

No. 02-09-00395-CV

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IN THE COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH, TEXAS

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UNIVERSITY OF NORTH TEXAS,  
*Appellant,*

v.

CITY OF DENTON, TEXAS, ACTING BY AND THROUGH  
ITS ELECTRIC UTILITY DEPARTMENT, DENTON MUNICIPAL ELECTRIC,  
*Appellee.*

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On Appeal from the 158th Judicial District Court  
of Denton County, Texas  
Hon. Jake Collier, Presiding

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**BRIEF OF AMICI CURIAE**  
**THE UNIVERSITY OF TEXAS SYSTEM**  
**THE TEXAS A&M UNIVERSITY SYSTEM**  
**THE UNIVERSITY OF HOUSTON SYSTEM**

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TO THE HONORABLE SECOND COURT OF APPEALS:

The University of Texas System, The Texas A&M University System, and The University of Houston System respectfully submit this brief as amici curiae to assist the Court in considering the central statutory construction issue in this appeal. Amici believe the district court erred in declaring that section 63 of the 1999 Texas Electric Utility Restructuring Act<sup>1</sup> terminated the 20% base rate discount for electric service that state universities and colleges receive under § 36.351 of the Public Utility Regulatory Act (“PURA”).<sup>2</sup> Amici urge the Court to reverse the judgment below.<sup>3</sup>

#### INTEREST OF AMICI<sup>4</sup>

Amici have no direct financial interest in the outcome of this specific case, but Amici would face significant adverse financial consequences if the district court’s erroneous interpretation of section 63 were upheld. The district court’s declaration that section 63 eliminated the 20% base rate electric discount for state universities and colleges would significantly increase the cost of electric service for Amici. Amici institutions are major electric customers. The University of Texas System currently spends approximately \$120 million annually on electricity. The Texas A&M University System and the University of Houston System each spend approximately \$18 million

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<sup>1</sup> Texas Electric Utility Restructuring Act § 63, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543, 2625 (1999).

<sup>2</sup> TEX. UTIL. CODE, Public Utility Regulatory Act §§ 11.001 *et seq.* (West 2007 & Supp. 2009).

<sup>3</sup> Amici take no position on the secondary issue in this appeal concerning Texas Education Code § 105.203. That provision by its terms applies solely to the University of North Texas and the City of Denton. Amici also take no position on the sovereign immunity issue raised by the University of North Texas.

<sup>4</sup> The fee for preparation of this brief will be paid solely by Amici.

annually. The “base rate” subject to the 20% discount is a component of the total electric rate Amici institutions pay for electric service.

The following Amici institutions have been receiving discounted rates pursuant to PURA § 36.351:

**THE UNIVERSITY OF TEXAS SYSTEM:**

The University of Texas at Brownsville, which receives electric service provided by the City of Brownsville Public Utility of Brownsville.

The University of Texas at El Paso which receives electric service provided by El Paso Electric Company.

The University of Texas Health Science Center at Houston which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.<sup>5</sup>

The University of Texas MD Anderson Cancer Center which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

The University of Texas Medical Branch at Galveston which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

The University of Texas Marine Science Institute which receives transmission and distribution electric service provided by American Electric Power (AEP) Texas.

The University of Texas – Pan American which receives transmission and distribution electric service provided by AEP Texas.

The University of Texas Health Science Center at San Antonio Regional Academic Health Center – Edinburg which receives transmission and distribution electric service provided by AEP Texas.

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<sup>5</sup> CenterPoint and other transmission and distribution electric utilities are required to provide the 20% discount to retail electric providers who then provide discounted rates in their contracts with state universities and colleges.

The University of Texas at Dallas which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.<sup>6</sup>

The University of Texas at Tyler which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

The University of Texas Health Science Center at Tyler which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

The University of Texas Southwestern Medical Center which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

The University of Texas at Arlington which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

The University of Texas at Austin's McDonald Laboratory which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

The University of Texas of the Permian Basin which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.<sup>7</sup>

**THE TEXAS A & M UNIVERSITY SYSTEM:**

Baylor School of Dentistry which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

Prairie View A&M Nursing School which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

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<sup>6</sup> Oncor Electric Delivery Company had been providing the 20% discount until about September 2009. Oncor's continued obligation to provide the discount is the subject of *Steering Committee of Cities Served by Oncor, et al. v. Pub. Util. Comm'n*, No. D-1-GV-10-000137, 98th Dist. Court, Travis County, Tex., a pending administrative appeal of a Public Utility Commission rate order involving Oncor.

<sup>7</sup> The district court's interpretation terminating the 20% discount in PURA § 36.351 may also adversely affect UT institutions that receive alternative discounts in accordance with subsections (d) and (e) of PURA § 36.351. Municipally-owned CPS Energy provides a discount pursuant to subsection (d) to The University of Texas at San Antonio and The University of Texas Health Science Center at San Antonio. Municipally-owned Austin Energy provides a discount pursuant to subsection (e) to The University of Texas at Austin. The lower court's ruling that section 63 terminated the 20% discount may open the door to arguments that section 63 also terminated the obligation to offer these alternative discounts.

Tarleton State University which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

Texas A&M University at Commerce which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

Texas A&M University at Corpus Christi, Kingsville, and Laredo each of which receives transmission and distribution electric service provided by AEP Texas.

Texas A&M University at Galveston which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

Texas A&M Health Science Center – Institute of Biosciences & Technology which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

Texas A&M University Health Science Center at Round Rock and Temple each of which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

Texas A&M University Health Science Center at McAllen which receives transmission and distribution electric service provided by AEP Texas.

Texas AgriLife Extension Service which has offices in several Texas counties that receive transmission and distribution electric service provided by AEP Texas and Oncor Electric Delivery Company.

Texas Cooperative Extension which receives transmission and distribution electric service from Oncor Electric Delivery Company.

Texas Engineering Extension Service at Galveston which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

Texas Engineering Extension Service at Mesquite which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.

Texas Forest Service which receives transmission and distribution electric service provided by Oncor Electric Delivery Company.<sup>8</sup>

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<sup>8</sup> Stephen F. Austin University, which receives transmission and distribution electric service provided by Oncor Electric Delivery Company, also benefits from discount rates by virtue of its participation in the Texas A&M University electricity contracts.

## **THE UNIVERSITY OF HOUSTON SYSTEM:**

The University of Houston which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

The University of Houston System at Cinco Ranch which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

The University of Houston – Clear Lake which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

The University of Houston – Downtown which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

The University of Houston System at Sugar Land which receives transmission and distribution electric service provided by CenterPoint Energy Houston Electric.

The University of Houston – Victoria which receives transmission and distribution electric service provided by AEP Texas.

Thus, the district court's interpretation terminating the 20% discount has implications well beyond the particular dispute between Appellant University of North Texas and Appellee City of Denton in this case. State universities and colleges in the service area of electric utility CenterPoint Energy Houston Electric, for example, could be forced to spend approximately \$2 million more annually if the discount were eliminated.<sup>9</sup> The Texas A&M System estimates that its electric bill alone would increase by approximately half a million dollars without the discount. The University of Houston System estimates that its institutions stand to lose \$400,000 in annual savings going forward if the statutory discount were terminated. The impact on The University of

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<sup>9</sup> See P.U.C. Docket No. 38214, *Application of CenterPoint Energy Houston Electric, LLC to Terminate Rider SCUD* at 4 (Apr. 30, 2010) (available at <http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/login/pgLogin.asp>; Control No. 38214, Item No. 1). CenterPoint, which seeks to stop providing the discount, filed an amicus brief in this appeal. As explained *infra* at 10-12, CenterPoint presents argument on a different issue not presented by the parties to this appeal. The Court need not reach CenterPoint's issue.



Texas System, given its total electric costs noted above, would be significantly higher than the loss to the Texas A&M and University of Houston Systems.<sup>10</sup> The district court's interpretation terminating the 20% discount therefore has significant budgetary implications for Amici's institutions.

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<sup>10</sup> Although an estimate of the impact on The UT System as a whole is unavailable, estimates of the annual discount received by certain individual UT institutions are available: UT Medical Branch at Galveston - \$440,000; MD Anderson Cancer Center - \$400,000; UT Arlington - \$250,000; UT Dallas - \$136,000; UT Pan American - \$120,000.

## SUMMARY OF THE ARGUMENT

Since its enactment in 1995, PURA § 36.351 has required municipally-owned utilities and electric utilities to provide a 20% discount on the “base rate” component of the rates they charge for electric service provided to four-year state universities and colleges. The discount is a legislative policy recognition that state universities and colleges have limited resources with which to provide the unique societal benefits of higher education.

In 1999, the Legislature amended PURA to restructure the electric industry, finding it in the public interest to transition from regulation to retail competition in certain areas of the state. Alongside those amendments, the Legislature enacted a temporary measure, uncodified section 63, to afford affected state universities and colleges a period of retail rate stability following the onset of competition. Section 63 provided that the “total rate” set by the Public Utility Commission under regulation would continue to be available to state universities and colleges in areas of competition until September 1, 2007.

What terminated on September 1, 2007, was the temporary extension of regulated retail rates prescribed by section 63, not the permanent 20% base rate discount mandated by PURA § 36.351. Section 63 could not have been intended to repeal PURA § 36.351 because the two provisions had very different purposes. Section 63 responded to the commencement of retail competition by temporarily extending regulated retail rates in order to afford state universities and colleges a period of rate stability. PURA § 36.351, by contrast, uniformly requires municipally-owned utilities and investor-owned electric

utilities to provide the 20% base rate discount regardless of whether they operate in areas opened to competition.

The status of municipally-owned utilities and electric utilities under the 1999 PURA competition amendments supports this conclusion. The 1999 amendments gave municipally-owned utilities the choice to exempt the areas they serve from competition. No municipally-owned utility opted for competition and all continue to charge regulated rates. Investor-owned electric utilities also continue to have their rates set under regulation by the Public Utility Commission. This is true even in areas of retail competition, where electric utilities are limited to providing transmission and distribution electric service.

The Legislature listed municipal corporations and electric utilities in section 63 to ensure that all utilities complied with the temporary regulated rate extension whether or not they chose or were affected by competition in their areas. But section 63 did not thereafter relieve the utilities, all of which continue to charge regulated rates, of their longstanding duty to provide the 20% base rate discount under PURA § 36.351. The district court's declaration to the contrary should be reversed because it would adversely impact state universities and colleges statewide in a way the Legislature never intended.

#### ARGUMENT

**I. The purpose of section 63 was not to repeal the 20% “base rate” discount in PURA § 36.351 but to preserve the “total rate” set under regulation for a temporary period following the onset of retail electric competition.**

In its final judgment, the district court “DECLARED that by virtue of [section 63], the 20% base rate discount afforded to state supported institutions of higher learning set

out in [PURA § 36.351] expired on September 1, 2007.”<sup>11</sup> This declaration is erroneous because it misconstrues the language and purpose of section 63 and its relationship to PURA § 36.351. Section 63 provided a temporary period of rate stability following the start of retail electric competition in 2002 in certain areas of the state. From January 1, 2002 until September 1, 2007, section 63 preserved the regulated retail rates that four-year state universities and colleges in those areas had been paying as of December 31, 2001. PURA § 36.351, on the other hand, gives state universities and colleges in all areas an ongoing discount on regulated utility rates unrelated to the transition to competition. Section 63 did not repeal the statewide discount simply because it temporarily preserved regulated retail rates following the onset of retail competition in certain areas.

A. Section 63

Section 63 was enacted into the General Laws as part of the 1999 Texas Electric Utility Restructuring Act and was not codified. The language of section 63 shows that it had a specific, temporary purpose. That purpose was to afford state universities and colleges stability in the retail electric rates they paid for a transitional period following the commencement of retail electric competition mandated by amendments to PURA.<sup>12</sup> Section 63 provided rate stability by setting a temporary freeze, or cap, on the “total rate” for electric service paid by state universities and colleges. Section 63 specified the total

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<sup>11</sup> Clerk’s Record 409-11 (Order Granting Plaintiff’s Motion for Summary Judgment at 2, ¶1).

<sup>12</sup> “In 1999, the Legislature substantially revised the Public Utility Regulatory Act (PURA) to bring about a major restructuring of the electric power industry in Texas to allow retail electric rates to be determined by competition.” *City of Corpus Christi v. Pub. Util. Comm’n*, 51 S.W.3d 231, 235 (Tex. 2001). The PURA amendments “provid[ed] for the transition from a regulated industry to a competitive deregulated market” in many parts of the state. *Office of Pub. Util. Counsel v. Public Util. Comm’n*, 303 S.W.3d 904, 907 (Tex. App.—Austin 2010, no pet.).

rate as the regulated rate in effect on December 31, 2001, the day before retail competition began. Section 63 required that this regulated rate be offered not only by municipally-owned utilities and investor-owned electric utilities, but also by electric cooperatives, river authorities, and the newly unbundled “affiliated retail electric providers” created as a result of the industry’s restructuring. Without section 63, the state universities and colleges’ retail rates would have been subject to unpredictable change and possible rate increases beginning the next day, January 1, 2002, when retail electric competition commenced in many parts of the state.<sup>13</sup> Section 63 avoided this rate uncertainty by preserving the December 31, 2001 regulated rate until September 1, 2007. After that date, section 63 expired by its own terms.<sup>14</sup>

B. PURA § 36.351

Unlike section 63, PURA § 36.351 is codified in the Texas Utilities Code and serves a different, permanent purpose. Section 36.351 does not set or cap the “total rate” as section 63 did, but instead gives state universities and colleges a 20% discount on a

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<sup>13</sup> See PURA § 39.102(a) (providing that retail electric customers “shall have customer choice on and after January 1, 2002”).

<sup>14</sup> Section 63 provided in relevant part:

Notwithstanding any other provision of this Act or Title 2, Utilities Code, any person or entity that provides electric service to a four-year state university, upper-level institution, Texas state technical college, or college, as provided by Section 36.351, Utilities Code, on December 31, 2001, shall continue to offer electric service to a four-year state university, upper-level institution, Texas state technical college, or college, as provided by Section 36.351, Utilities Code, until September 1, 2007, at a total rate that is no higher than the rate applicable to the university, institution, or college on December 31, 2001. The rate applicable to a four-year state university, upper-level institution, Texas state technical college, or college, as provided by Section 36.351, Utilities Code, shall be based on the rates provided for or described in Section 36.351, Utilities Code. . . . (Emphasis added.)

component (the “base rate”) of whatever the total retail rates may be.<sup>15</sup> Underlying § 36.351 is a legislative policy choice that state universities and colleges, which have limited resources and provide general societal benefits through education, should receive a discount vis a vis other electric customers. As Appellee City of Denton acknowledges, the discount “lighten[s] the burden on our IHLs [institutions of higher learning] so that their limited resources [can] be spent elsewhere.”<sup>16</sup> The 20% base rate discount and this policy apply independently of section 63’s temporary preservation of regulated retail rates at the onset of competition. The 20% discount, permanently codified in PURA § 36.351, both pre-dates and post-dates the temporary regulated rate extension in uncodified section 63.

C. The district court’s failure to distinguish between section 63 and PURA § 36.351

The district court’s declaratory judgment fails to recognize that section 63 and PURA § 36.351 employ different language for different purposes. The district court should have interpreted section 63 consistent with its language to temporarily maintain the “total rate” at the December 31, 2001 regulated level and thereby provide a period of retail rate stability for state universities and colleges after competition began on January 1, 2002. Instead, the lower court declared that section 63 set a termination date for the

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<sup>15</sup> PURA § 36.351 states in pertinent part:

- (a) Notwithstanding any other provision of this title, each electric utility and municipally owned utility shall discount charges for electric service provided to a facility of a four-year state university, upper-level institution, Texas State Technical College, or college.
- (b) The discount is a 20-percent reduction of the utility’s base rates that would otherwise be paid under the applicable tariffed rate.

<sup>16</sup> Amended Brief of Appellee City of Denton at 29.

20% base rate discount in PURA § 36.351 even though section 36.351 unequivocally mandates that “each electric utility and municipally owned utility shall” provide the discount with no termination date or mention of retail competition.

The lower court may have been influenced by the fact that section 63 includes references to PURA § 36.351. Appellee City of Denton emphasized these references in its motion for summary judgment as it does in its brief to this Court. But the legislative purpose in referring to PURA § 36.351 is evident on the face of section 63: to make explicit that the regulated retail rate during the extended period *should continue to include the 20% base rate discount* which the state universities and colleges had been receiving under PURA § 36.351. Nowhere in section 63 did the Legislature state that the 20% base rate discount would terminate on September 1, 2007 when the regulated retail rate extension ended.

**II. Section 63 could not have been intended to repeal the 20% discount because section 63 addressed the advent of competition whereas the 20% discount applies to all utilities including those exempted from competition.**

The 1999 amendments to PURA, though extensive, did not mandate competition for all parts of the state. Municipally-owned utilities could choose to remain fully regulated with their service areas exempt from competition.<sup>17</sup> No municipally-owned

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<sup>17</sup> See PURA § 40.051(a) (“The municipal governing body or a body vested with the power to manage and operate a municipally owned utility has the discretion to decide when or if the municipally owned utility will provide customer choice.”). See also PURA § 39.102(a) (“Each retail customer in this state, except retail customers of electric cooperatives and municipally owned utilities that have not opted for customer choice, shall have customer choice [as to an electric provider] on and after January 1, 2002.”).

utility opted for competition.<sup>18</sup> The 1999 amendments additionally provided that areas served by certain investor-owned electric utilities, including El Paso Electric Company and Entergy Texas, Inc., could or must remain regulated at least for some time and not subject to retail competition.<sup>19</sup>

The district court's interpretation of section 63 conflicts with these provisions for continued regulation. Section 63 was enacted to address the advent of competition on January 1, 2002. The Legislature could not have thereby intended to eliminate the 20% discount requirement for utilities that remained fully regulated and exempt from competition. Yet that is what the district court declared. The lower court erroneously ruled that section 63 repealed PURA § 36.351 as of September 1, 2007, and erased the statutory obligation of all regulated municipally-owned utilities and all regulated investor-owned electric utilities to provide the discount to state universities and colleges.

**III. The Legislature's inclusion of municipally-owned utilities and electric utilities among the entities subject to section 63 does not indicate an intent to repeal the 20% discount.**

Appellee City of Denton argues that there was no need to list "municipal corporation" among the entities subject to section 63 if the Legislature had intended the 20% discount in PURA § 36.351 to apply to municipal utilities after September 1, 2007.<sup>20</sup>

This argument overlooks the purpose of section 63 and the fact that municipally-owned

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<sup>18</sup> See Public Utility Commission, of Texas, *Scope of Competition in Electric Markets in Texas*, Report to the 78th Tex. Leg. at 25 (Jan. 2003) (reporting that, as of December 2002, only two electric cooperatives out of all municipally-owned utilities and electric cooperatives chose to open their systems to customer choice).

<sup>19</sup> See PURA §§ 39.102(c), 39.103, 39.104.

<sup>20</sup> See Amended Brief of City of Denton at 19-21.



utilities could have opted for competition under the PURA amendments. If a municipally-owned utility had chosen to allow competition in its service area, then state universities and colleges in that service area would have faced electric rate uncertainty.<sup>21</sup> The Legislature safeguarded against this possibility by including municipal corporations among the entities in section 63 obligated to offer state universities and colleges the “total rate” at the December 31, 2001 regulated level from January 1, 2002, until September 1, 2007.

As it turned out, no municipally-owned utility chose to allow competition in its service area, and therefore retail rates remained regulated during this period, as they are to this day. But the Legislature had no way to know this in 1999. Including municipally-owned utilities in section 63 served to ensure regulated rate stability for state universities and colleges in the event a municipally-owned utility exercised the competitive option.

Appellee City of Denton also questions why the Legislature included “electric utility” among the entities subject to section 63. One possible explanation lies in the 1999 PURA amendments which authorized the Public Utility Commission to implement “pilot projects” to evaluate an electric utility’s ability to implement competition in its power region on January 1, 2002.<sup>22</sup> The statute directed the Commission to delay competition if the Commission determined that fair competition was not possible on that

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<sup>21</sup> See PURA § 40.054(a) (providing that “a municipally owned utility participating in customer choice shall have the right to offer electric energy and related services at unregulated prices directly to retail customers”).

<sup>22</sup> See PURA § 39.104.

date.<sup>23</sup> The Legislature may have included electric utilities among the entities in section 63 to ensure that, whether as part of a pilot project or otherwise, state universities and colleges would receive the December 31, 2001 regulated rate (which included the 20% base rate discount) through September 1, 2007.

Another possible reason for including electric utilities and municipally owned utilities in section 63 is that the Legislature simply may have wanted to cover the waterfront – to be sure that all state universities and colleges benefited from the temporary regulated retail rate extension regardless of their electric provider.<sup>24</sup> This interpretation is consistent with the Legislature’s decision to apply section 63 “notwithstanding” both the 1999 Act amending PURA and PURA as a whole in “Title 2, the Utilities Code.” Inclusion of electric utilities in section 63, like the application of section 63 to PURA as a whole, removed any question that the regulated retail rate extension applied to all four-year state universities and colleges without exception.

**IV. The district court’s declaratory repeal of the 20% discount would broadly impact universities and colleges throughout the state.**

The district court’s declaratory ruling could have broad statewide impact. Under the lower court’s interpretation that section 63 terminated the 20% discount in PURA § 36.351, every municipally-owned utility in the state serving a four-year state university or college, not just the City of Denton, would be able to discontinue the 20% discount.

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<sup>23</sup> *Id.* § 39.103.

<sup>24</sup> Appellee City of Denton itself surmises that “[t]he only substantive reason the Legislature would have included electric utilities and municipal corporations” in section 63 “is to ensure that the provisions of § 63 . . . applied to electric utilities and municipal corporations, as well as to affiliated REPs, cooperatives and river authorities.” Amended Brief of Appellee City of Denton at 20-21.

Municipally-owned utilities would be able to do so even though they always charged fully regulated rates and were never subject to competition – before, during, or after the competition transition period addressed by section 63.

In addition to municipally-owned utilities, the district court’s ruling would allow every regulated investor-owned electric utility in the state to stop providing the 20% discount to the state universities and colleges they serve. By its terms, PURA § 36.351 applies equally to “each electric utility and municipally owned utility.”<sup>25</sup> If PURA § 36.351 “expired by virtue of section 63” as the district court declared, then it expired for both electric utilities and municipally-owned utilities.

There is little doubt that electric utilities would stop providing the discount if permitted to do so. The amicus brief submitted by CenterPoint Energy Houston Electric expresses that regulated electric utility’s eagerness to “escape the requirements of PURA § 36.351.”<sup>26</sup> Yet even CenterPoint offers only token, one-page support for the district court’s interpretation that section 63 repealed § 36.351.<sup>27</sup>

CenterPoint’s brief mainly addresses a different issue not before this Court. CenterPoint argues that “even if PURA § 36.351 was not repealed by § 63,” PURA

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<sup>25</sup> As noted above, PURA § 36.351 states in pertinent part:

(a) Notwithstanding any other provision of this title, each electric utility and municipally owned utility shall discount charges for electric service provided to a facility of a four-year state university, upper-level institution, Texas State Technical College, or college. (Emphasis added.)

<sup>26</sup> Brief of Amicus Curiae CenterPoint Energy Houston Electric, LLC at 10. As noted in footnote 9 above, CenterPoint filed an application with the Public Utility Commission specifically seeking to discontinue the rate discount. More recently, CenterPoint filed an application to increase its rates again seeking to terminate the 20% discount for state universities and colleges. *See* P.U.C. Docket No. 38339, *Application of CenterPoint Energy Houston Electric, LLC to Change Rates*.

<sup>27</sup> *See id.* at 7-8.

§ 36.351 does not require CenterPoint to provide the 20% discount. CenterPoint concedes that it is an “electric utility” but claims that as a “transmission and distribution” electric utility it does not provide “electric service” to state universities and colleges and therefore need not provide the 20% discount under PURA § 36.351.

This alternative argument to escape PURA § 36.351 fails on its merits. PURA nowhere defines “electric service” or states that the transmission and distribution of electricity should not be considered an electric service. Transmission and distribution service is in fact an essential electric service. CenterPoint transmits and distributes electric energy over electric lines that run from power plants to the electric meter located on or near the premises of retail electric customers including state universities and colleges. CenterPoint is a fully regulated electric utility, not subject to competition, that charges rates set by the Public Utility Commission for each class of customers including state universities and colleges.

CenterPoint notes that retail customers do not receive a bill directly from CenterPoint. Instead, transmission and distribution utilities charge “retail electric providers” (“REPs”) based on the meter usage of the retail customer, and the REPs then incorporate that cost in a total electric bill paid by the retail customer. This form of transaction does not mean CenterPoint does not provide electric service to state universities and colleges. PURA expressly recognizes that an electric utility’s “rate” “includes any . . . charge . . . that is directly *or indirectly* demanded, observed, charged,

or collected” by an electric utility.<sup>28</sup> CenterPoint provides transmission and distribution electric service directly to state universities and colleges, and CenterPoint charges and collects for that service through the REP. That the charge and collection occur indirectly does not permit CenterPoint to avoid its statutory obligation to provide the 20% discount.

In any event, CenterPoint’s issue is not presented in this appeal and the Court need not address it. The issue is directly presented and will be resolved in an administrative appeal of an electric rate case pending in Travis County District Court.<sup>29</sup> CenterPoint intervened in that appeal and filed a brief to make the same arguments that it makes here.

The issue in *this* appeal is whether section 63 repealed PURA § 36.351 and thereby erased the 20% base rate discount for state universities and colleges. For the reasons stated in this brief, section 63 did not repeal the PURA § 36.351 discount.

#### CONCLUSION AND PRAYER

The district court’s declaratory judgment should be reversed. If the Court finds that it has jurisdiction, Amici urge the Court to hold that section 63 did not terminate the 20% base rate discount that municipally-owned utilities and electric utilities must provide to state universities and colleges pursuant to PURA § 36.351.

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<sup>28</sup> PURA § 11.003(16).

<sup>29</sup> See *Steering Committee of Cities Served by Oncor, et al., v. Public Util. Comm’n*, No. D-1-GV-10-000137 (consolidated), 98th Dist. Court, Travis County, Tex. The district court has received full briefing and is set to hear argument on October 19, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on September 20, 2010, I served a copy of this amicus brief by first class or priority United States mail to counsel for Appellant and Appellee as indicated below. I also provided a courtesy copy of this amicus brief by first class United States mail to counsel for amicus CenterPoint Energy Houston Electric, LLC as indicated below.

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