Control Number: 49421

Item Number: 729

Addendum StartPage: 0

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**

TEXAS INDUSTRIAL ENERGY CONSUMERS' EXCEPTIONS TO PROPOSAL FOR DECISION

REDACTED

October 10, 2019

Phillip G. Oldham
State Bar No. 00794392
Katherine L. Coleman
State Bar No. 24059596
Michael McMillin
State Bar No. 24088034
98 San Jacinto Blvd., Suite 1900
Austin, Texas 78701
(512) 469.6100
(512) 469.6180 (fax)

ATTORNEYS FOR TEXAS INDUSTRIAL ENERGY CONSUMERS

729

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**

TABLE OF CONTENTS

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**

TEXAS INDUSTRIAL ENERGY CONSUMERS' EXCEPTIONS TO PROPOSAL FOR DECISION

I. INTRODUCTION [PO ISSUES 1, 2, 3]

It has been nearly a decade since CenterPoint Energy Houston Electric, LLC (CEHE) filed its last full rate case in Docket No. 38339, which was based a 2009 test year.[1] During that time, major changes have impacted both CEHE and the Texas regulatory construct. For one, CEHE's parent, CenterPoint Energy, has taken on significant additional debt to fund acquisitions of new subsidiaries, which has a direct adverse impact on CEHE's risk profile and credit quality.[2] The Commission has also learned much about the benefits of utility ring-fencing, which gives the Commission a valuable tool to protect the utility and its customers from parent-level risks.

While utility returns have dropped substantially over the past decade to reflect prevailing economic conditions,[3] CEHE has maintained an outdated ROE of nearly 10%. In addition, CEHE has been able to continuously increase rates with minimal review through various riders, such as interim Transmission Cost of Service (TCOS) updates, Transmission Cost Recovery Factor (TCRF) updates, and beginning in 2011, Distribution Cost Recovery Factor (DCRF) updates. This heavy reliance on rate riders has materially reduced CEHE's regulatory risk, and has also caused imbalances between CEHE's distribution and transmission revenues that must now be addressed. In many respects, this case is the Commission's first real opportunity to develop policy and precedent for ERCOT TDUs in nearly a decade.

In general, the Administrative Law Judges (ALJs) did a commendable job of tackling the important and, in many ways, novel issues raised by CEHE's filing—including recommending

---

1 *See* Docket No. 38339, *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates,* Order on Rehearing at Finding of Fact (FoF) 28 (Jun. 23, 2011).

2 *See, e.g.*, TIEC Initial Br. at 42; TIEC Reply Br. at 20-21; TIEC Ex. 5 (Gorman Dir.) at 22-23; TIEC Ex. 4 (Griffey Dir.) at 12.

3 TIEC Ex. 5 (Gorman Dir.) at 8; TIEC Ex. 19, S&P Article: "Average U.S. Electric, Gas ROE Authorizations in H1'18 Down from 2017") at 2; Tr. (Hevert Cr.) at 714:25-715:6 (June 26, 2019).

appropriate ring-fence protections. However, there are a few areas where the PFD was overly conservative, and other areas where the PFD declined to take a fresh look at decisions from nearly ten years ago in light of more recent context and current knowledge. The Commission should review and revise the those portions of the PFD, which are as follows:

A. The overall rate of return recommended by the PFD is unnecessarily high in light of CEHE's business and economic risk factors.

The PFD recommends reducing CEHE's Return on Equity (ROE) to 9.42%,[4] but this is still at the very high end of the reasonable ROE range developed by TIEC witness Mr. Gorman.[5] The Commission should reduce the PFD's recommended ROE to reflect CEHE's status as a low-risk wires-only utility operating in a favorable business and regulatory environment.[6] More significantly, the PFD seems to have taken a "split the baby" approach to establishing CEHE's capital structure,[7] allowing CEHE to retain its 55% debt, 45% equity ratio despite evidence demonstrating that a 60% debt, 40% equity ratio is more cost-effective and would preserve CEHE's credit with appropriate ring-fencing. CEHE is not facing any new or significant risks that justify increasing or even maintaining the equity component in its capital structure.[8] To the contrary, the PFD recommends neutralizing the single largest threat to CEHE's financial stability—its credit linkage with its parent company, CenterPoint Energy, Inc. (CNP)[9]—by adopting the reasonable ring-fencing measures proposed by TIEC and Commission Staff.[10] As

---

[4] PFD at 192 and FoF 209.

[5] TIEC Ex. 5 (Gorman Dir.) at 67 ("My recommended return on common equity of 9.25% is the midpoint of my estimated range of 9.00% to 9.5%"); *see also* TIEC Initial Br. at 24.

[6] *See infra* at Section III.A.

[7] PFD at 170.

[8] *See infra* Section III.C; *see also* TIEC Reply Br. at 21-22.

[9] *See* PFD at 214 ("CenterPoint is a wholly-owned subsidiary of CNP and they are not separate in terms of corporate governance. CenterPoint will continue to require capital to meet the demands of its service area. CNP has been depending on net income from CenterPoint. CNP's net income from other business operations has been negative. CNP undertook a disproportionately debt-financed acquisition of Vectren, including assuming its debt, which led to a rating downgrade of CNP and CenterPoint. CenterPoint's financial strength could be used to support affiliates in financial distress or finance their higher-risk business ventures. The risk to CenterPoint's customers is especially high if its parent were to enter bankruptcy. Although the Commission sets CenterPoint's rates, the regulatory process takes time. Without a strong enough ring fence, CenterPoint's financial condition could be weakened to the point of requiring higher rates to provide reliable service.").

[10] PFD at 216.

discussed in detail in TIEC's prior briefing,[11] if CEHE is ring-fenced such that CNP can no longer use CEHE's revenue stream to support risky acquisitions and unregulated business activities, CEHE's credit quality will improve.[12] In fact, ***CEHE's own witnesses*** admit that if CEHE is evaluated on a stand-alone basis, it will maintain solid investment grade ratings at a 40% equity ratio and Mr. Gorman's recommended 9.25% ROE, which is even lower than the ROE approved by the PFD.[13] CEHE has not disputed that these indicative credit ratings would be sufficient to provide it with access to capital at reasonable rates.[14] Accordingly, the PFD's recommended 45% equity ratio is unnecessarily rich and should be reduced to 40%.

B. Allowing CEHE to recover wholesale transmission costs in base rates, rather than through its TCRF, will perpetuate over-earning and is inconsistent with the treatment of every ERCOT utility that has filed a rate case since 2010.

The PFD essentially guarantees that CEHE will continue to over-recover its wholesale transmission costs by authorizing it to "zero out" its TCRF and recover all wholesale transmission costs through base rates.[15] It is undisputed that if CEHE experiences load growth,[16] as its witnesses expect,[17] it will over-recover its wholesale transmission costs in base rates. In the test year, CEHE over-recovered its wholesale transmission costs by ***$51.9 million*** as a result of this exact issue. As discussed below, the Commission amended the ERCOT TCRF rule to require dollar-for-dollar cost recovery of wholesale transmission costs in 2010, with mandatory true-ups every six months. Since then, ERCOT utilities have uniformly removed all wholesale transmission costs from base

---

[11] *See* TIEC Initial Br. at 42-52; TIEC Reply Br. at 21-23.

[12] As the PFD found, "***CenterPoint is financially stronger than its affiliates and has a lower credit rating because of them.***" PFD at 202 (emphasis added); *see also id.* at 202-203 (describing various rating agency actions and reports that support this finding).

[13] *See* TIEC Initial Br. at 50; *see also* CEHE Ex. 43 (McRae Reb.) at 24-25.

[14] *See infra* Section III.C.; *see also* CEHE Initial Br. at 51-67; CEHE Reply Br. at 56-84.

[15] PFD at 402.

[16] *See, e.g., id.* at 403 ("The ALJs concede that TIEC's concern regarding over-recovery is reasonable . . ."); TIEC Initial Br. at 71-75; TIEC Reply Br. at 41-43.

[17] *See* CEHE Ex. 27 (McRae Dir.) at 15 (stating that CEHE's load growth has averaged 2% per year and is expected to continue).

rates. This practice has been adopted by Oncor,[18] TNMP,[19] and Sharyland,[20] and has been proposed by AEP Texas in its pending rate case.[21] The same practice should be applied here. The current ERCOT TCRF rule effectively eliminates the risk that a utility will under-recover its wholesale transmission costs due to the six-month true-up requirement, and customers should get the corresponding benefit of receiving a refund when the utility over-recovers. Removing all wholesale transmission costs from base rates and recovering them exclusively through the TCRF achieves this objective.

C. It is undisputed that TIEC's proposed municipal franchise fee (MFF) allocation better reflects cost-causation. The Commission should reject the allocation adopted ten years ago in favor of TIEC's superior approach.

The PFD recommends the same MFF allocation method adopted in Docket No. 38339 without any substantive discussion of TIEC's proposed refinements to better reflect cost causation. Essentially, TIEC witness Mr. Pollock proposes to apply the same "Direct" allocation method the Commission has adopted in the past, where each class is allocated MFF expense based on in-city kWh deliveries and then the costs are collected from all customers in the case. However, TIEC proposes to apply that method ***on a city-by-city basis*** to reflect differences in MFF rates and class usage by municipality.[22] Importantly, no party to this case has disputed that Mr. Pollock's allocation better reflects cost causation, and even the PFD fails to find substantive fault with this superior methodology.[23] Rather, the PFD relies solely on the stale, dated decision in Docket No. 38339. The Commission should reject this aspect of the PFD. When presented with an indisputably superior allocation methodology, the Commission should be willing to reconsider its prior policies.

---

[18] *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates,* Docket No. 38929 at 8-9, FoF 39 (Aug. 26, 2011); *see also* Tr. (Abbott Cr.) 916:24 – 917:4 (June 26, 2019).

[19] *Application of Texas-New Mexico Power Company for Authority to Change Rates,* Docket No. 38480 at 5, FoF 16 (Jan. 27, 2011); *see also* Tr. (Abbott Cr.) 916:24 – 917:4 (June 26, 2019).

[20] *Application of Sharyland Utilities L.P. to Establish Retail Delivery Rates, Approve Tariff for Retail Delivery Service and Adjust Wholesale Transmission Rates,* Docket No. 41474 at 6, FoF 35 (Jan. 23, 2014); *see also* Tr. (Abbott Cr.) 916:24 – 917:4 (June 26, 2019).

[21] *See Application of AEP Texas, Inc. for Authority to Change Rates*, Docket No. 49494, Petition and Statement of Intent to Change Rates, at 3 (May 1, 2019); *see also id.*, Direct Testimony of Jennifer L. Jackson at 20-21, 41.

[22] PFD at 350 and FoF 369-370.

[23] *Id.* at 350.

D. CEHE should continue billing Transmission service customers for distribution charges based on the ERCOT 4CP, given the type of distribution expenses being recovered.

The PFD approved CEHE's request to bill Transmission Service customers for distribution service charges using their demand at the time of CEHE's system peaks (CEHE 4CP) rather than the ERCOT 4CP.[24] This decision should be rejected because Transmission voltage customers do not use physical distribution assets (the distribution service charge is used solely to recover MFF), so their usage during the CEHE 4CP does not cause CEHE to build additional distribution facilities.[25] Additionally, CEHE has traditionally billed both distribution and transmission charges to the Transmission class based on ERCOT 4CP demand, and changing this approach now will create administrative difficulties for both CEHE and its customers without any corresponding benefits.[26] This issue does not have an impact on any other retail classes, so significant weight should be given to the preference of the Transmission customers represented in this case.

E. Transmission customers should receive a partial refund of their Contributions in Aid of Construction (CIAC) if the facilities they fund are later used to serve other customers.

CEHE's tariff should be amended to ensure that retail Transmission customers receive a credit if other customers use facilities that they funded through a CIAC.[27] Contrary to the PFD's conclusion that the proposed language solves a "hypothetical" problem,[28] prospective transmission voltage customers are often hesitant to be the "first mover" funding upgrades in an industrial area because they know that other customers can subsequently use that infrastructure without making

---

[24] *Id.* at 346.

[25] CEHE Ex. 30 (Troxle Dir.) at 30 ("The Distribution System Charge for each rate schedule is based on the class revenue requirement for the Distribution function from the Proposed CCOSS"); *cf.* CEHE Ex. 1 (Application) at Schedule "II-I-2," Cell I-104 (listing "Total Cost of Service – Distribution" for the Transmission class at \$17,674,000); *with* CEHE Ex. 1 (Application) at Schedule "II-I-Total," Cell L-783 (total municipal franchise fees allocated to Transmission class are \$17,674,000).

This fact is further confirmed by testimony from CEHE's last rate case. *See* Docket No. 38339, Direct Testimony of Matthew Troxle at 26 (June 30, 2010); *see also* Docket No. 38339, Direct Testimony of Jeffry Pollock at 8 (Sept. 10, 2010) ("Unlike the corresponding charge applicable to other delivery rates, the Distribution System charge applicable for transmission service recovers only MFF expense."); *see also id.* at 40.

[26] *See* Docket No. 38339, Application at 18 (June 30, 2010) (attempting to make the same billing change CEHE is seeking in this case); *see also* Docket No. 38339, Direct Testimony of Matthew Troxle at 24 (June 30, 2010) (same).

[27] PFD at 363-364.

[28] *Id.* at 364.

the same up-front payment. This is ultimately a competitive issue that has already been addressed in other areas with a heavy industrial presence. As discussed below, Entergy Texas has already adopted similar provisions in its tariff to solve exactly this problem, and similar provisions should be adopted here.[29]

F. The Commission should disallow all financially based incentive compensation, including Restricted Stock Units (RSUs).

The PFD disallowed the vast majority of CEHE's financially based incentive compensation expenses, with the exception of expenses related to restricted stock units (RSUs).[30] The record shows that the value of RSUs is directly tied to CEHE's share price and dividend awards. Like other financially based incentive goals, these RSUs give utility employees a financial incentive to prioritize the interests of the utility's shareholders over those of its customers.[31] As a result, they should be similarly disallowed.

These issues are discussed in greater detail below.

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

A. Return on Equity [PO Issue 8]

The PFD's recommended 9.42% return on equity (ROE) is higher than necessary to give CEHE a reasonable opportunity to earn a reasonable return.[32] The PFD notes that a 9.5% ROE is supported by the parties' mathematical analyses,[33] and then reduces that number by five basis points to account for qualitative business and economic factors, followed by another three basis points due to service quality issues raised by HEB.[34] Yet, the PFD's recommended ROE is at the very high end of the reasonable ROE range developed by TIEC witness Mike Gorman, which spanned from 9.0% to 9.5%.[35] In prior briefing, TIEC provided extensive analysis of Mr. Gorman's 9.25% ROE recommendation[36] and those issues were accurately summarized in the

---

[29] *See infra* Section VIII.D.

[30] PFD at 248 and FoF 239.

[31] *See infra* Section IV.B.1.b.

[32] PFD at 170.

[33] *Id.*

[34] *Id.*

[35] TIEC Initial Br. at 23; TIEC Reply Br. at 16.

[36] *See* TIEC Initial Br. at 7-34; TIEC Reply Br. at 6-17.

PFD. Mr. Gorman's well-supported analysis supports a lower ROE than the PFD's recommendation. Additionally, the PFD should have adjusted its recommended ROE downward by more than five basis points in response to CEHE's extremely low regulatory risk factors. As described in greater detail below, the PFD is correct that "to the extent there is a bias [revealed by the economic metrics presented by the parties,] it lies towards ***lowering the ROE rather than setting it higher***."[37]

1. CEHE is exposed to very little business risk, and that risk has decreased since its last rate case.

The record shows that CEHE benefits from the extremely low-risk nature of its business, and the minimal level of risk CEHE faces today should be reflected through a much lower ROE. Unlike vertically integrated utilities, CEHE is a "wires-only" utility that is not exposed to the environmental and financing risks associated with constructing generation projects, or the commodity risks associated with procuring fuel or selling power directly to customers.[38] Further, CEHE's risk has decreased in recent years with the implementation of various rate riders such the DCRF.[39] CEHE has represented to investors that those riders allow it to recover as much as ***95%*** of its capital investments between rate cases.[40] CEHE has not and cannot show that it is exposed to any new, offsetting risks that justify maintaining its current rate of return. CEHE's only new risk factor is the Tax Cuts and Jobs Act (TCJA), but CEHE itself has described this risk as very minimal. In CEHE's own words, the TCJA is a [redacted][41] and [redacted][42] Accordingly, it is clear that CEHE's overall risk as a

---

[37] PFD at 170 (emphasis added).

[38] *See* TIEC Ex. 5 (Gorman Dir.) at 26; *see also* TIEC Initial Br. at 15; TIEC Reply Br. at 7; Tr. (Gorman Cr.) at 562:18-563:1 (Jun. 26, 2019) ("[C]redit rating agencies distinguish the credit metric targets for utilities with no commodity risk. And they establish a level of financial risk credit metric targets that are more lenient; that is, the utility can finance with greater amounts of financial risk or financial leverage and still maintain their bond rating because of the existence of the favorable regulatory treatment in Texas and importantly because Texas TDUs do not have commodity risk.").

[39] *See* Tr. (Gorman Re-Dir.) at 614:12-615:22 (June 26, 2019).

[40] *See* TIEC Initial Br. at 15; Tr. (Mercado Cr.) at 65:15–25 (June 24, 2019); TIEC Ex. 8 (Investor & Analyst Day Presentation in June 2014) at 7.

[41] *See* TIEC Ex. 4 (Griffey Dir.) at 28 (quoting CEHE Response to TCUC 1-02 in attachment SP 2018 CenterPoint Energy at 2-3. (HSPM)) (emphasis added).

[42] *Id.* (emphasis added).

stand-alone utility (i.e., independent of parent-level risk) has decreased in recent years, which justifies a lower rate of return.

2. Ring fencing will substantially decrease CEHE's financial risk.

The primary threat to CEHE's financial well-being is the credit linkage with its parent company. In recommending ring-fence measures to insulate CEHE from the risks imposed by its parent and affiliates, the PFD found that "***CenterPoint is financially stronger than its affiliates and has a lower credit rating because of them***."[43] As explained by TIEC witnesses Mr. Gorman and Mr. Griffey, CEHE's corporate parent, CNP, leverages CEHE's regulated revenue stream to support riskier business ventures, which drags down CEHE's credit quality but provides no benefits to CEHE's ratepayers.[44] For instance, CEHE just received a one notch credit downgrade from S&P due to its parent company's leveraged acquisition of Vectren Corp.[45] Based on its own stand-alone metrics, CEHE would be rated a+ by S&P, placing it among the top 3% of utilities nationwide in terms of credit rating.[46] However, CEHE actually borrows ***three notches below*** that at BBB+ due to its affiliation with CNP.[47] If the Commission adopts the PFD's ring-fence recommendations,[48] CEHE's credit will be evaluated separately from its corporate group's and, in turn, CEHE's ratepayers will actually receive the benefit of the credit quality they are funding at CEHE through lower borrowing costs and/or lower rates. In essence, ring fencing gives the Commission an opportunity to simultaneously lower CEHE's rates and improve its credit rating.

Despite recommending ring-fencing measures that will reduce the financial burden on CEHE by insulating it from its parent and affiliates, the PFD did not take the positive financial effects of those ring-fencing measures into account when determining CEHE's rate of return. The record is clear that CEHE's current rate of return has been more than sufficient to support its own

---

[43] PFD at 202; *see also id.* at 202-203 (describing various rating agency actions and reports that make this point).

[44] TIEC Ex. 4 (Griffey Dir.) at 10; TIEC Ex. 5 (Gorman Dir.) at 22-23.

[45] *Id.*

[46] *See* TIEC Ex. 5 (Gorman Dir.) at 11, Table 1 (only 3% of electric utilities were rated A or higher by S&P in 2018).

[47] TIEC Ex. 5 (Gorman Dir.) at 24-25. Similarly, recent Fitch ratings reports produced by CEHE in discovery indicate that for CEHE, [redacted] TIEC Ex. 4 (Griffey Dir.) at Ex. CSG-2 (Griffey HSPM Workpapers) at Bates 1 of 361 (response to TCUC 1-4 at 1 of 196, Fitch Full Rating Report for CenterPoint Energy Houston Electric, LLC at 1) (HSPM).

[48] *See* PFD at Section III.E.4.a.

credit rating ***and prop up CNP's***, and as discussed below, CEHE's own witnesses admit that Mr. Gorman's recommended 9.25% ROE and 40% equity ratio will be sufficient for CEHE to maintain solid investment grade credit ratings. Ring-fencing presents the Commission with an opportunity to decrease CEHE's rate of return—and thereby save ratepayers tens of millions of dollars per year[49]—without compromising CEHE's ability to access capital at reasonable terms. This decrease in risk should have been taken into account in the PFD, and should be considered by the Commission in setting CEHE's ROE.

3. Business and economic conditions are favorable for CEHE.

Beyond CEHE's extremely low risk as an ERCOT TDU, CEHE also operates in a business and economic environment that is very favorable for regulated utilities in general. TIEC witness Mr. Gorman demonstrated that, on average, regulated utility ROEs have been trending downward over the last several years,[50] and during that same period, utilities have maintained or improved their credit quality,[51] access to capital,[52] and stock valuations.[53] The evidence indicates that this downward trend in utility ROEs will continue. The PFD's recommended ROE of 9.42% does not appropriately reflect this trend, as it is higher than the 9.38% national average ROE awarded to delivery-only utilities in 2018.[54] And even that 9.38% average is potentially misleading and inflated. As Staff witness Mr. Ordonez determined, this "averaged" data lumped all "delivery-only" utilities together,[55] and many of those utilities are significantly riskier than CEHE and other

---

[49] TIEC Ex. 5 (Gorman Dir.) at 31.

[50] TIEC Ex. 5 (Gorman Dir.) at 8, Figure 1.

[51] *Id.* at 10-11 (demonstrating that the average credit rating of regulated utilities has gone up even as regulated returns have decreased).

[52] *Id.* at 11 (citing S&P Global Market Intelligence, RRA Financial Focus: "Utility Capital Expenditures Update," (Oct. 30, 2018)); *see also id.* at 12, Figure 3.

[53] *Id.* at 13, Ex. MPG-2 (demonstrating that utility stocks are currently receiving robust valuations relative to the past several years).

[54] *See* CEHE Reply Br. at 63 (citing Tr. (Woolridge Cr.) at 526:6-17 (June 26, 2019)). On that page, CEHE argues that the average in 2019 was 9.43%, but as Mr. Woolridge pointed out on cross, that average was based on a very small number of results. *See* Tr. (Woolridge Cr.) at 527:25-528:3 (June 26, 2019) ("**Q:** As you said, there are three delivery-only companies in 20 – or decisions in 2019. Right? **A:** Yes.").

[55] As a slight caveat to this statement, the 9.38% average awarded ROE for delivery-only utilities came from the 2019 version of the S&P Global Market Intelligence RRA Report, while Mr. Ordonez analyzed the same report from 2018. *See* Staff Ex. 39 (Ordonez Dir.) at 35. There is no indication that S&P Global Market Intelligence changed the way in which it reports "delivery-only" utility ROEs over the last year, and the 2019 report does not seem to separate out "delivery-only" utilities that are exposed to commodity risk. *See* CEHE Ex. 69 (Woolridge Exhibit Book) at Tab 7 (2019 S&P Global Market Intelligence RRA Report) at 1.

ERCOT TDUs because they are exposed to commodity risk in buying and selling electricity.[56] So, it is likely that the PFD's recommended ROE is even more in excess of the national average for wires-only utilities like CEHE.

Further, ROE analyses have traditionally been backward-looking, which causes a substantial lag in appropriate reductions when regulators rely heavily on "proxy groups" and decisions made in other jurisdictions. This dynamic means that regulators throughout the country have been slow to lower utility returns to match changing conditions. TIEC witness Mr. Griffey demonstrated that regulated utility returns are currently providing utility shareholders with historically high "risk premiums" compared to US Treasury bond rates.[57] Even the PFD's recommended 9.42% ROE would be ***632 basis points*** above long-term Treasury yields.[58] This is close to the all-time high utility risk premium of 650-700 basis points and well above the average utility risk premium since 1980, which is approximately 450 basis points.[59] As Mr. Griffey explains, excessive utility risk premiums run counter to reasonable economics and market theory because they "allow[] equity investor returns equivalent or superior than what is available in the markets generally, but for ***a lower level of risk***."[60] This opportunity to earn outsized returns has incentivized investment in regulated utility stocks, and the record shows that investors view Texas utilities in particular as a strong investment opportunity.[61] This is an indication that ROEs are currently excessive in relation to the business risks faced by regulated utilities, and the Commission should take that into account when setting CEHE's rates.

---

[56] *See* Staff Ex. 39 (Ordonez Dir.) at 35 ("[A]fter reviewing the financial information (e.g., from the U.S. Securities and Exchange Commission Form10-k reports, the Federal Energy Regulatory Commission Form 1 reports) for the delivery-only electric utilities in the 2018 S&P Global Market Intelligence RRA Report, ***I found that 14 of the 16 delivery-only electric utilities in the 2018 S&P Global Market Intelligence RRA Report purchase and sell electricity.*** The capital structures of the delivery-only electric utilities in the 2018 S&P Global Market Intelligence RRA Report, while a better proxy for CEHE than vertically integrated utilities, are not a good proxy for CEHE, which is a TDU (i.e., a wires-only utility) that does not purchase and sell electricity.") (emphasis added); *see also* CEHE Ex. 69 (Woolridge Exhibit Book) at Tab 7 (2019 S&P Global Market Intelligence RRA Report) at 1.

[57] *See* TIEC Ex. 4 (Griffey Dir.) at 27 and Ex. CSG-3 (Griffey, Charles, Whitepaper: "When 'What Goes Up' Does Not Come Down: Recent Trends in Utility Returns." (Feb. 15, 2017)); *see also* TIEC Initial Br. at 12-15.

[58] *See* PFD at 159 (noting that CEHE's requested 10.4% ROE would be 730 basis points above Treasury yields).

[59] TIEC Ex. 4 (Griffey Dir.) at Ex. CSG-3, page 6 (Griffey, Charles, Whitepaper: "When 'What Goes Up' Does Not Come Down: Recent Trends in Utility Returns." (Feb. 15, 2017)).

[60] *Id.* at Ex. CSG-3, p. 8.

[61] As evidence of this, Mr. Griffey cites the high level of interest in acquiring utilities in Texas, the multiples of book value that have been offered to buy Texas utilities, and various utilities' efforts to secure additional endpoints to build transmission facilities in the state. *See* TIEC Initial Br. at 12-15.

Ultimately, the evidence shows that CEHE operates in a very favorable business, economic, and regulatory environment, and will be able to access sufficient capital to provide safe and reliable electric service with a lower ROE than the PFD recommended. Accordingly, the Commission should go further than the PFD in decreasing CEHE's awarded ROE to account for these factors, and should adopt an ROE that is closer to Mr. Gorman's recommended 9.25%.

C. Capital Structure [PO Issue 7]

The Commission should adopt a capital structure that will give CEHE sufficient access capital at the lowest cost to customers. When evaluating CEHE's capital structure, it is important to remember that equity has a much greater cost to customers than debt. As Mr. Griffey indicated, "Debt yields are less than 5% for bonds rated Baa by Moody's, while prevailing returns on equity are between 9 and 10% in Texas."[62] Additionally, unlike debt, the equity component of a utility's capital structure has to be "grossed up" for federal income taxes, meaning that customers are required to pay a multiplier on the equity component in rates so that the utility can earn its awarded return after it pays income taxes on the collected amounts.[63] At the current corporate federal income tax rate, that multiplier is 1.26, meaning that for each dollar of equity in CEHE's capital structure, ratepayers must pay $1.26 in rates.[64] As a result, each dollar of additional equity in CEHE's capital structure significantly increases costs to ratepayers. As TIEC witness Mr. Gorman illustrated, even if moving to a 40% equity ratio resulted in CEHE receiving a one-notch credit downgrade (which TIEC disputes), such a downgrade would cost CEHE's ratepayers just $6.7 million per year,[65] but because equity is so much more expensive than debt, supporting an additional 5% equity in CEHE's capital structure would cost ***$45.9 million*** per year.[66] For ratepayers, the choice between these alternatives is obvious.

The PFD seems to have taken a blunt, "split the baby" approach in recommending that CEHE maintain its current 45% equity ratio, which is between the capital structure proposals from CEHE (50% debt/50% equity) and Staff/intervenors (60% debt/40% equity). In justifying that

---

62 TIEC Ex. 4 (Griffey Dir.) at 7.

63 *Id.* at 9.

64 *Id.*

65 *Id.* at 31.

66 *Id.*

decision, the PFD characterizes both CEHE and Staff/intervenors' positions as "extremes,"[67] but that premise is not supported by the evidence. Far from being "extreme," as the PFD claims, the 40% equity ratio supported by Staff and most intervenors is in line with the regulatory capital structure of several ERCOT utilities (including AEP Texas, Cross Texas, ETT, and WETT[68]), as well as the Commission's generic capital structure for wires-only TDUs[69] and the "benchmark" TDU capital structure used by Commission Staff during the earnings monitoring process.[70] CEHE's requested 50% equity component, on the other hand, ***is*** extreme and unprecedented for an ERCOT TDU.[71] To illustrate, CEHE's proposed 50% equity layer would be ***higher*** than the 48.46% equity ratio that this Commission awarded to vertically integrated SWEPCO last year in the fully litigated Docket No. 46449,[72] even though SWEPCO's exposure to generation and commodity risks undoubtedly makes it a much riskier business than CEHE.[73] Accordingly, the PFD should not have approached Staff and intervenors' proposed capital structure as an "outlier" like CEHE's, and the Commission should reconsider this portion of the PFD.

The PFD provides little analysis to support its decision to maintain CEHE's current 45% equity ratio, other than to state that a ratings agency may consider that decision to be "credit positive."[74] But as TIEC noted in prior briefing,[75] whether an action is "credit positive" or "credit negative" is essentially just describing whether that action gives the utility more or less money, and does not answer the real question of what constitutes a ***reasonable*** capital structure for CEHE.

---

[67] PFD at 191.

[68] Staff Ex. 39 (Ordonez Dir.) at 37, n. 41 ("The following TDUs are operating in Texas with authorized capital structures comprising 60% long-term debt and 40% equity: Cross Texas Transmission, LLC (Docket No. 43950), Electric Transmission Texas, LLC (Docket No. 33734), AEP Texas Central Company (Docket No. 33309), AEP Texas North Company (Docket No. 33310), Wind Energy Transmission Texas, LLC (Docket No. 44746).").

[69] PFD at 187-188 (The Commission found in Docket No. 22344 that a "uniform capital structure consisting of 60% long-term debt and 40% common equity was appropriate for ratemaking purposes for all TDUs operating in Texas.").

[70] TIEC Ex. 14 (P. 46910 Memo) at 3.

[71] CEHE's claim that the average awarded equity percentage for delivery-only utilities nationwide was 49.91% in 2018 is misleading because, as Staff witness Mr. Ordonez testified, 14 of the 16 utilities in that group are exposed to commodity risk, and are therefore much riskier than CEHE. *See* PFD at 190.

[72] *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at 31 (Mar. 19, 2018).

[73] *See supra* fn. 38 (explaining that CEHE does not face generation or commodity risk); *see also infra* Section III.C.1.

[74] *See* PFD at 191.

[75] *See* TIEC Reply Br. at Section III.C.1.

The objective of regulated utility ratemaking is not to ensure that the utility's revenues never decline (i.e., to take only "credit positive" actions), but ***to set an overall return that is fair to both the utility and its customers***, and that will allow the utility to access sufficient capital on reasonable terms.[76]

For the reasons discussed below, the Commission should reject the PFD's decision to maintain CEHE's unnecessarily rich 45% equity ratio and set CEHE's capital structure at 60% debt and 40% equity.

1. CEHE's minimal business and regulatory risk indicates that a lower equity ratio is appropriate.

The Commission should also take CEHE's business risks into account when setting its capital structure. As discussed in detail above, CEHE does not face any new or unique risks that would warrant more than a 40% equity ratio. To the contrary, CEHE is an extremely low-risk wires-only utility, and ratings agencies take that risk profile into account when evaluating CEHE's credit rating on a stand-alone basis.[77] Additionally, CEHE's risks have decreased in recent years due to a favorable business and economic environment, as well as the implementation of various rate riders that CEHE admits allow it to recover up to ***95%*** of its capital investment without filing a rate case.[78] Further, CEHE's financial risk will decrease even further if the Commission follows the PFD in requiring CEHE to adopt reasonable ring-fencing measures that will prevent CNP from leveraging CEHE's regulated income stream (and thereby decreasing its creditworthiness) to support CNP's risky acquisitions and unregulated businesses.[79] Taken together, these factors support lowering the amount of equity in CEHE's capital structure.

---

[76] PURA § 36.003(a) ("The regulatory authority shall ensure that each rate an electric utility or two or more electric utilities jointly make, demand, or receive is just and reasonable."); PURA § 36.051 ("In establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.").

[77] *See* TIEC Ex. 5 (Gorman Dir.) at 35-36; CEHE Ex. 43 (McRae Reb.) at Ex. R-RBM-4, p. 4 (S&P Global Ratings – CenterPoint Energy Houston Electric LLC, March 22, 2019) (Confidential) [redacted] (emphasis added).

[78] *See* TIEC Initial Br. at 15; Tr. (Mercado Cr.) at 65:15–25 (June 24, 2019); TIEC Ex. 8 (Investor & Analyst Day Presentation in June 2014) at 7.

[79] PFD at 202 ("***CenterPoint is financially stronger than its affiliates and has a lower credit rating because of them.***") (emphasis added); *see also id.* at 202-203 (describing various rating agency actions and reports that make this point).

2. CEHE's own witnesses admit that it will maintain solid investment grade ratings under Mr. Gorman's proposed 40% equity ratio and 9.25% ROE.

It is undisputed that CEHE will maintain solid investment grade credit ratings if the Commission awards it a 40% equity ratio. TIEC witness Mr. Gorman's analysis shows that along with his recommended 9.25% ROE (slightly lower than the PFD's recommended 9.42%), a 60% debt/40% equity capital structure will be sufficient to support an A- stand-alone credit rating from S&P while producing significant savings for ratepayers.[80] Importantly, an A- rating from S&P represents an ***upgrade*** over the BBB+ "group" rating under which CEHE currently borrows due to its association with CNP.[81]

In their rebuttal testimony, CEHE's witnesses confirmed that CEHE will maintain solid investment grade credit ratings on a standalone basis if the Commission adopts Mr. Gorman's recommended 9.25% ROE and a 40% equity ratio. Those prospective ratings are presented below:

Projected Standalone Credit Ratings at 9.25% ROE and 40% Equity			
	S&P	**Moody's**	**Fitch**
McRae[82]	A-	Baa (likely toward high end, Baa1)[83]	BBB
Lapson[84]	A-	Baa2 or Baa3	BBB mid

To put CEHE's projected credit ratings under a 9.25% ROE and 40% equity ratio into context, Ms. Lapson also projected credit ratings for CEHE at its current 10.0% ROE and 45% equity ratio:

Projected Credit Ratings at 10.0% ROE and 45% Equity			
	S&P	**Moody's**	**Fitch**
Lapson[85]	A (standalone); Metrics indicate a "group" rating of low A- or high BBB+[86]	Baa1 or Baa2	BBB to BBB-

[80] TIEC Ex. 5 (Gorman Dir.) at 36-37.

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

[82] CEHE Ex. 43 (McRae Reb.) at 23-25.

[83] *See* TIEC Initial Br. at 50-51.

[84] *See* CEHE Ex. 48 (Lapson Reb.) at Ex. R-EL-6, p. 3-4.

[85] *See id.* at Ex. R-EL-6, p. 1-2.

[86] *Cf. id.* at Ex. R-EL-6, p. 2; *with* TIEC Ex. 5 (Gorman Dir.) at 34 ("medial" volatility table used to set CEHE's "Group" rating).

As these charts show, even CEHE's witnesses agree that compared to the status quo, adopting Mr. Gorman's recommended 9.25% ROE and 40% equity ratio would decrease CEHE's credit rating by one notch ***at most*** for any of the ratings agencies. As noted above, a one-notch change in CEHE's credit rating would increase CEHE's debt costs by just $6.7 million per year,[87] which is minimal in light of its $2.3 billion proposed revenue requirement.[88] In contrast, the additional 5% equity CEHE requests to avoid this theoretical downgrade would cost its customers $45.9 million per year.[89] This tradeoff makes no sense for ratepayers.

3. CEHE's credit ratings at a 40% equity ratio will allow access to capital at more reasonable rates.

Despite CEHE's scare tactics, it is clear that the solid investment grade ratings that its own witnesses project for it under Mr. Gorman's recommended 9.25% ROE and 40% equity ratio will allow it to access capital on reasonable terms. In general, investment grade debt offerings are seen as low-risk, and companies with investment grade ratings can be expected to have access to large amounts of capital. In fact, during the CREZ buildout, ***this Commission used investment grade credit ratings as a proxy for prospective TSPs' ability to attract capital.***[90] Further, CNP's own experience shows that the investment grade ratings CEHE will maintain under a 40% equity ratio are more than enough to access the capital markets. For instance, CNP's February 2018 SEC Form 10-K filing reveals that in August of 2017, CEHE's affiliate CenterPoint Energy Resources Corporation (CERC) issued $300 million in long-term debt at just 4.1% interest,[91] and at the time, CERC's credit ratings were in ***exactly the same*** range as the ratings that CEHE's witnesses project

---

[87] TIEC Ex. 5 (Gorman Dir.) at 31.

[88] CEHE Initial Br. at 8-9.

[89] TIEC Ex. 5 (Gorman Dir.) at 31.

[90] *See* 16 T.A.C. § 25.216(c)(2); *see also Remand of Docket No. 35665 (Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zone*s, Docket 37902, Order on Remand at FoF 58, 60 (Mar. 30, 2010) ("58. Each interested TSP was also required to establish that it has adequate financial resources as follows . . . b. The interested TSP or its parent company or controlling shareholder or another company providing a bond guaranty or corporate commitment to the interested TSP under P.U.C. SUBST. R. 25.216(e)(2) must demonstrate an investment grade credit rating. . . . The determination of such investment grade quality will be based on the credit ratings provided by Standard & Poor's (S&P), Moody's Investor Services (Moody's), or any other nationally recognized rating agency. The minimum investment credit ratings that will satisfy the requirements of this paragraph include "BBB-" for S&P, "Baa3" for Moody's, or their financial equivalent.").

[91] CNP's 2018 Form 10K filing states that CERC issued $300 million in "unsecured senior notes" in August of 2017. *See* CEHE Ex. 88 (Optional Completeness to TCUC Ex. 31: CNP 2018 Form 10K) at 116.

that CEHE will sustain at a 40% equity ratio.[92] Similarly, CNP has told investors that for itself, it [redacted][93] There is no evidence that CEHE requires significantly higher credit ratings than its affiliates in order to access capital.

Critically, CEHE has never disputed that it will be able to access sufficient capital at reasonable rates if the Commission orders a 40% equity ratio. Nor can it, in light of its own witnesses' admission that CEHE will maintain solid investment grade credit ratings with that capital structure. Accordingly, the Commission should reduce CEHE's equity component to 40%, which will save ratepayers approximately $39.2 million per year[94] while still allowing CEHE to access the capital necessary to provide safe and reliable service.

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

B. Labor Expenses

1. Incentive Compensation

b. Long-Term Incentive Compensation

As the PFD recognized,[95] the Commission has consistently disallowed incentive compensation based on financial measures because "financial measures are of more immediate benefit to shareholders and financial measures are not necessary or reasonable to provide utility services."[96] In line with this precedent, the PFD disallowed the majority of CEHE's financially

---

[92] CNP's 2018 Form 10K filing lists the following credit ratings for "CERC Corp. Senior Unsecured Debt":

- Moody's – Baa2
- S&P – A-
- Fitch – BBB

Id. at 64.

[93] TIEC Ex. 4 (Griffey Dir.) at 10 (quoting "CenterPoint Energy, Inc. Strategy and Outlook" at 2, provided in CEHE Response to TCUC 1-02 (HSPM)) (emphasis added).

[94] Net of increased debt costs, assuming that CEHE experiences a one-notch credit downgrade. *See* TIEC Ex. 5 (Gorman Dir.) at 31.

[95] *See* PFD at 243, 248.

[96] *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at FoF 194 (Mar. 19, 2018).

based incentive compensation expenses.[97] However, contrary to the Commission's prior decision on this exact issue in Docket No. 38339,[98] the PFD did not disallow CEHE's expenses related to the restricted stock units (RSUs)[99] in CEHE's long-term incentive compensation (LTI) plan.[100] This is despite the PFD's finding that "***the value of the RSUs is tied to financial measures, which typically benefit shareholders***"[101] and CEHE's failure to provide any reason for the Commission to depart from its prior precedent on this issue.[102]

The PFD concluded that because RSU awards vest over time, they are "a time-based achievement," and that financial measures are "not what triggers the RSU payout to employees."[103] However, the Commission's decision on this issue should not be based on the explicit trigger for the incentive compensation payment, but instead on the incentives that it creates for CEHE's employees. The entire reason that financially based incentive compensation has historically been disallowed is because utility ratepayers should not fund compensation programs that reward utility employees for elevating the interests of shareholders over customers. As the PFD admits,[104] even though RSUs vest over time, their ***value*** is directly tied to the company's share price and dividends.[105] Even CEHE's parent company admits that "[t]he restricted stock units are intended to retain executive officers and ***reward them for long-term stock appreciation***."[106] Accordingly, regardless of what conditions trigger the payment of RSUs, they are financially based incentive

---

[97] *See* PFD at 245, 261.

[98] In Docket No. 38339, the Commission disallowed the entirety of CEHE's LTI package, including expenses related to RSUs. *Application of CenterPoint Electric Delivery Company, LLC, for Authority to Change Rates*, Docket No. 38339, Order on Rehearing at 22, FoF 82 (Jun. 23, 2011) ("***CenterPoint's [LTI] is not a reasonable and necessary component of CenterPoint's total compensation package.***") (emphasis added).

[99] RSUs are stock awards that only vest after an employee has been at CEHE for a certain amount of time. PFD at 246.

[100] *Id.* at 248.

[101] *Id.* (emphasis added).

[102] In disallowing the performance shares portion of CEHE's LTI plan, the PFD found that neither the "current economic conditions [n]or employment market justify a departure from the Commission's well-established precedent." *Id.* Nevertheless, it then departed from the Commission's prior treatment of CEHE's LTI expenses.

[103] *Id.*

[104] *Id.*

[105] *See* Tr. (Harkel-Rumford Cr.) 1343:24-1344:2 (June 28, 2019); *see also* COH Ex. 2 (Garrett Dir.) at 34 ("The *restricted units* are tied to financial performance because the value of these units is directly tied to the value of the Company's common stock."); *see also* TIEC Reply Br. at 28.

[106] TIEC Ex. 15 (Annual Shareholders Meeting Presentation) at 36 (emphasis added); *see also* TIEC Initial Br. at 54; TIEC Reply Br. at 28.

compensation that ratepayers should not be forced to fund. The Commission should reverse this portion of the PFD and disallow 100% of CEHE's expenses related to the RSUs.

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

B. Class Allocation

1. Class Allocation of Transmission Costs

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

The Commission should reject the PFD's recommendation to allow CEHE to bill distribution charges to Transmission Service retail customers based on their demand during ***CEHE's*** system 4CP (CEHE 4CP) rather than the ERCOT 4CP.[107]

Importantly, this is not a class allocation issue but purely a rate design issue. In other words, the Commission's decision on this issue will only affect how the distribution charges that are allocated to the Transmission class—which are entirely municipal franchise fees (MFF)[108]—will be spread among the customers ***within*** that class. The total amount of distribution charges collected from the Transmission class will be the same under either approach. In such a scenario, the Commission should give significant weight to how industrial customers prefer to be billed.

CEHE has been billing both distribution and transmission charges to Transmission Service customers based on their ERCOT 4CP demand since before Docket No. 38339.[109] Because all other Transmission retail charges are similarly billed on ERCOT 4CP, this makes it administratively simpler for industrial customers to predict and manage their electricity costs by

---

[107] *See* PFD at 344-345. TIEC takes no position on how any other retail class's rates are designed and does not oppose using CEHE's system 4CP, NCP, or any other billing determinants for residential and commercial bills.

[108] CEHE Ex. 30 (Troxle Dir.) at 30 ("The Distribution System Charge for each rate schedule is based on the class revenue requirement for the Distribution function from the Proposed CCOSS"); *cf.* CEHE Ex. 1 (Application) at Schedule "II-I-2," Cell I-104 (listing "Total Cost of Service – Distribution" for the Transmission class at $17,674,000); *with* CEHE Ex. 1 (Application) at Schedule "II-I-Total," Cell L-783 (total municipal franchise fees allocated to Transmission class are $17,674,000).

This fact is further confirmed by testimony from CEHE's last rate case. *See* Docket No. 38339, Direct Testimony of Matthew Troxle at 26 (June 30, 2010); *see also* Docket No. 38339, Direct Testimony of Jeffry Pollock at 8 (Sept. 10, 2010) ("Unlike the corresponding charge applicable to other delivery rates, the Distribution System charge applicable for transmission service recovers only MFF expense."); *see also id.* at 40.

[109] CEHE's Application in Docket No. 38339 reveals that it proposed to change the "Distribution System Charge" billing determinant for the Transmission class from 4CP kVa (ERCOT 4CP) to Billing kVa (CEHE 4CP). *See* Docket 38339, CEHE Application at 18 (June 30, 2010).

referencing to their 4CP demand. For large businesses, using uniform billing determinants facilitates important planning and business decisions by simplifying analyses of expected electric costs, and minimizes complexity in the billing process. In Docket No. 38339, the Commission considered and rejected CEHE's attempt to change the billing determinants it uses to assign distribution charges to Transmission retail customers.[110]

Here, the PFD reasoned that CEHE's proposal to bill distribution charges based on the CEHE 4CP was appropriate because CEHE builds its distribution system to serve its system peak.[111] While this may be true, it is irrelevant to billing the Transmission class because, by definition,[112] ***Transmission customers do not use physical distribution assets***. Rather, their so-called "distribution charges" consist of expenses that do not fall into the "Transmission" bucket. As a result, Transmission customers' usage at the time of CEHE's distribution system peak does not impact the distribution facilities that must be built to serve that peak. Instead, as noted above, the distribution service charges assessed to Transmission customers are used to recover MFF.[113] Importantly, MFF allocations among retail classes are based on customers' energy usage (kWh) within many different cities' corporate limits, rather than customers' demand (kVA),[114] so there is no relationship between the distribution charges that are allocated to the Transmission class and

---

[110] Despite CEHE's effort to change the "Distribution System Charge" billing determinant for the Transmission class from 4CP kVa (ERCOT 4CP) to Billing kVa (CEHE 4CP) in Docket No. 38339, as seen in CEHE's most recent tariff, the Transmission class is still being billed using 4CP kVA. *See* CEHE Tariff at Section 6.1.1.5, Sheet No. 6.5 at 1 (Eff. Date Sept. 1, 2017) (available at: https://www.centerpointenergy.com/en-us/Documents/RatesandTariffs/HoustonElectric/Tariff-for-Retail-Delivery-Service-9-1-17.pdf).

[111] PFD at 347.

[112] *See* CEHE Tariff, Section 6.16 at page 8 (Effective 9/1/11) ("A Retail Customer whose load is of such magnitude or of such unusual characteristics that it ***cannot otherwise be economically served from Company's distribution system***, as determined by Company, must receive electric service from the Company's high-voltage transmission system.") (available at: https://www.centerpointenergy.com/en-us/Documents/RatesandTariffs/HoustonElectric/Tariff-for-Retail-Delivery-Service-9-1-17.pdf).

[113] CEHE Ex. 30 (Troxle Dir.) at 30 ("The Distribution System Charge for each rate schedule is based on the class revenue requirement for the Distribution function from the Proposed CCOSS"); *cf.* CEHE Ex. 1 (Application) at Schedule "II-I-2," Cell I-104 (listing "Total Cost of Service – Distribution" for the Transmission class at $17,674,000); *with* CEHE Ex. 1 (Application) at Schedule "II-I-Total," Cell L-783 (total municipal franchise fees allocated to Transmission class are $17,674,000).

This fact is further confirmed by testimony from CEHE's last rate case. *See* Docket No. 38339, Direct Testimony of Matthew Troxle at 26 (June 30, 2010); *see also* Docket No. 38339, Direct Testimony of Jeffry Pollock at 8 (Sept. 10, 2010) ("Unlike the corresponding charge applicable to other delivery rates, the Distribution System charge applicable for transmission service recovers only MFF expense."); *see also id.* at 40.

[114] *See* TIEC Ex. 1 (Pollock Dir.) at 12-13.

those customers' demand during CEHE's system 4CP. Again, this issue only addresses how the charges that are allocated to the Transmission class will be ***billed*** to its individual members.

Changing Transmission customers' billing determinants to CEHE 4CP demand for distribution service charges will inject unnecessary complexity to the billing process. Currently, CEHE bills transmission customers for both transmission and distribution system charges based on their demand during the ERCOT 4CP,[115] and continuing to use a single billing determinant for both charges[116] will make it easier for CEHE to calculate bills and for Transmission customers to predict and manage their electric costs. Further, CEHE has used this system for many years without any issues, and there is no compelling reason to modify this practice given the nature of the charges that will be affected. Accordingly, the Commission should reverse the PFD on this point and order CEHE to retain its current practice of billing distribution charges to Transmission customers based on their ERCOT 4CP kVA.

2. Municipal Franchise Fees [PO Issue 27]

When presented with a superior allocation approach that better tracks cost-causation, the Commission should be open to modifying its prior practices, rather than reflexively following decisions made in prior cases nearly a decade ago. This is true of CEHE's MFF allocation proposal. TIEC has presented an allocation proposal that indisputably better tracks cost causation. However, that allocation was almost summarily rejected by the PFD because it differs in certain aspects from the approach taken in Docket No. 38339. The Commission should take a fresh look at this issue and adopt the best proposal based on the merits.

Before deregulation in ERCOT, cities charged "franchise fees" to allow vertically integrated utilities such as Houston Lighting & Power (HL&P, CEHE's predecessor) to use rights-of-way within city limits.[117] After deregulation, these right-of-way fees were converted to modern-day "MFF" rates, which are charged to utilities based on their in-city kWh deliveries—and are not directly tied to right-of-way through a particular city. Utility MFF expense today is the product of (a) the individual MFF rate adopted by each city, multiplied by (b) total kWh

---

[115] *See* CEHE Tariff at Section 6.1.1.5, Sheet No. 6.5 at 1 (Eff. Date Sept. 1, 2017) (available at: https://www.centerpointenergy.com/en-us/Documents/RatesandTariffs/HoustonElectric/Tariff-for-Retail-Delivery-Service-9-1-17.pdf).

[116] CEHE intends to continue using ERCOT 4CP demand to bill transmission charges to the Transmission class. CEHE Reply Br. at 132; *see also* PFD at 344.

[117] *See* TIEC Ex. 1 (Pollock Dir.) at 12-13.

deliveries within each city's limits.[118] As a result, a city with higher MFF rates creates higher costs for a utility like CEHE for each in-city kWh delivery.[119] Similarly, a customer class that takes delivery in a city with high MFF rates will cause CEHE to incur more MFF expense than a customer class that predominantly takes deliveries in a city with low MFF rates—even if the delivered quantities were the same for both classes.[120]

As more time passes since deregulation, it makes sense to continue to refine utility MFF allocations among the retail classes to better reflect cost-causation. Here, TIEC has proposed an allocation that is consistent with, but improves upon, the allocation methodology adopted in Docket No. 38339. In Docket No. 38339, the Commission adopted a methodology for allocating CEHE's MFF expense known as the "Direct" method. This method essentially calculates the ***average*** MFF rate for all cities with CEHE's service area, and then allocates MFF expense by multiplying this average rate times total in-city deliveries for each retail class—regardless of where those deliveries occurred. The allocated costs are then spread to all customers within each retail class (i.e., not just in-city customers). By using an average MFF rate for all cities, this allocation approach fails to give any weight to differences in the MFF rates where classes actually take delivery. However, as explained above, deliveries in cities with higher MFF rates have a greater cost to CEHE, and the city-by-city differences in MFF rates can be substantial. For example, the City of Houston charges 0.337¢ per kWh sold within its city limits, which is higher than average, and 89.7% of kWh sales within the City of Houston are made to residential and secondary service customers.[121] In contrast, the City of Mont Belvieu charges a below-average MFF rate of 0.193¢ per kWh, but those same classes represent only 4.9% of kWh sales in the City of Mont Belvieu.[122] These differences should be reflected in the MFF allocation.

Like the approach in Docket No. 38339, Mr. Pollock's proposal allocates MFF expense to each retail class based on in-city kWh deliveries, and then collects the costs from all customers within each retail class. However, Mr. Pollock's more refined approach applies this allocation ***on a city-by-city basis***, so that class allocations reflect not only total in-city kWh deliveries by class

---

[118] *Id.* at 14.

[119] *Id.* at 14-15.

[120] *Id.*

[121] *Id.*

[122] *Id.*

but also variances in the MFF rates where those deliveries occurred. This approach is consistent with what was adopted in Docket No. 38339, but better reflects cost-causation by capturing MFF rate differentials among the cities and the level of kWh deliveries for each class within a particular city.[123]

Critically, ***no party has disputed that Mr. Pollock's allocation better reflects each class's contribution to CEHE's MFF expense.***[124] Nor does the PFD.[125] Rather than addressing the merits of Mr. Pollock's proposal, the PFD dismissed it out of hand based entirely on the Commission and SOAH's decisions in Docket No. 38339.[126] However, as TIEC has stressed throughout its briefing on this issue, Mr. Pollock's methodology is consistent with, and builds upon, the Commission's approach in that docket.[127] While it is true that Mr. Pollock made a similar proposal in Docket No. 38339 that was not adopted, the Commission's order did not substantively criticize his approach; it just adopted the more "blunt" averaging approach proposed by CEHE. In that docket, the Commission found that "CenterPoint'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."[128] Additionally, as the PFD in this case notes, CEHE has repeatedly pointed to a section in the PFD from Docket No. 38339 that reads:

> The Commission in past cases has allocated customer franchise fees to the customer classes based on in-city kWh sales and collected the fees from all customers within the customer class, which is consistent with prior findings that franchise fees confer

---

[123] *See* TIEC Initial Br. at 65-69.

[124] *See* TIEC Reply Br. at 38-39.

[125] PFD at 350.

[126] *Id.* at 350 ("The ALJs concur with the decision made by the ALJs and the Commission in Docket No. 38339 regarding CenterPoint's MFF allocation proposal, and find that their analysis and conclusion applies in this proceeding as well.").

[127] Mr. Pollock's allocation is based on each customer class's in-city kilowatt-hour (kWh) sales, and collects the allocated MFF from all customers within each class, exactly like the allocation the Commission approved in Docket No. 38339. *See* Docket No. 38339, Order on Rehearing at 34, FoF 179 (June 23, 2011) ("CenterPoint'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.") (emphasis added).

[128] *Id.* (emphases added).

a system-wide benefit, and is consistent with the Company's methodology used in this case.[129]

Mr. Pollock's proposal is entirely consistent with these findings. As described above, Mr. Pollock's methodology is "based upon in-city kilowatt-hour (kWh) sales."[130] It also "collect[s MFF] from all customers within [each] customer class," which is sometimes referred to as the "Spread" method of collecting MFF expenses.[131] Contrary to some parties' implications, TIEC is not proposing to "set rates based on geographic location."[132] Instead, Mr. Pollock applies the same "Spread" collection method that the Commission approved in Docket No. 38339, which charges ***all*** customers within a retail class for MFF expense, regardless of whether they are in-city or not.[133] This means that customers' rates will vary by retail class, but not based on physical location within CEHE's service area—which is no different from today. Accordingly, because Mr. Pollock's method spreads MFF expenses to customers throughout CEHE's system rather than collecting them exclusively from in-city customers, it complies with the finding in the Docket No. 38339 PFD that MFF expenses provide a "system-wide benefit."[134] As stated above, Mr. Pollock is applying the ***exact allocation methodology*** adopted in Docket No. 38339, but on a city-by-city basis.

Further, while the PFD does not acknowledge this issue, it is worth noting that the Commission has not taken a uniform approach to MFF allocation for all utilities. For example, Texas New Mexico Power's (TNMP's) Commission-approved tariff charges each city's MFF charges directly to ***only in-city customers***—it does not spread the costs to all customers in a given class.[135] Similarly, Mr. Nalepa claimed in his testimony that the Commission rejected weighting MFF expense by class usage within each city in Entergy Texas, Inc. (ETI's) rate case in Docket

---

[129] *See* PFD at 349-50.

[130] *See* Docket No. 38339, Order on Rehearing at 34, FoF 179 (June 23, 2011).

[131] *See id.*

[132] COH/HCC Initial Br. at 35-36.

[133] *See* TIEC Initial Br. at 66; TIEC Ex. 1 (Pollock Dir.) at 17.

[134] Docket No. 38339, PFD at 156 (Dec. 3, 2010) (citations omitted).

[135] *See, e.g.,* TNMP Tariff at Section 6.1 "Municipal Franchise Fees. When service falls within the incorporated limits of a municipality that assesses a franchise fee on transmission customers, such municipal franchise fees shall be added to and separately stated on the bill of each customer taking service within the incorporated limits of the municipality and shall be at the rate of $0.00175000/kWh. Transmission customers taking service outside the incorporated limits of a municipality shall not be subject to this fee.").

No. 39896.[136] However, as demonstrated at the hearing, ETI collects all incremental MFF expense that is not in base rates through a rider charged directly to in-city customers.[137] Due to this hybrid allocation approach, the Commission's decision on how base-rate MFF expense should be allocated for ETI is not analogous to CEHE. As a result, there is no prevailing or controlling precedent, so the Commission should adopt the approach that best tracks cost-causation and aligns customers' incentive to manage the MFF rates in the cities where they use electricity. For these reasons, Mr. Pollock's approach is superior and should be adopted.

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

A. Transmission Service Rate

1. Allowing CEHE to recover its wholesale transmission costs through base rates will result in over-recovery and is inconsistent with the design of the ERCOT TCRF rule.

The Commission should reject the PFD's recommendation to allow CEHE to "zero out" its Transmission Cost Recovery Factor (TCRF) rider and recover all of its wholesale transmission costs in base rates through the Transmission Service Charge (TSC).[138] While this was common practice at one point, that practice changed when the Commission amended the TCRF rule in 2010 to provide exact cost recovery of wholesale transmission costs for distribution service providers (DSPs) like CEHE with mandatory true-ups every six months. As a result of this rule change, CEHE currently has virtually no regulatory lag and zero risk of under-recovery when passing through wholesale transmission costs to its customers in the TCRF, and customers should equally be entitled to receive refunds through the TCRF when CEHE over-recovers.

When the Commission adopted the current ERCOT TCRF rule, it recognized that DSPs like CEHE "essentially serve as billing and collection agents for passed-through [wholesale transmission] costs" and cannot directly control those costs.[139] Accordingly, the TCRF formula includes a true-up mechanism that provides for exact cost recovery of a DSP's ***actual*** wholesale

[136] OPUC Ex. 7 (Nalepa Cross-Reb.) at 9.

[137] TIEC Ex. 18 (Entergy Schedule FFBE); Tr. (Nalepa Cr.) 492:8-13 (June 27, 2019).

[138] *See* PFD at 398-403.

[139] *Rulemaking Proceeding to Amend PUC Subst. Rule § 25.193, Relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF),* Project No. 37909, Order (Oct. 5, 2010).

transmission costs—no more and no less.[140] As Staff witness Bill Abbott explained at the hearing, unlike the TSC charge in base rates, the TCRF rule ensures that if CEHE "recovers more or less than they were meant to recover over a given period, it gets trued-up through either a refund or a surcharge" in the next period.[141] This is consistent with the intent of the TCRF rule, which the Commission adopted with the explicit intention to "allow[] DSPs to recover, ***but not over-recover***," transmission costs flowed through by TSPs."[142] Notably, this is different from the non-ERCOT TCRF, which allows bundled utilities outside of ERCOT to recover ***their own*** transmission investment (as opposed to wholesale TCOS charges from ***other*** providers), and which does not include the true-up feature to eliminate regulatory lag or provide exact cost recovery. Because of the unique nature of the ERCOT TCRF, ensuring that no over-recovery occurs in base rates is necessary to treat customers fairly.

Allowing CEHE to move its wholesale transmission costs out of the TCRF and into base rates deprives customers of the benefit of a refund when future over-recovery occurs due to load growth, which is almost guaranteed.[143] ***No other utility in ERCOT*** does this today except AEP, which has proposed to remove all wholesale transmission costs and put them in base rates in its pending case. Importantly, the risk of over-recovery for CEHE is not hypothetical—CEHE over-recovered by $51.9 million[144] in the test year because it still has wholesale transmission costs in base rates instead of being subject to the TCRF rider's "true-up" feature. Even the PFD "concede[d] that ***TIEC's concern regarding over-recovery is reasonable***."[145] Instead of deliberately allowing such over-recovery to continue—particularly for a cost item that is essentially a pass-through for CEHE—the Commission should order CEHE to move all of its transmission cost recovery into its TCRF. As discussed below, this practice is consistent with the language of the TCRF rule adopted in 2010, has been implemented by ***every*** ERCOT TDU that

---

140 Project No. 37909, Order at 30 ("[T]he modified proposal as reflected in the adopted rule appropriately allows a DSP to recover-but not over-recover-the passed-through transmission costs that the DSP is charged by TSPs.").

141 Tr. (Abbott Cr.) at 915:12-19 (June 26, 2019); *see also id.* at 915:12 – 916:14.

142 Project No. 37909, *Rulemaking Proceeding to Amend PUC Subst. R. 25.193, Relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)*, Order at 7 (Oct. 5, 2010) (emphasis added).

143 CEHE has indicated in this proceeding that it projects consistent load growth over the next several years, and used that claim as support for its capital structure proposal. CEHE Ex. 27 (McRae Dir.) at 15.

144 TIEC Ex. 1 (Pollock Dir.) at 27.

145 PFD at 403.

has filed a rate case since the current TCRF rule was adopted in 2010,[146] and has been proposed by AEP in its pending case.[147]

There is little dispute that CEHE will receive a windfall if it is allowed to recover its wholesale transmission costs through its base rates.[148] Nevertheless, the PFD found that the size of that windfall will be limited by the requirement for CEHE to file another rate case in four years,[149] or, in an extreme case, by the Commission ordering CEHE to file a rate case after reviewing its earnings monitoring report.[150] However, that mitigation does not justify allowing CEHE to over-recover in the first place now that the TCRF rule treats these costs as a pass-through and provides exact cost recovery.[151] This is exactly why all other ERCOT utilities have (or have proposed) to move wholesale transmission costs into their TCRF and out of base rates.

Finally, to the extent that the Commission adopts the PFD on this issue, it should take CEHE's prospective over-recovery of wholesale transmission costs into account when setting an appropriate return on equity and capital structure. As noted above, CEHE stands to over-recover tens of millions of dollars per year, which justifies a lower ROE and a less equity-heavy capital structure.

2. Commission Staff's initial support for CEHE's proposal is inconsistent with its prior positions and is aimed at solving an entirely different issue.

Since the TCRF rule was adopted, Commission Staff has repeatedly advocated for wholesale transmission cost recovery to be moved entirely to the TCRF.[152] For instance, in Docket

[146] *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 38929 at 8-9, FoF 39 (Aug. 26, 2011); *Application of Texas-New Mexico Power Company for Authority to Change Rates*, Docket No. 38480 at 5, FoF 16 (Jan. 27, 2011); *Application of Sharyland Utilities L.P. to Establish Retail Delivery Rates, Approve Tariff for Retail Delivery Service and Adjust Wholesale Transmission Rates*, Docket No. 41474 at 6, FoF 35 (Jan 23, 2014).

[147] *See Application of AEP Texas, Inc. for Authority to Change Rates*, Docket No. 49494, Petition and Statement of Intent to Change Rates, at 3 (May 1, 2019); *see also* Docket No. 49494, Direct Testimony of Jennifer L. Jackson at 20-21, 41.

[148] CEHE argues that it also bears a corresponding risk of under-recovery, but that argument is belied by its own witnesses' claims that CEHE expects to see load growth in the coming years, as noted above. CEHE Ex. 27 (McRae Dir.) at 15.

[149] PFD at 403.

[150] *Id.* at 403.

[151] Nor should the Commission deliberately allow CEHE to over-recover on wholesale transmission costs to compensate for lower cost recovery in other areas, as CEHE suggests. *See id.* at 402.

[152] Commission Staff filed testimony on this issue but chose not to brief it after the hearing on the merits.

No. 38480, TNMP requested to "zero out" its TCRF,[153] exactly as CEHE seeks to do here, but Staff witness Mr. Lain recommended that TNMP instead recover those costs through the TCRF based on exactly the same concerns that TIEC has raised here.[154] Mr. Lain's position was based on the amendments to the ERCOT TCRF rule described previously, which provide exact cost recovery, and the Commission's related policy statements. As Mr. Lain explained:

> First, the Commission highlighted the distinction between a DSP's TCRF costs and costs recovered through base rates. The Commission advised that DSPs essentially serve as billing and collection agents for passed-through TCRF costs and, under the Commission's current rules, have no ability to avoid such costs or address and manage the regulatory lag that exists with respect to these costs. Second, ***the Commission underscored that for transmission costs it was concerned about over-recovery.***

Later, in Docket No. 41474, Staff witness Mr. Abbott used the same rationale[155] to argue that Sharyland should recover all of its wholesale transmission costs through the TCRF.[156] As Mr. Abbott explained, "[s]uch "full rider recovery" helps to reduce the likelihood of over-recovery of WTS charges by the DSP. ***Inappropriate over-recovery is more likely to occur if a portion of the costs are recovered in base rates and another portion recovered in the TCRF rider.***"[157]

The PFD states that its decision to allow CEHE to move its transmission recovery into base rates was based on "CenterPoint's ***and Staff's***" arguments in this proceeding.[158] However, while Commission Staff filed testimony on this issue, it chose not to pursue it in post-hearing briefing.[159] Additionally, Staff witness Mr. Abbott agreed with TIEC witness that "Mr. Pollock . . . that load

---

[153] TIEC Ex. 32 (D. 38480 Direct Testimony of Richard Lain Excerpt) at 29.

[154] *Id.* at 30 ("If TNMP experiences load growth, the billing determinants used to set transmission rates collected through base rates would not increase until a subsequent rate proceeding, after the ones currently used to set rates had been approved. Thus, TNMP would over-recover the difference between the higher billing determinants from increased load growth, and the lower billing determinants in base rates, multiplied by the base transmission rates."); *see also id.* at 29-30 ("First, the Commission highlighted the distinction between a DSP's TCRF costs and costs recovered through base rates. The Commission advised that DSPs essentially serve as billing and collection agents for passed-through TCRF costs and, under the Commission's current rules, have no ability to avoid such costs or address and manage the regulatory lag that exists with respect to these costs. Second, ***the Commission underscored that for transmission costs it was concerned about over-recovery.***") (emphasis added).

[155] At the hearing on the merits in this case, Mr. Abbott characterized his recommendation in Docket No. 41474 as "identical . . . to Mr. Pollock's . . . on this issue" in this case. *See* Tr. (Abbott Cr.) at 919:3-11 (June 26, 2019).

[156] TIEC Ex. 31 (D. 41474 Direct Testimony of William B. Abbott Excerpt) at 20.

[157] *Id.* (emphasis added).

[158] PFD at 403 (emphasis added).

[159] *See* Staff Initial Br. at 77; Staff Reply Br. at 71-72.

growth is not accounted for under the current TCRF rule, and that ***over-recovery of transmission expenses is therefore a potential outcome***" of CEHE's proposal.[160]

To the extent that Mr. Abbott supported CEHE's proposal to recover wholesale transmission costs through base rates, his support was explicitly aimed at addressing an entirely different allocation issue created by a known flaw in the TCRF rule.[161] This is allocation issue is addressed extensively in Mr. Pollock's testimony[162] and is somewhat irrelevant here. At a high level, however, the TCRF rule assigns a fixed percentage of wholesale transmission costs to each retail class, but then regularly updates class billing determinants as classes grow. As a result, if one class is growing faster than others, its TCRF rates will inappropriately decline below cost because it is not being allocated any additional percentage of the wholesale costs to match its load growth. This causes undesirable rate volatility and distortions over long periods of time. While TIEC strongly agrees that this known allocation flaw in the TCRF rule needs to be addressed, the solution to this is to regularly update class allocation factors in addition to billing determinants in TCRF updates—not to intentionally allow utilities to over-recover.

As Mr. Abbott acknowledged at the hearing, moving wholesale transmission costs in base rates ***does nothing*** to address this underlying issue with the TCRF rule—it just keeps ***all classes'*** rates artificially high by depriving them of refunds when the utility over-recovers. Mr. Abbott testified that allowing CEHE to recover wholesale transmission costs through base rates counteracts certain impacts of the flawed TCRF rule "by allowing the Company to over-recover its wholesale transmission charges rather than reallocating [transmission costs] among the customer classes."[163] The more appropriate solution to this problem—which affects all utilities—is to fix the TCRF or require regular class allocation updates, rather than knowingly allowing utilities to over-recover. In fact, that is what Staff is now recommending in AEP Texas's pending rate case, where Commission Staff has supported AEP Texas's proposal to recover all of its

[160] Staff Ex. 7B (Abbott Cr. Reb.) at 27 (emphasis added).

[161] *Id.* ("Moving transmission cost recovery from the TCRF and into base rates, as proposed by CenterPoint, reduces the magnitude of any mismatch that may arise between the fixed 4CP class allocation factors and the updated billing determinants under the TCRF."), *see also* Tr. (Abbott Cr.) at 922:15-923:2 (June 26, 2019).

[162] TIEC Ex. 1 (Pollock Dir.) at 22-28.

[163] Tr. (Abbott Cr.) at 922:21-923:3 (June 26, 2019) ("**Q:** But it [mitigates the mismatch] by allowing the Company to over-recover its wholesale transmission charges rather than reallocating it among the customer classes. Is that correct? **A.** Yes.").

wholesale transmission costs into its TCRF if it regularly updates the class allocation factors.[164] In short, the unrelated flaws in the TCRF rule are not a sound justification for treating CEHE differently from all other ERCOT utilities and allowing it to over-recover wholesale transmission costs. The PFD's recommendation on this issue should be rejected.

D. Transmission Service Facility Extensions

The PFD rejected TIEC's proposal to require CEHE to "refund a portion of a transmission customer's contribution in aid of construction (CIAC) if the facilities constructed with that CIAC are later used to serve other customers."[165] However, the PFD did not find that TIEC's proposal, which reflects provisions that are currently in place in Entergy Texas's tariff,[166] was unreasonable or bad policy. Instead, the PFD simply concluded that the arguments presented by CEHE and TIEC were "based on a hypothetical situation" and that therefore, no new tariff provision was necessary.[167]

Contrary to the PFD's findings, there is nothing hypothetical about TIEC's concern. In fast-growing industrial areas that are in need of new electrical infrastructure, it is very common for businesses to face a "first mover" problem. No company wants to be the first to establish a new or expanded electrical interconnection because under transmission extension policies like CEHE's it is the first customer, and ***only*** the first customer, that funds the entire cost of constructing that new infrastructure through a CIAC.[168] After construction, subsequent customers can then request interconnection on the same facilities without paying a CIAC, thereby reaping some of the benefit of infrastructure that was funded by the first mover.[169]

---

[164] *See* Docket 49494, Staff Ex. 8 (Narvaez Dir.) at 20; *see also* Docket No. 49494, Staff Initial Br. at 46.

[165] PFD at FoF 395.

[166] TIEC Ex. 1 (Pollock Dir.) at 38 (citing Entergy Texas, Inc., Section IV Rules and Regulations, Sheet No. 18B, Extension Policy (Eff. Date Oct. 17, 2018) (available at: https://interchange.puc.texas.gov/Documents/48371_441_1003812.PDF).

[167] PFD at 364 and FoF 395.

[168] *E.g.*, CEHE Tariff at Section 5.7, Sheet No. 5.1 at 16 (Eff. Date Sept. 1, 2017) ("Payments in the form of a contribution in aid of construction or an advance for construction may be required from ***the entity*** requesting such Construction Service prior to commencement of construction.") (emphasis added) (available at: https://www.centerpointenergy.com/en-us/Documents/RatesandTariffs/HoustonElectric/Tariff-for-Retail-Delivery-Service-9-1-17.pdf).

[169] As TIEC discussed in prior briefing, because CEHE generally retains ownership over transmission facilities that are funded through a CIAC, it is impossible for the first mover to demand recompense from later

Forcing first movers to fund the entire cost of transmission facilities that are later used to serve other customers is both inequitable and a competitive issue for industrial customers. Additionally, it is a very real problem, and at least one Texas utility—Entergy Texas—has adopted tariff provisions that resolve this exact issue by requiring new customers to bear some of the cost of infrastructure they use that was previously funded by another customer's CIAC.[170] Under these tariff provisions, if a new customer wishes to interconnect to facilities that were fully funded by another customer's CIAC, then Entergy Texas will surcharge the new customer for a portion of that CIAC in proportion to the customer's anticipated usage of the facilities, with the collected amounts refunded to the customer who initially paid the CIAC.[171] This is a reasonable solution to the problem described above, and neither CEHE nor the PFD have shown why this same practice would not work in CEHE's service area. In prior briefing, TIEC proposed tariff language that could achieve this objective.[172] The Commission should reject the PFD's decision on this issue and order CEHE to incorporate that proposed language into its revised tariff.

XII. CONCLUSION

TIEC recognizes the hard work and thought that went into drafting the PFD and, with the exception of the issues noted above, recommends that it be adopted. As discussed above, TIEC encourages the Commission to modify the PFD in the following ways:

- Decrease the PFD's recommended ROE to Mr. Gorman's recommended 9.25% and incorporate additional downward adjustments to reflect CEHE's low business and financial risks and the favorable economic environment in which it operates.
- Decrease the equity ratio in CEHE's capital structure to 40%, which results in dramatic savings for customers while still allowing CEHE to maintain solid investment grade credit ratings and access to capital at reasonable rates.
- Require CEHE to recover all of its wholesale transmission costs through the TCRF to prevent unnecessary and unjustified over-recovery at ratepayers' expense.

---

customers on the same facilities because the initial customer has no right to control access to the facilities and no privity with the subsequent customer(s). *See* TIEC Initial Br. at 76-77.

170 *See* TIEC Ex. 1 (Pollock Dir.) at 38.

171 *Id.*

172 TIEC Initial Br. at Attachment A.

- Adopt TIEC's MFF allocation proposal, which is a more refined version of the MFF allocation adopted in Docket No. 38339 that better complies with principles of cost causation.
- Require CEHE to adopt TIEC's proposed tariff provision that will allow Transmission customers to obtain a partial refund of their CIACs if facilities that are fully funded with those payments are later used to serve additional customers.
- Require CEHE to maintain its longstanding practice of billing retail Transmission service customers for distribution charges based on their ERCOT 4CP demand.

For these reasons, the Commission should reject CEHE's requested rate increase, and set its rates consistent with TIEC's recommendations, as discussed above.

Respectfully submitted,

THOMPSON & KNIGHT LLP

Katie Coleman BY PERMISSION:

Phillip G. Oldham
State Bar No. 00794392
Katherine L. Coleman
State Bar No. 24059596
Michael McMillin
State Bar No. 24088034
98 San Jacinto Blvd., Suite 1900
Austin, Texas 78701
(512) 469.6100
(512) 469.6180 (fax)

ATTORNEYS FOR TEXAS INDUSTRIAL ENERGY CONSUMERS

CERTIFICATE OF SERVICE

I, Michael McMillin, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 10th day of October 2019 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

Michael McMillin