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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

January 27, 2023

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

VIA EFILE TEXAS

**RE: SOAH Docket No. 473-22-2353; PUC Docket No. 53442;
*Application of CenterPoint Energy Houston Electric, LLC for
Approval to Amend its Distribution Cost Recovery Factor***

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR APPROVAL TO AMEND ITS DISTRIBUTION COST RECOVERY FACTOR

TABLE OF CONTENTS

I.	Notice, Jurisdiction, and Procedural History	2
II.	Applicable Law	5
III.	Temporary emergency electric energy facilities (TEEEF).....	6
A.	Lease and Operation of Facilities	7
1.	The Procurement Process [Supp. PO Issue 4(d)]	7
a)	CEHE's Position	7
(i)	Short-Term Lease and Extension	8
(ii)	Long-Term Lease.....	10
b)	Positions of HCC, TCPA, TEAM-ARM, and Staff.....	10
(i)	Short-Term Lease and Short-Term Lease Extension.....	11
(ii)	Long-Term Lease.....	13
c)	CEHE Response	13
d)	Analysis	15

2.	Authorized Operation [Supp. PO Issues 4(a)-(c), 5]	18
a)	TEAM-ARM, HCC, and TCPA's Positions	18
b)	CEHE's and Staff's Positions	23
c)	Analysis	25
3.	Inclusion of TEEEF in Emergency Operations Plan [Supp. PO Issue 6]	27
B.	Prudence of TEEEF and Resulting Revenue Requirement	28
1.	Recovery Period [Supp. PO Issue 3]	28
2.	Prudence of Leased TEEEF [Supp. PO Issue 7]	29
a)	CEHE's Position	29
b)	Staff's Position.....	29
c)	TCPA's Position	30
d)	TEAM-ARM's Position	31
e)	HCC's Position	32
f)	CEHE's Response	33
g)	Analysis	35
3.	Leasing and Operating Costs [Supp. PO Issues 8 through 10].....	38
a)	TEAM-ARM's Position	39
b)	HCC's Position	40
c)	CEHE's Response	40
d)	Analysis	41
4.	Proposed Accounting Treatment and Deferred Costs [Supp. PO Issues 11 through 13].....	41
C.	Cost Allocation, Revenue Distribution, and Rate Design [Supp. PO Issues 14 through 16]	42
1.	Exclusion from Transmission Voltage Customers	42
2.	Allocation Methodology	43
3.	Analysis	45
4.	Fuel Cost Allocation	46
5.	Analysis	48
D.	Rates [Supp. PO Issues 19 and 20]	48

E.	Tariff Revisions [Supp. PO Issue 22].....	49
IV.	Conclusion	50
V.	Findings of Fact	50
VI.	Conclusions of Law	66
VII.	Proposed Ordering Paragraphs	68

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION OF CENTERPOINT ENERGY HOUSTON
ELECTRIC, LLC FOR APPROVAL TO AMEND ITS
DISTRIBUTION COST RECOVERY FACTOR**

PROPOSAL FOR DECISION

As a part of its application to amend its distribution cost recovery factor (DCRF), CenterPoint Energy Houston Electric, LLC (CEHE) requests to recover approximately \$200 million for temporary emergency electric energy facilities (TEEEF).¹ The DCRF portion of the application was settled, so only recovery of TEEEF—or mobile generation—is at issue.

¹ CEHE Ex. 1 at 2 (Bates 6) (Amended Application of CenterPoint Energy Houston Electric, LLC to Amend its Distribution Cost Recovery Factor).

TEEEF may be recovered under Public Utility Regulatory Act (PURA)² section 39.918, which was passed by the Texas Legislature in the aftermath of Winter Storm Uri to allow transmission and distribution utilities (TDUs) to lease mobile generation for use during emergencies.³

Several intervenors contend that the \$200 million in TEEEF costs should be denied as imprudent or, in the alternative, approved in a smaller amount. For the reasons discussed below, the Administrative Law Judges (ALJs) find that the leasing of the 500 megawatts (MW) of mobile generation⁴ was not prudent or reasonable and necessary and recommend the Commission deny the requested TEEEF costs.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested and therefore addressed only in the findings of fact and conclusions of law.

CEHE's application was filed with the Commission on April 5, 2022 and referred to the State Office of Administrative Hearings (SOAH) the next day. CEHE did not include any costs in its proposed DCRF or TEEEF revenue requirement that were previously recovered from existing base rates or other rates. CEHE did not propose an adjustment to a non-fuel rate relating to the generation

² Tex. Util. Code §§ 11.001-66.016 (PURA).

³ PURA § 39.918(a), (b)(1).

⁴ CEHE seeks to recover in this proceeding only 345 MW of TEEEF placed in service prior to December 31, 2021. CEHE Ex. 7 (Garmon Direct Testimony (Dir.)) at 32.

of electricity, a wholesale DCRF rider, or any adjustments to the DCRF baselines established in Docket No. 49421.⁵ CEHE does propose that the DCRF Tariff and Rider TEEEF be applied on a system-wide basis within its certificated service territory.⁶

The following parties intervened: Texas Industrial Energy Consumers (TIEC), Gulf Coast Coalition of Cities (GCCC), Houston Coalition of Cities (HCC), Texas Coast Utilities Coalition (TCUC), Texas Energy Association for Marketers (TEAM), Texas Competitive Power Advocates (TCPA), Alliance for Retail Marketers (ARM), and Hunt Energy Network, LLC (HEN).⁷

On April 20, 2022, HCC, joined by several intervenors, moved to dismiss the mobile generation issue from the application. By SOAH Order No. 5, the motion was granted. On appeal, the Commission overruled SOAH Order No. 5, finding that mobile generation is recoverable originally in a DCRF proceeding but not subject to the requirements of PURA section 36.210 or Commission Rule 25.243,⁸ and therefore the issue of whether the requested TEEEF costs are reasonable and necessary must be addressed in this proceeding.⁹

In response, CEHE amended its application to address whether the mobile-generation costs are reasonable and necessary. The DCRF portion of the

⁵ CEHE Ex. 8 (Durland Dir.) at 4.

⁶ CEHE Ex. 1 (Amended DCRF Application) at 4.

⁷ SOAH Order No. 7 (June 6, 2022).

⁸ 16 Texas Administrative Code (TAC) § 25.243.

⁹ Order on Appeal of SOAH Order No. 5 at 6-7 (July 14, 2022).

application settled.¹⁰ CEHE moved for interim rates, based on the settlement, which was granted at a July 13, 2022 prehearing conference and memorialized in SOAH Order No. 10. On August 24, 2022, CEHE filed its tariff in compliance with the notice of approval of interim rates. Through interim rates, the tariff was in effect on September 1, 2022.¹¹

In a supplemental preliminary order relating to mobile generation, the Commission listed 23 issues to be addressed, including whether the rates are just and reasonable.¹²

Intervenors TEAM, HCC, TEAM-ARM, and ARM-TCPA¹³ filed direct testimony opposing recovery of mobile-generation costs. TIEC filed testimony opposing recovery of mobile-generation costs from transmission level customers. HEN and Staff filed statements of position but not direct testimony. HEN asked that the Commission give a detailed and thorough consideration of the prudence of CEHE's TEEF investment. Staff requested that some of CEHE's expenses be amortized over a longer time period, that the retail transmission rate class be excluded from the allocation of TEEEF costs, and that rate-case expenses be deferred to a future proceeding. CEHE filed rebuttal testimony.

¹⁰ CEHE Ex. 3 (Partial Stipulation and Settlement Agreement).

¹¹ CEHE Ex. 3 (Partial Stipulation and Settlement Agreement) at 3.

¹² Supplemental Preliminary Order at 5 (Aug. 4, 2022).

¹³ Both TEAM and ARM, and ARM and TCPA filed joint testimony. These parties will be referred to as ARM-TCPA and TCPA-ARM, respectively.

On October 18-20, 2022, the hearing on the merits convened. The evidentiary record closed initially on October 28, 2022, but was reopened on November 3, 2022, to admit CEHE Ex. 20.¹⁴ The record closed on December 2, 2022, with the filing of post-hearing briefs.

II. APPLICABLE LAW

During the 87th legislative session, the Texas Legislature passed House Bill (HB) 2483, which enacted PURA section 39.918. The Commission determined that the prohibition against reviewing whether distribution invested capital costs are prudent, reasonable, and necessary in a DCRF proceeding¹⁵ does not apply to mobile-generation recovery brought under PURA section 39.918.¹⁶ Rather, the Commission concluded that the “the determination of reasonableness and necessity must be made at the time the Commission approves the temporary-emergency-electric-energy costs.”¹⁷

Section 39.918 allows a TDU to “lease and operate facilities that provide temporary emergency electric energy to aid in restoring power to the utility’s distribution customers during a widespread power outage” under certain circumstances.¹⁸ A widespread power outage is “an event that results in: (1) a loss of electric power that: (A) affects a significant number of distribution customers of

¹⁴ SOAH Order No. 13 (Nov. 3, 2022) (file stamped Dec. 6, 2022).

¹⁵ 16 TAC § 25.243(e)(5).

¹⁶ Order on Appeal of SOAH Order No. 5 at 6.

¹⁷ Order on Appeal of SOAH Order No. 5 at 6-7.

¹⁸ PURA § 39.918(b)(1).

a transmission and distribution utility; and (B) has lasted or is expected to last for at least eight hours; and (2) a risk to public safety.”¹⁹ In selecting such facilities, a TDU “shall, when reasonably practicable, use a competitive bidding process.”²⁰

In its order on appeal, the Commission found that “to recover the mobile-generation costs at issue here, CenterPoint must prove that those costs are reasonable and necessary costs of leasing and operating facilities that provide temporary emergency electric energy to aid in restoring power to CenterPoint’s distribution customers during a widespread power outage.”²¹

Although the Commission has opened a rulemaking to implement section 39.918 in Project No. 53404, a final rule has yet to be adopted.²²

III. TEMPORARY EMERGENCY ELECTRIC ENERGY FACILITIES (TEEEF)

Upon the passage of PURA section 39.918, CEHE developed a plan to rapidly procure 500 MW of energy capacity. CEHE executed a short-term lease for 125 MW of generation capacity (Short-Term Lease) and, shortly thereafter, an extension for an additional 90 plus MW (Short-Term Lease Extension). Ultimately, CEHE executed a long-term lease for the entire 500 MW with a sole supplier (Long-Term Lease). CEHE seeks recovery of approximately \$200 million

¹⁹ PURA § 39.918(a).

²⁰ PURA § 39.918(f).

²¹ Order On Appeal of SOAH Order No. 5 at 7; Supplemental Preliminary Order at 4 (Issue No. 10) (Aug. 4, 2022); PURA § 39.918(e).

²² TEAM-ARM Ex. 1 (Hendrix Dir.) at 13; *Restoration of Electric Service After a Widespread Power Outage*, Project No. 53404 (pending).

in lease payments, operational costs and return for the Short-Term Lease, Short-Term Lease Extension, and Long-Term Lease.

A. LEASE AND OPERATION OF FACILITIES

1. The Procurement Process [Supp. PO Issue 4(d)]

Under section 39.918(f), a TDU “shall, when reasonably practicable, use a competitive bidding process” to lease the mobile-generation facilities permitted by the statute.

a) CEHE’s Position

CEHE contends that it properly used a competitive bidding process to obtain the Short-Term and Long-Term leases by following standard procurement practices deemed reasonable by an independent evaluator.²³ CEHE also defends its decision to enter into the Short-Term Lease Extension.

CEHE witness Erin E. Raben testified that there was “a very real sense of urgency” in the legislature’s passage of reliability measures—including section 39.918—“to mitigate the dangers to the public in the event of another widespread power outage.”²⁴ Months after Winter Storm Uri—and with hurricane season approaching—CEHE acted quickly. According to D. Dean Koujak, the independent evaluator retained by CEHE, the driving factors for acquiring mobile

²³ CEHE Init. Br. at 10.

²⁴ CEHE Ex. 11 (Raben Rebuttal Testimony (Reb.)) at 6.

generation were to allay the effects of any Energy Reliability Counsel of Texas (ERCOT)-required load shed, usually driven by winter weather conditions, “and to provide more reliable electric service following other extreme weather events, such as hurricanes.”²⁵

(i) Short-Term Lease and Extension

CEHE’s procurement strategy involved first seeking a short-term lease for mobile generation to address the approaching hurricane season.²⁶ According to Mr. Koujak, CEHE determined that a target of 125 MW was appropriate based on “what could be reasonably procured and integrated onto the system in time” for hurricane season.²⁷ Before issuing the request for proposal (RFP), CEHE engaged in identifying vendors that could provide available resources, communicating with potential bidders to understand their capabilities and share an overview of CEHE’s requirements.²⁸ CEHE issued its Short-Term Lease RFP on Tuesday, August 3, 2021, at 5:01 p.m. to four potential bidders.²⁹ Responses were due on Friday, August 6 at noon. The deadline for delivery of the requested mobile-generation units was August 16.

²⁵ CEHE Ex. 15 (Koujak Reb.) at 5.

²⁶ CEHE Ex. 12 (Narendorf Reb.) at 6.

²⁷ CEHE Ex. 15 (Koujak Reb.) at 6-7. The 125 MW is a subset of the 500 MW of overall need.

²⁸ CEHE Ex. 10 (Narendorf Reb.) at 35; CEHE Ex. 11 (Raben Reb.) at 7.

²⁹ See CEHE Ex. 10 (Narendorf Reb.), Exh. MWN R-1.

Of the four potential bidders, only three submitted responses, and only two of those that submitted responses met the technical specifications and capacity requirements.³⁰ These two bidders were Life Cycle Power (LCP) and Distributed Power Solutions (DPS). CEHE states that it assessed the bids and conducted negotiations with the bidders between August 6 and 13. In the second week of August, CEHE selected LCP “because it offered the most beneficial commercial scenario and was the only vendor that had TEEF units that were compatible with CenterPoint’s equipment that were ready to deliver before the 2021 hurricane season.”³¹ The Short-Term Lease with LCP was executed on September 1, had a two-month term, and applied to eight mobile generators with a combined capacity of 124.5 MW—five units with a capacity of 5.7 MW each and three units with a capacity of 32 MW each, designed to operate on gaseous and liquid fuels.³²

“While the Company and LCP endeavored to meet” the mid-August timeline for delivery, “due to the new and unique nature of this procurement coupled with the time for contract negotiations, delivery by mid-August did not occur,” and instead CEHE began receiving the mobile-generation units on September 13, 2021.³³ In December 2021, CEHE and LCP entered into the Short-Term Lease Extension for an additional 90 MW and another nine months.³⁴

³⁰ Hearing Transcript (Tr.) at 383-84 (Raben Cross).

³¹ CEHE Ex. 11 (Raben Reb.) at 9-10, Exh. EER-R-1 (timeline of TEEF procurement).

³² CEHE Ex. 6 (Narendorf Dir.) at 13.

³³ CEHE Ex. 11 (Raben Reb.), Exh. EER-R-1 (timeline of TEEF procurement).

³⁴ CEHE Ex. 6 (Narendorf Dir.), Exh. MWN-5 p.5.

(ii) Long-Term Lease

CEHE issued its long-term lease RFP to 15 bidders on October 6, 2021. The RFP, which required 30 days for responses, sought 500 MW of TEEEF, with delivery requested by January 31, 2022. On November 1, 2021, CEHE received six bids. According to CEHE, it then spent several weeks analyzing the bids and conducting negotiations. CEHE issued its conditional letter of award to, again, LCP on December 9, 2021. After contract negotiations, the Long-Term Lease was executed on December 31, 2021 for a seven-and-a-half-year term and applied to 20 mobile generators with a combined capacity of 516 MW (15 with a capacity of 32 MW each and five with a capacity of 5.7 MW each).³⁵ Under the contract, all TEEEF would be delivered by January 28, 2022.

b) Positions of HCC, TCPA, TEAM-ARM, and Staff

HCC, TCPA, TEAM-ARM, and Staff argue that CEHE's procurement process for the Short-Term Lease, the Short-Term Lease Extension, and the Long-Term Lease did not constitute the "competitive bidding process" required by section 39.918(f)

³⁵ Tr. at 64 (Narendorf Dir.). There is some overlap between the mobile generation units subject to the Long-Term Lease and the additional units leased as part of the Short-Term Lease Extension. CEHE Ex. 11 (Raben Reb.) at 23-24.

(i) Short-Term Lease and Short-Term Lease Extension

Staff and these intervenors object to the procurement process for the Short-Term Lease and its extension on multiple bases. According to HCC witness Kevin Mara, the RFP schedule “was not realistic and greatly reduced the number of competitive responses.” The two-and-a-half-day response deadline was “not reasonable for vendors to obtain the necessary approvals for the bid levels anticipated by the RFP.”³⁶

Referring to both the Short-Term and Long-Term Leases, ARM-TCPA witness Charles S. Griffey testified that he “would not characterize [CEHE’s bid process] as competitive.”³⁷ Mr. Griffey asserted the constraints of the RFP and the evaluation of bids “effectively resulted in only a single bidder on which CEHE relied for the entire scale of its procurement.”³⁸ In addition, he opined that the “fact that there was only one bidder that could meet the delivery date means that the bid was not competitive.”³⁹

HCC, TCPA,⁴⁰ and TEAM-ARM also contend that communications between CEHE and LCP before and after issuing the Short-Term Lease RFP reveal

³⁶ HCC Ex. 1 (Mara Dir.) at 22-23.

³⁷ ARM-TCPA Ex. 1 (Griffey Dir.) at 20.

³⁸ ARM-TCPA Ex. 1 (Griffey Dir.) at 22.

³⁹ ARM-TCPA Ex. 1 (Griffey Dir.) at 23.

⁴⁰ HCC and TCPA further argue that CEHE did not select the lowest-cost bidder in awarding the Short-Term Lease. The ALJs find that CEHE has presented substantial evidence showing that it acted reasonably in awarding the Short-Term Lease to LCP based on the bids presented. *See* TCPA Init. Br. at 21-25; HCC Init. Br. at 11; *see also* CEHE Ex. 11 (Raben Reb.) at 15 (describing bid analysis).

that the process was not competitive. Specifically, at noon on August 3, 2021 (about five hours before the Short-Term Lease RFP was issued and weeks before the long-term lease RFP), CEHE's Chief Financial Officer sent an email to an LCP employee stating, "Let's get past this short term lease process and then immediately turn our attention towards the longer term structure," referring to the long-term lease.⁴¹ The LCP employee quickly responded, stating, "I will defer to you on when we should connect regarding the longer term structure/capitalization. We can certainly accommodate the cap lease structure mentioned."⁴² TCPA argues that the possibility of collusion between CEHE and LCP is heightened by the disclosure that CEHE's CEO was previously acquainted with another sales representative of LCP's, when both individuals worked at Halliburton 10 years before.⁴³

In addition, Staff and TCPA argue that CEHE failed to perform due diligence during the RFP process, calling into question the reasonableness of CEHE's procedures. They point to the fact that CEHE failed to consider that LCP's CEO at the time, John Tuma, had a criminal conviction. As Staff notes, Mr. Tuma is a convicted felon for violations of federal environmental law who, the trial judge found, had not given truthful testimony at trial.⁴⁴

Moreover, HCC contends that the Short-Term Lease Extension was blatantly and improperly non-competitive. The original RFP for the Short-Term

⁴¹ HCC Ex. 26 at 3; Tr. at 377-78 (Raben Cross).

⁴² HCC Ex. 26 at 3.

⁴³ Tr. at 513-16 (Raben Cross (Conf.)).

⁴⁴ ARM-TCPA Ex. 1 (Griffey Dir.) at 25.

Lease did not state that the contract could be extended for additional capacity.⁴⁵ Moreover, LCP did not offer any additional capacity in its original bid, and no other bidder was given the opportunity to do so.⁴⁶

(ii) Long-Term Lease

Regarding the Long-Term Lease procurement process, TCPA, TEAM-ARM, and HCC argue that, while the timeline for the RFP process was reasonable, CEHE failed to properly assess the competing bids, undermining the competitive bidding process required by section 39.918(f), and that the process was likewise tainted by improper communications between CEHE and LCP and the lack of due diligence described above.

c) CEHE Response

In defense of CEHE's rapid procurement process, Mr. Koujak testified that mobile-generation facilities take time to build and are expensive to produce.⁴⁷ He stated the lead time for new units can be more than a year and few vendors have units in stock in large numbers.⁴⁸ The legislature, CEHE argues, foresaw this difficulty and therefore requires the competitive bidding process for such facilities only when "reasonably practicable."⁴⁹

⁴⁵ HCC Ex. 1 (Mara Dir.) at 31.

⁴⁶ HCC Ex. 1 (Mara Dir.) at 31.

⁴⁷ CEHE Ex. 15 (Koujak Reb.) at 11.

⁴⁸ CEHE Ex. 15 (Koujak Reb.) at 11.

⁴⁹ PURA § 39.918(f).

Regarding the two-and-one-half-day response deadline for the Short-Term Lease, Ms. Raben noted that CEHE’s purchasing manual states that the RFP process “will vary greatly depending on many factors such as the complexity of the work, the amount of market research required, *and the urgency of the requirement.*”⁵⁰ She stated that the deadline was reasonable “due to the pre-work and pre-communication with potential vendors prior to the RFP that informed an understanding of which vendors had units available and within proximity to mobilize in September 2021 and provide support during the remainder of peak hurricane season[.]”⁵¹

Mr. Koujak acknowledged that the three-day timeline is short “in terms of typical utility procurement,” but stated that a short timeline is reasonable when “the product sought is effectively a mobile commodity that can be repositioned and deployed.” Here, because CEHE “reasonably believed [mobile generators] were urgently needed, only entities that had the units on hand would be able to respond and additional time would not necessarily be beneficial” in responding to the RFP.⁵²

CEHE further contends that its due diligence was adequate. Ms. Raben testified that CEHE’s due diligence was “more robust than standard practice” and that it performed credit and funding analysis, insurance verification, and lien and title searches.⁵³ She further stated that “it is not standard practice to conduct

⁵⁰ CEHE Ex. 11 (Raben Reb.) at 11.

⁵¹ CEHE Ex. 11 (Raben Reb.) at 11-12.

⁵² CEHE Ex. 15 (Koujak Reb.) at 9.

⁵³ CEHE Ex. 11 (Raben Reb.) at 18.

background checks on a vendor's officers or other principals as part of due diligence and/or contract negotiations.”⁵⁴ The fact that LCP's former CEO had a criminal conviction before the leases were signed does not demonstrate a lack of diligence, as the leases are between the two companies, not individuals.⁵⁵

d) Analysis

With respect to the Short-Term Lease and extension, the ALJs find that CEHE's bidding process was not competitive and that it was reasonably practicable to implement a competitive process. The extremely short deadlines for RFP responses likely resulted in fewer conforming bids, a problem exacerbated by the fact that CEHE had identified only four potential bidders as having units available and ready to mobilize in September 2021.⁵⁶ CEHE's argument that it was operating under an urgent imperative is not persuasive. CEHE does not argue that using a competitive bidding process was not “reasonably practical,” only that it was attempting to act quickly to prepare for potential hurricanes and had to compete for a limited amount of mobile generation on the market. However, the hurricane season—which lasts from June to November—was already well underway, so any mobile generation that CEHE could procure would only be available for the final months of the season.⁵⁷ Though CEHE argues its acted quickly because it was competing for scarce mobile-generation resources, its short deadlines limited the number of complying bids and ultimately ensured that only one bidder could be

⁵⁴ CEHE Ex. 11 (Raben Reb.) at 18.

⁵⁵ CEHE Ex. 11 (Raben Reb.) at 20.

⁵⁶ CEHE Ex. 11 (Raben Reb.) at 11-12.

⁵⁷ HCC Ex. 1 (Mara Dir.) at 26.

selected: LCP was the only bidder that could meet CEHE's timing needs.⁵⁸ CEHE did not show that it would have been impractical to perform a more thorough evaluation of its immediate TEEEF requirements under the same urgent circumstances.

CEHE's justification for the extremely short response deadline is not persuasive. Although Mr. Koujak testified that CEHE's processes were reasonable given the urgency of acquiring mobile generation, he acknowledged that "the 3-day timeline is short in terms of typical utility procurement."⁵⁹ However, the mobile-generation facilities were not delivered under the Short-Term Lease until September (though the RFP required delivery by August 16) and CEHE did not show that it would have been impractical to extend the response deadline in the RFP. An extension of the response deadline could have allowed more companies more time to prepare bids and possibly resulted in more than two options for such a significant procurement.

Moreover, CEHE's "pre-work and pre-communication with potential vendors," with which Ms. Raben justifies the truncated timeline, tends to show a lack of transparency and fairness in the bidding process.

In addition, the ALJs find that, even if CEHE reasonably believed it urgently needed to enter a two-month lease as a stop gap, its reasoning to enter a nine-month extension for another 90 MW of mobile-generation capacity without *any*

⁵⁸ ARM-TCPA Ex. 1 (Griffey Dir.) at 22.

⁵⁹ CEHE Ex. 15 (Koujak Reb.) at 9.

competitive bidding is entirely unsupported. CEHE did not seek or obtain competitive bids and did not allow bidders to respond to the possibility of such an extension in the Short-Term Lease RFP. Nor does CEHE explain how the extension process was competitive. Instead, Ms. Raben testified that CEHE executed the Short-Term Lease Extension as “an administrative matter” to allow the use of additional mobile generation while pursuing a long-term lease.⁶⁰ However, extending the lease from two months to nine months vastly enlarged the duration, and the time bought by the Short-Term Lease would have removed any urgency CEHE initially felt in rushing to enter the Short-Term Lease.

For these reasons, the ALJs conclude that the Short-Term Lease and extension did not comply with the competitive bidding requirement.

With respect to the Long-Term Lease, for which 15 bidders were given 30 days to respond and several proposals were submitted, the ALJs find that CEHE showed it to be the result of a competitive bidding process. There is no substantial evidence that the potentially improper pre-communications made during the Short-Term Lease RFP process were repeated in seeking the Long-Term Lease, and those concerns are mitigated by the more robust Long-Term Lease RFP process.

Finally, the ALJs are not persuaded that a lack of due diligence impacted CEHE’s decision to award leases to LCP. The evidence shows that conducting due diligence on individuals is not a standard industry practice, and the leases themselves create obligations and duties between the two companies—not with any

⁶⁰ CEHE Ex. 11 (Raben Reb.) at 23.

individual employee or officer of LCP.⁶¹ The leases also contain risk-mitigation provisions that serve to protect CEHE against LCP's breach of performance obligations, regardless of the identity of LCP's officers.⁶²

2. Authorized Operation [Supp. PO Issues 4(a)-(c), 5]

a) TEAM-ARM, HCC, and TCPA's Positions

PURA section 39.918(b)(1) authorizes a TDU to lease and operate mobile-generation facilities that aid in restoring power to the utility's distribution customers during a widespread power outage in which either: (a) the independent system operator has ordered the utility to shed load, or (b) the utility's distribution facilities are not being fully served by the bulk power system under normal operation. Section 39.918(h)(1) allows a TDU "that leases and operates facilities under Subsection (b)(1)" to recover the reasonable and necessary costs of leasing and operating the facilities.

In the absence of a rule, TEAM-ARM, HCC, and TCPA argue, CEHE's request to recover of its mobile-generation costs here should be denied because CEHE plans to use these facilities in an unauthorized manner.

CEHE contends that section 39.918(b)(1)(B) "is intended to encompass all widespread power outages that are not caused by [an ERCOT load-shed order]."⁶³

⁶¹ CEHE Ex. 15 (Koujak Reb.) at 11; CEHE Ex. 11 (Raben Reb.) at 20.

⁶² CEHE Ex. 11 (Raben Reb.) at 20-21.

⁶³ CEHE Init Br. at 21.

For example, CEHE interprets “not being served by the bulk power system” to encompass all widespread power outages that are not caused by ERCOT load sheds, whereas these intervenors interpret it to apply only where the widespread power outage is the failure of the bulk power system itself, i.e., the transmission system, and not a problem with local distribution.⁶⁴ TEAM-ARM, HCC, and TCPA argue that CEHE’s expansive interpretation of section 39.918(b)(1) would improperly allow it to use mobile-generation facilities when a widespread power outage is attributable to conditions on CEHE’s own distribution facilities.

While “bulk power system” is not defined in PURA, TEAM-ARM witness Chris Hendrix testified it is used in the industry to mean “the electrical network comprised of generation facilities and transmission facilities.” Under the North American Energy Reliability Corporation’s definition, the bulk power system “does not include facilities used in the local distribution of electric energy.”⁶⁵ Mr. Hendrix asserted there is no evidence to refute the position that the term bulk power system refers to the transmission system, as defined by Commission rules.⁶⁶ Thus, TEAM-ARM maintains that, in the absence of an ERCOT load-shed order, if CEHE’s “distribution facilities are not being served by the bulk power system under normal operations,” that would mean the bulk power system itself, i.e., the generators and transmission facilities, are failing to provide power to CEHE’s

⁶⁴ TEAM-ARM Ex. 1 (Hendrix Dir.) at Bates 23-24.

⁶⁵ TEAM-ARM Ex. 1 (Hendrix Dir.) at 7-8 (Bates 8-9) (quoting NERC Glossary of Terms, available at https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf). This definition is repeated in the Federal Power Act. 16 U.S.C. § 824o(a)(1).

⁶⁶ TEAM-ARM Ex. 1 (Hendrix Dir.) at 8; 16 TAC § 25.5(142).

distribution facilities—not that the distribution facilities are themselves unable to receive power.⁶⁷

TCPA further argues that CEHE’s interpretation—that section 39.918(b)(1)(B) refers to *any* widespread power outage in which ERCOT has not ordered load shedding, whether caused by a fault with the bulk power system or with CEHE’s own distribution facilities—would render both sections 39.918(b)(1)(A) and (b)(1)(B) superfluous. If TDUs are allowed to use mobile generation in any widespread power outage in which there is an ERCOT load-shed event under (b)(1)(A) and in any widespread power outage under (b)(1)(B) in which the bulk power system is under normal operations (that is, when there is *not* an ERCOT load-shed event), then TDUs could use mobile generation in *any* widespread power outage, and the statutory distinction would be meaningless. TCPA insists that, had that interpretation been the legislative intent, the legislature would not have rejected the original version of HB 2483, which referred only to widespread power outages and did not include the specified distinctions found in (b)(1)(A) and (b)(1)(B).⁶⁸

Moreover, TEAM-ARM argues, CEHE’s interpretation is contrary to ERCOT’s larger competitive regulatory scheme. Mr. Hendrix explained that PURA provides three distinct market participants in ERCOT: retail electric providers (REPs), power generation companies (PGCs), and TDUs.⁶⁹ According to

⁶⁷ TEAM-ARM Init. Br. at 12.

⁶⁸ Tex. H.B. 2483, 87th Legislature, R.S. (as introduced March 1, 2021).

⁶⁹ TEAM-ARM Ex. 1 (Hendrix Dir.) at 9.

Mr. Hendrix, PURA section 39.918 “creates a limited exception to this fundamental market precept of separation between TDUs and PGCs” that allows TDUs to lease generation facilities for use “*only* under an independent system operator [ERCOT] load shed order or when wider conditions on the bulk power system interfere with the normal operations of its distribution system to the point of qualifying as a ‘widespread power outage.’”⁷⁰ Thus, “an outage that might otherwise meet the definition of widespread power outage, but is attributable only to issues with a TDU’s distribution facilities, does not qualify under the narrow exception” authorized under section 39.918.⁷¹

Good public policy, TEAM-ARM further argues, also militates against CEHE’s expansive reading of the statute. Due to the separation of the three primary market segments—PGCs, TDUs, and REPs—electric customers who fear an outage have market alternatives to obtain backup generation and can obtain such service from the competitive market (e.g., small gas-powered generators, battery devices). While different customers will have different needs for backup generation and a different willingness to pay for that backup, the value of the backup is directly accrued by that customer. By contrast, Mr. Hendrix testified, “PURA § 39.918 essentially allows the TDU to provide back-up generation services in limited, specially delineated circumstances and socializes the costs for that service to all ratepayers, regardless of whether or not the customer directly benefits from it.”⁷²

⁷⁰ TEAM-ARM Ex. 1 (Hendrix Dir.) at 10.

⁷¹ TEAM-ARM Ex. 1 (Hendrix Dir.) at 10.

⁷² TEAM-ARM Ex. 1 (Hendrix Dir.) at 10-11.

According to Mr. Hendrix, allowing and encouraging TDUs to obtain unreasonably large amounts of mobile generation by an expansive reading of section 39.918 would skew incentives for mobile-generation providers to cater to TDUs rather than the competitive marketplace involving customer choice, and could result in inequities among larger retail customers, such as grocery stores, that have or would have otherwise invested in onsite generation. Mr. Griffey testified that allowing CEHE to provide socialized back-up generation to certain facilities would create a “moral hazard” in which ratepayers who have chosen not to install their own back-up power will be rewarded by having this cost borne by all ratepayers.⁷³ Instead, to ensure that such socialized costs are minimized and that the competitive market is not compromised, Mr. Griffey argued that section 39.918 must be read narrowly to allow TDUs to deploy mobile generation only within the limited parameters of that statute.

As an example of how CEHE’s interpretation conflicts with section 39.918, HCC, TCPA, and TEAM-ARM point to CEHE’s use of mobile generation to provide power to the Lake Jackson Civic Center in 2021 in response to Hurricane Nicholas. The hurricane damaged CEHE’s distribution lines in the Lake Jackson area to such a degree that restoration would take longer than eight hours.⁷⁴ CEHE then used one of its 5 MW mobile generation units to provide power for approximately 70 hours to the Lake Jackson Civic Center, which was serving as a staging ground and cooling center for relief efforts.⁷⁵

⁷³ ARM-TCPA Ex. 1 (Griffey Dir.) at 32.

⁷⁴ CEHE Ex. 6 (Narendorf Dir.) at 18.

⁷⁵ CEHE Ex. 6 (Narendorf Dir.) at 18.

Mr. Griffey testified that this use is not permitted under section 39.918, because “the bulk power system was capable of providing power but for the downed distribution line.”⁷⁶ While agreeing that it was good for the Lake Jackson Civic Center to have power, Mr. Griffey opined that “there are a number of commercial firms that can provide back-up power solutions to individual sites” and that it is not good policy “to have ratepayers pay CEHE to compete against those solutions,” concluding that facilities like the Lake Jackson Civic Center “probably should have back-up power paid by local taxpayers or owners, not spread across regulated rates.”⁷⁷

Similarly, HCC witness Mr. Mara testified that CEHE’s use of mobile generators at the Lake Jackson Civic Center did not meet the requirements of section 39.918 because the outage was due to damage to the localized distribution system rather than the bulk power system, stating that “this is a good example of how *not* to use a mobile generator during major storms within the bounds of PURA § 39.918.”⁷⁸

b) CEHE’s and Staff’s Positions

In contrast, CEHE argues that the legislature, in passing HB 2483, intended to allow TDUs to use mobile generation facilities in response to events such as Winter Storm Uri and other natural disasters like hurricanes.⁷⁹ The statute itself,

⁷⁶ ARM-TCPA Ex. 1 (Griffey Dir.) at 30.

⁷⁷ ARM-TCPA Ex. 1 (Griffey Dir.) at 29-30.

⁷⁸ HCC Ex. 1 (Mara Dir.) at 13.

⁷⁹ CEHE Init. Br. at 19-20.

according to CEHE, should be read broadly to reflect that intention. CEHE witness Brad A. Tutunjian testified that section 39.918 must be evaluated in the proper context: “the need to preserve and protect human life during an emergency—not just the economics of the utility power market in Texas.”⁸⁰ It is his opinion that to prohibit CEHE from using mobile generation only because the outage is related to CEHE’s distribution system would be “absurd” and “nonsensical”: “[T]he people who are suffering during a widespread power outage could not care less whether the cause of the outage is due to a distribution system failure rather than a bulk power system failure”⁸¹

For this reason, according to CEHE, section 39.918(b)(1)(B) should be interpreted to encompass all widespread power outages that occur during normal operations (that is, ERCOT has not ordered TDUs to shed load) yet the TDU’s distribution facilities are nevertheless unable to be “fully served” by the bulk power system.⁸² Under this interpretation, damage to a TDU’s distribution facilities caused by a hurricane, such as the September 2021 Lake Jackson incident, would qualify as a widespread outage.

CEHE witness Martin W. Narendorf testified that CEHE’s use of mobile generators at the Lake Jackson Civic Center was in accordance with section 39.918 because CEHE’s distribution customers were not being served by the bulk power system under normal operation.

⁸⁰ CEHE Ex. 9 (Tutunjian Reb.) at 6.

⁸¹ CEHE Ex. 9 (Tutunjian Reb.) at 21-22.

⁸² CEHE Init. Br. at 21.

Staff supports CEHE's interpretation, arguing that section 39.918(b)(1)(B) "does not require that the bulk power system have some issue; it requires that a utility's distribution facilities not be fully served by the bulk power system under normal operations." It does not matter, therefore, whether the Lake Jackson outage was due to damage to CEHE's distribution facilities, only that those facilities were not being "fully served by the bulk power system." Accordingly, Staff argues, "[i]t would have been unreasonable for CEHE to have let residents of Lake Jackson suffer from a prolonged lack of electricity while CEHE let the mobile generators sit idle."⁸³

c) Analysis

The ALJs find that CEHE's proposed use of the mobile-generation units does not comply with section 39.918. Section 39.918 must be read as an exception to PURA's rigid separation of generators and TDUs, allowing TDUs to use generation only under the specific conditions set out therein. And in construing statutes, the text must be read "as a whole so as to render no part inconsistent, superfluous, or devoid of meaning," and "each word, phrase, and clause" should be read "in a manner that gives meaning to them all."⁸⁴ A TDU "that leases and *operates facilities under Subsection (b)(1)*" may recover those costs.⁸⁵ Cost recovery, therefore, is limited to *operation* under subsection (b)(1). Section 39.918(b)(1) permits the use of mobile generation only in those outages involving an ERCOT

⁸³ Staff Init. Br. at 6.

⁸⁴ *Levinson Alcoser Assocs., L.P. v. E/Pistolon II, Ltd.*, 513 S.W.3d 487, 493 (Tex. 2017).

⁸⁵ PURA § 39.918(h)(1).

load-shed order *or* in which “the utility’s distribution facilities are not being fully served by the bulk power system under normal operations.” To interpret this second scenario, as CEHE does, to include every outage not due to an ERCOT load-shed order would render both conditions meaningless, as every widespread power outage necessarily involves or does not involve such a load-shed order. Had the legislature wished to allow TDUs to use mobile generation in all widespread power outages, it would not have modified the original version of HB 2483, which did not contain the limitations in the version that became law.

Moreover, the inquiry in section 39.918(b)(2) is whether the TDU’s distribution *facilities*, not distribution customers, are being fully served by the bulk power system. Damage to the distribution facilities alone does not equate to those facilities not being “fully served.” Instead, section 39.918(b)(1)(B) must be read to apply only when an issue with the bulk power system—which the parties agree refers only to the generation and transmission systems—prevents the distribution facilities from being fully served. Accordingly, the ALJs conclude that section 39.918 does not allow a TDU to use mobile generation in response to a widespread power outage during normal operations that results from a failure of the TDU’s distribution system.

The ALJs note that this conclusion is consistent with the proposal for decision in Docket No. 53601.⁸⁶ In that docket, Oncor used a mobile generator following a tornado to restore power to a hospital when Oncor did not receive a

⁸⁶ *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 53601 (Jan. 13, 2023) (Proposal for Decision) at 25 *et seq.*

load-shed order from ERCOT and the tornado did not damage any portion of the transmission system, just as in the Lake Jackson event at issue here. The ALJs in that proceeding determined that such use was not authorized by section 39.918, finding that section 39.918(b)(1)(B) applies only to outages caused by a failure of the bulk power system.

The ALJs are mindful that that our conclusion may appear hypertechnical to Texans suffering in extreme cold or heat without electricity after a weather event or other grid emergency. However, the ALJs are bound by the language of the statute itself and cannot substitute their own judgment for that of the legislature's. Here, section 39.918's limited exception to the otherwise rigid separation of REPs, PGCs, and TDUs simply does not extend as broadly as CEHE contends.

3. Inclusion of TEEEF in Emergency Operations Plan [Supp. PO Issue 6]

CEHE argues that it has complied with section 39.918(g), which requires a TDU leasing mobile generation to include a detailed plan on the TDU's use of those facilities in its emergency operations plan (EOP) filed with the Commission. Mr. Narendorf testified that CEHE incorporated its proposed TEEEF operations into its EOP used to prepare for, respond to, and recover from emergency events, including winter storms, hurricanes, and other grid emergencies.⁸⁷ CEHE filed its updated EOP with the Commission on April 18, 2022, in Project No. 53385.⁸⁸

⁸⁷ CEHE Ex. 6 (Narendorf Dir.) at 4.

⁸⁸ *Project to Submit Emergency Operations Plans and Related Documents Under 16 TAC § 25.53*, Project No. 53385, Emergency Operations Plan Executive Summary (Apr. 18, 2022).

TCPA, TEAM, ARM, and HCC assert that CEHE failed to include enough detail about the operations of TEEEF in its EOP. The ALJs disagree and find that CEHE complied with the statute's requirement by filing its updated EOP. Concerns about the adequacy of CEHE's EOP are not at issue in this docket. Accordingly, the ALJs find that CEHE complied with section 39.918(g).

B. PRUDENCE OF TEEEF AND RESULTING REVENUE REQUIREMENT

1. Recovery Period [Supp. PO Issue 3]

CEHE's proposed Rider TEEEF contemplates an annual update filing with a September 1 effective date contemporaneous with CEHE's DCRF filings. However, according to CEHE, given the fact that TEEEF rates have not yet been implemented, rates approved for TEEEF will need to be updated for a shorter time period for recovery until the effective date for next year's TEEEF filing. The rates will also need to be updated, CEHE states, to reflect CEHE's consent to the removal of any transmission service class charges and Staff's requested seven-and-a half year amortization period for the Short-Term Lease.⁸⁹ No party challenged CEHE's proposed operation of Rider TEEEF,⁹⁰ the proposed recovery period, or need to update the tariff upon a final decision in this case. Accordingly, the ALJs recommend that CEHE's proposal should be approved, if the Commission approves any TEEEF recovery in this proceeding.

⁸⁹ Staff's Statement of Position at 1-2 (Oct. 13, 2022).

⁹⁰ Only TEAM and ARM address the recovery period proposed by CEHE, and their arguments center on whether the TEEEF units were used and useful under the Long-Term Lease as of December 31, 2021—not the recovery of TEEEF rates. Because the ALJs do not recommend recovery of TEEEF costs, this issue is not discussed further.

2. Prudence of Leased TEEEF [Supp. PO Issue 7]

Staff, TCPA, HCC, and TEAM-ARM contend that the costs CEHE incurred in leasing 500 MW of mobile generation were not prudently incurred. CEHE argues the costs were prudent.

a) CEHE's Position

CEHE argues that its acquisition of leases to acquire 500 MW of TEEEF was reasonable and prudent. In support of this position, Mr. Narendorf provided a seven-page PowerPoint presentation listing different choices CEHE could consider in selecting mobile-generation assets.⁹¹ The options presented by Mr. Narendorf and CEHE's response to the parties' positions on the prudence of the leased TEEEF are discussed in greater detail below.

b) Staff's Position

Staff argues CEHE acted imprudently in procuring the mobile generators because it did not perform any cost-benefit analysis and its PowerPoint presentation merely lists different choices CEHE could consider in selecting mobile-generation assets but provided no analysis.⁹² Additionally, Staff contends that CEHE failed to show that, in deciding to procure 500 MW of TEEEF, it properly considered other new weatherization requirements that might offset the need to acquire mobile generation.

⁹¹ CEHE Ex. 10 (Narendorf Reb.), Exh. MWN-R-1.

⁹² Staff Init. Br. at 7.

c) TCPA's Position

TCPA argues that CEHE's decision to lease 500 MW of TEEEF is unsupported by analysis, limited in its usefulness, was not considered against other alternatives, and is out of line with other utilities. Mr. Griffey testified that CEHE "did not perform any numerical analysis to demonstrate the value or benefit to customers of the mobile generation facilities."⁹³ Instead, "the assessment as to the size of TEEEF needed was 'done in a meeting in the form of verbal discussions' and '[n]o drafted assessments or analysis were performed.'"⁹⁴

TCPA further argues that the 500 MW have limited usefulness. All of the leased mobile generators operate at 12.5 kilovolts (kV) and none have step-up transformers that would allow them to operate at higher voltages to serve medical facilities on CEHE's system that operate at 34.5 kV, which may include emergency rooms, dialysis services, and other critical functions.⁹⁵

Finally, TCPA argues that CEHE's acquisition of mobile generation would not benefit customers significantly. For example, PG&E, a California utility, that acquired mobile generation to address power outages resulting from wildfires could serve only 12,600 meters of its distribution system with 350 MW of mobile generation. Extrapolating this figure, CEHE's witness Narendorf admitted that 500 MW would only serve 18,000 of CEHE's 2.4 million customers.⁹⁶ This

⁹³ ARM-TCPA Ex. 1 (Griffey Dir.) at 11 (quoting CEHE Response to ARM/TCPA RFI No. 1-03).

⁹⁴ ARM-TCPA Ex. 1 (Griffey Dir.) at 11 (quoting CEHE Response to ARM/TCPA RFI Nos. 1-03 and 1-7).

⁹⁵ TCPA Br. at 36 (citing Tr. at 113 (Narendorf Cross)).

⁹⁶ Tr. at 258 (Narendorf Cross).

information was available to CEHE at the time of its decision to acquire mobile generation and should have informed its analysis. TCPA further suggests that CEHE hurriedly amassed 500 MW of mobile generation not based on need but to obtain mobile generators before other utilities and to maximize returns—as evidenced by its rush to complete the leases by December 31, 2021—to collect returns as soon as possible. The 500 MW would also make CEHE an outlier compared to other utilities, such as Oncor and PG&E, which, though larger than CEHE, have obtained or sought to obtain far smaller amounts of mobile generation.⁹⁷

d) TEAM-ARM’s Position

TEAM-ARM likewise argues that CEHE’s decision to obtain 500 MW of mobile generation was imprudent because it leased too much capacity too quickly without attempting to quantify the benefit to customers. CEHE presented no evidence that its assessments of options included an evaluation of another Winter Storm Uri-level event. And CEHE never reconsidered the need for this amount of mobile generation even after its Short-Term Lease RFP yielded few options, nor did it consider options to minimize the cost of such an acquisition or to structure its leases to account for other preventative measures taken by the legislature and the Commission to mitigate the dangers of another similar event.⁹⁸ Further, TEAM-ARM asserts CEHE rushed to sign a lease by December 31, 2021, rather than prudently waiting for guidance from the Commission regarding its expansive interpretation of how mobile generation could be used.

⁹⁷ TCPA Init. Br. at 39.

⁹⁸ ARM-TCPA Init. Br. at 23.

e) HCC's Position

HCC contends that CEHE's decision to obtain 500 MW was based entirely on the experience of Winter Storm Uri, despite the lack of evidence suggesting that another load-shed event of that magnitude and duration would happen any time in the near future.⁹⁹ However, in the last five years, there have been only two major hurricanes that affected CEHE's system, Nicholas and Harvey. Mr. Mara testified that Hurricane Nicholas did not result in the loss of bulk electric service for more than eight hours, and thus mobile generation could not have been deployed under section 39.918. And that, while Hurricane Harvey caused 10 substations to lose bulk power service for more than eight hours, it is unclear if mobile generators could have been timely deployed.¹⁰⁰ Mr. Mara opined that while it is prudent to use mobile generation for storm restoration when bulk power is unavailable, the leased generators can only reasonably be expected to be used for emergency restoration caused by a hurricane once every four or six years, as storm-hardening measures have increasingly been deployed.¹⁰¹ With regard to load-shed events, Mr. Mara stated that these rare occurrences cannot support the need for 500 MW of mobile generation, especially compared with other larger utilities' proposed use of much less capacity.¹⁰²

⁹⁹ Tr. at 305 (Narendorf Cross).

¹⁰⁰ HCC Ex. 1 (Mara Dir.) at 9-10.

¹⁰¹ HCC Ex. 1 (Mara Dir.) at 14-15.

¹⁰² HCC Ex. 1 (Mara Dir.) at 17-20.

f)CEHE's Response

In response to HCC's assertions, Mr. Narendorf testified that the amount of TEEEF capacity was decided "based on [its] operational needs to allow greater load rotation during an ERCOT-directed load-shed event similar to Winter Storm Uri."¹⁰³ Based on discussions with CEHE's leadership and management, Mr. Narendorf stated, "it was decided that 500 MW of TEEEF would be needed to support and to prepare for potential ERCOT-directed load shed events. Because this capacity was based on operational necessity, other capacity offerings were not evaluated and presented to the Company's Board of Directors."¹⁰⁴

Regarding Staff's claim that CEHE did not consider PURA's other requirements to mitigate the risk of a load-shed event, CEHE states that it did consider these other measures and determined that it would take considerable time to implement them, and that TEEEF was intended to bridge that gap.¹⁰⁵ CEHE witness Kenneth A. Donohoo testified that "[w]hile the Commission and Railroad Commission of Texas have both instituted weatherization rules that are intended to better insulate equipment in the event of cold weather, certain changes that will enable us to completely avoid sustained outages after another Winter Strom Uri event will take years to put in place."¹⁰⁶

¹⁰³ CEHE Ex. 10 (Narendorf Reb.) at 18.

¹⁰⁴ CEHE Ex. 10 (Narendorf Reb.) at 20.

¹⁰⁵ CEHE Ex. 9 (Tutunjian Reb.) at 14.

¹⁰⁶ CEHE Ex. 14 (Donohoo Reb.) at 8.

CEHE argues that by insisting on a mathematical cost-benefit analysis of the 500 MW acquisition, Staff and intervenors discount the clear and immeasurable benefit of load rotation and reduced outage duration. Moreover, Mr. Koujak testified that a “cost-benefit analysis typically refers to a quantitative analysis that evaluates a resource’s relative cost stream to the value stream it creates” as a way to compare different technologies, but distribution-connected TEEEF does not have a readily quantifiable value stream.¹⁰⁷ When TEEEF are solely intended to operate during widespread power outages, the energy TEEEF creates becomes invaluable in terms of the negative economic impact and public safety risks it helps to mitigate.¹⁰⁸

Further, CEHE counters TCPA’s argument that the TEEEF units do not serve medical facilities in its service area by noting that, as Mr. Narendorf testified, circuits that serve hospitals are not part of CEHE’s load shed programs and that most medical facilities have their own backup generation.¹⁰⁹ In response to TCPA’s and TEAM-ARM’s claims that CEHE rushed into leases for profit, CEHE notes that customers are already benefiting from its investment in TEEEF, through the hurricane season and winter 2021-2022, while CEHE’s investors have yet to see any return.¹¹⁰

¹⁰⁷ CEHE Ex. 15 (Koujak Reb.) at 14.

¹⁰⁸ CEHE Ex. 15 (Koujak Reb.) at 15.

¹⁰⁹ Tr. at 141-42 (Narendorf Redir.).

¹¹⁰ CEHE Reply Br. at 31.

g) Analysis

The Commission's standard for assessing the prudence of utility management decisions is well settled.¹¹¹ Prudence is:

the exercise of that judgment and the choosing of one of that select range of options which a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives available at the point in time such judgment is exercised or option is chosen.¹¹²

The Commission has also noted that:

There may be more than one prudent option within the range available to a utility in any given context. Any choice within the select range of reasonable options is prudent, and the Commission should not substitute its judgment for that of the utility. The reasonableness of an action or decision must be judged in light of the circumstances, information and available options existing at the time, without benefit of hindsight.¹¹³

Under this standard, prudence is not restricted to one set of options that can be identified as reasonable; rather, to be prudent, the utility's options and approach are required to be within a range of reasonableness. A prudence determination must be based on the circumstances, information, and options available at the time

¹¹¹ See *Pub. Util. Comm'n of Tex. v. Tex. Indus. Energy Consumers*, 620 S.W.3d 418, 428 (Tex. 2021).

¹¹² *Gulf States Utils. Co. v. Pub. Util. Comm'n*, 841 S.W.2d 459, 476 (Tex. App.—Austin 1992, writ denied) (*Gulf States*); *Application of Southwestern Electric Power Company for Authority to Reconcile Fuel Costs (SWEPCO)*, Docket No. 32898, Second Order on Rehearing at Conclusion of Law (CoL) 21 (Nov. 26, 2007).

¹¹³ *Application of Gulf States Utilities Company to Reconcile Its Fuel Costs, for Permission to Delay Requesting a Surcharge, or in the Alternative, for a Surcharge to Recover Under-Recovered Fuel Expense*, Docket No. 15102, Order on Rehearing at 2 (Jul. 26, 1997) (Docket No. 15102); see also *Nucor Steel v. Pub. Util. Comm'n*, 26 S.W.3d 742, 752 (Tex. App.—Austin 2000, pet. denied) (*Nucor*).

of the decision, not on information that is available only with the benefit of hindsight.¹¹⁴

Prudent decision-making may be demonstrated in one of two ways. The first is through contemporaneous documentation of the utility's decision-making process; that is, documentation compiled at the time the utility was considering whether to enter into the transaction.¹¹⁵ Accordingly, utilities are advised to keep appropriate documentation so that such determinations can be made.¹¹⁶ The second is an independent, retrospective analysis of the decision.¹¹⁷ A utility without contemporaneous evidence of prudence, however, faces a heavy burden, and the Commission will subject the utility's after-the-fact, retrospective justifications to rigorous review.¹¹⁸

As with the contemporaneous approach, in the retrospective analysis "the utility must demonstrate that a reasonable utility manager, having investigated all relevant factors and alternatives as they existed at the time the decision was made, would have found the utility's actual decision a reasonably prudent one."¹¹⁹ Thus, under both approaches, the ALJs do not look to information that became available after the utility made its decision.

¹¹⁴ See Docket No. 15102, Order on Rehearing at 2.

¹¹⁵ *Gulf States*, 841 S.W.2d at 476.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Here, CEHE offered no contemporaneous documentation of the methodology used in determining the need for 500 MW of mobile-generation capacity or the appropriate technology required to deploy mobile generation during outages. The failure to show consideration of PURA's other measures to mitigate outages identified by Staff is only part of a larger lack of analysis. CEHE "did not perform any numerical analysis to demonstrate the value or benefit to customers of the mobile generation facilities."¹²⁰ Instead, its assessment was "done in a meeting in the form of verbal discussions" and "[n]o drafted assessments or analysis were performed."¹²¹ Additionally, in choosing the type of technology to acquire, CEHE's seven-page PowerPoint presentation details different fuel types, voltage amounts, and types of generators,¹²² but provides no analysis to compare those options. Thus, the ALJs find that CEHE failed to show through contemporaneous documentation that it exercised the judgment and selected an option that a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives.

Nor has CEHE met its burden through independent, retrospective analysis. Although CEHE has stated that the 500 MW figure was based on its experience of Winter Storm Uri, CEHE offered no evidence that it studied the probability of a load-shed event of Uri's severity occurring in the next seven-and-a-half years, the length of the Long-Term Lease. Mr. Koujak's opinion that CEHE's approach is reasonable because CEHE based its calculation of the 500 MW on "an actual

¹²⁰ ARM-TCPA Ex. 1 (Griffey Dir.) at 11 (quoting CEHE Response to ARM/TCPA RFI No. 1-03).

¹²¹ ARM-TCPA Ex. 1 (Griffey Dir.) at Bates 69 (CEHE Response to ARM/TCPA RFI No. 1-07).

¹²² CEHE Ex. 10 (Narendorf), Exh. MWN-R-1.

event, and actual system constraints” does not satisfy the prudence standard. Both Oncor and PG&E have chosen to obtain far less generation, despite having more customers than CEHE. By basing its evaluation on a single, anomalous event, CEHE did not show that its decision to acquire 500 MW of mobile generation was reasonably made “in light of the circumstances, information, and available options existing at the time.”¹²³

Accordingly, for the reasons addressed above, the ALJs recommend that the costs associated with CEHE’s lease of 500 MW be disallowed.

3. Leasing and Operating Costs [Supp. PO Issues 8 through 10]

The costs to lease and operate the mobile-generation facilities, identified by CEHE, were \$56.5 million as of December 31, 2021.¹²⁴ CEHE contends that these costs were reasonable and necessary. Staff proposes to reduce the requested revenue requirement by \$17.5 million to reflect an amortization period of seven-and-a-half years rather than one year for the Short-Term Lease—resulting in a first-year revenue requirement of \$39 million.¹²⁵ CEHE does not oppose this request.

¹²³ *Pub. Util. Comm’n v. Tex. Indus. Energy Consumers*, 620 S.W. 3d 418, 428 (Tex. 2017).

¹²⁴ CEHE Ex. 7 (Garmon Dir.) at 37 (Amended Table MAK-3); CEHE Ex. 1 (Amended DCRF Application), Schedule CEHE-DCRF-Working Scenario Mob. Gen.

¹²⁵ Staff’s Statement of Position at 1-2; *see also* Staff’s Init. Br. at 7-9.

Furthermore, the Long-Term Lease includes an option to terminate all or part of the lease prior to March 2023 if a regulatory event “creates a material adverse condition.” If CEHE timely exercises this provision, LCP would refund 75% of CEHE’s prepaid lease payments.¹²⁶

a) TEAM-ARM’s Position

TEAM-ARM argues that CEHE should not recover any of its unrecovered Short-Term Lease payments, carrying costs, operational costs, or costs not recoverable pursuant to its right to terminate its lease. While CEHE claims that it prudently negotiated a provision in the Long-Term Lease that would allow it to terminate if a ruling or regulatory event creates a material adverse condition, it can recoup only 75% of the prepaid rents, as that term is defined in the lease.¹²⁷ Because the remaining 25% and other costs were incurred imprudently, CEHE’s customers should not be held responsible if the Commission denies all or a portion of CEHE’s requested recovery.

Alternatively, TEAM-ARM argues that if CEHE is permitted to recover costs related to mobile generation, the recovery should be limited to the reasonable and necessary costs related to no more than 11 MW of mobile-generation capacity. This is the amount of mobile-generation capacity obtained by Oncor, the only other

¹²⁶ CEHE Ex. 11 (Raben Reb.) at 22.

¹²⁷ TEAM-ARM Ex. 1, Attachment CH-4 at 9; CEHE Ex. 12 (Garmon Reb.) at 8.

Texas utility for which information about the size and cost of its mobile-generation procurement is publicly available.¹²⁸

b) HCC's Position

HCC requests disallowance of all costs associated with CEHE's lease of mobile generation. As Mr. Mara testified, the termination clause in the Long-Term Lease would allow CEHE to terminate the lease without incurring a significant adverse impact.¹²⁹

c) CEHE's Response

CEHE contends that all of its TEEEF-related costs should be recovered, and that the rates it seeks here only begin to recover its investment in 345 MW of the TEEEF-units placed in service and received prior to December 31, 2021. If CEHE's investment in TEEEF is deemed prudent, it should recover all of its costs, and there is no basis to limit recovery to costs associated with only 11 MW of that mobile generation, as argued by TEAM-ARM.

Moreover, CEHE argues, the termination clause of the Long-Term Lease does not eliminate CEHE's risk in acquiring TEEEF for the benefit of its customers. Invoking that provision would require LCP to refund only 75% of the prepaid lease payments CEHE has made. As a result, CEHE would incur costs

¹²⁸ TEAM-ARM Init. Br. at 25-26.

¹²⁹ HCC Ex. 1 (Mara Dir.) at 6.

between \$335 to \$354 million if that clause is exercised by March 2023.¹³⁰ As such, CEHE requests the ability to recover through Rider TEEEF all costs that have been incurred in securing TEEEF for the benefit of its customers and resulting from the exercise of the termination clause.¹³¹

d) Analysis

Having determined that the costs associated with its leases of mobile generation were incurred imprudently, the ALJs do not recommend recovery of any of the costs to lease and operate the mobile-generation facilities. The ALJs find it is unreasonable to place the burden on ratepayers of expenses imprudently incurred. The ALJs do not address the expenses associated with the possible termination of the Long-Term Lease because those expenses have not yet been incurred.

4. Proposed Accounting Treatment and Deferred Costs [Supp. PO Issues 11 through 13]

The accounting issues in this proceeding appear uncontested.¹³² CEHE notes that an adjustment will need to be made to account for Staff's proposal to lengthen the amortization period of the Short-Term Lease costs to seven-and-a-half years. If

¹³⁰ CEHE Ex. 12 (Garmon Reb.) at 10. Mr. Garmon calculates the loss impact of terminating the Long-Term Lease as: 25% of prepaid rent amounts; 100% of rent amounts already paid; 100% of Short-Term Lease monthly payments; 100% of Short-Term Lease and Long-Term Lease carrying costs; and 100% of the Short-Term Lease and Long-Term Lease operational costs. For example, Mr. Garmon testified that if CEHE terminates the Long-Term Lease in February 2023, it would incur \$295,872,215 in lease payments, \$1,450,692 in operational costs, and \$46,753,921 in carrying costs for a total of \$344,076,828. *Id.*

¹³¹ CEHE Ex. 12 (Garmon Reb.) at 15; CEHE Ex. 9 (Tutunjian Reb.) at 23.

¹³² In its initial brief, CEHE stated that it had accepted HCC witness Kit Pevoto's proposed adjustment to ADIT HCC Init. Br. at 45. Accordingly, the ALJs recommend adoption of this adjustment.

the Commission allows for recovery, the ALJs recommend that this adjustment be accounted for in a final Staff number run after all contested issues have been decided.

C. COST ALLOCATION, REVENUE DISTRIBUTION, AND RATE DESIGN [SUPP. PO ISSUES 14 THROUGH 16]

1. Exclusion from Transmission Voltage Customers

CEHE originally proposed to allocate mobile-generation costs based on the previously allocated distribution plant in service, which would allocate a small portion of mobile-generation costs to the retail transmission class.¹³³

TIEC and HCC oppose this approach, arguing that the Rider TEEEF should be adjusted to ensure that none of the costs associated with mobile generation are allocated to customers who take service at transmission voltage.¹³⁴ These parties note that both in theory and in practice, mobile-generation units operate exclusively on utilities' distribution systems for the benefit of customers who take service at distribution voltage. Section 39.918(b)(1) allows TDUs to lease and operate mobile-generation facilities for the benefit of "the utility's *distribution customers* during a widespread power outage in which . . . the utility's *distribution facilities* are not being fully served by the bulk power system," and which "must be

¹³³ See TIEC Ex. 1 (Pollock Dir.) at 3. As Mr. Pollock explains, the DCRF baseline for the Transmission class is comprised almost exclusively of meter costs and related investment, and those assets do not enable retail Transmission customers to take service from CEHE's distribution system or its mobile generation assets. *Id.* at 4.

¹³⁴ TIEC Ex. 1 (Pollock Dir.) at 5; *see also* TIEC Ex. 1A (Pollock Dir., WP), Excel Native File Attachment (spreadsheet illustrating proposed allocation adjustment); HCC Ex. 4 (Pevoto Dir.) at 7, 18.

operated in isolation from the bulk power system.”¹³⁵ CEHE confirmed that the “[m]obile generators procured by CEHE are not physically capable of serving transmission voltage customers.”¹³⁶ Staff supports this position,¹³⁷ and CEHE does not oppose it.¹³⁸

For the reasons set out by TIEC and HCC, the ALJs agree that if the Commission approves recovery for any TEEEF costs, the allocation of those costs those costs should exclude customers who take service at transmission voltage.

2. Allocation Methodology

CEHE proposes an allocator based on the rate class distribution revenue requirements from its last rate case.¹³⁹ HCC opposes this approach and instead argues that the TEEEF, as a generation asset, be allocated among the retail rate classes based on a 12 Coincident Peak (12 CP) methodology.

In support of CEHE’s proposal, CEHE witness John Durland testified that TEEEF are not generation assets that provide retail generation to customers in the wholesale power market.¹⁴⁰ Specifically, he reasoned that “[t]he Company’s leased TEEEF are not Generation Assets, because, unlike the case with the generation assets owned by vertically integrated, non-ERCOT electric utilities, they are not

¹³⁵ PURA § 39.918(b)(1)(B), .918(d) (emphasis added).

¹³⁶ See TIEC Ex. 1A (Pollock Dir., WP) at 14 (CEHE response to TIEC RFI No. 2-3).

¹³⁷ Commission Staff’s Statement of Position at 2.

¹³⁸ CEHE Ex. 13 (Durland Reb.) at 4, 10.

¹³⁹ HCC Ex. 4 (Pevoto Dir.) at 9.

¹⁴⁰ CEHE Ex. 13 (Durland Rebut.) at 6, 8.

used to provide ‘generation service,’ as that term is defined in 16 TAC § 25.5(56) to mean the ‘production and purchase of electricity for retail customers and the production, purchase, and sale of electricity in the wholesale power market.’”¹⁴¹

HCC argues, however, that Mr. Durland’s reasoning is misplaced. HCC points out that Mr. Durland improperly reasoned that mobile generation is not a generation asset because it does not meet the definition of generation *service*.¹⁴² Moreover, for the definition of generation service, Mr. Durland relies on PURA section 35.152,¹⁴³ which applies to Electric Energy Storage,¹⁴⁴ which Mr. Durland admits, mobile generation is not.¹⁴⁵

Mobile-generation costs, HCC argues, should be treated as a generation cost. HCC witness Kit Pevoto testified that the characteristics and function of mobile generation, and its associated costs, do not change based on who the mobile-generation asset serves and cannot change to any type of cost other than generation.¹⁴⁶ HCC also points to testimony by Mr. Narendorf that the primary driver of mobile generation is load shedding to cure the imbalance of the ERCOT system due to insufficient generation.¹⁴⁷ As such, HCC argues, mobile generation is, by design and in practice, intended to generate power for distribution

¹⁴¹ CEHE Ex. 13 (Durland Rebut.) at 8.

¹⁴² HCC Ex. 32 (Durland Dep.) at 14–15; Tr. at 531–533 (Durland Cross); Cf. 16 TAC § 25.5(55) with (56).

¹⁴³ Tr. at 531–33 (Durland Cross).

¹⁴⁴ Tr. at 535 (Durland Cross).

¹⁴⁵ Tr. at 535 (Durland Cross).

¹⁴⁶ HCC Ex. 4 (Pevoto Dir.) at 11.

¹⁴⁷ Tr. at 237–38 (Narendorf Cross).

customers.¹⁴⁸ Finally, HCC argues, mobile generation meets the definition of generation asset,¹⁴⁹ and not a generation service, as CEHE proposes. As a generation asset, allocation based on 12 CP allocation methodology better aligns with cost causation principles.¹⁵⁰ HCC witness Pevoto developed a table for allocation using a 12 CP allocation methodology.¹⁵¹

HCC further argues that it is not appropriate to use the allocators from CEHE's last rate case, as CEHE proposes. First, HCC notes that the Commission has stated that PURA section 36.210 does not control the recovery of mobile generation.¹⁵² Second, CEHE's last rate case did not involve mobile generation and the allocators were developed as part of a settlement baseline and are therefore not precedential.¹⁵³

3. Analysis

The ALJs agree with HCC that mobile generation should be treated as a generation asset. There is no question that mobile generation is an asset associated with the production of electricity, plainly falling within the definition of a generation asset under 16 Texas Administrative Code section 25.5(55).

¹⁴⁸ HCC Ex. 4 (Pevoto Dir.) at 12–13.

¹⁴⁹ See 16 TAC § 25.5(55) (any asset “associated with the production of electricity”).

¹⁵⁰ HCC Ex. 4 (Pevoto Dir.) at 11–12, 14. HCC witness Pevoto also testified as to why the 4 Coincident Peak Average and Excess methodology is not appropriate to allocate generation capacity demand-related costs among rate classes, as that method is based on meeting the maximum peak demands occurring in the Summer months, whereas mobile generation is triggered by qualifying events with load shed that can occur at any time, day, or month of the year. HCC Ex. 4 (Pevoto Dir.) at 14–15.

¹⁵¹ HCC Ex. 4 (Pevoto Dir.) at 16, Table 4.

¹⁵² Order on Appeal of SOAH Order No. 5 at 5–6.

¹⁵³ Docket No. 49421, Final Order at 25 (March 9, 2020).

Mr. Durland's reference to generation service in subsection (56) of that section and to PURA section 35.152 is misplaced. The ALJs conclude that the treatment of mobile generation as a distribution asset is not supported by CEHE's reasoning.

Moreover, the ALJs find no precedential value in CEHE's last rate case, and instead agree the Order on Appeal of SOAH Order No. 5 in this proceeding expressly guides the parties to treat mobile generation distinct from assets under PURA section 36.210.

As a generation asset, the preponderance of the evidence supports allocating costs based on the 12 CP methodology, if the Commission approves recovery of TEEEF costs. CEHE witness Mr. Durland does not contest that HCC's recommended methodology is based on standard cost allocation principles.¹⁵⁴ Accordingly, the ALJs find that any approved mobile-generation costs should be allocated based on the 12 CP methodology.

4. Fuel Cost Allocation

Lastly, HCC recommends that the mobile-generation fuel costs be allocated based on each rate class's energy (kWh) usage for the test year.¹⁵⁵ This, HCC argues, is because fuel costs are energy related costs that should be allocated based

¹⁵⁴ HCC Ex. 32 (Durland Dep.) at 16-17.

¹⁵⁵ HCC Ex. 4 (Pevoto Dir.) at 17-18.

on an energy allocator.¹⁵⁶ The fuel related costs vary based on the kWh usage needs produced by the mobile generation.¹⁵⁷

HCC notes, and Mr. Durland acknowledges, the National Association Regulatory Utility Commissioners' Electric Utility Cost Allocation Manual provides that fuel expenses are "almost always classified as energy related."¹⁵⁸ Mr. Durland's proposed exception to this general rule is for a distribution asset, for the reasons noted above.¹⁵⁹

CEHE opposes this approach. Mr. Durland testified that there is no evidence of a link between kWh sales data and the costs incurred during a widespread power outage.¹⁶⁰ However, there is cost causation demonstrated through the DCRF allocator, where TEEEF is assumed to be able to serve any customer at any time during a qualifying event.¹⁶¹

In reply, HCC argues that CEHE has not provided any evidence to show that the use of the DCRF allocator reflects cost causation principles relevant to the mobile generation at issue because CEHE has not used standard cost allocation principles to examine and prove that the allocation methodologies upon which the

¹⁵⁶ HCC Ex. 4 (Pevoto Dir.) at 17-18.

¹⁵⁷ HCC Ex. 4 (Pevoto Dir.) at 14, 17.

¹⁵⁸ HCC Ex. 32 (Durland Dep.) at 29.

¹⁵⁹ HCC Ex. 32 (Durland Dep.) at 11-12, 29-32.

¹⁶⁰ CEHE Ex. 13 (Durland Rebut.) at 10.

¹⁶¹ CEHE Ex. 13 (Durland Rebut.) at 10.

settled DCRF allocator was developed reflect the causes for the need for the mobile generation.

5. Analysis

The ALJs agree with HCC that, if mobile-generation fuel costs are approved, the related fuel costs be allocated based on each rate class's energy (kWh) usage for the test year. CEHE's position to the contrary is not persuasive. First, it is based on the improper treatment of mobile generation as a distribution asset, as previously noted. Additionally, CEHE's evidence is inadequate to show that the DCRF allocator is a proxy for showing cost causation relevant to the mobile generation at issue.

D. RATES [SUPP. PO ISSUES 19 AND 20]

As proposed in CEHE's amended application, the cost impact of mobile generation to each customer class would be as follows:¹⁶²

Class	Revenue	Rate
Residential	\$32,531,382	\$0.001071 per kWh
Secondary ≤ 10	\$846,663	\$0.000971 per kWh
Secondary > 10	\$17,228,921	\$0.164175 per Billing kVa
Primary	\$1,336,331	\$0.106132 per Billing kVa
Transmission	\$141,094	\$0.003882 per 4CP kVa
Lighting	\$4,496,778	\$0.019724 per kWh

¹⁶² CEHE Ex. 1 at Schedule J, TEEEF-Summary of Revenue Requirement by Class.

Residential customers would pay approximately 57% of the mobile-generation costs.¹⁶³ This increase would be in addition to the increase attributable to the DCRF Rider and other rate changes, which took effect on September 1, 2022.¹⁶⁴ For a residential customer using 1,000 kWh per month, the other rate changes alone constituted an increase of \$11.45 per month.¹⁶⁵ Combined with the requested \$1.07 for mobile generation, the total increase is \$12.52 per month.

Because the ALJs find that the mobile-generation costs were imprudently incurred, they do not recommend any recovery. However, if any rates are approved, the ALJs recommend that they be calculated consistent with the Commission's final determination on the contested issues regarding mobile-generation costs as identified above. These calculations should be conducted in a Staff number run analysis.

E. TARIFF REVISIONS [SUPP. PO ISSUE 22]

CEHE requests changes to its Tariff for Retail Delivery service specific to TEEEF.¹⁶⁶ These changes are unique to CEHE's operation and ownership of TEEEF.¹⁶⁷ TEAM-ARM witness, Mr. Hendrix recommended approval of CEHE's proposal to include a new Section 6.2.3. but recommends sunsetting the tariff provisions related to TEEEF on the effective date the Commission adopts revisions

¹⁶³ Tr. at 547 (Durland Reb.).

¹⁶⁴ Tr. at 547 (Durland Reb.).

¹⁶⁵ Tr. at 548 (Durland Reb.).

¹⁶⁶ CEHE Ex. 8 (Durland Dir.) at 17; CEHE Ex. 13 (Durland Reb.) at 20-21.

¹⁶⁷ CEHE Ex. 8 (Durland Dir.) at 17; CEHE Ex. 13 (Durland Reb.) at 20-21.

to the *pro forma* Tariff relevant to TEEEF.¹⁶⁸ CEHE does not oppose Mr. Hendrix's proposal, as long as the sunseting would not include Sections 6.1.1.6.13, which include the CEHE's interim Rider DCRF rate schedule.¹⁶⁹

Mr. Hendrix's proposal is unopposed and therefore, the ALJs recommend its adoption.

IV. CONCLUSION

The ALJs recommend the Commission implement their recommendations and findings set forth in the discussion above by adopting the following proposed findings of fact and conclusions of law in the Commission's final order.

V. FINDINGS OF FACT

Application

1. On April 5, 2022, CenterPoint Energy Houston Electric, LLC (CEHE) filed an application for approval of a DCRF with the Public Utility Commission of Texas (Commission) and each of its municipal regulatory authorities.
2. CEHE sought to update its Rider DCRF to include net distribution system invested capital in Federal Energy Regulatory Commission (FERC) Accounts 303, 352, 353, 360 through 374, 391 and 397.
3. In its April 5, 2022 application CEHE additionally sought to update its Rider DCRF for investments in temporary emergency electric energy facilities (TEEEF) pursuant to PURA § 39.918.

¹⁶⁸ TEAM-ARM Ex. 1 (Hendrix Dir.) at 35.

¹⁶⁹ CEHE Ex. 13 (Durland Reb.) at 17.

4. This is CEHE's first DCRF proceeding since its last base-rate proceeding, Docket No. 49421.
5. In its April 5, 2022 application, CEHE requested approval to amend its DCRF based on an annual revenue requirement of \$145,680,810, after adjusting for load growth.
6. In its April 5, 2022 application, CEHE stated that from January 1, 2019 through December 31, 2021, it had invested \$1,097,973,841 in net distribution-system invested capital booked in FERC Accounts 303, 352, 353, 360 through 374, 391 and 397.
7. In its April 5, 2022 application, CEHE stated that it had invested \$199,566,430 in TEEEF pursuant to Public Utility Regulatory Act (Texas Utilities Code §§ 11.001-66.016; PURA) § 39.918 during the calendar year ending December 31, 2021.
8. In its April 5, 2022 application, CEHE requested the following DCRF rates:

Rate Class	DCRF Charge	Billing Units
Residential Service	\$0.002758	per kWh
Secondary Service Less Than or Equal to 10 kVA	\$0.002499	per kWh
Secondary Service Greater Than 10 kVA	\$0.422682	per Billing kVA
Primary Service	\$0.273246	per Billing kVA
Transmission Service	\$0.009995	per 4CP kVA
Lighting Services	\$0.050782	per kWh

9. CEHE's application affects all retail electric providers that take electric delivery service from CEHE and will affect electric customers of those providers to the extent that the providers pass along changes to their customers under CEHE's tariffs and riders approved in this proceeding.

10. In its application and testimony, CEHE demonstrated that it is not earning more than its authorized rate of return using weather-normalized data.
11. CEHE does not have a comprehensive base-rate proceeding pending before the Commission.
12. The Commission-approved DCRF baseline values set for CEHE in Docket No. 49421 were developed pursuant to settlement.
13. In its application, CEHE used the DCRF baseline values approved in Docket No. 49421.
14. The proposed effective date for Rider DCRF was September 1, 2022.
15. In its application, CEHE included the affidavits of Brad A. Tutunjian, Vice President of Distribution Operations and Service Delivery; Martin W. Narendorf Jr., Vice President of Electric Engineering and Asset Optimization; Mary A. Kirk, Director of Accounting; and John R. Durland, Director of Rates. In the affidavits, collectively, Mr. Tutunjian, Mr. Narendorf Jr., Ms. Kirk, and Mr. Durland attested that the application complied with the Commission's DCRF rule and CEHE's tariffs and was accurate, true, and correct to the best of their knowledge, information, and belief.

Referral to SOAH

16. On April 6, 2022, this proceeding was referred to the State Office of Administrative Hearings (SOAH) for assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision, if necessary.
17. On April 6, 2022, the Commission approved the first preliminary order for this docket, setting forth the standard list of issues to be addressed in a DCRF Proceeding.
18. On April 29, 2022, SOAH issued Order No. 3, adopting an agreed procedural schedule.

19. On August 1, 2022, SOAH issued Order No. 11, adopting a revised procedural schedule.

Notice

20. On April 5, 2022, CEHE provided notice of the application, including all attachments, to all parties that participated in CEHE's most recent base rate case in Docket No. 49421 and to parties in CEHE's last DCRF proceeding in Docket No. 48226.
21. On April 11, 2022, CEHE filed proof that notice was provided.
22. On April 11, 2022, SOAH issued Order No. 1, establishing a deadline for objections to CEHE's notice.
23. No objections were raised to CEHE's notice.
24. On April 21, 2022, SOAH issued Order No. 2, finding that CEHE's notice of the application was sufficient.

Sufficiency of Application

25. On April 21, 2022, SOAH issued Order No. 2, setting a May 5, 2022 deadline for filing a motion concerning the sufficiency of CEHE's application.
26. No objections were raised regarding the sufficiency of CEHE's application, and the ALJ did not issue a written order concluding that material deficiencies existed in the application.
27. The application was deemed sufficient.

Interventions

28. SOAH Order No. 2 set a May 5, 2022 deadline for intervening in the proceeding.

29. The following parties filed for and were granted intervenor status in this proceeding: the Texas Industrial Energy Consumers (TIEC), Gulf Coast Coalition of Cities (GCCC), Houston Coalition of Cities (HCC), Texas Coast Utilities Coalition (TCUC), Texas Energy Association for Marketers (TEAM), Texas Competitive Power Advocates (TCPA), Alliance for Retail Markets (ARM), and Hunt Energy Network, LLC (Hunt Energy).
30. SOAH Order No. 2 memorialized the granting of motions to intervene filed by TIEC, GCCC, HCC, TCUC, TEAM, TCPA, and ARM at the first prehearing conference held on April 21, 2022.
31. SOAH Order No. 7 memorialized the granting of the motion to intervene filed by Hunt Energy at the second prehearing conference held on May 31, 2022.

Motion to Dismiss TEEEF

32. On April 20, 2022, HCC, TCUC, and GCCC filed a joint Motion to Dismiss Mobile Generation Request from Proceeding (Motion to Dismiss TEEEF).
33. On April 29, 2022, CEHE filed a Response to the Motion to Dismiss TEEEF.
34. On May 2, 2022, SOAH Order No. 4 granted leave to reply to CEHE's response.
35. On May 5, 2022, ARM and TEAM filed a joint reply to CEHE's response.
36. On May 5, 2022, HCC, TCUC, and GCCC filed a joint reply to CEHE's response.
37. On May 5, 2022, TIEC filed a statement of position on the motion to dismiss.
38. On May 6, 2022, SOAH Order No. 5 granted the dismissal of the TEEEF component of CEHE's application from the proceeding.

Appeal of SOAH Order No. 5

39. On May 13, 2022, CEHE filed an appeal of SOAH Order No. 5 to the Commission.
40. On May 19, 2022, Hunt Energy filed a response to CEHE's Appeal of SOAH Order No. 5.
41. On May 20, 2022, TEAM and ARM filed a joint response to CEHE's Appeal of SOAH Order No. 5.
42. On May 20, 2022, HCC, TCUC, and GCCC filed a joint response to CEHE's Appeal of SOAH Order No. 5.
43. On May 20, 2022, TIEC filed a response to CEHE's Appeal of SOAH Order No. 5.
44. On May 23, 2022, the Commission voted to hear the Appeal of SOAH Order No. 5 at the Commission's June 16, 2022 open meeting.
45. On July 14, 2022, in its Order on Appeal of SOAH Order No. 5, the Commission granted CEHE's Appeal of SOAH Order No. 5.

Amendment to Application - Separation of TEEEF Costs

46. The Order on Appeal of SOAH Order No. 5 instructed CEHE to amend its application and separate out CEHE's TEEEF costs so those costs, if approved, could be recovered through a separate rider.
47. On July 1, 2022, CEHE filed an amended DCRF application and a proposed rider/tariff to recover TEEEF costs.
48. In its amended application, CEHE requested recovery of \$56,584,169 in TEEEF costs through Rider TEEEF.
49. In its amended application CEHE requested the following DCRF and TEEEF rates:

Rate Class	DCRF Charge	TEEEF Charge	Billing Units
Residential Service	\$0.001624	\$0.001071	per kWh
Secondary Service Less Than or Equal to 10 kVA	\$0.001471	\$0.000971	per kWh
Secondary Service Greater Than 10 kVA	\$0.248876	\$0.164175	per Billing kVA
Primary Service	\$0.160887	\$0.106132	per Billing kVA
Transmission Service	\$0.005885	\$0.003882	per 4CP kVA
Lighting Services	\$0.029900	\$0.019724	per kWh

50. The proposed effective date for Rider TEEEF was September 1, 2022.
51. In its amended application, CEHE stated that, after separating TEEEF costs, the resulting increase to the Company's current Rider DCRF revenue requirement for net distribution invested capital is \$85,776,965.

Partial Stipulation and Settlement Agreement

52. On July 11, 2022, CEHE filed a Partial Stipulation and Settlement Agreement to compromise and resolve all non-TEEEF issues in the proceeding.
53. The signatories to the Partial Stipulation are CEHE, Commission staff (Staff), HCC, TCUC, and GCCC (collectively, Signatories).
54. The remaining parties, TEAM, ARM, TIEC, Hunt Energy, and TCPA, are unopposed to the Partial Stipulation.
55. The Signatories agreed to a black box reduction of \$7,800,000 to the \$85,776,965 non-TEEEF revenue requirement requested in CEHE's amended application.

56. The black box reduction is comprised of miscellaneous items of contention. Specifically, CEHE agreed to remove: (1) incremental investment of any financially based incentive compensation and half (50%) of the capitalized amounts relating to other (non-financially based) incentive compensation that are nonetheless only awarded if certain financial goals are met; and (2) applicable capitalized costs related to accounting changes presented in this proceeding.
57. CEHE agreed that it will remove those same costs from future DCRF proceedings, that were capitalized after the close of the test year in Docket No. 49421 (December 31, 2018).
58. The black box settlement is also intended as a compromise on issues raised in this proceeding related to depreciation of certain software projects, the allocation and functionalization of certain software projects, and contributions in aid of construction related to certain public improvement projects.
59. The Signatories intended that the revenue requirement resulting from the Partial Stipulation should be effective September 1, 2022, and further agreed to support a motion for interim rates to achieve such effective date.
60. Under the Partial Stipulation, the following DCRF rates apply.

Rate Class	DCRF Charge	Billing Units
Residential Service	\$0.001476	per kWh
Secondary Service Less Than or Equal to 10 kVA	\$0.001337	per kWh
Secondary Service Greater Than 10 kVA	\$0.226245	per Billing kVA
Primary Service	\$0.146257	per Billing kVA
Transmission Service	\$0.005350	per 4CP kVA
Lighting Services	\$0.027182	per kWh

61. The Rider DCRF resulting from the Partial Stipulation was attached as Exhibit A to the Partial Stipulation.

62. It is appropriate for the Commission to approve the rates from Rider DCRF that are attached as Exhibit A to the Partial Stipulation.
63. CEHE agreed to reimburse the participating municipalities for their rate-case expenses within 30 days of the date of a signed final order in this docket.
64. It is appropriate for CEHE to reimburse the participating municipalities for their rate-case expenses within 30 days of the date of a signed final order in this docket.
65. It is reasonable for CEHE to be allowed to account for CEHE's and any municipal rate-case expenses associated with this DCRF proceeding and to subsequently request recovery of the expenses in a future rate proceeding or a proceeding to collect those expenses through a separate surcharge. Rate-case expenses in connection with this proceeding are subject to a final determination by the Commission as to the reasonableness and necessity of those expenses.

Interim Rates

66. On July 11, 2022, in accordance with the Partial Settlement, CEHE filed a Partial Settlement Motion for Interim Rates to be effective on and after September 1, 2022.
67. On July 15, 2022, SOAH Order No. 10 memorialized the approval of the Partial Settlement Motion for Interim Rates, which was granted at the fourth prehearing conference held on July 13, 2022.
68. The DCRF revenue requirement and rates attached as Exhibit A to the Partial Settlement were approved, to be effective September 1, 2022.

Supplemental Preliminary Order

69. On August 4, 2022, the Commission issued a Supplemental Preliminary Order, identifying additional issues related to TEEEF to be addressed in this proceeding.

70. The Supplemental Preliminary Order directed that two issues were not to be addressed further in this proceeding: (1) whether TEEEF costs may be recovered in this DCRF proceeding; and (2) do the requirements of PURA § 36.210 or 16 Texas Administrative Code (TAC) § 25.243 apply to the recovery of TEEEF costs.

Testimony and Statements of Position

71. In its April 5, 2022 application, CEHE included the direct testimonies and exhibits of Mr. Tutunjian, Mr. Narendorf Jr., Ms. Kirk, and Mr. Durland.
72. On July 1, 2022, CEHE included in its amended application the direct testimonies and exhibits of Mr. Tutunjian, Mr. Narendorf Jr., Jeff W. Garmon, and Mr. Durland.
73. On July 11, 2022, CEHE filed the testimony of Mr. Tutunjian in support of the Partial Stipulation.
74. On July 12, 2022, Commission Staff filed the testimony of Mark Filarowicz in support of the Partial Stipulation.
75. On September 16, 2022, HCC filed the direct testimonies and exhibits of Kevin J. Mara and Kit Pevoto.
76. On September 16, 2022, TCPA and ARM provided the direct testimony and exhibits of Charles S. Griffey.
77. On September 16, 2022, TEAM and ARM provided the direct testimony and exhibits of Chris Hendrix.
78. On September 16, 2022, TIEC filed the direct testimony and exhibits of Jeffry Pollock.
79. On October 5, 2022, CEHE filed the rebuttal testimony and exhibits of Mr. Narendorf Jr., Kenneth A. Donohoo, Mr. Durland, Mr. Garmon, D. Dean Koujak, Erin E. Raben, and Mr. Tutunjian.
80. On October 12, 2022, Hunt Energy filed a statement of position.

81. On October 13, 2022, Commission Staff filed a statement of position.

Hearing on the Merits and Proposal for Decision

82. On August 1, 2022, SOAH Order No. 11 scheduled a hearing on the merits to be convened on October 18, 2022.

83. The hearing on the merits convened on October 18, 2022 and adjourned on October 20, 2022.

84. On October 28, 2022, HCC moved to enter additional exhibits into the record.

85. On October 28, 2022, CEHE moved to admit evidence into the record due to optional completeness.

86. On December 6, 2022, SOAH Order No. 13 admitted CEHE Ex. 20 into the record.

87. On November 16, 2022, the parties filed initial post-hearing briefs.

88. On December 2, 2022, the parties filed reply briefs, and the record closed.

89. On January 27, 2023, SOAH issued a proposal for decision for the Commission's consideration.

Municipal Proceedings

90. On April 5, 2022, CEHE filed an application to amend its DCRF with each of the municipalities within its service area that had not ceded jurisdiction to the Commission, as attested to in an affidavit filed by CEHE on April 11, 2022.

91. On June 4, 2022, the final decisions of CEHE's municipal regulatory authorities were deemed appealed to the Commission and deemed consolidated into this docket.

Leases and Operation of TEEEF

92. CEHE entered into both short-term and long-term leases with Prime Power Solutions, LLC dba Life Cycle Power (LCP) to lease TEEEF.
93. The short-term lease was a two-month contract for 124.5 megawatts (MW) of generating units, signed on September 1, 2021. CEHE extended the short-term lease for an additional nine months and an additional 90 MW of generating units.
94. The long-term lease was signed on December 31, 2021, to lease 500 MW of generating units until June 29, 2029.
95. The TEEEF are located inside various distribution substations throughout CEHE's service area.
96. The TEEEF include 32 MW aeroderivative gas turbine generators and 5 MW generators designed to operate on gaseous and liquid fuels.
97. On September 30, 2021, January 28, 2022, and April 18, 2022, CEHE filed with the Commission updates to its emergency operations plan that included information pertaining to the use of the leased TEEEF facilities.
98. The North American Energy Reliability Corporation defines "bulk power system" as:
 - a. facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and
 - b. electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.
99. Portions of the TEEEF have been deployed once since being leased to restore electric power to the Lake Jackson Civic Center during Hurricane Nicholas in September 2021.

100. The outages in Lake Jackson were the result of damages to CEHE's distribution system and were not caused by issues with the bulk power system.
101. CEHE used a mobile generator to restore power at the Lake Jackson Civic Center when it had not received a load shed order from ERCOT and the hurricane had not damaged the transmission system.
102. CEHE's deployment of mobile generation did not comply with the limited conditions permitted under PURA § 39.918.

Bidding Process

103. CEHE had sufficient time to conduct a competitive bidding process to lease mobile generation. It conducted two request for proposal (RFP) processes: one for a short-term lease and one for a long-term lease.

Short-Term Lease and Extension

104. The short-term lease RFP was issued on August 3, 2021, and included a two-and-a-half-day deadline for responses and a delivery deadline of August 16, 2021.
105. The response and delivery deadlines were inadequate and resulted in a small number of bidders.
106. The winning bidder for the short-term lease was LCP.
107. CEHE executed the short-term lease on September 1, 2021.
108. The short-term lease RFP did not address an extension or the potential for additional capacity.
109. CEHE extended the short-term lease by nine months and procured 90 to 100 MW of additional mobile generation.
110. It was reasonably practicable for CEHE to use a competitive bidding process to lease the mobile-generation facilities under the short-term lease and its extension.

111. CEHE failed to use a competitive bidding process to acquire the mobile-generation facilities under the short-term lease and its extension.

Long-Term Lease

112. On October 5, 2021, CEHE issued an RFP to 15 bidders for a long-term lease of 500 MW of mobile generation, with a response deadline of November 5, 2021, and a requested delivery date of January 31, 2022.
113. Four bidders responded with three conforming bids.
114. CEHE selected LCP as the winner of the bidding for the long-term lease.
115. CEHE acquired mobile-generation facilities under the long-term lease in a competitive bidding process.

Prudence of TEEEF

116. During calendar year ending December 31, 2021, CEHE invested \$199,566,430 in TEEEF leases.
117. The costs incurred for TEEEF include costs for leasing the facilities, transporting, mobilizing and demobilizing the facilities, fuel needed for commissioning, operating, and readying the TEEEF, labor and materials for interconnecting the facilities, making prepayments under the leases and related costs.
118. The total \$199,566,430 amount is comprised of \$170,415,685 in lease payments, \$29,006,314 in operational costs, and \$144,431 in return.
119. CEHE's amended first year revenue requirement request for recovery of TEEEF Costs is \$56,584,169. CEHE does not oppose Staff's proposal to lengthen the amortization period on the short-term-lease from one to seven-and-a-half years, which reduces the annual revenue requirement by approximately \$17,567,297.
120. For the short-term lease, including the extension, CEHE requests recovery of \$24.1 million in lease payments, operations costs, and return.

121. For the long-term lease, CEHE requests recovery of \$175,466,076.
122. CEHE based its determination of the amount of mobile-generation capacity to lease based on CEHE's experience during Winter Storm Uri.
123. CEHE did not present options for mobile generation to its Board of Directors for approval that were less than 500 MW of capacity.
124. The 500 MW figure was arrived at solely in verbal discussions at a meeting.
125. CEHE leased substantially more mobile-generation capacity compared to other utilities of greater size.
126. CEHE failed to demonstrate that leasing 500 MW of mobile-generation capacity is reasonable or necessary to address the permissible circumstances for operation of mobile generation under PURA § 39.918(b)(1).
127. The long-term lease contains a termination clause that permits CEHE to terminate the agreement based on an adverse decision from the Commission on CEHE's request for recovery of its investment in mobile generation.
128. CEHE failed to meet its burden to demonstrate through contemporaneous documentation or independent, retrospective analysis that the lease and operation of the mobile generation in this proceeding is reasonable and prudent.
129. CEHE's request to recover \$199,566,430 in TEEEF leases expenses should be denied as imprudent.
130. If recovery is authorized, Staff's proposal to lengthen the amortization period on the short-term-lease from one to seven-and-a-half years is not opposed by CEHE and is reasonable and appropriate.

Rate Design

131. The class allocations used to design the TEEEF rates were the same allocation factors from CEHE's most recent base rate proceeding, Docket No. 49421.

132. CEHE does not oppose TIEC's proposal to exclude the Transmission Rate Class from Rider TEEEF.
133. Exclusion of the Transmission Rate Class from Rider TEEEF is reasonable.

Cost Allocation

134. Mobile generation is a generation asset.
135. It is appropriate and reasonable to allocate any mobile-generation capacity demand-related costs recovered in this proceeding among the retail rate classes based on a 12 Coincident Peak methodology.
136. It is appropriate and reasonable for allocation of mobile-generation energy-related costs to be based on kilowatt-hour usage for the test year.

Related Non-Rate Tariff Revisions

137. CEHE requested additional non-rate changes to the Company's Tariff for Retail Delivery service specific to TEEEF. These changes affect the table of contents and Chapter 6.
138. The proposed changes were presented in Exhibit JRD-8.2 to the Amended Direct Testimony of John R. Durland.
139. CEHE does not oppose TEAM and ARM's recommendation that any tariff changes to Chapter 6 relating to TEEEF be removed effective the date that Commission adopts revisions to the Pro Forma Tariff relevant to TEEEF.
140. The proposed tariff changes to the Company's Tariff for Retail Delivery are reasonable and appropriate.

Inclusion of Mobile Generation in Emergency Operations Plan

141. CEHE provided a sufficient level of detail regarding how it planned to utilize its mobile generation in its Emergency Operations Plan submitted to the Commission.

Proposed Accounting Treatment and Deferred Costs

142. CEHE did not present any evidence regarding whether the long-term lease would be, or has been, capitalized in its 2021 tax filing. Therefore, it has not supported its ADIT reduction to \$1.2 million.

VI. CONCLUSIONS OF LAW

1. CEHE is a public utility, an electric utility, and a TDU, as defined by PURA §§ 11.004 and 31.002(6), (19).
2. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 32.001, 33.002, 36.210, and 39.918.
3. SOAH exercised jurisdiction over this proceeding under PURA § 14.053 and Tex. Gov't Code § 2003.049.
4. The Commission processed CEHE's application in accordance with the requirements of PURA, the Administrative Procedure Act, and Commission rules.
5. CEHE's notice of the application was reasonable and provided in accordance with 16 TAC § 25.243(e)(2).
6. On June 4, 2022, pursuant to 16 TAC § 25.243(c)(1)(B), CEHE was deemed to have appealed the final decisions of its municipal regulatory authorities to the Commission and the appeals were deemed at that time to be consolidated into this docket.
7. The Partial Stipulation, taken as a whole, is a just and reasonable resolution of all issues it addresses, is supported by a preponderance of the credible evidence in the record, and is consistent with the relevant provisions of PURA and Commission rules.
8. CEHE properly calculated the DCRF in accordance with PURA § 36.210 and 16 TAC § 25.243(d).

9. CEHE's distribution invested capital costs associated with changes in CEHE's accounting rules or practices since Docket No. 49421 are consistent with PURA and 16 TAC § 25.243 and appropriate for recovery through the DCRF.
10. CEHE's classification of distribution investments, distribution revenue requirement, cost allocation, and rate design, as implemented in the Partial Stipulation, result in rates that are just and reasonable, comply with the relevant ratemaking provisions in PURA and Commission rules, and are not unreasonably discriminatory, preferential, or prejudicial.
11. CEHE met its burden of proof in demonstrating that it is entitled to the level of revenue set out in the Partial Stipulation and that the rates resulting from the Partial Stipulation are just and reasonable and consistent with PURA and Commission rules.
12. CEHE satisfied the requirement under PURA § 39.918 that it provide a plan for use of Mobile Generation in its Emergency Operations Plan filed with the Commission.
13. In this proceeding, the Commission does not determine whether investments recovered through Rider DCRF comply with PURA and 16 TAC § 25.243 and are prudent, reasonable, and necessary; such determinations are made in the DCRF reconciliation under 16 TAC § 25.243(f).
14. Prudence is the exercise of that judgment and the choosing of one of that select range of options which a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives available at the point in time such judgment is exercised or option is chosen. *Gulf States Utilities Company v. Public Utility Commission of Texas*, 841 S.W.2d 459, 475 (Tex. App—Austin 1992, writ denied).
15. A utility may demonstrate the prudence of its decision-making through contemporaneous evidence. Alternatively, the utility may obtain an independent, retrospective analysis that demonstrates that a reasonable utility manager, having all relevant factors and alternatives, as they existed at the time the decision was made, would have found the utility's actual

decision to be a reasonably prudent course. Docket No. 46449, Order on Rehearing at CoL 17; *Gulf States*, 841 S.W.2d at 476.

16. The utility without contemporaneous evidence to support its decision-making process faces a heavy burden; the Commission will subject its after-the-fact justifications to rigorous review. *Gulf States*, 841 S.W.2d at 476.
17. Under PURA § 36.006, a utility has the burden of proof of demonstrating prudence.
18. The prudence of a decision, once determined, is not reassessed based on its economic impact. Docket No. 48973, Order on Rehearing at 25.
19. A utility is not permitted to recover any imprudently incurred costs.
20. CEHE did not acquire its short-term lease or the short-term lease extension for mobile-generation units in compliance with PURA § 39.918(f).
21. PURA § 39.918 does not permit TDUs to use mobile generation to aid in restoring power to the utility's distribution customers in outages caused by a failure of the distribution system.
22. CEHE's use of mobile generators at the Lake Jackson Civic Center was not in compliance with PURA § 39.918(b).
23. CEHE did not demonstrate compliance with PURA § 39.918.

VII. PROPOSED ORDERING PARAGRAPHS

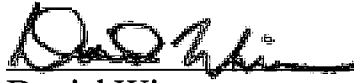
1. The Commission amends CEHE's DCRF to the extent provided in this Order.
2. The Commission approves CEHE's Rider DCRF tariff schedules attached to the Partial Stipulation as Exhibit A, effective September 1, 2022.
3. The Commission approves CEHE's proposed revisions to its Tariff for Retail Delivery service.

4. The Commission is not determining in this Order whether investments recovered through Rider DCRF comply with PURA or are prudent, reasonable, and necessary. The Commission will make those determinations in a future DCRF reconciliation proceeding under 16 TAC § 25.243(f).
5. CEHE must reimburse the participating municipalities for their rate-case expenses within 30 days of the date of this Order.
6. CEHE is authorized to either request recovery of its own and any participating municipality's rate-case expenses incurred in this proceeding in a future rate proceeding or to request to collect those expenses through a separate surcharge. Any rate-case expenses in connection with this proceeding are subject to a final determination by the Commission as to the reasonableness and necessity of those expenses.
7. Within ten days of the date of this Order, CEHE must provide a clean copy of the approved Rider DCRF tariff schedules, and the Tariff for Retail Delivery approved by this Order to Central Records to be marked Approved and filed in the Commission's tariff books.
8. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Partial Stipulation and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
9. Because the Commission deems imprudent CEHE's entry into the short-term lease, its extension, and the long-term lease for mobile generation, CEHE is not allowed to recover any costs under those agreements through future rate or DCRF proceedings.
10. The Commission denies all other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief that the Commission has not expressly granted.

SIGNED JANUARY 27, 2023.



Christian Siano,
Administrative Law Judge



Daniel Wiseman,
Administrative Law Judge