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**SOAH DOCKET NO. 473-22-2353  
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**APPLICATION OF CENTERPOINT  
ENERGY HOUSTON ELECTRIC,  
LLC FOR APPROVAL TO AMEND  
ITS DISTRIBUTION COST  
RECOVERY FACTOR**

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**BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DIRECT TESTIMONY**

**OF**

**CHARLES S. GRIFFEY**

**ON BEHALF OF TEXAS COMPETITIVE POWER ADVOCATES AND  
THE ALLIANCE FOR RETAIL MARKETS**

September 16, 2022

**SOAH DOCKET NO. 473-22-2353  
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1                                    **DIRECT TESTIMONY OF CHARLES S. GRIFFEY**

2                                    **I.        WITNESS QUALIFICATIONS AND BACKGROUND**

3    **Q.        PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.**

4    A.        My name is Charles S. Griffey, and I am President of Peregrine Consultants, LLC.  
5                Peregrine Consultants, LLC provides consulting services regarding the electric power  
6                industry. My address is 2918 Todville Road, Seabrook, Texas 77586.

7    **Q.        ON WHOSE BEHALF ARE YOU PROVIDING TESTIMONY?**

8    A.        I am testifying on behalf of Texas Competitive Power Advocates (TCPA) and the Alliance  
9                for Retail Markets (ARM).

10   **Q.        WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11   A.        I address whether CenterPoint Energy Houston Electric's (CEHE) request to recover the  
12                costs of its recently leased mobile generation units in a Temporary Emergency Electric  
13                Energy Facilities (TEEEF) rider should be granted.

14   **Q.        PLEASE OUTLINE YOUR FORMAL EDUCATION AND CERTIFICATIONS.**

15   A.        I have a Master of Business and Public Management from the Jones Graduate School of  
16                Business at Rice University and a Bachelor of Science in Chemical Engineering from Rice  
17                University. I am a Chartered Financial Analyst and a Professional Engineer registered in  
18                the State of Texas.

19   **Q.        PLEASE STATE YOUR PROFESSIONAL EXPERIENCE.**

20   A.        Prior to becoming a consultant in 2009, I was employed by Reliant Energy, Inc. (Reliant)  
21                as Senior Vice President of Regulatory Affairs and Market Design. I was responsible for  
22                Reliant's nationwide efforts in the design of competitive markets, regulatory affairs  
23                including interface with state commissions and Regional Transmission Organizations, and

1 government affairs. Reliant owned generation in a number of states and had retail  
2 operations in Texas and the Mid-Atlantic region.

3 I began working for Houston Lighting and Power (HL&P), the electric utility  
4 serving parts of Southeast Texas and the predecessor company to Reliant, in 1989 in  
5 Corporate Planning where I worked on resource planning, including determining what  
6 power plants to construct, what projects to cancel, evaluation of owning plants compared  
7 to power purchases, and determination of marginal cost. Beginning in 1995, I was also  
8 responsible for the rate department, and eventually I became Vice President of Regulatory  
9 Planning, with responsibility for resource planning, financial planning, rates, and rate  
10 design and cost allocation. Subsequently, I helped lead the integrated utility's efforts in  
11 restructuring the ERCOT market and transitioning the company for competition,  
12 integrating both wholesale and retail market design and operations, restructuring of utility  
13 functions and affiliate issues, and public policy advocacy.

14 Before working for Reliant, I worked at Austin Energy, at the Public Utility  
15 Commission of Texas (Commission), and for Bechtel Group, Inc. as an engineer on the  
16 Coolwater Coal Gasification Project.

17 **Q. PLEASE DESCRIBE YOUR EXPERIENCE WITH MATTERS PERTAINING TO**  
18 **RATE IMPACTS, RESOURCE PLANNING AND UTILITY DECISION-MAKING**  
19 **REGARDING GENERATION PROJECTS.**

20 A. While at HL&P I was responsible for resource planning, financial planning and rates. I  
21 evaluated decisions to retire plants, reactivate plants, and add new power plants, as well as  
22 the economics of power purchases and demand-side management. I also worked with the  
23 Electric Power Research Institute (EPRI) to examine how to use options analysis to  
24 evaluate the decision to retire a unit or add a resource, as well as general resource planning

1 economic issues. I helped develop HL&P's generation and integrated resource planning  
2 models, and I helped transition the company's models away from traditional revenue-  
3 requirement utility planning models to value-based planning models and ultimately  
4 market-based models and decision analysis. While at Reliant Energy, I participated in  
5 evaluations of power plant construction, mothballing, and retirements using state-of-the-  
6 art probabilistic and market-based models.

7 During my employment at HL&P, the company built one new plant, signed several  
8 purchased power agreements, and terminated proposed natural gas plants and a lignite  
9 plant. Later, I helped lead the transition of the company to wholesale and then retail  
10 competition. I am very familiar with traditional resource planning concepts as well as the  
11 evolution of those concepts as competitive markets developed and market prices became  
12 available. Later as an executive at Reliant, I also served as part of the Wholesale  
13 Leadership Team overseeing the Company's generation fleet, the Retail Leadership Team  
14 overseeing the retail business, and the Strategic Planning Committee, along with the CEO,  
15 CFO and Senior VP of Strategy. As part of those groups, I actively participated in decisions  
16 regarding new and existing generating units and projects.

17 Previously I served on the staff of the Commission and testified as to the prudence  
18 of utility fuel procurement and integrated resource planning.

19 **Q. PLEASE DESCRIBE YOUR CONSULTING EXPERIENCE ON RESOURCE**  
20 **PLANNING ISSUES.**

21 A. As a consultant I have testified on the prudence of utility resource planning and evaluated  
22 utility resource planning in numerous jurisdictions. Before the Texas Commission, I have  
23 testified on the prudence of Southwestern Electric Power Company's (SWEPCO) decision

1 to complete construction of the Turk coal plant in Docket No. 40443, Southwest Public  
2 Service Company's (SPS) decision to enter into solar purchased power agreements in  
3 Docket No. 48973, SWEPCO's request to purchase three wind farms in Oklahoma in  
4 Docket No. 49737, Entergy Texas's request to acquire a solar project in Liberty County in  
5 Docket No. 51215, and Entergy Texas's request to build the Orange County Advanced  
6 Power Station. I testified that Mississippi Power Company's continued efforts to complete  
7 the Kemper integrated gasification combined-cycle plant in Mississippi were imprudent. I  
8 have also testified regarding proposed combined-cycle gas plants in Louisiana and Texas,  
9 Public Service Company of Colorado's plan to early retire two coal plants and replace them  
10 with renewables and peaking units, Vectren South's proposal to build a solar facility in  
11 Indiana, NIPSCO's plan to retire its coal fleet in favor of renewables, and Public Service  
12 of New Mexico's plan to retire a coal plant and replace it with renewables and company-  
13 owned aeroderivative gas turbines.

14 **Q. WHAT REGULATORY COMMISSIONS AND COURTS HAVE YOU TESTIFIED**  
15 **BEFORE?**

16 A. I have testified before the Federal Energy Regulatory Commission (FERC) and the state  
17 regulatory commissions of Colorado, Indiana, Kansas, Louisiana, Maryland, Mississippi,  
18 New Mexico, Pennsylvania, and Texas. I have testified or provided expert reports to state  
19 and federal courts and provided testimony before the Texas Legislature. As a consultant,  
20 I have testified on behalf of ratepayer coalitions, industrial customers, retail electric  
21 providers, generators, fuel suppliers, and the Staff of the Texas Commission. Exhibit CSG-  
22 1 lists the testimony I have presented and a summary of my work experience.

1 **Q. IS YOUR TESTIMONY BASED ON YOUR PERSONAL KNOWLEDGE AND**  
2 **EXPERIENCE AND THE INFORMATION YOU REVIEWED IN THIS CASE?**

3 A. Yes.

4 **Q. DID YOU RELY ON SOURCES OF INFORMATION THAT YOU REGARD AS**  
5 **RELIABLE AND ARE ORDINARILY AND CUSTOMARILY USED AND RELIED**  
6 **ON BY THOSE INVOLVED IN THE ELECTRIC INDUSTRY?**

7 A. Yes. The RFIs and discovery materials that I relied upon are included in Exhibit CSG-2.

8 **II. SUMMARY**

9 **Q. PLEASE DESCRIBE THE GENERATORS THAT CEHE HAS LEASED.**

10 A. In this proceeding, CEHE has requested recovery for nearly \$200 million in expenditures  
11 associated with its lease of 19 mobile generation units with a total capacity of 345  
12 megawatts (MW). However, to date, CEHE has leased ■■■ MW of mobile generation  
13 units.<sup>1</sup> The units are all turbines, as opposed to reciprocating engines, are dual fuel capable,  
14 and are mounted on trailers. The 32.5 MW units are mounted on trailers that are 75' X 25'  
15 with a 13 foot height, while the 5 MW units are mounted on trailers that are 53' X 8.5'.<sup>2</sup>  
16 The 32.5 MW generators require permits to transport, which typically take five days to  
17 receive, take 48 hours to breakdown for transport, and take another 48 hours to reconnect  
18 to the distribution system at a new location.<sup>3</sup> Consequently, they could be difficult to move  
19 during an ice storm or to certain areas in the aftermath of a hurricane. CEHE has positioned  
20 the units at various substations in its service territory. It plans on providing 4-6 hours of  
21 fuel on-site for the turbines.<sup>4</sup>

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<sup>1</sup> CEHE Response to TCPA RFI No. 2-5.

<sup>2</sup> Amended Direct Testimony and Exhibits of Martin W. Narendorf Jr. at bates 113-114 (July 1, 2022)  
(Narendorf Amended Direct).

<sup>3</sup> CEHE Response to HCC-RFI 08-06.

<sup>4</sup> CEHE Response to ARM/TEAM RFI No. 1-11.



1 **Q. WHAT IS THE TOTAL COST OF THE FACILITIES, INCLUDING**  
2 **CAPITALIZED RETURN AND O&M?**

3 A. As of September 1, 2022, the total cost of the facilities, including capitalized return and  
4 capitalized operation and maintenance (O&M) costs, is \$818 million.<sup>5</sup> By capitalized  
5 return and capitalized O&M costs, I am referring to CEHE's treatment of these mobile  
6 generation agreements as capital leases for ratemaking purposes and to the statute giving  
7 them authority to defer O&M expenses to a regulatory asset, respectively. This treatment  
8 enables CEHE to earn a return on what are otherwise expenses.<sup>6</sup>

9 **Q. WHAT IS THE PURPOSE OF THE FACILITIES?**

10 A. Effective September 1, 2021, Public Utility Regulatory Act<sup>7</sup> (PURA) § 39.918 allows a  
11 transmission and distribution utility (TDU) such as CEHE to lease and operate generation  
12 facilities to provide temporary emergency electric energy under a widespread power outage  
13 in which (1) ERCOT has ordered the utility to shed load, or (2) "the utility's distribution  
14 facilities are not being fully served by the bulk power system under normal operations."<sup>8</sup>

15 **Q. DOES PURA § 39.918 PLACE OTHER RESTRICTIONS UPON THE TEEEF?**

16 A. Yes, several. For instance, under PURA § 39.918(c) a utility may not sell the output from  
17 the facilities, under Subsection (d)(1) the facilities must be isolated from the bulk power  
18 system, and under Subsection (d)(2) the facilities cannot be included in ERCOT's  
19 calculation of locational marginal prices (LMPs), pricing, or in its reliability models.

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<sup>5</sup> Adding the Long-term and Short-term lease amounts shown in WP Mobile Generation Amended 6.28.22

<sup>6</sup> See PURA § 39.918(j).

<sup>7</sup> PURA §§ 11.001-66.016.

<sup>8</sup> PURA § 39.918(b)(1).

1           Additionally, under Subsection (e), the utility must ensure, to the extent practicable,  
2           that retail customer usage during operation of the TEEEF is adjusted out of the usage  
3           reported for billing purposes by the customer's retail electric provider. Furthermore, the  
4           TEEEF may only be operated during a widespread power outage, which is specifically  
5           defined in Subsection (a)(1) as a loss of electric power that affects a significant number of  
6           customers in the TDU's service territory, has lasted or is expected to last at least eight  
7           hours, and is a risk to public safety. A TDU utilizing TEEEF must also include a detailed  
8           plan of the TDU's use of the facilities in its emergency operation plan filed with the  
9           Commission under Subsection (g). Finally, PURA § 39.918(h)(1) restricts the TDU to  
10          only recovering its reasonable and necessary operating costs of leasing and operating the  
11          facilities.

12   **Q.    IN YOUR EXPERIENCE WHAT FACTORS ARE CONSIDERED WHEN**  
13   **DETERMINING WHETHER A COST IS REASONABLE AND NECESSARY?**

14   A.    While I am not an attorney and am not making a legal conclusion, based on my 40 years  
15          of experience in utility ratemaking, issues such as prudence and whether an asset is used  
16          and useful in providing electric service are considerations that weigh on this determination.  
17          My testimony will focus on the prudence of CEHE's procurement of the TEEEF, although  
18          I also address concerns about the appropriate use of the facilities.

19   **Q.    BASED UPON YOUR REVIEW, SHOULD THE COMMISSION APPROVE**  
20   **CEHE'S REQUEST IN THIS CASE?**

21   A.    No. CEHE has not come close to meeting its burden to show that the TEEEF it has procured  
22          is appropriately sized or is the correct technology. CEHE has made no showing that the  
23          benefits to ratepayers as a whole will outweigh the cost of the TEEEF.

### 24          **III.    THE PRUDENCE OF CEHE'S PROCUREMENT OF TEEEF**

1       **A.     The Decision to Procure 500 MW of TEEEF**

2       **Q.     WHAT FACTORS WERE INVOLVED IN CEHE’S DECISION TO SEEK 500 MW**  
3       **OF TEEEF IN THE SUMMER AND FALL OF 2021?**

4       A.     The passage of House Bill (HB) 2483 permitted TDUs to employ TEEEF and to recover  
5       the cost on favorable terms, such as capitalization and recovery of return and O&M costs.  
6       CEHE expressed interest in having an amount of TEEEF available for the last part of the  
7       hurricane season of 2021 that was only limited by market availability (the short-term  
8       lease).<sup>9</sup> CEHE also wanted to get TEEEF in hand [REDACTED] for the winter of  
9       2022.<sup>10</sup> CEHE also expressed that an important factor was getting the TEEEF installed  
10      before December 31, 2021 in order for it to qualify for this Distribution Cost Recovery  
11      Factor (DCRF) proceeding.<sup>11</sup>

12      **Q.     WHAT IS THE ANNUAL COST OF THE TEEEF THAT CEHE HAS PROCURED?**

13      A.     In 2023 it will be approximately \$112 million.<sup>12</sup>

14      **Q.     WHAT IS THE COST PER KW FOR THE TEEEF?**

15      A.     CEHE has not publicly shown this number. In management’s presentation to the CEHE  
16      board, it shows a number of \$[REDACTED]/kW,<sup>13</sup> but that is for the long-term lease before pre-  
17      payments. With the short-term lease, prepayments, and capitalized items the cost is higher,  
18      at \$[REDACTED]/kW. Using the approximate number of MW made public (i.e. 500 MW), the cost  
19      is even higher still at \$1,636/kW. Bear in mind that this only covers the ability to operate  
20      these facilities through June 30, 2029.

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<sup>9</sup> Narendorf Amended Direct at bates 111.

<sup>10</sup> CEHE Response to TCPA RFI 2-1.

<sup>11</sup> CEHE Response to TEAM RFI 1-10).

<sup>12</sup> Amended Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend Its  
Distribution Cost Recovery Factor at Amended Exhibit MAK-6 (July 1, 2022) (Amended Application).

<sup>13</sup> CEHE Response to TCPA RFI 2-1.

1 **Q. WHAT WOULD BE AN APPLES-TO-APPLES COMPARISON TO A THIRTY-**  
2 **YEAR GENERATION ASSET?**

3 A. The Commission will be familiar with generation assets that have an expected thirty-year  
4 life, such as utility-scale gas turbines and combined cycle gas turbines, or as some utilities  
5 have claimed, certain renewable facilities. If the payments for the TEEEF are put on a  
6 common footing with such 30-year-life assets, the cost of the CEHE's TEEEF would be  
7 approximately \$4,000/kW.

8 **Q. PLEASE COMPARE THE COST OF THE MOBILE GENERATORS TO THE**  
9 **COST OF GENERATION CONNECTED TO THE TRANSMISSION SYSTEM.**

10 A. Prior to the recent bout of inflation, according to the Energy Information Agency,  
11 combustion turbines (CT) in ERCOT cost slightly less than \$800/kW in 2021 dollars, while  
12 Combined Cycle Gas Turbines (CCGTs) would be approximately \$1,000/kW. Solar  
13 facilities would have been under \$1,400/kW.<sup>14</sup> All of these costs would be higher today  
14 because of inflation.<sup>15</sup>

15 In contrast to these facilities, the cost of having the TEEEF available for 30 years  
16 would be \$4,000/kW, some five times more than a CT. \$4,000/kW is greater than what  
17 EIA estimates as the cost of an ultra supercritical coal plant (\$3,800/kW).<sup>16</sup>

18 **Q. WHAT DOES THE EIA SHOW TO BE THE COST OF RECIPROCATING**  
19 **INTERNAL COMBUSTION ENGINES (RICE)?**

20 A. The most recent EIA report shows that 5.6 MW RICE are estimated to cost \$1,898/kW.

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<sup>14</sup> Cost and Performance Characteristics of New Generating Technologies, Annual Energy Outlook 2022, EIA (Mar. 2022) (EIA 2022).

<sup>15</sup> For instance, this past summer a utility in Southeast Texas estimated that a CCGT, including the extra cost to co-fire hydrogen, would have cost approximately \$1,400/kW.

<sup>16</sup> See EIA 2022.

1 **Q. WHAT WOULD THE COST OF A TYPICAL COMBUSTION TURBINE BE**  
2 **OVER AN EIGHT-YEAR PERIOD?**

3 A. It would be approximately \$400/kW over eight years, or about 25% of the cost of the  
4 TEEEF.

5 **Q. ARE YOU SUGGESTING THAT UTILITY-SCALE GENERATION IS A**  
6 **SUBSTITUTE FOR THE TEEEF?**

7 A. No. While some utility scale generation might be able to be TEEEF (such as LM6000  
8 turbines, which are ~40 MW in size), the point I am making is that CEHE's chosen TEEEF  
9 technology is much more expensive than generation that the Commission has historically  
10 required utilities to demonstrate is reasonable to acquire to meet customers' needs using  
11 rigorous analysis. To protect customers from imprudent and unnecessary expenditures, the  
12 same level of rigor should be applied to TEEEF.

13 **Q. WHAT IS THE STANDARD THAT YOU APPLY FOR PRUDENCE?**

14 A. I used the prudence standard applied by the Commission in the *Gulf States* case:

15 [T]he exercise of that judgment or the choosing of one of a select  
16 range of options which a reasonable utility manager would exercise  
17 or choose in the same or similar circumstances given the information  
18 or alternatives available at the point in time such judgment is  
19 exercised or option is chosen.<sup>17</sup>

20 **Q. HAS CEHE PROVIDED ANY ANALYSIS THAT DEMONSTRATES THAT THE**  
21 **BENEFITS OF THE TEEEF OUTWEIGH THE COST?**

22 A. No.

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<sup>17</sup> *Application of Gulf States Utilities Company for Authority to Change Rates*, Docket No. 6525, Examiner's Report at Conclusion of Law 25 (Sept. 8, 1986), adopted by Final Order (Oct. 15, 1986); see also *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at Conclusion of Law 15 (Mar. 19, 2018).

1 **Q. IS THERE ANY DOCUMENTATION TO DEMONSTRATE THAT CEHE**  
2 **PERFORMED ANY COST/BENEFIT ANALYSIS AT ALL BEFORE**  
3 **PROCEEDING WITH LEASING TEEEF?**

4 A. No. “CEHE did not perform any numerical analysis to demonstrate the value or benefit to  
5 customers of the mobile generation facilities.”<sup>18</sup> Neither did CEHE perform any analysis  
6 as to the amount of the TEEEF to purchase or the reasonableness of the cost of the TEEEF.  
7 CEHE appears to take the position that holding an RFP demonstrates the reasonableness  
8 of the cost.<sup>19</sup>

9 **Q. IF THERE IS NO DOCUMENTATION, HOW DID CEHE DETERMINE THE**  
10 **SIZE OF THE MOBILE GENERATION FACILITIES IT HAS LEASED?**

11 A. Mr. Narendorf states that following Winter Storm Uri CEHE was trying to identify  
12 “solutions to improve system resiliency. In its assessments, the Company identified that  
13 having approximately 500 MW of mobile generation facilities, which along with “other  
14 options” the Company is pursuing, would have been sufficient to meet the load shed  
15 demands caused by Winter Storm Uri.”<sup>20</sup>

16 **Q. HOW WERE THESE ASSESSMENTS MADE?**

17 A. CEHE states that its assessment as to the size of TEEEF needed was “done in a meeting in  
18 the form of verbal discussions.”<sup>21</sup> CEHE goes on to say that “[n]o drafted assessments or  
19 analysis were performed.”<sup>22</sup>

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<sup>18</sup> CEHE Response to ARM/TCPA RFI No. 1-03.

<sup>19</sup> CEHE Response to ARM/TCPA RFI No. 1-04.

<sup>20</sup> Narendorf Amended Direct at bates 111.

<sup>21</sup> CEHE Response to TEAM RFI No. 1-7.

<sup>22</sup> *Id.*

1 **Q. PLEASE DESCRIBE THE AMOUNT ERCOT REQUESTED CEHE TO SHED**  
2 **DURING WINTER STORM URI.**

3 A. CEHE was required to shed close to 5,000 MW of load during Winter Storm Uri.<sup>23</sup> CEHE  
4 also states that it can automatically and evenly rotate up to 50% of the load available in its  
5 manual load shed block, which during Uri was 3,375 MW. One-half of that amount is  
6 1,688 MW.<sup>24</sup>

7 **Q. WOULD HAVING 500 MW OF TEEEF HAVE ALLOWED CEHE TO**  
8 **AUTOMATICALLY AND EVENLY ROTATE THE LOAD SHED REQUIRED**  
9 **DURING WINTER STORM URI?**

10 A. No. Based on the information CEHE provided, if relying on TEEEF alone, it would need  
11 approximately 3,300 MW to have been able to automatically and evenly rotate outages  
12 during Uri.<sup>25</sup> With TEEEF proposed to cover 500 MW, I can only assume that, the “other  
13 options” referred to in Mr. Narendorf’s testimony quoted above must make up the bulk of  
14 the “other options” needed to mitigate the issues CEHE experienced during ERCOT’s  
15 ordered load shed during Uri. As I describe below, there is no indication that CEHE  
16 developed a plan that considered how alternative solutions traded off against one another  
17 to create a comprehensive solution at the least cost. Instead CEHE’s lease of 500 MWs of  
18 TEEEF seems to be something it did because it thought it could, not because it should.

19 **Q. WHAT ARE THESE OTHER OPTIONS REFERRED TO BY MR. NARENDORF?**

20 A. CEHE cites that it is evaluating under-frequency load shed circuits (UFLS) and intelligent  
21 grid switching devices (IGSD) in addition to TEEEF.<sup>26</sup> In fact, CEHE states that it already

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<sup>23</sup> Narendorf Amended Direct at bates 115-116.

<sup>24</sup> CEHE Response to TEAMRFI No. 1-3.

<sup>25</sup> The 5,000 MW discussed above less 1,688 MW = ~3,300 MW.

<sup>26</sup> CEHE Response to HCC RFI No. 8-9.

1 has 3,000 MW of UFLS at the ready and expects to have 270 MW of IGSD ready by the  
2 end of 2022.<sup>27</sup>

3 **Q. DID CEHE ANALYZE THE COST/BENEFIT TRADEOFFS OF 500 MW OF**  
4 **TEEEF COMPARED TO UFLS OR IGSD?**

5 A. There is no contemporaneous documentation that it did so, and because the “assessment”  
6 was done orally in one meeting with no documentation, it strains credulity that an in-depth  
7 analysis was made. For instance, why would it not have been cost-effective to have 3,500  
8 MW of UFLS circuits, or more IGSD, instead of 500 MW of TEEEF? What beneficial  
9 need can TEEEF meet that these other options cannot? And is the cost of the TEEEF lower  
10 than the value of the benefit? Was it reasonable for CEHE to assume the need to shed as  
11 much load as in Winter Storm Uri for future events given the myriad policies and responses  
12 put in place in ERCOT following that event? There is no evidence that CEHE addressed  
13 these questions before pursuing acquisition of TEEEF.

14 **Q. HOW MUCH TEEEF CAPACITY HAS CEHE CONSIDERED LEASING?**

15 A. It states that it has considered up to 1,800 MW of TEEEF.<sup>28</sup>

16 **Q. WHAT WOULD BE THE COST OF 1,800 MW OF TEEEF?**

17 A. Using the same pricing as the 500 MW already procured, it would cost \$2.8 billion (present  
18 value) over the next 7.5 years to procure 1,800 MW of TEEEF facilities. Again, that would  
19 only lease the TEEEF for 7.5 years.

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<sup>27</sup> Id.

<sup>28</sup> Id.



1 **Q. WHAT IS CEHE'S DISTRIBUTION RATE BASE?**

2 A. Based on the final order in CEHE's last rate case, it was \$3.8 billion. It is somewhat below  
3 \$5 billion currently.<sup>29</sup>

4 **Q. PLEASE COMPARE THE SIZE OF THE 500 MW OF TEEEF TO CEHE'S**  
5 **DISTRIBUTION RATE BASE.**

6 A. At \$818 million, it is approximately 17% of CEHE's distribution rate base, a sizable  
7 amount. \$2.8 billion would be almost 60% of existing distribution rate base. Both are  
8 significant numbers for an asset for which CEHE has presented no evidence as to the  
9 benefit of having the asset outweighing the cost.

10 **Q. PLEASE COMPARE THE COST AND SIZE OF CEHE'S PROCURMENT TO**  
11 **THAT OF THE LARGEST TDU IN TEXAS.**

12 A. Oncor procured 7.5 MW of TEEEF under 7 year leases at a rate base cost of \$3.1 million  
13 as of December 31, 2021. This comes out to \$413/kW, or about 25% of the unit cost of  
14 the TEEEF that CEHE procured. There were 7 units procured by Oncor, so given the small  
15 size of the units they are likely reciprocating engines.<sup>30</sup>

16 **Q. HOW DID CEHE DETERMINE THAT THE CHOSEN TURBINE FACILITIES**  
17 **WERE THE APPROPRIATE TECHNOLOGY?**

18 A. That is not clear. Compared to reciprocating engines, gas turbine-based TEEEF cost more  
19 upfront but have lower O&M costs. They also provide more power in a lower footprint.  
20 However, CEHE made no cost comparison between reciprocating engines and gas turbine-  
21 based solutions. It sought price estimates for mobile turbine generators on July 22, 2021,

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<sup>29</sup> Amended Application at Schedule B, bates 384.

<sup>30</sup> *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 53601, Response of Oncor Electric Delivery Company LLC to Commission Staff's Tenth Request for Information at Staff 10-03 Attachment 1 and 10-4 (Aug. 4, 2022) (Attachment CH-4).

1 so CEHE appears to have ruled out reciprocating engines by then. Yet a vendor offered  
2 pricing that showed a 2 MW reciprocating engine would have a cost of [REDACTED] per  
3 month.<sup>31</sup> At that price, CEHE could have gotten 500 MW of TEEEF for under \$[REDACTED] million  
4 over 7.5 years.<sup>32</sup> While the operating cost would have been ~10% higher per hour, these  
5 are standby units for extreme emergencies, and it is not expected that the TEEEF would be  
6 used very often. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]<sup>34</sup>

15 **Q. ARE THERE OTHER REASONS TO PREFER THE TURBINE-BASED UNITS?**

16 A. Possibly. The turbines procured have the ability to operate on either natural gas or diesel,  
17 while the reciprocating engines then available might not. The turbines were also available  
18 at the correct voltage output, and there is no information provided for the cost to change  
19 the voltage output of the reciprocating engines. But the key point is that CEHE did not

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<sup>31</sup> CEHE Response to TCPA RFINo. 3-1.

<sup>32</sup> This is still far in excess of the cost that Oncor paid on a per kW basis for small units. Using Oncor's pricing, the cost for 500 MW would be ~\$200 million.

<sup>33</sup> Comparing the cost and run expense of the 2 MW reciprocating engines to the 35.5 MW turbines.

<sup>34</sup> CEHE Response to HCC RFP No. 5-1.

1 analyze the cost/benefit tradeoffs. It simply found some turbines that met certain criteria  
2 and were available, and procured them without any cost/benefit analysis.

3 **Q. DID CEHE RECONSIDER THE AMOUNT OF CAPACITY IT PROCURED**  
4 **UNDER THE SHORT-TERM LEASE WHEN IT SAW THE PRICING?**

5 A. No.<sup>35</sup>

6 **Q. DID CEHE RECONSIDER THE AMOUNT OF CAPACITY IT PROCURED**  
7 **UNDER THE LONG-TERM LEASE WHEN IT SAW THE PRICING?**

8 A. No.<sup>36</sup>

9 **Q. HAS CEHE EVER CALCULATED THE ANNUAL EXPECTED REVENUE**  
10 **REQUIREMENT FOR THE TEEEF?**

11 A. No. Even today CEHE is unable to provide the expected annual revenue requirement  
12 associated with the TEEEF.<sup>37</sup>

13 **Q. HAS CEHE BEEN ABLE TO CALCULATE THE IMPACT ON ITS PROPOSED**  
14 **CAPITAL PLAN IN DISCUSSIONS WITH INVESTORS?**

15 A. Yes. They seem to have been able to do that quite well. For instance, at its September 23,  
16 2021 Analyst Day, CEHE estimated that TEEEF would add \$600 million to its 5 year  
17 capital spending plan. CEHE updated that on its February 22, 2022 earnings call to \$700  
18 million, and bragged about how this was a great example of its “team moving quickly to  
19 implement these changes for the benefits of our customers and our shareholders.”<sup>38</sup> While  
20 I certainly agree the TEEEF lease will benefit shareholders, the benefit to ratepayers is  
21 completely unsubstantiated.

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<sup>35</sup> CEHE Response to TEAMRFI No. 1-8.

<sup>36</sup> CEHE Response to TEAMRFI No. 1-9.

<sup>37</sup> CEHE Response to ARM-TCPA RFI No. 1-1.

<sup>38</sup> Fourth Quarter Earnings Conference Call transcript at 10-11 (Feb. 22, 2022).  
<https://investors.centerpointenergy.com/static-files/2140c431-cb18-4125-b43d-2a4850dabda4>.

1 **Q. HOW WOULD YOU EXPECT A REASONABLE UTILITY MANAGER TO**  
2 **EVALUATE WHETHER INVESTING IN TEEEF IS A REASONABLE CHOICE?**

3 A. Given the sums involved, I would expect that a reasonable utility manager would identify  
4 the need for a resource like TEEEF, including what the value of meeting that need is. I  
5 would expect such a manager to evaluate the costs and benefits of alternatives that can  
6 meet the need and the tradeoffs involved with selecting TEEEF compared to the  
7 alternatives. I would expect that the utility manager would spend the time necessary to do  
8 a reasonable analysis and to document that analysis. Although CEHE has claimed a need  
9 for urgency in procuring TEEEF, appropriate analysis and due diligence could have been  
10 conducted in a reasonably prompt timeframe prior to CEHE's procurement decision.  
11 Finally, I expect a reasonable utility manager to evaluate market conditions and reevaluate  
12 if market conditions indicate the path chosen originally is no longer beneficial.

13 **Q. HAS CEHE IDENTIFIED AND VALUED A NEED?**

14 A. No. While faster restoration from an outage is an overall goal, they have not specified  
15 what the value is of meeting that goal, e.g. value of lost load beyond some acceptable range  
16 of outage duration. Further, CEHE never evaluated whether other solutions are more cost-  
17 effective than relying on temporary power generators. CEHE says that it currently cannot  
18 determine the monetary value of lost load to residential or commercial customers.<sup>39</sup> It also  
19 admits that it "has not evaluated how many hours of lost load could be saved on average  
20 each year" from the TEEEF.<sup>40</sup>

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<sup>39</sup> CEHE Response to ARM-TCPA RFI No. 1-07.

<sup>40</sup> CEHE Response to ARM-TCPA RFI No. 1-08.

1 **Q. DID CEHE EVALUATE THE COSTS AND BENEFITS OF ALTERNATIVES TO**  
2 **THE TEEEF?**

3 A. No. There is no evidence that CEHE evaluated the cost/benefit of RICE relative to the  
4 turbines it chose. Given that RICE has lower capital cost than turbines, this is a significant  
5 failure. Nor is there evidence that CEHE evaluated using a greater amount of UFLS or  
6 IGSD compared with pursuing 500 MW of TEEEF in order to be able to automatically  
7 rotate outages.

8 **Q. DID CEHE EXPLORE OPTIONS WITH ERCOT TO MITIGATE ITS INABILITY**  
9 **TO AUTOMATICALLY ROTATE LOAD UNDER CERTAIN CONDITIONS?**

10 A. Based on CEHE's application and testimony, no. CEHE has not indicated whether it has  
11 sought changes at ERCOT to ensure that CEHE's required load shed is proportional to its  
12 load in the winter, which would be a significantly less costly approach to lowering the  
13 outages that CEHE customers have to endure.

14 **Q. IN EVALUATING THE COSTS AND BENEFITS OF THE TEEEF, DID CEHE**  
15 **EVALUATE THE LIKELIHOOD OF EXPERIENCING ANOTHER LOAD SHED**  
16 **SCENARIO SIMILAR TO URI IN LIGHT OF OTHER POLICIES ENACTED BY**  
17 **THE TEXAS LEGISLATURE?**

18 A. No. There is no evidence that CEHE evaluated the likelihood of experiencing a similar load  
19 shed scenario to Winter Storm Uri while evaluating its TEEEF procurement, neither with  
20 nor without consideration of the impacts of other policies enacted in the wake of that event  
21 – such as weatherization of the electric and natural gas systems, increased coordination  
22 between the electric and natural gas industries, and the establishment of requirements to  
23 meet electric reliability needs, including the procurement of ancillary services and  
24 reliability services to ensure appropriate reliability during extreme heat and cold, as well  
25 as periods of low non-dispatchable power production.

1 **Q. DID CEHE PROVIDE ANY DOCUMENTATION OF ANY ANALYSES ON THE**  
2 **CHOICES IT MADE?**

3 A. No. As mentioned earlier, CEHE made the choice of how much capacity to procure based  
4 on oral discussions in one meeting. It has provided no minutes of that meeting.

5 **Q. GIVEN THE COST OF THE TEEEF, WOULD A PRUDENT UTILITY HAVE RE-**  
6 **EVALUATED THE AMOUNT OF CAPACITY IT WAS PROCURING FOR THE**  
7 **SHORT-TERM LEASE?**

8 A. Yes.

9 **Q. GIVEN THE COST OF THE TEEEF, WOULD A PRUDENT UTILITY HAVE RE-**  
10 **EVALUATED THE COST OF THE CAPACITY IT WAS PROCURING FOR THE**  
11 **LONG-TERM LEASE?**

12 A. Yes.

13 **Q. WAS THERE A REAL THREAT THAT OTHER UTILITIES MIGHT ACQUIRE**  
14 **THE AVAILABLE TEEEF BEFORE CEHE?**

15 A. Not by the time the long-term procurement was issued and awarded. It should have been  
16 evident by then that other utilities were not moving quickly to acquire large amounts of  
17 TEEEF. For instance, in its rate case Oncor is only requesting \$3.1 million in PURA  
18 § 39.918 mobile generation costs for the lease of seven mobile generation units (a total of  
19 7.5 MW), with a revenue requirement of \$769,171.<sup>41</sup> Furthermore, nothing was said about  
20 investments in mobile generation during Oncor's portion of its parent Sempra's Analyst  
21 Day presentation on June 29, 2021.<sup>42</sup> That is in stark contrast to CenterPoint Energy's

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<sup>41</sup> See Docket No. 53601, Response of Oncor Electric Delivery Company LLC to Commission Staff's RFI 10-03 Attachment 1 and 10-4 (Aug. 4, 2022).

<sup>42</sup> See Sempra Energy Analyst Day Presentation at 34-36 (June 29, 2021) <https://investor.sempra.com/static-files/5d69ec3d-1c25-4694-994f-d2a04bb41f73>.

1 inclusion of planned capital spend of approximately \$600 million during its Analyst Day  
2 two months later.<sup>43</sup>

3 **Q. WOULD IT BE REASONABLE FOR A UTILITY TO WAIT FOR THE**  
4 **COMMISSION'S RULEMAKING PROCESS TO BEGIN BEFORE**  
5 **COMMITTING APPROXIMATELY \$800 MILLION TO TEEEF?**

6 A. Yes. The rulemaking process will help define the parameters of what is allowed under HB  
7 2483, including to what use the TEEEF can be put as well as possibly defining the upward  
8 bounds for what a TDU can spend on TEEEF.

9 **Q. PLEASE GIVE AN EXAMPLE OF WHAT THE RULEMAKING MIGHT**  
10 **EVALUATE.**

11 A. I would expect parties to discuss what the value of TEEEF is against other ways to improve  
12 reliability. For instance, I understand that there is a \$54 million cap on the back-up fuel  
13 program the Commission has ordered to be implemented. The back-up fuel example is but  
14 one of the programs being evaluated or implemented at the wholesale level to improve  
15 reliability, and it would address at least part of the need that the TEEEF would address –  
16 outages during a winter storm. Consumer funding should be applied in the most cost-  
17 effective manner, so there is an open question as to whether CEHE's chosen technology  
18 and cost for TEEEF is a reasonable way to meet the goal of improving reliability.

19 **Q. DO YOU BELIEVE THAT CEHE'S DECISION TO PROCURE 500 MW OF**  
20 **TEEEF WAS PRUDENT?**

21 A. No. The TEEEF is extraordinarily expensive. CEHE has not demonstrated that customers  
22 will benefit in an amount greater than the cost. Further, given the cost of the TEEEF,  
23 CEHE should have undertaken and provided analyses demonstrating that the TEEEF was

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<sup>43</sup> Transcript of Analyst Day at 49. <https://investors.centerpointenergy.com/static-files/64a31e66-105a-468b-8c46-44cfa5990bd8>.

1 the lowest cost way to meet whatever need it is meant to serve. Again, CEHE did not do  
2 that. There is no record of an analysis of RICE, more UFLS, or more IGSD compared to  
3 TEEEF. CEHE should have weighed the trade-offs between upfront cost and operating  
4 cost. That it did not is imprudent.

5 Nor did CEHE reconsider its procurement in the face of those costs. Instead, CEHE  
6 has acted as if the permissive statute (allowing a utility to acquire and operate TEEEF)  
7 created a mandatory need to fill, no matter the cost. Furthermore, by acting with haste and  
8 in front of the Commission's rulemaking process, as discussed in Section III.B. below,  
9 CEHE entered into a very expensive long-term lease with an entity that was [REDACTED]  
10 [REDACTED] and may not be in a stable situation. Finally, as discussed in Section IV below, the  
11 uses to which CEHE seeks to put the TEEEF appear to be beyond what a reasonable reading  
12 of the statute allows.<sup>44</sup>

13 **B. CEHE's RFPs and the Choice of LCP as Lessor**

14 **Q. DID CEHE PROCURE ITS TEEEF THROUGH A BID PROCESS?**

15 A. Yes. However, I would not characterize that process as competitive. Moreover, CEHE's  
16 bid process was unreasonably and unnecessarily limited – the parameters of the request for  
17 proposal (RFP) limited the qualifying technologies, which served to disqualify a potentially  
18 lower-cost technology (e.g., RICE) out of hand, and did not consider how distribution  
19 upgrades could solve some of the same problems. In other words, there were potential  
20 solutions that were already “off the table” based on the parameters of the RFP. In addition,

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<sup>44</sup> I am not making a legal opinion. Instead I am relying on my 40 years' experience in the utility industry as to how I believe a reasonable person would interpret PURA § 39.918(b)(2).



1 as I describe in this section, the constraints of the RFP and CEHE's evaluation process  
2 effectively resulted in only a single bidder on which CEHE relied for the entire scale of its  
3 procurement.

4 These two interrelated flaws—CEHE's decision to take things off the table and then  
5 have such a confining RFP process for what was on the table—ultimately impaired the  
6 ability of a competitive solicitation process to play any meaningful role in disciplining the  
7 costs in question. Consequently, CEHE's claim that it undertook a competitive bid process  
8 for its TEEEF procurement should be accorded very little, if any, weight in determining  
9 prudence.

10 **Q. PLEASE DESCRIBE THE TIMING OF THE SHORT-TERM LEASE RFP.**

11 A. It was issued on August 3, 2021 and bids were due on August 6, 2021.<sup>45</sup>

12 **Q. HOW MANY BIDDERS WERE THERE?**

13 A. There were three entities that submitted bids, and one potential bidder who said it could  
14 not meet the September delivery requirement but was interested in future bidding.

15 **Q. WHO WAS THE WINNING BIDDER AND HOW WAS THAT BIDDER CHOSEN?**

16 A. Life Cycle Power (LCP) was the winning bidder. It was chosen because it was the only  
17 entity that could meet CEHE's timing needs.<sup>46</sup> LCP's bid was [REDACTED]

18 [REDACTED]

19 [REDACTED]<sup>47</sup>

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<sup>45</sup> Amended Application, Exhibit MWN-4 at bates 135.

<sup>46</sup> Narendorf Amended Direct at bates 108.

<sup>47</sup> CEHE Response to HCC-RFP05-01.

1 **Q. DOES THE TRUNCATED TIMELINE AND LIMITED BIDDING INDICATE**  
2 **THAT THE RFP PROVIDED A COMPETITIVE ENVIRONMENT?**

3 A. No. The issuance of an RFP while expecting bids to be returned in three days is a very  
4 expedited schedule. Further, the fact there was only one bidder that could meet the delivery  
5 date means that the bid was not competitive.

6 **Q. PLEASE DESCRIBE THE TIMING OF THE LONG-TERM LEASE RFP.**

7 A. The long-term lease followed quickly on the heels of the short-term lease. It was issued  
8 October 5, 2021, with bids due by November 5.<sup>48</sup> According to CEHE the timing was  
9 driven by the desire to acquire generation ahead of the winter, [REDACTED]  
10 [REDACTED] and to put as much capacity in rates prior to the December 31 deadline to  
11 qualify for the DCRF filing.<sup>49</sup>

12 **Q. DO THOSE REASONS JUSTIFY ENTERING INTO A 7.5 YEAR LEASE IN AN**  
13 **EXPEDITED FASHION?**

14 A.. No. CEHE could have signed another short-term lease to cover the winter of 2022 and  
15 thus allowed other entities to bid on a future long-term lease. A delay in the long-term  
16 lease would have also allowed the Commission to begin its rulemaking process before  
17 CEHE committed another half-billion dollars of ratepayer funds. What a delay would not  
18 have allowed is for CenterPoint Energy's senior executive to tout large additions in its  
19 long-term capital expenditure plan (driving increases in earnings per share and dividends,  
20 all without the need for an equity issuance) to investors at its Analyst Day in the fall of  
21 2021 and in subsequent earnings calls.<sup>50</sup>

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<sup>48</sup> Amended Application, Exhibit MWN-5 at bates 155.

<sup>49</sup> CEHE Response to TEAMRFI No. 1-10.

<sup>50</sup> See, e.g., Transcript of Fourth Quarter Earnings call at 10-11 (Feb. 22, 2022).  
<https://investors.centerpointenergy.com/static-files/64a31e66-105a-468b-8e46-44cfa5990bd8>.

1 **Q. WHO WAS THE WINNING BIDDER FOR THE LONG-TERM LEASE AND HOW**  
2 **WAS THE WINNER CHOSEN?**

3 A. The winner of the long-term lease RFP was the same as the winner of the short-term lease

4 RFP: LCP. [REDACTED] The

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 **Q. WHO WAS THE NEXT LOWEST PRICED BIDDER?**

10 A. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 **Q. PLEASE DESCRIBE LCP.**

14 A. LCP was formed in 2020. It is a small company backed by a private equity firm, Arroyo

15 Energy Investors. LCP operated only 150 MW of mobile generation in the spring of

16 2021.<sup>54</sup> [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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<sup>51</sup> CEHE Response to TCPA RFI No. 2-1.

<sup>52</sup> Id.

<sup>53</sup> CEHE Response to HCC RFI 5-1.

<sup>54</sup> See <https://arroyoinvestors.com/news/arroyo-invests-in-leading-behind-the-meter-power-solutions-companies/>.

<sup>55</sup> CEHE Response to TCPA RFI No. 2-4.

1 **Q. WHY DID CEHE FEEL COMFORTABLE SIGNING A 7.5 YEAR LEASE WITH**  
2 **LCP?**

3 A. [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 **Q. DID CEHE DO A BACKGROUND CHECK OR OTHER DUE DILIGENCE ON**  
7 **THE PRINCIPALS OF LCP BEFORE SIGNING THE LEASE AND PREPAYING**  
8 **HUNDREDS OF MILLIONS TO LCP?**

9 A. No.<sup>57</sup>

10 **Q. WHAT WOULD SUCH A BACKGROUND CHECK HAVE FOUND?**

11 A. Please refer to the documents included in Exhibit CSG-3. At the time of contracting with  
12 CEHE, LCP's co-founder and CEO was a convicted felon who had previously been in  
13 prison for five years after a 2012 conviction for environmental crimes and subsequently on  
14 probation for three years.<sup>58</sup> His sentencing was more severe because the Judge determined  
15 that he had not given truthful testimony during the trial.<sup>59</sup> The individual had sold a  
16 company treating water in Shreveport, Louisiana to a Canadian firm, but the individual  
17 continued managing the plant. Evidence indicated that he ordered employees to divert  
18 wastewater into the Red River and the Shreveport water system and had individuals lie to  
19 auditors and inspectors. After the new Canadian owner learned of the allegations, it fired

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<sup>56</sup> CEHE Response to TCPA RFI No. 2-1.

<sup>57</sup> CEHE Response to TCPA RFI No. 2-2.

<sup>58</sup> See

[https://cfpub.epa.gov/compliance/criminal\\_prosecution/index.cfm?action=3&prosecution\\_summary\\_id=2318](https://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2318).

<sup>59</sup> *United States v. Tuma*, CRIMINAL NO. 11-0031-01, 13-14 (W.D. La. Dec. 5, 2012) ("Therefore, by virtue of his failure to give truthful testimony on material matters that were designed to substantially affect the outcome of the case, the court concludes that Mr. Tuma's false testimony at trial warrants an upward adjustment by two levels pursuant to section 3C1.1 of the Guidelines").

1 the individual in question; he subsequently sued the parent firm for wrongful termination,  
2 a situation that will be seen to recur.<sup>60</sup>

3 **Q. SHOULD THIS HAVE BEEN A RED FLAG FOR CEHE?**

4 A. Yes. Prepaying hundreds of millions of dollars to a company whose CEO is a convicted  
5 felon only recently off probation and with a known history of falsehoods should have been  
6 a red flag to a prudent utility. This is particularly the case when an alternate bidder [REDACTED]  
7 [REDACTED] and was backed by an extremely large  
8 and well respected company.

9 **Q. IS THE INDIVIDUAL IN QUESTION STILL THE CEO AND AN OWNER OF**  
10 **THE COMPANY?**

11 A. LCP's website indicates that the individual is no longer the CEO.<sup>61</sup> The internet archive  
12 for LCP's website indicates that the individual disappeared from the website sometime  
13 after RFIs were propounded regarding CEHE's due diligence of LCP. The individual has  
14 since sued LCP's private equity backer over the circumstances of his removal.<sup>62</sup>

15 **Q. IS THERE ANYTHING OF INTEREST IN THE WRONGFUL TERMINATION**  
16 **LAWSUIT?**

17 A. Yes. The former CEO claims that the contract between CEHE and LCP was actually worth  
18 approximately \$1.2 billion, and that he was forced out by the private equity backer because  
19 that entity wanted a greater share of the benefit of that "lucrative" contract. He claims that  
20 another company that he controls bought a large number of turbines and is leasing them to

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<sup>60</sup> Refer to Tuma Original Petition and CCS Answer and Counterclaim, both included in Exhibit CSG-3.

<sup>61</sup> See <https://lcpower.energy/our-team/>.

<sup>62</sup> JOMA Manament, LLC and John Tuma v. Goldfinch Energy Holdings and Prime Power Solutions, LLC, d/b/a Life Cycle Power, Plaintiffs' Original Petition, included in Exhibit CSG-3.

1 LCP. Finally, he also claims that in the spring and early summer of 2022 LCP did not have  
2 a budget in place. If these allegations are true, it is disconcerting that the lessor for CEHE's  
3 mobile generators was so lacking in financial planning, and that some of the turbines that  
4 LCP is leasing to CEHE may become entangled in this ongoing litigation.<sup>63</sup>

5 **Q. WHAT IS THE ANSWER OF THE PRIVATE EQUITY INVESTOR TO THE**  
6 **LAWSUIT?**

7 A. In its answer, the private equity investor states that the plaintiff's claims are barred in whole  
8 or in part by the doctrine of unclean hand and fraud.<sup>64</sup>

9 **Q. WAS CEHE'S EXECUTION OF ITS SHORT-TERM AND LONG-TERM**  
10 **PROCUREMENT REASONABLE?**

11 A. No. CEHE appears to have rushed the procurement of the short-term RFP such that only  
12 one bidder qualified, resulting in a high-cost procurement with no justification as to the  
13 value of meeting the claimed need. The long-term procurement was also rushed, in part to  
14 meet the deadline for putting the capitalized lease in rates. CEHE again rejected a [REDACTED]  
15 [REDACTED] bidder and put all of its eggs into one basket, a basket for which its due diligence was  
16 limited. By front-running [REDACTED] and the Commission's rulemaking process in its  
17 haste to tout its expanded capital plan to investors, CEHE ended up in a long-term lease  
18 with what can best be described as a start-up entity with questionable management and an  
19 overhang of litigation. None of that needed to happen if CEHE had not been in such haste  
20 to sign leases to get \$800 million in rate base as quickly as it could without apparent regard  
21 for the alternatives or the value provided to customers.

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<sup>63</sup> *Id.*

<sup>64</sup> JOMA Managment, LLC and John Tuma v. Goldfinch Energy Holdings and Prime Power Solutions, LLC, d/b/a Life Cycle Power, Defendants' Original Answer, included in Exhibit CSG-3.

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2 **IV. ADDITIONAL PROBLEMS WITH CEHE’S PROPOSAL**

3 **Q. OTHER THAN THE PRUDENCE ISSUES DISCUSSED ABOVE, DO YOU HAVE**  
4 **OTHER ISSUES WITH CEHE’S EXPECTED USE OF TEEEF?**

5 A. Yes. CEHE has expressed interest in working with civic leaders and cities to provide back-  
6 up generation for identified “priority”<sup>65</sup> facilities and to “historically under-resourced  
7 areas” identified by a City of Houston initiative focused on equity and opportunity.<sup>66</sup>

8 **Q. WHY IS THAT A PROBLEM?**

9 A. There are several reasons. First, back-up generation for specific customers can be, and  
10 currently is, provided competitively. Many cities, hospitals, etc., already have back-up  
11 power. As a policy matter, providing back-up power to specific customers should not be a  
12 ratepayer-funded activity. Second, to the extent that TEEEF is pre-positioned at certain  
13 substations, in the event of load shed requests certain customers will be favored and keep  
14 their power while others suffer power outages as part of the ordered load shed.  
15 Furthermore, CEHE is partnering with and focusing at least partly on a set of communities  
16 already identified by a City of Houston initiative<sup>67</sup> as being the most “under-resourced.”  
17 A CEHE executive also stated that the company had an interest in finding “the perfect  
18 places where you have underprivileged and you have emergency needs where there’s  
19 critical loads...”<sup>68</sup> This suggests that politics and items unrelated to the delivery of  
20 electricity are playing a role in who gets the benefit of TEEEF at the expense of what is

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<sup>65</sup> CEHE Response to HCC RFI No. 1-5.

<sup>66</sup> Narendorf Amended Direct at bates 118.

<sup>67</sup> The initiative is called Complete Communities; *available at*: <https://www.houstoncc.org/>.

<sup>68</sup> CenterPoint Analyst Day Transcript at 49 (Sept. 23, 2021); *available at*:  
<https://investors.centerpointenergy.com/static-files/64a31e66-105a-468b-8e46-44cfa5990bd8>.

1 good for all customers or engineering considerations in the event of outages and load shed  
2 events.<sup>69</sup> This also appears to be possibly inconsistent with the anti-discrimination  
3 requirements in CEHE's tariff. Third, it is not at all clear that providing back-up power to  
4 designated customers, as was done for the Lake Jackson Civic Center example or as  
5 suggested at the CenterPoint Analyst Day, meets the requirements of PURA § 39.918.

6 **Q DID CEHE PROVIDE DOCUMENTATION AS TO HOW IT WOULD**  
7 **PRIORITIZE TEEEF LOCATIONS?**

8 A. Documents indicate CEHE's strategy includes [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 [REDACTED] Necessarily, this means that  
12 customers who have already purchased back-up generation will be subsidizing a  
13 politically-prioritized subset of those who have not competitively procured back-up  
generation.

14 **Q. DESCRIBE THE SITUATION WITH THE LAKE JACKSON CIVIC CENTER.**

15 A. After Hurricane Nicholas, the distribution feeder that supplies the Lake Jackson Civic  
16 Center was knocked out due to downed wire and tree limbs. The circuit was out from  
17 September 13 through 18, 2021.<sup>71</sup> CEHE reported that no substations were out of power  
18 as a result of that storm.<sup>72</sup> Separately, any damage to the bulk power system was repaired  
19 by September 16th. Thus, it does not appear that using TEEEF to service the Lake Jackson

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<sup>69</sup> My recollection from my time at CEHE's predecessor company is that Kingwood was the most under-resourced area from a power delivery perspective, not any of the communities listed in the current City of Houston initiative.

<sup>70</sup> CEHE Response to HCC RFI No. 1-05.

<sup>71</sup> CEHE Response to TEAM RFI No. 1-13.

<sup>72</sup> CEHE Response to HCC RFI No. 8-08.



1 Civic Center meets the requirement of PURA § 39.918(b)(1) that “the utility’s distribution  
2 facilities are not being fully served by the bulk power system under normal operations.”  
3 Rather, it appears that downed distribution wire resulted in the outage and that the bulk  
4 power system was capable of providing power but for the downed distribution line.

5 **Q. DO YOU DISAGREE THAT IT WAS A GOOD THING FOR THE LAKE**  
6 **JACKSON CIVIC CENTER TO HAVE POWER AFTER HURRICANE**  
7 **NICHOLAS.**

8 A. No. The issue is whether CEHE should use TEEEF to provide back-up generation for this  
9 and similar circumstances. While the Commission and courts have not yet determined  
10 precisely what the language in PURA § 39.918(b)(1)(B) means, my interpretation is that  
11 TEEEF is not to be used to provide back-up power for distribution outages. There are a  
12 number of commercial firms that can provide back-up power solutions to individual sites,  
13 and I do not believe it is good policy to have ratepayers pay CEHE to compete against  
14 those solutions. Further, such facilities probably should have back-up power paid by local  
15 taxpayers or owners, not spread across regulated rates.

16 **Q. HOW HAS CEHE SAID IT WILL DETERMINE WHETHER PURA § 39.918(b)(1)**  
17 **APPLIES?**

18 A. CEHE says it will be done on a case-by-case basis depending on individual facts and  
19 circumstances. Example of facts and circumstances provided include “under-frequency or  
20 under-voltage situations on the ERCOT transmission system, physical damage to the  
21 ERCOT transmission system, and physical damage to the utility’s distribution facilities.”<sup>73</sup>

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<sup>73</sup> CEHE Response to TEAMRFI No. 1-5.

1 **Q. DOES CEHE ADMIT THAT IT INTENDS TO USE THE TEEEF DUE TO LINE**  
2 **OUTAGES ON ITS DISTRIBUTION SYSTEM EVEN THOUGH THE BULK**  
3 **POWER SYSTEM IS OPERATING NORMALLY?**

4 A. Yes.<sup>74</sup>

5 **Q. DOES CEHE BELIEVE SUCH A SITUATION MEETS THE TEST IN PURA**  
6 **§ 39.918(b)(1)?**

7 A. Apparently CEHE believes that the conditions in that part of the statute are met if damage  
8 to distribution facilities prevents customers from being fully served by the bulk power  
9 system and subsequent outages are expected to last for at least eight hours.<sup>75</sup> This view  
10 gives no weight to whether the bulk power system is operating normally.

11 **Q. WHAT ARE THE OTHER IMPORTANT LIMITATIONS IN PURA § 39.918?**

12 A. There are several, including under PURA § 39.918(c) that the utility cannot sell power or  
13 ancillary services from the TEEEF, under Subsection (d)(1) that the TEEEF must be  
14 operated in isolation from the bulk power system, and under Subsection (d)(2) that the  
15 TEEEF cannot be included in the setting of prices or in ERCOT models for prices and  
16 reliability. Additionally, under Subsection (e), the utility must ensure, to the extent  
17 practicable, that retail customer usage during operation of the TEEEF is adjusted out of the  
18 usage reported for billing purposes by the customer's retail electric provider.

19  
20 **Q. DO YOU THINK CEHE'S USE OF TEEEF RUNS AFOUL OF ANY OF THOSE**  
21 **LIMITATIONS?**

22 A. It is not clear whether CEHE's use of TEEEF violates PURA § 39.918(c) or (d)(2) because  
23 CEHE does not address these. Given the cost of the TEEEF, I think there will be

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<sup>74</sup> CEHE Response to TEAMRFI No. 1-6.

<sup>75</sup> Id.

1 considerable pressure to make use of it and to demonstrate that it is used and useful in  
2 providing electric service. I think the Lake Jackson Civic Center situation is an example  
3 of that.

4 Further, there is moral hazard in CEHE being able to provide free back-up  
5 generation to certain facilities. Not only do the entities receiving the back-up generation  
6 not have to directly pay the capital cost of the generation, they do not have to pay for the  
7 power either because CEHE cannot sell the power generated. Instead all ratepayers will  
8 pay for certain entities who have chosen not to install their own back-up power in case of  
9 distribution outages, and all ratepayers will even have to pay for the fuel for that back-up  
10 power. The Commission needs to decide if that is a proper use of ratepayer funds, and  
11 whether CEHE's decision to front-run the Commission's rulemaking procedure should be  
12 allowed to create precedence on the proper interpretation of PURA § 39.918.

## 13 14 15 16 **V. CONCLUSION**

17 **Q. SHOULD THE COMMISSION APPROVE CEHE'S REQUEST TO INCLUDE**  
18 **THE COST OF TEEEF IN A RIDER?**

19 A. No. CEHE has failed to meet its burden of proof that the cost of the TEEEF is reasonable  
20 and necessary. CEHE's decision to procure the TEEEF it is requesting in this case was not  
21 prudent. CEHE made the decision based on discussions in one meeting, with no  
22 documentation created or retained. There is no evidence that CEHE analyzed whether the  
23 cost of the TEEEF was appropriate relative to the value of the need, nor is there any  
24 evidence that CEHE evaluated alternatives such as more under-frequency load shed, more

1 smart grid-enabled switches, changes to ERCOT rules regarding allocation of load shed in  
2 winter, the impact of other policies enacted to address the risk of load shed following  
3 Winter Storm Uri, or the cost of alternative technologies like reciprocating engines. Nor  
4 did CEHE make any course corrections when the cost of the TEEEF became apparent.  
5 Finally, its decision to sole-source the TEEEF through LCP was costly and ill-considered.

6 Just because CEHE now is not legally prohibited from leasing and operating  
7 TEEEF does not mean that CEHE's actions to date have been a reasonable choice among  
8 the many choices that can be made to improve reliability. The cost that CEHE is requesting  
9 its ratepayers to pay is four times as much on a per kW basis as what Oncor is procuring,  
10 and the capacity procured is almost 70 times higher. The cost of TEEEF needs to be valued  
11 against the improvement to reliability it provides and within the statutory confines through  
12 which that must be provided. From a statewide perspective, the Commission may also  
13 want to value the cost of TEEEF against the many other avenues it is implementing or  
14 evaluating to improve reliability. CEHE's choice to front-run the Commission's process  
15 [REDACTED] in an effort to capture the available TEEEF in the state by December 31,  
16 2021, and its ill-considered execution of that strategy, does not need to be rubber-stamped.  
17 Instead, the Commission should hold CEHE to the historical prudence standard for utility  
18 decision-making.

19 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

20 **A.** Yes.

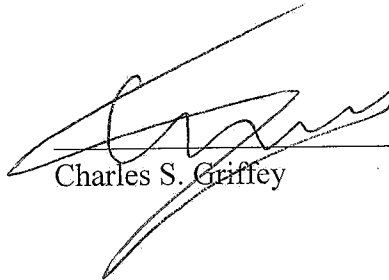
STATE OF Texas )  
 )  
COUNTY OF Harris )

**AFFIDAVIT OF CHARLES S. GRIFFEY**

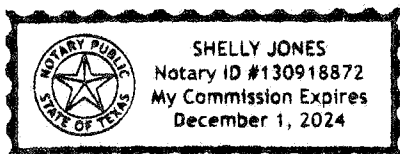
BEFORE ME, the undersigned authority, on this day personally appeared CHARLES S. GRIFFEY, who, having been placed under oath by me, did depose as follows:

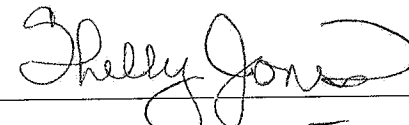
1. "My name is Charles S. Griffey. I am of sound mind and capable of making this affidavit. The facts stated herein are true and correct based upon my personal knowledge.
2. I have prepared the foregoing direct testimony and the attached exhibit offered by me are true and correct to the best of my knowledge."

Further affiant sayeth not.

  
\_\_\_\_\_  
Charles S. Griffey

SUBSCRIBED AND SWORN TO BEFORE ME by the said Charles S. Griffey this  
15 day of September, 2022.



  
\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: 12-1-24

**CAREER SUMMARY**

Mr. Griffey is a consultant to participants in the power industry. Previously, he was a senior energy executive who managed the regulatory planning and government affairs function for one of the nation's leading competitive electricity companies. Consulted closely with other senior executives to devise and implement commercial/regulatory/political strategies to manage risks and position the firm to be successful in competitive wholesale and retail electric markets. Recognized as leader in electric market design and as an expert witness on electric policy, market design, and resource planning matters. Skilled in:

- |                                      |                                    |
|--------------------------------------|------------------------------------|
| ◇ Corporate Strategy/Risk Management | ◇ Power Plant Economics            |
| ◇ Electric Market Design             | ◇ Rate Setting and Design          |
| ◇ Policy Advocacy                    | ◇ Retail and Wholesale Competition |

**PROFESSIONAL EXPERIENCE****Energy Consultant,**

Houston, Texas

**2009 – Present**

Provide consulting services across the energy value chain, from generation to customer sales for both electricity and natural gas. Clients include independent power producers, large industrial consumers, and retail electric providers. Sample engagements include:

- Consulting with industrial customers on disputes arising from Winter Storm Uri
- Expert testimony on utility mergers
- Expert testimony and consulting on resource planning, solar and wind projects projects, and early retirement
- Expert testimony and consulting expert on cost of combined cycle gas turbines
- Expert testimony on rate case issues, including return, credit risk, and capital structure
- Expert testimony on transmission planning
- Expert testimony on mitigation of generation market power
- Expert testimony on prudence of a decision to construct a coal-fired generating plant
- Expert testimony on distributed generation
- Expert testimony in civil litigation regarding commercial reasonability of retail electric contracts.
- Consulting services regarding prudence of planning to build nuclear and IGCC facilities
- Consulting services related to decision to build cogeneration at industrial facilities
- Consulting services to large industrial companies regarding electric market design.
- Consulting services to a large retail electric provider regarding market opportunities and regulatory/government affairs.
- Consulting services to a developer of compressed air energy storage on regulatory and government affairs.
- Expert testimony regarding market design, the meaning of PURPA and the appropriate payment to Qualifying Facilities for power provided to the grid.
- Expert testimony in a contract dispute between a retail electric provider and a customer regarding pass-through charges.
- Consulting expert on interpretation of purchased power contract between an investor-owned utility and a municipally-owned utility.
- Expert testimony on retail rate design.
- Develop and implement advocacy plan to avoid power plant retirements from a proposed policy to ban once-through cooling in a coastal state; manage compliance filing for two power plants.
- Advise on the economics of energy storage technologies.
- Advise on the feasibility of opening additional retail gas markets to competition.
- Advise on how to structure a regulatory and government affairs organization.

**Adjunct Professor of Management at Rice University's Jones Graduate School of Business 2010-2016**, specializing in the economics of the electricity value chain, management of risk, and related public policy considerations.

**RRI ENERGY (RELIANT ENERGY, INC.), Houston, Texas**

**1989 – 2009**

***Sr. VP Regulatory Affairs and Market Design***

*2007 - 2009*

Reporting directly to the CEO, co-managed the company's national, regional, and state level government, regulatory, community affairs, and communications functions, with emphasis on electricity regulation, competitive market design, and associated legislation. Oversaw a staff of 70 people and a managed a budget of \$30 million.

- Managed to an outcome wherein no laws or regulations harmful to the company were passed.
- Analyzed risk associated with the company's retail business (~ 1.8 million customers) and the wholesale business (~14,000 Mw installed capacity) and implemented regulatory risk mitigation strategies that aligned with corporate vision and goals.
- Coordinated policy between retail and wholesale business units to establish sound policy and design principles and to present a single voice to external stakeholders.
- Testified on electric policy, smart energy, and demand response in legislative, regulatory, and judicial arenas, drawing effectively on significant industry knowledge and experience.
- Achieved outstanding results on employee survey regarding departmental leadership and management capability (100% score on treating employees fairly, holding them accountable, making use of their skills, trusting them to make appropriate decisions, and improving own performance based on employee feedback).

***Sr. VP Regulatory Affairs***

*2003 - 2007*

- Managed Reliant's national regulatory and market design efforts and legislative efforts in Texas.
  - Achieved Texas PUC ruling on excess mitigation credits that effectively averted requirement that Reliant Energy pay \$375 million to CenterPoint Energy to lower stranded cost; and,
  - Successfully designed rules at Texas PUC regarding provider of last resort, price to beat, customer protections, and financial standards for retailers.
- Collaborated closely with legislative and executive branches in Texas, including Governor, Lt. Governor, Speaker, Chairs and members of Senate Business and Commerce and House Regulated Industries to achieve:
  - Successful transition to retail competition in Texas, creating a political/regulatory environment to allow Reliant's \$500 million contribution margin retail business the opportunity to thrive with appropriate government oversight; and,
  - Settlement of the political/regulatory intervention in retail pricing following Hurricanes Katrina and Rita. The settlement led to a phase-in of price increases which set the stage for a successful 2007 legislative session and emergence into full competition
- Provided expert witness testimony in regulatory, government, and court proceedings.
- Intimately involved in settlement of Reliant Energy's issues regarding the 2000-2001 California Energy crisis. Led response to FERC's March 2003 report accusing Reliant Energy of "churning" in its purchases of natural gas for its California power plants.

***VP Regulatory Strategy and Planning***

*1998 - 2003*

## **Charles S. Griffey**

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Directed Reliant's Texas regulatory and market design efforts. Responsible for financial forecasting, rates, and capital budgeting for Reliant Energy HL&P through 2001, including analysis of capital investment and mothball decisions, power purchase and sales agreements.

- Created and developed risk adjusted wholesale price forecasting tool that provided a distribution of future prices for use in investment analysis to value real options in the generation fleet and the retail contract portfolio.
- Led regulatory strategy to move Reliant Energy from being a regulated utility to becoming separate companies – a wires-only transmission and distribution utility and a company involved in competitive generation and retail activities.
- Deeply involved in passage and implementation of SB 7, the Texas law establishing a competitive market:
  - Competitive market design,
  - IPO of Reliant Resources, its option to buy Texas Genco, and use of that option price as the stranded cost valuation method for purposes of the statutory stranded cost true-up, and
  - Settlement of initial Price to Beat rate, and securitization of regulatory assets worth \$760 million.

### ***Various positions in Corporate/Regulatory Planning***

1989 - 1998

Led a variety of processes that involved evaluation and establishment of company's generation, resource planning, rate setting, and load forecasting, including power plants, energy efficiency, and demand response.

**AUSTIN ENERGY, Austin, Texas**

**1988 - 1989**

#### ***Manager, Gas Purchasing and Fuel Planning***

Held overall responsibility for purchasing natural gas for the utility's power plants, as well as planning construction of second gas pipeline to serve power plants.

**PUBLIC UTILITY COMMISSION OF TEXAS, Austin, Texas**

**1986 - 1988**

#### ***Fuel Analyst***

Investigated prudence of utility fuel and power procurement and integrated resource planning.

**BECHTEL GROUP, INC., Houston, Texas**

**1981 - 1983**

#### ***Process Design Engineer***

Worked on the Coolwater Coal Gasification Power Plant, the first IGCC ever built.

## **EDUCATION**

**JESSE H. JONES GRADUATE SCHOOL OF BUSINESS, RICE UNIVERSITY, Houston, Texas**

***Master of Business and Public Management, 1985***

*Majors - Finance and Entrepreneurship Honors - Outstanding Finance Student*

**RICE UNIVERSITY, Houston, Texas**

***BS, Chemical Engineering, 1981***

## **PROFESSIONAL CERTIFICATIONS**

**CHARTERED FINANCIAL ANALYST, No. 12245**

**PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, No. 73184**



## Testimony before the Public Utility Commission of Texas

Docket	On behalf of	Description
6032	PUCT Staff	<i>Petition of Central Power &amp; Light Company for fixing of refund with interest and amendment of monthly interim fuel factor. Performed fuel forecast.</i>
6611	PUCT Staff	<i>Petition of Southwestern Electric Power Company for recovery of unrecovered fuel expense with interest thereon and the setting of revised fixed fuel factors. Performed prudence investigation which resulted in fuel refunds; fuel forecast.</i>
6765	PUCT Staff	<i>Application by Houston Lighting &amp; Power Company for authority to change rates. Prudence of fuel procurement and fuel forecast.</i>
6963	PUCT Staff	<i>Investigation regarding the reasonableness of Houston Lighting &amp; Power Company's Spring Creek and Ken McGee Coal Contract Costs. Prudence of long-term coal contracts.</i>
6992	PUCT Staff	<i>Investigation regarding Texas-New Mexico Power Company for a Certificate of Convenience and Necessity for a proposed generating station (coal-fired) within Robertson County. Economic study of best and most economic option for utility resource acquisition.</i>
7195/6755	PUCT	<i>Application of Gulf States Utilities Company for authority to change rates. Inquiry of the Public Utility Commission of Texas into the prudence and efficiency of the planning and management of the construction of the River Bend Nuclear Generating Station. Prudence of fuel procurement and fuel forecast</i>
7460	PUCT Staff	<i>Application of El Paso Electric Company for authority to change rates. Prudence of fuel procurement and fuel forecast.</i>
7510	PUCT Staff	<i>Application of West Texas Utilities Company for authority to change rates. Prudence of fuel procurement and fuel forecast.</i>
7512	PUCT Staff	<i>Application of Lower Colorado River Authority for authority to change rates. Prudence of fuel procurement and fuel forecast.</i>
10473	HL&P	<i>Notice of Intent of Houston Lighting &amp; Power Company for a Certificate of Convenience and Necessity for DuPont Project, Webster Units 1 &amp; 2 Refurbishment Project, and Greens Bayou Units 3 &amp; 4 Refurbishment Project. Economic study of resource procurement.</i>
10832	HL&P	<i>Houston Lighting &amp; Power Company's Standard Avoided Cost Calculation for the Purchase of Firm Energy and Capacity from Qualifying Facilities Pursuant to Subst. R. 23.66(h)(3). History of resource planning and appropriateness of marginal cost.</i>
11000	HL&P	<i>Application of Houston Lighting &amp; Power Company for a Certificate of Convenience and Necessity for the DuPont Project. Economic study of resource procurement.</i>
11999	HL&P	<i>Application of Houston Lighting &amp; Power Company for Approval of Tariff for Economic Improvement Service - Rate Schedule EIS. Appropriateness of marginal cost.</i>
12138	HL&P	<i>Notice of Intent of Houston Lighting &amp; Power Company for a Certificate of Convenience and Necessity for Advanced Gas Turbine Projects. Economic study of resource procurement.</i>
12065	HL&P	<i>Complaint of Kenneth D. Williams Against Houston Lighting &amp; Power Company, Prudence of utility planning; industry restructuring.</i>

**Charles S. Griffey**  
**Testimony before the Public Utility Commission of Texas, con't**

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<b>Docket</b>	<b>On behalf of</b>	<b>Description</b>
12957	HL&P	<i>Application of Houston Lighting &amp; Power Company for Approval of Experimental Tariff for Special Contract Pricing, Rate Schedule SCP. Appropriateness of marginal cost.</i>
15000	HL&P	<i>An Investigation into Issues Related to the Electric Utility Industry and Regulatory Restructuring. Industry restructuring.</i>
15001	HL&P	<i>An Investigation into Potentially Stranded Investment in the Electric Utility Industry in Texas. Industry restructuring.</i>
15002	HL&P	<i>An Investigation into the Scope of Competition in the Electric Utility Industry in Texas. industry restructuring.</i>
21665	Reliant	<i>Application of Reliant Energy, Incorporated for a Financing Order to Securitize Regulatory Assets and Other Qualified Costs. Industry restructuring and securitization of regulatory assets.</i>
21956	Reliant	<i>Application of Reliant Energy, Inc. for Approval of Business Separation Plan. Industry restructuring.</i>
22355	Reliant	<i>Application of Reliant Energy HL&amp;P for Approval of Unbundled Cost Of Service Rate Pursuant to PURA §39.207 and Public Utility Commission Substantive Rules 25.344. Industry restructuring and recovery of stranded costs.</i>
23950	Reliant	<i>Petition of Reliant Energy, Inc. to Establish Price to Beat Fuel Factor and Request for Good Cause Exception to Subst. R. 25.47. Industry restructuring and setting of default service rate.</i>
24790	Reliant	<i>Petition to Appoint Provider of Last Resort Pursuant to PURA 39.706 for Residential and Small Non-Residential Customers in the Entergy, TXU East-DFW, and TXU West-DFW Service Areas and for Large Non-Residential Customers in the Reliant North, Reliant South, CPL Gulf Coast, CPL Valley, WTU, and SWEPCO Service Areas. Industry restructuring and setting of POLR rate.</i>
29526	Reliant	<i>Application Of CenterPoint Energy Houston Electric For A True-Up Filing. Rate design for stranded cost true-up</i>
35620	Reliant	<i>Application of CenetrPoint Houston Electric LLC for Approval to Implement Advanced Meter Information Network Pursuant to PURA 39.107(i). Benefits of smart meter deployment.</i>
37361	Occidental	<i>Application of Southwestern Public Service Company for Authority to Revise Its Tariff for Purchase of Non-Firm Energy from Qualifying Facilities. Appropriate price to pay for non-firm energy deliveries in SPP</i>
38448	Just Energy	<i>Petition of Just Energy Texas, LP for the Commission to Resolve a Billing Dispute. Nature of unaccounted for energy and how to calculate the amount of unaccounted for energy to bill a customer under a contract allowing pass-through of such charges</i>
40443	TIEC	<i>Application Of Southwestern Electric Power Company For Authority To Change Rates And Reconcile Fuel Costs. Prudence of decision to continue construction of Turk coal plant and impact of Turk Plant on Texas</i>
40449	Occidental	<i>Complaint of Ascendant Renewable Energy Corp. Against Southwestern Public Service. Appropriate interconnection procedure for a distribution level Qualifying Facility in SPP and interpretation of SPS tariffs and contracts</i>
40545	PUCT Staff	<i>Petition of Calpine for Approval of Voluntary Mitigation Plan. Evaluation of market power mitigation under proposed plan</i>
41223	Occidental	<i>Application Of Entergy Texas, Inc. and ITC Holdings Corp. for Approval of Change of Ownership and Control of Transmission Business. Determination of whether transaction is in the public interest</i>

41437 <i>Occidental</i>	<i>Application of Entergy Texas, Inc. for Approval of LQR Tariff.</i> Appropriate price to pay for deliveries of non-firm energy from QFs
42511 <i>TIEC/Luminant</i>	<i>Complaint Of Calpine Corporation And NRG Energy, Inc., Against The Electric Reliability Council Of Texas And Appeal Of Decision Concerning The Houston Import Project.</i> Determination of whether ERCOT followed its procedures in approving the Houston Import Project
43695 <i>Occidental</i>	<i>Application Of Southwestern Public Service Company For Authority To Change Rates.</i> Issues regarding post test year adjustments, transmission charges, and cost allocation and rate design
44547 <i>TIEC/Luminant</i>	<i>Application of Centerpoint Energy Houston Electric, LLC to Amend a Certificate Of Convenience and Necessity for a Proposed 345-Kv Transmission Line Within Grimes, Harris, And Waller Counties.</i> Appropriate transmission planning procedures.
45188 <i>TIEC</i>	<i>Joint Report And Application Of Oncor Electric Delivery Company Llc, Ovation Acquisition I, L.L.C., Ovation Acquisition II, L.L.C., And Shary Holdings, L.L.C. For Regulatory Approvals Pursuant To Pura §§ 14.101, 37.154, 39.262(L)-(M), And 39.915.</i> Public interest findings with respect to the sale/transfer/merger of a utility with a REIT.
45624 <i>TIEC</i>	<i>Application Of The City Of Garland, Texas, For A Certificate Of Convenience And Necessity For The Proposed Rusk To Panola Double-Circuit 345-Kv Transmission Line In Rusk And Panola Counties, Texas.</i> Conditions for the line to be in the public interest and proper way to do a cost/benefit analysis for a DC tie.
46050 <i>TIEC</i>	<i>Application Of AEP Texas Central Company, AEP Texas North Company, And AEP Utilities, Inc. For Approval Of Merger.</i> Estimation of merger savings.
46238 <i>TIEC</i>	<i>Joint Report And Application of Oncor Electric Delivery Company LLC And Nextera Energy, Inc. for Regulatory Approvals Pursuant to Pura §§ 14.101, 39.262 And 39.915.</i> Public interest findings with respect to the sale/transfer/merger of a utility.
45414 <i>TIEC</i>	<i>Review of the Rates of Sharyland Utilities, L.P., Establishment of Rates for Sharyland Distribution &amp; Transmission Services, L.L.C., and Request For Grant of A Certificate of Convenience And Necessity and Transfer of Certificate Rights.</i> Whether to include federal income tax as expense of a public utility REIT, issues regarding transfer of development of transmission lines among affiliates of electric utility, recovery of regulatory asset.
46416 <i>TIEC</i>	<i>Application of Entergy Texas, Inc. for a Certificate of Convenience and Necessity to Construct Montgomery County Power Station.</i> Appropriate method to use to analyze resources of different lives, and appropriateness of including imputed debt as a cost for PPAs.
46831 <i>FMI</i>	<i>Application of El Paso Electric Company to Change Rates.</i> Appropriateness of cost allocation, issues regarding interruptible rates and customers contracts, rates for residential distributed solar resources, possible directed purchase options.
47576 <i>TIEC</i>	<i>Application of The City of Lubbock Through Lubbock Power and Light for Authority to Connect a Portion of Its System with the Electric Reliability Council of Texas.</i> Appropriate method to evaluate whether a utility outside of ERCOT joining ERCOT is in the public interest.
48400 <i>TIEC</i>	<i>Joint Application of Rayburn Country Electric Cooperative, Inc. and Lone Star Transmission, LLC to Transfer Load to Ercot, and for Sale of Transmission Facilities and Transfer of Certificate Rights in Henderson and Van Zandt Counties.</i> Evaluate whether a utility outside of ERCOT joining ERCOT is in the public interest and best method to interconnect to ERCOT.
48929 <i>TIEC</i>	<i>Joint Report And Application Of Oncor Electric Delivery Company LLC, Sharyland Distribution &amp; Transmission Services, L.L.C., Sharyland Utilities, L.P., And Sempra Energy For Regulatory Approvals Under Pura §§ 14.101, 37.154, 39.262, And 39.915.</i> Public interest findings with respect to the sale/transfer/merger of a utility.

48973 TIEC	<i>Application of Southwestern Public Service Company for Authority to Reconcile Fuel and Purchased Power Costs.</i> Prudence of decision to enter into solar power contracts and proper analysis techniques for resource planning.
49421 TIEC	<i>Application of Centerpoint Energy Houston Electric, LLC for Authority to Change Rates.</i> Financial ring-fencing and context for return on equity, debt, and capital structure.
49737 TIEC	<i>Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Acquisition of Wind Generation Facilities.</i> Reasonableness of proposal to acquire new wind facilities.
49831 TIEC	<i>Application of Southwestern Public Service Company for Authority to Change Rates.</i> Appropriate capital structure, credit risks, and return on equity.
49849 TIEC	<i>Joint Report and Application of El Paso Electric Company, Sun Jupiter Holdings LLC, And IIF US Holding 2 LP for Regulatory Approvals Under PURA §§ 14.101, 39.262, And 39.915.</i> Public interest findings with respect to the sale/transfer/merger of a utility.
50584 TIEC	<i>Joint Report and Application Of Wind Energy Transmission Texas, LLC; Axinfra US LP; Hotspur Holdco 1 LLC; Hotspur Holdco 2 LLC; And 730 Hotspur, LLC, for Regulatory Approvals Under Pura §§ 14.101, 39.262, And 39.915.</i> Public interest findings with respect to the sale/transfer/merger of a utility.
51547 TIEC	<i>Joint Report And Application of Texas-New Mexico Power Company, NM Green Holdings, Inc. and Avangrid, Inc. for Regulatory Approvals Under Pura §§ 14.101, 39.262, And 39.915.</i> Public interest findings with respect to the sale/transfer/merger of a utility.
51215 TIEC	<i>Application of Entergy Texas, Inc. to Amend its Certificate Of Convenience and Necessity for the Acquisition of a Solar Facility in Liberty County.</i> Reasonableness of proposal to build a new solar facility.
51802 TIEC	<i>Application of Southwestern Public Service Company for Authority to Change Rates.</i> Appropriate capital structure, credit risks, off-system sales margins, and return on equity.
52210 TIEC	<i>Application Of Southwestern Public Service Company For Authority To Implement An Interim Net Surcharge For Under-Collected Fuel Costs.</i> Off-system sales margin, financing costs, appropriate recovery period.
52322 TIEC	<i>Application of Electric Reliability Council of Texas, Inc. for A Debt Obligation Order Pursuant To Chapter 39, Subchapter N, of The Public Utility Regulatory Act.</i> Process for securitization and recovery of Winter Storm Uri uplift.
52397 TIEC	<i>Application Of Southwestern Electric Power Company For Authority To Implement An Interim Net Surcharge For Under-Collected Fuel Costs.</i> Financing costs, appropriate recovery period.
52487 TIEC	<i>Application Of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity to Construct Orange County Advanced Power Station.</i> Reasonableness of proposal to build a new CCGT facility capable of co-firing with hydrogen.
53034 TIEC	<i>Application of Southwestern Public Service Company for Authority to Reconcile Fuel and Purchased Power Costs for the Period July 1, 2018 through June 30, 2021.</i> Off-system sales margins.

**Colorado Public Service Commission**

16A-0396E Coalition of Ratepayers	<i>In The Matter Of The Application Of Public Service Company Of Colorado For Approval Of Its 2016 Electric Resource Plan.</i> Whether retirement of two coal units and implementation of the Colorado Energy Plan is the lowest cost alternative for ratepayers.
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17A-0797E *Coalition of Ratepayers*      *Re: In The Matter Of The Application Of Public Service Company Of Colorado To Modify The Depreciation Schedules For The Early Retirement Of Comanche 1 And Comanche 2 Generating Units, Establish A Regulatory Asset To Collect Incremental Depreciation, Reduce The Renewable Energy Standard Adjustment Collection To One Percent, And Implement A General Rate Schedule Adjustment, Contingent On The Approval Of The Colorado Energy Plan Portfolio In Proceeding No. 16A-0396E.* Issues with PSCo's evaluation of economics of early retirement in favor of Colorado Energy Plan and deferral of accelerated depreciation into a regulatory asset.

### Indiana Utility Regulatory Commission

- 45806 *Alliance Coal*      *Verified Petition of Southern Indiana Gas and Electric Company D/B/A Vectren Energy Delivery of Indiana, Inc., for: (1) Authority to Construct, Own and Operate a Solar Energy Project and a Finding that Such Project Constitutes a Clean Energy Project Pursuant to Ind. Code Ch. 8-1-8.8; (2) Issuance of a Certificate Of Public Convenience And Necessity for the Construction of the Solar Energy Project Pursuant to Ind. Code Ch. 8-1-8.5; and (3) Authority to Timely Recover Costs Incurred During Construction and Operation of the Project in Accordance with Ind. Code § 8-1-8.5-6.5 and Ind. Code § 8-1-8.8-11. Economics of a solar project in Indiana.*
- 45159 *ICARE, ICC*      *Petition Of Northern Indiana Public Service Company LLC Pursuant To Ind. Code §§ 8-1-2-42.7, 8-1-2-61 And, Ind. Code § 8-1-2.5-6 For (1) Authority To Modify Its Rates And Charges For Electric Utility Service Through A Phase In Of Rates; (2) Approval Of New Schedules Of Rates And Charges, General Rules And Regulations, And Riders; (3) Approval Of Revised Common And Electric Depreciation Rates Applicable To Its Electric Plant In Service; (4) Approval Of Necessary And Appropriate Accounting Relief; And (5) Approval Of A New Service Structure For Industrial Rates. Flaws in NIPSCO's Integrated Resource Plan.*
- 45194 *ICC*      *Verified Joint Petition Of Northern Indiana Public Service Company Llc ( "Nipsco" ) And Rosewater Wind Generation Llc (The "Joint Venture") For (1) Issuance To Nipsco Of A Certificate Of Public Convenience And Necessity For The Purchase And Acquisition Of A 102 Mw Wind Farm ( "The Rosewater Project" ); (2) Approval Of The Rosewater Project As A Clean Energy Project Under Ind. Code § 8-1-8.8-11; (3) Approval Of Ratemaking And Accounting Treatment Associated With The Rosewater Project; (4) Authority To Establish Amortization Rates For Nipsco's Investment In The Joint Venture; (5) Approval Pursuant To Ind. Code § 8-1-2.5-6 Of An Alternative Regulatory Plan Including Establishment Of Joint Venture Through Which The Rosewater Project Will Support Nipsco's Generation Fleet And The Reflection In Nipsco's Net Original Cost Rate Base Of Its Investment In Joint Venture; (6) Approval Of Purchased Power Agreements Through Which Nipsco Will Receive The Energy Generated By The Rosewater Project, Including Timely Cost Recovery Pursuant To Ind. Code § 8-1-8.8-11 Through Nipsco's Fuel Adjustment Clause; (7) Authority To Defer Amortization And To Accrue Post-In Service Carrying Charges On Nipsco's Investment In Joint Venture; (8) To The Extent Generally Accepted Accounting Principles Would Treat Any Aspect Of Joint Venture As Debt On Nipsco's Financial Statements, Approval Of Financing; (9) Approval Of An Alternative Regulatory Plan For Nipsco In Order To Facilitate The Implementation Of The Rosewater Project; And (10) To The Extent Necessary, Issuance Of An Order Pursuant To Ind. Code § 8-1-2.5-5 Declining To Exercise Jurisdiction Over Joint Venture As A Public Utility. Reasonableness of proposal to build a 102 MW of wind project.*
- 45195 *ICC*      *Verified Petition Of Northern Indiana Public Service Company LLC For Approval Pursuant To Ind. Code §§ 8-1-2-42(A), 8-1-8.8-11, And To The Extent Necessary Ind. Code § 8-1-2.5-6, Of A Renewable Energy Power Purchase Agreement With Jordan Creek Wind Farm LLC, Including Timely Cost Recovery. Reasonableness of proposal to purchase 400 Mw of wind energy.*
- 45196 *ICC*      *Verified Petition Of Northern Indiana Public Service Company LLC For Approval Pursuant To Ind. Code §§ 8-1-2-42(A), 8-1-8.8-11, And To The Extent Necessary Ind. Code § 8-1-2.5-6, Of A Renewable Energy Power Purchase Agreement With Roaming Bison Wind, LLC, Including Timely Cost Recovery. Reasonableness of proposal to purchase 300 Mw of wind energy.*

**Kansas Corporation Commission**

12-KG&E-17-CON *Occidental*      *Application Of Kansas Gas And Electric Company For Approval Of The Energy Supply Agreement Between Kansas Gas And Electric Company And Frontier El Dorado Refining Company LLC. Economics of special contracts and customer by pass of utility service.*

**LOUISIANA PUBLIC SERVICE COMMISSION****Dockets On behalf of      Description**

U-32538 *Occidental*      *In Re: Joint Application of Entergy Louisiana, LLC, Entergy Gulf States Louisiana, LLC, Mid South Transco, LLC, Transmission Company Louisiana I, LLC, Transmission Company Louisiana II, LLC, ITC Holdings Corp. and ITC Mid South LLC for Approval of Change of Ownership of Electric Transmission Businesses, For Certain Cost-Recovery Related Adjustments and for Related Relief. Determination of whether transaction is in the public interest*

U-33950 *Occidental*      *In Re: Entergy Louisiana, LLC Compliance Submission Regarding Deactivation Of Little Gypsy 1, Ninemile 3, And Willow Glen 2 And 4, As Required By Order No. U – 33510. Evaluation of economics of decision to deactivate Willow Glen 2 and 4.*

U-34283 *Occidental*      *In Re: Application of Entergy Louisiana, LLC for Approval to Construct Lake Charles Power Station, and for Cost Recovery. Appropriate method to use to analyze resources of different lives, and appropriateness of including imputed debt as a cost for PPAs.*

U-34447 *Occidental*      *Application Of Entergy Louisiana, LLC Regarding Continued Participation In The Midcontinent Independent System Operator, Inc. Regional Transmission Organization. Recommended conditions to for ELL to continue membership in MISO, recommended change case for measurement of benefits of MISO membership.*

**MARYLAND PUBLIC SERVICE COMMISSION**

9063      *Reliant*      *In The matter of The Optimal Market Design For The Electric Industry In Maryland. Wholesale and Retail Market design.*

**Mississippi Public Service Commission**

2015-UN-80 *Greenleaf*      *Notice Of Intent Of Mississippi Power Company For A Change In Rates Supported By A Conventional Rate Filing Or, In The Alternative, By A Rate Mitigation Plan In Connection With The Kemper County IGCC Project. Amount of investment to count as prudent for the CCGT portion of an IGCC. Reasons why Kemper IGCC project should be abandoned.*

2017-AD-112 *Greenleaf*      *Encouraging Stipulation of Matters In Connection With the Kemper County IGCC Project. Amount of prudent investment in Kemper CCGT that should be allowed in rates, and setting of O&M expense and annual revenue requirement.*

**New Mexico Public Resource Commission**

19-00018-UT *Westmoreland*      *In The Matter Of Public Service ) Company Of New Mexico's Consolidated Application For Approvals For The Abandonment, Financing And Resource Replacement For San*

**Pennsylvania Public Utilities Commission**

P-00032071	<i>Reliant</i>	<i>Duquesne Light Company Petition for Approval of Plan for Post Transition POLR Service. Wholesale and Retail Market design and supply procurement.</i>
P-00052188	<i>RESA<sup>1</sup></i>	<i>Petition of Pennsylvania Power Co. for Approval of Interim PLR Supply Plan. Wholesale and Retail Market design.</i>

**Testimony Filed with the Federal Energy Regulatory Commission**

<b>FERC Dockets</b>	<b>On behalf of</b>	<b>Description</b>
<i>ER98-927-000</i>	<i>Reliant</i>	<i>Application of Reliant Energy Mandalay, L.L.C., to sell energy, capacity and ancillary services at market based rates. Market Power study.</i>
<i>ER98-928400</i>	<i>Reliant</i>	<i>Application of Reliant Energy Ellwood, L.L.C., to sell energy, capacity and ancillary services at market based rates. Market Power study.</i>
<i>ER98-930-000</i>	<i>Reliant</i>	<i>Application of Reliant Energy Etiwanda, L.L.C., to sell energy, capacity and ancillary services at market based rates. Market Power study.</i>
<i>ER98-931400</i>	<i>Reliant</i>	<i>Application of Reliant Energy Cool Water, L.L.C., to sell energy, capacity and ancillary services at market based rates. Market Power study.</i>
<i>ER98-2878-000</i>	<i>Reliant</i>	<i>Application of Reliant Energy Ormond Beach, L.L.C., to sell energy, capacity and ancillary services at market based rates. Market Power study.</i>
<i>ER99-3143-000</i>	<i>Reliant</i>	<i>Application of Reliant Energy Indian River, L.L.C., to sell energy, capacity and ancillary services at market based rates. Market Power study.</i>
<i>EL13-61-000</i>	<i>Occidental</i>	<i>Exelon Wind et al Complaint and Petition for Enforcement. Determination of whether a Legally Enforceable Obligation was established between a QF and a utility</i>
<i>ER19-1486-000</i>	<i>Load/Customer Coalition</i>	<i>PJM Interconnection, L.L.C. Comments on ORDC design</i>
<i>EL19-58-000</i>	<i>Load/Customer Coalition</i>	<i>PJM Interconnection, L.L.C. Comments on ORDC design</i>

**CIVIL LITIGATION**

<i>CAUSE NO. C-356-10-A</i>	<i>Loral, Ltd, Danhana, Ltd, RGV Warehouse, Ltd, and Richann, Inc. v. Sempra Energy Soutlion, LLC and Priority Power, LL, 92<sup>nd</sup> Judicial Court, Hidalgo County, Texas. Commercial Reasonability of Retail Electric Contracts and Wholesale and Retail Market Design.</i>
<i>CAUSE NO. A-09-CA-917-SS</i>	<i>JD Wind v. Public Utility Commission of Texas, United States District Court, Western District of Texas, Austin Division. History of PURPA implementation and avoided cost.</i>
<i>CAUSE NO. D-1-GN-10-004130</i>	<i>Exelon Wind v. Public Utility Commission of Texas, State District Court, Austin, Texas. History of PURPA implementation and avoided cost.</i>

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<sup>1</sup> Retail Electric Suppliers' Association

- CAUSE NO. D-1-GN-12-0021s6 Lower Colorado River Authority v. Central Texas Electric Cooperative, Fayette Electric Cooperative and San Bernard Electric Cooperative. Damages calculation for breach of purchased power contract.*
- CAUSE NO. 121-001-B Lower Colorado River Authority v. City Of Kerrville, Acting By And Through Kerrville Public Utility Board. Damages calculation for breach of purchased power contract.*
- CAUSE NO. 3:08-cv-780-CWR-LRA The State Of Mississippi, Ex Rel. Jim Hood, Attorney General For The State Of Mississippi, Plaintiff, v. Entergy Mississippi, Inc., Et Al., Defendants. Reasonableness of power procurement by utility.*
- CIVIL ACTION NO. 4:21-cv-01447 OLIN CORPORATION Plaintiff, v. TENASKA POWER SERVICES CO. Defendant. Operation of the ERCOT market for RRS.*

**LEGISLATIVE TESTIMONY**

- Joint Meeting of Texas House Interim Committee of Natural Resources and House Regulated Industries, May 2009*
- Texas House Regulated Industries, February 2007 - State of the Electric Industry*
- Texas Senate Business and Commerce, February 2007 – State of the Electric Industry*
- Texas House Regulated Industries, March 2005 - State of the Electric Industry*



**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Alliance for Retail Markets' and Texas Competitive Power Advocates  
REQUEST NO.: ARM-TCPA01-01**

**QUESTION:**

Please provide the expected annual revenue requirement associated with the leased mobile generation facilities for each year through the completion of the lease.

**ANSWER:**

This analysis has not been performed.

**SPONSOR (PREPARER):**  
Jeff Garmon

**RESPONSIVE DOCUMENTS:**  
None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Alliance for Retail Markets' and Texas Competitive Power Advocates  
REQUEST NO.: ARM-TCPA01-07**

**QUESTION:**

What value of lost load does CEHE believe is applicable to residential customers in its service territory? Commercial customers?

**ANSWER:**

CenterPoint Energy does not have information to determine the monetary value of lost load applicable to residential or commercial customers.

**SPONSOR (PREPARER):**

John Durland

**RESPONSIVE DOCUMENTS:**

None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Alliance for Retail Markets' and Texas Competitive Power Advocates  
REQUEST NO.: ARM-TCPA01-08**

**QUESTION:**

Has CEHE evaluated how many hours of lost load could be saved on average each year from the mobile generation facilities? If so, please provide the analyses. If not, please explain why not.

**ANSWER:**

CEHE has not evaluated how many hours of lost load could be saved on average each year from the mobile generation facilities. Mobile generations facilities are intended to be used to aid in restoration during a widespread power outage, such as resulting from a hurricane, or during ERCOT initiated load shed events. These events are unpredictable and cannot be accurately represented in a yearly load loss impact calculation.

**SPONSOR (PREPARER):**  
Martin Narendorf

**RESPONSIVE DOCUMENTS:**  
None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Alliance for Retail Markets' and Texas Competitive Power Advocates  
REQUEST NO.: ARM-TCPA01-11**

**QUESTION:**

How did CEHE determine the inventory of fuel at the pre-positioned sites? How does CEHE propose to resupply the facilities with fuel in the event of a winter storm or hurricane that limits road access?

**ANSWER:**

When determining fuel inventory CEHE wanted to have enough fuel to ride through 4-6 hours, this would allow time for refueling tankers to start their operations. CEHE has worked with SunCoast fuels and other fuel transport companies to have tankers staged on CNP property or near the generator sites to expedite the refueling efforts.

**SPONSOR (PREPARER):**  
Martin Narendorf

**RESPONSIVE DOCUMENTS:**  
None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Houston Coalition of Cities  
REQUEST NO.: HCC-RF108-06**

**QUESTION:**

Please refer to Mr. Martin W. Narendorf Jr.' s Testimony, page 19, lines 9 to 10, providing the Company has developed strategies to have mobile generation facilities available ready to be deployed rapidly, and provide the following for both the 5 MW and 32 MW standby generators:

- a. Please also refer to CONFIDENTIAL INFORMATION Exhibit MWN-2 LONG\_ TERM LEASE AGREEMENT and identify the required notice period the lessee must provide to the lessor prior to relocating a mobile generator;
- b. Identify the number of employees or persons and the time, measured in hours, needed to relocate a mobile generator;
- c. Identify the number of employees or persons and the time, measured in hours, needed to assemble a mobile generator after relocation;
- d. Identify the number of employees or persons and the time, measured in hours, needed to commission the generator and isolate the electric load from the grid.
- e. Identify the permits required for the mobile generator and the lead time required to acquire any permits identified.

**ANSWER:**

- a. See Part 2 of Appendix A to the Long-Term Lease listing the Lessor's Performance Requirements, including the requirement that the mobile generators "must be capable of being deployed and operational within 48 hours" and the requirement that the Lessor "must provide transportation and assembly services for relocation of any Equipment to support emergency operations."
- b. LifeCycle Power (LCP) will need a minimum of 3 people for 48 hours to disassemble the ~30 MW units. CEHE will need 4 crew members for approximately 3 hours to disconnect the generators medium voltage cables and grounding connections. For the ~5 MW units it would take 2 LCP personnel and 2 CEHE crew members approximately 2 hours to disconnect the medium voltage cables and grounding connections.
- c. LCP will need a minimum of 3 people for 48 hours to assemble the ~30 MW units. CEHE will need 4 crew members approximately 3 hours to connect the generators medium voltage cable and grounding connections.  
For the ~5 MW units it would take 2 LCP personnel approximately 6 hours and CEHE would need 2 crew members for approximately 3 hours to connect the medium voltage cable and grounding connections.
- d. All units are located at CEHE substations and are fully commissioned. See section XII (d) of the Long-Term lease stating the agreed upon time of 24 hours or 6 hours as applicable to respond to events and initiate operation of mobile generation facilities and Standby Generators. It may take CEHE crews approximately 3 hours at each location to have the medium voltage transformers isolated from the bulk electric system.
- e. For the ~30 MW units a Super load permit is required for overweight, over-sized. Typical

processing time for this permit is 5 business days. The ~5 MW units need an over weight permit which is typically processed the same day.

**SPONSOR (PREPARER):**

Martin Narendorf

**RESPONSIVE DOCUMENTS:**

None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC**  
**PUC DOCKET NO. 53442**  
**SOAH NO. DOCKET NO. 473-22-2353**

**Houston Coalition of Cities**  
**REQUEST NO.: HCC-RF108-08**

**QUESTION:**

Please refer to Mr. Martin W. Narendorf Jr.'s Testimony, page 6, lines 9 to 10, providing the Company has power outages during hurricanes, including Hurricane Harvey and Hurricane Nicholas, and provide the following for each hurricane:

- a. State whether the event is a widespread outage as used in PUCT 39.918
- b. The name and location of substations that could not receive power from the transmission grid for more than 8 hours
  1. For each substation listed, provide the total outage time at the substation prior transmission service was restored

**ANSWER:**

- a. Hurricane Nicholas resulted in widespread outage as used in PURA 39.918. PURA 39.918 did not exist during Hurricane Harvey and for prior hurricanes.
- b. Hurricane Nicholas – No substations were out of power but the damages from hurricane resulted in several distribution facilities to not receive power from the bulk power system.

Hurricane Harvey – See list below for name and location of CEHE substations. These substations were "not being fully served by the bulk power system under normal operations" for periods exceeding 8 hours.

Substation	Address	Outage Start	Outage End	Duration
West Columbia	503 Oil Field Rd, West Columbia, TX	8/26/2017 18:30	9/13/2017 17:24	~18 days
Britmoore	1317 Britmoore Rd, Houston TX	8/29/2017 20:07	8/30/2017 18:07	~22 hours
Addicks	2105 Britmoore Rd, Houston TX	8/30/2017 1:03	8/30/2017 17:49	~16 hours
Memorial	655 Nottingham Oak Tr, Houston TX	8/28/2017 18:03	9/5/2017	~8 days
Brays	4211 S Braeswood Blvd, Houston TX	8/27/2017 11:09	9/4/2017 12:00	~8 days
Parkway	12070 Beaumont Hwy, Houston TX	8/28/2017 18:06	8/31/2017 23:00	~3 days
Brazos Valley	4325 FM 723, Richomd TX	8/29/2017 3:00	9/3/2017 19:00	~5 days
North Belt	15330 Chaplin Dr, Houston TX	8/27/2017 21:18	8/30/2017 23:59	~3 days
Wallisville	7618 Wallisville Rd, Houston TX	8/27/2017 1:07	8/30/2017 17:00	~3 days
Pledger	17400 FM 1301, Pledger TX	8/29/201 13:33	9/4/2017 18:00	~6 days

1. See response to b.

**SPONSOR (PREPARER):**  
Martin Narendorf

**RESPONSIVE DOCUMENTS:**  
None



**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC**  
**PUC DOCKET NO. 53442**  
**SOAH NO. DOCKET NO. 473-22-2353**

**Houston Coalition of Cities**  
**REQUEST NO.: HCC-RF108-09**

**QUESTION:**

Mr. Narendorf testified that CEHE having approximately 500 MW of mobile generation facilities, along with other options the Company is pursuing, would be sufficient to meet the load shed demand caused by Winter Storm Uri. (page 14 lines 3-5)

- a. Provide detail information regarding each option that the Company is pursuing
- b. Provide the load shed capacity of each option
- c. Provide information regarding the readiness of these options; are these option in place today or is there a roll out for these potential options?

**ANSWER:**

- a. CEHE is currently evaluating the use of following options to expand its load shed capabilities.
  - Use of underfrequency load shed circuits (UFLS)
  - Use of intelligent grid switching devices (IGSD) on circuits with priority customers
  - Use of mobile generation facilities.
- b. Below are the load shed capabilities for each option.
  - UFLS circuits - up to 3,000MW.
  - IGSD load shed - up to approximately 400MW
  - Mobile generation facilities - up to 1,800MW
- c. Below are the readiness of these options.
  - a. UFLS circuits - ready
  - b. IGSD load shed - up to 270MW by end of 2022. Remaining locations are being reviewed and planned to be deployed in 2023 and 2024
  - c. Mobile generation facilities - ready

**SPONSOR (PREPARER):**  
Martin Narendorf

**RESPONSIVE DOCUMENTS:**  
None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC**  
**PUC DOCKET NO. 53442**  
**SOAH NO. DOCKET NO. 473-22-2353**

**Texas Competitive Power Advocates'**  
**REQUEST NO.: TCPA02-01**

**QUESTION:**

Please provide the following:

- a. All investigatory due diligence undertaken by CEHE regarding Prime Power Solutions, LLC dba Life Cycle Power as an entity, its key personnel, and its ability to fulfill its obligations to CEHE before entering into the short and long term lease agreements;
- b. The name of the person(s) who conducted the investigatory due diligence on CEHE's behalf;
- c. The approximate date that the due diligence commenced; and
- d. All documents associated with the due diligence process.

**ANSWER:**

- a. In August 2021, CEHE decided to pursue mobile generation after the passing of new legislation. It was decided to pursue a short-term lease to cover the remainder of the current hurricane season. CenterPoint's Procurement department prepared a short-term lease RFP with input from CEHE ops and engineering departments. Four vendors were identified as potential bidders for the short-term lease RFP based on research which showed the kind of mobile generation needed and based on feedback from oil field services companies who regularly use mobile generation in their operations. LCP was the winning bidder based on price and their ability to deliver the requested generation units and capacity set out in the RFP criteria for types and availability of equipment. Based on that assessment of the short-term lease, CEHE decided to pursue a long-term lease for mobile generation to be in place for the winter season and beyond. The RFP for the long-term lease was sent out to approximately 15 bidders with only 2 respondents having conforming responses. CEHE conducted financial due diligence of both bidders and met with their respective private equity providers. LCP was selected as the bidder that CEHE would pursue negotiations with towards a long-term lease agreement based on LCP's bid price, availability of equipment, and financial strength of LCP's financing entity. Procurement department conducted and completed a procurement risk assessment of LCP during the lease agreement negotiations.
- b. Investigatory due diligence on CEHE's behalf was performed by Supply Chain, Strategic Planning and Engineering business units. Both internal and external counsels also support the due diligence efforts.
- c. Due diligence process commenced on 8/6/2021 for short term lease and 11/7/2021 for long term lease proposals.
- d. Attached highly sensitive document "TCPA02-01\_JUSTIFICATION FORM (HIGHLY SENSITIVE).pdf" contains the business justification forms that were completed by CEHE's Procurement department for both short-term and long-term leases. Attached highly sensitive document "TCPA02-01\_Board Resolution\_TEEE Proposal (Highly Sensitive).pdf" shows the summary of the due diligence that was completed.

**The attachments are Highly Sensitive and are being provided pursuant to the protective order issued in this docket.**

**SPONSOR (PREPARER):**  
Martin Narendorf

**RESPONSIVE DOCUMENTS:**

TCPA02-01\_Board Resolution\_TEEE Proposal (Highly Sensitive).pdf  
TCPA02-01\_JUSTIFICATION FORM (HIGHLY SENSITIVE).pdf

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Competitive Power Advocates'  
REQUEST NO.: TCPA02-02**

**QUESTION:**

As part of the due diligence addressed in TCPA 2-1 above, did CEHE perform background checks on Prime Power Solutions, LLC dba Life Cycle Power's key personnel, including its C-level executives? If the answer is yes, please provide all related documents. If the answer is no, please explain why CEHE did not perform this task.

**ANSWER:**

No. CenterPoint Energy does not conduct due diligence on individual employees or executives of a vendor unless such employees or executives were making financial or other commitments to CenterPoint Energy in their individual capacities. None of Life Cycle Power's key personnel or C-level executives have made any such commitments in their individual capacities.

**SPONSOR (PREPARER):**

Martin Narendorf

**RESPONSIVE DOCUMENTS:**

None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Energy Association for Marketers  
REQUEST NO.: TEAM01-03**

**QUESTION:**

**Mobile Generation**

Reference the following statement from the Amended Direct Testimony of Martin Narendorf at Bates pages 115-16: "CenterPoint Energy was required to shed close to 5,000 MW of load, which exceeded the Company's automated load rotation capabilities." What is the MW threshold (single number or range) at which CenterPoint is no longer able to automatically rotate load during a load shed event? Please provide all analysis or studies that examine this issue.

**ANSWER:**

The specific MW threshold at which CenterPoint is no longer able to automatically and evenly rotate load during a load shed event is dependent on the amount of system load at the time of the event. In general CenterPoint can automatically and evenly rotate up to 50% of the load that is available in feeders in our manual load shed block. During Winter Storm Uri, there was approximately 3,375 MW available in the Manual Load shed block, 50% of which figures to about 1,688 MW. No analysis or studies were performed. These numbers are based on operation experiences from winter storm Uri.

**SPONSOR (PREPARER):**

Martin Narendorf

**RESPONSIVE DOCUMENTS:**

None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Energy Association for Marketers  
REQUEST NO.: TEAM01-05**

**QUESTION:**

**Mobile Generation**

Reference CenterPoint's response to subpart a. of HCC 1-1, which references PURA § 39.918(b) (1). Please describe how CenterPoint determines that: (1) the bulk power system is not operating normally; and (2) the failure of the bulk power system to operate normally is preventing full service to CenterPoint's distribution facilities.

**ANSWER:**

1. The determination of when a "utility's distribution facilities are not being fully served by the bulk power system under normal operations," as stated in PURA § 39.918(b)(1)(B), is a determination that is made based on the relevant facts and circumstances attendant to each situation and is done so in consultation with Operations, Engineering, Regulatory, and Legal. Examples of such facts and circumstances may include, but are not limited to, under-frequency or under-voltage situations on the ERCOT transmission system, physical damage to the ERCOT transmission system, and physical damage to the utility's distribution facilities.
2. See response above.

**SPONSOR (PREPARER):**  
Martin Narendorf

**RESPONSIVE DOCUMENTS:**  
None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Energy Association for Marketers  
REQUEST NO.: TEAM01-06**

**QUESTION:**

**Mobile Generation**

Reference the Amended Direct Testimony of Martin Narendorf at Bates pages 104-05, which states: "The intensity and duration of these storms have often resulted in widespread damage to the Company's distribution facilities, preventing them from delivering power from the bulk power system and taking a considerable amount of time to rebuild facilities and restore power from the bulk power system to our customers." Please admit or deny that this statement is describing a situation where the bulk power system is operating normally such that CenterPoint's customers would not be experiencing an interruption in service but for an operational issue that is limited to CenterPoint's distribution system. If anything other than an unqualified admit, please explain.

**ANSWER:**

Admit.

**SPONSOR (PREPARER):**  
Martin Narendorf

**RESPONSIVE DOCUMENTS:**  
None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Energy Association for Marketers  
REQUEST NO.: TEAM01-07**

**QUESTION:**

**Mobile Generation**

Reference the Amended Direct Testimony of Martin Narendorf at Bates page 111. Please provide a copy of the "assessments" referenced in the following statement: "In its assessments, the Company identified that having approximately 500 MW of mobile generation facilities, along with other options the Company is pursuing, would have been sufficient to meet the load shed demands caused by Winter Storm Uri."

**ANSWER:**

Assessments were done in a meeting in the form of verbal discussions. During the discussions it was determined that, based on the loading conditions that existed during winter storm Uri and the amount of load shed directed by ERCOT, the 500MW mobile generation capacity can provide the additional load shed capability needed to rotate customers evenly. No drafted assessments or analysis were performed.

**SPONSOR (PREPARER):**

Martin Narendorf

**RESPONSIVE DOCUMENTS:**

None



**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Energy Association for Marketers  
REQUEST NO.: TEAM01-08**

**QUESTION:**

**Mobile Generation**

After receiving responses to the RFP for the short-term lease, did CenterPoint re-evaluate the total MW of mobile generation it sought to procure in an effort to bring down the cost?

**ANSWER:**

No.

**SPONSOR (PREPARER):**

Martin Narendorf

**RESPONSIVE DOCUMENTS:**

None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Energy Association for Marketers  
REQUEST NO.: TEAM01-09**

**QUESTION:**

**Mobile Generation**

After receiving responses to the RFP for the long-term lease, did CenterPoint re-evaluate the total MW of mobile generation it sought to procure in an effort to bring down the cost?

**ANSWER:**

No.

**SPONSOR (PREPARER):**

Martin Narendorf

**RESPONSIVE DOCUMENTS:**

None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Energy Association for Marketers  
REQUEST NO.: TEAM01-10**

**QUESTION:**

**Mobile Generation**

Reference the Amended Direct Testimony of Martin Narendorf at Bates page 111. Please admit or deny that the December 31, 2021 end date to the period covered by CenterPoint's application in this proceeding impacted the timeline for executing a long-term lease for mobile generation facilities.

**ANSWER:**

The primary factor affecting the execution timing of the long term lease was the potential for another winter load shed event in 2022 similar to Uri in 2021 and the Company's desire to have mobile generation facilities deployed in time to mitigate the impacts of such an event. The ability to obtain timely cost recovery for the lease of those facilities was another important factor in the execution timing.

**SPONSOR (PREPARER):**

Martin Narendorf

**RESPONSIVE DOCUMENTS:**

None

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
PUC DOCKET NO. 53442  
SOAH NO. DOCKET NO. 473-22-2353**

**Texas Energy Association for Marketers  
REQUEST NO.: TEAM01-13**

**QUESTION:**

**Mobile Generation**

Reference the Amended Direct Testimony of Martin Narendorf at Bates page 115, which states: "In addition, the damage to the Company's facilities meant that they were not capable of being served by the bulk power system." Please describe the conditions on the bulk power system preventing its normal operation such that CenterPoint's distribution facilities near the Lake Jackson Civic Center would not have been fully served had they not been damaged. Please identify each piece of equipment or facilities that are part of the bulk power system that failed in this situation.

**ANSWER:**

Refer to response on TEAM01-12 describing the impacts for Hurricane Nicholas which resulted in a widespread power outage. Distribution circuit that feeds Lake Jackson Civic Center was impacted and locked out on 9/13/2021. Upon inspections, crews found wire down as well as tree limbs on wires along Plantation Court street preventing restoration of power to Lake Jackson Civic Center. The wires were repaired and circuit was restored on 9/18/2021.

**SPONSOR (PREPARER):**

Martin Narendorf

**RESPONSIVE DOCUMENTS:**

None

TO ORDER COPIES OF ANY DOCUMENTS LISTED  
BELOW, CALL WESTLAW COURTEXPRESS  
1-877-DOC-RETR (1-877-362-7387) (Additional Charges Apply)

**This docket is current through 07/25/2022**

Today's Date: 8/1/2022

Source: Court of Chancery, Delaware


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#### CASE INFORMATION

Case Title:	John Tuma v. Prime Power Solutions, LLC
Court:	Court of Chancery
Case Number:	2022-0604
Filing ID Number:	7581604
Case Type:	Civil
Case Subtype:	Complaint - Inspection of Books & Records
Key Nature of Suit:	Business Organizations (080)
Description:	Civil Action
Date Filed:	07/08/2022
Judge:	Kathaleen St Jude McCormick
Case Status:	Active
Judge Last Status Date:	07/08/2022
Other Judge:	Judge Unassigned

#### SYNOPSIS INFORMATION

Allegations:	Plaintiff seek an order compelling defendant to provide plaintiffs and their duly authorized representatives with the books and records as requested in the demand. (Updated with redacted complaint and additional details)
Damages:	Injunctive relief, attorney's fees and costs. COMPLAINT (MANUALLY RETRIEVED)
	 Original Image of this Document (PDF)

#### PARTICIPANT INFORMATION

**JOMA Management, LLC**

Type:	Plaintiff
Attorney:	Jenness Parker
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Attorney Phone:	302-651-3183
Bar Number:	DE: 4659
Email Address:	jenness.parker@skadden.com

Firm Name: Skadden Arps Slate Meagher & Flom LLP-Wilmington

**JOMA Management, LLC**

Type: Plaintiff  
Attorney: Lauren N Rosenello  
Attorney Phone: 302-651-3267  
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**JOMA Management, LLC**

Type: Plaintiff  
Attorney: Peyton Carper  
Attorney Phone: 302-651-3267  
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**John Tuma**

Type: Plaintiff  
Attorney: Jenness Parker  
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**John Tuma**

Type: Plaintiff  
Attorney: Lauren N Rosenello  
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Attorney Fax: 302-552-3267

**John Tuma**

Type: Plaintiff  
Attorney: Peyton Carper  
Attorney Phone: 302-651-3267  
Attorney Fax: 302-552-3267

**Prime Power Solutions, LLC**

Type: Defendant



## ATTORNEY INFORMATION

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**Attorney Address:** PO Box 636  
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## DOCKET PROCEEDINGS (19)

Date:	Entry #:	Description:	Date Docketed:	Party:
07/23/2022	89492872	<b>Document Description:</b> Notice of Service of (i) Plaintiffs' First Set of Interrogatories Directed to Defendant Prime Power Solutions, LLC d/b/a Life Cycle Power with Schedule A; and (ii) Plaintiffs' First Request for Production of Documents Directed to Defendant Prime Power Solutions, LLC d/b/a Life Cycle Power (with Certificate of Service) <b>Docket Entry Type:</b> Notice of Service <b>Attorney:</b> Jenness Parker <b>File Type:</b> Main <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Levette Williams <b>Number of Pages:</b> 3 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/25/2022	Send Runner to Court
07/23/2022	89492835	<b>Document Description:</b> Schedule A to Plaintiffs John Tuma and JOMA Management, LLC's Notice of Rule 30(b)(6) Deposition of Defendant Prime Power Solutions, LLC d/b/a Life Cycle Power <b>Docket Entry Type:</b> Exhibits <b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Levette Williams <b>Number of Pages:</b> 6 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/25/2022	Send Runner to Court
07/23/2022	89492834	<b>Document Description:</b> Plaintiffs John Tuma and JOMA Management, LLC's Notice of Rule 30(b)(6) Deposition of Defendant Prime Power Solutions, LLC d/b/a Life Cycle	07/25/2022	Send Runner to Court

		Power (with Certificate of Service) <b>Docket Entry Type:</b> Notice of Deposition <b>Attorney:</b> Jenness Parker <b>File Type:</b> Main <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Levette Williams <b>Number of Pages:</b> 3 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington		
07/19/2022	89470124	<b>Document Description:</b> Letter to The Honorable Kathaleen St. J. McCormick from Jenness E. Parker regarding confidential treatment of the Motion to Expedite Proceedings and Exhibits to the Verified Complaint <b>Docket Entry Type:</b> Letter <b>Attorney:</b> Jenness Parker <b>File Type:</b> Main <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Stacey Righter <b>Number of Pages:</b> 2 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/19/2022	 <a href="#">View</a>
07/18/2022	89462448	<b>Document Description:</b> Summons Pursuant to 6 Del. C. § 18-105 to Special Process Server, Brandywine Process Servers, Ltd. and Return of Service upon Prime Power Solutions, LLC D B A Life Cycle Power by serving the register agent on July 15, 2022 <b>Docket Entry Type:</b> Summons <b>Attorney:</b> Jenness Parker <b>File Type:</b> Main <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 3 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/18/2022	<a href="#">Send Runner to Court</a>
07/15/2022	89456766	<b>Document Description:</b> 7.15.22 - issued (1) Original Summons to Special Process Server (1 Copy) <b>Docket Entry Type:</b> Issuance of Summons <b>File Type:</b> Main <b>Disposition:</b> Accepted <b>Filer:</b> Jessica Thompson <b>Reviewer:</b> Sharay Knight <b>Number of Pages:</b> 4 <b>Filer Organization:</b> DE Court of Chancery Civil Action	07/15/2022	 <a href="#">View</a>
07/14/2022	89453869	<b>Document Description:</b> Letter to The Honorable Kathaleen St. J. McCormick from Jenness	07/15/2022	 <a href="#">View</a>



		<p>E. Parker, Esquire enclosing two courtesy copies of Plaintiffs' Motion to Compel Production of Books and Records <b>Docket Entry Type:</b> Letter <b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Wendy Cathers <b>Reviewer:</b> Stacey Righter <b>Number of Pages:</b> 2 <b>Filer Organization:</b> Skadden Arps Slate Meagher &amp; Flom LLP-Wilmington</p>		
07/14/2022	89453868	<p><b>Document Description:</b> [PROPOSED] Order re Motion to Compel Production of Books and Records <b>Docket Entry Type:</b> Proposed Order <b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Wendy Cathers <b>Reviewer:</b> Stacey Righter <b>Number of Pages:</b> 1 <b>Filer Organization:</b> Skadden Arps Slate Meagher &amp; Flom LLP-Wilmington</p>	07/15/2022	 <a href="#">View</a>
07/14/2022	89453867	<p><b>Document Description:</b> Plaintiffs' Motion to Compel Production of Books and Records <b>Docket Entry Type:</b> Motion to Compel 2022 WL 2829717 <b>Attorney:</b> Jenness Parker <b>File Type:</b> Main <b>Disposition:</b> Accepted <b>Filer:</b> Wendy Cathers <b>Reviewer:</b> Stacey Righter <b>Number of Pages:</b> 7 <b>Filer Organization:</b> Skadden Arps Slate Meagher &amp; Flom LLP-Wilmington</p>	07/15/2022	 <a href="#">View</a>
07/14/2022	89448834	<p><b>Document Description:</b> Redacted Version of Verified Complaint for Inspection of Books and Records Pursuant to 6 Del. C. § 18-305 <b>Docket Entry Type:</b> Public Version 2022 WL 2802578 <b>Attorney:</b> Jenness Parker <b>File Type:</b> Main <b>Disposition:</b> Accepted <b>Filer:</b> Sarah Steigler <b>Reviewer:</b> Stacey Righter <b>Number of Pages:</b> 23 <b>Filer Organization:</b> Skadden Arps Slate Meagher &amp; Flom LLP-Wilmington</p>	07/14/2022	 <a href="#">View</a>
07/08/2022	89425791	<p><b>Document Description:</b> [Proposed] Order Granting Plaintiffs' Motion to Expedite Proceedings <b>Docket Entry Type:</b> Proposed Order</p>	07/08/2022	 <a href="#">View</a>

		<b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 2 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington		
07/08/2022	89425790	<b>Document Description:</b> Plaintiffs' Motion to Expedite Proceedings <b>Docket Entry Type:</b> Motion to Expedite 2022 WL 2714091 <b>Attorney:</b> Jenness Parker <b>File Type:</b> Main <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 9 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/08/2022	 <a href="#">View</a>
07/08/2022	89425789	<b>Document Description:</b> Letter to the Register in Chancery from Jenness E. Parker, Esquire certifying compliance with Court of Chancery Rule 5.1(e) in accordance with Rule 5.1(c) <b>Docket Entry Type:</b> Certificate of Rule 5.1 <b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 3 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/08/2022	 <a href="#">View</a>
07/08/2022	89425788	<b>Document Description:</b> Letter to the Register in Chancery from Jenness E. Parker, Esquire re: Summons Instructions pursuant to 6 Del. C. § 18-105 <b>Docket Entry Type:</b> Summons Instructions <b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 2 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/08/2022	 <a href="#">View</a>
07/08/2022	89425787	<b>Document Description:</b> Supplemental Information Sheet Pursuant to 3(a) of the Rules of the Court of Chancery with Statement of Good Cause <b>Docket Entry Type:</b> Supplemental Information Sheet	07/08/2022	 <a href="#">View</a>

		<b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 2 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington		
07/08/2022	89425786	<b>Document Description:</b> Exhibit F to Verified Complaint for Inspection of Books and Records Pursuant to 6 Del. C. § 18-305 <b>Docket Entry Type:</b> Exhibits <b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 4 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/08/2022	 <a href="#">View</a>
07/08/2022	89425784	<b>Document Description:</b> Exhibits B-D to Verified Complaint for Inspection of Books and Records Pursuant to 6 Del. C. § 18-305 <b>Docket Entry Type:</b> Exhibits <b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 32 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/08/2022	 <a href="#">View</a>
07/08/2022	89425782	<b>Document Description:</b> Verification of John Tuma on behalf of JOMA Management, LLC to Verified Complaint for Inspection of Books and Records Pursuant to 6 Del. C. § 18-305 <b>Docket Entry Type:</b> Verification to Complaint <b>Attorney:</b> Jenness Parker <b>File Type:</b> Supporting <b>Disposition:</b> Accepted <b>Filer:</b> Kraig M Ellis <b>Reviewer:</b> Brenda McKinnon <b>Number of Pages:</b> 2 <b>Filer Organization:</b> Skadden Arps Slate Meagher & Flom LLP-Wilmington	07/08/2022	 <a href="#">View</a>
07/08/2022	89425781	<b>Document Description:</b> Verification of John Tuma to Verified Complaint for Inspection of Books and Records Pursuant to 6 Del. C. § 18-305 <b>Docket Entry Type:</b> Verification to Complaint	07/08/2022	 <a href="#">View</a>

**Attorney:** Jenness Parker **File**  
**Type:** Supporting **Disposition:**  
Accepted **Filer:** Kraig M Ellis  
**Reviewer:** Brenda McKinnon  
**Number of Pages:** 2 **Filer**  
**Organization:** Skadden Arps  
Slate Meagher & Flom LLP-  
Wilmington

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## United States v. Tuma

Decided Dec 5, 2012

CRIMINAL NO. 11-0031-01

12-05-2012

UNITED STATES OF AMERICA v. JOHN  
EMERSON TUMA

TOM STAGG

JUDGE TOM STAGG

### **WRITTEN REASONS FOR JUDGMENT**

On March 21, 2012, the defendant, John Emerson Tuma ("Mr. Tuma"), was convicted by a jury on five counts: Discharge To The Publicly Owned Treatment Works In Violation Of A Requirement Of The Approved Pretreatment Program in violation of 33 U.S.C. § 1319(c)(2)(A); two counts of Discharge to the Red River Without A Permit in violation of 33 U.S.C. § 1311(a); Conspiracy in violation of 18 U.S.C. § 371; and Obstruction in violation of 18 U.S.C. § 1505.

The sentencing hearing in this matter was rescheduled several times. Now, on December 5, 2012, 259 days since the jury verdict, the process will be completed. Prior to today's hearing, the parties submitted copious briefs on the six (6) sentencing enhancements sought by the government and objected to by the defendant.

2 In arriving at the decisions on the defendant's objections to the PSR, I have \*2 carefully considered the contents of the PSR and the addendums thereto and the oral and written arguments of counsel. The reasons stated herein

are designed merely to supplement the record, not to serve as the cumulative explanation of authorities which support the judgment in this matter.

### **I. Analysis Of Enhancements And Defendant's Objections**

#### **a. Ongoing, Continuous, Or Repetitive Discharge**

The PSR applies U.S.S.G. § 2Q1.3(b)(1)(A), which provides for a six-level increase where the offense resulted in "an ongoing, continuous, or repetitive discharge, release, or emission of a pollutant into the environment." Application Note 4 provides that: "Subsection (b)(1) assumes a discharge or emission into the environment resulting in actual environmental contamination. A wide range of conduct, involving the handling of different quantities of materials with widely differing propensities, potentially is covered. Depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from that prescribed in these specific offense characteristics may be appropriate."

Mr. Tuma argues that the enhancement should not apply because the government did not introduce evidence of environmental harm, and, in the alternative, \*3 that a two-level downward departure is warranted for the same reason. The Fifth Circuit cases interpreting § 2Q1.3(b)(1)(A) make clear that the government need not prove environmental harm. In United States v.

Goldfaden, 959 F.2d 1324, 1331 (5th Cir. 1992), the Fifth Circuit explicitly held that the Application Note does not require proof of contamination; instead, "(b)(1) takes environmental contamination as a given, but allows for upward or downward departures depending on the potency, size, or duration of the contamination." Therefore, absence of proof of environmental contamination is irrelevant to the applicability of the enhancement.

The evidence adduced at trial showed that, at Mr. Tuma's direction, on innumerable occasions, there were illegal discharges of untreated wastewater, a pollutant, from about March 2006 through September 2007, which clearly qualifies as "ongoing" and "continuous." See Record Document 123, Todd Cage Trial Testimony at 21-25. Thus, the enhancement applies in this case because of the continuous discharges of untreated waster.

Additionally, Mr. Tuma is not entitled to a two-level departure. As noted in Goldfaden, the court should consider the potency, size, or duration of the contamination in deciding whether to depart. See 959 F.2d at 1331. While Mr. Tuma is correct that the government did not prove the potency of the contamination, the government did prove the duration of the contamination at trial. For several  
4 months, \*4 as directed by Mr. Tuma, illegal discharges into the Red River and the Shreveport Publicly Owned Treatment Works ("POTW") occurred. See Record Document 123, Todd Cage Trial Testimony at 21-25. Mr. Tuma does not contest the duration of the contamination. Accordingly, the two-level downward departure is unwarranted because of the lengthy duration of contamination.

Therefore, the six-level enhancement in U.S.S.G. § 2Q1.3(b)(1)(A) applies.

#### **b. Substantial Expenditure For Cleanup**

Paragraph 40 of the PSR adds a four-level increase pursuant to U.S.S.G. § 2Q1.3(b)(3), which provides in relevant part that "... if cleanup required a substantial expenditure, increase by 4 levels." Application Note 6 says that "Subsection (b)(3) provides an enhancement where a public disruption, evacuation or cleanup at substantial expense has been required. Depending upon the nature of the contamination involved, a departure of up to two levels in either direction could be warranted."

Section 2Q1.3(b)(3) does not apply here. There was no public disruption, no evacuation, and in my opinion, no "cleanup" as envisioned by the Guidelines. The government argues that CCS expended substantial funds to dispose of the leftover wastewater in the storage tanks at the facility. However, when section 2Q1.3(b)(3) is read in full, it is clear that the "cleanup" refers to  
5 remediation of some \*5 environmental contamination (e.g., an oil spill). While CCS claims to have expended large amounts of money to dispose of untreated wastewater in on-site tanks (allegedly as much as \$ 12,3 00,000.00), the government did not produce evidence at trial that the Red River or Shreveport POTW was actually contaminated by Mr. Tuma's actions. Hauling away wastewater contained in stainless steel tanks is not "cleaning up" as contemplated by Section 2Q1.3(b)(3). Since the government did not prove any environmental harm requiring a "cleanup," the enhancement does not apply. Moreover, this court declined to apply the same enhancement in sentencing Mr. Tuma's co-defendant, Cody Tuma. The court is guided by the need to treat similarly situated defendants equally. Therefore, the four-level enhancement in section 2Q1.3(b)(3) does not apply.

#### **c. Discharge In Violation Of Or Without A Permit**

Paragraph 41 of the PSR applies U.S.S.G. § 2Q1.3(b)(4) which provides for a four-level increase "if the offense involved a discharge

without a permit or in violation of a permit." Application Note 7 says that "Subsection (b)(4) applies where the offense involved violation of a permit, or where there was a failure to obtain a permit when one was required. Depending on the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels in either direction may be warranted." The government asks for a two-level

6 \*6 upward departure because Mr. Tuma discharged in violation of a permit and without a permit when one was required. Mr. Tuma asks for a two-level downward departure because the government did not prove the toxic nature of the substance he discharged.

It is clear that the enhancement applies because Mr. Tuma violated the terms of his permit to discharge into the Shreveport POTW when he discharged untreated wastewater, and Mr. Tuma himself admitted that he did not have a permit to discharge into the Red River in August of 2006. See Record Document 123, Jeri Dixon Trial Testimony at 8 (testifying that only clean water was supposed to be discharged to the city under terms of permit); Record Document 134, John Tuma Trial Testimony at 271-272. However, a two-level upward departure is not warranted simply because Mr. Tuma caused both the discharge to the Red River when he did not have a permit to do so and violated his permit to discharge into the Shreveport POTW. The Guidelines do not provide such a justification for departing upwards, and the government has not produced any cases in which a court has departed upward when a defendant both violates a permit and discharges without one. Therefore, a two-level upward departure is not justified.

Likewise, Mr. Tuma is not entitled to a two-level downward departure. Although the government did not prove the toxic "nature" of the substance, the Application Note also requires sentencing

7 courts to consider the quantity of the \*7 upward departure because Mr. Tuma discharged in violation of a permit and without a permit when

one was required. Mr. Tuma asks for a two-level downward departure because the government did not prove the toxic nature of the substance he discharged.

It is clear that the enhancement applies because Mr. Tuma violated the terms of his permit to discharge into the Shreveport POTW when he discharged untreated wastewater, and Mr. Tuma himself admitted that he did not have a permit to discharge into the Red River in August of 2006. See Record Document 123, Jeri Dixon Trial Testimony at 8 (testifying that only clean water was supposed to be discharged to the city under terms of permit); Record Document 134, John Tuma Trial Testimony at 271-272. However, a two-level upward departure is not warranted simply because Mr. Tuma caused both the discharge to the Red River when he did not have a permit to do so and also violated his permit to discharge into the Shreveport POTW. The Guidelines do not provide such a justification for departing upwards, and the government has not produced any cases in which a court has departed upward when a defendant both violates a permit and discharges without one. Therefore, a two-level upward departure is not justified.

Likewise, Mr. Tuma is not entitled to a two-level downward departure. Although the government did not prove the toxic "nature" of the substance, the Application Note also requires sentencing

8 courts to consider the quantity of the \*8 substance, which in this case was substantial. For instance, Todd Cage testified that Mr. Tuma directed his employees to discharge untreated wastewater on "pretty much a nightly basis" throughout 2006 and 2007, which amounted to almost one million gallons per night. See Record Document 123, Todd Cage Trial Testimony at 21-25. Given the quantity of the wastewater discharged, a two-level downward departure is not warranted.

Therefore, the four-level enhancement in U.S.S.G. § 2Q1.3(b)(4) applies.

#### d. Role In The Offense

The PSR applies U.S.S.G. § 3B1.1(a), which provides for a four-level increase "if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. . ." Application Note 1 defines "participant" as a "person who is criminally responsible for the commission of the offense, but need not have been convicted," while Note 3 instructs the court to consider "all persons involved during the course of the entire offense" including "the unknowing services" of "outsiders" when determining if the activity is "otherwise extensive." Mr. Tuma argues that the enhancement does not apply because there were less than five participants in his scheme, and alternatively that the criminal activity was not otherwise extensive.

9 The court finds that the enhancement applies because Mr. Tuma led a criminal \*9 activity that was "otherwise extensive." In United States v. Ho, 311 F.3d 589, 611 (5th Cir. 2002), the Fifth Circuit interpreted § 3B1.1(a) and Application Note 3 in holding that "[i]n deciding whether a scheme was otherwise extensive, the district court must take into account all persons involved during the course of the entire offense" including those outsiders who unknowingly served the criminal activity. In United States v. Davis, 226 F.2d 346, 360 (5th Cir. 2000), the Fifth Circuit upheld application of the enhancement where employees, loan brokers and lawyers unknowingly served a fraud and money laundering scheme. Similarly, the evidence adduced at trial in this case clearly supports a finding that Mr. Tuma's criminal activity was extensive, as it involved the unknowing service of numerous ArkLa employees, delivery truck drivers and contractors who modified the ArkLa facility to allow the concealment of illegal discharges. Therefore, the four-level enhancement in U.S.S.G. § 3B1.1(a) is warranted.

#### e. Abuse of Position of Trust

In paragraph 44, the PSR applies U.S.S.G. § 3B1.3 which provides for a two-level increase "if the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels...". That section also provides that if the adjustment is based solely on use of a special skill, 10 it may not be employed in \*10 addition to an adjustment under § 3B1.3. U.S.S.G. § 3B1.3. Mr. Tuma argues that he did not occupy a position of trust, and that, even if he did, the position did not significantly facilitate commission or concealment of the crime.

Whether abusing a position of trust significantly facilitated commission or concealment of the offense depends on "whether the defendant occupied a superior position, relative to all people in a position to commit the offense, as a result of [his] job." United States v. Pruett, 681 F.3d 232, 248 (5th Cir. 2012)(citation omitted). Section 3B1.3 is satisfied "where the defendant's position made the criminal conduct easier to perform." Id. The facts of Pruett are strikingly similar to those of this case. There, the defendant was president and CEO of two companies which operated twenty-eight wastewater facilities in northern Louisiana. Id. at 237. This position afforded him a great amount of discretion and control over aspects of the business, including compliance with permit regulations. Id. at 249. Judge James applied the enhancement in 3B1.3 when he sentenced the defendant and the Fifth Circuit affirmed, noting that the defendant "was responsible for overseeing the facilities' treatment and testing systems, as well as maintaining accurate records." Id. at 249. Although the LDEQ and EPA conducted tests, they relied on the defendant to monitor and self-report his own violations. Id. Thus, his position 11 "facilitated his offenses." Id. \*11

Similarly, the enhancement applies here because Mr. Tuma abused his position as owner (while at ArkLa) and plant manager (after the sale to CCS) in a manner that significantly facilitated the



commission or concealment of his offense. Mr. Tuma was responsible for overseeing the facilities's treatment and testing systems and maintain records. The City of Shreveport relied on Mr. Tuma to self-report violations, but he abused his position of trust in order to facilitate and conceal his crime.

The defense argues that the government cannot now claim that the public is a "victim" because the PSR only included CCS as a victim and the government did not object. This argument has no merit. The enhancement does not depend on the public's status as a "victim." In United States v. Kay, 513 F.3d 432, 460 (5th Cir. 2007), the Fifth Circuit explained that: "We have never held... nor do the guidelines explicitly require, that the determination whether a defendant occupied a position of trust must be assessed from the perspective of the victim." In Kay and other cases, the Fifth Circuit has "upheld the defendant's sentence enhancement because [they] violated [their] position[s] of trust with respect to the government" even though the victims were non-government entities. Id. Even though the public is technically a victim of Clean Water Act violations, United States v. Snook, 366 F.3d 445 (7th Cir. 2004), their status as such is irrelevant to an analysis under the of abuse of trust enhancement. The only relevant inquiries are whether Mr. Tuma

12 abused a position \*12 of trust and whether that abuse facilitated commission or concealment of his offense. See Kay, 513 F.3d at 460. Accordingly, it is irrelevant that the PSR did not explicitly label the public as a victim.

Mr. Tuma was the owner and manager of ArkLa and the plant manager at CCS for a substantial portion of the period of time during which he committed the offense. He abused his leadership position in order to facilitate his crime. Therefore, the two-level enhancement in U.S.S.G. § 3B1.3 applies.

#### f. Obstruction of Justice

Paragraph 45 of the PSR applies a two-level increase for obstruction of justice pursuant to U.S.S.G. § 3C1.1. The government argues that the enhancement applies because Mr. Tuma committed perjury while testifying at trial. In United States v. Dunnigan, 507 U.S. 87 (1993), the Supreme Court held that district courts must make factual findings regarding each element of perjury before applying the enhancement. A witness commits perjury if he gives false testimony concerning a material matter with the intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory. See 18 U.S.C. § 1621.

The court finds that the defendant was untruthful at trial with respect to material matters in this case. Specifically, Mr. Tuma lied on multiple occasions under oath about intentionally discharging untreated wastewater to the City of Shreveport \*13 and the Red River. With respect to discharging untreated water, Mr. Tuma said he "absolutely [did] not" intentionally discharged untreated wastewater to the city and "never" discharged untreated water to the river. See Record Document 134, John Tuma Trial Testimony at 39. Mr. Tuma further denied having "any knowledge or belief that Mr. Cage, Mr. Mallet, or Cody was illegally dumping water into the city sewer or the Red River." Id. at 61-62.

At trial, there were numerous witnesses who contradicted Mr. Tuma on the basic fact of his intentional discharge of untreated water. For example, Wayne Mallet testified that Mr. Tuma directed the employees at the facility to "put [the untreated wastewater] in the tanks available and then we would constantly discharge untreated water." Record Document 123, Wayne Mallet Trial Testimony at 13-15.

Todd Cage corroborated Mr. Mallet's testimony. Todd Cage testified that he was discharging untreated wastewater to the city and into the Red River on "pretty much a nightly basis" throughout 2006 and 2007. Record Document 123, Todd Cage

Trial Testimony at 21-23. He further testified that he was discharging the untreated water at the explicit direction of Mr. Tuma. See id.

Whether Mr. Tuma knowingly discharged untreated wastewater is a basic fact on which Mr. Tuma could not have been mistaken or confused.

Therefore, by virtue of his failure to give truthful  
14 testimony on material matters \*14 that were  
designed to substantially affect the outcome of the  
case, the court concludes that Mr. Tuma's false  
testimony at trial warrants an upward adjustment  
by two levels pursuant to section 3C1.1 of the  
Guidelines.

December 28, 2007

**BY MESSENGER**

Ms. Theresa Chang  
Harris County District Clerk  
201 Caroline, First Floor, Room 110  
Houston, Texas 77002

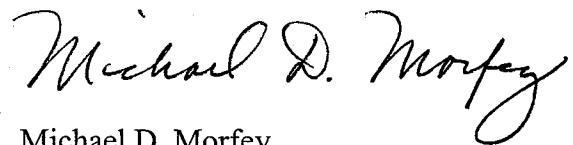
Re: Cause No.: 2007-69975; *John Tuma, Individually and as Trustee of the Defunct Renea Modasette Bypass Trust, The Dustin Heath Tuma Bypass Trust and The Cody Montgomery Tuma Bypass Trust v. CCS (USA), Inc., CCS Energy Services, L.L.C. and Stanford Trust Company*; In the 126th Judicial District Court, Harris County, Texas.

Dear Ms. Chang:

Enclosed for filing in the above-referenced matter are an original and one (1) copy of Defendants CCS (USA), Inc.'s and CCS Energy Services, L.L.C.'s Original Answer and Counterclaim. Please file the original in your customary manner and return the extra file-stamped copy to our messenger.

If you have any questions, please feel free to call me at (713) 220-4152.

Very truly yours,



Michael D. Morfey

7952:mar  
Enclosures

cc: Counsel of Record (CM/RRR)

CAUSE NO. 2007-69975

JOHN TUMA, INDIVIDUALLY AND AS  
TRUSTEE OF THE DENIA RENEA  
MODASSETTE BYPASS TRUST, THE  
DUSTIN HEATH TUMA BYPASS  
TRUST AND THE CODY  
MONTGOMERY TUMA BYPASS  
TRUST

Plaintiff,

VS.

CCS (USA), INC., CCS ENERGY  
SERVICES, L.L.C. AS SUCCESSOR-IN-  
INTEREST TO ARKLA DISPOSAL,  
L.L.C., AND STANFORD TRUST  
COMPANY,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

126<sup>TH</sup> JUDICIAL DISTRICT

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CHANG  
TERESA CLERK  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS  
2007 DEC 28 PM 3:17  
BY DEPUTY

**CCS (USA), INC. AND CCS ENERGY SERVICES, L.L.C.'S  
ORIGINAL ANSWER AND COUNTERCLAIM**

Defendants CCS (USA), Inc. ("CCS Inc.") and CCS Energy Services, L.L.C. ("CCS Energy"), collectively the "CCS Defendants," file this Original Answer and Counterclaim against John Tuma, Individually and as Trustee of the Denia Renea Modasette Bypass Trust, The Dustin Heath Tuma Bypass Trust and The Cody Montgomery Tuma Bypass Trust (collectively, "Tuma") in Plaintiff's Original Petition and state as follows:

**I. ANSWER**

The CCS Defendants assert a general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, reserving the right to amend their pleadings subsequently to present their special exceptions to the Plaintiff's Original Petition, their affirmative defenses, special denials, other pleas and defenses, and their own claims.

## II. AFFIRMATIVE DEFENSES

For further answer, if necessary, CCS Defendants assert the following affirmative defenses, subject to and without waiver of their general denial:

1. Tuma's pleading fails to set forth facts sufficient to state a cause of action against the CCS Defendants.
2. Tuma's claims against the CCS Defendants under the Stock Purchase and Membership Purchase Agreement ("Stock Purchase Agreement") are barred in whole or in part because Tuma has not complied with all conditions precedent to recovery of his claims.
3. Tuma has failed to assert a redressable claim against CCS Energy under the Stock Purchase Agreement because CCS Energy is not a party to that agreement.
4. Tuma's claims against the CCS Defendants under the Stock Purchase Agreement are barred in whole or in part because Tuma fraudulently induced CCS Inc. into executing the Stock Purchase Agreement.
5. Tuma's claims against the CCS Defendants under the Escrow Agreement are barred in whole or in part because Tuma has not complied with all conditions precedent to recovery of his claims.
6. Tuma's claims against the CCS Defendants under the Escrow Agreement are barred in whole or in part because Tuma fraudulently induced CCS Inc. into executing the Escrow Agreement.
7. Tuma has failed to assert a redressable claim against CCS Energy under the Escrow Agreement because CCS Energy is not a party to that agreement.

8. Tuma's claims against the CCS Defendants under the Employment Agreement are barred in whole or in part because Tuma has not complied with all conditions precedent to recovery of his claims.

9. Tuma's claims against the CCS Defendants under the Employment Agreement are barred in whole or in part because Tuma fraudulently induced CCS Energy into executing the Employment Agreement.

10. Tuma has failed to assert a redressable claim against CCS Inc. under the Employment Agreement because CCS Inc. is not a party to that agreement.

11. Tuma's own acts or omissions caused or contributed to the recovery sought by Tuma. Therefore, any remedy assessed against CCS Defendants, if any, should be diminished either completely and/or in proportion to the amount of fault attributed to Tuma.

12. The CCS Defendants are entitled to indemnity from Tuma for any acts or omissions by Tuma which caused or contributed to the losses and/or damage, if any, at issue in this lawsuit.

13. Tuma's claims against the CCS Defendants for the termination of his employment fail because Tuma's own acts or omissions constitute "Cause," as that term is defined under the Employment Agreement.

14. Tuma's claims against the CCS Defendants are barred in whole or in part by the doctrine of unclean hands.

15. Tuma's claims against the CCS Defendants are barred in whole or in part by Tuma's failure to mitigate his alleged damages.

16. Tuma and his agents have failed to take reasonable steps to avoid the damages, if any, alleged in the Original Petition. To the extent that such damages, if any, were incurred, Tuma's recovery, if any, should be reduced accordingly.

17. Tuma is estopped from making the claims that form the basis of the Petition.

18. Tuma's claims are barred in whole or in part by waiver.

### **III. COUNTERCLAIM**

Pursuant to Rule 97 of the Texas Rules of Civil Procedure, Counter-Plaintiffs/Defendants CCS Defendants counterclaim against Plaintiff/Counter-Defendant Tuma and state as follows:

#### **A. DISCOVERY**

1. Pursuant to Texas Rules of Civil Procedure 190.3, CCS Defendants request that this case be governed by a Level 2 discovery plan.

#### **B. PARTIES**

2. Counter-Plaintiff/Defendant CCS (USA), Inc. is a Delaware Corporation that has been served with process and has appeared in this matter by and through its counsel of record.

3. Counter-Plaintiff/Defendant CCS Energy Services, L.L.C. is a Louisiana limited liability company that has been served with process and has appeared in this matter by and through its counsel of record.

4. Plaintiff/Counter-Defendant Tuma is a resident of Harris County, Texas, and has appeared in this matter by and through his counsel of record.

#### **C. JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over Counter-Defendant Tuma for purposes of this counterclaim because Tuma is a resident of the State of Texas.

6. This Court has subject matter jurisdiction over this dispute because the amount in controversy exceeds the minimal jurisdictional requirements of this Court.

7. Venue for this counterclaim is proper in this Court because the underlying lawsuit is currently pending in this Court, and because Counter-Defendant Tuma is a resident of Harris County, Texas. *See* TEX. CIV. PRAC. & REM. CODE 15.002(a)(2).

**D. BACKGROUND FACTS**

8. The CCS Defendants' counterclaims against Tuma in this lawsuit involve their purchase of an industrial wastewater treatment plant (the "Plant") from Tuma in September 2006. The Plant is located at 10845 Highway 1, Shreveport, Louisiana, and sits on property approximately one-half mile from the Red River.

9. Tuma is the former owner and President of ARKLA Disposal Services Inc. and its affiliated company, ARKLA Disposal L.L.C. (collectively referred to as "ARKLA"), which owned and operated the Plant prior to September 2006. The primary purpose of the Plant is to provide treatment to industrial wastewater received from local area gas wells and various other industrial waste streams.

10. Prior to the Plant's sale, Tuma represented to the CCS Defendants that the Plant was capable, through various processes, of removing oil and other contaminants from incoming wastewater for treatment and eventual discharge back into the surface waters of the State of Louisiana, including the Red River. Tuma further represented that the Plant's water treatment and reclamation processes were in compliance with all applicable federal, state and local environmental laws.

11. Based upon the purported capabilities of the Plant as represented by Tuma, CCS Inc. agreed to purchase the Plant (and the operations of ARKLA) in September, 2006.



Specifically, CCS Inc. and Tuma entered into the Stock Purchase Agreement, on September 7, 2006, wherein CCS acquired all of the outstanding shares of ARKLA for \$10,573,243.72. Under the terms of the Stock Purchase Agreement, CCS Inc. paid Tuma consideration as follows:

- a. \$5,173,243.72 in cash for all issued and outstanding stock of ARKLA Disposal Services Inc. and for 99% of the membership interests of ARKLA Disposal L.L.C.; and
- b. \$5,400,000.00 in CCS Income Trust Units of the CCS Income Trust (the "Trust Units"), a publicly-held unincorporated investment trust, organized under the laws of the Province of Alberta, Canada. Pursuant to the terms of the Stock Purchase Agreement and a separately entered Escrow Agreement with Defendant Stanford Trust Company, the Trust Units were to be held in escrow and released in 20% allotments per year for a period of five years.

12. In connection with the Stock Purchase Agreement, Tuma also entered into an Employment Agreement with ARKLA Disposal, L.L.C. (now owned and controlled by CCS Energy) to remain employed as the President of the Plant for a period one year, with automatic extensions up to five years, and subject to cancellation by the parties. Under the Employment Agreement, Tuma was to continue managing and supervising the Plant's operations as its President and was to further assist the CCS Defendants with their water treatment needs. Among other enumerated duties, Tuma's employment as President of the Plant entailed ensuring regulatory and legal compliance of the Plant's "water processing, physical, chemical, biological, distillation, filtration, etc., and all other forms of treatment for all forms of waste." Tuma began his employment at the Plant under the terms of the Employment Agreement on or around September 8, 2006.

13. In the year following the sale of the Plant, the CCS Defendants began to slowly realize that the Plant did not have the water treatment capabilities that Tuma had previously represented to them. By the end of the first year, it had also become apparent that Tuma had not,

and was not, operating the Plant in compliance with federal and state environmental laws. In October 2007, CCS management was informed that Tuma had purposefully directed certain Plant employees to bypass the Plant's water treatment processes. CCS management was also informed that Tuma was ordering its employees to directly discharge untreated wastewater into the Red River.

14. In response to this information, the CCS Defendants initiated an internal investigation of Tuma's reported activities at the Plant, his supervision of the Plant's employees and its water treatment operations, and his overall compliance with applicable environmental laws. The information gathered by the CCS Defendants during this investigation uncovered substantial evidence that Tuma had directed certain Plant employees to purposefully discharge untreated industrial wastewater into the Red River. Indeed, through a series of intricate valves, piping and hoses known only to Tuma (and a very small number of employees), Tuma created a method for surreptitiously bypassing the Plant's proper waste disposal mechanisms during the Plant's nighttime operations. These valves, pipes and hoses were deliberately put into place by Tuma, or at his direction, for the sole purpose of directly discharging untreated wastewater into the Red River. On information and belief, Tuma was intentionally discharging this untreated wastewater into the Red River in an effort to make it appear that the Plant was fully capable of processing and treating contaminated water to the extent previously represented by Tuma to the CCS Defendants.

15. On information and belief, the unlawful discharges that Tuma had initiated, directed, and participated in at the Plant had begun prior to the sale of the Plant to CCS Inc. on September 7, 2006.

16. As a result of Tuma's illegal activities, the CCS Defendants made a voluntary disclosure of potential non-compliance with the Clean Water Act and related state statutes and regulations to the Environmental Protection Agency ("EPA") on November 7, 2007.

17. On November 7, 2007, CCS Inc. provided Defendant Stanford Trust Company ("Stanford"), the trustee under the Escrow Agreement, with a Claim Notice in the amount of \$7,600,000.00 pursuant to its indemnification rights under the Stock Purchase Agreement and Escrow Agreement. The Claim Notice based upon Tuma's violations of the Stock Purchase Agreement and his unlawful activities described above.

18. Additionally, by letter dated November 9, 2007, the CCS Defendants notified Tuma that his employment was being terminated for cause under the Employment Agreement, effective November 9, 2007. Tuma was subsequently paid all of his salary and unused vacation through November 9, 2007.

#### **E. CAUSES OF ACTION**

##### **Count One: Breach of the Stock Purchase Agreement by Tuma**

19. The allegations set forth in paragraphs 8 through 18 of the counterclaim are incorporated by reference, as if specifically restated.

20. Under the Stock Purchase Agreement, Tuma represented to CCS Inc. that the Plant and ARKLA's operations were in compliance with applicable federal, state and local environmental laws. Tuma also represented and agreed to indemnify CCS Inc. from, *inter alia*, any and all losses, damages, judgments, claims, reasonable costs and expenses interest and awards, fines, fees and penalties incurred by CCS Inc. for:

- any environmental claims or environmental liabilities related to the purchase of the Plant;

- any environmental claims or environmental liabilities related to any release, discharge or spill from a pipeline originating from the Plant; and
- any inaccuracy or breach of any representation or warranty by Tuma.

Tuma also agreed to abide by the indemnification process provided under the terms of Stock Purchase Agreement, including the filing of a Claim Notice for indemnification.

21. Tuma has breached the Stock Purchase Agreement by, *inter alia*, (i) misrepresenting the Plant's capabilities to properly treat industrial wastewater, (ii) misrepresenting that the Plant and ARKLA's operations were in compliance with applicable federal, state and local environmental laws, (iii) making inaccurate representations and warranties concerning the operations of the Plant prior to the closing date of the Stock Purchase Agreement, and (iv) failing to indemnify the CCS Defendants for his violations of the Stock Purchase Agreement.

22. Tuma's breach of the Stock Purchase Agreement has proximately caused CCS Inc. to sustain damages in excess of the minimum jurisdictional limits of this Court. CCS Inc. seeks recovery of these damages.

23. All relevant conditions precedent have been performed or have occurred for CCS Defendants to bring this breach of contract counterclaim against Tuma.

**Count Two: Breach of the Employment Agreement by Tuma**

24. The allegations set forth in paragraphs 8 through 23 of the counterclaim are incorporated by reference, as if specifically restated.

25. Under the Employment Agreement, Tuma represented and agreed that he would comply with any and all instructions, manuals, policies, and written and/or verbal commands issued to him by CCS Energy. Tuma also represented and agreed that he would conduct all of

his activities and the activities of those under his management in accordance with any and all federal, state or local laws. Tuma also agreed to ensure that the Plant would remain in compliance with all regulatory and legal environmental requirements for water processing and all other forms of treatment for all forms of waste.

26. Tuma has breached the Employment Agreement by directing and personally participating in the purposeful discharge of untreated industrial wastewater into the Red River or other surface waters of the State of Louisiana. Tuma has also breached the Employment Agreement by, *inter alia*, (i) performing his job in bad faith to the detriment of the CCS Defendants, (ii) refusing or failing to act in accordance with the lawful directions of the CCS Defendants, (iii) wantonly disregarding the performance of his duties of employment, and (iv) breaching the material terms of the Employment Agreement.

27. Tuma's breach of the Employment Agreement has proximately caused CCS Energy to sustain damages in excess of the minimum jurisdictional limits of this Court. CCS Energy seeks recovery of these damages.

28. All relevant conditions precedent have been performed or have occurred for CCS Defendants to bring this breach of contract counterclaim against Tuma.

### **Count Three: Declaratory Judgment**

29. The allegations set forth in paragraphs 8 through 28 of the counterclaim are incorporated by reference, as if specifically restated.

30. Tuma has violated the Stock Purchase Agreement, Escrow Agreement and Employment Agreement as described above. As a result of these violations, CCS Inc. has provided Stanford with a Claim Notice in the amount of \$7,600,000.00 pursuant to its indemnification rights under the Stock Purchase Agreement and Escrow Agreement. The CCS

Defendants have also terminated Tuma's employment at the Plant for cause under the Employment Agreement.

31. As reflected in Plaintiff's Original Petition, Tuma alleges that the Claim Notice provided to Stanford was faulty and that the termination of his employment was wrongful. As such, an immediate controversy therefore exists between the parties with respect to the parties' respective rights under the Stock Purchase Agreement, Escrow Agreement and Employment Agreement.

32. The CCS Defendants therefore seek a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code that they have not breached the Stock Purchase Agreement, Escrow Agreement and/or Employment Agreement, and that they have not, and are not, violating any of Tuma's rights with regard to the Trust Units set aside by Stanford pursuant to the Claim Notice.

#### **Count Four: Fraudulent Inducement**

33. The allegations set forth in paragraphs 8 through 32 of the counterclaim are incorporated by reference, as if specifically restated.

34. As set forth above, Tuma induced CCS Inc. to enter into the Stock Purchase Agreement and Escrow Agreement by making false representations and/or omissions concerning the capability of the Plant to properly treat industrial wastewater and its overall compliance with federal, state, and local environmental laws. Tuma made these false representations and/or omissions, either intentionally or recklessly, and they were false when made. These false representations and/or omissions were made specifically to induce CCS Inc. to purchase the Plant (and ARKLA's operations) by entering into the Stock Purchase Agreement and the Escrow Agreement.

35. Additionally, Tuma induced CCS Energy to enter into the Employment Agreement by making false representations and/or omissions concerning his alleged expertise and experience in treating industrial wastewater. Tuma also made several other express representations concerning his agreed compliance with federal, state, and local environmental laws with respect to his management and supervisory position at the Plant. Tuma made these false representations and/or omissions, either intentionally or recklessly, and they were false when made. These false representations and/or omissions were made specifically to induce CCS Energy to enter into the Employment Agreement with Tuma and to employ him as President of the Plant at a significant salary.

36. The false representations and/or omissions made by Tuma further operated as a fraud on, and fraudulent inducement to, CCS Defendants, because CCS Defendants had no means to discover or know the truth concerning the representations and/or omissions. Therefore, because CCS Defendants reasonably relied on the statements of Tuma and reasonably believed that Tuma had not withheld material information from CCS Defendants, CCS Defendants were deceived into believing a state of affairs existed that is now shown to be materially false.

37. On information and belief, Tuma's misrepresentations and/or omissions were part of Tuma's intentional scheme to materially deceive and mislead CCS Defendants into entering the Stock Purchase Agreement, Escrow Agreement and the Employment Agreement. The misrepresentations and/or omissions proximately and directly caused CCS Defendants to suffer substantial damages, for which Tuma is liable to CCS Defendants. Without limitation, had Tuma not deceived the CCS Defendants with his misrepresentations and/or omissions, but instead accurately and honestly disclosed to CCS Defendants what is now known to be the truth concerning the Plant's actual capabilities to process and treat industrial wastewater, the CCS

Defendants would not have entered into the Stock Purchase Agreement, Escrow Agreement and/or the Employment Agreement.

38. As a direct and proximate cause of Tuma's misrepresentations and/or omissions, CCS Defendants has suffered damages, including, without limitation, (i) being unjustly named as defendant in this lawsuit by Tuma, (ii) being induced into paying Tuma \$10,573,243.72 for wastewater treatment facilities and operations that do not treat water as promised, (iii) being induced into employing Tuma as the President of the Plant and paying him a substantial salary for over one year (iv) being induced into employing Tuma during which time he has personally exposed the CCS Defendants to potential environmental liability, and (v) having to incur and pay the attorney's fees necessitated by it investigation and this lawsuit.

#### **Count Five: Rescission**

39. The allegations set forth in paragraphs 8 through 38 of the counterclaim above are incorporated by reference, as if specifically restated.

40. Additionally, and in the alternative, the CCS Defendants seek rescission of the Stock Purchase Agreement, Escrow Agreement and the Employment Agreement. As set forth above, the CCS Defendants were induced into entering into theses agreements based upon Tuma's fraudulent representations concerning the Plant's capabilities for processing and treating industrial wastewater and his own purported expertise in operating the Plant. Because the Plant does not treat wastewater as promised by Tuma and because EPA fines are likely imminent against the CCS Defendants for environmental violations caused by Tuma's activities at the Plant, the specific measure of damages resulting from Tuma's fraudulent inducement may far exceed the value of all monies paid under the agreements and/or may expose the CCS Defendants to continuing liability for environmental violations in the future. Accordingly, there



may be no adequate remedy at law for damages suffered by the CCS Defendants as a result of Tuma's fraudulent inducement.

41. To the extent that the Court finds that there is not adequate remedy at law for their respective damages, the CCS Defendants request that the Court should (i) void the Stock Purchase Agreement, Escrow Agreement and Employment Agreement, (ii) have Tuma return any consideration paid to him under those agreements, and (iii) return the parties to their earlier positions as if none of these agreements had existed. Accordingly, Tuma should be ordered to return to the CCS Defendants all cash or other consideration paid to him under the Stock Purchase Agreement, the Escrow Agreement, and the Employment Agreement.

**Count Six: Negligent Misrepresentation**

42. The allegations set forth in paragraphs 8 through 41 of the counterclaim above are incorporated by reference, as if specifically restated.

43. In the alternative, the misrepresentations made by Tuma as set forth above were negligently made, and the CCS Defendants relied upon those representations in entering the Stock Purchase Agreement, the Escrow Agreement, and the Employment Agreement. Had those representations not been made, the CCS Defendants would not have entered into any of those agreements.

44. As a direct and proximate result of CCS Defendants' reasonable reliance to their detriment on Tuma's negligent misrepresentations and omissions, CCS Defendants have suffered and will continue to suffer substantial damages, including, without limitation, the amounts set forth in paragraph 38 above. Tuma is therefore liable for all of the damages suffered by CCS Defendants as a proximate result of his negligent misrepresentations and omissions.

### **Count Seven: Attorneys' Fees**

45. The allegations set forth in paragraphs 8 through 17 of the counterclaim above are incorporated by reference, as if specifically restated.

46. As a result of the foregoing, CCS Defendants were forced to retain the law firm of Andrews Kurth LLP to defend themselves in the defense and prosecution of this matter. CCS Defendants have agreed to pay their attorneys a reasonable fee for said services. CCS Defendants are entitled to recover their reasonable and necessary attorneys' fees from Tuma under Chapter 38 of the Texas Civil Practice & Remedies Code.

### **V. REQUEST FOR DISCLOSURE**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff/Counter-Defendant Tuma is requested to disclose, within 30 days of service of this request, the information or material described in Rule 194.2(a)-(k).

### **VI. PRAYER FOR RELIEF**

WHEREFORE, Defendants/Counter-Plaintiffs CCS (USA), Inc. and CCS Energy Services, L.L.C. request that the Court (i) deny all relief requested by Tuma, (ii) dismiss the causes of action asserted against the CCS Defendants in Plaintiff's Original Petition with prejudice, and (iii) grant the CCS Defendants all affirmative relief requested in their counterclaims. CCS Defendant further pray for all costs of court and for such other and further relief to which they may be justly entitled.

Respectfully submitted,

**ANDREWS KURTH LLP**

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**ATTORNEYS FOR DEFENDANT CCS (USA),  
INC. and CCS ENERGY SERVICES, L.L.C.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via certified mail, return receipt requested on this the 28th day of December, 2007.

Michael D. Morfey  
Michael D. Morfey

CAUSE NO. 2022-40837

JOMA MANAGEMENT, LLC  
and JOHN TUMA,

Plaintiffs,

v.

GOLDFINCH ENERGY HOLDINGS,  
LLC and PRIME POWER  
SOLUTIONS, LLC, d/b/a LIFE CYCLE  
POWER,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11<sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANTS' ORIGINAL ANSWER**

Defendants Goldfinch Energy Holdings, LLC ("Goldfinch") and Prime Power Solutions, LLC ("Life Cycle Power") (together, "Defendants") file this original answer to Plaintiffs' Original Petition filed by JOMA Management, LLC and John Tuma ("Plaintiffs").

**I.**

**GENERAL DENIAL**

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny the allegations contained in Plaintiffs' Original Petition.

**II.**

**AFFIRMATIVE DEFENSES**

2. Plaintiffs' claims are barred, in whole or part, by the doctrine of unclean hands.
3. Plaintiffs' claims are barred, in whole or part, by fraud.

**III.**

**REQUEST FOR DISCLOSURE**

4. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiffs are requested to disclose within thirty days of the service of this request the information or material described in Rule 194.

**IV.**  
**PRAYER**

Goldfinch and Life Cycle Power pray that Plaintiffs take nothing from Defendants by reason of this suit and that Goldfinch and Life Cycle Power be awarded all relief, whether in law or equity, to which they are entitled.

Respectfully submitted,

BRACEWELL LLP

By: /s/ Stephen B. Crain

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing pleading has been forwarded to all counsel of record in accordance with the Texas Rules of Civil Procedure on August 5, 2022.

/s/ Stephen B. Crain

Stephen B. Crain

### **Automated Certificate of eService**

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#### **Case Contacts**

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## Summary of Criminal Prosecutions

### Search Criminal Prosecution

**FISCAL YEAR:** 2013

**1. PRINCIPAL DEFENDANT:** Cody Montgomery Tuma

W.D. Louisiana 5:11-CR-00031

**2. DEFENDANT:** John Emerson Tuma

W.D. Louisiana 5:11-CR-00031

Wednesday, December 5, 2012

### **Shreveport, La., Wastewater General Manager and Former Owner Sentenced to Five Years in Prison for Discharging Pollutants into the Red River**

WASHINGTON – John Tuma, 55, of Centerville, Texas, was sentenced following his March 21, 2012, trial conviction by a federal jury for discharging untreated wastewater directly into the Red River without a permit, discharging untreated wastewater into the city of Shreveport sewer system in violation of its permit and obstructing an EPA inspection, announced Ignacia S. Moreno, Assistant Attorney General of the Justice Department's Environment and Natural Resources Division and U.S. Attorney Stephanie A. Finley of the Western District of Louisiana. U.S. District Judge Tom Stagg sentenced John Tuma to a 60-month prison sentence, three years of supervised release and a \$100,000 fine.

John Tuma, who was both general manager and the former owner of Arkla Disposal Services Inc., was charged in a five-count indictment with violations of the Clean Water Act, conspiracy and obstruction of justice related to illegal discharges coming from the Arkla Disposal Services Inc., a facility in Shreveport. The Arkla facility, located at 10845 Highway 1 South in Shreveport, was a centralized wastewater treatment facility that received wastewater from industrial processes and oilfield exploration and production facilities. Arkla contracted to treat the wastewater through a multi-step treatment process and then discharge the treated wastewater to either the City of Shreveport publicly owned treatment works or the Red River.

The case was investigated by EPA's Criminal Investigation Division and is being prosecuted by Assistant U.S. Attorney C. Mignonne Griffing and Trial Attorney Leslie E. Lehnert of the Environmental Crimes Section of the Department of Justice.

February 23, 2011

Both John and Cody Tuma were charged as follows:



- 1 count - conspiracy {18 U.S.C. 371}
- 3 counts - violating the CWA {33 U.S.C. 1311; 33 U.S.C. 1319(c)(2)(A) - knowing violation}
- 1 count - Obstruction {18 U.S.C. 1505}

Cody Tuma pled guilty to all 6 counts.

**CITATION:** 18 U.S.C. 1505, 33 U.S.C. 1311(a), 33 U.S.C. 1319(c)(1)(A), 42 U.S.C. 7413(c)(4)

March 21, 2012

John Tuma was convicted by a federal jury for discharging untreated wastewater directly into the Red River without a permit, discharging untreated wastewater into the city of Shreveport sewer system in violation of its permit and obstructing an EPA inspection.

June 20, 2012

Cody Tuma was sentenced to 60 months probation. No fine was imposed.

December 5, 2012

John Tuma was sentenced to 60 months incarceration, 36 months probation and was ordered to pay a \$100,000 criminal fine.

**STATUTE:**

- Clean Water Act (CWA)
- Title 18 U.S. Criminal Code (TITLE 18)

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LAST UPDATED ON SEPTEMBER 15, 2022