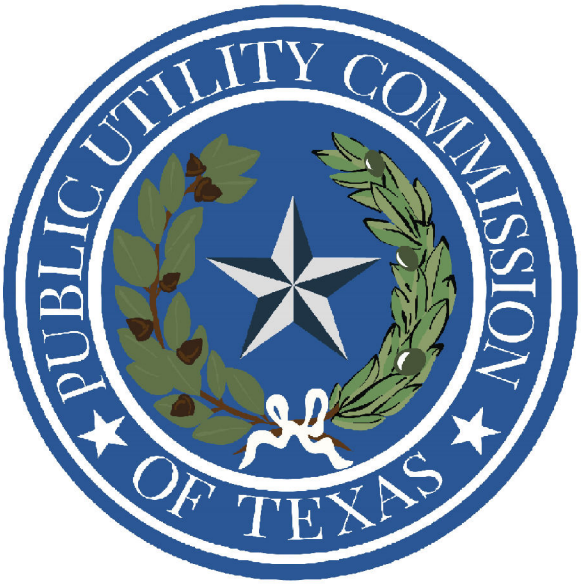

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APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY FOR AUTHORITY TO CHANGE RATES	**§** **§** **§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

ALLIANCE FOR RETAIL MARKETS AND TEXAS ENERGY ASSOCIATION FOR MARKETERS' INITIAL POST-HEARING BRIEF

Dated: October 14, 2022

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SOAH DOCKET NO. 473-22-2695
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been emailed to all parties of record on this the 14th day of October, 2022, in accordance with the Commission's Second Order Suspending Rules issued on July 16, 2020, in Project No. 50664.

Matthew A. Arth

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ALLIANCE FOR RETAIL MARKETS AND TEXAS ENERGY ASSOCIATION FOR MARKETERS' INITIAL POST-HEARING BRIEF

The Alliance for Retail Markets (ARM) and Texas Energy Association for Marketers (TEAM) (collectively, the REP Coalition) jointly file this Initial Post-Hearing Brief. At the prehearing conference held in this proceeding on June 1, 2022, and as subsequently memorialized in State Office of Administrative Hearings (SOAH) Order No. 2,[1] the motions to intervene of ARM and TEAM were granted. The REP Coalition participated in the hearing on the merits held from September 26, 2022 through October 4, 2022. SOAH Order No. 20 established 5:00 PM on October 14, 2022 as the deadline for all parties to file their initial briefs. Therefore, this brief is timely filed.

I. Introduction/Summary [Preliminary Order ("PO") Issues 1, 2, 3]

A. Executive Summary

The REP Coalition's Initial Brief is limited to two isolated issues in this case. Both issues are of minor-to-no impact on Oncor Electric Delivery Company LLC's (Oncor) revenue requirement and both issues are material to the retail electric providers (REPs) who are the entities that pay the rates resulting from this proceeding. Those two issues are costs incurred to lease facilities that provide temporary emergency electric energy (mobile generation) under PURA[2] § 39.918 and discretionary service Charge No. DD24 Inadvertent Gain (IAG fee).

Mobile Generation

Oncor proposes to recover costs for generation that it acquired during the test year to serve as mobile generation under the newly enacted PURA § 39.918. However, the evidence

[1] *See* SOAH Order No. 2 at 2 (Jun. 24, 2022).

[2] Public Utility Regulatory Act, Tex. Util. Code §§ 11.002-66.016 (PURA).

demonstrates that Oncor's procurement process and designed use of the procured generation does not fall within the permissible statutory purpose identified in PURA § 39.918.

This is a case of first impression for the Public Utility Commission of Texas (Commission) under this new legislation. As the Commission is aware, under the restructured and unbundled electricity market created by legislation passed in 1999, generation may only be owned by power generation companies (PGCs), and transmission and distribution utilities (TDUs), such as Oncor, are specifically prohibited from owning generation. In the aftermath of Winter Storm Uri, the Texas Legislature passed PURA § 39.918 to allow TDUs to lease mobile generation to be deployed to protect public safety only in the event of widespread power outages caused by load shed or by an outage on the bulk power system. Oncor's current plan addressing deployment and use of its mobile generators does not conform to this limited statutory purpose. The REP Coalition proposes that Oncor's requested recovery be denied without prejudice and deferred to a future proceeding.

IAG Fee In 2014, Oncor became the only TDU to charge an "inadvertent gain fee" to REPs for participation in the Electric Reliability Council of Texas's (ERCOT) MarkeTrak system. Oncor proposes not only to continue this "discretionary charge" but to actually increase this charge. The MarkeTrak system is maintained for the purpose of supporting ERCOT's role as the registration agent in the market, i.e., the entity with responsibility to ensure that customers are assigned to the REP of their choice. However, instead of recovering this cost as a system-wide service and cost component of its base rates, Oncor proposes to increase the actual charge to REPs who willingly participate in the MarkeTrak process to honor the customers' choices. Eliminating the IAG fee will have no negative impact on the overall revenue requirement or amount of money recovered by Oncor.

The evidence shows that the IAG fee is not properly characterized as a discretionary service and, therefore, should not be charged to individual REPs who may have served no role in necessitating the initiation of the IAG process. Accordingly, the REP Coalition respectfully requests the elimination of the IAG fee and that Oncor be allowed to recover the TDU portion of costs to process IAGs in its base rates.

Further, the evidence shows that Oncor is overcollecting the costs associated with IAGs without the increase requested in this proceed. If the Commission approves the IAG fee, the REP Coalition requests a decrease in the overall level of the fee due to the unsupported

assumptions regarding the amount of employee time required to process IAG cases and the over collection.

II. Invested Capital - Rate Base [PO Issues 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22]

A. T&D Capital Investment [PO Issues 4, 5, 11, 13, 14, 15, 16]

1. Burden of Proof, Used-and-Useful Requirement, and Prudence Standard

2. Amount of Invested Capital Not Previously Reviewed for Prudence

The Commission should defer Oncor's request in this case to recover costs incurred to lease and operate facilities that provide temporary emergency electric energy (mobile generation) under PURA § 39.918 because Oncor has not developed a plan demonstrating how it will comply with the requirements of this statute. Because a regulation is presently under development, Oncor also cannot yet demonstrate compliance with any corresponding rule to be adopted by the Commission. PURA § 39.918 establishes a very narrow exception within the ERCOT market structure to allow transmission and distribution utilities (TDU) to lease and operate mobile generation facilities and thereby temporarily provide generation.[3] A utility may recover only the reasonable and necessary costs of leasing and operating mobile generation facilities specifically permitted under PURA § 39.918.[4] Further, a utility may only earn a return on invested capital that is used and useful in providing service.[5] As part of satisfying both of these requirements, Oncor must show that it has leased its mobile generators pursuant to a plan that will ensure the use of these facilities only in a manner that conforms with PURA § 39.918, and that the lease procurement complies with the requirements of PURA § 39.918.

As discussed in detail below, the record in this proceeding supports a finding that Oncor has already used, and intends to continue using, its mobile generation in a manner that violates PURA § 39.918(b)(1). The record also supports a finding that Oncor has not met its burden to show that it used a competitive bidding process to procure its mobile generation, or in the

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[3] *Compare*, PURA § 39.918 (enacted in 2021 to permit TDUs to lease and operate mobile generation), *with*, PURA § 39.051 (enacted in 1999 to require the unbundling of electric utilities, including separating a TDU from a PGC).

[4] PURA § 39.918(h)(1).

[5] 16 Tex. Admin. Code § 25.231(c)(2) (TAC).

alternative, that it was not practicable to use a competitive bidding process.[6] Consequently, the Commission should deny Oncor's recovery of the costs it has incurred to lease and operate mobile generation without prejudice and allow Oncor to seek such recovery in a future proceeding after Oncor develops and files a plan that provides for the use of mobile generation only in the two specific circumstances described in PURA § 39.918(b)(1) and consistent with the other requirements of PURA § 39.918.

Deferral of approval of the costs Oncor has incurred under PURA § 39.918 is reasonable because the total amount of recovery requested in this proceeding is relatively modest. Oncor seeks to recover a total rate base of approximately $3.1 million to lease seven mobile generation units, which equates to an annual revenue requirement of $769,171.[7] About 65% of this revenue requirement ($502,818) is operations and maintenance costs, while another 19% ($146,938) is return on equity.[8] While not insignificant, the revenue requirement for mobile generation is just a small part of the $5,810,772,332 per year Oncor seeks to recover through the rates proposed in this proceeding.[9]

Since the end of Oncor's December 31, 2021 test year, Oncor has leased eight additional mobile generation units for a total of 15 units with capacity equal to approximately 11 megawatts (MW).[10] Neither the incremental costs for these eight units, nor the actual costs to deploy and operate mobile generation facilities during a widespread power outage, are included in the revenue requirement requested by Oncor.[11] Oncor intends to defer any incremental operating costs and return for recovery in a future rate proceeding.[12] Instead, Oncor should incorporate the costs related to all 15 units into the request in that future proceeding.

Because: (1) Oncor's requested recovery is relatively modest from a pure dollars-and-cents standpoint; (2) Oncor has stated its intention to seek recovery of additional costs incurred to lease and operate mobile generation in a future proceeding; and, above all, (3) Oncor has not

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[6] PURA § 39.918(f).

[7] Direct Testimony of Chris Hendrix, TEAM-ARM Ex. 1, Attachment CH-4 at 1.

[8] Direct Testimony of Chris Hendrix, TEAM-ARM Ex. 1, Attachment CH-4 at 1.

[9] Oncor Electric Delivery Company, LLC's Petition and Statement of Intent, Oncor Ex. 1 at Ex. 1.

[10] Direct Testimony of Keith Hull, Oncor Ex. 11 at 26:18-24.

[11] TEAM-ARM Ex. 1, Attachment CH-5 at 1.

[12] TEAM-ARM Ex. 1, Attachment CH-4 at 1.

carried its burden to show that it is in compliance with PURA § 39.918 in this proceeding, it is reasonable to defer approval of cost recovery for mobile generation until Oncor satisfies certain conditions in a future proceeding.[13] Specifically, the Commission should require Oncor to file a plan detailing how the mobile generation facilities leased now or in the future will be operated only when ERCOT has directed Oncor to shed load[14] or the bulk power system is not serving Oncor's distribution facilities under normal operations[15] and in a manner that satisfies all other requirements of PURA § 39.918.

a. Scope of PURA § 39.918

1) Oncor's reading of PURA § 39.918 is contrary to the plain meaning of the statute, does not comport with the rules of statutory construction, and creates inconsistencies between subsections (b)(1)(A) and (b)(1)(B).

Oncor's requested recovery for mobile generation is made under PURA § 39.918(b)(1), which first took effect on September 1, 2021. This subsection authorizes a TDU to request the recovery of reasonable and necessary costs incurred to:

> lease and operate facilities that provide temporary emergency electric energy to aid in restoring power to the utility's distribution customers during a widespread power outage in which:
>
> (A) the independent system operator has ordered the utility to shed load; or
>
> (B) the utility's distribution facilities are not being fully served by the bulk power system under normal operations.[16]

A "widespread power outage" is defined as an outage that: (1) affects a significant number of a TDU's distribution customers; (2) lasts for, or is expected to last for, at least eight hours; and (3) is a risk to public safety.[17]

It is critical to note that PURA § 39.918(b) begins: "Notwithstanding any other provision of this subtitle…" The Merriam Webster Dictionary defines notwithstanding to mean

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[13] TEAM-ARM Ex. 1 at 14:11-18.

[14] PURA § 39.918(b)(1)(A).

[15] PURA § 39.918(b)(1)(B).

[16] PURA § 39.918(b)(1) and (h)(1).

[17] PURA § 39.918(a).

"despite."[18] Consequently, the authority granted to a TDU to lease and operate mobile generation must be read as an exception to the remainder of PURA. An exception is necessary because other provisions of PURA mandate the separation of the three primary categories of participants in the ERCOT market—retail/REPs, transmission and distribution/TDUs, and generation/ PGCs.[19] More specifically, PURA requires:

- A person may not generate electricity unless the person is registered with the commission as a PGC.[20]
- A PGC may not own a transmission or distribution facility other than an essential interconnecting facility or a facility that is not dedicated to public use.[21]
- A REP may not own or operate generation assets.[22]
- A TDU owns or operates for compensation equipment or facilities to transmit or distribute electricity.[23]

PURA § 39.918 provides a limited exception to the business separation requirements above and permits a TDU to lease mobile generation only to address specific, emergency grid conditions. It is subsection (b)(1) of PURA § 39.918, and not subsection (a), that contains the language that actually grants a TDU the ability to lease these facilities only for the purposes stated therein. Therefore, the TDU may only lease generation facilities that are capable of meeting the exceptional permissible uses of mobile generation during a widespread power outage caused by conditions enumerated in PURA § 39.918(b)(1). First, a TDU may use mobile generation when ERCOT has directed it to shed load.[24] Second, a TDU may use mobile generation when its distribution facilities are not being fully served by the bulk power system under normal operations.[25] A widespread power outage alone, or a widespread outage that is

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[18] Merriam-Webster Dictionary at definition of notwithstanding, https://www.merriam-webster.com/dictionary/notwithstanding (last visited Oct. 14, 2022).

[19] PURA § 39.051(b).

[20] PURA § 39.351(a).

[21] PURA 31.002(10)(B); *see also,* 16 TAC § 25.5(82)(A)-(B).

[22] PURA 31.002(17); *see also,* 16 TAC § 25.5(114).

[23] PURA 31.002(19); *see also,* 16 TAC § 25.5(137).

[24] PURA § 39.918(b)(1)(A).

[25] PURA § 39.918(b)(1)(B).

attributable only to issues with a TDU's distribution facilities, does not fall within the exception allowing a TDU to lease generation equipment.[26]

In construing statutes, the text must be "read...as a whole so as to render no part inconsistent, superfluous, or devoid of meaning."[27] Further, the Texas Supreme Court instructs that statutory construction should interpret "each word, phrase, and clause in a manner that gives meaning to them all."[28] Oncor is incorrectly reading PURA § 39.918 as a blanket authorization to recover costs to lease and operate mobile generation to be deployed during any and all widespread power outages, including outages caused by a localized failure of its distribution system.[29] This interpretation is fundamentally flawed because it renders PURA § 39.918(b)(1) meaningless, which is contrary to the settled rules of statutory interpretation. It appears that Oncor seeks to recover costs for mobile generators that are designed to be used to serve individual customers in the event of any widespread power outage regardless of the cause of the outage. Had the Legislature wanted to create a more sweeping exception to the strict separation between the three primary types of market participants, it could have adopted the Introduced version of House Bill 2483, which included only the definition of widespread power outage;[30] however, it did not.

Assuming *arguendo* that Oncor's interpretation somehow leaves the statute's reference to load shed intact, Oncor's interpretation is still incorrect because it reads "bulk power system" out of the statute entirely. A definition of "bulk power system" is not included in PURA § 39.918, nor for that matter is it included in the rest of PURA or in the Commission's rules.[31] If a statute leaves a term undefined, then a court will use the plain and ordinary meaning of the term and interpret it within the context of the statute.[32] Most simply stated, the bulk power

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[26] *See* PURA § 39.918(b)(1); TEAM-ARM Ex. 1 at 8:9-11.

[27] *Levinson Alcoser Assocs., L.P. v. E/Pistolon II, Ltd.*, 513 S.W.3d 487, 493 (Tex. 2017); *see also,* Tex. Gov't Code § 311.021(2) (Code Construction Act).

[28] *Id.*

[29] Rebuttal Testimony of Keith Hull, Oncor Ex. 41 at 5:5-8 ("I am not a lawyer, but a plain reading of that section shows that there is no specific or implied limitation that the damaged facilities that caused the outage must be on the transmission system, or mobile generation cannot be deployed to distribution customers.")

[30] *See* Tex. H.B. 2483, 87th Legislature, R.S. (as Introduced on Mar. 1, 2021).

[31] Tr. at 337:8-24 (Hull Rebuttal) (Sept. 27, 2022) (Mr. Hull confirmed at the hearing that no other Commission statute or rule defines "bulk power system.").

[32] *EBS Sols., Inc. v. Hegar*, 601 S.W. 3d 744, 758 (Tex. 2020).

system is the electrical network comprised of generation facilities and transmission facilities.[33] The North American Energy Reliability Corporation (NERC) Glossary of Terms describes the bulk power system as: "(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability. The term *does not include facilities used in the local distribution of electric energy*."[34] At the hearing, Oncor witness Keith Hull acknowledged NERC's definition of bulk power system and confirmed that he has no disagreement with NERC's definition.[35]

Of particular relevance in this case is the "transmission system," which the Commission's rules define as "the transmission facilities at or above 60 kilovolts owned, controlled, operated or supported by a transmission service provider or a transmission service customer that are used to provide transmission service."[36] The distinction between transmission and distribution facilities is made throughout a TDU's system and each utility asset is classified for accounting and operational purposes as either transmission or distribution.[37] If an issue on the transmission system is not a prerequisite for the use of mobile generation, then PURA § 39.918(b)(1)(B) would not be necessary. This construction is also consistent with the other provisions of PURA § 39.918 that serve to limit a TDU's operation of mobile generation, which include: a prohibition against selling electric energy or ancillary services from these facilities; a mandate to operate mobile generation in isolation from the bulk power system; and a requirement to exclude customer usage during the operation of mobile generation out of the usage sent to the customer's retail electric provider for billing purposes.[38]

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[33] 16 U.S.C. § 824o (defining the term "bulk power system" to mean: "(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.").

[34] TEAM-ARM Ex. 1 at 6:8-13.

[35] Tr. at 336:20 – 337:7 (Hull Rebuttal) (Sept. 27, 2022). Mr. Hull also confirmed that Oncor is a "Transmission Owner" and a "Transmission Operator" under the NERC Rules of Procedure and accordingly that Oncor complies with NERC's standards. Tr. at 337:6-14.

[36] 16 TAC § 25.5(142).

[37] TEAM-ARM Ex. 1 at 7:6-8.

[38] PURA § 39.918(c)-(e).

Collectively, the provisions of PURA § 39.918 exhibit an intent to create an exception to the traditional role of a TDU that is bounded by carefully tailored restrictions. To expand the exception to apply in circumstances where the widespread power outage is attributable only to conditions on the TDU's own distribution system essentially authorizes a TDU to operate mobile generation facilities to address deficiencies or failures of its own distribution system rather than to enhance resiliency needed to compensate for a larger grid issue. Therefore, Oncor's interpretation of PURA § 39.918(b)(1)(B) should be rejected in favor of an interpretation that is consistent with the plain meaning of the statute, meets the rules of statutory construction, and maintains a cohesive statutory framework with the longstanding business separation of PGCs, TDUs, and REPs.

2) Any interpretation of PURA § 39.918 approved in this proceeding must take into account the potential market disruptions resulting from the participation of rate-regulated companies.

The separation of the three primary categories of market participants described above in Section a.1 is foundational to the service of customers under Texas's competitive electric market.[39] It is imperative to interpret any exception to this separation in a manner that does not disrupt the very bright lines established in PURA. The competitive market already offers a customer who is concerned that an outage could interrupt their electric service multiple options for purchasing back-up generation for use behind the meter, such as distributed generation designed as back-up generation or battery devices.[40] Under PURA § 39.918, a TDU is not allowed to lease generators as a substitute for this customer-specific back-up generation service.[41] Oncor improperly proposes to provide this competitive energy service (i.e. individual customer back-up generation) and, by recovering the costs incurred to provide it through a TDU's rates, socializes the costs for that service to all ratepayers.[42]

Oncor's proposed lease and operation of mobile generation in this manner causes inequities among customers in the same rate class because those customers who have made

[39] TEAM-ARM Ex. 1 at 14:16-18.

[40] TEAM-ARM Ex. 1 at 8:16-19.

[41] TEAM-ARM Ex. 1 at 8:19-21.

[42] TEAM-ARM Ex. 1 at 8:21-9:2.

strategic investments in onsite generation as part of their business model will be required to shoulder the cost of Oncor's mobile generation (in addition to what they have already paid for their own back up generation) even though they will not benefit from it.[43]

In contrast, if generation were leased in compliance with the statutory purposes (i.e., in load-shed), this individual customer cross-subsidy condition would be mitigated. Deployment of emergency generation to mitigate the duration of load shed for any particular portion of the Oncor system, would benefit the entire customer base of ERCOT. To ensure that expenditure on mobile generation is used and useful for the entire TDU system, a TDU must only be permitted to lease mobile generation in accordance with the parameters established by PURA § 39.918.[44]

Interpreting the scope of PURA § 39.918 to allow for the use of mobile generation only in the narrow circumstances described by the plain language of subsection (b)(1) will maintain consistency with the remainder of PURA. While PURA § 39.918 creates an exception for TDU-operated generation, it is wisely bounded by many requirements on TDU conduct,[45] and it is also governed by the classical principles of utility ratemaking—namely, that expenses, such as leases, must be prudently incurred, and that rates must be just and reasonable.[46] Cost-of-service regulation is a proxy for competition.[47] Thus, it is necessary to consider whether a TDU's expenditures on mobile generation represent the prudence and business acumen that one would expect to be brought to bear in a competitive landscape.[48] To protect the ERCOT competitive market, PURA § 39.918 should be interpreted to disturb the existing regulatory structure as little as possible to reduce the kinds of market interferences the structure set forth by PURA is designed avoid.[49]

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[43] TEAM-ARM Ex. 1 at 9:13-18.

[44] TEAM-ARM Ex. 1 at 8:21-9:2.

[45] *See* PURA §§ 39.918(c)-(f).

[46] TEAM-ARM Ex. 1 at 9:20-23.

[47] TEAM-ARM Ex. 1 at 9:23-10:1.

[48] TEAM-ARM Ex. 1 at 10:1-4.

[49] TEAM-ARM Ex. 1 at 9:18-19.

b. Oncor's Designed Use of Mobile Generation

The record in this proceeding leads to only one conclusion: Oncor has already used, and intends to continue using, its mobile generation in violation of PURA § 39.918(b)(1)(B). The only evidence contrary to this conclusion are bare assertions[50] or simple references to only a portion of the language of PURA § 39.918. For example, the multi-level review process cited by Oncor to illustrate that each time Oncor considers whether to deploy mobile generation, it considers whether the subject circumstance falls within the requirements of PURA § 39.918[51] was described as follows: "The first step in the review is to ensure the request meets the requirements of Tex. Util. Code § 39.918 for power restoration after a widespread power outage as defined in that section. The next step. . ."[52] No other explanatory information was provided. This conclusory statement is insufficient to demonstrate that Oncor has acquired and plans to operate its mobile generation facilities within the confines of PURA § 39.918. Accordingly, the costs incurred in connection with these facilities are not permitted by the statute and are not reasonable and necessary to include in rates.

1) Oncor has admitted that it has deployed mobile generation in response to an outage that was not caused by load shed or an issue on the bulk power system as required by PURA § 39.918(b)(1).

The one and only time Oncor deployed mobile generation during the test year was in violation of PURA § 39.918(b)(1) because the widespread power outage was not attributable to a load shed order or conditions on the Texas electric transmission grid. Oncor used a mobile generator to restore power to the Faith Community Hospital in Jacksboro, Texas, which was served by a single distribution feeder.[53] Jacksboro had been hit by a tornado that caused damage to 34 poles, 32 crossarms, and four transformers on the distribution feeder serving the hospital.[54] By Oncor's own admission, the tornado did not damage any portion of its transmission

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[50] *See, e.g.*, Rebuttal Testimony of Ellen E. Buck, Oncor Ex. 43 at 5:8-10 ("Yes, of course. As stated in Oncor witness Mr. Hull's rebuttal testimony, Oncor has deployed, and will continue to deploy, its leased mobile generation facilities only in a manner that complies with the statute.").

[51] Oncor Ex. 41 at 4:29-5:2.

[52] Oncor Ex. 41 at Ex. KH-R-3.

[53] Oncor Ex. 41 at 3:14-16 and Ex. KH-R-1.

[54] Oncor Ex. 41 at Ex. KH-R-1.

system,[55] and Oncor did not provide any information indicating that it had received a load shed order from ERCOT.[56] Therefore, neither of the conditions enumerated in PURA § 39.918(b)(1) were present and Oncor's operation of the mobile generation was not in compliance with the statute.

2) Oncor has developed policies for the use of mobile generation facilities in circumstances that fall outside the scope of the exceptions in PURA § 39.918(b)(1).

The procedures and processes developed by Oncor addressing the deployment and operation of mobile generation effectively ignore the requirements of PURA § 39.918(b)(1)(B). In support of his assertion that "Oncor carefully considered the entirety of PURA § 39.918, including § 39.918(b)(1)(B), when we determined how and when we would be allowed to deploy mobile generation under PURA § 39.918[,]"[57] Oncor witness Keith Hull provided a document titled [redacted][58] The [redacted]"[59] Mr. Hull confirmed that, [redacted] maintained by Oncor.[60] Contrary to Mr. Hull's assertion, the [redacted] does not provide any insight into how PURA § 39.918(b)(1) has been incorporated into Oncor's [redacted] and does not indicate that it has.

[redacted][61] [redacted]

[55] Oncor Ex. 41 at 3:18-19.

[56] Oncor Ex. 41 at Ex. KH-R-1.

[57] Oncor Ex. 41 at 4:16-19.

[58] Oncor Ex. 41, Confidential Ex. KH-R-2.

[59] Tr. at 237:8-10 (Hull Rebuttal) (Sept. 27, 2022).

[60] Tr. at 330:3-11 (Hull Rebuttal) (Sept. 27, 2022).

[61] Oncor Ex. 41, Confidential Ex. KH-R-2 at 33.

[redacted][62] [redacted]

[redacted][63] [redacted]

[redacted][64] [redacted]

[redacted]

[redacted][66]

Also included in the [redacted][67] [redacted]

[redacted]

[redacted][68]

[redacted], the use cases for mobile generation that Oncor has identified as not meeting the requirements of PURA § 39.918 also omit any consideration of the conditions in subsection (b)(1). According to Oncor, the use cases that do not qualify are those where there is not "(1) a loss of electric power that: (a) affects a significant number of distribution customers and (b) has lasted or is expected to last for at least eight hours; and (2) a risk to public safety."[69] Clearly, Oncor is applying only the criteria used to define a widespread power outage, and not the criteria used to describe the limited circumstances in which a TDU is permitted to use mobile generation, when deciding when to use mobile generation. While a widespread power outage is a necessary circumstance, one of the two circumstances in PURA § 39.918(b)(1) must also be present.

Further bolstering the conclusion that Oncor is not properly observing the limitations imposed by PURA § 39.918(b)(1) is Oncor's Emergency Operations Plan (EOP). Under 16 TAC § 25.53(e)(1)(H), a TDU that leases or operates facilities under PURA § 39.918(b)(1) is

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[62] Oncor Ex. 41, Confidential Ex. KH-R-2 at 8.

[63] Oncor Ex. 41, Confidential Ex. KH-R-2 at 6.

[64] Tr. at 320:6-11 (Hull Rebuttal) (Sept. 27, 2022).

[65] Oncor Ex. 41, Confidential Ex. KH-R-2 at 8; Tr. at 321:7-19 (Hull Rebuttal) (Sept. 27, 2022).

[66] Oncor Ex. 41, Confidential Ex. KH-R-2 at 8; Tr. at 321:20-24 (Hull Rebuttal) (Sept. 27, 2022).

[67] Oncor Ex. 41, Confidential Ex. KH-R-2 at 11.

[68] Oncor Ex. 41, Confidential Ex. KH-R-2 at 11; Tr. at 324:1-6 and 324:10-325:3 (Hull Rebuttal) (Sept. 27, 2022).

[69] TEAM-ARM Ex. 1, Attachment CH-3 at 2.

required to include an annex in its EOP that details its plan for the use of those facilities. Oncor's most recently filed public EOP included a single page in Annex G to satisfy this requirement.[70] Once again, there is a reference to the criteria in subsection (a) defining a widespread power outage, but no mention of load shed or the bulk power system.[71]

Finally, in order to determine that there is an outage sufficient to support the deployment of mobile generation, Oncor proposes only to dispatch Distribution Operations field personnel to confirm a reported outage or interruption of electrical service to Oncor's distribution facilities.[72] Oncor does not perform any inspection of its transmission facilities to confirm that there is an issue on the bulk power system that is preventing the full service of the affected distribution facilities.[73] By its own admission, Oncor does not intend to take any action to ensure that the cause of a widespread power outage is not attributable solely to an issue on the distribution system.

3) Oncor designed its acquisition of mobile generation for the impermissible use of [redacted]

Oncor plans to [redacted] behind the customer's meter, which is not an approach that is compliant with PURA § 39.918. Oncor has procured mobile generation for "government agencies, fire departments, police departments, 911 call centers, hospitals, emergency shelters/warming facilities, and water treatment facilities."[74] As confirmed by Mr. Hull, Oncor [redacted][75] [redacted][76] As explained above, such a use is

[70] Oncor Electric Delivery Company LLC's Public Emergency Operations Plan – Annex G, TEAM-ARM Ex. 4.

[71] TEAM-ARM Ex. 4; Tr. at 315:22-316:1 and 316:10-14 (Hull Rebuttal) (Sept. 27, 2022).

[72] TEAM-ARM Ex. 1, Attachment CH-2 at 1.

[73] TEAM-ARM Ex. 1 at Attachment CH-2 at 1.

[74] Oncor Ex. 11 at 26:26-29.

[75] Tr. at 320:22-321:6 (Hull Rebuttal) (Sept. 27, 2022); Oncor Ex. 41 at Confidential Ex. KH-R-2 at 9.

[76] Tr. at 325:4-21 (Hull Rebuttal) (Sept. 27, 2022); Oncor Ex. 41 at Confidential Ex. KH-R-2 at 9.

an impermissible competitive energy service and is not used and useful for the statutory purpose of PURA § 39.918(b)(1).

Additionally, Mr. Hull's rebuttal testimony included a reference to "the period the mobile generation is connected to a customer"[77] and Oncor witness Daniel Hall stated the following in response to discovery: "When Oncor operates a mobile generation facility *to power a customer's premise* consistent with the requirements of Tex. Util. Code § 39.918, the current billing meter will be removed…"[78] Another discovery response provided by Oncor stated that it only deploys mobile generation facilities at distribution secondary voltage 277/480, 120/240, and 120/208,[79] which are voltages used to provide service for end-use customers that do not take service through a primary metering system, and are not voltages at the substation or a distribution feeder that could serve multiple customers or alleviate the need to shed load on a particular feeder.[80]

Taken together, these facts demonstrate that Oncor's plans for using mobile generation [redacted][81] However, PURA § 39.918(b)(1) allows for the lease and operation of mobile generation to restore power to a TDU's distribution *customers*. Therefore, it is not clear that [redacted] is permissible under the statute, and Oncor has not provided a robust explanation as to why it is.

c. Oncor's Procurement Process

Oncor has not carried its burden to show that it used a competitive bidding process to procure its mobile generation or that it was not practicable to use a competitive bidding process. Pursuant to PURA § 39.918(f), a TDU is required, when practicable, to use a competitive bidding process to lease mobile generation. None of the Oncor witnesses who filed direct

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[77] Oncor Ex. 41 at 7:7-8.

[78] Rebuttal Testimony of Daniel E. Hall, Oncor Ex. 44 at Ex. DEH-R-1 (emphasis added).

[79] Oncor Ex. 41 at Ex. KH-R-5.

[80] Tr. at 333:2-15 (Hull Rebuttal) (Sept. 27, 2022).

[81] *See also*, Oncor Ex. 41 at Confidential Ex. KH-R-2 at 25 ([redacted]).

testimony addressed the process Oncor used to procure mobile generation specifically.[82] On rebuttal, Oncor witness Ellen Buck asserted that "Oncor in fact developed and utilized a reasonable process to secure its leased mobile generation facilities." The only facts provided regarding this process were as follows: (1) Oncor developed a request for proposals (RFP); (2) Oncor sent the RFP to nine vendors and received eight responses; and (3) the nine vendors were either existing Oncor suppliers or identified through research.[83]

Because PURA § 39.918 is a new statute, and TDUs were not previously permitted to lease or operate mobile generation, this is the first time Oncor has had to develop an RFP for these types of facilities. Yet, Oncor did not explain how the criteria included in the RFP was identified and how or why its standard strategic sourcing and procurement practices were appropriate for such a novel RFP. Accordingly, Oncor has not fully demonstrated that it used a competitive bidding process for this specific procurement, nor has it demonstrated that a competitive bidding process was not practicable. Aside from the explicit statutory requirement, without information behind the procurement process, there is little information for the Commission to determine if the lease procurement was in fact reasonable and prudent, and whether associated costs are prudently incurred.

VIII. Revenue Distribution and Rate Design [PO Issues 4, 5, 46, 53, 54, 55, 56, 75, 76]

D. Discretionary Services

The REP Coalition seeks elimination of a unique fee that is currently charged only to REPs under Oncor's discretionary service charges in Section 6 of the tariff, which is labeled Charge No. DD24 Inadvertent Gain. The REP Coalition does not propose to restrict Oncor's ability to recover the cost of processing inadvertent gains through MarkeTrak. Instead, the appropriate place for recovery of this TDU function is through base rates rather than through unique charges to only one REP per incident. Oncor provided little direct evidence regarding the reasonableness of including these costs in a discretionary service rather than through base rates. The impact to base rates would be infinitesimal, but the impact on each REP is to impose a cost that may have no relationship to an action or inaction of the REP charged. Further, unlike every other discretionary service charge in Chapter 6 of the tariff, the inadvertent gain fee is

[82] TEAM-ARM Ex. 1 at 11:3-6.

[83] Oncor Ex. 43 at 4:5-10.

not the result of a request for specialty service by the customer, and as a result should be part of the system service charges rather than a discretionary service charge.

No other TDU in ERCOT charges an IAG fee. Oncor relies on its original rate case in which the IAG fee was created.[84] However, as discussed below, the evidence shows that the stated purpose for creation of that fee does not hold true in practice. Oncor presented no evidence that the assessment of a discretionary service charge on REPs involved in an inadvertent gain has had any effect on reducing the amount of inadvertent gains that have to be processed.[85] In fact, Oncor asserts that that cost has increased and seeks to increase the amount of cost recovered through the inadvertent gain fee in this case.

Specifically, Section 6.1.2 of Oncor's Tariff for Retail Delivery Service contains a discretionary service charge, Charge No. DD24 Inadvertent Gain, which Oncor proposes to raise from $35.65 to $36.15.[86] During the test year, Oncor collected $628,438.20 through this charge.[87] As explained further herein, this Inadvertent Gain (IAG) charge is discriminatory because it imposes a cost on the gaining REP regardless of whether that REP was responsible for the IAG. Oncor is the only TDU in ERCOT that imposes an IAG fee and it was only approved in Docket No. 35717 based on an understanding that this charge would reflect cost causation. Oncor's IAG fee does not satisfy this goal and accordingly this is best recovered as an operations and maintenance (O&M) expense, which is how Oncor used to recover costs associated with IAGs.

The REP Coalition provided extensive evidence on this issue through the testimony of Chris Hendrix and through cross-examination. Accordingly, the REP Coalition respectfully requests that the ALJs and the Commission consider the totality of the record evidence in

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[84] Tr. at 1053:4-11 (Troxle Rebuttal (Sept. 30, 2022); *see also,* TEAM-ARM Ex. 1 at 21:17-22:6 (quoting Findings of Fact Nos. 207 and 208 approving Oncor's discretionary service charges in Docket No. 35717); *see also generally, Application of Oncor Electric Delivery Company, LLC for Authority to Change Rates*, Docket No. 35717, Order on Rehearing (Nov. 30, 2009).

[85] *See* Oncor Electric Delivery Company, LLC's Response to TEAM RFI No. 2-23, TEAM-ARM Ex. 2 (stating that Oncor has not performed any studies or analyses comparing the number of IAGs per year (or other defined time period such as quarter, month, etc.) that it processed before receiving approval of the IAG fee to the number of IAGs processed after implementing the IAG fee).

[86] *See* Direct Testimony of Chris Hendrix, TEAM-ARM Ex. 1, Attachment CH-6 at 7 (Response of Oncor Electric Delivery Company, LLC to Steering Committee of Cities Served by Oncor's Fourth Request for Information at Cities 4-8).

[87] Oncor Ex. 2 at WP IV-J-2; *see also* TEAM-ARM Ex. 1 at 21:7 (referring to Oncor's WP IV-J-2).

evaluating the inclusion of this fee in Oncor's tariff and find that the underlying costs should cease to be collected through a discretionary service charge.

a. An IAG is an unintentional change in a customer's REP of record that is resolved using a standardized set of transactions applicable to all REPs and TDUs in ERCOT.

For context, an IAG is a change in a customer's REP of record[88] without the customer's proper authorization.[89] This change can take place through one of two types of transactions. A switch transaction is submitted when a customer desires to change REPs but does not want to change the premise where they are being served.[90] A move-in transaction is submitted when a customer requests service at a premise where service is not currently provided, for a premise that is new to the customer, or when the customer requests service at a premise that is entirely new (for example, a newly-developed subdivision).[91] In either case, when an IAG occurs, the result is that one REP inadvertently gains a customer (the gaining REP), while another REP inadvertently loses that customer (the losing REP).

An IAG occurs when a switch or move-in request is submitted to ERCOT, but the information included in the transaction is incorrect.[92] As the name suggests, and as Oncor has confirmed, at a very basic level, the root cause of an IAG is an unintentional human error.[93] One typical cause of an IAG is incorrect address information, such as transposed address numbers or an inaccurate street name. For example, a move-in request to 123 Harbor Court may be submitted with an incorrect street name of 123 Harbor *Lane*, or the address number 123 could be transposed as 132.[94] Another typical cause is a missing apartment number.[95]

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[88] The Commission defines REP of record as: "The REP assigned to the electric service identifier (ESI ID) in ERCOT's database. There can be no more than one REP of record assigned to an ESI ID at any specific point in time." 16 TAC § 25.5(115).

[89] TEAM-ARM Ex. 1 at 15:3-4.

[90] TEAM-ARM Ex. 1 at 15:4-6.

[91] TEAM-ARM Ex. 1 at 15: 6-9.

[92] TEAM-ARM Ex. 1 at 15:10-14.

[93] Tr. at 349:17-350:4 (Hall Rebuttal) (Sept. 27, 2022).

[94] TEAM-ARM Ex. 1 at 15:10-17.

[95] TEAM-ARM Ex. 1 at 15:16-17.

Once an IAG has been unwound, the affected customer is returned to the original REP of record. In other words, the customer is no longer the customer of the REP that is assessed Charge No. DD24 Inadvertent Gain.[96] To illustrate this point, TEAM-ARM witness Chris Hendrix provided the following hypothetical scenario:[97]

- REP A is serving the Smith Family at 123 Harbor Lane; REP A is the Smith's REP of record.
- The Jones Family intends to move-in to 132 Harbor Lane soon, and chooses to enroll with REP B for service at their new address; REP B is the Jones's REP of choice.
- The Joneses inadvertently enter their service address as 123 Harbor Lane in the online enrollment form.
- REP B submits a move-in for the Jones Family for 123 Harbor Lane.
- Due to the transposed street number, the transaction changes the Smith Family's REP of record from REP A to REP B.
- REP B inadvertently gains the Smith Family as a customer and REP A inadvertently loses the Smith Family as a customer; REP B is the gaining REP and REP A is the losing REP.
- REP A, REP B, and the TDU are required to unwind the IAG and return the Smith Family to REP A without an interruption of service.

Under 16 TAC § 25.495, ERCOT is required to facilitate the prompt return of the customer to the losing REP or the customer's REP of choice.[98] The process corresponding to this rule that is used by ERCOT, REPs, and transmission and distribution service providers (TDSPs)[99] to unwind an IAG is found in Section 7.3 of ERCOT's Retail Market Guide (RMG), which states in part:

> This Section provides guidelines for ensuring that inadvertently gained Electric Service Identifiers (ESI IDs) are returned to the losing Competitive Retailer (CR) in a quick and efficient manner with minimal inconvenience to the Customer as required by P.U.C.

[96] TEAM-ARM Ex. 1 at 23:13-17.

[97] TEAM-ARM Ex. 1 at 16:1-14.

[98] 16 TAC § 25.495.

[99] A TDU is also a TDSP.

SUBST. R. 25.495, Unauthorized Change of Retail Electric Provider.[100]

The processes described in Section 7.3 are executed using MarkeTrak, which is the electronic system maintained by ERCOT to track and resolve retail market issues and data discrepancies.[101] As described by the RMG, "MarkeTrak is the primary tool used by CRs, TDSPs and ERCOT to resolve retail market transaction issues, request manual service order cancellations, request ERCOT assistance with inadvertent ESI ID transfers, and file Data Extract Variance (DEV) issues."[102] Resolving an IAG is just one of the many uses for MarkeTrak as demonstrated by the fact that Oncor has created a Market Solutions Specialist position that is responsible for monitoring and taking appropriate action on MarkeTrak exceptions and performing research and analysis to assist with resolving MarkeTrak exceptions.[103]

b. Revocation of Charge No. DD24 Inadvertent Gain Charge

1) Charge No. DD24 Inadvertent Gain is a discriminatory rate that is not based on cost causation because it is assessed on the gaining REP regardless of whether that REP was the source of the inaccurate information resulting in the IAG.

As explained by Mr. Hendrix, the gaining REP is not always the source of the incorrect information that leads to an IAG.[104] Because the erroneous information is typically provided during the enrollment of a customer, the applicant/customer, or a third party such as a broker, can also be the party responsible for inadvertently inputting the incorrect information.[105] Oncor agreed in its response to TEAM RFI No. 1-26 that a customer or a third party such as a broker could be the source of the incorrect information leading to an IAG.[106] Oncor also admitted that it does not have a process in place to determine the source of the inadvertent, inaccurate

[100] TEAM-ARM Ex. 1 at 17:17-18:3.

[101] TEAM-ARM Ex. 1 at 18:11-13.

[102] TEAM-ARM Ex. 1 at 18:13-17.

[103] TEAM-ARM Ex. 1, Attachment CH-2 at 3-4 (Response of Oncor Electric Delivery Company, LLC to Texas Energy Association for Marketers' First Request for Information at TEAM RFI No. 1-21).

[104] TEAM-ARM Ex. 1 at 16:5-20.

[105] TEAM-ARM Ex. 1 at 16:15-17:14.

[106] TEAM-ARM Ex. 1, Attachment CH-2 at 7 (Response of Oncor Electric Delivery Company, LLC to Texas Energy Association for Marketers' First Request for Information at TEAM RFI No. 1-26).

information that led to an IAG.[107] Nevertheless, Oncor assesses the IAG fee on the gaining REP when an IAG occurs.[108]

Pursuant to PURA § 36.003(b), a rate charged by a utility may not be unreasonably preferential, prejudicial, or discriminatory. Furthermore, Section 3.7 of Oncor's Tariff for Retail Delivery Service requires that Oncor, "shall discharge its responsibilities under this Tariff in a neutral manner, not favoring or burdening any particular Competitive Retailer or Retail Customer…"[109] Oncor's IAG fee is discriminatory on its face because it is charged to a REP regardless of whether that REP caused the IAG. Compounding the problem is the fact that the REP incurring the fee cannot pas the charge on to any customer.[110]

As referenced above, Charge No. DD24 Inadvertent Gain was initially approved in Docket No. 35717.[111] The Commission's final order in that proceeding did not specifically address the IAG fee;[112] however, the Proposal for Decision (PFD) recommended approval of the IAG fee because it, "would at least endeavor to place the costs of an erroneous switch on the REP if it were at fault, which is a more equitable allocation of these costs."[113] However, Oncor makes no attempt to determine if the incorrect information originated from the gaining REP before assessing the IAG fee. Therefore, the basis for the PFD's approval of the Charge No. DD24 Inadvertent Gain was not put into practice and the charge remains discriminatory and accordingly should be revoked.

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[107] Tr. at 1052:11-15 (Troxle Rebuttal) (Sept. 30, 2022) (Q: "And so when Oncor assesses an inadvertent gain charge to a REP, Oncor does not have a process to verify the source of the information that led to the inadvertent gain. Is that right?" A: "No.").

[108] *See* TEAM-ARM Ex. 1, Attachment CH-2 at 2 (Response of Oncor Electric Delivery Company, LLC to Texas Energy Association for Marketers' First Request for Information at TEAM RFI No. 1-20).

[109] Oncor Ex. 5 at bates 1937 (§ 3.7 Non-Discrimination in Oncor's Tariff for Retail Delivery Service); *see also,* TEAM-ARM Ex. 1 at 22 (footnote 48 quotes this portion of the pro forma Tariff for Retail Delivery Service); *see also* 16 TAC § 25.214(d) (establishing pro forma Tariff for Retail Delivery Service, including § 3.7).

[110] 16 TAC § 25.495(a)(4)(F); *see also* TEAM-ARM Ex. 1 at 23:13-20.

[111] *See* Tr. at 1050:14-21 (Troxle Rebuttal) (Sept. 30, 2022).

[112] *See* Tr. at 1053:4-11 (Troxle Rebuttal (Sept. 30, 2022); *see also,* TEAM-ARM Ex. 1 at 21:17-22:6 (quoting Findings of Fact Nos. 207 and 208 approving Oncor's discretionary service charges in Docket No. 35717); *see also generally*, *Application of Oncor Electric Delivery Company, LLC for Authority to Change Rates*, Docket No. 35717, Order on Rehearing (Nov. 30, 2009).

[113] Rebuttal Testimony of Matthew A. Troxle, Oncor Ex. 54, Exhibit MAT-R-30 (excerpt of Proposal for Decision from Docket No. 35717).

The IAG fee is also discriminatory because Oncor will assess it to the gaining REP even when that REP has complied with the Commission's rule establishing enrollment procedures designed to ensure that all applicants and customers in Texas are protected from an unauthorized switch or an unauthorized move-in.[114] Under 16 TAC § 25.474(d)(10), (e)(6), (f)(4), and (h)(5), the Commission has established procedures for the verification of enrollments performed via the internet, a written letter of authorization, door-to-door sales, and over the telephone. Each subsection requires that the REP "obtain or confirm" the applicant's service address and "obtain or confirm" the applicant's ESIID, if available.[115] At the hearing, Mr. Hall agreed that if a REP: (1) performed a telephonic enrollment; (2) complied with all of the steps established in 16 TAC § 25.474(h)(5) to verify the customer's authorization of the telephonic enrollment; and (3) submitted a move-in or switch transaction that resulted in an IAG, the REP would be assessed an IAG fee despite its compliance with Commission rules.[116]

Oncor contends that eliminating the IAG fee would "allow REPs to avoid validating information from potential customers."[117] Consequently, it appears that Oncor views its IAG fee as a defacto "penalty." However, this "penalty" applies even when the gaining REP has complied with all Commission rules in verifying the enrollment. Oncor has not demonstrated why it is appropriate for a TDU to impose a penalty on a REP when there is no problem with compliance with Commission rules. Therefore, Oncor's IAG fee is discriminatory.

2) Oncor's IAG processing is a system service, not a discretionary service, and accordingly Oncor's costs, if just and reasonable, should be recovered as an O&M expense rather than a discretionary service charge.

It is important to note that Charge No. DD24 Inadvertent Gain is not one of the uniform discretionary service charges included in Section 6.1.2.1 of the *pro forma* Tariff for Retail Delivery Service established by 16 TAC § 25.214(d).[118] And, although Oncor's customers are

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[114] 16 TAC § 25.474(b).

[115] 16 TAC § 25.474(d)(10)(A)-(B), (e)(6)(A)-(B), (f)(5)(B)(i)-(ii), (h)(5)(B)(i)-(ii).

[116] Tr. at 357:21-358:6 (Hall Rebuttal) (Sept. 27, 2022).

[117] Oncor Ex. 44 at 5:14-17.

[118] TEAM-ARM Ex. 5 (Oncor's Response to ARM RFI No. 1-01) (As the Oncor witness sponsoring this RFI response, Mr. Troxle confirmed that Charge No. DD24 is not one of the uniform discretionary service charges included in the *pro forma* Tariff).

not the only TDU customers impacted by IAGs,[119] and all TDUs are required to follow the IAG processes and use the transactions prescribed by the RMG,[120] no other TDU operating in ERCOT assesses a discretionary service charge for processing an IAG.[121] Furthermore, as Mr. Hendrix explained based on a review of the other ERCOT TDUs' discretionary service charges, separate charges related to the resolution of a MarkeTrak issue are rare.[122] From a rate design perspective, Oncor's IAG fee is not compliant with Commission rules because it is a system service, not a discretionary service. To appropriately comply with the Commission's definitions of services and how costs for service types should be recovered, Oncor's costs to process the unwinding of an IAG should be recovered through base rates rather than a discretionary service charge.

For context, 16 TAC § 25.342(f)(1) generally requires each service offered by a TDSP to be classified as a discretionary service or a system service.[123] The Commission defines system services to include TDU "standard metering and billing services,"[124] of which billing system services are defined to include both "administrative activities necessary to maintain REP billing accounts and records" and "error investigation and resolution."[125] Oncor admitted in its responses to TEAM RFI Nos. 2-21 and 2-22 that the resolution of an IAG (as a resolution of an unauthorized change of REP) checks both of those boxes for the definition of billing system services.[126] In his rebuttal testimony, Oncor witness Daniel Hall attempts to narrow the applicability of this rule by arguing that the administrative activities and error investigations referenced in 16 TAC § 25.341(15)(G) and (H) only refer to Oncor's *internal* administrative activities and error investigations of its own billing system.[127] However, Mr. Hall cites no support for this interpretation and on its face the rule makes no such distinction. Based on a

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[119] Tr. at 351:3-11 (Hall Rebuttal) (Sept. 27, 2022).

[120] Tr. at 351:19-25 (Hall Rebuttal) (Sept. 27, 2022).

[121] TEAM-ARM Ex. 1 at 23:21-23.

[122] TEAM-ARM Ex. 1 at 23:23 - 24:4.

[123] TEAM-ARM Ex. 1 at 24:5-13.

[124] *See id.*; *see also* 16 TAC § 25.341(13).

[125] 16 TAC § 25.341(15)(G) & (H).

[126] *See* TEAM-ARM Ex. 1, Attachment CH-3 at 8-9 (Oncor Responses to TEAM RFI Nos. 2-21 and 2-22).

[127] Oncor Ex. 44 at 6:18 – 7:2 (Sept. 16, 2022).

plain reading of the rule and without any evidence to the contrary, Mr. Hall's supposed interpretation is without merit.

Furthermore, the Commission rule classifying system services versus discretionary services establishes that:

> The cost associated with each discretionary service is customer-specific and should be borne only by the retail electric provider serving the transmission and distribution customer who *purchases* the discretionary service.[128]

The rule's use of the word "purchases" implies that discretionary services are reserved for those services affirmatively initiated by the customer.[129] By contrast, an IAG is the result of an inadvertent error, not a service purchased by a customer. Moreover, an IAG is not always initiated by a customer request or the customer of the subject premises' action or inaction in a situation—it is a process that is required by Commission rules to remedy a situation whether a customer requests it or not.[130] Finally, the cost to process and unwind an IAG is not customer-specific, as 16 TAC § 25.342(f)(1)(B) requires, but rather is a standardized process that all TDUs and REPs must follow. As market participants, Oncor and the gaining REP are required to follow the IAG process established in Section 3.7 of the ERCOT Retail Market Guide through submissions to ERCOT's MarkeTrak online portal. As Mr. Hendrix explains in his direct testimony, for these reasons IAG processing is more accurately and appropriately classified as a system service and should be recovered as such rather than using a charge for a discretionary service.[131]

In support of its request to increase the IAG fee to $36.15, Oncor attributes a $43.57 loaded hourly rate for Revenue Management Specialist and Market Solutions Specialist positions and asserts that these positions devote 0.38 and 0.45 hours respectively to IAG transactions.[132] Oncor states that these time estimates were determined "based on discussions with the people performing the required tasks [related to processing an IAG] on a daily

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[128] 16 TAC § 25.342(f)(1)(B) (emphasis added).

[129] TEAM-ARM Ex. 1 at 24:16-18.

[130] TEAM-ARM Ex. 1 at 25:3-6; 16 TAC § 25.249.

[131] TEAM-ARM Ex. 1 at 24:5 - 25:8.

[132] *See* TEAM-ARM Ex. 1 at 20:9-14 (referencing Oncor Schedule IV-J-2 and WP IV-J-2-2).

basis."[133] Because a resolution of an IAG is a system service and costs are derived from the hourly rates for Revenue Management Specialists and Market Solutions Specialists, Mr. Hendrix recommends that Oncor recover its IAG costs as an O&M expense included in Oncor's revenue requirement to set base rates.[134] Mr. Hendrix explains that:

> The charge is derived from the hourly rates for the Revenue Management Specialist and Market Solutions Specialist positions and the associated costs for paid time off, benefits, and payroll taxes. These types of labor expenses are recoverable through a TDSP's revenue requirement if they are found to be reasonable and necessary costs of providing utility service.[135]

In his rebuttal testimony, Oncor witness Mr. Troxle agreed with Mr. Hendrix that Oncor's costs to process IAGs should be recovered as O&M expenses if the IAG fee is eliminated.[136] In fact, Mr. Troxle explained during the hearing that Oncor recovered IAG costs through O&M expenses before Charge No. DD24 was instituted in Docket No. 35717.[137] For these reasons, the discretionary service Charge No. DD24 Inadvertent Gain should be revoked and instead, if Oncor demonstrates that its costs for resolving IAGs are just and reasonable, then such costs should be included as O&M expenses. This would be a return to appropriately treating IAG processing as a system service and would eliminate a discriminatory rate.

c. If Charge No. DD24 Inadvertent Gain is not revoked, Oncor's request to increase the IAG fee should be denied and its current IAG fee amount should be reduced.

If the IAG fee is nevertheless approved, then the amount of Charge No. DD24 should be reduced because Oncor has failed to meet its burden to demonstrate that such costs are just and reasonable. No Oncor witness provided direct testimony supporting the reasonableness of the $36.15 requested and Oncor did not perform a study or other analysis to demonstrate the accuracy of the 0.38 and 0.45 hours attributed to IAG processing for its Revenue Management Specialists and Market Solutions Specialists.[138] Oncor witness Mr. Hall asserted only that

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[133] TEAM-ARM Ex. 1, Attachment CH-3 at 5 & 6 (Oncor Response to TEAM RFI Nos. 2-14 and 2-15).

[134] TEAM-ARM Ex. 1 at 23:3-12 and 25:9-26:19.

[135] TEAM-ARM Ex. 1 at 23:7-12.

[136] Oncor Ex. 54 at 50:22-29.

[137] Tr. at 1053:24 – 1054:8 (Troxle Rebuttal) (Sept. 30, 2022).

[138] TEAM-ARM Ex. 1 at 27:7-10 and 16-18.

Oncor determined these time estimates by talking to the employees performing these tasks, but provided no insight into the rigorousness of such discussions or the means by which those employees accounted for their time.[139]

Oncor's IAG fee is also resulting in an over collection. Oncor processed 17,628 IAGs during the test year.[140] At a total of 0.83 hours per IAG case, that is 14,361 hours spent on IAGs, or just over seven full-time equivalent positions.[141] Both a Revenue Management Specialist and a Market Solutions Specialist are paid a salary of $70,900 per year.[142] Thus, it would cost Oncor $496,300 to employ the seven full-time equivalents needed to process IAGs, which is $132,138 less than the $628,438[143] collected via Charge No. DD24 during the test year. While Oncor currently employs eight Revenue Management Specialists and ten Market Solutions Specialists, none of them work on IAGs full time.[144] Accordingly, if the Commission also accepts the wholly unsupported time allocation of 0.83 hours per IAG case, Charge No. DD24 Inadvertent Gain should be no higher than $28.16, which would have generated a total of $496,404 for the 17,628 IAGs processed during the test year.

As Mr. Hendrix explains, Oncor has not satisfied its burden to demonstrate the reasonableness of an increase in Charge No. DD24 Inadvertent Gain and the REP Coalition recommends that if this Charge is maintained Oncor should be required to present a supporting time study in its next rate case.[145]

XIII. Conclusion

For the reasons stated herein, the REP Coalition respectfully requests that: (i) Oncor's request to recover for mobile generation be denied without prejudice and deferred to a future proceeding; and (ii) Oncor's discretionary service Charge No. DD24 Inadvertent Gain be

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[139] Oncor Ex. 44 at 8:1-3.

[140] TEAM-ARM Ex. 1 at 21:7.

[141] TEAM-ARM Ex. 1 at 21:7-8, 11.

[142] TEAM-ARM Ex. 1 at 27:4.

[143] TEAM-ARM Ex. 1 at 21:7.

[144] Oncor Ex. 44 at 7:24-26.

[145] TEAM-ARM Ex. 1 at 27:7-10 and 16-18.

eliminated and that Oncor be permitted to recover the revenues otherwise generated by this charge through base rates.