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Attached are CenterPoint Energy's comments on proposed new TAC §1.86 and 1.87 relating to discovery and proposed amendments to 16 TAC §7.5530 relating to rate case expense.

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GAS UTILITIES DOCKET NO. 10362

**PROPOSED NEW RULES
16 TEX. ADMIN. CODE §§ 1.86 AND 1.87**

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**BEFORE THE
RAILROAD COMMISSION
OF TEXAS**

COMMENTS OF CENTERPOINT ENERGY

CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas (“CenterPoint” or the “Company”) timely submits these comments in response to the proposed rules, 16 Tex. Admin. Code §§ 1.86 and 1.87 (the “Proposed Rules”), approved for publication by the Railroad Commission of Texas (the “Commission”) on July 8, 2014, and published in the *Texas Register* on July 25, 2014.

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I. INTRODUCTION

CenterPoint fully supports the Commission’s efforts to adopt rules that promote efficiencies in the ratemaking process that do not impinge upon a party’s ability to participate in a ratemaking proceeding and that will also lead to lower costs for ratepayers. Encouraging alignment of parties with similar interests, as proposed in Rule § 1.86, and attempting to place a reasonable bound on certain types of discovery and to eliminate duplicative discovery requests in ratemaking proceedings, as proposed in Rule § 1.87, will serve to reduce rate case expenses and promote the efficient resolution of ratemaking proceedings. The proposed rules are an

appropriate exercise of the Commission's jurisdiction because a municipality's original jurisdiction over a utility's rates and services is subject to the Commission's jurisdiction over appeals from municipal rate orders.¹ The Commission reviews the decision from the municipality *de novo* and must enter a final order establishing the rates the municipality should have set.² This Commission authority necessarily extends to the management of cases before the Commission and approval of parties' reasonable rate case expenses in a ratemaking proceeding before the Commission.

Because CenterPoint agrees with the Commission's statements in the Preamble and supports the proposed rules, CenterPoint provides the following comments that first address general issues related to the rulemaking and then address specific provisions in the Proposed Rules.

II. GENERAL COMMENTS ON PROPOSED RULES

A. The Proposed Rules Protect a Municipality's Right to Analyze a Utility's Requested Ratemaking Treatment

It is critical to note at the outset that the Proposed Rules preserve and protect a municipality's authority to analyze a utility's rates and services. The Proposed Rules apply only to the discovery phase of a ratemaking proceeding. Therefore, under Proposed Rule § 1.86, municipalities would not be aligned for purposes of providing testimony or participating in a hearing on the merits. Similarly, the discovery limit proposed in Rule § 1.87 applies only to a specific portion of the discovery phase. Specifically, the proposed limit applies only to Requests for Information ("RFIs") and places no limit on a city's ability to engage in other forms of discovery. Neither Proposed Rule impedes a municipal regulator's authority to appropriately scrutinize and challenge a utility's rate request. Instead, the rules insert the reasonable

¹ *Texas Coast Utilities Coalition v. R.R. Comm'n of Texas*, 423 S.W.3d 355, 360 (Tex. 2014) (citing TEX. UTIL. CODE § 102.001(b)).

² *Id.* (citing TEX. UTIL. CODE § 103.055(a), (c)).

procedural tools of alignment and discovery limits into one of the most costly aspects of a ratemaking proceeding—discovery—in a way that balances party interests with the fact that ratepayers ultimately will bear the cost of reasonable litigation expenses.

B. Discovery Controls Are An Existing Part of Ratemaking Litigation at the Commission

As the Commission notes in the Preamble, the concepts and procedures memorialized in the Proposed Rules are not novel to Commission rules or precedent. Proposed Rule § 1.86, which requires the alignment of municipal groups in a ratemaking proceeding, is an extension of the Commission’s existing ability under § 103.023(b) of the Gas Utility Regulatory Act (“GURA”) to consolidate municipalities with other rate case litigants on an issue of common interest.³ Furthermore, under Commission Procedural Rule § 1.61, “[t]he examiner may align parties according to the nature of the proceeding.”⁴ Proposed Rule § 1.86 merely extends the Commission’s existing authority by adding a rebuttable presumption of municipal alignment only for purposes of discovery in ratemaking proceedings.

Additionally, Commission Examiners have repeatedly used discovery control orders to manage the amount of discovery propounded in ratemaking proceedings.⁵ Proposed Rule § 1.87 merely memorializes this existing precedent by giving the presiding officer the ability to limit discovery in the interest of efficiency and justice. The Proposed Rule puts future ratemaking

³ TEX. UTIL. CODE § 103.023(b).

⁴ 16 TEX. ADMIN. CODE 1.61 (R.R. Comm’n of Tex., Classification and Alignment of Parties).

⁵ See GUD Nos. 9902, 10006, 10007, 10038, 10097, and 10106. In GUD Nos. 9902 and 10038, Commissioner Examiners limited a party to issuing no more than thirty-five RFIs (including subparts) in a single week and limited the total number of RFIs to 800 (including subparts). GUD No. 9902, Examiner Letter No. 3 (Sept. 17, 2009); GUD No. 10038, Examiner Letter No. 6 (Jan. 11, 2011). At the time CenterPoint requested such a limitation in GUD No. 10038, it had already received 543 RFIs from the two city groups in the case. In GUD No. 10182, Commission Examiners limited parties to three sets of no more than twenty-five RFIs (including subparts, but excluding RFIs asking only for identification or authentication of documents) and limited parties to issuing one set of RFIs per week. GUD No. 10182, Examiner Letter No. 17 (Sept. 7, 2012). At the time CenterPoint requested these limitations, it had already responded to 431 RFIs. Consistent with the discovery control plan in GUD No. 9902, the limitations set in the case limited parties to approximately 300 RFIs at the Commission level, and approximately 800 RFIs total.

litigants on notice of the Commission's practice to place reasonable restrictions on the amount of discovery and the Commission's expectation that parties exercise discretion when propounding discovery requests.

C. The Proposed Discovery Limit Rule Would Bring Commission Rules into Alignment with Standard Texas and Federal Practice

The Commission's Proposed Rules would bring Commission practice into alignment with well-accepted Texas and Federal practice and procedure, although with more generous limits on discovery. In Texas civil practice, each case must be governed by a discovery control plan. In some Texas civil cases, discovery is limited to "no more than 25 written interrogatories," excluding certain types of interrogatories, and each discrete subpart is considered a separate interrogatory.⁶ Moreover, with regard to Texas regulatory or administrative law practice, the procedural rules of the State Office of Administrative Hearings ("SOAH") also place limits on discovery to allow no more than two sets of 25 RFIs per party, including subparts.⁷ Similarly, the Federal Rules of Civil Procedure contain limitations on discovery. While the federal rules allow a court to alter limitations on discovery, the default requirement is that a party may serve only 25 written interrogatories on another party, inclusive of subparts.⁸ Thus, the Commission's Proposed Rule § 1.87 would align the Commission with standard Texas and Federal practice regarding limitations on discovery, yet do so in a less stringent manner because the proposed Commission rule is not mandatory and permits a much higher number of RFIs than in other forums.

Importantly, the issues that prompted the implementation of discovery limits in Texas civil cases are the same issues that have prompted the Commission to seek to enact reasonable limits on discovery when appropriate. Specifically, when Texas Rule of Civil Procedure 190

⁶ TEX. R. CIV. P. 190.2, 190.3.

⁷ 1 TEX. ADMIN. CODE § 155.251(c)(6) (State Office of Admin. Hearings, Discovery).

⁸ FED. R. CIV. P. 26(b)(2)(A), 33.

was enacted, it was intended to encourage parties to be more thoughtful and intentional in their discovery requests, so as to reduce the costs of litigation. The drafters noted that Rule 190 was, “intended both to compel parties to carefully consider the need for discovery before seeking it and to encourage courts to actively monitor discovery to reduce unnecessary cost and delay.”⁹ Similarly, the explanatory statement to Rule 190 noted that “the necessity of a discovery control plan in each case, whether by rule or by order, is intended to focus courts and parties on both the need for discovery and its costs in each case.”¹⁰

The Commission is rightfully motivated by the same concerns that prompted enactment of Texas Rule of Civil Procedure 190. Just as in civil litigation, litigants in rate cases will benefit from reasonable limits on discovery because these limits will encourage parties to be judicious about whether discovery requests are necessary for the party to analyze the utility’s requested rate treatment. Unlike the civil, Federal, and SOAH rules that limit discovery to fifty RFIs or less in many cases, the Commission has balanced the need for parties to fully vet the utility’s requested rate treatment with a reasonable limit of 600 total RFIs while placing no limit on other forms of discovery. This reasonable limit protects a municipality’s right to review the utility’s rate request while also recognizing that parties should exercise discretion to propound a reasonable level of discovery. This limit is critically important in a ratemaking context because Texas ratepayers will bear the cost of reasonable litigation expenses.

III. SPECIFIC COMMENTS ON THE PROPOSED RULES

A. Proposed Rule § 1.86 Places No Additional Burdens on Municipalities

Under Proposed Rule § 1.86, the presiding officer must align all municipal parties in a ratemaking proceeding for purposes of discovery only. As previously noted, the rule does not

⁹ Nathan Hecht & Robert Pemberton, *A Guide to the 1999 Texas Discovery Rules Revisions*, Nov. 11, 1998, <http://www.supreme.courts.state.tx.us/rules/tdr/discle3.htm>.

¹⁰ *Approval of Revisions to the Texas Rules of Civil Procedure: Explanatory Statement Accompanying the 1999 Amendments to the Rules of Civil Procedure Governing Discovery*, 61 TEX. B.J. 1140, 1141 (Dec. 1998).

affect a municipality's ability to file testimony or participate in a hearing independent of other municipal parties in a case. While the rule incorporates a presumption of alignment, the rule does not prevent municipal participation in a rate case; the rule merely codifies the reality that municipalities share a common interest in reducing a utility's rate request. For this reason, it is reasonable for municipalities to be aligned as parties in the discovery phase of a rate case. Importantly, to the extent a municipality objects to alignment, the municipality has the right to file a motion to realign in whole or in part.

B. Proposed Rule § 1.87, While Limited in Scope, Can Yield Savings to Texas Ratepayers

Despite the perceived threat to municipal authority in a ratemaking proceeding, Proposed Rule § 1.87 is relatively limited in its scope. The rule applies only to RFIs and only in ratemaking proceedings. The rule places no limit on a party's ability to propound requests for production, inspection or admission, each of which can be effective discovery tools. Nevertheless, even with its limited scope, the proposed discovery limits target one of the most time consuming, resource intensive and expensive portions of a rate case: discovery. Because gas utilities implement rates on a geographic or statewide basis, multiple municipalities or coalitions typically intervene and participate in the litigation. In turn, these intervenors often generate a large amount of discovery requests in an effort to appropriately scrutinize a utility's rate request. While there is nothing inherently wrong with seeking information from a utility requesting a change in rates, frequently multiple municipal parties request the same or similar information from the utility despite the fact that the utility provides all discovery responses to all parties in a case. This reality is inefficient, costly and can be avoided. By placing a reasonable limit on discovery, parties will inevitably prioritize and coordinate RFIs they propound, which will increase the efficiency of the case and reduce costs for all parties and ultimately for

ratepayers. Proposed Rule § 1.87 should be adopted because the small amount of cooperation contemplated by the rule could yield critical savings for Texas ratepayers.

IV. CONCLUSION

The Commission's Proposed Rules §§ 1.86 and 1.87 will promote efficiency in ratemaking proceedings and are narrowly tailored to address only the discovery phase. The rules target, with pinpoint accuracy, the discovery phase of a rate case, which is one of the most expensive aspects of rate case litigation. Even with their narrow scope, the rules should be adopted because they will reduce litigations costs while still protecting a municipality's ability to analyze a utility's rate request. Furthermore, the Proposed Rules would bring Commission rules into alignment with standard Texas and Federal practice. CenterPoint looks forward to working with the Commission and other interested stakeholders in this rulemaking proceeding.

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GAS UTILITIES DOCKET NO. 10362

**PROPOSED AMENDMENTS TO
16 TEX. ADMIN. CODE § 7.5530**

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**BEFORE THE
RAILROAD COMMISSION
OF TEXAS**

COMMENTS OF CENTERPOINT ENERGY

CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas (“CenterPoint” or the “Company”) timely submits these comments in response to the proposed amendments to 16 Tex. Admin. Code § 7.5530, approved for publication by the Railroad Commission of Texas (the “Commission”) on July 8, 2014, and published in the *Texas Register* on July 25, 2014.

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I. INTRODUCTION

CenterPoint supports the Commission’s efforts to memorialize its recent rate case expense precedent in the proposed amendments to Commission Substantive Rule § 7.5530 (the “Proposed Amendments”). The Proposed Amendments appropriately tie the Commission’s rate case expense rule to the statutory reimbursement requirement in § 103.022(b) of the Gas Utility Regulatory Act (“GURA”) and codify the Commission’s recent practice of, where possible, assigning the recovery of rate case expenses to the party who caused the expenses to be incurred. The Company applauds the Commission’s efforts to revise its rate case expense rule, which will

help encourage continued municipal oversight over the expenses incurred in ratemaking proceedings. The proposed amendments are an appropriate exercise of the Commission's jurisdiction because a municipality's original jurisdiction over a utility's rates and services is subject to the Commission's jurisdiction over appeals from municipal rate orders.¹ The Commission reviews the decision from the municipality *de novo* and must enter a final order establishing the rates the municipality should have set.² This Commission authority necessarily extends to the management of cases before the Commission and approval of parties' reasonable rate case expenses in a ratemaking proceeding before the Commission.

As the Commission notes in the Preamble, the Proposed Amendments will encourage municipalities to actively manage the consulting and attorney resources acting on their behalf during rate proceedings. The Commission's Proposed Amendments will provide municipalities with a clear understanding of not only their rights, but also their obligations, concerning rate case expenses. Furthermore, by allocating rate case expenses based on cost-causation principles, municipalities will necessarily have a sense of ownership over the costs of the cases they pursue. This oversight and awareness of rate case expenses will necessarily benefit utility customers.

II. SPECIFIC COMMENTS ON THE PROPOSED RULE

A. Proposed Rule § 7.5530(c) — The Amendments Place No Additional Burden on Municipalities

The Commission's Proposed Amendments will place no additional burden on municipalities. Currently, when a municipality enters into a ratemaking proceeding, it must pass an ordinance to either hire a law firm to represent it or to join a coalition of municipalities to participate in the litigation. Municipalities can meet the requirements of the Proposed Amendments simply by inserting additional language into the ordinance, noting that the utility's

¹ *Texas Coast Utilities Coalition v. R.R. Comm'n of Texas*, 423 S.W.3d 355, 360 (Tex. 2014) (citing TEX. UTIL. CODE § 102.001(b)).

² *Id.* (citing TEX. UTIL. CODE § 103.055(a), (c)).

reimbursement of the municipality is triggered after the municipality has actually paid the expenses or expressly assumed the obligation to pay the expenses of a person engaged under GURA § 103.022(a).

Importantly, the amendments contained in subsection (c) do not alter the Commission's rules or procedures on determining the reasonableness of rate case expenses. If a municipality meets the statutory standard for the recovery of rate case expenses and follows the requirements set out in proposed subsection (c), then a municipality will be reimbursed for its reasonable rate case expenses. Moreover, the Proposed Amendments do not limit a municipality's regulatory authority in a ratemaking proceeding in any way. Under the Proposed Amendments, municipalities may continue to participate in ratemaking proceedings, form coalitions, and hire experts and attorneys.

B. Proposed Rule § 7.5530(d), (e), and (f) — Consistent with Commission Precedent Regarding the Equitable Allocation of Expenses

The Proposed Amendments also memorialize recent Commission decisions to allocate rate case expenses based on the principle of cost causation, which is a fundamental tenet of ratemaking. In the past, city rate case expenses were allocated to all of the utility's customers in a particular division.³ Recently, however, in GUD No. 10051, the Commission required that costs be allocated based on causation.⁴ In that case, there were a total of 66 municipalities affected by the rate increase, exclusive of environs. Thirty-one municipalities denied the rate increase and joined municipal coalitions.⁵ The other 35 municipalities allowed the rates to go

³ See, e.g., Docket No. 9811, *Rate Case Expenses Severed From Gas Utilities Docket No. 9791*, Final Order Nunc Pro Tunc at Finding of Fact 14 (Sept. 21, 2010).

⁴ Docket No. 10051, *Rate Case Expense Issues Severed From GUD Nos. 10038, 10047, 10052, 10058, 10070, and 10071*, Final Order (Aug. 21, 2012).

⁵ *Id.* at Finding of Fact 32.

into effect, surrendered their jurisdiction to the Commission, or reached a separate settlement with the utility.⁶

When allocating the rate case expenses, the Commission appropriately divided expenses into three categories: (1) required regulatory expenses; (2) litigation expenses; and (3) estimated expenses.⁷ The Commission determined that it was reasonable to allocate the required regulatory expenses amongst all customers within the service area.⁸ For CenterPoint's litigation expenses, however, the Commission allocated these expenses to parties who participated in the Commission-level proceeding, including the municipal coalitions, the municipalities that ceded jurisdiction to the Commission, and the environs customers under the Commission's original jurisdiction.⁹ For the litigation expenses incurred by the municipal coalitions, the Commission allocated those expenses to only those municipal coalitions, and not to the non-coalition municipalities or surrounding environs. In doing so, the Commission stated "[i]t is not reasonable that municipalities and the environs that did not join [the municipal coalitions] be allocated the litigation expenses of those municipal coalitions as they did not review, control, or participate in the litigation decisions of those coalitions."¹⁰

Allocation of costs based on causation and participation is often more equitable than spreading reasonable rate case expenses equally among all ratepayers. Memorializing this precedent in the Proposed Amendments will ensure a more direct allocation of the costs incurred for litigation at the Commission. For example, Subsection (d) would protect the ratepayers within the environs from bearing the same level of rate case expenses as a municipality that engaged consultants, accountants, auditors, attorneys, or engineers to litigate a case. Similarly,

⁶ *Id.*

⁷ *See id.* at Findings of Fact 34–35, 41–45.

⁸ *Id.* at Finding of Fact 34.

⁹ *Id.* at Finding of Fact 41.

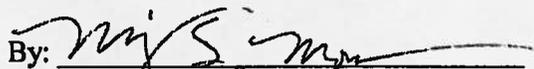
¹⁰ *Id.* at Finding of Fact 44.

Subsections (e) and (f) would protect, for example, municipalities who allowed the proposed rates to go into effect or entered into a settlement agreement prior to the incurrence of a majority of the litigation expenses. It is worth noting, as well, that the allocation provisions in the Proposed Amendments are subject to a showing that good cause exists to allocate reasonable rate case expenses in some other manner. The flexibility built into the Proposed Amendments allows parties or the Commission in a given proceeding to determine that a different allocation might be appropriate.

III. CONCLUSION

CenterPoint supports the Proposed Amendments for the reasons noted herein as well as the statements documented in the Preamble. The Proposed Amendments should be adopted because they memorialize recent Commission precedent and properly incentivize parties involved in the litigation to manage the costs they incur. CenterPoint is grateful to the Commission for the opportunity to express its views, and looks forward to working with the Commission and other interested stakeholders in this rulemaking proceeding.

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