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APPLICATION OF EL PASO §
ELECTRIC COMPANY FOR §
APPROVAL TO REVISE ITS §
ENERGY EFFICIENCY COST §
RECOVERY FACTOR AND §
REQUEST TO ESTABLISH REVISED §
COST CAP §

PUBLIC UTILITY COMMISSION
OF TEXAS

**APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL TO REVISE
ITS ENERGY EFFICIENCY COST RECOVERY FACTOR AND REQUEST TO
ESTABLISH REVISED COST CAPS**

El Paso Electric Company (EPE or Company) submits this Application for Approval to Revise its Energy Efficiency Cost Recovery Factor (EECRF) and Request to Establish Revised Cost Cap (Application). In support thereof, EPE respectfully shows the following:

I. BUSINESS ADDRESS AND AUTHORIZED REPRESENTATIVES

EPE's business address is 100 N. Stanton, El Paso, Texas 79901. EPE's authorized representative for the purpose of receiving service of documents is:

Curtis Hutcheson
El Paso Electric Company
100 N. Stanton Street
El Paso, Texas 79901
(915) 543-4354
(915) 521-4450 (fax)

EPE's authorized legal representatives and designated recipients for service of pleadings and other documents are:

Leslie M. Padilla
State Bar No. 24084628
Duggins Wren Mann & Romero, LLP
P.O. Box 1149
Austin, Texas 78767
(512) 744-9300
(512) 744-9399 (fax)

Lorenzo Nieto
State Bar No. 24037183
El Paso Electric Company
100 N. Stanton Street
El Paso, Texas 79901
(915) 543-5897
(915) 521-4747 (fax)

II. JURISDICTION

The Public Utility Commission of Texas (Commission or PUCT) has jurisdiction over EPE and the subject matter of this Application pursuant to Section 39.905 of the Public Utility Regulatory Act (PURA)¹ and Title 16 of the TEXAS ADMINISTRATIVE CODE (16 TAC) § 25.181.

III. AFFECTED PERSONS

EPE provides service to approximately 300,000 retail electric customers in Texas. EPE proposes to apply the EECRF requested herein to all of its retail electric customers in its Texas service area that fall within the classes subject to the EECRF. Those classes are listed in the proposed tariff, which is Attachment A to this Application.

IV. EPE'S PROPOSED EECRF FOR 2017 AND REQUEST TO ESTABLISH REVISED COST CAP

By this Application, EPE requests the authority to revise its EECRF for 2017 to reflect the following four components:

- 1) \$4,394,650 in projected energy efficiency program costs for 2017;
- 2) a \$667,545 performance bonus based on the Company's 2015 energy efficiency program performance;
- 3) EPE's prior year (2015) EECRF proceeding expenses of \$83,290;

¹ TEX.UTIL.CODE §§ 11.001-66.017 (Vernon 2007 & Supp. 2014) (PURA)

- 4) A true-up adjustment, by rate class, of EPE's net over-recovery for 2015 of \$380,039; and

A fifth component of the EECRF permitted by 16 TAC § 25.181(f)(1) is the projected cost of evaluation, measurement, and verification (EM&V) that is allocated to EPE by the Commission. However, as of the date of filing this petition, the Commission has not assigned any EM&V costs to EPE. As a result, EPE's EM&V costs are currently shown as \$0. If the Commission assigns EM&V costs to EPE, EPE will either include those costs in this proceeding, if timely, or in a future true-up of the EECRF.

The total amount that EPE requests be included in its 2017 EECRF (not including EM&V costs that will be added when the Commission assigns them) is therefore \$4,765,446. EPE's request is based on continuing all of its energy efficiency programs (with the exception of one program that will no longer be offered), and with the same megawatt goal (11.16 MW) and at the same level they have been since 2011. With the programs that EPE proposes to offer in 2017, EPE calculates that it will be able to achieve the equivalent of an energy efficiency saving of greater than both the 30% energy efficiency goal and the four-tenths of 1% of its summer weather-adjusted peak demand goal that are prescribed by 16 TAC § 25.181(e).

In order to operate its energy efficiency programs to accomplish its energy and demand goals, the rates for the commercial customers will continue to exceed the cost caps set by 16 TAC § 25.181(f)(7). Accordingly, pursuant to 16 TAC § 25.181(e)(2), in order to proceed with this approach, EPE requests that the Commission establish a revised cost cap for the commercial classes.

There is good cause to establish a revised cost cap. First, EPE's proposal to continue with the same megawatt goal as it has had in previous years is consistent with the requirement of 16 TAC § 25.181(e)(1)(E) that "a utility's demand reduction goal in any year shall not be lower

than its goal for the prior year, unless the commission establishes a goal for a utility pursuant to paragraph (2) of this subsection.” It is not reasonably possible for EPE to comply with the requirement that its demand reduction goal not be lower than the previous year’s goal without continuing to exceed the Commission’s cost cap for commercial customers. EPE’s commercial customers already have an EECRF that exceeds the cap. If the Company were to revise its 2017 spending to a level that would allow the Company to comply with the cost cap, it would require a major change in EPE’s energy efficiency programs. Some of the programs for classes that have been particularly successful would receive substantially less funding, and some that have not been as successful would experience an increase in spending. EPE does not believe it is in the best interest of its energy efficiency programs or the affected customer classes to make such changes.

Therefore, rather than undertake a restructuring of its energy efficiency programs, EPE respectfully requests to Commission to continue the revised cost cap for EPE’s commercial customers. Although EPE will still exceed the cost cap with this request for commercial customers, the Company believes this request achieves the most benefits for its customers by continuing valuable energy-saving programs while limiting any rate increases.

In support of this application, EPE submits the Direct Testimonies of Araceli Perea and Rene F. Gonzalez and an affidavit by Bret J. Slocum concerning last year’s EECRF proceeding expenses. In her Direct Testimony, Ms. Perea addresses EPE’s energy efficiency program and its associated costs, as well as the bidding and engagement process for contracting with energy efficiency service providers. In his Direct Testimony, Mr. Gonzalez provides a summary of the relief sought by EPE and describes the specific costs to be included in EPE’s revised EECRF pursuant to the requirements of 16 TAC § 25.181(f). Mr. Gonzalez’s testimony also supports the calculation of EPE’s revised EECRF rates for the billing period January 2017 through December

2017. Lastly, Mr. Gonzalez explains why good cause supports the Company's requests for continuation of a revised cost cap for commercial customers.

V. ADJUSTED ENERGY EFFICIENCY COST RECOVERY FACTOR

EPE's revised EECRF tariff containing the EECRF rates for 2017 is provided as Exhibit RG-2 to Mr. Gonzalez's Direct Testimony and is attached to this Application as Attachment A. Under EPE's EECRF request, based on EPE's current base rates and fixed fuel factor, a residential customer using 625 kWh of electricity per month would be charged \$0.44 per month, which is a decrease of \$0.18 cents per month.

EPE requests the Commission approve the adjusted EECRF effective as of the first billing cycle of the January 2017 billing month, which is January 2, 2017.

VI. NOTICE

Consistent with the notice provisions of 16 TAC § 25.181,² EPE proposes to provide notice to all parties that participated in the Company's last EECRF proceeding, Docket No. 44677, and its last completed base rate proceeding, Docket No. 40094. EPE will also provide notice to Texas Department of Housing and Community Affairs, which is the state agency that administers the federal weatherization program. Because EPE's service territory is not open to retail competition, no Retail Electric Provider is eligible to provide service in EPE's service area, so no notice to them is required. The form of the notice to be provided is set forth

² 16 TAC § 25.181(f)(13) states:

Notice of a utility's filing of an EECRF application is reasonable if the utility provides in writing a general description of the application and the docket number assigned to the application within 7 days of the application filing date to:

- (A) All parties in the utility's most recent completed EECRF docket;
- (B) All retail electric providers that are authorized by the registration agent to provide service in the utility's service area at the time the EECRF application is filed;
- (C) All parties in the utility's most recent completed base-rate proceeding; and
- (D) The state agency that administers the federal weatherization program.

in Attachment B to this Application. The Company requests that the Commission find that the Company's notice is sufficient.

VII. DOCUMENTS FILED UNDER SEAL AND REQUEST FOR PROTECTIVE ORDER

Portions of this filing constitute confidential or highly sensitive confidential materials and have been filed under seal. These materials will be made available to the Staff of the PUCT and any intervenors upon entry of an appropriate protective order ensuring the confidential nature of these materials. EPE proposes that the Commission adopt the protective order in Attachment C, which is the Protective Order approved in EPE's last EECRF proceeding, Docket No. 44677.

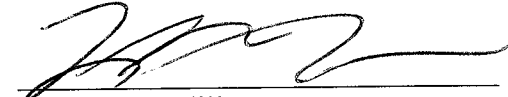
VIII. PRAYER

EPE requests that its Application be deemed complete and sufficient and in compliance with PURA § 39.905(b) and 16 TAC § 25.181; that EPE's suggested notice of this filing as described above and attached to this Application be considered sufficient and authorized; that EPE's Application for Approval to Revise its EECRF be approved with implementation for use beginning with the first billing cycle of its January 2017 billing month; and for such other relief to which it may be entitled.

Respectfully submitted,

Lorenzo Nieto
State Bar No. 24037183
El Paso Electric Company
100 N. Stanton
El Paso, Texas 79901
(915) 543-5897
(915) 521-4747 (fax)

Leslie M. Padilla
State Bar No. 24084628
Duggins Wren Mann & Romero, LLP
P.O. Box 1149
Austin, Texas 78767
(512) 744-9300
(512) 744-9399 (fax)



Leslie M. Padilla

**ATTORNEYS FOR EL PASO
ELECTRIC COMPANY**

SCHEDULE NO. 97
ENERGY EFFICIENCY COST RECOVERY FACTOR

APPLICABILITY

Electric service billed under rate schedules having an Energy Efficiency Cost Recovery Factor Clause shall be subject to an Energy Efficiency Cost Recovery Factor ("EECRF"). The EECRF is not applicable to service billed at transmission voltage rates.

Pursuant to Title 16 of the Texas Administrative Code § 25.181(f), the EECRF allows the Company to recover the cost of energy efficiency programs from the customer classes that receive services under such programs. (T)

TERRITORY

Texas Service Area

MONTHLY RATE

| Rate No. | Description | Energy Efficiency Cost Recovery Factor (\$/kWh) | |
|----------|--|---|-----|
| 01 | Residential Service Rate | \$ 0.000704 | (R) |
| 02 | Small Commercial Service Rate | \$ 0.004160 | (I) |
| 07 | Outdoor Recreational Lighting Service Rate | (\$ 0.000407) | (I) |
| 08 | Governmental Street Lighting Service Rate | (\$ 0.000110) | (R) |
| 09 | Governmental Traffic Signal Service | \$ 0.000000 | (N) |
| 11 | Municipal Pumping Service Rate | (\$ 0.001121) | (R) |
| 11-TOU | Time-Of-Use Municipal Pumping Service Rate | (\$ 0.001121) | (R) |
| WH | Water Heating | (\$ 0.000188) | (I) |
| 22 | Irrigation Service Rate | (\$ 0.001053) | (R) |
| 24 | General Service Rate | \$ 0.000663 | (R) |
| 25 | Large Power Service Rate (excludes transmission) | \$ 0.001238 | (I) |
| 34 | Cotton Gin Service Rate | (\$ 0.000142) | (R) |
| 41 | City and County Service Rate | \$ 0.001602 | (I) |
| 46 | Maintenance Power Service For Cogeneration And Small Power Production Facilities | (\$ 0.000142) | (I) |
| 47 | Backup Power Service For Cogeneration And Small Power Production Facilities | (\$ 0.000142) | (I) |

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 Sheet Number 33
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Revision Number 6
 Effective with bills issued on or
after January 1, 2017

**NOTICE OF APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL
TO REVISE ITS ENERGY EFFICIENCY COST RECOVERY FACTOR AND
REQUEST TO ESTABLISH REVISED COST CAP**

On April 29, 2016, El Paso Electric Company (EPE or the Company) submitted to the Public Utility Commission of Texas (PUCT) its Application for Approval to Revise Its Energy Efficiency Cost Recovery Factor and Request to Establish Revised Cost Cap (Application) as permitted under Section 39.905(b) of the Public Utility Regulatory Act (PURA) and under Title 16 of the TEXAS ADMINISTRATIVE CODE (16 TAC) § 25.181(f) relating to recovery of costs for energy efficiency programs. The filing was assigned Docket No. 45885 by the PUCT. EPE requested that its revised energy efficiency cost recovery factor (EECRF) become effective beginning with the first billing cycle of its January 2017 billing month, which begins on January 2, 2017. All EPE retail electric customers in its Texas service area that fall within the classes subject to the EECRF will be affected by approval of the Company's Application.

EPE's proposed EECRF rates for commercial customers in aggregate will exceed the cost cap prescribed by 16 TAC § 25.181(f)(7). Therefore, pursuant to 16 TAC § 25.181(f)(2), EPE requested that the Commission find good cause to revise the Company's cost cap to permit the Company to recover energy efficiency costs necessary to achieve the 2017 energy efficiency goal.

In its Application, EPE requested to recover through its 2017 EECRF approximately \$4,765,446 in energy efficiency costs, reflecting the following five components:

- 1) \$4,394,650 in projected energy efficiency program costs for 2017;
- 2) a \$667,545 performance bonus based on the Company's 2015 energy efficiency program performance;
- 3) EPE's prior year EECRF proceeding expenses of \$83,290;
- 4) a \$380,039 true-up adjustment representing EPE's net over-recovery of 2015 program costs actually incurred; and,
- 5) Evaluation, Measurement, and Verification (EM&V) costs of \$0. At the time, the PUCT has not assigned any expenses for the EM&V contractor for 2017. As such, the projected EM&V costs are shown in the Application as \$0. If the Commission assigns EM&V costs to EPE, EPE will either include those costs in this proceeding, if timely (which will increase EPE's request in this case by that amount), or in a future true-up of the EECRF.

Under EPE's EECRF request, based on EPE's proposed base rates and fixed fuel factor (Docket No. 44941), a residential customer using 625 kWh of electricity per month would be charged \$0.44 per month, which is approximately 18 cents lower on average per month than the EECRF approved in EPE's last EECRF proceeding, PUCT Docket No. 44677. The Company's requested EECRF rates are as follows:

| Description | Energy Efficiency Cost Recovery Factor |
|---|--|
| | (\$/kWh) |
| Residential Service Rate | \$ 0.000704 |
| Small Commercial Service Rate | \$ 0.004160 |
| Outdoor Recreational Lighting Service Rate | (\$ 0.000407) |
| Governmental Street Lighting Service Rate | (\$ 0.000110) |
| Governmental Traffic Signal Service | \$ 0.000000 |
| Municipal Pumping Service Rate | (\$ 0.001121) |
| Time-Of-Use Municipal Pumping Service Rate | (\$ 0.001121) |
| Water Heating | (\$ 0.000188) |
| Irrigation Service Rate | (\$ 0.001053) |
| General Service Rate | \$ 0.000663 |
| Large Power Service Rate (excludes transmission) | \$ 0.001238 |
| Cotton Gin Service Rate | (\$ 0.000142) |
| City and County Service Rate | \$ 0.001602 |
| Maintenance Power Service For Cogeneration And Small Power Production Facilities | (\$ 0.000142) |

Persons with questions or who want more information about EPE's application may contact the Company at 100 N. Stanton St., El Paso, Texas 79901, or call (915) 543-4354. A complete copy of the application is available for inspection at the address listed above. The Commission will review EPE's Application, establish an intervention date for interested persons, and determine whether EPE's Application should be approved. The Commission's proceeding to review EPE's Application has been assigned Docket No. 45885. Persons who wish to intervene in or comment upon these proceedings, or obtain further information, should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at

(512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All communications should refer to Docket No. 45885.

DOCKET NO. 45885

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|-------------------------------|---|---------------------------|
| APPLICATION OF EL PASO | § | PUBLIC UTILITY COMMISSION |
| ELECTRIC COMPANY FOR | § | |
| APPROVAL TO REVISE ITS ENERGY | § | |
| EFFICIENCY COST RECOVERY | § | OF TEXAS |
| FACTOR AND REQUEST TO | § | |
| ESTABLISH REVISED COST CAPS | § | |

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 45885" (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.¹ Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public

¹ TEX. GOV'T CODE ANN. §§ 552.001-552.353 (Vernon 2004 and Supp. 2013).

knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.
4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to

unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;² (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; or (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 45885" (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party's designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party shall maintain a record of all copies made of Highly Sensitive Protected Material and shall send a duplicate of the record to the producing party when the copy or copies are made. The record shall specify the location and the person possessing the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN., § 32.101(c) (Vernon 2007 & Supp. 2012) (PURA).

document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.**

With the exception of Commission Staff, The Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (a) outside counsel for the Reviewing Party, (b) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel or, (c) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8, and must be either outside counsel or an outside consultant. Other representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Each Reviewing Party may make two additional copies of Highly Sensitive documents for outside consultants whose business offices are located outside of Travis County. All restrictions on Highly Sensitive documents in this order shall apply to the additional copies maintained in the outside consultants' offices. Any Highly Sensitive Protected Materials provided to a

Reviewing Party may not be copied except as provided in Paragraph 7 and shall be returned along with any copies made pursuant to paragraph 7 to the producing party within two weeks after the close of the evidence in this proceeding. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is a representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.
11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC, and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC, and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.
12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC, and the OAG (if the OAG is

representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.

13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.
14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 45885. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from

independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

The Reviewing Party shall provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record.

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.
17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant

to Paragraphs 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.

18. **Procedures Regarding Voluminous Protected Materials.** P.U.C. PROC. R. 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.
19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.
22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials.** Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.
23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties.

The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.

24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order Holding Materials are not Protected Materials.** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.
25. **Notice of Intent to Use Protected Materials or Change Materials Designation.** Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. 45885 at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such

Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.
27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such

determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28. **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.
29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.** Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.
30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.

31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the "conclusion of these proceedings" is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.
32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,³ the Texas Securities Act⁴ and any other applicable law, provided that parties subject to those acts will notify the party asserting

³ TEX. GOV'T CODE ANN. § 551.001-551.146 (Vernon 2004 & Supp. 2010).

⁴ TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-43 (Vernon 2010).

