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<b>APPLICATION OF CENTERPOINT</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>ENERGY HOUSTON ELECTRIC, LLC</b>	<b>§</b>	
<b>FOR APPROVAL TO AMEND ITS</b>	<b>§</b>	<b>OF</b>
<b>DISTRIBUTION COST RECOVERY</b>	<b>§</b>	
<b>FACTOR</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**COMMISSION STAFF'S REPLY BRIEF**

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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### I. INTRODUCTION

On April 5, 2022, CenterPoint Energy Houston Electric, LLC (CEHE) filed an application for approval to amend its distribution cost recovery factor (DCRF). CEHE’s application requested inclusion of mobile generation amounts in accordance with Public Utility Regulatory Act (PURA) § 39.918. Staff (Staff) for the Public Utility Commission (Commission) reaffirms its position as stated in its Initial Brief. Staff now responds to several arguments made by CEHE in its Initial Brief.

### II. REPLY TO CEHE’S INITIAL BRIEF

In its Initial Brief, CEHE states the decision to lease the Temporary Emergency Electric Energy Facilities (TEEEF) at issue is to be judged under the standard articulated by the Supreme Court in *Public Utility Commission of Texas and Southwestern Electric Power v. Texas Industrial Energy Consumers*.<sup>1</sup> That standard is as follows:

The standard for determining prudence is the exercise of that judgment or the choosing of one of a select range in the same or similar circumstances given the information or alternatives available at the point in time such judgment is exercised, or option chosen; the “prudence standard” allows for a range of options and, within those options, it defers to a utility’s business judgment. [This standard] contemplates that (1) there may be more than one prudent option within the range available to a utility in any given context; (2) any choice within the select range of reasonable options is prudent; (3) the Commission should not substitute its judgment for that of the utility; and (4) the reasonableness of a decision must be

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<sup>1</sup> *Pub. Util. Comm’n of Tex. Indus. Energy Consumers*, 620 S.W.3d 418, 428 (Tex. 2021).

judged in light of the circumstances, information, and available options existing at the time, without benefit of hindsight.<sup>2</sup>

CEHE asserts that it has met this standard. Following Staff’s discussion in its Initial Brief, Staff disagrees that CEHE has satisfied the second and fourth provisions. As the relevant facts address both the second and fourth provisions, Staff briefly touches upon them in the order raised by CEHE in the introduction to its Initial Brief. *Contra* CEHE, the record does not conclusively demonstrate that CEHE did what a reasonable utility manager would do in its circumstances after the Texas Legislature passed House Bill 2483.

First, CEHE admits that it “moved quickly” to add TEEEF to its system.<sup>3</sup> This is an understatement. The speed with which CEHE entered into the short-term lease calls into question whether its decision-making process was reasonable under PURA § 39.918. CEHE’s failure to provide a detailed cost-benefit analysis of the available alternatives highlights the problem. Staff reaffirms its position that the procurement process was unreasonably compressed as stated in its Initial Brief.<sup>4</sup>

Second, CEHE characterizes the Intervenor’s concerns about the reasonableness of CEHE’s TEEEF investment as asking the ALJs and the Commission to do two things forbidden by the Texas Supreme Court: (1) ignore the fact that the utility can choose from a range of reasonable options under its circumstances, and (2) use hindsight in evaluating the utility’s decision-making.<sup>5</sup>

This is not the only reasonable application of those two rules; they can just as easily be read against CEHE’s decision to enter into the leases. For example—to point out that CEHE contracted with Life-Cycle Power (LCP) when its then-CEO had already been convicted of environmental crimes is neither to ignore that it can choose from a range of options nor to use hindsight to evaluate its decision-making. Had CEHE undertaken cursory research of LCP and its executives at the time, it would likely have discovered this fact. But CEHE did not discover that

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<sup>2</sup> *Id.*

<sup>3</sup> CenterPoint Energy Houston Electric LLC’s Initial Brief at 5 and 15 (Nov. 16, 2022) (CEHE’s Initial Brief).

<sup>4</sup> Commission Staff’s Initial Brief at 3-4 (Nov. 16, 2022) (Staff’s Initial Brief).

<sup>5</sup> CEHE’s Initial Brief at 7.

fact until later. Why did CEHE decide that LCP with its disreputable executive was within the range of reasonable options? CEHE didn't decide that. And that was because CEHE didn't do its homework. Likewise, the Commission would not be using hindsight in evaluating CEHE's decision-making by pointing out CEHE's failure to research its business contacts. Such a question falls under the purview of the fourth provision in the prudence standard mentioned above; it should have known at the time. Only discovering something of this significance after the fact—something which could very well affect LCP's ability to perform under the contract—clearly indicates that CEHE failed to research something that was not only simple to determine, but something that could have persuaded it to select another bidder, thereby avoiding any such unnecessary risk.

Third, CEHE attempts to deflect criticism from Intervenors by stating that they “have presented testimony that is consistent with their own economic interests.”<sup>6</sup> This point is irrelevant. CEHE's request for recovery of its TEEEF investments is consistent with its own economic interests. CEHE is trying to deflect responsibility for its own actions and discredit the Intervenors without fully addressing their points.

Fourth, CEHE tries to persuade the Commission by use of the refrain “hope is not a strategy” in relation to future, potential severe weather events.<sup>7</sup> CEHE essentially argues that without a TEEEF investment, the public would be at substantially more risk than without one.<sup>8</sup> But no party is arguing that an investment in TEEEF would not prove useful in the event of another severe weather emergency. The apposite question is whether CEHE met its burden to prove *its particular TEEEF investment* is reasonable under PURA § 39.918. CEHE's rhetorical flourish does not substantively address the concerns raised by the Intervenors about *this particular TEEEF investment*.

### III. CONCLUSION

Staff respectfully requests the issuance of a proposal for decision consistent with both the foregoing and those arguments put forth in Staff's Initial Brief.

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<sup>6</sup> CEHE's Initial Brief at 7.

<sup>7</sup> *Id.* at 8, 34-35.

<sup>8</sup> *Id.*

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on December 2, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Phillip Lehmann  
Phillip Lehmann