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**SOAH DOCKET NO. 473-22-2353**  
**PUC DOCKET NO. 53442**

<b>APPLICATION OF CENTERPOINT</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>ENERGY HOUSTON ELECTRIC, LLC</b>	<b>§</b>	
<b>FOR APPROVAL TO AMEND ITS</b>	<b>§</b>	<b>OF</b>
<b>DISTRIBUTION COST RECOVERY</b>	<b>§</b>	
<b>FACTOR</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**TABLE OF CONTENTS**

I. REPLY TO EXCEPTIONS..... 3

    A. Lease and Operation of Facilities ..... 3

        1. Procurement Process and Vendor Selection in Accordance with PURA 39.918(f)  
           [Supp. PO Issue 4(d)] ..... 3

    B. Prudence of TEEF and Resulting Revenue Requirement ..... 7

        2. Reasonableness and Consistency with PURA 39.918 of Capacity of Leased TEEEF  
           [Supp. PO Issue 7] p. 19-26 ..... 7

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<b>FACTOR</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**TEXAS COMPETITIVE POWER ADVOCATES' REPLY  
TO CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC'S EXCEPTIONS  
TO THE PROPOSAL FOR DECISION**

Texas Competitive Power Advocates ("TCPA") timely submits this Reply CenterPoint Houston Electric, LLC's Exceptions to the Proposal for Decision, dated February 15, 2023, and respectfully shows as follows:

**INTRODUCTION**

CEHE seems to believe that, because the Legislature temporarily authorized utilities to lease mobile generators following Winter Storm Uri, CEHE was absolved of its duty to act reasonably and prudently.<sup>1</sup> It was not absolved of this duty, and as the ALJs correctly found, CEHE acted imprudently in procuring 516 MW of mobile generation, and in incurring over \$818 million in costs for such mobile generation to date.<sup>2</sup> As such, the ALJs should deny CEHE's Exceptions to the Proposal for Decision ("PFD").

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<sup>1</sup> PURA § 36.003 (requiring just and reasonable rates); *see also Entergy Gulf States , Inc. v. Public Util. Comm'n*, 112 S.W.3d 208, 214 (Tex. App.-Austin 2003, pet. denied) ("To raise the price of its product, the utility must participate in a rate case and bear the burden of proving that each dollar of cost incurred was reasonably and prudently invested.").

<sup>2</sup> *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend its Distribution Cost Recovery Factor*, Docket No. 53442, Proposal for Decision at 35-88 (Jan. 27, 2023) ("PFD"); *see also* Direct Testimony of Charles S. Griffey, ARM-TCPA Ex. 1 at 6 (bates 000008).

## **I. REPLY TO EXCEPTIONS**

### **A. Lease and Operation of Facilities**

#### **1. Procurement Process and Vendor Selection in Accordance with PURA 39.918(f) [Supp. PO Issue 4(d)]**

In its Exceptions, CEHE continues to defend its procurement process and its selection of Life Cycle Power (“LCP”), but its justifications continue to evolve. The truth is that CEHE’s process and its ultimate choice were unreasonably flawed, likely predetermined, and resulted in the worst possible outcome for ratepayers.

CEHE’s Exceptions states that:

- LCP could meet all of [CEHE’s mobile generation] needs with 5 MW and 32 MW units.
- [Distributed Power Solutions (“DPS”)], on the other hand, was proposing to meet a portion of [CEHE’s] needs with 45 2 MW units that were roughly the same size as the 5 MW units.  
\* \* \*
- [CEHE] could not accept DPS’s full supply proposal because there was not enough space within CEHE’s substations to place the 45 2 MW units . . . [and]  
\* \* \*
- DPS’s full supply proposal . . . would have required the use of additional step-up transformers [for the 2 MW generators]. . . .”<sup>3</sup>

In making these statements, it seems that CEHE is now trying to justify its selection of LCP on the grounds that DPS only offered 2 MW generators whereas LCP offered 5.7 MW generators. CEHE’s earlier justification for choosing LCP was that DPS was more expensive, but this claim was thoroughly proven false at the hearing, and in earlier briefing, and again in more

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<sup>3</sup> CenterPoint Houston Electric, LLC’s Exceptions to the Proposal for Decision at 10 (Feb. 15, 2023) (“CEHE’s Exceptions”).

detail later herein.<sup>4</sup> CEHE claims in its Exceptions that it could not use the 2 MW generators from DPS because they would have required step up transformers in order to connect to CEHE's substations.<sup>5</sup> This claim should be rejected because: (1) CEHE's own Request for Proposal ("RFP") for the Long-Term Lease asked for bids for 2 MW generators,<sup>6</sup> (2) the 2 MW generators may have been more useful than the 5.7 MW generators for CEHE's only actual use of such generators to date,<sup>7</sup> (3) other utilities leased the 2 MW generators,<sup>8</sup> and *most importantly*, (4) contrary to CEHE's claim, DPS in fact offered a bid for the 5.7 MW generators in addition to a bid for the 2 MW generators.<sup>9</sup>

**(1) CEHE's RFP asked for bids for 2 MW generators**

CEHE's Long-Term Lease RFP required bidders to offer at least one generator which: (1) was capable of providing at least 2 MW of power; (2) was mobile; (3) was of the gas turbine type; and (4) must be delivered by January 31, 2022.<sup>10</sup> If CEHE believed that the 2 MW generators were not useful for its purposes, then it would not have included the 2 MW size in its RFP criteria.

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<sup>4</sup> See Texas Competitive Power Advocates' Initial Brief at 21-25 (Nov. 16, 2022) ("TCPA's Initial Brief") (citing relevant portions of Hearing testimony); *see also* Texas Competitive Power Advocates' Exceptions to the Proposal for Decision at 4-8 ("TCPA's Exceptions") (citing relevant portions of Hearing testimony).

<sup>5</sup> CEHE's Exceptions at 9-10.

<sup>6</sup> TCPA Ex. 39 (Long Term Lease RFP at 5 (Bates TCPA 39\_027)); *see also* Tr. at 278:14 – 279:15 (Narendorf Cross) (Oct 19, 2022).

<sup>7</sup> CEHE's Exceptions at 12 (in which CEHE discusses using a mobile generator to power the Lake Jackson civic center); *see also* Tr. at 321:5-16 (Narendorf Cross) (Oct. 19, 2022) (in which CEHE witness, Martin Narendorf, admitted that the Lake Jackson civic center had a maximum load of 1.5 MW).

<sup>8</sup> Tr. at 279:16 – 281:5 (Narendorf Cross) (Oct 19, 2022).

<sup>9</sup> ARM-TCPA Ex. 1B (HSPM) (bates 000144); *see also* WP 11c Raben (HSPM) (comparing bids from both LCP and DPS for the 5.7 MW generators, in tabs A.1 and D.1 respectively).

<sup>10</sup> CEHE Ex. 6, Exhibit MWN-5 at 5-6.

## **(2) The 2 MW generators may have been more useful**

CEHE's only actual use of a generator that is part of the record in this case involves using a 5.7 MW generator to serve the Lake Jackson civic center, which CEHE's own witness admitted had a maximum load of less than 1.5 MW.<sup>11</sup> Thus, if CEHE believes that serving civic centers when its distribution lines go down after a hurricane is a lawful use of the generators, then having a sufficient number of 2 MW generators may actually have been a more prudent choice than having five 5.7 MW generators.<sup>12</sup> But we will never know what the prudent choice was because CEHE conducted no analysis whatsoever regarding the cost or benefits of the 2 MW generators versus the 5.7 MW generators. CEHE has offered no explanation for why the 2 MW generators would not have been a better choice for hurricane assistance for individual buildings than the 5.7 MW generators. CEHE's lack of analysis has been and will continue to be a pervasive theme in this Docket.

## **(3) Other utilities leased the 2 MW generators, and not the 5.7 MW generators**

Indeed, PG&E – the only utility that CEHE claims it consulted for guidance before leasing its mobile generation—leased the 2 MW generators.<sup>13</sup> CEHE has repeatedly mentioned Oncor's lease of mobile generation; however, it is worth noting that Oncor leased 15 generators totaling 11 MW,<sup>14</sup> and its generators were less than 1 MW each.<sup>15</sup> CEHE has offered no studies, or

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<sup>11</sup> Tr. at 321:5-16 (Narendorf Cross) (Oct. 19, 2022). CEHE would not have needed a transformer to hook up a 2 MW generator to the Lake Jackson civic center. Tr. at 321:5-22 (Narendorf Cross) (Oct. 19, 2022).

<sup>12</sup> Tr. at 321:5 – 323:1 (Narendorf Cross) (Oct. 19, 2022).

<sup>13</sup> Tr. at 278:14 – 281:5 (Narendorf Cross) (Oct 19, 2022).

<sup>14</sup> CEHE Ex. 16 at 2; *see also Application of Oncor Electric Delivery Company, LLC for Authority to Change Rates*, Docket No. 53601, Proposal for Decision at 22 (Dec. 28, 2022) (“Oncor PFD”).

<sup>15</sup> Response of Oncor Electric Delivery Company LLC to Steering Committee of Cities Served by Oncor's Tenth Request for Information at 1 (Aug. 17, 2022), *available at* [https://interchange.puc.texas.gov/Documents/53601\\_350\\_1231601.PDF](https://interchange.puc.texas.gov/Documents/53601_350_1231601.PDF)

simulations, or any other evidence supporting its choice of the 5.7 MW generators while other utilities chose smaller generators.

**(4) DPS in fact offered a bid for the 5.7 MW generators in addition to a bid for the 2 MW generators**

Despite what CEHE insinuates in its Exceptions, DPS did offer a bid for the 5.7 MW generators in addition to a bid for the 2 MW generators.<sup>16</sup> CEHE presented rebuttal witness, Erin Raben, to justify CEHE's selection of LCP. Ms. Raben included a Workpaper with her testimony ("Workpaper"), which compared actual bids from DPS and LCP for essentially the same equipment, including 5.7 MW generators.<sup>17</sup> These bids are discussed in more detail in the last section of TCPA's replies. Therefore, CEHE's insinuation that LCP was the only "viable" bidder because it offered 5.7 MW generators, whereas DPS did not, should be rejected.

Lastly, it seems that CEHE seeks to justify giving its *entire* procurement to LCP, based on DPS's supposed inability to offer the 5.7 MW generators. This argument fails to appreciate that only 5 out of the 20 generators that CEHE leased were of the 5.7 MW variety, for a total of 28.5 MW. Fifteen of the 20 generators were of the roughly 32 MW variety, for a total of 480 MW, and as discussed later herein, DPS offered better large generators at a lower cost. Thus, even if it were true that only LCP offered a bid for the 5.7 MW generators, and even if CEHE had proven that it actually needed the 5.7 MW generators, this did not mean that CEHE should lease *all* of its generators from LCP. It could have leased its large generators from DPS.

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<sup>16</sup> ARM-TCPA Ex. 1B (HSPM) (bates 000144); *see also* WP 11c Raben (HSPM) (comparing bids from both LCP and DPS for the 5.7 MW generators, in tabs A.1 and D.1 respectively).

<sup>17</sup> WP 11c Raben (HSPM) (comparing bids from both LCP and DPS, in tabs A.1 and D.1 respectively, for the both the ~32 MW and the 5.7 MW generators).

## **B. Prudence of TEEF and Resulting Revenue Requirement**

### **2. Reasonableness and Consistency with PURA 39.918 of Capacity of Leased TEEF [Supp. PO Issue 7] p. 19-26**

#### **a. Amount of Capacity Leased**

CEHE claims that this case presents a public policy question, “better made by public policy makers than Intervenor and ALJs,” but this is a red herring. The truth is that this case presents a rate-making prudence review, yet CEHE has once again resorted to melodrama in its Exceptions in order to divert attention away from its grossly imprudent choices regarding the capacity of mobile generation it leased. The ALJs correctly concluded that CEHE did not meet its burden of proving that its lease of over 500 MW was prudent, either through contemporaneous evidence or through retrospective analysis.<sup>18</sup> CEHE’s response to the Intervenor and the ALJs is effectively that they are all wrong because CEHE’s engineers said so.<sup>19</sup> If this were an adequate basis for a prudence finding, then there would be no need for rate cases. Utilities could simply provide affidavits from their engineers stating that everything the utility did was prudent, and that would be the end of it. Of course, this is not how it works. CEHE was required to provide contemporaneous documentation of its decision-making process. CEHE could not do this because it had none.<sup>20</sup>

In fact, CEHE conducted no analysis whatsoever regarding the usefulness of its generators. Nevertheless, in its application and in its Exceptions brief, CEHE baldly asserted:

500 MW of [mobile generation] *allowed* [CEHE] to ‘close the gap’ between the capacity [CEHE] had and the capacity it needed to

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<sup>18</sup> PFD at 35-38.

<sup>19</sup> CEHE’s Exceptions at 7 (in which CEHE claims its engineers made the decisions, but then provided no analysis as to how) and at 19-20 (in which CEHE essentially claims that because its engineers know its system well and they decided that 500 MW was needed, that should be the end of it, but again, providing no analysis).

<sup>20</sup> *See id.* *See also* PFD at 20-21 (in which CEHE states well-known facts about Winter Storm Uri, and concludes therefrom that more “numerical analysis would not change these undeniable facts”) and at 23-24 (in which CEHE claims that, because outages cause hardships, a “traditional cost-benefit analysis is not applicable or needed”).



rotate *all* customers during the winter storm to avoid prolonged outages. (Emphasis added).<sup>21</sup>

CEHE's 516 MW procurement certainly has done no such thing at this point, and CEHE has provided no evidence that it even could, or that a load shed event of the magnitude of Winter Storm Uri is likely to recur. CEHE has leased 20 generators, but it has *hundreds* of substations.<sup>22</sup> CEHE located the generators "around its service territory,"<sup>23</sup> but using what methodology? Do the 5.7 MW and 32 MW generators have enough capacity to serve all customers connected to those substations? And if not, what happens to the unserved customers once CEHE disconnects them from the bulk power system and hooks them up to the mobile generators? Are those customers now going to be prevented from receiving rotating power from both the bulk power system and the mobile generators? Has CEHE run any simulations showing what would actually happen with its generators based on load-shed events of different sizes and in different temperatures? In its Application, CEHE stated that as a result of Winter Storm Uri, "1,412 total electric circuits locked out, 1,254 total electric fuses went out, and four substations were out of service."<sup>24</sup> How would a mobile generator be useful if were located at a substation suffering from these conditions? Has CEHE run any simulations showing what would happen on its system if it located its generators at different substations, or located different sized generators at its substations, or used an altogether different mix of generator sizes compared to its current mix? This is only a tiny sampling of the analyses that CEHE should have conducted, but it did none of this. Instead, as several of the

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<sup>21</sup> CEHE's Exceptions at 20.

<sup>22</sup> See *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates*, Docket No. 49421, Proposed Finding of Fact 36 (Sep. 16, 2019) (stating that CEHE has 234 substations).

<sup>23</sup> CEHE's Exceptions at 7.

<sup>24</sup> Amended Direct Testimony of Brad A. Tutunjian, CEHE Ex. 5 at 5.

Intervenors have demonstrated and the ALJs found, CEHE simply went on a spending spree to acquire everything available, without regard to its usefulness or cost.

CEHE also appears to be of the belief that, because the Legislature *authorized* utilities to lease mobile generators, CEHE not only *had to* lease mobile generators, but it had to lease them in bulk, immediately, and for whatever price the sellers were asking. The reality is that CEHE could have conducted a thoughtful and appropriate analysis before procuring such a large amount of mobile generators, especially for a full 7.5 year lease, and it could have acquired them piecemeal as it gained more experience with their usefulness, or rather lack thereof. Instead, CEHE decided to essentially exploit the Winter Storm Uri crisis to make money for its shareholders.<sup>25</sup>

It is important to note that in its Exceptions, CEHE has improperly tried to cite “evidence” that is not in the record in a desperate effort to bolster its weak case. For example, CEHE has tried to assert that its generators were used on multiple occasions that are not in evidence in this case.<sup>26</sup> Intervenors have not had an opportunity to seek discovery on, or cross examine CEHE witnesses regarding these alleged uses of its mobile generation and these claims should therefore be disregarded. In another example, CEHE has alleged that Calpine leased generators in California, which, even if true, would be irrelevant to the question as to whether CEHE acted prudently in this case. It’s worth noting however, that in support of CEHE’s unsubstantiated claim about Calpine, CEHE cited a website link that does not work.

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<sup>25</sup> Direct Testimony of Charles Griffey, ARM-TCPA Ex. 1 at 16 (bates 000018) (citing CEHE’s Fourth Quarter Earnings Conference Call, transcript at 10-11 (Feb. 22, 2022)) *available at* <https://investors.centerpointenergy.com/static-files/2140c431-cb18-4125-b43d-2a4850dabda4>).

<sup>26</sup> For example, CEHE cites to its apparent loan of a mobile generation facility to Austin Energy during Winter Storm Mara. CEHE’s Exceptions at 4, note 2. If such a loan did occur, then CEHE’s ratepayers should arguably be reimbursed for Austin Energy’s use of CEHE’s mobile generator.

**a. Cost of the Capacity Leased**

CEHE has requested that the ALJs rubber-stamp its costs if the Commission were to find that CEHE's over 500 MW procurement was prudent. Accordingly, although CEHE's application should be denied, the issue of cost must be addressed. Further, the question of cost bears directly on the topic of CEHE's vendor selection, which several Intervenors have demonstrated was imprudent.

As previously stated, CEHE presented rebuttal witness, Ms. Raben, to justify its selection of LCP, based on both the process and the price. On the topic of price, in an attempt to justify CEHE's selection of LCP, Ms. Raben included the aforementioned Workpaper with her testimony, which was a spreadsheet comparing bids for LCP and DPS.<sup>27</sup> The Workpaper contains the monthly lease prices offered by both LCP and DPS for both the 5.7 MW generators, and the large generators.

As shown in the Workpaper, DPS actually offered a better version of the larger generators for a lower price than LCP's supposed "discounted" prepayment price. LCP's large generators were 32 MW whereas DPS's large generators were 35 MW. Ms. Raben's Workpaper shows that, **even after accounting for LCP's purported 24% "discount" on the lease price in exchange for CEHE's prepayment for the entire lease, DPS's bid for the 35 MW generators was 16%**

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<sup>27</sup> Rebuttal Testimony, Exhibits, and Workpapers of Erin. E. Raben, CEHE Ex. 11 at 15; *see also* WP 11c Raben (HSPM).

**cheaper than LCP's bid for the 32 MW generators,<sup>28</sup> and DPS's bid for the 5.7 MW generators was 18% cheaper than LCP's bid for exactly the same 5.7 MW generators.<sup>29</sup>**

Although DPS offered better equipment than LCP, and at a lower price than LCP, as discussed in detail at the Hearing and in earlier briefing, CEHE undertook to make DPS's bid look more expensive by manipulating its bid. CEHE did this by imputing unreasonably high operating cost assumptions to DPS's bid, and by comparing the sums of the lease payments plus operating costs owed for each bid, as opposed to the present value of the lease payments plus operating costs owed for each bid.<sup>30</sup> If Ms. Raben had treated the present values of the lease payments plus operating costs as the appropriate metric for comparison of the two bids, rather than the sums, then this consideration alone would have shown DPS's bid to be \$5 million cheaper than LCP's bid.<sup>31</sup> If Ms. Raben also had imputed reasonable assumptions regarding operating costs to DPS's bid for purposes of comparison, instead of extremely unrealistic assumptions, then this would have shown DPS's bid to be \$147 million cheaper than LCP's bid.<sup>32</sup>

Finally, it doesn't take complicated math to determine that the harm caused by CEHE's refusal to compare the present values of the lease payments plus operating costs for both bidders

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<sup>28</sup> WP 11c Raben (HSPM) (under tab "A.1," cells M9-M23, showing LCP's "discounted" lease price for the 32 MW generators, for a total of 471.9 MW, and under tab "D.1," cells M9-M23, showing DPS's lease price for the 35 MW generators, for a total of 525 MW. DPS's price per megawatt for the large generators was still 16% lower than LCP's "discounted" prepayment bid and DPS could have delivered within the same time frame that LCP delivered its large generators).

<sup>29</sup> WP 11c Raben (HSPM) (under tab "A.1," cell R25, showing the cumulative monthly cost of the fifteen 32 MW generators, and cell R33, showing the cumulative monthly cost of the five 5.7 MW generators, and cell R35 showing the total cumulative monthly cost for both, and then dividing the amount shown in cell R33, which is for the 5.7 MW generators, by cell R35, which is the total monthly cost for both, and arriving at 8.3%).

<sup>30</sup> See *Application of Entergy Texas, Inc. to Amend a Certificate of Convenience and Necessity for the Acquisition of a Solar Facility in Liberty County*, Docket No. 51215, Order at 7 (Oct. 19, 2021) (finding that ETI failed to act reasonably when it failed select the lowest cost alternative based on a present value calculation).

<sup>31</sup> Tr. at 494:14-21 (Raben Cross) (Oct 20, 2022) (Confidential); see also TCPA Ex. 36 (Native File) (HSPM) (see tab called "Summary," and reference cell F48 for DPS's bid, and C48 for LCP's bid).

<sup>32</sup> TCPA Ex. 97 (Native file) (HSPM) (see tab called "Summary," and reference cell F48 for DPS's bid, and C48 for LCP's bid).

was compounded by the fact that CEHE actually *prepaid LCP the entire cost of lease at the beginning of the lease*. In other words, CEHE could have paid a lower price, over the course of 7.5 years, but instead, it chose to pay a higher price, now, and to a company lead by a felon, no less. It does not get any more imprudent than that.

In light of the price differential, there is no conceivable justification for CEHE's lease of its entire fleet from LCP—especially the large generators—other than CEHE's CEO's pre-existing relationship with LCP's salesperson, whom he has known for over ten years. At a minimum, CEHE could have leased the large generators from DPS and the small generators from LCP, or it could have opted to lease the 2 MW generators that DPS also offered, but, inexplicably, it chose to pay more.

### **CONCLUSION**

For the foregoing reasons, and for the reasons set forth in TCPA's Exceptions, CEHE's Exceptions should be denied, and its costs should be deemed imprudently incurred.

Respectfully submitted.

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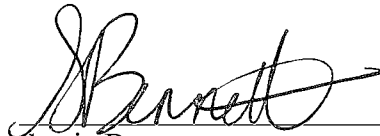
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**ATTORNEYS FOR TEXAS**

**COMPETITIVE POWER ADVOCATES**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of February 2023, a true and correct copy of the foregoing document was served upon on all parties of record by email, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Stacie Bennett