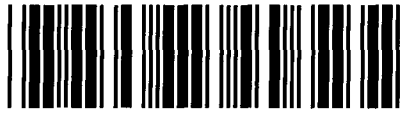


Control Number: 46271



Item Number: 7

Addendum StartPage: 0

RECEIVED

COMPLAINT OF EVERETTH HOLLEY §
 AGAINST AEP TEXAS CENTRAL §
 COMPANY, JUST ENERGY, AND CPL §
 RETAIL ENERGY §

PUBLIC UTILITY COMMISSION
 2/16/2015 2:59 PM
 PUBLIC UTILITY COMMISSION
 CLERK
 OF TEXAS

**RESPONSE OF AEP TEXAS CENTRAL COMPANY
 TO COMPLAINT OF EVERETTH HOLLEY AND MOTION TO DISMISS**

NOW COMES AEP Texas Central Company (TCC) and, pursuant to Order No. 2 in the above-referenced proceeding, files this response to the complaint of Everetth Holley (Complainant) and Motion to Dismiss, and in support thereof would respectfully show as follows:

I. Jurisdiction and Motion to Dismiss

The Commission does not have jurisdiction over this complaint against TCC until the complaint has been presented to the City of Corpus Christi, Texas for its determination pursuant to Public Utility Regulatory Act (PURA)¹ §§ 33.001-.002 and 16 Tex. Admin. Code (TAC) § 22.242(e)(1). The service address at issue in this complaint, 520 Jester, is located inside the incorporated limits of the City of Corpus Christi, which has not ceded its original jurisdiction rights to the Commission. The Commission's rule, 16 TAC § 22.242(e)(1), states:

Requirement to present complaint concerning electric utility to a city. If a person receives electric utility service or has applied to receive electric utility service within the limits of a city that has original jurisdiction over the electric utility providing service or requested to provide service, the person must present any complaint concerning the electric utility to the city before presenting the complaint to the commission.

- (A) The person may present the complaint to the commission after:
 - (i) the city issues a decision on the complaint; or
 - (ii) the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.
- (B) If the city does not act on the complaint within 30 days, the commission may send the city a letter requesting that the city act on the complaint. If the city does not respond or act within 30

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-64.158 (West 2011 & Supp. 2015).

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days from the date of the letter, the complaint shall be deemed denied by the city and the commission shall consider the complaint.

Because Complainant has provided no evidence that his complaint has been presented to the City of Corpus Christi, this complaint should be dismissed for lack of jurisdiction.

II. Allegations Raised in Complaint

On August 9, 2016, Complainant filed a formal complaint against TCC and Just Energy (Complainant's retail electric provider (REP)) regarding the accuracy of meter readings and billing for electric service at 520 Jester Street, Corpus Christi, TX. On August 19, 2016, Complainant made a subsequent filing, clarifying that CPL Retail Energy had been his REP prior to switching to Just Energy on May 31, 2016.

Although it is not entirely clear from his formal complaint, in his informal complaint, Complainant questioned why his meter was not registering energy being put back on to the grid as a result of the 1 kW wind turbine installed on his property. On February 19, 2016, an AEP meter technician visited Mr. Holley's property. While Mr. Holley's meter could not be tested in the field because the meter technician's test kit was not set up for the program ID of Mr. Holley's meter, the technician installed a new meter with a program ID compatible with his testing unit and confirmed that the new meter was registering both delivered and received energy under testing conditions. Delivered energy is what the utility delivers to the customer and received energy is the energy the customer puts back onto the grid. Additionally, the technician tested Mr. Holley's old meter at the AEP Central Meter Shop, which confirmed that the meter was functioning properly, showing both delivered and received energy. The results of the meter tests performed are contained in Confidential Attachment A hereto.

Despite the fact that the meter tests indicate the meters were functioning properly, Complainant seems to allege that his wind turbine should be delivering energy to the grid. However, it does not appear that the 1 kW wind generator installed by Mr. Holley is creating enough energy to put energy back on to the grid. Confidential Attachment B shows the meter reads at the premises, 520 Jester, from May 29, 2013 through July 28, 2016. These records indicate that TCC has complied with the Commission's rules and TCC's tariff. TCC obtained actual readings every month and the meter tests confirmed that the meter was functioning correctly. On July 15, 2015, the PUC Consumer Protection Division informed Mr. Holley that

CPD's investigation into his informal complaint found that TCC has "acted consistently with Tariff sections 4.7.2 Meter Reading and 4.7.4 Meter Testing."

Mr. Holley also complains that the dollar amount he is being charged does not seem to be in line with the decreased usage his meter is registering. TCC provides the meter readings to Mr. Holley's REP, but cannot speak to what amount he should have been billed by his REP.

III. Applicable Statutes, Rules, Orders and/or Tariff Provisions

The following PUC Substantive Rules apply to this complaint:

§25.121(e). Accuracy requirements.

- (1) No meter that violates the test calibration limits as set by the American National Standards Institute, Incorporated, shall be placed in service or left in service. Whenever on installation, periodic, or other tests, a meter is found to violate these limits, it shall be adjusted or replaced.
- (2) Meters shall be adjusted as closely as practicable to the condition of zero error.

§25.124. Meter Testing.

- (a) Meter tests prior to installation. No permanently installed meter shall be placed in service unless its accuracy has been established. If any permanently installed meter is removed from actual service and replaced by another meter for any purpose, it shall be properly tested and adjusted before being placed back in service unless such meter is monitored by a test program approved by the commission.
- (b) Testing of meters in service. Meter test periods for all types of meters shall conform to the latest edition of American National Standards Institute, Incorporated, (ANSI) Standard C12 unless specified otherwise by the commission.
- (c) Meter tests on request of customer.
 - (1) Each electric utility shall, upon the request of a customer, test the accuracy of the customer's meter at no charge to the customer. The test shall be made during the electric utility's normal working hours and shall be scheduled to accommodate the customer or the customer's authorized representative, if the customer desires to observe the test. The test should be made on the customer's premises, but may, at the electric utility's discretion, be made at the electric utility's test laboratory.
 - (2) If the meter has been tested by the electric utility, or by an authorized agency, at the customer's request, and within a period of four years the customer requests a new test, the electric utility shall make the test. However, if the subsequent test finds the meter to be within ANSI's accuracy standards, the electric utility may charge the customer a fee, which represents the cost of testing at a rate specified in the electric utility's approved tariffs.
 - (3) Following the completion of any requested test, the electric utility shall promptly advise the customer of the date of removal of the meter, the date of the test, the result of the test, and who made the test.

(d) Meter testing facilities and equipment.

(1) Laboratory equipment. Each electric utility furnishing metered electric service shall, either with its own facilities or a standardizing laboratory of recognized standing, provide such meter laboratory, standard meters, instruments and other equipment and facilities as may be necessary to make the meter tests required by these rules. Such equipment and facilities shall generally conform to ANSI Standard C12, unless otherwise prescribed by the commission, and shall be available at all reasonable times for inspection by the commission's authorized representatives.

(2) Portable test equipment. Each electric utility furnishing metered electric service shall provide portable test instruments for testing billing meters.

(3) Reference standards. Each electric utility shall provide or have access to suitable indicating electrical instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing billing meters.

(4) Testing of reference standards. Reference standards of all kinds shall be submitted once each year or on a scheduled basis approved by the commission to a standardizing laboratory of recognized standing, for the purpose of test and adjustment.

(5) Calibration of test equipment. All shop and portable instruments used for testing billing meters shall be calibrated by comparing them with a reference standard at least every 120 days during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the electric utility.

The following Tariff provision applies to this complaint:

4.7.2 METER READING

Company is responsible for reading the Meter on a monthly basis in accordance with the published Meter Reading Schedule. Company shall make a reasonable effort to complete an Actual Meter Reading. Company must obtain an Actual Meter Reading within two Business Days of the date published in the Meter Reading Schedule, except as otherwise provided herein, and shall submit the Data from the Meter Reading to the Registration Agent within three Business Days of the Scheduled Meter Reading Date. If an Actual Meter Reading cannot be completed, an Estimated Meter Reading shall be performed for invoicing purposes in accordance with this Chapter, the Rate Schedules in Section 6.1, RATE SCHEDULES, and Applicable Legal Authorities. Unless otherwise provided in this section or in the Rate Schedule, a Meter Reading shall not be estimated more than three times consecutively. Company shall establish validation procedures that prohibit zero usage and extreme value Meter Readings unless good reason exists for the readings. Company shall ensure that invoices and Meter Reading transactions with zero usage or usage with extreme and unlikely values are not issued to Competitive Retailer or Retail Customer unless Company has good reason to believe that the value is correct.

4.7.4 METER TESTING

Company will test the Meters in accordance with the schedule and standards of the American National Standards Institute, Incorporated ("ANSI"), as adopted by the Commission, and P.U.C. SUBST. R. 25.124, Meter Testing. Upon a request by any authorized person in accordance with Applicable Legal Authorities, Company will perform additional tests of the accuracy of the Meter no later than ten Business Days after the request is received, provided the Meter is a self-contained single phase, kWh Meter and subject to obtaining Access as provided in Section 5.4.8, ACCESS TO RETAIL CUSTOMER'S PREMISES and completing any necessary coordination with the Retail Customer or a third party. In the event the Meter is other than a self-contained, single phase kWh Meter, Company will perform the additional tests no later than 30 calendar days after the request is received. The additional tests will be performed preferably on the Retail Customer's Premises, but may, at Company's discretion, be performed at a Meter test laboratory. The additional tests will be free of charge if the Meter is determined to be outside the accuracy standards established by ANSI or if a test has not been requested and performed in the previous four years, Company will provide a copy of the complete results of that test to the requesting party as soon as possible but within the timeframes allowed for testing of the Meter. Competitive Retailer or Retail Customer may request a new test if one has been performed within the previous four years, but if the Meter tests within ANSI accuracy standards, Company will charge Competitive Retailer for the additional tests in accordance with the Rate Schedules in Section 6.1, RATE SCHEDULES. Following the completion of any additional test, Company will promptly advise the party requesting the test of the date of removal of the Meter, the date of the test, the result of the test, who conducted the test, and where the test was performed. Company will provide more detailed information to customer upon request at no additional charge to the customer.

A Competitive Retailer may request testing of a Non-Company Owned Meter. Company shall invoice any charges resulting from the request, to the Competitive Retailer. If a Non-Company Owned Meter is determined to be outside the accuracy standards established by ANSI, the Company shall remove the Meter and install a replacement Meter. Company must immediately notify Competitive Retailer upon removal of the Meter. facilities, physically or electronically disorienting the Meter, attaching objects to the Meter, inserting objects into the Meter, altering billing and settlement data or other electrical or mechanical means of altering Delivery Service.

IV. Other Matters Relevant to the Complaint

The information contained in several of the attachments is confidential customer protected information. Therefore, TCC requests the entry of the standard Commission Protective Order contained in Attachment C be issued to protect that information.

Many of the statements contained in the complaint contain factual assertions (such as the amounts billed by Complainant's REP) that cannot be confirmed or denied by TCC.

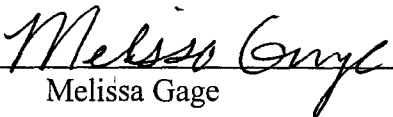
V. Prayer

WHEREFORE, PREMISES CONSIDERED, TCC respectfully requests this complaint be dismissed for lack of jurisdiction. Alternatively, TCC requests that a Protective Order be issued and that the complaint of Everetth Holley be denied for lack of merit because TCC acted consistent with its tariff and the Commission rules and the meter has been tested and found to be working correctly.

Dated: September 14, 2016

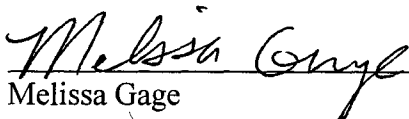
RESPECTFULLY SUBMITTED,

American Electric Power
400 West 15th Street, Suite 1520
Austin, Texas 78701
Rhonda Colbert Ryan
State Bar No. 17478800
Melissa Gage
State Bar No. 24063949
Telephone: 512.481.3320
Facsimile: 512.481.4591

By: 
Melissa Gage

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding by hand-delivery, overnight delivery, facsimile transmission, or U.S. first-class mail on the 14th day of September, 2016.


Melissa Gage

This information is CONFIDENTIAL PROTECTED MATERIAL under the terms of the Protective Order. The CONFIDENTIAL information is available for review at the Austin office of American Electric Power Company (AEP), 400 West 15th Street, Suite 1520, Austin, Texas 78701, (512) 481-4562, during normal business hours.

This information is CONFIDENTIAL PROTECTED MATERIAL under the terms of the Protective Order. The CONFIDENTIAL information is available for review at the Austin office of American Electric Power Company (AEP), 400 West 15th Street, Suite 1520, Austin, Texas 78701, (512) 481-4562, during normal business hours.

PUC DOCKET NO. 46271

COMPLAINT OF EVERETTH	§	PUBLIC UTILITY COMMISSION
HOLLEY AGAINST AEP TEXAS	§	
CENTRAL COMPANY, JUST	§	OF TEXAS
ENERGY, AND CPL RETAIL	§	
ENERGY		

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. 46271" (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

¹ TEX. GOV'T CODE ANN. §§ 552.001-552.353 (Vernon 2004 and Supp. 2009).

proceeding is or was public 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. 46271” (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.

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

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 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 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. 46271. 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. 46271 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 confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
33. **Procedures for Release of Information under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the

³ TEX. GOV'T CODE ANN. § 551.001-551.146 (Vernon 2004 & Supp. 2009).

⁴ TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-43 (Vernon 1964 & Supp. 2009).

governmental entity involved will maintain the confidentiality of the Protected Materials.

34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
35. **Notify Defined.** “Notify” for purposes of Paragraphs 32, 33 and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure.** If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party shall tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and

serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to P.U.C. PROC. R. 22.161.
38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

ATTACHMENT A**Protective Order Certification**

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 received 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. 46271. 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 here shall not apply.

Signature

Party Represented

Printed Name

Date

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

Signature

Party Represented

Printed Name

Date

ATTACHMENT B

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Protected Materials and/or Highly Sensitive Protected Materials

Signature

Party Represented

Printed Name

Date