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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**City of Houston and Houston Coalition of Cities'
Exceptions to Proposal for Decision**

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To the Honorable Administrative Law Judges:

The City of Houston and Houston Coalition of Cities (“COH/HCC”) respectfully submit the following Exceptions to the Proposal for Decision 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]

This is a very important case both for PUC precedent and for its impact on the Houston region. This is the first base rate case for CenterPoint Energy Houston Electric (“CEHE” or the “Company”) since 2010 (PUC Docket No. 38339). Since Docket No. 38339, CEHE has had four Distribution Cost Recovery Factor (“DCRF”) proceedings. In this case, CEHE seeks to reconcile over \$60 million in DCRF increases associated with those proceedings. Accordingly, this case represents the first opportunity to reconcile DCRF expenses.

In addition, CEHE seeks Commission approval of its proposal regarding the refund of over collected tax expense resulting from the Tax Cuts and Job Act (“TCJA”). This refund totals over \$562.5 million.

Further, CEHE requests inclusion in rates of certain costs relating to its response to Hurricane Harvey. These costs exceed \$60 million.

Examining CEHE’s capital expenditures and operations over the last nine years, combined with these interim or extraordinary adjustments made this an extremely intensive and complex rate case. As a result, extensive discovery was conducted and the parties participated in several days of evidentiary hearing in this matter.

On September 16, 2019, the Administrative Law Judges (“ALJs”) for the State Office of Administrative Hearings (“SOAH”) submitted their Proposal for Decision (“PFD”) in this

proceeding. The ALJs for the SOAH are to be commended for what, for the most part, is a well-reasoned, fair and balanced PFD. COH/HCC agree with much of the recommendations in the PFD. However, there are some instances where the PFD, while recognizing a failure of CEHE to meet its burden of proof¹ or overwhelming evidence refuting the Company's claims, fails to recommend the required disallowance. On these issues, COH/HCC except and ask the Commissioners to reach a conclusion consistent with the evidence and the law on the issues. The specific findings to which COH/HCC except are as follows:

Rate Base

1. Major Underground Rehabilitation Program and Underground Residential Distribution Cable Life Extension Program ("URD CLEP") - **Findings of Fact Numbers 50, 53, 54, 56, and 58.**

COH/HCC recommend that the Major Underground Rehabilitation Program (\$57.5 million) and URD CLEP (\$54 million) investments totaling nine figures (\$111.5 million) be disallowed on the basis of prudence. The ALJs found that CenterPoint showed benefits for URD CLEP but not the Major Underground Rehabilitation Program. The ALJs further found that CenterPoint did not justify the URD CLEP Cost. Nevertheless, the ALJs recommend that a 10% disallowance of the URD CLEP and a 35% disallowance of the Major Underground Rehabilitation Program is reasonable. COH/HCC wholly disagree with the ALJs' allowance of any of these programs.

2. Indirect Corporate Costs - **Findings of Fact Numbers 107 and 108.**

COH/HCC recommend that the \$2.6 million in costs assigned by CenterPoint to distribution are indirect corporate costs and, thus, should be removed entirely from CenterPoint's rate base and new rate base rates. COH/HCC further recommend that such rates be refunded through CenterPoint's DCRF over a one-year period via a DCRF credit rider. The ALJs recommend that the costs are not indirect corporate costs but based on capital activity such they are necessary to distribution.

Operating and Maintenance Expenses

3. Overall O&M Costs - **Finding of Fact Number 226.**

¹ *Entergy Gulf States, Inc. v. PUC*, 112 S.W.3d 208, 214–15 (providing that the burden of proof does not shift until the utility establishes its *prima facie* case to establish reasonableness and prudence for every dollar of cost incurred).

COH/HCC recommend that CenterPoint's requested abnormally high O&M expense level be reduced by \$44.3 million for a total allowable O&M cost, excluding ERCOT charges, of \$606.4 million. The ALJs recommend rejecting the adjustment, thus recommending no disallowance.

4. Long-Term Incentive Compensation **Finding of Fact Number 239.**

COH/HCC recommend treating restricted stock units ("RSU") as financially-based incentives and, accordingly, disallowing the costs. The ALJs found that the RSU are not tied to financial goals and may be included in rates.

5. Street Lighting Service - **Findings of Fact Numbers 322 and 323.**

COH/HCC recommend that \$2.73 million of O&M expenses allocated to non-light-emitting diode (LED) street lighting customers be allocated to LED customers. The ALJs misunderstand COH/HCC's recommendation to be an adjustment of the expenses, rather than a reallocation. The ALJs recommend that no adjustment be made.

Functionalization

6. Texas Margin Tax - **Finding of Fact Number 347.**

COH/HCC recommend that the TMT expense be allocated based on revenues that would be collected from retail customers for taking the transmission service and distribution services, respectively. The proposed allocator, initially provided by CenterPoint, includes \$942.5 million in total transmission revenue consisting of \$395.8 million total revenue requirement of transmission facilities and \$546.7 of customer payments to other transmission owners. The ALJs recommend, based on CenterPoint's amended recommendation, to functionalize the costs to retail customers, rather than to wholesale customers.

7. FERC Account 907-10 – **Finding of Fact Numbers 378 and 379.**

COH/HCC recommend that FERC Account 907-10 be allocated based on customer count, as all other costs are allocated. The ALJs recommend that the costs be allocated based on lamp count to the Street Lighting Class.

Revenue Distribution and Rate Design

8. Residential Customer Charge - **Finding of Fact Number 384.**

COH/HCC recommend that the customer charge be examined independently of the meter charge and, therefore, that the charge be increased by the lesser of (1) the percentage increase for the base rate revenue requirement for the residential class, or (2) \$1.75. The ALJs recommend that the proposed increase is reasonable because the net increase to customer charges and meter charges is in fact a decrease.

II. Rate Base [PO Issues 4, 5, 10, 11, 12, 13, 15, 16, 17, 18, 19, 59]

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

1. Prudence Issues

a. Burden of Proof

COH/HCC agree with the ALJs' statement of the burden of proof in this case. However, for the reasons stated below, COH/HCC disagree with their conclusions and findings with regard to the outcome where, as here, CEHE fails to meet that burden of proof.

b. Underground Residential Distribution Cable Assessment and Life Extension Program and Major Underground Rehabilitation Program [Finding of Fact Numbers 50, 53, 54, 56, and 58.]

A significant issue in this case is the substantial amount CEHE has spent since 2010 on capital investments. One such issue relates to two underground programs. COH/HCC wholly agree with and supports the ALJs' analysis and conclusion that CEHE "failed to meet its burden to prove the prudence of the entire cost of the programs." However, the conclusion they reach as a result of CEHE's failure is fatally flawed and contrary to law. Therefore, COH/HCC except to the PFD's findings on these issues and requests that the Commission disallow the entire cost of these programs (URD CLEP - \$54 million and the Major Underground Rehabilitation Program - \$57.5 million, for a total of \$111.5 million).

In this case, CEHE is requesting a tremendous increase in its rate based. The Company's Plant in Service balances by the end of the test year are \$4.3 billion more than 2010, the conclusion of CEHE's last base rate case.² Roughly 37 percent of CEHE's major investments allegedly were

² COH/HCC Hearing Exhibit No. 1, Direct Testimony of Witness S. Norwood, 13:18-14:4.

for distribution system reliability improvement—approximately \$866 million of the \$2.34 billion in capital distribution assets from the last rate case through the test year.³

The Company's main justifications for this extraordinary increase in Plant in Service **(which as the ALJs' noted were raised for the first time in rebuttal testimony)** relate to an alleged need to increase CEHE's system reliability and for load growth. Neither of these alleged justifications was supported by the evidence. As explained by COH/HCC witness Scott Norwood, and based on CEHE's own testimony, CEHE's load growth averaged only 1 percent and the Company's services were already extremely reliable (as stated in Norwood's direct testimony, CEHE's service reliability was approximately 99.98 percent over the last 3 years).⁴ Stated another way, CEHE's investments into the Programs was not prudent: the benefit, if any, to customers were extremely small and certainly not justified by the exorbitant cost of the investments.

As provided by CEHE's own witnesses, the Company's load growth from 2009 to 2018 was 1 percent, which is below the Company's norm.⁵ Even further, in more recent years, the Company's load growth was anywhere between zero and even a reduction.⁶

In addition to the Company experiencing little to nonexistent load growth, the Company's investments are traditionally measured by a cost/benefit analysis to gauge whether major investments benefit customers economically and are the lowest reasonable cost alternative.⁷ It was only in response to discovery requests that CenterPoint provided any support for the prudence of

³ *Id.* at 16:7–11.

⁴ *Id.* at 9:1–5.

⁵ Tr. at 197:10–15; 212:15–18.

⁶ *Id.* at 213:5–17.

⁷ COH/HCC Hearing Exhibit No. 1, Direct Testimony of Witness S. Norwood, 15:4–15.

these capital additions. As explained by Norwood, CEHE's discovery responses only provided results from the Company's Asset Investment Strategy ("AIS") software, which does not measure the economic benefit of a given investment to customers.⁸ The software ranks capital investment projects on a Value-to-Cost ("V/C") ratio basis wherein value is determined based on four benefits: load at risk (the primary benefit), reliability, design criteria, and supplemental.⁹ It is undisputed, as recognized by the Company, that the four categories utilized by the AIS software to determine value do not represent the expected economic benefit to CEHE's customers.¹⁰

The Company provides no justification for such Programs and, its only attempt at justifying the cost was in response to discovery responses—responses that related exclusively to the Company's AIS software.¹¹ Further, only after several requests by COH/HCC for additional information did CEHE provide, for the first time in rebuttal testimony, that its capital project investments were necessary for alleged load growth and reliability concerns.¹² In his testimony, CEHE witness Martin Narendorf attempts to minimize the Company's reliance on AIS, stating that the tool is not used to evaluate project prudence.¹³

However, when presented with CEHE's response to City of Houston Request for Information 1-22,¹⁴ which requests the cost/benefit analysis and other information to support the prudence of major projects, Narendorf admitted that no evidence, other than analysis from AIS

⁸ *Id.* at 14:5–15:15.

⁹ *Id.* at 14:11–17.

¹⁰ *Id.* at. 15:4–15.

¹¹ Tr. at 1157:22–1167:4.

¹² *Id.*

¹³ *Id.* at 1158:18–1159:9.

¹⁴ COH/HCC Hearing Exhibit No. 10.

and information unrelated to prudence, was provided in response.¹⁵ Further, when presented with CEHE's response to COH/HCC Request for Information 15-2,¹⁶ which requested the Company to identify any testimony, exhibit, or workpaper supporting the prudence of the projects, Narendorf referenced only one page of his testimony.¹⁷ Further, Company witness Randal Pryor—whose testimony was presented to support the reasonableness of capital projects—acknowledged and confirmed that in his direct testimony, the only information he provided to support the program, was found exclusively on two pages.¹⁸

CEHE's AIS software fails to produce information that would justify the costs of these programs. An investigation of investments in the Programs, which total \$111.5 million and are the Company's sixth and seventh most costly projects,¹⁹ prove to be "superficial and deficient."²⁰ The AIS software rendered low V/C ratios of 0.02 and 0.04 for the Programs, indicating very load at risk benefit.²¹ In addition to the clearly low V/C ratio, CEHE acknowledges that there is no direct correlation between the Programs' capital investments and SAIDI impacts.²²

To the contrary, the Company's own witnesses presented ample evidence that the exorbitantly high costs were not necessary for reliability or load growth. The Company's SAIDI performance for eight of the last ten years was better than the PUC standard, and CEHE

¹⁵ Tr. at 159:2–162:24.

¹⁶ COH/HCC Hearing Exhibit No. 33.

¹⁷ Tr. at 1163:14–1165:3.

¹⁸ *Id.* at 1107:22–1108:20.

¹⁹ *Id.* at 195:9–15; 1108:21–1109:3.

²⁰ COH/HCC Hearing Exhibit No. 1, Direct Testimony of Witness S. Norwood 16:13–17:8.

²¹ *Id.*

²² *Id.*

consistently received the lowest annual penalties among major ERCOT utilities.²³ Based on SAIDI performance, CEHE's reliability performance has been exceptional, averaging approximately 99.98 percent over the last three years.²⁴

Moreover, the Company acknowledged that underground cables are more reliable than overhead distribution circuits.²⁵ Pryor recognized that underground cables are more expensive than overhead cables due, in part, to the increased reliability of cables.²⁶ From 2010 through 2018, underground cable failures contributed only five minutes per year to the Company's SAIDI.²⁷ The impact, if any, of the investments to improve underground circuits is almost indiscernible.²⁸ Given the Company's above-average reliability, the prudence of capital projects invested for the purpose of improving reliability must be analyzed in this context.

The magnitude of any increase in reliability would be minimal, and certainly would not justify the exorbitant costs for the two underground Programs, in light of the current overall system reliability index of 99.98 percent (and *an even higher* reliability for underground cables).

CEHE clearly failed to provide information sufficient to support the prudence of the Projects. To the contrary, the necessity of the underground programs is outshined by the pristine reliability of the Company's underground service, with an estimate of one outage every three years.²⁹ In addition to the high underground reliability, the Company's SAIDI as a whole, from

²³ Tr. at 1247:11–25.

²⁴ *Id.* at 1248:22–1249:3.

²⁵ *Id.* at 1115:17–25.

²⁶ *Id.* at 1116:1–20.

²⁷ *Id.* at. 1147:7–1148:20.

²⁸ *Id.*

²⁹ *Id.* at 1116:21–1117:4.

2008 to 2014, averaged under 100 minutes per year—significantly below the Commission’s standard.³⁰ Even after 2014, only two years were above the standard, which was due to major Company developments.³¹ Moreover, load growth, the other major justification for this excessively high cost investment in these two Programs, does not support the reasonableness and prudence of the Programs.

The ALJs acknowledge all of these facts: 1) CEHE’s failure to justify the need for these exorbitantly costly projects; 2) the failure to present any evidence establishing a cost/benefit analysis or any other analysis establishing that these costs were prudently incurred versus any alternative, despite repeated discovery from COH/HCC and 3) CEHE’s failure to present even the feeble evidence it did provide in rebuttal testimony relating solely to the alleged need after the interveners direct case was filed and after discovery had concluded. The ALJs, therefore, clearly recognized that there was a need for a disallowance or some or all of these costs. However, rather than disallowing the entire costs due to CEHE’s failure to meet its burden of proof to establish that the cost of the project were prudent, they arbitrarily found that only 10 percent of the URD CLEP program and 35 percent of the Major Underground Rehabilitation Program should be disallowed.

It is well settled in Texas, that capital investments not found to be prudently incurred must be disallowed. Here, due to CEHE’s failure to meet its burden or to present **any** evident establishing the reasonableness of the costs for the two projects, there is no support for permitting any of the requested costs. CEHE had every opportunity to present evidence demonstrating the reasonableness of these costs through a cost\benefit analysis or other analysis. It chose not to do so. Instead, it only provided the SAIDI reports, which it admitted did not establish the prudence

³⁰ *Id.* at 214:20–215:16.

³¹ *Id.* at 215:17–216:13.

of the requested costs. To allow any portion of these costs would reward CEHE for failing or refusing to comply with PURA and this Commission's rules and for stonewalling in discovery. That would create a terrible precedent for future rate cases.

As correctly stated by the ALJs, CenterPoint “bears the burden to prove **each dollar of cost** was reasonably and prudently invested, and enjoys no presumption that the costs reflected in its books were prudently incurred by simply opening its books to inspection.”³² The burden does not shift from the utility until, and if, it establishes a *prima facie* case.³³ A utility's failure to present a *prima facie* case or, in other words, the failure to show “each dollar of cost incurred was reasonably and prudently invested,” means the utility has failed to satisfy its burden of proof.³⁴ CenterPoint “had the burden to prove prudence and [can]not shift that burden to those challenging its requested rate increase.”³⁵ A determination that a cost is not reasonable or prudent renders its preclusion from rate base.³⁶

COH/HCC recommend the investments in the Projects be disallowed and removed from rate base. COH/HCC further recommend that the Company be required to refund the imprudent Projects' costs that have already been collected from customers through the Company's past DCRF charges, through a DCRF credit rider.

2. Land Costs

N/A.

³² PFD, p. 10 (citing to *Entergy Gulf States, Inc. v. PUC*, 112 S.W.3d 208, 214–15) (emphasis added).

³³ *Gulf States*, 112 S.W.3d at 214.

³⁴ *Id.* at 215.

³⁵ *Id.* at 220.

³⁶ *See id.*

3. Capital Project Accounting/Capitalization Policy Changes

N/A.

N/A.

B. Indirect Corporate Costs [Finding of Fact Numbers 107 and 108]

COH/HCC also except to the ALJs' recommendation that there be no disallowance for the approximately \$2.6 million in indirect corporate costs established in the record. COH/HCC recommend that this amount be removed from the Company's rate base and new base rates and, further, that it be refunded through the Company's DCRF charges over a one-year period through a DCRF credit rider.

As noted by COH/HCC witness Norwood, PUC Substantive Rule 25.243 explicitly provides: "Distribution invested capital does not include: . . . indirect corporate costs."³⁷ Nevertheless, CEHE improperly includes \$2.6 million of indirect corporate costs in its past DCRF charges.

These indirect corporate costs were clearly identified as such by CenterPoint in response to discovery.³⁸ In response to COH/HCC RFI, 15-06, CEHE identified areas of capitalized overhead for distribution: accounts payable, property accounting and call center.³⁹ The total costs associated with these three categories is \$2,602,580.⁴⁰

³⁷ COH/HCC Hearing Exhibit No. 1, Direct Testimony of Witness S. Norwood, 6:1–13, 19:19–20:7.

³⁸ *Id.* at COH/HCC Hearing Exhibit No. 1, Exhibit SN-13, Attachment 2.

³⁹ *Id.*

⁴⁰ *Id.*

By the very nature of these costs (accounts payable, property accounting and call center), they are not direct distribution costs. Instead, as COH/HCC witness Norwood testified, these are corporate costs that CEHE indirectly assigned to distribution. Under PUC Subst. R. 25.243, these indirect corporate costs are not recoverable in the DCRF. Therefore, this Commission should order the Company to refund these indirect corporate costs (and associated carrying charges) and the imprudent project investments discussed Section II.A.1.b., above through a DCRF credit rider—the total impact being \$32.5 million (plus carrying charges).⁴¹ COH/HCC recommend that the refund be over a one-year period, using DCRF credit factors that reflect cost allocations and billing units consistent with the Company’s approved DCRF.⁴²

C. Prepaid Pension Asset

N/A.

D. Other Prepayments

N/A.

E. Regulatory Assets and Liabilities [PO Issues 18, 19, 34, 41, 54, 59]

1. Protected Excess Deferred Income Tax

N/A.

2. Hurricane Harvey

N/A.

3. Medicare Part D

N/A.

⁴¹ *Id.* at 21:9–15.

⁴² *Id.* at 21:16–22:3.

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.

F. Capitalized Incentive Compensation

N/A.

G. Capitalized Non-Qualified Pension Expense

N/A.

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

A. Return on Equity [PO Issue 8]

N/A.

B. Cost of Debt [PO Issue 8]

N/A.

C. Capital Structure [PO Issue 7]

N/A.

D. Overall Rate of Return [PO Issue 8]

N/A.

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]

A. Total of O&M Expense [Finding of Fact Number 226]

COH/HCC except to the ALJs' recommendation that no disallowance be made to the 12.5 percent increase in Operations and Maintenance Expense (O&M) requested by CEHE. COH/HCC recommend that CEHE's 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.

CEHE's claimed O&M expenses⁴³ have increased by 37.4 percent since its last rate case, resulting in an additional \$177 million in costs.⁴⁴ Moreover, 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 2018.⁴⁵

Again, CEHE has failed to meet its burden to establish the reasonableness of this excessive level of O&M expenses. The Company attempts to support the increase in cost on the basis that it is necessary, in part, for increased reliability and to meet load growth.⁴⁶ However, as demonstrated above, the abnormally low load growth experienced by CEHE, with virtually no growth in energy sales over the last several years, and the minimal potential improvement to CEHE's current exceptional reliability performance do not justify the abnormally large increase

⁴³ The expenses referenced here do not include ERCOT transmission charges from third parties.

⁴⁴ Direct Testimony of CEHE Witness R. Pryor, 7.

⁴⁵ COH/HCC Hearing Exhibit No.1, Direct Testimony of Witness S. Norwood, 10:4–12.

⁴⁶ *Id.* at 7:4–13.

in test year O&M expense when compared to CEHE's O&M spending in 2017.⁴⁷ In 2017, the O&M level was less than \$600 million. Accordingly, the test year O&M level represents over a \$50 million increase from just the previous year.

The vast majority (79 percent) of the increase occurs in seven FERC accounts that increased at an annual rate of 18.9 percent over the average.⁴⁸ CEHE witness Pryor confirmed that more than 50 percent of the Company's totally capital investment since 2010 has been for either reliability improvement or service restoration, which includes the replacement of failed equipment.⁴⁹ CEHE represents that the increase in expenses is also due to the need to address reliability concerns. However, as provided by COH/HCC witness, Norwood, "CEHE's system reliability performance, as measured by System Average Interruption Duration Index ("SAIDI"), has been generally good since 2010."⁵⁰ CEHE's distribution service reliability performance is also evidenced by the drastically low number of customer complaints.

The purported 'reliability concerns' explanation, however, is completely rebutted by the Company's own reports regarding its performance. CEHE reports only 120 customer complaints per year over the last five years related to outages or adequacy of service.⁵¹ With 2.5 million customers, the complaints represent less than 0.005 percent of CEHE's customer base.⁵² Despite its average customer service reliability of 99.98 percent,⁵³ the Company still provides customers

⁴⁷ *Id.* at 10 (Figure 1).

⁴⁸ *Id.* at 10:13–11:7; 13:1–14.

⁴⁹ Tr. 158:9–159:21.

⁵⁰ COH/HCC Hearing Exhibit No. 1, Direct Testimony of Witness S. Norwood, 8:4–7.

⁵¹ *Id.* at 9:13–20.

⁵² *Id.* at. 9:13–10:2.

⁵³ *Id.* at 9:1–5.

an optional Premium Rollover Service tariff for customers who want higher service reliability.⁵⁴ Not surprisingly, given the very high level of reliability provided by CEHE - only 13 (0.0005 percent) of CEHE's 2.5 million customers have opted into the premium reliability service.⁵⁵

The Commission has historically required utilities to demonstrate that costs sought to be recovered through a rate case are reasonable, necessary, prudently incurred, and reflect the expense's status as recurring.⁵⁶ CEHE witness Pryor was unable to identify specific portions of his own testimony wherein he compared historical levels of O&M expenses to those of the test year for capital investment programs.⁵⁷ Even further, Pryor opined, if the Company did experience a 1 percent in annual load growth, which would not be high for an electric utility company.⁵⁸ As provided by CEHE witness Dale Bodden, CEHE's load growth from 2009 to 2018 was, in fact, 1 percent.⁵⁹ CEHE witness Martin Narendorf testified that 1 percent load growth would even be below the norm for the Company.⁶⁰ Notably, while the load growth averaged 1 percent over the preceding decade, most recently, from 2015 through 2018, Bodden testified that the load growth was "essentially zero" and even included a reduction in load growth in some years.⁶¹

Nevertheless, Pryor acknowledged that, other than for the narrow category of vegetation management, his direct testimony and workpapers are vacant on the topic of the Company's

⁵⁴ *Id.* at. 9:13–10:2.

⁵⁵ *Id.*

⁵⁶ *Id.* at. 12:4–22.

⁵⁷ Tr. at 172:25–174:24.

⁵⁸ *Id.* at. 177:25–178:22.

⁵⁹ *Id.* at. 212:15–18.

⁶⁰ *Id.* at. 197:10–15.

⁶¹ *Id.* at. 213:5–17.

historical 1 percent load growth in comparison to CEHE's proposed O&M and/or capital expenses.⁶² Narendorf testified that he provided no analysis related to the historical 1 percent in load growth and that he did not even consider O&M expense levels from 2010 through 2017.⁶³ Stated another way, for the strong majority of the O&M expenses requested by the Company, only one small portion of its request was generated with historical numbers in mind. Instead, the Company relied almost exclusively on data from the single test year, which Company witness Pryor admits was "significantly higher than the previous years."⁶⁴ Pryor further agreed that an expense that is abnormally high for a chosen year and not likely to reoccur would be an expense that should be excluded.⁶⁵ CEHE provides no specific reasons for the cost increases and no explanation for why the costs are reasonable, necessary, and prudently incurred or, least of all, that they are likely to recur in the future.

Despite this testimony, and the obvious need to normalize the test year expenses to remove these extraordinarily high O&M expenses, CEHE witness Pryor admitted that no test year adjustments for normalization were made by the Company.

The ALJs' recognized all of these failings on the part of CEHE. They stated, in fact, that the Commission's Rate Filing Package (RFP) instructions require that: "adjustments shall be made to remove nonrecurring costs and normalize extraordinary expenditures."⁶⁶ The ALJ's, instead refer to CEHE's complaints above COH's proposed adjustment as being "inconsistent with PURA

⁶² *Id.* at. 180:3–8, 183:25–184:9.

⁶³ *Id.* at. 201:6–14; 202:18–23.

⁶⁴ *Id.* at. 1119:4–18.

⁶⁵ *Id.* at 1120:20–1121:11.

⁶⁶ PFD at p. 220

and PUC Subst. R. 25.231; the fact COH/HCC did not attack a particular expense and the allegation that the adjustment would not result in expenses representative of CEHE's cost to operate. Based on these assertions, the ALJs' rejected COH's proposed disallowance.

This finding is totally inconsistent with the very legal authorities referenced by the ALJ's. First, as stated above, the Commission's RFP instructions, which obviously are consistent with PURA and PUC Subst. R. 25.231 require a utility to make adjustments to remove nonrecurring costs and to normalize extraordinary expenditures. The only way to determine whether the exorbitantly high test year O&M expenses are of a non-recurring or extraordinary nature is to examine the Company's historical experience. That is exactly the analysis COH/HCC witness Norwood undertook.

As demonstrated above, CEHE undertook no such analysis. In fact, the ALJs' stated that "the sharp increase in overall O&M expenses *during the test year*, which Norwood described, is concerning and **was not adequately explained by CenterPoint.**"⁶⁷

Moreover, Norwood identified specific expenses. The table used by the ALJs on page 224 of the PFD identified seven specific accounts where the bulk (79 percent of the increase in O&M costs occurred). These are specific accounts that represent extraordinary and non-recurring expenses that have not been removed or normalized.

CEHE, not COH/HCC or any other party, has the burden to establish the reasonableness of its requested expenses, including the fact that all non-recurring or extraordinary expenses have been removed. As the ALJs' observed, the test year O&M expenses represent a significant increase over previous years. Further, the extraordinary increase was not removed. Nor was its inclusion adequately explained. That is the very definition of a failure to meet the utility's burden

⁶⁷ *Id.* at p. 226

of proof on this issue. Accordingly, COH/HCC re-urges its recommendation that the Commission disallow \$44.3 million in test year O&M expense. This amount still permits an increase of 2.6 percent, which is two times the average annual increase (1.3 percent) experienced by the Company from 2014 to 2017.⁶⁸

B. Labor Expenses

N/A.

1. Effect of House Bill 1767 and PURA § 14.006 ON Electric Utility Ratemaking Proceedings

2. Incentive Compensation

a. Short-Term Incentive Compensation

N/A.

b. Long-Term Incentive Compensation [Finding of Fact Number 239]

The ALJs correctly recommended that \$7.5 million of the \$11.3 million LTI compensation requested tied to financially-based performance shares should be disallowed.⁶⁹ However, in contrast, the ALJs incorrectly found that the remaining \$3.8 million in restricted stock units (“RSU”) are not based on financial measures, but rather purely time-based achievements, and that may be included in rates.⁷⁰ COH/HCC respectfully provide that the RFU are only time-based and recommends that the RSU be treated as financial-based incentives.

The RSU were correctly identified by COH/HCC as financial-based incentives. The RSU are common stock options that, as common stocks do, rise and fall based on the financial value of

⁶⁸ COH/HCC Hearing Exhibit No. 1, Direct Testimony of Witness S. Norwood, 5:4-7.

⁶⁹ PFD, p. 246.

⁷⁰ *Id.* at p. 248

the Company over the vesting period.⁷¹ Stated another way, if CenterPoint is not financially successful, the value of the RSU would be, accordingly, lesser.⁷² The recipient of the RSU is incentivized to increase the value of the shares during the vesting period.⁷³ The very value of the incentive the recipient obtains is contingent on the financial success of CenterPoint. As acknowledged by the ALJs, CenterPoint's stated purpose of the RSU is to reward recipients "for long-term stock appreciation."⁷⁴ The RSU are financially-based incentives.

The ALJs base their opinion on the fact that the RSU only vest, and are not triggered until, after three years of employment.⁷⁵ The ALJs strict focus on the time element of the compensation overlooks the other portion of the incentive, which is that the value and degree of compensation in the RSU that is afforded after three years depends on CenterPoint's financial success as reflected in its stock price.⁷⁶ Thus, while the ALJs are correct that the incentive is triggered based on time, the actual magnitude of the incentive is based on the financial success of the Company.

The ALJs further note CenterPoint's argument that the RSU is intended to recruit and retain employees and, thus, "necessary."⁷⁷ While incentives, generally, are uncontestably helpful aids in recruitment and retention, CenterPoint provides no evidence showing the effectiveness of RSU for this purpose. Further, as provided by COH/HCC witness Mark Garrett, as seen nationwide:

⁷¹ COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 33:11–34:19.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ PFD, p. 246 (citing to TIEC Exhibit No. 15, p. 34).

⁷⁵ *Id.* at p. 248.

⁷⁶ See CEHE Hearing Exhibit No. 22, Direct Testimony of CEHE Witness L. Harkel-Rumford, 30; see also COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 34:7–19.

⁷⁷ PFD, p. 247.

[M]uch of the electricity in this country is provided by *municipal electric providers* virtually none of which pay long-term stock-based incentives, yet they are able to attract talent sufficient to deliver safe and reliable electric service. *Electric cooperatives* also provide a substantial amount of the electricity used in this country but do so without the use of long-term stock-based incentives. Likewise, *state-run electric systems* provide electric service without the use of long-term incentives, as do *federally-owned utilities*.⁷⁸

As explained by Garrett, it would be inaccurate to state long-term incentives, such as RSU, are “necessary” given the magnitude of entities that do so without the incentives.⁷⁹ COH/HCC request that the Commission reject the ALJs’ recommendation regarding RSU and disallow all LTI costs, including RSU.

3. Executive Employee Related Expenses

N/A.

4. Payroll Adjustments

N/A.

5. Benefit Restoration Plan Expenses

N/A.

C. Depreciation and Amortization Expense [PO Issue 25]

N/A.

D. Affiliate Expenses [PO Issue 35, 36]

N/A.

1. CenterPoint’s Vectren Acquisition Adjustment

2. Compensation for Use of Capital/Affiliate Carrying Charge

E. Injuries and Damages

⁷⁸ COH/HCC Hearing Exhibit No. 2, Direct Testimony of Witness M. Garrett, 39:24–40:16.

⁷⁹ See *id.*

N/A.

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

N/A.

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

N/A.

H. Vegetation Management

N/A.

I. Smart Meter Texas Expense

N/A.

J. Street Lighting Service [Finding of Fact Numbers 322 and 323]

COH/HCC further except to the ALJs' recommendation regarding O&M expenses allocated to non-light-emitting diode (LED) street lighting customers in the Street Lighting Service rate class. The ALJs recommend that no adjustment be made to CenterPoint's requested \$7.6 O&M request for that class. This recommendation appears to be a misunderstanding of COH's position on the issue. COH/HCC did not recommend a reduction to the amount of O&M allocated to the entire Street Lighting Service rate class. Instead, COH/HCC proposed that \$2.7 million of that expense not be allocated to LED customers within the class. For the reasons, stated below, COH/HCC continue to urge this adjustment and ask that the ALJs' recommendation on this issue be rejected or modified to include this allocation adjustment.

COH/HCC witness Kit Pevoto addressed this issue in extensive testimony. Her uncontroverted testimony demonstrated that the Company has no O&M costs for 15 years after its conversion to LED lights, and such conversion costs are capital, not O&M, costs.⁸⁰

⁸⁰ COH/HCC Hearing Exhibit No. 4, Cross-Rebuttal Testimony of Witness K. Pevoto, 12:22–13:22.

Nevertheless, the street lighting rates proposed by CEHE curiously include \$2.73 million in operation and maintenance expenses for LED lights.⁸¹ Company Witness Julienne Sugarek testified that the LED lights are comprised of luminaires for which there is no bulb and last for 15 years and compared them to high-pressure sodium (“HPS”) lights, for which the luminaire lasts 29 years but the bulbs have an average life of 5 years.⁸² By Sugarek’s own admission, LED lights require less maintenance expenses overall than those of HPS lights.⁸³ 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.⁸⁴

Sugarek estimates the Company will save \$2.7 million by avoiding HPS bulb replacement due to the installation of LED, which she acknowledges is the same exact amount as the recommended reduction proposed by COH/HCC witness Pevoto for street lighting O&M expenses assigned to the LED lights.⁸⁵ Specifically, Sugarek testified that the conversion from standard to LED lights would reduce O&M by approximately \$3 million.⁸⁶ Nevertheless, 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.⁸⁷ Thus, between the life expectancy of the LED

⁸¹ COH/HCC Hearing Exhibit No. 3, Direct Testimony of Witness K. Pevoto, 30:19–31:5.

⁸² Tr. at 230:2–15.

⁸³ *Id.* at. 231:7–24.

⁸⁴ *Id.* at. 231:25–232:10.

⁸⁵ *Id.* at. 232:23–233:13.

⁸⁶ *Id.* at. 1239:13–1241:10.

⁸⁷ *Id.* at. 1053:13–1054:25.

lights, in addition to the test year statistics indicating no LED lights had to be replaced, the Company's witnesses admit that none of the O&M costs would be incurred for the LED lights.⁸⁸

The ALJs, in addition to misunderstanding COH/HCC's position on the allocation of the \$7.6 million Street Lighting O&M amount requested, and more specifically the \$2.73 million reduction allocated to Street Lighting LED customers, asserted that the latter amount was uncertain because the proposed conversion is not rigid and the amount of conversions that will be conducted annually is allegedly unknown. This conclusion is inconsistent with the evidence in this case. The \$2.73 million found by CEHE in its own studies, is primarily based on the conversions already completed. Furthermore, Pevoto, as discussed in her testimony, conducted her own independent analysis and reached the same conclusion. Therefore, the failure to adopt COH/HCC's proposal of a \$2.73 million reduction in the O&M costs allocated to LED customers within the Street Lighting Class cannot be justified on the basis of uncertainty relating to the actual costs incurred.

K. Loss on Sale of Land

N/A.

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

⁸⁸ *Id.*

1. Texas Margin Tax Expense and Associated Accounts [Finding of Fact Number 347]

COH/HCC recommend that the TMT expense be allocated based on revenues that would be collected from retail customers for taking the transmission service and distribution services, respectively. The ALJs recommend, in contrast, to functionalize the costs to retail customers, rather than to wholesale customers.

The ALJs provided that CenterPoint's proposed functionalization for the TMT expense to retail customers is reasonable and aligns with cost causation principles.⁸⁹ The ALJs noted COH/HCC's argument that the \$395.8 million figure was double counted by Staff's witness, Brian Murphy, and, thus, represents an inflated figure.⁹⁰ The ALJs also noted the cross examination of the same witness, wherein he testified that the number is the correct number and not a miscalculation, without any more explanation.⁹¹ He provided, in addition to TIEC, that this issue was not contested in the last base rate case and thus is not precedential here.⁹²

The ALJs failed to provide any explanation, which was also not made by Staff or TIEC, explaining the inflated number. Nevertheless, the ALJs accepted Murphy's opinion on face value, despite the lack of support. Murphy's testimony provides that his proposal would uplift certain transmission costs to wholesale that should be assigned to retail.⁹³ But, again, that costs are uplifted into a different category does not explain the double-counting of \$395.8 million. Murphy does not provide any formula or information to support the duplicative costs.

⁸⁹ PFD, p. 329.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Tr. at 854:11–855:5.

The ALJs also did not provide a justification for diverting from precedent. In CenterPoint's last rate base proceeding, the Commission ordered an allocation as proposed by COH/HCC in this case. The ALJs provide, as explained by the Company, that the issue was not contested in the last case.⁹⁴ While the issue may not have been contested in the last case, precedent is nevertheless precedent. Indeed, the fact that other parties do not raise issue with long-standing precedent does not lessen the significance of its importance.

2. Miscellaneous General Expense (FERC Account 930.2)

N/A.

3. Unprotected Excess Deferred Income Tax

N/A.

4. FERC Accounts 586 and 597

N/A.

B. Class Allocation

N/A.

1. Class Allocation of Transmission Costs and Distribution Costs

N/A.

a. Transmission Costs

b. Demand Related Costs

c. 4CP Rate Design versus NCP Rate Design

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

2. Municipal Franchise Fees [PO Issue 27]

N/A.

⁹⁴ PFD, p. 329.

3. Transmission Accounts and Support Group

N/A.

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

N/A.

5. Other Cost Allocation issues [PO Issue 46]

a. Subject FERC Accounts

b. FERC Accounts 907-10 [Finding of Fact Numbers 378 and 379]

COHHCC except to the ALJs conclusion that CEHE should be allowed to over allocate FERC Account 907-10 costs to the Street Lighting Class based on a lamp count versus customer count (as it is for all other costs). As the ALJs recognize, this decision is based solely on the conclusory testimony of CEHE witness Troxle that the cost to serve customers with more lamps will be higher, and is not based on any “study specific data.”⁹⁵

The result of allowing CEHE to allocate these costs to Street Lighting (a vital safety and security tool) is an assignment of **26 percent** of these costs to that one class.⁹⁶ This is in stark contrast to the allocation that would occur if a per customer allocation were conducted (as it is with all other costs). Under this approach, the portion of FERC Account 907-10 costs assigned to Street Lighting would be 1-2 percent.⁹⁷

Without clear empirical data unequivocally supporting such a conclusory finding, this Commission should not allow CEHE to impose such an extreme allocation of costs to this vital

⁹⁵ PFD, p. 356

⁹⁶ *Id.* at at 1046:11–1047:4.

⁹⁷ *Id.*

service. Imposing such unsupported costs on this class of customers is not only potentially harmful to the safety and security of people within the Houston region, it is also unjust and unreasonably discriminatory.

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

A. Residential Customer Charge

N/A.

B. Customer and Meter Charges - Per Meter Basis vs. Per Customer Basis

N/A.

C. Transmission Service Facility Extensions

N/A.

D. Street Lighting Service

As discussed in Section IV J., COH/HCC except to the ALJs findings regarding allocation of O&M expenses within the class. The evidence clearly demonstrates that \$2.73 million in O&M expenses should not be allocated to LED customers within the Street Lighting Class.

E. Discretionary Services – Pre-Interconnection Study Costs

N/A.

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

N/A.

A. CenterPoint’s Rider UEDIT Proposal

B. Merger Savings Rider

C. Other Riders

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

N/A.

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.

XII. Conclusion and Prayer

For these reasons, COH/HCC request that the Commission reverse the ALJs on the above issues. COH/HCC request all other relief, legal and equitable, to which they are justly entitled.

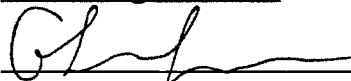
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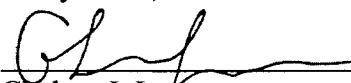
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CERTIFICATE OF SERVICE

I hereby certify that on this October 10, 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.


Chelsea J. Lu