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**SOAH DOCKET NO. 473-22-04394  
PUC DOCKET NO. 53719**

<b>APPLICATION OF ENTERGY</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>TEXAS, INC. FOR AUTHORITY</b>	<b>§</b>	<b>OF</b>
<b>TO CHANGE RATES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S APPEAL OF  
INTERIM ORDER NO. 4 DENYING MOTION FOR LEAVE TO INTERVENE**

Southwestern Public Service Company (“SPS”) files this appeal to the Public Utility Commission of Texas (“Commission”), pursuant to 16 Tex. Admin. Code (TAC) § 21.123, of the ruling by the Administrative Law Judge (ALJ) in Interim Order No. 4<sup>1</sup> denying SPS’s Motion for Leave to Intervene in this matter.<sup>2</sup> In support of its appeal, SPS would show as follows:

**I. BACKGROUND**

Entergy Texas, Inc. (ETI) filed this rate case on July 1, 2022. As part of its case, ETI seeks approval of riders that would allow it to recover investments in transportation electrification equipment.<sup>3</sup> On August 4, 2022, the Commission issued a Preliminary Order setting forth issues to be considered or addressed in this matter.<sup>4</sup> Relevant to SPS, the Preliminary Order includes the following two issues:

- 68. Is it appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure, or should the ownership of such facilities be left to competitive providers?

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<sup>1</sup> See Order No. 4 attached as Exhibit A.

<sup>2</sup> As provided by 16 Tex. Admin. Code § 22.123(a)(8), at any time prior to the Commission’s decision on this appeal, the appeal may be treated as a request for reconsideration by the presiding officer of the order under appeal.

<sup>3</sup> See ETI’s Statement of Intent and Application filed July 1, 2022, at 7.

<sup>4</sup> See TEX. GOV’T CODE § 2003.049(e) (“the commission shall provide to the administrative law judge a list of issues or areas that must be addressed. In addition, the commission may identify and provide to the administrative law judge at any time additional issues or areas that must be addressed”).

69. Should Entergy be allowed to own transportation electrification and charging infrastructure—including vehicle-charging facilities—in the manner it has proposed in its application, or should such ownership be wholly left to customers or third parties?<sup>5</sup>

SPS was not a party who received notice of ETI's rate case filing and SPS did not receive service of filings in this matter at the time the Preliminary Order issued. However, because SPS is an "an electric utility in a vertically integrated area," SPS is directly impacted by any resolution of the above-referenced policy issues. Once SPS became aware of the Commission's Preliminary Order, SPS moved to intervene in this matter on August 18, 2022, as permitted by 16 TAC § 22.104(d), for the limited purpose of participating in resolution of issues 68 and 69 in the Preliminary Order.<sup>6</sup>

Because SPS was not a party that had received notice of this matter, SPS's Motion for Leave to Intervene was filed three days after the deadline for intervening in this matter. Accordingly, SPS's Motion for Leave to Intervene requested leave to intervene late, and SPS's motion set forth how SPS satisfied the criteria under 16 TAC § 22.104(d) that the presiding officer must consider when deciding whether to allow a late intervention.

No party filed a response in opposition to SPS's Motion for Leave to Intervene. Despite this, on September 7, 2022, the ALJ issued Order No. 4 ("Order"), which denied SPS's intervention motion. In the Order, the ALJ stated that SPS's motion was being denied because "SPS has not established that it has a particularized justiciable interest, such that it should be conferred intervenor status in this case, a base rate case for another electric utility."<sup>7</sup>

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<sup>5</sup> Preliminary Order issued August 4, 2022, at 15.

<sup>6</sup> See SPS's Motion for Leave to Intervene, attached as Exhibit B.

<sup>7</sup> Order No. 4 issued September 7, 2022, at 2.

SPS now appeals Order No. 4 to the Commission, pursuant to 16 TAC § 21.123(a), and requests that the Commission reverse the decision of the ALJ denying SPS's Motion for Leave to Intervene and grant SPS's intervention in this matter, for the reasons set forth herein.

## **II. ARGUMENT**

### **A. Standard of Review**

An appeal to the Commission of an interim order under 16 TAC § 21.123(a) requires a showing that the interim order was “unjustified, improper, or immediately prejudices a substantial or material right of a party or materially affects the course of the hearing.” As shown below, the denial of SPS's Motion for Leave to Intervene was unjustified and improper because, contrary to the ALJ's ruling, SPS has a clear justiciable interest in the resolution of issues 68 and 69 in the Preliminary Order since the Commission's decision on those issues in this matter may be considered binding precedent affecting SPS in its own future cases before the Commission.<sup>8</sup> Further, the denial of SPS's intervention motion by the ALJ “immediately prejudices” a “material right” of SPS by precluding SPS from actively participating in the resolution of issues 68 and 69 in this matter, despite the direct impact of any such resolution on SPS. Accordingly, for the reasons set out herein, the Commission should grant this appeal and allow SPS's intervention in this matter for the limited purpose of participating in resolution of issues 68 and 69 in the Preliminary Order.

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<sup>8</sup> See, e.g., *Allen Parker Co. v. Trustmark Nat. Bank*, 2013 WL 2457113, at \*5 (Tex. App.—Houston[14<sup>th</sup> Dist.] June 6, 2013, pet. denied) (explaining that a “trial court abuses its discretion by striking a plea in intervention if: (1) the intervenor establishes it has a justiciable interest; (2) the intervention will not complicate the case by excessively multiplying the issues; and (3) the intervention is practically essential to effectively protect the intervenor's interest”) (citing *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990)).

**B. SPS demonstrated entitlement to intervention in this matter.**

The intervention deadline in this matter was August 15, 2022. SPS sought leave to intervene in this matter just three days past this deadline, on August 18, 2022, pursuant to 16 TAC § 22.104(d). Evaluation of a motion for leave to intervene filed under 16 TAC § 22.104(d), requires the presiding officer to consider: (1) whether there is good cause for late intervention; (2) whether the late intervention would prejudice existing parties; (3) whether the late intervention may disrupt the proceedings; and (4) whether the public interest is likely to be served by the late intervention. *See* 16 Tex. Admin. Code § 22.104(d). As shown here, SPS demonstrated in its Motion for Leave to intervene that all of the foregoing factors compelled granting SPS's motion.

*First*, SPS's demonstrated that there was good cause for its late intervention. SPS's Motion for Leave to Intervene was filed mere days after the deadline to intervene had elapsed and before a ruling had issued on any other motions to intervene. Accordingly, SPS showed that allowing the late intervention would not prejudice any other parties.<sup>9</sup> Further, SPS showed that it had good cause for its late filing because SPS was not a party entitled to receive notice of this case and was not given notice of the intervention deadline. Despite this, SPS expeditiously filed its request for leave to intervene once it became aware of issues 68 and 69 in the Preliminary Order. SPS also made clear in its Motion for Leave to Intervene that its rights would be materially impacted by decisions made in this matter since issues 68 and 69 in the Preliminary Order are couched as policy questions whose resolution will have an impact beyond this specific docket, and will particularly impact vertically integrated utilities such as SPS.<sup>10</sup> Indeed, the presiding officer has already

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<sup>9</sup> While the ALJ has now granted all Motions to Intervene filed prior to the August 15, 2022, intervention deadline, this matter is still in its very early stages and no relevant discovery or testimony deadlines have elapsed or will elapse for well over a month from the date of this filing, such that no prejudice will be suffered by other parties if the Commission were to now grant SPS the right to intervene.

<sup>10</sup> *See* Preliminary Order dated August 4, 2022, at Paragraphs 68 and 69

allowed intervention in this matter of one party, Flashpoint Parking,<sup>11</sup> based solely on that party's claimed interest in resolution of the broad policy issues arising from issues 68 and 69 in the Preliminary Order. Further, as of the time of the filing of the instant appeal another party, ChargePoint, Inc., has a pending a motion for leave to intervene in this matter for the specific purpose of participating in resolution of the policy issues set forth in issues 68 and 69.<sup>12</sup> Because of all of the foregoing, there is ample good cause to allow SPS's late intervention and the ALJ was unjustified in denying SPS's motion.

Second, SPS showed in its Motion for Leave to Intervene that its late intervention would not prejudice the existing parties or disrupt the proceedings—evidenced by the fact no party filed opposition to SPS's motion. More specifically, SPS made clear in its Motion for Leave to Intervene that it has no objection to the existing procedural schedule and, if permitted to intervene, SPS intends to comply with all established deadlines. Further, as made clear in its Motion for Leave to Intervene, SPS seeks to intervene in this matter for the limited purposes of resolving issues 68 and 69 in the Preliminary Order. Given the limited scope of SPS's requested intervention, there is no basis for finding that SPS's intervention in this matter would be disruptive to the proceeding.

Third, SPS demonstrated in the Motion for Leave to Intervene that its intervention will serve the public interest. SPS seeks to intervene to address two specific issues raised in the Commission's Preliminary Order regarding utility ownership of electric vehicle charging facilities.<sup>13</sup> Because SPS is a utility in a vertically-integrated area in Texas, it has a material interest

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<sup>11</sup> See Motion to Intervene of FlashParking, Inc., filed on August 15, 2022

<sup>12</sup> See Motion for Leave to Intervene of ChargePoint, Inc., filed on September 7, 2022.

<sup>13</sup> See Preliminary Order dated August 4, 2022, at Paragraphs 68 and 69.

in these issues.<sup>14</sup> The public interest will be served by allowing a diversity of parties to address these discrete issues in this proceeding. Indeed, given that the ALJ has already granted the intervention of one party—Flashpoint Parking—to specifically participate in resolution of issues 68 and 69 in the Preliminary Order, the public interest will be best served by allowing other parties who will be materially impacted by resolution of those issues, such as SPS, to have their voices heard in this matter.

Finally, SPS notes that in prior matters concerning intervention the Commission has described its approach as a “liberal intervention policy” that weighs in favor of allowing participation of parties with an interest in resolution of a proceeding.<sup>15</sup> Denying SPS the ability to intervene in this matter would run entirely counter to this policy.

**C. SPS will be materially prejudiced if it not permitted to intervene.**

As currently drafted, issue number 68 in the Preliminary Order requires the resolution in the instant matter of a wide-ranging policy question—i.e., whether, as a general matter, electric utilities in a vertically integrated area in Texas should be permitted to own vehicle electrification facilities. It simply cannot be disputed that the resolution of such a broad policy question in this docket will directly impact SPS, because SPS is precisely an “electric utility in a vertically integrated area” in Texas. SPS therefore has a clear justiciable interest that may be adversely affected by the outcome of this proceeding within the meaning of 16 TAC § 22.103(b)(2) and has

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<sup>14</sup> SPS is an electric utility, a public utility and a utility as those terms are defined in Public Utility Regulatory Act (“PURA”), TEX. UTIL. CODE §§ 11.004(1) and 31.002(6), and is a wholly-owned electric utility subsidiary of Xcel Energy Inc. (“Xcel Energy”).

<sup>15</sup> See *In Re Sw. Bell Tel. Co.*, 18 Tex. P.U.C. Bull. 1156 (Tex. P.U.C. Nov. 4, 1992) (Order Granting Motion to Intervene dated November 4, 1992, PUC Docket No. 11487); see also *In Re Mci Worldcom, Inc.*, 2000 WL 33957863 (Tex. S.O.A.H. Feb. 29, 2000) (“the Commission has a long-standing policy of liberal intervention”).

standing to intervene in this matter.<sup>16</sup> Indeed, the only manner by which SPS can properly protect its interests with respect to the issue of utility ownership of transportation electrification facilities is by being allowed to intervene in this matter to participate in resolution of issues number 68 and 69 in the Preliminary Order.

Despite this, the ALJ appeared to deny SPS's motion simply because SPS was seeking to intervene in another utility's rate case. The ALJ, however, improperly ignored the fact that SPS made plain in its Motion for Leave to Intervene that it is *not* seeking to intervene in ETI's rate case as a general matter; rather, SPS only seeks to intervene to address discrete issues that the Commission has framed in the Preliminary Order as applicable to *all* electric utilities in a vertically integrated area in Texas. Indeed, even ETI recognized in a recent filing in this matter that resolution of these issues in its rate case would have a direct impact on SPS, because any order resolving the issued raised here could be treated as *binding precedent* in any future matter brought by or against SPS before the Commission.<sup>17</sup> Indeed, even the Supreme Court of Texas has been known to cite Commission decisions as precedent bearing on in its own decisions.<sup>18</sup>

Given the foregoing, it simply cannot be disputed that SPS could be directly prejudiced by the Commission's resolution of issues 68 and 69 in the Preliminary Order. Accordingly, SPS has a clear justiciable interest in the resolution of those matters here and should be permitted to intervene in this proceeding to participate in a decision on those issues.<sup>19</sup> Indeed, fundamental due

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<sup>16</sup> See, e.g., *Law Offices of Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 70 (Tex. App.—Fort Worth 2003, no pet.) (“A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation”).

<sup>17</sup> See ETI's Response to ChargePoint, Inc.'s Motion for Leave to Intervene, dated September 9, 2022, at 4. See also *Oncor Elec. Delivery Co. LLC v. Pub. Util. Comm'n of Texas*, 406 S.W.3d 253, 267 (Tex. App.—Austin 2013, no pet.) (agency must justify reasoning if it seeks to depart from norms established in its prior decisions).

<sup>18</sup> See, e.g., *Oncor Elec. Delivery Co. LLC v. Pub. Util. Comm'n of Texas*, 507 S.W.3d 706, 717 (Tex. 2017) (referencing how the Court had “cit[ed] precedent from the Commission” in its own prior decision).

<sup>19</sup> See, e.g., *Ghiasinejad*, 109 S.W.3d at 70 (justiciable interest exists if rights of party affected by outcome of matter).



process concerns would exist if a ruling in the instant matter on issues 68 and 69 that was adverse to SPS's interests were used against SPS in the future matter, particularly after denying its right to participate here.<sup>20</sup> To help avoid such concerns, this appeal should be granted and SPS should be given leave to intervene in this matter for the limited purpose it requests.

## **V. Conclusion and Prayer**

SPS respectfully requests that the Commission grant this appeal and grant SPS leave to participate as an intervenor in this proceeding for the purpose of resolution of the issues set forth in paragraphs 68 and 69 of the Commission's Preliminary Order. SPS further requests such other relief to which it may be entitled.

Respectfully submitted,

/s/ Erika M. Kane

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PUBLIC SERVICE COMPANY

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<sup>20</sup> *Cf. Flores v. Employees Ret. Sys. of Texas*, 74 S.W.3d 532, 545 (Tex. App.—Austin 2002, pet. denied) (“when an agency adopts new policy in the course of a contested-case hearing without giving the parties pre-hearing notice, the parties may be deprived of procedural due process”).

**CERTIFICATE OF SERVICE**

I certify that on September 16, 2022, a true and correct copy of the foregoing instrument was served on all parties of record by electronic service, hand delivery, Federal Express, regular First Class mail, certified mail, or facsimile transmission.

/s/ Jeremiah W. Cunningham

**SOAH Docket No. 473-22-04394**  
**PUC Docket No. 53719**

**Suffix: PUC**

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# **BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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## **APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES**

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### **SOAH ORDER NO. 4 CONSOLIDATING MUNICIPAL APPEALS AND DENYING MOTION TO INTERVENE**

#### **I. APPEALS OF MUNICIPAL DECISIONS**

On August 19, 2022, and August 29, 2022, Entergy Texas, Inc. (ETI) filed its Third and Fourth Petitions for Review of Municipal Ordinances and Motion to Consolidate (Petitions). ETI asserts that the Cities/Towns of Kountze, Cleveland, Normangee, Plum Grover, Hardin, Devers, North Cleveland, Plantersville, and China (collectively, Cities) in which it operates denied ETI's requested rate change. In its Petitions, ETI appeals the Cities' decisions and requests that the appeals be consolidated with this rate case to promote regulatory efficiency, stating

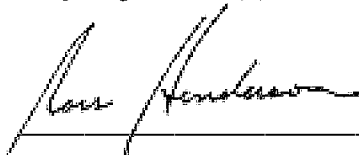
that the appeals involve common questions of law and fact to those in this proceeding. No objections were filed. ETI's Petitions are **GRANTED**, and the appeals of the Cities' denials of the requested rates are **CONSOLIDATED** for review with this docket.

## **II. DENYING MOTION TO INTERVENE**

On August 18, 2022, Southwestern Public Service Company (SPS) filed an untimely motion seeking leave to intervene outside of the deadline pursuant to 16 Texas Administrative Code § 22.104(d).<sup>1</sup> SPS stated that it seeks to intervene because the Preliminary Order in this case includes two issues that may, it argues, materially impact SPS in its own rate cases. However, SPS has not established that it has a particularized justiciable interest, such that it should be conferred intervenor status in this case, a base rate case for another electric utility. Thus, SPS' motion to intervene is **DENIED**.

**SIGNED SEPTEMBER 6, 2022**

ALJ Signature(s):

A handwritten signature in black ink, appearing to read "Ross Henderson", written over a horizontal line.

Ross Henderson,

Presiding Administrative Law Judge

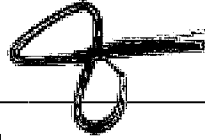
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<sup>1</sup> Per SOAH Order No. 2, the intervention deadline was August 15, 2022.



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Rachelle Nicolette Robles,  
Co-Presiding Administrative Law Judge



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Vasu Behara,  
Co-Presiding Administrative Law Judge

**SOAH DOCKET NO. 473-22-04394  
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<b>APPLICATION OF ENTERGY</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
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<b>TO CHANGE RATES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**SOUTHWESTERN PUBLIC SERVICE COMPANY'S  
MOTION FOR LEAVE TO INTERVENE**

Southwestern Public Service Company ("SPS") moves to intervene in the above-referenced proceeding in accordance with 16 Tex. Admin. Code §§ 22.103 and 22.104.

This motion is filed outside of the deadline for intervention set forth in the procedural schedule in this matter; however, by this motion SPS seeks leave to allow its late intervention as permitted under 16 Tex. Admin. Code § 22.104(d).

**I. Authorized Representatives**

SPS's authorized representatives for this case are:

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SPS requests that all documents (motions, orders, discovery requests, discovery responses, etc.) be served on its authorized representatives.

**II. Request for Leave to Intervene Late**

The intervention deadline in this matter was August 15, 2022. SPS seeks leave to intervene in this matter outside of this deadline pursuant to 16 Tex. Admin. Code § 22.104(d). In determining whether to allow a late intervention the presiding officer may consider, among other things,

whether there is good cause for late intervention, whether the late intervention would prejudice the existing parties, whether the late intervention may disrupt the proceedings, and whether the public interest is likely to be served by the late intervention. *See* 16 Tex. Admin. Code § 22.104(d).

SPS's motion to intervene is filed mere days after the deadline to intervene has elapsed and before a ruling has issued on other motions to intervene; accordingly, allowing the late intervention should not prejudice any other parties. SPS did not receive notice of this case, as SPS is not a customer, statutory party, or typical intervenor in Entergy cases. Nonetheless, SPS's rights could be affected by decisions made in this matter because, as discussed below, the resolution of issues presented in the preliminary order appear to apply beyond this docket.<sup>1</sup> The intervention of Flashpoint Parking, filed three days ago on August 15, 2022, highlights that issues related to utilities owning vehicle-charging facilities and related infrastructure will be an important issue in this docket.<sup>2</sup> Therefore, there is good cause to allow SPS's intervention.

Further, SPS does not object to the existing procedural schedule and intends to comply with all deadlines; as such, SPS's intervention should not disrupt the proceedings. Finally, allowing SPS's intervention will serve the public interest. As explained below, SPS seeks to intervene in this matter for the purpose of addressing two specific issues raised in the Commission's Preliminary Order regarding utility ownership of electric vehicle charging facilities.<sup>3</sup> Because SPS is a utility in a vertically-integrated area in Texas, it has a material interest in these issues.<sup>4</sup> The public interest will be served by allowing a diversity of parties to address these discrete issues in this proceeding.

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<sup>1</sup> *See* Preliminary Order dated August 4, 2022, at Paragraphs 68 and 69

<sup>2</sup> *See* Motion to Intervene of FlashParking, Inc., filed on August 15, 2022

<sup>3</sup> *See* Preliminary Order dated August 4, 2022, at Paragraphs 68 and 69.

<sup>4</sup> SPS is an electric utility, a public utility and a utility as those terms are defined in Public Utility Regulatory Act ("PURA") §§ 11.004(1) and 31.002(6) Tex. Util. Code Ann., and is a wholly-owned electric utility subsidiary of Xcel Energy Inc. ("Xcel Energy").

## **II. Standing to Intervene**

SPS seeks to intervene in this matter for the purpose of addressing the following discrete issues raised in the Commission's Preliminary Order dated August 4, 2022:

68. Is it appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure, or should the ownership of such facilities be left to competitive providers?

69. Should Entergy be allowed to own transportation electrification and charging infrastructure—including vehicle-charging facilities—in the manner it has proposed in its application, or should such ownership be wholly left to customers or third parties?

SPS is a vertically integrated utility in Texas and will be materially impacted by the Commission's resolution of the above issues, which appear to be issues of first impression in Texas. Therefore, SPS has a justiciable interest which may be adversely affected by the outcome of this proceeding within the meaning of 16 Tex. Admin. Code § 22.103(b)(2) and has standing to intervene in this matter. In order for SPS to properly protect its interests with respect to the issue of utility ownership of vehicle-charging facilities, it should be granted leave to intervene in this matter to participate in resolution of these limited issues.

## **V. Conclusion and Prayer**

SPS respectfully requests that the Commission grant SPS's Motion to participate as an Intervenor in this proceeding for the purpose of resolution of the issues set forth in paragraphs 68 and 69 of the Commission's Preliminary Order. SPS further requests such other relief to which it may be entitled.



Respectfully submitted,

/s/ Erika M. Kane

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ATTORNEYS FOR SOUTHWESTERN  
PUBLIC SERVICE COMPANY

**CERTIFICATE OF SERVICE**

I certify that on August 18, 2022, a true and correct copy of the foregoing instrument was served on all parties of record by electronic service, hand delivery, Federal Express, regular First Class mail, certified mail, or facsimile transmission.

/s/ Jeremiah W. Cunningham