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NON-STANDARD TRUE-UP FILING § PUBLIC UTILITY COMMISSION
OF AEP TEXAS INC. PURSUANT TO §
THE FINANCING ORDER IN § OF TEXAS
DOCKET NO. 39931 §

PETITION OF AEP TEXAS INC.

AEP Texas Inc. (“AEP Texas” or the “Company”) makes this non-standard true-up filing as the servicer of Transition Bonds issued in accordance with the Financing Order in Docket No. 39931 (the “Financing Order”).¹ A non-standard true up is needed because the forecasted billing units for one or more of the transition charge customer classes for the upcoming period has decreased by more than 10% compared to the billing units used to develop the periodic billing requirement allocation factors approved in the Financing Order (known as threshold billing units).² Accordingly, AEP Texas has calculated new rates for Rider 6.1.1.2.2.1 Initial/Adjusted Transition Charge-3 Rates – Rider TC-3 (“Rider TC-3”) following the Financing Order’s prescribed non-standard true-up adjustment provisions.³ With the exception of the rates, the proposed Rider TC-3 has been approved by the Public Utility Commission of Texas (“Commission”). AEP Texas requests approval of the revised Rider TC-3, effective March 1, 2021.

I. Jurisdiction

AEP Texas is a public utility as that term is defined in Public Utility Regulatory Act (“PURA”)⁴ § 11.004(1), an electric utility as that term is defined in PURA § 31.002(6), and a transmission and distribution utility as that term is defined in PURA § 31.002(19). AEP Texas is the servicer of the Transition Bonds issued pursuant to the Financing Order. AEP Texas’ business address is 539 North Carancahua Street, Corpus Christi, Texas 78401.

¹ *Application of AEP Texas Central Company for Financing Order*, Docket No. 39931, Financing Order (Jan. 12, 2012).

² Docket No. 39931, Financing Order at Finding of Fact No. 86.

³ The proposed Rider TC-3 is provided as Exhibit JAM-3 to the Direct Testimony of Jacob A. Miller, which accompanies this petition as Appendix A.

⁴ Tex. Util. Code Ann. §§ 11.001 – 66.016 (West).

The Commission has jurisdiction over this filing under PURA §§ 39.003 and 39.307. This filing is made in compliance with Findings of Fact Nos. 86 – 88 and Ordering Paragraph No. 13 of the Financing Order.

II. Affected Parties

The relief requested in this filing affects all retail electric providers (“REPs”) serving end-use retail electric customers in AEP Texas’ certificated service territory previously served by AEP Texas Central Company (“TCC”) and will affect the retail electric customers of those REPs.

III. Authorized Representatives

AEP Texas’ authorized business and legal representatives are:

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AEP Texas requests that all information, pleadings, and other documents in this matter be served on each of the persons above as well as emailed to aepaustintx@aep.com.

IV. Background

On December 2, 2011, AEP TCC filed an application for a financing order under Subchapter G of Chapter 39 of PURA to permit securitization of some of its stranded costs and other qualified costs. That proceeding was assigned Docket No. 39931. On January 12, 2012, the Commission approved the Financing Order, which authorized AEP TCC to securitize and cause the issuance of Transition Bonds with an aggregate principal amount not to exceed \$800 million.⁵ In accordance with the Financing Order, AEP Texas Central Transition Funding III, LLC (the “Bond Company”) issued Transition Bonds on March 14, 2012 and began billing transition charges (TC-3s) on March 14, 2012.

⁵ Docket No. 39931, Financing Order at Ordering Paragraph No. 2.

Effective December 31, 2016, AEP TCC and AEP Texas North Company (“TNC”) were merged into their parent company, now called AEP Texas. The merger was approved by the Commission in Docket No. 46050 – *Application of AEP Texas Central Company, AEP Texas North Company, and AEP Utilities, Inc. for Approval of Merger*. The Commission ordered AEP Texas to “maintain separate TCC and TNC divisions, which will continue to charge separate rates and riders, and maintain separate tariffs, unless and until such time as the Commission may consider and approve consolidated rates and tariffs.”⁶ Consistent with the Commission’s order, AEP Texas maintains two divisions within AEP Texas: AEP Texas — Central Division (formerly TCC) and AEP Texas — North Division (formerly TNC). In AEP Texas’ last rate case, Docket No. 49494, the Commission approved the consolidation of the rates of the two divisions with certain exceptions. Schedule TC-3 was one of those exceptions. Therefore, this filing only impacts the central division of AEP Texas.

AEP Texas is the servicer for the Bond Company with respect to the Transition Bonds and in that role it bills, collects, receives, and adjusts the transition charges imposed pursuant to Rider TC-3, and remits the amounts received to the trustee to repay the Transition Bonds. The Financing Order, Schedule TC-3, and Rider TC-3 set out the rates and terms and conditions under which the transition charges will be billed and collected with respect to the Transition Bonds. The Financing Order provides that retail electric customers must pay the principal, interest, and related costs of the Transition Bonds through TC-3s pursuant to the form of tariff approved in the Financing Order. The Financing Order establishes how the annual costs permitted to be recovered through TC-3 rates are allocated among TC-3 customer classes.

In Findings of Fact Nos. 86 – 88, the Financing Order sets out a procedure for adjusting the TC-3 rates for each customer class if the forecasted billing determinants for any one of the classes for an upcoming period decrease by more than 10% compared to the threshold billing units established for the annual period ending March 31, 2011. That procedure is referred to as a “non-standard true up.” This filing is being made to comply with the procedures in the Financing Order for making a non-standard true up.

⁶ Docket No. 46050, Final Order at Ordering Paragraph No. 2 (Dec. 12, 2016).

V. Required Showing

A non-standard true-up is justified because the billing determinants for the period of March 2021 through February 2022 for the Commercial and Small Industrial – Energy (“Commercial Energy”) class are forecasted to decrease by more than 10% as compared to the billing determinants for the twelve months ending March 31, 2011, as shown in Appendix D to the Financing Order. The projected consumption for the Commercial Energy TC-3 class is 1,917,901,089 kWh, which is lower than the 90% threshold of 2,001,190,230 kWh in the Financing Order. In his testimony, Mr. Jacob A. Miller identifies three factors influencing this lower usage. The first factor is that a large portion of the customers in this class were existing customers prior to unbundling who were receiving service under energy-only tariff schedules. These customers migrated to this TC-3 class and were frozen from moving out of the class. However, many of those accounts were older accounts and may have terminated service, been replaced by new, more modern loads, or reduced their consumption.

The second factor is that the remaining customers in this class are new customers taking service under the current Secondary Voltage Service ≤ 10 kW. As the competitive Texas market has evolved, customers taking service under this tariff schedule may not demonstrate as high a kWh consumption pattern as the old accounts that have terminated.

A final and significant factor is that the Commission’s new pro-forma tariff schedules use a threshold of 10 kW for determining whether new customers should be billed on an energy-only based tariff schedule or a demand-based tariff schedule. Prior to deregulation, the customer’s usage characteristics rather than demand determined the type of tariff schedule that was most appropriate for the customer. Now, under the new pro-forma tariffs, new customers tend to qualify for service on the Secondary Voltage Service > 10 kW distribution rate class. New Secondary Voltage Service > 10 kW distribution rate class customers are assigned the Commercial and Small Industrial – Demand TC-3 rate, which uses the customer’s demands for billing purposes. No new Secondary Voltage Service > 10 kW distribution rate class customers are allowed to be billed on the Commercial Energy TC-3 class charges.

Accordingly, AEP Texas has calculated revised TC-3 rates that comply with the provisions of the Financing Order and Schedule TC-3 so that the TC-3 rates applied to the various retail customer classes will reflect the allocation contemplated by the non-standard true-up provisions of the Financing Order. The proposed transition charge rates are set out in proposed revised Rider

6.1.1.2.2.1, Initial/Adjusted Transition Charge Rates – Rider TC-3, which is provided as part of Appendix A to this petition, which is the testimony and exhibits of Mr. Jacob A. Miller.⁷ Mr. Miller's testimony also addresses the calculation of the TC-3 rates and provides additional support for this filing.

In accordance with Finding of Fact No. 88 in the Financing Order, this filing is being made at least 90 days before the date of the proposed true-up adjustment. AEP Texas proposes that the adjustment be effective for bills rendered beginning on March 1, 2021, which is the date upon which the bills for the first cycle for the month of March will be rendered.

VI. Scope of Proceeding and Proposed Procedural Schedule

The scope of this proceeding is limited to determining whether the proposed adjustment complies with the Financing Order.⁸ The Commission must conduct a contested case proceeding pursuant to PURA § 39.003 and issue a final order by the proposed true-up adjustment date stated in the filing.⁹

Since this proceeding is limited in scope and is intended to be resolved within 90 days, AEP Texas proposes that a schedule be established similar to that required for fuel factor change proceedings, which must be concluded within 90 days under Commission rules, and that the schedule allow for the possibility of informal disposition pursuant to 16 Texas Administrative Code § 22.35. This procedure was proposed in Docket No. 24775, *Non-Standard True-up Filing of AEP Texas Central Company Pursuant to the Financing Order in Docket No. 21528* (December 17, 2001) and has been used in all of AEP Texas' subsequent non-standard true-up filings. Specifically, AEP Texas requests that the presiding officer establish a procedural schedule that will enable the Commission to issue its order in this proceeding within 60 days after the date this petition is filed if no hearing is requested within 30 days of the filing of the petition, and within 90 days after the date of this petition if a hearing is requested within 30 days of the filing of the petition. If a hearing is requested, AEP Texas respectfully requests that the hearing be held no earlier than the first business day after the 45th day following the filing of the petition.

⁷ The proposed Rider TC-3 is provided as Exhibit JAM-3 to Mr. Miller's testimony.

⁸ Docket No. 39931, Financing Order at Finding of Fact No. 88.

⁹ *Id.*

VII. Notice

Concurrently with the filing of this petition, AEP Texas will provide a copy of the notice set out in Appendix B to this petition to the attorneys of record to Commission Staff, the Office of Public Utility Counsel, each party that participated in Docket No. 39931, each retail electric provider that has been certified by the Commission to provide retail electric service in AEP Texas' service area, and municipalities and cooperatives who serve customers in areas of dual certification with AEP Texas. AEP Texas will also provide a copy of this filing to the Commission Staff, the Office of Public Utility Counsel, and to other parties upon request. In accordance with the Commission's Second Order Suspending Rules issued on July 16, 2020 in Project No. 50664, AEP Texas will provide the notice via email.

VIII. Protective Order

As part of this proceeding, AEP Texas expects that it may need to provide to one or more parties highly sensitive or confidential information. Accordingly, AEP Texas requests that the Commission enter a protective order in this docket, and that, pending entry of the protective order, the parties treat the proposed protective order as a confidentiality agreement. A copy of the proposed protective order, which is based on the Commission's standard protective order, is provided as Appendix C to this petition.

IX. Requested Relief

AEP Texas requests that the Commission approve: (a) a procedural schedule that leads to Commission approval of the requested rates within 60 or 90 days, depending on whether a hearing is requested; (b) the Company's proposed form and method of notice; (c) entry of the requested protective order; (d) the proposed Rider TC-3, effective March 1, 2021, provided as Exhibit JAM-3 to the Direct Testimony of Jacob A. Miller; and (e) any such other relief to which AEP Texas may be justly entitled.

RESPECTFULLY SUBMITTED,

/s/ Leila Melhem

AMERICAN ELECTRIC POWER SERVICE
CORPORATION

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ATTORNEYS FOR AEP TEXAS INC.

Certificate of Service

I certify that on November 13, 2020, a true and correct copy of this petition was filed with the Commission through the Interchange on the Commission's website in accordance with the Commission's Second Order Suspending Rules issued on July 16, 2020, in Project No. 50664.

/s/ Leila Melhem

PUC DOCKET NO.
PUBLIC UTILITY COMMISSION OF TEXAS
NON-STANDARD TRUE-UP FILING
OF
AEP TEXAS INC.
PURSUANT TO THE FINANCING ORDER
IN DOCKET NO. 39931

DIRECT TESTIMONY OF
JACOB A. MILLER
FOR
AEP TEXAS INC.

NOVEMBER 13, 2020

TESTIMONY INDEX

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EXHIBITS

EXHIBIT JAM-1	Calculation of the TC-3s
EXHIBIT JAM-2	Rate Comparison
EXHIBIT JAM-3	Transition Charge Rates (Rider TC-3)

I. INTRODUCTION

1
2 Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

3 A. My name is Jacob A. Miller. I am employed as a Senior Regulatory Consultant in the
4 Regulated Pricing and Analysis Department, part of the American Electric Power
5 Service Corporation (AEPSC) Regulatory Services Department. AEPSC is a
6 subsidiary of American Electric Power Company, Inc. (AEP), as is AEP Texas Inc.
7 (AEP Texas or Company). My business address is 212 East Sixth Street, Tulsa,
8 Oklahoma 74119.

9 Q. PLEASE BRIEFLY DESCRIBE THE AEPSC REGULATORY SERVICES
10 DEPARTMENT AND YOUR CURRENT JOB RESPONSIBILITIES.

11 A. AEPSC Regulatory Services is part of the AEP Utilities Business Group. Regulatory
12 Services provides coordination and tariff-related services for the AEP operating utility
13 companies, including AEP Texas. My current responsibilities include cost-of-service
14 analysis, rate design, and tariff provisions for the three AEP West operating companies.
15 I am also responsible for the preparation of, and support for, filings before the various
16 state commissions under whose jurisdiction AEP or its subsidiaries provide service.

17 Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL
18 EXPERIENCE.

19 A. In 2012, I received a Bachelor of Science in Business Administration from Oklahoma
20 State University. I received a Master of Business Administration and Master of Energy
21 Business from the University of Tulsa in 2013 and 2019, respectively. I have attended

workshops sponsored by Electric Utility Consultants Inc. including their Electric Cost-of-Service and Electric Utility Pricing courses.

I began my professional career in 2010, having worked in various analyst roles within the oil and gas industry until May 2016, when I began employment with AEPSC as a Transmission Project Coordinator. In April 2018, I accepted the position of Regulatory Consultant and have since progressed to my current title of Senior Regulatory Consultant.

II. PURPOSE OF TESTIMONY

Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY IN THIS FILING.

A. The purpose of my testimony in this filing is to support the calculation of Transition Charge-3 (TC-3) rates by rate class pursuant to the non-standard true-up provisions as approved in Docket No. 39931, Findings of Fact (FOF) 86 through 88 and support the tariff (Rider TC-3) revised in this filing.

Effective December 31, 2016, AEP Texas Central Company (TCC) and AEP Texas North Company (TNC) were merged into their parent company, now called AEP Texas. The merger was approved by the Commission in Docket No. 46050 – *Application of AEP Texas Central Company, AEP Texas North Company, and AEP Utilities, Inc. for Approval of Merger*. The Public Utility Commission (“PUC” or “Commission”) ordered AEP Texas to “maintain separate TCC and TNC divisions, which will continue to charge separate rates and riders, and maintain separate tariffs, unless and until such time as the Commission may consider and approve consolidated

1 rates and tariffs.”¹ Consistent with the Commission’s order, AEP Texas maintains two
2 divisions within AEP Texas: AEP Texas – Central Division (formerly TCC) and AEP
3 Texas – North Division (formerly TNC). In AEP Texas’ last rate case, Docket No.
4 49494, the Commission approved the consolidation of the rates of the two divisions
5 with certain exceptions. Schedule TC-3 was one of those exceptions. Therefore, this
6 filing only affects the Central Division of AEP Texas.

7 Q. WHAT RELIEF IS THE COMPANY REQUESTING IN THIS FILING?

8 A. The Company is requesting approval of Rider TC-3 effective with the first billing cycle
9 for March 2021 (March 1, 2021) which incorporates TC-3 rates calculated utilizing the
10 non-standard true-up adjustment.

11
12 III. BACKGROUND

13 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE HISTORY OF THE TC-3
14 RATES.

15 A. On December 2, 2011, AEP Texas Central Company (TCC) (formerly known as
16 Central Power and Light Company) filed an application for a Financing Order under
17 Subchapter G of Chapter 39 of the Public Utility Regulatory Act (PURA) to permit
18 securitization of some of its stranded costs and other qualified costs as described in that
19 application. That proceeding was assigned Docket No. 39931. On January 12, 2012,
20 the Public Utility Commission of Texas (PUC or Commission) issued a Final Order

¹ Docket No. 46050, *Application of AEP Texas Central Company, AEP Texas North Company, and AEP Utilities, Inc. for Approval of Merger*, Final Order at Ordering Paragraph No. 2 (Dec. 12, 2016).

(Financing Order) that authorized the issuance of Transition Bonds for TCC for the recovery of stranded costs, carrying costs, and up-front qualified costs associated with such bonds through Rider TC-3. In accordance with the Financing Order, AEP Texas Central Transition Funding III LLC, (Bond Company) securitized the stranded costs and other qualified costs on March 14, 2012 by issuing Transition Bonds and TCC began billing TC-3s on March 14, 2012. AEP Texas is the Servicer for the Bond Company with respect to the Transition Bonds, and in that role it bills, collects, receives, and adjusts the transition charges imposed pursuant to AEP Texas' Tariff for Electric Delivery Service, Section 6.1.1.2.2.1 – Initial/Adjusted Transition Charge-3 Rates - Rider TC-3, and remits the amounts received to the trustee to repay the Transition Bonds. The Financing Order, Schedule TC-3, and Rider TC-3 set out the rates and terms and conditions under which the transition charges will be billed and collected with respect to the Transition Bonds.

This filing is being made to comply with the procedures in the Financing Order for making a non-standard true-up, which among other things, require this filing be made 90 days in advance of the proposed effective date of the non-standard true-up. This filing is being made 90 days prior to the first billing cycle for March 2021 so that the TC-3 rates will reflect the non-standard true-up provision of the Financing Order.

IV. NON-STANDARD TRUE-UP

Q. WHAT IS THE NON-STANDARD TRUE-UP ADJUSTMENT?

A. FOF 86 of the Financing Order states that a non-standard true-up adjustment will be applied if the forecasted billing units for one or more of the transition charge customer

1 classes for an upcoming period decrease by more than 10% compared to the billing
2 units for the 12 months ending March 31, 2011 as shown in Appendix D of the
3 Financing Order in Docket No. 39931. FOFs 87 and 88 set forth a non-standard true-
4 up adjustment procedure for adjusting the transition charges to each customer class and
5 the process to be followed for a non-standard true-up filing.

6 Q. WHY IS THE NON-STANDARD TRUE-UP ADJUSTMENT NEEDED AT THIS
7 TIME?

8 A. The billing determinants for the period of March 2021 through February 2022 for the
9 Commercial and Small Industrial Energy (Commercial Energy) class are forecasted to
10 decrease by more than 10% as compared to the billing determinants for the twelve
11 months ending March 31, 2011, as shown in Appendix D to the Financing Order.
12 Therefore, in accordance with FOF 86 of the Financing Order, the TC-3 rates proposed
13 to be effective beginning March 1, 2021 are to be adjusted pursuant to the Non-
14 Standard True-Up provisions of the Financing Order.

15 The Commercial Energy TC-3 class is demonstrating lower than forecasted
16 kWh usage compared to 2011 levels. There are three possible contributing factors
17 influencing this lower usage. The first factor is that a large portion of the customers in
18 this class were existing customers prior to unbundling who were receiving service
19 under energy-only tariff schedules. These customers migrated to this TC-3 class and
20 were frozen from moving out of the class. However, these are typically older accounts
21 and many have either terminated service, have been replaced by new, more modern
22 loads, or have reduced their consumption. The second factor is that the remaining

1 customers in this class are new customers taking service under the current Secondary
2 Voltage Service ≤ 10 kW. As the competitive Texas market has evolved, customers
3 taking service under this tariff schedule may not demonstrate as high a kWh
4 consumption pattern as the old accounts that have terminated. A final and significant
5 factor is that the Commission's new pro-forma tariff schedules use a threshold of 10
6 kW for determining whether new customers should be billed on an energy-only based
7 tariff schedule or a demand-based tariff schedule. Prior to deregulation, the customer's
8 usage characteristics rather than demand determined the type of tariff schedule that was
9 most appropriate for the customer. Now, under the new pro-forma tariffs, new
10 customers tend to qualify for service on the Secondary Voltage Service > 10 kW
11 distribution rate class. New Secondary Voltage Service > 10 kW distribution rate class
12 customers are assigned the Commercial and Small Industrial Demand (Commercial
13 Demand) TC-3 rate, which uses the customer's demands for billing purposes. No new
14 Secondary Voltage Service > 10 kW distribution rate class customers are allowed to be
15 billed on the Commercial Energy TC-3 class charges.

16 Q. HOW IS THE NON-STANDARD TRUE-UP ADJUSTMENT CALCULATED?

17 A. As prescribed in FOF 87 in the Financing Order and Schedule TC-3, the non-standard
18 true-up shall be conducted in the following manner:

- 19 (a) allocate the upcoming period's PBR based on the PBRAFs approved in this
20 Financing Order;
- 21 (b) calculate undercollections or overcollections, including without limitation any
22 caused by REP defaults, from the preceding period in each class by subtracting
23 the previous period's transition charge revenues collected from each class from
24 the PBR determined for that class for the same period;
- 25 (c) sum the amounts allocated to each customer class in steps (a) and (b) to

- 1 determine an adjusted PBR for each transition charge customer class;
- 2 (d) divide the PBR for each customer class by the maximum of the forecasted
3 billing units or the threshold billing units for that class, to determine the
4 “threshold rate”;
- 5 (e) multiply the threshold rate by the forecasted billing units for each class to
6 determine the expected collections under the threshold rate;
- 7 (f) allocate the difference in the adjusted PBR and the expected collections
8 calculated in step (e) among the transition charge customer classes using the
9 PBRAFs approved in this Financing Order;
- 10 (g) add the amount allocated to each class in step (f) above to the expected
11 collection amount by class calculated in step (e) above to determine the final
12 PBR for each class; and
- 13 (h) divide the final PBR for each class by the forecasted billing units to determine
14 the transition charge rate by class for the upcoming period.

15 The calculation of the TC-3 rates, detailed in Exhibit JAM-1 to this testimony, complies
16 with these provisions of the Financing Order and Schedule TC-3 detailed above.

17 Q. PLEASE EXPLAIN THE PERIODIC BILLING REQUIREMENT (PBR) USED IN
18 THE CURRENT FILING.

19 A. The PBR for the period March 2021 through February 2022 is \$75,264,843. This
20 amount corresponds to the actual interest rates and other factors known at issuance in
21 March 2012. Each year’s PBR is substantially levelized for the expected life of the
22 securitization as was determined in Docket No. 39931. Each class’s over/under
23 collections are included in the calculation as well as items such as interest earned on
24 collections and a charge-off true-up. The charge-off true-up has been revised based on
25 the REP’s recent charge-off experience and is included in this filing. Summing the
26 true-up amount for each class produces an overall under-recovery of \$113,772, which
27 has been incorporated into the current filing to arrive at an adjusted PBR of
28 \$75,378,615.

1 Q. PLEASE EXPLAIN THE PROJECTED BILLING UNITS USED IN THE CURRENT
2 FILING.

3 A. AEP Economic Forecasting and Analysis forecasts kWh and kW by TC-3 class based
4 on historical billing units for each TC-3 class through August 2020. Historical kWh
5 and kW for each TC-3 class are used to arrive at projected billing units for March 2021
6 through February 2022. Projected kWh billing units are used for the Residential,
7 Municipal and Cotton Gin, and Commercial Energy TC-3 classes. Projected kW
8 billing units are used for the Commercial Demand, Large Industrial Firm and Non-
9 Firm, and Standby Firm and Non-Firm TC-3 classes.

10

11 V. REVISED TARIFF

12 Q. HAVE YOU PROVIDED A REVISED TARIFF REFLECTING THE
13 NON-STANDARD TRUE-UP CALCULATION OF TC-3s?

14 A. Yes. Exhibit JAM-3 contains the Transition Charge Rates – Rider TC-3 calculated
15 using the non-standard adjustment, which has been marked showing the changes from
16 the current tariff.

17 Q. WHAT CHANGES ARE PROPOSED FOR RIDER TC-3?

18 A. The rates are changed as indicated with margin notations on Exhibit JAM-3, page 2 of
19 2. An effective date of March 1, 2021 has been added to the header of each page.

20 Q. HOW DO THE PROPOSED TC-3 RATES COMPARE TO THE CURRENT RATES?

21 A. Please see Exhibit JAM-2 for rate comparisons. Proposed TC-3 rates for most TC-3

1 classes are slightly higher compared to current TC-3 rates. The proposed TC-3 rates for
2 the Residential, Commercial Energy, and Standby Non-Firm classes are lower than the
3 current TC-3 rates.

4 VI. CONCLUSION

5 Q. WHAT RELIEF IS THE COMPANY REQUESTING IN THIS PROCEEDING?

6 A. The Company is requesting that the proposed Rider TC-3 be approved effective with
7 the first billing cycle of March 2021 (March 1, 2021).

8 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

9 A. Yes, it does.

AEP TEXAS CENTRAL DIVISION
 TRANSITION CHARGE-RATES - RIDER TC-3
 Calculation of Rider TC-3 Rates
 Non-Standard True-up per Financing Order of Docket No. 39931

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
Customer Class	Current Rate	Proposed Rate	Price Cap (Over/Under)	Adjusted Rate	Proposed Rate	Threshold Rate	Current Rate	Threshold Rate	Proposed Rate	Difference (Over/Under)	Adjusted Rate	Proposed Rate
Residential	39.2853%	29.568019	(292.565)	29.275455	10,265,072.491	7,933,417.698	10,265,072.491	0.002852	29.275455	-	283.207	29,558.661
Commercial and Small Industrial - Energy	22.6320%	17.033939	287.070	17.321009	1,917,901.089	2,001,190.230	2,001,190.230	0.008655	16.600112	720.897	163.153	16,761.265
Commercial and Small Industrial - Demand	29.4288%	22.149540	222.570	22.371910	26,088.151	20,285.437	26,088.151	0.857551	22.371910	-	212.151	22,584.062
Large Industrial - Firm	2.2118%	1.664708	(52.279)	1,612.429	6,161.823	2,781.430	6,161.823	0.261680	1,612.429	-	15.945	1,628.373
Large Industrial - Non-Firm	1.9842%	1.493405	(12.939)	1,480.466	2,709.423	2,451.956	2,709.423	0.346414	1,480.466	-	14.304	1,494.770
Standby - Firm	1.4922%	1.123102	(32.867)	1,090.235	15,475.071	15,267.104	15,475.071	0.070451	1,090.235	-	10.757	1,100.992
Standby - Non-Firm	0.2833%	190.646	(10.245)	180.401	2,698.024	2,329.963	2,698.024	0.066864	180.401	-	1.826	182.227
Municipal and Cotton Gin	2.7124%	2,041.484	5.227	2,046.710	430,558.307	398,605.318	430,558.307	0.004754	2,046.710	-	19.554	2,066.264
Total	100.0000%	75,264.843	115.972	75,378.615					74,657.718	720.897	720.897	75,378.615

AEP TEXAS CENTRAL DIVISION
 TRANSITION CHARGE-3 RATES - RIDER TC-3
 Rate Comparison

TC-3 Customer Class	Period1	Period2	Billing Units	Rate Change	
	Rider TC-3 Rate	Rider TC-3 Rate		per unit	%
Residential	0.003131	0.002880	per kWh	(0.000251)	-8.03%
Commercial and Small Industrial - Energy	0.009090	0.008740	per kWh	(0.000350)	-3.85%
Commercial and Small Industrial - Demand	0.853083	0.865683	per kW or kVa	0.012600	1.48%
Large Industrial - Firm	0.253682	0.264268	per kW or kVa	0.010586	4.17%
Large Industrial - Non-Firm	0.534660	0.551693	per kW or kVa	0.017033	3.19%
Standby - Firm	0.069519	0.071146	per Daily kW or kVa	0.001627	2.34%
Standby - Non-Firm	0.068776	0.067541	per Daily kW or kVa	(0.001235)	-1.80%
Municipal and Cotton Gin	0.004585	0.004799	per kWh	0.000214	4.67%

AEP TEXAS

TARIFF FOR ELECTRIC DELIVERY SERVICE

Applicable: Certified Service Area previously served by AEP Texas Central Company

Chapter: 6 Section: 6.1.1

Section Title: Delivery System Charges

Revision: Eleventh Effective Date: March 1, 2021

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6.1.1.2.2.1 Initial / Adjusted Transition Charge-3 Rates – Rider TC-3

AVAILABILITY

This schedule is applicable to billed energy consumption and demands of retail customers taking service from the Company during the term that this schedule is in effect, and to the facilities, premises, and loads of all other retail customers obligated to pay TC-3 Charges as provided in Schedule TC-3, Section 6.1.1.2.2. Terms defined in Schedule TC-3 that are used herein shall have the same meaning as set forth in Schedule TC-3.

RATE CLASSES

For purposes of billing Initial/Adjusted Transition Charge-3 Rates (TC-3 Rates), each retail end-use customer will be designated as a customer belonging to one of eight classes as identified and defined by Schedule TC-3.

TRANSITION CHARGE-3 RATES

The Initial/Adjusted TC-3 Rates shall be determined in accordance with and are subject to the provisions set forth in the Financing Order and Schedule TC-3. Not less than 15 days prior to the first billing cycle for the Company's March 2013 billing month and no less frequently than annually thereafter, the Company or successor Servicer will file a revision to Rider TC-3 setting forth the Adjusted TC-3 Rates to be effective for the upcoming period. If made as a result of the annual true-up adjustment in Schedule TC-3, the Adjusted TC-3 Rates will become effective on the first billing cycle of the Company's March billing month. In accordance with Schedule TC-3 an interim true-up is mandatory semi-annually (or quarterly after the last scheduled maturity date of the Transition Bonds) if the Servicer forecasts that transition charge collections will be insufficient to make all scheduled payments of principal, interest and other amounts in respect of the Transition Bonds on a timely basis during the current or next succeeding payment period and/or or to replenish any draws upon the capital subaccount. Optional interim true-ups may also be made at any time as described in Schedule TC-3. If an interim true-up adjustment is made pursuant to Schedule TC-3, the Adjusted TC-3 Rates will become effective on the first billing cycle of the Company's billing month that is not less than 15 days following the making of the interim true-up adjustment filing. If a Non-Standard True-Up filing pursuant to Schedule TC-3 is made to revise the Rider TC-3, the filing will be made at least 90 days prior to the first billing cycle for the Company's March billing month.

AEP TEXAS

TARIFF FOR ELECTRIC DELIVERY SERVICE

Applicable: Certified Service Area previously served by AEP Texas Central Company

Chapter: 6 Section: 6.1.1

Section Title: Delivery System Charges

Revision: Eleventh Effective Date: March 1, 2021

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6.1.1.2.2.1 Initial / Adjusted Transition Charge-3 Rates – Rider TC-3

<u>Transition Charge-3 Customer Class</u>	<u>Initial/Adjusted TC-3 Rates</u>	
Residential	\$0.002880 per kWh	R
Commercial and Small Industrial – Energy	\$0.008740 per kWh	R
Commercial and Small Industrial – Demand	\$0.865683 per kW or kVa	I
Large Industrial – Firm	\$0.264268 per kW or kVa	I
Large Industrial – Non-Firm	\$0.551693 per kW or kVa	I
Standby – Firm	\$0.071146 per Daily kW or kVa	I
Standby – Non-Firm	\$0.067541 per Daily kW or kVa	R
Municipal and Cotton Gin	\$0.004799 per kWh	I

The Initial/Adjusted TC-3 Rates are multiplied by the kWh or kVa, as applicable, read, estimated or determined during the billing month and will be applied to bills rendered on and after the effective date.

NOTICE

This rate schedule is subject to the Company's Tariff and Applicable Legal Authorities.

NOTICE OF NON-STANDARD TRUE-UP FILING
BY AEP TEXAS INC.

AEP Texas Inc. (“AEP Texas” or the “Company”) hereby provides NOTICE that it filed with the Public Utility Commission of Texas (“Commission”) on November 13, 2020 the NON-STANDARD TRUE-UP FILING OF AEP TEXAS INC. PURSUANT TO THE FINANCING ORDER IN DOCKET NO. 39931. The filing seeks approval of transition charge rates to be calculated and applied beginning with the first billing cycle for the month of March 2021, pursuant to the non-standard true-up provisions of the order issued by the Commission on January 12, 2012 in Docket No. 39931, *Application of AEP Texas Central Company for Financing Order* (the “Financing Order”) and Sections 39.003 and 39.307 of the Texas Utilities Code.

The relief requested in this filing affects all retail electric providers (“REPs”) serving end-use retail electric customers in AEP Texas’ certificated service territory previously served by AEP Texas Central Company (“TCC”) and will affect the retail electric customers of those REPs. Customers potentially affected include those retail customers, whether or not currently receiving transmission and/or distribution service from AEP Texas – Central Division (formerly TCC), whose facilities, premises, and loads are located in AEP Texas’ certificated service area (formerly TCC’s certificated service area) and are being served or have been served by AEP Texas (formerly TCC) at any time on or after May 1, 1999. This filing only affects the AEP Texas – Central Division. The filing has been assigned Docket No. ____.

On March 14, 2012, Transition Bonds were issued under the Financing Order. The Financing Order establishes how the annual costs permitted to be recovered through transition charges are allocated among customer classes. The non-standard true-up provisions of the Financing Order permit adjustment of the transition charges for each customer class if the forecasted billing determinants for any one or more customer classes are projected to decrease by more than 10% from the billing determinants for the 12 months ending March 31, 2011 (“Base Period”). The billing determinants for the Commercial and Small Industrial – Energy class are forecasted to decrease by more than 10% for the 12 months ending February 2022 when compared to the Base Period.

If the non-standard true up is approved, transition charge rates applicable to all retail customer classes will be affected. The proposed rates for the transition charge classes are as follows:

<u>Transition Charge-3 Customer Class</u>	<u>Initial/Adjusted TC-3 Rates</u>
Residential	\$0.002880 per kWh
Commercial and Small Industrial – Energy	\$0.008740 per kWh
Commercial and Small Industrial – Demand	\$0.865683 per kW or kVa
Large Industrial – Firm	\$0.264268 per kW or kVa
Large Industrial – Non-Firm	\$0.551693 per kW or kVa
Standby – Firm	\$0.071146 per Daily kW or kVa
Standby – Non-Firm	\$0.067541 per Daily kW or kVa
Municipal and Cotton Gin	\$0.004799 per kWh

The deadline for filing a motion to intervene in this proceeding is _____. Additionally, any person who intervenes and would like a hearing on this matter must file a request for hearing with the Commission by _____. The request for a hearing must also include a specific list of issues the person believes should be addressed at the hearing.

The scope of the proceeding will be limited to determining whether the non-standard true-up complies with the Financing Order. The Financing Order requires the Commission to rule upon the Company's request within 90 days or the requested rates will go into effect. Persons with questions or who want more information on this petition may contact Steven Beaty at AEP Texas, 400 W. 15th Street, Suite 1520, Austin, Texas 78701 or call (512) 481-4550 during normal business hours. A complete copy of this Application is available for inspection at the above address. Persons who wish to formally participate in this proceeding, or who wish to express their comments concerning this Petition should contact the Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, or call (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may call (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989.

DOCKET NO. _____

NON-STANDARD TRUE-UP FILING	§	PUBLIC UTILITY COMMISSION
OF AEP TEXAS INC. PURSUANT TO	§	
THE FINANCING ORDER IN	§	OF TEXAS
DOCKET NO. 39931	§	

PROTECTIVE ORDER

This Protective Order governs 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. _____ ” (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 must 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 must not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

¹ Tex. Gov’t Code § 552.001-.353.

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 is required to 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 or their staff, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff must be informed of the existence and coverage of this Protective Order and will 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; and (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party must bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____ (or words to this effect) and must 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 is required to maintain a record of all copies made of Highly Sensitive Protected Material and must send a duplicate of the record to the producing party when the copy or copies are made. The record must specify the location and the person possessing the copy. Highly Sensitive Protected Material must 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 must 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.

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA).

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 must 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, OAG, and OPC, for the purpose of access to Highly Sensitive Protected Materials, must 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 is required to 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. 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. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. 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 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 is required to also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC (if OPC is a party), 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 (if OPC is a party), and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC (if OPC is a party) 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 (if OPC is a party), 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 (if OPC is a party), 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 must, 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 must not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC will be used only for the purpose of the proceeding in Docket No. _____. 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 must not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order must, 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 is required to 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 must 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 must be terminated and all notes, memoranda, or other information derived from the protected material must 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 is required to 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 must be provided to the Reviewing Parties under Paragraph 9, and voluminous Protected Materials, the producing party is required to 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 according to this Protective Order, but a record must be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party is required to provide the party asserting confidentiality with a copy of that record.

18. **Procedures Regarding Voluminous Protected Materials.** 16 Texas Administrative Code (TAC) § 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 will commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period will 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 must 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 must 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 must be maintained in a secure place and must 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 must 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 must be marked "PROTECTED MATERIAL" and must 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) must notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) must 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 will 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 must 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 must 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. _____ 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 must 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 will 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 must 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 will 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 must 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 must 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 must 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 will 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 will 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 will 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 must 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 precludes 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 must 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 prohibits 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 will 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 is not 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 must 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 must 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 must 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

³ Tex. Gov't Code § 551.001-.146.

⁴ Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-43.

specified in this section is not 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.

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, OAG, 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 must 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 is required to 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 must 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 must 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 will 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 16 TAC § 22.161.
38. **Modification of Protective Order.** Each party will 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, will be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party will not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party will be entitled to pursue any other form of relief to which it is entitled.

ATTACHMENT A to Protective Order
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 must not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC will be used only for the purpose of the proceeding in Docket No. _____. 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 will 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 to Protective Order

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