



## Filing Receipt

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

**OCI ALAMO 1 LLC's OBJECTIONS AND  
MOTION TO STRIKE TESTIMONY OF RAMYA RAMASWAMY**

COMES NOW OCI ALAMO 1 LLC (OCI) and files these objections to, and motion to strike, portions of the direct testimony of Commission Staff witness Ramya Ramaswamy.

**I. ARGUMENT**

**A. Unqualified, Improper Legal Opinion**

OCI objects to each and every statement in Ms. Ramaswamy's testimony that consists of legal opinion, arguments, and conclusions, which are impermissible and inadmissible under Texas Rule of Evidence 702. "Statutory construction is a question of law for the court to decide."<sup>1</sup> In addition to such legal opinion testimony being improper because it is, in fact, legal opinion, OCI also objects to such testimony because it is beyond Ms. Ramaswamy's expertise, as described in her own testimony. Texas Rule of Evidence 702 sets the framework for analyzing the propriety of "expert" testimony:

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

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<sup>1</sup> *Tex. DOT v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002).

“An expert witness may not testify regarding an opinion on a pure question of law.”<sup>2</sup> Even if Ms. Ramaswamy qualifies as an expert on application of the relevant statutes and rules, she is prohibited from testifying directly to her understanding of the law—she may only apply legal terms to her factual understanding of the factual matters in issue.<sup>3</sup> An “expert” must also be qualified to provide expert testimony within the area of their expertise, by knowledge, skill, experience, training, or education.

But the burden is on the proponent of the expert to establish her qualifications.<sup>4</sup> Commission Staff and Ms. Ramaswamy fail to do so.

And her testimony does not help the trier of fact. Expert opinion is unnecessary to determine whether OCI failed to submit a report on time—that is simply a fact issue.

In sum, significant portions of Ms. Ramaswamy’s testimony are objectionable and should be stricken for lack of qualifications, testimony beyond the scope of any qualifications, failure to help the trier of fact, and for offering legal opinions that are not evidence.

OCI first objects to Ms. Ramaswamy’s repeated offering of her legal opinion. Regardless of the scope or basis of a witness’s alleged expertise, offering legal opinion disguised as “expert testimony” is improper and those legal opinions should be struck.

The Texas Supreme Court has stated that statutory interpretation is a matter of law to be decided by courts. Accordingly, every statement by Ms. Ramaswamy that expresses her opinion regarding what a provision of PURA or the Commission’s rules means is improper and not a valid subject of testimony. It is legal argument, not expert testimony, and should be stricken.

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<sup>2</sup> *Upjohn Co. v. Rylander*, 38 S.W.3d 600, 611 (Tex. App.—Austin 2000, pet. denied).

<sup>3</sup> *Greenberg Traurig of N.Y., P.C. v. Moody*, 161 S.W.3d 56, 94 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

<sup>4</sup> *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 718 (Tex. 1998) (“The offering party must demonstrate that the witness ‘possess[es] special knowledge as to the very matter on which he proposes to give an opinion.’”).

Notably, this approach mirrors exactly the approach Commission Staff has taken in objecting—successfully—in multiple cases to witness testimony as improper legal opinion.<sup>5</sup> OCI simply seeks to apply to Commission Staff witnesses the same standard that Commission Staff applies to other parties. The portion of Ms. Ramaswamy’s direct testimony that constitutes nothing other than her legal opinion, legal argument, or legal conclusion is as follows (bold emphasis added):

- Section IX, page 13, lines 22-27 (opining on meaning of 16 TAC §25.55(c)(2)):

**“It is my opinion that [OCI] initially violated 16 TAC § 25.55(c)(2) twice on December 1, 2021 by failing to timely submit the winter weather readiness reports for its generation and energy storage resources. It is also my opinion that [OCI] continued to violate 16 TAC § 25.55(c)(2) for each resource on each day after December 1, 2021 that [OCI] failed to submit the required winter weather readiness reports. I recommend that a finding of fact be made to this effect.”**

OCI’s objection to the above-recited, objectionable, and improper portion of Ms. Ramaswamy’s testimony is focused on her legal opinions, legal analysis, and legal conclusions. The portions quoted above that surround those statements of legal opinion, legal analysis, and legal conclusions rely entirely on those legal conclusions and are thus equally objectionable and improper.

Legal opinions, legal analysis, and legal conclusions are not evidence. Accordingly, the identified portion of Ms. Ramaswamy’s direct testimony—and any portions found to rely upon those—is objectionable, improper, and should be stricken. OCI respectfully asks Your Honor to strike the entirety of Ms. Ramaswamy’s testimony quoted and referenced above.

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<sup>5</sup> See Docket No. 52451-132, Commission Staff’s Objection to and Motion to Strike Portions of the Rebuttal Testimony of Jeremiah W. Cunningham, [https://interchange.puc.texas.gov/Documents/52451\\_132\\_1183659.PDF](https://interchange.puc.texas.gov/Documents/52451_132_1183659.PDF); Docket No. 52322-171, Commission Staff’s Objection to and Motion to Strike Portions of the Direct Testimony of Amanda Frazier, [https://interchange.puc.texas.gov/Documents/52322\\_171\\_1147652.PDF](https://interchange.puc.texas.gov/Documents/52322_171_1147652.PDF); Docket No. 52322-172, Commission Staff’s Objection to and Motion to Strike Portions of the Direct Testimony of James C. Spindler, PH.D, [https://interchange.puc.texas.gov/Documents/52322\\_172\\_1147654.PDF](https://interchange.puc.texas.gov/Documents/52322_172_1147654.PDF).

## **B. Hearsay and Unsupported Testimony**

Ms. Ramaswamy's testimony is also replete with hearsay that is objectionable, improper, and should be stricken. She relies on statements made by others and testifies—relying on those statements—that OCI's allegedly late report created a reliability risk, justifying the imposition of exorbitant penalties. Hearsay is prohibited under the Texas Rules of Evidence, which apply to this proceeding. Hearsay refers to a statement made by a person who is not testifying at the current trial or hearing that a party offers in evidence to prove the truth of the matter asserted.<sup>6</sup> Any statement—or equivalent—made by a person not testifying in this proceeding is hearsay if offered to prove the truth of the matter asserted.

Ms. Ramaswamy asserts that OCI's alleged untimely paperwork created “uncertainty in the reliability planning process” and “a potential hazard”:

“The failure to timely submit a winter weather readiness report resulted in uncertainty in the reliability planning process, specifically whether the resource was fully prepared or if any deficiencies could hinder its reliable operation during the winter storm.

...

Because [OCI] did not submit the required winter weather readiness reports on December 1, 2021, Commission Staff and ERCOT were unable to discern whether the [OCI] resources were prepared for winter weather conditions at the state of the winter season or ... by what date the resources would be prepared. ... The uncertainty caused by the lack of information created a potential hazard to the reliability of the electric grid, and, therefore, to the health, safety, and economic welfare of the public.”

That Ramaswamy testimony, at page 7, lines 21-23 and at page 12, lines 1-11, should be stricken as impermissible direct hearsay.

Ms. Ramaswamy asserts that OCI's alleged untimely paperwork filing created uncertainty that thereby created “a potential hazard to the reliability of the electric grid.” But the Legislature,

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<sup>6</sup> Tex. R. Evid. 801(d); Docket No. 50284-36, SOAH Order No. 3, Ruling on Motion to Strike, [https://interchange.puc.texas.gov/Documents/50284\\_36\\_1075713.PDF](https://interchange.puc.texas.gov/Documents/50284_36_1075713.PDF).

in PURA § 39.151(a)(2), directs *ERCOT* to “ensure the reliability and adequacy of the regional electrical network.” Both Ms. Ramaswamy and Jeffrey Wirth, who relies upon Ms. Ramaswamy’s testimony,<sup>7</sup> are employees of the PUC,<sup>8</sup> not ERCOT. Ms. Ramaswamy’s testimony asserts various concerns or impacts or analyses regarding reliability that supposedly were held, believed, or performed by ERCOT, and lists impacts on activities that are within ERCOT’s responsibilities, not Commission Staff’s.

Stated succinctly, Ms. Ramaswamy attempts to testify *for ERCOT* and testifies to several matters (reliability risks, hazards) that are outside of her expertise, personal knowledge, or even realm of operation. She is an employee of the PUC, not ERCOT. And Commission Staff has taken the position in this docket—conveyed in conversations and reflected in its filed objections to discovery—that it cannot answer RFIs that OCI has propounded upon it seeking ERCOT’s information and documents, on the theories that the PUC and ERCOT are wholly separate entities, arguing that Commission Staff cannot compel ERCOT to provide information nor respond to the RFIs on behalf of ERCOT. By the same token, then, Commission Staff cannot be permitted to attempt to testify *for ERCOT*.

Ms. Ramaswamy asserts that *ERCOT* was “unaware” of certain things and was “unable” to do certain things because of late-filed reports:

Because Alamo 1 did not submit the required winter weather readiness reports on December 1, 2021, Commission Staff **and ERCOT were unable** to discern whether the Alamo 1 resources were prepared for winter weather conditions at the start of the winter season or, to the extent they were not prepared by December 1, 2021, by what date the resources would be prepared for winter. Moreover, Commission Staff **and ERCOT were unaware** which preparation activities may have been outstanding, the anticipated need for future scheduled maintenance dates, or how those circumstances could affect reliability planning for this generation entity in the event of extreme winter weather during the winter 2021

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<sup>7</sup> See, e.g., Wirth Direct at 12, nn.5 & 6.

<sup>8</sup> *Id.* at 1:6-7; Ramaswamy Direct at 1:3-5.

season. The uncertainty caused by the lack of information created a potential hazard to the reliability of the electric grid, and, therefore, to the health, safety, and economic welfare of the public.

Additionally, 16 TAC § 25.55(c)(3), (4), and (6)(B) assigned expeditious deadlines **to ERCOT** and Commission Staff to review the winter weather readiness reports for approximately 850 generation entities in the ERCOT region. Because Alamo 1's winter weather readiness reports were not submitted by December 1, 2021, **ERCOT and Commission Staff were unable** to timely consider Alamo 1's circumstances at the outset of the report evaluation period.<sup>9</sup>

Ms. Ramaswamy—an employee of the PUC, which is separate and distinct from ERCOT—cannot and could not have any knowledge regarding what ERCOT was or is “aware” of, or what ERCOT was or is “able” to do, unless ERCOT communicated that to her. She seeks to tell this tribunal (without directly quoting ERCOT) what ERCOT has allegedly communicated to Commission Staff out of court, and offers testimony based on that out-of-court communication for the truth of what was communicated out of court. Accordingly, every statement by Ms. Ramaswamy regarding ERCOT's awareness, ability, or the lack thereof, is impermissible hearsay and should be stricken.

Importantly, this is not just a matter of striking the phrases “and ERCOT” or “ERCOT and.” The entire substance of Ms. Ramaswamy's testimony about supposed reliability impacts is founded on impacts to activities that only ERCOT—not Commission Staff—performs. The alleged reliability impact that Ms. Ramaswamy testifies to is based on alleged unawareness about winter weather readiness, about any necessary scheduled maintenance, and about reliability planning. But the operative rule—16 TAC § 25.55—assigns to ERCOT, not Commission Staff, the obligation to assess the reports and act on them. Under 16 TAC § 25.55(c)(3), “ERCOT must file with the commission comprehensive checklist forms” for assessing each unit's winter readiness, which must “include checking systems and subsystems containing cold weather critical

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<sup>9</sup> Ramaswamy Direct at 12:1-17 (emphasis added).

components.” And under that same rule paragraph, ERCOT—not the Commission Staff—must tailor those checklist forms to each unit’s particular situation: “ERCOT must use a generation entity’s winter weather readiness report submitted under paragraph (2) of this subsection to adapt the checklist to the inspections of the generation entity’s resources.” Thus, it is ERCOT—not Commission Staff—that the Commission, via its rule, expressly directed to review the generation entity’s reports and use them to tailor specific checklists by which to assess whether the particular unit poses any reliability risk.

Similarly, under 16 TAC § 25.55(c)(4), ERCOT, not the Commission, is obligated to take action. That paragraph of the Commission’s rule mandates that “ERCOT must file with the commission a compliance report that addresses whether each generation entity has submitted the winter weather readiness report ... and whether the generation entity submitted an assertion of good cause for noncompliance.”

And the only other paragraph of the rule cited by Ms. Ramaswamy (16 TAC § 25.55(c)(6)(B)) simply assigns a joint responsibility to Commission Staff and ERCOT: “Commission staff will work with ERCOT to expeditiously review notices asserting good cause for noncompliance.”

Regarding the assessment of planning and reliability risks, the Commission’s rule, at 16 TAC § 25.55(d)(1), also directs ERCOT—not Commission Staff—to conduct inspections and to prioritize those inspections based on reliability risk: “ERCOT must conduct inspections of resources for the 2021-2022 winter weather season and must prioritize its inspection schedule based on risk level.” Thus, it is clear that ERCOT—not Commission Staff—is the entity that assesses the reliability “risk level” and it is ERCOT—not Commission Staff—that is obligated to



conduct inspections based upon its assessment of reliability “risk level” gleaned from its analysis of the information it has received from generation owners.

Ms. Ramaswamy’s testimony about ERCOT’s “uncertainty” and “unawareness” and “inability” to assess reliability is an attempt by Commission Staff to testify *for ERCOT* about obligations specifically assigned by the Commission’s own rule to ERCOT—not to Commission Staff. As a Commission Staff employee, Ms. Ramaswamy has no knowledge regarding ERCOT’s awareness of anything or ERCOT’s inability to do anything, unless ERCOT has told Ms. Ramaswamy about those things. And if ERCOT has done so, that was an out-of-court statement, which Ms. Ramaswamy now seeks to offer (without quoting it) for the truth of the matter asserted. Accordingly, it is impermissible hearsay and should be stricken from Ms. Ramaswamy’s testimony.

Moreover, Ms. Ramaswamy’s testimony regarding alleged “reliability risks” is contravened by ERCOT’s own public report on its assessment of precisely such reliability risks. On January 17, 2022, ERCOT presented its Winterization and Inspection Update presentation at the ERCOT Special Board of Directors Meeting.<sup>10</sup> In that presentation, ERCOT stated that its inspections—conducted between December 2–22, 2021—revealed only a handful of *actual* deficiencies, *none of which it labeled as a reliability risk*. No deficiencies were identified at Intermittent Renewable Resource sites (such as OCI’s solar facility). And at no point in ERCOT’s Final Report,<sup>11</sup> filed January 21, 2022, does ERCOT contend that those *actual* deficiencies—let alone late filings—were “reliability risks.” It instead noted that deficiencies were few and far

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<sup>10</sup> Item 3: Weatherization and Inspection Update, [https://www.ercot.com/files/docs/2022/01/17/3\\_Weatherization\\_and\\_Inspection\\_Update.pdf](https://www.ercot.com/files/docs/2022/01/17/3_Weatherization_and_Inspection_Update.pdf); see also Winter Weather Readiness, <https://www.ercot.com/gridinfo/generation/winterready>.

<sup>11</sup> ERCOT’s Final Report on Winter Weather Readiness Inspections, Project No. 52786 & 52787, [https://www.ercot.com/files/docs/2022/01/21/52786\\_52787\\_ERCOT\\_Final\\_Report\\_on\\_Winter\\_Weather\\_Readiness\\_Inspections.pdf](https://www.ercot.com/files/docs/2022/01/21/52786_52787_ERCOT_Final_Report_on_Winter_Weather_Readiness_Inspections.pdf).

between, and its inspections revealed that “the owners of generation and transmission infrastructure in the ERCOT region have taken the Commission’s weatherization mandate seriously and have demonstrated good faith in complying with the rule’s requirements.”<sup>12</sup> Accordingly, Ms. Ramaswamy’s testimony about “reliability risks” or “potential hazards” is unsupported, is hearsay, and is shown to be demonstrably false by ERCOT’s public report.

The governing procedural rule, 16 TAC § 22.221(a), provides that the “Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases.” Pursuant to Texas Rule of Evidence 802, evidence is hearsay when its probative value depends in whole or in part upon the competency or credibility of some person other than the person by whom it is sought to be produced.<sup>13</sup> The inclusion of hearsay testimony impermissibly prejudices OCI because it deprives OCI of the opportunity to test the veracity of the statements being made about what ERCOT was “unaware” of or “unable” to do and the allegedly “inherent” “reliability risks” that follow from that unawareness or inability.

Therefore, OCI objects to the following portions of Ms. Ramaswamy’s testimony and requests that they be stricken (emphasis added):

- Section V, page 5, lines 17-20 (testifying about what was feasible for ERCOT to do):

“Due to the short timeline between [adopting 16 TAC § 25.55(c)(1) and winter], it was **not feasible for ... ERCOT** to physically inspect the approximately 850 generation and energy storage resources...”

- Section V, page 6, lines 1-2 (testifying about what information ERCOT would glean from a report):

“[T]he **reports also provided ... ERCOT with critical information** about the state of readiness of ERCOT’s resource fleet ...”

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<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Texarkana Mack Sales, Inc. v. Flemister*, 741 S.W.2d 558, 562 (Tex. App.—Texarkana 1987, no writ).

- Section V, page 6, lines 8-14 (testifying about ERCOT’s receipt of information):

“The winter weather readiness reports served as a means of demonstrating compliance with the winter weather preparation standards **to ERCOT** ... The reports included detailed explanations of the activities that had been completed...the reports served as a substantive demonstration of compliance with the requirements under 16 TAC §25.55.”

- Section V, page 6, lines 16-17 (testifying about ERCOT’s receiving information—i.e., being informed):

“[T]he reports **informed ERCOT** ... of the outstanding activities which remained to be completed, efforts taken to comply with the outstanding requirements, and expected compliance dates.”

- Section V, page 6, lines 19-20 (testifying about what ERCOT would be “allowed” to do—i.e., able to do—based on receiving information in a report):

“[T]he reports **allowed ERCOT** ... to ensure and confirm that each resource was prepared for winter weather, or was taking steps necessary to become prepared for winter weather in the near future.”

- Section V, page 6, lines 22-24 (testifying about whether ERCOT could know or “be informed” about something):

“To the extent that a generation entity did not submit a report, **ERCOT ... had no way to be informed whether a resource was compliant** ... or was prepared for winter weather ...”

- Section V, page 7, lines 13-16 (testifying about what ERCOT would be “allowed”—i.e., able—to do):

“This **information allowed ERCOT** ... **to gauge the readiness** of resources during specific timelines and allowed ERCOT and generation entities to coordinate the timing of when preparation measures could be completed.”

- Section V, page 7, lines 19-20 (testifying about what ERCOT “relied on”):

“... **ERCOT relied on the winter weather readiness reports** to gauge the preparations of the ERCOT generation fleet when planning for the winter months.”

- Section IIX, page 12, lines 1-9 (testifying about what ERCOT was able to “discern” and about what ERCOT was “unaware” of):

“Because [OCI] did not submit the required winter weather readiness reports on December 1, 2021, Commission Staff and **ERCOT were unable to**

**discern** whether [OCI] resources were prepared for winter weather conditions at the start of the winter season or, to the extent they were not prepared by December 1, 2021, by what date the resources would be prepared for winter. Moreover, Commission Staff and **ERCOT were unaware** which activities may have been outstanding, the anticipated need for future scheduled maintenance dates, or how those circumstances could affect reliability planning for this generation entity in the event of extreme winter weather during the winter 2021 season.”

- Section IIX, page 12, lines 12-17 (testifying about what ERCOT was “unable” to “consider”):

“Additionally, 16 TAC § 25.55(c)(3), (4), and (6)(B) **assigned expeditious deadlines to ERCOT and Commission Staff to review the winter weather readiness reports** for approximately 850 generation entities in the ERCOT region. Because [OCI]’s winter weather readiness reports were not submitted by December 1, 2021, **ERCOT and Commission Staff were unable to timely consider [OCI]’s circumstances at the outset of the report evaluation period.**”

- Section IIX, page 12, lines 21-27 (testifying to the “strain” caused on accomplishing tasks assigned to ERCOT by the cited rule—i.e., 16 TAC §25.55(c)(3), (4) and (6)(B)):

“While both the initial and continuing violations caused a potential hazard to the health, safety, and economic welfare of the public by creating uncertainty regarding the reliability of [OCI]’s resources in winter weather emergencies, the continuing failure to submit all required information pertaining to the preparation measures undertaken by Alamo 1 until December 9, 2021, **created additional strain to accommodate the late submission in the process of adhering to the tight deadlines established under 16 TAC § 25.55(c)(3), (4), and (6)(B).**”

- Section IIX, page 13, lines 4-11 (testifying to “ERCOT’s ability to consider” information):

“In my opinion, [OCI]’s late submission of its [WWRRs] delayed ... **ERCOT’s ability to consider** how the specific nature of [OCI]’s compliance status would impact the reliability of its resources – and the resource’s impact on the reliability of the grid, in general – in the event of extreme winter weather during the winter 2021 season.”

As demonstrated in the foregoing argument, Ms. Ramaswamy’s allegations (as a PUC employee, not an ERCOT employee) about ERCOT’s state of awareness of certain information, ERCOT’s intent to rely upon certain information, ERCOT’s reliance on certain information, ERCOT’s ability to perform inspections, ERCOT’s ability to evaluate reliability, and ERCOT’s

assessment of reliability risk are all impermissible hearsay, and OCI respectfully asks Your Honor to strike each portion of Ms. Ramaswamy's testimony cited above.

### C. Unsupported, Conclusory Testimony

Testimony must be concrete, based on the witness's expertise, and conclusions must be based on reliable facts and methodologies. "Although expert opinion testimony often provides valuable evidence in a case, 'it is the basis of the witness's opinion, and not the witness's qualifications or his bare opinions alone, that can settle an issue as a matter of law; a claim will not stand or fall on the mere *ipse dixit* of a credentialed witness.'"<sup>14</sup> Conclusory or speculative testimony is not relevant evidence, because it does not tend to make the existence of a material fact "more probable or less probable."<sup>15</sup>

In multiple instances, Ms. Ramaswamy improperly speculates as to the existence and/or potential of a reliability risk and hazard to the electric grid—and the public—without support. As these portions of her testimony are entirely conjecture, OCI objects to, and moves to strike, each conclusory statement, including the following:

- Section V, page 7, lines 21-23 (speculating and offering conclusory statement regarding impact of "uncertainty" on ERCOT):

**"The failure to timely submit a winter weather readiness report resulted in uncertainty in the reliability planning process, specifically whether the resource was fully prepared or if any deficiencies could hinder its reliable operation during the winter storm."**

- Section VI, page 12, lines 9-11 (testifying about speculative "potential hazard"):

**"The uncertainty caused by the lack of information created a potential hazard to the reliability of the electric grid, and, therefore, to the health, safety, and economic welfare of the public."**

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<sup>14</sup> *Coastal Transp. Co., Inc. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 232 (Tex. 2004) (quoting *Burrow v. Arce*, 997 S.W.2d 229, 235 (Tex. 1999)).

<sup>15</sup> *Id.* (quoting Tex. R. Evid. 401).

- Section IIX, page 12, lines 9-11 (testifying about speculative “potential hazard” and “strain” on accomplishing tasks assigned to ERCOT, not to Commission Staff):

“While both **the initial and continuing violations caused a potential hazard** to the health, safety, and economic welfare of the public by **creating uncertainty regarding the reliability** of [OCI]’s resources in winter weather emergencies, the **continuing failure to submit all required information** pertaining to the preparation measures undertaken by [OCI] until December 9, 2021, **created additional strain to accommodate the late submission in the process of adhering to the tight deadlines** established under 16 TAC § 25.55(c)(3), (4), and (6)(B).”

- Section IIX, page 12, lines 9-11 (speculating about “potential hazard” and “likelihood” of severe weather, without testifying to any actual hazard or actual severe weather):

“In my opinion, [OCI]’s late submission of its winter weather readiness reports delayed Commission Staff and ERCOT’s ability to consider how the specific nature of [OCI]’s compliance status would impact the reliability of its resources - and the resource’s impact on the reliability of the grid, in general - in the event of extreme winter weather during the winter 2021 season. By delaying the ability to access to information required to accurately assess and plan for grid reliability, [OCI]’s continued violations **created a potential hazard to the health, safety, and economic welfare of the public.**

In addition, each day that passed without receiving [OCI]’s required winter weather readiness reports **increased the potential hazard** to the health, safety, and welfare of the public because, winter season had started on December 1, 2021, the **likelihood of severe weather increased every day and, therefore, the reliability risk caused by uncertainty regarding [OCI]’s compliance status grew.”**

- Section IIX, page 12, lines 21-27 (relying on hearsay from ERCOT):

“While both **the initial and continuing violations caused a potential hazard to the health, safety, and economic welfare of the public by creating uncertainty regarding the reliability of [OCI]’s resources in winter weather emergencies**, the continuing failure to submit all required information pertaining to the preparation measures undertaken by Alamo 1 until December 9, 2021, created additional strain to accommodate the late submission in the process of adhering to the tight deadlines established under 16 TAC § 25.55(c)(3), (4), and (6)(B).”

#### **D. Testimony Outside Expertise and Purpose**

OCI further objects to portions of Ms. Ramaswamy’s testimony on the ground that they are outside her expertise.

Ms. Ramaswamy offers, multiple times, her opinion regarding supposed reliability impacts springing from OCI's alleged failure to timely file certain paperwork. But her sworn testimony fails to establish her qualification to opine as an expert on matters of grid reliability. The only "qualification" she provides is her education, three years' experience with the PUC, and brief service on a "rulemaking committee" (a responsibility that is entirely unclear and misleading, since only the PUC itself, not Commission Staff, has authority to promulgate rules). Ms. Ramaswamy testifies that she has a Master of Science in Mechanical Engineering, previously worked in Research and Development with a different company, and has worked for three years with the PUC's Infrastructure Division.<sup>16</sup> Her current occupation at the PUC is described as "a Senior Engineering Specialist within the Market Analysis Division."<sup>17</sup> Ms. Ramaswamy states, in response to an inquiry about how her "rulemaking committee" experience qualifies her as an expert, that she is qualified because her experience allowed her to meet and visit generation entities, understand seasonal preparation methods, and breakdown the preparation process "in such a way that the generation entity, ERCOT and Commission Staff could work together in readying the electric grid for the upcoming winter season."<sup>18</sup>

None of the above qualifies her to testify as an expert regarding grid reliability issues. Thus, OCI objects to each of Ms. Ramaswamy's opinions regarding alleged "reliability" impacts of late paperwork on grid reliability because she is not qualified to offer any expert opinion on that subject. Expert testimony must be limited to scientific, technical, or other specialized knowledge *possessed by the witness* that would help a trier of fact. In this instance, Ms. Ramaswamy's knowledge, as reflected in her testimony, is not scientific, technical, or otherwise specialized

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<sup>16</sup> Ramaswamy Direct at RR-1.

<sup>17</sup> *Id.* at 1:4-5.

<sup>18</sup> *Id.* at 4:23-5:1.

knowledge of grid reliability considerations, and therefore cannot help the trier of fact understand any alleged impacts of a late paperwork filing on actual grid reliability considerations.

In order to permissibly opine on grid reliability considerations, Ms. Ramaswamy must first establish, via her own testimony, that she has sufficient knowledge, experience, education, skill, or training to opine as an expert on reliability risks or grid reliability hazards, including by, at the very least—in her direct testimony—demonstrating some actual experience or specialized knowledge about how to make a determination of reliability risk. But Ms. Ramaswamy has not provided any testimony showing any experience or specialized knowledge concerning relevant considerations, such as:

- How to analyze a winter weather readiness report to discern what it might reveal about grid reliability;
- How the information contained in a winter weather readiness report could impact the actual reliability of operation of a generation asset;
- How a generation asset operates and how that impacts grid reliability;
- How the delayed filing of a report could even create an actual grid reliability risk;
- How the delayed filing of a report could create any type of physical hazard;
- What factors or considerations are important in assessing potential impacts on grid reliability;
- How grid reliability is assessed, evaluated, or measured;
- How a roughly 40 MW resource could potentially impact reliability of an electrical grid that consists of over 100,000 MW of installed capacity;
- Whether, and in what specific circumstances, a 40 MW resource could actually risk the reliability of the 100,000+ MW ERCOT grid; and



- What would be necessary to determine how an action (or in this case, failure to take an action by a deadline) might create a risk to grid reliability.

Ms. Ramaswamy recites several facts as providing a basis for her expert testimony. They fall short. She says she has met generation entities and visited generation facilities. But so has nearly every newspaper and TV reporter who covers electricity issues in Texas. That does not qualify them to opine about alleged grid reliability impacts from late paperwork, and it similarly does not qualify Ms. Ramaswamy to do so.<sup>19</sup> Just as visiting the ERCOT control center does not make one an expert on how ERCOT actually controls the grid, meeting and visiting generation entities does not give one any expertise in determining their reliability, much less how one of their allegedly untimely filings might create a grid-wide “reliability risk.”

Similarly, Ms. Ramaswamy’s assertion that she broke down “the preparation process” for generation entities, ERCOT, and Commission Staff to work together on the winter readiness reports does not demonstrate any expertise in evaluating how the filing of a report could somehow create a “reliability risk” for the entire ERCOT grid. Even if Ms. Ramaswamy understands “seasonal preparation methods adopted by generation entities” to prepare for summer and winter weather, that has no bearing on her expertise to opine on the cause or existence of a reliability risk allegedly triggered by late paperwork.

Accordingly, OCI specifically objects to, and moves to strike, the portions of Ms. Ramaswamy’s testimony that are outside of her expertise. She has no expertise, per her own testimony, regarding assessment of reliability risks associated with actual operation of generation facilities and administration of the ERCOT grid.

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<sup>19</sup> See *Broders v. Heise*, 924 S.W.2d 148, 153 (Tex. 1996) (“possessed knowledge and skill not possessed by people generally does not in and of itself mean that such expertise will assist the trier of fact”).

For these reasons, OCI objects to and moves to strike the following testimony as outside Ms. Ramaswamy's expertise as stated in her own sworn testimony (emphasis added):

- Section V, page 5, lines 25, through page 6, line 4 (testifying, without expertise, about what constitutes "critical information" about the electrical grid's "state of readiness"):

"In addition to demonstrating compliance with the physical preparation requirements, the **reports also provided Commission Staff and ERCOT with critical information about the state of readiness of ERCOT's resource fleet** for the winter weather ..."

- Section V, page 6, lines 8-25 (testifying, without expertise, about what steps are necessary to physically prepare a generation unit for winter weather):

"The winter weather readiness reports **served as a means of demonstrating compliance with the winter weather preparation standards to ERCOT** and Commission Staff. The reports included detailed explanations of the activities that had been completed at each resource to prepare for the winter weather, and required each generation entity's highest officer to attest to the completion of the activities described in the reports. As affirmed by the attestation, the reports served as a substantive demonstration of compliance with the requirements under 16 TAC § 25.55(c)(1).

Additionally, to the extent that a resource was unable to fully comply with the preparation standards by the December 1, 2021 submission deadline, **the reports informed ERCOT and Commission Staff of the outstanding activities which remained to be completed, efforts already taken to comply with the outstanding requirements, and expected compliance dates.** As a result, the reports **allowed ERCOT and Commission Staff to ensure and confirm that each resource was prepared for winter weather, or was taking the steps necessary to become prepared for winter weather in the near future. To the extent that a generation entity did not submit a report, ERCOT and Commission Staff had no way to be informed whether a resource was compliant with 16 TAC § 25.55(c)(1) or was prepared for winter weather until such time that a physical inspection was completed.**"

- Section V, page 7, lines 21-23 (testifying, without expertise, about what "deficiencies" could "hinder" the "reliable operation" of generation units):

"The failure to timely submit a [WWRR] resulted in **uncertainty in the reliability planning process**, specifically whether the resource was fully prepared or if any deficiencies could **hinder its reliable operation** during the storm."

- Section IIX, page 12, lines 1-17 (testifying, without expertise, about a “potential hazard to the reliability of the electrical grid” caused by alleged late paperwork filing):

**“Because [OCI] did not submit the required winter weather readiness reports on December 1, 2021, Commission Staff and ERCOT were unable to discern whether the [OCI] resources were prepared for winter weather conditions at the start of the winter season or, to the extent they were not prepared by December 1, 2021, by what date the resources would be prepared for winter. Moreover, Commission Staff and ERCOT were unaware which preparation activities may have been outstanding, the anticipated need for future scheduled maintenance dates, or how those circumstances could affect reliability planning for this generation entity in the event of extreme winter weather during the winter 2021 season. The uncertainty caused by the lack of information created a potential hazard to the reliability of the electric grid, and, therefore, to the health, safety, and economic welfare of the public.**

Additionally, 16 TAC § 25.55(c)(3), (4), and (6)(B) assigned expeditious deadlines to ERCOT and Commission Staff to review the winter weather readiness reports for approximately 850 generation entities in the ERCOT region. **Because [OCI]'s winter weather readiness reports were not submitted by December 1, 2021,** ERCOT and Commission Staff were unable to timely consider [OCI]'s circumstances at the outset of the report evaluation period.

- Section IIX, page 12, lines 21-27 (testifying, without expertise, about “a potential hazard” to “reliability” caused by an alleged late paperwork filing):

**“While both the initial and continuing violations caused a potential hazard to the health, safety, and economic welfare of the public by creating uncertainty regarding the reliability of [OCI]'s resources in winter weather emergencies, the continuing failure to submit all required information pertaining to the preparation measures undertaken by [OCI] until December 9, 2021, created additional strain to accommodate the late submission in the process of adhering to the tight deadlines established under 16 TAC § 25.55(c)(3), (4), and (6)(B).”**

- Section IIX, page 13, lines 4-11 (testifying, without expertise, about impacts on the ability to “assess and plan for grid reliability” caused by an alleged late paperwork filing):

**“In my opinion, [OCI]'s late submission of its winter weather readiness reports delayed Commission Staff and ERCOT's ability to consider how the specific nature of [OCI]'s compliance status would impact the reliability of its resources – and the resource's impact on the reliability of the grid, in general – in the event of extreme weather during the winter 2021 season. By delaying the ability to access information required to accurately assess and plan for grid reliability, [OCI]'s continued violations created a potential hazard to the health, safety, and economic welfare of the public.”**

- Section IX, page 13, lines 12-18 (testifying, without expertise, that an alleged late paperwork filing “increased the potential hazard” and the “risk” to grid reliability):

“In addition, each day that passed without receiving [OCI]’s required winter weather readiness reports **increased the potential hazard to the health, safety, and welfare of the public** because, winter season had started on December 1, 2021, the likelihood of severe weather increased every day and, therefore, **the reliability risk caused by uncertainty regarding [OCI]’s compliance status grew**. Each day that a winter weather readiness report was late **represented an additional delay to effectively and accurately assess the reliability of the ERCOT generation fleet in advance of a future winter weather event.**”

The above excerpts reflect multiple instances where Ms. Ramaswamy’s testimony veers substantially outside her expertise as described by her own testimony. Accordingly, OCI objects to, and moves to strike, those excerpts as unsupported and improper and respectfully asks Your Honor to strike them.

#### **E. Improper Attempt to Supplement Direct Case**

Once a party has presented evidence and closed its case-in-chief, it is not permitted to reopen evidence and take a “second bite at the apple” because it wants to present more evidence.<sup>20</sup> Only in exceptional circumstances—such as new evidence coming to light—may a party *request* to reopen the case to present additional evidence.<sup>21</sup> But even that depends on the trial court’s discretion and a showing of the party’s exercise of diligence in initially bringing forth relevant evidence: evidence may not be reopened where the moving party fails to show that they were diligent yet unable to produce the additional evidence in a timely fashion.<sup>22</sup> Unequivocally, there is no “right to supplement testimony.”

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<sup>20</sup> *Poag v. Flories*, 317 S.W.3d 820, 828 (Tex. App.—Fort Worth 2010, pet. denied); *accord Apresa v. Montfort Ins. Co.*, 932 S.W.2d 246, 249–50 (Tex. App.—El Paso 1996, no writ).

<sup>21</sup> *Poag*, 317 S.W.3d at 828.

<sup>22</sup> *Id.*

Commission Staff has the burden of proof and must meet that burden with its direct testimony. Commission Staff has supplied its direct testimony. Commission Staff cannot reserve the right to supplement its case with more late-filed direct testimony. Thus, OCI objects to, and moves to strike, Commission Staff's improper attempt to reserve a *right* to supplement its direct testimony at will:

- Section IX, page 14, lines 5-6 (improperly “reserving” right to supplement direct case):

“I reserve the right to supplement this testimony during the course of the proceeding if new evidence becomes available.”

If new evidence becomes available, Commission Staff must *request* that it be permitted to reopen evidence, at which point it must first demonstrate how and why justice so requires.

## **II. CONCLUSION**

OCI makes these objections without waiver of its right to challenge the accuracy of the portions of the foregoing testimony to which OCI has objected, if any objections are not sustained. Commission Staff presented two witnesses, employed by the PUC, to testify to countless topics that were unsupported, hearsay, prohibited by Texas law and rules of evidence, improper under PURA and the Texas Administrative Code, outside their expertise, and impermissible legal conclusions—some of which reached the ultimate issues in the proceeding. Such testimony is improper under any one of those grounds. In this pleading, OCI objects to and moves to strike multiple portions of the testimony of Ms. Ramaswamy. OCI respectfully requests that its objections and motions to strike be sustained and that it be granted any other relief to which it may show itself entitled.

**WHEREFORE**, OCI respectfully requests that the ALJ strike the testimony of Ramya Ramaswamy described and objected to above.

Dated May 20, 2022.

Respectfully submitted,


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**CERTIFICATE OF SERVICE**

I certify that on May 20, 2022, a true copy of the foregoing document was served by email on all parties of record, as directed in the July 16, 2020 Second Order Suspending Rules in Project No. 50664.

  
Alyssa C. Shattuck