



Control Number: 49421



Item Number: 737

Addendum StartPage: 0

2019 OCT 17 PM 2:45

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

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PUBLIC UTILITY COMMISSION
OF TEXAS

JOINT OBJECTION AND MOTION TO STRIKE

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), and files on behalf of itself, Texas Industrial Energy Consumers, the Texas Coast Utilities Coalition ("TCUC") of cities, Gulf Coast Coalition of Cities, and the Office of Public Utility Counsel (OPUC) (the Parties) this Joint Objection and Motion to Strike. In support thereof, Staff shows the following:

On April 5, 2019, CenterPoint Energy Houston Electric (CEHE) filed an application for authority to change rates along with its entire rate filing package. After a hearing on the merits at the State Office of Administrative Hearings (SOAH), the SOAH Administrative Law Judges (ALJs) issued a Proposal for Decision on September 16, 2019. The Parties and CEHE filed Exceptions to the Proposal for Decision on October 10, 2019. CEHE's filed Exceptions to the Proposal for Decision (Exceptions) included Attachments A and C, which CEHE *did not offer as evidence during the hearing* nor include as part of its application. CEHE also included as an attachment to its Exceptions, Attachment D to which parties objected and which *was not admitted* as evidence during the hearing on the merits or included as part of CEHE's application. The Parties object to the inclusion of Attachments A, C, and D, and move to strike any discussion in CEHE's Exceptions regarding these documents.

Under 16 Texas Administrative Code § 22.78, the Parties have five working days to file responsive pleadings including motions to admit evidence. Because CEHE's Exceptions were filed on October 10, 2019, this pleading is timely filed.

Objections to each attachment are provided below:

Attachment A

2019 OCT 17 PM 2:45

Within its exceptions, CEHE argues that it identified several issues or errors in Staff's number running model filed on September 17, 2019.¹ CEHE argues that the correction of these errors would increase CEHE's total base revenue by \$31.495 million.² Staff intends to respond to CEHE's argument in its reply to CEHE's Exceptions and explain how CEHE has mischaracterized its Exceptions as errors. However, in advancing its mischaracterization, CEHE has moved for admission of Attachment A and corresponding workpapers,³ which essentially represent an entirely new rate filing package. Interestingly, CEHE does not entirely provide citations to the record making it difficult to trace the numbers provided in Attachment A.⁴ The record-close deadline was July 16, 2019.⁵ As such, the Parties object to CEHE's motion to admit Attachment A. Additionally, the Parties move to strike any discussion regarding Attachment A, found on pages 79, 99, and 103-104 of the Exceptions.

Attachment C

CEHE also references Attachment C as part of its Number Running Exceptions.⁶ While CEHE does not directly move for admission of Attachment C, CEHE uses Attachment C as a workpaper to support Attachment A and incorporates the values from Attachment C into Attachment A. Accordingly, the Parties object to any admission of Attachment C and move to strike any discussion regarding Attachment C, found on pages 103-104.

Attachment D

CEHE also moves for admission of Attachment D in its Exceptions.⁷ However, both TIEC and Staff objected to the admission of this document each time that CEHE attempted to admit it at the hearing, and those objections were sustained.⁸ CEHE first attempted to bring

¹ CenterPoint Energy Houston Electric, LLC's Exceptions to the Proposal for Decision (Exceptions), at 103 (Oct. 10, 2019).

² *Id.*

³ *Id.* at 104.

⁴ Also, the Parties note that there will be an opportunity for a final number run after the Commission's final order. In prior instances where there have been disputes over the accuracy of the number runs in the Proposal for Decision, SOAH has agreed that "the parties should work with Staff to ensure that the final numbers accurately reflect the Commission's decision." See *Application of Oncor Electric Delivery Company*, Docket No. 35717, Recommended Changes to the PFD, at 3 (June 30, 2009).

⁵ Tr. at 1366 (June 28, 2019).

⁶ *Id.* at 103.

⁷ *Id.* at 49.

⁸ This objection was joined by the City of Houston and Texas Coast Utilities Coalition. *Id.* at 51-52.

Attachment D into evidence during its cross-examination of Staff witness Mr. Tietjen.⁹ There were three objections made. Commission Staff objected that the subject matter of the document was outside the scope of Mr. Tietjen's testimony,¹⁰ and the ALJ sustained that objection because Mr. Tietjen's testimony dealt with ring fencing, and not the credit issues discussed in Attachment D.¹¹ Additionally, TIEC objected that Mr. Tietjen could not authenticate the document¹² and that it was hearsay.¹³ While the ALJs did not explicitly rule on those objections, they too were proper objections. Despite these facts, CEHE now argues, for the first time, that Attachment D should have been admitted as a periodical or learned treatise under Texas Rule of Evidence 803(18).¹⁴ However, that rule states that "[i]f admitted, the statement may be read into evidence but *not received as an exhibit*,"¹⁵ and CEHE has failed to comply with this procedural requirement because its offer of proof with respect to Attachment D consisted entirely of marking that document as exhibit rather than reading it into the record.¹⁶

After losing in its first attempt to shoehorn Attachment D into the record, CEHE then characterized that document as "supplemental rebuttal testimony" for its witness Ms. Ellen Lapson.¹⁷ Counsel for Staff, TIEC, and the City of Houston objected that this constituted inappropriate supplemental rebuttal testimony.¹⁸ That objection was also sustained,¹⁹ and the ALJ's ruling was correct. Admitting entirely new evidence as "supplemental testimony" just moments before cross examination is set to begin clearly prejudices the rights of any party attempting to contest that evidence. This kind of "trial by ambush" is exactly the kind of practice that the Commission's procedural rules attempt to avoid by requiring pre-filed direct and rebuttal testimony. Accordingly, the ALJs were correct to sustain this objection, and the Commission should uphold that ruling and keep Attachment D out of the record.

Further, the Commission should decline to admit Attachment D into the record because of CEHE's undue delay in requesting its admission. The evidentiary rulings that CEHE

⁹ Tr. at 815.

¹⁰ *Id.*

¹¹ Tr. at 818.

¹² Tr. at 815, 817.

¹³ *Id.*

¹⁴ CEHE Exceptions at 52.

¹⁵ Texas Rule of Evidence 803(18).

¹⁶ *See* Tr. at 934 ("CEHE OFFER OF PROOF NO. 1 marked").

¹⁷ CEHE Exceptions at 52.

¹⁸ *See* Tr. at 956-66.

complains about were made *months* ago, and while CEHE made an offer of proof for the admission of this document during the hearing, CEHE did not move for the admission of Attachment D into evidence at any time from the close of the hearing until filing its Exceptions. CEHE should have filed a separate motion to admit Attachment D after the hearing; exceptions are not the appropriate avenue to move for admission of evidence. CEHE also uses Attachment D as argument for a higher Return on Equity than was awarded by the SOAH ALJs.²⁰ Therefore, the Parties object to the admission of Attachment D and move to strike any discussion regarding Attachment D found on pages 11, 49-53.

Conclusion

The Parties respectfully request an order sustaining its objections to Attachments A, C, and D and striking any discussion of the Attachments from CEHE's Exceptions.

¹⁹ Tr. at 963.

²⁰ *Id.* at 50-53.

**PUBLIC UTILITY COMMISSION OF
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 17, 2019 in accordance with 16 TAC § 22.74.


Rashmin J. Asher