

ORDINANCE NO. 2009-O-9A

AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS (“CITY”) REVIEWING THE REQUESTED RATE INCREASE REQUEST OF CENTERPOINT ENERGY ENTEX (“CENTERPOINT”); SETTING AND ESTABLISHING RATES AND TARIFFS; ORDERING THE REFUND OF BASE RATE INCREASES IMPLEMENTED ON AUGUST 1, 2009; ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE AND THE IMPLEMENTATION OF NEW RATES; PROVIDING FOR FINES FOR NON-COMPLIANCE WITH THIS ORDINANCE NOT TO EXCEED \$500 PER VIOLATION AND MAKING EACH DAY A VIOLATION OF THIS ORDINANCE CONTINUES A SEPARATE VIOLATION; FINDING THAT THE MEETING COMPLIED WITH THE OPEN MEETINGS ACT; PROVIDING A SEVERABILITY CLAUSE; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE TOPICS SET FORTH IN THIS CAPTION.

WHEREAS, On May 1, 2009 CenterPoint Energy Entex (CenterPoint) filed a request to increase rates within the Texas Coast Division by approximately \$2 million; and

WHEREAS, the Chair of the Texas Coast Utilities Coalition of Cities (“TCUC”), Ignacio Ramirez, City Attorney for the City of Baytown, notified CenterPoint on July 13, 2009 that each of the TCUC Cities would suspend the effective date for 90 days as set forth in Attachment A which is appended hereto and incorporated herein by reference, and

WHEREAS, the City as a member of TCUC suspended CenterPoint’s requested implementation date of August 1, 2009 for 90 days or until October 30, 2009, as provided in Attachment B appended hereto and incorporated herein by reference ; and

WHEREAS, CenterPoint’s filing purports to be in compliance with a “Cost of Service Adjustment” (“COSA”) tariff approved by the Railroad Commission of Texas; and

WHEREAS, the COSA tariff approved by the Railroad Commission of Texas provides that “The provisions of this Cost of Service Adjustment are to be implemented in harmony with

the Gas Utility Regulatory Act (Texas Utilities Code, Chapters 101-105). The Company's annual rate adjustment will be made in accordance with all applicable laws," and

WHEREAS, CenterPoint refused to respond to three sets of requests for information, thus, adding to the difficulty of TCUC's consultant, Diversified Utility Consultants, Inc., completing its report and recommendation to the TCUC Cities; and

WHEREAS, the suspensions of the effective date were undertaken pursuant to Section 104.107 of the Texas Utilities Code; and

WHEREAS, in spite of the suspension, on August 1, 2009 CenterPoint increased its rates by approximately \$1.7 million or 55 cents per month for a typical residential customer; and

WHEREAS, the TCUC Cities, through its Chair, notified CenterPoint of the unlawfulness of its conduct as set forth on Attachment C as appended hereto and incorporated herein by reference; and

WHEREAS, the report of Diversified Utility Consultants, Inc. indicates that the rates requested by CenterPoint were excessive as set forth in Attachment D which is appended hereto and incorporated herein by reference; and

WHEREAS, refunds are owed to ratepayers located within the TCUC Cities for higher base rates implemented on August 1, 2009.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANGLETON, TEXAS:

Section 1. That the facts contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That the base rate increase put into effect by CenterPoint on August 1, 2009 within the City is unlawful.

Section 3. That CenterPoint shall refund any base rate increase put into effect between July 31, 2009 and October 29, 2009 with interest at the rate being earned on customer deposits no later than December 31, 2009.

Section 4. That CenterPoint shall file a report on November 16, 2009 with the Chair of the TCUC Cities, Ignacio Ramirez, City Attorney for the City of Baytown, Texas, detailing, on a customer-class basis, the amount refunded as ordered by this Ordinance, and shall provide in its report the consumption data upon which refund is based.

Section 5. The report by Diversified Utility Consultants, Inc. to the TCUC Cities calls for substantial reductions in the rate request, over and above the rates set by the Railroad Commission for the environs areas but assuming CenterPoint will refund the base rate increase of August 1, 2009 until the effective date of this Ordinance the City shall forego such additional adjustments to the rate request as detailed by Diversified in its report.

Section 6. The City adopts the tariffs appended hereto and incorporated herein as Attachment E by reference so long as they do not go into effect prior to October 29, 2009.

Section 7. The effective date for this Ordinance is October 29, 2009 and this Ordinance shall not be effective until not less than ten (10) days from the date of its passage in accordance with the City Charter and the City Secretary is hereby directed to cause the caption of this Ordinance to be published in the official newspaper of the City at least once within ten days after the passage of this Ordinance.

Section 8. The City adopts the attached tariffs with the understanding that such tariffs, or any other principle underlying such tariffs, shall not constitute precedent in any other proceeding.

Section 9. If there is an appeal of this Ordinance, then, the City reserves the right to assert additional adjustments to the revenue requirement, cost allocation and rate design which were not contained in the report by Diversified Utility Consultants, Inc., in addition to those in the report.

Section 10. All conditions precedent to the adoption of each of the foregoing sections herein have been complied with under law.

Section 11. CenterPoint shall reimburse the reasonable rate case expenses of the TCUC city coalition.

Section 12. TCUC shall submit its rate case expenses to CenterPoint by September 1, 2009.

Section 13. CenterPoint shall reimburse TCUC for its reasonable rate case expenses through the City of Baytown no later than November 3, 2009.

Section 14. Penalty upon failure to comply. Any person found guilty of violating or failing to comply with any provision or requirement of this Ordinance may be fined up to \$500.00 pursuant to the Local Government Code, Section 54.001 and making each day that a violation of this Ordinance continues a separate violation.

Notwithstanding the foregoing, any violation of any provision of this Ordinance that constitutes an immediate danger or threat to the health, safety and welfare of the public may be enjoined in a suit brought by the city for such purpose.

Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this ordinance.

Section 15. OPEN MEETINGS. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 16. Severability. If any section or part of any section, paragraph, or clause of this Ordinance is declared invalid or unconstitutional for any reason, such declaration shall not be held to invalidate or impair the validity, force, or effect of any other section or sections, part of section, paragraph, or clause of this Ordinance

Section 17. The City Secretary is hereby directed to send a true and copy of this Ordinance to Richard A. Zapalac, Vice President for Gas Operations-Texas, CenterPoint Energy, Suite 2120, 1111 Louisiana Street, Houston, Texas 77002 and to Jim Boyle, Herrera & Boyle, PLLC, Suite 1250, 816 Congress, Austin, Texas 78701.

PASSED AND APPROVED this 8th day of September, 2009 to be effective on October 29, 2009.

City of Angleton, Texas

J. Patrick Henry, Mayor

ATTEST:

Shelly Deisher,
City Secretary

APPROVED AS TO FORM:

Herbert L. Prouty
Interim City Attorney