; therefore, this pleading is timely filed. In support of its Exceptions, H-E-B respectfully submits the following for the Commission's consideration and adoption.

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I. Introduction/Summary

In this proceeding, CenterPoint Energy Houston Electric, LLC's ("CenterPoint") made several proposals to substantially increase its rates, further increase the equity component of its capital structure, substantially increase its return on equity ("ROE"), and change its transmission and distribution rate design, all while failing to provide adequate service to customers such as H-E-B.

H-E-B appreciates the SOAH ALJs' careful review and consideration of the record evidence, which is comprehensively detailed and cited in the PFD, and the ALJs' thoughtful approach to addressing the complex issues raised in this proceeding. H-E-B respectfully excepts only with respect to one issue of the myriad issues covered by the PFD. Specifically, H-E-B excepts to the findings of fact and the portions of the PFD regarding CenterPoint's capital structure. H-E-B continues to recommend that the Commission establish a 60% debt to 40% equity capital structure for CenterPoint. H-E-B requests that the Commission adopt the PFD in its entirety, as modified by H-E-B's recommendation herein.

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

No Exceptions.

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

A. Return on Equity [PO Issue 8]

No Exceptions.

B. Cost of Debt [PO Issue 8]

No Exceptions.

C. Capital Structure [PO Issue 7]

H-E-B excepts to the PFD's conclusion that "the most appropriate and reasonable capital structure for CenterPoint [is] 55% long-term debt and 45% equity."[1] The record evidence reflects that a 60% debt to 40% equity capital structure is more appropriate for CenterPoint. Accordingly, the Commission should adopt the 60% debt to 40% equity capital structure proposed by Texas Coast Utilities Coalition ("TCUC"), Texas Industrial Energy Consumers ("TIEC"), and Commission Staff, and supported by The Gulf Coast Coalition of Cities ("GCCC").

The ALJs are correct that H-E-B agreed with TCUC witness Mr. Woolridge's statement that CenterPoint is currently able to raise capital based on its Commission-approved capital structure of 55% debt to 45% equity.[2] However, H-E-B noted that CenterPoint's current 55% debt to 45% equity capital structure approved by the Commission in CenterPoint's last base-rate case—and the ALJs' recommended capital structure for CenterPoint in this proceeding—is in and of itself higher than the Commission's standard of 60% debt to 40% equity.[3] Further, H-E-B argued in briefing that that a 60% debt to 40% equity capital structure should be used in a manner that results in reliable service.[4]

CenterPoint contends that it is "[w]ell-established precedent that a utility be allowed a reasonable opportunity to earn a reasonable rate of return on invested capital,"[5] and that it is "necessary for the Commission to provide CenterPoint an opportunity to attract capital on

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[1] Proposal for Decision at 191 (Sept. 16, 2019).
[2] *Id.*
[3] H-E-B's Initial Brief at 27 (Jul. 9, 2019).
[4] H-E-B's Reply Brief at 7 (Jul. 16, 2019).
[5] CenterPoint's Initial Brief at 51 (Jul. 9, 2019).

reasonable terms."[6] In support of its proposed capital structure, CenterPoint asserts that the ability to attract capital on reasonable terms is "critically important" to CenterPoint because it will spend approximately $5.14 billion in capital investments over the next five years.[7] Indeed the ALJs correctly note that "no party took issue with CenterPoint's forecast of approximately $5.14 billion in capital expenditures from 2019-2023 to construct facilities to serve its rapidly expanding service area."[8]

H-E-B agrees that it is necessary for the Commission to provide CenterPoint an opportunity to attract capital on reasonable terms. That is the basis for H-E-B's support of a 60% debt to 40% equity capital structure. As CenterPoint continues to invest, CenterPoint will earn a return of and on its capital investments. CenterPoint's ability to earn a return on its investments in the "constructive,"[9] "credit positive,"[10] and low-risk Texas regulatory environment supports the implementation of a 60% debt to 40% equity capital structure.

The Commission's regulatory oversight and rate-setting power create a low-risk environment for CenterPoint. PURA § 31.001(b) states that "[e]lectric utilities are by definition monopolies in many of the services provided and areas they serve."[11] In Texas, transmission and distribution utilities are monopolies that operate with a set customer base in their established service territory. As a monopoly, CenterPoint is subject to the Commission's regulatory oversight. CenterPoint's earnings, revenue requirement, and its rates are set by the Commission through the ratemaking process. Transmission and distribution utilities can charge rates at levels that will allow recovery of just and reasonable costs and a reasonable return. PURA § 36.051,

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[6] *Id.* at 52.
[7] *Id.*
[8] Proposal for Decision at 175 (Sept. 16, 2019).
[9] Direct Testimony of Jorge Ordonez, Staff Ex. 3A at 32:10-13 (Jun. 12, 2019).
[10] *Id.* at 37:4-5.
[11] PURA § 31.001(b).

requires that the Commission set a utility's overall revenues, and by extension its rates, at a level that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital that is used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.[12] CenterPoint is insulated from its perceived business and regulatory risks because of the Commission's rate-setting power derived from the above requirement in PURA § 36.051.[13] The record evidence also reflects that CenterPoint has "extraordinarily low business risk."[14] CenterPoint, as a regulated transmission and distribution utility, faces less risk than that faced by vertically integrated utilities that own generation. For example, CenterPoint faces low business and operational risk as a regulated transmission and distribution utility in Texas[15] and carries no commodity risk.[16]

In addition, CenterPoint's ability to utilize regulatory cost-recovery mechanisms, like the Distribution Cost Recovery Factor and Interim Transmission Cost of Service, reduce regulatory lag and allow CenterPoint to adjust its charges to customers to "fully recover its cost of service in a stable, predictable manner."[17] Thus, the implementation of these regulatory cost-recovery mechanisms further reduces the risk to CenterPoint and its investors by shifting that risk from investors to ratepayers.[18]

CenterPoint's ability to earn a return of and on its investments, combined with the Commission's regulatory oversight and rate-setting power and the myriad of regulatory cost-

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[12] *Id.* at § 36.051.
[13] *See Id.*
[14] Tr. 565:21–565:24 (Gorman Cross) (Jun. 26, 2019).
[15] *See* Direct Testimony of Anjuli Winker, OPUC Ex. 3 at 40:6–40:8 (Jun. 6, 2019) ("My [] recommendation includes my consideration of . . . CenterPoint[]'s low business and operating risk as a T&D utility in Texas."); *See also* Direct Testimony of J. Randall Woolridge, TCUC Ex. 1 at 49:26–49:27 (Jun. 6, 2019) ("[CenterPoint]'s investment risk . . . is a little below the averages of the Electric and Hevert Proxy Groups."); Tr. at 561:21–561:23 (Gorman Cross) (Jun. 26, 2019); Tr. at 679:1–679:10 (Ordonez Cross) (Jun. 26, 2019).
[16] Tr. at 561:21–561:23 (Gorman Cross) (Jun. 26, 2019); Tr. at 679:1–679:10 (Ordonez Cross) (Jun. 26, 2019).
[17] Tr. at 565:20–565:21 (Gorman Cross) (Jun. 26, 2019).
[18] Tr. at 616:13–616:16 (Gorman Cross) (Jun. 26, 2019).

recovery mechanisms available to CenterPoint, create a low-risk environment for CenterPoint that supports the implementation of a 60% debt to 40% equity capital structure. Accordingly, the Commission should adopt a 60% debt to 40% equity capital structure consistent with the capital structures approved by the Commission for other, similarly situated transmission-only and transmission and distribution utilities in Texas.[19] As noted by Commission Staff and other intervenors, the 60% debt to 40% equity capital structure is "consistent with the prevailing capital structure of many ERCOT TDUs, reflects the Commission Staff's 'benchmark' for ERCOT TDUs, and will be sufficient to allow CenterPoint to attract capital at reasonable rates."[20]

Therefore, H-E-B respectfully requests the following revisions to the Findings of Fact:

Capital Structure

206. A capital structure composed of ~~55~~60% long-term debt and ~~45~~40% equity is reasonable in light of Center Point's business and regulatory risks.

207. A capital structure composed of ~~55~~60% long-term debt and ~~45~~40% equity will help CenterPoint attract capital from investors.

209. CenterPoint's reasonable overall rate of return is as follows:

COMPONENT	**CAPITAL STRUCTURE**	**COST OF CAPITAL**	**WEIGHTED AVERAGE COST OF CAPITAL**
LONG-TERM DEBT	~~55~~60.00%	4.38%	~~2.41~~ 2.63%

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

[20] Proposal for Decision at 181 (citing CEHE Response to Staff 17-20, Staff Ex. 39 at 37, n. 41; Project No. 46910 – Commissioner Memo, TIEC Ex. 14 at 3.

COMMON EQUITY	~~45~~40.00%	9.42%	~~4.24~~ 3.77%
TOTAL	100.00%		~~6.65~~ 6.40%

IV. Conclusion

H-E-B appreciates the substantial work on the part of the ALJs to parse through the record in this proceeding and draft the detailed and well-reasoned PFD. H-E-B urges the Commission to modify the PFD only with respect to the Commission's preferred capital structure of 60% debt to 40% equity due to the low-risk environment within which CenterPoint operates. When combined with the Commission-approved cost-recovery mechanisms available to CenterPoint, CenterPoint's risk is further diminished because these mechanisms enable CenterPoint to recover its cost of service both quickly and in a stable, predictable manner. For the reasons discussed herein, H-E-B respectfully requests that the Commission adopt the PFD as modified by these exceptions.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served on counsel for the parties of record on October 10, 2019.

Diana Liebmann

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