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DOCKET NO. _____

APPLICATION OF TRITON TEXAS	§	BEFORE THE PUBLIC UTILITY
HOLDINGS LLC, THE KAUFFMAN	§	
FAMILY LIVING TRUST, DATED	§	COMMISSION OF TEXAS
APRIL 9, 2015, DISCIPLE ASSET	§	
HOLDINGS, LP, AND MALAKOFF	§	
FAMILY HOLDINGS, LP, FOR	§	
APPROVAL OF CHANGES IN	§	
OWNERSHIP UNDER TEXAS WATER	§	
CODE § 13.302	§	

**APPLICATION OF TRITON TEXAS HOLDINGS LLC, THE KAUFFMAN FAMILY
LIVING TRUST, DATED APRIL 9, 2015, DISCIPLE ASSETS HOLDINGS, LP, AND
MALAKOFF FAMILY HOLDINGS, LP, FOR APPROVAL OF CHANGES IN
OWNERSHIP UNDER TEXAS WATER CODE § 13.302**

Triton Texas Holdings LLC (TTH), a Texas limited liability company, respectfully files this application (Application), together with The Kauffman Family Living Trust, dated April 9, 2015, Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP (the Interest Holders) (collectively, the Applicants), for Commission approval under Texas Water Code (TWC) § 13.302 and 16 Texas Administrative Code (TAC) § 24.243 for changes in ownership of Horseshoe Bend Water Company LLC (Horseshoe Bend) and Lone Star Water Company (Lone Star). TTH seeks approval to acquire 100% of the issued and outstanding limited liability company interests of Horseshoe Bend (Horseshoe Bend Equity) and 100% of the issued and outstanding shares of Lone Star stock (Lone Star Equity) (collectively, the Interests) after an initial temporary transfer of the Interests from Triton Utilities, Inc. (TUI) to the Interest Holders. In support thereof, the Applicants show the following.

I. PROPOSED TRANSACTION AND REQUESTED ACTION¹

Triton Utilities, Inc., a Texas corporation, is the current owner of the Horseshoe Bend Equity and Lone Star Equity. TUI proposes to execute an agreement to sell and transfer all the Interests to the Interest Holders, and the Interest Holders propose to execute a separate agreement to then subsequently sell and transfer the Interests to TTH. Both transactions would occur in rapid succession on the closing date. A copy of those agreements is being confidentially filed with the Commission as part of this Application and that copy is hereby incorporated as **Attachment A** (Confidential). Closing for these transactions is conditioned on Commission approval.

Horseshoe Bend has a sale, transfer, or merger (STM) application with Castle Water, Inc. d/b/a Horseshoe Bend Water System pending before the Commission to transfer the water system facilities and service area served under water Certificate of Convenience and Necessity (CCN) No. 10263 in Parker County to Horseshoe Bend.² Horseshoe Bend closed on that acquisition effective October 2, 2020 after receiving Commission approval to proceed with the transaction, but Horseshoe Bend has not yet been assigned its own water CCN for that system since the STM application remains pending.

Lone Star holds water CCN No. 13279, which includes a water service area in Denton County.³ A STM application that led to Lone Star's acquisition of its three water systems was finally approved by the Commission on May 20, 2020.⁴

Closing documents for the Interests would not be executed until Commission approval is obtained. The Commission action requested herein is approval for the Interest Holders to purchase

¹ 16 TAC § 22.73(4)-(5).

² *Application of Castle Water, Inc. dba Horseshoe Bend Water System and Horseshoe Bend Water Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County*; Docket No. 50085 (pending)

³ *Application of Ponder Enterprises, Inc. dba Longhorn Company and Lone Star Water Company for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*; Docket No. 49231; Notice of Approval (May 20, 2020).

⁴ *Id.*

the Interests from TUI, and for the Interest Holders to then contribute the Interests to TTH per the proposed transaction documents so that both transactions may close in rapid succession.

From the perspective of Horseshoe Bend and Lone Star customers, operations during the transition of the Interests to TTH will be seamless. After the closing, Horseshoe Bend and Lone Star will continue to exist in their current forms and the shareholders of TTH will be identical to those of TUI with the same ownership percentages. There will be no change to the water service or rates for Horseshoe Bend or Lone Star customers resulting from the proposed transactions. Horseshoe Bend and Lone Star will continue to own all their respective utility property, easements, and water rights/permits. The current Horseshoe Bend and Lone Star personnel, including their licensed water operators, will continue to manage and operate the Horseshoe Bend and Lone Star systems immediately after the closing. The Commission reviewed the financial, managerial, and technical capabilities of Horseshoe Bend and Lone Star during their respective STM application matters and found them sufficient.

The primary benefit of the transactions to Horseshoe Bend, Lone Star, and their customers is that they will facilitate compliance with applicable regulatory and taxation requirements for the utilities' parent company. TTH will be an organization dedicated to Texas utilities, while TUI will retain interests in utilities located in other jurisdictions. The Applicants believe this will be beneficial to the organizations as a whole and, thus, Texas utility customers.

II. JURISDICTION AND APPLICABLE LAW⁵

The Commission has jurisdiction to consider this application under TWC § 13.302. The Commission's rule adopted for TWC § 13.302 implementation is 16 TAC § 24.243.

⁵ 16 TAC § 22.73(1).

TWC § 13.302 provides, “A utility may not purchase voting stock in another utility doing business in this state and a person may not acquire a controlling interest in a utility doing business in this state unless the person or utility files a written application with the utility commission not later than the 61st day before the date on which the transaction is to occur.”⁶ TWC § 13.302 and 16 TAC § 24.243 set forth criteria for the Commission to consider for transactions subject to same, but do not specify precisely what a TWC § 13.302 applicant should provide to the Commission for review.⁷ There are no specific Commission forms or notice requirements for TWC § 13.302 applications other than this report to the Commission. However, this Application presents information relevant to considerations set forth in TWC § 13.302, 16 TAC § 24.243, and the general application information provisions of 16 TAC § 22.73.

If the Commission has questions based on the criteria listed in TWC § 13.301(e) or 16 TAC § 24.239(h) (per TWC § 13.302(d) and 16 TAC § 24.243(d)),⁸ Applicants are committed to working with the Commission to address those concerns. Those criteria generally speak to public interest considerations and may be considered here even though most are more appropriate for changes in CCN possession or ownership of utility system facilities, neither of which would occur here if the Commission approves the proposed transactions (*i.e.*, Horseshoe Bend and Lone Star would remain the CCN holders and utility system facility owners). Applicants submit that the proposed transaction is in the public interest for reasons expressed in this Application. Thus, Applicants respectfully request the Commission deem this Application and its attachments an administratively complete filing sufficient for Commission consideration under TWC § 13.302 and 16 TAC § 24.243 and ultimately authorize the proposed transactions described herein.

⁶ TWC § 13.302(a); *see also* 16 TAC § 24.243(a).

⁷ TWC § 13.302(b); *see also* 16 TAC § 24.243(b).

⁸ Based on the reference in TWC § 13.302(d) to TWC § 13.301(e), Applicants believe 16 TAC § 24.243(d) is intended to refer to 16 TAC § 24.239(h), not (k) as currently reflected in the Commission’s rules.

TTH and the Interest Holders are prepared to provide additional information to the Commission for review upon request.

III. AFFECTED PARTIES, CUSTOMER CLASSES, AND TERRITORIES⁹

The known parties, customer classes, or territories that would be affected by the proposed transaction if the relief requested in this Application is granted include TTH, the Interest Holders, and TUI who are parties to the transactions. Neither Horseshoe Bend, Lone Star, nor the water utility services they currently provide to their customers within their existing water CCN service territories will change if the requested relief is granted.

Triton Texas Holdings LLC is a Texas limited liability company created to own the two Texas-based water utilities currently owned by Triton Utilities, Inc. Triton Utilities, Inc., formerly known as Potable Products Incorporated, is a Texas corporation that owns and operates 13 water utility system entities in Arizona and two water utility system entities in Texas. TUI has been in business since 2014, but its management began operating water utilities in 2013 before forming TUI.

Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP are family Texas limited partnerships created for asset protection and estate planning purposes. The Kauffman Family Living Trust, dated April 9, 2015, is a revocable trust created for the same purposes.

Lone Star Water Company is a Texas utility company that owns three public water systems in Denton County, Texas: Longhorn Meadows Addition (PWS ID No. 0610217); Double Rock Estates (PWS ID No. 0610179); and Meadow Ranch Water System (PWS ID No. 0610223).

Horseshoe Bend Water Company LLC is a Texas utility company that owns and operates the Horseshoe Bend Water System (PWS ID No. 1840002) in Parker County, Texas.

⁹ See 16 TAC § 22.73(2)-(3).

Attached for the Commission's review as **Attachment B** is an affidavit from Paul Kauffman, President of TTH, that verifies that the statements and matters set forth in all the documents filed with this application are generally true and correct. That affidavit also contains and attests to the accuracy of a balance sheet for TTH, the entity that will own the Interests following the two virtually simultaneous transactions proposed herein. TTH's balance sheet shows that TTH has no debt and a significant cash balance. This should satisfy the Commission's "leverage test."¹⁰ Further, as reflected in their respective STM applications, neither Horseshoe Bend or Lone Star are anticipated to have short-term cash shortages in the near term.¹¹ Thus, there is good cause to only apply the "leverage test" in this matter as that will be the case whether the Interests are owned by TUI or TTH.¹²

IV. SERVICE CONTACT INFORMATION¹³

Please serve all notices and communications with regard to this Application upon:

Geoffrey P. Kirshbaum
TERRILL & WALDROP
810 W. 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)
gkirshbaum@terrillwaldrop.com

V. MOTION FOR PROTECTIVE ORDER

Applicant is filing confidential information in this docket and recognizes a potential need to file additional confidential information. Therefore, Applicant moves for adoption of the Protective Order included as **Attachment C**. The Protective Order accords with the Commission's standard protective order.

¹⁰ 16 TAC § 24.11(e)(2)(A).

¹¹ See 16 TAC § 24.11(e)(3).

¹² See 16 TAC § 24.11(e)(2).

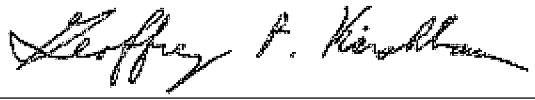
¹³ See 16 TAC § 22.73(8).

VI. CONCLUSION

Based on the foregoing, Triton Texas Holdings LLC, The Kauffman Family Living Trust, dated April 9, 2015, Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP respectfully request the Commission approve the proposed transactions described herein, adopt the requested Protective Order for use in this docket, and authorize Applicants to purchase the Horseshoe Bend Equity and Lone Star Equity, *i.e.*, the Interests, currently owned by Triton Utilities, Inc. as proposed.

Respectfully submitted,


TERRILL & WALDROP

By: 
Geoffrey P. Kirshbaum
State Bar No. 24029665
810 West 10th Street
Austin, Texas 78701
Tel: (512) 474-9100
Fax: (512) 474-9888
gkirshbaum@terrillwaldrop.com

**ATTORNEYS FOR TRITON TEXAS HOLDINGS, LLC,
THE KAUFFMAN FAMILY LIVING TRUST, DATED
APRIL 9, 2015, DISCIPLE ASSET HOLDINGS, LP,
AND MALAKOFF FAMILY HOLDINGS, LP**

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 September 22, 2021, in accordance with the Orders Suspending Rules issued in Project No. 50664.

A handwritten signature in black ink, reading "Geoffrey P. Kirshbaum", written over a horizontal line.

Geoffrey P. Kirshbaum

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STATEMENT OF CONFIDENTIALITY

Triton Texas Holdings LLC, The Kauffman Family Living Trust, dated April 9, 2015, Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP (collectively, the Applicants) have designated as Protected Material certain documents in their Application for Commission approval under Texas Water Code § 13.302 and 16 Texas Administrative Code § 24.243 for a change in ownership of Horseshoe Bend Water Company LLC and Lone Star Water Company. The Applicants consider the information identified below to be competitively-sensitive commercial or financial information that is confidential and exempted from disclosure under the Public Information Act §§ 552.101 and 552.110.

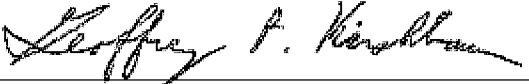
INDEX OF CONFIDENTIAL DOCUMENTS

1. Attachment A
 - a) Designation of Information: Protected Material
 - b) Description of Documents: (1) Contribution Agreement and Bill of Contribution, (2) Distribution of Shares in Lone Star Water Company, and (3) Distribution of Membership Interests in Horseshoe Bend Water Company LLC
 - c) Applicable Exemptions: Public Information Act of Texas §§ 552.101 and 552.110.
 - d) Explanation of Designation: The Contribution Agreement and Bill of Contribution, Distribution of Shares in Lone Star Water Company, and Distribution of Membership Interests in Horseshoe Bend Water Company LLC contain competitively-sensitive business operations information, commercial information, or financial information.

e) Certification of Counsel:

The undersigned counsel has reviewed the information sufficiently to state in good faith that the information is exempt from discovery under the Public Information Act of Texas and is entitled to its classification specified above.

Respectfully submitted,

By: 

Geoffrey P. Kirshbaum

State Bar No. 24029665

TERRILL & WALDROP

810 West 10th Street

Austin, Texas 78701

Tel (512) 474-9100

Fax (512) 474-9888

gkirshbaum@terrellwaldrop.com

**ATTORNEYS FOR TRITON TEXAS HOLDINGS, LLC,
THE KAUFFMAN FAMILY LIVING TRUST, DATED
APRIL 9, 2015, DISCIPLE ASSET HOLDINGS, LP,
AND MALAKOFF FAMILY HOLDINGS, LP**

CONFIDENTIAL

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Submitting Parties: Triton Texas Holdings LLC, The Kauffman Family Living Trust, dated April 9, 2015, Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP

Confidential Document – Attachment A to Application

Brief Description of Documents:

1. Contribution Agreement and Bill of Contribution
2. Distribution of Shares in Lone Star Water Company
3. Distribution of Membership Interests in Horseshoe Bend Water Company LLC

Page Range: Triton 0001 – Triton 0013

Envelope 1 of 1

Submitted to the Commission on September 22, 2021.

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AFFIDAVIT OF PAUL KAUFFMAN

THE STATE OF CALIFORNIA §
 §
 COUNTY OF SAN DIEGO §

BEFORE ME, the undersigned official on this day personally appeared Paul Kauffman, who is personally known to me and first being duly sworn according to law, upon his oath deposed and said:

My name is Paul Kauffman. I am over the age of 18 years and reside in San Diego County, California. I am of sound mind and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

I am the President of Triton Texas Holdings LLC an Applicant in the above styled and numbered case. I am authorized to make this affidavit on behalf of Triton Texas Holdings LLC.

In support of the application for Commission approval under Texas Water Code (TWC) § 13.302 and 16 Texas Administrative Code (TAC) § 24.243 by Triton Texas Holdings LLC, together with The Kauffman Family Living Trust, dated April 9, 2015, Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP, for changes in ownership of Horseshoe Bend Water Company LLC

and Lone Star Water Company attached please find Triton Texas Holdings LLC's Balance Sheet as of September 17, 2021.

I do hereby attest to the accuracy of the attached Balance Sheet for Triton Texas Holdings LLC. The Balance Sheet additionally demonstrates that Texas Triton Holdings LLC has no debt and a significant cash balance. I also attest that I am personally familiar with the documents filed with the application and that all statements and matters set forth therein are true and correct.

Further Affiant sayeth not.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Paul Kauffman
Paul Kauffman

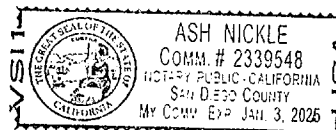
SUBSCRIBED AND SWORN TO BEFORE ME on this the 21st day of September, 2021, to which witness my hand and official seal.

State of California

County of San Diego

Subscribed & sworn to (or affirmed)
before me this 21st day of Sept, 2021
by Paul Kauffman, proved to
me on the basis of satisfactory evidence
to be the person(s) who appeared before me

Ash Nickle
Notary Public in and for
The State of CA



Triton Texas Holdings LLC
Balance Sheet
As of September 17, 2021

	<u>Sep 17, 21</u>
ASSETS	
Current Assets	
Checking/Savings	
Chase Bank	100,000.00
Total Checking/Savings	<u>100,000.00</u>
TOTAL ASSETS	<u>100,000.00</u>
LIABILITIES & EQUITY	
Equity	
Member Contributions	100,000.00
Total Equity	<u>100,000.00</u>
TOTAL LIABILITIES & EQUITY	<u>100,000.00</u>

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CODE § 13.302	§	

PROTECTIVE ORDER

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

It is ORDERED that:

1. Designation of Protected Materials. Upon producing or filing a document, including, but not limited to, records stored or encoded 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 not only the documents so designated, but also the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. Materials Excluded from Protected Materials Designation. Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Texas Public Information Act. Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in a proceeding, is or was public

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

3. Reviewing Party. For the purposes of this Protective Order, a Reviewing Party is a party to this docket.
4. Procedures for Designation of Protected Materials. On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (1) any and all exemptions to the Public Information Act, Tex. Gov't Code Ann., Chapter 552, claimed to be applicable to the alleged Protected Materials; (2) the reasons supporting the providing 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 (3) that counsel for the providing 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 shall be permitted access to Protected Materials only through its Reviewing Representatives who have signed the Protective Order Certification Form. 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 these proceedings. At the request of the Commissioners or their staff, copies of Protected Materials may be produced by the Commission Staff (Staff) or the Commission's Docket Management and Commission Advising (CADM) to the Commissioners. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. Highly Sensitive Protected Material Described. The term Highly Sensitive Protected Materials is a subset of Protected Materials and refers to documents or information which 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 set forth herein) would expose a producing party to unreasonable risk of harm, including but not limited to: (1) customer-specific information protected by Tex. Util. Code Ann. § 32.101(c); (2) contractual information pertaining to contracts that specify that their terms are confidential or which are confidential pursuant to an order entered in litigation to which the producing party is a party; (3) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (4) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____” or words to this effect and shall be consecutively Bates Stamped in accordance with the provisions of this Protective Order. 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 in order 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. A record of any copies that are made of Highly Sensitive Protected Material shall be kept and a copy of the record shall be sent to the producing party at the time the copy or copies are made. The record shall include information on the location and the person in possession of the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as provided by Paragraphs 9 and 13. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8. Restricting Persons Who May Have Access to Highly Sensitive Protected Material. With the exception of Commission Staff 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: (1) outside counsel for the Reviewing Party; (2) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel; or (3) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review each Highly Sensitive Protected document to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.
9. Copies Provided of Highly Sensitive Protected Material. A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8, and be either outside counsel or an outside consultant. Other representatives of the reviewing party who are authorized to view Highly Sensitive Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Each reviewing party may make two additional copies of Highly Sensitive Protected Materials for outside consultants and/or Reviewing Party's employees whose business offices are located outside of Travis County. The additional copies may be maintained at the outside consultant's offices outside Travis County. All restrictions on Highly Sensitive documents in this Order shall apply to additional copies maintained outside the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected documents provided to a

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

10. Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict. The procedures set forth in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.
11. Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC, and the OAG. When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC (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 set forth herein.
12. Delivery of the Copy of Highly Sensitive Protected Material to 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 provided in Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC, and the OAG (if the OAG is

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

13. Restriction on Copying by Commission Staff, OPC, and the OAG. Except as allowed by Paragraphs 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. Limited notes may be made by Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) 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. Commission Staff, OPC (if OPC is a party), and the OAG (if OAG is a representing party) may make two additional copies of Highly Sensitive documents for outside consultants whose business offices are located outside Travis County. All restrictions on Highly Sensitive documents in this Order shall apply to additional copies maintained in the outside consultant's offices.
14. Public Information Requests. In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. Required Certification. Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification set forth in the attachment to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to

anyone other than in accordance with the Protective Order and unless I am an employee of Commission Staff or OPC shall 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 shall not apply.

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

A copy of each signed certification shall be provided by the reviewing party to counsel for the producing party and served upon all parties of record.

16. Disclosures Between Reviewing Representatives and Continuation of Disclosure Restrictions After a Person is no Longer Engaged in the Proceeding. Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be

bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials. Except for Highly Sensitive Protected Materials which shall be provided to the Reviewing Parties pursuant to Paragraph 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.
18. Procedures Regarding Voluminous Protected Materials. Production of voluminous Protected Materials will be governed by 16 Tex. Admin. Code § 22.144(h). Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.
19. Reviewing Period Defined. The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. Procedures for Making Copies of Voluminous Protected Materials. Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical, or electronic copies of the Protected Materials, subject to the conditions hereof; provided, however, that before photographic, mechanical, or electronic copies can be made, the Reviewing Party seeking photographic,

mechanical, or electronic copies must complete a written receipt for copies on the attached form identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

21. Protected Materials to be Used Solely for the Purposes of These Proceedings. All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (1) 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 (2) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.
22. Procedures for Confidential Treatment of Protected Materials and Information Derived from those Materials. Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to ensure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.
23. Procedures for Submission of Protected Materials. If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion, or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents

shall be marked "CONFIDENTIAL" and shall be filed under seal with the Presiding Officer and served under seal to the counsel of record for the Reviewing Parties. The Presiding Officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (1) shall notify the party which provided the information within sufficient time so that the providing party may seek a temporary sealing order; and (2) shall otherwise follow the procedures set forth in Tex. R. Civ. P. 76a.

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

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

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

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

28. Maintenance of Protected Status During Periods Specified for Challenging Various Orders. Any party electing to challenge, in the courts of this state, a Commission or Presiding Officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (1) the date of an unfavorable Commission order; or (2) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this Paragraph. For purposes of this Paragraph, a favorable ruling of a state district court, state appeals court, supreme court or other appellate court includes any order extending the deadlines set forth in this Paragraph.
29. Other Grounds for Objection to Use of Protected Materials Remain Applicable. Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless and until such additional disclosure is order by the Commission or a court, all parties will abide by the restrictions imposed by the Protective Order.
30. Protection of Materials from Unauthorized Disclosure. All notices, applications, responses, or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials. Following the conclusion of these proceedings, each Reviewing

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

32. Applicability of Other Law. This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act, and any other applicable law, provided that parties subject to those acts will give the party asserting confidentiality notice, if possible under those acts, prior to disclosure pursuant to those acts.
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: (1) the Reviewing Party shall notify the party asserting confidentiality of such order at least five (5) calendar days in advance of the release of the information in order for the party

asserting confidentiality to contest any release of the confidential information; (2) the Reviewing Party shall notify the producing party that there is a request for such information within five (5) calendar days of the date the Reviewing Party is notified of the request for information; and (3) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein.

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 or written opinion of the Texas Attorney General which was sought in compliance with the Public Information Act. 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 Tex. Gov’t Code Ann. § 552.301, or intends to comply with the final governmental or court order.
35. Notify Defined. Notify, for purposes of Paragraphs 32, 33, and 34, shall mean written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. Requests for Non-Disclosure. If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Order, the producing party shall tender the information for in camera review to the presiding officers within 10 calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the

classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information. Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the commission.

37. Sanctions Available for Abuse of Designation. If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to 16 Tex. Admin. Code § 22.161.
38. Modification of Protective Order. Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. Breach of Protective Order. In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

SIGNED AT AUSTIN, TEXAS as of the _____ day of _____, 2021.

ADMINISTRATIVE LAW JUDGE

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 been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of Commission Staff or OPC shall 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 shall not apply.

Signature

Party Represented

Printed Name

Date

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

Signature

Party Represented

Printed Name

Date

DOCKET NO. _____

I request to view/copy the following documents:

Document requested	# of Copies	Non-Confidential	Confidential &/or H.S.

Signature

Party Represented

Printed Name

Date