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In order to protect ratepayers and customers in the territory served by CenterPoint, Texas Consumer Association (TCA) files this complaint to request the Commission modify its rulings with respect to CenterPoint Energy Houston Electric (CEHE) mobile generation policies and cost recovery through the Distribution Cost Recovery Factor, as determined in Dockets 53442 and 54830. TCA requests the Commission end cost recovery and return on investment on all the large 32 MW and 5 MW generators approved in Docket No. 53442.

We believe this request is justified because:

- The 500 MW of large generator capacity that CEHE acquired in the 2021 LCP procurement are not used and not useful. In particular, the fifteen 32 MW generators acquired in this contract are not useable for the stated reasons CEHE acquired them. None of the 32 MW generators and almost no use of the 5 MW generators has actually occurred to support distribution customers since procurement occurred.
- Information presented in Docket 53442 and elsewhere misrepresented the mobility, flexibility, and usability capabilities of these generators to meet the utility's asserted needs.¹
- CEHE misrepresentation of the suitability and usability of these generators to expedite widespread distribution outages contributed to the Commission's conclusion in Docket No. 53442 that the "mobile generation" leases were prudent and reasonable. The Commission's approval of CEHE's Texas Emergency Electric Energy Facilities (TEEEF) rates in Docket No. 54830 is also predicated upon CEHE's misrepresentations in Docket No. 53442.
- If company officials responsible for negotiating the contract did not understand at the time it leased 500 MW of 5 MW and 32 MW generators that these units could not be quickly moved around the system to facilitate distribution service restoration after a hurricane, then the utility did insufficient analysis and due diligence, and this procurement was unreasonable and imprudent.
- If company officials performed adequate analysis in deciding that they needed mobile generation, what types and how much, then their continuing insistence through Docket No. 53442 that these generators could be used for hurricane restoration as well as ERCOT load shed was intentional misrepresentation.

As a remedy for these violations of basic Texas requirements for prudent and reasonable investments and well-managed procurement, TCA requests that the Commission: 1) Immediately reconsider and deny the continued recovery of costs and earnings on all of CEHE's 32 MW generators, and, 2) Provide relief to customers for past cost and earnings recovery and

¹ For instance, CEHE's witnesses in Docket No. 53442 repeatedly claimed that mobile generation facilities offer flexible and proven solutions to help restore power under outages caused by hurricanes and during ERCOT-directed load shed events, by disconnecting customers from the main grid to serve them from the mobile units.

order refunds to be rebated back on customer bills for both the costs of these leased generators and the associated 6.5% return on the leases. In the alternative, if the Commission is not prepared to overturn its prior approval of CEHE's mobile generator lease and require full refund of all costs and profits recovered to date, then we ask the Commission to immediately terminate any further collection of TEEEF rates for the LifeCycle Power mobile generation lease, and to require clawback of the profits that CEHE has already collected on that lease, refunding those amounts back to ratepayers.

The leased large backup generators are not used and useful -- CEHE procured fifteen large 32 MW GE TM2500 aeroderivative gas turbines for the stated purposes of serving load in the event of an ERCOT-ordered load shed and for restoring service more quickly after large distribution system damage after hurricane events. But CEHE has not used any of these large generators since they were acquired in October 2021, and none of the "mobile generators" were used to restore service or shorten outage time for any of the 2.25 million Texans who lost power due to Hurricane Beryl in July 2024.

Large generators are not useable for hurricane response because they are not mobile or flexible -- Although CEHE asserted repeatedly in Dockets No. 53442 and 54830 that the 32MW generators are mobile and can be moved around its system to help with hurricane recovery,² that is incorrect. The turbine manufacturer's site says a TM2500 unit can be installed and commissioned "in as few as 11 days" – which clearly indicates that these units are not appropriate for fast transport, set-up and emergency operation.³ Additionally, once connected to the grid, the 32 MW units take 24 hours to turn on and operate, which means they may not be available and operable in time to meet an unexpected ERCOT load shed call.⁴ CEHE has since acknowledged that these generators are not designed to be mobile, are too large to move quickly,⁵ and require several days to move, test, connect to the grid, procure fuel supply, and be operationalized to inject into the grid. A CEHE witness agreed that in most cases, it would take longer to get the generation units deployed and connected than it would take to repair the distribution damage that was causing the outages.⁶

Of the five Solar SMT60 5 MW generators CEHE leased under the mobile generation procurement, only one has been used prior to hurricane Beryl to support the Lake Jackson Civic Center after local distribution equipment broke (i.e., neither a hurricane nor bulk power system outage situation). In that occasion, the 5 MW generator served only 1.5 MW of Civic Center load and did not support the other 12,000 local customers out of service. Other generators were positioned to support two Pasadena School District facilities after a tornado but were never used to provide power to those facilities. Although CEHE asserted that these generators could be used to support large groups of customers on feeders, in these three instances the 5 MW generators

² For instance, CEHE witness Easton testified in Docket 54830 that while the TEEF facilities are presently sited inside some CEHE substations, they are mobile facilities that can be relocated as operating conditions, road conditions and other safety considerations permit.

³ GE Vernova, "TM2500 aeroderivative gas turbine."

⁴ Remarks of CenterPoint CEO Jason Wells in Senate Special Committee on Hurricane and Tropical Storm Preparedness, Recovery and Electricity, July 29, 2024.

⁵ Per CEHE witness Narendorf cross-examination, each GE TM2500 32 MW generator is 75' long, 25' wide and 13' tall (before mounting on a transport), so it cannot be moved quickly or without securing local road permits.

⁶ Cross-examination of CEHE witness Martin Narendorf in Docket No. 53442.

were only hooked up to serve a single customer each. It is not yet clear exactly how many actual people or businesses were served when CEHE used the 5 MW generators to support customers during Hurricane Beryl recovery.

CEHE has since acknowledged that only smaller generators have the mobility and flexibility needed to support service restoration and has borrowed and leased smaller generators (in the 1 MW range) in order to serve individual customers.⁷

These facts establish that CEHE's leased generators – particularly the 32 MW units – are not used, useful or usable for the purposes CEHE acquired them.

CEHE's procurement of these leased facilities was unreasonable and imprudent – As documented in Docket No. 53442, CEHE conducted little analysis on how to use mobile generation to support load shed power provision (the stated purpose of PURA 39.918) or service restoration after major distribution outages (CEHE's oft-stated purpose for mobile generator use). This would be a high visibility procurement – these generators were supposed to play a critical role in protecting customers during emergencies. But CEHE did not adequately study what types, sizes and quantities of mobile generation are feasible for either purpose. This lack of analysis led the utility to place inappropriate restrictions on the mobile generation procurement. These restrictions (such as specifying 30 MW generators for immediate delivery) limited the number of respondents and raised the cost of the leased generators. And this procurement had a very high price tag -- \$200 million in 2021 alone, with a total cost of about \$800 million through 2029 after lease costs, fuel costs, labor and operations costs, and the 6.5% return on the lease costs. Any utility expense of that magnitude should be supported by bulletproof research and analysis supporting the validity of the need for the expenditure and its magnitude.

CEHE's lease procurement was also imprudent because it failed to build adequate protections into the lease contract. Company leadership recently acknowledged that the company cannot terminate its lease for the "mobile generators" unless the lessor fails to meet its contractual obligations before the lease ends in 2029. The only early termination provision in the contract, linked to regulatory disapproval of the lease, expired in 2023 after the Commission found the procurement to be reasonable and prudent.⁸ Prudent and reasonable contracting processes, particularly for an \$800 million contract, might have acquired less generation but would certainly have created more flexibility for the utility to manage the contracted number of units and costs over time, with additional opportunities to modify or terminate the contract to deal with changing circumstances.

These facts establish that CEHE's 2021 procurement of large mobile generators was unreasonable and imprudent, as was the lease itself.

⁷ Sateerja, Neena, "CenterPoint spent \$800M on mobile generators. Where are they post-Hurricane Beryl?" Houston Chronicle, July 26, 2024, and Sateerja, Neena, "CenterPoint went big on seldom-used mobile generators. \$800 million later, it needs smaller ones." Houston Chronicle, July 26, 2024.

⁸ Hao, Claire, "Why CenterPoint says it's stuck with barely used generators it leased for \$800M", Houston Chronicle, August 15, 2024.

Authorities for this complaint

Texas's utility regulation statutes and rules are designed to protect customers from having to pay for utility investments and expenses that are not used to serve those customers.

Used & useful – Basic utility regulation requires that energy assets be physically used and useful to current ratepayers; only assets that are used and useful should be allowed to be charged to customers or earn a return on equity. PURA Section 36.051 states, “In establishing an electric utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of the utility's reasonable and necessary operating expenses.”

TCA submits that CEHE's fifteen leased 32 MW generators may only be useable at some point in the future to help offset a large ERCOT load shed event, such as another Uri event. Even so, those generators must be pre-positioned, connected to the distribution grid, warmed up, fueled and fully operable well in advance in order to respond to a sudden load shed event. But these generators are clearly neither used, useful or usable to help respond to a widespread hurricane-caused distribution outage, as CEHE asserted repeatedly in Dockets No. 53442 and 54830.

Prudence and reasonableness – The Texas Public Utility Regulatory Act is constructed to assure “rates, operations and services that are just and reasonable to the consumers and to the electric utilities.”⁹ Under Commission precedent, the prudence standard requires, “[t]he exercise of that judgment and the choosing 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 at the point in time such judgment is exercised or option is chosen.”¹⁰

TCA submits that a reasonable utility manager would not have attempted to acquire 500 MW of large capacity “mobile generators” in 2021. It does not require hindsight to tell that acquisition of 500 MW of “mobile generation” in 2021 was neither prudent nor reasonable; CEHE's peer, Oncor, used the TEEEF provisions to acquire only 11 MW of much smaller, truly mobile units (which CEHE later borrowed to cope with Hurricane Beryl outages). The record in Docket No. 53442 indicates that it was possible to tell in summer 2021 that 32 MW generators were not easily mobile. It was clear at that time that the Texas Legislature had already taken steps after Winter Storm Uri to require the Commission to implement improvements to the grid – including utility resilience plans, generation and transmission weatherization measures, and grid segmentation and loadshed management planning – that could change the likelihood of and operational requirements for widespread outages and therefore change the potential amount of backup generation needed.

Furthermore, a reasonable utility procurement manager would not have agreed to the costly, inflexible Life Cycle Power mobile generation long-term lease. The final negotiated lease offers

⁹ PURA Sec. 31.001.

¹⁰ *Gulf States Utils. Co. v. Public Util. Comm'n*, 41 S.W.2d 459, 475 (Tex.App.-Austin 1992, writ denied) “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.” *State of Tex. Agencies & Insts. Of Higher Learning v. Pub. Util. Comm'n*, 450 S.W.3d 615, 634 (Tex. App.-Austin 2014), *aff'd in part, rev'd on other grounds (citing, Nucor Steel v. Public Util. Comm'n*, 16 S.W.3d 742, 752 (Tex.App.-Austin 2000, *pet.denied*)).

no opportunities to renegotiate or revise its provisions after 2023, which means that there is no way for CEHE to modify its terms to reduce costs or adjust product as the grid evolves and CEHE's needs change between 2023 and lease expiration in 2029.

Because the leased generators and the lease itself are unreasonable and imprudent, that lease should not be allowed for either cost recovery or a return on investment. It follows that the associated TEEEF rates incorporated in CEHE's Distribution Cost Recovery Factor (DCRF) rate are not just and reasonable and should be disallowed and reimbursed to CEHE ratepayers.

Unreasonable or violative existing rates – PURA Sec. 36.151 specifies that if the Commission, on its own motion or on complaint by an affected person, finds that the existing rates of an electric utility for a service are unreasonable or in violation of law, the regulatory authority shall: (1) enter an order establishing the just and reasonable rates to be observed thereafter....”

TCA submits that because CEHE's leased generation is not used or useful, and the lease procurement was neither prudent nor reasonable, collection of the TEEEF lease costs and associated costs (fuel, labor, transportation, and return on investment) in CEHE's DCRF rates is unjust and unreasonable and therefore in violation of the law. The Commission should reexamine the entire mobile generation case and set new rates that exclude costs for at least the 32 MW generators and all costs and returns thereon.

Misleading evidence -- The State Office of Administrative Hearings, on behalf of the Public Utility Commission of Texas, follows the Texas Rules of Evidence. Rule 403 of the Texas Rules of Evidence allows a court to exclude relative evidence if the probative value of this evidence is in danger of misleading the jury. Additionally, Rule 603 requires a witness to give an oath or affirmation to testify truthfully.

The CEHE witnesses presented extensive, repeated and highly misleading evidence about the mobility and usability of the 32 MW generators – even though they later acknowledged that these generators were difficult to move and could not be relocated to respond to a widespread distribution outage. It is not clear whether this misrepresentation was intentional from the start or whether the CEHE team only recognized these inaccuracies over the duration of the Docket No. 53442 proceeding. But CEHE's assertions clearly misled the Commission when it overturned the SOAH judges' Proposal for Decision in Docket No. 53442,¹¹ just as CEHE's assertions about mobile generation misled Texas legislators who advocated on CEHE's behalf.¹²

Since the Commission's ratemaking decisions in Docket Nos. 53442 and 54830 are based on misleading evidence provided by witnesses under oath, the Commission should void these two ratemaking orders and protect CEHE customers from having to pay for the lease and associated costs.

¹¹ The Commission's May 25, 2023 Order on Rehearing and SOAH Judges Proposal for Decision (January 27, 2023)

¹² See, for instance, comments from senators in the Senate Special Committee on Hurricane and Tropical Storm Preparedness, Recovery and Electricity, July 29, 2024, and August 8, 2024 statement from Texas Senator Phil King.

Closing plea

As noted above, in our role as a representative of Texas consumers, TCA files this complaint in the belief that there are solid statutory grounds for the Commission to exercise the duty to protect customers from unjust and unreasonable services and costs. We ask the Commission to find that: CEHE's 2021 lease of 500 MW of "mobile generators" was neither reasonable nor prudent, that the selection of generators leased was imprudent and unreasonable, that the lease itself is imprudent, that the leased generators are neither used, useful nor usable for the purposes CEHE intended, and that for these reasons the rates set for CEHE under Docket Nos. 53442 and 58430 are unjust and unreasonable and should be revoked and refunds made to CEHE customers. In the alternative, if the Commission is not prepared to require a full refund of the entire TEEEF costs that CEHE collected to date, we ask the Commission to immediately terminate further CEHE collection of these TEEEF costs in rates and require CEHE to refund to customers all of the profits it has already collected on this lease.

Respectfully submitted,

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