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SOAH DOCKET NO. 473-22-04394
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APPLICATION OF ENTERGY	§	STATE OFFICE
TEXAS, INC. FOR AUTHORITY TO	§	OF
CHANGE RATES	§	ADMINISTRATIVE HEARINGS

REBUTTAL TESTIMONY

OF

MEGHAN E. GRIFFITHS

ON BEHALF OF

ENTERGY TEXAS, INC.

NOVEMBER 2022

ENTERGY TEXAS, INC.
REBUTTAL TESTIMONY OF MEGHAN E. GRIFFITHS
SOAH DOCKET NO. 473-22-04394
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1 **I. INTRODUCTION**

2 Q1. PLEASE STATE YOUR NAME, EMPLOYER, TITLE, AND BUSINESS
3 ADDRESS.

4 A. My name is Meghan E. Griffiths. I am a partner with the law firm of Jackson
5 Walker, LLP (“Jackson Walker”). My business address is 100 Congress Avenue,
6 Suite 1100, Austin, Texas, 78701.

7
8 Q2. ON WHOSE BEHALF ARE YOU TESTIFYING?

9 A. Entergy Texas, Inc. (“Entergy” or the “Company”).
10

11 Q3. ARE YOU THE SAME MEGHAN E. GRIFFITHS WHO FILED DIRECT AND
12 SUPPLEMENTAL DIRECT TESTIMONY ON BEHALF OF ENTERGY IN
13 THIS DOCKET?

14 A. Yes.
15

16 **II. SUMMARY OF REBUTTAL TESTIMONY**

17 Q4. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS
18 PROCEEDING?

19 A. Public Utility Commission of Texas (“Commission” or “PUC”) Staff witness Ruth
20 Stark provided direct testimony on November 2, 2022, regarding the recovery of
21 rate case expenses by Entergy in this proceeding and Docket No. 49916. I address
22 Ms. Stark’s proposed adjustments to Entergy’s external rate case expenses. Richard

1 E. Lain sponsors Entergy's internal rate case expenses and he, along with Company
2 witness Ryan M. Dumas, will address Ms. Stark's proposed adjustments to
3 Entergy's internal rate case expenses.

4

5 Q5. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY
6 RECOMMENDATIONS.

7 A. My rebuttal testimony addresses three recommended disallowances proposed by
8 Ms. Stark. She seeks to impose hourly rate caps of \$550 per hour for attorneys'
9 fees. She recommends disallowance of certain invoice amounts that contain
10 redacted entries with descriptions containing privileged information. She also
11 recommends disallowances of Deloitte Touche Tohmatsu Limited f/k/a Deloitte &
12 Touche LLP ("Deloitte") accounting expense. I address why these
13 recommendations are inappropriate, unreasonable, and should be rejected.

14

15 Q6. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECT
16 SUPERVISION AND CONTROL?

17 A. Yes. The information contained in this testimony is true and correct to the best of
18 my knowledge, information, and belief after reasonable inquiry.

19

20 Q7. DO YOU HAVE ANY WORKPAPERS?

21 A. Yes. The workpapers for my rebuttal testimony are being filed separately.

1 **III. RATE CAPS**

2 Q8. ON PAGE 9, LINE 8 THROUGH PAGE 18, LINE 19 OF MS. STARK’S DIRECT
3 TESTIMONY, MS. STARK RECOMMENDS A RATE CAP OF \$550 PER
4 HOUR FOR ATTORNEY RATES AND A DISALLOWANCE OF ANY
5 ATTORNEY FEES IN EXCESS OF \$550 PER HOUR. IN YOUR OPINION,
6 DOES MS. STARK’S RECOMMENDATION COMPLY WITH 16 TEX.
7 ADMIN. CODE (“TAC”) § 25.245(C)(1)?

8 A. No, it does not. Under the Public Utility Regulatory Act (“PURA”) § 36.051 and
9 § 36.061(b), as well as under the rate case expense rule in 16 TAC § 25.245, the
10 governing principle is that the utility is entitled to recover reasonable rate case
11 expenses in light of the governing standards and the specific criteria specified in
12 the rate case expense rule. Those factors, which are addressed in my direct
13 testimony, do not support an across the board rate cap.

14 Ms. Stark’s claim that a rate cap of \$550 per hour is an objective standard
15 to determine whether fees are extreme or excessive is improper and wholly ignores
16 the factors specified in the rate case rule. Ms. Stark also ignores that the
17 Commission considered and rejected imposing caps on hourly rates for rate case
18 expenses when it adopted 16 TAC § 25.245(c)(1). In an October 18, 2013
19 memorandum to the Commission, Ms. Stark, along with other senior Commission
20 Staff, noted that both utilities and intervenors nearly unanimously suggested that

1 imposing caps on hourly rates was problematic.¹ Stakeholders in the rulemaking
2 stated that rates should be examined based on specific circumstances on a case-by-
3 case basis.² This makes sense because a more efficient senior attorney who charges
4 more than \$550 per hour can, in certain instances, more economically provide legal
5 services than a less experienced attorney who has an hourly rate less than \$550 per
6 hour. Ultimately, the Commission agreed with the comments of the utilities and
7 intervenors, and did not adopt a rate cap by rule or indicate one should be used as
8 an objective measure of the reasonableness of rate case expenses. The rule instead
9 requires the examination of the factors described in my direct testimony.
10 Commission Staff nevertheless has recommended an across the board rate cap of
11 \$550 per hour since 2013.

12
13 Q9. WHAT IS THE BASIS FOR COMMISSION STAFF'S RATE CAP
14 RECOMMENDATION?

15 A. Commission Staff's recommendation arises from a 2012 Office of the Attorney
16 General of Texas ("OAG") memorandum to state agencies, university systems, and
17 institutions of higher learning related to policies for retention of outside legal
18 counsel. The memorandum required approval from the First Attorney General for
19 attorney rates that exceed \$525 per hour. This OAG guideline for outside counsel

¹ *Rulemaking to Propose New Substantive Rule 25.245, Relating to Recovery of Expenses for Ratemaking Proceedings, Memorandum, Project No. 41622, Memorandum at 2 (Oct. 18, 2013).*

² *Id.*

1 attorney rates has been in place for almost ten years. Commission Staff has relied
2 upon this hourly rate, rounded up to the nearest \$50, since 2013.

3

4 Q10. DOES THE OAG SPECIFY A RATE CAP FOR ATTORNEY HOURLY RATES?

5 A. No, it does not. Importantly, this memorandum does not prescribe a rate cap, but
6 rather requires a process for approval of rates above the specified hourly rate of
7 \$525. The OAG can and may approve hourly rates above \$525 when requested and
8 appropriate.

9

10 Q11. IS COMMISSION STAFF'S PROPOSED RATE CAP OF \$550 REASONABLE
11 IN THIS CASE?

12 A. No, it is not. Commission Staff has relied upon the same \$550 rate cap for over
13 nine years, which indicates that Commission Staff does not examine the factors
14 identified in the rate case expense rule, but rather arbitrarily has set a rate cap by
15 practice. Setting aside that a rate cap is inappropriate and does not comport with
16 the factors to be considered under PURA and the rate case expense rule,
17 Commission Staff's consistent use of the same \$550 per hour rate cap is also
18 unreasonable because it ignores inflation and increases in law firm overhead that
19 escalate over time (e.g., attorney and administrative payroll and expense, operating
20 costs, utilities, rent, and other expenses). Hourly rates are typically based on the
21 seniority of the attorney and are designed to capture payment to attorneys for their
22 time spent providing legal services, as well as the overhead that goes with providing

1 such services. It is therefore unreasonable and arbitrary for Ms. Stark and
2 Commission Staff in general to use the same rate cap year after year.

3
4 Q12. WHAT ECONOMIC INDICATORS REFLECT THAT MS. STARK’S
5 PROPOSED RATE CAP OF \$550 IS NOT REASONABLE?

6 A. Ms. Stark has failed to examine the impacts of rising inflation and law firm
7 overhead. Using the U.S. Bureau of Labor Statistics Consumer Price Index (“CPI”) Inflation
8 calculator, \$550 per hour in January 2013 has the same buying power as
9 approximately \$712 in October 2022.³ Since 2013, the dollar has had an average
10 inflation rate of 2.77% per year between 2013 and today, producing a cumulative
11 price increase of more than 27%.⁴ Thus, an hourly rate of approximately \$712 in
12 2022 reflects Commission Staff’s recommended rate cap from 2013 when
13 appropriately adjusted for inflation. The current high inflationary environment also
14 underscores the unreasonable nature of Commission Staff’s position. The current
15 inflation rate is 8.2% for the 12 months ended September 2022, which impacts
16 overhead and labor costs for law firms.⁵ Total salary and benefits expenses and
17 general expenses for law firms have similarly increased with the AmLaw 200,⁶
18 seeing an 11.5% increase in total salary and payroll expense in 2022 and an increase

³ CPI Inflation Calculator, available at: https://www.bls.gov/data/inflation_calculator.htm.

⁴ \$550 in 2013 → 2022 | Inflation Calculator (officialdata.org), available at: <https://www.officialdata.org/us/inflation/2013?amount=550>.

⁵ Current US Inflation Rates: 2000-2022 | US Inflation Calculator, available at: <https://www.usinflationcalculator.com/inflation/current-inflation-rates/>.

⁶ Jackson Walker is in the AmLaw200; Eversheds Sutherland is in the Global 200.

1 in general expense of 12.9% in 2022.⁷ The AmLaw 100 has seen a higher increase
2 of 14.9% in total salary and benefits expense in 2022 and an increase in general
3 expense of 14.6% in 2022. The notion that a flat cap of \$550 established in 2013
4 is a reasonable rate therefore wholly ignores economic trends concerning the rising
5 costs of providing and purchasing legal services. Hourly rates for attorneys, just
6 like salaries for Commission Staff, should not be frozen at 2013 levels, but should
7 be based on reasonable market rates based on the nature and complexity of the work
8 to be performed and the experience of the attorney providing the work.

9
10 Q13. MS. STARK POINTS TO THE COMMISSION'S ADOPTION OF THE
11 PROPOSAL FOR DECISION ("PFD") IN SOUTHWESTERN ELECTRIC
12 POWER COMPANY'S ("SWEPCO") RECENT RATE CASE AS SUPPORT
13 FOR HER POSITION. DO YOU AGREE?

14 A. No. SWEPCO's rate case was based on a test year ending on March 31, 2020. The
15 hearing on the merits was held in May 2021. The facts supporting an inflation
16 escalation on Commission Staff's proposed rate cap have grown significantly
17 stronger since SWEPCO's rate case. Inflation began to escalate significantly after
18 the SWEPCO hearing, in the last six months of 2021. The rate of inflation in 2021
19 was ultimately 7% by the end of the year and has steadily increased 8.2% for the
20 12-months ending September 2022. The Administrative Law Judges ("ALJs") in

⁷ Wells Fargo Legal Specialty Group Six-Month Survey August 2022 provided in my workpapers (Confidential) to this rebuttal testimony.

1 Docket No. 51415 were careful to point out that they did not recommend that a hard
2 \$550 per-hour-cap should apply in all future cases. The PFD stated: “First, at some
3 point in the future, hourly rates in excess of \$550 per hour may not be deemed
4 excessive, and instead might be deemed reasonable, depending on the then-existing
5 circumstances, such as the economy, inflation, or any other number of factors.”⁸
6 The ALJs also noted that “there may be instances in the near term, not present here,
7 where an electric utility could justify a request to recover in excess of \$550 per hour
8 from its customers.”⁹

9 Here, rising inflation and related increases in overhead for law firms
10 justifies utilizing an inflation adjustment to Commission Staff’s proposed rate cap.
11 Using an inflation escalation would increase the proposed rate cap of \$550 per hour
12 to \$710 per hour, which is at or near the high end of the range of the attorneys relied
13 upon by Entergy in this rate case, and less than the high end of market rates for
14 senior attorneys in utility rate cases.

15 In Docket No. 51415, the Commission also noted that the facts in that case
16 did not support a higher hourly rate, but that was because the utility had not met its
17 burden in that proceeding to show that the “nature, extent, and difficulty of the work
18 performed . . . justified hourly rates in excess of \$550 in this base-rate case.”¹⁰

⁸ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415, PFD at 330 (Aug. 27, 2021).

⁹ *Id.*

¹⁰ Docket No. 51415, Final Order at Finding of Fact No. 308 (Jan. 14, 2022).

1 Q14. ARE THE RATES PAID BY ENTERGY REASONABLE BASED ON MARKET
2 RATES AND THE NATURE, EXTENT, AND DIFFICULTY OF THE WORK
3 PERFORMED?

4 A. Yes. Market rates in utility rate proceedings and other complex litigation also
5 support the reasonableness of rates above \$550 per hour. I addressed this in my
6 direct testimony, which explained that rates charged in utility rate cases vary by the
7 classification and experience of the attorney and the size and nature of the law firm.
8 The upper end for senior and experienced attorneys appears to be in the \$600 to
9 \$800-plus per hour range.¹¹ Here, the majority of the attorneys who Entergy has
10 engaged to represent it in this proceeding that charge more than \$550 per hour are
11 senior partners with extensive experience in utility rate cases who have close to or
12 more than 20 years of electric utility experience, and their rates are below the top
13 end of the range. Moreover, these rates are either at the rates charged to other
14 clients, or less than their standards rates.

¹¹ Direct Testimony of Meghan E. Griffiths at 24-25 (Jul. 1, 2022). *See, e.g., Application of Cross Texas Transmission, LLC for Authority to Change Rates and Tariffs*, Docket No. 43950, Application at 594-95 & 608-09 (Dec. 23, 2014) and Final Order (May 1, 2015); *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 46957, Application at 1571 and WP/Schmidt (Mar. 17, 2017) and Final Order (Oct. 13, 2017); *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 53601, Direct Testimony of Ruth Stark at 15-26 (recommending disallowance of rates in excess of \$550 per hour ranging from \$565 to \$800 per hour) (Sept. 2, 2022).

1 Q15. MS. STARK COMMENTED THAT A \$550 PER HOUR RATE CAP IS ALSO
2 APPROPRIATE BECAUSE BOTH THE COMMISSION STAFF AND THE
3 OFFICE OF PUBLIC UTILITY COUNSEL SUPPORT COMPLEX ELECTRIC
4 RATE CASES RATHER THAN UTILIZING OUTSIDE COUNSEL. IS THIS
5 PERSUASIVE?

6 A. No. Ms. Stark ignores that the utility in the rate case bears the burden of proof, and
7 that rate cases require significant legal and consulting manpower. It is more
8 economical for Entergy to maintain a lean in-house regulatory and legal staff than
9 to maintain the full-time regulatory and legal staff that it would require to litigate a
10 complex regulatory proceeding. Accordingly, Entergy must hire experienced
11 outside counsel and consultants at market rates who are well-versed in the
12 multifaceted and interdisciplinary issues presented in rate cases. Ms. Stark's
13 arbitrary cap of \$550 per hour ignores the fact that Entergy's reliance on outside
14 counsel saves ratepayers money and that, in order to do so, Entergy must pay market
15 rates for legal services. Indeed, the Railroad Commission of Texas, which also has
16 in-house counsel like the PUC, has approved rates of \$877.50 per hour in two recent

1 gas utility rate proceedings.¹² Gas utility rate proceedings involve complex
2 ratemaking issues similar to electric rate proceedings and there is often overlap in
3 attorneys who participate in gas utility rate proceedings at the Railroad Commission
4 of Texas and electric utility rate proceedings at the Commission.

5 In addition, complex litigation in Texas involves hourly rates that can be as
6 high or higher than the hourly rates involved in this case.¹³ Texas bankruptcy
7 proceedings, including proceedings that involve law firms that practice in front of
8 the PUC, routinely demonstrate higher hourly rates than the rates charged in utility
9 rate cases.¹⁴ For example, in the recent Brazos Electric Power Cooperative
10 bankruptcy proceeding, O'Melveny & Myers LLP billed at rates from \$540 per

¹² See *Statement of Intent Filed by Hooks Gas Pipeline, LLC to Increase and Consolidate Rates for Hooks Gas Pipeline, LLC, Texas Gas Pipeline Company, LLC and 1486 Pipeline, LLC*, Railroad Commission of Texas Docket No. OS-20-00004866, Proposal for Decision at 14 (Mar. 23, 2021) (finding Vinson & Elkins' hourly attorney rates of \$647.40 to \$877.50 to be reasonable); *id.*, Final Order at 5-6 (Apr. 13, 2021) (approving Proposal for Decision); *Statement of Intent Filed by Universal Natural Gas Inc. to Increase and Consolidate Rates in the Unincorporated Areas Served by Universal Natural Gas, LLC d/b/a Universal Natural Gas, Inc., Consumers Gas Company, LLC d/b/a Consumers Gas Company, Inc., Enertex NB, LLC, and Gas Energy, LLC*, Railroad Commission of Texas Docket No. OS-20-00004865, Proposal for Decision at 22 (Mar. 31, 2021) (finding Vinson & Elkins' hourly attorney rates which ranged up to \$877.50 to be reasonable); *id.*, Final Order at 7 (Apr. 13, 2021) (approving Proposal for Decision).

¹³ See, e.g., *N. Atl. Operating Co. v. Mike's Worldwide, LLC*, No. H-16-3685, 2018 U.S. Dist. LEXIS 115753 at *2 (S.D. Tex. July 11, 2018) (awarding attorney's fees including up to \$840 per hour).

¹⁴ E.g., *In re SQLC Senior Living Ctr. at Corpus Christi, Inc.*, No. 19-20063 (Bankr. S. D. Tex. Sept. 16, 2019) (authorizing hourly rates for Thompson & Knight LLP up to \$735); *In re Sherwin Alumina Co., LLC*, No. 16-20012 (Bankr. S.D. Tex. Nov. 30, 2016) (authorizing hourly rates over \$1,000); *In re Autoseis, Inc.*, No. 14-20130 (Bankr. S.D. Tex. Aug. 26, 2014) (authorizing hourly rates for Baker Botts up to \$915)*; *In re Lilis Energy, Inc.*, No. 20 - 33274 (Bankr. S.D. Tex. Jan. 19, 2021) (authorizing for Vinson & Elkins LLP hourly rates for partners of \$1,125 to \$1,630, at a blended average of \$1,385, and for associates of \$600 to \$1,125, at a blended average of \$796, in comparison to the blended averages for its nonbankruptcy hourly rates of \$1,287 for partners and \$750 for associates); *In re Sundance Energy, Inc.*, No. 21-30882 (Bankr. S.D. Tex. June 17, 2021) (authorizing for Hunton Andrews Kurth LLP hourly rates for a partner of \$990, and for associates of \$575 to \$725 at a blended associate average of \$713, in comparison to the blended averages for its non-bankruptcy hourly rates of \$796 for the partner and \$540 for the associates).

1 hour for an associate up to \$1,225 per hour for a senior partner and the partner rates
2 billed by Eversheds Sutherland (US) LLP were all over \$550 per hour, ranging from
3 \$600 to \$945.¹⁵ Other Texas law firms that practice in front of the PUC also
4 similarly charge higher rates than Ms. Stark's proposed arbitrary cap of \$550.¹⁶

5 In my experience, PUC rate proceedings, including this Entergy rate case,
6 are high stakes litigation for the utilities, and involve litigation of complex
7 technical, engineering, state and federal tax, regulatory, and accounting and finance
8 issues. Therefore, Entergy has to hire sophisticated and specialized legal counsel
9 that can efficiently address the complex interdisciplinary issues raised in the
10 proceeding. As noted in my direct testimony, the rates charged to Entergy in this
11 proceeding are reasonably based on the nature and complexity of the case, the
12 experience of the counsel, and the rates charged by other attorneys who have
13 provided similar services.

¹⁵ The law firm fee statements are included in my public workpapers.

¹⁶ *In re Lilis Energy, Inc.*, No. 20-33274, Doc. 758 at 55 of 593 (Bankr. S.D. Tex. Dec. 24, 2020) (identifying non-bankruptcy blended hourly rates for Vinson & Elkins LLP of \$1,287.15 for partners and \$750.29 for associates); *In re Sundance Energy, Inc.*, No. 21-30882, Do . 206-4 (Bankr. S.D. Tex. May 24, 2021) (disclosing non-bankruptcy blended hourly rates for Hunton Andrews Kurth LLP of \$795.65 for partners and \$539.62 for associates).

1 Q16. DOES MS. STARK HAVE ANY EXPERIENCE HIRING LEGAL SERVICES
2 FOR UTILITY RATE PROCEEDINGS?

3 A. Ms. Stark admits that she has no experience hiring outside counsel in utility rate
4 cases or other complex litigation.¹⁷ Accordingly, I would respectfully comment that
5 Ms. Stark's testimony regarding the reasonableness of outside counsel fees should
6 be given little to no weight.

7

8 **IV. REDACTED INVOICES**

9 Q17. ON PAGES 19 THROUGH 21 OF MS. STARK'S TESTIMONY, MS STARK
10 RECOMMENDS A DISALLOWANCE OF \$22,231 FOR LINE ITEMS IN
11 INVOICES THAT CONTAIN REDACTIONS. DO YOU AGREE WITH HER
12 RECOMMENDED DISALLOWANCE?

13 A. No. Ms. Stark recommends disallowance because she states that redacted invoices
14 do not meet the evidentiary standard in 16 TAC § 25.245. I disagree. The line
15 entries that Ms. Stark refers to were redacted on the basis of the work product
16 privilege.

¹⁷ Commission Staff's Response to Entergy Texas, Inc. First Request for Information at Response ETI 1-1 through 1-3 (Nov. 10, 2022).

1 Q18. ARE THERE ANY ISSUES TO ADDRESS RELATED TO MS. STARK'S
2 RECOMMENDATION WITH RESPECT TO THE EVERSHEDS
3 SUTHERLAND (US) LLP INVOICE DATED JUNE 28, 2022 REFERENCED IN
4 EXHIBIT RS-6?

5 A. Yes. Ms. Stark recommends that \$962.50 associated with this invoice should be
6 disallowed. Entergy is not seeking recovery of this expense item and does not
7 oppose Ms. Stark's recommendation related to this line item on the June 28, 2022
8 invoice. The remainder of my testimony refers only to the amounts included in
9 ETI's rate case expense request.

10

11 Q19. PLEASE EXPLAIN WHY YOU DISAGREE WITH MS. STARK'S
12 RECOMMENDATION TO DISALLOW LINE ENTRIES IN INVOICES THAT
13 WERE REDACTED ON THE BASIS OF PRIVILEGE.

14 A. Information in legal invoices describes work performed by attorneys, and may
15 include legal topics, theories, and strategies associated with the work performed.
16 In some instances, including in these invoices, the information is considered
17 protected work product, and it is therefore required for the attorneys to redact such
18 information or else the work product privilege will be waived.

19 Ms. Stark's claim is that redacted invoices do not meet the standard in 16
20 TAC § 25.245 because she cannot verify the nature of the services. However, her
21 position is unreasonable because it contradicts Commission rule 16 TAC
22 § 22.221(b), which states that Texas law addressing privilege and exemptions

1 applies in contested cases. Texas Civil Procedure Rule § 192.5 provides that work
2 product can be “material prepared or mental impressions developed in anticipation
3 of litigation” and is considered privileged information not subject to discovery. It
4 is therefore reasonable for Entergy to redact work product in its invoices, which it
5 has done on limited line items that would disclose litigation strategy and other
6 information to opposing parties. Here, Commission Staff is an opposing party, and
7 it is therefore a violation of the Commission’s own rules related to privilege to
8 require that Entergy reveal work product to Commission Staff.

9
10 Q20. DID YOU REVIEW UNREDACTED INVOICES TO DETERMINE THE
11 REASONABLENESS OF THE RATE CASE EXPENSES ASSOCIATED WITH
12 THE REDACTED ENTRIES?

13 A. Yes. I did, and it is my opinion that the legal fees associated these line items are
14 reasonable rate case expenses. In addition, the Company has unredacted or partially
15 unredacted certain task narratives included in invoices that were previously
16 provided. These invoices are included with my public workpapers.

17

18 **V. DELOITTE**

19 Q21. PLEASE DESCRIBE MS. STARK’S POSITION WITH RESPECT TO THE
20 AMOUNT PAID TO DELOITTE.

21 A. On page 22 of her testimony Ms. Stark recommends the disallowance of the lump
22 sum of \$150,000 paid to Deloitte. She asserts that the invoice submitted by Deloitte

1 for the flat fee arrangement was not sufficient for her to determine that the fees paid
2 to, tasks performed by, or time spent on tasks was not extreme or excessive. She
3 contends that the payment for the flat fee arrangement should be disallowed.

4

5 Q22. IN YOUR OPINION, DOES THE DOCUMENTATION SUBMITTED VIOLATE
6 THE RATE CASE EXPENSE RULE?

7 A. No. In my opinion, it does not. In the reasonableness determination, 16 TAC
8 § 25.245(c)(1) provides the following factor for consideration: “the fees paid to,
9 tasks performed by, or time spent on a task by an attorney or other professional
10 were extreme or excessive.” Entergy paid Deloitte a flat fee of \$150,000, and
11 Entergy has provided a description of the work performed through the engagement
12 letter that was provided in my workpapers and addressed in my direct testimony.¹⁸
13 Deloitte performed audit services with respect to the affiliate charges for purposes
14 of the rate case. Given the heightened requirements associated with the recovery
15 of affiliate payments and the \$49 million disallowance in Docket No. 16705¹⁹
16 associated with such payments, it is important and necessary for the Company to
17 have this audit performed to ensure it meets its burden of proof in the rate case. My
18 supplemental direct testimony at pages 4-5 explained the purpose of the Deloitte
19 expense. In addition, the invoice that was provided in my supplemental workpapers

¹⁸ Supplemental Direct Testimony of Meghan E. Griffiths, WP/MEG Supp. Direct Testimony at 297-328.

¹⁹ See *Application of Entergy Gulf States, Inc. for Approval of its Transition to Competition Plan and the Tariffs Implementing the Plan, and for the Authority to Reconcile Fuel Costs, to Set Revised Fuel Factors, and to Recover a Surcharge for Underrecovered Fuel Costs*, Docket No. 16705, Second Order on Rehearing at 3-4 (Oct. 14, 1998).

1 states that the amount billed “related to our attestation report over the Summary of
2 Costs Billed by Entergy Services, LLC and Other Entergy Affiliates to Entergy
3 Texas, Inc. in accordance with the Engagement Letter dated May 5, 2022.”²⁰ The
4 engagement letter with Deloitte, which was also provided in my supplemental
5 workpapers, further stated that Deloitte was engaged as an independent accountant
6 to perform an examination of management’s assertion that the summary of costs
7 billed by Entergy Services, LLC and other Entergy affiliates to Entergy Texas, Inc.,
8 for the year ended December 31, 2021, complies with the services agreements that
9 have been approved by the Securities and Exchange Commission under PUHCA
10 1935 and those subsequently accepted by the Federal Energy Regulatory
11 Commission.²¹ As noted in my supplemental direct testimony at page 5, the
12 independent audit was relied upon by Entergy witness Ryan M. Dumas’s direct
13 testimony²² to meet Entergy’s burden of proof related to affiliate expenses. Thus,
14 the expenses have been demonstrated to be reasonable and necessary rate case
15 expenses. Deloitte’s audit is relied upon for a single issue so no further write up is
16 necessary. Nevertheless, Deloitte has provided a timesheet with the employee
17 level, name, hours worked by week, hourly rates, and total fees.

²⁰ Supplemental Direct Testimony of Meghan E. Griffiths, WP/MEG Supp. Direct Testimony at 328 (Oct. 13, 2022).

²¹ *Id.* at 297.

²² Direct Testimony of Ryan M. Dumas at 45 and RMD-15, Attachment 9 (Jul. 1, 2022).

1 Q23. IS THE FLAT FEE PAYMENT OF \$150,000 EXCESSIVE?

2 A. No. With respect to the time spent, the Company has eliminated the concern that
3 the amount of time was extreme or excessive by agreeing to the flat fee
4 arrangement. In Project No. 41622, the Commission recognized that alternative fee
5 arrangements such as flat-fee arrangements can eliminate the downside risk of
6 hourly billing arrangements.²³ As is demonstrated by the Deloitte timesheet, ETI
7 benefited from the flat fee arrangement, because the fees calculated on an hourly
8 basis would have come in higher than the fixed \$150,000 amount. Further, the
9 amount charged by Deloitte in this case is reasonable for the reasons stated in my
10 supplemental direct testimony, including the prior expertise and experience of
11 Deloitte on this matter and the amount previously charged for such services in prior
12 rate cases. In Docket Nos. 41791 and 48371, Entergy's 2013 and 2018 rate cases,
13 respectively, Entergy's consultants charged \$125,000 for the audit.²⁴ Adjusted for
14 inflation, the \$150,000 charge in this case is therefore reasonable. Accordingly, the
15 \$150,000 payment was reasonable.

²³ See discussion of Item 21 by Commissioner Anderson addressing potential benefits of alternative fee arrangements, including flat fee arrangements. Admin Monitor - Texas - Public Utility Commission of Texas, available at https://adminmonitor.com/tx/puct/open_meeting/20140710/.

²⁴ *Application of Entergy Texas, Inc. for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 41791, Supplemental Direct Testimony of Stephen F. Morris, Exhibit SFM-SD-5 at 2 (Bates 30) (Feb. 28, 2014); Review of the Rate Case Expenses Incurred in Docket No. 48371, Docket No. 48439, Rebuttal Testimony and Exhibits of Stephen F. Morris at 52 (Bates 55) (May 23, 2019).

- 1 **VI. CONCLUSION**
- 2 Q24. DOES THIS CONCLUDE YOUR TESTIMONY?
- 3 A. Yes.

AFFIDAVIT OF MEGHAN GRIFFITHS


THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This day, Meghan Griffiths, the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under other:

“My name is Meghan Griffiths. I am of legal age and a resident of the State of Texas. The foregoing testimony and exhibits offered by me are true and correct, and the opinions stated therein are, to the best of my knowledge and believe, accurate, true and correct.”


Meghan Griffiths

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 14th
day of November 2022.


Notary Public State of Texas