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

§ BEFORE THE STATE OFFICE
§ OF
§ ADMINISTRATIVE HEARINGS
§

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

H-E-B, LP ("H-E-B") files its *Replies to Exceptions to the Proposal for Decision* in this docket. On September 16, 2019, the State Office of Administrative Hearings ("SOAH") Administrative Law Judges ("ALJs") issued a Proposal for Decision ("PFD") in this proceeding. The deadline for filing replies to exceptions is October 24, 2019; therefore, this pleading is timely filed. In support of its Replies to Exceptions, H-E-B respectfully submits the following for the Commission's consideration and adoption.



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I. Introduction/Summary

H-E-B's Replies to Exceptions responds to CenterPoint Energy Houston Electric, LLC's Exceptions and CenterPoint's repeated proposals to substantially increase its rates, further increase the equity component of its capital structure, and substantially increase its return on equity ("ROE"), despite failing to provide adequate service to customers such as H-E-B. Once again, CenterPoint fails to meet its burden of proof, and fails to rebut the various adjustments, disallowances, and reductions to its rate base and ROE established by the Public Utility Commission of Texas ("PUCT" or "Commission") Staff and the intervenors through testimony and at the hearing on the merits. H-E-B recommends that CenterPoint's ROE be capped at the 9.42% ROE recommended by the ALJs. H-E-B continues to recommend that the Commission establish a 60% debt to 40% equity capital structure for CenterPoint.

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

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

1. Capital Project Prudence

H-E-B contests the assessment by City of Houston and Houston Coalition of Cities ("COH/HCC") that CenterPoint is providing "a very high level of reliability" to customers.¹ The City of Houston relies upon CenterPoint's customer complaints filed with the Commission and System Average Interruption Duration Index ("SAIDI") metrics to conclude that CenterPoint is providing excellent service quality to its customers.² As discussed in detail in Section III.A.5., this assumption is disproven by the record evidence showing that the Commission's customer complaint records do not reflect all complaints of customers that are made directly to

¹ COH/HCC Exceptions to PFD at 20.

² *Id.* at 12.

CenterPoint, and SAIDI values are not reflective of the outages experienced by all customers. H-E-B disagrees with the City of Houston's reliance upon SAIDI values and customer complaint records as being wholly indicative of CenterPoint's service quality performance. However, H-E-B does not dispute the City of Houston's conclusion that CenterPoint has not efficiently or effectively invested in distribution system projects that improve system reliability for ratepayers.

CenterPoint argues that the ALJs improperly disallowed recovery of certain costs associated with the URD CLEP and Major Underground Rehabilitation Program.³ The City of Houston's testimony reveals that CenterPoint has not used any effective analysis to address whether these programs impact system reliability. City of Houston witness Mr. Norwood concluded that the programs are "not justified by reliability or monetary benefits to customers" and that "it is questionable whether customers would even notice the reliability effects of the two underground projects."⁴ CenterPoint's reliability improvement projects have not benefitted H-E-B. H-E-B received no indication that the reliability programs described in CenterPoint's Application were to be used to target the reliability outage problems identified by H-E-B going back to 2015.⁵ To the extent such programs were used to address H-E-B's frequent outages, the programs were not effective because there was no discernible improvement in the quality of service. The ALJs' disallowance of the recovery of costs related to these programs is reasonable, supported by evidence in the record, and should be retained.

³ CenterPoint's Exceptions to the PFD at 20 (Oct. 10, 2019) ("CenterPoint's Exceptions").

⁴ Direct Testimony of Scott Norwood, COH/HCC Ex. 1 at 17:19–18:3 (Jun. 6, 2019).

⁵ H-E-B Initial Brief at 9 (Jul. 9, 2019).

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

A. Return on Equity [PO Issue 8]

1. H-E-B, not CenterPoint, has taken responsibility for its reliability issues.

In its Exceptions, CenterPoint incorrectly alleges that “the evidence in this case simply does not support the PFD’s conclusion that CenterPoint . . . was unresponsive to [H-E-B’s] complaints.”⁶ CenterPoint also asserts that “the evidence provided by Ms. Sugarek establishes that the Company . . . devoted significant resources to diagnose and correct issues impacting specific [H-E-B] stores.”⁷ CenterPoint also baselessly claims that it “has gone to great lengths to work with H-E-B to resolve its issues”⁸ and accuses the ALJs of “ignor[ing] the substantial evidence presented by the Company detailing its efforts to aid H-E-B in remedying its reliability issues.”⁹

CenterPoint’s claims are incorrect and unsupported. H-E-B first raised its reliability issues with CenterPoint in 2015 and requested a meeting with CenterPoint to discuss the problems that H-E-B was encountering and options to resolve the issues.¹⁰ H-E-B contacted CenterPoint on June 18, 2015 with concerns about reliability at H-E-B locations.¹¹ Further discussions between H-E-B and CenterPoint led to a meeting between H-E-B and CenterPoint on July 22, 2015, where H-E-B again expressed concern about the frequent, lengthy outages that H-E-B was experiencing, and sought CenterPoint’s assistance in mitigating the reliability

⁶ CenterPoint’s Exceptions at 13.

⁷ *Id.* at 12.

⁸ *Id.* at 54.

⁹ *Id.*

¹⁰ Direct Testimony of George W. Presses, H-E-B Ex. 1 at 12:9-11 (Jun. 6, 2019); Tr. at 1190:21-1190:24 (Sugarek Cross) (Jun. 27, 2019).

¹¹ Rebuttal Testimony of Julianne P. Sugarek, CEHE Ex. 33 at 9:6-9:7 (Jun. 19, 2019).

problems.¹² However, CenterPoint did not make any commitments to take any action to address the reliability concerns raised by H-E-B.¹³ After the meeting, H-E-B facilities continued to experience frequent, lengthy outages.¹⁴

CenterPoint also asserts that it “offered to retain a third party at no expense to H-E-B to further study the issues identified by CenterPoint Houston’s analysis.”¹⁵ While H-E-B does not dispute this assertion, H-E-B would note that CenterPoint did not make this offer to H-E-B until April 12, 2019, one week after CenterPoint filed this rate case, and four years after H-E-B raised these issues with CenterPoint and was turned away without any effort by CenterPoint to resolve the significant reliability issues.¹⁶

CenterPoint further contends that “[t]he undisputed facts demonstrate that CenterPoint Houston has been responsive to, and taken considerable responsibility for, H-E-B’s outage experiences.”¹⁷ This assertion is false. CenterPoint’s statements regarding the “undisputed facts” is not supported by the record evidence. H-E-B disputes CenterPoint’s claims and has demonstrated that CenterPoint failed to timely respond to H-E-B’s concerns and that CenterPoint’s outage data is both inaccurate and unverified.¹⁸ CenterPoint also asserts that Ms. Sugarek testified that CenterPoint was concerned about H-E-B’s outage experience;¹⁹ however,

¹² H-E-B Ex. 1 at 12:11-15.

¹³ *Id.* at 12:17-12:18.

¹⁴ *Id.* at 12:18-12:19.

¹⁵ CenterPoint’s Exceptions at 12-13.

¹⁶ CEHE Ex. 33, Exhibit HSPM-JPS-14 at 2.

¹⁷ CenterPoint’s Exceptions at 55.

¹⁸ H-E-B Ex. 1 at 12:9-15:18; 22 Tr. at 417:4-417:12 (Presses Recross) (Jun. 25, 2019); see also H-E-B’s Initial Brief at 14-16 (Jul. 9, 2019).

¹⁹ CenterPoint’s Exceptions at 54.

CenterPoint did not, and cannot, cite to Ms. Sugarek’s written testimony or testimony at the hearing in support of this unfounded assertion.²⁰

In addition, the ALJs correctly concluded that CenterPoint displayed an “unwillingness to accept even a modicum of responsibility for the reliability issues faced by H-E-B.”²¹ CenterPoint argues that this conclusion indicates that the ALJs “failed to review the Company’s rebuttal testimony on the issue.”²² CenterPoint’s accusation is baseless. What CenterPoint fails to acknowledge is that the ALJs, as evidenced by their thorough and thoughtful analysis, reviewed and considered CenterPoint’s testimony on the issue. However, the ALJs did not find this testimony credible or convincing.

Furthermore, CenterPoint’s unwillingness to accept responsibility for the reliability issues faced by H-E-B is best demonstrated by the fact that CenterPoint is the entity that the Commission charges with providing safe, adequate, and reliable electric service to its customers.²³ However, instead of taking responsibility for the recurring outages and fixing the problem, CenterPoint’s response has been to attempt to shift its burden to H-E-B.²⁴ Regardless, H-E-B has more than met this burden and H-E-B, not CenterPoint, has taken responsibility for CenterPoint’s reliability issues.²⁵ When it became clear in 2015 that CenterPoint was not willing to take any action to prevent H-E-B stores from experiencing further outages, H-E-B had to take steps to protect its business. H-E-B decided to unilaterally address the issues by undertaking the substantial expense associated with the installation of on-site generation to provide reliable

²⁰ *Id.*

²¹ PFD at 169 (Sept. 16, 2019).

²² CenterPoint’s Exceptions at 55.

²³ *See* PURA 38.001(a).

²⁴ *See* CenterPoint’s Initial Brief at 146-148 (Jul. 9, 2019).

²⁵ H-E-B Ex. 1 at 13:3-15:3.

electric service to H-E-B stores.²⁶ For example, the frequency and duration of outages at a particular H-E-B location, which experienced 33 outages over 28 months, led H-E-B to select this store as the first site for installing onsite generation.²⁷ H-E-B's installation of on-site generation at this location was so successful at resolving the issues caused by CenterPoint's frequent outages that H-E-B decided to expand the installation of on-site generation to additional stores. H-E-B now includes on-site generation in all of its plans for new facilities in the CenterPoint service area.

H-E-B made the business decision that it was more cost-efficient for the company to make significant capital investments to install on-site generation at H-E-B stores and other facilities in CenterPoint's service territory than to continue accruing the costs caused by CenterPoint's frequent power outages.²⁸ H-E-B took these actions to fix CenterPoint's reliability problems, despite being obligated to continue paying CenterPoint's rates for service that was not reliable. The record irrefutably shows that H-E-B's decision to install on-site generation was solely due to CenterPoint's failure to provide reliable service to H-E-B, not because of storms or any special requirement of H-E-B, but because of the day-to-day failure of CenterPoint to provide reliable service. The ALJs correctly concluded that CenterPoint's lack of an "unwavering commitment" to its customers is best demonstrated by the fact that it has encouraged the Commission to disregard H-E-B's complaints altogether.²⁹ Once again, CenterPoint has spent more time and resources trying to blame its customer for CenterPoint's poor reliability than it has spent trying to fix the outages that H-E-B continues to experience.

²⁶ *Id.*

²⁷ *Id.* at 13:8-13:14.

²⁸ *Id.*

²⁹ PFD at 169.

2. CenterPoint's data regarding H-E-B's outages is unsubstantiated and erroneous.

CenterPoint also criticizes the ALJs for rightly reducing its ROE by three basis points for its inability to provide reliable service to H-E-B.³⁰ CenterPoint contends that “Ms. Sugarek’s data shows a less serious outage problem than the information put forth by H-E-B.”³¹

CenterPoint’s data is unverified and incorrect. CenterPoint requested data from H-E-B regarding H-E-B’s outages, and H-E-B provided the requested data to CenterPoint on February 26, 2019.³² CenterPoint asserts that after reviewing H-E-B’s 2018 data and comparing it to its own 2018 data, it disagrees with the outage numbers that H-E-B provided in Mr. Presses’ Direct Testimony because it was “unclear . . . how that outage data was captured, quantified, and defined.”³³

H-E-B disagrees with CenterPoint’s data regarding H-E-B’s outages because H-E-B, not CenterPoint, is in the best position to identify when an H-E-B location is experiencing a power outage. H-E-B’s data is reliable; the data is metered to the exact second at H-E-B locations with on-site generation. Further, Ms. Sugarek admitted that CenterPoint became aware of outages and issues at a particular H-E-B location only after H-E-B informed CenterPoint of the outages and provided CenterPoint with outage data related to that location. Below is the actual exchange with Ms. Sugarek:

Q. Okay. And it was H-E-B that actually identified that location to CenterPoint as having reliability issues and provided the data to CenterPoint. Right?

A. Yes, they did.

Q. And the data that H-E-B provided included the outage information for CenterPoint to look into. Right?

³⁰ CenterPoint’s Exceptions at 53-54.

³¹ Id. at 57.

³² CEHE Ex. 33 at 11:19-11:20.

³³ Id. at 12:10-12:11.

A. It did.³⁴

H-E-B did not quantify all of the outages it has had and continues to have at its locations in CenterPoint's service territory without on-site generation. As such, the number of outages presented in H-E-B's testimony is significantly lower than the total number of outages that occurred across all H-E-B facilities located in CenterPoint's service territory. Mr. Presses testified that H-E-B's outages are captured by H-E-B, with each decrease in voltage from CenterPoint being recorded by H-E-B's meters at the H-E-B locations with on-site generation.³⁵ Further, H-E-B's customers and Partners experience these outages in real time and report the outages.³⁶

Contrary to the record evidence, CenterPoint also contends that "Ms. Sugarek establishes that the Company provides reliable service to H-E-B overall."³⁷ However, the data CenterPoint uses to make its assertions concerning the reliability of its service, as H-E-B has shown, is demonstrably not accurate.

Furthermore, even if CenterPoint's data was remotely accurate, the CenterPoint data shows that CenterPoint was responsible for 8,345 total outage minutes, which is 139 hours or 5.8 days, in 2018 alone.³⁸ Further, CenterPoint admits that its own data shows that many H-E-B locations have experienced outages for at least two hours or more for 48 days out of the year for 2018 alone.³⁹

³⁴ Tr. at 1203:13-1203:20 (Sugarek Cross) (Jun. 27, 2019).

³⁵ Tr. at 417:4-417:10 (Presses Recross) (Jun. 25, 2019).

³⁶ Tr. at 417:10-417:12 (Presses Recross) (Jun. 25, 2019).

³⁷ CenterPoint's Exceptions at 54.

³⁸ CEHE Ex. 33 at 12:22-12:24.

³⁹ Tr. at 1218:22-1219:2 (Sugarek Cross) (Jun. 27, 2019).

Despite its responsibility for 8,345 total outage minutes in 2018 according to its own data, CenterPoint maintains that H-E-B is receiving reliable service from CenterPoint. Ms. Sugarek admitted this on cross-examination at the hearing on the merits. Below is the actual exchange with Ms. Sugarek:

- Q. Now, in your rebuttal testimony, you disagree with the outage numbers that Mr. Presses includes in his testimony for the H-E-B locations in CenterPoint's territory. Correct?
- A. Are you speaking of the outage data that was provided in his testimony?
- Q. Yes, I am.
- A. Yes, I do disagree with that.
- Q. And you state that your numbers are 24 percent lower than Mr. Presses' numbers. Correct?
- A. Yes, I do.
- Q. Now, even using CenterPoint's numbers, in your professional opinion, is H-E-B receiving reliable service at these levels?
- A. I believe that H-E-B is receiving service in line with the standard metrics that –
- Q. Ms. Sugarek --
- A. -- are set by the Commission.
- Q. -- I'm going to ask you again. In your professional opinion, using your numbers in your testimony, is H-E-B receiving reliable service from CenterPoint?
- A. I'm struggling to answer your question because the outage data that we reviewed shows that there –
- Q. Ms. Sugarek, I -- I think you can talk about this with your counsel on -- on redirect, but you have outage data in your testimony for H-E-B locations. **My question to you is: The outages that H-E-B is suffering at those locations, under your data, do you think that service is reliable service?**
- A. **Yes, I do.**⁴⁰

⁴⁰ Tr. at 1200:24-1202:4 (Sugarek Cross) (Jun. 27, 2019).

In addition, H-E-B, through its witness Mr. Presses, described the intermittent nature of CenterPoint's service and the lack of quality or reliable service that H-E-B receives at multiple locations as a distribution customer of CenterPoint.⁴¹ The record evidence in this proceeding demonstrates the very large number of outages that have occurred at H-E-B's facilities located in CenterPoint's service area.⁴² As Ms. Suagrek admitted on cross-examination, outages at H-E-B's facilities have continued since Mr. Presses approached CenterPoint about these issues in 2015,⁴³ with CenterPoint not having addressed or resolved these problems.⁴⁴ To date, H-E-B continues to receive intermittent service at multiple locations.⁴⁵ As detailed in the testimony of Mr. Presses and in briefing, the lack of reliability from CenterPoint has resulted in substantial losses to perishable product causing economic losses to H-E-B in H-E-B's core business.⁴⁶ CenterPoint's failure to provide reliable service required H-E-B to make significant capital investments to install on-site generation at several H-E-B locations within CenterPoint's service territory.⁴⁷

3. CenterPoint Continues to Blame H-E-B for CenterPoint Outages

CenterPoint contests the ALJs' finding that the failure of CenterPoint to accept "even a modicum of responsibility"⁴⁸ for the outages experienced by H-E-B, but CenterPoint identifies no evidence of CenterPoint taking responsibility for the outages. Throughout this proceeding,

⁴¹ H-E-B Ex. 1 at 9:1-18:2.

⁴² *Id.* at 16:1-16:11.

⁴³ Tr. at 1191:9-24 (Sugarek Cross) (Jun. 27, 2019).

⁴⁴ H-E-B Ex. 1 at 9:10-9:10; 14:9-15:18.

⁴⁵ *Id.* at 28:9-28:10.

⁴⁶ *Id.* at 15:4-15:18.

⁴⁷ *Id.* at 12:21-13:2.

⁴⁸ PFD at 169.

CenterPoint has deflected blame for its poor service quality by denying the validity of H-E-B's outage records and alleging that H-E-B's on-site generators are the cause of the outages, even though the generators are approved by CenterPoint prior to interconnection and interconnected precisely in accordance with CenterPoint's specifications.⁴⁹ Further, CenterPoint denies that the number of outages experienced by H-E-B indicates that H-E-B is receiving unreliable service. The ALJs provide a thorough explanation of the record evidence that supports their conclusion.

First, the PFD debunks CenterPoint's claim that the outages are caused by H-E-B's equipment by noting that H-E-B does not experience service quality issues, voltage fluctuations, or power outages when its on-site generators are running. The PFD continues an examination of the various claims made by CenterPoint to place blame on H-E-B for the outages and discusses the blown fuses that CenterPoint claims are a result of H-E-B's equipment. The ALJs cite evidence showing that CenterPoint was unaware of what type of fuses are installed on H-E-B's equipment, that the most common cause of a blown fuse is a lightning strike, and that CenterPoint reviewed and approved H-E-B's onsite generation facilities prior to interconnection to CenterPoint's transmission and distribution system. The ALJs also cite evidence that H-E-B operates onsite generation facilities in other service areas without issue and that CenterPoint never notified H-E-B of the concern about fuses despite H-E-B's continued reliability problems and CenterPoint's obligation to notify H-E-B if CenterPoint becomes aware that H-E-B's onsite generators may harm the reliability of the grid.⁵⁰ The ALJs also question CenterPoint's assertion that the outages are weather-related and point to CenterPoint's testimony that CenterPoint does

⁴⁹ See Highly Sensitive Confidential Interconnection Agreement, H-E0B Ex. 32 at 3; *see also* Highly Sensitive Confidential Letter Granting Permission to Operate, H-E-B Ex. 33, Tr. at 1214:1-1214:3 (Sugarek Cross) (Jun. 27, 2019).

⁵⁰ PFD at 23-25.

not rely on weather data to determine if an outage is weather-related, but instead bases the determination on “the number of outages that are caused” in an area within a certain timeframe.⁵¹

The ALJs provide extensive evidentiary support for the conclusion that CenterPoint has not accepted “even a modicum of responsibility”⁵² for H-E-B’s outages. CenterPoint has provided no evidence of accountability for the outages, and points to no such evidence in its Exceptions, while continuing to claim that the outages are caused by H-E-B. CenterPoint’s criticism of the PFD’s findings is unsubstantiated and should be rejected.

4. CenterPoint’s SAIDI Values Do Not Reflect All Customer Experiences

CenterPoint continues to incorrectly rely upon its SAIDI performance to discount the reliability issues raised by H-E-B in this proceeding. That is problematic on two accounts. First, the Commission’s SAIDI rule is only one indicator of reliability performance. It measures the duration of outages that an average customer will experience. CenterPoint’s SAIDI levels indicate that an average customer experienced “less than two hours of outage minutes” during the entire year.⁵³ While this may be true for CenterPoint’s hypothetical average customer, all of the evidence in the record shows that this is not true for H-E-B.

The outage records provided by H-E-B show that H-E-B experienced 45 separate outages lasting more than two hours in duration throughout the last three years.⁵⁴ These records give only a partial view of H-E-B’s outages, as they only include outages that occurred at the H-E-B facilities supported by on-site generation.⁵⁵ Further, CenterPoint’s own data shows that many

⁵¹ PFD at 25.

⁵² *Id.* at 169.

⁵³ Direct Testimony of Dale Bodden, CEHE Ex. 9 at 33:15–33:16 (Apr. 5, 2019).

⁵⁴ H-E-B’s Initial Brief at 12.

⁵⁵ *Id.*

H-E-B locations experienced outages lasting more than two hours in duration for 48 days out of the year in 2018 alone.⁵⁶ Using the outage records of either H-E-B or CenterPoint, the frequency and duration of outages that H-E-B has experienced are far greater than the outages experienced by an average customer. If anything, the immense differential between the outage levels experienced by H-E-B and those used by CenterPoint as an “average customer” should be a confirmation to CenterPoint that H-E-B, at all locations, regardless of on-site generation is receiving poor service quality and that CenterPoint’s outage records are not accurate, at least for H-E-B and potentially the “average customer” against which CenterPoint is benchmarking. However, CenterPoint remains steadfast in its assertion that it provides reliable service to H-E-B, and continues to make this claim in its Exception to the PFD.⁵⁷ This only serves to further support the ALJs’ conclusion that CenterPoint’s failure to accept any responsibility for the volume of outages experienced by H-E-B is troubling.⁵⁸

Another concern about relying on CenterPoint’s SAIDI values as an indicator of reliability is that there is some doubt that CenterPoint is capturing all of the outages actually experienced by its customers. This is certainly the case for H-E-B. CenterPoint’s outage data showed 8,345 total outage minutes for 2018, which is 24% less than the data provided by H-E-B that does not even capture outages at all of H-E-B’s facilities.⁵⁹ H-E-B provided evidence that H-E-B’s outages are captured by H-E-B’s system on the distributed generation side that records a decrease in voltage from CenterPoint at H-E-B’s meters.⁶⁰ Further, H-E-B’s employees

⁵⁶ Tr. 1218:22–1219:2 (Sugarek Cross) (Jun. 27, 2019).

⁵⁷ CEHE Exceptions at 54.

⁵⁸ See PFD at 182.

⁵⁹ CEHE Ex. 33 at 12:22–12:24.

⁶⁰ Tr. at 417:4–417:10 (Presses Recross) (Jun. 25, 2019).

(“Partners”) and customers experience these outages in real time and H-E-B Partners report the outages while simultaneously tracking the resulting loss of product.⁶¹ The ALJs correctly noted that H-E-B, not CenterPoint, is in the best position to identify when an H-E-B location is experiencing a power outage.⁶²

CenterPoint takes issue with the PFD’s conclusion that “customer experiences are not accurately captured or accounted for in aggregate measurements like SAIDI and [System Average Frequency Duration Index (“SAIFI”)]” and that the “frequency and duration of outages that H-E-B experienced are not reflected in the data.” CenterPoint oddly concludes that the ALJs do not understand how the Commission calculates SAIDI and SAIFI metrics. CenterPoint assumes that the ALJs believe the SAIDI and SAIFI are calculated using “voluntary customer complaints failed at the Commission.”⁶³ There is nothing in the PFD to support CenterPoint’s inaccurate assumption. However, the record evidence does show that CenterPoint recorded significantly fewer outages at H-E-B facilities than H-E-B itself recorded. This demonstrates that CenterPoint failed to record all of the outages experienced by H-E-B and, in turn, those unreported outages *are not reflected in CenterPoint’s SAIDI and SAIFI calculations*. CenterPoint’s assertion that the ALJs’ misunderstand how the Commission measures SAIDI and SAIFI values is unfounded and should be rejected.

5. Formal Customer Complaints Do Not Reflect All Customer Experiences

Not only does CenterPoint fail to take responsibility for the outages experienced by H-E-B, it also fails to accept accountability for the complaints of other customers. CenterPoint continuously and repeatedly diminishes the significance of the customer complaints that are not

⁶¹ Tr. at 417:10–417:12 (Presses Recross) (Jun. 25, 2019).

⁶² PFD at 165.

⁶³ CenterPoint’s Exceptions at 57.

captured within the Commission's formal complaint process. CenterPoint provided records of customer communication in response to a discovery request from H-E-B that was significantly narrowed based upon CenterPoint's objection to the initial broader request. H-E-B agreed to limit the request to an internal search of the email accounts of a few employees based on CenterPoint's objection that a comprehensive search of its computer systems to find all of the complaints would have been cost prohibitive for CenterPoint. The responsive communication records demonstrate that H-E-B's reliability issues with CenterPoint is similar to that of many other CenterPoint customers who, like H-E-B, may not have filed formal complaints with the Commission. Notably, no PUCT customer complaints were included in the discovery response provided. Despite uncontroverted evidence that the Commission's formal complaint process does not encapsulate all customer reliability issues, or even all customer complaints, CenterPoint mischaracterizes the ALJs' conclusion that a wider discovery search would have produced additional complaint records as speculative.

The ALJs' conclusion is not speculation. It is a reasonable inference based upon a narrowly tailored and limited discovery response, in which the records of customer communications reveal that many customers who may not have filed formal complaints with the Commission have experienced reliability problems and a lack of responsiveness from CenterPoint in effectively addressing such issues. Instead of supporting the logical conclusion reached by the ALJs, CenterPoint seeks to dismiss these complaints as "just the few in the emails" and again fall back on the Commission's formal complaint records as the sole measure of customer satisfaction.

CenterPoint even claims that the “emails actually evidence [CenterPoint’s] efforts to respond to complaints” and “often demonstrate the resolution of customer complaints.”⁶⁴ H-E-B disagrees and asserts that the emails speak for themselves:

*At about noon today, 6/28, we had a major power surge which caused our manufacturing equipment to lose control/processing capability. These have been happening on a more frequent basis, and when they do, they cause significant issues with our processes. On a monetary side, each time this occurs and we are running equipment, it costs either side of \$20,000 with loss of materials. Each of our extrusion has to be stopped, cleaned and re-started, as well as loss of resin, which is a highly valuable commodity.*⁶⁵

*Over the past several months we have been experiencing frequent power failures that are having severe effects on our manufacturing facility. These monetary failures are enough to shut down our large [redacted] machining equipment that can and have resulted in catastrophic failure of the part of the machine. Many of the failures do not appear to be weather related, although some definitely were.*⁶⁶

I am not certain what the meter can do to expedite this issue, but we have not been able to run the facility between 3:00 pm and midnight for weeks now. Our on-call employee was out all weekend with the issue at [redacted]. We are running the generator for many hours a day in which is an added expense on top of all the overtime we are paying our employees. As noted last week, we also are still experiencing problems at our [redacted] facility that is the main source [redacted]. Furthermore, to remind you that both of these sites are [redacted].

From the previous emails it was [redacted] assumption that CenterPoint was already identifying areas to switch loads? What is the purpose of the monitor? It is already a known fact that there is a problem. This seems to be another delay. Last week [redacted] stated that a [redacted] is looking into this, and that some adjustments have been made to your system already. He also stated that orders have been issued additional modifications to the circuit, and that CenterPoint is awaiting confirmation from the field crews that they have been completed. Where does the additional modifications stand at this point? How long does it take to get confirmation from field crews that they have completed the work?

⁶⁴ CenterPoint’s Exceptions at 56.

⁶⁵ CEHE’s Response to H-E-B01-03U, H-E-B Ex. 31.

⁶⁶ *Id.* at 8.

*I am quite certain that CenterPoint, like [redacted] are always dealing with issues, although if we were having a service problem with one of our customers this would be moved up to a priority for us to rectify asap. We seriously need help here, and we feel that we are getting nowhere. We cannot continue to try and run our facilities like this.*⁶⁷

Being a [redacted] provider we certainly understand that from time to time problems happen that are beyond our control that may result in outages and or service problems etc. However, we take pride as I am sure CenterPoint Energy does, in being proactive and responsive to minimizing and correcting service problems to our customers.

We have been very patient in dealing with CenterPoint Energy on the issue of unbalanced voltage and current problems. These continues fluctuation problems are causing electrical equipment to lockout our motors that pump the water provided to our customers. We have adjusted our electrical protection devices beyond the manufacture range, whereas to stay in operation. However, this is still not working and our personnel are going out almost every evening to manually manipulate our equipment in order to keep service to our customers. [Redacted] has communicated on numerous occasions our continued problems in writing and by phone to numerous people with in your organization.

*It is time to move this problem to a priority status! We have reached a point of frustration with this circumstance and expect CenterPoint Energy to solve the problems we are experiencing ASAP.*⁶⁸

Yet again about 3:00 pm yesterday we experienced the unbalanced voltage issue at [redacted]. As you well know by now, this site is located at [redacted]. Furthermore, at our facility located at [redacted] in which is the key source of [redacted] experienced the same issue around 3:00 pm yesterday afternoon as well. It was 11:00 pm before the imbalance was within range to enable us to run the facilities.

...

We serve over [redacted] customers that depend on [redacted], not to mention the rules we are governed by t[redacted]. We have been requesting assistance in this matter for nearly a month now. At this time we would like to request a meeting, or possibly a conference call with someone that has the authority to make this

⁶⁷ *Id.* at 15.

⁶⁸ *Id.* at 17.

*happen. We do appreciate what efforts that have been dedicated thus far, but we are not seeing any beneficial results.*⁶⁹

*I am glad that you were able to attend our meeting with CenterPoint today and hope that we can resolve the ongoing electrical problems that [redacted] homeowners are experiencing. I wanted to recap everything that was discussed so that you may relay the information to inquiring homeowners if need be. [Redacted] has made several attempts to correct the electrical issues that have been occurring in [redacted], but has yet to discover a solution related to our products or services. After reviewing all of the service calls that [redacted] have made, the information in our system, and the surveys that you have provided to me, [redacted] has come to the conclusion that there is a problem on the CenterPoint side. Many homeowners have complained about power outages that occur more frequently than seems usual. The homes that are having issues range anywhere from 10+ years old to brand new and were not all built by [redacted] homes are also experiencing issues).*⁷⁰

We just had another power blip.

*We are beginning to see the same pattern we experienced some years ago, and this is VERY troubling for the Building, and for its Tenants.*⁷¹

Over the last few business days we have experienced power outages lasting long enough to transfer power over to the generator and as soon as the generator ramps up, the power comes back online. We are losing our plant and everything else equipment wise and it is a bit concerning as it is causing unnecessary wear and tear on our equipment.

These aren't blips because we historically haven't lost our plant when a blip occurs.

*Today, one happened at 11:38 am, yesterday we had 2 during the day, we had one on Monday 10/1, and one last week. Our tenants are concerned and we need to figure out what is going on.*⁷²

⁶⁹ *Id.*

⁷⁰ *Id.* at 20.

⁷¹ *Id.* at 27.

⁷² *Id.* at 50.

We have had 3 power outages so far this month...

7-1-18 – around 12:30 am

7-4-18 – late afternoon around 4:30 pm

7-7-18 – late afternoon around 4:30pm

Please relay this to your team member we were speaking about. This roughly cost us \$2500 each power outage.⁷³

What is the progress on reviewing the data collected and coming up with a solution? We are continuing to have multiple events per week. These events trip VFD's, single phase electric motors, and the abrupt power cycling due to surges are wreaking havoc on our air compressor.⁷⁴

6. An ROE of 9.42% or lower is appropriate for CenterPoint.

Contrary to CenterPoint's assertions,⁷⁵ the ALJs correctly found that CenterPoint's failure to provide reliable service to H-E-B warrants a reduction in CenterPoint's ROE.⁷⁶ Indeed, CenterPoint argued in briefing that a "plain reading of PURA § 36.052" authorizes the Commission to adjust CenterPoint's ROE based on whether CenterPoint provides reliable electric service.⁷⁷ The Commission should adopt the ALJ's recommended three basis point reduction to CenterPoint's ROE because the record evidence justifies a quality of service reduction. H-E-B and other ratepayers should not have to pay higher rates until CenterPoint has demonstrated that it can effectively use the revenue it collects to address reliability issues and provide reliable service to its customers. Because CenterPoint has not demonstrated that it is

⁷³ *Id.* at 58.

⁷⁴ *Id.* at 60.

⁷⁵ CenterPoint's Exceptions at 45-47.

⁷⁶ PFD at 169-170.

⁷⁷ PURA § 36.052(2).

providing reliable service to its customers, it should not be rewarded with an ROE greater than 9.42%.

CenterPoint inaccurately argues that the 9.42% ROE “falls well below the national average authorized ROE for electric utilities.”⁷⁸ Further, CenterPoint characterizes the PFD’s recommended ROE as “unreasonably low”⁷⁹ and argues that the 9.42% ROE would be “the lowest Commission-approved ROE for any electric utility in the state of Texas.”⁸⁰ In support of these arguments, CenterPoint directs the Commission to the recently approved ROEs of two ERCOT TDUs: Oncor’s 9.8% ROE and TNMP’s 9.65% ROE.⁸¹

CenterPoint’s arguments are inaccurate and are not supported by the record evidence. Contrary to CenterPoint’s assertions, the record evidence reflects that the average authorized ROE in 2017 for wires-only utilities was 9.43%⁸² and the average authorized ROE for wires-only utilities in the first half of 2018 was 9.18%.⁸³ In addition, the two dockets and ROEs referenced by CenterPoint in support of its position were the result of settled cases, and thus, these Commission-approved ROEs carry no precedential weight.⁸⁴ Indeed, the final orders in these dockets both contain the Commission’s standard ordering paragraph regarding contested cases that states:

⁷⁸ CenterPoint’s Exceptions at 45.

⁷⁹ *Id.* at 48.

⁸⁰ *Id.* at 10; 45.

⁸¹ *Id.* at 48.

⁸² S&P Article - Average U.S. Electric, Gas ROE Authorizations in H1'18 Down from 2017, TIEC Ex. 19 at 2; Tr. at 714:25-715:6 (Hevert Cross) (Jun. 26, 2019).

⁸³ *Id.*

⁸⁴ *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 46957, Order at 17-18, Ordering Paragraph 18 (Oct. 13, 2017); *Application of Texas New Mexico Power Company for Authority to Change Rates*, Docket No. 48401, Order at 19 Ordering Paragraph 30 (Dec. 20, 2018).

Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.⁸⁵

Accordingly, CenterPoint's reliance on these settled dockets in support of ROE arguments is misplaced and should be rejected.

CenterPoint also points to Docket No. 8928⁸⁶ in support of its assertion that a quality of service concern expressed by a customer is not enough to warrant a reduction in ROE.⁸⁷ In Docket No. 8928, the Commission contemplated adjusting the return of Texas-New Mexico Power ("TNMP") because of quality of service issues experienced by a customer.⁸⁸ CenterPoint argues that the ALJs in the TNMP docket declined to adjust TNMP's ROE because the customer's electric requirements were "exceptional" because it sought "100% reliability."⁸⁹ Further, CenterPoint argues that the customer's decision to spend money to improve its reliability was evidence that its electrical requirements were "exceptional."⁹⁰ CenterPoint argues that like TNMP's customer, H-E-B's electrical requirements are "exceptional" because H-E-B is "extraordinarily sensitive to electrical interruptions" and because of H-E-B's decision to install on-site generation.⁹¹

CenterPoint's statements are erroneous and its reliance on Docket No. 8928 is misplaced. H-E-B's electrical requirements are ordinary and are no more exceptional than any other

⁸⁵ *Id.*

⁸⁶ *Appeal of Texas New Mexico Power Co. For Authority to Change Rates*, Docket No. 8928, Order on Rehearing (Apr. 12, 1990).

⁸⁷ CenterPoint's Exceptions at 55-56.

⁸⁸ Docket No. 8928, Examiners' Report at 63-66 (Feb. 1, 1990).

⁸⁹ CenterPoint's Exceptions at 55-56 (citing Docket No. 8928, Examiners' Report at 65 (Feb. 1, 1990)).

⁹⁰ *Id.*

⁹¹ CenterPoint's Exceptions at 56.

customer's electrical requirements. All customers, whether it be H-E-B or any other customer, seek consistent and dependable reliability when it comes to their electric service. In H-E-B's case, the harm suffered during an outage is magnified compared to the harm suffered by a residential or a commercial customer because of the costs associated with maintaining H-E-B's "cold chain," a temperature-controlled supply chain that must remain in operation to keep temperatures at appropriate levels for perishable product. However, the need for reliable and predictable electric service is no different than that of any other CenterPoint customer.

For CenterPoint to argue that this somehow makes H-E-B's electrical requirements "exceptional" is ludicrous, particularly when the level of outages experienced by H-E-B exceeds the level of outages experienced by an "average customer" by such a vast degree. In addition, as discussed in Section III.A.1., the record reflects that H-E-B's decision to install on-site generation was solely due to CenterPoint's failure to provide reliable service to H-E-B—not because of any "exceptional" requirement. CenterPoint's failure to provide reliable service to H-E-B was so bad that H-E-B made the prudent decision to solve its reliability issues itself by making significant capital investments to install on-site generation at locations within the CenterPoint service territory.⁹²

In addition, H-E-B's issues with CenterPoint, however, are markedly different than the facts and circumstances in the TNMP docket. For example, the customer in the TNMP docket experienced only two outages over a two-year period.⁹³ The first outage lasted 1 hour and 56 minutes, or 116 minutes, and then second outage lasted 1 hour and 4 minutes, or 64 minutes.⁹⁴

⁹² H-E-B Ex. 1 at 12:21-13:2.

⁹³ Docket No. 8928, Examiners' Report at 64 (Feb. 1, 1990).

⁹⁴ *Id.*

Conversely, H-E-B's facilities experienced repeated, consistent outages.⁹⁵ At its facilities with installed on-site generation, H-E-B experienced 521 outages from January 2017 through May 2019 for a total duration of approximately 20,000 minutes, or just over 333 hours.⁹⁶ Further, some of H-E-B's outages last more than 17 hours. For instance, one store experienced 33 outages during the timeframe, with the longest outage lasting 670 minutes, more than 11 hours.⁹⁷ This is a significant contrast to the outages in the TNMP docket and even from the duration of the outages experienced by an "average customer" of CenterPoint.

Accordingly, CenterPoint's reliance on this docket, in addition to the recent, settled Oncor and TNMP dockets, in support of ROE arguments is misplaced and should be rejected. H-E-B recommends that CenterPoint's ROE not exceed the ALJs recommended ROE of 9.42% given CenterPoint's failure to reliably serve its customers. In addition, H-E-B recommends that the Commission adopt the ALJ's recommended three basis point reduction to CenterPoint's ROE because the record evidence justifies a quality of service reduction.

B. Cost of Debt [PO Issue 8]

No Exceptions.

C. Capital Structure [PO Issue 7]

In its Exceptions, CenterPoint continues to request Commission approval of a capital structure of 50% debt and 50% equity,⁹⁸ which is a significant deviation from CenterPoint's current 55% debt to 45% equity capital structure approved by the Commission in CenterPoint's

⁹⁵ H-E-B Ex. 1 at 16:1-18:2.

⁹⁶ *Id.* at 11:4-11:6.

⁹⁷ *Id.* at 11:7-11:8.

⁹⁸ CenterPoint's Exceptions at 59-63.

last base-rate case⁹⁹ and the ALJs' recommended capital structure for CenterPoint in this proceeding.¹⁰⁰ H-E-B again urges the Commission to reject CenterPoint's capital structure proposal.

CenterPoint contends that a 50% debt to 50% equity capital structure "properly accounts for the level of business and regulatory risks that CenterPoint Houston faces, including elevated capital expenditures required to reliably serve customers, risk caused by the Tax Cuts and Jobs Act, hurricane risk, and regulatory risk."¹⁰¹ However, CenterPoint's concerns are overstated and misplaced. As discussed in H-E-B Initial and Reply Briefs and its Exceptions, CenterPoint, as a regulated transmission and distribution utility, faces less risk than that faced by vertically integrated utilities that own generation.¹⁰² Unlike vertically integrated utilities that carry commodity risk, CenterPoint faces low business, operational, and regulatory risk because it operates in the "constructive,"¹⁰³ and "low-risk"¹⁰⁴ Texas regulatory environment.¹⁰⁵

In addition, CenterPoint argues that increasing the equity component of its capital structure "is the most beneficial method to customers for preserving CenterPoint Houston's financial metrics."¹⁰⁶ This assertion is not supported by the record evidence. Instead, the record

⁹⁹ *Application of CenterPoint Electric Delivery Company, LLC, for Authority to Change Rates*, Docket No. 38339, Order on Rehearing at 21, Finding of Fact No. 67 (Jun. 23, 2011).

¹⁰⁰ PFD at 191.

¹⁰¹ CenterPoint's Exceptions at 62.

¹⁰² See H-E-B's Initial Brief at 29; H-E-B's Exceptions at 4-7 (Oct. 10, 2019).

¹⁰³ Direct Testimony of Jorge Ordonez, Staff Ex. 3A at 32:10-13 (Jun. 12, 2019).

¹⁰⁴ Tr. 565:21-565:24 (Gorman Cross) (Jun. 26, 2019).

¹⁰⁵ See Direct Testimony of Anjuli Winker, OPUC Ex. 3 at 40:6-40:8 (Jun. 6, 2019) ("My [] recommendation includes my consideration of . . . CenterPoint's low business and operating risk as a T&D utility in Texas."); See also Direct Testimony of Randall J. Woolridge, TCUC Ex. 1 at 49:26-49:27 (Jun. 6, 2019) ("[CenterPoint]'s investment risk is a little below the averages of the Electric and Hevert Proxy Groups."); Tr. at 561:21-561:23 (Gorman Cross) (Jun. 26, 2019); Tr. at 679:1-679:10 (Ordonez Cross) (Jun. 26, 2019); Tr. at 561:21-561:23 (Gorman Cross) (Jun. 26, 2019); Tr. at 679:1-679:10 (Ordonez Cross) (Jun. 26, 2019).

¹⁰⁶ CenterPoint's Exceptions at 60.

evidence reflects that CenterPoint's capital structure proposal would significantly and unnecessarily increase costs to customers without a corresponding benefit or increase in the reliability of service provided by CenterPoint.¹⁰⁷

Contrary to CenterPoint's assertions, the record evidence reflects that a 60% debt to 40% equity capital structure is more appropriate for CenterPoint because the myriad of regulatory cost-recovery mechanisms available to CenterPoint substantially reduces CenterPoint's regulatory risk and regulatory lag because CenterPoint can timely recover its cost of service and its investments in transmission and distribution assets.

CenterPoint also contends that "Moody's has already placed CenterPoint on negative [credit rating] outlook based on the [capital structure] recommendations of the parties in the proceeding."¹⁰⁸ This assertion is misleading, disingenuous, and is based on a Moody's report that is not in evidence.¹⁰⁹ CenterPoint is inappropriately trying to supplement the record evidence by transcribing the contents of a Moody's report into its Exceptions and into the administrative record. CenterPoint's actions and statements on this matter are wholly inappropriate and should be rejected. H-E-B supports the Joint Objection and Motion to Strike filed by intervenors and Commission Staff on October 17, 2019.¹¹⁰

Further, even if, as hypothesized by CenterPoint, CenterPoint were to experience a detrimental impact to its credit ratings because of a 60% debt to 40% equity capital structure,¹¹¹

¹⁰⁷ OPUC Ex. 3 at 43:16-43:19; TCUC Ex. 1 at 19:9-19:21; Direct Testimony of Michael P. Gorman, TIEC Ex. 5 at 6:1-6:3; *See also* Direct Testimony of Charles S. Griffey, TIEC Ex. 4 at 9:18-9:19 (Jun. 6, 2019).

¹⁰⁸ CenterPoint's Exceptions at 60.

¹⁰⁹ Tr. at 816:6-7 (Judge Bailey Ruling) (Jun. 26, 2019); Tr. at 818:3-818:7 (Judge Bailey Ruling) (Jun. 26, 2019).

¹¹⁰ Joint Objection and Motion to Strike (Oct. 17, 2019).

¹¹¹ CenterPoint's Exceptions at 59.

CenterPoint could file a rate case to request relief, or CenterPoint would come in for its next rate case in another three and a half years in accordance with 16 TAC § 25.247. Under 16 TAC § 25.247(b)(1), each investor-owned utility, including CenterPoint must have its base rates set every four years. Indeed, CenterPoint acknowledges the same when it states that “the Commission will have the opportunity to revisit the equity ratio in a future rate case filed pursuant to the rate review schedule.”¹¹²

Accordingly, the Commission should reject CenterPoint’s capital structure proposal and instead adopt the 60% debt to 40% equity capital structure proposed and supported by several intervenors and Commission Staff.


IV. Conclusion

For the reasons discussed herein, H-E-B respectfully requests that the Commission reject CenterPoint’s proposed changes and Exceptions to the PFD and adopt the PFD as modified by H-E-B’s Exceptions.

¹¹² *Id.* at 61.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served on counsel for the parties of record on October 24, 2019.


Diana M. Liebmann