

**Kellie Martinec**

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**From:** Talley, Alisa - ARA <Alisa.Talley@houstontx.gov>  
**Sent:** Thursday, August 21, 2014 2:36 PM  
**To:** rulescoordinator  
**Subject:** City of Houston Comments in Response to GUD 10362  
**Attachments:** City of Houston Comments GUD 10362 Sec. 7.5530 Amendment.pdf

Please find attached the City of Houston comments in response to the Railroad Commission of Texas proposed amendment of 16 TAC §7.5530 relating to Allowable Rate Case Expenses. By separate filing, Houston will address proposed new 16 TAC §1.86, relating to Alignment of Municipal Intervenors for Purposes of Discovery and new 16 TAC §1.87, relating to Limitations on Discovery Requests.

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**GAS UTILITIES DOCKET NO. 10362**

**AMENDMENT OF 16 TAC §7.5530,  
RELATING TO ALLOWABLE RATE  
CASE EXPENSES**

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**RAILROAD COMMISSION  
OF TEXAS**

**COMMENTS OF THE CITY OF HOUSTON**

The City of Houston ("Houston") submits the following Comments regarding the Railroad Commission of Texas ("the Commission" or "RRC") proposed amendment of 16 TAC §7.5530 relating to Allowable Rate Case Expenses. By separate filing, Houston will address proposed new 16 TAC §1.86, relating to Alignment of Municipal Intervenors for Purposes of Discovery and new 16 TAC §1.87, relating to Limitations on Discovery Requests. Houston appreciates the opportunity to provide the Commission with these comments.

**GENERAL COMMENTS**

Houston opposes the proposed amendment of 16 TAC §7.5530. The proposed amendment presents several concerns to Houston, among which is the overall impact on municipal original jurisdiction, the potential negative impact on the ratemaking process, and unsubstantiated need for the amendment. Further, Houston is concerned that the Commission has not first explored, in collaboration with all interested parties, potential alternative methods for addressing rate case expenses, including standardization of certain aspects of the rate filing package.

**The Legislatively Mandated Role of Municipalities**

The Gas Utility Regulatory Act (GURA) outlines the basic mandate granting a municipality exclusive original jurisdiction over the rates, operations, and services of a gas utility providing services within its incorporated boundaries.<sup>1</sup> Through its participation in ratemaking proceedings, Houston fulfills its responsibility as a regulator under GURA when the utility chooses to initiate local

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<sup>1</sup> Gas Utility Regulatory Act, Texas Utilities Code §103.001

and environs cases simultaneously. The proposed amendment of 16 TAC §7.5530 fails to adequately consider cities' distinct legislatively mandated role in ratemaking proceedings or the benefits afforded to all customers through municipal participation. Instead, the amendment of 16 TAC §7.5530 as proposed imposes restrictions on municipal rate case expense recovery and penalizes intervening cities, and customers within those cities, for participating in the ratemaking process.

The proposed amendment of 16 TAC §7.5530 proposes changing the allocation of certain rate case expenses from all customers to a special subset of customers — customers within intervening cities only. Proposed §7.5530 (d) addresses reasonable municipal rate case expenses and requires allocation of municipal rate case expenses to the customers within the intervening city only. If the municipality joined a coalition, the coalition expenses would be allocated to customers only within the municipalities belonging to the coalition. Proposed §7.5530 (e) classifies utility rate case expenses into three distinct categories — required regulatory expenses, litigation expenses and estimated expenses. Proposed §7.5530 (f) establishes the methodology for allocating each category of utility rate case expenses. Litigation and estimated expenses would be allocated to customers of intervening cities and affected customers subject to the original jurisdiction of the Commission.

Assigning municipal rate case expenses to intervening city customers only is unduly discriminatory to both the municipality, and customers within those cities. The undue discrimination is not based on any valid regulatory principal, but appears to be in response to a city performing its legislatively mandated role established by the Texas State Legislature. If a utility elects to initiate an application to change rates with a city exercising its regulatory authority, the city is obligated to evaluate the rate change request. Moreover, when a rate application is filed on a division-wide basis seeking system-wide rates, municipal regulators have no option but to consider and review the rate filing package inclusive of costs attributable to environs customers, customers within intervening cities, customers within cities surrendering jurisdiction to the Commission, and customers within cities that choose not to intervene — all customers. The filing of a rate case on a division or system-

wide basis was typically initiated by utilities, adopted by the Commission, but contrary to the consent of some cities. Under the current system-wide filing approach, an individual city can no longer review and analyze information applicable only to its jurisdiction, but must analyze costs applicable to all customers in that division or system. However, the proposed amendment would now assign a disproportionate level of costs compared to benefits to that city for doing the same legislatively mandated analyses it performed prior to system-wide rate filings.

#### **Unwarranted and Unsubstantiated Need for Amendment**

The need to amend the current practice is not warranted or substantiated. Current mechanisms for ensuring reasonable rate case expenses have proven sufficient. Under current practice, the Commission makes the final determination whether rate case expenses are reasonable; and whether to allow recovery through the proposed rates or through a customer surcharge.

The prudence of retaining the current mechanism is easily demonstrated through a cost/benefit analysis comparing a utility's rate request as filed in its Statement of Intent with the rates ultimately adopted by the Commission after a fully contested case with municipal intervention. For example, as a result of the 2009 CenterPoint Energy Houston Gas Division Rate Case, residential customers paid a total (including the utility's rate case expenses and those of all municipal intervenors) of \$2.88 per customer in rate case expenses (\$0.24 per month over a 12-month period).<sup>2</sup> The extensive efforts of municipal intervention in the ensuing fully litigated hearing yielded an average annual reduction from proposed rates of \$14.52 per customer. In other words, the level of rate case expenses were quickly eclipsed by the savings attributable to municipal intervention.

When municipal intervention occurs, the ultimately adopted rates tend to be substantially lower than the utility proposed rates, *even after taking into account rate case expenses*. Today, the savings to CenterPoint Energy Houston Gas Division customers as a result of the 2009 rate case are

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<sup>2</sup> *Statement of Intent of CenterPoint Energy Resources Corp. D/B/A CenterPoint Energy Entex and CenterPoint Energy Texas Gas to Increase Rates on a Division-Wide Basis in the Houston Division, Gas Utility Docket (GUD) No. 9902; and Rate Case Expenses Severed from Gas Utilities Docket No. 9902, GUD 9954.*

over 2,000% the one time total level of rate case expenses. Customer benefits continue to accrue, not just for customers within the intervening cities, but for all customers. Houston believes the results of the 2009 CenterPoint Energy Houston Gas Division Rate Case demonstrates that the current practice has proven sufficient and effective.

#### **Unjust and Discriminatory Allocation of Rates**

Houston is not aware of any claims that the overall worth of municipal actions in rate proceedings does not provide benefits to all customers. Yet, the proposed amendment of 16 TAC §7.5530 would assign municipal intervention costs to intervening city customers only, while all customers would continue to receive the resulting benefits. The apportionment of rate case expenses to a particular subset of customers, because their city performed its lawful duty, is discriminatory and increases the overall rate burden placed on in-city customers. Despite the expressed intent of the proposed amendment “. . . to minimize the impact of rate case expenses on end-use customers,” the end result is an additional burden placed on a particular subset of customers — intervening city customers. Shifting a portion of the rate case expenses from all customers to intervening city customers only increases versus decreases the overall rate case expenses applied to that particular customer sub-set. In addition, as other participants are encouraged to take advantage of the system-wide benefits afforded through municipal intervention minus the associated rate case expenses, the burden on the intervening customers will continue to grow. Moreover, rate case expenses are not viewed by the end-use customer separately, rather customers are concerned about their total bill. The proposed amendment could ultimately result in higher overall charges, if intervening cities scale back the level of investigation due to concerns of bearing an inequitable share of costs.

If it is considered appropriate to apply the cost of municipal intervention only to customers of intervening cities, the concepts of consistency and equity should be considered. Consistency and equity suggest that customers singled out and assigned additional costs (burdens) be afforded the

corresponding rate savings (benefits) derived through municipal intervention. In turn, the utility's proposed rates would apply to customers within cities forgoing participating in a rate proceeding or other customers seeking to avoid incremental rate case expenses. While Houston does not sponsor such an approach, it would comply with the well recognized regulatory principal of the "benefits follow the burdens."

#### **Utility's Impact on Rate Case Expenses**

Although the intent of the proposed amendment of 16 TAC §7.5530 is to ensure rate case expenses are reasonable and to minimize the impact of rate case expenses on end-use customers, the proposed amendment fails to consider the utility's contribution to the overall level of rate case expenses. In the 2009 CenterPoint Energy Houston Gas Division Rate Case, the utility's rate case expenses totaled approximately \$1.4 million.<sup>3</sup> The utility recovered one hundred percent of its rate case expenses despite the fact it prevailed on less than twenty-five percent of its initial request.

Several factors drive the overall level of rate case expenses including, but not limited to the amount of the revenue requirement and rate change requested, the number and complexity of issues presented and pursued, the level of information presented by the utility in its filing, and the level of fully responsive information provided by the utility to discovery. If, for example, a utility is less than forthcoming in its filing and chooses to present limited or only summary information in support of its request, the result can lead to extensive and costly discovery. Further, less than responsive utility discovery responses also increase the level of discovery and corresponding cost necessary to complete the review. The utility, in a ratemaking proceeding, has the most significant impact and control on the overall level of rate case expenses — both the utility's and the municipal regulators'. Therefore, in the event the Commission proceeds with the proposed amendments, it must also address the impact on the end-use customer of the utility's impact on rate case expenses and include, among other things, meaningful mandated additional filing requirements for utilities. Other state

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<sup>3</sup> *Rate Case Expenses Severed from Gas Utilities Docket No. 9902, GUD 9954, 3,*

utility commissions require the submission of a master set of normally filed discovery with a rate filing request.<sup>4</sup>

#### **Negatively Impacts the Ratemaking Process**

Contrary to the underlying legislative intent to support and encourage proper municipal intervention, the proposed amendment of 16 TAC §7.5530 discourages municipal participation in ratemaking proceedings by establishing restrictions or additional unnecessary requirements on a city's ability to recover reasonable rate case expenses. The statutorily-based recovery of municipal rate case expenses allows for and anticipates that cities will present a comprehensive review of the utility's rate filing package. Often, it is the municipal regulators that perform the most comprehensive review of the rate filing. Houston believes that the Commission currently does not command the same resources as cities; and its resources are spread statewide. In the 2009 CenterPoint Energy Houston Gas Division Rate Case, the cities bore the "lion's share" of the burden to investigate the validity of the requested rate increase.<sup>5</sup> It was cities' sponsored issues that resulted in significant savings for customers. Cities consistently present broader and more in depth analysis of a utility's rate request, and in a cost effective manner. In order to conduct an effective investigation of earnings, as performed by cities with original jurisdiction, the state would have to spend substantial additional funds. By contrast, cities form regulatory coalitions to share resources and limit duplication of efforts to the extent possible. The cities serve as a valuable additional resource to the Commission, especially during periods of economic constraints.

Like the Commission, Houston is concerned about the overall impact of rate case expenses passed on to customers. Houston makes every effort to minimize these overall costs whenever possible. However, Houston believes that the proposed amendments inappropriately focus on discouraging municipal intervention through rate case expense related actions rather than properly

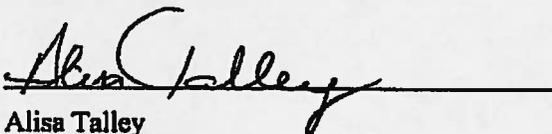
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<sup>4</sup> States such as Florida and Nevada require Minimum Filing Requirements.

<sup>5</sup> *Statement of Intent of CenterPoint Energy Resources Corp. D/B/A CenterPoint Energy Entex and CenterPoint Energy Texas Gas to Increase Rates on a Division-Wide Basis in the Houston Division*, GUD No. 9902

recognizing (1) the noticeable benefits obtained for all customers through municipal intervention, (2) the cities statutory responsibility to perform a comprehensive review of a rate request, and (3) the utility's ability to control the level of rate case expenses incurred by the cities. If the proposed rule discourages or limits a city's ability to perform a comprehensive review in any rate proceeding, whether directly or indirectly, the rule ultimately interferes with that city's ability to effectively perform its legislatively mandated obligations as municipal regulator and will have a significant and negative impact on the public interest in the ratemaking process. Rate cases throughout Texas exemplify the benefits of municipal participation in the ratemaking process.

Respectfully Submitted  
CITY OF HOUSTON, TEXAS

A handwritten signature in black ink, appearing to read "Alisa Talley", is written over a solid horizontal line.

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