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RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

GUD No. 9811

Rate Case Expenses Severed from Gas Utilities Docket Nos. 9791.

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PROPOSAL FOR DECISION

1. Procedural History

On March 6, 2008, CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") filed a statement of intent to increase rates in the unincorporated areas of its Texas Coast Division ("TCD"). On April 15, 2008, CenterPoint filed an appeal of the actions of the Cities of Baytown, Clute and Shoreacres, Texas, which was originally docketed by the Commission as Gas Utilities Docket No. 9796. On June 4, 2008, CenterPoint filed an appeal of the actions of the Cities of Freeport, Pearland, West Columbia, and Angleton, Texas, which was originally docketed by the Commission as Gas Utilities Docket No. 9803. On July 9, 2008, CenterPoint filed an appeal of the actions of the Cities of League City and Wharton, which was originally docketed by the Commission as Gas Utilities Docket No. 9808. Gas Utilities Docket Nos. 9791, 9796, 9803 and 9808 were consolidated into one docket, Gas Utilities Docket No. 9791 ("GUD No. 9791"). On July 25, 2008, the Examiners severed Commission consideration of rate case expenses into a separate docket for consideration by the Commission, Gas Utilities Docket No. 9811: Rate Case Expenses Severed from GUD No. 9791.

On December 16, 2008, The Railroad Commission of Texas ("Commission) approved its final order in GUD No. 9791. A final hearing in GUD No. 9811 was noticed and scheduled for July 20, 2009. On July 20, 2009, CenterPoint and the Texas Coast Utilities Coalitions filed a joint stipulation and partial settlement agreement in order to settle several issues presented in this docket and avoid the fully contested final hearing.

2. Jurisdiction

The Commission has jurisdiction over the matters at issue in this proceeding under TEX. UTIL. CODE ANN. §§ 102.001, 104.001, 121.051, and 121.151 (Vernon 2007 & Supp. 2008). The statutes and rules involved include, but are not limited to TEX. UTIL. CODE ANN. §103.022 (Vernon 2007 & Supp. 2008) and 16 TEX. ADMIN. CODE § 7.5530 (2002).

3. Stipulation and Partial Settlement Agreement

On July 9, 2009, CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") and the Texas Coast Utilities Coalition ("TCUC") filed a stipulation and partial settlement agreement (the "Agreement") in order to settle several issues presented in this docket and therefore avoid a fully contested case hearing.[1] In the Agreement, both TCUC and CenterPoint stipulated to the admissibility of the direct and rebuttal testimony submitted by each party. The Agreement also stipulates that the requested amounts of rate case expenses, including estimated future expenses, were reasonably and necessarily incurred to the extent otherwise recoverable.[2] Both TCUC and CenterPoint stipulated that the rate case expenses incurred by either party are reasonable. The State is not a party to the Agreement and contests the

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[1] Joint Ex. 1, Stipulation and Partial Settlement Agreement
[2] *Id.* at 1.

reasonableness of CenterPoint's rate case expenses. The State does not contest the reasonableness of TCUC's rate case expenses.

4. CenterPoint's Rate Case Expenses

Ms. Debra DePeña, Director of Rates for CenterPoint Energy Service Company, LLC testified on behalf of CenterPoint in support of the utility's request to recover rate case expenses incurred in GUD No. 9791. Ms. DePeña proposes an allocation methodology to allocate rate case expenses to the various groups that participated in CenterPoint's statement of intent and subsequent appeal to the Commission in GUD No. 9791. She also proposes a surcharge recovery mechanism designed to recover rate case expenses from ratepayers over a one year period of time.

Ms. DePeña testified that CenterPoint is requesting recovery of $1,045,844 in rate case expenses as illustrated in Table 1.[3] She testified that CenterPoint proposes an allocation of these expenses using cost causation principles and which allocates $799,922 in expenses to municipal customers and $245,922 in expenses to environs customers. Ms. DePeña testified that CenterPoint is not seeking to recover all of its incurred expenses and that the utility incurred $143,650 in expenses for activities resulting in a settlement agreement with the Gulf Coast Coalition of Cities ("GCCC"). In this proceeding CenterPoint does not seek recovery of rate case expenses incurred as a result of activities involved in GCCC municipalities.[4]

Table 1. CenterPoint Rate Case Expenses

Actual Incurred Expenses	$695,844
Estimated Appeals from Order on Rehearing	$115,000
Estimated Expenses to Complete GUD No. 9811	$235,000
Total	**$1,045,844**
Allocated to Customers within TCUC Cities	*$799,922*
Allocated to Customers within the Environs	*$245,922*

Ms. DePeña testified that CenterPoint's rate case expenses incurred were recorded in the utility's books and records through the normal invoicing and expense account processes, that CenterPoint's books and records are maintained in accordance with Commission Rule 7.310, and therefore they are entitled to the presumption of reasonableness under Commission Rule 7.503.[5] CenterPoint is seeking to recover estimated future expenses that are actually and reasonably incurred.

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[3] CenterPoint Ex. 1, DePena Direct Testimony, pp. 3-4.
[4] *Id.* at 4.
[5] *Id.* at 7-8.

Mr. Andrew Taylor[6] testified on behalf of CenterPoint. He gave testimony regarding the reasonableness of the legal fees incurred by CenterPoint in GUD No. 9791 and the estimated legal fees that will be incurred by CenterPoint during appeals of the Commission's decision in GUD No. 9791. He testified that in his opinion, CenterPoint's request for recovery of $829,478 in actually incurred and estimated future legal fees is reasonable, necessary and meets the criteria of the Commission for rate case expenses.[7] CenterPoint requests reimbursement for outside legal services billed and incurred in GUD No. 9791 through March 2009, expenses expected to be incurred in the appeals of GUD No. 9791, and in this docket (GUD No. 9811).[8] Mr. Taylor reviewed all invoices from outside counsel and interviewed outside counsel in order to determine if the legal work performed in this docket was reasonable, necessary, and otherwise conformed to the standards set forth in Commission Rule 7.5530.[9]

State's Position

Only the State challenges the reasonableness of the rate case expenses incurred. The State argues in its briefing that CenterPoint's requested rate case expenses and their proposed allocation are unreasonable and should be rejected by the Commission.[10] The State did not submit witness testimony or other evidence into the record that the level of rate case expenses incurred in this docket is unreasonable. The State argues that CenterPoint's rate case expenses are disproportionate to the revenue increase requested and approved and the total of its expenses cannot be considered reasonable.[11] The State points out that CenterPoint requested a system-wide revenue increase of $7.36 million, was granted only an increase of only $1.21 million, and that the utility is requesting $1.19 million in rate case expenses, which is disproportionate and violates Commission Rule §7.5530. State points out that CenterPoint requests $0.21 million in expenses related to return on equity testimony, "an issue settled by the parties and not litigated at the hearing on the merits."[12]

TCUC's Position

TCUC does not challenge the reasonableness, necessity, level and amount of rate case expenses that CenterPoint seeks to recover in this proceeding. Rather, TCUC contests the allocation methodology and recovery mechanism proposed by CenterPoint, which is discussed in Section 6.

Examiners' Analysis and Recommendation

The Examiners reviewed all billings, invoices and evidence submitted by CenterPoint. The Examiners have found no evidence of double-billing, excess charges, inappropriate documentation

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[6] CenterPoint Ex. 2, Direct Testimony of Andrew Taylor .
[7] *Id.* at 5.
[8] *Id.* at 10.
[9] *Id.* at 6-25. 16 TEX. ADMIN. CODE §7.5530 (2002).
[10] Initial Brief of the State of Texas, p. 1
[11] *Id.* at 7-9.
[12] *Id.* at 7.

of work, excessive entertainment and dining expenses, or other charges that were not incurred as a direct result of CenterPoint prosecuting GUD No. 9791 before the Commission. The invoices, testimony and other evidence submitted by CenterPoint address the information required under §7.5530(a).[13] The evidence indicates that the amount of work required to prosecute GUD No. 9791 justifies the work performed by the utility's attorneys and consultants pursuant to the requirements of §7.5530(a).[14] As the testimony of Mr. Taylor addresses, several issues presented in the hearing were complex and novel. Additionally, GUD No. 9791 was unique in that it was the first time in recent history that the Commission conducted the final hearing itself.

Rule 7.5530(b)[15] sets out four additional factors that the Commission is to consider when determining the reasonableness of rate case expenses. The evidence in the record establishes there was no duplication of services or testimony and that the work performed by CenterPoint's attorneys and consultants was relevant and reasonably necessary to the proceeding, as this was a complex rate case, presented novel issues and was the first time in recent history that a rate case has been heard by the Commission. The Commission is required to consider whether the request for a rate change was warranted. CenterPoint was granted a rate increase by the Commission. The Commission determined the utility's existing rates were inadequate, approved a rate increase, and therefore the utility's request for new rates was warranted.

The remaining factor requires the Commission to consider whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted. This, in effect, requires the Commission to put in perspective the amount of work performed as compared to the amount of revenue increase sought and amount of revenue increase granted. Ultimately, CenterPoint received a rate increase. The issues involved in GUD No. 9791 were complex. The testimony of both CenterPoint's and TCUC's witnesses addressed the complexity and difficulty of the issues presented in GUD No. 9791. The work involved in GUD No. 9791 was not disproportionate to the complexity of the issues or the amount of revenue increase sought in GUD No. 9791.

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[13] 16 TEX. ADMIN. CODE § 7.5530(a) (2002).

[14] 16 TEX. ADMIN. CODE § 7.5530(a)(2002). In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Each gas utility and/or municipality shall detail and itemize all rate case expenses and allocations and shall provide evidence showing the reasonableness of the cost of all professional services, including but not limited to: (1) the amount of work done; (2) the time and labor required to accomplish the work; (3) the nature, extent, and difficulty of the work done; (4) the originality of the work; (5) the charges by others for work of the same or similar nature; and (6) any other factors taken into account in setting the amount of the compensation.

[15] 16 TEX. ADMIN. CODE § 7.5530(b) (2002). In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted.

The extent to which the rate increase approved in GUD No. 9791 impacts the Commission's determination of the reasonableness of CenterPoint's rate case expenses is a public policy question. Under §7.5530(b) the Commission has the authority to determine that a portion of the rate case expenses are not reasonable given the relative size of the approved rate increase. The State argues that CenterPoint's rate case expenses should be limited given the amount of rate increase and given the total amount of rate case expenses incurred in this docket. The State's argument is essentially that the Commission should not approve the recovery of rate case expenses greater than the approved revenue increase. This issue is a public policy question and the Examiners have found no recent precedent to recommend a rate case expense reduction based on an analysis of §7.5530(b). Further, the State does not argue with any specificity how much to reduce CenterPoint's expenses, how to determine what amount is unreasonable, how to calculate a reduction and a basis for calculating that reduction. The Examiners have not identified any specific amounts, expenditures, fees, and expenses actually incurred in GUD No. 9791 that are different from the types of fees and expenses approved by the Commission in prior rate cases. Therefore, the Examiners recommend that the Commission approve the utility's request to recover $695,844 in actual expenses incurred by CenterPoint in GUD No. 9791.

The Examiners recommend that the Commission approve the utility's request to recover a maximum of $350,000 in estimated future expenses necessary to complete GUD Nos. 9791 and 9811, subject to subsequent verification of actual incurrence and reasonableness of these amounts.

5. TCUC's Rate Case Expenses

Ms. J. Kay Trostle[16] testified on behalf of TCUC. She gave testimony regarding the reasonableness of the legal fees incurred by TCUC in GUD No. 9791 and the estimated legal fees that will be incurred by TCUC during appeals of the Commission's decision in GUD No. 9791. She testified that in her opinion TCUC's rate case expenses are reasonable and should be approved.[17] Ms. Trostle recommends the Commission approve a total of $580,462 in rate case expenses, broken out by firm as follows:[18]

Herrera & Boyle	$422,686
Technical Associates, Inc.	$12,850
Diversified Utility Consultants, Inc.	$113,586
Law Offices of James Brazell	$14,089
Jackie D. Standard	$1,050
Smith Trostle LLP	$16,200

[16] TCUC Ex. 1, Direct Testimony of J. Kay Trostle.
[17] *Id.* at 12.
[18] *Id.* at 13.

Ms. Trostle conducted a review of fees and expenses under applicable standards for rate case expenses. She testified that the hourly rates charged by attorneys and consultants are reasonable; the number of attorneys working on the underlying docket was minimized; the invoices accurately document hours worked and services provided; there were no time entries exceeding 12.0 hours per day; there was no duplicate billing; there were no disbursements for luxury items such as limousine service, sporting events, alcoholic drinks, hotel movies, or other entertainment; or meals costing in excess of $25.00 per person per meal.[19] She testified that the total fees and expenses charged were reasonable and necessary and otherwise complied with the requirements of the Commission's rule.

State's and CenterPoint's Position

CenterPoint does not challenge the reasonableness, necessity, level and amount of rate case expenses that TCUC seeks to recover in this proceeding. Rather, CenterPoint contests the allocation methodology and recovery mechanism proposed by TCUC, which is discussed in Section 6. The State does not challenge or argue against the recovery of rate case expenses incurred by TCUC.

Examiners' Analysis and Recommendation

The Examiners reviewed all billings, invoices and evidence submitted by TCUC. The Examiners have found no evidence of double-billing, excess charges, inappropriate documentation of work, excessive entertainment and dining expenses, or other charges that were not incurred as a direct result of TCUC participating in GUD No. 9791 before the Commission.

The invoices, testimony and other evidence submitted by TCUC address the information required under §7.5530(a).[20] The evidence indicates that the amount of work required to prosecute GUD No. 9791 justifies the work performed by the utility's attorneys and consultants representing TCUC before the Commission, pursuant to the requirements of §7.5530(a). As the testimony of Ms. Trostle addresses, several issues presented in the hearing were complex and novel. Additionally, GUD No. 9791 was unique in that it was the first time in recent history that the Commission conducted the final hearing.

When analyzing TCUC's expenses under Rule 7.5530(b), the Examiners found no duplication of services or testimony. The Examiners also find that the attorney and consultant work performed on behalf of TCUC was relevant and reasonably necessary to the proceeding given the size of the requested revenue increase ($7.6 million) and complexity of the issues presented (e.g. CenterPoint's proposed COSA). GUD No. 9791 involved several complex issues and the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought by CenterPoint. There is no evidence in the record of duplication of services or testimony or that the work performed by TCUC's attorneys and

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[19] *Id.* at 13-28.
[20] 16 TEX. ADMIN. CODE § 7.5530(a) (2002).

consultants was not relevant. The Examiners have not identified any specific amounts, expenditures, fees, and expenses actually incurred in GUD No. 9791 that are different from the types of fees and expenses approved by the Commission in prior rate cases. Therefore, the Examiners recommend that the Commission approve TCUC's request to recover its expenses incurred in GUD No. 9791.

6. Allocation of Rate Case Expenses and Recovery Mechanism

The major area of contention among the parties concerns how rate case expenses will be allocated to CenterPoint's customers. The parties also disagree on the length of the recovery period that any surcharge to recover rate case expenses would be in effect. The three issues involving allocation of rate case expenses are:

(1) How to allocate rate case expenses between parties that did not settle (TCUC and environs) and the settling cities (GCCC).
(2) How to allocate rate case expenses between TCUC (municipal customers) and the environs customers.
(3) How long a period of time to surcharge customers for recovery of rate case expenses.

CenterPoint's Position

Ms. DePeña testified regarding CenterPoint's proposed allocation methodology and recovery mechanism for rate case expenses incurred in this docket. CenterPoint incurred rate case expenses in GUD No. 9791 as a result of interactions with three distinct groups: TCUC, GCCC, and the Texas Coast Environs customers. The utility proposes to recover its expenses using cost causation principles allocating costs as follows:

1. Costs specifically related to GCCC cities are 100 percent allocated to GCCC;
2. Costs specifically related to both GCCC and TCUC are allocated equally (50% / 50%) between GCCC and TCUC;
3. Costs associated with initial preparation of the filing package are allocated equally (33.3% / 33.3% / 33.3%) between GCCC, TCUC and the environs customers.[21]

CenterPoint proposes that 100% of the costs for appeals and completion of this docket be allocated to TCUC because it appealed from the Order on Rehearing in GUD No. 9791, and is therefore the cost driver. CenterPoint proposes that TCUC be allocated all the expenses in this docket because its positions are materially adverse to the Texas Coast Division environs customers.[22] GCCC rate case expenses will be collected from GCCC customers pursuant to settlement, and CenterPoint is not requesting recovery of those expenses in GUD No. 9811.[23]

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[21] *Id.* at 5.
[22] *Id.* at 6.
[23] *Id.* at 15.

Approved rate case expenses will be recovered through a volumetric surcharge. Two different groups will have different volumetric surcharges under CenterPoint's proposal. The utility "proposes to divide the Commission approved rate case expenses for each group (TCUC cities and Texas Coast Division environs) by the annual CCF sales volume for these groups as reported in the Company's 2008 Annual Report" and will be recovered over a one year period.[24]

TCUC's Position

TCUC takes the position that all rate case expenses approved for recovery should be recovered on a system-wide basis from all customers subject to, or who can avail themselves of, the final order in GUD No. 9791.[25] TCUC opposes CenterPoint's proposed allocation methodology. Ms. Trostle testified that the GCCC cities have the contractual right to opt into the rates approved in GUD No. 9791 under a most favored nations clause. "Because the overall base rate increase in the GUD No. 9791 Final Order is $1.2 million, compared to the $3.38 million base rate increase in the GCCC settlement, it is reasonable to conclude that the GCCC cities benefitted from, and under their MFN provision can take advantage of, the Commission's final order in the underlying docket."[26] TCUC also advocates the allocation of rate case expenses using a similar method approved in GUD No. 9002-9135 based on the last date a settling city reached an agreement with the utility. In this docket, all rate case expenses incurred through 8/19/08 would be allocated to all rate payers. After 8/19/08 all rate case expenses would be allocated to customers under the Commission's jurisdiction in GUD No. 9791.[27]

Ms. Trostle testified that CenterPoint's allocation methodology assigns work done on discovery matters to the group propounding such discovery; it is not reasonable to assume that only party propounding discovery is the only beneficiary and should bear all costs. Environs customers benefitted from the discovery conducted by the litigants and CenterPoint's allocation methodology does not recognize this.[28] She testified that "it is impossible to determine how the allocation category was selected for time entries that were so vague as to defy classification" and that "there are inconsistencies throughout."[29] Ms. Trostle testified that the effect of this allocation method is to penalize the customers of the cities that participate in rate cases by imposing expenses selectively.[30] Ms. Trostle testified that CenterPoint is the ultimate cause of rate case expenses. "TCUC and other municipalities, acting in their statutory role as regulators, would never have incurred any expenses but for the utility's filing of the rate case. Therefore, the cost causer for all rate case expenses is CenterPoint."[31] She testified that in GUD No. 9465 all of the intervening Cities' rate case expenses associated with Texas Gas Services' initial rate filing, which was

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[24] *Id.* at 15.
[25] TCUC Ex. 1, Direct Testimony of J. Kay Trostle, at 30.
[26] *Id.* at 30.
[27] TCUC Initial Brief at 44.
[28] *Id.* at 41-42.
[29] *Id.* at 42-43.
[30] *Id.* at 43.
[31] J. Kay Trostle, Rebuttal Testimony, at 2.

incomplete and required updating, were ordered to be paid by Texas Gas Service rather than ratepayers. She testified that another problem with CenterPoint's allocation method is that it ignores the municipalities' statutory duty to act as regulators and attributes causation directly to the customers who reside in certain cities. She testified that the Commission should reject CenterPoint's proposed allocation methodology "because it flies in the face of the public policy to encourage the participation of municipalities, as regulators with original jurisdiction, and as statutory parties in appeals taken by utilities before the Commission, when setting gas utility rates, and terms of service and operation."[32]

TCUC argues that CenterPoint's proposed allocation methodology is intended to concentrate as much expense as possible on the TCUC cities and impose a large enough surcharge on the customers residing in those cities in order to discourage other cities from challenging CenterPoint's future filings.[33] TCUC points out that all customers are eligible to benefit from the Commission's decision in GUD No. 9791, as the GCCC cities have Most Favored Nations clauses in the settlement agreements and can therefore avail themselves of the GUD No. 9791 rates. TCUC argues that the Commission's default methodology is to have all customers bear rate case expenses and cites the Commission's orders in GUD Nos. 9488, 9695, 9846, 9517 (GUD No. 9400), and 9835.[34] TCUC argues that this is a general historic pattern and should not be changed without concrete data to support such a change. TCUC argues that rate case expenses should be recovered from all customers who directly benefitted from TCUC's litigation of issues in GUD No. 9791, and TCUC customers, environs customers, and approving cities benefitted from the GUD No. 9791 litigation because CenterPoint's proposed $7.36 million revenue increase was reduced by the Commission to a $1.2 million increase.[35] TCUC argues that there are approximately 239,383 customers in the Texas Coast Division and that 168,540 customers directly benefitted from TCUC's participation in GUD No. 9791, whereas 70,843 are customers within the GCCC cities. Further, that the 168,540 customers are "(a) either customers in the Environs; (b) customers in one of the 23 cities that approved CenterPoint's application or allowed it to go into effect by operation of law but that are subject to the MFN provisions CenterPoint promised these cities; (c) customers in cities that ceded their original jurisdiction to the Commission; or (4) customers in cities that are in the TCUC coalition of cities."[36] TCUC does not propose that GCCC municipal customers be allocated rate case expenses in this docket. TCUC argues that allocating rate case expenses to ratepayers that directly benefit from the GUD No. 9791 final order is consistent with PUC decisions and precedent on this issue.[37]

TCUC requests that rate case expenses be recovered over a period of time longer than one year. Regarding the time period of recovery, Ms. Trostle testified that "consistent with the Commission's Order in GUD No. 9517, I recommend that all the rate case expenses should be

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[32] J. Kay Trostle, Rebuttal Testimony, at 3.
[33] TCUC's Initial Brief, at 28-29.
[34] *Id.* at 29-30.
[35] *Id.* at 31.
[36] *Id.* at 32.
[37] *Id.* at 36-38.

recovered over a three year period."[38]

State's Position

The State takes the position that CenterPoint's proposed allocation of rate case expenses is unreasonable, based on an inappropriate application of cost causation principles and should be rejected by the Commission.[39] The State argues that the cost causation principle does not support CenterPoint's proposed allocation methodology.[40] "Of the 47 cities within the TCD, eight adopted ordinances approving the originally-requested rates and another fifteen allowed the originally-requested rates to go into effect by operation of law. CenterPoint proposes rewarding these cities by not allocating to them any of its costs of meeting the statutory filing and notice requirements applicable to those cities."[41] State argues that GUD No. 9791 was a major change rate case, a hearing is statutorily required, and therefore CenterPoint's allocation methodology is inappropriate because cost causation does not offer guidance in allocating rate case expenses. Likewise, a hearing on the environs rates was required under the Commission's rules and it is inappropriate to exclude certain groups from rate case expense recovery.

The State also argues that CenterPoint's proposed rate case expenses and allocation contravenes the Commission's allowable rate case expenses rule.[42] Specifically, that the rate case expenses are disproportionate to the revenue increase approved by the Commission and therefore should be limited under §7.5530(b). "By both the criteria identified in the Commission's Allowable Rate Case Expenses Rule, 'the amount of the increase sought as well as the amount of any increase granted,' CenterPoint's requested allocated rate case expenses are unreasonable and must be rejected."[43] The State proposes limiting recovery of rate case expenses to the revenue increase approved by the Commission.

Finally, the State argues that rate case expenses should be proportionately allocated to all beneficiaries of the ratemaking process.[44] CenterPoint intended all customers of the Texas Coast Division to benefit from GUD No. 9791 because it gave Most Favored Nations ("MFN") treatment to the twenty-three unaligned cities and to the GCCC cities. The State supports allocating allowable rate case expenses to all TCD customers using non-gas revenues in order "to reflect the relative benefits of rate case expenses to all TCD customers up to the revenue increase approved by the Commission in GUD No. 9791" which was adopted by the Commission in GUD No. 9517.[45]

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[38] TCUC Ex. 1, Direct Testimony of J. Kay Trostle, at 31.
[39] Initial Brief of the State of Texas, at 1-3.
[40] *Id.* at 4-6.
[41] *Id.* at 4-6.
[42] *Id.* at 7-9.
[43] *Id.* at 9.
[44] *Id.* at 10-13.
[45] *Id.* at 12.

Examiners' Analysis and Recommendation

The first issue for Commission decision concerns the allocation of rate case expenses between parties that did not settle (TCUC and environs) and the settling cities (GCCC). Both CenterPoint and TCUC appear to agree that allowable rate case expenses set in this docket should not be allocated to the GCCC cities.[46] Only the State disagrees with this proposition. CenterPoint argues that GCCC cities can not be allocated rate case expenses in this docket because there is no appeal before the Commission of the actions taken by those municipalities. Thus, the Commission does not have jurisdiction over the rates set and agreed to by the GCCC cities. The Commission has not previously allocated rate case expenses incurred during an appeal to municipalities that did not participate in that appeal. In GUD No. 9465 the Commission did not allocate rate case expenses to the City of Port Arthur, which settled prior to an appeal by other municipalities. GURA § 102.002(2) prevents the Commission from affecting the jurisdiction of a municipality in its regulatory capacity.[47] No case law specifically holds that allowing a utility to recover rate case expenses from customers located within a municipality that was not a party to an appeal to the Commission is outside the Commission's jurisdiction or somehow violates GURA § 102.002(2).

Although the settlement agreement between the GCCC cities and CenterPoint has a MFN clause allowing the lower rates approved in GUD No. 9791 to be implemented within those cities, the GCCC cities are not parties to any appeal before the Commission. Further, rate case expenses incurred by the GCCC cities in the statement of intent filing before them are being recovered pursuant to the settlement agreement entered into between GCCC and CenterPoint. The State argues that because GCCC cities may benefit from the rates implemented in GUD No. 9791 they should be allocated a portion of the rate case expenses incurred. Although the presence of a Most Favored Nations clause raises an equity issue, specifically whether or not it is equitable for the GCCC cities to potentially benefit from lower litigated rates and not bear some of the costs associated with that litigation. There is also an equity issue of whether or not it is sound policy to reduce the cost of litigation to the party litigant by allocating a portion of costs to non-litigants. We recommend that the Commission not allocate rate case expenses incurred in GUD Nos. 9791 and 9811 to customers located within the GCCC cities that did not participate in GUD No. 9791. This recommendation is consistent with the recommendation of the Examiners in GUD No. 9787.

The Examiners recommend that rate case expenses be recovered over a one year period of time by means of a per bill surcharge allocated on non-gas revenues. The following table illustrates the results of the Examiners' recommendation. The one year surcharge will result in a $1.01, $1.18 and $18.72 per bill surcharge to TCUC and environs Residential, Small Commercial, and Large Commercial customers, respectively.

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[46] TCUC's Initial Brief at 34.

[47] Except as otherwise provided by this subtitle, this subtitle does not authorize the railroad commission to affect the jurisdiction, power, or duty of a municipality that has elected to regulate and supervise a gas utility in the municipality. TEX. UTIL. CODE ANN. § 102.002(2) (Vernon 2007 & Supp. 2009).

GUD No. 9811 - Examiners' Schedule 1
Rate Case Expense Surcharge Calculation

	Amounts
Centerpoint	
Actual (pre 3-31-2009)	$695,845
Estimated (post 3-31-2009)	$350,000
TCUC	
Actual (pre 3-31-2009)	$580,462
Estimated (post 3-31-2009)	$175,000
Total Amount to be Recovered from TCUC and Environs Customers	$1,801,306
Residential Revenue without Gas Cost	$23,829,548
Small Commercial Revenue without Gas Cost	1,697,543
Large Commercial Revenue without Gas Cost	636,305
Total Revenue by Class without Gas Cost	26,163,396
Residential Class Percentage	91.08%
Small Commercial Class Percentage	6.49%
Large Commercial Class Percentage	2.43%
Residential Rate Case Expense Recovery	$1,640,625
Small Commercial Rate Case Expense Recovery	116,873
Large Commercial Rate Case Expense Recovery	43,809
Total Rate Case Expense Recovery	1,801,306
Residential Annual Customer Charges TCUC and Environs	1,631,776
Small Commercial Annual Customer Charges TCUC and Environs	99,097
Large Commercial Annual Customer Charges TCUC and Environs	2,340
Residential Rate Case Expense Surcharge per Customer per Month	**$1.01**
Small Commercial Rate Case Expense Surcharge per Customer per Month	**$1.18**
Large Commercial Rate Case Expense Surcharge per Customer per Month	**$18.72**

Note: Revenue without Gas Cost and number of customer charges are from 12 months ended September, 2007.

7. The Statutory Meaning of "Reimbursement"

The parties raised the issue of whether or not a municipality must first disburse funds to attorneys and consultants before the municipality may be reimbursed by the utility. At issue is the interpretation of GURA §103.022(b),[48] which provides:

> The gas utility in the ratemaking proceeding shall reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (a) to the extent the applicable regulatory authority determines reasonable.

CenterPoint takes the position that §103.022(b) requires a city to expend funds prior to being reimbursed by the utility. TCUC takes the position that the statute does not require cities to pay its attorneys and consultants prior to reimbursement by the utility. The State does not take a position on this issue in its briefing.

CenterPoint's Position

In its briefing, CenterPoint argues that the literal interpretation of GURA §103.022 requires a municipality to pay attorney and consultant rate case expenses prior to the utility reimbursing the municipality for those expenses, as a mater of law. CenterPoint argues that the "plain meaning of 'reimbursement' is to compensate someone for funds already spent" and that Black's Law Dictionary defines reimbursement as "to pay back, to make restoration, to repay that expended."[49] Therefore under the rules of statutory construction §103.022 requires a utility to compensate a municipality for reasonable rate case expenses only after those expenses have been paid. CenterPoint argues that the TCUC cities have expended no funds on rate case expenses, seven cities have "opt-out" clauses that shield them from legal obligation to pay for participating in rate proceedings, and therefore the cities are entitled to no "reimbursement" under GURA §103.022, until after the cities have paid their attorneys and consultants.

CenterPoint also argues that public policy considerations support its proposed interpretation. CenterPoint argues that interpreting §103.022 to not require payment before reimbursement "effectively removes any real incentive for municipalities to review and control the rate case expenses they generate leads to bad policy consequences."[50] CenterPoint argues that if the municipality is required to expend funds prior to reimbursement, the municipality will be more likely

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[48] TEX. UTIL. CODE ANN. §103.022 (Vernon 2007 & Supp. 2009).
[49] Initial Brief of CenterPoint Energy Resources Corp., p. 12
[50] Initial Brief of CenterPoint Energy Resources Corp., p. 13

to "provide active oversight of the lawyers and consultants," otherwise the municipality has no incentive to control litigation costs.[51]

Mr. Taylor testified on rebuttal that TCUC may not have satisfied the provisions of §103.022 authorizing the recovery of rate case expenses by municipalities because the term *reimburse* "implies that the city will have first paid for the consulting or legal services for which it seeks reimbursement."[52] He also testified that public policy issues are raised by the TCUC cities not having "any actual financial consequences in a rate case proceeding."[53] He testified that the municipalities have no incentives to monitor or control rate case expenses, evaluate the cost/benefit aspects of litigation tactics and positions, and therefore encourages more litigation and higher transaction costs in rate-making proceedings.[54]

TCUC's Position

TCUC advances numerous arguments as to why §103.022(b) does not require payment of rate case expenses prior to reimbursement. TCUC takes the position that GURA requires reimbursement based on the invoices submitted to municipalities and has no requirement of actual payment of expenses. TCUC argues that GURA from its inception, its predecessor statute the Public Utility Regulatory Act ("PURA"), and as currently enacted, requires utilities to reimburse a municipality's reasonable rate case expenses.

TCUC argues that both the Railroad Commission and the Public Utility Commission ("PUC") have each interpreted the meaning of "reimbursement" to require payment upon presenting invoices.[55] That in both GURA and PURA as currently enacted, the statutes concerning the reimbursement of a municipality's reasonable rate case expenses are verbatim the same.[56] Further, that the PUC has considered the same argument advanced by CenterPoint and has consistently rejected the theory that "reimbursement' requires actual payment prior to reimbursement by the utility.[57] TCUC argues that a PUC decision involving Houston Power and Light,[58] (Docket No. 12065 – HP&L) should be used by the Commission as guidance on this issue. In that docket, the ALJ's disagreed with HP&L's argument that "reimburse" required the actual payment of expenses. TCUC argues that the Docket No. 12065 – HP&L supports the principle of reimbursing

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[51] *Id.*
[52] CenterPoint Ex. 3, Taylor Rebuttal Testimony, p. 2.
[53] *Id.* at 6.
[54] *Id.* at 6.
[55] TCUC Initial Brief, pp. 8-10.
[56] GURA §103.022, PURA §33.023.
[57] *Id.* at 10-17.
[58] Docket No. 12065, *Complaint of Kenneth D. Williams Against Houston Lighting and Power Company*, Order No. 66 (Nov. 8, 1994).

municipalities for reasonable rate-case expenses incurred without any requirement that the cities first pay those expenses; that there is no statutory requirement of prepayment; that the public policy of municipal participation in PUC proceedings is supported by such an interpretation; and that the difference between incurrence of an expense and disbursement of monetary payment of that expense is recognized by the decision. TCUC also argues that this principle is recognized in the probate code, insurance law, and cases involving attorney's fees. TCUC argues that the PUC ruled similarly in Docket 12784 – SWBT.[59]

TCUC argues that the Commission's decision in GUD No. 9400 approving quarterly reimbursement of rate case expenses recognizes that reimbursement does not require prepayment of expenses. CenterPoint recognizes that reimbursement does not require prepayment in its actions of reimbursing municipalities in other utility matters before the PUC and municipalities. Ms. Trostle testified that there is nothing in the statute or precedent before the Commission or the PUC which would indicate that actual disbursement by the municipality is a prerequisite to a utility's obligation to reimburse the municipality for reasonable rate case expenses.[60] Ms. Fox testified that in "accounting terminology an expense is the cost for the use of items or for services provided. It can be either a cost incurred or money exchanged. The timing of the cash disbursement to pay the expense does not change an expense from being an expense."[61] Ms. Fox testified that reimbursement is the compensation of an expense. "Reimbursement of an expense can be for an out-of-pocket cash disbursement or for an incurred expense with proper documentation such as an invoice."[62]

That under the *doctrine of legislative acceptance*, the Legislature has endorsed and accepted the Commission's practice regarding reimbursement of municipality rate case expenses and that pre-payment is not required. Under the *doctrine of legislative acceptance*, when the Legislature reenacts a statute which is the subject of a long-standing, particular, administrative construction, it is presumed that the reenactment constitutes the Legislature's acceptance of the agency's practice. Therefore, given the long-standing practices of the Commission regarding the interpretation of reimbursement, when the Legislature continued the existence of the Commission's jurisdiction over gas utilities during the Sunset Review Process, the Legislature endorsed and accepted the Commission's procedure regarding reimbursement of a municipality's rate case expenses.

Examiners' Analysis and Recommendation

The Commission has not decided this issue in a previous gas utility docket. As currently enacted GURA §103.022 and PURA §33.023 are substantially the same provisions. The PUC has rejected CenterPoint's proposed interpretation that the statute requires payment of expenses prior to reimbursement. The statute in question does not specifically require the prepayment of expenses

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[59] Docket No. 12784, *Southwestern Bell Telephone Company's Statement of Intent to Change & Restructure the Company's Local Transport & Directory Transport Categories of its Switched Access*, Order No. 8 (July 1, 1994).

[60] J. Kay Trostle, Rebuttal Testimony, pp. 11-12.

[61] Marilyn J. Fox, Rebuttal Testimony, p. 2.

[62] *Id.*

prior to reimbursement. The Commission has required reimbursement of a municipality's rate case expenses prior to the conclusion of a rate case and without requiring that expenses be actually paid prior to reimbursement (GUD No. 9400). Therefore the Examiners recommend that the Commission deny CenterPoint's proposed interpretation of GURA §103.022. The Examiners recommend that the Railroad Commission of Texas approve the attached Proposed Final Order containing findings of fact and conclusions of law.

Respectfully submitted,

John Chakales
Hearings Examiner
Office of General Counsel

Mark Evarts
Technical Examiner
Gas Services Division

BEFORE THE
RAILROAD COMMISSION OF TEXAS

RATE CASE EXPENSES SEVERED FROM GAS UTILITIES DOCKET NO. 9791	§ § § §	**GAS UTILITIES DOCKET NO. 9811**

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551, et seq. (Vernon 2004 & Supp. 2008). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") is a utility as that term is defined in the Texas Utility Code, and is subject to the jurisdiction of the Railroad Commission of Texas ("Commission").

2. CenterPoint owns and operates a gas distribution system that provides gas service to customers in its Texas Coast Division ("TCD").

3. The TCD includes the cities of Alvin, Angleton, Baytown, Beach City, Beasley, Brookshire, Brookside Village, Clear Lake Shores, Clute, Danbury, Dickinson, East Bernard, El Lago, Freeport, Friendswood, Hillcrest Village, Hitchcock, Jones Creek, Katy, Kemah, Kendleton, La Marque, La Porte, Lake Jackson, League City, Liverpool, Manvel, Morgan's Point, Mont Belvieu, Needville, Orchard, Oyster Creek, Pearland, Pleak, Richmond, Richwood, Rosenberg, Santa Fe, Seabrook, Shoreacres, Sugar Land, Taylor Lake Village, Texas City, Wallis, Webster, West Columbia, Wharton and their surrounding environs.

3. On March 6, 2008, CenterPoint filed a statement of intent to increase rates in the unincorporated areas of the TCD. On April 15, 2008, CenterPoint filed an appeal of the actions of the Cities of Baytown, Clute and Shoreacres, Texas which was docketed as Gas Utilities Docket No. 9796. On June 4, 2008, CenterPoint filed an appeal of the actions of the Cities of Freeport, Pearland, West Columbia, and Angleton, Texas which was docketed as Gas Utilities Docket No. 9803. On July 9, 2008, CenterPoint filed an appeal of the actions of the Cities of League City and Wharton, Texas which was docketed as Gas Utilities Docket No. 9808. Gas Utilities Docket Nos. 9791, 9796, 9803 and 9808 were consolidated into one docket, Gas Utilities Docket No. 9791 ("GUD No. 9791").

4. On December 16, 2008, the Commission issued a final order in GUD No. 9791.

5. On April 15, 2008, the Texas Coast Utilities Coalition ("TCUC") intervened as a party to GUD No. 9791 and is a party in this docket. On July 28, 2008, the State of Texas ("STATE") intervened as a party to GUD No. 9791 and is a party in this docket.

6. On July 9, 2009, CenterPoint and TCUC filed a stipulation and partial settlement agreement (the "Agreement") in order to settle several issues presented in this docket and therefore avoid a fully contested case hearing. In the Agreement, both TCUC and CenterPoint stipulated to the admissibility of the direct and rebuttal testimony submitted by each party. The Agreement also stipulates that the requested amounts of rate case expenses, including estimated future expenses, were reasonably and necessarily incurred.

7. A final hearing in GUD No. 9811 was conducted on July 20, 2009.

8. CenterPoint's witnesses established that the hourly rates charged by consulting attorneys, and special service consultants were reasonable; the number of consulting attorneys working on the underlying docket was minimized; the invoices accurately documented hours worked and services provided; there were no time entries exceeding 12.0 hours per day; and there were no disbursements for hotels, valet parking, designer coffee, airfare, or meals requiring special scrutiny or disallowment.

9. TCUC's witnesses established that the hourly rates charged by consulting attorneys, and special service consultants were reasonable; the number of consulting attorneys working on the underlying docket was minimized; the invoices accurately documented hours worked and services provided; there were no time entries exceeding 12.0 hours per day; and there were no disbursements for hotels, valet parking, designer coffee, airfare, or meals requiring special scrutiny or disallowment.

10. The Examiners reviewed all invoices supporting the rate case expenses incurred by CenterPoint and did not find any duplication of services or testimony. There is no evidence in the record that any of the expenses submitted for reimbursement were not necessarily incurred in the prosecution of CenterPoint's rate case proceeding before the Commission.

11. The evidence submitted establishes that CenterPoint's total rate case expenses of $1,045,845 are reasonable and were necessary to prosecute GUD Nos. 9791 and 9811. Of that amount, $695,845 are actual expenses and $350,000 are estimated future expenses.

12. The evidence submitted establishes that TCUC's total rate case expenses of $755,462 are reasonable and were necessary to prosecute GUD Nos. 9791 and 9811. Of that amount, $580,462 are actual expenses and $175,000 are estimated future expenses.

13. It is reasonable that CenterPoint recover all rate case expenses approved herein over a period of twelve (12) months. It is reasonable that CenterPoint recover rate case expenses by using a per bill surcharge.

14. It is reasonable that rate case expenses incurred in prosecuting GUD Nos. 9791 and 9811 before the Commission be recovered from all customers located within the TCUC cities and environs because these customers primarily benefitted from the participation of TCUC in these proceedings and were subject to the Commission's jurisdiction in GUD Nos. 9791 and 9811.

15. A rate case expense surcharge of $1.01 per bill for Residential customers, $1.18 per bill for Small Commercial customers, and $18.72 per bill for Large Commercial customers is reasonable

because these surcharges are designed to recover rate case expenses over a twelve (12) month period, based on non-gas revenues.

16. It is reasonable to require CenterPoint to true-up rate case expenses after the twelve month recovery period because it will allow the utility to recover the exact amount of rate case expenses without over-recovering or under-recovering the utility's rate case expenses from customers.

17. It is reasonable that CenterPoint file a report detailing recovery with the Commission forty-five (45) days after the end of December 2010 and June 2011, identifying the beginning balance for the period, the recovery by month with monthly volumes, the interest calculation and the ending balance. It is reasonable that the report include a reconciliation of the estimated rate case expense approved by providing invoices submitted to the total authorized recovery of the estimated rate case expense.

CONCLUSIONS OF LAW

1. CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint") is a gas utility as defined in TEX. UTIL. CODE ANN. §§ 101.003(7), 121.001 (Vernon 2007 & Supp. 2008) and is subject to the Commission's jurisdiction under TEX. UTIL. CODE ANN. §§ 104.001, 121.051 (Vernon 2007 & Supp. 2008).

2. Each party seeking reimbursement for its rate case expenses has the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence, under 16 TEX. ADMIN. CODE § 7.5530 (2002).

3. The rate case expenses enumerated in the findings of fact herein are reasonable and comply with 16 TEX. ADMIN. CODE ANN. § 7.5530 (2002).

4. The Commission has the authority to allow CenterPoint to recover rate case expenses through a surcharge on its rates, under TEX. UTIL. CODE ANN. § 104.051 (Vernon 2007 & Supp. 2008).

IT IS THEREFORE ORDERED that CenterPoint is authorized to recover all rate case expenses incurred in GUD No. 9791 and approved by this order by means of a surcharge on its rates charged to ratepayers subject to the final orders entered in GUD No. 9791. A rate case expense surcharge of $1.01 per bill for Residential customers, $1.18 per bill for Small Commercial customers, and $18.72 per bill for Large Commercial customers to be implemented over a period of approximately twelve (12) months, commencing with the date this final order becomes effective. The per bill surcharge shall be a separate line item on each customer's bill clearly identifying the recovery rate and amount recovered each month.

IT IS FURTHER ORDERED that CenterPoint shall true-up any amounts over-recovered or under-recovered at the end of the twelve month recovery period. If at the end of the twelve (12) month recovery period, CenterPoint is either over or under recovered, the utility shall file a report with the Director of the Gas Services Division identifying the over or under recovered amount and the estimated number of

months required to fully collect any under recovered amount. All over-recovered amounts shall be refunded, with interest, in the following billing cycle.

IT IS FURTHER ORDERED that any proposed findings of fact and conclusions of law not specifically adopted herein are **DENIED. IT IS ALSO ORDERED** that each exception to the Examiners' Proposal for Decision not expressly granted herein is overruled and all pending motions and requests for relief not previously granted herein are hereby **DENIED.**

IT IS FURTHER ORDERED THAT CenterPoint may begin surcharging rates for rate case expenses on and after the date of this Order. This Order will not be final and appealable until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

SIGNED this ____ day of June, 2010.

RAILROAD COMMISSION OF TEXAS

_____
CHAIRMAN VICTOR CARRILLO

_____
COMMISSIONER ELIZABETH A. JONES

_____
COMMISSIONER MICHAEL L. WILLIAMS

ATTEST:

_____
SECRETARY

SERVICE LIST
Gas Utilities Docket No. 9811
Rate Case Expenses Severed from Gas Utility Docket No. 9791
Examiner: John Chakales
Co Examiner: Mark Evarts

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