



Filing Receipt

Received - 2023-04-06 04:26:43 PM
Control Number - 54731
ItemNumber - 5

DOCKET NO. 54731

REPORT ON TEXAS-NEW MEXICO	§	PUBLIC UTILITY COMMISSION
POWER COMPANY; FINDINGS OF	§	
VIOLATIONS 16 TAC § 25.25,	§	OF TEXAS
RELATED TO ISSUANCE AND	§	
FORMAT OF BILLS; § 25.241,	§	
RELATING TO FORM AND FILING	§	
OF TARIFFS; TARIFF FOR RETAIL	§	
DELIVERY SERVICE SECTIONS 4.7.2	§	
AND 4.7.2.2	§	

COMMISSION STAFF'S PROOF OF NOTICE

On March 8, 2023, Staff of the Public Utility Commission of Texas (Commission) filed its report to the Commission regarding its investigation of Texas-New Mexico Power Company (TNMP) for violations related to its estimated billing practices. On March 30, 2023, the administrative law judge issued Order No. 1 requiring Commission Staff to file proof that it provided notice of its report in compliance with 16 Texas Admin. Code § 22.246(f)(2)(A) and (C). Therefore, this pleading is timely filed.

I. PROOF OF NOTICE

On March 20, 2023, Commission Staff provided notice of its report to the Commission regarding its investigation of Texas-New Mexico Power Company for violations related to its estimated billing practices to TNMP via certified mail in compliance with 16 Texas Admin. Code § 22.246(f)(2)(A) and (C). A copy of the Notice is attached to this pleading as Attachment 1. Tracking information provided by the United States Postal Service (USPS) indicates that the notice letter was received by USPS on March 20, 2023, and delivered to TNMP on March 22, 2023.¹ Additionally, TNMP has stated in its recent filing in this docket that it was served with the report of violation on March 20, 2023.²

¹ See, Attachment 2.

² Texas New Mexico Power Company's Request for Hearing and Joint Motion to Abate Procedural Schedule at 1 (Apr. 6, 2023).

Dated: April 6, 2023

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS

**DIVISION OF COMPLIANCE AND
ENFORCEMENT**

Barksdale English
Division Director

/s/Van Moreland
Van Moreland
State Bar No. 24088087
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7163
(512) 936-7268 (facsimile)
van.moreland@puc.texas.gov

DOCKET NO. 54731

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 6, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Van Moreland
Van Moreland

ATTACHMENT 1

Peter M. Lake
Chairman

Will McAdams
Commissioner

Lori Cobos
Commissioner

Jimmy Glotfelty
Commissioner

Kathleen Jackson
Commissioner



Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

March 20, 2023

VIA EMAIL (stacy.whitehurst@tnmp.com; mgriffiths@jw.com); &
VIA CERTIFIED MAIL (7020 2450 0000 5363 1082)

Stacy Whitehurst
Vice President, Regulatory Affairs
Texas-New Mexico Power Company
577 N. Garden Ridge Blvd.
Lewisville, TX 75067

RE: **PUC Docket No. 54731** – Report on Texas-New Mexico Power Company;
Finding of Violations of 16 Tex. Admin. Code §§ 25.25, Related to Issuance
and Format of Bills; 25.241, Relating to Form and Filing of Tariffs; Tariff for
Retail Delivery Service Sections 4.7.2 and 4.7.2.2.

The Division of Compliance and Enforcement (DICE) of the Public Utility Commission of Texas (Commission) has recommended the assessment of an administrative penalty against Texas-New Mexico Power Company (TNMP) for violations of 16 Texas Administrative Code (TAC) §§ 25.25, Related to Issuance and Format of Bills; 25.241, Relating to Form and Filing of Tariffs; and sections 4.7.2 and 4.7.2.2 of its Tariff for Retail Delivery Service (tariff). This letter serves as a formal Notice of a Report of Violation (ROV) under 16 TAC § 22.246(f).

I. Summary of Alleged Violations

The Division of Compliance and Enforcement (DICE) of the Public Utility Commission of Texas (Commission) investigated Texas-New Mexico Power Company (TNMP) for violations related to its estimated meter reading. As discussed in the attached ROV,¹ Commission Staff alleges that TNMP failed to comply with sections 4.7.2 and 4.7.2.2 of its tariff by estimating meter readings for periods greater than three months; violated 16 TAC § 25.241(b) by exhibiting behavior different from that which is prescribed in its effective tariff filed with the Commission; violated 16 TAC § 25.214(c) by not adhering to its tariff provisions; and failed

¹ Attachment A.



to comply with the Commission's order related to TNMP's updated advanced metering system deployment plan.

II. Statement of the Amount of Recommended Penalty

Based on the attached Report on Violations, DICE recommends assessing an administrative penalty against TNMP in the amount of \$1,747,400. This recommendation is based on consideration of the penalty factors set forth in Public Utility Regulatory Act² (PURA) § 15.023(c) and 16 TAC § 22.246. A copy of 16 TAC § 22.246 has been attached to this letter,³ as required under 16 TAC § 22.246(f)(2)(C)(vi).

III. Statement Relating to TNMP's Rights

Persons alleged to have committed a violation or continuing violation have a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both. Options available under Commission rules to resolve this matter include paying the penalty, requesting a settlement conference, or requesting a contested case hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.⁴

Written acceptance of the determination of violation and recommended penalty or a written request for a hearing must be received no later than 20 days after service of notice of the report on violations.⁵ Failure to timely respond to the notice will result in the Commission approving by order the determination of violation and recommended penalty.⁶

The factual allegations listed in the attached Report of Violation could be deemed admitted and the relief sought herein could be granted by default if you fail to timely request a hearing.

If you have any questions about the issues raised in this ROV, please do not hesitate to contact Van Moreland, Attorney, Division of Compliance and Enforcement, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Mr. Moreland can also be reached at van.moreland@puc.texas.gov or at (512) 936-7163.

² Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001—66.016 (PURA).

³ Attachment B.

⁴ 16 Tex. Admin. Code (TAC) § 22.246(f)(2)(C)(iv).

⁵ PURA § 15.024(d).

⁶ PURA § 15.204(e).

Sincerely,

PUBLIC UTILITY COMMISSION OF TEXAS

**DIVISION OF COMPLIANCE AND
ENFORCEMENT**

Barksdale English
Division Director

A handwritten signature in black ink, appearing to read 'V. Moreland', is positioned above a horizontal line.

Van Moreland
State Bar No. 24088087
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7163
(512) 936-7268 (facsimile)
van.moreland@puc.texas.gov

ATTACHMENT A
REPORT ON VIOLATIONS

Peter M. Lake
Chairman

Will McAdams
Commissioner

Lori Cobos
Commissioner

Jimmy Glotfelty
Commissioner

Kathleen Jackson
Commissioner



Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Chairman and Commissioners

FROM: Van Moreland, Attorney
Division of Compliance & Enforcement

DATE: March 8, 2023

RE: **Docket No. 54731** – Report on Texas-New Mexico Power Company; Finding of Violations 16 Tex. Admin. Code §§ 25.25, Related to Issuance and Format of Bills; 25.241, Relating to Form and Filing of Tariffs; Tariff for Retail Delivery Service Sections 4.7.2 and 4.7.2.2.

I. SUMMARY

The Division of Compliance and Enforcement (DICE) of the Public Utility Commission of Texas (Commission) investigated Texas-New Mexico Power Company (TNMP) for violations related to its estimated billing practices. This memorandum serves as a report to the Commission under PURA¹ § 15.024(a) determining violations have occurred, providing a statement of the facts forming the basis of the determination, and providing a recommendation on an administrative penalty. DICE staff have consulted with the executive director on the report, and under the authority provided by PURA § 15.027(c), DICE issues this report to the Commission.

II. INTRODUCTION

Accurate and timely billing of electric consumption is critical to consumers and industry entities alike. Underlying accurate billing is accurate electric meter reading. Since the early 2010s, each transmission and distribution utility – the industry entity that owns the electric meter in the ERCOT power region – has adopted advanced metering systems, an innovation that has allowed for more precise and more timely reporting of electricity consumed by an end-use customer. Because of the deployment of advanced metering systems, transmission and distribution utilities can seamlessly and remotely pull data from an advanced meter and send consumption data to the retail electric provider offering service to the individual customer. These innovations have generally resulted in improved efficiencies for both the utility and the retail electric provider as well as providing end-use customers with other tangible benefits. When advanced meter reading runs into problems, however, utilities must be quick to adapt

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001—66.016 (PURA).

and implement standby measures to prevent inaccurate bills from being sent to customers, especially over a long period of time.

A recent DICE investigation has determined that TNMP violated rules related to accurate meter reading because of a systemic failure to address changes to its advanced metering system imposed by a third party that provided core metering functionality.

III. APPLICABLE LAW

The following authorities govern the determination of an occurrence of a violation in this matter.

- Under PURA § 39.101(a)(6), the Commission must ensure that retail customers are entitled to accurate metering and billing.
- 16 Texas Administrative Code (TAC) § 25.214(c) requires each transmission and distribution utility to file a tariff with the Commission and makes the provisions of the tariff requirements with which the transmission and distribution utility must comply.
- 16 TAC § 25.241(b) states that no utility shall directly or indirectly offer any service, collect any rate or charge, give any compensation or discount to a customer, or impose any classification, practice, or regulation different from that which is prescribed in its effective tariff filed with the commission.
- TNMP's Tariff for Retail Delivery Service (tariff), Section 4.7.2 Meter Reading, states that unless otherwise provided in this section or in the Rate Schedule, a meter reading shall not be estimated more than three times consecutively.
- Section 4.7.2.2 of the tariff states that the Company shall not perform an estimated meter reading for more than three consecutive scheduled meter reading dates for a retail customer's premises when the retail customer has not denied the Company access to the meter.
- 16 TAC § 25.130(g)(4) requires a transmission and distribution utility to provide a deployment plan to the Commission if the utility seeks to add or enhance features to its advanced metering system.
- PURA § 15.023 provides that the Commission may impose an administrative penalty against a person regulated under PURA who violates a provision of PURA or a rule or order adopted under PURA.
- 16 TAC § 25.8(b)(2)(A) provides that penalties for Class B violations may not exceed \$5,000 per violation per day.

IV. STATEMENT OF FACTS

TNMP is a transmission and distribution utility (TDU) that owns or operates for compensation facilities to transmit or distribute electricity in this state. TNMP provides electric transmission and distribution services in the ERCOT power region under certificate of convenience and necessity (CCN) number 30038.

In 2007, the Commission adopted new substantive rules² that required a TDU desiring to deploy an advanced metering system (AMS) to seek the Commission's approval to implement its deployment plan. TNMP received approval for its initial deployment plan in 2011.³ Then, in 2014, the Commission approved TNMP's amended AMS deployment plan, which notably allowed TNMP to upgrade its wireless telecommunications network to a third generation (3G) or later system.⁴ Since TNMP's implementation of its amended AMS plan and through calendar year 2022, TNMP used 3G-enabled advanced meters that were designed to communicate with the TDU via AT&T's or Verizon's 3G cellular networks.

According to TNMP, AT&T informed the TDU on February 21, 2019 that it would discontinue operating its 3G network, effective February 2022.⁵ Despite knowing for more than 18 months that the backbone of its AMS system would be decommissioned in three years' time, TNMP did not apply to the Commission for approval of a new AMS deployment plan that would solve the impending network discontinuance until October 2, 2020.⁶ In that application, TNMP proposed to upgrade its communication technology through the rollout of new advanced meters that use radio frequency mesh communication technology provided by a different vendor.⁷ The Commission approved TNMP's application to upgrade its AMS on January 14, 2021.

The rollout of the more than 170,000⁸ new meters was scheduled to begin in April 2021 and conclude by October 2022.⁹ However, TNMP contends that the meter vendor notified the TDU in July of 2021 that the vendor was experiencing supply chain constraints related to the Covid-19 pandemic, so delivery of the meters would be delayed.¹⁰ TNMP did not begin rolling

² See 16 TAC § 25.130.

³ *Texas-New Mexico Power Company's Request for Approval of Advanced Meter System (AMS) Deployment and AMS Surcharge*, Docket No. 38306, Final Order (Jul. 8, 2011).

⁴ *Application of Texas-New Mexico Power Company for Amendment to its Commission-Approved AMS Deployment Plan*, Docket No. 43239, Final Order (Nov. 14, 2014).

⁵ *Application of Texas-New Mexico Power Company for Change in Deployed Advanced Meter Technology*, Docket No. 51387, Application at 2 (Oct. 2, 2020).

⁶ *Id.*

⁷ Docket No. 51387, Prepared Direct Testimony and Exhibits of Robert K. Roberts (Roberts Testimony) at 4:16-24 (Oct. 2, 2020).

⁸ Docket No. 51387, Prepared Direct Testimony and Exhibits of Stacy R. Whitehurst at 3:7 (Oct. 2, 2020).

⁹ Docket No. 51387, Roberts Testimony at 8:12-13 (Oct. 2, 2020).

¹⁰ *Texas-New Mexico Power Company Compliance Filings for Monthly Advanced Metering Status Reports Pursuant to the Commission's Final Order in Docket No. 38306*, Docket No. 39772, Monthly Progress Report of Texas-New Mexico Power Company for Period Ending July 15, 2021 at 2 (Jul. 31, 2021).

out new meters until February 2022, the same month AT&T's 3G network ceased to operate. Though it knew seven months earlier that there could be tens of thousands of meters that would stop communicating with the utility, TNMP did not execute a mitigation strategy until February 2022.¹¹ As a result, TNMP had to begin estimating usage for the non-communicating meters. Because TNMP failed to secure the necessary resources to conduct manual meter reads for so many non-communicating meters, estimations for many customers extended for periods greater than three months. Ultimately, from January 1, 2022, to December 31, 2022, TNMP estimated readings of 17,474 meters for more than three consecutive months.¹²

During this same time, the Commission received more than 800 complaints related to billing concerns in TNMP's service area.¹³ Some complaints indicate months of estimated readings, and at least one customer reported estimations up to seven consecutive months.¹⁴ In many cases, TNMP's estimations chronically under-estimated actual electricity consumption such that, when the new 5G meters were finally installed and TNMP was able to obtain actual readings, customers were presented with a significant amount of unbilled-for electric consumption. Some customers reported receiving bills for the difference in one billing cycle, creating financial hardship. One customer reported receiving a \$1,200 electric bill due to estimated meter readings from the summer months and then another \$1,000 bill for new estimated reading for usage during that fall and winter.¹⁵

As of the filing of this report, TNMP had installed approximately 186,409 new advanced meters and 1,931 meters remained to be swapped.¹⁶

V. VIOLATIONS

Based on the above statement of facts and applicable law, DICE concludes TNMP has committed the following violations:

1. *TNMP did not comply with its required tariff provisions when it estimated meter readings for more than three consecutive months.*

TNMP violated sections 4.7.2 and 4.7.2.2 of its tariff 17,474 times between January 1, 2022 and December 31, 2022 by estimating meter readings for periods greater than three consecutive months. Commission Staff asserts that violations related to estimated meter readings could be continuing until the entire deployment of new advanced meters is completed.

¹¹ Docket No. 39772, Monthly Progress Report of Texas-New Mexico Power Company for Period Ending January 15, 2022 at 2 (Jan. 18, 2022).

¹² Exhibit 1 at p. 2.

¹³ See Exhibit 2.

¹⁴ See, for example CP2022110707.

¹⁵ Amy Davis, KPRC 2 Investigates: Wrong electric bills for customers, KPRC 2, Feb 13, 2023, <https://www.click2houston.com/news/investigates/2023/02/13/kprc-2-investigates-wrong-electric-bills-for-customers/> (last visited Feb 23, 2023).

¹⁶ Exhibit 3.

2. *TNMP provided service in a manner which is not prescribed in its tariff.*

Because TNMP is out of compliance with its tariff under sections 4.7.2 and 4.7.2.2, TNMP violated 16 TAC § 25.241(b) by exhibiting behavior different from that which is prescribed in its effective tariff filed with the commission.

3. *TNMP did not adhere to multiple provisions of its tariff.*

Because TNMP is out of compliance with its tariff under sections 4.7.2 and 4.7.2.2, TNMP violated 16 TAC § 25.214(c) by not adhering to its tariff provisions.

4. *TNMP did not follow the Commission's order related to its updated AMS deployment plan.*

The Commission issued an order approving a deployment plan in Docket No. 51387 based on TNMP's direct testimony submitted with its application. TNMP proposed a plan to deploy new advanced meters beginning in April 2021, but meters did not roll out until February 2022. TNMP did not propose a mitigation strategy even though it recognized at the time it submitted its application that "sourcing initiatives" may be impacted by the Covid-19 pandemic.¹⁷ Therefore, the Commission approved a deployment plan in which TNMP should have been exchanging customers' meters for ten months before the AT&T 3G network was discontinued.

VI. RECOMMENDATION FOR ADMINISTRATIVE PENALTY

DICE recommends the Commission approve an administrative penalty against TNMP in the amount of \$1,747,400 or \$100 for each affected customer.

16 TAC § 25.8(b)(2)(B) provides that all violations not specifically enumerated as a Class C or Class A violation are Class B violations. The violations described in this report are Class B violations.

The recommended administrative penalty amount is based on consideration of the penalty factors set forth in 16 TAC § 22.246:

1. *The seriousness of the violation, including the nature, circumstances, extent, and gravity of a prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public*

The purpose of sections 4.7.2 and 4.7.2.2 of the TDU's tariff is to ensure meter accuracy by forbidding meter reading estimation for periods greater than three months. Failure to ensure meter reading accuracy creates an economic hazard to the public because the estimations may result in under- or over-billing for electric consumption that a customer cannot reasonably predict. Moreover, TNMP's systemic inaccurate meter reading resulted in instances in which customers may have suddenly large electric bills

¹⁷ Docket No. 51387, Roberts Testimony at 7:11 (Oct 2, 2021).

for consumption that never occurred or occurred months prior to the date the bill was issued.

As evidence of the impact, the Commission received 925 complaints involving TNMP and meters from January 1, 2022, to February 15, 2023. The majority of complaints were a result of steep increases in billing because of prolonged periods of meter reading estimation.

Additionally, extended periods of estimated meter readings create a potential economic hazard for the retail electric providers serving the customers in TNMP's service area. Unpredictable and unreliable billing based on prolonged periods of estimated meter reading can cause confusion and consternation for the REPs' customers, which can lead to the REP experiencing an increase in unpaid bills, deferred payment plans, and other types of delays that could constrain the REP's cash flow or harm the REP's reputation.

TNMP is required to comply with its tariff under 16 TAC § 25.214(c) and must follow the practices enumerated within its tariff, according to 16 TAC § 25.241(b). Failure to comply with its tariff is seen as a significant violation since tariffs are meant to act as a contract between the utility and its customers. In this case, TNMP engaged in a practice that was forbidden in its tariff and which resulted in prolonged and widespread hazards or potential hazards to the economic welfare of the public.

2. *Economic harm to property or the environment caused by the violation*

Commission Staff is not aware of any harm to property or the environment because of the violations documented in this matter.

3. *History of previous violations*

TNMP does not have a history of previous violations related to meter reading estimation. TNMP's previous violations are related to violations of the Commission's electric service quality rules.

4. *The amount necessary to deter future violations*

The recommended penalty amount is necessary to deter future violations because it makes clear to both TNMP and the other TDUs that their obligation to provide continuous and adequate service extends to taking all necessary steps to ensure the accuracy and reliability of the utility's AMS, which is so heavily relied upon by consumers and industry alike. An entity holding a certificate of convenience and necessity is granted an exclusive right to serve, and so it must adhere to its obligations to serve those customers adequately or face serious consequences. TNMP's failure to comply with rules and tariffs forbidding the estimation of meters for billing purposes for more than three consecutive months represents a serious breach of its obligations to adequately service its customers.

5. *Efforts to correct the violation*

DICE is unaware of any substantive effort by TNMP to correct the violations. Actual meter readings are obtained when a customer's meter is changed out or when a manual meter reading is taken. TNMP's new meter roll out was significantly delayed and its lack of a back-up plan to obtain actual meter readings during the pendency of the transition consigned the TDU to estimating thousands of meters for months on end. TNMP failed to secure enough resources to conduct manual readings of each meter at least once every three months, and Commission Staff is unaware of any other effort the TDU took to proactively mitigate the risks its failures placed on residents located in its service area.

6. *Any other matter justice may require*

TNMP could have avoided the vast majority of the violations described above. The utility had three-years' notice that the communication backbone of its AMS was going to be discontinued; yet, it did not devise a plan until half way through that timeframe. Additionally, TNMP could have developed a back-up mitigation plan in case its vendor was unable to provide more than 170,000 new meters in time to avoid the foreseeable communications failures. The violations committed by TNMP were widespread, affecting more than 17,000 residents located in its service territory. The violations are serious and warrant a significant penalty.

VII. STATEMENT RELATING TO TNMP'S RIGHTS

Persons alleged to have committed a violation or continuing violation have a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both.¹⁸ Options available under Commission rules to resolve this matter include paying the penalty, requesting a settlement conference, or requesting a contested case hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.¹⁹

Written acceptance of the determination of violation and recommended penalty or a written request for a hearing must be received no later than 20 days after service of notice of the report on violations.²⁰ Failure to timely respond to the notice will result in the Commission approving by order the determination of violation and recommended penalty.²¹

¹⁸ PURA § 15.024(d).

¹⁹ 16 TAC § 22.246(f)(2)(C)(iv).

²⁰ PURA § 15.024(d).

²¹ PURA § 15.204(e).

VIII. PROCEDURE

Commission Staff will give written notice of this report to TNMP no later than 14 days after the report is issued.²² Simultaneous with the filing of its notice, Commission Staff will propose a procedural schedule for the Commission to consider.

²² 16 TAC § 22.246(f)(2)(A).

EXHIBIT 1

INVESTIGATION NO. SIR2022080002

**INVESTIGATION OF COMPLIANCE WITH 16 TEX. ADMIN CODE §§ 25.25,
RELATED TO ISSUANCE AND FORMAT OF BILLS; AND 25.241,
RELATED TO FORM AND FILING OF TARIFFS**

**TEXAS-NEW MEXICO POWER COMPANY'S RESPONSE TO
STAFF'S THIRD REQUEST FOR INFORMATION**

TEXAS-NEW MEXICO POWER COMPANY ("TNMP") files this response to Staff's third request for information.

TNMP files these responses without agreeing to the relevancy of the information sought and without waiving their right to object at the time of any hearing to the admissibility of information produced herein.

Respectfully submitted,

/s/ Scott Seamster

Scott Seamster

State Bar No. 00784939

Associate General Counsel

TEXAS-NEW MEXICO POWER COMPANY

577 N. Garden Ridge Blvd.

Lewisville, TX 75067

Tel. 214-222-4142

Fax 214-222-4156

scott.seamster@pnmresources.com

**TNMP'S RESPONSE TO COMMISSION STAFF'S THIRD
REQUEST FOR INFORMATION (RFI)**

RFI 3-1

Please provide an updated count of instances in which TNMP estimated a customer's meter for four or more consecutive months from January 1, 2022, to December 31, 2022, which does not include denial of access locations.

Prepared by: Andrea Couch, Stacy Whitehurst

Sponsored by: Stacy Whitehurst

RESPONSE: 17,474 ESI IDs have estimated 4 or more consecutive times since January 1, 2022, to December 31, 2022, which excludes access issue locations.

RFI 3-2

Please provide the number of locations in which access to the meter was denied by the customer for four or more consecutive months from January 1, 2022, to December 31, 2022

Prepared by: Andrea Couch, Stacy Whitehurst

Sponsored by: Stacy Whitehurst

RESPONSE: 6,739 ESI IDs have estimated 4 or more consecutive times since January 1, 2022, to December 31, 2022 because of access issues.

RFI 3-3

Has TNMP provided door hangers for each location identified in RFI 3-2?
If not, please explain why.

Prepared by: Chris Gerety, Stacy Whitehurst

Sponsored by: Chris Gerety, Stacy Whitehurst

RESPONSE:

Yes. TNMP crews left door hangers at all inaccessible locations worked by TNMP. TNMP instructed its AMI vendor to place the door hangers at all inaccessible locations that it serviced. If the vendor was unable to locate a meter, TNMP identified such locations and either replaced the meter or left a door hangar. TNMP understands that the AMI vendor complied with instructions and has requested confirmation. If any response from the AMI vendor alters this answer, TNMP will supplement.

What actions are taken by TNMP for locations identified in RFI 3-2 that make the customer aware of the customer's limited options of:

RFI 3-4

- a) Disconnection of service;
- b) Installation of a remotely read meter at the retail customer's expense and billed directly by TNMP to the REP; or
- c) Relocation of the meter to make the meter accessible at the retail customer's expense.





Prepared by: Chris Gerety, Stacy Whitehurst

Sponsored by: Chris Gerety, Stacy Whitehurst

RESPONSE:

On 1/14/21 in Docket No. 51387, TNMP received approval from the Public Utility Commission of Texas to upgrade the communication technology for its AMS meters in certain areas from cellular to radio frequency mesh communication technology in response to AT&T's turn down of the 3G network in February of 2022. TNMP engaged its AMI vendor to remediate its 3G meters prior to February 2021. Subsequently, TNMP's AMI vendor notified TNMP in July of 2021 that they were experiencing significant supply chain constraints related to the COVID-19 pandemic. These constraints ultimately prevented TNMP from replacing 3G meters throughout deployment and otherwise fully mitigating the impacts related to AT&T's turndown of the 3G network.

TNMP's process is to leave door hangers when the installation of the new meter is not accessible or unable to read the 3G meter before installation of the new RF Mesh or 4G meter.

 Texas-New Mexico Power Please... We need your help! We came by to upgrade your electric meter today, but were unable to get that done. We would appreciate it if you would give us a call to schedule a time to try again. Appointment? please call... (866) 256-2030 Questions? Please call... (833) 347-1703 Or...Please visit... www.tnmp.com For information on frequently asked questions (FAQs) or any other information on the electric meter upgrade project Thanks, Texas-New Mexico Power	 Texas-New Mexico Power Por favor... (Necesitamos su ayuda) Pasamos hoy para actualizar su medidor eléctrico, pero no pudimos completar el trabajo. Le agradeceríamos que nos llamara para programar una hora para volver a intentarlo. Para citas, por favor llame... (866) 256-2030 Para preguntas, por favor llame... (833) 347-1703 Por favor visita... www.tnmp.com Para obtener información sobre las preguntas más frecuentes (PMF) o cualquier otra información sobre el proyecto de actualización del medidor eléctrico Gracias, Texas-New Mexico Power	 Dear Customer: A TNMP representative was at your home/business today. We did not have access to read your meter. Please assist us by attending to one or more of the following: <input type="checkbox"/> Locked gate <input type="checkbox"/> Dog in yard <input type="checkbox"/> Bush / Tree / Vegetation <input type="checkbox"/> Covered meter or obstruction covering meter or preventing access <input type="checkbox"/> If this line is checked we cannot estimate your reading due to on-site access issues Contact TNMP at 800-788-5579 for details. Thank You! 
---	---	--

RFI 3-5

How long does TNMP allow the customer or the customer's REP to select an option listed in RFI 3-4 before making the decision on behalf of the customer or the customer's REP.

Prepared by: Stacy Whitehurst

Sponsored by: Stacy Whitehurst

RESPONSE:

TNMP is attempting to replace all 3G meters with 4G or new RF Mesh meters. TNMP has notified the Retail Electric providers that a Denial of Access charge will be issued for current access issues consistent with Tariff provision 5.4.8 ACCESS TO RETAIL CUSTOMER'S PREMISES .

RFI 3-6

How many times from January 1, 2022, to December 31, 2022, has TNMP chosen one of the options listed in RFI 3-4 on behalf of the customer or the customer's REP.

Prepared by: Stacy Whitehurst

Sponsored by: Stacy Whitehurst

RESPONSE:

TNMP is attempting to replace all 3G meters with 4G or new RF Mesh meters, since the customers have not signed an "opt-out" for the advanced meter.

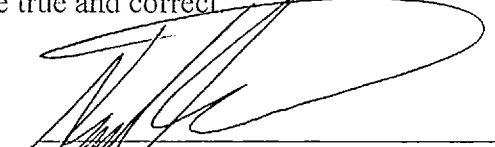
VERIFICATION

STATE OF TEXAS §

DENTON COUNTY §

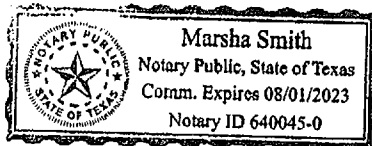
Before me, the undersigned notary, on this day personally appeared *Stacy Whitehurst*, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

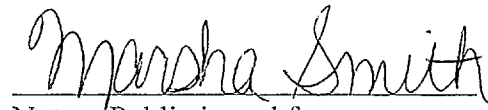
“My name is *Stacy Whitehurst*, Vice-President of Regulatory Affairs for Texas-New Mexico Power Company. I am capable of making this verification. I read *Texas-New Mexico Power Company’s Response to Staff’s Third Request for Information*. The facts stated in it are within my personal knowledge or based on information relayed to me by TNMP personnel with personal knowledge of the matters relayed and are true and correct.”



Stacy Whitehurst

Sworn to and subscribed before me by *Stacy Whitehurst* on January 23, 2023.





Notary Public in and for
the State of Texas

My commission expires: 8-1-2023

EXHIBIT 2

Public Utility Commission of Texas

Memorandum

TO: Van Moreland, Attorney
Division of Compliance & Enforcement

FROM: Harold Kohl, Complaint Program Supervisor
Customer Protection Division

DATE: March 8, 2023

RE: Complaints Against Texas-New Mexico Power Company Related to Billing and
Estimated Meter Readings

The Customer Protection Division (CPD) received more than 800 complaints from Texas-New Mexico Power Company's (TNMP) end-use customers related to billing concerns from January 1, 2022 through December 31, 2022. Of those complaints, the vast majority related to estimated meter readings. TNMP's estimated meter readings that resulted in higher bills from retail electric providers (REP) to customers once it obtained actual readings. TNMP informed CPD that the estimated readings were associated with the turn down of AT&T's 3G network in February 2022.

Complaint Totals

The more than 800 complaints received by CPD from January 1, 2022 through December 31, 2022 is a significant increase over previous years for TNMP. By comparison, CPD received the following total number of complaints for TNMP in previous years:

2017 - 45
2018 - 71
2019 - 39
2020 - 57
2021 - 103

Estimated Metering

CPD found that in many complaints, TNMP provided REPs with three or more consecutive, estimated meter readings before it could replace the meters. The estimates were lower than the customers' actual usage, causing an accumulation of unbilled usage. TNMP obtained actual readings once it replaced the meters. The unbilled usage was then accounted for in the actual readings.

Obtaining the difference between estimated and actual readings is referred to as a true-up of the usage. TNMP would provide invoice the REP with the true-up in one service period for instances of one to three estimates. TNMP would prorate the true-up over the previous service periods using a per-day average usage for instances of more than three consecutive estimates.

Billing Issues

The true-up of the consecutive estimates caused customers to have large bills from REPs that some customers expressed an inability to pay. For example, CPD found one customer had her bill increase from \$41 to \$452 due to TNMP underestimating her usage for five consecutive months.¹ The customer expressed, “I live in a low income apartment and live in a fixed income! I can barely keep my head above water now with groceries and gas! There’s no way I can pay this high an electric bill.”

Another customer had his bill increase to \$1,121 for 7,121 kWh after having his usage estimated for three consecutive months.² In one extreme example, CPD found TNMP had provided 10 consecutive estimates for a customer resulting in a bill totaling \$2,655 for 9,708 kWh upon true-up.³

The estimates also resulted in some customers not receiving the benefits of their REP’s retail plans. For example, one customer reported she received bill credits if she used over 1,000 kWh a month.⁴ TNMP estimated the usage too low and so she was not receiving the credits. TNMP adjusted the previous estimates after the customer submitted her complaint resulting in one service period having over 1,000 kWh.

¹ See CP2022091459

² See CP2022090928

³ See CP2023011005

⁴ See CP2022050407

EXHIBIT 3

From: [Retail Market Subcommittee](#) on behalf of [Couch, Andrea](#)
To: RMS@LISTS.ERCOT.COM
Subject: TNMP - 3G Network Remediation - Status Update
Date: Friday, February 24, 2023 4:18:25 PM

WARNING: EXTERNAL SENDER. Always be cautious when clicking links or opening attachments. NEVER provide your user ID or password.

***** **EXTERNAL Email** *****

Please be cautious and evaluate before you click on links, open attachments, or provide credentials.

NOTICE DATE: February 24, 2023

NOTICE TYPE: Informational

SHORT DESCRIPTION: 3G Network Remediation – Status Update

INTENDED AUDIENCE: Retail Electric Providers

DAY AFFECTED: February 24, 2023

LONG DESCRIPTION: As of February 28, 2022, TNMP lost the ability to communicate with the 3G meter population based on AT&T sunset.

ADDITIONAL INFORMATION:

- The chart below displays the current count of transactions open in EDI:

	January	February	Total
814_03	0	40	40
814_03 MVO	0	35	35
814_03 MVI	0	251	251
814_03 SW	0	72	72
814_24	0	90	90
650_01	1	26	27

- REP specific 3G meter ESI ID list is now available on the TNMP Portal at <https://rep-portal.tnmp.com/>. It is located under Reports and is titled “3G Meters List”.
- Cycle bills may be delayed due to manual read and billing efforts. Cycle completion percentages may have decreased from previous week due to cancel/rebill scenarios for adjustments to previously estimated data. Current status of completion through 02/23/2023:

Cycle	Read Date	Completion %
03	02/02/2023	100%
05	02/03/2023	100%
07	02/06/2023	100%
09	02/08/2023	100%
12	02/10/2023	100%
13	02/13/2023	100%
15	02/16/2023	100%
17	02/17/2023	100%
19	02/22/2023	98%

- There may be an increase in estimated reads reflected on 867_03 transactions due to meter accessibility and access issues. TNMP will begin to assess a Denial of Access fee per our tariff for locations not accessible or where customer denies access. Retail providers will be notified prior to assessing a denial of access fee.
- TNMP is currently responding to all MarkeTraks submitted.** At this time, we are not responding to MarkeTraks submitted prior to December unless it was sent to us as an escalation. It is no longer necessary to email TNMPBilling@tnmp.com to review MarkeTraks or notify of billing disputes. Please review TNMP – MarkeTrak Update notice submitted for specific

information.

- As of February 23, 2023, TNMP has deployed 186,409 NextGen meters. Single phase remaining to be changed out are primarily access issues, due to meter location or customer denial of access. Polyphase deployments will be focused in our West Texas area beginning Monday, January 30th . We are continuing to replace remaining 3G in all service areas as service order requests are completed in the field. Chart below displays NextGen deployment based on service area and the number of 3G meters installed in the field (remaining to be changed out).

DEPLOYMENT		REMAINING	
REGION	DEPLOYED	SINGLE PHASE	POLYPHASE
GULF	77,150	152	275
CENTRAL & NORTH	51,509	148	400
LEWISVILLE	42,433	20	122
WEST	15,317	86	728
Totals	186,409	406	1,525

- Weekly status updates will be provided each Friday or more frequent as new information is available to share.
- Additional information is available on our website at <https://www.tnmp.com/customers/update-meters>.

CONTACT: If you have any questions regarding this notification, please send an email to MPRelations@tnmp.com

ATTACHMENT B

COPY OF 16 TAC § 22.246

**Subchapter M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR
COMMISSION PROCEEDINGS.**

§22.246. Administrative Penalties.

- (a) **Scope.** This section addresses enforcement actions related to administrative penalties or disgorgement of excess revenues only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.
- (b) **Definitions.** The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise:
 - (1) **Affected Wholesale Electric Market Participant** -- An entity, including a retail electric provider (REP), municipally owned utility (MOU), or electric cooperative, that sells energy to retail customers and served load during the period of the violation.
 - (2) **Excess Revenue** -- As defined in §25.503 of this title (relating to Oversight of Wholesale Market Participants).
 - (3) **Executive director** -- The executive director of the commission or the executive director's designee.
 - (4) **Person** -- Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.
 - (5) **Violation** -- Any activity or conduct prohibited by PURA, the TWC, commission rule, or commission order.
 - (6) **Continuing violation** -- Except for a violation of PURA chapter 17, 55, or 64, and commission rules or commission orders adopted or issued under those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.
- (c) **Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.**
 - (1) Each day a violation continues or occurs is a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.
 - (2) The administrative penalty for each separate violation may be in an amount not to exceed \$25,000 per day, provided that an administrative penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.
 - (3) The amount of the administrative penalty must be based on:
 - (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
 - (B) the economic harm to property or the environment caused by the violation;
 - (C) the history of previous violations;
 - (D) the amount necessary to deter future violations;
 - (E) efforts to correct the violation; and
 - (F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.
- (d) **Amount of administrative penalty for violations of the TWC or a rule or order adopted under chapter 13 of the TWC.**
 - (1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.
 - (2) The administrative penalty for each separate violation may be in an amount not to exceed \$5,000 per day.
 - (3) The amount of the penalty must be based on:
 - (A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

- (B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
 - (C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;
 - (D) any economic benefit gained through the violations;
 - (E) the amount necessary to deter future violations; and
 - (F) any other matters that justice requires.
- (e) **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing violation, the executive director will determine whether an investigation should be initiated.
- (f) **Report of violation or continuing violation.** If, based on the investigation undertaken in accordance with subsection (e) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.
 - (1) **Contents of the report.** The report must state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable under §25.503 of this title, a recommendation that excess revenue be disgorged.
 - (2) **Notice of report.**
 - (A) Within 14 days after the report is issued, the executive director will give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice may be given by regular or certified mail.
 - (B) For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, within ten days after the report is issued, the executive director will, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.
 - (C) The notice must include:
 - (i) a brief summary of the alleged violation or continuing violation;
 - (ii) a statement of the amount of the recommended administrative penalty;
 - (iii) a statement recommending disgorgement of excess revenue, if applicable, under §25.503 of this title;
 - (iv) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;
 - (v) a copy of the report issued to the commission under this subsection; and
 - (vi) a copy of this section, §22.246 of this title (relating to Administrative Penalties).
 - (D) If the commission sends written notice to a person by mail addressed to the person's mailing address as maintained in the commission's records, the person is deemed to have received notice:
 - (i) on the fifth day after the date that the commission sent the written notice, for notice sent by regular mail; or
 - (ii) on the date the written notice is received or delivery is refused, for notice sent by certified mail.
- (g) **Options for response to notice of violation or continuing violation.**
 - (1) **Opportunity to remedy.**
 - (A) This paragraph does not apply to a violation of PURA chapters 17, 55, or 64, or chapter 13 of the TWC, or of a commission rule or commission order adopted or issued under those chapters.

- (B) Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.
- (C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no administrative penalty will be assessed against the person who is alleged to have committed the violation.
- (D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director will make a determination as to what further proceedings are necessary.
- (E) If the executive director determines that the alleged violation is a continuing violation, the executive director will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.
- (2) **Payment of administrative penalty, disgorged excess revenue, or both.** Within 20 days after the date the person receives the notice set out in subsection (f)(2) of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person must take all corrective action required by the commission. The commission by written order will approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue or order a hearing on the determination and the recommended penalty.
- (3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection (f)(2) of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:
 - (A) the occurrence of the violation or continuing violation;
 - (B) the amount of the administrative penalty; and
 - (C) the amount of disgorged excess revenue, if applicable.
- (4) **Failure to respond.** If the person fails to timely respond to the notice set out in subsection (f)(2) of this section, the commission by order will approve the determination and impose the recommended penalty or order a hearing on the determination and the recommended penalty.
- (h) **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.
 - (1) If a settlement is reached:
 - (A) the parties must file a report with the executive director setting forth the factual basis for the settlement;
 - (B) the executive director will issue the report of settlement to the commission; and
 - (C) the commission by written order will approve the settlement.
 - (2) If a settlement is reached after the matter has been referred to the State Office of Administrative Hearings, the matter will be returned to the commission. If the settlement is approved, the commission will issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

- (i) **Hearing.** If a person requests a hearing under subsection (g)(3) of this section, or the commission orders a hearing under subsection (g)(4) of this section, the commission will refer the case to SOAH under §22.207 of this title (relating to Referral to State Office of Administrative Hearings) and give notice of the referral to the person. For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order will assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing, the case will then proceed as set forth in paragraphs (1)-(5) of this subsection.
- (1) The commission will provide the SOAH administrative law judge a list of issues or areas that must be addressed.
 - (2) The hearing must be conducted in accordance with the provisions of this chapter and notice of the hearing must be provided in accordance with the Administrative Procedure Act.
 - (3) The SOAH administrative law judge will promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:
 - (A) the occurrence of the alleged violation or continuing violation;
 - (B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA chapters 17, 55, or 64; of a commission rule or commission order adopted or issued under those chapters; or of chapter 13 of the TWC; and
 - (C) the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.
 - (4) Based on the SOAH administrative law judge's proposal for decision, the commission may:
 - (A) determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue;
 - (B) if applicable, determine that a violation occurred but that, as permitted by subsection (g)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no administrative penalty will be imposed; or
 - (C) determine that no violation or continuing violation has occurred.
 - (5) Notice of the commission's order issued under paragraph (4) of this subsection must be provided under the Government Code, chapter 2001 and §22.263 of this title (relating to Final Orders) and must include a statement that the person has a right to judicial review of the order.
- (j) **Parties to a proceeding.** The parties to a proceeding under chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue will be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) of this section.
- (k) **Distribution of Disgorged Excess Revenues.** Disgorged excess revenues must be remitted to an independent organization, as defined in PURA §39.151. The independent organization must distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution will be removed prior to calculating the load proportions of the affected wholesale electric market participants that are still active. However, if the commission determines other wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct commission staff to open a subsequent proceeding to address those issues.
- (1) No later than 90 days after the disgorged excess revenues are remitted to the independent organization, the monies must be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization must, by that date, notify the commission of the date by which the funds will be distributed. The independent organization must include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues, an instruction that the monies must be used to

reduce costs or fees incurred by retail electric customers, and any other information the commission orders.

- (2) The commission may require any affected wholesale electric market participants receiving disgorged funds to demonstrate how the funds were used to reduce the costs or fees incurred by retail electric customers.
- (3) Any affected wholesale electric market participant receiving disgorged funds that is affiliated with the person from whom the excess revenue is disgorged must distribute all of the disgorged excess revenues directly to its retail customers and must provide certification under oath to the commission that the entirety of the revenues was distributed to its retail electric customers.

ATTACHMENT 2

Tracking Number:

Remove X

70202450000053631082

Copy Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your item was delivered to an individual at the address at 10:28 am on March 22, 2023 in LEWISVILLE, TX 75067.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Feedback

Delivered

Delivered, Left with Individual

LEWISVILLE, TX 75067
March 22, 2023, 10:28 am

Arrived at USPS Regional Facility

COPPELL TX DISTRIBUTION CENTER
March 21, 2023, 11:58 am

Departed USPS Regional Facility

AUSTIN TX DISTRIBUTION CENTER
March 21, 2023, 9:18 am

Arrived at USPS Regional Facility

AUSTIN TX DISTRIBUTION CENTER
March 20, 2023, 8:48 pm

Hide Tracking History