

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

NORTHERN PLAINS RESOURCE  
COUNCIL, et al.,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS,  
et al.,

Defendants,

TC ENERGY CORPORATION, et al.,

Intervenor-Defendants,

STATE OF MONTANA,

Intervenor-Defendant,

AMERICAN GAS ASSOCIATION,  
et al.,

Intervenor-Defendants.

**CV 19-44-GF-BMM**

**ORDER AMENDING  
SUMMARY JUDGMENT  
ORDER (DOC. 130)  
AND  
ORDER REGARDING  
DEFENDANTS' MOTIONS  
FOR STAY PENDING  
APPEAL**

**INTRODUCTION**

The Court issued an order on the parties' motions for summary judgment on April 15, 2020. (Doc. 130.) The Court concluded that the Army Corps of Engineers ("Corps") violated the Endangered Species Act ("ESA") when it reissued Nationwide Permit 12 ("NWP 12") in 2017. (*Id.* at 25.) The Court

remanded NWP 12 to the Corps for compliance with the ESA. (*Id.* at 26.) The Court also vacated NWP 12 and enjoined the Corps from authorizing any dredge or fill activities under NWP 12 pending completion of the consultation process and compliance with all environmental statutes and regulations. (*Id.*)

## **DISCUSSION**

Federal Defendants and TC Energy have filed motions for a partial stay pending appeal. (Docs. 131 & 136.) Federal Defendants also suggest that the Court could revise its remedy. (Doc. 131 at 7.) Plaintiffs propose a revised remedy that would narrow the scope of the vacatur and injunction. (Doc. 144 at 10.)

### **I. THE PLAINTIFFS' FACIAL CHALLENGE AND THE COURT'S DECISION**

The Court focused its ESA analysis on Plaintiffs' facial challenge to NWP 12. (Doc. 130 at 7-21.) Plaintiffs alleged that NWP 12 authorized activities that "cause immediate and irreparable impacts to ecosystem functions of streams and adjacent wetlands" and "adversely affect hundreds of listed species that rely on rivers, streams, and wetland habitats and other aquatic resources across the country." (Doc. 36 at 43.) Plaintiffs' challenge focused on the Corps' use of NWP 12 to approve pipeline projects like Keystone XL, but Plaintiffs did not suggest that their harms stemmed only from pipelines, let alone only from Keystone XL. (Doc. 144 at 33.)

Plaintiffs explained in seeking summary judgment that “regional conditions and project-level consultations” represented “inadequate substitutes for programmatic consultation” because they “fail to adequately analyze NWP 12’s cumulative impacts to listed species, like migratory birds, that cross regions.” (Doc. 73 at 42 (citing Keystone XL as “illustrative”)). The Court agreed with Plaintiffs. The Court concluded that the Corps cannot circumvent the consultation requirements of ESA § 7 by relying on project-level review. (Doc. 130 at 16.) The Court recognized that “[p]rogrammatic review of NWP 12 in its entirety . . . provides the only way to avoid piecemeal destruction of species and habitat.” (Doc. 130 at 18.) The Court vacated NWP 12 and enjoined the Corps from authorizing activities under NWP 12. (Doc. 130 at 26.)

The relief that the Court provided comports with law. A district court “should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.” Fed. R. Civ. P. 54(c); *see also In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). The Court properly can grant the presumptive remedy of vacating the unlawful action, particularly where, as here, Plaintiffs requested “such other relief as the Court deems just and appropriate.” (Doc. 36 at 88); *see Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2307 (2016).

The U.S. Supreme Court recently addressed a district court’s authority in

determining the appropriate relief in the face of an unconstitutional statute in *Whole Woman's Health*. A group of doctors challenged Texas's law that required doctors to perform abortions in a surgical center and that required doctors who perform abortions to have admitting privileges at a local hospital, as applied to doctors at two separate abortion facilities. *Id.* at 2299, 2301. The district court enjoined enforcement of both provisions throughout Texas. *Id.* at 2303.

The Fifth Circuit reversed, in significant part, due to the fact that res judicata barred the district court from holding the admitting-privileges unconstitutional statewide when petitioners had challenged its application only to two separate facilities. *Id.* at 2300-301. The Supreme Court reversed. Petitioners had asked for as-applied relief and for "such other and further relief as the Court may deem just, proper, and equitable." *Id.* at 2307. The Supreme Court concluded that "[n]othing prevents . . . awarding facial relief as the appropriate remedy for petitioners' as applied [constitutional] claims" even when the facial relief exceeds the other relief requested. *Id.* at 2307. Plaintiffs here also asked for "other relief as the Court deems just and appropriate." (Doc. 36 at 88.)

The Ninth Circuit likewise has recognized that "the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed" when a reviewing court determines that agency regulations are unlawful. *Empire Health Found. v. Azar*, \_\_\_ F.3d \_\_\_, 2020 WL 2123363, \*10 (9th

Cir. May 5, 2020) (citation omitted). The Ninth Circuit invalidated on substantive grounds a rule promulgated by the Secretary of Health and Human Services regarding Medicare reimbursement. *Id.* at \*8-9. The Ninth Circuit saw no reason not to apply the “ordinary result” of vacating the invalid rule that it had deemed unlawful. *Id.* at \*10.

Accordingly, a single plaintiff with a successful Administrative Procedure Act (“APA”) claim may obtain broad programmatic relief. *See E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1283 (9th Cir. 2020); *O.A. v. Trump*, 404 F. Supp. 3d 109, 153 (D.D.C. 2019) (rejecting argument that vacatur “should be limited to the plaintiffs in this case”). The Ninth Circuit affirmed a nationwide injunction to ensure the implementation of a “uniform federal policy” and to avoid having important parts of federal immigration law being determined according to the law of a local forum rather than having a “uniform federal definition.” *E. Bay Sanctuary Covenant*, 950 F.3d at 1283 (citations omitted). The ESA likewise has nationwide application and significance that should be interpreted and applied pursuant to a “uniform federal definition.”

Other courts routinely have vacated invalid agency actions of broad applicability without requiring plaintiffs to show harms stemming from each unlawful application. The Ninth Circuit in *Natural Resources Defense Council v. U.S. Environmental Protection Agency*, 526 F.3d 591, 608 (9th Cir. 2008),

vacated a rule adopted by EPA that prevented EPA from requiring permits for storm water discharge comprised solely of sediment from oil and gas construction activities. *See also Chamber of Commerce of U.S. v. Dep't of Labor*, 885 F.3d 360, 388 (5th Cir. 2018) (vacating Department of Labor's application of the "fiduciary rule" to broker-dealer and insurance agents as conflicting with the Employee Retirement Income Security Act). The facts presented here, and the cases analyzed, indicate that the Court exercised appropriate discretion when it chose to vacate broadly and enjoin the Corps' authorizations under NWP 12 due to the Corps' program-level ESA violation. *See Empire Health Found.*, 2020 WL 2123363 at \*10.

## **II. REMEDY**

Federal Defendants now suggest that the Court has the authority to amend the scope of the relief ordered. (Doc. 131 at 7.) Plaintiffs do not oppose a partial narrowing of the vacatur and injunction. (Doc. 144 at 9-10.) Plaintiffs suggest that the Court narrow the vacatur of NWP 12 to a partial vacatur that applies to the construction of new oil and gas pipelines. (*Id.*) This proposed narrowing would keep NWP 12 in place during remand insofar as it authorizes non-pipeline construction activities and routine maintenance, inspection, and repair activities on existing NWP 12 projects. (*Id.* at 10.) Plaintiffs also recommend that the Court narrow the injunction to enjoin the Corps from authorizing any dredge or fill

activities for Keystone XL under NWP 12. (*Id.*) Plaintiffs contend that this narrowed relief would afford endangered and threatened species and their habitat appropriate protection while minimizing any potential disruption. (*Id.*)

Vacatur stands as the presumptively required remedy when an agency acts unlawfully. *See* 5 U.S.C. § 706(2)(A) (directing courts to “set aside agency action . . . found to be . . . not in accordance with law”). The Ninth Circuit in *Pollinator Stewardship Council v. EPA*, 806 F.3d 520, 530-31 (9th Cir. 2015), invalidated EPA’s unconditional registration of an insecticide used in beekeeping as being in violation of its own regulations. The question of the appropriate remedy remained. The precariousness of bee populations led the Ninth Circuit to determine that “leaving EPA’s registration . . . in place risks more potential environmental harm than vacating it.” *Id.* at 532. As a result, the Ninth Circuit rejected EPA’s request to leave the unconditional registration in place on remand. *Id.* Here, injunctive relief likewise furthers the core purposes of the ESA and reflects the potentially widespread harms caused by the Corps’ violation. *See, e.g., W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 498-500 (9th Cir. 2011) (enjoining revisions to nationwide grazing regulations for federal lands); *Lane Cty. Audubon Soc’y v. Jamison*, 958 F.2d 290, 295 (9th Cir. 1992) (enjoining BLM from conducting any timber sales until it had consulted with Fish and Wildlife Service regarding potential endangered species issues).

**a. Vacatur**

Vacatur remains the presumptive remedy when an agency violates the law. 5 U.S.C. § 706(2)(A). The Ninth Circuit remands agency actions without vacating that action only in “limited circumstances.” *Pollinator*, 806 F.3d at 532 (quoting *Cal. Cmty. Against Toxics v. EPA*, 688 F.3d 989, 994 (9th Cir. 2012)); see *Wood v. Burwell*, 837 F.3d 969, 975-76 (9th Cir. 2016) (recognizing that remand without vacatur is a remedy “used sparingly”). A district court possesses “broad latitude,” however, in fashioning equitable relief “when necessary to remedy an established wrong.” *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 936 (9th Cir. 2008).

A district court may exercise that discretion where appropriate to order partial, rather than complete, vacatur. See, e.g., *Sierra Club v. Van Antwerp*, 719 F. Supp. 2d 77, 79-80 (D.D.C. 2010). The district court in *Van Antwerp* determined that the Corps had violated the National Environmental Policy Act (“NEPA”) and the Clean Water Act (“CWA”) in issuing permits. *Id.* at 78. The district court tailored its relief to reduce the harm caused by the violations. The fact that the developers already had completed work on some of the project prompted the district court to narrow the scope of its vacatur to allow the developer to continue with the construction of a partially-completed county road and to maintain a storm water maintenance program as the continuation of these activities would promote

the purposes of the CWA. *Id.* at 79-80.

Two factors guide the Court in deciding whether to depart from, or limit, the presumptive remedy of vacatur: (1) “the seriousness” of an agency’s errors; and (2) “the disruptive consequences” that would result from vacatur. *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm’n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993); *see Cal. Cmty. Against Toxics*, 688 F.3d at 994 (applying *Allied-Signal*’s two-factor test). The Court will address each of these factors.

**i. The Seriousness of the Corps’ Error**

The Corps committed serious error in failing to engage in programmatic consultation. The Corps should have engaged in programmatic consultation before it issued NWP 12 as required by § 7 of the ESA. (Doc. 130 at 18-19.) The Court determined that programmatic consultation represents “the only way to avoid piecemeal destruction of species and habitat” and that project-level review “cannot ensure that the discharges authorized by NWP 12 will not jeopardize listed species or adversely modify critical habitat.” (*Id.* (citing *National Wildlife Federation v. Brownlee*, 402 F. Supp. 2d 1, 9-10 (D.D.C. 2005); 50 C.F.R. § 402.14(c))). The Court further noted that the Corps’ ESA violation may have repercussions under NEPA and the CWA. (*Id.* at 21-25.) The Court acknowledged that the Corps’ ESA § 7 programmatic consultation could alter the Corps’ assessment of NWP 12’s environmental consequences under NEPA and the CWA.

(*Id.* at 22-25.)

Plaintiffs proffered evidence in their summary judgment brief that addressed Keystone XL as illustrative of potential injuries. (Docs. 73-2 & 73-7.) Plaintiffs also pointed to harms likely to arise from other projects. (*Id.*) Plaintiffs now have submitted additional declarations to underscore the harm that they and their members may suffer from NWP 12's unlawful use, particularly from construction of major oil and gas pipelines throughout the country. (*See, e.g.*, Docs. 144-1 to 144-15.)

A court should tip the scales in favor of the endangered species under the ESA's "institutionalized caution" mandate in applying the *Allied-Signal* test to ESA violations like this one. *Klamath-Siskiyou Wildlands Ctr. v. Nat'l Oceanic & Atmospheric Admin.*, 109 F. Supp. 3d 1238, 1242 (N.D. Cal. 2015) (quoting *Sierra Club v. Marsh*, 816 F.2d 1376, 1383 (9th Cir. 1987)). The need for "institutionalized caution" led the district court in *Klamath-Siskiyou Wildlands Center* to vacate permits issued to a logging company that included an improperly issued 50-year incidental take permit that allowed the logging company to take two threatened species in violation of the ESA. *Id.* The district court declined to categorize the agency's errors as "mere technical or procedural formalities" when the errors included the agency's failure to conduct a cumulative impacts analysis under NEPA for the timber harvest projects. *Id.* at 1244. The agency's failure to

conduct a cumulative impacts analysis compares with the Corps' failure here to engage in programmatic consultation analysis as required by § 7 of the ESA. This same need for "institutionalized caution" in evaluating ESA violations supports vacatur until the Corps adequately analyzes NWP 12's impacts to listed species through programmatic ESA consultation. *See Klamath-Siskiyou Wildlands Ctr.*, 109 F. Supp. 3d at 1242.

**ii. The Vacatur's Disruptive Consequences**

A court largely should focus on potential environmental disruption, as opposed to economic disruption, under the second *Allied-Signal* factor. *Ctr. for Food Safety v. Vilsack*, 734 F. Supp. 2d 948, 953 (N.D. Cal. 2010). As noted by the district court in *Center for Food Safety*, "the Ninth Circuit has only found remand without vacatur warranted by equity concerns in limited circumstances, namely serious irreparable environmental injury." *Id.* The district court invalidated an agency decision to deregulate a variety of genetically engineered sugar beets without having prepared an environmental impact statement. In vacating the rule, the district court declined to classify the NEPA violations as "not that serious or numerous." *Id.* at 953. The district court ultimately determined that the equities favored vacatur of the rule despite allegations of potential economic consequences. *Id.* at 954.

A few examples of decisions to remand without vacatur provide further context for the Court's analysis. For example, the Ninth Circuit's decision in *California Communities Against Toxics v. EPA*, 688 F.3d 989 (9th Cir. 2012), demonstrates the limited nature of remanding an invalid agency action without vacating the action. Environmental groups challenged the decision of the EPA to approve revisions to California's clean air plan. The groups contended that EPA had committed procedural errors during the rulemaking process and that the substance of the revised state plan violated the Clean Air Act. *Id.* at 991-92. The district court agreed. EPA had violated the notice-and-comment provisions of the APA when it failed to list all pertinent documents in the docket index. The district court deemed the error harmless because the environmental groups already had the documents in their possession from earlier proceedings. *Id.* at 992.

The Ninth Circuit affirmed on this harmless error point. *Id.* at 993. EPA may have violated the Clean Air Act in approving the revisions to California's plan. *Id.* The Ninth Circuit agreed with EPA, however, that remand without vacatur would be appropriate in light of the harmless nature of EPA's procedural error and the potential harm caused by the vacatur. Vacatur would delay the construction of a much-needed power plant that could result in power blackouts over the coming summer. *Id.* at 994. These blackouts, in turn, would require the use of diesel generators that would add to air pollution in contravention of the purpose of the

Clean Air Act. *Id.* This combination of economically *and* environmentally harmful consequences led the Ninth Circuit to affirm the order of remand without vacatur. *Id.*; see also *Pollinator*, 806 F.3d at 532 (confirming that the *Allied-Signal* inquiry centers on “whether vacating a faulty rule could result in possible environmental harm”).

Finally, the Ninth Circuit’s analysis in *Idaho Farm Bureau Federation v. Babbitt*, 58 F.3d 1392, 1405-06 (9th Cir. 1995), highlights the proper application of vacatur as a remedy in environmental cases. The district court set aside the decision of the Fish and Wildlife Service (“FWS”) to list the Bruneau Hot Springs snail due to several procedural errors committed by FWS during the period between the initial proposal and final listing. The Ninth Circuit remanded without vacatur of FWS’s listing decision for two reasons: (1) the minor nature of the agency’s procedural error; and (2) concerns that immediately vacating the listing decision threatened the potential extinction of a snail species that constituted an irreparable environmental injury. *Id.* The procedural error arose from the agency’s failure to make available for public comment one study that the agency had relied upon in making its decision. *Id.* at 1405. The Ninth Circuit discussed no potential harm that would have occurred by leaving the listing of the endangered species *in place* while the agency reconsidered its decision. *Id.*

Defendants here point to no potentially irreparable environmental injury

that could arise from the Court's failure to remand without vacatur. Defendants and Intervenor-Defendants focus on disruptions stemming from vacatur of NWP 12 as to the construction of electric, internet, and cable lines, and to routine maintenance, safety, and repair of projects that already have been built and that may pose less risk to species. For example, the NWP 12 Coalition discusses routine maintenance and repair of gas pipelines to ensure safety, vegetation removal along electric lines to prevent forest fires, placement of protective matting to prevent rutting from service vehicles, and ongoing maintenance of utility projects in navigable waters. (Doc. 138 at 9-12, 21-22.) The Corps raises similar concerns. The Corps cited a fiber optic cable upgrade project, an improvement to a wastewater management system, and work associated with removal of a tree from an exposed and leaking water line that would be halted by the vacatur. (Doc. 131 at 16.)

Plaintiffs' arguments on summary judgement centered on threats to listed species and critical habitats by the construction of major oil and gas pipelines such as Keystone XL. (Doc. 144 at 21.) Plaintiffs note that these major oil and gas pipelines potentially affect numerous waterbodies and thereby involve precisely the kinds of cumulative impacts that should be addressed through programmatic consultation. (*Id.* at 21-22.) On the other hand, other activities authorized by NWP 12, such as routine maintenance and repair, raise issues that the Corps must

consider on remand. (*Id.* at 22.) These routine maintenance and repair projects, however, do not necessarily involve the same level of potential severe risk to listed species and their habitat as pipelines. (*Id.*)

To allow the Corps to continue to authorize new oil and gas pipeline construction could seriously injure protected species and critical habitats—“the very danger” that the ESA “aims to prevent.” *Cal. Cmty. Against Toxics*, 688 F.3d at 994. Plaintiffs contend that the appropriate course would be for the Court to narrow the vacatur of NWP 12 to a partial vacatur that applies only to the construction of new oil and gas pipelines. (Doc. 144 at 10.) Plaintiffs’ proposed partial vacatur would keep NWP 12 in place during remand insofar as it authorizes more routine and minor projects in order to avoid these claimed disruptions. (*Id.*)

To narrow the vacatur of NWP 12 to a partial vacatur that applies to the construction of new oil and gas pipelines strikes a reasonable balance under the *Allied-Signal* factors while still redressing the potential harms to listed species and habitat that those projects pose. For example, the Court discussed adverse effects to threatened and endangered species from NWP 12-authorized construction activities, including increased sedimentation, and from horizontal directional drilling used during pipeline construction. (Doc. 130 at 14-15.) These impacts likely would be particularly severe when constructing large-scale oil and gas pipelines. (Doc. 144 at 24.) These large-scale oil and gas pipelines may extend

many hundreds of miles across dozens, or even hundreds, of waterways and require the creation of permanent rights-of-way. (*See* Doc. 138-5 at 4 (asserting that several developers “have relied on NWP 12 authorizations to construct hundreds of miles” of oil and gas pipelines within the past five years).) These large-scale oil and gas pipelines often require a network of access roads, pump stations, pipe yards, contractor yards, and extra workspace. (*See* Doc. 137 at 16 (describing Keystone XL’s proposed Project footprint); Doc. 144-14 (Keystone XL’s Biological Assessment).)

Plaintiffs acknowledge that the potential impacts arising from NWP 12, by contrast, likely would be less severe for routine maintenance, repair, and inspection activities on *existing* NWP 12 projects, and for the installation of non-pipeline projects like broadband and fiber optic cables. (Doc. 107 at 64-65.) The Corps must address all such impacts on remand. To narrow the vacatur portion of the remedy to the more severe threats posed by NWP 12 proves justified in this instance. *See Idaho Farm Bureau Fed’n*, 58 F.3d at 1405-06; *see also Van Antwerp*, 719 F. Supp. 2d at 79-80 (noting that a district court may exercise discretion where appropriate to order partial, rather than complete, vacatur).

The continued availability of the ordinary individual permit process under CWA § 404(a) tempers any disruption caused by this partial vacatur. Partial vacatur does not block any projects. It vacates only the Corps’ categorical approval

of new oil and gas pipeline construction under NWP 12. Defendants acknowledge that the individual permit process remains available. Defendants simply complain that the individual permit process proves too expensive and time-consuming.

The need to protect endangered species and critical habitat from harm until the Corps completes programmatic consultation outweighs any disruption or permitting delays that would result from this partial vacatur. Numerous other courts have agreed. For example, state and tribal groups brought an action against BLM in *California v. BLM*, 277 F. Supp. 3d 1106, 1125-27 (N.D. Cal. 2017). The groups alleged that BLM had violated the APA in adopting its decision to postpone compliance dates in a rule governing natural gas waste and royalties without following the notice-and-comment period after the rule's effective date had passed. *Id.* at 1110-11. The magistrate judge agreed.

The magistrate judge rejected BLM's argument that the cost of compliance warranted remand without vacatur, and, instead, concluded that "the general rule in favor of vacatur" would be appropriate. *Id.* at 1127; *see also Pub. Emps. for Envtl. Responsibility v. FWS*, 189 F. Supp. 3d 1, 3 (D.D.C. 2016) (reasoning that "[a]bsent a strong showing by [the agency] that vacatur will unduly harm economic interests . . . , the Court is reluctant to rely on economic disruption" to deny relief of vacatur of rules adopted in violation of NEPA); *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 282 F. Supp. 3d 91, 104 (D.D.C. 2017)

(noting that allegations of financial harm to pipeline developer will not necessarily have a “determinative effect” on remedy, because claims of “lost profits and industrial inconvenience” are “the nature of doing business, especially in an area fraught with bureaucracy and litigation”).

The Ninth Circuit approved of this type of limited vacatur in *Northern Cheyenne Tribe v. Norton*, 503 F.3d 836 (9th Cir. 2007). BLM had taken a “hard look” at the environmental consequences caused by coal bed methane development. *Id.* at 844. This “hard look” had found evidence to suggest that coal bed methane development would cause less environmental damage than BLM anticipated. *Id.* BLM failed to analyze, however, a phased development alternative in addition to the five proposals. Under these circumstances, the district court properly found that the limited injunction proposed by BLM would minimize potential damage to the environment. *Id.* at 846.

Partial vacatur proves appropriate under the circumstances. To vacate NWP 12 only as it relates to new oil and gas pipeline construction will prohibit the Corps from relying on NWP 12 for those projects that likely pose the greatest threat to listed species. The Corps may not approve the discharge of dredged or fill material under NWP 12 for projects constructing new oil and gas pipelines. NWP 12 will remain in place during remand insofar as it authorizes non-pipeline construction activities and routine maintenance, inspection, and repair activities on

existing NWP 12 projects. The “less drastic remedy” of partial vacatur adequately will prevent harm to listed species and critical habitat at this point. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). The continued availability of the ordinary permitting process further supports partial vacatur as it represents the “nature of doing business” in this area. *Standing Rock Sioux Tribe*, 282 F. Supp. 3d at 104.

**b. Injunctive Relief**

A plaintiff seeking injunctive relief must satisfy a four-factor test by showing the following:

(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

*eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). The Ninth Circuit long has recognized an exception to the traditional test for injunctive relief when addressing procedural violations under the ESA. *Cottonwood Env. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1088 (9th Cir. 2015). No question exists that the ESA strips courts of at least some of their equitable discretion in determining whether injunctive relief proves warranted. *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 543 n.9 (1987) (explaining that the ESA “foreclose[s] the traditional discretion possessed by an equity court”).

The Ninth Circuit also has recognized that the ESA “removes the latter three factors in the four-factor injunctive relief test from [courts’] equitable discretion.” *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Service*, 886 F.3d 803, 817 (9th Cir. 2018). This analysis requires a court to “presume that remedies at law are inadequate, that the balance of interests weighs in favor of protecting endangered species, and that the public interest would not be disserved by an injunction.” *Id.* This approach comports with the “fundamental principle” that Congress has “afford[ed] endangered species the highest of priorities.” *National Wildlife Fed’n v. Nat’l Marine Fisheries Service*, 422 F.3d 782, 794 (9th Cir. 2005) (citing *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978)).

The court must exercise its discretion to determine whether a plaintiff has suffered irreparable injury. *Cottonwood*, 789 F.3d at 1090. “[T]here is no presumption of irreparable injury where there has been a procedural violation in ESA cases.” *Id.* at 1091. Plaintiffs must demonstrate that irreparable injury “is likely in the absence of an injunction.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis in original). A “possibility” of irreparable harm cannot support an injunction. *Id.* The Ninth Circuit has recognized that “establishing irreparable injury”—the remaining factor—should not “be an onerous task” given “the stated purposes of the ESA in conserving endangered and threatened species and the ecosystems that support them.” *Cottonwood*, 789 F.3d at 1091.

A court determines irreparable harm by reference to the purposes of the statute being enforced. *Nat'l Wildlife Fed'n*, 886 F.3d at 818 (citing *Garcia v. Google*, 786 F.3d 733, 744-45 (9th Cir. 2015)). The types of harms that may be irreparable “will be different according to each statute’s structure and purpose.” *Sierra Club v. Marsh*, 872 F.2d 497, 502-03 (1st Cir. 1989). The Court determined that the Corps violated § 7 of the ESA. (Doc. 130.)

One of the ESA's central purposes is to conserve species. *See* 16 U.S.C. § 1531(b) (a purpose of the ESA is to provide “a program for the conservation of . . . endangered species and threatened species”). The “plain intent” of Congress in enacting the ESA was “to halt and reverse the trend toward species extinction, whatever the cost.” *Tenn. Valley Auth.*, 437 U.S. at 184. To fulfill this important purpose, the ESA requires the Corps to determine “at the earliest possible time” whether any action it takes “may affect” listed species and critical habitat. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). If the Corps’ action “may affect” listed species or critical habitat, the Corps must consult with FWS and/or National Marine Fisheries Service (“NMFS”). 16 U.S.C. § 1536(a)(2).

The Court explained in its Order how the Corps’ reissuance of NWP 12 in 2017 failed to comply with the ESA. (Doc. 130 at 7-21.) The Corps failed to initiate § 7(a)(2) consultation to ensure that discharge activities authorized under NWP 12 comply with the ESA. *See* 16 U.S.C. § 1536(a)(2). Plaintiffs assert that

the Court must enjoin Keystone XL to avoid irreparable harm. (Doc. 144 at 36.) TC Energy asserts that it would be improper to single out Keystone XL from the new construction of other oil and gas pipelines for different treatment. (Doc. 137 at 18.)

The Court agrees that it would be improper to single out Keystone XL. The Court's ESA analysis focused on Plaintiffs' facial attack to NWP 12. (Doc. 130 at 7-21.) Plaintiffs now have argued and demonstrated that certain activities authorized under NWP 12 pose more of a threat to listed species and critical habitat than other activities authorized under NWP 12. *See supra* at 11-18. Large-scale oil and gas pipelines, including Keystone XL, repeatedly utilize NWP 12 to approve dredge and fill activities for a pipeline that extends hundreds of miles across many waterways. (*See* Doc. 138-5 at 4.)

The Court discussed at length in its Order that the Corps needed to consider NWP 12's entire effect when it reissued the permit in 2017. (*See, e.g.*, Doc. 130 at 16.) The Court concluded that "[p]rogrammatic review of NWP 12 in its entirety, as required by the ESA for any project that 'may effect' listed species or critical habitat, provides the only way to avoid piecemeal destruction of species and habitat." The Corps failed to ensure that its reissuance of NWP 12 in 2017 was not likely to jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat. (Doc. 130 at 21); *see* 16 U.S.C. §

1536(a)(2). The Court noted that the types of discharges that NWP 12 authorizes “may affect” listed species and critical habitat. (Doc. 130 at 13.) The Corps should have initiated § 7 ESA consultation before it reissued NWP 12 in 2017, and irreparable injury “is *likely*” if developers continue to build new, large-scale oil and gas pipeline projects. *See Nat’l Wildlife Fed’n*, 886 F.3d at 819 (citation omitted).

Although case law instructs the Court to presume that the remaining factors favor injunctive relief, the Court addresses these factors briefly below out of an abundance of caution. *See Nat’l Wildlife Fed’n*, 886 F.3d at 817. The second factor—whether remedies available at law are inadequate to compensate for the injury—plainly favors injunctive relief. *Amoco*, 480 U.S. at 545 (“Environmental injury, by its nature, can seldom be adequately remedied by money damages”). This need for injunctive relief proves especially true considering that the Court identified a violation of the ESA. *Cottonwood Envtl. Law Ctr.*, 789 F.3d at 1090 (noting that it is the “incalculability” of an ESA injury that “renders the remedies available at law . . . inadequate” (citation omitted)); *Nat’l Wildlife Fed’n*, 886 F.3d at 817 (noting Congress’s “plain intent” in enacting the ESA was to “halt and reverse the trend toward species extinction, whatever the cost”).

The Court addresses the third and fourth factors together. *See Padilla v. Immigration and Customs Enforcement*, 953 F.3d 1134, 1141 (9th Cir. 2020)

(noting where the government is a party is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge). Preserving endangered species is of “incalculable” value to the public interest. *Cottonwood*, 789 F.3d at 1090. The public also has an interest in the repair, maintenance, and construction of vital infrastructure. (*See e.g.*, Doc. 131 at 16). The Court’s order strikes a balance between these important interests by narrowing the relief to allow for certain of these vital projects to continue while the Corps completes the consultation and compliance process pursuant to the ESA.

Routine maintenance, inspection, and repair activities on existing NWP 12 projects pose less of a risk. *See supra* p. 16. No evidence exists, however, that the construction of Keystone XL pipeline necessarily poses a greater risk under the ESA than the construction of other new oil and gas pipelines. The Court will amend its order to narrow its injunctive relief to the same scope that it narrowed its vacatur relief. *See supra* pp. 17-18.

### **III. STAY PENDING APPEAL**

Federal Defendants and TC Energy have filed separate motions for partial stays pending appeal. (Docs. 131 & 136.) Federal Defendants ask the Court to stay the portions of the Order that vacate NWP 12 and enjoin the Corps from authorizing any dredge or fill activities under NWP 12. (Doc. 131 at 6.) Federal Defendants ask the Court, at the very least, to stay the vacatur and injunction as

they relate to anything other than the Keystone XL pipeline. (*Id.*) TC Energy asks the Court to stay the order for Keystone XL and all other utility projects. (Doc. 137 at 18.)

“A stay [pending appeal] is not a matter of right, even if irreparable injury might otherwise result.” *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017) (per curiam) (quoting *Nken v. Holder*, 556 U.S. 418, 433 (2009)). The U.S. Supreme Court has set forth a four-factor test to evaluate a request for a stay pending appeal:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

*Nken*, 556 U.S. at 434. A party requesting a stay pending appeal bears the burden of showing that the circumstances justify an exercise of the court’s discretion. *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012).

**a. Federal Defendants’ and TC Energy’s Likelihood of Success on the Merits of Their Appeal**

“An applicant for a stay pending appeal must make ‘a strong showing that he is likely to succeed on the merits.’” *Al Otro Lado v. Wolf*, 952 F.3d 999, 1010 (9th Cir. 2020) (quoting *Nken*, 556 U.S. at 434). The Court determined that the Corps’ reissuance of NWP 12 in 2017 violated the ESA. (Doc. 130 at 25.) Well-settled case law indicates that Defendants likely would be unable to succeed on appeal.

*See, e.g., Brownlee*, 402 F. Supp. 2d at 9-10. The district court in *Brownlee* reached the same conclusion regarding NWP in 2002 as did the Court regarding NWP 12—the Corps needed to engage in programmatic consultation to comply with the ESA. *Id.* The Ninth Circuit similarly determined in *Lane County Audubon Society*, 958 F.2d at 295, that BLM’s failure to consult with FWS before implementing management guidelines for conservation of northern spotted owl violated § 7 of the ESA.

These circumstances differ greatly from those faced by the Ninth Circuit in *Alaska Survival v. Surface Transportation Board*, 704 F.3d 615 (9th Cir. 2012). The Surface Transportation Board (“STB”) issued a decision to allow a construction project to move forward that plaintiffs sought to challenge as violating the board’s statutory authority and NEPA. *Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1079, 1084 (9th Cir. 2013). The Ninth Circuit originally granted plaintiffs a stay of the STB’s decision. *Id.* at 1077 n.2. The Ninth Circuit then received merits briefing and heard oral argument on the claims. *Alaska Survival*, 704 F.3d at 616. The Ninth Circuit issued a brief opinion after oral arguments to lift the stay with notice that “[a]n opinion on the merits of denial of the petition for review will follow in due course.” *Id.* The brief opinion explained that it had decided to lift the stay because “the balance of hardships no longer tips sharply in the [plaintiffs’] favor.” *Id.* To leave the stay in place would result in hardships

because it would “prevent the award of construction contracts, postpone the hiring of construction employees, and significantly increase costs.” *Id.* Plaintiffs, on the other hand, would suffer almost no hardships because the court had determined on the merits that STB had complied fully with the law. *Id.* No reason existed to leave a stay in place during a time in which the Ninth Circuit completed work on an opinion in favor of the STB.

**b. Irreparable Injury**

Defendants’ claims of irreparable injury fail to support a stay. Irreparable harm stands as the “bedrock requirement” of a stay pending appeal. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011) (per curiam). Federal Defendants complain that, absent a stay, the Corps will be burdened by having to process an increased number of individual permit applications under § 404(a). (Doc. 131 at 19-20.) Those burdens prove to be a fault of the Corps’ own making. Federal Defendants’ claimed harms appear “less than convincing” in light of the Corps’ knowledge that its reauthorization of NWP 12 required § 7(a)(2) consultation given its prior consultation on the reissuance of NWP 12 in 2007. (Doc. 130 at 20); *Ctr. for Food Safety v. Vilsack*, 10-cv-04038, 2010 WL 11484449, at \*6 (N.D. Cal. Nov. 30, 2010) (citation omitted); *see also Al Otro Lado*, 952 F.3d at 1008 (noting that the fact that the government’s asserted harm was largely self-inflicted severely undermined the government’s claim for equitable relief).

Indeed, the Corps' own regulatory manager acknowledged the Corps' consultation obligations before recommending that the Corps simply make a "national 'no effect' determination for each NWP reissuance until it is challenged in federal court and a judge rules against the Corps." NWP036481. Plaintiffs challenged the Corps' no effect determination in federal court. The Court ruled against the Corps, just as the Corps anticipated. (Doc. 130 at 7-21.) This type of "largely self-inflicted" harm undermines the Corps' claim for equitable relief. *See Al Otro Lado*, 952 F.3d at 1008.

The Corps' alleged burden fails to support a stay where, as here, "the troubles complained of resulted from [the agency's] failure to follow the law in the first instance." *Swan View Coal. v. Weber*, 52 F. Supp. 3d 1160, 1161-62 (D. Mont. 2014) (enjoining Forest Service from authorizing or accepting harvest plans for site-specific timber projects due to failure to comply with NEPA and ESA); *accord Miller v. Carlson*, 768 F. Supp. 1341, 1343 (N.D. Cal. 1991) (denying stay based on rejection of fiscal constraints as justification for a state's failure to comply with its legal obligations). The Ninth Circuit affirmed a preliminary injunction that required the federal government to hold bond hearings before an immigration judge. *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013). The Ninth Circuit, in rejecting the government's cost concerns in complying with the terms of preliminary injunction, noted that even the likelihood of the

government facing “severe logistical difficulties in implementing [the injunction]” would not warrant a stay as these difficulties “would merely represent the burdens of complying with the applicable statutes.” *Id.* The Corps similarly faces the burdens of complying with the ESA. Moreover, any burdens that the Corps will face represent largely a fault of its own making. *See Swan View Coal.*, 52 F. Supp. 3d at 1161-62.

Intervenors claim that their inability to rely on NWP 12 will cause additional costs and delays. (Doc. 137 at 15-18 & Doc. 138 at 14-16.) The Court’s amended remedy to partial vacatur and partial injunction lessens the burdens suggested by Intervenors. The Court narrowed the scope of the vacatur and injunction to minimize potential disruption to existing projects and smaller-scale projects while ensuring appropriate protection for endangered and threatened species and their critical habitats. *See supra* pp. 17-18, 20. NWP 12 does not stand as Intervenors’ only option. Developers remain able to pursue individual permits for their new oil and gas pipeline construction. *See Pub. Emps. for Envtl. Responsibility*, 189 F. Supp. 3d at 3.

TC Energy states that enjoining Keystone XL from using NWP 12 would cause substantial harm to TC Energy, TC Energy’s employees and its customers, the State of Montana, and all the local governments, businesses, and individuals that will benefit from the economic activity generated by construction of Keystone

XL. (Doc. 137 at 20-21.) TC Energy relies largely upon the U.S. Supreme Court's decision in *Amoco Production Company*, 480 U.S. at 545, to support its claim that courts should not necessarily presume irreparable harm in environmental cases.

Two Alaska Native villages and a Native organization sought to enjoin exploratory drilling off the Alaska coast under leases that the Secretary of the Interior had granted to oil companies. *Amoco*, 480 U.S. at 535. Plaintiffs alleged that the leases violated the Alaska National Interest Lands Conservation Act ("ANILCA") because it restricted their use of subsistence resources. *Id.* The U.S. Supreme Court reversed the Ninth Circuit's grant of injunctive relief based on its use of a presumption of irreparable harm in the context of ANILCA. *Id.* at 545.

The presumption of irreparable injury when an agency fails to evaluate thoroughly the environmental impact of a proposed action runs contrary to traditional equitable principles involved in determining the appropriateness of granting injunctive relief. *Id.* To permit oil exploration to continue pending administrative review did not violate ANILCA where "injury to subsistence resources from exploration was not at all probable." *Id.* The Supreme Court understood, however, that in most instances "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable." *Id.* The balance of harms usually will favor the issuance of an injunction to protect the environment when "such injury is

sufficiently likely.” *Id.*

*Amoco* looked with disfavor upon the presumption of irreparable harm in the context of ANILCA. *Id.* The Ninth Circuit and other circuits have questioned the applicability of *Amoco* to NEPA cases. *See, e.g., Sierra Club v. U.S. Forest Serv.*, 843 F.2d 1190 (9th Cir. 1988); *Marsh*, 872 F.2d at 502–03 (holding *Amoco* should not routinely control the decision of whether to enjoin agency action in NEPA cases). The First Circuit has outlined why harm may not prove irreparable under ANILCA even when irreparable under other statutes. Under NEPA, for example, if “the decisionmaker has fully considered the environmental impacts of the proposed action, NEPA does not stop him from deciding to cause environmental damage.” *Marsh*, 872 F.2d at 502. ANILCA, on the other hand, allows a court to make the decisionmaker choose a different option entirely. *Id.* at 503. This distinction, according to the First Circuit, proves important because agency decisions in general face “every-growing bureaucratic commitment” as interest groups, workers, suppliers, potential customers and local officials “become ever more committed to the action initially chosen.” *Id.* at 503. Under ANILCA, environmental harm proves “reparable” because the court can require the decisionmaker to make a new choice, regardless of the level bureaucratic commitment. Under NEPA, however, the court’s limited ability to review actions means that any later litigation “effort to bring about a new choice, simply by

asking the agency administrator to read some new document, will prove an exercise in futility” due to bureaucratic commitment. *Id.* This futility means “that ever-growing bureaucratic commitment to a project . . . may prove to be ‘irreparable harm’ in a NEPA case in a sense not present in an ANILCA case.” *Id.*

These decisions, and their reasoning, appear to support the presumption of irreparable damage employed by the Ninth Circuit in evaluating alleged NEPA violations. Here, we face a violation of the ESA and its programmatic consultation requirement. This programmatic consultation requirement compares to the procedural requirements of NEPA that serve to apprise the agency of environmental consequences. The Court nevertheless will follow *Amoco* and not presume that irreparable injury would arise from the Corps’ failure to engage in programmatic consultation as required by the ESA. *See, e.g., Cottonwood Envtl. Law Ctr*, 789 F.3d at 1089–91; *Pub. Serv. Co. of Colorado v. Andrus*, 825 F. Supp. 1483, 1504–08 (D. Idaho 1993), *modified*, No. CIV. 91-0035-S-HLR, 1993 WL 388312 (D. Idaho Sept. 21, 1993).

The district court in *Andrus* found that Idaho had shown several irreparable injuries that would result from the decisions of the Department of Energy (“DOE”) regarding the shipment, receipt, processing, and storage of spent nuclear fuel at the national engineering laboratory in Idaho. The number and volume of shipments of spent nuclear fuel to the laboratory would increase dramatically under DOE’s

current proposals and it was undisputed that the total amount of radiation exposure increases as the number of shipments increases. *Andrus*, 825 F. Supp. at 1505. The risk of an accident in transit also increases as the number of shipments increase. *Id.* at 1505-06. The environmental consequences of even a single accident could be devastating. *Id.* at 1504-08. These factors easily satisfied the irreparable injury requirement. Spent nuclear fuel admittedly poses a risk of a kind different than the construction and development of oil and gas pipelines. Nevertheless, an increase in the number and size of pipelines increases the risk of an accident or harm to the environment in the construction and development of these pipelines. *See Sierra Club v. U.S. Fish & Wildlife Serv.*, 235 F. Supp. 2d 1109, 1139-40 (D. Or. 2002) (determining that the potential over-harvesting of cougars satisfied the likelihood of irreparable harm requirement to support injunction until completion of EIS).

Intervenors' alleged harm stems from the requirement that Intervenors and their members follow the law and obtain permits for their projects. These type of ordinary compliance costs likewise do not rise to the level of irreparable harm. In fact, "monetary injury is not normally considered irreparable" absent a threat of being driven out of business. *hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 993 (9th Cir. 2019) (citation and alteration omitted)); *see also Am. Hosp. Ass'n v. Harris*, 625 F.2d 1328, 1331 (7th Cir. 1980) (determining that "injury resulting from attempted compliance with government regulation ordinarily is not

irreparable harm”). Intervenor possess no inherent right to maximize revenues by using a cheaper, quicker permitting process, particularly when their preferred process does not comply with the ESA. *See Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 738 (9th Cir. 2001) (determining that the “loss of anticipated revenues . . . does not outweigh the potential irreparable damage to the environment”), *abrogated on other grounds by Monsanto*, 561 U.S. 139; *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014) (irreparable environmental injuries outweigh temporary economic harms).

**c. The Balance of the Equities and Public Interest**

Defendants’ failure to satisfy the irreparable harm requirement relieves the Court from needing to address the final two factors. *See Leiva-Perez*, 640 F.3d at 965. Out of an abundance of caution, however, the Court will address the balance of equities and the public interest. The balance of equities and public interest “tip sharply” in Plaintiffs’ favor in this case. *See Al Otro Lado*, 952 F.3d at 1015. The equities and public interest factors always tip in favor of the protected species “when evaluating a request for injunctive relief to remedy an ESA procedural violation.” *Cottonwood Envtl. Law Ctr.*, 789 F.3d at 1091.

As detailed above, Plaintiffs would suffer substantial harm if the Court allowed Keystone XL and other oil and gas pipelines to be constructed using

NWP 12 during the remand. (*See* Doc. 138-1 at 6-7 (stating that developer was one month away from receiving verification for a pipeline “designed to extend hundreds of miles across multiple states”); Doc. 138-5 at 5 (stating that developers have plans to construct pipelines in 17 states)). The fact that the Corps *already* has issued more than 38,000 preconstruction notification (“PCN”) verifications under NWP 12 since March 19, 2017, up and until the April 15, 2020 Order, compounds this harm. (*See* Doc. 131-1 at 3.)

Federal Defendants claim that Plaintiffs will suffer no such harm. Federal Defendants note that very few of the 5,500 pending PCNs relate to oil and gas pipelines or implicate listed species. (Doc. 131 at 16.) This argument fails. The mere fact that many *other* PCNs remain pending does not mean that the oil and gas pipelines waiting on verifications will not harm Plaintiffs if allowed to proceed. Further, even if the Court were to assume that permittees correctly determine whether their NWP 12-authorized activities trigger General Condition 18, the ensuing project-level review for those activities cannot cure the Corps’ violation of a failure to engage in programmatic consultation pursuant to § 7 of the ESA. (*See* Doc. 130 at 18-20.) NWP 12 requires programmatic consultation to ensure that the cumulative impacts of oil and gas pipelines, combined with the thousands of other PCN and non-PCN uses of NWP 12, will not cause adverse effects to listed species. (*Id.* at 20.)

The public interest further weighs against the issuance of a stay. In arguing otherwise, Defendants cite the need to use NWP 12 for the maintenance and repair of electric, internet, and cable lines and wires. (*See, e.g.*, Doc. 131 at 16; Doc. 135 at 4-5.) The Court's narrowing of the vacatur and injunction will allow these uses to continue. This narrowing of the vacatur and injunction thereby avoids many associated harms to the public.

The Court's narrowing of the vacatur ensures that the Corps can enforce special conditions in existing verifications for projects that already have been built. The Ninth Circuit considered whether vacatur would risk greater environmental harm to vulnerable bee populations in rejecting the agency's request to leave the unlawful registration decision in place on remand. *Pollinator*, 806 F.3d at 532. The Court similarly declines to risk potential environmental harm to endangered species by leaving NWP 12 in place on remand. And no confusion should result from the Corps' regulation deeming PCNs presumptively authorized after 45 days. The Corps should deny verifications to address any uncertainty, but the narrowed scope of the Court's vacatur dictates that non-pipeline construction activities and routine maintenance, inspection, and repair activities on existing NWP 12 projects remain authorized.

No public interest exists in allowing the construction of new oil and gas pipelines to proceed before the Corps has completed the legally required

programmatic consultation under § 7 of the ESA. This programmatic consultation “allows for a broad-scale examination” of NWP 12’s potential impacts and safeguards against the “piecemeal destruction” of listed species and critical habitat. (Doc. 130 at 10, 18.) The threat of such destruction from oil and gas pipelines proves substantial.

The public’s interest in ensuring that the Corps follows the ESA trumps any purported tax and energy security benefits of new oil and gas pipelines. (See Doc. 137 at 17-18; Doc. 135 at 6; Doc. 138 at 8-9). The district court in *Montana Wilderness Association v. Fry*, 408 F. Supp. 2d 1032, 1038 (D. Mont. 2006), understood that the “most basic premise of Congress’ environmental laws” is that “the public interest is best served when the law is followed.” The U.S. Supreme Court likewise opined that it remains “beyond doubt that Congress intended endangered species to be afforded the highest of priorities.” *Hill*, 437 U.S. at 174; see also *Indigenous Envtl. Network v. State Dep’t*, 369 F. Supp. 3d 1045, 1051-52 (D. Mont. 2018) (concluding potential environmental damage to the public outweighed any energy security and economic benefits provided by Keystone XL). The Court agrees.

## ORDER

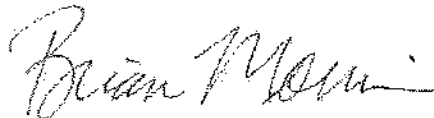
Accordingly, it is **HEREBY ORDERED** that the relief in the Court’s April 15, 2020 Order (Doc. 130 at 26) is **AMENDED AS FOLLOWS**:

5. NWP 12 is vacated as it relates to the construction of new oil and gas pipelines pending completion of the consultation process and compliance with all environmental statutes and regulations. NWP 12 remains in place during remand insofar as it authorizes non-pipeline construction activities and routine maintenance, inspection, and repair activities on existing NWP 12 projects.

6. The Corps is enjoined from authoring any dredge or fill activities for the construction of new oil and gas pipelines under NWP 12 pending completion of the consultation process and compliance with all environmental statutes and regulations. The Corps remains able to authorize dredge or fill activities for non-pipeline construction activities and routine maintenance, inspection, and repair activities on existing NWP 12 projects.

It is further **ORDERED** that Federal Defendants' and TC Energy's Motions for Partial Stay Pending Appeal (Docs. 131 & 136) are **DENIED**.

DATED this 11th day of May, 2020.



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Brian Morris, Chief District Judge  
United States District Court

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**PUC DOCKET NO. 56211**

<b>APPLICATION OF CENTERPOINT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ENERGY HOUSTON ELECTRIC, LLC</b>	<b>§</b>	
<b>FOR AUTHORITY TO CHANGE RATES</b>	<b>§</b>	<b>OF TEXAS</b>

**DIRECT TESTIMONY**

**OF**

**DERYL TUMLINSON**

**ON BEHALF OF**

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC**

**MARCH 2024**

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## **GLOSSARY OF ACRONYMS AND DEFINED TERMS**

<b>Acronym</b>	<b>Definition</b>
ALA	Asset Lifecycle Accounting
CAIDI	Customer Average Interruption Duration
CenterPoint Houston or Company	CenterPoint Energy Houston Electric, LLC
Commission	Public Utility Commission of Texas
CNP	CenterPoint Energy, Inc.
CSO	Customer Service Orders
EEI	Edison Electric Institute
EOP	Emergency Operations Plan
ERCOT	Electric Reliability Council of Texas, Inc.
GIS	Geographical Information System
ICS	Incident Command System
IGSD	Intelligent Grid Switching Devices
kV	Kilovolts
O&M	Operations and Maintenance
SAIDI	System Average Interruption Duration Index
SAIFI	System Average Interruption Frequency Index
TEEEF	Temporary Emergency Electric Energy Facilities
Test Year	12 Months Ending December 31, 2023
URD	Underground Residential Distribution

**EXECUTIVE SUMMARY****DISTRIBUTION OPERATIONS AND SERVICE DELIVERY****(DERYL TUMLINSON)**

The CenterPoint Energy Houston Electric, LLC (“CenterPoint Houston” or the “Company”) Distribution Operations and Service Delivery division is responsible for the day-to-day operation of the Company’s distribution grid.

My testimony:

- describes the Distribution Operations and Service Delivery Division;
- describes the quotidian activities and major programs and initiatives that drive distribution investment and expense;
- discusses the impacts and operational responses that occurred as a response to significant weather events, such as hurricanes, freezes, and tornados;
- supports the reasonableness and necessity of operations and maintenance (“O&M”) expenses incurred in support of the distribution functions during the 12 months ended December 31, 2023 (“Test Year”) in the amount of \$87.0 million;
- supports the reasonableness and necessity of distribution capital costs from January 2019 through December 2023 in the amount of approximately \$3.070 billion, of which approximately \$1.516 billion was attributable to customer growth;
- presents the impact of supply chain disruptions; and
- describes the evaluation of long lead-time asset purchases.

Together with the cost-of-service data and testimony of the Company’s other witnesses, my testimony demonstrates that the capital expenditures and Test Year O&M expenses for the distribution function are reasonable, necessary, and representative of the costs to provide service to customers of CenterPoint Houston and thus, should be included in the Company’s cost of service.

**Direct Testimony of Deryl Tumlinson  
CenterPoint Energy Houston Electric, LLC**

**DIRECT TESTIMONY OF DERYL TUMLINSON**

**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME AND POSITION.**

A. My name is Deryl Tumlinson, and I am employed by the Company as Vice President of Distribution Operations and Service Delivery.

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.**

A. I graduated from LeTourneau University in 2000 with a bachelor's degree in business administration. I began my career with Houston Lighting & Power, a CenterPoint Energy, Inc. ("CNP") predecessor company, in August 1983. Since that time, I have been employed by CNP or one of its affiliates. My positions within the Company have included Power Plant Operator, Service Consultant, Service Area Supervisor, Service Area Director, Business Transformation Director, Major Underground Operations Director, and Regional Operations Director. I was named to my present position in March 2023, at which time I assumed responsibility for electric distribution operations in the state of Texas.

**Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

A. As Vice President of Distribution Operations and Service Delivery, my responsibilities include overseeing electric distribution operations for the entire greater Houston area, which covers approximately 5,000 square miles and delivers electricity to approximately 2.8 million metered customers.

1    **Q.    ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

2    A.    I am testifying on behalf of CenterPoint Houston.

3    **Q.    HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY**  
4    **PROCEEDINGS?**

5    A.    Yes. I have filed testimony on behalf of CenterPoint Energy for its AMS  
6    Reconciliation Filing with the Public Utility Commission of Texas ("Commission")  
7    in Docket Nos. 38339, 42084, and 47364.

8    **Q.    WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
9    **PROCEEDING?**

10   A.    My testimony provides insight into the work that Distribution Operations and  
11   Service Delivery completes for the Company. These activities support the \$87.0  
12   million in O&M expense and \$3.070 billion of capital investment associated with  
13   activities performed by the Distribution Operations and Service Delivery Division.  
14   At the end of the test year, CenterPoint Houston's Electric Business Unit in Texas  
15   consisted of six divisions: (1) Distribution Operations and Service Delivery, (2)  
16   Electric Engineering, (3) Grid Transformation and Investment Strategy, (4) High  
17   Voltage and System Operations, (5) Major Underground and Distribution  
18   Modernization division, and (6) Strategic Business Growth and Engagement.<sup>1</sup>

19            My testimony identifies the functions of Distribution Operations and  
20   Service Delivery and describes how the division is structured and staffed to  
21   accomplish the goal of providing safe and reliable electric delivery distribution

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<sup>1</sup> Based on organizational structure on 12/31/2023, Strategic Business Growth & Engagement division led by Rina Harris is included with Operations in this proceeding. The division has since moved to the Customer Experience Organization.

1 service at a reasonable cost. My testimony demonstrates that the O&M costs  
2 associated with the Distribution Operations and Service Delivery division are  
3 effectively and carefully managed and maintained through business planning,  
4 budget plan review, and ongoing budget plan monitoring. In addition, my  
5 testimony describes restoration efforts for major events, such as hurricanes and ice  
6 storms. My testimony also addresses supply chain disruptions and long lead time  
7 items and how they impacted Distribution Operations and Service Delivery. I  
8 support the prudence of distribution capital investment in the amount of \$3.070  
9 billion. This capital investment is used and useful in the provision of electric utility  
10 service and was prudently incurred. As a result, these costs are reasonable and  
11 necessary and should be recovered in the Company's rates.

12 **Q. DO YOU SPONSOR ANY EXHIBITS OR SCHEDULES INCLUDED IN**  
13 **THE RATE FILING PACKAGE?**

14 A. No. My testimony includes no exhibits, and I do not sponsor or co-sponsor any  
15 schedules in the rate filing package.

16 **Q. WAS YOUR TESTIMONY PREPARED BY YOU OR UNDER YOUR**  
17 **DIRECT SUPERVISION AND CONTROL?**

18 A. Yes.

19 **Q. PLEASE DESCRIBE THE INTERACTION OF YOUR TESTIMONY WITH**  
20 **OTHER WITNESSES IN THIS CASE.**

21 A. My testimony sponsors the total capital investment that has been made in the  
22 Company's distribution system since January 1, 2019, and describes the day-to-day  
23 operation, system maintenance and trouble response of the distribution delivery

1 system and service center activities. My testimony and that of company witness Mr.  
 2 Randal Pryor explain the distribution reliability and maintenance programs for  
 3 which we are each responsible.

4 Mr. Randal Pryor is responsible for Major Underground and Distribution  
 5 Modernization and sponsors programs such as the Distribution Pole Life Extension  
 6 Program, the Vegetation Management Program, part of the Grid Modernization  
 7 Program, and the Cable Life Extension Program. Mr. Pryor's testimony will also  
 8 discuss three-phase metering, while my testimony will cover single-phase meters.

9 I will discuss the impact of supply chain disruptions and long lead time  
 10 materials to Distribution Operations and Service Delivery, but Ms. Carla Kneipp  
 11 will discuss the impact in more detail.

12 I support the reasonableness and necessity of the capital and O&M costs  
 13 associated with Distribution Operations and Service Delivery that are attributed to  
 14 roles and tasks at the Service Centers and a portion of the distribution programs,  
 15 such as the Grid Modernization Program.

16 The chart below provides a very high-level overview of the testimony of the  
 17 Company's seven operations witnesses.

#### Overview of CenterPoint Operations Witnesses

Witness, Title	Subjects Addressed
<b>Lynnae Wilson,</b> Senior Vice President, Electric Business Unit	<ul style="list-style-type: none"> <li>• Overview of CenterPoint Houston and its operations;</li> <li>• Company's organizational and management structure and Company's commitment to its core values;</li> <li>• Summary of the Company's rate filing package,</li> <li>• The Company's efforts related to reliability and resiliency, and the impact of economic and customer growth in the Company's service territory since its last base rate case.</li> </ul>
<b>Eric Easton,</b> Vice President,	<ul style="list-style-type: none"> <li>• How Distribution and Transmission Planning groups identify and develop future capital investment projects;</li> <li>• How capital investments are prioritized and optimized;</li> </ul>

Direct Testimony of Deryl Tumlinson  
 CenterPoint Energy Houston Electric, LLC

Witness, Title	Subjects Addressed
Grid Transformation & Investment Strategy	<ul style="list-style-type: none"> <li>• The reliability reporting process and various reporting tools that have been developed;</li> <li>• How the addition of a Capital Program Management department will support the efficient execution of capital projects and programs;</li> <li>• How the Strategic Coordination and Analysis department aligns strategic initiatives, identifies synergies, and improves interdepartmental coordination on projects; and</li> <li>• Supports the reasonableness and necessity of Grid Transformation &amp; Investment Strategy-related Test Year O&amp;M expense and capital investment since 2019 and the related schedules.</li> </ul>
<b>David Mercado,</b> Vice President, High Voltage and System Operations	<ul style="list-style-type: none"> <li>• Overview of the structure and functions of the High Voltage and System Operations Division;</li> <li>• Operations in the High Voltage and System Operations Division since 2019;</li> <li>• Key programs and initiatives undertaken by the High Voltage and System Operations;</li> <li>• Expense planning and cost control measures; and</li> <li>• Supports the reasonableness and necessity of High Voltage and System Operations-related Test Year O&amp;M expense and capital investment since 2019 and the related schedules.</li> </ul>
<b>Randal M. Pryor,</b> Vice President, Major Underground & Distribution Modernization	<ul style="list-style-type: none"> <li>• MUG &amp; Distribution Modernization division and the major programs and initiatives;</li> <li>• Implications for MUG &amp; Distribution Modernization due to the growth the Company's distribution system has experienced since 2019;</li> <li>• Processes used to plan, monitor, and control investments and expenditures; and</li> <li>• Supports the reasonableness and necessity of Major Underground &amp; Distribution Modernization-related Test Year O&amp;M expenses and distribution capital investment since 2019 and the related schedules.</li> </ul>
<b>Deryl Tumlinson,</b> Vice President, Distribution Operations & Service Delivery	<ul style="list-style-type: none"> <li>• Distribution Operations and Service Delivery Division;</li> <li>• Quotidian activities and major programs and initiatives that drive distribution investment and expense;</li> <li>• Impacts and operational responses that occurred as a response to significant weather events;</li> <li>• Impact of supply chain disruptions;</li> <li>• Long lead-time asset purchases; and</li> <li>• Supports the reasonableness and necessity of Distribution Operations &amp; Service Delivery-related Test Year O&amp;M expenses and distribution capital investment since 2019 and the related schedules.</li> </ul>
<b>Mandie Shook,</b> Vice President, Electric Engineering	<ul style="list-style-type: none"> <li>• Creation of the Electric Engineering Division;</li> <li>• Operations within the Electric Engineering Division;</li> </ul>

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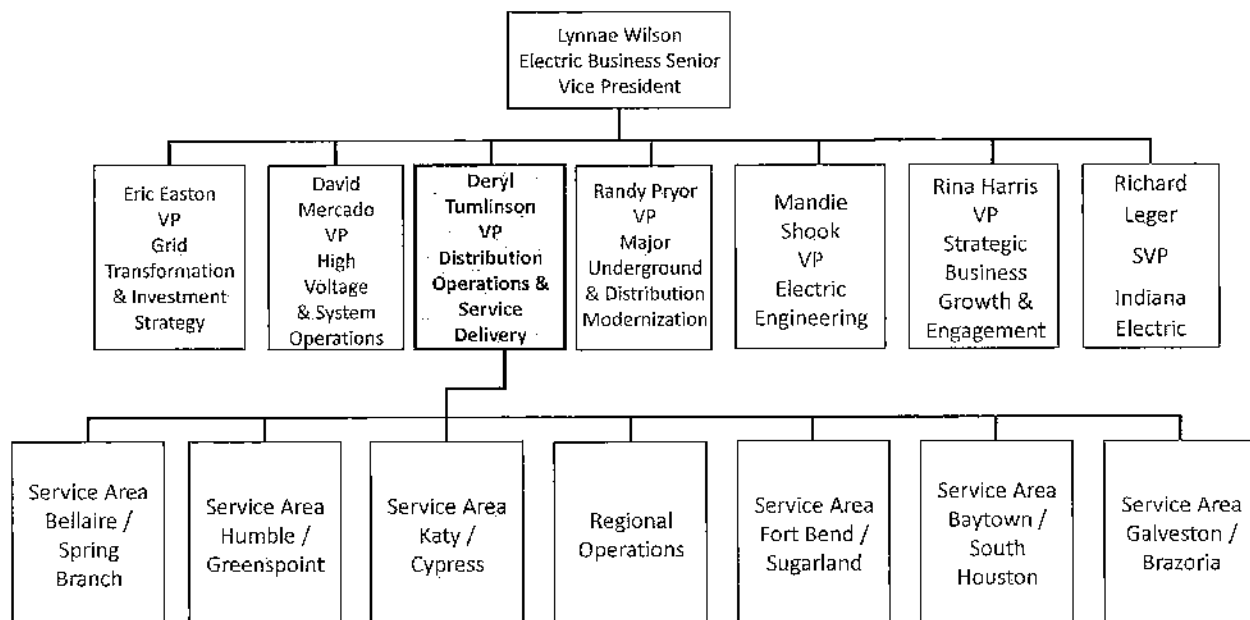
Witness, Title	Subjects Addressed
	<ul style="list-style-type: none"> <li>• Major programs and initiatives that drive Electric Engineering investment and expense, including the reliability initiative and resiliency standards;</li> <li>• Planning and cost control programs within the Electric Engineering Division;</li> <li>• Supports the reasonableness and necessity of Electric Engineering-related O&amp;M expense and capital costs incurred since 2019 and related schedules.</li> </ul>
<b>Rina Harris,</b> Vice President, Strategic Business Growth & Engagement	<ul style="list-style-type: none"> <li>• Functions of the Strategic Business Growth and Engagement Division;</li> <li>• Explains how the division is structured and staffed to enhance the customer service provided to large customers;</li> <li>• Steps taken to understand future customer needs so as to efficiently support large customer's growth and reliability needs; and</li> <li>• Supports the reasonableness and necessity of test year O&amp;M costs.</li> </ul>

**II. DESCRIPTION OF THE DISTRIBUTION OPERATIONS AND SERVICE DELIVERY DIVISION**

**Q. HOW IS DISTRIBUTION OPERATIONS AND SERVICE DELIVERY ORGANIZED?**

A. Distribution Operations and Service Delivery currently has 12 service centers that are managed by six Service Area Directors, based on geography, and a Director of Regional Operations, which includes a Reliability Department. See Figure 1 for the organizational chart for Distribution Operations and Service Delivery.

**Figure 1. Distribution Operations and Service Delivery Organizational Chart**



### III. DISTRIBUTION DELIVERY SYSTEM OVERVIEW

**Q. WHAT ASSETS MAKE UP THE COMPANY'S ELECTRIC DISTRIBUTION DELIVERY SYSTEM?**

A. The Company's distribution system begins at the distribution substation where high voltage, bulk power delivered by the Company's transmission system, is lowered to distribution voltage levels. The electric distribution delivery system consists of poles, conductors (i.e., wires), transformers, meters, and other equipment that efficiently transports power from the transmission delivery system to the customer.

Distribution feeder lines transport power from the distribution substations at 12 kilovolts ("kV") and 35 kV. CenterPoint Houston has approximately 1,817 distribution feeders. These feeders utilize both overhead and underground service to customers. As of December 31, 2023, the distribution system includes

approximately 5,753 miles of 12 kV and 5,665 miles of 35 kV overhead feeder main lines.

**Table 1 - Overhead Feeder Main Circuit Miles**

Circuit Miles	1/1/2019	12/31/2023
12kV Overhead Feeder Main	5,488	5,753
35kV Overhead Feeder Main	4,919	5,665
Total Miles	10,407	11,418
Percent Growth		9.7%

Customers not served directly from main distribution feeder lines receive their electric service from fused overhead or underground residential distribution (“URD”) lines originating from these main feeders. These fused lines are referred to as laterals. As of December 31, 2023, CenterPoint Houston’s distribution system includes over 12,013 miles of overhead primary laterals (with 9,028 miles at 12 kV and 2,985 miles at 35 kV) and over 11,753 miles of underground URD laterals (3,365 miles at 12 kV and 8,388 miles at 35 kV).

**Table 2 - Overhead Laterals Circuit Miles**

Circuit Miles	1/1/2019	12/31/2023
12KV Overhead Laterals	9,505	9,028
35KV Overhead Laterals	2,580	2,985
Total Miles	12,085	12,013
Percent Growth		(1%)

Note that the total miles of 12kV laterals have decreased. The reduction in 12kV lateral is largely a result of upgrading to 35kV or converting to circuit backbone, thus providing reclosing capabilities and overall reliability improvement.

**Table 3 - Underground Residential Distribution (URD) and Streetlight Miles**

<b>Circuit Miles</b>	<b>1/1/2019</b>	<b>12/31/2023</b>
12KV URD	3,172	3,365
35kV URD	7,175	8,388
Total Miles	10,347	11,753
Percent Growth		13.6%

To provide service to a distribution customer, the distribution voltage must be lowered to the customer's desired service voltage by utilizing service transformers. Typical service level voltages range from 120/240-volt to 480-volt service. Power is delivered to the customer's point of service by lines called "secondaries" or "service drops." CenterPoint Houston's distribution system includes 5,839 miles of overhead secondary cable as of December 31, 2023.

**Table 4 - Overhead Secondary Circuit Miles**

<b>Circuit Miles</b>	<b>1/1/2019</b>	<b>12/31/2023</b>
Overhead Secondary	5,723	5,839
URD Secondary	4,030	4,592
Total Miles	9,752	10,431
Percent Growth		7%

At the customer's point of service, all usage is measured by advanced smart meters that are owned, maintained, and operated by CenterPoint Houston. These advanced smart meters record 15-minute intervals of kwh and demand for residential, small commercial, mid-size commercial, large commercial, and industrial customers. CenterPoint Houston completed the initial installation of advanced meters on the Company's 2.2 million then-existing customer meters on July 1, 2012. In addition to the enhanced electric market operation, the advanced meters can report power outages at customer premises instantly. CenterPoint Houston uses data analytics as a tool to process and filter meter data into operational

1 metrics. The meter is the end of the utility's distribution system.

2 **Q. DOES CENTERPOINT HOUSTON USE UNDERGROUND**  
3 **DISTRIBUTION FACILITIES?**

4 A. Yes, the Company utilizes two main types of underground facilities to serve  
5 designated areas. Dedicated underground feeder lines that serve downtown  
6 Houston, Texas Medical Center, Houston Intercontinental Airport, UT Medical  
7 Branch in Galveston, and the Galleria and Greenway Plaza areas, freeway  
8 crossings, and substation connections called "getaways" are the responsibility of  
9 Major Underground and will be discussed in Mr. Pryor's testimony. The  
10 underground system also includes URD single-phase circuits primarily used for  
11 serving residential subdivisions.

12 **IV. DISTRIBUTION DELIVERY SYSTEM IMPROVEMENTS**

13 **Q. WHAT ARE THE CATEGORIES FOR CAPITAL INVESTMENTS FOR**  
14 **THIS RATE FILING?**

15 A. The costs for capital investments from January 1, 2019, through December 31,  
16 2023, are in the following categories: customer growth, reliability improvements,  
17 restoration, and general equipment.

18 **Q. WHAT SYSTEM IMPROVEMENTS WERE NECESSARY DURING THE**  
19 **PERIOD JANUARY 1, 2019, THROUGH DECEMBER 31, 2023?**

20 A. In Distribution Operations and Service Delivery, system improvements include  
21 overhead reliability projects that upgrade capital equipment inspected and  
22 identified as a candidate for replacement. A typical job will replace poles,  
23 conductors (i.e., wires), transformers, fuses, and associated hardware to reduce the  
24 probability of failure of the equipment. This work is performed typically on

1 underperforming circuits, such as (a) the circuits that are in the lowest 10% of  
2 System Average Interruption Duration Index ("SAIDI") or System Average  
3 Interruption Frequency Index ("SAIFI") performance and (b) the circuits that have  
4 SAIDI or SAIFI that is greater than 300% of the systemwide SAIDI or SAIFI.  
5 Focusing our work on these underperforming circuits provides the most value for  
6 our customers. This work is completed under the programs described below.  
7 CenterPoint Houston witness Ms. Shook also speaks to the 300% circuit program  
8 in her direct testimony.

9 **Q. DOES CENTERPOINT HOUSTON HAVE CAPITAL IMPROVEMENT**  
10 **PROGRAMS THAT ARE DESIGNED TO MAINTAIN OR IMPROVE**  
11 **RELIABILITY?**

12 A. Yes. Distribution Operations and Service Delivery has programs to improve  
13 reliability which often result in capital improvements. These programs include the  
14 Company's Pole Life Extension Program and URD Cable Life Extension Program  
15 (both described in Mr. Pryor's testimony), the power factor program (described in  
16 Mr. Easton's testimony), as well as the Infra-Red Program, the Root Cause Analysis  
17 Program, the Hot Fuse Program, and the Distribution Automation Program (each  
18 of which I describe below).

19 **Q. PLEASE DESCRIBE THE INFRA-RED PROGRAM**

20 A. The Infra-Red Program utilizes infra-red technology to see the heat generated by  
21 deteriorating components on the overhead distribution system. Infra-red  
22 technology is a unique tool to find potential equipment outages before they occur,  
23 so that proactive repairs can be made prior to an outage. Ms. Shook's Testimony

1 discusses the Electric Engineering Division's inspection process for the Infra-red  
2 program. When equipment that is running hotter than expected is found, a  
3 notification is created and sent to the Distribution Operations and Service Delivery  
4 division. From 2019 through 2023, there were 1,328 pieces of equipment that were  
5 identified as either needing repair or replacement. Distribution Operations and  
6 Service Delivery takes these notifications and creates work orders for field crews  
7 to make necessary repairs.

8 **Q. PLEASE DESCRIBE THE ROOT CAUSE ANALYSIS PROGRAM**

9 A. Pursuant to the Root Cause Analysis Program, the Company analyzes circuits that  
10 it projects will not perform as well as desired under the SAIDI and SAIFI metrics.  
11 As discussed by Ms. Shook, the Company's Electric Engineering Division conducts  
12 a detailed analysis of circuit outages for the current year. Electric Engineering uses  
13 outage causes, outage location, outage frequency, customer outage minutes, and the  
14 results of a field inspection to develop an action plan that can include several  
15 possible recommendations to address the root cause of the outages. From this  
16 analysis, Electric Engineering provides recommendations and an action plan to  
17 address circuit issues to the Distribution Operations and Service Delivery Division.  
18 The recommendations might include a protective coordination study, an infra-red  
19 inspection, enhanced lightning protection, reconfiguration to avoid vehicle  
20 collisions, reconfiguration of line fuses, tree trimming, and installation or relocation  
21 of automated devices. After the Distribution Operations and Service Delivery  
22 Division takes corrective action, the circuit performance is watched throughout the  
23 year to determine if the analysis was correct or if additional measures are necessary.

1 An essential element of the program is to create a proactive response to outages on  
2 10% circuits. A 10% circuit is a feeder that has been identified as having a SAIDI  
3 or SAIFI score in the top 10% of the system, in which lower is better. It is designed  
4 to identify and initiate corrective actions on circuits with issues before they become  
5 a repeating 10% circuit. To accomplish this, a circuit's indices are analyzed against  
6 predictive data that indicates operational issues.

7 **Q. PLEASE DESCRIBE THE HOT FUSE PROGRAM.**

8 A. The Hot Fuse Program identifies line and transformer fuses that have experienced  
9 recurring outages. Fuses are identified daily, and within approximately four weeks,  
10 corrective action is identified. There are two hot fuse criteria: (1) recurring hot fuse  
11 – a fuse that has had a minimum of three outages within a 90-day period, and (2)  
12 ultra hot fuse – a fuse that has had a minimum of three outages within a 30-day  
13 period. Hot fuses are more closely associated with wind-related events that are  
14 caused by vegetation or slack span contacts. The ultra hot fuses are more closely  
15 associated with ongoing issues, such as overloaded devices. In addition, a third  
16 criterion applies for fuses that have large customer counts that affect the circuit's  
17 overall reliability. For those circuits with greater than four outages in 12 months,  
18 these fuses are also reviewed during the Root Cause Analysis process to verify a  
19 successful solution to the outages. CenterPoint Houston field personnel inspect all  
20 the hot fuses meeting one of these criteria and research outage records to determine  
21 the cause of the outages causing the hot fuse. The Company then issues work orders  
22 to correct the problem. Typical remedies include tree trimming, the installation of  
23 wildlife protection devices, slack span adjustment, upgrading equipment, the

1 installation of additional fuses to limit the impact of a fault, and/or the installation  
2 of smart fuses that allow temporary faults to clear, mitigating sustained outages.

3 **Q. PLEASE DESCRIBE THE DISTRIBUTION AUTOMATION PROGRAM.**

4 A. The Distribution Automation Program is divided into two components:  
5 TripSavers® and Intelligent Grid Switching Devices (“IGSDs”). My testimony  
6 will discuss the TripSavers®, while IGSDs are discussed in Mr. Pryor’s testimony.  
7 TripSavers® are devices installed on distribution lines that detect downstream  
8 faults and can trip and reclose. This restores power automatically to the affected  
9 customers without having to send a truck to re-fuse the line and restore power.  
10 CenterPoint Houston has installed approximately 2,622 TripSavers® devices to  
11 convert a sustained outage to a momentary one so that customers’ lights will remain  
12 on.

13 **V. DISTRIBUTION OPERATIONS AND SERVICE DELIVERY SINCE**  
14 **DOCKET NO. 49421**

15 **Q. WHAT FACTORS HAVE AFFECTED THE COMPANY’S DAY-TO-DAY**  
16 **DISTRIBUTION OPERATIONS SINCE THE COMMISSION LAST**  
17 **CONDUCTED A COMPREHENSIVE BASE RATE REVIEW FOR**  
18 **CENTERPOINT HOUSTON?**

19 A. The test year in Docket No. 49421 ended December 31, 2018. Since that time,  
20 CenterPoint Houston has remained committed to delivering safe and reliable  
21 electric delivery service to its customers—this commitment never has and never  
22 will change. However, two developments have affected our day-to-day distribution  
23 operations: significant customer growth and supply chain disruptions. On top of  
24 those daily challenges, the Company incurred additional expenses from two more

1 episodic challenges: storm restoration efforts and the effects of the COVID-19  
2 Pandemic.

3 **1. Customer Growth**

4 **Q. PLEASE EXPLAIN HOW CUSTOMER GROWTH HAS IMPACTED THE**  
5 **DISTRIBUTION OPERATIONS AND SERVICE DELIVERY DIVISION.**

6 A. The extensive growth in the Houston area has resulted in the addition of 257,084  
7 new residential customers and 21,047 new commercial customers from January 1,  
8 2019, through December 31, 2023. This growth has resulted in a substantial  
9 uptick in the projects the Company has undertaken to ensure the ability to serve  
10 new customers and continued reliable operation of its system for existing  
11 customers. In the Distribution Operations and Service Delivery Division, this has  
12 meant an increase in the volume of projects for Service Consultants to design and  
13 coordinate with the influx of new customers. On the field activity side, more  
14 customers will require restoration when an outage occurs.

15 **Q. DOES THE COMPANY EXPECT CUSTOMER GROWTH TO**  
16 **CONTINUE?**

17 A. Yes, CenterPoint Houston expects distribution growth to continue, as identified and  
18 presented in testimony by Lynnae Wilson and Randy Pryor.

19 **2. Supply Chain Disruptions**

20 **Q. HOW HAVE SUPPLY CHAIN ISSUES IMPACTED DISTRIBUTION**  
21 **OPERATIONS AND SERVICE DELIVERY AT CENTERPOINT**  
22 **HOUSTON?**

23 A. Supply chain challenges significantly increased due to the COVID-19 global  
24 pandemic. Many of our trusted vendors were not able to get the raw materials they

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1 needed to build equipment and the lead time to procure some materials became very  
2 long. CenterPoint Houston proactively took measures to reduce the impact of this  
3 material shortage on customers. The Company's Supply Chain organization  
4 provided Distribution Operations and Service Delivery a complete list of equipment  
5 with lead time requirements of at least six months so we could determine which  
6 items would aid in restoring power to distribution customers following a significant  
7 power outage. Material quantity requirements were estimated by extracting  
8 previous material usage during significant historic events, including Hurricane Ike,  
9 Hurricane Harvey, and the 2022 heat wave as well as typical usage volumes. More  
10 details on the impacts of supply chain issues are provided in Company witness  
11 Carla Kneipp's testimony. The testimony of Ms. Colvin addresses the Company's  
12 request for long lead-time facilities cost recovery.

### 13 3. Storm Response and Service Restoration

14 **Q. WHAT TYPE OF STORM RESPONSE AND SERVICE RESTORATION**  
15 **HAS CENTERPOINT HOUSTON EXPERIENCED SINCE DOCKET NO.**  
16 **49421?**

17 **A.** Since the end of Docket No. 49421, CenterPoint Houston has experienced several  
18 storms which required mutual assistance and service restoration work. The storms  
19 that occurred since the end of 2019 include Hurricane Laura, Winter Storm Uri,  
20 Hurricane Nicholas, January 2023 Tornado, and a June 2023 storm. CenterPoint  
21 Houston witness David Mercado also speaks to storm restoration as it relates to  
22 CenterPoint Houston's transmission system.

**a. Hurricane Laura**

**Q. HOW WAS CENTERPOINT HOUSTON IMPACTED BY HURRICANE LAURA AND WHAT WAS THE RESPONSE?**

A. Hurricane Laura made landfall on August 27, 2020 as a Category 4 Hurricane with winds at 150 miles per hour. CenterPoint Houston began its preparations for a potential landfall to its service area and activated its Emergency Operation Plan (“EOP”), because landfall was predicted to the upper Texas coast to Louisiana. During the activation, resource acquisition for Vegetation Management, distribution line resources along with logistical support were secured in anticipation of the event. CenterPoint crews and equipment were also relocated inland from coastal areas such as Galveston. On August 25th, Galveston ordered evacuations for its residents. Fortunately for the Company’s service area, on August 26th, the storm made a turn to the north missing the CenterPoint Houston service territory and made landfall at Cameron, Louisiana during the early morning of August 27th as a Category 4 hurricane. The secured resources, including personnel, material and equipment, along with CenterPoint Houston personnel as part of mutual assistance networks were efficiently released the morning of the 27th to assist fellow Texans served by Entergy Texas in the Beaumont/Port Arthur area along with assistance provided to our neighboring state of Louisiana in the Lake Charles area. While the direct path was through Louisiana, CenterPoint Houston’s service area still felt the impact. Approximately 8,257 customers experienced outages due to the heavy downpours, gusty winds and lightning associated with Hurricane Laura. CenterPoint Houston offered mutual assistance to Louisiana and sent 124 internal full-time employees with appropriate fleet and equipment to support the

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1 restoration. CenterPoint Houston also released 87 full-time contractor line skills  
2 for additional support for those impacted.

3 **b. Winter Storm Uri**

4 **Q. HOW WAS CENTERPOINT HOUSTON IMPACTED BY WINTER**  
5 **STORM URI AND WHAT WAS THE RESPONSE?**

6 A. In February 2021, Winter Storm Uri occurred when several powerful polar vortex  
7 cold fronts brought extreme record-breaking winter weather with strong winds,  
8 snow, ice, and bitterly cold temperatures. The severe winter weather forced many  
9 Texas power plants offline while load was increasing to record levels, which  
10 resulted in an ERCOT system generation shortfall. This forced ERCOT to begin  
11 requests for CenterPoint Houston to manually shed very significant amounts of load  
12 for about three days. This load shed event created over 5.2 billion customer minutes  
13 and a system-wide SAIDI of 2,019.57 minutes. During Winter Storm Uri,  
14 CenterPoint Houston experienced a significant number of failed transformers and  
15 utilized internal resources and on-site contractors to restore service. The Company  
16 brought in external overhead and Major Underground line skills and vegetation  
17 management resources. Due to minimal impact to the Company's infrastructure,  
18 the resources were released to assist other utilities.

19 **c. Hurricane Nicholas**

20 **Q. HOW WAS CENTERPOINT HOUSTON IMPACTED BY HURRICANE**  
21 **NICHOLAS AND WHAT WAS THE RESPONSE?**

1 A. Hurricane Nicholas made landfall on Sept 13, 2021 as a Category 1 Hurricane with  
2 sustained winds at 75 miles per hour.<sup>2</sup> Nicholas caused over 700,000 customers to  
3 lose power, impacting 210 substations and 1,381 feeders. These outages created  
4 over 500 million customer minutes and a system-wide SAIDI of 188.47 minutes.  
5 CenterPoint Houston activated its EOP and brought in 2,089 mutual assistance  
6 skills, with 381 tree resources, and 1,708 distribution resources. The Company was  
7 also able to deploy its new Temporary Emergency Electric Energy Facilities  
8 (“TEEEF”) in response to Hurricane Nicholas. New legislation passed in 2021,  
9 which became Texas Utilities Code § 39.918, allows transmission and distribution  
10 utilities to lease TEEEF and to use them during widespread outages, including after  
11 storm events. TEEEF can help lessen outage duration for customers during load  
12 shed events, aid in restoration of electric service, and provide redundancy in case  
13 of an outage. During Hurricane Nicholas restoration, the Company first pressed into  
14 service the TEEEF to provide electricity to the Lake Jackson Civic Center that  
15 served as a center for cooling, electronic recharging, and water distribution for  
16 residents. The TEEEF was running consistently for approximately 70 hours while  
17 the Company worked on power restoration. Once power to the Civic Center was  
18 restored, the TEEEF was recalled and prepared for future use.

19 **d. January 2023 Tornado**

20 **Q. HOW WAS CENTERPOINT HOUSTON IMPACTED BY THE JANUARY**  
21 **2023 TORNADO?**

22 A. On January 24, 2023, an F3 tornado with estimated peak winds of 140 mph

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<sup>2</sup> [Hurricane Nicholas - Wikipedia](#)

1 impacted the South Houston and Baytown areas the Company serves and caused  
 2 significant damage. The Company responded quickly and opened the Pasadena  
 3 Fairgrounds to bring in 234 off-site contractors with distribution line skills to  
 4 accelerate restoration. The off-site contractors worked from January 25th to 27th,  
 5 and Company crews and on-site contractors performed final restoration over the  
 6 weekend and thereafter resumed normal activities. In response to the damage of the  
 7 January 2023 Tornado, the Company deployed and energized TEEEF to provide  
 8 service to two schools in the Pasadena area to resume classes just days after the  
 9 tornado. These schools were able to remain open for the remainder of the week  
 10 until normal service was restored.

11 **e. June 2023 Storm**

12 **Q. HOW WAS CENTERPOINT HOUSTON IMPACTED BY THE JUNE 2023**  
 13 **STORM?**

14 A. On June 21, 2023, the Company experienced another major weather event.  
 15 Sustained winds as high as 60 miles per hour were recorded and a record-high 97  
 16 mph wind gust occurred at Bush Intercontinental Airport around 9 p.m.,<sup>3</sup> which  
 17 tops the previous record of 82 mph during Hurricane Ike in 2008. Again, the  
 18 Company responded quickly and brought in 139 off-site distribution line workers  
 19 with specialized skills to supplement internal and on-site contract crews to assist  
 20 with the restoration, primarily in the Cypress, Humble and Greenspoint areas of the  
 21 Company's service area. The external crews worked diligently from June 22<sup>nd</sup>  
 22 through the 25<sup>th</sup>. The Company's response to the June 2023 event was recognized

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<sup>3</sup> 97 MPH wind gust at Intercontinental as summer storm knocks out power across Houston region – Houston Public Media.

1 by the Edison Electric Institute (“EEI”) and earned an EEI Emergency Response  
2 Award. During the June storms, two TEEEFs were deployed in the Greenspoint  
3 area to restore service to a retirement home and approximately 75 houses until  
4 normal restoration was completed approximately 24 hours later.

5 **f. Temporary Emergency Electric Energy Facilities (TEEEF)**

6 **Q. ARE THERE OTHER INSTANCES IN WHICH CENTERPOINT**  
7 **HOUSTON HAS DEPLOYED ITS TEEEF, BEYOND THE INSTANCES**  
8 **DESCRIBED ABOVE?**

9 A. Yes. In late August 2023, a potential generation shortage from ERCOT was  
10 forecast. The Company prepared the TEEEF resources to support any load shed  
11 requirements by ERCOT to maintain service to our customers. While the units were  
12 not activated, the Company’s preemptive actions would have averted potential  
13 outages for customers in extremely hot temperatures. Distribution Operations  
14 prepared for the use of TEEEF by performing numerous switching orders. In late  
15 2023, a barge hit and damaged the Pelican Island Causeway and Company facilities  
16 used to feed one of the two sources into Pelican Island. Customers were minimally  
17 affected, because the Company was able to restore service with the remaining  
18 circuit. However, due to the extreme temperatures and loss of redundancy to  
19 Pelican Island, the Company activated TEEEF and placed two generators in a  
20 strategic location on the island. The damage to the bridge required the Company to  
21 design an innovative solution to place the generators on barges and float them to  
22 the island for offloading, where they were then stationed and placed on standby.  
23 The proactive generator deployment acted as a secondary source for several months  
24 in the event of a possible extended outage until distribution repairs could be made

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1 and service to the island could be returned to normal. More details on TEEEF are  
2 provided in the testimony of Company witness Eric Easton.

**g. Service Restoration Process**

3 **Q. WHAT IS THE PURPOSE OF THE SERVICE RESTORATION PROCESS?**

4 A. The purpose of the service restoration process is to promptly respond to outages,  
5 identify outage causes, take appropriate corrective actions, and restore service to as  
6 many customers, as quickly as is safely possible. Reducing service response time  
7 will improve overall reliability. For more information on CenterPoint Houston's  
8 reliability performance metrics, please refer to Mr. Easton's direct testimony.

9 **Q. TO SUPPORT THIS SERVICE RESTORATION PROCESS, DID**  
10 **CENTERPOINT HOUSTON ESTABLISH ANY SPECIFIC ROLES?**

11 A. Yes. CenterPoint Houston has adopted the Incident Command System ("ICS")  
12 which is a component of the National Incident Management System. ICS uses a  
13 common system of identifying roles and responsibilities which include: Incident  
14 Commander, Operations Section Chief, and Planning Section Chief, among others.  
15 Additionally, CenterPoint Houston established the role of the Monitor at  
16 Distribution Control Operations to monitor the weather, provide alerts, and issue  
17 pages. This role is performed by one of the regional supervisors. CenterPoint  
18 Houston established the role of Trouble Coordinator so that at each service center  
19 a crew leader provides a single point of contact for trouble related issues at that  
20 center. The Incident Commander, whose responsibilities are typically performed  
21 by an electric operations director, makes decisions regarding the activation and  
22 mobilization of resources. The Incident Commander is supported by the Operations

1 Section Chief and the Planning Section Chief. Incident Commanders are identified  
2 annually and are an integral responsibility of all operational leaders. All  
3 distribution operational leaders play a vital role in this process and are assigned  
4 several weeks throughout the year in which they perform their role under the ICS  
5 structure.

6 **Q. HOW DOES THE SERVICE RESTORATION PROCESS ACCOMPLISH**  
7 **ITS GOALS?**

8 A. The service restoration process utilizes a number of steps to accomplish its goals.  
9 First, the Monitor watches weather conditions in advance of storms. This is  
10 especially important for storms that occur on weekends and after hours, so that  
11 crews can be mobilized before the weather enters the area. Second, using eight  
12 trouble levels (blue sky day up to an extreme event), the Trouble Coordinator  
13 measures the severity of the storm as determined by the number of circuits and  
14 fuses affected, as well as the numbers of customers impacted. Third, based on  
15 forecasted and actual trouble levels, the Incident Commander mobilizes crews to  
16 respond accordingly. It is important to have an appropriate match between the  
17 number of crews available and the amount of trouble. Communications are sent to  
18 all necessary personnel to provide notice of impending storms, trouble levels,  
19 mobilization requirements and storm status. Fourth, the crews follow restoration  
20 priority protocols that optimize restoration by restoring service to the outage events  
21 that impact the largest number of customers first. The priority is to restore circuits  
22 first, then fuses, then transformers and finally local outages, which are individual  
23 customers. This effort to triage events ensures that resources are deployed in the

1 most effective manner. Circuit and fuse metrics are reported weekly, along with  
2 monthly scorecards that measure call out rates, hold time, travel time, dispatch time  
3 and system response rates. The result is a unified system-wide approach to restore  
4 electric service.

5 **Q. DOES DISTRIBUTION OPERATIONS AND SERVICE DELIVERY USE**  
6 **ANY OTHER PROCESSES TO ENHANCE SERVICE RESTORATION IN**  
7 **THE EVENT OF A SEVERE STORM?**

8 A. Yes. Distribution Operations and Service Delivery uses trouble isolation practices.  
9 The purpose of trouble isolation practices is to isolate outages to the fewest number  
10 of customers, so that the time it takes to make the actual repair impacts the fewest  
11 number of customers. For URD loop outages, the practice includes determining  
12 the fault location, isolating the bad transformer or cable fault, re-establishing  
13 service to the remaining transformers, and replacing the bad transformer. As a  
14 result, only a few customers are out of service during the repair. This same practice  
15 is also used for overhead infrastructure where damaged infrastructure is isolated  
16 from sound infrastructure – allowing service to be restored to the customers located  
17 within the bounds of the non-impacted area.

#### **h. COVID-19 Pandemic**

18 **Q. DID THE COMPANY INCUR INCREMENTAL EXPENSES RESULTING**  
19 **FROM THE EFFECTS OF THE COVID-19 PANDEMIC?**

20 A. Yes. To meet the electric delivery needs of our customers, CenterPoint Energy  
21 implemented precautionary measures in response to the COVID-19 pandemic to  
22 keep its customers, contractors, and employees safe and informed. The Company

1 incurred goods and services procured as part of that response that would not have  
2 been incurred in the normal course of business. Those incremental costs largely  
3 include personal protective equipment, facilities and personal cleaning products,  
4 additional janitorial services, government-required testing, additional staging sites  
5 for social distancing and continued operations, and employee expenses for supplies  
6 and mileage necessary for closures and remote work.

7 **Q. FOR THE COVID INCREMENTAL DIRECT COSTS, HOW DID THE**  
8 **COMPANY DETERMINE THE AMOUNTS TO DEFER?**

9 A. At the start of the pandemic, the Company created cost objects in its accounting  
10 system to track COVID-related incremental direct costs incurred specifically as a  
11 result of and in response to the pandemic. Separate internal orders were established  
12 for each business area, and employees were instructed to charge COVID-related  
13 incremental direct costs to these orders. Company witness Kristie Colvin provides  
14 direct testimony for the accounting treatment of these incremental COVID  
15 expenses.

16 **VI. CAPITAL AND O&M EXPENSE PLANNING**  
17 **AND COST CONTROL**

18 **Q. HOW DOES CENTERPOINT HOUSTON ENSURE THAT ITS**  
19 **NECESSARY CAPITAL INVESTMENTS AND O&M EXPENSES ARE**  
20 **REASONABLE?**

21 A. CenterPoint Houston carefully plans capital investments and O&M activities and  
22 related expenses in a five-year planning process, and adjusts the programs, as well  
23 as costs annually depending upon system performance. The Company uses several  
24 processes to accomplish this oversight. These processes include: 1) the workforce

1 planning process, 2) budgeting and cost control, 3) the use of contractors, 4) the  
2 distribution planning process, 5) the transmission planning process, and 6) the asset  
3 management and prioritization process. I will discuss the workforce planning  
4 process along with budgeting and cost controls for internal crews, while Mr. Pryor's  
5 testimony will present budgeting and cost control and the use of contractors. The  
6 distribution planning process, the transmission planning process, and the asset  
7 management process are discussed in Mr. Easton's testimony.

8 **1. Internal Workforce Planning Process**

9 **Q. HOW DOES CENTERPOINT HOUSTON ENSURE THAT IT MAINTAINS**  
10 **PERSONNEL LEVELS SUFFICIENT TO OPERATE AND MAINTAIN ITS**  
11 **DISTRIBUTION DELIVERY SYSTEM?**

12 A. CenterPoint Houston must have an adequate number of experienced and  
13 well-trained field operations and service consultant employees on staff at all times.  
14 This will enable the Company to support maintenance operations and construction  
15 for service area growth and facilitate timely response for restoration efforts. As  
16 such, the Company has processes in place to ensure adequate staffing while, at the  
17 same time, ensuring that its staffing is efficient and reasonable.

18 For instance, the Company regularly and consistently evaluates future  
19 staffing needs. Succession planning is reviewed and updated for key positions  
20 within the distribution organizations to address attrition, retirements, and  
21 promotions.

22 Relatedly, CenterPoint Houston also uses Service Suite (formerly Mobile  
23 Data), which dispatches customer service orders ("CSO") and trouble orders to line  
24 mechanics in the field. This enables the distribution dispatching group to analyze

1 the Company's resource needs by reviewing work levels across the system and  
2 adjust CSO assignments across service center boundaries to meet daily work  
3 requirements. This eliminates the need for staffing for peak days within some  
4 service center offices and allows for a more equalized workload to be distributed  
5 across the system.

6 Additionally, CenterPoint Houston has established a Resource Allocation  
7 Team to review and authorize staffing levels line skill positions, including shifts  
8 and the various types of crews. This includes daytime one-man crews that perform  
9 trouble restoration and one-man CSO work, daytime two-man crews that perform  
10 two-man CSO work and assist on trouble restoration, daytime construction crews,  
11 evening crews, night crews and weekend crews. The Resource Allocation Team  
12 has representation that includes the Director of Operations, a Regional Operations  
13 Director, the Director of Distribution Control, the Director of Project Management,  
14 Service Area Operations Managers and Human Resource Managers.

15 Finally, the Company has established the Distribution Services Resource  
16 Utilization Team to support the Resource Allocation Team by analyzing staffing  
17 needs based on historical and projected workloads and making recommendations  
18 to the Resource Allocation Team accordingly.

19 **Q. ARE WORK MANAGEMENT SYSTEMS IN PLACE?**

20 A. Yes. All of the departments referenced in my testimony have work management  
21 systems in place to analyze the need for resources and to schedule and monitor  
22 work. Since 2000, all of these systems have been integrated with the corporate

enterprise information system, SAP. This effort has enhanced overall efficiency, enabled resource allocation, and provided improved cost monitoring.

## 2. Budgeting and Cost Control

**Q. WHAT MEASURES DOES THE COMPANY USE TO BUDGET, MONITOR, AND CONTROL COSTS?**

A. CenterPoint Houston develops the distribution organization's budget as part of the Company's business planning process. In developing the distribution organization's budget, CenterPoint Houston uses historical trends for service restoration and maintenance and analyzes current trends in development activity to anticipate growth and reliability that must be addressed through the budget. To be sure that planned expenditures remain reasonable, the Company monitors actual expenses, compares them against budgeted amounts on a monthly basis, and investigates variances. On a monthly basis, CenterPoint Houston makes projections and changes to the budget forecast based on this review. These spending evaluations result in continual system-wide cost control. Please refer to the testimony of Darren Storey for more detail on the Company's planning and budget processes for services provided to the Company by its affiliates.

## **VII. DISTRIBUTION OPERATIONS AND SERVICE DELIVERY O&M EXPENDITURES**

**Q. WHAT O&M AMOUNT WAS NECESSARY FOR THE DISTRIBUTION OPERATIONS AND SERVICE DELIVERY DIVISION DURING THE TEST YEAR?**

- 1 A. Distribution Operations and Service Delivery incurred \$87.0 million in O&M  
 2 during the test year. Table 5 shows the test year expense by department for the  
 3 Regional Operations, Service Delivery, and Administration and General.

4 **Table 5 - Test-Year O&M Expense by Department for**  
 5 **Distribution Operations and Service Delivery**

<b>Distribution Operations and Service Delivery O&amp;M by Department</b>	<b>Test Year Expense (in Millions)</b>
Regional Operations	\$ 79.0
Service Delivery	\$ 7.3
Administrative and General	\$ 0.7
<b>TOTAL:</b>	<b>\$ 87.0</b>

- 6  
 7 **Q. PLEASE DESCRIBE THE ACTIVITIES PERFORMED BY REGIONAL**  
 8 **OPERATIONS AND THE ASSOCIATED O&M COSTS.**

- 9 A. For the Test Year, Regional Operations O&M-related costs were \$79.0 million.  
 10 This department has six regional directors and twelve service centers that are  
 11 responsible for the day-to-day operations of overhead distribution overhead  
 12 delivery system and associated URD, including construction, operation, and  
 13 maintenance. The majority of the O&M expenditures are for essential,  
 14 non-discretionary activities since they involve distribution maintenance,  
 15 distribution restoration and new distribution service. Distribution maintenance  
 16 includes repairs for pole top switches, regulators, reclosers, capacitors, security and  
 17 guard lights, URD loops and transformers, and field corrective maintenance, which  
 18 is follow-up maintenance after trouble.

- 19 Distribution Operations and Service Delivery personnel responded to  
 20 approximately 55,686 outage cases in 2023. Outage events include circuit outages,

1 line fuse outages, transformer outages and individual customer outages. Inclement  
2 weather, equipment failure, and foreign objects (trees, vehicles, wildlife, etc.)  
3 coming into contact with distribution facilities typically cause these power  
4 interruptions. Most of the O&M repairs that are required are minor in nature, such  
5 as re-fusing line sections and replacing non-capital equipment (such as wooden  
6 crossarms and insulators). These expenditures do not include costs for restoration  
7 during major storm events, such as a hurricane or significant ice storm.

8 **Q. PLEASE DESCRIBE THE ACTIVITIES PERFORMED BY SERVICE**  
9 **DELIVERY AND THE ASSOCIATED O&M COSTS.**

10 **A.** For the Test Year, Service Delivery O&M-related costs were \$7.3 million. Within  
11 Service Delivery, service consultants are responsible for customer engagement,  
12 including meeting with customers, site inspections, coordinating planned outages  
13 with customers and field crews, and more. Service consultants typically meet with  
14 the customer on site to discuss the customer's service requirements, such as load.  
15 Once the scope of the job has been identified, the service consultants will use  
16 various software to design the job, including the geographic information system  
17 ("GIS"), which is used to create maps and geospatial drawings, and SAP, which  
18 details the materials and labor for the work order. When a customer calls for a  
19 move-in order, that call triggers the process for field crews to energize the line to  
20 the customer. The service consultant will continue to function as the customer  
21 liaison until completion.

22 This department is also responsible for inspecting all reoccurring hot line  
23 fuses, out of service requests, and infrared notifications. When follow up work is

1 required, Reliability also creates work orders for mitigation. This department also  
 2 inspects the worst 10% circuits as they are identified and creates action plans and  
 3 work orders for reliability improvements along with any other power quality  
 4 concerns.

5 **Q. WHAT O&M COSTS ARE ASSOCIATED WITH THE ADMINISTRATIVE**  
 6 **AND GENERAL CATEGORY FOR DISTRIBUTION OPERATIONS AND**  
 7 **SERVICE DELIVERY?**

8 A. For the test year, distribution administrative and general O&M costs were  
 9 \$0.7 million. These expenses include managerial labor, administrative support and  
 10 miscellaneous general expenses for the Distribution Operations and Service  
 11 Delivery Division.

12 **Q. ARE ALL OF THESE O&M EXPENDITURES REASONABLE AND**  
 13 **NECESSARY?**

14 A. Yes. The test year O&M expenses for Distribution Operations and Service Delivery  
 15 were related to necessary functions that directly impacted the reliability and  
 16 operation of the distribution system to serve both existing and new customers.

# 17 **VIII. DISTRIBUTION SYSTEM CAPITAL ADDITIONS**

18 **Q. WHAT CAPITAL INVESTMENT IN DISTRIBUTION PLANT**  
 19 **ADDITIONS DOES CENTERPOINT HOUSTON SEEK TO INCLUDE IN**  
 20 **RATE BASE IN THIS PROCEEDING?**

21 A. Distribution Operations and Service Delivery spent \$3.070 billion for distribution  
 22 plant additions between January 1, 2019 and December 31, 2023. These capital  
 23 investments were reasonable and necessary for customer growth, reliability

improvements, restoration, and general equipment. Table 6 shows a breakdown of the capital investment by category.

**Table 6 - Distribution Capital Investment by Category**

Major Underground & Distribution Modernization Capital Investment by Category (in Millions):						
Capital Investment by Category	2019	2020	2021	2022	2023	Total
Customer Growth (incl. Relocations, Meters, Communications)	\$ 183	\$ 244	\$ 269	\$ 337	\$ 483	\$ 1,516
Reliability Improvement	\$ 118	\$ 123	\$ 177	\$ 338	\$ 413	\$ 1,168
Restoration	\$ 47	\$ 42	\$ 58	\$ 79	\$ 119	\$ 345
General Equipment	\$ 7	\$ 19	\$ 4	\$ 6	\$ 5	\$ 42
Total	\$ 355	\$ 428	\$ 508	\$ 761	\$ 1,019	\$ 3,070

**Q. WHY WERE DISTRIBUTION CAPITAL INVESTMENTS NECESSARY?**

A. The major factors necessitating the distribution capital investments are load growth driving new meter installations, public improvements such as equipment relocations, reliability improvements such as system and grid resiliency projects utilizing TripSavers®, service restoration replacement costs for damaged distribution facilities, and general equipment which include the investments that are required for fleet, office facilities and equipment that occur as our system grows and ages.

**Q. WHAT CAPITAL INVESTMENT WAS NECESSARY FOR CUSTOMER GROWTH DURING THE PERIOD JANUARY 1, 2019 THROUGH DECEMBER 31, 2023?**

A. As shown below in Table 7, the capital investment for customer growth generally falls into the categories of distribution development, relocations, and new service. The testimony of Randy Pryor will discuss capital investments for customer growth in more detail.

**Table 7 – Customer Growth Investments**

Major Underground & Distribution Modernization Capital Service Customer Growth Investments (in Millions):								
Capital Investment by Category:	2019	2020	2021	2022	2023	Total		
Distribution Development	\$ 40	\$ 61	\$ 61	\$ 119	\$ 167	\$ 447		
Public Improvement (Relocations)	\$ 15	\$ 26	\$ 23	\$ 22	\$ 25	\$ 110		
New Service	\$ 113	\$ 146	\$ 169	\$ 175	\$ 264	\$ 871		
Overhead Installations (single and three phase)	\$ 41	\$ 60	\$ 71	\$ 66	\$ 102	\$ 342		
Underground Installations (single and three phase)	\$ 54	\$ 61	\$ 55	\$ 65	\$ 112	\$ 346		
Meters and Drops	\$ 9	\$ 10	\$ 27	\$ 25	\$ 28	\$ 99		
Street Lighting	\$ 14	\$ 15	\$ 16	\$ 18	\$ 21	\$ 85		
Meter & Communications	\$ 10	\$ 11	\$ 17	\$ 21	\$ 28	\$ 87		

**Q. WHAT CAPITAL INVESTMENT WAS NECESSARY FOR RELIABILITY IMPROVEMENT DURING THE PERIOD JANUARY 1, 2019, THROUGH DECEMBER 31, 2023?**

**A.** Capital investments, as shown in Table 8, are needed for reliability improvements to perform the Company's programs such as the Company's Pole Life Extension Program and URD Cable Life Extension Program (both described in Mr. Pryor's testimony) and the power factor program (described in Mr. Easton's testimony), as well as the Infra-Red Program, the Root Cause Analysis Program, the Hot Fuse Program, and the Distribution Automation Program (each of which I described above).

**Table 8 – Reliability Improvements**

MUG & Distribution Modernization Capital Reliability Improvements (in Millions):						
Capital Investment by Category:	2019	2020	2021	2022	2023	Total
Overhead Reliability	\$ 23	\$ 32	\$ 72	\$ 174	\$ 272	\$ 573
Pole Replacement / Bracing	\$ 20	\$ 29	\$ 30	\$ 61	\$ 52	\$ 193
URD Replacement	\$ 31	\$ 21	\$ 30	\$ 50	\$ 36	\$ 167
Capacitor Work	\$ 5	\$ 6	\$ 6	\$ 7	\$ 7	\$ 29
Major Underground Rehab	\$ 10	\$ 8	\$ 8	\$ 7	\$ 5	\$ 38
Street Lighting	\$ 22	\$ 26	\$ 27	\$ 27	\$ 29	\$ 130
IGSD Installations	\$ 7	\$ 1	\$ 5	\$ 12	\$ 13	\$ 38
<b>Total:</b>	<b>\$ 118</b>	<b>\$ 123</b>	<b>\$ 177</b>	<b>\$ 338</b>	<b>\$ 413</b>	<b>\$ 1,168</b>

Mr. Pryor's direct testimony will address capital investment for Pole Replacement/Bracing, Major Underground Rehab, Street Lighting and IGSD installations.

**Q. WHAT CAPITAL INVESTMENT WAS NECESSARY FOR SERVICE RESTORATION DURING THE PERIOD JANUARY 1, 2019 THROUGH DECEMBER 31, 2023?**

A. Capital expenditures for service restoration totaled \$345 million for URD, overhead, significant weather events, and Major Underground. Other capital investments for distribution restoration are provided in Mr. Pryor's direct testimony, such as Major Underground. Table 9 below provides more details for capital investment for restoration.

**Table 9 – Restoration Investments**

Major Underground & Distribution Modernization Capital Service Restoration Investments (in Millions):						
Capital Investment by Category:	2019	2020	2021	2022	2023	Total
Underground Residential Distribution (URD) Trouble	\$ 12	\$ 12	\$ 16	\$ 26	\$ 36	\$ 103
Overhead Distribution Trouble	\$ 17	\$ 16	\$ 20	\$ 29	\$ 47	\$ 128
Weather Related Distribution Trouble	\$ 10	\$ 7	\$ 13	\$ 13	\$ 22	\$ 65
Major Underground Capital Trouble	\$ 8	\$ 7	\$ 9	\$ 11	\$ 13	\$ 49
<b>Total:</b>	<b>\$ 47</b>	<b>\$ 42</b>	<b>\$ 58</b>	<b>\$ 79</b>	<b>\$ 118</b>	<b>\$ 345</b>

**Q. WHY WERE INVESTMENTS IN URD, OVERHEAD, AND WEATHER-RELATED SERVICE RESTORATION NECESSARY?**

A. Service Restoration costs are non-discretionary in nature and are the result of equipment damage or failure caused by events beyond the Company's control, such as poles being damaged due to vehicle accidents, third-party cable cuts, and inclement weather.

**1. General Equipment**

**Q. WHAT CAPITAL INVESTMENT WAS INCURRED FOR OPERATIONS AND SUPPORT DURING JANUARY 1, 2019, THROUGH DECEMBER 31, 2023?**

A. Capital investment for operations and support related to miscellaneous expenses, shop service, other, and general expenses total to \$42 million during the period. The below figure shows the capital investments in general equipment.

**Table 10 – General Equipment Investments**

Major Underground & Distribution Modernization Capital Service General Equipment Investments (in Millions):							
Capital Investment by Category:	2019	2020	2021	2022	2023	Total	
Miscellaneous Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1	\$ 1
Shop Services	\$ -	\$ -	\$ 1	\$ 1	\$ 1	\$ 4	\$ 4
Other	\$ 6	\$ 18	\$ 3	\$ 4	\$ 3	\$ 34	\$ 34
Major Underground General Expenses	\$ 1	\$ -	\$ -	\$ 1	\$ -	\$ 2	\$ 2
<b>Total</b>	<b>\$ 7</b>	<b>\$ 19</b>	<b>\$ 4</b>	<b>\$ 6</b>	<b>\$ 5</b>	<b>\$ 42</b>	<b>\$ 42</b>

The direct testimony of Mr. Pryor will address the Major Underground general expenses.

**Q. WERE INVESTMENTS IN MISCELLANEOUS EXPENSES, SHOP SERVICE, AND OTHER OPERATIONS AND SUPPORT INVESTMENTS REASONABLE AND NECESSARY?**

A. Yes. Capital operations and support investments include miscellaneous capital expenses for the purchase of distribution computer hardware, premise equipment, tools, and test equipment, the cost of distribution materials and services as provided by the Shops Department, and other capital investments such as capital tools, climbing kits and salvage. Scrap sales and transformer sales resulted in a negative value for operations and support investments.

**2. Capital Project Classification and Allocation**

1  
2 **Q. WHAT POLICIES OR GUIDELINES DETERMINE THE MANNER IN**  
3 **WHICH SPECIFIC PROJECTS ARE CAPITALIZED ON THE**  
4 **COMPANY'S BOOKS AND RECORDS?**

5 A. The capitalization policy and guidelines are presented in the testimony of Mr.  
6 Randy Pryor as is the review process for service delivery work orders.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes.

STATE OF Texas §  
COUNTY OF Harris §

**AFFIDAVIT OF DERYL TUMLINSON**

BEFORE ME, the undersigned authority, on this day personally appeared Deryl Tumlinson who having been placed under oath by me did depose as follows:

1. "My name is Deryl Tumlinson. I am of sound mind and capable of making this affidavit. The facts stated herein are true and correct based upon my personal knowledge.
2. I have prepared the foregoing Direct Testimony and the information contained in this document is true and correct to the best of my knowledge."

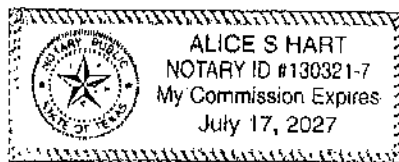
Further affiant sayeth not.

Deryl Tumlinson  
Deryl Tumlinson

SUBSCRIBED AND SWORN TO BEFORE ME on this 21st day of February,  
2024.

Alice S. Hart  
Notary Public in and for the State of Texas

My commission expires: 7/17/27



THERE ARE NO EXHIBITS  
TO  
THE DIRECT TESTIMONY  
OF  
DERYL TUMLINSON

THERE ARE NO WORKPAPERS  
TO  
THE DIRECT TESTIMONY  
OF  
DERYL TUMLINSON

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**PUC DOCKET NO. 56211**

<b>APPLICATION OF CENTERPOINT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ENERGY HOUSTON ELECTRIC, LLC</b>	<b>§</b>	
<b>FOR AUTHORITY TO CHANGE RATES</b>	<b>§</b>	<b>OF TEXAS</b>

**DIRECT TESTIMONY**

**OF**

**RANDAL M. PRYOR**

**, ON BEHALF OF**

**CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC**

**MARCH 2024**

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## **LIST OF EXHIBITS**

Exhibit RMP-1	CenterPoint Houston Service Area
Exhibit RMP-2	Diagram of Distribution System
Exhibit RMP-3	Settlement Rules for Work Orders

## GLOSSARY OF ACRONYMS AND DEFINED TERMS

Acronym	Definition
10% Circuit	Circuit in the lowest 10% of SAIDI or SAIFI
300% Circuit	Circuit with a SAIDI or SAIFI greater than 300% of the systemwide SAIDI or SAIFI
1ph	Single phase
3ph	Three phases
ADMS	Advanced Distribution Management System
ALA	Asset Life Accounting
AMI	Advanced Metering Infrastructure
CAIDI	Customer Average Interruption Duration Index: the average length of an outage.
CenterPoint Houston or Company	CenterPoint Energy Houston Electric, LLC
CLEP	Cable Life Extension Program
CNP	CenterPoint Energy, Inc.
Commission	Public Utility Commission of Texas
CSO	Customer Service Order
FERC	Federal Energy Regulatory Commission
FSR	Field Service Representative
IGSD	Intelligent Grid Switching Device
kV	Kilovolts
kwh	Kilowatt-hour
LED	Light Emitting Diode
MUCAMS	Major Underground Communications and Monitoring Systems
MUG	Major Underground
O&M	Operations and maintenance
SAIDI	System Average Interruption Duration Index

Test Year	12 months ending December 31, 2023
URD	Underground Residential Distribution

**EXECUTIVE SUMMARY - MAJOR UNDERGROUND AND  
DISTRIBUTION MODERNIZATION  
(RANDAL M. PRYOR)**

CenterPoint Energy Houston Electric, LLC's ("CenterPoint Houston" or the "Company") Distribution Operations division is one of the divisions in the Company that is responsible for the day-to-day operations of the Company's distribution system. A map has been provided of the CenterPoint Houston Service Area in Exhibit RMP-1.

My testimony:

- describes the Major Underground ("MUG") & Distribution Modernization division and the major programs and initiatives that drive distribution investment and expense;
- describes the implications for MUG & Distribution Modernization due to the growth the Company's distribution system has experienced since the Company's last base rate proceedings, Docket No. 49421;
- describes the processes used to plan, monitor, and control investments and expenditures;
- supports the reasonableness and necessity of operations and maintenance ("O&M") expenses incurred in support of the distribution function during the 12 months ended December 31, 2023 ("Test Year") in the amount of \$82.0 million; and
- supports the reasonableness and necessity of distribution capital costs from January 1, 2019 through December 31, 2023, in the amount of approximately \$3.070 billion, of which approximately \$1.516 billion was attributable to customer growth.

Together with the cost-of-service data and testimony of the Company's other witnesses, my testimony demonstrates that the capital expenditures and test year O&M expenses for the distribution function are reasonable, necessary, and representative of the costs to provide service to customers of CenterPoint Houston and thus, should be included in the Company's cost of service.

**DIRECT TESTIMONY OF RANDAL M. PRYOR**

**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME AND POSITION.**

A. My name is Randal M. Pryor, and I am employed by CenterPoint Houston as Vice President of Major Underground & Distribution Modernization.

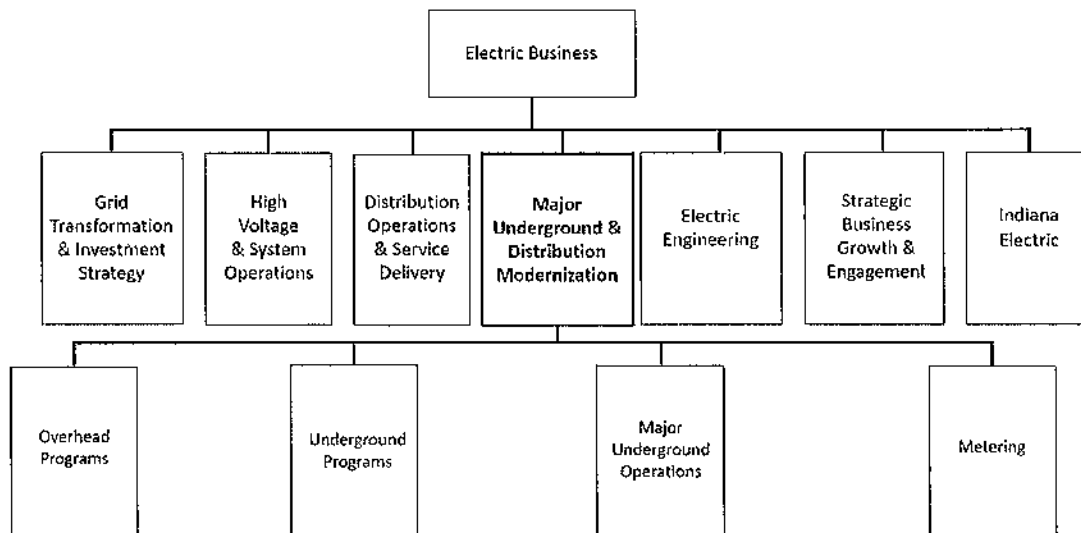
**Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.**

A. I graduated from Texas A&M University in 1990 with a Bachelor of Science degree in Agricultural Economics. I began my career with Houston Lighting & Power, a CenterPoint Energy, Inc. ("CNP") predecessor company, in June of 1991. Since that time, I have been employed by CNP or one of its affiliates. My positions within the Company have included Financial Analyst, Supervisor/Manager/Director of Financial Planning, Service Area Director, Operations Director, Vice President of Regional Operations for CNP's Texas gas utility subsidiary, and Vice President of Distribution Operations where I assumed responsibility for all electric distribution operations for the entire greater Houston area. I was named Vice President of Distribution Projects & Grid Modernization, in August 2021, at which time I assumed responsibility for all the Company's distribution projects and grid modernization efforts. In November 2022, I assumed my present position, Vice President of Major Underground & Distribution Modernization, which includes oversight over major underground operations, distribution metering, and distribution projects.

1    **Q.    WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

2    A.    I am the Vice President of Major Underground & Distribution Modernization. The  
 3    Electric Business of CNP includes operations in both Texas and Indiana. At the  
 4    end of the test year, the Texas electric organization consists of six divisions: (1)  
 5    Major Underground (MUG) & Distribution Modernization, (2) Grid  
 6    Transformation & Investment Strategy, (3) High Voltage & System Operations, (4)  
 7    Distribution Operations & Service Delivery, (5) Electric Engineering, and (6)  
 8    Strategic Business Growth & Engagement. As further described by Ms. Lynnae  
 9    Wilson, the Company reorganized the Electric Business Unit to more strategically  
 10    align different operations.

11    *Figure 1 - Electric Business Organizational Chart*



12

13    As Vice President of Major Underground & Distribution Modernization, my  
 14    responsibilities focus on investing in our infrastructure and aligning resiliency  
 15    programs for distribution overhead and underground residential construction, street  
 16    lighting, overhead and underground residential design, reliability, and resiliency,

1 as well as the overhead and underground residential system inspection programs,  
2 including vegetation management. I also oversee the construction, maintenance,  
3 and operation of the Company's three-phase underground facilities and the  
4 installation of our metering facilities.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. I am testifying on behalf of CenterPoint Houston.

7 **Q. HAVE YOU TESTIFIED PREVIOUSLY?**

8 A. Yes. I have filed testimony with the Public Utility Commission of Texas  
9 ("Commission") in Docket No. 49421 and the Railroad Commission of Texas in  
10 Gas Utilities Docket Nos. 10432, 10567, and 10669.

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
12 **PROCEEDING?**

13 A. The purpose of my testimony is to support the \$82.0 million in O&M expense  
14 associated with activities performed by MUG & Distribution Modernization. I also  
15 support the prudence of distribution capital investment in the amount of  
16 approximately \$3.070 billion through December 31, 2023.

17 My testimony identifies the functions of MUG & Distribution  
18 Modernization and describes how the division is structured and staffed to  
19 accomplish the goal of providing a reliable power delivery system at a reasonable  
20 cost. My testimony demonstrates that the O&M costs and capital investment  
21 associated with MUG & Distribution Modernization are effectively and carefully  
22 managed and maintained through business planning, budget plan review, and  
23 ongoing budget plan monitoring. The capital investment is used and useful in the

1 provision of electric utility service for our customers and was prudently incurred.  
 2 As a result, I conclude that these costs are reasonable and necessary and should be  
 3 recovered in the Company's rates.

4 **Q. HAVE YOU INCLUDED ANY EXHIBITS WITH YOUR TESTIMONY?**

5 A. Yes. I have prepared or supervised the preparation of the exhibits listed in the table  
 6 of contents.

7 **Q. PLEASE DESCRIBE THE INTERACTION OF YOUR TESTIMONY WITH**  
 8 **OTHER WITNESSES IN THIS CASE.**

9 A. My testimony sponsors the total capital investment that has been made in the  
 10 Company's distribution system since January 1, 2019, and describes the capital  
 11 construction programs, system maintenance, and meter maintenance for the  
 12 distribution delivery system. Company witness Ms. Mandie Shook is responsible  
 13 for Electric Engineering and her testimony describes the engineering, design, power  
 14 quality solutions and capital budgeting process for the transmission and distribution  
 15 system. Company witness Mr. Deryl Tumlinson is responsible for Distribution  
 16 Operations & Service Delivery and his testimony describes the operation, system  
 17 maintenance, trouble response, customer interface, and customer support that  
 18 directly impact our customers. My testimony and that of Ms. Shook and Mr.  
 19 Tumlinson explain the reliability and maintenance programs for which we are each  
 20 responsible.

21 Company witness Mr. David Mercado is responsible for High Voltage &  
 22 Real Time Operations and his testimony describes the transmission and substation  
 23 system and how it provides energy to the distribution delivery system. Mr.

Mercado supports the total capital spent on transmission and substation required to provide service to the distribution system. Mr. Mercado similarly supports the overall maintenance and operation of these activities and the associated expenditures.

Company witness Mr. Eric Easton is responsible for Grid Transformation & Investment Strategy and his testimony describes the Company's efforts in planning and transforming the Company's transmission and distribution system into a more reliable and resilient resource for our customers.

The following witnesses present testimony on the operations of the Electric Business Unit:

#### **Overview of CenterPoint Operations Witnesses**

<b>Witness, Title</b>	<b>Subjects Addressed</b>
<b>Lynnae Wilson,</b> Senior Vice President, Electric Business Unit	<ul style="list-style-type: none"> <li>• Overview of CenterPoint Houston and its operations;</li> <li>• Company's organizational and management structure and Company's commitment to its core values;</li> <li>• Summarize the Company's rate filing package,</li> <li>• The Company's efforts related to reliability and resiliency, and the impact of economic and customer growth in the Company's service territory since its last base rate case.</li> </ul>
<b>Eric Easton,</b> Vice President, Grid Transformation & Investment Strategy	<ul style="list-style-type: none"> <li>• How Distribution and Transmission Planning groups identify and develop future capital investment projects;</li> <li>• How capital investments are prioritized and optimized;</li> <li>• The reliability reporting process and various reporting tools that have been developed;</li> <li>• How the addition of a Capital Program Management department will support the efficient execution of capital projects and programs;</li> <li>• How the Strategic Coordination and Analysis department aligns strategic initiatives, identifies synergies, and improves interdepartmental coordination on projects; and</li> <li>• Supports the reasonableness and necessity of Grid Transformation &amp; Investment Strategy-related Test Year O&amp;M expense and capital investment since 2019 and the related schedules.</li> </ul>
<b>David Mercado,</b> Vice President, High	<ul style="list-style-type: none"> <li>• Overview of the structure and functions of the High Voltage and System Operations Division;</li> </ul>

**Direct Testimony of Randal M. Pryor  
CenterPoint Energy Houston Electric, LLC**

Voltage and System Operations	<ul style="list-style-type: none"> <li>• Operations in the High Voltage and System Operations Division since 2019;</li> <li>• Key programs and initiatives undertaken by the High Voltage and System Operations;</li> <li>• Expense planning and cost control measures; and</li> <li>• Supports the reasonableness and necessity of High Voltage and System Operations-related Test Year O&amp;M expense and capital investment since 2019 and the related schedules.</li> </ul>
<b>Randal M. Pryor</b> , Vice President, Major Underground & Distribution Modernization	<ul style="list-style-type: none"> <li>• MUG &amp; Distribution Modernization division and the major programs and initiatives;</li> <li>• Implications for MUG &amp; Distribution Modernization due to the growth the Company's distribution system has experienced since 2019;</li> <li>• Processes used to plan, monitor, and control investments and expenditures; and</li> <li>• Supports the reasonableness and necessity of Major Underground &amp; Distribution Modernization-related Test Year O&amp;M expenses and distribution capital investment since 2019 and the related schedules.</li> </ul>
<b>Deryl Tumlinson</b> , Vice President, Distribution Operations & Service Delivery	<ul style="list-style-type: none"> <li>• Distribution Operations and Service Delivery Division;</li> <li>• Quotidian activities and major programs and initiatives that drive distribution investment and expense;</li> <li>• Impacts and operational responses that occurred as a response to significant weather events;</li> <li>• Impact of supply chain disruptions;</li> <li>• Long lead-time asset purchases; and</li> <li>• Supports the reasonableness and necessity of Distribution Operations &amp; Service Delivery-related Test Year O&amp;M expenses and distribution capital investment since 2019 and the related schedules.</li> </ul>
<b>Mandie Shook</b> , Vice President, Electric Engineering	<ul style="list-style-type: none"> <li>• Creation of the Electric Engineering Division;</li> <li>• Operations within the Electric Engineering Division;</li> <li>• Major programs and initiatives that drive Electric Engineering investment and expense, including the reliability initiative and resiliency standards;</li> <li>• Planning and cost control programs within the Electric Engineering Division;</li> <li>• Supports the reasonableness and necessity of Electric Engineering-related O&amp;M expense and capital costs incurred since 2019 and related schedules.</li> </ul>
<b>Rina Harris</b> , Vice President, Strategic Business Growth & Engagement	<ul style="list-style-type: none"> <li>• Functions of the Strategic Business Growth and Engagement Division;</li> <li>• Explains how the division is structured and staffed to enhance the customer service provided to large customers;</li> <li>• Steps taken to understand future customer needs so as to efficiently support large customer's growth and reliability needs; and</li> </ul>

Direct Testimony of Randal M. Pryor  
CenterPoint Energy Houston Electric, LLC

- |  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• Supports the reasonableness and necessity of test year O&amp;M costs.</li> </ul> |
|--|---|

1  
2 Company witness Mr. L. Darren Storey discusses allocated costs associated  
3 with the regulated support organizations and CenterPoint Energy Service  
4 Company, LLC., as well as the Company's overall planning and budgeting process  
5 and cost of service adjustments

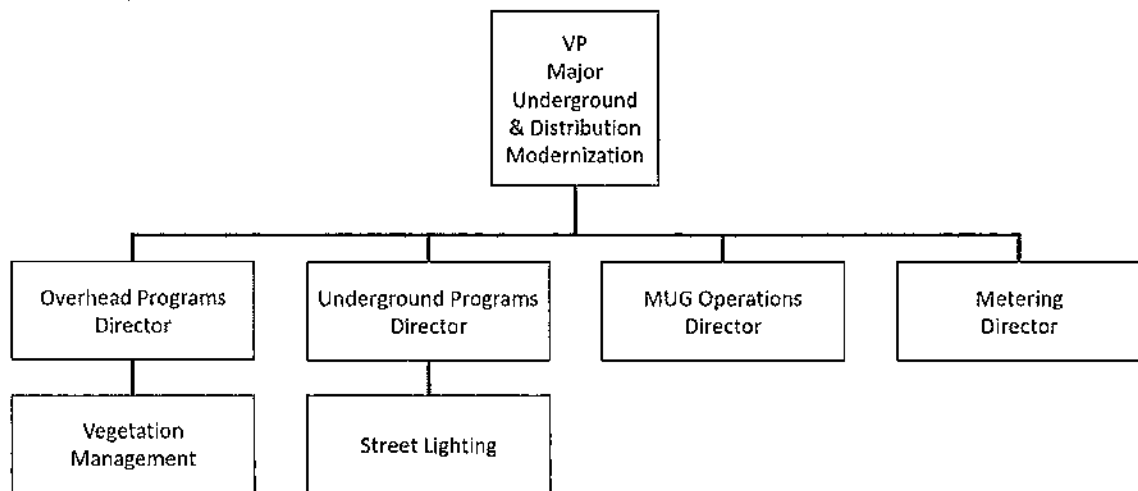
## 6 **II. OVERVIEW OF MUG & DISTRIBUTION MODERNIZATION**

### 7 **DESCRIPTION AND HISTORY**

#### 8 **Q. HOW IS MUG & DISTRIBUTION MODERNIZATION ORGANIZED?**

9 A. MUG & Distribution Modernization Division is comprised of four departments:  
10 Overhead Programs, Underground Programs, MUG Operations, and Metering. The  
11 two organization charts in Figures 1 (above) and 2 (below) show how Major  
12 Underground and Distribution Modernization fits into the overall electric business  
13 as well as the organizational structure of MUG & Distribution Modernization.

**Figure 2 - MUG & Distribution Modernization Organizational Chart**



Overhead Programs is responsible for overhead distribution construction related to load growth and reliability, relocations to accommodate public infrastructure improvements, vegetation management, distribution programs including resiliency, pole life extension, and quality assurance. The Vegetation Management team is also responsible for distribution and transmission vegetation management including substation and transmission right of way mowing.

Underground Programs is responsible for the design and construction of the single-phase underground residential distribution system, underground residential distribution (“URD”) cable life extension program, quality assurance, and street lighting. The Street Lighting team, which is part of Underground Programs, is responsible for the design, construction, maintenance and operation of over 500,000 streetlights along public right of ways.

1           MUG Operations is responsible for the construction, maintenance, and operation  
2 of the Company's three-phase underground facilities, which enables the Company  
3 to efficiently deliver electricity to commercial and industrial customers. The  
4 Company uses underground three-phase power in high density areas such as  
5 downtown Houston, the Texas Medical Center, and George Bush Intercontinental  
6 Airport, and to serve individual commercial loads served with three-phase pad  
7 mount transformers, underground getaways from substations, and underground  
8 dips under freeways. MUG Operations consists of bargaining unit employees and  
9 management/administrative staff. The bargaining unit is composed of specialized  
10 cable splicers, underground network testers, and heavy equipment operators,  
11 assigned to the Relay group or the Cable groups. The Relay group installs,  
12 programs, and maintains protective relaying systems, SCADA systems, and  
13 underground communication network systems. The Relay group also programs and  
14 maintains power equipment control devices such as breakers, automatic switches,  
15 and network protectors. The Cable groups install equipment and cable, along with  
16 the necessary splices and terminations to interconnect the underground system,  
17 including fiber optic cable systems. Both the Relay and Cable groups execute  
18 clearance switching as needed to safely perform maintenance and repairs of power  
19 system equipment and control devices. All civil construction such as  
20 concrete-encased duct bank, equipment pads, and underground boring is performed  
21 through contractors.

22           The Metering department is responsible for Primary Metering, Central  
23 Metering and the field service representative ("FSR") group. Primary Metering

1 handles distribution customers that take service at 12 kV or 35 kV. Central  
2 Metering is responsible for installing, maintaining, removing, and repairing  
3 metering equipment, including transformer-rated metering services, and for  
4 procuring, testing, and calibrating meters, as well as the central meter shop that  
5 supports this effort. Central Metering is also responsible for the high voltage  
6 metering employees that perform these same tasks for transmission customers, the  
7 Electric Reliability Council of Texas, and inter-tie locations. The FSR group is  
8 responsible for field service orders involving residential and small commercial  
9 customers for single phase 120/240-volt 3 wire meters up to the 200-amp rating.  
10 The FSR group removes and installs lock bands at the request of electricians and  
11 customers to facilitate customer work behind the meter. It also investigates meter  
12 tampering alerts.

13 **III. OPERATIONS SINCE DOCKET NO. 49421**

14 **Q. HAVE THERE BEEN ANY CHANGES IN THE MUG & DISTRIBUTION**  
15 **MODERNIZATION'S DAY-TO-DAY DISTRIBUTION OPERATIONS**  
16 **SINCE THE COMMISSION LAST CONDUCTED A COMPREHENSIVE**  
17 **BASE RATE REVIEW FOR CENTERPOINT HOUSTON?**

18 **A.** Yes. The test year in Docket No. 49421 ended December 31, 2018. Since that  
19 time, CenterPoint Houston has remained committed to delivering safe and reliable  
20 electric delivery service to its customers—this commitment never has and never  
21 will change. However, two factors in particular—customer growth and technology  
22 advancements—are changing the way the MUG & Distribution Modernization's  
23 operates on a day-to-day basis.

1 Q. WHAT CUSTOMER GROWTH HAS THE COMPANY SEEN SINCE  
2 DOCKET NO. 49421?

3 A. As Ms. Lynnae Wilson discusses in her testimony, Houston has seen significant  
4 customer growth since its most recent base rate proceeding. Since January 1, 2019,  
5 from an infrastructure perspective, overhead distribution pole miles (feeder-main  
6 and laterals) and URD circuit miles have increased as shown in Figure 3 below. As  
7 Mr. Easton's direct testimony also notes, economic growth within Houston and in  
8 the surrounding metropolitan areas has resulted in the need to build or install new  
9 substation feeder positions to accommodate new distribution feeders, new and  
10 upgraded substation transformers, and new distribution substations as indicated in  
11 the chart below.

12 *Figure 3 - Infrastructure Additions*

	2019 - 2022	2023
Added Overhead Distribution pole miles (feeder-main and laterals)	569	190
Added URD miles	1,092	502
New Substation Feeder Positions (CKTS)	110	15
New Substation Transformers	37	22
Upgraded Substation Transformers	2	9
New Distribution Substations	6	1

13  
14 **Q. CAN YOU PROVIDE SOME EXAMPLES OF THE AREAS WITHIN**  
15 **CENTERPOINT HOUSTON'S SERVICE TERRITORY THAT HAVE**  
16 **REQUIRED INVESTMENT DUE TO GROWTH?**

17 A. Yes. Both residential and commercial growth areas by region in the last four years  
18 are shown in Figure 4 below.

1 **Figure 4 - Residential and Commercial Additions in CenterPoint Houston Territory**

Northern Region	Western Region	Central Region	Southern Region
Bush Intercontinental Airport Expansion	Twinwood	Hines Development	Port of Houston
Al Natura Post Consumer Resin Plant	Cinco Ranch	TMC3	Spaceport
Tex Tube	Katy ISD	MD Anderson, Levan High Fashion	Pearland Surface Water Treatment Plant
Siemens	Skybox Data Center	Lone Star Logistics Center	Alvin ISD
UPS	INFO™ Data Center	McNair Plaza – Complex	Jindal Saw USA
Transwestern Development Company	GAMC Mobile Bitcoin Mining	Baylor St Lukes	Project Hydrate
Hewlett Packard	PCD Lake Pointe One Land LTD	Methodist Hospital	Industrial Fabrics
IPT Rampart Corporate Center Project	Hailiang	East River Development	Freeport Hydrotreating
Nesteel USA	Fort Bend Levee Improvement District #2	University of Houston	Warbird Tubular, Methodist Hospital
Waller ISD	Dream Harvest Vertical Farm		Explorer Pipeline
Bridgeland	Lancium		Bayport
Towne Lakes	Project Mozart		
Springwood	Frito Lay Plant Expansion		
Audubon Magnolia Development	Igloo Corp.		
Pinehurst	Camillo Lakes		
CYRUS ONE	Fort Bend County Epicenter		
Tomball ISD	Freeman Ranch		
Cypress-Fairbanks ISD	Friendswood Development Company		
Generation Park	Fort Bend ISD		
Beacon Hill Development			

2  
3 Further, as discussed in the testimony of witness Ms. Rina Harris, Vice President  
4 of Strategic Growth and Engagement, the region is experiencing increases in both  
5 commercial fleet, light commercial and residential electric vehicle charging  
6 installations.