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**SOAH DOCKET NO. 473-24-12812
DOCKET NO. 56165**

APPLICATION OF AEP TEXAS INC. FOR AUTHORITY TO CHANGE RATES	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**SOAH DOCKET NO. 473-24-13232
DOCKET NO. 56211**

APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR AUTHORITY TO CHANGE RATES	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**HUNT ENERGY NETWORK LLC’S AND SMT TX MANAGEMENT LLC’S
APPEAL OF SOAH ORDERS NO. 7**

Pursuant to 16 Texas Administrative Code (“TAC”) § 22.123, Hunt Energy Network LLC (“HEN”) and SMT TX Management LLC (“SMT”) appeal two SOAH Orders, both No. 7—the denial of their Joint Motion for Certified Issues to the Public Utility Commission of Texas in the above-styled proceedings (“Joint Motion”).¹ In support thereof, HEN and SMT show as follows:

I. INTRODUCTION AND SUMMARY OF ARGUMENT

HEN and SMT own and operate multiple sub-10 MW, stand-alone battery energy storage systems interconnected at distribution voltage throughout ERCOT, including in AEP Texas Inc.’s (“AEP”) service area. These Distribution Energy Storage Resources (“DESRs”)² provide sought-

¹ SOAH Order No. 7 in the AEP rate case (Docket No. 56165) laid out the ALJs’ reasoning and findings with regard to the Joint Motion. SOAH Order No. 7 in the CenterPoint rate case (Docket No. 56211) denied the Joint Motion “for the reasons set out in SOAH Order No. 7” in the AEP rate case. *See* Docket No. 56165, SOAH Order No. 7 (May 20, 2024); Docket 56211, SOAH Order No. 7 (May 20, 2024). For convenience, HEN refers collectively to the two orders as “SOAH Order No. 7” herein and when citing the order refer to SOAH Order No. 7 in the AEP rate case (Docket No. 56165), which contains the substantive analysis.

² “Distribution Energy Storage Resource” or “DESR” is a defined term in the ERCOT Protocols and refers to an Energy Storage Resource that is registered with ERCOT for the purpose of providing energy and/or ancillary services

after dispatchable energy and ancillary services to the ERCOT market today. They can be built and begin serving the grid faster than transmission-interconnected generation resources. HEN and SMT want to continue to develop these desirable resources. However, the new wholesale delivery service tariffs AEP and CenterPoint Energy Houston Electric, LLC (“CenterPoint”) propose to apply to DESRs in their pending base rate cases (collectively, the “Rate Cases”) will render HEN’s and SMT’s existing assets uneconomic and prevent them from developing additional storage resources at distribution to help meet ERCOT’s explosive load growth.³

In their Joint Motion, HEN and SMT urged the ALJs to certify three questions to the Commission for guidance on the threshold legal and policy issues of whether DESRs when charging their batteries should be required to pay wholesale delivery charges, and if so, how that impacts the DESRs’ Contribution in Aid of Construction (the “DESR Policy Issues”) in both Rate Cases:

- 1) As a matter of Commission policy, when charging the storage resource, should a DESR be required to pay a delivery charge for transmission service provided at distribution voltage? If yes, does that change the amount of the Contribution in Aid of Construction the DESR should pay to the Distribution Service Provider?
- 2) Is requiring a DESR to pay a wholesale delivery rate when charging its storage facility consistent with PURA §35.004(b)’s requirement that utilities provide “nondiscriminatory access to wholesale transmission service”?
- 3) Is requiring a DESR to pay a wholesale delivery rate when charging its storage facility consistent with 16 TAC § 25.192(a)’s exclusion of wholesale storage from a utility’s transmission service tariff and 16 TAC § 25.192(b)’s exclusion of storage entities from charges for transmission service delivered within ERCOT?

The ALJs acknowledged that the DESR Policy Issues meet the rule requirements for issue certification (i.e., address matters of Commission policy and statutory and rule construction as required by 16 TAC 25. § 22.127), but declined to exercise their discretion and certify the issues in this instance “because the Commission has already weighed in on the specific issues that HEN/SMT request to certify and has indicated that any policy changes are best considered in a rulemaking, which

to the ERCOT system and is interconnected at distribution voltage. *See* ERCOT Nodal Protocol § 2 (definitions of “Resource,” “Energy Storage Resource,” and “Distribution Energy Storage Resource”).

³ *See* Docket No. 56165, Direct Testimony of Patrick H. Wood, III at 3:16-19, 9:13-19 (May 16, 2024); Docket No. 56165, Direct Testimony of David Spotts at 5 (May 16, 2024).

the Commission is in the process of doing.”⁴ HEN and SMT appeal SOAH Order No. 7 denying their Joint Motion because while everyone appears to agree the Commission prefers to resolve these threshold policy issues in Project No. 54224, the Rate Cases present the questions now. AEP’s and CenterPoint’s applications cannot be addressed fully without deciding whether wholesale delivery service rates are appropriate for DESRs. HEN and SMT appeal SOAH Order No. 7 to allow the Commission to decide whether it would like to weigh in on the DESR Policy Issues in the Rate Cases before the parties spend additional time and resources litigating these policy issues in these cases.

In response to the Joint Motion, AEP, CenterPoint, Texas Industrial Energy Consumers (“TIEC”), and Office of the Public Utility Council (“OPUC”) point to the final Order in Oncor’s last rate case as resolving the DESR Policy Issues.⁵ The Oncor case is exactly why HEN moved to certify the threshold issues to the Commission in these Rate Cases. To be clear, HEN believes the Commission can and does make broadly-applicable policy decisions in contested cases. Indeed, HEN litigated these threshold legal and policy issues in the Oncor case—seeking clear guidance from the Commission on whether wholesale delivery rates were appropriately applied to DESRs at all.⁶ Upon the Proposal for Decision (“PFD”) recommending approval of Oncor’s amendments to include DESRs in its existing wholesale delivery service tariffs, HEN filed exceptions and presented oral argument to the Commission on the DESR Policy Issues.⁷ Rather than evaluate HEN’s arguments on their merits in Oncor’s rate case, it was clear from the Commission’s discussion that it preferred to evaluate and resolve the DESR Policy Issues in Project No. 54224. The effect of this decision to

⁴ SOAH Order No. 7 at 4-5.

⁵ See Docket No. 56165, AEP Texas Inc.’s Response to Joint Motion for Certified Issues at 2 (May 16, 2024); Docket No. 56165, Joint Parties’ Response to Hunt Energy Network LLC’s and SMT TX Management LLC’s Joint Motion for Certified Issues at 2 (May 16, 2024); Docket No. 56211, Centerpoint’s Response to Joint Motion for Certified Issues at 3 (May 16, 2024); Joint Parties’ Response to Hunt Energy Network LLC’s and SMT TX Management LLC’s Joint Motion for Certified Issues at 2 (May 16, 2024).

⁶ See e.g. *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 53601, Direct Testimony of Pat Wood, III at Section III, 6-19 (Aug. 26, 2022); Docket No. 53601, Initial Brief of Hunt Energy Network LLC at 2-4, 12-22 (Oct. 14, 2022).

⁷ See Docket No. 53601, Hunt Energy Network, L.L.C.’s Exceptions to the Proposal for Decision (Jan. 24, 2023); Docket No. 53601, Hunt Energy Network, L.L.C.’s Request for Oral Argument (Feb. 6, 2023); Docket No. 53601, Oral Argument Add Letter (March 6, 2023) (“Commission will hear oral argument at the March 9, 2023 Open Meeting”).

defer substantive consideration of the policy issues was to adopt the PFD on this point, allowing Oncor to begin charging DESRs for wholesale delivery service.

That was in March 2023. At the time, HEN was hopeful Project No. 54224 would resolve the DESR Policy Issues quickly; however, that hope has not materialized. For over a year, HEN and other DESRs have been paying Oncor's rates for wholesale delivery service when they charge their batteries.

A similar, though more nuanced, situation now exists in the AEP and CenterPoint Rate Cases. Where Oncor had an existing wholesale delivery service tariff that it amended to include DESRs, AEP and CenterPoint seek to create completely new tariffs for these previously non-existent rates. With Project No. 54224 asking the question whether such tariffs are appropriate at all,⁸ HEN has once again presented its full argument on the DESR Policy Issues in the AEP rate case⁹ and is preparing to do so in the CenterPoint case. HEN and SMT sought to certify the DESR Policy Issues to the Commission now so that the Commission might provide guidance to the parties and the ALJs in these proceedings.¹⁰ SOAH Order No. 7 denies the Commission that opportunity. HEN and SMT appeal the order to let the Commission decide. HEN and SMT seek Commission guidance on the DESR Policy Issues via certified issues to avoid incurring further litigation expenses associated with presenting their arguments on the issues in the Rate Cases only to be told once again that resolution of the DESR Policy Issues is more appropriate in the generic proceeding. HEN and SMT would prefer to address these issues in the generic proceeding, but AEP and CenterPoint have forced the issues in these cases by seeking approval of the tariffs.

⁸ *Cost Recovery for Service to Distributed Energy Resources*, Project No. 54224, Commission Staff Questions for Comment (Oct. 24, 2022) ("Is it appropriate for a DESR to pay some level of distribution charges?").

⁹ *See generally* Docket No. 56165, Direct Testimony of Patrick H. Wood, III (May 16, 2024).

¹⁰ *See generally* Docket No. 56165, Hunt Energy, LLC and SMT TX Management LLC's Joint Motion for Certified Issues (May 9, 2024).

II. ARGUMENT AND AUTHORITIES

A. Denial of the Joint Motion Immediately Prejudices HEN and SMT and Materially Affects the Course of the Hearings

HEN's and SMT's appeal of SOAH Order No. 7 is proper. 16 TAC § 25.123 allows appeals of any order that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. SOAH Order No. 7 was not an evidentiary ruling. It immediately prejudices HEN and SMT by ensuring HEN and SMT will have to fully litigate the DESR Policy Issues (HEN for the second time) in two, parallel rate proceedings without the benefit of the Commission's forthcoming policy guidance. It likewise materially affects the course of the hearings. As argued in the Joint Motion, if the Commission were to direct that wholesale delivery service rates are not applicable to DESRs, all parties can avoid the time and expense of further arguing the threshold issues and developing alternative rate proposals. If the Commission were to direct that wholesale delivery service rates are applicable to DESRs, HEN and SMT can focus their efforts in these cases on the appropriate design of that rate. Certification of the DESR Policy Issues has the added benefit of delivering timely Commission guidance, or possibly resolving, Project No. 54224 as well. Under the certification rule, 16 TAC § 22.127, the parties may file briefs on the certified issues within 13 days of their submission, and the Commission will issue a written decision within 30 days of submission.¹¹

B. The DESR Policy Issues Are Appropriate Issues for Certification

SOAH ALJs "may certify to the commission an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law."¹² The Commission's Procedural Rules specify three types of issues that are appropriate for certification: (1) the Commission's interpretation of its rules and applicable statutes, (2) which rules or statutes are applicable to a proceeding, and

¹¹ 16 Tex. Admin. Code ("TAC") § 22.127(c)-(d).

¹² 16 TAC § 22.127(a).

(3) whether Commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.¹³

The DESR Policy Issues fall squarely within two of the three categories, and SOAH Order No. 7 acknowledges as much.¹⁴ First, Commission policy should be established and/or clarified regarding whether wholesale distribution tariffs should apply to DESRs and whether and how that policy determination impacts the Contribution in Aid of Construction that DESRs pay. These are critically important substantive issues in the Rate Cases: neither AEP's nor CenterPoint's proposed wholesale distribution tariffs can be approved without such a determination.¹⁵ Second, this policy determination requires the Commission's interpretation of its rules and statutory provisions relating to wholesale storage and transmission access (PURA §35.004(b), 16 TAC § 25.192(a), and 16 TAC § 25.192(b)). Finally, the establishment/clarification of policy and interpretation of the Commission rules will affect the outcome of the Rate Cases. Certification of the issues is appropriate here; the ALJs just declined to exercise their discretion to do so.¹⁶ HEN and SMT appeal SOAH Order No. 7 to allow the Commission to determine whether it would like to provide the requested policy guidance. This guidance is needed for all DESR developers because distribution interconnected energy storage resources are the only generation and energy storage resources that have been required to pay a monthly wholesale delivery charge.

¹³ 16 TAC § 22.127(b).

¹⁴ *See* SOAH Order No. 7 at 4-5.

¹⁵ Docket No. 56165, Direct Testimony of Jennifer L. Jackson at Ex. JLJ-5 (Feb. 29, 2024); Docket No. 56211, Direct Testimony of John R. Durland at JRD-10 (Mar. 6, 2024).

¹⁶ *See* SOAH Order No. 7 at 4-5.

C. Procedural History of the DESR Policy Issues

The threshold DESR Policy Issues are now currently pending in five separate proceedings.¹⁷ AEP first filed for approval of a new, stand-alone wholesale transmission service at distribution voltage tariff applicable to DESRs in February 2022.¹⁸ CenterPoint followed suit in May 2022.¹⁹

Separately, Oncor filed a base rate case in May 2022 that also included amendments to add DESRs to its existing wholesale distribution tariff that was applicable only to electric cooperatives previously.²⁰ Throughout 2022, and at the request and leadership of Commissioner Glotfelty and former Commissioner McAdams, various stakeholders engaged in productive conversations surrounding whether DESRs should be required to pay wholesale delivery rates when charging their batteries. Following these discussions, the Commission initiated Project No. 54224, *Cost Recovery for Service to Distributed Energy Resources (DERs)* in October 2022 to consider and decide these important policy issues.²¹ Both the AEP and CenterPoint tariff proceedings were abated pending this project (and remain abated).²²

In Project No. 54224, Commission Staff requested comments on a variety of questions, including “Is it appropriate for a DESR to pay some level of distribution charges?” and “Should a DSP be required to implement a DESR-specific tariff for transmission service at distribution

¹⁷ See *Application of AEP Texas Inc. for Approval of a Wholesale Distribution Service Distributed Generation Energy Storage Tariff*, Docket No. 53267 (filed February 24, 2022); *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend Its Wholesale Transmission Service Tariff*, Docket No. 53606 (filed May 13, 2022); *Cost Recovery for Service to Distributed Energy Resources*, Project No. 54224 (opened October 2022); *Application of AEP Texas Inc. for Authority to Change Rates*, Docket No. 56165 (filed February 29, 2024); *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket 56211 (filed March 6, 2024).

¹⁸ See Docket No. 53267, Application at 2-3 (Feb. 24, 2022); Docket No. 53267, Testimony of Jennifer L. Jackson at 4-13, Ex. JLJ-1 (Feb. 24, 2022).

¹⁹ See Docket No. 53606, Application 2-4 (May 13, 2022); Docket No. 53606, Direct Testimony of Joseph F. Jernigan at 2-8, EX. JFJ-2 (May 13, 2022).

²⁰ See Docket No. 53601, Application at Exhibit JAG-1, Exhibit 1 at lines 10-11. (May 13, 2022).

²¹ See Project No. 54224, Commission Staff Questions for Comment (Oct. 24, 2022).

²² Docket No. 53267, SOAH Order No. 3 – Granting Motion to Abate (Oct. 28, 2022); Docket No. 53267, SOAH Order No. 4 – Denying Motion to Lift Abatement (Sep. 19, 2023); Docket No. 53606, SOAH Order No. 3 – Granting Motion for Interim Relief and Abating Case (Nov. 14, 2022).

voltage?”²³ Interested parties filed extensive comments and briefing on these policy issues in late 2022 and early 2023.

Meanwhile, the Oncor rate case moved forward, and interested parties, including HEN, fully litigated the DESR Policy Issues in that case. There, Oncor, TIEC, and Commission Staff argued, among other things, that the DESR Policy Issues raised by HEN were better addressed in a rulemaking—maintaining that a rate case pertaining to one utility is not the appropriate place to make policy changes that will affect other market participants.²⁴ In light of Project No. 54224, TIEC and Commission Staff argued the Commission should allow Oncor to continue its established practice until the underlying legal and policy questions can be resolved in a holistic way.²⁵ The ALJs agreed, and in the Oncor PFD, recommended approval of Oncor’s amendments to include DESRs in their existing wholesale delivery service tariffs.²⁶ HEN filed exceptions and requested oral argument, which was granted.²⁷ During the Commissioners’ discussion of the DESR Policy Issues after oral argument, they acknowledged a need to address the issues in a holistic, rather than piecemeal, manner²⁸ and declined to discuss the merits of HEN’s arguments at that time. The outcome of that decision, however, was to adopt Oncor’s tariff amendments²⁹ and begin charging DESRs for transmission service at distribution voltage. Despite abated tariff applications, AEP and CenterPoint now both request approval of their new wholesale delivery service tariffs in the Rate Cases. HEN and SMT fear a repeat of the Oncor decision where the Commission prefers to address the issues generically, but new tariffs are permitted to go into effect.

²³ Project No. 54224, Commission Staff Questions for Comment (Oct. 24, 2022).

²⁴ See Docket No. 53601, SOAH Proposal for Decision at 318-319 (Dec. 28, 2022).

²⁵ See Docket No. 53601, SOAH Proposal for Decision at 318-19 (Dec. 28, 2022).

²⁶ See Docket No. 53601, SOAH Proposal for Decision at 321-322 (Dec. 28, 2022).

²⁷ See Docket No. 53601, Hunt Energy Network, L.L.C.’s Exceptions to the Proposal for Decision (Jan. 24, 2023); Docket No. 53601, Hunt Energy Network, L.L.C.’s Request for Oral Argument (Feb. 6, 2023); Oral Argument Add Letter (March 6, 2023) (“Commission will hear oral argument at the March 9, 2023 Open Meeting”).

²⁸ See Open Meeting Discussion on *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates* (Docket No. 53601) at 3:16 - 3:29 (Mar. 9, 2023).

²⁹ See Docket No. 53601, Order on Rehearing at ¶¶ 291-94 (Jun. 30, 2023).

D. Commission Guidance Now Is the Most Efficient Path to Clarity on the DESR Policy Issues

HEN spent hundreds of thousands of dollars in legal and consulting expenses in the Oncor rate case litigating the DESR Policy Issues and is poised to do so again in both the AEP and CenterPoint Rate Cases. The same is likely true for the utilities, Commission Staff, and any other interested parties. It would be a significant financial burden and inefficient use of time and effort for everyone concerned if the parties litigate these issues in separate rate cases on parallel procedural schedules, only to again reach the Commission and find that the policy issues will not be resolved within the Rate Cases. HEN and SMT therefore strongly urge the Commission to grant their appeal and provide the requested policy guidance before more, duplicative time and expense is incurred by all parties.

The Commission weighing in on the DESR Policy Issues via certified questions is especially appropriate because the threshold policy question of whether DESRs should be charged for wholesale transmission service at distribution voltage is identical in both Rate Cases and has been directly identified as a policy issue in Project No. 54224. It is highly inefficient to litigate a policy issue in multiple contested cases at the same time while a project is open to address the very same policy issue. The fact that there are multiple contested cases pending highlights the need for general policy guidance from the Commission now. The Commission has already received extensive written comments on the issues in Project No. 54224 and, further, there is a briefing opportunity for the parties if SOAH Order No. 7 is reversed. Thus, the Commission should have sufficient input to make a policy determination.

Finally, the Rate Cases' procedural schedules are not at risk unless the Commission decides to delay either case sua sponte. AEP argued and the ALJs expressed concern that the Joint Motion jeopardized AEP's procedural schedule;³⁰ however, HEN and SMT did not request abatement pending their Joint Motion and do not now request abatement pending their appeal. HEN and SMT prefer quick resolution of the DESR Policy Issues and appeal SOAH Order No. 7 so that the

³⁰ See AEP Texas Inc.'s Response to Joint Motion for Certified Issues at 6 (May 16, 2024); SOAH Order No. 7 at 5.

Commission can provide clear policy guidance on these important issues in the Rate Cases, saving all parties time and expense. As discussed, HEN has already presented the DESR Policy Issues in its direct case in the AEP case, and parties wishing to engage on those issues can do so. Policy guidance from the Commission on the issues in the AEP case will simply inform settlement strategy, the ALJs' findings in the PFD, and the parties' post-hearing briefing. Because the CenterPoint case is slightly behind the AEP case, Commission guidance now could allow the parties to avoid unnecessary testimony and consultants in addition to informing settlement, the ALJs' PFD, and the parties' post-hearing briefs.

III. CONCLUSION AND PRAYER

HEN and SMT respectfully request the Commission grant their appeal and reverse SOAH Order No. 7. Guidance now from the Commission on the fundamental DESR Policy Issues via certified questions in the Rate Cases is appropriate and beneficial to the parties and the ALJs. The questions are urgent, the DESR Policy Issues have been under consideration for approximately two years, and the Commission itself is best-situated to provide a comprehensive policy answer on a basis timely for incorporation into the Rate Cases. As it stands, in the absence of Commission guidance, the issues will be litigated in parallel with—and could circumvent—the Commission's consideration of these same issues in Project No. 54224. Commission guidance now will ensure all parties use their time and financial resources efficiently and effectively and the ALJs understand the Commission's position on these important issues.

Respectfully Submitted,

By /s/ Marty Hopkins

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been forwarded to all parties of record in this proceeding via electronic mail on this 21st day of May, 2024, in accordance with the Order Suspending Rules, issued in Project No. 50664.

By: /s/ Melvena Rhett-Fair