

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

STATEMENT OF INTENT FILED BY §	
CENTERPOINT ENERGY ENTEX TO §	GAS UTILITIES DOCKET
CHANGE RATES IN THE ENVIRONS §	NO. 9469
OF THE CITY OF HOUSTON, TEXAS §	

PROPOSAL FOR DECISION

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Attachments to Proposal for Decision

Exhibit 1.	Bill Comparison
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I Introduction

The Statement of Intent filed by Centerpoint Energy Entex (Entex) in this case seeks to implement residential and commercial rates for the Houston Environs that are the same as the rates approved for the City of Houston. As originally filed with the City of Houston, Entex sought to increase division-wide rates by \$27.5 million. After negotiations with the city, Entex agreed to a total division-wide increase of \$14 million. Several questions were raised during this proceeding regarding the structure of the proposed rates. A hearing was held on May 6, 2004, regarding those issues. After a post-hearing discussion with Entex several of those issues were resolved, and issues related to Section 104.301 of the Texas Utilities Code were severed to be considered in a separate docket, after a rule implementing that provision is issued by the Railroad Commission of Texas (Commission).

The Examiners recommend that the base rates be approved but that one component to those rates be rejected. Entex proposed that franchise fees collected within a municipality be recovered on a division-wide basis. Thus, franchise fees traditionally based on revenues generated within a municipal jurisdiction are to be paid by the environs customers. The Examiners recommend that this be rejected as unreasonable.

II. Procedural History and Notice

On June 13, 2003, Entex filed with the City of Houston, Texas, a written “Statement of Intent to Increase Gas Rates” to its customers located in the City of Houston (“Houston SOI”). Entex and the City of Houston reached an agreement on December 10, 2003. On December 23, 2003, Entex filed a Statement of Intent with the Railroad Commission which sought to implement the same rates that were approved by the City of Houston within the environs of Houston. Pursuant to TEX. UTIL. CODE ANN. § 104.102, Entex published notice of the proceeding in the *Houston Chronicle*, a newspaper of general circulation in the counties of Harris, Fort Bend, and Montgomery, encompassing the territory affected by the proposed statement of intent. The public notice was issued during the weeks of January 1, 8, 15, and 22, 2004.

Pre-hearing conferences were held on February 11, 2004; March 10, 2004; and April 7, 2004. Notice of Hearing was issued on April 20, 2004, and a hearing was held on May 6, 2004. Prior to the hearing, the Examiners issued several requests for information, to which Entex timely responded. One set of requests for information was issued after the hearing and a post-hearing conference was held with a representative of Entex on May 13, 2004. On May 17, 2004, issues related to the proposed provisions regarding interim adjustments pursuant to TEX. UTIL. CODE ANN. § 104.301 were severed pending the issuance of rules designed to implement that statutory provision. This Proposal for Decision and attached Proposed Order were issued on May 20, 2004.

The Commission has jurisdiction over Entex 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 2004). 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 Notice of Hearing was issued on April 20, 2004, and satisfied the requirements of 16 TEX. ADMIN. CODE § 1.45 and of TEX. GOV'T CODE ANN. § 2001.052 (Vernon 2004).

VI Overview of the Case

Entex is a division of CenterPoint Energy Resources Corp. (CERC), a subsidiary of CenterPoint Energy.¹ Entex owns and operates a gas distribution system in Houston and its environs, collectively referred to as the Houston Division. The Houston Division is a service territory that encompasses an area inside the city limits of the City of Houston; inside the city limits of other surrounding local municipalities; and their environs. Within the Houston Division, Entex serves 389,111 customers in the City of Houston; in the 28 other municipalities served by Entex there are 103,288 customers; and in the environs of the Houston Division there are 283,858 customers. The customer ratios are summarized in Table 1.

Table 1: Distribution of Customers within the Houston Division

	Number of customers	Percentage of Total Customers
City of Houston	389,111	50.12%
Other Cities	103,288	13.31%
Environs of the Houston Division	283,858	36.57%
Total	776,257	100.0%

¹ Prefiled Direct Testimony of Bruce H. Fairchild, p. 4, attached to Exhibit 4.

The last rate increase in the Houston Environs was in 1986, pursuant to GUD No. 6457, *Statement of Intent Filed by Entex, Inc. to Change Residential and Commercial Rates in the Environs of its Houston Division*, Order (Dec. 22, 1986). The Commission considered rates for the environs in 1981, GUD No. 3026, *Statement of Intent Filed By Entex, Inc., to Change Rates for the Unincorporated Areas in the Vicinity of Houston, Texas* (May 4, 1981), and in 1979, GUD No. 1876, *Statement of Intent filed by Entex, Inc. to Change Rates Charged in the Unincorporated Areas Adjacent to Houston, Texas*.

Entex filed its Statement of Intent with the City of Houston on June 13, 2003. In that filing Entex sought a \$27.5 million rate increase. The review at the city level was extensive and public hearings were conducted on July 23-24, 2003. The City of Houston and Entex reached an agreement that was approved on December 10, 2003. The rate increase became effective in the City of Houston on January 6, 2004. The Statement of Intent filed with the Commission was designed to produce residential and commercial rates for the Houston Environs that are the same as the rates approved for the City of Houston.

Entex also filed with other municipalities within the Houston Division a statement of intent seeking approval of the same rates that were approved in the City of Houston. The following municipalities have approved the same rates: Bellaire, Bunker Hill Village, City of Pasadena, the City of Hedwig Village, Deer Park, Galena Park, Hilshire Village, Humble, Hunters Creek Village, Jacinto City, Jersey Village, Meadows Place, Nassau Bay, New Waverly, Piney Point Village, Roman Forest, Stafford, Southside Place, Spring Valley, and South Houston. The cities of West University and Missouri City have not yet acted on the proposed rates.

Under the terms of the settlement adopted by the City of Houston and the several municipalities within the Houston Division, Entex agreed to a base rate increase of approximately \$8.4 million, calculated on a division-wide basis. In addition, Entex will be allowed to increase its service fees by \$5.5 million in total, division-wide. The total increase of \$14 million is significantly less than Entex's original proposed increase of \$27.9 million. The overall reduction in the revenue request resulted in a reduction to rates. Table 2 compares the proposed rates with the settled rates. The effect of those rates on a residential customers who consume 6 McF (60 Ccf), on a small commercial customer who consumes 30 Mcf (300 Ccf), and on a large commercial customer who consumes 300 Mcf (3,000 Ccf) is shown on Exhibit 1.

Table 2: Comparison of Proposed Rates and Settled Rates

	Proposed by Entex		Settlement Amounts	
Total Revenue Increase	\$ 27.9 million		\$14 million	
Residential Rates	Customer Charge	Commodity Charge per Ccf	Customer Charge	Commodity Charge per Ccf
	\$14.75 per bill	\$0.001	\$10.50 per bill	\$0.046
Commercial Small	Customer Charge	Commodity Charge per Ccf	Customer Charge	Commodity Charge per Ccf
	\$25.00 per bill	1 st 1500 Ccf \$0.09797 more than 1500 Ccf \$0.0500	\$18.85 per bill	1 st 1500 Ccf- \$0.0635 1501-10,000 Ccf- \$0.0635 over 10,000 Ccf- \$0.0535
Commercial Large	Customer Charge	Commodity Charge per Ccf	Customer Charge	Commodity Charge per Ccf
	\$150.00 per bill	1 st 150 Mcf \$0.9797 more than 150 Mcf \$0.50	\$310.00 per bill	1 st 1500 Ccf \$0.0850 1501-10,000 Ccf \$0.0635 over 10,000 Ccf \$0.0535

On December 23, 2003, Entex filed with the Commission a Statement of Intent to increase its rates for the environs of Houston, Texas. As noted, Entex sought to implement the same rates in the environs of the Houston Division as were approved within the city and other municipalities of the Houston Division. Pre-hearing conferences were held on February 11, 2004; March 10, 2004; and April 7, 2004. Entex also responded to several requests for information from the Examiners. After reviewing the responses of Entex the Examiners determined that Entex, had not met its burden of establishing that certain aspects of the proposed rates are just and reasonable.

Initially, there was some confusion as to whether the rates were intended to apply to the area north of the City of Houston that appeared to be more appropriately identified as the environs of Conroe. On February 20, 2004, Entex clarified that the environs of Conroe were not intended to be included in this proceeding. Attached as Exhibit 2 is a copy of a map submitted

by Entex. As discussed by Entex, the Houston Division Environs includes the gray shaded area except for the area north of the red line with “Conroe” and “Houston,” printed above and below, respectively. The gray shaded area above the line constitutes the environs of Conroe. In addition, the Examiners requested changes to the proposed tariffs. A reference to stand-by service fees was removed and potentially discriminatory provisions were also removed. While these areas were corrected and clarified the following areas were of continued concern.

The Examiners identified six broad areas of concern to be addressed at the May 6, 2004, hearing:

1. **Standard Agreements.** Entex proposed that general service large volume customer contracts be on file with the Commission. In order to receive delivery from Entex, the general service large volume customer would have to execute a written contract with Entex on the form on file with the Commission. The filing of such a contract would place an undue burden on the Commission to analyze, review, and enforce the contracts and is beyond the tariff filing requirements. In addition, the potential for litigation before the Commission may increase because of disputes concerning agreements filed with the Commission may result in more complaints being filed at the Commission.
2. **Prompt payment discount.** Entex proposed what it refers to as a prompt payment discount. Residential and commercial customers bills are increased by the lesser of (a) 10 percent of the net monthly bill or (b) \$3.00 **unless** payment is made within ten (10) days. These rate provisions appeared to conflict with the provisions of the Commission’s Quality of Service Rules, 16 TEX. ADMIN. CODE § 7.45 (4)(A) & (B). Section 7.45(4)(A) requires that the due date of the bill for utility service shall not be less than 15 days after the issuance. Section 7.45(4)(B) provides that a utility may offer an inducement for prompt payment of bills by allowing a discount in the amount of five percent for payment of bills within 10 days after their issuance.
3. **Service Fees.** Entex proposed an increase in its service fees of \$5.5 million in total, division-wide. Entex did not provide in its initial filing sufficient evidence that the proposed 312 percent increase in service fees was just and reasonable.
4. **Purchased gas adjustment (PGA) clause.** Entex proposed that a PGA filing shall be made with the Commission. Each PGA rate would become effective for bills rendered on and after the first day of the calendar month and would continue in effect until the next filing, unless within sixty (60) days after the PGA filing, the Commission takes affirmative action to disapprove or modify such PGA rate. The Examiners did not agree with Entex’s interpretation of this provision and in light of Entex’s proposal to implement hedging as part of its gas purchase practices, the Examiners objected to this provision.
5. **Rates for Interim Adjustment for Changes in Investment.** Entex proposes that the following stipulations apply for purposes Section 104.301 of the Texas Utilities Code: The rate of return on investment would be deemed to be 8.27 percent, depreciation rates would be on the basis of the Settlement as approved or subsequently modified by the Railroad Commission; and the incremental income tax factor would be 1.53846. During

this proceeding, Entex did not establish that these proposed rates were actual components derived from the settled rates. Thus, these rates may or may not be actual components Entex's rates approved in this docket. The Examiners did not agree that this arbitrary rate setting was contemplated by TEX. UTIL. CODE ANN. § 104.301

6. **Franchise fees.** Pursuant to the terms of the Settlement Agreement all municipal franchise fees will be collected from **all** customers within the Houston Division, regardless of whether or not the customers reside within a particular municipality or environs. Franchise fees are typically calculated on the basis of gross receipts from the sale of gas on gas sold to residential, commercial, and industrial customers **within** the corporate limits of the municipality. Collecting franchise fees from customers outside of the municipality through implementation of Entex's rates shifts the burden of the fee to residents **outside** of the municipal boundaries.

The hearing commenced on May 6, 2004. In addition to the direct testimony already filed by Charles J. Harder, Senior Counsel for CenterPoint Energy Arkla/Entex, Mr. Harder filed Supplemental Direct testimony to address the issues that the Examiners raised. Furthermore, testimony was filed by Talmadge R. Centers, Jr., Manager of Gas Operations for CenterPoint Energy Entex to provide evidence regarding the cost calculations for the proposed service fees. Mr. Centers supervised the study performed by Entex to assess the labor costs, equipment costs, material costs, and travel time involved in providing the services listed in Entex's proposed rate schedules. Entex amended testimony after the hearing and filed its amendment on May 13, 2004 and on May 19, 2004.

At the hearing, Entex agreed to remove its request that standard agreements be filed with the Commission. Thus, the first issue listed above was resolved. After the hearing, the Examiners met with a representative of Entex and discussed several aspects of the remaining issues listed above. Entex further agreed to modify its prompt payment provisions to more closely track the language in Section 7.45 (4)(A) of the Commission's Quality of Service rules. The amount of time for customers to pay will be extended to 15 days. Based upon the arguments presented by Entex at the hearing, the Examiners agree that Entex may continue to incorporate the prompt payment provisions as established in GUD No. 3026, *Statement of Intent to Change Rates in the Environs of Entex's Houston Division* (May 4, 1981). As a result, the second issue listed above was resolved.

The third issue was resolved when Entex filed testimony prepared by Mr. Centers cost justifying the miscellaneous service rates and agreed to amend its service fees to conform with the quality of service rules by changing the maximum allowed amount of \$15 for a meter test and by changing the returned check fee from \$30 to \$20. Based upon the evidence presented at the hearings, the Examiners find that Entex has met its burden of establishing that the proposed service fees are just and reasonable. Finally, the fourth issue was resolved when Entex agreed to modify the PGA provision and indicated its intent to continue to work with the Gas Services Division Staff to establish a reasonable review period. In addition, because Entex desires to include hedging and related costs associated with hedging, Entex also agreed to provide the Gas Services Division an annual report outlining its Gas Purchase Plan, and an annual report

analyzing the results to gas purchases from its hedging practices.¹

At the conclusion of these discussions with Entex, there were two remaining issues left unresolved: first, Entex's request for rates for interim adjustment for changes in investment pursuant to TEX. UTIL. CODE ANN. § 104.301; and, second, Entex's request to recover municipal franchise fees from environs customers. None of these issues affected the overall revenue request or base rates and are discussed further as follows.

V Request for rates for interim adjustment for changes in investment pursuant to Tex. Util. Code Ann. § 104.301.

Pursuant to TEX. UTIL. CODE ANN. § 104.301, a gas utility that has filed a rate case within the preceding two years may file with the regulatory authority a tariff or rate schedule that provides for an interim adjustment to recover the cost of changes in the investment.² The gas utility may adjust the utility's rates under the tariff or rate schedule only for the return on investment, depreciation expense, ad valorem taxes, revenue related taxes, and incremental federal income tax factor.³

Entex proposed that the following stipulations apply for purposes of Section 104.301 of the Texas Utilities Code: The rate of return on investment shall be *deemed* to be 8.27%, depreciation shall be calculated on the basis of the Settlement Rates as *approved or subsequently modified* by the Railroad Commission; and, the incremental income tax factor shall be 1.53846. During this proceeding, Entex could not establish that these rate components were actual components of the settled rates. This does not appear to be what is contemplated by TEX. UTIL. CODE ANN. § 104.301.

In the Second Request for Information, the Examiners asked Entex to provide the various components of the settled rates. Attached as Exhibit 3 is a copy of the format. As explained by Entex in its response, the negotiations and settlement between Entex and the City of Houston resulted in the approval of rate schedules that increase Entex's base rate revenues approximately \$14 million, calculated on a division-wide basis. Except to the extent that the rate of return, depreciation rates, incremental income tax factor and rate adjustment allocation factors were specifically addressed in the settlement for purposes of Section 104.301, the settlement did not include a calculation, allocation, or assignment of the increase in revenues resulting from adjustment to the individual components of the cost of service, nor were such components "adjusted" subsequent to the settlement. In other words, the agreement decreasing the original request to \$14 million, or 46 percent of Entex's original request, was not based upon a particular issue, but was an agreed upon amount.

¹ Entex files a similar plan in other jurisdictions. See, Exhibit 4, Response to Fourth Request for Information, No. 7 (RCT04A-7).

² TEX. UTIL. CODE ANN. § 104.301(a).

³ TEX. UTIL. CODE ANN. § 104.301(d).

The statute requires that the return on investment, depreciation, and incremental federal income tax factors used in the computation must be the “*same* as the factors reflected in the *final order* issued by *or settlement agreement* approved by the regulatory authority establishing the gas utility’s latest effective rates for the area in which the tariff or rate schedule is implemented.”⁴ The difficulty with the position articulated by Entex is that there is no method by which to verify that the proposed rate of return is the actual rate of return approved by the settlement agreement. By agreeing to a settlement that resulted in a substantially reduced total revenue requirement, Entex has likely agreed to a lower rate of return. If the actual rate of return in the settlement is lower than 8.27 percent, then under this proposal, Entex would be able to recover a higher rate of return on new capital expenditures than on the existing capital. It is the Examiners position that this was not intended by the statute.

Entex suggested that these issues and the interpretation of this statutory provision be severed until the current rule-making proceeding involving Section 104.301 is completed. In that proceeding, the Commission can consider this question, which will have an impact on the entire industry. The Examiners agreed, and the issues related to Section 104.301 were subsequently severed.

VI Franchise fees and taxes

Pursuant to the terms of the Settlement and Stipulation Agreement reached with the City of Houston, all municipal franchise fees will be removed from inclusion in the rates and collected from all customers within the Houston Division, *regardless* of whether the customer resides within a particular municipality or in the environs. This proposal would require environs customers to pay the franchise fees of the various municipalities within the Houston Division.

Entex pointed out that municipal franchise fees assessed by the cities in the Houston Division are charged to Entex so that it may use streets, alleys, and public rights-of-way to install and maintain its infrastructure for providing natural gas service. Entex argued that neither the infrastructure nor the base load served by Entex end at the boundary lines of each municipality within the Houston Division. Entex further argues that Entex’s mains, metering equipment, and other related facilities integral to the provision of natural gas service constitute an indivisible system that extends throughout the Houston Division and as such, provides a benefit to all city and environs customers within the Houston Division. Finally, Entex argues that precedent at the Public Utility Commission (“PUC”) supports its position here. Entex pointed out that the PUC has held that such fees should be collected from all customers on an electric transmission and distribution company’s system, as opposed to collecting them solely from those customers located within the municipal boundaries.

Several issues are raised by this proposal. As an initial matter, the Examiners are unaware of this practice by any other gas utility that has appeared before this Commission. Further, the Examiners are unpersuaded by the PUC precedent cited because of the difference in nature of the

⁴ *Id* (Emphasis added).

deregulated electric market and the regulated natural gas industry. As explained by Entex, municipal franchise fees are assessed in exchange for the utility's right to place its "property" (mains, metering equipment, and related facilities) in, along, and across the city's "property" (streets, alleys, and rights-of-way). Nevertheless, franchise fees are calculated based upon the gross revenues for sales *within* the municipal boundaries. Presumably, the franchise fees paid by the residents provide funds for city services within the municipal boundaries.

It is not reasonable for Entex to shift the burden of paying those fees, at the request of the cities, to environs customers. Specifically, it is not reasonable to shift those costs to residents outside of the municipal boundaries who derive *no benefit* from the franchise fees. Those customers derive no benefit from the municipal services that are funded by franchise fees. As a result, in this particular circumstance, it does not appear reasonable to require an environ customer to pay an allocated franchise fee applicable to the communities of Bellaire, Hedwig Village, Piney Point Village (all of which are encompassed by the City of Houston), and the City of Houston. Finally, it should be noted that shifting those costs would result in a larger increase in rates to the environs customer than to municipal customer.

VII Rate Case Expenses

Entex seeks reimbursement of its rate case expenses in the amount of \$142,154.57. Several issues were presented in this proceeding that required additional investigation and inquiry from the Examiners. Entex responded to four separate requests for information and prepared for a hearing on issues of first impression before this Commission. The complexity of issues in this proceeding ranged from the allocation of municipal franchise fees across a utility's division-wide service area; the application of TEX. ADMIN. CODE § 140.301; to the establishment of a uniform environs rate applicable to all environs areas within the division, based on the rate set by a single, major municipality within the division. The Examiners find that the request for rate case expenses is just and reasonable and recommend that Entex be awarded those costs.

The Examiners recommend that the expenses be recovered over a 12 month period as a surcharge. The total surcharge will be \$0.00088 per Ccf billed per customer until recovered.

Issued this 20th day of May, 2004

Respectfully submitted,

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