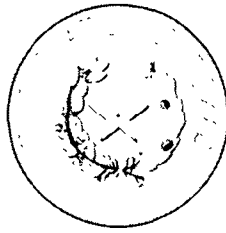


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State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

November 6, 2019

TO: Stephen Journey, Commission Counsel
Commission Advising and Docket Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

VIA EMAIL

RE: SOAH Docket No. 473-19-3864
PUC Docket No. 49421

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

Dear Mr. Journey:

Background

On September 16, 2019, the undersigned Administrative Law Judges (ALJs) issued the Proposal for Decision (PFD) in this case. On October 10, 2019, Exceptions to the PFD were filed by CenterPoint Energy Houston Electric, LLP (CenterPoint or CEHE); the Public Utility Commission of Texas (Commission) staff (Staff); and intervenors City of Houston and Houston Coalition of Cities (collectively, COH); Gulf Coast Coalition of Cities (GCCC); H-E-B, LP (HEB); Office of Public Utility Counsel (OPUC); Texas Coast Utilities Coalition (TCUC); Texas Competitive Power Advocates; and Texas Industrial Energy Consumers (TIEC). Later that day, CenterPoint filed corrections to its Exceptions. On October 24, 2019, Replies to Exceptions were filed by CenterPoint, Staff, and intervenors Alliance for Retail Markets (ARM), COH, GCCC, HEB, OPUC, TCUC, and TIEC. The next day, Staff filed errata to its Replies to Exceptions. On October 28, 2019, CenterPoint filed Attachment A, which had been inadvertently omitted from its Replies to Exceptions. On October 30, 2019, CenterPoint filed a corrected Attachment A to its Replies to Exceptions.

Most of the Exceptions and Replies make arguments that were fully considered by the ALJs and discussed in the PFD and are not addressed again here. In this letter, the ALJs accept several

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CenterPoint Exceptions, make a few clarifying changes and comments, and discuss a few other Exceptions and Replies to Exceptions. Except where this letter states otherwise, the ALJs have no changes to the PFD.

While this was not a concern with most parties' filings, parts of certain Exceptions and Replies contain factual assertions without evidentiary citation or support and mischaracterize evidence (including whether certain evidence is uncontroverted), the law, party positions (including whether some factual assertions are undisputed), and the ALJs' analysis stated in the PFD. In this letter, the ALJs list a few examples of those problems but mostly rely on the PFD's descriptions of the evidence, the law, the parties' positions, and the ALJs' analysis.

The ALJs' acceptance of certain CenterPoint Exceptions would affect number-running. In addition, some parties' Exceptions and Replies discuss whether the number-running schedules Staff provided, which are attached to the PFD, accurately capture the recommendations in the PFD. The ALJs appreciate Staff's suggestion that when the ALJs' number-running memos list the witnesses whose recommendations the ALJs are accepting, that helps the number-running Staff understand the ALJs' recommendations. The ALJs will endeavor to do so more fully in number-running memos in future cases. At this stage, the important matter is that the number running accurately capture the decisions the Commission makes in this case. Accordingly, this letter does not delve into the parties' detailed disputes about the number running.

At the end of this letter, the ALJs provide some background relating to CEHE Exhibit 72, which is Attachment D to CenterPoint's Exceptions and one subject of the pending joint objection and motion to strike by Staff, GCCC, OPUC, TCUC, and TIEC.

Rate Base/Transmission and Distribution Capital Investment

In its Exceptions at 15, n. 41, CenterPoint cites PFD Finding of Fact No. 44. As currently phrased, that finding is inconsistent with other findings of fact in the PFD, and the ALJs clarify it by adding the language underlined below:

44. Except where stated otherwise in Finding of Fact Nos. 45 through 89, CenterPoint's capital investment in transmission and distribution plant additions incurred between January 1, 2010, and December 31, 2018, is used and useful in providing service to the public, is reasonable and necessary, and was prudently incurred.

Rate Base/Transmission and Distribution Capital Investment/URD CLEP and Major Underground Rehabilitation Program

CenterPoint's Exceptions state: "Yet, the PFD proposes a disallowance of 10% of the investment in the URD CLEP program and 35% of the investment in Major Underground Rehabilitation Program *based solely on the ALJs' apparent dissatisfaction concerning a single discovery response* amongst the over one thousand responses that CenterPoint produced in the

case.”¹ That statement mischaracterizes the bases for the ALJs’ disallowance recommendation, which are set out in the PFD at 15-19 regarding the URD CLEP and 19-22 regarding the Major Underground Rehabilitation Program.

CenterPoint complains that COH did not file a motion to compel or a motion to strike. As discussed in the PFD, however, CenterPoint had a duty to provide complete, accurate, responsive answers to discovery and COH was entitled to assume from the discovery responses provided that CenterPoint had done so. Similarly, regardless of whether it moved to strike the applicable rebuttal testimony, COH was entitled to impeach that testimony through cross examination about the contradictions between that testimony and CenterPoint discovery responses that were also in evidence.

CenterPoint and COH, in arguing for no disallowance and a 100% disallowance respectively, argue the ALJs misapplied the law on burden of proof and prudence discussed in the PFD at 10-12. For reasons described in the PFD at 12-22, the ALJs concluded that regarding these programs, CenterPoint made a prima facie case, shifting the burden of production to COH, which met its burden through its direct case, and that CenterPoint, which had the never-shifting burden of persuasion, met that burden only to the extent of the amounts the ALJs recommended for inclusion in rate base. The ALJs have not changed their recommended amounts, which were subjective and based on the ALJs’ consideration of the evidence as a whole, including that the evidence proved the programs had important reliability benefits but not that they were cost-effective. As CenterPoint and COH point out, no witness supported a partial disallowance for either program. If the Commission concludes that, as a result, its choices are either no disallowance or a 100% disallowance for these programs, the ALJs believe the preponderance of the evidence would support a 100% disallowance and would not support a zero disallowance. The reason is that, under the well-established legal standards set forth in the PFD, and for reasons described in the PFD, CenterPoint failed to prove that 100% of the cost of these programs, or any specific smaller amount *quantified in the evidence*, was prudent.

Rate Base/Transmission and Distribution Capital Investment/La Marque Substation

CenterPoint’s Exceptions state: “As acknowledged by the PFD, the total construction cost associated with this project was \$2,773,369. The estimated cost for this project was \$1,446,000 and *based on this difference alone*, the PFD recommends a disallowance of the difference between the actual costs and estimated cost resulting in a nearly 43% disallowance of the costs associated with this project.”² That statement mischaracterizes the bases for the ALJs’ disallowance recommendation, which are discussed in the PFD at 28-30. For example, in response to a Staff discovery request, CenterPoint explained: “Tower design and location changed during detailed engineering phase which led to some material errors. One angle structure had to be removed and replaced.”³ A CenterPoint rebuttal witness testified that construction errors were not the sole

¹ CenterPoint Exceptions at 19 (italics added).

² CenterPoint Exceptions at 24 (italics added).

³ Staff Ex. 8 at 7; Staff Ex. 8A; OPUC Ex. 5 at 39, Att. KJN-3 at 88-89 (CenterPoint response to Staff RFI 6-24).

reason for the difference between the initial cost estimates and the actual costs.⁴ He also indicated that one structure was staked in close proximity to the next, requiring one foundation to be rebuilt.⁵ As the PFD states, the ALJs concluded CenterPoint failed to prove: (1) that the construction errors were not caused by imprudence; and (2) the amount of the cost increase that resulted not from imprudence, but rather from the need to build seven structures instead of four. Given that need, the ALJs find Staff's proposed disallowance (90% of the difference between the estimated costs and the actual costs) to be more reasonable than OPUC's larger proposed disallowance.

Rate Base/Transmission and Distribution Capital Investment/Land Costs

CenterPoint's Exceptions at 25 state: "there is no merit to the PFD's statement that CenterPoint Houston's discussion of this issue in its rebuttal case 'denied Staff the ability to conduct discovery' on this issue. All parties had the opportunity to conduct discovery on CenterPoint Houston's rebuttal case...." CenterPoint cites the PFD at 37, which states: "In its application, CenterPoint did not ask that the land be considered Plant Held for Future Use, unlike other land that was not yet used and useful. For the land at issue, CenterPoint made that request for the first time in its rebuttal case. That timing denied Staff the ability to conduct discovery and to address that request in its own testimony." To clarify, this PFD language refers to that timing denying Staff the ability to conduct discovery that Staff could include and discuss in its own testimony and otherwise to address that request in its own testimony.

Rate Base/Capital Project Accounting/S/101318/CG/Tools

CenterPoint's Exceptions at 26 point out that the PFD recommends a \$2.1 million disallowance, but in a footnote in its brief, OPUC had withdrawn its recommendation on that issue. The ALJs agree with CenterPoint and no longer recommend a disallowance on this issue. Accordingly, Finding of Fact No. 99 should be revised as follows:

99. ~~Because CenterPoint did not prove certain tools were used in construction and/or repair work, and thus properly capitalized, the~~ The \$2,127,089 cost of ~~the~~ tools should be ~~removed~~included in rate base.

This change would affect number running.

Rate Base/Changes in Capitalization Policy

CenterPoint's Exceptions at 30-32 discuss this issue with respect to the URD CLEP. CenterPoint argues that the number run for the PFD made a duplicative disallowance for that program. The ALJs do not address the number run except to note they certainly did not intend a duplicative disallowance. The ALJs agree with CenterPoint that the URD CLEP was implemented

⁴ CenterPoint Ex. 32 at 17, 71-72 (Exh. R-MWN-1, CenterPoint response to Staff RFI 6-24).

⁵ CenterPoint Ex. 32 at 17-18, 71-72 (Exh. R-MWN-1, CenterPoint response to Staff RFI 6-24). 81-82 (Exh. R-MWN-2).

in 2013 but, for the reasons discussed in OPUC's Replies to Exceptions at 3-4, do not change their recommendations on this issue.

Rate Base/Medicare Part D Regulatory Asset

CenterPoint's Exceptions at 40-41 assert that the PFD acknowledges "the suspect nature" of the PFD's adoption of GCCC's \$5.572 million regulatory asset calculation "and invites CenterPoint Houston to provide a correct calculation based on the PFD's recommendation that the Medicare Part D regulatory asset be calculated based on a starting period of January 1, 2013." The PFD does not indicate that GCCC's calculation is suspect. What the PFD actually states is: "If CenterPoint believes a different amount, which is consistent with the ALJs' acceptance of [basing the calculation on a starting period of January 1, 2013] *is in evidence*, CenterPoint should identify that amount in its Exceptions to the PFD."⁶ CenterPoint's Exceptions at 41 state that it "has performed this calculation" and provide some citations to evidence. The ALJs cannot confirm the entire calculation is in evidence. In its Replies to Exceptions at 7-8, GCCC takes issue with the methodology CenterPoint used to perform the calculation. Accordingly, the ALJs are not changing their recommended amount for this regulatory asset.

Rate Base/Capitalized Incentive Compensation

CenterPoint correctly points out in its Exceptions that the ALJs' recommendation for a 92% disallowance of the total requested capitalized incentive compensation should be corrected to 91.34%. This correction accurately reflects the computation of CenterPoint's test year short-term incentive (STI) compensation payout percentages for financially-based STI compensation, as determined by the ALJs.⁷ Thus, the ALJs recommend the following change to proposed Finding of Fact No. 181 in the PFD:

181. It is reasonable to disallow 91.34%~~92%~~ of CenterPoint's total capitalized incentive compensation in order to remove the impact of financial measures which benefit shareholders more immediately than customers.

Financial Integrity (Ring-Fencing)

In its Exceptions at 64 and 72, CenterPoint argues it does not have the burden of proof on this issue; instead TIEC and Staff do. In writing the PFD, the ALJs considered but did not discuss in the PFD that burden of proof issue because it was not briefed and did not matter to the ALJs' recommendation in this case, in that, for reasons discussed in the PFD, the preponderance of the evidence supports the ring-fencing measures the ALJs recommended. CenterPoint complains that TIEC and Staff did not prove their proposed measures would not be too costly. Regarding who had the burden to produce evidence on costs to implement the measures, the ALJs considered the

⁶ PFD at 92, n. 264 (italics added).

⁷ CenterPoint Exceptions at 44; OPUC Ex. 2A, Exh. at WP JMD-9 (confidential); Staff Ex. 4A, Exh. MF-11; COH Ex. 2 at 25, Exh. MG-2.3; TIEC Ex. 3 at 13.

State Office of Administrative Hearings rule on burden of proof, which lists among factors to be considered:

- (1) the status of the parties;
- (2) the parties' relative access to and control over information pertinent to the merits of the case;
- (3) the party seeking affirmative relief;
- (4) the party seeking to change the status quo; and
- (5) whether a party would be required to prove a negative.⁸

Regarding the ring-fencing measures themselves, TIEC and Staff are seeking affirmative relief and to change the status quo, but CenterPoint has better access to information about its costs to implement the measures, and imposing on TIEC and Staff the burden to prove their measures would not be too costly would require them to prove a negative. CenterPoint's Exceptions list ring-fencing measures it would be willing to accept and assert at 65 that the "remaining ring-fencing measures recommended by the PFD will financially harm the Company." The ALJs found the evidence shows the ring-fencing measures recommended in the PFD will financially benefit CenterPoint. Even if TIEC and Staff have the burden of proof on ring-fencing, they made a prima facie case regarding the measures recommended in the PFD, shifting the burden of production to CenterPoint, which did not meet it with respect to those measures.

In its Exceptions at 77-78, CenterPoint requests that it be allowed at least 120 days to implement any new ring-fencing measures and, if ordered, another 30 days to obtain a non-consolidation opinion. The ALJs recommend granting this request. The time periods stated in PFD Proposed Ordering Paragraphs 8 and 9 were based on the ALJs' estimate of what time periods would be reasonable, without evidence or argument on that point. Accordingly, the ALJs would revise those paragraphs to read:

8. CenterPoint shall implement and adhere to all financial protections listed in Finding of Fact No. 223. No later than 120~~90~~ days from the date of this Order, CenterPoint shall have implemented, and be adhering to, all of those financial protections, except as provided in Paragraph 9 below.
9. No later than 150~~30~~ days from the date of this Order, CenterPoint shall file in *Compliance Proceeding Regarding Financial Protections Ordered in Docket No. 49421*, Control No. , its separate non-consolidation opinion described in Finding of Fact No. 223(o). No later than 30 days from the date of this Order, and every 30 days thereafter until CenterPoint has fully implemented all of the financial protections listed in Finding of Fact No. 223, CenterPoint shall file in that

⁸ 1 Tex. Admin. Code § 155.427. Tex. Util. Code § 36.006 addresses burden of proof but applies to proposed rate changes.

proceeding a report describing the status of its compliance with each of those financial protections. No later than ~~April 30~~^{March 31} of each year, beginning with 2020, CenterPoint shall file a statement attesting to its compliance with all of those financial protections.

CenterPoint also requests that it be allowed to seek an extension of these deadlines for good cause if needed. The ALJs are not sure what procedure would be used to consider or grant such a good cause exception and have not revised the above paragraphs in that regard.

Operating and Maintenance Expenses/Incentive Compensation

CenterPoint also correctly points out that the ALJs' recommendation for a 92% disallowance of the total STI compensation should be corrected to 91.34%.⁹ For the reasons addressed above regarding capitalized incentive compensation, the ALJs recommend the following change to proposed Finding of Fact No. 236 in the PFD:

236. 92% 91.34% of CenterPoint's total requested STI costs should be disallowed, and the remaining ~~8%~~ 8.66% is reasonable and necessary to the provision of electric service and should be included in the cost of service.

Functionalization and Cost Allocation/Texas Margin Tax and Miscellaneous General Expenses

CenterPoint and Staff propose that the ALJs' recommended functionalization percentages for CenterPoint's Texas Margin Tax and miscellaneous general expenses be updated to reflect any potential flow-through impacts resulting from other recommended adjustments adopted by the Commission that affect the calculation of FERC Account Nos. 565 or 930.2, respectively.¹⁰ The ALJs agree and recommend the Commission adopt CenterPoint's and Staff's proposal.

Revenue Distribution and Rate Design/Street Lighting Services

In its Exceptions at 26, COH states that the ALJs misunderstood its position on CenterPoint's requested \$7.6 million of operation and maintenance (O&M) expenses for the street lighting services class. COH states that it did not recommend a reduction to the amount of O&M expenses allocated to the entire street lighting class, but rather proposed that \$2.7 million of that requested expense not be allocated to the light-emitting diode (LED) customers within that class. For this reason, COH requests that the Commission reject the ALJs' recommendation on this issue, or modify the ALJs' recommendation to include the above-referenced allocation adjustment.

The ALJs find that COH mischaracterizes the basis for its Exception to the ALJs' recommendation on this issue. Moreover, the ALJs find that COH's requested street lighting service allocation adjustment, as detailed in its Exceptions, differs from the recommendation COH proposed on this issue in its initial post-hearing brief. COH's initial brief states that "COH/HCC

⁹ CenterPoint Exceptions at 86.

¹⁰ CenterPoint Exceptions at 94; Staff Replies to Exceptions at 29.

recommends that the Company's O&M expenses related to street lighting [be] excluded, thereby reducing the Company's street lighting rates by \$2.73 million."¹¹ COH repeated that recommendation verbatim in its reply brief and included the following proposed finding of fact:

19. The Company's costs for the Street Lighting Class [is] overstated by \$2.73 million, because it erroneously includes O&M costs for this class that were not experienced during the test year and will not be incurred in the future.¹²

The ALJs address this issue above to provide the Commission background as to why the ALJs did not accept COH's Exception.

Other Issues

GCCC correctly points out that Footnote No. 1476 in the PFD should be corrected to replace "GCCC Ex. 1 at 22" with "TIEC Ex. 1 at 22."¹³ CenterPoint correctly points out that in Finding of Fact No. 395, "y" should be changed to "by"; and in Proposed Ordering Paragraph No. 11, "46449" should be changed to "49491."¹⁴

Exceptions, Replies, and Joint Objection and Motion to Strike Regarding CEHE Exhibit 72

In the Rate of Return (ROR)/Return on Equity section of its Exceptions, CenterPoint contends that CEHE Exhibit 72 (Attachment D to CenterPoint's Exceptions) should have been admitted; Staff and some intervenors take the opposite position in their Replies to Exceptions; and on October 17, 2019, Staff, GCCC, OPUC, TCUC, and TIEC filed a joint objection and motion to strike Attachment D and discussion thereof in CenterPoint's Exceptions. On October 24, 2019, CenterPoint filed a response to the joint objection and motion to strike.

Whether to admit an exhibit not previously admitted and how to rule on the joint objection and motion to strike are matters before the Commission, not the ALJs. In case it would be helpful, the ALJs provide the following background about the objections and evidentiary rulings regarding CEHE Exhibit 72 at the hearing, which the PFD does not discuss.

The hearing took place on June 24 to 28, 2019. Twice during the hearing (June 26 and 27, 2019), CenterPoint offered CEHE Exhibit 72 and the ALJs sustained Staff and intervenor objections to it. Those two offers are discussed below.

Offer on June 26, 2019 (during cross-examination of Staff witness Darryl Tietjen). On June 26, 2019, when the hearing reconvened at 1:20 p.m., the first witness to testify was Staff ROR

¹¹ COH Initial Brief at 39-40. See Tr. at 233.

¹² COH Reply Brief at 33 and 36.

¹³ GCCC Exceptions at 9.

¹⁴ CenterPoint Exceptions at 104.

witness Jorge Ordonez, followed by CenterPoint ROR witness Robert B. Hevert.¹⁵ After redirect and recross-examination of Mr. Hevert, CenterPoint witness Robert B. McRae testified, followed by Staff witness Tietjen,¹⁶ who testified to Staff's recommended financial protections (ring-fencing). CenterPoint was the only party to cross-examine Mr. Tietjen. CenterPoint offered CEHE Exhibit 72 at the end of its cross-examination of him.¹⁷ At that time, CenterPoint counsel stated that Moody's had issued the document that CenterPoint offered as CEHE Exhibit Ex. 72 "literally two hours ago." After the ALJs sustained objections to CEHE Exhibit 72, Staff began redirect examination of Mr. Tietjen a few minutes after 5:00 p.m.¹⁸

While being cross-examined by CenterPoint, Mr. Tietjen agreed his job duties include preparing testimony on ROR and other financial issues and that his testimony in this case sets out legal standards relating to setting a utility's ROR, including maintenance of credit and attraction of capital.¹⁹ At that point, Staff objected that CenterPoint was exceeding its estimated cross-examination time and asking Mr. Tietjen about matters beyond the scope of his testimony, and requested that CenterPoint move along. CenterPoint then had CEHE Exhibit 72 marked and asked Mr. Tietjen additional questions. He agreed that his testimony included quotations from Moody's and that Moody's is one of the sources of information to which persons in his area of expertise look for support and guidance. Asked to look at CEHE Exhibit 72, Mr. Tietjen agreed that it showed it was a Moody's document dated June 26, 2019, and that it said the outlook was being changed from stable to negative, at which point Staff objected to him being asked about the exhibit because he was not Staff's ROR witness.²⁰ After the ALJs sustained the objection, the following exchange occurred between CenterPoint counsel Mark Santos and Staff counsel Stephen Mack:

MR. SANTOS: Well, if Mr. Ordonez is still here and would like to retake the stand, we'd request permission to cross-examine him again.

MR. MACK: We've already been past that, Your Honor. We're well into the evening here. We think that it needs to move along. They had plenty of opportunity to cross-examine Mr. Ordonez, and there was another attorney cross-examining him who had every opportunity.

MR. SANTOS: Your Honor, we got this as quickly as we could here today. It literally was issued two hours ago, so there's no delay on our part or intent to delay here. It is directly related to Mr. Tietjen's testimony. He speaks to credit metrics and how they are important to his issue of ring-fencing, and that's all this document

¹⁵ Mr. Ordonez's live testimony is at Tr. at 658-708; Mr. Hevert's is at Tr. at 708-75 and includes a recess at 3:10 p.m., partway through his cross-examination.

¹⁶ Tr. at 784-824.

¹⁷ CenterPoint's cross-examination of Mr. Tietjen is at Tr. at 785-819; its questions regarding and offer of CEHE Exhibit 72 are at Tr. at 810-19.

¹⁸ Tr. at 819.

¹⁹ Tr. at 811-14.

²⁰ Tr. at 814-16.

talks about. It is – Mr. Tietjen has both the experience, expertise, and the testimony in this case to answer to this document.²¹

TIEC objected that Mr. Tietjen did not state he had ever seen the document before or had any knowledge of what was in it, so he could not authenticate it and it was hearsay. CenterPoint responded that an expert like Mr. Tietjen could be cross-examined about a document of a type he relied on even if he had not seen it before.²² After the ALJs again did not admit the exhibit, CenterPoint counsel stated “we’ll just need to make an offer of proof on it, Your Honor.”²³ CenterPoint had no other questions for Mr. Tietjen. Four more witnesses testified before the hearing recessed for the day at 7:45 p.m., when CenterPoint made an offer of proof for CEHE Exhibit 72.²⁴

Offer on June 27, 2019 (during direct examination of CenterPoint rebuttal witness Ellen Lapson). The hearing reconvened on June 27, 2019, at 9:00 a.m.²⁵ That morning, CEHE Exhibit 72 was offered for the second time, during CenterPoint’s direct examination of Ms. Lapson, as a supplement to her workpapers.²⁶ Staff, TIEC, COH, and TCUC objected.²⁷ TIEC counsel Katie Coleman objected that the supplement was the same exhibit the ALJs had excluded the day before; that TIEC’s witnesses had no opportunity to review it, be cross-examined on it, or offer any credit reports that might have been issued since their testimony was filed; and that Ms. Coleman was not “in a position to ask Ms. Lapson questions about this today without the benefit of having my experts review it.”²⁸ COH counsel Alton Hall stated that it was an inappropriate attempt to supplement CenterPoint’s testimony, that COH had had no opportunity to do discovery on it, and that he was “seeing it for the first time.”²⁹ He argued:

MR. HALL: At some point, we have to cut it off. That’s the reason we have deadlines for discovery. You gave a deadline on errata, and, you know, there are a lot of things that we could try to supplement that may have changed since the time someone filed their testimony. But the case has to be tried, and we prepared to try it based on the rebuttal that was filed.

²¹ Tr. at 816.

²² Tr. at 815, 817.

²³ Tr. at 818-19. CenterPoint did not mention any plan to re-offer the exhibit the next day.

²⁴ Tr. at 934.

²⁵ Tr. at 937.

²⁶ Tr. at 955-67.

²⁷ Tr. at 956-66.

²⁸ Tr. at 959.

²⁹ Tr. at 957.

So to come here on the last day of the hearing to talk about something that they claim just changed within the last couple of days totally prejudices the other parties with no countervailing benefit that would overcome that.³⁰

Staff joined the intervenors' objections. CenterPoint counsel Andrea Stover responded:

MS. STOVER: Your Honor, we actually supplied the errata last night to the parties. I know it was late, but we did not actually receive the information until yesterday afternoon. It was a change announced by Moody's just yesterday.

It corrects Ms. Lapson's testimony. Ms. Lapson's testimony is actually currently incorrect given the change that was announced by Moody's....

And the rule actually states that the presiding officers have the discretion to let the supplemental testimony in and allow the other parties to respond to it separately....

Ms. Lapson's testimony on Page 57 discusses an outlook that was issued by Moody's on June 17th, 2019, discussing the possibility of changing – or, I guess, the impacts of this case on CEHE's credit rating as being credit negative. The announcement they made yesterday was the follow-up to that.³¹

The ALJs again did not admit the exhibit, stating “it wasn't correcting an actual error in your report at the time you wrote it... [A] lot of the witnesses and expert witnesses have already left.... We understand that the facts have changed in this report, and so we're trying to mitigate the issues of it being sprung on the parties at the very last minute without the effect of y'all being able to conduct discovery on this.”³²


³⁰ Tr. at 960-61. The hearing had been set for June 24-27, 2019 (SOAH Order No. 2), but took longer than expected, adjourning shortly after noon on June 28, 2019. Tr. at 1367.

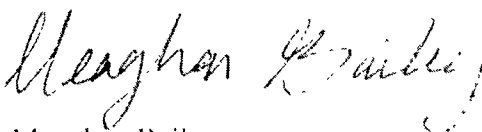
³¹ Tr. at 958, 960-61. The Commission rule referenced by Ms. Stover is 16 Tex. Admin. Code § 22.225(c), which states: “Oral or written supplementation of prefiled testimony and exhibits may be allowed prior to or during the hearing provided that the witness is available for cross-examination. The presiding officer may exclude such testimony if there is a showing that the supplemental testimony raises new issues or unreasonably deprives opposing parties of the opportunity to respond to the supplemental testimony. The presiding officer may admit the supplemental testimony and grant the parties time to respond.”


³² Tr. at 963-64, 966.

With the corrections described in this letter, the PFD is ready for your consideration.

Sincerely,


Steven D. Arnold
Administrative Law Judge


Meaghan Bailey
Administrative Law Judge


Elizabeth Drews
Administrative Law Judge

xc: All Parties of Record