



## **Filing Receipt**

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**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**APPLICATION OF CENTERPOINT ENERGY HOUSTON  
ELECTRIC, LLC FOR AUTHORITY TO CHANGE RATES**

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**SOAH ORDER NO. 14  
DENYING WITHDRAWAL**

CenterPoint Energy Houston Electric, LLC filed a Notice of Withdrawal of its application in this case.<sup>1</sup> For the reasons discussed below, the withdrawal is denied.

**I. BACKGROUND**

PURA<sup>2</sup> section 36.157 requires the Public Utility Commission of Texas (Commission) to adopt a rule establishing a schedule “that requires an electric utility

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<sup>1</sup> CenterPoint Energy Houston Electric, LLC’s Notice of Withdrawal (Aug. 1, 2024).

<sup>2</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016.

to make periodic filings with the commission to modify or review base rates charged by the electric utility.” The Commission established such a Rate Review Schedule in Rule 25.247.<sup>3</sup> Under the Commission Rate Review Schedule, “[e]ach investor-owned electric utility in the ERCOT region must file for a comprehensive rate review within 48 months of the order setting rates in its most recent comprehensive rate proceeding.”<sup>4</sup> Exceptions to these filing requirements are allowed for good cause under PURA section 36.157(d) and Rule 25.247(b)(2).<sup>5</sup>

The order setting rates in CenterPoint’s last comprehensive rate proceeding was signed on March 9, 2020.<sup>6</sup> In that order, the Commission adopted the following Ordering Paragraphs:

16. CenterPoint Houston must file a base-rate case no later than four years from the date of this Order. CenterPoint Houston may file a base-rate case earlier than four years from the date of this Order.
17. CenterPoint Houston may not request to delay the filing of its next base-rate case under the provisions of 16 TAC § 25.247(b)(2).<sup>7</sup>

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<sup>3</sup> 16 Tex. Admin. Code § 25.247.

<sup>4</sup> 16 Tex. Admin. Code § 25.247(b)(1).

<sup>5</sup> Additionally, Commission Rule 22.181(g)(2) allows for withdrawal of an application for good cause in certain circumstances.

<sup>6</sup> *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 49421, Order (Mar. 9, 2020).

<sup>7</sup> Docket No. 49421, Order at Ordering Paragraph Nos. 16 and 17 (Mar. 9, 2020).

Therefore, by law and order, CenterPoint was required to file a rate application no later than March 9, 2024, and was specifically prohibited from requesting an extension of that date. Nevertheless, in October 2023, CenterPoint did just that.<sup>8</sup> Specifically, CenterPoint sought a good cause exception on grounds that it wished to use a calendar test year instead of a split calendar test year. Although the request was unopposed, the Commission denied the extension on grounds that CenterPoint was required to file a comprehensive rate review by March 9, 2024.<sup>9</sup> As required, CenterPoint filed the instant application on March 6, 2024.

CenterPoint now seeks to withdraw its application under Rule 22.181(g)(1), which allows a party that initiated a proceeding to withdraw its application if it has not yet presented its direct case. This withdrawal presents an issue of first impression: whether Rule 22.181(g)(1) allows a party to unilaterally withdraw an application it was required to file.

## II. ARGUMENTS

CenterPoint argues that it filed its rate application as required by PURA section 36.157 and Rule 25.247 but nevertheless qualifies for withdrawal under Rule 22.181(g)(1). In reply briefing, CenterPoint requests, in the alternative, a finding of good cause for withdrawal on grounds that it needs to focus on its Greater

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<sup>8</sup> *Application of CenterPoint Energy Houston Electric, LLC for an Extension of Rate Filing Requirement Under 16 TAC § 23.247*, Docket No. 55744, *Application of CenterPoint Energy Houston Electric, LLC for an Extension of Rate Filing Requirement Under 16 TAC § 25.247* (Oct. 23, 2023).

<sup>9</sup> Docket No. 55744, Order at 1 (Feb. 1, 2024).

Houston Resiliency Initiative, “launched on Monday, August 5, 2024.”<sup>10</sup> CenterPoint also commits to file a new rate application no later than June 30, 2025.

Commission Staff and the Office of Public Utility Counsel support the withdrawal.

Texas Industrial Energy Consumers, Texas Energy Association for Marketers and Alliance for Retail Markets take no position on withdrawal, but argue that a utility’s unilateral withdrawal of its rate application should not be approved without good case.<sup>11</sup>

Opposing withdrawal is a group of intervenors, namely, Gulf Coast Coalition of Cities, Texas Coast Utilities Coalition, Houston Coalition of Cities, and Texas Consumer Association (Joint Intervenors). The Joint Intervenors argue that CenterPoint’s withdrawal should be denied because the mechanism for withdrawal under Rule 22.181(g) does not supersede the requirement that CenterPoint file the rate application under Rule 25.247(b)(1), as ordered in Docket Nos. 49421 and

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<sup>10</sup> CenterPoint Energy Houston Electric, LLC’s Reply to the Joint Response Opposing CenterPoint’s Notice of Withdrawal at 1 (Aug. 14, 2024).

<sup>11</sup> Texas Energy Association for Marketers and Alliance for Retail Markets also request that, if abatement is lifted, certain procedural conditions be implemented. This request is not addressed because the abatement is not lifted at this time.

55744, and the intent of PURA section 36.157 requiring the Commission to periodically review CenterPoint’s base rates.<sup>12</sup>

Similarly, the Environmental Defense Fund opposes CenterPoint’s withdrawal for various policy reasons, and alternatively, supports TIEC’s position.

### III. ANALYSIS

No party argues that CenterPoint does not meet the condition for withdrawing under Rule 22.181(g)(1): it has not yet presented its direct case.<sup>13</sup> Rather, Joint Intervenors and TIEC argue that withdrawal should not be allowed as a matter of right when, as here, the party that initiated the proceeding was required to do so under the Commission’s rules and multiple orders.

To resolve these competing positions, the ALJ turns to the rules of construction. Agency rules have the same force as statutes and are construed in the same manner.<sup>14</sup> However, “when a rule of procedure conflicts with a statute, the statute prevails . . . .”<sup>15</sup> “It is an elementary rule of construction that, when possible

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<sup>12</sup> Joint Intervenors also argue that the Commission nevertheless retains authority to impose temporary rates under PURA section 36.109, and they request “lower interim rates” if the case remains abated. However, interim relief may be granted only in compliance with Rule 22.125, which has not been demonstrated.

<sup>13</sup> See *Application of the City of Austin dba Austin Water for Authority to Change Water and Wastewater Rates*, Docket No. 49189, SOAH Order No. 13 (Dec. 16, 2019) (ruling that an applicant has not presented its direct case until it presents its case at the hearing on the merits); *Ratepayers Appeal of the Decision by Valley Municipal Utility District No. 2 to Install Individual Water Meters and Change Rates*, Docket No. 53393, SOAH Order No. 11 at 1 n.1 (June 21, 2024).

<sup>14</sup> *Rodriguez v. Serv. Lloyds Ins. Co.*, 997 S.W.2d 248, 254 (Tex. 1999).

<sup>15</sup> *Johnstone v. State*, 22 S.W.3d 408, 409 (Tex. 2000).

to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered superfluous or inoperative.”<sup>16</sup> Where possible, two provisions should be construed in a way that harmonizes rather than conflicts.<sup>17</sup>

Under these rules of construction, Rule 25.247(b)(1) is best harmonized by concluding that Rule 22.181(g)(1) does not operate where the application was filed under compulsion. Withdrawing CenterPoint’s application conflicts with the requirement for investor-owned electric utilities in the ERCOT region to file a comprehensive rate review within 48 months of the order in the utility’s most recent comprehensive rate proceeding. Therefore, withdrawing CenterPoint’s application would impede the Commission’s ability to review CenterPoint’s rates in accordance with PURA section 36.157 and render the Rate Review Schedule inoperative. While CenterPoint has complied with the letter of the rule and Commission orders to file a rate case, allowing it to withdraw would defeat the purpose of filing, namely, “to modify or review base rates charged by the electric utility,” as required by PURA section 36.157(b).

The Commission may grant an exception to its Rate Review Schedule when good cause has been shown.<sup>18</sup> However, CenterPoint has given no explanation for

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<sup>16</sup> See *Spence v. Fenchler*, 180 S.W. 597, 601 (Tex. 1915).

<sup>17</sup> *Tex. Indus. Energy Consumers v. CenterPoint Energy Houston Elec., LLC*, 324 S.W.3d 95, 107 (Tex. 2010) (citing Tex. Gov’t Code § 311.026(a)).

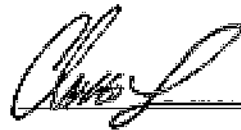
<sup>18</sup> PURA § 36.157(d) (allowing the Commission to extend the date for a proceeding required under the Rate Review Schedule for good cause shown); see also 16 Tex. Admin. Code § 25.3 (authorizing the Commission to make exceptions to its rules for electric utilities for good cause).

how pursuit of its Greater Houston Resiliency Initiative—launched four days after its notice of withdrawal was filed—interferes in any way with its ability to proceed in this matter. The Commission has twice ruled that CenterPoint’s application should not be delayed.<sup>19</sup> CenterPoint has not demonstrated good cause as to why this case, already abated to pursue settlement discussions,<sup>20</sup> should not proceed to conclusion.

IT IS ORDERED that CenterPoint’s withdrawal is DENIED, and its application is RETAINED until otherwise properly disposed of.

This matter remains abated.

**SIGNED August 16, 2024**



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Christiaan Siano,  
Administrative Law Judge

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<sup>19</sup> See Docket No. 55744, Order at 1 (Feb. 1, 2024); Docket No. 49421, Order at Ordering Paragraph No. 17 (Mar. 9, 2020).

<sup>20</sup> See SOAH Order No. 11 (July 17, 2024).