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APPLICATION OF THE ELECTRIC § PUBLIC UTILITY COMMISSION
RELIABILITY COUNCIL OF TEXAS, §
INC. FOR A DEBT OBLIGATION § OF TEXAS
ORDER TO FINANCE UPLIFT §
BALANCES UNDER PURA §
CHAPTER 39, SUBCHAPTER N, FOR §
AN ORDER INITIATING A §
PARALLEL DOCKET, AND FOR A §
GOOD CAUSE EXCEPTION §

COMMISSION STAFF’S OBJECTION TO AND MOTION TO STRIKE THE DIRECT TESTIMONY OF JAMES C. SPINDLER, PH.D

On August 12, 2021, TXU Energy Retail Company LLC (TXU Energy), Ambit Texas, LLC (Ambit), Luminant ET Services Company LLC (ETS), TriEagle Energy LP (TriEagle), Value Based Brands LLC dba Change Energy, Express Energy, Veteran Energy (VBB) (collectively, the TXU LSEs) and the parent company of Luminant Energy Company LLC (Luminant) filed the direct testimony of Amanda Frazier. Under the procedural schedule established in Order No. 4, filed August 5, 2021, the deadline to file objections to intervenor direct testimony is August 16, 2021. Therefore, this pleading is timely filed.

Staff moves to strike the direct of testimony of Dr. Spindler in its entirety because it consists almost entirely of legal argument related to the separateness of legal entities and is therefore inadmissible under Texas Rule of Evidence 702. The Texas Supreme Court has stated that statutory interpretation is a matter of law to be decided by the Court. His entire testimony is directed to abstract legal concepts.

I. LEGAL THEORY IS NOT ADMISSIBLE EVIDENCE

Pursuant to Texas Rule of Evidence 702:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will **help the trier of fact to understand the evidence or to determine a fact in issue.**

Numerous Texas Courts have held that expert testimony that purports to offer a legal opinion is inadmissible. “An expert witness may not testify regarding an opinion on a pure question

of law.”¹ “It is still an elementary principle that witnesses are to give evidence as to facts, and not statements of law.”² “An expert, however, may not testify on pure questions of law. Thus, an expert is not allowed to testify directly to his understanding of the law, but may only apply legal terms to his understanding of the factual matters in issue.”³ “The trial court erred in allowing Professor Long and former Justice Wallace to testify on questions of law.”⁴

Dr. Spindler is a law professor presenting testimony about the contours of corporate law. The law in Texas concerning corporations is not a fact issue. In fact, it is not even a legal issue in dispute in the present proceeding. This is confirmed by looking at some of questions posed in his direct testimony, which include:

- What is the general rule for liability sharing among separate persons?⁵
- Are limited liability entities considered separate persons?⁶
- How does legal separateness affect asset ownership and liability? ⁷
- What is the economic purpose of legal separateness and limited liability? ⁸
- Does Texas law treat affiliated companies as distinct entities? ⁹

He also makes legal conclusions about what would contravene Texas law and what provision of Texas law would control questions related to piercing the corporate veil.¹⁰ Because his direct testimony consists entirely of legal opinions and theories, it is not admissible evidence.

Moreover, Dr. Spindler’s testimony is an attempt to expand on the TXU LSE’s Response to the Commission Briefing Order filed on July 21, 2021. That brief specifically argued that netting

¹ *Upjohn Co. v. Rylander*, 38 S.W.3d 600, 611 (Tex. App.—Austin 2000, pet. denied)

² *Welder v. Welder*, 794 S.W.2d 420, 433 (Tex. App.—Corpus Christi 1990, no writ) (“Howard's understanding and interpretation of specific case law improperly called for the witness to make statements of law, and it was not error for the trial court to sustain appellee's objection.”).

³ *Greenberg Traurig of New York, P.C. v. Moody*, 161 S.W.3d 56, 94 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Mega Child Care, Inc. v. Tex. Dep't of Protective & Regulatory Servs.*, 29 S.W.3d 303, 309 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

⁴ *Id.* at 95.

⁵ Spindler Direct at 5:14.

⁶ *Id.* at 6:12.

⁷ *Id.* at 7:1.

⁸ *Id.* at 7:14.

⁹ *Id.* at 8:15.

¹⁰ *Id.* at 4:15-18 and 13:1-14.

would violate certain principles of corporate law.¹¹ Dr. Spindler's testimony on this topic is a blatant attempt to file a supplemental response to the Order Requesting Briefing. The deadline for responding to the Briefing Order was August 4, 2021. The TXU LSEs (and Luminant) should not be allowed to use Dr. Spindler's testimony as a vehicle to provide additional briefing on this issue. Framing a brief in the form of questions and answers should not be a loophole to the express limitations in the Order Requesting Briefing.

II. CONCLUSION

For the reasons stated above, Staff respectfully requests that Dr. Spindler's direct testimony be stricken in its entirety.

Dated: August 16, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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¹¹ TXU Load-Serving Entities' Brief Regarding Netting at 7-8 (Aug. 4, 2021).

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 16, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ R. Floyd Walker

R. Floyd Walker