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Addendum StartPage: 0

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| **APPLICATION OF AEP TEXAS NORTH COMPANY FOR REGULATORY APPROVALS RELATED TO THE INSTALLATION OF UTILITY-SCALE BATTERY FACILITIES** | § § § § § § | **BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS** |

# TEXAS INDUSTRIAL ENERGY CONSUMERS' REPLY BRIEF

## I. INTRODUCTION

AEP Texas (AEP) is seeking to overstep its role as a regulated transmission and distribution utility (TDU)[1] in order to participate in the competitive ERCOT wholesale and retail markets using ratepayer-funded facilities. In doing so, AEP would: (1) improperly "participate" in ERCOT's competitive energy markets as a regulated utility; and (2) violate statutory requirements to "accurately account" for the production and consumption of electricity by uplifting the costs of this participation to ERCOT customers at large. Whether or not AEP's proposal is barred as a matter of law, the specific facts of how AEP proposes to operate and settle these facilities plainly run afoul of both PURA and Commission rules, and conflict with the established policy of strict separation between competitive and regulated electric services in ERCOT.

In an attempt to fit the proposed batteries into an incompatible regulatory framework, AEP proposes to settle the energy consumed or discharged by the batteries as "unaccounted for energy" (UFE), which is indiscriminately charged to all ERCOT customers regardless of who actually uses the electricity. UFE was never meant to be used as the primary means of settling a facility's consumption or production. Rather, it is intended as a fallback settlement mechanism to address meter failures, temporary use of load profiles, or similar unavoidable "gaps" in the ERCOT settlement process. Settling the batteries' consumption and production through UFE effectively requires one set of customers to pay for energy that is stored and then later used to serve a different set of customers. This use of UFE would systematically and routinely violate

[1] *See* PURA § 39.105 (stating that a TDU "may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs.").



136

PURA's requirement that "electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in a region."[2] In discharging the batteries to serve load, AEP would be improperly "participating" in the competitive market, but spreading the financial implications of this participation to all ERCOT customers. The precedential implications of AEP's proposal are unacceptable. If the Commission allows TDU-owned storage facilities to settle their usage through UFE, there will be significant adverse consequences for the competitive ERCOT markets. Widespread use of UFE in this manner would improperly shift significant costs among different groups of customers, and would create controversial pricing impacts when battery exports displace the energy from competitive generators.[3]

Even if the ALJs and the Commission are not willing to completely foreclose TDUs from operating battery facilities as a matter of law, AEP's request for ill-defined "regulatory approvals" should not be approved here. The Commission has never directly addressed the issue of TDUs owning distribution-level storage facilities and settling them through UFE. If TDU battery installations are not barred in all scenarios as a matter of law, the Commission may nonetheless want to impose limitations or consider a heightened standard for TDU battery installations to mitigate the adverse impacts to ERCOT customers and competitive markets. If the Commission declines to grant any "regulatory approvals" here, AEP can still proceed at its own risk in installing the batteries, and the Commission will retain maximum flexibility to (a) consider the specific facts surrounding a battery installation in a future rate case, or (b) develop a uniform policy for TDU-owned batteries through a rulemaking. In no event should AEP receive vague "regulatory approvals" here that could serve as precedent and be used to limit the Commission's discretion in the future.

[2] PURA § 39.151(a)(4).

[3] *See* Luminant Ex. 1, Direct Testimony of Amanda Frazier (Frazier Dir.) at 7-9; Staff Ex. 1, Direct Testimony of Mark Bryant (Bryant Dir.) at 12-14; Tr. (Frazier Cr.) at 161:6-25 (Jun. 21, 2017).

## II. ARGUMENT AND AUTHORITIES

### A. The prior ruling on the Joint Parties' Motion for Summary Decision does not dictate the outcome of this case.

As a preliminary matter, the ultimate decision in this case is not preordained by SOAH Order No. 5,[4] which denied the Joint Parties' Motion for Summary Decision.[5] As discussed in that order, the standard for granting summary disposition is high, and requires a showing "that there is no issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law."[6] While SOAH Order No. 5 found that issues of material fact remained, and that the Joint Movants were not entitled to judgment as a matter of law on certain issues, the facts have now been developed and the legal standards at this stage in the proceeding are different. In the motion for summary disposition, the burden was on the movants to prove that they were entitled to a judgment in their favor as a matter of law, but here, AEP has the burden to prove that the Commission should grant its request for regulatory approvals. As a result, the ALJs are not required to decide in AEP's favor, as it implies throughout its initial brief.[7]

### B. AEP's proposal for owning, operating, and settling the batteries would constitute a competitive energy service that AEP is prohibited from providing under PURA. (Preliminary Order Issue Nos. 1 and 2)

AEP's proposed batteries would be used to provide "competitive energy services"[8] that TDUs are prohibited from providing.[9] "Competitive energy services" are defined as "business activities that are ***capable of being provided*** on a competitive basis in the retail market."[10] It is undisputed that, if AEP were to construct sufficiently robust transmission and distribution facilities at Woodson and Paint Rock, PGCs and REPs would be capable and willing to provide sufficient power to customers in those areas through the competitive wholesale and retail

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[4] *See* Docket No. 46368, SOAH Order No. 5 Denying Motion for Summary Disposition (May 25, 2017).

[5] *See* Docket No. 46368, Joint Parties' Motion for Summary Decision (Mar. 31, 2017).

[6] Docket No. 46368, SOAH Order No. 5 Denying Motion for Summary Disposition at 1 (quoting PUC Proc. R. 22.182).

[7] *See* AEP Initial Br. at 2, 3, 7, 10.

[8] PUC Subst. R. 25.341(3) (defining "competitive energy services" as "business activities that are capable of being provided on a competitive basis in the retail market").

[9] *See* PUC Subst. R. 25.343(c) ("An electric utility shall not provide competitive energy services.").

[10] PUC Subst. R. 25.341(3) (emphasis added).

markets. But instead of building traditional transmission or distribution infrastructure to ensure appropriate reliability and support competition in Woodson and Paint Rock, AEP intends to bypass the competitive market and provide power directly to customers (after first appropriating that power from a different set of consumers).

AEP claims that its proposal is not a competitive energy service because AEP's proposed usage of the batteries would not be cost-effective in a competitive retail market.[11] That is exactly the problem—AEP is using ***ratepayer funding*** to install facilities that would not otherwise be economically viable, and intends to then use those facilities to improperly compete with market providers. This ***exactly*** the type of market interference the legislature intended to prohibit in drawing a bright line between regulated and competitive electric service.

Further, the criteria for determining whether a project or service is a "competitive energy service" cannot logically depend on the commercial viability of that particular proposal in the competitive markets. Otherwise, TDUs could argue, for example, that installing inefficient diesel generators on their distribution systems is not a "competitive energy service" because it is not an economically viable option without regulated rate funding. It cannot be the case that TDUs are allowed to own any facilities that would be uneconomic for a competitive market participant that does not receive ratepayer funding. This reasoning would turn deregulation entirely on its head. The question is not whether particular facilities could be built and operated on a competitive basis, but whether a particular ***business activity*** (in this case, supplying electricity to Paint Rock and Woodson) can be provided by the competitive market. And because the market would be willing and able to serve the affected areas if there is sufficient transmission and distribution infrastructure, it is inappropriate for a TDU like AEP to interfere with the market by providing energy to customers itself.

AEP also attempts to distinguish its battery proposal from "competitive energy services" by arguing that such services must be "provided directly on individual retail customer premises."[12] Yet, Commission rules do not support this argument. PUC Substantive Rule 25.341(3) includes "hedging and risk management services,"[13] "retail marketing, selling,

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[11] *See* AEP Initial Br. at 5.

[12] AEP Initial Br. at 4 (emphasis removed).

[13] PUC Subst. R. 25.341(3)(L).

demonstration, and merchant activities,"[14] and "facilities operations and management"[15] as examples of "competitive energy services," and none of these necessarily occur on an individual customer's premises. Further, because AEP would be operating and managing the proposed battery facilities as they store and then discharge energy to serve customers in Paint Rock and Woodson, its activities fall within the scope of at least two different competitive energy services—"merchant activities,"[16] because AEP will be acting like a merchant generator, and "facilities operations and management."[17] Unlike operating and managing transmission and distribution infrastructure—a service that wholesale and retail market participants are prohibited from providing—operating and managing battery facilities could be (and has been[18]) accomplished on a competitive basis by unregulated market participants.

Ultimately, AEP cannot escape the conclusion that operating the proposed batteries will cause it to run afoul of PURA's prohibition on TDUs "sell[ing] electricity or otherwise participat[ing] in the market for electricity except for the purpose of buying electricity to serve [their] own needs."[19] Even if AEP uses UFE to take electricity from the market at the expense of one set of customers, and then give it away to a different set of customers, it will still be "participating" in the competitive energy market in a way that cannot be squared with the statutory bounds of its role as a TDU.

### C. The proposed storage facilities are not distribution assets. (Preliminary Order Issue No. 3)

The proposed batteries are not distribution assets because they are not "necessary to transform and move electricity" from generating facilities to the point of interconnection with retail customers pursuant to the Commission's definition of a distribution asset.[20] AEP's batteries are only used to ***store*** electricity, and do not themselves either move or transform

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[14] PUC Subst. R. 25.341(3)(N).

[15] PUC Subst. R. 25.341(3)(O).

[16] PUC Subst. R. 25.341(3)(N).

[17] PUC Subst. R. 25.341(3)(O).

[18] *See* Tr. (Frazier Cr.) at 162:1-20 (Jun. 21, 2017) (discussing the Notrees battery facility, which is registered as a power generation company and provides battery service on a competitive basis in the retail market).

[19] *See* PURA § 39.105(a).

[20] *See* PUC Subst. R. 25.341 (defining "distribution" for purposes of functional cost separation under PUC Subst. R. 25.344(g)(2)(C)).

power. Instead, power goes into the battery at a certain voltage, and then comes back out at the same point and at the same voltage. Because the proposed batteries neither move nor transform power, they cannot possibly be necessary to achieve those objectives, and cannot qualify as "distribution assets."

In disputing this point, AEP cites two Texas appellate court decisions that discuss the scope of the "need" standard that is used to determine whether to issue a transmission line CCN[21] to draw a false comparison between "need" in that context and the word "necessary" as it is used to define a distribution asset.[22] But this argument is misguided and ignores the plain contextual distinctions between these two inapposite provisions. In PUC Substantive Rule 25.341(5), the word "necessary" limits a particular class of assets based on their function (i.e., distribution assets must be "necessary" to transform or move power). In contrast, the transmission CCN provisions of PURA have a much broader purpose, and require the Commission to consider "the need for additional service" before issuing a CCN.[23] These inquiries are substantially different, and it is unreasonable to expect that the Commission meant the word "necessary" to be applied uniformly across them.

Additionally, the conclusion that AEP draws from this comparison—that a facility is "necessary" if it is the least-cost solution to provide reliable electric delivery service[24]—ignores the clause that follows the word "necessary" in the definition of a distribution asset. According to Substantive Rule 25.341(5), a distribution asset is not just one that is "necessary" to provide reliable electric service, but one that is necessary to "transform and move electricity." Because storage batteries accomplish neither of these objectives, they cannot be considered distribution assets. Further proving this point, under AEP's interpretation a small generator could be considered "necessary" as the lowest cost solution to a local reliability issue, even though AEP plainly could not own an operate such an asset as a regulated TDU.

Nor does AEP's self-serving characterization of the proposed batteries as falling within FERC Account 363 prove that the facilities comply with the Commission's definition of

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[21] *See* AEP Initial Br. at 8-9.

[22] *See* PUC Subst. R. 25.341(5).

[23] PURA § 37.056(c)(2).

[24] *See* AEP Initial Br. at 9.

"distribution assets." As discussed in detail in TIEC's initial brief, there are three separate FERC accounts for storage batteries, and the descriptions of those accounts use identical language to describe batteries that can be booked as either distribution, transmission, or generation assets.[25] AEP's unilateral decision to book the proposed facilities in the distribution-related FERC account, when they could just as easily have been booked to the "generation" storage account, simply reflects AEP's desired outcome, and provides no objective information about the underlying character of the facilities or the service they will provide. Instead of accepting AEP's characterization of the batteries as distribution assets, the Commission should recognize that they will function like generation assets, as discussed in greater detail below.

AEP is also incorrect that the batteries qualify as "distribution assets" because they will provide "system service" as defined in PUC Substantive Rule 25.341(13). By definition, "system service" only includes "[s]ervice that is ***essential*** to the transmission and distribution of electricity from the point of interconnection of a generation source or third-party electric grid facility, to the point of interconnection with a retail customer or other third-party facility."[26] Based on this definition, AEP's batteries are not providing system service because, unlike traditional TDU assets like wires and transformers, batteries are not ***essential*** to transmitting or distributing electricity.[27] Instead, the batteries take energy from the system (like a load) and later discharge it (like a generator), neither of which is "essential" to "transmitting or distributing energy." Rather, this is an unnecessary detour between generation facilities and end-use customers.

### D. Storage facilities are generation assets under PURA. (Preliminary Order Issue No. 4)

AEP's battery facilities are intended to provide energy at wholesale, even if that wholesale transaction is settled as UFE. Therefore, the batteries are generation assets under

[25] Tr. (Talavera Cr.) at 64:6-64:4 (Jun. 21, 2017).

[26] PUC Subst. R. 25.341(13) (emphasis added).

[27] As discussed throughout AEP's Application and testimony, there are readily available "traditional" transmission and distribution system upgrades that could resolve the issues that AEP faces in Paint Rock and Woodson, so installing batteries is not an essential step. *See* AEP Ex. 5, Direct Testimony of Charles R. Brower, III (Brower Dir.) at Exhibits CRB-3 and CRB-5 (providing cost estimates for "traditional" solutions to the reliability issues in Paint Rock and Woodson).

PURA, which must be owned by a Power Generation Company (PGC). As a TDU that owns transmission assets, AEP is statutorily prohibited from being also being a PGC.[28]

PURA § 35.151 applies to "electric energy storage equipment or facilities that are intended to ***provide*** energy or ancillary services at wholesale,"[29] and PURA § 35.152 states that all storage facilities "intended to be used to sell energy or ancillary services at wholesale are generation assets." AEP attempts to avoid "selling" the stored energy by settling it as UFE in order to sidestep these definitions; yet, AEP would still be transacting in the market, they would just doing it with someone else's money. This does not remedy the fundamental problem with a TDU putting power out onto the grid to serve customers. The batteries themselves will still be used to sell energy at wholesale, which makes them generation facilities within the scope of PURA § 35.152 even if AEP does not receive the revenues.[30]

Commission precedent supports this interpretation. In Docket No. 35994, the Commission found that "ETT will not buy, sell, or take title to the unmetered, unaccounted-for energy stored in the NAS battery."[31] Under AEP's interpretation of the law, this finding would have been sufficient to ensure that ETT would not be considered a PGC as a result of operating its battery facility. But instead, the Legislature had to specifically carve ETT out of the PGC definition by enacting PURA § 35.152(c).[32] The existence of this exception makes it clear that PURA §§ 35.151 and 35.152 were intended to require the owner of any battery storage facility that exports stored energy into the ERCOT market[33] to register as a PGC, while exempting storage facilities that are designed to support specific loads behind the customer's meter. Because the Presidio battery is designed to export power onto the ERCOT grid, a specific

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[28] PURA § 31.002(10)(B) (stating that a "power generation company" cannot "own a transmission or distribution facility in this state" other than one that is essential to interconnect its generation assets to the grid).

[29] Emphasis added.

[30] *See* Luminant Ex. 1 (Frazier Dir.) at 8 (explaining that the energy used to charge AEP's batteries would be sold into the ERCOT market by competitive generators, and when the batteries discharge, its customers would consume that energy, and their meter data would be aggregated by ERCOT and assigned to the customers' REPs for wholesale settlement).

[31] *Application of Electric Transmission Texas, LLC for Regulatory Approvals Related to Installation of a Sodium Sulfur Battery at Presidio, Texas*, Docket No. 35994, Final Order at 10 (April 6, 2009).

[32] PURA § 35.152(c) ("Notwithstanding Subsection (a), this section does not affect a determination made by the commission in a final order issued before December 31, 2010.").

[33] Which necessarily results in a sale of energy at wholesale regardless of whether the energy is settled as UFE. *See* Luminant Ex. 1 (Frazier Dir.) at 8.

exemption was required to prevent ETT from being a PGC, which is statutorily prohibited.[34] There is no similar exemption that would apply to the Woodson and Paint Rock facilities, which will also export power onto the ERCOT grid.

This reading is consistent with PURA §§ 35.151-.152, as well as PUC Substantive Rule 25.341(10), which defines "generation" as "assets . . . related to the production of electricity for sale."[35] AEP's proposed batteries fit this description because they produce energy that is sold at wholesale in the ERCOT market—even if AEP does not receive the proceeds from that sale because it is settled as UFE. PUC Substantive Rule 25.341(10) also states that "generation ends where the generation company's facilities tie into the facilities of the transmission and distribution system."[36] AEP argues that the batteries do not meet this definition of "generation" because they will be located on the distribution grid instead of on a generation company's side of a grid interconnection[37] This argument presumes that the facilities are not "generation assets" purely because AEP ***unilaterally decided*** not to meter or settle them as generation, instead relying on UFE to uplift the energy costs to the ERCOT market. AEP's argument is entirely circular. Essentially, AEP argues that because it is not a generator and has chosen not to meter these facilities, the facilities are not on the "generator" side of the interconnection. This is pure artifice and assumes, without demonstrating, that AEP is not improperly acting as a market generator in owning and operating these facilities. Under PURA §§ 35.151-.152, AEP should be required to register as a PGC (which is a "generation company") by virtue of operating the proposed batteries, so the batteries would be a "generation company's facilities" regardless of whether they were located on AEP's distribution system—just like other merchant distributed generation facilities. AEP cannot rely on its violation of PURA to legally excuse additional violations of PURA once it is operating outside the statutory framework.

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[34] *See* PURA § 31.002(10)(B) (stating that a "power generation company" cannot "own a transmission or distribution facility in this state" other than one that is essential to interconnect its generation assets to the grid).

[35] PUC Subst. R. 25.341(10).

[36] *Id.*

[37] *See* AEP Initial Br. at 12.

**E. If not prohibited altogether, TDUs should be required to obtain a certificate of convenience and necessity (CCN) before owning or operating battery facilities. (Preliminary Order Issue No. 5)**

AEP summarily concludes that it is not required to obtain a CCN because the batteries are distribution assets, but this is again a circular argument that presumes AEP's desired outcome.[38] As discussed previously, the proposed batteries are not properly considered "distribution" assets under PUC Substantive Rule 25.341(3)(O) because they are not "necessary to transform and move electricity" from generating facilities to the point of interconnection with retail customers. In fact, because the batteries are "related to the production of electricity for sale," they fit more closely into the definition of "generation" assets provided by Substantive Rule 25.341(10). AEP's unilateral decision to book the assets to a distribution "storage" FERC account—when they could also have been booked to a generation "storage" account—likewise does not prove anything about the fundamental character of the asset or the services provided. As a result, the Commission's rules do not squarely address if and when a TDU can own and operate storage facilities, or whether they require a CCN.

The lack of clear guidance on this point gives the Commission the opportunity to define new policy. If the Commission is not willing to conclude that TDUs are legally prohibited from operating batteries in all instances, it should nonetheless establish clear guidelines to protect the competitive markets and preserve the demarcation between regulated and competitive electric services. This should include a heightened standard for a TDU to demonstrate that a battery installation is justified and "needed" under the CCN requirements. If the Commission creates a precedent allowing TDUs to install and operate storage facilities on their systems without pre-approval, this could result in rampant TDU installations with very little Commission oversight or control. And as Luminant witness Amanda Frazier[39] and Staff witness Mark Bryant[40] cautioned at the hearing, placing a large number of TDU-owned storage devices on the ERCOT system could significantly harm the market by undermining incentives to construct traditional transmission and distribution facilities and displacing competitive generation. Therefore, whether PURA and PUC rules legally bar AEP's proposal, as a matter of policy the Commission

[38] AEP Initial Br. at 16-17.

[39] Luminant Ex. 1 (Frazier Dir.) at 7-9.

[40] Staff Ex. 1 (Bryant Dir.) at 12-14.

should not issue any "approvals" in this case that could later be used to guarantee the batteries' inclusion in rates or other regulatory treatments. Rather, the Commission should consider the policy implications and appropriate conditions on TDU battery installations in a rulemaking. Specifically, TIEC believes that the Commission should set standards that only allow TDUs to install batteries (if at all) in unique, extenuating circumstances when there are essentially no other options, given the harm they can cause to competitive markets.

### F. AEP's proposal to treat the energy flows associated with the proposed storage facilities as UFE violates the requirement to accurately account for electricity production and consumption under PURA § 39.151(a)(4). (Preliminary Order Issue No. 6)

AEP's proposal to systematically rely on UFE to settle the electricity consumed and produced by the batteries is not authorized by PURA or the Commission's rules, and would directly violate PURA § 39.151(a)(4), which requires "electricity production and delivery [to be] accurately accounted for among the generators and wholesale buyers and sellers in the region." Rather than accounting for the battery facility's consumption and production (as either a wholesale buyer or seller of electricity), AEP's proposed use of UFE would socialize the financial implications of those transaction to all loads in ERCOT. Similarly, AEP's proposal would charge one set of customers for energy used to charge the battery, and then later discharge that energy to serve a different set of customers. AEP's only response to these legal impediments is to point out that the proposed batteries are smaller than the existing Presidio battery. This is irrelevant because, as noted previously, the Presidio battery required a specific statutory carve-out. Regardless of size, settling AEP's batteries through UFE will prevent electricity production and consumption from being accurately accounted for within ERCOT. There is no exception to this requirement based on the size of the facilities, and the Commission should not sanction AEP intentionally disregarding PURA's requirements as a matter of precedent, even if the impacts in this particular case are small.

Absent any legal support for improperly relying on UFE as a primary means of settlement, AEP argues that UFE is "an effective method"[41] to accomplish its objectives and will not produce serious harm. Again, whether a proposal is "effective" in allowing AEP to pursue its objective of installing batteries is not the standard for determining whether that proposal is

[41] AEP Initial Br. at 17.

***legal***. UFE is meant to act as a backstop to ensure that generators are paid (or loads credited) for energy that was not accurately metered; it was never meant to be the primary means of settling energy put to or taken from the grid. Rather than authorizing AEP to exploit UFE to evade PURA's prohibition on TDUs taking title to and directly selling energy to end-use consumers,[42] the Commission should reject AEP's request for "regulatory approvals," and either (1) determine that AEP is prohibited from owning and operating the batteries in this manner, or (2) decline to issue any approvals here, and reserve the flexibility to address the broader policy issues surrounding TDU battery installations in a future rulemaking.

### G. PURA and the Commission's rules do not specify the appropriate energy-flow metering requirements for TDU-owned storage batteries because batteries are not allowed. (Preliminary Order Issue No. 7)

Even if there may, hypothetically, be an acceptable way to meter the energy consumed by and discharged from AEP's proposed battery facilities under PURA or the Commission's existing rules, AEP's proposal is not it. AEP's proposal to rely on UFE as the primary means of settlement violates both PURA and Commission rules for the reasons discussed above. Therefore, even if the Commission intends to allow TDUs to own and operate storage batteries in some limited instances, it should require this to be accomplished in a way that does not shift costs among various groups of consumers, take "free" energy from the grid without compensation to customers, and then later inject that energy in a manner that displaces competitive generation. Until AEP or another TDU can develop a legally valid proposal for metering and settling the energy that would flow through TDU-owned storage batteries, the Commission should reject any requests for TDU-owned battery facilities.

## III. CONCLUSION

PURA and the Commission's rules prohibit AEP from owning or operating battery facilities in the manner it has proposed, so AEP's request for regulatory approvals should be denied. However, if the Commission does not prohibit TDU batteries in all instances, it should still decline to grant AEP's request in this case and: (a) reserve the flexibility to consider the batteries in a future rate case, including determining whether they are appropriate TDU assets, with a full evidentiary record that includes the cost attributes of the batteries relative to other options, and (b) reserve the flexibility to consider and promulgate uniform standards for TDU

[42] *See* Luminant Ex. 1 (Frazier Dir.) at 11.

batteries that address the policy impacts of such installations, rather than setting precedent on an *ad hoc* basis. In neither instance should AEP's request for regulatory approvals be granted in this proceeding.

## IV. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

For purposes of consistency and efficiency, TIEC adopts and supports the proposed findings of fact and conclusions of law submitted by Luminant Energy Company, LLC and TXU Energy Retail Company LLC.

Respectfully submitted,

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ATTORNEYS FOR TEXAS INDUSTRIAL ENERGY CONSUMERS

## CERTIFICATE OF SERVICE

I, Michael McMillin, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 4th day of August, 2017 by electronic mail, facsimile and/or First Class, U.S. Mail, Postage Prepaid.

Michael McMillin