



# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

GUD NO. 10077

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**APPEAL OF CENTERPOINT ENERGY RESOURCES CORP. D/B/A CENTERPOINT ENERGY TEXAS GAS OPERATIONS AND CENTERPOINT ENERGY ENTEX FROM THE ACTION OF THE CITY OF BEAUMONT DENYING THE REQUEST OF MUNRO'S UNIFORM SERVICES, LLC.**

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### APPEARANCES:

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### PROCEDURAL HISTORY:

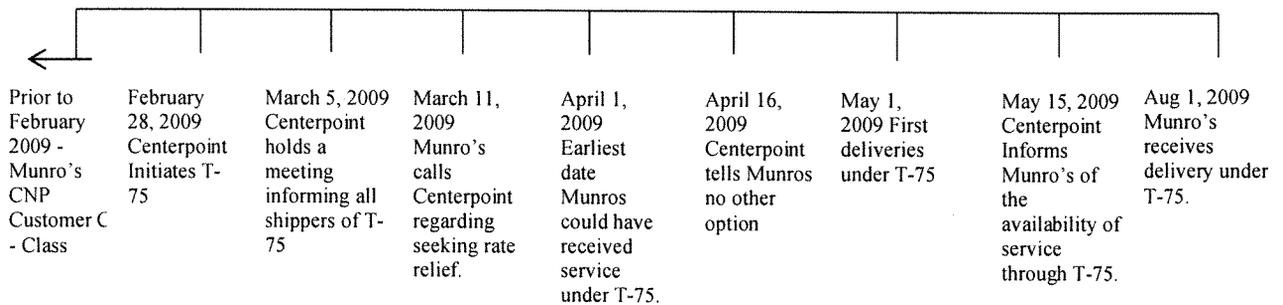
Docket Established:	May 5, 2011
Final Hearing Date:	January 11, 2012
Heard By:	Gene Montes, Hearings Examiner Rose Ruiz, Technical Examiner
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**STATEMENT OF THE CASE**

The key facts of this proceeding are not disputed. At one time Munro’s was a captive commercial customer of CenterPoint. Munro’s contacted CenterPoint seeking rate relief. CenterPoint expanded an existing transportation service program that allowed third-party shippers of natural gas to provide natural gas service to certain commercial customers of CenterPoint that satisfied particular consumption parameters. Those existing customers of CenterPoint that qualified to receive service from a third-party shipper were no longer captive customers of CenterPoint. As a result of CenterPoint’s action, Munro’s qualified for that program and was no longer a captive customer of CenterPoint.

On the date the transportation services program was expanded, CenterPoint did not file, nor was CenterPoint required to file, a tariff with the regulatory authority reflecting the expanded program, CenterPoint did not post information regarding the program on its website, CenterPoint did not notify customers regarding the program. Thus, Munro’s was unable to independently review the natural gas service options available. Ten days after the program was expanded, on March 11, 2009, and unaware that the program was expanded, Munro’s contacted CenterPoint again seeking rate relief. Forty-seven days after the program was expanded, on April 16, 2009, CenterPoint mistakenly informed Munro’s that Munro’s was not eligible for service from a third-party supplier. Seventy-nine days after the program was established, on May 15, 2009, Munro’s was correctly informed of its eligibility to receive service from a third-party shipper. Munro’s subsequently contracted with at third-party shipper and 154 days after the transportation services program was expanded, on August 1, 2009, Munro’s exercised its option to no longer receive service from CenterPoint and became a natural gas service customer of a third party shipper. The third-party supply was at a lower price than the prior service from CenterPoint.

Figure 1 – Summarized Timeline



The issue presented under these facts is an issue of first impression for the Commission. Namely, whether Munro’s should have been informed of the expanded transportation services program and the choice of service created by the action of its existing natural gas service provided prior to May 15, 2009. As set forth below, the Examiners find that CenterPoint failed to comply with applicable tariffs. If the Commission agrees, the Commission need not address whether the method applied for notifying shippers was just and reasonable. Further, the issue of whether the method of informing its customers of the options for natural gas service that were created by actions of CenterPoint need not be addressed. Finally, issues of discrimination and prejudice are not reached. Those issues are not reached here because CenterPoint simply failed to comply with the customer relations provisions of its General Services Tariff.

**TABLE OF CONTENTS**

1. Procedural History.....	1
2. Jurisdiction .....	3
3. Legal Standard.....	4
4. General Background.....	5
5. Specific Undisputed Facts Related to Transition of Service .....	7
6. Position of the Parties.....	8
7. Examiners' Analysis.....	9
8. Remedy and Timing .....	11
9. Conclusion.....	12

## PROPOSAL FOR DECISION

### 1. Procedural History

This case was filed on May 5, 2011, as *CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Texas Gas Operations and CenterPoint Energy Entex's Petition for Review*. CenterPoint energy appealed the City of Beaumont's decision to decline to exercise jurisdiction over a complaint brought by Munro's Uniform Services, L.L.C. (Munro's) against CenterPoint. Munro's is a uniform rental company whose principal place of business is located at 399 N. MLK Parkway, Beaumont, Texas 77701. The complaint that led to the appeal relates to CenterPoint's gas utility sales service provided to Munro's, at its principal place of business during certain months in 2009. Munro's began receiving gas service from a third-party transporter on August 1, 2009.

On May 26, 2010, Munro's filed suit in Jefferson County District Court complaining about the rates it was charged by CenterPoint for gas utility services and alleging fraud for misinformation that Munro's was provided. Munro's eventually non-suited its complaint in that proceeding. A year later, Munro's filed a complaint with the City of Beaumont alleging the same facts. Simultaneous with the filing of its complaint, Munro's asked the City of Beaumont to disclaim jurisdiction over the dispute so that it could re-file in Jefferson County District Court. The City of Beaumont issued an order (by resolution dated April 5, 2011) and an amendment to that order (by resolution dated May 3, 2011) (collectively referred to as the "Municipal Order") acknowledging that Beaumont (1) has "exclusive original jurisdiction over the rates, operations and services of CenterPoint" and (2) Beaumont does not intend "to surrender said jurisdiction to the Railroad Commission by this action."<sup>1</sup> The City of Beaumont concluded that the complaint filed by Munro's did not involve a dispute over which the municipality had jurisdiction. Centerpoint appealed to the Commission.

In response to the appeal filed by CenterPoint, Munro's filed a plea to the jurisdiction on May 16, 2011, arguing that jurisdiction for the claims asserted were vested in district court. CenterPoint filed a response to the plea to the jurisdiction. After considering the arguments of the parties, on June 24, 2011, the Examiners issued a letter ruling that no hearing would be convened unless otherwise directed by the Commission. CenterPoint filed an interim appeal. On July 26, 2011, the Commission reversed the Examiner's ruling, asserted jurisdiction, and directed that a hearing be convened to consider the appeal and the underlying complaint of Munro's.

A Notice of Hearing was issued on September 9, 2011, and a hearing was set for January 11, 2012. The following testimony and exhibits were admitted into the record of the case:

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<sup>1</sup> Interim Order, July 26, 2011.

**Exhibits Admitted Into Record of the Case**

<b>Exhibit No.</b>	<b>CenterPoint Exhibits</b>
1	Direct Testimony of Philip W. Reeves, Transportation Services Director
2	Direct Testimony of Brian Gehlbach, Account Manager
3	Direct Testimony of Kathleen Roche, Senior Marketing Consultant
4	Rebuttal Testimony of Philip W. Reeves
5	Munro's Response to CenterPoint RFA 2-2
6	Munro's Response to CenterPoint RFA 2-3
7	Munro's Response to CenterPoint RFA 2-4
8	Munro's Response to CenterPoint RFA 2-5
9	Munro's Response to CenterPoint RFA 2-6
10	Munro's Response to CenterPoint RFA 2-7
11	Munro's Response to CenterPoint RFA 2-8
12	Munro's Response to CenterPoint RFA 2-9
13	Munro's Response to CenterPoint RFA 2-10
14	CenterPoint Response to Munro's RFI 1-6
15	CenterPoint's Petition for Review
16	Munro's Plea to the Jurisdiction and Response to CenterPoint's Petition
	<b>Munro's Exhibits</b>
1	Direct Testimony of William H. Munro's, CEO Munro's
2	Direct Testimony of Chad Blanchard, President of Munro's
3	Munro's Amended Response to CenterPoint RFP 1-1 - Confidential
4	Munro's Amended Response to CenterPoint RFP 1-2 - Confidential
5	Munro's Amended Response to CenterPoint RFP 1-3 - Confidential
6	Munro's Amended Response to CenterPoint RFP 1-4 - Confidential
7	Munro's Amended Response to CenterPoint RFP 1-5 - Confidential
8	CenterPoint Response to Munro's RFP 1-2
9	CenterPoint Response to Munro's RFP 1-5
10	CenterPoint Response to Munro's RFP 1-6
11	Munro's Response to CenterPoint RFD (c)
12	Munro's Response to CenterPoint RFI 1-1
13	Munro's Response to CenterPoint RFI 1-2
14	Munro's Response to CenterPoint RFI 1-3
15	Munro's Response to CenterPoint RFI 1-4
16	Munro's Response to CenterPoint RFI 2-1
17	Munro's Response to CenterPoint RFA 1-2
18	Munro's Response to CenterPoint RFA 1-3
19	Munro's Response to CenterPoint RFA 2-1

## 2. Jurisdiction

### a. *Statutory Provisions*

The Commission has jurisdiction over the applicant, associated affiliates and over the matters at issue in this proceeding pursuant to TEX. UTIL. CODE ANN. §§ 102.001, 103.003, 103.051, 104.001, 121.051, 121.052, and 121.151 (Vernon 2007 and Supp. 2010). The statutes and rules involved in this proceeding include, but are not limited to TEX. UTIL. CODE ANN. §§ 104.101, 104.102, 104.103, 104.105, 104.106, 104.107, 104.110, 104.301, and 16 TEX. ADMIN. CODE, Chapter 7.

The Commission has appellate jurisdiction pursuant to § 103.051 – 103.105 of the Gas Utility Regulatory Act (GURA). The Commission has original jurisdiction pursuant to § 104.001. That section provides that the Railroad Commission is vested with all authority and power to ensure compliance with the obligations of gas utilities. Finally, the Commission has an independent jurisdictional basis pursuant to Section 104.005(c) which provides that after notice and hearing the Railroad Commission may, in the public interest, order a gas utility to refund with interest compensation received in violation Section 104.005 of GURA.

### b. *Jurisdictional Arguments Raised by Parties.*

Throughout this proceeding, Munro's has maintained that its complaint is focused upon the tort claims of fraud, negligent misrepresentation, and fraud by non-disclosure. As part of the remedy related to those claims, Munro's sought recovery of damages and punitive damages. Munro's asserted that the Commission is without jurisdiction to consider the tort claims and remedies.<sup>2</sup> All of Munro's filings steadfastly maintained that Munro's claims are tort claims and Munro's has argued that CenterPoint, and the Commission, transformed a tort claim into a claim that Munro's has been subjected to prejudice or disadvantage pursuant to GURA. Munro's asserted that it has never claimed that it has been subjected to unreasonable prejudice or disadvantage pursuant to GURA. Indeed, Munro's, in furtherance of its claims that the Commission lacks jurisdiction Munro's has affirmatively declared that it has not been subjected to unreasonable prejudice or disadvantage pursuant to GURA. Furthermore, Munro's disavowed any claim that it is entitled to a refund. In furtherance of this claim, Munro's averred that it was charged the appropriate commercial rate on file with the Commission.

The jurisdictional issue raised by Munro's was addressed by the Commission through an interim appeal and the Commission asserted jurisdiction over this proceeding. The basis for the Commission's determination is the well-settled exclusive jurisdiction doctrine. Namely, an agency has exclusive jurisdiction when a pervasive regulatory scheme indicates that the legislature intended for the regulatory process to be the exclusive means of remedying the issues to which the regulations are addressed.<sup>3</sup> CenterPoint's duties to its customers are governed by

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<sup>2</sup> Munro's Plea to the Jurisdiction filed May 16, 2011, Munro's Brief on the Merits filed on February 2, 2012, and Munro's Brief in Response to Examiners' Letter No. 7 filed October 23, 2013. .

<sup>3</sup> Subaru of America v. David Mc.David Nissan, Inc., 84 S.W.3<sup>rd</sup> 212, 221 (Tex 2002); In re Entergy Corp., 142 S.W.3<sup>rd</sup> 316, 323 (Tex. 2004); In re Sw. Bell Tel. Co., L.P., 235 S.W.3<sup>rd</sup> 619 (Tex. 2007).

the GURA, Commission regulations, and the company's tariffs. Thus, the scope of its duties to its customers fall squarely under the Commission's jurisdiction.

The Commission has exclusive original jurisdiction over the rates and services of a gas utility in areas outside a municipality and in areas inside a municipality that surrenders its jurisdiction. The Commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction. As noted in the procedural history discussed above, the City of Beaumont exercised its original jurisdiction over the rates and services provided by CenterPoint and CenterPoint appealed.

GURA defines the term "rate" broadly. The term includes any compensation, tariff, charge, fair, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a gas utility for a service, product, or commodity provided by a gas utility. It also includes a rule, regulation, practice or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification. GURA also defines the term "service" broadly and specifically declares that it is to be given its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a gas utility in the performance of the utility's duties to its patrons, employees, or other gas utilities, and the public. GURA grants the regulatory authority, whether it be the municipal authority or the Commission, jurisdiction over rates and services. These definitions reflect the legislature's intent for the regulatory process established by GURA to be the exclusive means of remedying relations between a gas utility and its customers.

### **3. Legal Standard**

Section 104.001 provides that the Railroad Commission is vested with all authority and power to ensure compliance with the obligations of gas utilities. Section 104.004 provides that a gas utility may not (1) grant an unreasonable preference or advantage concerning rates or services to a person in a classification; (2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates or services; or (3) establish or maintain an unreasonable difference concerning rates or services between localities or between classes of service. Subsection 104.005(a) provides that a gas utility may not directly or indirectly charge, demand, collect, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable schedule of rates. Section 104.005(b) provides that a person may not knowingly receive or accept a service from a gas utility for compensation greater or less than the compensation prescribed by the schedules. Section 104.005(a) and (b) reflect what is commonly referred to as the "filed rate doctrine." The Commission may, in the public interest, order a gas utility to refund with interest compensation received in violation of Section 104.005. Finally, Section 104.007(a) provides that a gas utility may not discriminate against a person who sells or leases equipment or performs services in competition with a gas utility or engages in a practice that tends to restrict or impair that competition.

As noted by the courts, the filed-rate doctrine encompassed in Section 104.005, specifies that a filed tariff has the effect of law governing the relationship between the utility and its

customers.<sup>4</sup> A corollary to the filed-rate doctrine is that a tariff is to be strictly construed against the drafter of the tariff.<sup>5</sup> CenterPoint had two rate tariffs on file that impact this proceeding and the relationship between CenterPoint and Munro's: (1) General Rules and Regulations Applicable to Natural Gas Service in Texas ("General Rules of Service"); and (2) General Service – Large Volume Rate Service Schedule No. GSLV-597-A ("Commercial Rate"). Centerpoint has a third tariff entitled Transportation Service Rate Schedule No. T-75. That tariff, however, is not filed until CenterPoint engages in a transportation services contract with an individual transporter.

The General Rules of Service apply to residential and commercial customers of CenterPoint Energy Entex. These rules were adopted by CenterPoint, in part, pursuant to 16 TEX. ADMIN. CODE § 7.45 (Rule 7.45) which requires that gas utilities adopt minimum service standards.

- The Company shall assist the customer in selecting the most economical rate schedule,
- In compliance with applicable law or regulations, the Company shall notify customers affected by a change in rates or schedule or classification, and
- Furnish such additional information on rates and services as the customer may reasonably request.

CenterPoint argues that Rule 7.45 does not apply to this proceeding. Regardless of that assertion, the General Rules of Service promulgated by the company are made applicable to all "Consumers regardless of classification."<sup>6</sup> The term "Consumer" is defined therein as any person or organization utilizing the services of CenterPoint.<sup>7</sup> Section 22 of the company's General Rules of Service sets out the general provisions governing customer relations with its commercial customers.

#### **4. General Background**

CenterPoint is an indirect, wholly-owned subsidiary of CenterPoint Energy, Inc (CNP). CenterPoint's natural gas distribution business engages in natural gas sales to, and transportation for residential, commercial and industrial customers in the states of Arkansas, Louisiana, Minnesota, Mississippi, Oklahoma and Texas. The company also provides transportation services to third-party shippers and an affiliate shipper of CenterPoint, CenterPoint Energy Services. The company's principal office in Texas is located in Houston, Texas, and its books, accounts and records are kept at that location.

Service offered by CenterPoint within Texas is provided by four divisions – the South Texas Division, the Beaumont/East Texas Division, the Houston Division, and the Texas Coast Division. CenterPoint provides gas utility service to customers within the city limits of

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<sup>4</sup> *Entex v. Railroad Com'n of Texas* 18 S.W.3<sup>rd</sup> 858 (Austin – App. 2000), review denied.

<sup>5</sup> *See, Roberts Express, Inc. v. Expert Transportation, Inc.*, 842 S.W.2d 766 (Tex. App. – Dallas 1992 writ denied).

<sup>6</sup> General Rules of Service, Section 2(a).

<sup>7</sup> *Id.*, Section 1(a).

Beaumont, Texas through its Beaumont/East Texas Division. Prior to August 1, 2009, Munro's was a CenterPoint customer receiving gas utility sales services within the Beaumont city limits. After August 1, 2009, Munro's began receiving natural gas service from a third-party shipper on CenterPoint's transmission lines. That shipper, Luminant, is a transportation services customer of CenterPoint. As a result, Munro's is no longer a CenterPoint customer.

CenterPoint's transportation services program offers qualifying shippers an opportunity to transport and sell natural gas to large-volume end-use commercial and industrial customers on CenterPoint's distribution system. Once shippers sign up and are accepted for a particular transportation service, they may contract with end-users meeting the threshold usage levels established by the applicable transportation tariffs to deliver natural gas under terms and conditions negotiated between the shipper and end-user.

The transportation services program began in May 2004 for rural Texas, which includes the service territories of Beaumont, East Texas and South Texas. The program began in April 2005 for the Houston and Texas Coast areas. Initially, Centerpoint offered one transportation rate in rural Texas pursuant to a tariff entitled, Rate Schedule T-65. To be eligible to transport pursuant to that tariff, a shipper was required to transport a minimum of 50 Mcf per day to each delivery point. By 2009, the program had expanded and CenterPoint offered five transportation rates that are summarized in Table 2 below:

**Table 2**  
**Transportation Tariffs Available in Transportation Services Program in 2009**

<b>Tariff</b>	<b>Applicable Service Area</b>	<b>Minimum Natural Gas Transported</b>
T-65	Rural Texas	Greater than 50 Mcf per day
T-69	Houston & Texas Coast Division	Greater than 100 Mcf per day
T-72	Houston & Texas Coast Division	50 to 99 Mcf per day
T-75	Rural Texas	25 to 49 Mcf per day
T-76	Houston & Texas Coast Division	25 to 49 Mcf per day

All tariffs that govern the service provided by CenterPoint to its customers are ultimately filed with the regulatory authority. The tariffs applicable to residential and commercial customers, however, are not treated in the same manner as tariffs that are part of the company's transportation services program. The residential and commercial tariffs are tariffs of general applicability and are not tied to a specific customer or destination. Those tariffs are filed with the Commission and a customer who falls within a particular class is charged according to the tariff as soon as the customer is connected to the system. On the other hand, the transportation tariffs are tied to specific customers and destinations. Unlike a sales tariff for residential or commercial service, a transportation tariff is effective only when there is a contract executed to provide transportation service pursuant to the contract. Only after CenterPoint agrees to provide the requested transportation is the tariff filed with a regulatory entity.

The transportation tariff that is the focus of this case is Tariff T-75. The CenterPoint customer receiving service pursuant to a Tariff T-75 is a shipper. In order to receive service pursuant to Tariff T-75, the shipper must have executed a Transportation Service Agreement

with CenterPoint. The shipper provides natural gas to an end-use customer pursuant to a separate contract between the shipper and the end-use customer. CenterPoint is not a party to the agreement between the shipper and the end-use customer. Although CenterPoint is not a party to the agreement between the shipper and the end-use customer, CenterPoint requires that the shipper provide a document that provides evidence of the agreement. This document is referred to as an "Exhibit A" because it is attached as Exhibit A to Tariff T-75.

## **5. Specific Undisputed Facts Related to Transition of Service**

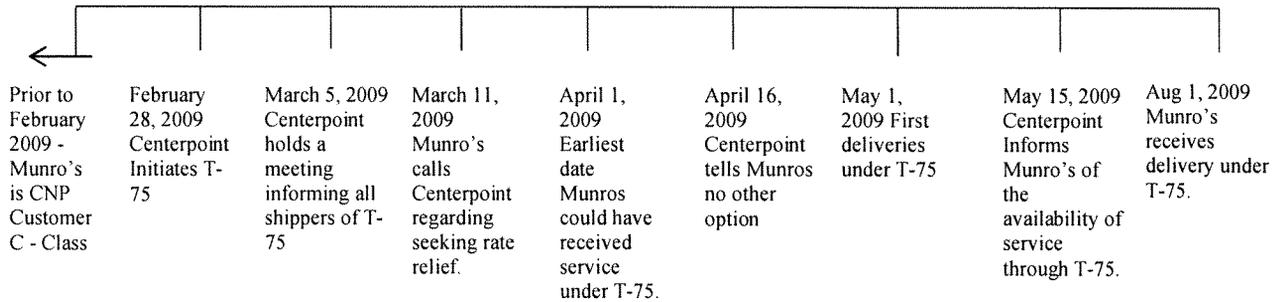
Prior to February 28, 2009, Munro's was a commercial customer of CenterPoint who had no choice in gas supply and received natural gas transportation pursuant to General Service – Large Volume Rate Schedule No. GSLV – 597 – A. Representatives of Munro's contacted CenterPoint and expressed concern regarding the natural gas rates applicable to Munro's as a captive customer subject to the General Service – Large Volume Rate Schedule No. GSLV – 619. At that time Munro's was not eligible to receive natural gas service from a third-party shipper on CenterPoint's distribution system.

CenterPoint subsequently developed the transportation services program applicable to Rate Schedule T-75. This program would be available to shippers providing gas supply to end-use consumers in rural Texas who consumed 25 to 49 Mcf of natural gas per day. Rate Schedule T-75 ultimately offered larger end-use customers, such as Munro's a choice of gas suppliers. Munro's qualified for service pursuant to that program.

On February 28, 2009, CenterPoint made transportation available on its distribution system pursuant to Rate Schedule T-75. Rate Schedule T-75, in combination with an appropriate third-party natural gas supplier, provided Munro's a choice of gas suppliers. Centerpoint did not notify Munro's, a customer subject to the General Service – Large Volume Rate Schedule No. GSLV – 619, that Munro's had a choice of gas suppliers. CenterPoint did not change its website to inform customers of the fact that Rate Schedule T-75 had been implemented. CenterPoint's website only contained information on Rate Schedule T-65, which was not applicable to Munro's.

On March 5, 2009, CenterPoint held a meeting at its offices in Houston for all shippers who were qualified and approved to provide transportation service on CenterPoint's system. Rate Schedule T-75 was explained at that meeting to eligible shippers. On March 11, 2009, representatives of Munro's contacted CenterPoint seeking rate relief. On April 16, 2009, CenterPoint responded and representatives of Munro's were incorrectly informed by representatives of CenterPoint that Munro's did not qualify for third-party transportation service. On May 1, 2009, the first deliveries of gas pursuant to Rate Schedule T-75 began, at two locations. The end-use customers were previously served by an existing transportation tariff. On May 18, 2009, CenterPoint met with representatives of Munro's to explain Rate Schedule T-75. On June 1, 2009, former CenterPoint customers, who had not previously received natural gas service from a third-party shipper, began receiving natural gas from third-party shippers pursuant to Rate Schedule T-75. After May 26, 2010, CenterPoint changed its website to inform customers of the fact that Rate Schedule T-75 had been implemented.

The key dates discussed above are outlined in Figure 1 below:



## 6. Position of the Parties

### a. *Munro's Position*

Munro's position is that the Commission lacks jurisdiction to consider any complaint related to these events. Munro's contended that its claims are tort claims that the Commission lacks jurisdiction to consider. In order to preserve its legal position, Munro's asserted that Munro's has not alleged, and no evidence has been admitted, that Munro's was charged outside of the rates on file. Furthermore, Munro's declared that no evidence as has been introduced that Munro's was subjected to any prejudice or disadvantage compared to similarly situated customers. In this context, Munro's admits that it is the first CenterPoint customer in the City of Beaumont to begin transportation service pursuant to the revised transportation program.

Munro's appears to take this position in order to argue that the Commission's lack of authority is evident in the scope of the inquiry made in this proceeding. The scope was limited to a number of questions that ultimately may be reduced to two questions. First, was Munro's entitled to a refund under the statute? Second, was Munro's subjected to disadvantage or prejudice in violation of statute? Munro's answered both in the negative in order to assert that the underlying question was a tort question regarding whether CenterPoint lied. Munro's concluded that the Commission is without jurisdiction to consider that question concluding that the Commission simply does not have the statutory authority to hear or decide the issues that are at the core of this dispute.

### b. *CenterPoint's Position*

In response to the jurisdictional arguments that were consistently raised by Munro's, CenterPoint argued that the Commission has exclusive jurisdiction to consider the allegations raised by Munro's. CenterPoint asserted that GURA granted the Commission jurisdiction over all gas utility "rates," "services," and "operations." These terms are defined in the broadest and most inclusive sense. As a result, GURA provides the Commission exclusive jurisdiction over all aspects of a gas utility's operations.

Centerpoint insisted generally that it complied with GURA and the applicable tariffs. The company explained that while Munro's was a commercial customer of CenterPoint, CenterPoint charged it the appropriate rate pursuant to the applicable tariff. CenterPoint emphasized that Munro's did not dispute that the rate it was charged, while it was a commercial customer of the company, was improper.

CenterPoint maintained that it was under no obligation to inform Munro's of the transportation program. Indeed, CenterPoint argued more broadly that it was under no obligation to inform its existing sales customers or the public about changes to its transportation rates or program. CenterPoint stressed that it only had an obligation to eligible shippers under the transportation services program. Nevertheless, CenterPoint ultimately voluntarily informed Munro's, along with all other eligible consumers on the CenterPoint distribution system, about the expanded transportation services program. CenterPoint maintained that the system adopted to voluntarily inform its commercial customers about the expanded transportation service was reasonable and consistent with its desire to provide an orderly and efficient implementation of the expanded transportation services program.

CenterPoint contended that the record evidence confirmed that it did not subject Munro's to any unreasonable prejudice or disadvantage. CenterPoint emphasized that Munro's itself has not complained that Munro's was subject to unreasonable prejudice or disadvantage. Finally, CenterPoint argued that Munro's was responsible for part of the delay. While the Munro's might have been able to obtain alternative service within thirty days of learning of the expanded transportation services program, CenterPoint points out that Munro's delayed seventy-five days.

## **7. Examiners' Analysis**

Paradoxically, and contrary to its argument regarding the Commission's jurisdiction, CenterPoint asserted that no "Commission rule addresses the issues presented in this docket."<sup>8</sup> The Examiners find that GURA, the relevant tariffs, and Commission regulations address the issue raised in this docket. As explained by CenterPoint the filed-rate doctrine prohibits a customer from suing a utility in contract or tort over issues that a publicly filed tariff's term govern.<sup>9</sup> The company's tariff governs the issue presented in this case. The narrow issue presented is whether Munro's should have been informed of the expanded transportation services program and the choice of service created by the action of its existing natural gas service provided prior to May 15, 2009. The relevant tariffs required notification of the expanded service prior to that date. The Examiners agree, however, that this issue is an issue of first impression and the issue of whether a utility has failed to provide relevant information to its regulated customers has not previously been addressed by the Commission in a contested case.

On February 28, 2009, CenterPoint inaugurated the expanded transportation program. On March 5, CenterPoint contacted eligible shippers regarding the expanded program. Six days later, Munro's contacted CenterPoint regarding the cost of service. Instead of notifying Munro's at that time that actions taken by the company had established a choice of service for Munro's,

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<sup>8</sup> CenterPoint Initial Brief, p. 3.

<sup>9</sup> See, *Southwestern Electric Power Company v. Grant*, 73 S.W.3<sup>rd</sup> 211, 217 (Tex. 2002).

CenterPoint waited forty-five days and conveyed the exact opposite. Namely, Munro's could not expect rate relief and Munro's did not have a choice of service. In other words, it's only option was as a captive customer of CenterPoint pursuant to General Service – Large Volume Rate Schedule No. GSLV – 597 – A. CenterPoint contends that the error may be excused as it was under no obligation to correctly inform Munro's that it was eligible to receive service from a third-party shipper pursuant to a transportation program administered by CenterPoint. This is contradicted by the General Services Tariff.

The General Service Tariff applicable to large volume commercial customers requires the following:

- The Company shall assist the customer in selecting the most economical rate schedule,
- In compliance with applicable law or regulations, the Company shall notify customers affected by a change in rates or schedule or classification, and
- Furnish such additional information on rates and services as the customer may reasonably request.

These provisions require that the company inform its customers that actions taken by the company changed the customers' classification from captive customers to customers who are eligible to elect natural gas service from another natural gas service provider.

In this case, CenterPoint took an action that created the choice available to Munro's. Certainly, the above cited provisions in the General Services Tariff require CenterPoint to inform its customers that actions taken by the utility now establish a choice of service. Due to the unique circumstances of this case CenterPoint's failure to correctly inform Munro's of the availability of alternative service when contacted by Munro's results in a violation of the company's General Rules Tariffs. CenterPoint did not announce the program on its website. Thus, Munro's was unable to independently verify the availability of the alternative service. On the contrary, a review of the website would have confirmed the misinformation. On its website, CenterPoint only had information about the other transportation services programs for which Munro's did not qualify. Munro's could not ascertain its options from a review of the Commission's website as these tariffs are not filed as tariffs of general applicability. In light of these circumstances, the fact that Munro's was misinformed at the time the Munro's contacted CenterPoint results in a violation of its General Services Tariff.

This issue was not squarely addressed by the parties in briefing. The Examiners requested additional briefing on this point. On October 23, 2013, the parties timely filed briefs in response to the Examiners request. Munro's reiterated its jurisdictional argument contending that the Examiners' inquiry reflected the underlying jurisdictional problem. Namely, the only remedy available for an error in representation is a remedy in tort. CenterPoint responded as follows:

Although Munro's was not informed of Rate Schedule T-75 prior to its implementation date of April 1, 2009, was mistakenly informed that it did not qualify for transportation service under a transportation tariff on April 16, 2009,

and the Company's website did not reflect the addition of Rate Schedule T-75 prior to its implementation, at no time did CenterPoint fail to comply with its General Rules Tariff.

CenterPoint premised its conclusion upon the assertion that it was under no obligation to inform its customers of the existence of the transportation tariff. While the Examiners do not agree, the issue is not reached because the General Rules Tariff requires that a customer be correctly informed of its available tariffs. Munro's was not correctly informed and CenterPoint did not allow any independent avenue for verification by the customer because of the misinformation on the website and because the tariff was not filed as a tariff of general applicability at the Commission.

The Commission need not address whether the method applied for notifying shippers was just and reasonable. Further, the issue of whether the method of informing its customers of the options for natural gas service that were created by actions of CenterPoint need not be addressed. The Examiners note, however, that by not notifying all customers of the availability of alternative service created by CenterPoint, failing to publish the revised program on its website, or failing to file the tariff with the Commission the company runs the risk of engaging in actions that may be construed as discriminatory. It would also appear that CenterPoint's position is contrary to Section 104.007 related to discrimination and restriction on competition. This section imposes an obligation upon CenterPoint to uniformly notify the public of the expanded transportation services program. By failing to notify eligible customers CenterPoint would engage in a practice that tended to restrict or impair competition. Those issues are not reached here because CenterPoint failed to comply with its General Services Tariff.

## **8. Remedy and Timing**

Section 104.005(a) provides that a gas utility may not directly or indirectly charge, demand, collect or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable schedule of rates. CenterPoint contends that the applicable tariff was General Service – Large Volume Rate Schedule No. GSLV – 597 – A. The General Services Tariff, however, also applies and an option that Munro's would have exercised had CenterPoint complied with the General Services Tariff was to receive no service at all from CenterPoint. This was the option ultimately exercised by Munro's. Thus, any amounts recovered after Munro's should have been notified of the expanded transportation services program are amounts recovered in excess of the filed rates.

Had Munro's exercised this option when it contacted CenterPoint on March 11, 2009, the earliest date it could have received alternative service was April 1, 2009. There is no evidence to assume, however, that Munro's would have behaved differently and began receiving service prior to sixty days from the date it was notified of the expanded transportation services program. Accordingly, it would be reasonable to measure any over-recovery from May 1, 2009. Thus, the amounts paid to CenterPoint in May, June and July should be refunded to Munro's pursuant to Section 104.005(c). The total amount paid to CenterPoint during that period was \$44,856.29.

## 9. Conclusion

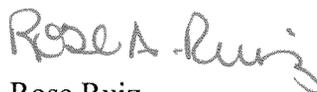
CenterPoint undertook a program that ultimately created a choice of service for Munro's. Thus, Munro's transitioned from a captive customer with no choice of service to a customer in a competitive market. When contacted by the Munro's, however, CenterPoint, failed to inform the customer about the availability of a choice of service. On the contrary, CenterPoint explicitly stated that the Munro's had no service option. As CenterPoint controlled all of the information related to the expanded transportation services program the customer was unable to independently verify the assertions made by CenterPoint. Munro's could not review the company's website, as the information was not posted there. Munro's could not review the tariffs on file at the Commission as the tariff is not filed with the Commission as a general services tariff. The Examiners find that this is a violation of CenterPoint's General Services Tariff.

The General Services Tariff provides that the Company shall furnish such additional information on rates and services as the customer may reasonably request, shall assist the customer in selecting the most economical rate schedule, and inform the customers affected by a change in rates or schedules or classification. The company did not furnish additional information regarding service Munro's was eligible to receive as a direct result of an action taken by CenterPoint. CenterPoint did not inform Munro's of a change in its classification from a captive customer to a customer in a competitive environment as a direct result of actions taken by CenterPoint. As the record established that Munro's would have opted to receive service from a third party, the Examiners find that all amounts charged by CenterPoint between the date Munro's would have established third-party service and the date that service was established should be refunded.

Respectfully submitted,



Gene Montes  
Hearings Examiner



Rose Ruiz  
Technical Examiner

**BEFORE THE  
RAILROAD COMMISSION OF TEXAS**

**APPEAL OF CENTERPOINT ENERGY §  
RESOURCES CORP. D/B/A §  
CENTERPOINT ENERGY TEXAS GAS §  
OPERATIONS AND CENTERPOINT §  
ENERGY ENTEX FROM THE ACTION § GAS UTILITIES DOCKET No. 10077  
OF THE CITY OF BEAUMONT §  
DENYING THE REQUEST OF §  
MUNRO'S UNIFORM SERVICES, §  
L.L.C. §**

**PROPOSED 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 2008 & Supp. 2013). 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 gas 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's natural gas distribution business engages in natural gas sales to, and transportation for residential, commercial and industrial customers in the states of Arkansas, Louisiana, Minnesota, Mississippi, Oklahoma and Texas.
3. CenterPoint also provides transportation services to third-party shippers and an affiliate shipper of CenterPoint, CenterPoint Energy Services.
4. Service offered by CenterPoint within Texas is provided by four divisions – the South Texas Division, the Beaumont/East Texas Division, the Houston Division, and the Texas Coast Division.
5. CenterPoint provides natural gas service to residents within the City of Beaumont through its Beaumont/East Texas Division.
6. Prior to August 1, 2009, Munro's Uniform Services, LLC (Munro's) was a CenterPoint customer within the City of Beaumont.

7. After August 1, 2009, Munro's began receiving natural gas service from a third-party shipper on CenterPoint's transmission lines. Munro's is no longer a customer of CenterPoint.
8. The shipper that provides natural gas service to Munro's is a transportation services customer of Centerpoint.
9. Munro's filed a complaint with the City of Beaumont in 2011 complaining of the treatment it received from CenterPoint during the period of transition from being a CenterPoint customer to a customer of a third-party shipper.
10. The City of Beaumont issued an order (by resolution dated April 5, 2011) and an amendment to that order (by resolution dated May 3, 2011) acknowledging that the City of Beaumont (1) had exclusive original jurisdiction over the rates, operations and services of CenterPoint and (2) the City of Beaumont did not intend to surrender its jurisdiction to the Commission. The City of Beaumont, however, declined to exercise jurisdiction over the complaint.
11. On May 5, 2011, CenterPoint timely filed an appeal with the Commission.
12. CenterPoint began its transportation services program in May of 2004. Centerpoint initially offered one transportation rate in rural Texas pursuant to a tariff entitled, Rate Schedule T-65. To be eligible to transport pursuant to the tariff a shipper was required to transport a minimum of 50 Mcf per day to each delivery point.
13. Due to Munro's consumption level, Munro's did not qualify to receive service from a third-party transporter engaged in transportation pursuant to Rate Schedule T-65.
14. In February 2009, CenterPoint expanded its transportation services program and added a new rate schedule, Rate Schedule T-75.
15. Munro's consumption level qualified it for service from a third party shipper engaged in transportation pursuant to Rate Schedule T-75.
16. As a direct result of CenterPoint's action Munro's classification changed from a captive customer, eligible to receive natural gas service only from CenterPoint through the General Service – Large Volume Rate Schedule No. GSLV – 619 to a customer in a competitive environment eligible to receive service from a third-party shipper.
17. CenterPoint initiated the expanded transportation services program on February 28, 2009. The commercial customers eligible to receive service from a third-party shipper pursuant to the expanded transportation services program were not notified of their eligibility to choose an alternative natural gas provider at the time the program was initiated.
18. On March 5, 2009, CenterPoint held a meeting at its offices in Houston to all shippers who were qualified and approved to provide transportation service on CenterPoint's

- system pursuant to Rate Schedule T-75. The commercial customers eligible to receive service from a third-party shipper pursuant to the expanded transportation services program were not notified of their eligibility to choose an alternative natural gas provider at the time of the meeting with the shippers.
19. Munro's contacted CenterPoint on March 11, 2009, and requested rate relief. Munro's was not notified at that time that it was eligible to receive transportation from a third-party service provider.
  20. CenterPoint's website did not reflect the existence of transportation tariff Rate Schedule T-75. Instead, the website described only the transportation tariff Rate Schedule T-65. Munro's was not qualified to receive natural gas service pursuant to Rate Schedule T-65.
  21. On April 16, 2009, CenterPoint responded to Munro's inquiry of March 11, 2009 and misinformed Munro's by stating that its consumption level did not meet the requirements of CenterPoint's transportation services program.
  22. The correct information was not on CenterPoint's website.
  23. The website contained only information regarding the transportation services program for which Munro's did not qualify.
  24. The transportation tariff is not filed with the Commission as a tariff of general applicability.
  25. Munro's had no method of independently verifying the information CenterPoint provided on April 16, 2009 and the company's website would have confirmed the incorrect information.
  26. On May 15, 2009, Munro's was correctly informed of its natural gas service options.
  27. Munro's exercised its option to receive service from a third-party natural gas service provider and terminated service from CenterPoint.
  28. Based upon the above Findings of Fact, CenterPoint failed to inform Munro's prior to May 15, 2009, that Munro's had a choice of service.
  29. Based upon the above Findings of Fact, CenterPoint failed to inform Munro's prior to May 15, 2009, that Munro's had the option to cease receiving service from CenterPoint.
  30. The General Rules of Service Tariff drafted and filed by CenterPoint with the Commission provides as follows:
    - The Company shall assist the customer in selecting the most economical rate schedule,

- In compliance with applicable law or regulations, the Company shall notify customers affected by a change in rates or schedule or classification, and
  - Furnish such additional information on rates and services as the customer may reasonably request.
31. Prior to May 15, 2009, CenterPoint did not notify Munro's that the customers' classification changed from a commercial customer with no choice in natural gas service to a commercial customer in a competitive environment.
  32. The record in this case established that Munro's would have terminated natural gas service from CenterPoint within seventy-five days of learning of its service options.
  33. All amounts charged by CenterPoint between the date Munro's would have established third-party service and the date that service was established should be refunded.
  34. The record established that CenterPoint recovered from Munro's \$44,856.29 between the date Munro's would have established third-party service and the date that service was established.

### 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) (Vernon 2007 and Supp. 2013) and §121.001(Vernon 2013) and is therefore subject to the jurisdiction of the Railroad Commission (Commission) of Texas.
2. The Commission has jurisdiction over CenterPoint pursuant to TEX. UTIL. CODE ANN. §§ 102.001, 103.022, 103.054, & 103.055, 104.001, 104.001 and 104.201 (Vernon 2007).
3. The Commission is vested with all the authority and power of the State of Texas to ensure compliance with the obligations of gas utilities with GURA. TEX. UTIL. CODE ANN. § 104.001(a).
4. A gas utility may not grant an unreasonable preference or advantage concerning rates or services to a person in a classification, subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates or services, or establish or maintain an unreasonable difference concerning rates of service between localities or between classes of service. TEX. UTIL. CODE ANN § 104.004.
5. A gas utility may not directly or indirectly charge, demand, collect or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable schedule of rates. TEX. UTIL. CODE ANN. § 104.005(a).

6. After notice and hearing, the Commission may, in the public interest, order a gas utility to refund with interest compensation recovered that is not consistent with the applicable schedule of rates. TEX. UTIL. CODE ANN. § 104.005(b).
  
35. The filed rate doctrine requires that CenterPoint conduct itself in accordance with its tariffs. The General Rules of Service Tariff drafted and filed by CenterPoint with the Commission provides as follows:
  - The Company shall assist the customer in selecting the most economical rate schedule,
  - In compliance with applicable law or regulations, the Company shall notify customers affected by a change in rates or schedule or classification, and
  - Furnish such additional information on rates and services as the customer may reasonably request.
  
7. The actions taken by CenterPoint were inconsistent with the General Rules of Service Tariff and failed to inform the customer of its option to cease natural gas service from CenterPoint.
  
8. A gas utility may not discriminate against a person who sells or leases equipment or performs services in competition with the gas utility or engage in a practice that tends to restrict or impair that competition. TEX. UTIL. CODE ANN. § 104.007.

**IT IS THEREFORE ORDERED** that CenterPoint refund all amounts charged by CenterPoint between the date Munro's would have established third-party service and the date that service was established should be refunded.

**IT IS FURTHER ORDERED** that the total amount to be refunded be \$44,856.29 and that these amounts be paid no later than sixty days from the effective date of this order.

SIGNED this 18<sup>th</sup> day of February, 2014.

**RAILROAD COMMISSION OF TEXAS**

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**CHAIRMAN BARRY T. SMITHERMAN**

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**DAVID PORTER COMMISSIONER**

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**CHRISTI CRADDICK, COMMISSIONER**

**ATTEST:**

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**SECRETARY**