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

APPLICATION OF CENTERPOINT	§	BEFORE THE
ENERGY HOUSTON ELECTRIC, LLC	§	PUBLIC UTILITY COMMISSION
FOR AUTHORITY TO CHANGE RATES	§	OF TEXAS

JOINT RESPONSE TO
CENTERPOINT’S APPEAL OF SOAH ORDER NO. 14

Gulf Coast Coalition of Cities (GCCC), Texas Coast Utilities Coalition (TCUC), Houston Coalition of Cities (HCC), and Texas Consumer Association (TCA) (collectively, Intervenor) file this Response to CenterPoint Energy Houston Electric, LLC’s (CenterPoint or Company) Appeal of State Office of Administrative Hearings (SOAH) Order No. 14 (Appeal). In support, Intervenor show as follows:

I. INTRODUCTION

CenterPoint was required by law and order to file this case. In fact, the Commission issued two separate orders requiring CenterPoint to file this case.¹ Having unsuccessfully delayed the application earlier this year, CenterPoint is now using an unrelated storm event as the vehicle for bypassing a required rate application that would likely result in a significant rate decrease. While Intervenor do not discredit the serious need for restoration measures arising out of Hurricane Beryl, the Administrative Law Judge (ALJ) correctly found that CenterPoint has not established sufficient good cause to permit withdrawal of this application.

This case was initiated four months prior to Hurricane Beryl and is based on a historical test year. At the time CenterPoint filed its Notice of Withdrawal, the proceeding was abated, and the hearing was cancelled to facilitate settlement discussions. All direct and rebuttal testimony had been filed. Importantly, multiple parties, including the Staff (Staff) of the Public Utility Commission of Texas (Commission), the Office of Public Utility Counsel (OPUC), and city coalitions recommend a rate decrease. None of the facts raised in CenterPoint’s Appeal sufficiently explain why the Company is unable to continue settlement discussions or otherwise work towards a resolution of this case. Granting good cause based upon a showing as thin as CenterPoint’s will set a harmful precedent for utilities’ compliance with the Commission’s Rate

¹ *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 49421, Final Order (Mar. 9, 2020); *Application of CenterPoint Energy Houston Electric, LLC for an Extension of Rate Filing Requirement Under 16 TAC § 25.247*, Docket No. 55744, Order (Feb. 1, 2024).

Review Schedule under 16 Tex. Admin. Code (TAC) § 25.247—a schedule the Legislature statutorily mandated as a tool for protecting ratepayers from unreasonable rates. CenterPoint was required to file this case and, for the sake of protecting ratepayers and complying with the law, CenterPoint should be required to see it through to its conclusion.

Intervenors respectfully request denial of CenterPoint’s Appeal and request the Commission order the parties to proceed with resolving this case. If the Commission determines abatement is appropriate, lower interim rates should be implemented pursuant to the Commission’s authority under Public Utility Regulatory Act (PURA) § 36.109.

II. ARGUMENT

A. CenterPoint has not established good cause to permit withdrawal of this case.

In its Appeal, CenterPoint relies on the impact of Hurricane Beryl to argue good cause exists for permitting withdrawal of the application. Intervenors acknowledge and support the need for timely implementation of resiliency measures in light of CenterPoint’s failures during Hurricane Beryl. But this rate case is based on a historical test year and was well underway by the time Hurricane Beryl made landfall on July 8, 2024. At the time CenterPoint filed its Notice of Withdrawal, the case had been abated because, according to CenterPoint’s own characterization, the parties had been in “active settlement discussions for several weeks...”²

The Commission should not allow CenterPoint to hide behind storm restoration efforts concerning a storm that occurred four months into the proceeding as its sole reason for good cause to withdraw its application. While storm restoration efforts remain of great import, the Commission should nevertheless require CenterPoint to carry out these efforts while also continuing to work towards a resolution to this case. The evidence presented in this proceeding indicates that a significant rate decrease is likely and warranted. Therefore, to allow CenterPoint to withdraw its application this far into the proceeding would set a dangerous precedent going forward.

Notably, CenterPoint did not claim good cause in its Notice of Withdrawal.³ As a result, parties were deprived of the opportunity to respond to CenterPoint’s claim of good cause prior to

² CenterPoint Energy Houston Electric, LLC (CEHE or CenterPoint) Unopposed Motion to Abate (Jul. 17, 2024); SOAH Order No. 11—Abating Proceeding; Cancelling Hearing (Jul. 17, 2024).

³ CenterPoint’s three sentence Notice of Withdrawal sought to unilaterally withdraw its application and made no mention of good cause for doing so.

the Appeal. Only when other parties mentioned the possibility of good cause in response to CenterPoint's Notice of Withdrawal⁴ did the Company subsequently raise it. Even then, CenterPoint provided a single sentence to support good cause, referencing the Greater Houston Resiliency Initiative,⁵ a program that, as noted by the ALJ, was launched four days after CenterPoint filed its Notice of Withdrawal.⁶ Allowing CenterPoint to prevail on a claim of good cause when the Company did not initially plead good cause would set an unusual precedent that a party may appeal a SOAH order to the Commission based on entirely new grounds than what that party raised before the ALJ.

CenterPoint references the withdrawal of its System Resiliency Plan in Docket No. 56548 as additional support for withdrawal.⁷ However, under the circumstances, a pending System Resiliency Plan is easily distinguishable from this rate case. Hurricane Beryl has direct and significant ties to resiliency. Many of the directives CenterPoint has received from the Commission and the Legislature are inextricably tied to the types of requests the Company may include in a System Resiliency Plan. For example, one of the ongoing efforts articulated in CenterPoint's Appeal is addressing higher risk vegetation issues, and Vegetation Management was a specific resiliency measure identified in the Company's application in Docket No. 56548.⁸ During this time, it is reasonable for CenterPoint to reevaluate any pending applications that are directly related to resiliency. Accordingly, Intervenor and other parties did not dispute CenterPoint's withdrawal in Docket No. 56548.

In contrast, CenterPoint should not be permitted to withdraw a base rate case that uses a historic test year, was filed four months prior to Hurricane Beryl, and is completely unrelated to the storm. This would allow utilities to assert good cause when any weather event or other occurrence impacts their service territory, even if the event has no connection to the data presented in the application and when the docket has made substantial procedural progress. This is not a

⁴ See Texas Industrial Energy Consumers' Letter to Commissioners (Aug. 7, 2024); Texas Energy Association for Marketers' and Alliance for Retail Markets' Response to SOAH Order No. 13 (Aug. 14, 2024).

⁵ 56211 CEHE Response to Intervenor (Aug. 14, 2024).

⁶ SOAH Order No. 14—Denying Withdrawal at 7 (Aug. 16, 2024).

⁷ CEHE Appeal of SOAH Order No. 14 at 5 (Aug. 23, 2024) (Appeal).

⁸ *Id.* at 5; *Application of CenterPoint Energy Houston Electric, LLC for Approval of its Transmission and Distribution System Resiliency Plan*, Docket No. 56548, *Application of CenterPoint Energy Houston Electric, LLC for Approval of its Transmission and Distribution System Resiliency Plan* at 2, Figure APP-1 (Apr. 29, 2024).

practical outcome. Hurricane season occurs each year regardless of whether a rate case is pending, and utilities will *always* be tasked with keeping the lights on.

CenterPoint's Appeal additionally fails to establish why it is not possible to continue settlement discussions or otherwise work towards a reasonable resolution of this proceeding. The Company's only support for good cause is that many of the witnesses designated to testify in this rate proceeding are involved in the Company's ongoing resiliency measures.⁹ As stated explicitly in CenterPoint's own motion, the hearing was specifically abated to accommodate productive settlement discussions. Settlement does not necessarily require extensive involvement from operational or management witnesses who may be prioritizing resiliency efforts but is instead primarily led by regulatory personnel and legal counsel. Moreover, all of the witnesses referred to as necessary in CenterPoint's Appeal have already filed both direct and rebuttal testimony in this case. With all pre-filed testimony on file, an abatement in place, and settlement talks ongoing, CenterPoint's only basis for good cause is that its witnesses may not be available to testify in an unscheduled hearing. CenterPoint has yet to demonstrate that Hurricane Beryl impairs the Company's ability to proceed with this case and has therefore failed to show good cause for withdrawal.

B. Granting CenterPoint's Appeal would undermine the purpose of the Rate Review Schedule mandated by PURA § 36.157.

If the Commission grants CenterPoint's Appeal, it will open the door for utilities to use an unsupported claim of good cause as a mechanism for dodging the Rate Review Schedule required by law. Comprehensive base rate proceedings for electric investor-owned utilities should occur regularly to ensure that customer rates are reasonable and tied to actual costs. Regular, predictable reviews also ensure that utilities do not over-recover costs, are financially healthy, and are investing appropriately in their infrastructure to promote safe and reliable service.¹⁰ The Legislature recognized the importance of these principles when it adopted PURA § 36.157 in 2017. Under the statute, the Commission must adopt a rule establishing a schedule "that requires an electric utility to make periodic filings with the commission to modify or review base rates charged

⁹ Appeal at 5-6.

¹⁰ Indeed, the Commission has closely scrutinized each request by a utility to deviate from the Rate Review Schedule. For example, Texas-New Mexico Power Company's most recent request for an extension was filed in April 2024 and is still ongoing. See *Application of Texas-New Mexico Power Company for an Extension of Rate Filing Requirement Under 16 TAC § 25.247*, Docket No. 56429 (Apr. 1, 2024).

by the electric utility.” One stated impetus for the legislation was to combat a lack of oversight that had allowed some utilities to charge inappropriately high rates.¹¹ As such, one crucial aim of the legislation was to protect ratepayers.

In response to PURA § 36.157, the Commission adopted 16 TAC § 25.247 in Project No. 47545. Comments filed in that project reemphasized the Legislature’s purpose in adopting PURA § 36.157: “[b]y requiring electric utilities to come in for a comprehensive rate review on a specified timeline, customers are assured regularly refreshed rates and utilities are held accountable for establishing a rate base that reflects their most recent financial positions.”¹² Furthermore, “regularly scheduled rate cases rebalance the interests of ratepayers and utilities, mitigating some of the impacts of the various rate riders and ‘cost recovery factors’ that have been granted to utilities within ERCOT.”¹³ Delaying a utility’s deadline under the Rate Review Schedule for good cause should be a relatively high bar for utilities to meet. Otherwise, the purpose of the law will never be adequately served.

Preserving the integrity of comprehensive rate reviews is especially important for utilities like CenterPoint who benefit from a variety of alternative rate mechanisms that undergo limited and/or expedited regulatory review.¹⁴ For example, prior to this case, CenterPoint’s most recent comprehensive rate case was filed over five years ago on April 5, 2019.¹⁵ Since that time, CenterPoint has filed over **30** piecemeal rate increases. Unlike comprehensive base rate proceedings, rate riders enable utilities to increase rates for discrete items while ignoring offsetting cost reductions in other areas. Rate riders also fail to appropriately adjust items like class cost allocations, the utility’s weighted-average cost of capital, and other critical rate components. As a result, rate riders cause a utility’s rates over time to no longer reflect reality, often resulting in

¹¹ House Bill Analysis for S.B. 753 from 85th session: <https://capitol.texas.gov/tlodocs/85R/analysis/pdf/SB00735H.pdf#navpanes=0>.

¹² *Rulemaking Proceeding to Establish Filing Schedules for Investor-Owned Electric Utilities Operating Solely Inside ERCOT*, Project No. 47545, Steering Committee of Cities Served by Oncor’s Comments at 1 (Jan. 5, 2018).

¹³ Project No. 47545, Texas Industrial Energy Consumer’s Comments on the Proposal for Publication at 1 (Jan. 2, 2018).

¹⁴ For example, the energy efficiency cost recovery factor (EECRF), the advanced metering system (AMS) surcharge, the transmission cost recovery factor (TCRF), and the distribution cost recovery factor (DCRF).

¹⁵ Docket No. 49421, Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates (Apr. 5, 2019).

rates that are inflated, unjust, and unreasonable. Distortions caused by rate riders become worse the longer the time period since a utility last filed a comprehensive rate proceeding. The unreasonable rates CenterPoint is charging its customers will only become more distorted if CenterPoint is allowed to withdraw this application.

In its Appeal, CenterPoint proposes June 30, 2025, as its chosen deadline for re-filing this case. Granting this type of cherry-picked deadline would render the statutorily required Rate Review Schedule meaningless. It would effectively give CenterPoint the discretion to choose its own test year and designate when it should file a rate case in contravention of the law. It would give the Company a free pass to entirely scrap its developed, pending rate case in favor of filing an application over six years after the initiation of its last base rate proceeding.¹⁶ The Rate Review Schedule is specifically intended to limit utilities' flexibility in choosing whether and when to file a rate case. When given full discretion, utilities will always choose to file when they expect rates will increase and will never file when rates should be reduced. Intervenors urge the Commission to consider the implications of allowing CenterPoint to withdraw this case during settlement discussions only to file an entirely new application at a date of the Company's choosing. Further, if CenterPoint's good cause is truly based on storm restoration efforts, it begs the question why the Company is proposing to prosecute a rate proceeding during next year's hurricane season—by CenterPoint's own logic, it will need to devote all of its energies to preparedness measures. In addition, the Commission has already rejected the Company's first attempt to set its own June 30 deadline for filing this application.¹⁷ CenterPoint has not introduced any new facts that warrant a deviation from the Commission's denial of the extension request earlier this year.

C. Dismissal would deprive ratepayers of a significant rate decrease.

CenterPoint's sudden claim of good cause conveniently disregards the fact that a rate decrease is warranted in this case. Based on more than two months of discovery and detailed review of CenterPoint's application, Commission Staff and several parties' collective adjustments illustrate that CenterPoint's rates are excessive and that ratepayers are entitled to a significant rate

¹⁶ Conspicuously, the Company has not *also* committed to refrain from filing expedited rate filings like DCRFs, EECRFs, TCRFs, or a request for recovery of storm restoration costs, until after June 30, 2025. CenterPoint's proposed filing date will allow the Company to stave off a comprehensive rate case for a year only to continue over-earning while also increasing rates through other mechanisms.

¹⁷ 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) (requesting a filing deadline of June 30, 2024). The Commission rejected CenterPoint's request.

decrease. For example, the recommendations filed by the municipal intervenors equate to a nearly \$150 million decrease, Commission Staff recommended an \$84 million decrease, and OPUC recommended a well over \$70 million decrease.¹⁸ At a minimum, the impact of solely reducing CenterPoint's requested 10.4% Return on Equity to a more reasonable 9.5% recommended by multiple parties would reduce CenterPoint's requested rates by \$56.6 million.¹⁹ The direct testimony recommending the above-described reductions was filed in June 2024, and CenterPoint was able to conduct discovery on this testimony. CenterPoint filed its Notice of Withdrawal in August during ongoing settlement discussions, with the knowledge that multiple parties in the proceeding had identified the need for a rate decrease. If the case had not been abated to accommodate settlement discussions, the hearing would have taken place prior to CenterPoint's attempt to unilaterally withdraw. If this case does not proceed, ratepayers will be denied the rate decrease the evidence demonstrates they are entitled to.

D. At a minimum, lower interim rates are appropriate.

Intervenors do not dispute the need for CenterPoint to prioritize the serious resiliency and reliability issues arising from Hurricane Beryl. For this reason, Intervenors support CenterPoint withdrawing its System Resiliency Plan in Docket No. 56548. However, as discussed above, the instant proceeding does not relate to Hurricane Beryl and, therefore, CenterPoint has not established good cause to withdraw. Even if the Commission finds the Company's witnesses or other resources should be dedicated solely to keeping the lights on, the solution is not dismissal of this case but abating the proceeding and setting lower interim rates. The Commission has the authority under PURA § 36.109 to establish temporary rates until a final determination is made. Dismissal of this case would harm ratepayers by allowing CenterPoint to continue over-earning and would set a harmful precedent of abusing good cause. Absent implementation of interim rates, CenterPoint's proposed June 30, 2025 deadline is unacceptable as it would allow the Company to over-earn in excess of two years.

¹⁸ Direct Testimony of Lane Kollen at 4 (Jun. 19, 2024) (Kollen Direct); Direct Testimony of Ruth Stark Rate Regulation Division Public Utility Commission of Texas at 4 (Jun. 26, 2024); OPUC's Direct Testimony of Kyrá Coyle at 11 (Jun. 19, 2024). These figures are reductions to the Company's requested \$60 million rate increase.

¹⁹ Kollen Direct at 4; *see also* Redacted Direct Testimony and Exhibits of Michael P. Gorman on Behalf of Texas Industrial Energy Consumers (Jun. 19, 2024).

III. CONCLUSION

Based upon the foregoing, Intervenor respectfully urge the Commission to deny CenterPoint's Appeal and order the case to proceed however necessary for reaching a fair and expeditious resolution. CenterPoint has failed to establish good cause to dismiss this proceeding, and permitting withdrawal at this stage without sufficient good cause would set a harmful precedent. At a minimum, if the Commission finds further abatement is warranted, Intervenor respectfully request implementation of lower interim rates as a temporary solution. Additionally, Intervenor request any other relief to which they are entitled.

Respectfully submitted,

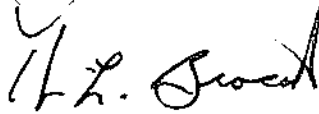
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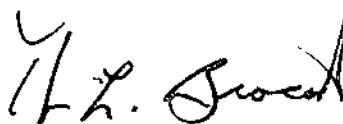
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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 27, 2024, in accordance with the Order Suspending Rules, issued in Project No. 50664.



THOMAS L. BROCATO