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**SOAH DOCKET NO. 473-24-13232
PUC 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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**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC’S
RESPONSE TO HUNT ENERGY NETWORK LLC’S AND
SMT TX MANAGEMENT LLC’S APPEAL OF SOAH ORDER NO. 7**

The Public Utility Commission of Texas (the “Commission”) should deny the Appeal of SOAH Orders No. 7 filed by Hunt Energy Network LLC (“HEN”) and SMT TX Management LLC (“SMT” and, together with HEN, “Appellants”).¹ The Administrative Law Judges (“ALJs”) correctly denied the Appellants’ motion to certify issues, ruling that “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 the Commission is in the process of doing.”² The ALJs further ruled that “[c]ertifying the issues now would potentially short circuit that process while also potentially delaying [the] pending rate case.”³ CenterPoint Energy Houston Electric, LLC (“CenterPoint Houston”) reasserts by reference the arguments presented in its response to the Appellants’ motion for certified issues,⁴ a copy of which is attached to this response.

Moreover, as further explained below, CenterPoint Houston does not seek in this base rate proceeding to change the rate currently being charged for Wholesale Distribution Service. That rate was approved on an interim basis in Docket No. 53606 with no objection from HEN⁵ and is subject to true up based on the outcome of the Commission’s pending Project No. 54224, *Cost*

¹ *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 56211, Hunt Energy Network LLC’s and SMT TX Management LLC’s Appeal of SOAH Orders No. 7 (May 21, 2024) (hereinafter, the “Appeal”). While Appellants filed the same appeal in this docket and in the pending rate case filed by AEP Texas, Inc. in Docket No. 56165, CenterPoint Houston limits its response to the appeal filed in this docket.

² *Application of AEP Texas Inc. for Authority to Change Rates*, Docket No. 56165, SOAH Order No. 7 (Denying Motion to Certify Issues) at 5 (May 20, 2024), as cited in *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 56211, SOAH Order No. 7 (Denying Motion to Certify Issues) at 1 (denying Appellant’s motion to certify “for the reasons set out in SOAH Order No. 7 in . . . PUC Docket No. 56165 (May 20, 2024).”) (May 20, 2024).

³ *Id.*

⁴ Docket No. 56211, CenterPoint Energy Houston Electric, LLC’s Response to Hunt Energy Network LLC and SMT TX Management LLC’s Motion for Certified Issues (May 16, 2024).

⁵ *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend its Wholesale Transmission Service Tariff*, Docket No. 53606, CenterPoint Houston’s Unopposed Motion for Interim Relief and to Abate (November 10, 2022); *Id.*, SOAH Order No. 3 (granting motion for interim relief and abating case) (November 14, 2022).

Recovery for Service to Distributed Energy Resources (DERs). Thus Appellants are not prejudiced by awaiting resolution in Project No. 54224 of the three issues they seek to certify in CenterPoint Houston's base rate proceeding.

Appellants state that they, too, would prefer to address their proposed certified issues in Project No. 54224⁶ but cannot do so because the WDS Tariff proposed in CenterPoint Houston's base rate proceeding will "prevent them from developing additional storage resources at distribution to help meet ERCOT's explosive load growth;"⁷ "will render HEN's and SMT's existing assets uneconomic;"⁸ "has forced consideration of the proposed issues in [this] base rate proceeding;"⁹ and will cause them "further litigation expenses associated with presenting their arguments on the issues in [this docket] only to be told once again that resolution of the DESR Policy Issues is more appropriate in the generic proceeding."¹⁰ These claims do not accurately reflect CenterPoint Houston's request in this case.

- First, CenterPoint Houston implemented an interim WDS Tariff to *facilitate* (not hinder) the interconnection of additional storage resources at distribution.
- Second, HEN has already acquiesced to the rates in CenterPoint Houston's *interim* WDS Tariff.
- Third, CenterPoint Houston's base rate proceeding does not force any issues, because CenterPoint Houston has not proposed any changes to its interim WDS tariff, which is *subject to refund or surcharge* based on the outcome of Project No. 54224.
- Fourth, the only reason Appellants face additional litigation costs is their repeated refusal to heed the Commission's consistent directive that the proposed certified issues should be addressed in Project No. 54224, not in individual utility rate proceedings.

⁶ Appeal at 4.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* at 3 ("...CenterPoint's application[] cannot be addressed fully without deciding whether wholesale delivery service rates are appropriate for DESRs.") and 4 ("...CenterPoint [has] forced the issues . . . by seeking approval of the tariff[]").

¹⁰ *Id.* at 4.

1. The interim WDS tariff *facilitates* the interconnection of additional storage resources at distribution.

In May 2022, CenterPoint Houston sought approval to amend its Wholesale Transmission Service Tariff to add provisions for the sale of wholesale transmission service at distribution level voltage (the “Wholesale Tariff Proceeding”).¹¹ Twelve days later, HEN intervened in the Wholesale Tariff Proceeding.¹² While the Wholesale Tariff Proceeding was pending, the Commission initiated Project No. 54224 to consider cost recovery for service to distributed energy resources (“DERs”).¹³ One month later, the parties—including HEN—determined it to be more efficient to abate the Wholesale Tariff Proceeding pending the outcome of Project No. 54224.

Abatement is appropriate because the Commission has recently opened a project to consider cost recovery for service to distributed energy resources. The issues in that project are similar to those to be considered here in CenterPoint Houston’s application. Therefore, the parties have determined it to be more efficient to abate this proceeding.¹⁴

In connection with that abatement, CenterPoint Houston filed an unopposed motion to adopt its WDS Tariff on an interim basis “so that CenterPoint Houston’s DESR customers *may interconnect and energize their facilities* under the terms of the WDS Tariff *pending resolution of this proceeding*.”¹⁵ Contrary to the suggestion in HEN’s appeal, the adoption of CenterPoint Houston’s interim WDS Tariff *facilitates* the interconnection of DESRs pending resolution of Project No. 54224 and CenterPoint’s currently-abated Wholesale Tariff Proceeding.

2. HEN has already acquiesced to the *interim* rates in CenterPoint Houston’s *interim* WDS Tariff.

In its unopposed motion for interim relief in the Wholesale Tariff Proceeding, CenterPoint Houston laid out the pricing under its proposed interim WDS Tariff¹⁶ and also attached a copy of the proposed interim tariff to its motion.¹⁷ CenterPoint Houston “conferred with Commission Staff, the City of Houston, *and Hunt Energy Network, L.L.C. (“HEN”)* and no party oppose[d] the

¹¹ *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend its Wholesale Transmission Service Tariff*, Docket No. 53606, Application at 1 (May 13, 2002).

¹² *Id.*, Hunt Energy Network L.L.C.’s Motion to Intervene (May 25, 2022).

¹³ Project No. 54224, Control Number Request Form (Oct. 20, 2022).

¹⁴ Docket No. 53606, CenterPoint Energy Houston Electric, LLC’s Unopposed Motion for Interim Relief and to Abate at 3 (Nov. 20, 2022).

¹⁵ *Id.* at 1 (emphasis added).

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at Attachment B.

interim adoption of the WDS Tariff.”¹⁸ It is highly improbable that the interim WDS Tariff in which HEN acquiesced will “render HEN’s and SMT’s existing assets uneconomic,” particularly given that the tariff charges are subject to true-up as explained below.

3. The base rate proceeding does not force any issues, because CenterPoint Houston’s interim WDS Tariff is *subject to refund or surcharge* based on the outcome of Project No. 54224

Awaiting a decision in Project No. 54224 imposes no burden on the Appellants, because CenterPoint Houston does not seek to change the rate currently being charged on an interim basis for Wholesale Distribution Service, and it is subject to refund (or surcharge) pending the outcome of Project No. 54224 and CenterPoint Houston’s currently abated Wholesale Tariff Proceeding. In seeking abatement of the Wholesale Tariff Proceeding and approval of an interim WDS Tariff, CenterPoint made it clear that the rates charged to customers under the WDS Tariff would be subject to true-up.

The distribution service rates charged to customers will be subject to true-up consistent with the final order in this proceeding.¹⁹

Interim rates are subject to refund or surcharge to the extent the rates ultimately established differ from the interim rates.²⁰

CenterPoint and the parties [including HEN] have conferred and acknowledge that should the rates ultimately established in this proceeding differ from the interim rates, the rates imposed under the interim WDS Tariff shall be true-up upon adoption of a final CenterPoint Houston WDS Tariff, and that CenterPoint Houston will issue refunds or surcharges as appropriate.²¹

The order granting CenterPoint Houston’s request again underscored this point.

... the request for interim relief is **GRANTED**, and CenterPoint Houston’s WDS Tariff shall be effective on the date of this order on an interim basis. The interim rates shall be subject to refund or surcharge to the extent the rates ultimately established differ from the interim rates.²²

¹⁸ *Id.* at 1-2 (emphasis added).

¹⁹ *Id.* at 1.

²⁰ *Id.* at 2.

²¹ *Id.* at 3.

²² Docket No. 53606, SOAH Order No. 3 at 2-3.

In the current base rate proceeding, CenterPoint Houston does not seek to change the rate currently being charged on an interim basis for Wholesale Distribution Service. The Company's direct testimony in the current base rate proceeding confirms that the current rate is subject to refund or surcharge based on the outcome of Project No. 54224.

The current interim rates were established as part of a settlement agreement in Docket No. 53606. In that docket, parties agreed to adopt the PVS rates subject to refund or surcharge . . . until the Commission rulemaking on DESRs [Project No. 54224] establishes the costs applicable to DESRs.²³

In short, the provision for a true-up based on the outcome of Docket No. 54224, to be implemented in the currently abated Wholesale Tariff Proceeding, protects Appellants from undue injury and obviates the need even to consider (let alone certify) the proposed certified issues in this CenterPoint Houston base rate proceeding.

4. The prior agreement, in the Wholesale Tariff Proceeding, to implement interim rates subject to true up, eliminates the need for additional litigation expenses on the proposed certified issues.

HEN attempted to litigate the proposed certified issues in Oncor's last rate case but the Commission declined to do so.

Indeed, HEN litigated these threshold legal and policy issues in the Oncor case [I]t was clear from the Commission's discussion that it preferred to evaluate and resolve the DESR Policy Issues in Project No. 54224.²⁴

Appellants now seek to relitigate the issues in both AEP's and CenterPoint Houston's pending base rate proceedings.²⁵ As the Appellants have stated in their Appeal, "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."²⁶ Continuing an *interim* WDS Tariff, subject to true-up based on Project No. 54224, avoids (rather than causes) unnecessary litigation costs.

²³ Docket No. 56211, Direct Testimony of John R. Durland at 65 (Bates page 2512) (Mar. 6, 2024).

²⁴ Appeal at 3.

²⁵ Appeal at 2 ("In their Joint Motion, HEN and SMT urged the ALJs to certify three questions . . . in both Rate Cases.")

²⁶ Appeal at 9.

The Commission should deny the appeal by HEN and SMT, refuse to certify their proposed issues in this CenterPoint Houston base rate proceeding, and order any further relief to which CenterPoint Houston may be entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on May 29, 2024, this document was filed with the Public Utility Commission of Texas in Docket No. 56211, and a true and correct copy of it was served by electronic mail on all parties of record in this proceeding in accordance with the *Second Order Suspending Rules* issued in Project No. 50664.


Andrea Moore Stover



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**SOAH DOCKET NO. 473-24-13232
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APPLICATION OF CENTERPOINT	§	BEFORE THE STATE OFFICE
ENERGY HOUSTON ELECTRIC, LLC	§	
FOR AUTHORITY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC'S RESPONSE TO
HUNT ENERGY NETWORK LLC AND SMT TX MANAGEMENT LLC'S
MOTION FOR CERTIFIED ISSUES**

CenterPoint Energy Houston Electric, LLC ("CenterPoint Houston") urges the Administrative Law Judge ("ALJ") to deny Hunt Energy Network LLC ("HEN") and SMT TX Management LLC's ("SMT") Motion for Certified Issues ("Motion")¹, because it is an improper attempt to pre-empt and circumvent an ongoing project initiated by the Public Utility Commission of Texas ("Commission"), Project No. 54224, that is intended to address the same policy issues regarding distributed energy storage resources (DESRs) that HEN and SMT seek to certify.² Indeed, CenterPoint Houston has made it clear in its direct testimony that the Company is not seeking final approval of a DESR tariff in light of its existing interim tariff³ and Project No. 54224. Additionally, the issues sought to be certified in the Motion are not within the three types of issues permitted to be certified under 16 Tex. Admin. Code ("TAC") §22.127(b)(1)-(3). To the extent that any new policy determinations or revisions to Commission rules surrounding the treatment of DESRs are to be made, the Commission has directed that they be addressed in Project No. 54224. Therefore, CenterPoint Houston urges the ALJ not to certify these issues to the Commission.

I. Introduction and Background

HEN and SMT pose three questions that they claim require Commission resolution as quickly as possible. What they term the "DESR Policy Issues" all concern cost recovery for

¹ CenterPoint Houston received the Motion on May 9, 2024. This response is timely filed.

² *Cost Recovery for Services to Distributed Energy Resources (DER)*, Project No. 54224.

³ *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend its Wholesale Transmission Service Tariff*, Docket No. 53606, SOAH Order No. 3 – Granting Motion for Interim Relief and Abating Case (November 14, 2022).

services rendered to DESRs. HEN and SMT assert that CenterPoint Houston's Application in this proceeding "presuppose[s] a particular disposition of the threshold DESR Policy Issues."⁴ But CenterPoint Houston has simply applied existing Commission interpretation of its rules, as stated by the Commission in June 2021.

In June 2021, in response to a similar request by HEN, the Commission reiterated that under its rules, not only is a distribution service provider *allowed* to charge an entity engaging in wholesales storage for wholesale transmission service at distribution voltage, in certain circumstances it is required to do so:⁵

[T]he Commission specifically clarified in Project No. 39917 that wholesale storage entities interconnected to a transmission or distribution service provider's system at distribution voltage receive wholesale transmission service at distribution voltage under 16 TAC § 25.191(d)(2) and are assessed a separate charge for that service. The Commission stated that "[w]holesale storage load would be subject to any applicable tariffs or charges if it connects and receives service at the distribution level."⁶

HEN believes that the existing policy should change and therefore is pushing the Commission to consider the issues it proposes here to alter what costs are charged to DESRs. However, the Commission has established Project No. 54224 to consider this issue and has set a road map for staff to complete their work, as discussed at the May 2, 2024 Open Meeting.⁷ The Commission has consistently stated that it will "develop the rule in parallel" with individual tariff amendment proceedings so as not to delay the interconnection of much-needed DESRs.⁸ For this reason, CenterPoint Houston (like other utilities) sought and obtained approval (at least on an interim basis) for a wholesale tariff that sets out appropriate charges for customers receiving such

⁴ Motion at 2.

⁵ *Application of the City of San Antonio, Acting By and Through the City Public Service Board, to Amend its Wholesale Transmission Customer Primary Distribution Voltage Service Tariff*, Docket No. 51409, Preliminary Order at 2 (June 14, 2021).

⁶ *Id.* at 3 (quoting *Rulemaking on Energy Storage Issues*, Project No. 39917, Order Adopting Amendments to § 25.192 and § 25.501 as Approved at the March 7, 2012 Open Meeting at 34 (Mar 30, 2012)).

⁷ Open Meeting Video at 42:23 – 46:10 (May 2, 2024) available online at: https://www.adminmonitor.com/tx/puct/open_meeting/20240502/.

⁸ See, e.g., Open Meeting Video at 1:19:10 – 1:37:03 (May 12, 2022) available online at: https://www.adminmonitor.com/tx/puct/open_meeting/20220512/.

service.⁹ HEN intervened in the CenterPoint Houston wholesale tariff proceeding but nevertheless did not oppose the adoption of interim rates.¹⁰

HEN also raised¹¹ these issues on rehearing in a recent Oncor Electric Delivery Company LLC (“Oncor”) base rate proceeding and the Commission declined to take them up and instead approved the rates for DESRs in Oncor’s application.¹² In doing so, the Commission reiterated its existing policy that “a transmission or distribution service provider is allowed to charge an entity engaging in wholesale storage for wholesale transmission service at distribution voltage;” that “providing delivery service to DESRs imposes costs on [a utility’s] distribution system and failing to charge DESRs for their use of the system would shift those cost obligations onto other customers who would then be subsidizing the DESRs;” and that “it is not unreasonably discriminatory for [a utility’s] rates for distribution serve to apply to DESRs, but not” other power generation companies and transmission energy storage resources.¹³

II. The Issues Proposed for Certification are Not Eligible Under 16 TAC § 22.127(b).

Not every question may be certified to the Commission. Under 16 TAC § 22.127(b), a presiding officer “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.”¹⁴ Only the following issue types are eligible:

- (1) the Commission’s interpretation of its rules and applicable statutes;
- (2) which rules or statutes are applicable to a proceeding; or
- (3) whether commission policy should be established or clarified as to a substantive or

⁹ See, e.g., *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend its Wholesale Transmission Service Tariff*, Docket No. 53606, CenterPoint Energy Houston Electric, LLC’s Unopposed Motion for Interim Relief and to Abate (November 10, 2022).

¹⁰ *Id.*

¹¹ *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 53601, Hunt Energy Network, L.L.C.’s Motion for Rehearing (May 1, 2023).

¹² *Id.*, Order on Rehearing at 50.

¹³ *Id.*

¹⁴ 16 TAC § 22.127(a).

procedural issue of significance to the proceeding.¹⁵

The DESR Policy Issues do not fit within any of these categories. HEN and SMT argue that Commission policy “should be established and/or clarified” on these questions and that “this policy determination requires the Commission’s interpretation of its rules and statutory provisions.”¹⁶ As noted above, the Commission has already interpreted its rules and has since applied that interpretation in proceedings like this one. In the case of Oncor’s base rate proceeding, the Commission applied its existing interpretation and was not precluded from deciding the case as a whole. Similarly, Commission policy does not need to be interpreted or clarified as it relates to DESRs to determine the outcome of this proceeding, especially considering the fact that CenterPoint Houston is not seeking final approval of a DESR tariff.

The true crux of the Motion is that HEN and SMT would like the Commission to *change* its policy. Impatient with progress in Project No. 54224, HEN and SMT want to force the Commission to make that policy change in this proceeding, circumventing the Commission’s chosen path for considering these issues. Given the Commission’s decision whether to change its policy will impact all affected parties, CenterPoint Houston’s active base rate proceeding is not the appropriate vehicle to address these issues. The Commission has made clear: the proper venue for such challenges is Project 54224.

III. Conclusion

For the foregoing reasons, CenterPoint Houston respectfully requests that the ALJ deny HEN and SMT’s Motion and grant CenterPoint Houston any other relief to which it may be entitled.

Respectfully submitted,

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¹⁵ *Id.* at § 22.127(b).

¹⁶ Motion at 4.

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CERTIFICATE OF SERVICE

I certify that on May 16, 2024, a true and correct copy of this document was served via electronic mail on all parties of record in this proceeding, in accordance with the *Second Order Suspending Rules* issued in Project No. 50664.


Andrea Moore Stover