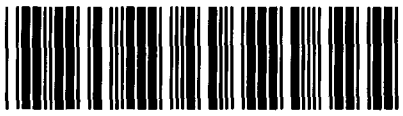
Control Number: 49421



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November 8, 2019

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FILING CLERK

Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin
Public Utility Commission of Texas
1701 N. Congress Avenue
PO Box 13326
Austin, Texas 78711-3326

RE: PUC Docket No. 49421, SOAH Docket No. 473-19-3864, Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates

Dear Chairman Walker, Commissioner D'Andrea, and Commissioner Botkin:

In a legislative hearing earlier this year, I testified on behalf of Texans for Lawsuit Reform on a bill we believed would take a small step toward reducing unnecessary and expensive tactics in rate cases pending before the Railroad Commission.[1] SOAH's decision in the above-referenced matter seemingly rewards the type of behavior that concerns us.

As the Commission knows, utility rate cases are among the most complex and important of administrative proceedings. It is not unusual to have multiple parties intervene in these cases, and the cases often produce an administrative record in the tens of thousands of pages. These intervening parties, in particular, can dramatically increase litigation costs—and build-up attorney fees—by sending voluminous discovery requests. Often, only a fraction of the information produced by the utility in response to these requests is introduced into evidence.

In addition to sending voluminous discovery requests, intervening parties are requiring ever-more information from the utility to meet its burden of proof on issues such as the prudence of the utility's capital investments.[2] The intervenors argue that the utility must have an independent retrospective analysis or a cost/benefit analysis, or must demonstrate quantifiable improvements in service, to justify capital expenditures.[3] The City of Houston's challenge to CenterPoint Houston's underground reliability program investment in this case is an example of an intervenor demanding an enhanced quantum of evidence to prove the prudence of the investment.

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[1] *See* http://tlcsenate.granicus.com/MediaPlayer.php?clip_id=14386 at 47:17.

[2] Texas courts and the Commission have consistently applied a "reasonable utility manager" standard to evaluate the prudence of capital investments. *See, Gulf States Util. Co. v. Pub. Util. Comm'n*, 841 S.W.2d 459 (Tex. App. Austin—1992, writ denied).

[3] An appeal pending before the Texas Supreme Court of this Commission's decision regarding the prudence of an electric generating plant is one such example. *Public Utility Comm'n of Texas and Southwestern Elec. Power Company v. Texas Industrial Energy Consumers, et. al.*, No. 18-1061 (Tex. appeal docketed Nov. 6, 2018).

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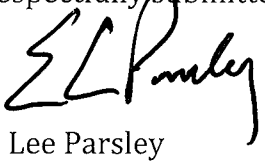
Responding to these unsupported-in-law arguments is expensive. Developing the evidence being requested is too. All of it increases the time being billed to the case by the intervenor attorneys. We are concerned these kinds of arguments are incentivized by the fact that law firms representing cities have their legal fees paid for by utility customers rather than by the cities that retain them.[4] It is, in effect, it is no-risk litigation for the attorneys and a hidden tax on Texans.

We encourage the Commission to apply the same prudence standard in this case that it has applied in rate case after rate case. We encourage the Commission to reject proposals, like the City of Houston's, that are unsupported in the law and impose new and undefined requirements on a utility. Otherwise, attorneys who represent intervenors in these matters will continue to litigate excessively because they know their fees will be paid by the utilities—and passed through to rate payers—no matter the outcome of the intervention.

We appreciate the Commission's consideration of these comments regarding this important case.

Respectfully submitted,



E. Lee Parsley
General Counsel

cc: Attorneys of record by email

[4] Public Utility Regulatory Act, Tex. Util. Code Ann. § 33.023 ("PURA").