



## **Filing Receipt**

**Filing Date - 2024-05-07 12:41:15 PM**

**Control Number - 56211**

**Item Number - 170**

**PUC DOCKET NO. 56211  
SOAH DOCKET NO. 473-24-13232**

<b>APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR A PROPOSED 138-KV TRANSMISSION LINE IN HARRIS AND MONTGOMERY COUNTIES</b>	§ § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
--	---------------------------------	--

**WILLIAM A. ROPER, JR.'s SURREPLY ON MOTION TO INTERVENE**

William A. Roper, Jr. ("Movant") very respectfully requests consideration of this his surreply to CenterPoint's *out of time* surresponse (Item No. 159).<sup>1</sup>

**I. Background**

On April 17, 2024, William A. Roper, Jr., timely filed his motion styled *William A. Roper, Jr.'s Motion to Intervene* (Item No. 97). On April 23, 2024, CenterPoint filed its objection to the Movant's motion to intervene.<sup>2</sup> On April 30, 2024, Movant filed his "*Response to CenterPoint's Objection to My Motion to Intervene*" (Item No. 147).<sup>3</sup> On May 1, 2024, the ALJ signed SOAH Order No. 5 (Item No. 149), discussing Intervener's motion and authorizing CenterPoint to file a surresponse by 3:00 P.M. on Monday, May 6, 2024. The ALJ also expressly indicated via footnote 1 that within that Order "No replies to CenterPoint Houston's potential surresponse will be considered." At 4:30 P.M. on Monday, May 6, 2024, CenterPoint filed its "*Reply to Mr.*

---

<sup>1</sup> Movant expressly acknowledges the ALJ's SOAH Order No. 5 specifying that "No replies to CenterPoint Houston's potential surresponse will be considered." SOAH Order No. 5, page 2. Movant intends no disrespect in requesting consideration of this surreply, but rather, as a *pro se* litigant, is concerned that in failing to at least *request consideration* of the additional authority shown herein, he might be *waiving* such arguments and be ineligible for consideration of such arguments on an appeal to the Commission. This Movant certainly trusts the ALJs to reach a just decision when provided the correct arguments and authority.

<sup>2</sup> *CenterPoint Energy Houston Electric, LLC's Objection to Mr. William A. Roper, Jr.'s Motion to Intervene* (Item No. 121, Filed April 23, 2024).

<sup>3</sup> Within Movant's response, there is a scrivener's error on page 8, misidentifying the citation as to the Commission's Procedural Rule on standing as "COMM. PROC R. §22.103(a)." The correct citation is COMM. PROC R. §22.103(b) or 16 TEX. ADMIN. CODE §22.103(b). *Movant apologizes for this error.*

*William A. Roper, Jr.'s Response to CenterPoint's Objection to My [sic] Motion to Intervene*"  
(Item No. 159).

## **II. Argument**

### **CenterPoint's Untimely Surreponse**

Initially, Movant notes that CenterPoint's surresponse was filed *one and a half* hours *after* the time allowed and was therefore *untimely*. CenterPoint has not requested a *good cause* exception to the ALJ's order, nor explained why it might be entitled to a *good cause* exception.

CenterPoint's outside counsel frequently engages in zealous advocacy, seeking to *strike* untimely filings, but feels free to fail to comply or refuse to comply with the Commission's time standards.

Movant therefore respectfully moves to *strike* CenterPoint's surresponse in its entirety.

### **CenterPoint's Confusion of Standing and Capacity**

Within its *Reply*, CenterPoint raises *new issues* and completely *distorts* the controlling Texas law regarding *justiciable interest*, confusing the issues of *standing* and *capacity*, two legally distinct concepts for which Texas law is clear based upon well settled and clearly articulated Texas Supreme Court guidance within the cases *Austin Nursing Center, Inc. v. Lovato*, 171 S.W.3d 845, 848-849 (Tex. 2005), *Nootsie, Ltd. v. Williamson County Appraisal District*, 925 S.W.2d 659, 661 (Tex.1996); *Sixth RMA Partners, LP v. Sibley*, 111 S.W.3d 46, 56 (Tex. 2003), et al.

The Texas Supreme Court holding within *Austin Nursing Center, Inc. v. Lovato* frames the precise disputed issue herein:

"A plaintiff must have both standing and capacity to bring a lawsuit. *Coastal Liquids Transp.*, 46 S.W.3d at 884. **The issue of standing focuses on whether a party has a sufficient relationship with the lawsuit so as to have a "justiciable interest" in its outcome, whereas the issue of capacity "is conceived of as a procedural issue dealing with the personal qualifications of a party to**

litigate." [emphasis added] 6A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, AND MARY KAY KANE, WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 1559, at 441 (2d ed.1990). We have previously distinguished between these two threshold requirements as follows:

**A plaintiff has standing when it is personally aggrieved, regardless of whether it is acting with legal authority; a party has capacity when it has the legal authority [at page 849] to act, regardless of whether it has a justiciable interest in the controversy.** [emphasis added]

*Nootsie, Ltd. v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 661 (Tex.1996); see also 6A WRIGHT, MILLER, & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 1559, at 441 ("Capacity has been defined as a party's personal right to come into court, and should not be confused with the question of whether a party has an enforceable right or interest [emphasis added].").

In Texas, the standing doctrine requires that there be (1) "a real controversy between the parties," that (2) "will be actually determined by the judicial declaration sought." *Nootsie*, 925 S.W.2d at 662 (quoting *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443-44 (Tex.1993)). Implicit in these requirements is that litigants are "properly situated to be entitled to [a] judicial determination." 13 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, AND EDWARD H. COOPER, WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION 2D § 3531, at 338-39 (2d ed.1984). Without standing, a court lacks subject matter jurisdiction to hear the case. *Tex. Ass'n of Bus.*, 852 S.W.2d at 443. Thus, the issue of standing may be raised for the first time on appeal. *Id.* at 445.

In addition to standing, a plaintiff must have the capacity to pursue a claim. For example, minors and incompetents are considered to be under a legal disability and are therefore unable to sue or be sued in their individual capacities; such persons are required to appear in court through a legal guardian, a "next friend," or a guardian ad litem. See *Sax v. Votteler*, 648 S.W.2d 661, 666-67 (Tex.1983); *Peek v. DeBerry*, 819 S.W.2d 217, 218 (Tex. App.—San Antonio 1991, writ denied); see also TEX. PROBATE CODE §§ 601(14), 773; TEX. R. CIV. P. 44, 173. Similarly, a decedent's estate "is not a legal entity and may not properly sue or be sued as such." *Price v. Estate of Anderson*, 522 S.W.2d 690, 691 (Tex.1975); see also *Henson v. Crow*, 734 S.W.2d 648, 649 (Tex.1987). Although a minor, incompetent, or estate may have suffered an injury and thus have a justiciable interest in the controversy, these parties lack the legal authority to sue; the law therefore grants another party the capacity to sue on their behalf. **Unlike standing, however, which may be raised at any time, a challenge to a party's**

**capacity must be raised by a verified pleading in the trial court. TEX. R. CIV. P. 93(1)-(2)** [emphasis added]; *Sixth RMA Partners v. Sibley*, 111 S.W.3d 46, 56 (Tex.2003).” *Austin Nursing Center, Inc. v. Lovato*, 171 S.W.3d 845, 848-849 (Tex. 2005)

*Lovato* further describes the legal concepts of *standing* and *capacity* on pages which follow.

The Commission’s procedural rule relating to intervention is expressly labeled “**Standing to intervene.**” 16 TEX. ADMIN. CODE §22.103(b). The rule expressly defines standing:

“A person has standing to intervene if that person:

- (1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or
- (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.”

There is no *capacity* defect in the Movant’s *Motion to Intervene*. Movant has not sought to enforce legal rights of the Estate of Patricia Guarin Roper, but rather, from the outset has sought only to represent *his own legally distinct personal interests*, which interests *include* an undivided one third interest in the parcel at 912 West Main Street, Tomball, which *vested in Movant* at Patricia’s death pursuant to TEX. ESTATE CODE §101.001.

A hypothetical presenting a somewhat similar but distinct fact pattern illustrates the distinction. If, rather than dying of natural causes Patricia had been killed in a vehicle accident involving a CenterPoint owned and operated vehicle, while Movant as a co-legatee would have a *justiciable interest* and *standing* to bring a wrongful death suit against CenterPoint, he would lack the *capacity* to initiate such suit. The proper party to bring such a suit would be the personal representative of the estate, in this case the *executor*.

Even so, if this Movant had brought such a suit, it would be incumbent upon CenterPoint as the defendant to interpose a *capacity defense* via a verified pleading and failing to do so, it would *waive* any such argument. While the personal representative would be entitled to intervene in such suit and seek to be substituted as the plaintiff or might otherwise assert rights on behalf of the estate, CenterPoint's *capacity* defense could only be asserted by making a timely *capacity* defensive argument pursuant to TEX. R. CIV. P. 93.

Movant is not bringing a lawsuit against CenterPoint. Rather, Movant is seeking to *intervene* as a party in a pre-existing *regulatory matter* initiated by CenterPoint.

The Commission has not set forth any separate *capacity* requirement within its substantive or procedural rules. Under the Texas Rules of Civil Procedure applicable to other civil matters, Rules 93(1) and 93(2) relate to capacity defenses:

**“RULE 93. CERTAIN PLEAS TO BE VERIFIED**

A pleading setting up any of the following matters, unless the truth of such matters appear of record, shall be verified by affidavit.

1. That the plaintiff has not legal capacity to sue or that the defendant has not legal capacity to be sued.
2. That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.” TEX. R. CIV. P. 93.

Movant is not *suing* anyone, CenterPoint included. CenterPoint is not *suing* the Movant or the Estate of Patricia Guarin Roper, Deceased. Movant is not seeking any monetary recovery against CenterPoint and CenterPoint is not seeking to impose liability on either Movant, nor Patricia's estate. Any contention relating to Movant's capacity is therefore *specious*.

Even if the Commission had in mind to invoke a capacity requirement equivalent to TEX. R. CIV. P. 93, CenterPoint *waived* any such argument as to Intervener's *capacity* in failing to present this argument in a verified pleading within the allotted time to respond to his motion to intervene pursuant to 16 TEX. ADMIN. CODE §22.78(a). See *Ray Malooly Trust v. Juhl*, 186 S.W.3d 568, 671 (Tex. 2006); *Sixth RMA Partners, LP v. Sibley*, 111 S.W.3d 46, 56 (Tex. 2003); *Nootsie v. Williamson County Appraisal District*, 925 S.W.2d 659, 662 (Tex. 1996).

Now, CenterPoint seeks to make an *out of time* argument in reply which conflates what is, at core, a *capacity* argument, to challenge whether the Movant has a *justiciable interest*, a *standing* argument, the actual necessary antecedent to intervention in this matter.

While there are valid prudential reasons to restrict access to Texas courts as to a party's *capacity* to sue and recover damages, such prudential reasons do not apply to Texas PUC cases generally or to ratemaking actions in particular.

Movant has previously noted the Commission's standards relating to standing as to interventions:

"one's right to appear in an agency proceeding should be liberally recognized since an agency should be apprised of diverse viewpoints in order to determine where the public interest lies and how it should be furthered." Entergy. Order on Appeal, citing *Railroad Comm'n of Tex. v. Ennis Transportation Co., Inc.*, 695 S.W.2d 706, 710 (Tex. App.—Austin 1985) (citing to *Texas Industrial Traffic League v. Railroad Comm'n of Tex.*, 628 S.W.2d 187, 197 (Tex. App.—Austin 1982)). *Application of Entergy Texas, Inc., for Authority to Change Rates*, PUC Docket No. 53719, SOAH Docket No. 473-22-04394, Order on Appeal of SOAH Order No. 4 at 2, Item No. 198 (October 20, 2022)

"[S]ince administrative proceedings are different from judicial proceedings in purpose, nature, procedural rules, evidence rules, relief available and the availability of review, it is understandable that one's right to appear in an agency proceeding should be liberally recognized." *Application of Entergy Texas, Inc., for Authority to Change Rates*, PUC Docket No. 53719, SOAH Docket No. 473-

While Movant does reside in Pennsylvania, Movant's landholdings within CenterPoint's service area exceed those of 99% of CenterPoint's ratepayers, either by total parcel size or value.

Movant is not seeking any special treatment or consideration, but rather only the *same* right to intervene granted to the very smallest of landowners. That Movant also co-owns a property at 912 West Main Street, Tomball, *subject to current electrical service* by CenterPoint paid by funds belonging to Movant held in trust by the executor is an *additional argument* favoring intervention. The Commission's policy of liberally granting interventions should be applied to the Movant's request to be *included* as a party to this matter.

### **III. Conclusion**

WHEREFORE, premises considered, Intervener requests that the ALJs strike CenterPoint's untimely surresponse, OVERRULE CenterPoint's Objection, and grant his motion to intervene in this matter, as well as any other relief to which he is justly entitled.

Respectfully submitted,

/ s / William A. Roper, Jr.

**William A. Roper, Jr.**

waroper@pobox.com

717-914-8649



## CERTIFICATE OF SERVICE

I certify that on Tuesday, May 7, 2024, I served a true and correct copy of the foregoing document on CenterPoint Energy. All other parties were served by *filing* in accordance with SOAH Order No. 2 (Item 195, 12/20/2023).

/ s / William A. Roper, Jr.

**William A. Roper, Jr.**

waroper@pobox.com

717-914-8649