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APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES	§ § §	STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**ENTERGY TEXAS, INC.’S OBJECTIONS TO COMMISSION STAFF’S FIRST SET OF
REQUESTS FOR INFORMATION**

Entergy Texas, Inc. (“ETI”) files these Objections to Commission Staff’s (“Staff”) First Set of Requests for Information (“RFIs”) and respectfully shows as follows.

I. PROCEDURAL HISTORY

ETI received Staff’s Second Set of RFIs on July 20, 2022. The deadline for objections is August 1, 2022. Therefore, these Objections are timely filed.

II. NEGOTIATIONS

Counsel for ETI and Staff have negotiated diligently and in good faith regarding Staff’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 Staff’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.”¹ As more fully described below, ETI objects to Staff 1-3 on the grounds that the request seeks to require ETI to produce a document (1) that does not exist and therefore not within ETI’s constructive or actual possession, custody, or control; and (2) the production of which has no basis in the Commission’s rules or precedent.

¹ 16 Tex. Admin. Code (“TAC”) § 22.141.

IV. SPECIFIC OBJECTIONS

ETI objects to the following RFI:

Commission Staff RFI 1-3:

Please provide an affidavit signed by each professional stating that the rate charged is the normal hourly billing rate charged by the professional, is comparable to the hourly rate charged by other professionals for similar services provided to other Texas utilities, and is the normal billing rate charged by the professional for services to non-regulated entities.

Discovery on Applicant's Direct Case

ETI objects to Staff RFI 1-3 because it is an improper request that exceeds the scope of permissible discovery by demanding ETI prepare specified evidentiary content. As the Applicant in this proceeding, ETI has the burden of proof to show its proposed rate change is just and reasonable.² The purpose of discovery is to permit the parties to obtain knowledge of the issues and facts prior to hearing,³ not to demand that ETI create additional evidence in formats prescribed by opposing parties. ETI recognizes that parties are entitled to discovery concerning the evidence presented by ETI and inquire into the factual contentions made in ETI's direct case. However, ETI is not required to marshal evidence in response to discovery⁴ or alter the manner it presents its direct case simply to comply with a discovery request.⁵ While ETI objects to the provision of the requested affidavits categorically, in the interest of reducing the scope of the controversy here, ETI proposes and agrees to provide such affidavits for its non-attorney consultants. Consistent with Section 36.061(b) of the Public Utility Regulatory Act and the Commission's rules concerning the recovery of rate-case expenses for an attorney or other professional,⁶ in its direct

² See, e.g., PURA § 36.006 ("In a proceeding involving a proposed rate change, the electric utility has the burden of proving that: (1) the rate change is just and reasonable, if the utility proposes the change; or (2) an existing rate is just and reasonable, if the proposal is to reduce the rate."); see also *Gulf States Utils. Co. v. Pub. Util. Comm'n*, 841 S.W.2d 459, 475 (Tex. App.—Austin 1992, writ denied) (citations omitted) (describing burden of proof).

³ See *Tucker v. Gayle*, 709 S.W.2d 247, 249 (Tex. App.—Houston [14th Dist.] 1986, no writ).

⁴ This is well-established under the rules of civil procedure. For instance, a party's legal and factual contentions are discoverable but only a "basic statement of those contentions" and the rules do not "require a marshaling of evidence." Tex. R. Civ. P. 192.7 at Comment 5. While "interrogatories may be used to ascertain basic legal and factual claims and defenses" they "may not be used to force a party to marshal evidence." Tex. R. Civ. P. 197.3 at Comment 1.

⁵ A utility determines how best to present its case in order to meet its burden. A utility "may meet its burden without proving the reasonableness and necessity of every individual dollar paid on a granular level, but may present evidence that is comprehensive." *Entergy Tex., Inc. v. Pub. Util. Comm'n*, 490 S.W.3d 224, 240 (Tex. App.—Austin 2016, pet. denied).

⁶ See PURA §§ 36.051, 36.061(b); 16 TAC § 25.245.

case, ETI has provided ample supporting testimony, exhibits, schedules, and an affidavit in support of its rate case expense request in this case. Company witness Richard E. Lain provided detailed information concerning ETI's request for recovery of rate case expenses and testimony supporting the reasonableness and necessity of those expenses in accordance with the Commission's standards and review criteria.⁷ Company witness Erika N. Garcia provided an affidavit in further support of the Company's request to recover ETI's internal rate case expenses.⁸ Additionally, Daniel T. Falstad's testimony describes the legal services class of affiliate costs, providing detailed testimony and exhibits to support the reasonableness and necessity of the costs included in the Company's request.⁹ Finally, Meghan Griffiths' testimony includes her review and evaluation of the Company's external consultant and legal fees and provides detailed testimony concerning the reasonableness of ETI's rate case expenses at issue in this proceeding.¹⁰ Thus, ETI's presentation of its direct case on rate case expenses is more than adequate such that it is not necessary or appropriate for ETI to be required to supply proof in a different format.

Possession, Custody, and Control

ETI also objects to Staff RFI 1-3 because it seeks a document that does not exist and is therefore not in ETI's possession, custody, or control.¹¹ 16 TAC § 22.141(a) states that while parties may obtain discovery regarding "any matter, not . . . exempted under . . . Texas Rules of Civil Procedure . . . that is relevant to the subject matter in the proceeding," "[a] person is not required to produce a document or tangible thing unless it is within that person's constructive or actual possession, custody, or control." As a general matter, parties are not required to create documents for the sole purpose of complying with discovery requests.¹² ETI does not currently have in its possession, custody, or control affidavits "from each professional" containing the

⁷ Direct Testimony of Richard E. Lain at 24-42 and accompanying Exhibits REL 5-6; *see also* Schedule G-14.1 (Rate Case Expenses) and G-14.2 (Rate Case Expenses – Prior Rate Applications).

⁸ *See* REL-6 (Affidavit of Erika N. Garcia in Support of Entergy Texas, Inc.'s Internal Rate Case Expenses).

⁹ *See* Direct Testimony of Daniel T. Falstad at 4-22.

¹⁰ *See* Direct Testimony and accompanying exhibits of Meghan E. Griffiths.

¹¹ *See also* Tex. R. Civ. P. 192.3 ("A person is required to produce a document or tangible thing that is within the person's possession, custody, or control."); *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 942 (Tex. 1998).

¹² *See, e.g.*, 192.3(b); *In re Preventative Pest Control Houston, LLC*, 580 S.W.3d 455, 460 (Tex. App.—Houston [14th Dist.], orig. proceeding) (citing cases and stating parties "cannot be forced to create documents that do not exist for the sole purpose of complying with a request for production").

particular attestations outlined by Staff in this request. Therefore, Staff RFI 1-3 exceeds the permissible scope of discovery permitted under the Commission's rules. Such a request is also improper as the content prescribed may not be an appropriate basis for attestation for each and every professional involved in this case. Finally, the added burden and expense of the resolution of this discovery dispute and the imposition of a requirement that ETI create and produce the documents requested in Staff RFI 1-3 would cause ETI to incur additional rate case expenses in the instant proceeding while the likely benefit of the proposed discovery would be minimal.¹³

Commission Rules/Precedent Do Not Require the Requested Production

The Commission's rules and precedents do not require the creation and production of the affidavits sought in Staff RFI 1-3. Nor is the Company aware of any precedent requiring such production. The reasonableness of rate case expenses have been successfully reviewed by the State Office of Administrative Hearings and the Commission for decades without the affidavits requested by Staff. 16 TAC § 25.245 specifies the requirements for recovery of rate case expenses and the criteria for their review and reasonableness. The rule requires only sufficient information verified by testimony or affidavit. "A utility . . . seeking recovery of . . . rate-case expenses shall file sufficient information that details and itemizes all rate-case expenses, including, but not limited to, evidence verified by testimony or affidavit . . ."¹⁴ As described above, ETI has met that evidentiary standard. The production sought in Staff RFI 1-3 has no basis in the Commission's rules or precedents.

Accordingly, ETI's objections to Staff's RFI 1-3 should be sustained.

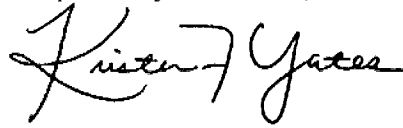
V. CONCLUSION AND PRAYER

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

¹³ See, e.g., Tex. R. Civ. P. 192.4 (noting discovery methods should be limited when: "(b) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.").

¹⁴ 16 TAC § 25.245.

Respectfully submitted,



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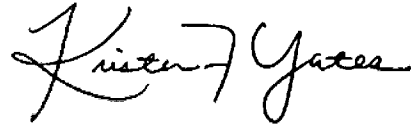
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ATTORNEYS FOR ENTERGY TEXAS, INC.

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 August 1, 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, stylized "K" and "Y".

Kristen F. Yates