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

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

**RESPONSE OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC
TO JOINT OBJECTION AND MOTION TO STRIKE**

On October 17, 2019, the Staff (“Staff”) of the Public Utility Commission of Texas (“Commission”) filed on behalf of itself, Texas Industrial Energy Consumers (“TIEC”), the Texas Coast Utilities Coalition, Gulf Coast Coalition of Cities, and the Office of Public Utility Counsel (“OPUC”) (collectively, “Movants”) a Joint Objection and Motion to Strike (“Motion”) certain portions of CenterPoint Energy Houston Electric, LLC’s (“CenterPoint Houston” or the “Company”) Exceptions to the Proposal for Decision (“PFD”). This response is timely filed and, for the reasons discussed below, the Motion should be denied.

This proceeding has been complex, resource intensive, and has required all parties to work within tight deadlines. Throughout this case, it has been CenterPoint Houston’s goal to ensure that the Commission has the evidentiary record it needs to make an informed rate decision and render a balanced and fair result. This necessarily requires that the information the Commission reviews be complete and accurate.

Granting the Movants’ Motion would frustrate this objective because it effectively asks the Commission to find that utilities have no right or vehicle through which to: (1) challenge an evidentiary ruling made during a hearing on the merits at the State Office of Administrative Hearings (“SOAH”), even when that party properly preserved the error with an offer of proof, or (2) identify number-running issues in the revenue requirement calculation. This is not a sound regulatory result nor is it consistent with fundamental due process or the Commission’s past practice. As shown below, the Commission is the decision-making agency tasked with reviewing the PFD and rendering a final decision, and CenterPoint Houston has the absolute right to appeal the SOAH Administrative Law Judges’ (“ALJs”) evidentiary decision on Exhibit D to the Commission through the Company’s Exceptions. Similarly, the identification of number-running issues following the issuance of the PFD is common in Commission rate proceedings, and it was wholly appropriate for CenterPoint Houston to identify these issues in its Exceptions to the PFD. Movants’ Motion should be denied.

I. ARGUMENT

A. **It is appropriate for CenterPoint Houston to address an evidentiary error in the Company's Exceptions and to ask the Commission to remedy that error.**

Movants seek to withhold information from the Commission that is directly relevant to the Commission's decision in this case. In this endeavor, the Movants mischaracterize the Company's effort to admit the June 2019 Moody's Investor Services credit outlook report ("Moody's Report") into evidence as "trial by ambush."¹ As the Company explains in its Exceptions, the Moody's Report states that a rate case outcome consistent with that proposed by Movants would be credit negative for CenterPoint Houston. The Moody's Report was issued on June 26, 2019, during the hearing on the merits, and was brought to all parties' attention that same day.

There is no dispute that CenterPoint Houston has no control over when Moody's issues its reports nor the ability to influence the content of those reports. Because the Moody's Report speaks directly to how Moody's views the positions taken by parties in this case and the negative impact that the adoption of these positions would have on CenterPoint Houston's credit ratings, there can also be no reasonable dispute that the information is relevant evidence that the Commission should be allowed to consider in its deliberations. In fact, Commission rules provide for the supplementation of testimony (as long as the witness is available for cross-examination) for situations just like this.² The ALJs, however, refused to allow the Company to cross-examine a Staff witness on the issue, refused to admit the Moody's Report into evidence, and refused to allow a Company witness to supplement her testimony in response to the Moody's Report.³

To preserve error on this issue, CenterPoint Houston made an offer of proof for purposes of appealing the ALJs' decision on the Moody's Report's admissibility.⁴ The administrative record includes the Company's offer of proof, the Company properly perfected its offer of proof, and as such, it is appropriate for the Company to address in its Exceptions the error it believes the ALJs committed. To conclude otherwise suggests that the Commission cannot cure or reverse an evidentiary finding of the ALJs, which is clearly not the case.

The Commission should reverse the ALJs' decision to exclude the Moody's Report from the evidentiary record. It is understandable that the Movants do not want the Moody's Report in

¹ Joint Objection and Motion to Strike at 3.

² 16 Tex. Admin. Code § 22.225(c).

³ Tr. at 814:19-819:4 (Tietjen Cross) (Jun. 26, 2019); Tr. at 956:20-966:12 (Lapson Cross) (Jun. 27, 2019); CEHE Ex. 48 at 17, Table 1, 57:14-58:5 (Lapson Rebuttal).

⁴ *Gunn v. McCoy*, 554 S.W.3d 645, 666 (Tex. 2018) (Once the court rules the evidence is inadmissible, the party must make an offer of proof).

evidence. However, the objections raised by the parties during the hearing go to the weight, not the admissibility of the report. Moreover, Movants will have ample opportunity to respond to the Company's exceptions and legal arguments on the admissibility of Attachment D in their replies to exceptions. For these reasons, the Motion to strike Attachment D to CenterPoint Houston's Exceptions should be denied.

B. It is a common and appropriate practice for parties to identify calculation issues when filing exceptions to a PFD.

The PFD Number Run Model ("Number Run Model") is used to calculate a revenue requirement that gives effect to the recommendations in the PFD, and, ultimately, the final decision of the Commission. Through its Exceptions, CenterPoint Houston properly identified issues in the Number Run Model that include, but are not limited to, amounts that do not tie to the Company's errata schedules, disallowances applied to incorrect FERC accounts, wrong inputs, incorrect functionalization factors, and the incomplete flow-through and attendant impacts of certain recommendations in the PFD.⁵ CenterPoint Houston explained that these corrections are necessary in order to ensure the accuracy of the Number Run Model results. And, there should be no dispute that: (1) it is important for the Number Run Model to be accurate, and (2) the Commission cannot make an informed decision without knowing the actual cost impact that its decisions have on CenterPoint Houston's revenue requirement. It is not clear, therefore, why the Movants seek to deprive the Commission of information that serves only to ensure that the information reviewed by the Commission is accurate.

CenterPoint Houston understands the complexity of the number-running process and the need for all parties to have the opportunity to review the results and identify proposed corrections. As such, the Company notified Staff of its number running issues prior to filing its Exceptions. Based on those discussions, it was CenterPoint Houston's understanding that Staff expected the Company to address its proposed corrections to the PFD Number Running Model as part of its Exceptions. If this understanding was incorrect, the Company apologizes. This information should not, however, be withheld from the Commission based on a misunderstanding.

Second, contrary to Movants' claim, utilities and Intervenors have consistently used exceptions filings to identify issues in a Number Run Model. For example, in the Company's last base rate case, Docket No. 38339, the Company included a similar number run exception to the

⁵ CEHE Exceptions at 103-104.

PFD.⁶ No party objected to or moved to strike CenterPoint Houston’s exceptions in Docket No. 38339. In Docket No. 33309, *Application of AEP Texas Central Company for Authority to Change Rates*, AEP Texas Central Company (“AEP TCC”) also pointed out number running issues through its exceptions. In fact, AEP TCC’s exceptions in Docket No. 33309, were entitled: “AEP Texas Central Company’s Exceptions to the Proposal for Decision and *Request for Number Running Corrections*.”⁷ AEP TCC’s exceptions on the number run in Docket No. 33309 took up approximately 11 pages of its exceptions, and AEP TCC also included corrected PFD Schedules.⁸ Again, no party moved to strike AEP TCC’s exceptions or its corrected schedules. In Docket No. 43695, *Application of Southwestern Public Service Company for Authority to Change Rates*, Southwestern Public Service Company (“SPS”) included corrections to the number run in its exceptions to the PFD.⁹ No party moved to strike SPS’s proposed corrections.

Further, while the Movants cite Docket No. 35717, *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, as an example of how the ALJs can order Commission Staff to work with the parties to ensure the accuracy of the final number run, the Movants neglect to note that Oncor Electric Delivery Company LLC (“Oncor”) included number running corrections in its exceptions to the PFD in that case.¹⁰ Again, no party moved to strike Oncor’s exceptions to the number run calculation. In fact, even Movants have filed exceptions requesting number run corrections in prior rate cases. For example, in Docket No. 47461, *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project*, TIEC’s exceptions to the PFD included a number run exception.¹¹ And, while OPUC’s exceptions in that case did not phrase its exceptions as addressing an issue in the “number run,” OPUC had the same exception to the number run as TIEC.¹²

⁶ *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 38339, CenterPoint Energy Houston Electric, LLC’s Exceptions to the Proposal for Decision at 66 (Dec. 20, 2010).

⁷ *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 33309, AEP Texas Central Company’s Exceptions to the Proposal for Decision and Request for Number Running Corrections at 1 (Sep. 20, 2007) (emphasis added).

⁸ *Id.* at 67-77.

⁹ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Southwestern Public Service Company’s Exception to Proposal for Decision at 93-96 (Nov. 2, 2015).

¹⁰ *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 35717, Oncor Electric Delivery Company LLC’s Exceptions to the Proposal for Decision at 131-32 (Jun. 16, 2009).

¹¹ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project*, Docket No. 47461, Texas Industrial Energy Consumer’s Exceptions to the Proposal for Decision at 16 (Jun. 12 2018) (“the projected base savings of the Wind Project by \$388 million is based on an error in the number runs.”).

¹² *Id.* Office of Public Utility Counsel’s Exceptions to the Proposal for Decision at 6 (Jun. 12, 2018).

CenterPoint Houston's exceptions to the Number Run Model are not unusual or inappropriate and should be considered so that the rates set in this proceeding accurately reflect the decisions that are made. The cases above illustrate that this has, in fact, been standard operating procedure at the Commission for many years.

C. The admission of Attachments A and C into the evidentiary record is completely within the Commission's discretion and has no bearing on whether the attachments are appropriately included in CenterPoint Houston's Exceptions.

Movants' primary complaint with the Company's identification of the Number Run Model issues appears to relate to the fact that CenterPoint Houston *offered* Attachments A (a corrected number run model of same model used in the incorrect number run) and C (a workpaper supporting the requested changes in the number run) as exhibits.¹³ CenterPoint Houston's intent behind offering those attachments was solely to ensure that the Commission had a motion before it in the event that it desired to admit the Attachments into the evidentiary record.¹⁴ CenterPoint Houston does not believe this is necessary unless the originally filed Number Run Model is admitted into evidence. Again, CenterPoint Houston's intent in identifying these issues as part of its Exceptions was to ensure that the information considered by the Commission is accurate. In this regard, Attachments A and C simply provide a road map that can be used to correct the Number Run Model.

There is also no merit to Movants' complaint that CenterPoint Houston should have offered Attachments A and C during the hearing or before the close of the evidentiary record. As an initial matter, the Number Run Model was not issued until after the close of the evidentiary record and the issuance of the PFD.¹⁵ Thus, the information did not exist at the time Movants insist it should have been filed, just as the Number Run Model results did not exist at that time.

Movants' argument that Attachments A and C create "an entirely new rate filing package" is also misplaced. Attachments A and C simply correct the Number Run Model filed with the Commission on September 17, 2019. These Attachments do not reflect CenterPoint Houston's request in this case.

Furthermore, the purpose of exceptions is to permit parties to identify issues in the PFD and the resulting Number Run Model for the Commission's consideration. The Commission's

¹³ Joint Objection and Motion to Strike at 2-3.

¹⁴ CEHE Exceptions at 104 ("To the extent deemed necessary, CenterPoint Houston respectfully requests and moves for the admission into the evidentiary record of Attachment A to these Exceptions.").

¹⁵ PUCT Interchange Filing Search, Item Nos. 721 (Number Running Communications) & 722 (Number Running Workpapers (Sept. 17, 2019).

rules explicitly permit the filing of exceptions and the Commission expressly requested them in this case. Fundamental due process requires that the Commission provide all parties the opportunity to identify issues for the decision maker's consideration and the exceptions process is the only vehicle after the PFD is issued, but before Commission deliberations occur, that can be used to notify the Commission of issues that may directly impact its ability to render an accurate, balanced and fair rate result.

Finally, Movants acknowledge that they will have the opportunity to respond to the Number Run Model issues identified by CenterPoint Houston in their reply to exceptions filings.¹⁶ Thus, Movants can show no prejudice to their rights through CenterPoint Houston's inclusion of Attachments A and C. In contrast, CenterPoint Houston will be directly prejudiced if Attachments A and C are stricken. Fundamental due process provides CenterPoint Houston the right to identify issues that adversely impact its statutory right to recover its reasonable and necessary operating expenses and the opportunity to earn a reasonable return on its investment. For these reasons, Movants' request to strike Attachments A and C to CenterPoint Houston's Exceptions should be denied.

II. CONCLUSION

The Company acted properly and in good faith by identifying issues in the evidentiary record and Number Run Model through its Exceptions. Movants have the opportunity to respond to the attachments at issue in their replies, and the content of the Company's Exceptions is consistent with prior Commission practice. The Commission cannot and should not be deprived of the opportunity to weigh in on and decide these important issues, and CenterPoint Houston should not be deprived of its due process rights. The Motion should be denied.

¹⁶ Joint Objection and Motion to Strike at 2.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October 2019, a true and correct copy of the foregoing document was served on all parties of record in accordance with 16 Tex. Admin. Code § 22.74.

A handwritten signature in cursive script that reads "Andrea Moore Stover". The signature is written in black ink and is positioned above a horizontal line.

Andrea Moore Stover