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**REBUTTAL TESTIMONY
OF ANDREA M. STOVER, WITNESS FOR
ONCOR ELECTRIC DELIVERY COMPANY LLC**

I. BACKGROUND AND PURPOSE2

II. ONCOR’S USE OF REDACTIONS FOR PRIVILEGE AND/OR
WORK PRODUCT3

III. COMMISSION STAFF’S PROPOSED \$550 CAP.....5

AFFIDAVIT..... 13

1 **REBUTTAL TESTIMONY OF**

2 **ANDREA M. STOVER**

3 **I. BACKGROUND AND PURPOSE**

4 Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS
5 ADDRESS.

6 A. My name is Andrea M. Stover. I am a Partner at the law firm Baker Botts
7 L.L.P. ("Baker Botts"). My business address is 98 San Jacinto, Suite 1500,
8 Austin, Texas 78701.

9 Q. ARE YOU THE SAME ANDREA M. STOVER WHO PREVIOUSLY
10 SUBMITTED DIRECT TESTIMONY AND SUPPLEMENTAL DIRECT
11 TESTIMONY IN THIS DOCKET?

12 A. Yes, I am. My direct testimony is included in Oncor's rate filing package at
13 Volume 4, Bates pages 1891-1917. Oncor filed my supplemental direct
14 testimony on rate-case expenses on September 9, 2022.

15 Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

16 A. I am testifying on behalf of Oncor Electric Delivery Company LLC ("Oncor"
17 or the "Company").

18 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

19 A. In my rebuttal testimony, I address the arguments made by Staff ("Staff") of
20 the Public Utility Commission of Texas ("Commission") witness Ruth Stark
21 concerning the reasonableness of Oncor's rate-case expenses.
22 Specifically, I address:

- 23 • Oncor's redactions of its attorneys' invoices to protect privilege
24 and/or work product; and
25 • Ms. Stark's proposed \$550 per hour cap on attorney rates.

26 In short, it is my opinion that Ms. Stark's positions on these issues are
27 unreasonable and that the associated proposed disallowances should be
28 rejected.

1 My rebuttal testimony was prepared by me or under my direction,
2 supervision or control, and is true and correct.

3 **II. ONCOR'S USE OF REDACTIONS FOR PRIVILEGE AND/OR WORK**

4 **PRODUCT**

5 Q. ON PAGE 13, LINE 6 THROUGH PAGE 14, LINE 1 OF HER DIRECT
6 TESTIMONY, MS. STARK RECOMMENDS A DISALLOWANCE OF THE
7 ENTIRE AMOUNT OF ATTORNEYS' TIME ENTRIES CONTAINING
8 REDACTIONS AND THE TOTAL AMOUNT OF ATTORNEYS' INVOICES
9 IN WHICH ALL OR THE MAJORITY OF TIME ENTRIES CONTAIN
10 REDACTIONS. WHEN IS IT REASONABLE FOR ATTORNEYS TO
11 REDACT THEIR INVOICES FOR SUBMISSION TO THE COMMISSION?

12 A. Information included within attorney invoices describes work performed by
13 attorneys, including the legal topics, theories, and strategies associated
14 with the work performed. In many instances that information is considered
15 protected work product, and it is reasonable for attorneys to redact such
16 protected information to avoid waiving a claim of privilege and otherwise
17 disclosing information that might negatively impact the interests of their
18 client.

19 Q. WHAT ARE THE RULES APPLICABLE TO THIS TYPE OF PROTECTED
20 MATERIAL?

21 A. Commission rule 16 Tex. Admin. Code ("TAC") § 22.221(b) provides that
22 Texas law addressing privilege and exemptions applies in contested
23 proceedings. The Texas Rules of Civil Procedure Rule § 192.5 provides
24 that work product can be comprised of "material prepared or mental
25 impressions developed in anticipation of litigation" and is considered
26 privileged information not subject to discovery. See Tex. R. Civ. Proc.
27 § 192.5(b)(1) and (d).

28 Q. PLEASE DESCRIBE THE TYPE OF INFORMATION CONTAINED IN
29 INVOICES THAT WOULD BE PRIVILEGED AND/OR WORK PRODUCT?

1 A. In their invoices, attorneys record descriptions of the work they perform on
2 behalf of clients that can include description of work addressing legal
3 theories, development of strategies, research topics, or other information
4 revealing the mental impressions of attorneys regarding the litigation. When
5 this is prepared in anticipation of or during pending litigation, all or portions
6 of these descriptions are attorney work product and, therefore, protected
7 privileged information.

8 Q. IN YOUR OPINION, IS IT REASONABLE FOR ONCOR TO FILE
9 REDACTED INVOICES IN THIS CASE?

10 A. Yes. Because these invoices contained descriptions of the work attorneys
11 performed in preparation for and during litigation at issue in this proceeding,
12 it is reasonable for Oncor to file redacted invoices that remove descriptions
13 that constitute work product relevant to the pending proceeding. Oncor
14 should not be required to waive legitimate claims of privilege or disclose
15 work product, particularly during the pendency of the proceeding where the
16 invoices would disclose litigation strategy and other information to opposing
17 parties, to support its rate-case expenses.

18 Q. DID YOU REVIEW UNREDACTED INVOICES IN THE DEVELOPMENT
19 OF YOUR DIRECT AND SUPPLEMENTAL DIRECT TESTIMONY?

20 A. Yes. The opinions I offered about the reasonableness of the attorneys' fees
21 was based on a complete review of Oncor's outside counsel's invoices.

22 Q. WILL STAFF HAVE THE OPPORTUNITY TO REVIEW ONCOR'S LEGAL
23 INVOICES WITHOUT REDACTIONS?

24 A. Yes. It is my understanding that Oncor is willing to allow Commission Staff
25 an opportunity to review unredacted or minimally-redacted invoices either
26 near the end of or after the hearing on the merits, when Oncor no longer
27 has concerns about the disclosure of its attorney work product and legal
28 strategy in this pending proceeding.

1 **III. COMMISSION STAFF'S PROPOSED \$550 CAP**

2 Q. PLEASE EXPLAIN MS. STARK'S TESTIMONY REGARDING ATTORNEY
3 RATES.

4 A. Ms. Stark states in her direct testimony that the Commission should apply
5 a fixed cap of \$550 per hour on the rates charged by Oncor's outside
6 counsel in this proceeding.¹ The basis for Ms. Stark's opinion is consistent
7 with the position that Commission Staff has taken in electric utility rate
8 proceedings for at least nine years.

9 Q. IN YOUR OPINION, SHOULD THE COMMISSION SET A FIXED CAP ON
10 THE HOURLY RATE OF ONCOR'S ATTORNEYS?

11 A. No. As I set out in my direct testimony, I do not believe that setting a cap on
12 the rates of outside counsel is appropriate. Instead, the Commission should
13 focus its review on rate-case expenses as a whole and the individual
14 experience and qualifications of outside counsel, along with the type of work
15 provided by the attorney. As a general matter, focus on an individual
16 attorney's rate is not an indication of whether a utility's rate-case expenses
17 are reasonable. For example, if a highly specialized attorney with an hourly
18 rate of \$750 spent 4 hours writing a motion, the total cost would be \$3,000.
19 If a less experienced attorney with an hourly rate of \$500 took 7 hours to
20 write the same motion, it would cost \$3,500 and may not be as effective. In
21 that example, it is in both the utility's and the ratepayers' best interests to
22 utilize the more specialized attorney with the higher rate. Sometimes it is
23 more effective for less experienced attorneys with lower rates to take on
24 certain work in support of a rate case, but more experienced and specialized
25 attorneys should oversee, advise, and direct legal strategy and other
26 aspects of the case. The key consideration for legal expenditures in a rate
27 case is the overall amount of rate-case expenses given the context of the

¹ Direct Testimony of Ruth Stark at 14-26.

1 case, and the efficiency and skill of the attorneys in relation to the hourly
2 rate charged.

3 Q. IF THE COMMISSION WERE TO EVALUATE HOURLY RATES, DO YOU
4 BELIEVE RELYING ON AN ATTORNEY GENERAL MEMORANDUM
5 PROVIDES AN "OBJECTIVE AS OPPOSED TO SUBJECTIVE MEASURE
6 OF THE REASONABLENESS OF HOURLY ATTORNEY RATES" AS
7 CLAIMED BY MS. STARK ON PAGE 20, LINES 1 THROUGH 4 OF HER
8 DIRECT TESTIMONY?

9 A. No. As an initial point, the general contracting needs of the State of Texas
10 are not analogous to the needs of investor-owned electric utilities in rate
11 proceedings for a number of reasons. First, the State of Texas has
12 significantly more market power than a single utility. That market power can
13 be used to put downward pressure on attorney rates in a manner that is not
14 available to a single utility. Second, the cited memorandum specifically
15 provides for a procedure whereby subdivisions of the state may seek
16 permission to exceed the general \$525 rate cap. Presenting a rate case is
17 an enormously complex undertaking, and Oncor has billions of dollars at
18 stake. If a state agency needed outside counsel for a proceeding with this
19 amount of complexity where it faced losing billions in taxpayer dollars, I
20 would expect it to seek and obtain permission to exceed the Attorney
21 General's \$525 rate cap.

22 Q. IS STAFF'S USE OF A \$550 CAP IN ALL RATE PROCEEDINGS,
23 WITHOUT REGARD TO THE SPECIFIC ATTORNEY'S EXPERIENCE OR
24 SKILL, CONSISTENT WITH THE COMMISSION'S RATE-CASE
25 EXPENSE RULE² ("RCE RULE")?

26 A. No. The RCE Rule requires consideration of numerous factors that vary
27 from case to case, including the "size of the utility," the "amount of money
28 or value of property or interest at stake," and the "novelty or complexity of

² 16 TAC § 25.245.

1 the issues addressed.” If the Commission does choose to focus on
2 attorney’s hourly rates, the inclusion of these factors in the RCE Rule
3 suggests that an evaluation of hourly rates should be based on the
4 individual attorney within the context of the rate case. Although I do not
5 think caps are appropriate, if the Commission decides to employ a cap, it
6 should be formulated on a case-specific basis. Commission Staff would
7 seek to apply this same \$550 rate cap to both water utilities with 5,000
8 customers and only a few million in rate base on the one hand, and to Oncor
9 with millions of customers and billions in rate base on the other hand.

10 As a general proposition, it is unreasonable to apply a cap on
11 attorneys’ hourly rates without consideration of the attorney charging the
12 rate. To my knowledge, the Commission does not impose blanket cost caps
13 on any other component of a utility’s expenses. While it may be that an
14 hourly rate above \$550 would not be appropriate for a first-year lawyer, the
15 same analysis should not apply to a lawyer with 10 or 15 years of
16 experience, including experience acting as a utility’s lead counsel in other
17 rate proceedings.

18 Q. WHEN THE COMMISSION APPLIED A \$550 RATE CAP IN
19 SOUTHWESTERN ELECTRIC POWER COMPANY’S (“SWEPCO”) RATE
20 CASE, DOCKET NO. 51415, DID IT ADOPT STAFF’S APPROACH OF
21 APPLYING A UNIVERSAL \$550 RATE CAP?

22 A. No. The Commission applied the RCE Rule and found that \$550 was an
23 appropriate rate cap for that specific proceeding and emphasized it was
24 “not recommending a hard \$550 per-hour cap should apply in all future
25 cases for two reasons.” First, the ALJs noted that \$550 might not be
26 excessive depending on the economy, inflation, or other factors. As Ms.
27 Stark admits, even since the decision in Docket No. 51415, there has been

1 significant inflation that would justify reconsideration of the proposed \$550
2 cap.³

3 Second, the ALJs acknowledged that other utilities might be able to
4 justify hiring attorneys whose rates are in excess of \$550. In particular, the
5 Proposal for Decision (“PFD”) noted that SWEPCO had not met its burden
6 of proof to show the reasonableness of hourly rates in excess of \$550 but
7 another utility might be able to carry that burden.⁴ Here, Oncor has
8 demonstrated that rates above \$550 an hour are not in themselves
9 unreasonable. Oncor has presented evidence of the extensive experience
10 and expertise of its outside counsel, that the Railroad Commission of Texas
11 has approved rates of \$877.50 in two recent gas utility rate proceedings⁵
12 and that other electric utility lawyers regularly charge above a \$550 an hour
13 rate.⁶ The majority of the attorneys that Oncor has engaged to represent it
14 in this proceeding that charge more than \$550 an hour each have at least
15 10 years of experience specific to utility regulatory proceedings, including
16 rate cases; several of these attorneys have close to or more than 20 years
17 of such experience. These lawyers likely charge similar if not higher rates
18 to other clients, and as Company witness Robert A. Schmidt sets out in his
19 direct testimony, the rates they are charging for work in this proceeding are
20 consistent with the rates that other attorneys have charged utilities in other
21 rate proceedings. This supports Oncor’s claim for recovery of attorney fees
22 not subject to an arbitrary cap of \$550 per hour.

23 Q. IS MS. STARK’S CLAIM ON PAGE 20, LINE 21 THROUGH PAGE 21, LINE
24 7 OF HER DIRECT TESTIMONY THAT THE COMMISSION STAFF’S

³ Direct Testimony of Ruth Stark at 21-22.

⁴ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415, PFD at 330 (Aug. 27, 2021).

⁵ Direct Testimony of Andrea M. Stover at 22.

⁶ Direct Testimony of Robert A. Schmidt at 10.

1 LEGAL DIVISION IS PARTICIPATING IN THIS PROCEEDING WITHOUT
2 HIRING OUTSIDE COUNSEL IN EXCESS OF \$550 RELEVANT?

3 A. No. Commission Staff is not tasked with preparing an application and
4 supporting testimony on behalf of a utility seeking approval of changes to
5 its base rates, nor managing the ongoing litigation including responding to
6 hundreds of discovery requests. Staff's role is to evaluate an application
7 and respond to it. In addition, Oncor has significant risks associated with
8 litigating a significant rate proceeding. It is critical for Oncor to ensure it has
9 the right legal team, with sufficient depth and experience to successfully
10 litigate a complex case. Consequently, a different analysis must apply to
11 the evaluation of Oncor's outside counsel and Commission Staff counsel.

12 Q. DO YOU AGREE WITH MS. STARK'S STATEMENT ON PAGE 22, LINE
13 15 OF HER DIRECT TESTIMONY THAT THE COMMISSION HAS *DE*
14 *FACTO* SPOKEN TO THE ISSUE OF FOCUSING ON CAPPING
15 ATTORNEY RATES RATHER THAN OVERALL RATE-CASE
16 EXPENSES?

17 A. No. Ms. Stark points to the Order in Docket No. 51415 and the portion of
18 the PFD in that case that states that SWEPCO could not identify anything
19 in the RCE Rule that "suggests that if a consultant or lawyer hired by a utility
20 or municipality routinely bills at a rate in excess of \$550 per hour to non-
21 utility clients, then that rate is essentially *de facto* reasonable."⁷ I agree that
22 any specific hourly rate charged by outside counsel should not be
23 determined to be *de facto* reasonable. However, it is likewise not
24 appropriate and was not the decision of the Commission that all rates above
25 \$550 should be *de facto unreasonable*.

26 Further, a more holistic review of rates paid for legal services by both
27 utilities and non-utilities, along with the experience and expertise of the
28 attorneys, provides a more appropriate analysis of the reasonableness of

⁷ Docket No. 51415, PFD at 332.

1 hourly fees. If other utilities are paying comparable rates for comparable
2 levels of legal services, that is some evidence of whether the rates are
3 reasonable. As I previously mentioned, Oncor witness Mr. Schmidt
4 provided evidence in his direct testimony that other utilities have paid similar
5 rates for legal work in rate cases, as well as other evidence about prevailing
6 legal rates. Ms. Stark dismisses this information out of hand, claiming that
7 the Commission found that prevailing rates does not mean that the rates
8 are reasonable.⁸ However, the Commission found that rates paid by non-
9 utilities *alone* is not sufficient to establish reasonableness; rather that
10 information is some indication of reasonableness.⁹ For example, if an
11 attorney charged its utility client \$600 an hour, but charged all other clients
12 \$300 an hour for similar work, that would be some indication that the rate
13 charged to the utility was unreasonable.

14 Next, Ms. Stark notes that two of the utilities Mr. Schmidt referenced
15 agreed to forgo recovery of rate-case expenses and another agreed to a
16 reduction in the recovery of its rate-case expenses.¹⁰ While Ms. Stark is
17 correct that the Commission did not ultimately have the opportunity to
18 approve those rates, the relevant point is that there are other utilities that
19 *paid* comparable rates, which is therefore some evidence of the
20 reasonableness of those rates. The strategic reasons that each of those
21 utilities *agreed* to forgo or reduce their rate-case expenses may or may not
22 have anything to do with the level of expenses or whether those expenses
23 would have ultimately been recovered and, therefore, the settlements do
24 not speak to the reasonableness of the rates.

25 Q. DID MS. STARK PRESENT ANY EVIDENCE TO SHOW THAT THE
26 RATES CHARGED BY ATTORNEYS CHARGING MORE THAN \$550 PER
27 HOUR IN THIS CASE WERE INDIVIDUALLY UNREASONABLE?

⁸ Direct Testimony of Ruth Stark at 22.

⁹ Docket No. 51415, Order, Finding of Fact No. 310.

¹⁰ Direct Testimony of Ruth Stark at 23.

1 A. No. Ms. Stark merely provides the blanket opinion that Oncor should not be
2 allowed to recover any amount of legal expenses over the \$550 hourly cap.
3 Ms. Stark also made no specific comparisons to suggest that the Oncor rate
4 case is sufficiently similar to the SWEPCO case or that the \$550 hourly cap
5 should equally apply here. The RCE rule requires the evaluation of each
6 utility's individual rate-case expenses given the context of the utility's
7 request and the myriad of factors that are different for each utility's
8 application. Therefore, the analysis of an attorney's hourly rates should also
9 be individual and not be subject to a blanket cap without an analysis
10 performed to determine the reasonableness of each attorney's hourly rate.
11 Q. DO YOU AGREE WITH MS. STARK'S SUGGESTION ON PAGE 21,
12 LINES 19-23 OF HER TESTIMONY THAT IF UTILITY COMMISSION IS
13 TO APPLY AN INFLATION ESCALATOR TO STAFF'S PROPOSED \$550
14 HOURLY CAP, THAT IT SHOULD ONLY ADJUST FOR INFLATION THAT
15 HAS OCCURRED AFTER AUGUST 2021?
16 A. No. While I do not believe the Commission should apply a rate cap for
17 attorney billing rates, particularly one based on Commission Staff's arbitrary
18 selection of \$550, if the Commission does wish to apply an escalator, it
19 should apply the escalator from the point at which Staff determined the level
20 of the cap.
21 As previously explained, the Commission explicitly declined to adopt
22 a generally applicable rate cap of \$550 in the SWEPCO rate case. Thus,
23 the cap in that proceeding should be viewed as specific to that case.
24 Particularly as Oncor is a much larger utility, has many more customers,
25 and its rate proceedings involve much larger dollar amounts.
26 Furthermore, Commission Staff first formulated its \$550 cap on
27 hourly rates in response to an appellate decision overturning a denial of

1 Oncor's rate case expenses.¹¹ Because Oncor's rate case expenses
2 triggered Commission Staff's \$550 cap in 2013, any inflation escalator for
3 Oncor should begin in 2013. According to the consumer price index
4 published by the U.S. Bureau of Labor Statistics on September 13, 2022,
5 \$550 in 2013 would be approximately \$700 today. If the Commission is to
6 apply a cap based on an inflation escalator, it should cap the hourly rates
7 of Oncor's attorneys at \$700. This rate would be far more consistent with
8 the rates charged to the other utilities noted by Mr. Schmidt and the data
9 reflecting outside counsel rates more generally.

10 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

11 A. Yes.

¹¹ Commission Staff began the rulemaking that resulted in the RCE Rule when Oncor successfully appealed the Commission's denial of its reasonable rate-case expenses. *Oncor Elec. Delivery Co. v. Pub. Util. Comm'n*, 406 S.W.3d 253 (Tex. App.—Austin Jun. 14, 2013) (reversing *Application of Oncor Electric Delivery Company LLC for Rate Case Expenses Related to PUC Docket No. 35717*, Docket No. 36530, Order on Rehearing (Nov. 2, 2009)); *Rulemaking to Propose New Subst. R. § 25.245, Relating to Recovery of Expenses for Ratemaking Proceedings*, Docket No. 41622, Control Number Request (Jun. 27, 2013). During the Jul. 19, 2013 Open Meeting, a commissioner directed Commission Staff to more closely scrutinize attorney's fees. Tr. at 75:9-18. Staff responded by formulating a \$550 rate cap, which in my opinion was not what the commissioner had requested.

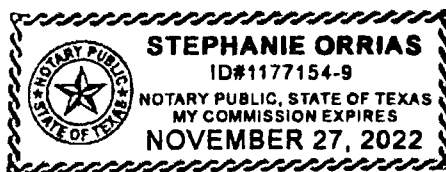
STATE OF TEXAS §
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COUNTY OF TRAVIS §

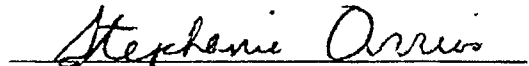
BEFORE ME, the undersigned authority, on this day personally appeared Andrea M. Stover, who, having been placed under oath by me, did depose as follows:

My name is Andrea M. Stover. I am of legal age and a resident of the State of Texas. The foregoing rebuttal testimony offered by me is true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.


Andrea M. Stover

SUBSCRIBED AND SWORN TO BEFORE ME by the said Andrea M. Stover this 16th day of September, 2022.




Notary Public, State of Texas