

THIRD COURT OF APPEALS OF TEXAS AT AUSTIN

**Entergy Texas, Inc. v. Public Utility Commission of Texas, Office of
Public Utility Counsel, and Texas Industrial Energy Consumers**

Entergy Texas · No. 03-14-00709-CV · Decided May 6, 2015

OPINION

PER CURIAM.

ACCEPTED 03-14-00709-CV 5166900 THIRD COURT OF APPEALS AUSTIN, TEXAS
5/6/2015 8:46:45 AM JEFFREY D. KYLE CLERK No. 03-14-00709-CV IN THE FILED IN 3rd
COURT OF APPEALS THIRD COURT OF APPEALS AUSTIN, TEXAS AT AUSTIN 5/6/2015
8:46:45 AM JEFFREY D. KYLE ENTERGY TEXAS, INC., Clerk Appellant, v. PUBLIC
UTILITY COMMISSION OF TEXAS, Appellee. Appeal from the 53rd Judicial District Court,
Travis County, Texas The Honorable Amy Clark Meachum, Judge Presiding

APPELLANT

ENTERGY TEXAS, INC.'S ORAL ARGUMENT EXHIBIT

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ATTORNEYS FOR APPELLANT ENTERGY TEXAS, INC. May 2015 CERTIFICATE OF
SERVICE As required by Texas Rule of Appellate Procedure 9.5, I certify that on the 6th day of
May, 2015, the foregoing document was electronically filed with the Clerk of the Court using the
electronic case filing system of the Court, and that a true and correct copy was served on the
following lead counsel for all parties listed below via electronic service: Elizabeth R. B. Sterling
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Counsel for Office of Public Utility Counsel /s/ Marnie A. McCormick Marnie A. McCormick
The CGS Statute as Enacted ... The tariffs subject to this subsection may not be considered to
offer a discounted rate or rates under Section 36.007, and the utility's rates shall be set, in the
proceeding in which the tariff is adopted, to recover any costs unrecovered as a result of the
implementation of the tariff. ... Tex. Util.

Code Ann. § 39.452(b) (emphasis added). The CGS Statute as Interpreted by the PUC ... The tariffs subject to this subsection may not be considered to offer a discounted rate or rates under Section 36.007, and the utility's rates shall be set, in the proceeding in which the tariff is adopted, to recover any costs unrecovered as a result of the implementation of the tariff. ... The Energy Efficiency Statute at Issue in CenterPoint, 354 S.W.3d 899 (Tex.

App. – Austin 2011, no pet.) (b) The commission shall provide oversight and adopt rules and procedures to ensure that the utilities can achieve the goal of this section, including: (1) establishing an energy efficiency cost recovery factor for ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of this section; ... (b-1) The energy efficiency cost recovery factor under Subsection (b)(1) may not result in an over-recovery of costs but may be adjusted each year to change rates to enable utilities to match revenues against energy efficiency costs and any incentives to which they are granted.

The factor shall be adjusted to reflect any over-collection or under-collection of energy efficiency cost recovery revenues in previous years. Tex. Util. Code Ann. § 39.905 (emphasis added).