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<b>APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES</b>	<b>§ § §</b>	<b>STATE OFFICE OF ADMINISTRATIVE HEARINGS</b>
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**ENTERGY TEXAS, INC.’S OBJECTIONS TO OFFICE OF PUBLIC UTILITY  
COUNSEL’S FIRST SET OF REQUESTS FOR INFORMATION**

Entergy Texas, Inc. (“ETI”) files these Objections to Office of Public Utility Counsel (“OPUC”) First Set of Requests for Information (“RFIs”) and respectfully shows as follows.

**I. PROCEDURAL HISTORY**

ETI received OPUC’s First Set of RFIs on July 19, 2022. The deadline for objections is July 29, 2022. Therefore, these Objections are timely filed.

**II. NEGOTIATIONS**

Counsel for ETI and OPUC have negotiated diligently and in good faith regarding OPUC’s First Set of RFIs. To date, the parties have been unable to reach an agreement on all issues, necessitating the filing of these Objections.

**III. GENERAL OBJECTIONS AND SUMMARY**

ETI generally objects to the “Definitions” and “Instructions” preceding OPUC’s RFIs to the extent they seek to expand ETI’s obligations under the relevant procedural rules. ETI will provide responses consistent with the rules of the Public Utility Commission of Texas (“Commission”), the Texas Rules of Civil Procedure, the Administrative Procedure Act, and the Protective Order, as applicable.

The Commission’s Procedural Rules permit discovery that is “not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”<sup>1</sup> As described in more detail below, ETI objects to OPUC 1-14 because the request exceeds the scope of permissible discovery, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

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<sup>1</sup> 16 Tex. Admin. Code (“TAC”) § 22.141.

#### IV. SPECIFIC OBJECTIONS

ETI objects to the following RFIs:

##### **OPUC RFI 1-14:**

Please refer to the Direct Testimony of Ms. Lofton, pages 22-23. Please provide a schedule that shows the adjustment to plant in service to remove all financially based incentive compensation by year for each of the years since Docket No. 39896. Please provide this information by FERC account. Also, please provide all underlying workpapers which show the calculation of the adjustment by year.

##### **Relevance and Overbreadth**

ETI objects to OPUC 1-14 because the request exceeds the scope of permissible discovery by seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As a threshold matter, a request for information must be relevant “to the subject matter of the *pending action*.”<sup>2</sup> Relevance turns on the tendency of the information “to make a fact more or less probable than it would be” with that information when that “fact is of consequence in determining the action.”<sup>3</sup>

The Company’s request for relief in this case seeks to include in base rates capital additions closed to plant in service from January 1, 2018 (the test year end for ETI’s prior base rate case, Docket No. 48371) through December 31, 2021 (the test year end for this case). The information sought by OPUC 1-14, however, seeks information concerning the Company’s plant in service and corresponding adjustments made, reviewed, and subject to a final and non-appealable Commission order in prior proceedings, and therefore is not relevant to the Company’s request for relief in this proceeding. Such information does not have a tendency to make more or less probable a fact that is of consequence in determining the issues for decision in this case. Plant in service and related adjustments to those costs going back several rate case dockets (to Docket No. 39896) through the end of the test year in ETI’s most recent rate case, Docket No. 48371, were part of the rate requests before the Commission in those prior proceedings and do not bear on the costs at issue in this case. Invested capital associated with those cases from those periods have already been reviewed and

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<sup>2</sup> Tex. R. Civ. P. 192.3(a) (“[A] party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the *pending action* . . . .”) (emphasis added); *see also* 16 TAC § 22.141 (identifying the scope of discovery as matters “relevant to the subject matter in the *proceeding*”) (emphasis added).

<sup>3</sup> *See In re Nat’l Lloyd’s Ins. Co.*, 532 S.W.3d 794, 807-08 (Tex. 2017) (citing Texas Rules of Evidence).

determined to be prudent and reasonable.<sup>4</sup> To be clear, OPUC’s request does not seek to determine whether ETI has complied with the Commission’s orders in prior cases. The request seeks to compare *ETI’s* adjustments to invested capital then and now. But ETI’s handling of this issue in prior irrelevant periods does not change whether ETI, in this instance, has complied with PURA, the Commission’s Rules, prior Commission orders, and other controlling authority. Thus, for those periods prior to January 1, 2018 (the end of the test year in the Company’s last base rate case), ETI objects to the request as such information will not aid in the resolution of any dispute in this case.<sup>5</sup>

ETI further objects that OPUC 1-14 is overbroad. The test for overbreadth is whether the request could have been tailored “to avoid including tenuous information and still obtain the necessary, pertinent information.”<sup>6</sup> Here, OPUC 1-14 asks ETI to “provide a schedule that shows the adjustment to plant in service to remove all financially based incentive compensation by year for each of the years since Docket No. 39896.”<sup>7</sup> By its terms, this request is not limited in time frame to a relevant period nor is it tailored to “the subject matter of the pending action,” but rather is directed to costs unrelated to the pending action—the years following the conclusion of Docket No. 39896 through the end of the test year in Docket No. 48371. While the request could have been written to address only that plant in service at issue in this proceeding, OPUC 1-14 primarily concerns information that was the subject of prior proceedings.<sup>8</sup> This is inconsistent with the requirement that requests be tailored “to the relevant time, place, and subject matter.”<sup>9</sup> Therefore,

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<sup>4</sup> See, e.g., *Application of Entergy Texas, Inc. for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 41791, Order at Finding of Fact 38 (May 16, 2014) (“ETI’s invested capital as presented in the application is reasonable, necessary, and used and useful.”); *Entergy Texas, Inc.’s Statement of Intent and Application for Authority to Change Rates*, Docket No. 48371, Order at FoF 43 (Dec. 20, 2018) (“ETI’s capital additions that were closed to plant in service through December 31, 2017 are used and useful and reasonable and were prudently incurred.”).

<sup>5</sup> See *In re Nat’l Lloyd’s Ins. Co.*, 532 S.W.3d 794, 807-08 (“Although the scope of discovery is broad, a request for information ‘must show a reasonable expectation of obtaining information that will aid the dispute’s resolution.’”).

<sup>6</sup> *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (per curiam).

<sup>7</sup> The Order on Rehearing in Docket No. 39896 was issued Nov. 2, 2012. *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment*, Docket No. 39896, Order on Rehearing (Nov. 2, 2012). It should be noted that complying with this request requires ETI to identify and compile multiple years’ worth of data to create a document in the form of a schedule prescribed in the RFI. ETI should not be compelled to provide such a schedule. See, e.g., Tex. R. Civ. P. 192.3(b); *In re Preventative Pest Control Houston, LLC*, 580 S.W.3d 455, 460 (Tex. App.—Houston [14th Dist.], orig. proceeding) (stating parties “cannot be forced to create documents that do not exist for the sole purpose of complying with a request for production”).

<sup>8</sup> Tex. R. Civ. P. 192.3(a); 16 TAC § 22.141.

<sup>9</sup> *In re Master Flo Valve Inc.*, 485 S.W.3d 207, 213 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (“Discovery requests must be limited to the relevant time, place and subject matter.”); see also *In re CSX Corp.*, 124 S.W.3d at 152 (explaining requests “may not be used simply to explore”); *In re Sun Coast Rest., Inc.*, 562 S.W.3d 138, 146 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (citations omitted); *In re Jarvis*, 431 S.W.3d 129, 134 (Tex.

ETI proposes and agrees to provide all of the information requested for the period relevant to this case (January 1, 2018 – December 31, 2021), and objects only to the provision of the requested information pertaining to the prior period.

Accordingly, ETI's objections to OPUC 1-14 should be sustained.<sup>10</sup>

## V. CONCLUSION AND PRAYER

For the above-stated reasons, ETI requests that these Objections to OPUC 1-14 be sustained. ETI further requests that it be granted any such other relief to which it may be entitled.

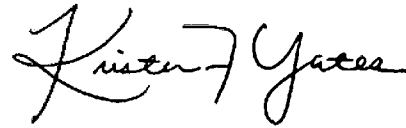
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App.—Houston [14th Dist.] 2013, no pet.) (“Because discovery is limited to matters relevant to the case, requests for information that are not reasonably tailored as to time, place, and subject matter amount to impermissible ‘fishing expeditions.’”).

<sup>10</sup> “As parties are not entitled to unlimited discovery, the trial court must impose reasonable discovery limits.” *In re Sun Coast Rest., Inc.*, 562 S.W.3d at 146.

Date: July 29, 2022

Respectfully submitted,



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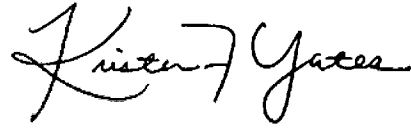
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**ATTORNEYS FOR ENTERGY TEXAS, INC.**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served on all parties of record via email on July 29, 2022 pursuant to the Second Order Suspending Rules issued in Project No. 50664.

A handwritten signature in black ink that reads "Kristen F. Yates". The signature is written in a cursive style with a large initial 'K' and 'Y'.

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Kristen F. Yates