



Filing Receipt

Received - 2022-05-13 02:23:00 PM

Control Number - 52929

ItemNumber - 22

**SOAH DOCKET NO. 473-22-1661
PUC DOCKET NO. 52929**

NOTICE OF VIOLATION BY OCI	§	
ALAMO 1 LLC FOR VIOLATIONS OF	§	
16 TAC § 25.55 CONCERNING	§	BEFORE THE STATE OFFICE
WINTER WEATHER	§	OF
PREPAREDNESS REPORTING	§	
REQUIREMENTS	§	ADMINISTRATIVE HEARINGS

OCI ALAMO 1 LLC’s MOTION FOR ISSUANCE OF SUBPOENA

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Respondent OCI Alamo 1 LLC (OCI), pursuant to Tex. Gov’t Code §§ 2001.089 and 2001.103, and 16 TAC § 22.145, moves for the issuance of a subpoena duces tecum (the Subpoena) to non-party Electric Reliability Council of Texas, Inc. (ERCOT). **Exhibit A** contains a true and correct copy of the Subpoena.

BACKGROUND

This proceeding arises out of a December 8, 2021 Notice of Violation (the NOV) issued to OCI by the Executive Director of the Public Utility Commission of Texas (the Commission Staff) recommending the assessment of a \$1.1 million penalty against OCI for its alleged paperwork violations—namely, alleged failure to timely file two reports. OCI has contested both the alleged violations and the amount of the proposed penalty.

A. The Report, the Alleged Harm, and the Rebuffed Discovery.

The NOV alleges failure by OCI to timely file two Winter Weather Readiness Reports required to be filed at ERCOT and the Commission by 16 TAC § 25.55(c)(2) on December 1, 2021. OCI filed the reports no later than December 9, 2021.

Commission Staff seeks imposition of \$1.1 million in administrative penalties, contending that the alleged failure to file the paperwork is “a serious violation of the highest

degree” based in large part upon its assertion that failure to file such paperwork “endangers public health and safety by posing a reliability risk during the winter months.”

Notably, under Title II of Texas Utilities Code (known as the Public Utility Regulatory Act or PURA), ERCOT is the entity directed by the Legislature to “ensure the reliability and adequacy of the regional electrical network.” PURA § 39.151(a)(2).

In order to defend itself against Commission Staff’s conclusory allegations of a “reliability risk” posed by the alleged untimely paperwork filing, OCI propounded discovery upon Commission Staff seeking information regarding matters such as ERCOT’s communications and documents related to evaluation of reliability risks posed by any potential failure to weatherize generation facilities, ERCOT’s schedules for conducting on-site inspections of such facilities, and other matters related to ERCOT’s considerations of reliability concerns as relevant to the allegations in the NOV and specifically as relevant to solar and battery facilities like OCI’s.

In response to those narrow, targeted discovery requests, Commission Staff has informed OCI that it does not have possession, custody, or control over ERCOT’s information or documents and therefore will not be providing ERCOT’s information or documents in response to OCI’s discovery requests, unless Commission Staff had already received any responsive information from ERCOT. Notably, Commission Staff attached to its NOV to OCI an affidavit from an ERCOT employee as factual support for the allegation of untimely filing contained in the NOV. Further, Commission Staff included in its testimony certain responses to questions it informally posed to ERCOT and to which ERCOT responded. But, despite compelling and relying upon that affidavit from a non-Commission (ERCOT) employee, as well as relying on information that ERCOT provided to Commission Staff at Commission Staff’s request,

Commission Staff now turns on its heel and, when subjected to discovery, asserts that it has no control over ERCOT and is unable or unwilling to produce, in response to OCI's discovery requests, ERCOT's information or documents relevant to the NOV.

B. The Subpoena.

In order to evaluate the veracity, weight, and credibility of Commission Staff's conclusory allegations regarding a "reliability risk" posed by OCI's alleged untimely paperwork, OCI must obtain information from the entity that is charged by the Legislature with ensuring grid reliability—ERCOT. Hence, OCI seeks issuance of a subpoena duces tecum commanding ERCOT, a non-party to this enforcement proceeding, to respond to OCI's discovery requests.

The Subpoena's document requests are narrowly tailored to discover information that divulges ERCOT's own evaluations of any "reliability risk" or harm caused to ERCOT by OCI's alleged untimely paperwork filing.

Obtaining responses from ERCOT—the organization charged by the Legislature with "ensuring" reliability of the grid—is essential to OCI's ability to defend itself against Commission Staff's conclusory allegations of harm or risk to grid reliability. If Commission Staff cannot or will not provide ERCOT's information or documents, then OCI must obtain that information or documents directly from ERCOT, because no entity other than ERCOT possesses information or documents regarding ERCOT's own evaluation of any such reliability risks or harms. It was ERCOT—and only ERCOT—that would have relied upon OCI's filing to develop its assessments of reliability risks and its plans to conduct on-site weatherization inspections. Thus, if OCI's alleged untimely filing caused some harm to grid reliability, interfered with ERCOT's plan for on-site inspections, or somehow affected ERCOT's assessment of grid preparedness, only ERCOT's documents will show the existence (or lack) of evidence of such

harm. And if those documents belie Commission Staff's conclusory allegations, then those ERCOT documents are uniquely and irreplaceably vital to OCI's ability to defend itself against Commission Staff's conclusory allegations and the proposed \$1.1 million dollar fine for allegedly late paperwork.

OCI has conferred with ERCOT's counsel about the issuance of this Subpoena and the discovery that OCI seeks. Without waiving any right to object to the discovery that is sought, ERCOT's General Counsel has agreed to accept service of the Subpoena, if and when it is issued by the Administrative Law Judge thus, service by a law officer will not be necessary—email service will suffice.

Notwithstanding this agreement, and because it is imperative that OCI have access, as soon as possible, to the information it needs to develop and file its testimony in this docket, it may be helpful to the Administrative Law Judge's analysis of this Motion to know that OCI has anticipated objections that ERCOT might have to the discovery sought and believes there are reasonable grounds for issuing the Subpoena as requested.

If ERCOT were to object to the Subpoena's issuance, the objections might rely on two different grounds: (1) the documents sought might contain other entities' confidential information, and (2) discovery from ERCOT is irrelevant to any issue in an enforcement action against OCI for its alleged paperwork violation. As discussed below, any such objections would lack merit, and the Subpoena should issue.

1. Any objection to the Subpoena on the ground it seeks other entities' confidential information would be premature and improper.

At the outset, OCI is sensitive to confidentiality concerns. In an effort to alleviate them, OCI will negotiate with Commission Staff on an agreed Protective Order, which will closely resemble or be identical to the Commission's Standard Protective Order, which is attached. *See*

Exhibit B hereto. The Protective Order provides for two types of confidential information. First, (a) “Protected Materials,” which are defined as “information deemed confidential” and expressly exclude (i) “any information or document contained in the public files of the Commission or any other federal or state agency, court, or local government authority subject to the Public Information Act,” and (ii) “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” the Protective Order. *See* Protective Order ¶ 2. Second, (b) “Highly Sensitive Protected Materials,” which “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.” *Id.* ¶ 6.¹

Under the Protective Order, to designate materials as “Protected Materials,” ERCOT 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

¹ The Protective Order contains the following non-exclusive examples of “Highly Sensitive Protected Materials:” “(a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act; (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.” Protective Order ¶ 6.

merits the Protected Materials designation.” *Id.* ¶ 4. Similarly, to designate materials as “Highly Sensitive Protected Materials,” the documents produced “must bear the designation ‘HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 52929’ (or words to th[at] effect) and must be consecutively Bates Stamped.” *Id.* ¶ 6.

Once so designated, the documents and information in them can only be used in this proceeding. *Id.* ¶ 21. Perhaps most importantly, the Protective Order limits the number of people with access to “Protected Materials,” *id.* ¶¶ 5, 12, 16, and is extremely limiting with respect to “Highly Sensitive Protected Materials,” restricting the number of copies of such material that can be made and permitting only Staff and its attorneys and experts and OCI’s *outside* counsel and consulting experts to review it, *id.* ¶ 7, 8, 9, 16.

Even though OCI has attempted to address the confidentiality concerns in advance, it is important to note that any objection to the Subpoena based on confidentiality grounds would be both premature and improper. Such an objection would be premature because the law places no initial burden on OCI to justify its discovery requests. *Cf. In re Subpoena issued to Dennis Friedman*, 350 F.3d 65, 69 (2nd Cir. 2003) (noting that the discovery regime set out by the federal rules of procedure, on which the Texas discovery rules are based, is extremely permissive and that “the rules generally do not place any initial burden on parties to justify their deposition and discovery requests”); *In re Continental General Tire, Inc.*, 979 S.W.2d 609, 613 (Tex. 1998, orig. proceeding) (holding that “the party resisting discovery must establish that information is a trade secret” before the burden “shifts to the requesting party” to show that it is necessary). Instead, the burden is on the subpoenaed party to assert any objections to a subpoena *after* it has been served. *See, e.g.*, 16 TAC § 22.142(a)(2) (providing that person from whom discovery is

sought may file a motion for protective order, but must specify “the grounds on which a protective order is justified”); *id.* § 22.145(d) (permitting motion to quash subpoena); Tex. R. Civ. P. 176.6(d)-(e) (providing for subpoenaed person to serve objections to the subpoena or move for a protective order).

More important, any blanket objection to the Subpoena because it seeks confidential information would be wholly improper. First, confidential information is routinely sought and produced in commercial litigation.

Second, at worst, the Subpoena might require the production of some other entity’s confidential information, but *not* ERCOT’s. “A party may not ask for an order to protect the rights of another party or witness if that party or witness does not claim protection for himself” 8 Charles Alan Wright, *supra* § 2035, at 475; *accord* *Bush Dev. Corp. v. Harbour Place Assocs.*, 632 F. Supp. 1359, 1364 (E.D. Va. 1986) (holding defendants have no standing to object on grounds of confidentiality to the third party’s production of documents in response to a subpoena); *In re Westinghouse Elec. Corp. Contracts Litig.*, 76 F.R.D. 47, 59 (E.D. Pa. 1977) (holding defendant had no standing to assert that certain documents sought to be discovered were “Secret Documents” of the Canadian government that such government wanted returned).² Here, as the Subpoena does not seek ERCOT’s confidential information, ERCOT has no standing to object to its issuance. Rather, only those other entities would have such standing, and then only after the Subpoena has been served.

² In contrast, a party has standing to object to a subpoena seeking a non-party’s production of *its* documents. *E.g.*, *In re Shell E&P, Inc.*, 199 S.W.3d 125, 129 (Tex. App. – 2005, orig. proceeding); 8 Charles Alan Wright, *supra* § 2035, at 475.

2. The Subpoena seeks relevant information.

Under 16 TAC § 22.141(a), parties may obtain discovery regarding any matter that is not privileged or exempted and that is relevant to the subject matter in the proceeding. The Rule has the same, broad scope as the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 192.3(a). Like the Texas Rules of Civil Procedure, the P.U.C’s Procedural Rules permit subpoenas to non-parties. *See* 16 TAC § 22.145.

The Subpoena’s document requests seek information and documents relevant to and needed for fair adjudication of the NOV’s allegations. For example:

- As pointed out above, Commission Staff alleges that the alleged failure to timely file paperwork posed “reliability risks.” ERCOT is the entity charged by the Legislature to “ensure reliability” of the grid. Accordingly, the Subpoena seeks documents and information produced by or for ERCOT that evaluate such alleged reliability risks—particularly in the context of the weatherization activities and on-site inspections that are directly relevant to the alleged violation.
- The requests seek communications among ERCOT employees related to the subject of the NOV.
- The requests seek ERCOT documents assessing reliability risks posed by facilities such as the solar and battery facilities owned by OCI.

The foregoing are only examples, but they are pertinent examples. And in each of these respects, the requests are directly relevant to the subject matter of the NOV and the alleged reliability risks raised by Commission Staff in its conclusory accusations.

In sum, the Subpoena clearly seeks relevant documents, and the only source of information to directly refute Staff’s conclusory allegations is information from ERCOT itself—

since ERCOT is the entity charged with ensuring reliability and inspecting facilities for compliance with weatherization requirements. Accordingly, the information and documents sought are necessary for OCI to mount its defense to the NOV's accusations and the Subpoena should issue.

WHEREFORE, OCI respectfully requests that the ALJ issue the attached Subpoena.

Respectfully submitted,

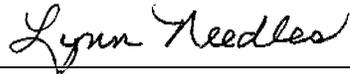
ENOCH KEVER PLLC

Carolyn Shellman
State Bar No. 18196200
William A. Moore
State Bar No. 00794330
Mandy Kimbrough
State Bar No. 24050613
7600 N. Capital of Texas Hwy
Building B, Suite 200
Austin, Texas 78731
(512) 615-1200 (phone)
(512) 615-1198 (fax)
cshellman@enochkever.com
bmoore@enochkever.com
mkimbrough@enochkever.com

By: *Carolyn E. Shellman*
Attorneys for OCI Alamo 1 LLC

CERTIFICATE OF SERVICE

I certify that on May 13, 2022, a true copy of the foregoing document was served by email, as directed in the July 16, 2020 Second Order Suspending Rules in Project No. 50664, on all parties of record.



Lynn Needles

EXHIBIT A

Subpoena

**SOAH DOCKET NO. 473-22-1661
PUC DOCKET NO. 52929**

NOTICE OF VIOLATION BY OCI	§	
ALAMO 1 LLC FOR VIOLATIONS OF	§	BEFORE THE STATE OFFICE
16 TAC § 25.55 CONCERNING	§	
WINTER WEATHER	§	OF
PREPAREDNESS REPORTING	§	ADMINISTRATIVE HEARINGS
REQUIREMENTS	§	

THE STATE OF TEXAS

**SUBPOENA FOR THE PRODUCTION OF INFORMATION OF
THE ELECTRIC RELIABILITY COUNCIL OF TEXAS**

To: ERCOT

Registered Agent:

Mr. Chad Seely, General Counsel
Electric Reliability Council of Texas
8000 Metropolis Drive, Bldg E, Ste 100
Austin, Texas 78744
chad.seely@ercot.com

Greetings:

YOU ARE HEREBY COMMANDED to produce responses certified under oath to the certain requests for information attached as Attachment A, propounded at the instance of OCI Alamo 1 LLC in the above-styled and numbered Docket, by and through their legal counsel. Additionally, you are commanded to produce responsive materials within 20 days of being served this subpoena, at the office of Enoch Kever PLLC, Attn: Carolyn E. Shellman, 7600 N. Capital of Texas Highway, Building B, Suite 200, Austin, TX 78731.

Pursuant to Texas Rule of Civil Procedure 176.8(a), **ERCOT** is notified that failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

Issued at the request of OCI Alamo 1 LLC and their attorney of record, Carolyn E. Shellman, and given under my hand and seal of the State Office of Administrative Hearings, this ____ day of May, 2022.

[name]
Administrative Law Judge
State Office of Administrative Hearings

ATTACHMENT A

OCI Alamo 1 LLC's First RFIs to ERCOT

**SOAH DOCKET NO. 473-22-1661
PUC DOCKET NO. 52929**

NOTICE OF VIOLATION BY OCI	§	
ALAMO 1 LLC FOR VIOLATIONS OF	§	BEFORE THE STATE OFFICE
16 TAC § 25.55 CONCERNING	§	
WINTER WEATHER	§	OF
PREPAREDNESS REPORTING	§	ADMINISTRATIVE HEARINGS
REQUIREMENTS	§	

**OCI ALAMO 1 LLC’S FIRST REQUEST
FOR INFORMATION TO THE ELECTRIC RELIABILITY COUNCIL OF TEXAS**

OCI Alamo 1 LLC (“OCI”) requests that you answer and provide information in response to the attached questions under oath. OCI further requests that you answer the questions in the order in which they are asked with as much detail so as to fully present all of the relevant facts.

Instructions

Please answer the attached questions on separate pages and copy the question immediately above the answer to each question. Following each answer, please identify the witness or witnesses who will sponsor each of your answers at the hearing in this PUC Docket No. 52929. These questions are continuing in nature and, should there be a change in circumstances that would modify or change any of your answers, then, in such case, please change or modify such answer and submit such changed answer as a supplement to the original answer within twenty (20) calendar days of your discovery that such change or modification is appropriate.

In answering these requests for information, you are requested to furnish such information as is available to you, including information which you are able to obtain by due diligence from your present or former attorneys, accountants, investigators, consultants, employees, agents, and persons acting on your behalf. To the extent any information responsive to a general question is also responsive to another more specific question, provide the information in response to the more specific request.

To the extent any question calls for you to provide documents, furnish such documents in native format, with all formulas intact.

If you are unable to answer any request fully and completely after exercising due diligence to make inquiry and to secure information, you are to answer such request as fully and completely

as you can and to specify the portions which you are unable to answer in such request. In addition to specifying those portions, you are to state with regard to each portion:

- (1) The fact on which you base the contention that you are unable to answer that portion;
- (2) The knowledge, information, and belief you have concerning that portion; and
- (3) The acts done and inquiries made by you in attempting to answer such request.

The singular includes the plural and the plural includes the singular.

Masculine, feminine, or neuter pronouns do not exclude the other genders.

The words “document” and “documents” have the broadest meaning that can be ascribed to them pursuant to the Texas Rules of Civil Procedure. Among other things, the words “document” and “documents” mean the final form and **all drafts and revisions of any kind** of written or graphic matter, original or reproduced copy, however produced or reproduced, of any kind and of every kind, and all copies therefrom that are different in any way from the original regardless of whether designated “confidential,” “privileged,” or otherwise restricted. Without limiting the generality of the foregoing, the words “document” and “documents” also include information stored or maintained on, or which could be reproduced from, any form of physical or electronic storage or storage device including, without limitation, film, microfilm, computer printout, disk or diskette, magnetic tape, cassette, phonographic disc, videotape, compact disk, DVD, flash drive or similar means.

The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to bring within each request all documents which might otherwise be construed as outside its scope.

The words “communication” and “communications” include, without limitation of their generality, both written and oral: statements, representations, discussions, conversations, speeches, meetings, remarks, questions, answers, panel discussions and symposia. These words include, without limitation of their generality, both communications and statements that are face-to-face and those that are transmitted by any writing or document or by media of any kind. These words also include any communications and statements that are transmitted electronically or wirelessly, through means such as, but not limited to, email or text messages.

The words “identify” and “identification,” when used with respect to a natural person or persons, mean to state the name, address(es) and telephone number(s) of each such person. If any

of the foregoing information is not available, state any other available means of identifying such person.

The words “identify” and “identification,” when used in reference to a person other than a natural person, mean to set forth its:

- (1) full name or title;
- (2) nature or organization, including the state under which the same was organized or incorporated;
- (3) address and telephone number (with area code prefix); and
- (4) principal line of business.

If any of the foregoing information is not available, state any other available means of identifying such person.

The words “identify” and “describe,” when used in reference to a fact, mean to state not only the fact itself, but also:

- (1) its date, time, and place;
- (2) the name, address, and telephone number of each person with knowledge of the fact;
- (3) whether the act is supported by an oral communication, a document, or other event; and
- (4) any other evidence that supports such fact.

The words “identify” and “identification,” when used in reference to a document, mean to state:

- (1) its date;
- (2) its author;
- (3) its addressee;
- (4) the type of document (e.g., letter, memorandum, receipt, invoice, schedule, report, telegram, chart, photograph, etc.); and
- (5) its present location and identity of its custodian. If any document was, but is no longer, in your possession, custody, or control, or is no longer in existence, explain why.

If any of the foregoing information is not available, state any other available means of identifying such document. If a document is one of a series of pages contained in a book, pamphlet, binder, folder, microfilm (or other storage device), include in your identification of such document(s) any

available numerical reference (or other aid) to the pages and line or other portion thereof at which the information referred to can be found. A true and correct copy of any document may be produced and filed with your Answers hereto in lieu of the above information.

The words “identify” and “describe,” when used with respect to an oral communication, mean:

- (1) to state the substance of each such oral communication;
- (2) to state the exact words used by each person participating in the oral communication;
- (3) to identify each speaker;
- (4) to identify each person present at the making or reception of such oral communication;
- (5) to specify the date, time, and place of each oral communication;
- (6) to identify each person repeating such oral communication;
- (7) to identify every document which records, memorializes, or relates to all or part of such communication; and
- (8) to identify the mode of such communication (e.g., telephone, face-to-face, etc.).

The words “person” and “persons” as used herein, mean all individuals and entities, and shall be deemed to include natural persons, firms, partnerships, associations, organizations, joint ventures, corporations, and any other entities.

The words “relate,” “related,” “relates,” and “relating,” as used herein, mean involving, relating to, referring to, having any relationship to, pertaining to, evidencing or constituting evidence of, in whole or in part.

All computer readable data should be provided on CD ROMs, DVDs or flash drives for use on PC-compatible machines. OCI will provide a sufficient amount of CDs, DVDs, or flash drives if requested by you before time for your response.

If you have any question concerning the attached Questions or any of these instructions, please contact Carolyn Shellman at (512) 615-1203.

Unless the specific question permits a longer time period, answers to this Request for Information should be served on OCI and filed with the Public Utility Commission of Texas within twenty (20) calendar days from your receipt of said request. Service on OCI should be made as follows:

Carolyn Shellman
William A. Moore
Mandy Kimbrough
ENOCH KEVER PLLC
7600 N. Capital of Texas Hwy
Building B, Ste 200
Austin, Texas 78731
(512) 615-1198 (fax)
cshellman@enochkever.com
bmoore@enochkever.com
mkimbrough@enochkever.com

Respectfully submitted,

ENOCH KEVER PLLC
Carolyn Shellman
State Bar No. 18196200
William A. Moore
State Bar No. 00794330
Mandy Kimbrough
State Bar No. 24050613
7600 N. Capital of Texas Hwy
Building B, Suite 200
Austin, Texas 78731
(512) 615-1200 (phone)
(512) 615-1198 (fax)
cshellman@enochkever.com
bmoore@enochkever.com
mkimbrough@enochkever.com

By: _____
Attorneys for OCI Alamo 1 LLC

CERTIFICATE OF SERVICE

I certify that on May ___, 2022, a true copy of OCI Alamo 1's First Request for Information was served by email, as directed in the July 16, 2020 Second Order Suspending Rules in Project No. 50664, on the following:

Chad Seely
Electric Reliability Council of Texas
8000 Metropolis Drive, Building E
Suite 100
Austin, Texas 78744
chad.seely@ercot.com

Lynn Needles

ADDITIONAL DEFINITIONS

1. The words “you,” “your,” “ERCOT,” “ERCOT Staff,” and “ERCOT personnel” mean the Electric Reliability Council of Texas, Inc., its attorneys, employees, consultants, contractors, or representatives.
2. “Concerning” means constituting, arising out of, incident to, referring to, mentioning, bearing upon, reflecting, evidencing, affecting, concerning or relating in any manner to the transaction, communication, document, individual, entry, act, object, conference, activity or thing identified.
3. “NOV” or “Notice of Violation” means the Notice of Violation filed in Docket No. 52929.
4. “ERCOT Protocols” or “Protocols” means the ERCOT Protocols as such exist or existed at the time period in question.
5. “PUC” or “PUCT” means the Public Utility Commission of Texas.
6. “PUC Staff” or “PUCT Staff” means employees of the Public Utility Commission of Texas, along with its attorneys, consultants, contractors, or representatives engaged to assist those employees in performing the duties and responsibilities of the Public Utility Commission of Texas.

**OCI ALAMO 1 LLC'S FIRST REQUEST
FOR INFORMATION TO ERCOT**

- OCI 1-1** Please provide all communications between ERCOT and PUC Staff related to the allegations described in PUC Staff's Notice of Violation filed in this proceeding (the NOV or PUC Docket No. 52929) regarding OCI Alamo 1, LLC (OCI).
- OCI 1-2** Please provide all communications between ERCOT employees related to the allegations described in the NOV.
- OCI 1-3** Please provide all communications between ERCOT and any PUC Commissioner related to: (a) the allegations described in the NOV; (b) any entity's alleged failure to timely file a Winter Weather Readiness Report (WWR); or (c) proposed enforcement actions or administrative penalties for any alleged violation of 16 TAC § 25.55.
- OCI 1-4** Please provide ERCOT's schedule, as it existed on December 1, 2021, for conducting inspections of generating facilities to evaluate their preparations for winter weather.
- OCI 1-5** Please provide ERCOT's schedule, as it existed on December 8, 2021, for conducting inspections of generating facilities to evaluate their preparations for winter weather.
- OCI 1-6** Please provide ERCOT's schedule, as it existed on December 15, 2021, for conducting inspections of generating facilities to evaluate their preparations for winter weather.
- OCI 1-7** Please provide ERCOT's schedule, as it existed on December 22, 2021, for conducting inspections of generating facilities to evaluate their preparations for winter weather.
- OCI 1-8** Please provide ERCOT's schedule, as it existed on December 29, 2021, for conducting inspections of generating facilities to evaluate their preparations for winter weather.
- OCI 1-9** Please provide all documents that describe how ERCOT prioritized inspections of generation facilities to validate generation facilities' WWRs and assess those generation facilities' preparations for winter weather.
- OCI 1-10** Please provide all documents and communications that describe how ERCOT determined the method, manner, and nature of the inspections ERCOT or its inspection contractor(s) would conduct in order to validate the generation facilities' WWRs and assess the efficacy of those generation facilities' preparations for winter weather.
- OCI 1-11** Please provide all communications within ERCOT or between ERCOT and its winter weather preparation inspection contractor(s)—including without limitation Filsinger Energy Partners—and all documents created by or for ERCOT or its winter weather preparation inspection contractor(s), pertaining to: (a) prioritization of inspections of generation facilities to evaluate preparations for winter weather, including without limitation communications and documents prepared pursuant to the direction in PURA § 35.0021(c-1) that ERCOT “shall prioritize inspections . . . based on risk level”; (b) identification of solar facilities to which site visits would or did occur relating to assessment of preparations for winter weather; (c) identification of energy storage facilities to which site visits would or did occur relating to assessment of preparations for winter weather; (d) evaluations of potential impacts to ERCOT grid reliability posed by any hypothetical or actual failure to prepare solar facilities for winter weather; (e) evaluations of potential impacts to ERCOT grid reliability posed by any hypothetical

or actual failure to prepare energy storage facilities for winter weather; (f) inspections of OCI facilities; (g) receipt or evaluation of any WWRR filed by OCI; and (h) impacts to onsite inspection schedules caused by any alleged untimely filing of a WWRR by OCI.

- OCI 1-12** Please provide a list identifying every generation facility, by name, location, fuel type (e.g., coal, natural gas, nuclear, solar, wind, etc.), total MW installed capacity, and date of on-site inspection, at which ERCOT or its contractor(s) conducted an on-site inspection in December 2021 or January 2022 to assess preparations for winter weather.
- OCI 1-13** Please provide a list specifically identifying each solar generation facility, by name, owner, location, total MW installed capacity, and date of on-site inspection, at which ERCOT or its contractor(s) conducted an on-site inspection in December 2021 or January 2022 to assess preparations for winter weather.
- OCI 1-14** Please provide a list specifically identifying each energy storage facility, by name, owner, location, total MW installed capacity, and date of on-site inspection, at which ERCOT or its contractor(s) conducted an on-site inspection in December 2021 or January 2022 to assess preparations for winter weather.
- OCI 1-15** For each facility identified in RFIs 1-13 and 1-14, please provide all documents and communications related to scheduling each on-site inspection identified in the responses to those RFIs.
- OCI 1-16** For each facility identified in RFIs 1-13 and 1-14, please provide all documents and communications containing or related to ERCOT's and its contractor(s) assessments of any threat to, or actual detrimental impact on, ERCOT grid reliability caused by: (a) any scheduling or re-scheduling of any on-site inspection of the facility; or (b) any insufficient preparation for winter weather at the facility.
- OCI 1-17** Please provide a detailed description and quantification of every harm to ERCOT grid reliability ERCOT asserts was actually and directly caused by the alleged untimely filing of a WWRR by OCI, along with all documents, calculations, and methodologies that demonstrate any such alleged harm to ERCOT grid reliability.
- OCI 1-18** Please specifically identify and quantify every harm that ERCOT asserts was actually and directly caused by the alleged untimely filing of a WWRR by OCI in each of the following categories, along with all documents, calculations, and methodologies that demonstrate any alleged harm: (a) public health; (b) public safety; (c) public economic welfare; (d) economic harm to property; and (e) economic harm to the environment.
- OCI 1-19** Please provide all documents and communications that support an allegation (as contained within the NOV) that any untimely filing of a WWRR is non-remediable.
- OCI 1-20** Please provide all documents and communications related to any circumstance, within the last 10 years, in which ERCOT did not timely file with the PUC any required report, response, notification, or any other document.
- OCI 1-21** Please provide all documents and communications in ERCOT's possession related to any circumstance, within the last 10 years, in which PUC Staff did not timely file at the PUC or with any tribunal any required report, pleading, response, notification, or any other document.

- OCI 1-22** Please provide all communications between ERCOT and PUC Staff, within the last 10 years, in which ERCOT requested an extension of time or a revised deadline on which to file or provide any document, report, notification, or other document.
- OCI 1-23** Please identify each distribution list ERCOT used to disseminate information relevant to PUC Substantive Rule 25.55 and the WWRRs to OCI, including the email address(es) associated with OCI for each distribution list.
- OCI 1-24** Please provide all communications between ERCOT and OCI between September 1, 2021 and March 1, 2022 regarding:
- a. the requirement and process to file a WWRR in December 2021;
 - b. the filing of a WWRR by OCI;
 - c. weatherization of OCI facilities;
 - d. the NOV filed in this Docket No. 52929;
 - e. inspections of any OCI facilities for compliance with weatherization requirements;
 - f. any other subject matter related to the allegations in the NOV filed in this Docket No. 52929; and
 - g. anything not covered above that is related to the filing of any document, report, or the deadlines related to the filing of same, specifically including all communications related to winter readiness reporting at ERCOT or at the PUCT.
- OCI 1-25** Please provide the full text of the WWRRs filed by OCI, along with the date the WWRRs were received by ERCOT.
- OCI 1-26** Please provide copies of all communications between ERCOT and PUCT Staff in 2021 regarding:
- a. the development, requirements contained in, process to be followed to publicize, implement and enforce, and the adoption of PUC Substantive Rule 25.55; and
 - b. the development, requirements contained in, and process to be followed to publicize, implement, receive and review the WWRR form.
- OCI 1-27** Please provide copies of all internal ERCOT documents and any communications between ERCOT and PUCT Staff regarding:
- a. the use of DocuSign as a means for distributing and/or receiving the WWRR form; and
 - b. the training ERCOT staff received on PUCT Substantive Rule 25.55, the WWRR, and the submission/filing process.
- OCI 1-28** Please provide a copy of each Request for Information (formal or informal) ERCOT received from PUCT Staff related to PUCT Docket No. 52929 and ERCOT's responses to such Requests, including any communication regarding the request(s) (a) between ERCOT and PUCT Staff or (b) among ERCOT employees.
- OCI 1-29** Please provide a list of the date, time, sender, and recipient for each attempt by ERCOT to send to OCI the link to the DocuSign process by which OCI was to submit its WWRRs.

OCI 1-30 For each attempt listed in response to RFI 1-29, please provide a copy of the communication from ERCOT and indicate whether the communication was successful or unsuccessful (e.g., the communication would be unsuccessful if it “bounced” back to ERCOT, was identified as “undeliverable,” or otherwise identified by ERCOT’s systems as not received by OCI).

OCI 1-31 For each attempt listed in response to RFI 1-29 that was identified in response to RFI 1-30 as unsuccessful, please provide documentation explaining why or how ERCOT identified the attempt as unsuccessful and please provide any and all information available to ERCOT identifying any and all reasons that the message attempt was unsuccessful.

EXHIBIT B

Protective Order

**P.U.C. DOCKET NO. 52929
SOAH DOCKET NO. 473-22-1661**

NOTICE OF VIOLATION BY OCI	§	BEFORE THE
ALAMO 1 LLC FOR VIOLATIONS OF	§	
16 TAC § 25.55 CONCERNING	§	PUBLIC UTILITY COMMISSION
WINTER WEATHER PREPAREDNESS	§	
REPORTING REQUIREMENTS	§	OF TEXAS

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. 52929" (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, 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. 52929" (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 Materials.** 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. 52929. 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. 52929 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

³ Tex. Gov't Code § 551.001-.146.

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

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 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

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. 52929. 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

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