The commission disagrees with El Paso, which stated that subsections (c)(3)(A) as proposed may not be necessary because it is already addressed by SOAH Procedural Rule §155.303. The commission notes that the SOAH rule would not govern matters that are not referred by the commission to SOAH and does not provide explicitly for the disallowance of rate-case expenses.

Finally, for the same reasons as stated previously, the commission declines to adopt the *Andersen* standard as proposed by Water IOUs.

Consistent with the reorganization of subsection (c), this paragraph has been renumbered as subsection (c)(4), and the word "whether" is removed.

Section (c)
(3)(B) whether an entity's proposal on any issue is contrary to clearly established commission precedent, so long as that precedent is no longer subject to any appeal;

State Agencies pointed out that the reference to "clearly established" precedent will create disputes about when commission precedent becomes "clearly" established. State Agencies also commented that the proposed rule does not discourage re-litigation of settled issues because the qualifier "no longer subject to any appeal" is overly broad and precedent can be "appealed" by any utility through litigation in any subsequent rate case. State Agencies stated that, because precedent is arguably appealed by litigation in any subsequent rate case, the proposed rule is inconsistent with statutes that give effect to commission decisions unless stayed or reversed. State Agencies proposed a substitute for subsections (c)(3)(A) and (B), which would remove the reference to whether an issue is subject to any appeal.

Mr. Baron commented that the proposed rule language, with its separate parts (A) and (B) of subsection (c)(3), would independently place at risk expenses for any rate-case issue or proposal found contrary to clearly established commission precedent. Mr. Baron argued that the phraseology proposed therein would invite after-the-fact litigation over whether commission precedent is "clearly established" and if so, whether a utility's or municipality's position was "contrary to" it. Mr. Baron noted that with no linkage to part (A), part (B) would discourage utilities and municipalities from making a case for reconsideration of precedent even when their arguments are presented in good faith and have some reasonable basis in law, policy, or the facts. Mr. Baron argued that the commission should want the opportunity to consider such arguments and that his proposed revisions would help to mitigate these concerns and would avoid *post hoc* litigation over the meaning of "clearly established" and "contrary to," and would assure utilities and municipalities that they will not be penalized for making good-faith arguments having a reasonable basis in law, policy or fact. Mr. Baron proposed a new paragraph that would replace subsection (c)(3) entirely and specify that a party's rate-case expenses may be disallowed if the party's proposal had no basis in law, policy, or fact, or was not warranted by any reasonable argument for the extension, modification, or reversal of commission precedent. State Agencies replied that Mr. Baron's proposal actually invites the continuation of costs and ensures further costs to litigate whether there was a "reasonable basis" for repeated litigation.

OPUC commented that it is concerned that this provision goes further than intended and that the language in this provision as drafted unintentionally creates a never-ending opportunity to have the expense included. OPUC noted that in order to prevent rate-case expenses related to a

challenge of clear commission precedent from being found unreasonable, the entity could merely file an appeal of the rate case itself, including the issue in question, thereby creating an appeal that would be "pending" at the time of a separate rate-case expense proceeding. OPUC argued that when the commission determines an issue in a contested case, the precedent is set on that issue and the commission applies this precedent to future cases until reversed by the Courts or the commission changes course in future cases due to a change in law or circumstances. OPUC contended that if and until the Court reverses the commission on a disallowance, the precedent should be followed in the next case or rate-case expense proceeding, regardless of whether an appeal is pending and that the commission should retain its discretion to determine when an issue is contrary to clearly established commission precedent. OPUC noted that this does not preclude the utility from bringing the issue forward; it merely requires that the utility and its shareholders pay for the precedent-challenging issue, not ratepayers.

TIEC commented that the qualifier "so long as that precedent is no longer subject to appeal" in subsection (c)(3)(B) should be deleted from the proposed rule because, if approved, this qualifier would leave this provision with very little practical meaning. TIEC noted that appeals process can last many years, and it is not uncommon for a utility or municipality to appeal a decision even though it is well-settled in commission precedent. TIEC noted that a utility could also easily add a losing issue to an appeal for the sole purpose of recovering rate-case expenses related to that issue. TIEC argued that the commission should retain discretion to determine when an issue is contrary to clearly established commission precedent, and the commission can consider the impact of any pending appeals as part of that determination without including this specific language in the rule.

Joint Utilities replied that litigating "settled" precedent is not always unreasonable and to the extent it is unreasonable, the commission can make that determination based on the factors in subsections (b) and (c). Joint Utilities pointed out that if the commission follows its above suggested changes to subsection (c)(3), including the adoption of a new subsection (c)(4) concerning frivolous arguments that address situations where the commission believes a party should not have litigated "clearly established commission precedent," the language in subsection (c)(3)(B) should be deleted to avoid confusion over what standard should apply.

Commission response

Mr. Baron, State Agencies, and OPUC all expressed concern regarding use of the concept of clearly established commission precedent in subsection (c)(3)(B) as published. These commenters stated that this criterion was not clear and would invite voluminous litigation regarding whether any commission precedent is clear. Additionally, TIEC noted that the exception in subsection (c)(3)(B) as published for issues that are subject to an appeal is ambiguous and arguably exempts all issues from consideration. As noted previously, the commission has replaced subsection (c)(3)(B) as published by replacing all of subsection (c)(3) with the language proposed by Mr. Baron. Accordingly, the commission addresses these concerns by removing any instruction to the presiding officer to consider whether a commission precedent is clearly established. However, the commission maintains that the overall question when evaluating rate-case expenses is one of reasonableness, and parties should be discouraged from presenting unreasonable challenges to existing commission precedent.

The commission declines to adopt Joint Utilities' proposed new subsection (c)(4). Joint Utilities states that subsection (c)(3)(B) is unnecessary if Joint Utilities' proposed change to subsection (c)(3)(A) is adopted. For the same reasons as those stated above, the commission declines to adopt Joint Utilities' proposed changes to subsection (c).

Accordingly, subsection (c)(3)(B) is deleted from the rule.

Section (c)
(4) the amount of discovery;

State Agencies noted that in addition to the amount of discovery, opposition to it is also a driver of costs because of the time expended to file objections and motions to compel. State Agencies proposed modification to subsection (c)(4) to reflect this consideration.

Joint Utilities replied that they have noted throughout this project that discovery is a primary driver of rate-case expenses and therefore, consideration of the amount of discovery a utility or municipality must respond to is an obvious and reasonable factor to consider when evaluating the reasonableness of rate-case expenses. Joint Utilities argued that contrary to State Agencies' position related to consideration of the extent to which utilities challenge discovery, neither utilities nor municipalities should be punished for challenging discovery as long as those challenges are reasonable, which can already be considered within the context of the commission's reasonableness inquiry pursuant to the factors listed in proposed subsections (b) and (c).

Houston proposed striking subsection (c)(4) because the "amount of discovery" is an issue-specific situation that is often driven by the level of information presented by the utility. Houston argued that putting the "amount of discovery" *per se* at issue in rate-case expense recovery contradicts the public interest as it creates an incentive for the utility to be less than fully forthcoming in its filing. Houston commented that if a utility chooses to present limited or only summary information in support of its request, the result can lead to extensive discovery and that to the extent a blanket numerical limit on requests for information is established or implied for an entire case or even a single issue, a utility would have every incentive to limit the corresponding information presented in its filing. Houston argued that limiting the number of requests for information acts as a *disincentive* to the utility to be comprehensive and transparent in its initial filing and could potentially result in less responsive utility discovery responses to whatever limited discovery is allowed. Houston noted that a municipality can only meet its mandate to serve the public interest when discovery is permitted that corresponds to the specific facts and circumstances of a particular case and attempts to establish discovery limitations should be discouraged. Houston urged that the trier of fact in a case can and should consider abuses of all types, including discovery abuses, but without a pre-established *per se* numerical discovery limit that acts as a *de facto* limitation to effective participation.

OPUC commented that considering the amount of discovery without context would not present the commission or ALJs with sufficient information with which to determine the reasonableness of rate-case expenses since rate cases vary in size, complexity and controversy. OPUC noted that discovery is necessary because rate proceedings often involve large rate increases and

complex issues (*e.g.*, depreciation, return on equity, taxes, cost allocation and rate design, prudence issues, and other policy matters). OPUC further noted that some rate cases involve novel issues that necessitate propounding more discovery, while some involve highly controversial matters like the approval of the Turk plant in SWEPCO's Docket No. 40443. OPUC pointed out that some rate cases are supported with the testimony of more than thirty witnesses, thousands of pages of testimony, and voluminous workpapers, but that looking at the amount of discovery, the issues at play, the number of witnesses or the quality of the rate filing package submitted by the utility does not tell the whole story. OPUC argued that the same amount of discovery may be reasonable in one case and wildly out of line in another. OPUC suggested that if the commission wishes to include subsection (c)(4) in the adopted rule, the language should be amended to consider the amount of discovery in context with the issues in controversy, the number of witnesses, and other contributing factors.

The Alliance agreed with Houston and OPUC that a municipality should not be penalized for conducting the amount of discovery needed to meaningfully review a utility's case and that in the vast majority of instances, the utility initiates the case and controls the number of issues in dispute. The Alliance noted that if a municipality has to "pull its punches" for fear of not receiving reimbursement for legitimate discovery efforts, ratepayers will suffer by paying higher rates. The Alliance disagreed with Joint Utilities' proposal to restrict discovery in a manner that would impede Staff and intervenors' abilities to meaningfully review the utility's case.

Houston reiterated in reply comments that the amount of discovery should not be one of the permissible criteria for reviewing the reasonableness of a rate-case expense request and that the

amount of discovery varies from case to case, depending on the issues, facts, and circumstances of the case, largely within the utility's control. Houston pointed out that because PURA §33.021 already provides the commission with the criterion for judging the reasonableness of the amount of discovery by providing that the information requested from utilities must be necessary, subsection (c)(4) in its proposed form or any suggested amendments thereto are not needed.

Mr. Baron proposed retaining subsection (c)(4) as published and moving it to subsection (b) in order to more clearly indicate that this is an issue on which the commission requires the presentation of evidence.

Commission response

The commission declines to adopt State Agencies' suggested insertion in subsection (c)(4) as published to specify that the presiding officer shall consider the amount of opposition to discovery as well as the amount of discovery in a proceeding. The commission notes that this consideration is already implied and declines to enumerate all of the considerations implicit in subsection (c)(4) as published lest a party infer that those factors not included are intentionally excluded. Rather, the commission reiterates that the factors listed therein are non-exhaustive and nothing in the rule should be interpreted to prevent a party from presenting evidence on any relevant factor in order to establish the reasonableness or unreasonableness of a particular rate-case expense request.

The commission acknowledges Joint Utilities' concern that consideration of the amount of opposition to discovery requests may somehow penalize a utility or municipality for

challenging discovery. However, subsection (c)(4) as published lists one of several factors that the presiding officer will consider, and nothing in the rule should be interpreted to require the disallowance of rate-case expenses related to challenging discovery requests. Instead, the commission retains the flexibility to consider all relevant factors when evaluating the reasonableness of rate-case expenses.

The commission declines to adopt Houston's proposal to delete subsection (c)(4) as published. Houston states that subsection (c)(4) may provide an incentive for a utility to provide less information in its application, so that parties would be required to file additional discovery. The commission also disagrees with the Alliance, which states that subsection (c)(4) could be interpreted to penalize a municipality for conducting robust discovery. The commission finds that the total amount of discovery is an important factor to consider when evaluating rate-case expenses. However, nothing in the rule shall be interpreted to prevent a party from challenging a utility's rate-case expenses attributable to discovery on the basis that they are unreasonable. Additionally, nothing in the rule shall be interpreted to impose limitations on the number of discovery requests a party may promulgate.

Houston also stated that subsection (c)(4) as published is unnecessary because PURA §33.021 already provides the commission with the criterion for judging the reasonableness of discovery by providing that the information requested from utilities must be necessary. The commission disagrees with Houston's argument. The commission notes that PURA §33.021 applies to rate cases conducted by a municipality. The commission adopts the

proposed rule to cover all requests for recovery of or reimbursement for rate-case expenses incurred in proceedings before the commission, including proceedings in which PURA §33.021 does not apply.

The commission agrees with OPUC, which stated that the amount of discovery, if considered without context, would not present the presiding officer with sufficient information with which to determine the reasonableness of rate-case expenses. OPUC proposed amending subsection (c)(4) as published to instruct the presiding officer to consider the amount of discovery in context with the issues in controversy, the number of witnesses, and other contributing factors. The commission rejects OPUC's proposal and declines to enumerate all of the considerations implicit in subsection (c)(4) lest a party infer that those factors not included are intentionally excluded. The commission notes that the rule instructs the presiding officer to consider all relevant factors. Accordingly, OPUC's proposal is not necessary.

The commission agrees with Mr. Baron. The amount of discovery is an issue regarding which the commission will require the presentation of evidence by an applicant. Accordingly, this requirement is better listed in subsection (b) instead of in subsection (c). As discussed regarding subsection (b), the commission has incorporated this concept into subsection (b)(5)(D).

Section (c):

(5) the occurrence of a hearing; and

Mr. Baron proposed retaining subsection (c)(5) as published and moving it to subsection (b) in order to more clearly indicate that this is an issue on which the commission requires the presentation of evidence.

Commission response

The commission agrees with Mr. Baron. The occurrence of and details regarding the underlying rate case is an issue regarding which the commission will require the presentation of evidence by an applicant. Accordingly, this requirement is better listed in subsection (b) instead of in subsection (c). As discussed regarding subsection (b), the commission has incorporated this concept into subsection (b)(5)(E).

Section (c)

(6) the size of the utility and number of customers served.

Houston commented that it is not certain how size and number of customers served would significantly impact the reasonableness and necessity of the rate-case expenses. Houston expressed concern with this proposal due to the transfer of the economic regulation of water utilities from the TCEQ to the commission because Houston regulates approximately four water/wastewater investor-owned utilities operating within its jurisdiction. Houston noted that each of these systems serves less than approximately 2,000 Houston customers and that the rate-setting process is potentially less contentious and involved as a result of the smaller revenue requirement and the level of rate change requested. Houston commented that while often the

number and complexity of the issues may remain the same in these cases, focus on any particular issue is dependent on the overall monetary impact. Houston commented that with a revenue requirement of approximately $250,000, the number of potentially contentious issues pursued is significantly fewer compared to a request involving a $20 million revenue requirement that would more than likely provide a more comprehensive rate filing package and include of a larger number of witnesses. Houston expressed concern on this issue related to precedent in that cost may necessarily be incurred on a small dollar issue in a small case, but the precedent established on the issue would be applied to larger rate cases. Houston commented that more appropriate measures might include the number and complexity of issues pursued, whether or not the utility provided sufficient proof supporting its rate request, and the total amount of the revenue requirement or rate change requested. Houston noted that based on its own experience, the overall rate-case expenses incurred in a rate proceeding involving a small water utility is significantly less than that for the review of a large gas or electric utility and that perhaps another metric to be examined is a threshold based on the proportion of rate-case expenses to the revenue requirement.

Oncor Cities commented that this subsection should be deleted because it does not reflect the reality of the issues presented in nearly every rate case and that the scope of issues posed by a rate filing generally does not vary with the size of the utility or the number of customers served. Oncor Cities acknowledged that there may be scope differences in an application filed by a vertically integrated utility as opposed to a TDU, but within the broad categories, having fewer customers does not equate to a smaller rate filing. Oncor Cities argued that certain issues such as depreciation, return, and self-insurance reserve must be addressed in every rate case and do not

vary in complexity with the size of the utility. Oncor Cities pointed out that municipal intervenors do not determine the scope and complexity of a rate filing—the utility does, and that intervenors must respond to the breadth of issues presented by the utility. Oncor Cities commented that to penalize those intervenors because the utility may have fewer customers than others is inequitable and that proposed subsection (c)(6) should not become part of any rule adopted in this proceeding.

Joint Utilities commented that subsection (c)(6), which directs the presiding officer to consider the size of the utility and the number of customers served, should not be adopted because a utility's size and customer count have no bearing on the amount of rate-case expenses a utility reasonably and necessarily incurs to prosecute a rate case. Joint Utilities argued that this subsection would therefore unnecessarily impose a higher standard on smaller utilities and the municipalities that intervene in their rate proceedings. Joint Utilities pointed out that, generally speaking, a utility bears the same burden of proof, must address the same issues, and must assemble and file the same commission-mandated rate-filing package regardless of whether it has 10,000 or 100,000 customers. Joint Utilities noted that putting on a direct case on a utility's return on equity (ROE) requires the same amount of analysis and supporting testimony regardless of the size of the utility and that a depreciation study requires the same type of analysis and supporting testimony to determine service lives and net salvage value regardless of whether the study addresses $500,000,000 in plant or $1,000,000,000 in plant. Joint Utilities pointed out that the burden of proof applicable under the affiliate cost recovery standard in PURA §36.058 applies regardless of the size of the utility or the number of its customers and that the amount of discovery and other litigation costs is not necessarily affected by the size of the

utility involved but, rather, by the parties involved and the number and nature of the issues they decide to contest. Joint Utilities urged that neither the utility nor the municipalities should be penalized for litigating these issues simply because the utility has relatively fewer customers.

Water IOUs commented that utility rate cases before TCEQ, regardless of size, have required varying amounts of rate-case expenses depending on the level of opposition encountered. Water IOUs stated that in past TCEQ water/wastewater rate cases involving smaller investor-owned utilities, there has been unjust use or attempted use of the size or number of customers served in efforts to cut rate-case expense surcharges even when total rate-case expenses were otherwise reasonable and necessary. Water IOUs argued that under Senate Bill 567, adopted by the 83rd Texas Legislature, and the commission's current transfer rule proposal for water utilities, rate cases for acquired small size/connection systems by affiliates of Class A utilities will receive the same Class A rate case treatment with the accompanying unlimited discovery and extensive filing requirements. Water IOUs noted that much of the same work is required for smaller-sized rate cases, particularly with respect to discovery and RFI responses, as has been experienced with larger past rate cases and that this shows that utility size or customer figures are not valid considerations for rate-case expense recovery. Water IOUs argued that using such criteria creates the potential for arbitrary rate-case expense disallowance and discriminatory treatment, particularly if the commission plans to continue forcing Class A utilities to litigate smaller size/connection rate cases using the same procedures as larger size/connection rate cases.

OPUC replied that the utility's size and number of customers can be relevant in determining whether the magnitude of rate-case expenses is reasonable since the utility largely controls the

amount of rate-case expenses incurred and must act as the prudent gatekeeper of expenses on behalf of ratepayers. OPUC argued that if costs are completely out of proportion to the benefits (which may be apparent when comparing the costs incurred with the number of customers benefitted) the commission should be able to take this factor into consideration. OPUC noted that the commission has the discretion to determine which factors are relevant to the particular case before it, as well as how much weight to give each factor and should therefore maintain its flexibility to consider the utility's size and number of customers.

Mr. Baron proposed retaining subsection (c)(6) as published and moving it to subsection (b) in order to more clearly indicate that this is an issue on which the commission requires the presentation of evidence.

Commission response

Houston, Oncor Cities, Joint Utilities, and Water IOUs commented that it is not certain that size and number of customers served significantly impact the reasonableness and necessity of the rate-case expenses. These parties expressed concern that parties may be penalized for participating in the review of applications filed by smaller utilities, even if they are no less complex than the applications filed by larger utilities. Houston proposed that more appropriate measures might include the number and complexity of issues pursued, whether or not the utility provided sufficient proof supporting its rate request, and the total amount of the revenue requirement or rate change requested. The commission rejects Houston's proposed changes. The commission agrees with OPUC, which stated that the utility's size and number of customers can be relevant in determining

whether the magnitude of rate-case expenses is reasonable. The commission finds that the size of a utility is frequently correlated with the amount of rate-case expenses it incurs. Accordingly, the commission determines that evidence regarding the size of the utility and the number and type of customers served shall be considered by the presiding officer, along with all relevant factors, when determining the reasonableness of rate-case expenses. However, nothing in the rule shall be interpreted to prevent a party from presenting evidence with regard to the issues listed by Houston. The presiding officer and the commission will then have the discretion to weigh this factor on a case-by-case basis as appropriate in light of this or any other evidence presented by a party.

The commission agrees with Mr. Baron. The size of the utility and number and type of customers served is an issue regarding which the commission will require the presentation of evidence by an applicant. Accordingly, this requirement is better listed in subsection (b) instead of in subsection (c). As discussed regarding subsection (b), the commission has incorporated this concept into subsection (b)(5)(A).

Additional suggestions related to subsection (c):

State Agencies proposed that consideration be given to a comparison of the requested amount of rate relief with the amount actually granted consistent with the Railroad Commission rule regarding rate-case expenses. State Agencies pointed out that the State Bar of Texas' standard for assessing the reasonableness of attorney's fees takes this into consideration as does the TCEQ's rate-case expenses rule, which disallows all rate-case expenses unless the amount of the

rate increase granted is at least 51% of the requested amount. OPUC supported State Agencies' suggestions.

OPUC commented that, although as currently written this rule could possibly be read to cover the complexity and expense of the work being commensurate with the complexity of the issues in the proceeding, it does not explicitly state this, nor does it consider the amount of the rate increase sought versus the amount granted unless subsection (d) comes into play. OPUC pointed out that, while part of this concept is found in paragraph (d)(2) of the published proposed rule, that subsection deals solely with how to calculate the expenses, not the reasonableness of them. OPUC argued that these are important considerations when determining the reasonableness of the rate-case expenses, not merely factors for calculating the amount of rate-case expenses to be recovered. OPUC noted that the last sentence of the Railroad Commission's rate-case expense rule includes these considerations when determining reasonableness. OPUC recommended that a new paragraph (c)(7) be added to the proposed rule that reads as follows: *"(c)(7) whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of increase sought as well as the amount of any increase granted."*

Mr. Baron commented that the rule should provide for a disallowance when the amount of a utility's or municipality's rate-case expenses as a whole are found to be clearly disproportionate, excessive, and unwarranted, after taking into consideration the full nature and scope of the rate case. Mr. Baron urged that this standard should replace or substitute for the other global standards for disallowance implicit in subsections (d)(1), (2), and (4) of the proposed rule by

laying the necessary predicate for a proportionate disallowance using a "Results Oriented" calculation or other method. Mr. Baron proposed incorporating this suggestion by creating a new paragraph in subsection (c) that would read: "the amount of rate-case expenses as a whole was clearly disproportionate, excessive, and unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section."

Mr. Baron also suggested the creation of a new paragraph in subsection (c) that would instruct the presiding officer to consider the recommendation of a disallowance when a utility or municipality fails to present sufficient evidence as required by subsection (b). Mr. Baron's proposed paragraph would read: "the utility or municipality failed to comply with the requirements of presenting a prima facie case pursuant to subsection (b) of this section."

State Agencies commented that it is readily apparent from information provided previously in this project that the experts and attorneys employed by the utilities are considerably more expensive than those of the municipalities and other intervenors. State Agencies argued that there should be a comparison of the costs for experts and attorneys for work of the same or similar nature, consistent with the Railroad Commission rule. Joint Utilities replied that the reasonableness of these rates and fees is already addressed in proposed subsection (c)(1), so the proposal is duplicative of the existing rule language.

State Agencies commented that some utilities file rate cases more frequently than others and that this may indicate a lack of efficiency in presentation, cost control, or prosecuting incremental rate measures like the TCRF, DCRF, and PCRF. State Agencies proposed additional language

that takes into consideration the amount of time that has passed since a final order in the utility's previous base rate case. OPUC was supportive of State Agencies' suggestion.

Commission response

The commission declines to adopt the several new criteria for review proposed by State Agencies and OPUC. State Agencies and OPUC proposed that consideration be given to a comparison of the requested amount of rate recovery ultimately granted in the rate proceeding with the amount of requested rate-case expenses. OPUC also proposed that the rule explicitly state that the presiding officer will consider whether the issues in a proceeding, the amount of increase sought, and the amount of any increase granted are commensurate with the expense of litigating the proceeding. Additionally, State Agencies proposed that the rule provide for a comparison of the costs of experts and attorneys employed by utilities with the costs of experts and attorneys employed by other parties. Finally, State Agencies and OPUC proposed additional language that takes into consideration the amount of time that has passed since a final order in the utility's previous base rate case, on the basis that the frequent filing of rate cases indicates a lack of efficiency in presentation, cost control, or prosecution of rate cases.

The commission declines to adopt State Agencies' and OPUC's proposals. The commission declines to attempt to draft an exhaustive list of all potentially relevant factors that underpin the commission's inquiry into the reasonableness of particular rate-case expenses. Rather, the commission finds that the published rule, as amended, provides the flexibility necessary for a robust review of a party's rate-case expenses while at the same

time providing notice to parties appearing before the commission regarding the factors that the presiding officer must consider as part of that analysis.

However, the commission finds that the two new paragraphs proposed by Mr. Baron should be included among the factors that the presiding officer is instructed to consider. While the commission disagrees that adoption of this provision obviates the need for the adoption of any of the proportional methodologies found in subsection (d), the commission adopts as a new subsection (c)(5) the requirement for the presiding officer to consider whether the "rate-case expenses as a whole were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section." The commission adopts this criterion as one that the presiding officer must explicitly consider because of its close relationship to the question of whether a party's rate-case expenses are reasonable. Additionally, the commission inserts this paragraph because, as discussed below, a disallowance recommended pursuant to subsection (c)(5) as adopted is one of the two circumstances in which the commission finds it is reasonable to permit the calculation of the disallowance using the methodologies found in subsection (d) as adopted.

The commission also finds that Mr. Baron's proposal to instruct the presiding officer to consider as a basis for a disallowance whether the utility or municipality has failed to comply with the requirements of subsection (b). This provision is directly related to the question of whether a party has satisfied its burden of proof to show the reasonableness of its rate-case expenses. Accordingly, the commission requires consideration of this issue in

each rate-case expense proceeding. As discussed above, because the commission has declined to adopt any reference to the establishment of a prima facie case from subsection (b), the commission declines to adopt the new paragraph as drafted by Mr. Baron. Instead the commission adopts the following language as a new subsection (c)(6): "the utility failed to comply with the requirements for providing sufficient information pursuant to subsection (b) of this section."

Section (d) **Methodologies for calculating rate-case expenses.**
When considering a utility's or municipality's request for recovery of its rate-case expenses pursuant to PURA §33.023 or §36.061(b)(2), if the evidence presented pursuant to subsection (b) of this section does not enable the presiding officer to determine the amount of expenses to be disallowed with reasonable certainty and specificity then the presiding officer may deny recovery of a proportion of a utility's or municipality's requested rate-case expenses equal to any or a combination of the following:

OPUC, TIEC, and State Agencies commented that subsection (d) should not be limited to cases in which the evidence presented does not allow the amount to be disallowed to be determined with reasonable certainty and specificity. OPUC stated that the proposed language would significantly constrain the commission from evaluating and acting upon policy issues rather than merely engaging in dollar-for-dollar recovery and disallowances. OPUC expressed concern that, under the proposed rule as worded, if an issue costs very little to raise but is contrary to clearly established commission precedent, then utilities would not be discouraged from pursuing that issue. TIEC stated that the commission should not be precluded from allocating a portion of rate-case expenses to a utility's shareholders as a policy matter to encourage the utility to act like a private litigant, regardless of whether the utility has proven up these expenses.

In response, the Joint Utilities stated that, if subsection (d) is adopted, none of the methodologies listed in subsection (d) would comply with PURA without the proposed limitation that those methodologies may only be used in situations where the presiding officer is not able to quantify a disallowance. Accordingly, Joint Utilities recommended that, if subsection (d) is to be adopted, the commission must retain that limiting language.

TIEC commented that the methodologies listed in subsection (d) should not be interpreted to limit the commission's discretion. TIEC further commented that the commission should continue to explicitly reserve its discretion to make decisions that may be outside the bounds of subsection (d) based on evidentiary factors and other policy directives. Additionally, TIEC proposed revisions to subsection (d) to clarify that the commission is not prohibited from considering evidence other than the evidence provided by a utility or municipality pursuant to subsection (b).

Mr. Baron proposed revising the first sentence of subsection (d) to state affirmatively that the calculation of any allowance or disallowance must be based on the amount of expenses actually incurred and shown to be reasonable or unreasonable by the evidence as applied to the factors and criteria detailed above. Mr. Baron proposed three new sentences to replace the first sentence in subsection (d) as published, which would read: "Based on the factors and criteria in subsections (b) and (c) of this section, the presiding officer shall allow or recommend allowance of recovery of rate-case expenses equal to the amount shown in the evidentiary record to have been actually and reasonably incurred by the requesting utility or municipality. The presiding officer shall disallow or recommend disallowance of recovery of rate-case expenses equal to the

amount shown to have been not reasonably incurred under the criteria in subsection (c). A disallowance may be based on cost estimates in lieu of actual costs only if reasonably accurate and supported by the evidence." Mr. Baron also proposed an additional sentence that would state that the commission retains the authority to use a proportional disallowance methodology, but only when necessary to calculate a disallowance imposed based on the criteria found in what is numbered subsection (c)(5) of adopted version of the rule. Mr. Baron's comments indicated that it would be reasonable to limit the application of subsection (d) of the published rule if the commission were to adopt the requirement that rate-case expenses be segregated by litigated issue.

State Agencies stated that Mr. Baron's proposed revisions to subsection (d) of the published rule effectively eliminate the commission's discretion and ability to use the alternative approaches set out in the proposed rule and fail to incorporate the essential criterion of "necessity" that must be determined before rate-case expenses may be recovered. Joint Utilities commented that the commission should reject the language labeled subsections (d)(5) and (e) in Mr. Baron's comments (which correspond to subsections (c)(5) and (d) in the commission's adopted rule) because they impose a "results-oriented" analysis on the reasonableness inquiry that is inconsistent with PURA. OPUC stated that the alternative to subsection (d) of the published rule proposed by Mr. Baron is flawed because it ignores the commission's broad discretion in ordering recovery of rate-case expenses. OPUC stated that Mr. Baron's proposed language would tie the commission's hands by requiring that the commission "shall allow" recovery of rate-case expenses based on the amount actually and reasonably incurred by the utility or municipality. OPUC also stated that Mr. Baron's proposed language permitting disallowance of

expenses based on cost estimates only if reasonably accurate and supported by the evidence is a narrower interpretation of the purpose of the proposed subsection (d).

Commission response

The commission finds that Mr. Baron's proposed changes better clarify the commission's intent in adopting the proposed rule. Accordingly, the commission adopts the first three sentences that Mr. Baron proposes should be included in subsection (d). The commission also adopts Mr. Baron's proposal that the commission retain a proportional reduction methodology but limit its application to the calculation of a disallowance imposed based on the criteria found in what is numbered subsection (c)(5) of the adopted version of the rule. However, as discussed below, the commission has modified Mr. Baron's proposed language regarding the proportional reduction methodology to better clarify how the Results Oriented Method is to be applied. In adopting this revision, the commission restates that it intends to use a "reasonableness" review when considering requests for recovery of or reimbursement for rate-case expenses. Accordingly, the commission intends that recovery or reimbursement will be granted with respect to reasonably incurred rate-case expenses.

The commission disagrees with State Agencies and OPUC who expressed opposition to Mr. Baron's proposed revisions to subsection (d) of the published rule. OPUC stated that Mr. Baron's proposed language would tie the commission's hands by requiring that the commission "shall allow" recovery of rate-case expenses that are reasonably incurred, which may be more restrictive than the language provided by PURA §36.061(b). However, the commission finds that it does not unduly limit its discretion by adopting a provision

stating that the presiding officer shall allow or recommend recovery of rate-case expenses equal to the amount shown in the evidentiary record to have been actually and reasonably incurred. The commission notes that rate-case expenses that are not in the public interest or, as discussed above, are not necessary will likely be disallowed on the basis that they were not reasonably incurred. However, the commission finds that the rule as adopted comports with PURA while maintaining reasonableness as the essential standard for reviewing rate-case expenses.

OPUC also stated that Mr. Baron's proposed language permitting disallowance of expenses based on cost estimates only if reasonably accurate and supported by the evidence is based on a narrow interpretation of the purpose of the proposed subsection (d). However, as stated above, two of the methodologies found in subsection (d) as published have been deleted, while the applicability of other two have been narrowed. As such, the commission finds that subsection (d) as adopted clearly states the commission's intention that disallowances will be based on quantifications of unreasonably incurred rate-case expenses to the extent that it is possible. For the reasons discussed below, the commission finds that the narrowed scope of the methodologies in subsection (d) provide for the efficient processing of rate-case expense proceedings while retaining the necessary flexibility to use another means of determining the value of disallowances when necessary.

The commission declines to adopt the proposals by OPUC, TIEC, and State Agencies, all of which proposed that the commission modify subsection (d) so that its methodologies are not limited to only proceedings in which the presiding officer has determined that some

disallowance is appropriate but is not able to quantify the amount of the disallowance based on the evidence provided by the parties in the proceeding.

While the commission agrees that it retains substantial discretion under PURA §36.061(b) to disallow a utility's rate-case expenses, including by using the methodologies in subsection (d) as published, the commission nevertheless finds that in proceedings where it is possible to quantify the disallowance attributable to unreasonably incurred rate-case expenses, it is preferable to disallow that amount of rate-case expenses rather than use a proxy amount. As discussed below, the commission adopts the changes proposed by Mr. Baron into subsection (d)(1) as adopted, which states affirmatively that the calculation of any allowance or disallowance should be based on the amount of expenses actually incurred and shown to be reasonable or unreasonable by the evidence as applied to the factors and criteria set forth in subsection (c) of the adopted rule, in part because these changes emphasize that it is preferable to disallow a quantified amount of rate-case expenses when possible rather than use a proxy amount.

TIEC requested that the methodologies listed in subsection (d) should not be interpreted to limit the commission's discretion and that the commission should explicitly reserve its discretion to make decisions that are not prescribed by subsection (d) and to consider evidence other than the evidence provided by a utility or municipality pursuant to subsection (b). The commission notes that subsection (c) requires that the presiding officer consider all relevant factors. Accordingly, nothing in the rule as adopted should be interpreted to prevent the consideration of relevant evidence presented by any party in a

proceeding. Accordingly, the commission declines to adopt TIEC's requested change because it is unnecessary.

Section (d)

(1) The 50/50 Method. For utilities, 50% of the utility's total requested expenses, in recognition that the utility's shareholders, who reap benefits from a rate increase, should also share in the cost of obtaining that rate increase.

LCRA, Joint Utilities, and Mr. Baron commented that the proposed subsection (d)(1) was inadvisable because it would disallow rate-case expenses regardless of whether the expenses were reasonably incurred and because it is not clear that shareholders reap benefits from a rate increase. LCRA further commented that subsection (d)(1) appears to violate PURA because it appears to automatically disallow recovery of legitimate expenses. Commenting parties relied on various cases, including the *Oncor* case, to support the contention that a utility is entitled under PURA to recover all of its actual, necessary, and reasonable rate-case expenses. These parties commented that, therefore, subsection (d)(1) should not be adopted because it would appear to disallow recovery of rate-case expenses without a finding that those expenses are unreasonable or unnecessary. These parties also stated that they viewed any application of subsection (d)(1) as inappropriately punitive.

OPUC, TML, TIEC, the Alliance, State Agencies commented in support of the adoption of subsection (d)(1). OPUC also stated that Joint Utilities advance a far too narrow interpretation of the *Oncor* case as requiring that all of a utility's reasonable and necessary rate-case expenses be recoverable because the *Oncor* case mainly focused on notice issues and whether the commission's jurisdiction extended to certain rate-case expenses. OPUC stated that the

assignment of certain rate-case expenses to a utility's shareholders does not serve as a punishment of utility and its shareholders and, instead, recognizes the reality that the utility's shareholders reap benefits from implementing rate increases and that the utility's board of directors owes a fiduciary duty to the utility's shareholders to maximize profits. OPUC stated that it agreed with TIEC, which stated that subsection (d)(1) creates an incentive for a utility to better manage its rate-case expenses and act more like private litigants. TML stated that utilities initiate the majority of ratemaking proceedings and that it is therefore fair that utilities' shareholders pay some of the associated costs. The Alliance commented that utilities' shareholders should bear some of the costs for seeking increases in the utility's rates because rate cases are filed, in part, to improve the utility's return on its shareholders' investment. OPUC stated that the commission has broad discretion to determine recovery of expenses in a ratemaking proceeding. OPUC cited PURA §36.061, which states that the commission *may* allow as a cost or expense the reasonable costs of a utility's participation in a ratemaking proceeding. OPUC also stated that the commission is not limited to line-item disallowances or charges relating to underlying unreasonable costs. OPUC contended that, in *City of Amarillo v. Railroad Commission of Texas*, 894 S.W.2d 491 (Tex. App.—Austin 1995, writ denied), the court upheld the Railroad Commission's decision to reduce the uncontested expenses related to one analyst's charges by 20% due to insufficiency of support. OPUC also stated that it is within the commission's discretion to find rate-case expenses to be unreasonable even if the underlying cost item in the rate case is found to be reasonable. State Agencies commented that Mr. Baron and Joint Utilities mischaracterized the *Oncor* precedent because the reasonableness and necessity of the rate-case expenses at issue in that proceeding had been stipulated by the parties. State Agencies stated that, in the *Oncor* precedent, the commission had held that it had no

jurisdiction in a 2009 proceeding to order recovery of certain rate-case expenses incurred in 2004 and 2005 because Oncor had failed to obtain approval to seek recovery of them in the later proceeding. State Agencies stated that the "prior authorization" issue was central to the holding in the *Oncor* precedent and that the holding does not limit the commission's discretion under PURA §36.061(b)(2) to approve or deny recovery of rate-case expenses. State Agencies commented that the adoption of a rule that sets out guidelines that the commission will consider in its analysis of the reasonableness and necessity of rate-case expenses, sets out objective caps on travel-related expenses, and that sets out alternative methods for analyzing the full impact of unnecessary and unreasonable rate-case expenses will give parties notice that was arguably lacking in the *Oncor* precedent and would fall well within the commission's broad rulemaking authority.

Commission response

LCRA, Joint Utilities, and Mr. Baron commented that subsection (d)(1) should not be adopted based on concerns that it would be used to disallow rate-case expenses regardless of whether the expenses were reasonably incurred. While the commission finds that adoption of subsection (d)(1) as published is within the commission's authority, the commission has determined that it is not necessary to adopt the 50/50 Method at this time. The commission has adopted revisions to the evidentiary requirements in the adopted rule that will incentivize utilities and municipalities to act more like self-funded litigants. As indicated by Mr. Baron, because the commission has adopted subsection (b)(6) of the adopted rule, the commission is persuaded that sufficient evidence will be presented in most circumstances to permit the quantification of disallowances for unreasonably

incurred rate-case expenses. As such, the commission only retains the use of a methodology to quantify a disallowance in two particular circumstances: (1) when rate-case expenses are disallowed because, as a whole, they are disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case, or (2) if the evidence presented pursuant to subsection (b)(6) of the adopted rule does not enable the presiding officer to determine the appropriate disallowance of rate-case expenses associated with a particular issue. Accordingly, the rule as adopted only retains those methodologies that are best tailored to each scenario while permitting the presiding officer the discretion to use any other appropriate methodology. The commission finds that explicitly retaining the 50/50 Methodology adds unnecessarily to the complexity of the rule without furthering the commission's aim to provide for the efficient processing of rate-case expense proceedings.

Section (d)
(2) The Results Oriented Method.

LCRA, Joint Utilities, and Mr. Baron expressed opposition to the adoption of subsection (d)(2) based on objections to the Results Oriented Method of calculating disallowances. LCRA further commented that application of subsection (d)(2) would not recognize all costs attributable to concluding a rate case and is not comprehensive. Joint Utilities commented that subsections (d)(2) applies a "prevailing theory" of cost recovery that is inconsistent with PURA, under the *Oncor* precedent, and could perpetuate litigation and actually increase litigation costs. Joint Utilities stated that whether a utility prevails on a particular issue in a rate case does not necessarily reflect the reasonableness of the underlying rate-case expenses. Joint Utilities also noted that a utility receiving a rate of return 100 basis points below its request would result in a

reduced revenue requirement, increasing a disallowance calculated using subsection (d)(2), even though it would not be clear that the utility's position was unreasonable or that it "won" or "lost" that issue. Joint Utilities also stated that a company's requested revenue requirement may be reduced by amortizing certain expenses, such as rate-case expenses over a longer period of time, even though these decisions may not represent a clear "loss" for the utility. Mr. Baron commented that adoption of subsection (d)(2) is not advisable because there is no necessary correspondence between the amount of a commission-authorized revenue requirement increase and the reasonable of rate-case expenses incurred in a ratemaking proceeding. Mr. Baron indicated, however, that, if the commission wishes to retain a proportional disallowance methodology, it should only be applied with respect to a disallowance imposed based on the criteria found in what is numbered subsection (c)(5) of adopted version of the rule. Mr. Baron proposed rewording the language providing for proportional disallowances so as to avoid specifically listing the Results Oriented Method or other possible formulae. Mr. Baron's proposed language states generally that the presiding officer may take into consideration the amount of relief requested that was denied. Mr. Baron noted that, if the commission agrees that proportionate disallowances are problematic and should not be used, then these revisions would not be necessary and the Results Oriented Method could be deleted entirely.

TIEC stated that the commission should reject Joint Utilities' arguments that it is inappropriate to apply subsections (d)(2) and (d)(3) to the context of a ratemaking proceeding on the basis that a "prevailing party" theory is not appropriate with respect to issues, like rate of return, that do not produce clear "winners" and "losers." TIEC stated that these arguments are not compelling because subsections (d)(2) and (d)(3) are not mandatory or prescriptive but are guidelines to be

referenced when the commission exercises its discretion in reviewing rate-case expenses. TIEC stated that, with respect to issues for which subsections (d)(2) and (d)(3) cannot be reasonably applied, the commission will not apply those provisions. TIEC stated that adoption of subsections (d)(2) and (d)(3) is appropriate because those provisions may be applied to issues which do tend to produce "winners" and "losers."

Commission response

The commission agrees with TIEC that the commission should retain the Results Oriented Method. Accordingly, the commission disagrees with LCRA, Joint Utilities, and Mr. Baron, which stated that the Results Oriented Method relies on a "prevailing party" theory of cost recovery that is inconsistent with PURA and that may not provide for a comprehensive evaluation of a party's rate-case expenses. Mr. Baron notes that there is no necessary correspondence between the amount of a commission-authorized revenue requirement increase and the reasonableness of the rate-case expenses incurred in the ratemaking proceeding. Because it is not mandatory that the Results Oriented Method be applied to each proceeding, it is not the case that the Results Oriented Method requires the disallowance of reasonable rate-case expenses. The Results Oriented Method does not imply that rate-case expenses are unreasonably incurred merely because a utility does not prevail on all issues in a proceeding.

However, the commission finds there is merit in Mr. Baron's recommendation that, if the commission wishes to retain this proportional disallowance methodology, it should be applied with respect to a disallowance imposed based on the criteria found in what is

numbered subsection (c)(5) of adopted version of the rule. The commission declines to adopt Mr. Baron's proposed language that generally permits the presiding officer to compare the relief requested by a party with the relief that was granted or denied but does not specify what methodology should be used when conducting this comparison. Instead, the commission retains more specific language that more clearly lays out the components of the ratio used in the Results Oriented Method. Specifically, if a disallowance is imposed pursuant to subsection (c)(5), the disallowance may be calculated, for a utility, by calculating the ratio of the increase in revenue requirement requested by the utility that was denied to the total amount of the increase in revenue requirement requested in a proceeding by the utility or, for a municipality, the ratio of the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality to the total amount of the increase in revenue requirement challenged by the municipality. The commission notes that the adopted language also retains the commission's broad flexibility to use any other appropriate methodology. The commission finds that limiting the scope of the Results Oriented Method in this manner while providing explicit instructions for its application provides for the efficient processing of rate-case expense proceedings by reducing the likelihood that the commission will be required to weigh the benefits of each of the published methodologies in relation to each proceeding. Instead, the commission expects that the evidence presented pursuant to subsection (b) as adopted will limit the circumstances in which it will be necessary to resort to some proportional methodology. Accordingly, the commission need only retain the Results Oriented Method with respect to those proceedings in which a disallowance is imposed pursuant to subsection (c)(5).

Additionally, Joint Utilities commented that the Results Oriented Method should not be adopted because some issues, such as rate of return, do not tend to produce clear "prevailing parties." Although some ratemaking issues do not lend themselves to the application of the Results Oriented Method, the commission notes the methodologies listed in subsection (d) of the adopted rule are not exclusive or exhaustive and may only be applied where appropriate. The commission retains the discretion of the presiding officer to determine in which proceedings the application of the Results Oriented Method is appropriate based on the facts of each proceeding.

Additionally, because subsections (d)(2) and (d)(3) of the adopted rule have been restated to permit the application of any other appropriate methodology, subsection (d)(5) of the published rule is duplicative and has been deleted.

Section (d)
(2)(A) For utilities, the ratio of the amount of the increase in revenue requirement requested by the utility that was denied to the total amount of the increase in revenue requirement requested in a proceeding by the utility.
(2)(B) For municipalities, the ratio of the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality to the total amount of the increase in revenue requirement challenged by the municipality.

As indicated above, OPUC, the Alliance, El Paso, State Agencies, the TML, and Houston commented that subsection (d)(2)(B) should not be applied to municipalities. OPUC also stated that subsections (d)(2)(B) and (d)(3)(B) as proposed result in a disproportionate disallowance to a municipality when compared with the commensurate provisions for utilities in subsections (d)(2)(A) and (d)(3)(A) due to the larger size of a utility's requested revenue requirement

compared to the relatively small size of a municipality's requested disallowances. The Alliance stated that municipalities do not control the issues raised by the utility initiating the ratemaking proceeding and must respond to the utility's proposals or else municipalities' citizens and businesses will be forced to pay higher rates. The Alliance further noted that it is unfair to penalize the ratepayers in those municipalities for trying to minimize the utility's proposed rate increases. The Alliance stated that it would be more equitable to maintain the status-quo than to adopt subsections (d)(2)(B) and (d)(3)(B). El Paso asserted that it is inappropriate to tie a municipality's recovery of its rate-case expenses to the results obtained in a proceeding because municipalities review the entire rate filing package and not simply opposing a rate increase. Houston maintained that it is concerned that subjecting municipalities to the proposed new rule would potentially interfere with a municipality's ability to continue to properly fulfill its legislatively mandated regulatory obligations. Houston noted that the cost of a municipality's rate-case expenses is typically minimal compared to the benefits achieved through a municipality's intervention. Houston stated that the reimbursement of a municipality's rate-case expenses allows a municipality to present a more complete case than many intervenors do, providing valuable information to the commission in each case. State Agencies agreed with OPUC, stating that subsections (d)(2) and (d)(3) might impose disproportionate penalties on municipalities compared with utilities.

TIEC stated that the positions taken by a municipality in a ratemaking proceeding are not influenced by and may be adverse to out-of-city customers and that it would be inequitable to require out-of-city customers to bear part of the cost of the municipality's rate-case expenses. TIEC stated that, if municipalities' rate-case expenses are collected only from customers within

the municipal limits, then it is not necessary to apply subsections (d)(2) and (d)(3) to municipalities. TIEC also stated that there is some merit in OPUC's argument that applying subsections (d)(2) and (d)(3) to municipalities can result in disproportionate disallowances, could create an incentive for municipalities to challenge more issues in order to avoid disproportionate disallowances, or could create a disincentive for a municipality to challenge a particularly high-dollar issue. TIEC states that, because of these issues, it would be preferable not to adopt subsections (d)(2) and (d)(3) and, instead, to mandate that a municipality's rate-case expenses shall only be recovered from in-city customers.

Commission response

The commission disagrees with those parties, such as OPUC, the Alliance, El Paso, State Agencies, TML, and Houston, who stated, variously, that the Results Oriented Method should not be applied to municipalities because its application would result in disproportionate disallowances for municipalities. Specifically, these parties objected to the application of the Results Oriented Method to municipalities because, among other things, it penalizes the citizens of municipalities for challenging the utility's requested revenue requirement or interferes with a municipality's ability to continue to properly fulfill its legislatively mandated regulatory obligations, including its statutory right to intervene in ratemaking proceedings before the commission. The commission disagrees that application of the Results Oriented Method to municipalities would necessarily result in disproportionately large disallowances for municipalities. First, the commission notes that the Results Oriented Method is not mandatory, but may only be applied in situations where some disallowance is appropriate but in which the municipality has not presented

sufficient evidence to quantify the appropriate disallowance. Furthermore, in proceedings in which the application of the Results Oriented Method would result in a disproportionate disallowance, the commission notes that the presiding officer retains the discretion to apply any other appropriate methodology. Second, the commission disagrees that the application of the Results Oriented Method would penalize the citizens of municipal intervenors or impair the municipality's legislatively mandated regulatory obligations. To the extent that a municipality's rate-case expenses are reasonably incurred and are not disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case, the Results Oriented Method will not be applied to the municipality. The commission disagrees that the disallowance of unreasonably incurred rate-case expenses unfairly penalizes the citizens of a municipality or impairs the municipality's ability to conduct or participate in ratemaking proceedings. Accordingly, the commission includes in the adopted rule a provision explicitly permitting the application of the Results Oriented Method to municipalities. This provision is found in subsection (d)(2)(B) of the adopted rule.

TIEC recommended that it would be preferable to decline to adopt subsections (d)(2)(B) and (d)(3)(B) of the published rule and, instead, to require that a municipality's rate-case expenses be collected only from ratepayers inside the municipality's territory. The commission disagrees with TIEC's proposal because the commission wishes to retain the flexibility to address the recovery and allocation of a municipality's rate-case expenses among a utility's customer groups based on the facts of each proceeding. Accordingly, the commission declines to adopt TIEC's recommendation.

Section (d)
(3) The Issue Specific Method.

LCRA, Joint Utilities, and Mr. Baron expressed opposition to the adoption of subsection (d)(3) based on objections to the Issue Specific Method of calculating disallowances. LCRA further commented that application of subsection (d)(3) may become very complicated depending on whether issues are successfully appealed, noting that a successful appeal means that the utility did not in fact unsuccessfully litigate that issue. LCRA asked specifically how to determine the specific point in time at which the commission determines the appropriate measurement of total rate-case expenses on which to base any disallowance. Joint Utilities stated that their concerns regarding the propriety and applicability of a "prevailing party" theory with respect to the Results Oriented Method also apply to the Issue Specific Method. Mr. Baron commented that adoption of subsection (d)(3) is not advisable because it will not be necessary if the commission requires utilities and municipalities to present sufficient evidence to determine the actual value of incurred rate-case expenses.

For the same reasons as those stated above, TIEC stated that the commission should also reject Joint Utilities' arguments that it is inappropriate to apply subsections (d)(2) and (d)(3) to the context of a ratemaking proceeding on the basis that a "prevailing party" theory is not appropriate with respect to issues, like rate of return, that do not produce clear "winners" and "losers."

Commission response

Mr. Baron commented that adoption of the Issue Specific Method is not advisable because it will not be necessary if the commission requires utilities and municipalities to present sufficient evidence to determine the actual value of incurred rate-case expenses associated with each litigated issue. Although the commission agrees with Mr. Baron that it is advisable to adopt subsection (b)(6), which requires a party to reasonably associate its rate-case expenses with each litigated issue, the commission has determined that it is still advisable to retain the Issue Specific Method. In recognition of several parties' concerns, instead of adopting Mr. Baron's recommendation to reject the Issue Specific Method entirely, the commission decides instead to limit its application to only those cases in which the evidence presented pursuant to subsection (b)(6) does not enable the presiding officer to determine the appropriate disallowance of rate-case expenses reasonably associated with an issue with certainty and specificity. The commission notes that Mr. Baron's comments regarding the Results Oriented Method indicated that the commission may wish to retain a proportional reduction methodology but restrict its application to disallowances imposed pursuant to a limited number of criteria. As the commission discussed above regarding the Results Oriented Method, the commission finds that it is preferable to retain some of the methodologies found in subsection (d) as published but limit their application to a narrower range of circumstances. Accordingly, although the adoption of subsection (b)(6) increases efficiency in the processing of rate-case expense proceedings and decreases the likelihood that the evidence presented pursuant to subsection (b) would not enable the presiding officer to determine the appropriate disallowance of rate-case expenses

reasonably associated with an issue with certainty and specificity, the commission also retains the necessary discretion to address such a situation when necessary.

The commission notes that subsection (d)(3) as adopted is permissive but does not require the application of the Issue Specific Method. The commission finds that it is reasonable to retain flexibility when considering rate-case expense proceedings and retains the presiding officer's discretion to find that an application is insufficient for further processing when an applicant has not presented the necessary information pursuant to subsection (b) of the adopted rule. The commission wishes to provide a range of reasonable options for situations in which it is determined that it is not possible to determine the rate-case expenses associated with each issue with certainty and specificity.

The commission disagrees with LCRA, Joint Utilities, and Mr. Baron, which expressed objections to the Issue Specific Method. LCRA stated that the application of the Issue Specific Method may become very complicated because a successful appeal means that the utility did not in fact unsuccessfully litigate that issue. LCRA states that it is not clear at which point in time a utility can be said to have definitively "lost" an issue in order for the application of the Issue Specific Method to apply. However, the commission concludes that the successful appeal of a commission decision with respect to a litigated issue does not necessarily prove that all of the costs associated with litigating that issue before the commission were reasonably incurred. The commission notes that the Issue Specific Method represents a methodology for quantifying a disallowance after it is determined that some rate-case expenses were unreasonably incurred. Accordingly, even if an issue is

successfully appealed, it is not necessarily the case that it was inappropriate to have applied the Issue Specific Method with respect to the requested revenue associated with that issue. Accordingly, the commission retains the presiding officer's discretion to assess the propriety of applying the Issue Specific Method on a case-by-case basis.

Additionally, for reasons stated above, the commission disagrees with Joint Utilities' concerns that the Issue Specific Method inappropriately relies on a "prevailing party" theory of cost recovery. As stated above, the commission notes that the Issue Specific Method may only be used in proceedings in which some disallowance of unreasonably incurred rate-case expenses is appropriate but in which the utility or municipality has not presented sufficient evidence to quantify the disallowance. Because this methodology is not used to determine the reasonableness of expenses, it is not the case that the Issue Specific Method requires the disallowance of rate-case expenses or implies that rate-case expenses are unreasonably incurred merely because a utility does not prevail on all issues in a proceeding.

The commission retains broad discretion to use an appropriate methodology after considering the specific facts of each proceeding. The commission also notes that successful appeal of a commission decision with respect to a litigated issue does not necessarily prove that all of the costs associated with litigating that issue before the commission were reasonably incurred. Accordingly, the commission declines to adopt any other proposed changes to this subsection.

Additionally, because subsections (d)(2) and (d)(3) of the adopted rule have been restated to permit the application of any other appropriate methodology, subsection (d)(5) of the published rule has been deleted.

Section (d)
(3)(A) For utilities, the ratio of the amount of the increase in revenue requirement requested by a utility related to any unsuccessfully litigated issue(s) to the total revenue requirement increase requested by the utility.
(3)(B) For municipalities, the ratio of the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality relating to any unsuccessfully litigated issue(s) by the municipality to the total amount of the increase in revenue requirement challenged by the municipality.

OPUC, the Alliance, El Paso, State Agencies, TML, and Houston expressed similar objections to the adoption of subsection (d)(3)(B) as indicated by those parties in opposition to subsection (d)(2)(B). El Paso also commented that subsection (d)(3)(B) should not be adopted because it will not always be clear whether an issue is in fact successfully litigated.

For the same reasons as those stated above, TIEC asserted that it would be preferable not to adopt subsections (d)(2) and (d)(3) and, instead, to mandate that a municipality's rate-case expenses shall only be recovered from in-city customers.

Commission response

OPUC, the Alliance, El Paso, State Agencies, TML, and Houston expressed the same concerns regarding the application of the Issue Specific Method to municipalities as these parties expressed regarding the application of the Results Oriented Method. These parties stated, variously, that the Results Oriented Method should not be applied to municipalities

because its application would result in disproportionate disallowances for municipalities, it penalizes the citizens of municipalities for challenging the utility's requested revenue requirement, and/or it interferes with a municipality's ability to continue to properly fulfill its legislatively mandated regulatory obligations, including its statutory right to intervene in ratemaking proceedings before the commission. The commission notes that these methodologies are not mandatory, but rather the presiding officer retains the flexibility to determine in which proceedings each methodology may be appropriately applied. Second, the commission disagrees that the application of the Issue Specific Method would penalize the citizens of municipal intervenors or otherwise impair the municipality's legislatively mandated regulatory obligations. To the extent that a municipality's rate-case expenses are reasonably incurred and to the extent that a municipality presents sufficient evidence pursuant to subsection (b) of the adopted rule, the Issue Specific Method will not be applied to the municipality. The commission disagrees with any contention that the disallowance of rate-case expenses for which the municipality has not met its burden of proof unfairly penalizes the citizens of a municipality or impairs the municipality's ability to conduct or participate in ratemaking proceedings. Accordingly, the commission includes in the adopted rule a provision explicitly permitting the application of the Issue Specific Method to municipalities. This provision is found in subsection (d)(3)(B) of the adopted rule.

For the same reasons as stated above, the commission declines to adopt TIEC's proposal to mandate that a municipality's rate-case expenses shall only be recovered from in-city customers instead of adopting the Issue Specific Method as applied to municipalities.

However, as stated above, the commission retains the discretion to evaluate the allocation of the recovery of rate-case expenses among a utility's customer groups in individual ratemaking proceedings.

Section (d)
(4) The 51% Allowance Method. For utilities, all of a utility's requested rate-case expenses incurred in a proceeding in which the increase in the utility's approved revenue requirement after a contested hearing is less than 51% of the total amount of the increase in revenue requirement requested by the utility.

Water IOUs, Mr. Baron, LCRA, and Joint Utilities expressed opposition to the 51% Allowance Method. Water IOUs stated that subsection (d)(4) of the published rule should not be adopted because, in every rate case, assuming there is any merit to the application at all, there is some amount of reasonable and necessary cost associated with the application that would be unfairly disallowed. Water IOUs stated that a recent application of a similar provision by the TCEQ is being challenged on appeal in the case styled *Canyon Lake Water Service Company's Application for a Rate/Tariff Change*; SOAH Docket No. 582-11-1468; TCEQ Docket No. 2010-1841-UCR. Mr. Baron commented that adoption of the 51% Allowance Method would be unnecessary if his proposal to require that rate-case expenses be associated with the rate case's litigated issues. LCRA commented that application of the 51% Allowance Method would violate PURA and recent case precedents because it appears to over-reach while sacrificing a utility's ability to recover its reasonable costs authorized by PURA. Joint Utilities commented that the 51% Allowance Method is inconsistent with PURA because it systematically and arbitrarily disallows rate-case expenses without any review of the reasonableness of the individual costs.

In response, TIEC agreed that subsection (d)(4) is based on a TCEQ rule. TIEC stated that the Texas Water Code contains provisions similar to PURA §36.051 and that, therefore, it is permissible for the commission to adopt subsection (d)(4). TIEC stated that because these provisions would be listed explicitly in the rule, utilities would have clear notice of the risk that one of these disallowance provisions could be applied, which allows the utilities to factor that risk into their spending decisions and further preserves their opportunity to earn a reasonable return pursuant to PURA §36.051.

Commission response

The commission agrees with Mr. Baron that adoption of the requirement that rate-case expenses be associated with the rate case's issues decreases the need to adopt the 51% Allowance Method. Accordingly, the commission finds at this time that it is not necessary to adopt subsection (d)(4) of the published rule. The commission therefore deletes subsection (d)(4) of the published rule. As indicated by Mr. Baron, because the commission has adopted subsection (b)(6) of the adopted rule, the commission is persuaded that sufficient evidence will be presented in most circumstances to permit the quantification of disallowances for unreasonably incurred rate-case expenses. The commission only retains the use of a methodology to quantify a disallowance in two particular circumstances: (1) when rate-case expenses are disallowed because, as a whole, they are disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case, or (2) if the evidence presented pursuant to subsection (b)(6) of the adopted rule does not enable the presiding officer to determine the appropriate disallowance of rate-case expenses associated with a particular issue. Accordingly, the rule as adopted only retains those

methodologies that are best tailored to each scenario while permitting the presiding officer the discretion to use any other appropriate methodology. The commission finds that explicitly retaining the 51% Allowance Method adds unnecessarily to the complexity of the rule without furthering the commission's aim to provide for the efficient processing of rate-case expense proceedings.

The commission disagrees with Water IOUs, Mr. Baron, LCRA, and Joint Utilities, which state that, assuming there is any merit to the application at all, there is some amount of reasonable and necessary cost associated with the application that would be unfairly disallowed if all rate-case expenses are disallowed. LCRA similarly commented that application of the 51% Allowance Method would violate PURA because it systematically and arbitrarily disallows rate-case expenses without a review of the reasonableness of the individual costs. The commission agrees that it is possible that some rate-case expenses are reasonably incurred, even if more than 51% of a request is disallowed. However, the published version of the rule provides the presiding officer's discretion to determine on a case-by-case basis whether the facts of each proceeding support using the 51% Allowance Method to quantify a disallowance to be associated with unreasonably incurred rate-case expenses.

The commission acknowledges Water IOUs' statement that the 51% Allowance Method should not be adopted because a similar provision in TCEQ's rules is being challenged on appeal by Canyon Lake Water Service Company. However, this provision has not been overturned on appeal at this time. Additionally, even if TCEQ's application of the

provision is overturned on appeal, the commission retains the flexibility to assess at that time whether the adoption of the 51% Allowance Method may be appropriately applied in other proceedings with different factual and policy issues than the TCEQ proceeding that is currently subject to appeal.

Section (d)
(5) The result of the use of any other appropriate methodology.

Other comments related to subsection (d)

LCRA, Joint Utilities, Water IOUs, and Oncor Cities commented that subsection (d) should be deleted from the proposed rule. LCRA and Joint Utilities commented that, in any given case, the commission has the prerogative to disallow any unreasonable expenses as long as the basis for denial is explained. LCRA clarified that it believes that the commission already has the ability to evaluate a utility's rate-case expenses on the merits and determine if they are unreasonable or imprudent. LCRA further commented that subsection (d) is unnecessary because it does not see a need for any mechanical methods to calculate the value of disallowances. Joint Utilities further commented that the adoption of subsection (d) could make reaching settlements more difficult because a party that is confident of "winning" an issue will have less incentive to settle and can instead use the issue to drive up other parties' rate-case expenses. Joint Utilities stated that, if a case that would otherwise have settled is fully litigated, customers may be forced to bear the additional litigation costs of a hearing as well as higher rates related to cost-of-service issues a utility may "win" but that it otherwise would have settled. Water IOUs commented that the application of subsection (d) may result in confiscatory decisions because it may allow for arbitrary disallowances of reasonable and necessary expenditures. Water IOUs stated, generally,

that all of the proposed methodologies for calculating disallowances must be rejected because any proposals to systematically disallow rate-case expenses for "policy" reasons without regard to their reasonableness may violate PURA. The Oncor Cities also proposed deletion of subsection (d), stating that subsection (d) implies that it is *per se* unreasonable to incur costs to litigate issues that are ultimately lost. Oncor Cities stated that this connection is not always clear because losing parties do not necessarily unreasonably litigate a novel issue. Oncor Cities stated that disallowances calculated pursuant to subsection (d) could result in arbitrary and capricious reductions that would necessarily sweep broadly enough to capture expenses associated with not just the problematic issue but also other expenses that are not unreasonable.

In response to these concerns, OPUC and State Agencies stated that deletion of subsection (d) is not warranted. OPUC stated that subsection (d) as proposed does not require the commission to use any of these particular methods but, appropriately, puts the parties on notice that the commission may use these methods in a particular case where it is justified. OPUC stated that the proposed rule, with OPUC's suggested changes stated above, strikes a balance in maintaining the broad discretion granted to the commission while also providing guidance to the parties who come before the commission. OPUC agreed with TIEC's comments that the commission should delete the restrictive language in subsection (d) limiting the use of the enumerated methodologies to cases where the evidence presented does not enable the presiding officer to determine the amount of expenses to be disallowed. TIEC also replied, stating that the methodologies listed in subsection (d) are within the commission's authority to adopt. TIEC stated that it disagrees with Joint Utilities' justification for seeking to remove these methodologies from the rule. TIEC stated that PURA §36.061 permits the commission to allow recovery of a utility's rate-case

expenses but does not guarantee recovery of rate-case expenses. TIEC disagreed that the *Oncor* precedent created a requirement that a utility be permitted to recover all rate-case expenses that it shows to be reasonable and necessary. TIEC stated that, pursuant to PURA §36.051, a utility is entitled to just and reasonable rates so that it may be afforded an opportunity to earn a reasonable return but that it is difficult to imagine a disallowance of rate-case expenses that would deprive a utility of this opportunity. TIEC stated that, as a matter of law, the commission is not precluded from applying the types of disallowances listed in proposed subsection (d). State Agencies commented that Joint Utilities are incorrect in asserting that subsection (d) would violate PURA because subsection (d) is not required to be employed in every case but allows the commission flexibility to apply appropriate disallowances where facts warrant them. State Agencies pointed out that similar methodologies had been adopted by other administrative agencies in Texas.

Commission response

The commission disagrees with LCRA, Joint Utilities, Water IOUs, and Oncor Cities, who commented that subsection (d) should be deleted from the proposed rule. LCRA and Joint Utilities commented that, in any given case, the commission has the authority to disallow unreasonable expenses as long as the basis is explained and that, therefore, the mechanical methods to calculate disallowances are unnecessary. The commission disagrees and notes that, in some proceedings, the utility or municipality does not present sufficient evidence to quantify disallowances associated with unreasonably incurred rate-case expenses. The commission retains the discretion to use a methodology for calculating an appropriate disallowance in these proceedings, consistent with its prior practice. As discussed above, the commission notes that the adopted rule should be interpreted to provide the presiding

officer all necessary flexibility when determining whether a failure to provide sufficient evidence pursuant to subsection (b)(6) of the adopted rule should result in a finding that the application is not sufficient for further processing or instead whether it would be appropriate to recommend a disallowance calculated pursuant to subsection (d)(3) of the adopted rule.

The commission disagrees with Joint Utilities' concern that adoption of subsection (d) may make reaching settlements difficult because it will encourage a party to drive up other parties' rate-case expenses if it is confident of "winning" an issue. Especially in light of the narrowed scope of subsection (d)(3) in the adopted version of the rule, the commission disagrees that parties will be motivated to incur additional unnecessary litigation costs in the hopes that the presiding officer may find that some of the utility's rate-case expenses should be disallowed and then resort to a discretionary methodology for the calculation of a disallowance. In fact, as discussed above, the commission finds that adopting clear evidentiary standards and specific criteria for reviewing rate-case expense proceedings will provide incentive for utilities and municipalities to act more like self-funded litigants. The commission retains the discretion to address these concerns on a case-by-case basis.

The commission also disagrees with Water IOUs, which stated that application of subsection (d) may result in confiscatory decisions by allowing for arbitrary disallowances of reasonable and necessary expenditures. The commission also disagrees with Oncor Cities, which proposed deletion of subsection (d) because it implies it is *per se* unreasonable to incur costs to litigate issues that are ultimately lost. As stated above, the methodologies

in subsection (d) are not used to determine whether rate-case expenses are reasonably incurred. These methodologies are only used to quantify disallowances that are associated with disallowed and unreasonably incurred rate-case expenses. The commission agrees with OPUC and State Agencies which stated that deletion of subsection (d) is not warranted and that subsection (d) does not require the commission to use any of these particular methods. Accordingly, it is not the case that application of these methodologies may result in confiscatory decisions or in the disallowance of reasonable and necessary expenditures.

Finally, the commission disagrees with OPUC's and TIEC's suggestion that the commission should permit the application of the methodologies in subsection (d) of the proposed rule in any proceeding, even in a proceeding in which the presiding officer is able to quantify the appropriate disallowance to be associated with unreasonably incurred rate-case expenses. Although this modification is within the commission's discretion, the commission prefers at this time that, if it is possible to quantify the appropriate disallowance, then that quantity will be disallowed. The commission retains this provision as an incentive for utilities and municipalities to present sufficient evidence to quantify their rate-case expenses in as much detail as possible and as a disincentive for parties to request approval of excessive rate-case expenses. The commission also prefers to limit disagreements regarding which methodologies to apply to only those proceedings in which it is necessary to apply some methodology.

Other Comments Regarding the Proposed Rule

Oncor Cities proposed adding a new subsection stating that rate-case expenses incurred by municipalities will be quantified as late in the ratemaking proceeding as is practical and that municipalities may establish an estimate of rate-case expenses to complete the ratemaking proceeding after the quantification date and to participate in appeals of the proceeding. Oncor Cities proposed that the reasonableness of the costs comprising the estimate should be subject to commission approval in the order resolving the ratemaking proceeding. TML, the Alliance, and El Paso supported the proposal that municipalities be able to recover estimated rate-case expenses.

OPUC proposed a new subsection (e) that would limit a utility's recovery of rate-case expenses if the litigated outcome of a rate case is equal to or less than a written settlement offer. OPUC stated that a similar requirement has been adopted by the TCEQ and that the provision would encourage parties to settle ratemaking proceedings.

LCRA and the Joint Utilities opposed OPUC's proposal. LCRA stated that it objects because settlement offers are confidential but that OPUC's proposal would appear to require public disclosure of a group of parties' written settlement offer before the commission could begin to gauge whether to deny recovery of rate-case expenses after the date of the offer. LCRA stated that OPUC did not state which parties would trigger its proposed provision. LCRA stated that OPUC's proposed provision would prevent a utility from recovering its rate-case expenses in a proceeding if the commission awarded a result worse than a group's settlement offer, even if the

commission's order is overturned on appeal. LCRA further stated that it opposes OPUC's proposal because it limits the commission's ability and responsibility to perform a reasoned analysis of the facts in a given proceeding. Joint Utilities stated that the proposal is contrary to PURA and impractical in the context of a ratemaking proceeding because there exist many components to a settlement proposal other than revenue requirement, which is the criterion that OPUC's proposal focuses on. These parties stated that it would be overly complex to try to analyze the non-revenue requirement elements of a settlement proposal to determine whether the final outcome as a whole was better or worse than a settlement proposal. These parties also commented that OPUC's proposal would necessarily require the admission of confidential settlement offers into evidence in violation of Texas Rule of Evidence 408. These parties commented that this would create a chilling effect because utilities may have a greater reluctance to make settlement offers if such offers could be used against them in the manner suggested by OPUC.

Mr. Baron recommended that the commission should include a new subsection relating to procedures and specify that applications to recover rate-case expenses should be filed and separately docketed after the conclusion of a rate case. Mr. Baron recommended, in order to encourage settlement, utilities and municipalities should, before filing a request to recover rate-case expenses, offer to provide relevant documents for informal review by Staff and other parties.

Joint Utilities commented that the commission may allow rate-case expenses to be examined in a separate proceeding, but it should also allow parties to address those expenses when practicable

in the proceeding in which they are incurred. State Agencies commented that, even when rate-case expenses are considered in a severed proceeding, parties should retain the ability to settle rate-case expenses as part of a total rate case settlement.

State Agencies commented that the proposed rule lacks an essential standard for evaluating costs incurred for travel, lodging, and meals. State Agencies proposed the use of an objective standard based on the guidelines for state employees' travel expenses that are published by Texas Comptroller of Public Accounts that would be used to determine whether travel, lodging, and meal expenses are reasonable.

Joint Utilities stated that any attempt to establish maximum travel expenses will be complicated and in need of ample justified exceptions. Joint Utilities further commented that it is not clear that the commission's existing policy of reviewing travel-related rate-case expenses on a case-by-case basis is ineffective. Joint Utilities stated that they are not opposed to adopting language proposed by Mr. Baron relating to travel expenses as part of the criteria the commission would consider in determining the reasonableness of rate-case expenses.

The REP Group recommended that the commission adopt an additional subsection relating to the method of recovery of rate-case expenses. The REP Group proposed that the commission specify that rate-case expenses will be recovered in a rider. The REP Group further proposed that the commission may authorize a separate rider for each eligible rate class. The REP Group also recommended that the commission suspend the effective date of any approved rider so that the rate-case expenses charges will take effect on March 1 or September 1, as applicable. The

REP Group further stated that, if the final decision on a request to recover rate-case expenses has not been issued at least 46 days before March 1, the effective date of an approved rider will be suspended until September 1, and if the final decision on a request to recover rate-case expenses has not been issued at least 46 days before September 1, the effective date of an approved rider will be suspended until the following March 1. The REP Group also recommended that, unless otherwise ordered, a utility should be required to serve notice of the approved rates and the effective date of the approved rates by the first working day after the presiding officer's final decision to retail electric providers that are authorized by the registration agent to provide service in the utility's service area.

At the public hearing, OPUC commented that it generally did not oppose the REP Group's recommendation but proposed two modifications. First, OPUC suggested that ratepayers should not be required to pay interest during the delay between a commission order approving a rider and the effective date of the rider. Second, OPUC suggested that the commission use April 1 and October 1 as the effective date of the rider instead of March 1 and September 1 because March and September are particularly high-use months.

Commission response

The commission declines to adopt the proposed changes and opts to retain its broad discretion to consider many factors when determining the reasonableness and necessity of rate-case expenses, including how such expenses should be recovered.

The commission declines to adopt Oncor Cities' proposal relating to the reimbursement of a municipality's expected future rate-case expenses. Recent commission precedents, including Docket No. 40295, expressly state that approving estimated future rate-case expenses for municipal parties is not in the public interest. Accordingly, the commission declines to adopt any provision that would permit the approval of estimated future expenses. Accordingly, subsection (d) of the adopted rule states that the presiding officer shall allow or recommend recovery of rate-case expenses that have been shown to have been actually incurred.

The commission declines to adopt Mr. Baron's and Oncor Cities' proposals relating to the timing and docketing of rate-case expenses. Mr. Baron recommended that the commission should include a new subsection relating to procedures and specify that applications to recover rate-case expenses should be filed and separately docketed after the conclusion of a rate case and that utilities and municipalities should, before filing a request to recover rate-case expenses, offer to provide relevant documents for informal review by Staff and other parties. Oncor Cities proposed that the rule specify that rate-case expenses incurred by municipalities will be quantified as late in the ratemaking proceeding as is practical and that municipalities may establish an estimate of rate-case expenses to complete the ratemaking proceeding and to participate in appeals after the quantification date. The commission agrees with Joint Utilities which stated that the commission should allow parties to address rate-case expenses, when practicable, in the proceeding in which they are incurred. The commission also agrees with State Agencies, which commented that the commission should retain the flexibility to allow parties to settle rate-case expense issues as

part of a ratemaking proceeding provided those issues have already been severed into a separate proceeding. Presently, the presiding officer is granted discretion to determine the procedure for processing requests for recovery of or reimbursement for rate-case expenses based on the facts particular to each proceeding, including whether to sever the review of rate-case expenses into a separate proceeding and how best to determine an appropriate cut-off date for the counting of rate-case expenses. The commission declines to adopt particular criteria for determining a set cut-off date for rate-case expenses, as the commission prefers to retain the presiding officer's flexibility to address these issues on a case-by-case basis.

The commission declines to adopt OPUC's proposed new subsection (e) that would limit a utility's recovery of rate-case expenses if the litigated outcome of a rate case is equal to or less than a written settlement offer. The commission agrees with Joint Utilities that this proposal is not practical to implement because there exist many components to a settlement proposal other than revenue requirement, which is the criterion that OPUC's proposal focuses on. Joint Utilities commented that it would be overly complex to try to analyze the elements of the settlement proposal that do not relate to the revenue requirement in order to determine whether the final outcome was better or worse than the settlement proposal. Accordingly, the commission declines to adopt OPUC's proposal.

The commission declines to adopt State Agencies' proposal to include in the rule an objective standard for evaluating costs incurred for travel, lodging, and meals. The commission notes that subsections (b)(4) and (c) of the adopted rule require the

presentation and evaluation of evidence relating to the expenses incurred for lodging, meals and beverages, transportation, or other services or materials. The commission agrees with Joint Utilities who commented that establishing maximum travel expenses is complicated and that it is not clear that the commission's existing policy of reviewing travel-related expenses on a case-by-case basis is ineffective. The commission finds that these issues depend too much on the facts of each proceeding and that it is not appropriate to adopt prescriptive criteria that would limit a party's recoverable rate-case expenses, such as using the reimbursement schedule for state employees' travel costs. The commission finds that it is preferable to retain the presiding officer's discretion to address these issues based on the facts of each particular proceeding.

The commission declines to adopt the REP Group's proposal regarding the timing of riders to recover rate-case expenses. The commission has determined that the presiding officer should retain the flexibility to address these issues based on the facts of each proceeding, including the preferences of the particular retail electric providers that participate in a given proceeding.

OPUC stated that it did not object conceptually to the REP Group's proposal but proposed two modifications relating to the timing of the proposed riders and relating to carrying costs on the balance of the amount included in the rider. Because the commission declines to adopt the REP Group's proposal, the commission declines to adopt OPUC's proposed modifications to the REP Group's proposal.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and, specifically, §33.023(b), which requires that a municipality be reimbursed by an electric utility for the reasonable costs of a municipality's participation in a ratemaking proceeding, and §36.061(b)(2), which permits the commission to allow as a cost or expense the reasonable cost of a utility's participation in a proceeding initiated pursuant to PURA.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 33.023(b), and 36.061(b)(2).

§25.245. Rate-Case Expenses.

(a) **Application.** This section applies to utilities requesting recovery of expenses for ratemaking proceedings (rate-case expenses) pursuant to Public Utility Regulatory Act (PURA) §36.061(b)(2) and to municipalities requesting reimbursement for rate-case expenses pursuant to PURA §33.023(b).

(b) **Requirements for claiming recovery of or reimbursement for rate-case expenses.** A utility or municipality requesting recovery of or reimbursement for its rate-case expenses shall have the burden to prove the reasonableness of such rate-case expenses by a preponderance of the evidence. A utility or municipality seeking recovery of or reimbursement for 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, showing:

(1) the nature, extent, and difficulty of the work done by the attorney or other professional in the rate case;

(2) the time and labor required and expended by the attorney or other professional;

(3) the fees or other consideration paid to the attorney or other professional for the services rendered;

(4) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials;

(5) the nature and scope of the rate case, including:

(A) the size of the utility and number and type of consumers served;

(B) the amount of money or value of property or interest at stake;

(C) the novelty or complexity of the issues addressed;

(D) the amount and complexity of discovery;

(E) the occurrence and length of a hearing; and

(6) the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associated with each issue.

(c) **Criteria for review and determination of reasonableness.** In determining the reasonableness of the rate-case expenses, the presiding officer shall consider the relevant factors listed in subsection (b) of this section and any other factor shown to be relevant to the specific case. The presiding officer shall decide whether and the extent to which the evidence shows that:

(1) the fees paid to, tasks performed by, or time spent on a task by an attorney or other professional were extreme or excessive;

(2) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials were extreme or excessive;

(3) there was duplication of services or testimony;

(4) the utility's or municipality's proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of commission precedent;

(5) rate-case expenses as a whole were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section; or

(6) the utility or municipality failed to comply with the requirements for providing sufficient information pursuant to subsection (b) of this section.

(d) **Calculation of allowed or disallowed rate-case expenses.**

(1) Based on the factors and criteria in subsections (b) and (c) of this section, the presiding officer shall allow or recommend allowance of recovery of rate-case expenses equal to the amount shown in the evidentiary record to have been actually and reasonably incurred by the requesting utility or municipality. The presiding officer shall disallow or recommend disallowance of recovery of rate-case expenses equal to the amount shown to have been not reasonably incurred under the criteria in subsection (c) of this section. A disallowance may be based on cost estimates in lieu of actual costs if reasonably accurate and supported by the evidence.

(2) A disallowance pursuant to subsection (c)(5) of this section may be calculated as a proportion of a utility's or municipality's requested rate-case expenses using the following methodology or any other appropriate methodology:

(A) For utilities, the ratio of:

(i) the amount of the increase in revenue requirement requested by the utility that was denied, to

(ii) the total amount of the increase in revenue requirement requested in a proceeding by the utility.

(B) For municipalities, the ratio of:

(i) the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality, to

(ii) the total amount of the increase in revenue requirement challenged by the municipality.

(3) If the evidence presented pursuant to subsection (b)(6) of this section does not enable the presiding officer to determine the appropriate disallowance of rate-case expenses reasonably associated with an issue with certainty and specificity, then the presiding officer may disallow or deny recovery of a proportion of a utility's or municipality's requested rate-case expenses using the following methodology or any other appropriate methodology:

(A) For utilities, the ratio of:

(i) the amount of the increase in revenue requirement requested by the utility in the rate case related to the issue(s) not reasonably supported by evidence of certainty and specificity, to

(ii) the total amount of the increase in revenue requirement requested in a proceeding by the utility.

(B) For municipalities, the ratio of:

(i) the amount of the increase in revenue requirement requested by the utility in the rate case challenged by the municipality relating to the issue(s) not reasonably supported by evidence of certainty and specificity, to

(ii) the total amount of the increase in revenue requirement challenged by the municipality.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be within the agency's authority to adopt. It is therefore ordered by the Public Utility commission of Texas that §25.245, relating to Recovery of Expenses for Ratemaking Proceedings, is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the _____ day of August 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

_____

DONNA L. NELSON, CHAIRMAN

_____

KENNETH W. ANDERSON, JR., COMMISSIONER

_____

BRANDY D. MARTY, COMMISSIONER

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APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES	§ § §	STATE OFFICE OF ADMINISTRATIVE HEARINGS

SECOND SUPPLEMENTAL DIRECT TESTIMONY

OF

MEGHAN E. GRIFFITHS

ON BEHALF OF

ENTERGY TEXAS, INC.

FEBRUARY 2023

ENTERGY TEXAS, INC.
SECOND SUPPLEMENTAL DIRECT TESTIMONY OF MEGHAN E. GRIFFITHS
DOCKET NO. 53719

TABLE OF CONTENTS

PAGE

EXHIBITS

Exhibit MEG-SD2-3	Summary of Duggins Wren Mann & Romero LLP Invoices (Docket No. 49916)
Exhibit MEG-SD2-4	Summary of External Rate Case Expenses associated with Docket No. 53719
Exhibit MEG-SD2-5	Summary of Eversheds Sutherland (US) LLP Invoices
Exhibit MEG-SD2-6	Summary of Duggins Wren Mann & Romero LLP Invoices
Exhibit MEG-SD2-7	Summary of Jager Smith LLC Invoices
Exhibit MEG-SD2-8	Summary of KFG, Inc. Invoices
Exhibit MEG-SD2-9	Summary of Taggart Morton Invoices
Exhibit MEG-SD2-10	Summary of Alliance Consulting Group Invoices
Exhibit MEG-SD2-11	Summary of Expergy Invoices
Exhibit MEG-SD2-12	Summary of Jackson Walker LLP Invoices
Exhibit MEG-SD2-13	Summary of Lewis & Ellis Invoices
Exhibit MEG-SD2-14	Summary of Deloitte & Touche Invoice
Exhibit MEG-SD2-15	Summary of Brattle Invoices
Exhibit MEG-SD2-16	Summary of Osprey Invoice
Exhibit MEG-SD2-17	Summary of ScottMadden Invoices
Exhibit MEG-SD2-18	Summary of Sargent & Lundy Invoices
Exhibit MEG-SD2-19	Summary of Commonwealth Consulting Invoice

I. INTRODUCTION

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

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

Q2. ON WHOSE BEHALF ARE YOU FILING THIS SUPPLEMENTAL DIRECT TESTIMONY?

A. I am testifying on behalf of Entergy Texas, Inc. ("ETI").

Q3. ARE YOU THE SAME MEGHAN E. GRIFFITHS WHO SUBMITTED DIRECT TESTIMONY ON BEHALF OF ETI ON JULY 1, 2022, SUPPLEMENTAL DIRECT TESTIMONY ON BEHALF OF ETI ON OCTOBER 10, 2022, AND REBUTTAL TESTIMONY ON BEHALF OF ETI ON NOVEMBER 16, 2022?

A. Yes, and I fully incorporate as if provided in full in this second supplemental direct testimony my prior direct testimony, supplemental direct testimony, and rebuttal testimony. For a discussion of my educational and professional qualifications, please see my direct testimony submitted on July 1, 2022.

II. PURPOSE OF SECOND SUPPLEMENTAL DIRECT TESTIMONY

Q4. WHAT IS THE PURPOSE OF YOUR SECOND SUPPLEMENTAL DIRECT TESTIMONY IN THIS PROCEEDING?

A. The purpose of my second supplemental direct testimony is to update the review and conclusions outlined in my prior testimonies and provide additional incremental current invoices for fees and expenses recorded by ETI in this proceeding through December 2022.[1] The additional invoices for legal and consulting expenses are identified in my supplemental Exhibits MEG-SD2-1 through MEG-SD2-19, and the additional supporting invoices are provided as supplemental workpapers.[2]

Q5. WHAT ARE THE STANDARDS FOR RECOVERY OF RATE CASE EXPENSES?

A. The standards for the recovery of rate case expenses are set forth in my direct testimony, which as previously mentioned, I fully incorporate as if provided in full in this second supplemental direct testimony. The opinions set forth in my direct testimony regarding the standards for rate case expense recovery, my

[1] For purposes of my second supplemental direct testimony, the dates refer to when the invoices were recorded by ETI, not the dates the firm or vendor performed the services.

[2] My supplemental exhibits are the same exhibits I provided with my Direct Testimony, updated to include any additional invoices and vendors or firms to support ETI's requested external rate case expenses incurred through December 31, 2022. Some exhibits, such as Exhibits MEG-SD2-1 through MEG-SD2-3 were not updated, because there were no additional invoices to report. As such, Exhibits MEG-SD1-1 through MEG-SD1-3 are identical to Exhibits MEG-SD2-1 through MEG-SD2-3, except for the name of the exhibits. I am providing these exhibits along with my supplemental, updated exhibits for completeness and ease of reference.

review of rate case expenses, and the reasonableness of the fees and expenses incurred by ETI remain unchanged.

Q6. WAS THIS SECOND SUPPLEMENTAL DIRECT TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECT SUPERVISION?

A Yes. This second supplemental direct testimony was prepared by me or under my direct supervision and the information contained in it is true and correct to the best of my knowledge.

III. REVIEW OF RATE CASE EXPENSES

Q7. PLEASE DESCRIBE THE REVIEW AND ANALYSIS YOU HAVE CONDUCTED OF THE ADDITIONAL INVOICES.

A. I reviewed the supplemental invoices identified in supplemental Exhibits MEG-SD2-1 through MEG-SD2-19 in the same manner and using the same standards as discussed in my direct testimony.

ETI is requesting actual rate case expenses totaling $6,184,217, comprised of $804,731 associated with Docket No. 49916 and $5,379,486 associated with Docket No. 53719. Of the total rate case expenses associated with Docket No. 49916, I support the $305,740 in external legal fees as identified in Exhibits MEG-SD2-1 through MEG-SD2-3. Of the total rate case expenses associated with Docket No. 53719, I support the external legal and consulting fees, as identified in Exhibits MEG-SD2-4 through MEG-SD2-19. At the time of the filing of my supplemental direct testimony, ETI had recorded $1,211,613.65 of

total fees and expenses for outside legal counsel fees and consultants associated with this proceeding, which has increased to $2,083,191.15 as of December 31, 2022. This second supplemental direct testimony is to address the reasonableness of those incremental fees and expenses.

Q8. HAVE YOU FORMED AN OPINION REGARDING THE INVOICES RECORDED BY ETI FROM SEPTEMBER 1, 2022 THROUGH DECEMBER 31, 2022?

A. Yes, I have. I reviewed the additional invoices to verify that they were calculated correctly, the amounts were related to rate case matters, charges were not double billed, the hours were reasonable and no luxury items were included in ETI's request. There were no expenses for luxury items, travel, or meals associated with the invoices provided. In my opinion, the fees and expenses of ETI's outside counsel and consultants were reasonable and were provided at reasonable rates.

Q9. DOES ETI EXPECT TO INCUR ADDITIONAL RATE CASE EXPENSES RELATED TO THIS DOCKET?

A. Yes. Due to the timing of ETI recording rate case invoices, not all invoices for services performed for the rate case have been recorded. ETI will record invoices for this time period and incur additional expenses as the case progresses, which will be deferred for recovery in a future proceeding.

IV. SUPPLEMENTAL LEGAL FEES AND EXPENSES

Q10. WHAT SUPPLEMENTAL INVOICES FOR LEGAL SERVICES DID YOU REVIEW?

A. I reviewed Eversheds Sutherland (US) LLP's ("Eversheds") invoices recorded by ETI through December 2022 in connection with Docket No. 53719. The firm's invoices are among my workpapers and include time, task, and attorney information, as well as billing category task codes. Exhibit MEG-SD2-5 contains monthly summaries of Eversheds' invoices. In addition, I reviewed the invoices and supporting documents for Duggins Wren Mann & Romero LLP ("Duggins Wren") for the time period through December 2022 in connection with Docket No. 53719. The invoices from Duggins Wren are among my workpapers and include time, task, attorney information, and billing category task codes. Exhibit MEG-SD2-6 contains monthly summaries of Duggins Wren's invoices. I also reviewed the invoices for Jager Smith LLC ("Jager Smith") through December 2022. The invoices from Jager Smith are among my workpapers and include time, task, attorney information, and billing category task codes. Exhibit MEG-SD2-7 is a monthly summary of Jager Smith's invoices. I also reviewed the invoices from Taggart Morton LLC ("Taggart Morton") through December 2022. The invoices from Taggart Morton are among my workpapers and include time, task, attorney information, and billing category task codes. Exhibit MEG-SD2-9 is a monthly summary including the Taggart Morton invoices.

A. Eversheds

Q11. DID YOU REVIEW ALL OF EVERSHEDS' INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by Eversheds through December 2022 for legal work performed for ETI. The invoices are included among my supplemental workpapers.

Q12. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY EVERSHEDS?

A. I did not make any adjustments to the Eversheds invoices.

Q13. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY EVERSHEDS IN THIS CASE?

A. The rates charged by Eversheds are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Eversheds are necessary, reasonable, and warranted, and thus not extreme or excessive.

B. Duggins Wren

Q14. DID YOU REVIEW ALL OF DUGGINS WREN'S INVOICES?

A. Yes, I have reviewed all the recorded invoices submitted by Duggins Wren through December 2022 for legal work performed for ETI and those invoices are included among my supplemental workpapers.

Q15. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY DUGGINS WREN?

A. I made some adjustments to remove meal charges that were disallowed by ETI. Those adjustments are reflected in Exhibit MEG-SD2-6.

Q16. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY DUGGINS WREN IN THIS CASE?

A. The rates charged by Duggins Wren are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Duggins Wren are necessary, reasonable, and warranted, and thus not extreme or excessive.

C. Jager Smith

Q17. DID YOU REVIEW ALL OF JAGER SMITH'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by Jager Smith through December 2022 for legal work performed for ETI and those invoices are included among my supplemental workpapers.

Q18. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY JAGER SMITH?

A. I did not make any adjustments to the Jager Smith invoices.

Q19. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY JAGER SMITH IN THIS CASE?

A. The rates charged by Jager Smith are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Jager Smith are necessary, reasonable, and warranted, and thus not extreme or excessive.

D. Taggart Morton

Q20. DID YOU REVIEW ALL OF TAGGART MORTON'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by Taggart Morton through December 2022 for legal work performed for ETI and those invoices are included among my supplemental workpapers.

Q21. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY TAGGART MORTON?

A. I did not make any adjustments to the Taggart Morton invoices.

Q22. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY TAGGART MORTON?

A. The rates charged by Taggart Morton are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Taggart Morton are necessary, reasonable, and warranted, and thus not extreme or excessive.

V. SUPPLEMENTAL CONSULTANT FEES AND EXPENSES

Q23. WHAT SUPPLEMENTAL INVOICES FOR CONSULTING FEES AND EXPENSES DID YOU REVIEW?

A. I reviewed incremental recorded invoices for the following consultants through December 2022 in connection with Docket No. 53719: KFG, Inc. ("KFG"); Alliance Consulting Group ("Alliance"); Expert Powerhouse, LLC DBA Expergy ("Expergy"); Jackson Walker LLP ("Jackson Walker"); Lewis & Ellis, Inc. ("Lewis & Ellis"); The Brattle Group ("Brattle Group"); ScottMadden, Inc. ("ScottMadden"), Sargent & Lundy, L.L.C. ("Sargent & Lundy"), and Commonwealth Consulting Group ("Commonwealth Consulting"). The invoices from these consultants are among my workpapers and summarized in Exhibit MEG-SD2-8, Exhibits MEG-SD2-10 through MEG-SD2-13, Exhibit MEG-SD2-15, and Exhibits MEG-SD2-17 through MEG-SD2-19.

A. KFG

Q24. DID YOU REVIEW ALL OF KFG'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted through December 2022 by KFG for services performed for ETI and those invoices are included among my supplemental workpapers. Exhibit MEG-SD2-8 is a monthly summary of KFG's invoices.

Q25. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY KFG?

A. I did not make any adjustments to the KFG invoices.

Q26. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY KFG?

A. The rates charged by KFG are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by KFG are necessary, reasonable, and warranted, and thus not extreme or excessive.

B. <u>Alliance</u>

Q27. DID YOU REVIEW ALL OF ALLIANCE'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by Alliance through December 2022 for work performed for ETI and those invoices are included among my supplemental workpapers. Exhibit MEG-SD2-10 is a monthly summary of Alliance's invoices.

Q28. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY ALLIANCE?

A. I did not make any adjustments to the Alliance invoices.

Q29. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY ALLIANCE?

A. The rates charged by Alliance are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Alliance are necessary, reasonable, and warranted, and thus not extreme or excessive.

C. Expergy

Q30. DID YOU REVIEW ALL OF EXPERGY'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted through December 2022 for work performed for ETI and those invoices are included among my supplemental workpapers. Exhibit MEG-SD2-11 is a monthly summary of Expergy's invoices.

Q31. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY EXPERGY?

A. I did not make any adjustments to the Expergy invoices.

Q32. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY EXPERGY?

A. The rates charged by Expergy are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Expergy are necessary, reasonable, and warranted, and thus not extreme or excessive.

D. Jackson Walker

Q33. DID YOU REVIEW ALL OF JACKSON WALKER'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by Jackson Walker through December 2022 for work performed for ETI and those invoices are included among my supplemental workpapers. Exhibit MEG-SD2-12 is a monthly summary of Jackson Walker's invoices.

Q34. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY JACKSON WALKER?

A. I did not make any adjustments to the Jackson Walker invoices.

Q35. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY JACKSON WALKER?

A. The rates charged by Jackson Walker are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Jackson Walker are necessary, reasonable, and warranted, and thus not extreme or excessive.

E. Lewis & Ellis

Q36. DID YOU REVIEW ALL OF LEWIS & ELLIS' INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by Lewis & Ellis through December 2022 for work performed for ETI and those invoices are included among my supplemental workpapers. Exhibit MEG-SD2-13 is a monthly summary of Lewis & Ellis' invoices.

Q37. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY LEWIS & ELLIS?

A. I did not make any adjustments to the Lewis & Ellis invoices.

Q38. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY LEWIS & ELLIS?

A. The rates charged by Lewis & Ellis are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Lewis & Ellis are necessary, reasonable, and warranted, and thus not extreme or excessive.

F. Brattle Group

Q39. DID YOU REVIEW ALL OF BRATTLE GROUP'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by Brattle Group through December 2022 for work performed for ETI and those invoices are included among my supplemental workpapers. Exhibit MEG-SD2-15 is a monthly summary of Brattle Group's invoices.

Q40. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY BRATTLE GROUP?

A. I made an adjustment to remove fees and expenses that ETI is not seeking recovery for in this proceeding. This adjustment is reflected in Exhibit MEG-SD2-15.

Q41. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY BRATTLE GROUP?

A. The rates charged by Brattle Group are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Brattle Group are necessary, reasonable, and warranted, and thus not extreme or excessive.

G. ScottMadden

Q42. DID YOU REVIEW ALL OF SCOTTMADDEN'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by ScottMadden through December 2022 for work performed for ETI and those invoices are included among my supplemental workpapers. Exhibit MEG-SD2-17 is a monthly summary of ScottMadden's invoices.

Q43. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY SCOTTMADDEN?

A. I did not make any adjustments to the ScottMadden invoices.

Q44. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY SCOTTMADDEN?

A. The rates charged by ScottMadden are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by ScottMadden are necessary, reasonable, and warranted, and thus not extreme or excessive.

H. Sargent & Lundy

Q45. DID YOU REVIEW ALL OF SARGENT & LUNDY'S INVOICES?

A. Yes, I have reviewed all of the recorded invoices submitted by Sargent & Lundy through December 2022 for work performed for ETI and those invoices are included among my supplemental workpapers. Exhibit MEG-SD2-18 is a monthly summary of Sargent & Lundy's invoices.

Q46. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICES SUBMITTED BY SARGENT & LUNDY?

A. I did not make any adjustments to the Sargent & Lundy invoices.

Q47. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY SARGENT & LUNDY?

A. The rates charged by Sargent & Lundy are reasonable. The number of hours billed is reasonable. The invoices were calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Sargent & Lundy are necessary, reasonable, and warranted, and thus not extreme or excessive.

I. Commonwealth Consulting

Q48. DID YOU REVIEW ALL COMMONWEALTH CONSULTING'S INVOICE?

A. Yes, I have reviewed the recorded invoice submitted by Commonwealth Consulting through December 2022 for work performed for ETI and that invoice is included among my supplemental workpapers. Exhibit MEG-SD2-19 is a monthly summary of Commonwealth Consulting's invoice.

Q49. WHAT ADJUSTMENTS, IF ANY, DID YOU MAKE TO THE INVOICE SUBMITTED BY COMMONWEALTH CONSULTING?

A. I did not make any adjustments to the Commonwealth Consulting invoice.

Q50. WHAT IS YOUR CONCLUSION REGARDING THE REASONABLENESS OF THE RATES AND CHARGES BY COMMONWEALTH CONSULTING?

A. The rates charged by Commonwealth Consulting are reasonable. The number of hours billed is reasonable. The invoice was calculated correctly. There were no double billings. There were no charges that should have been recovered through the reimbursement of other expenses. None of the charges should have been assigned to other jurisdictions or other matters. There were no time entries for more than 12 hours in a single day. No luxury items were billed to the utility. Accordingly, in my opinion the amounts charged through December 31, 2022 by Commonwealth Consulting are necessary, reasonable, and warranted, and thus not extreme or excessive.

VI. CONCLUSION

Q51. DOES THIS CONCLUDE YOUR SECOND SUPPLEMENTAL DIRECT TESTIMONY IN THIS CASE?

A. Yes, it does.

THE STATE

ENTERGY TEXAS, INC. RATE CASE EXPENSES
Total Amount Requested Associated with PUC Docket No. 49916
for Services Performed through August 2020

VENDORS	TOTAL
Eversheds Sutherland (US) LLP	$136,142.50
Duggins Wren Mann & Romero LLP	$169,597.19
TOTAL EXTERNAL FEES AND EXPENSES	**$305,739.69**

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Eversheds Sutherland (US) LLP
Incurred in PUC Docket No. 49916

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested	Comments
May-19	1066570	6/17/2019	$4,910.00		$4,910.00		$4,910.00	
Jun-19	1071529	7/25/2019	$17,993.00		$17,993.00	($658.00)	$17,335.00	Entergy denied charge due t
Jul-19	1074059	8/15/2019	$12,357.50		$12,357.50		$12,357.50	
Aug-19	1077632	9/16/2019	$14,577.00		$14,577.00		$14,577.00	
Sep-19	1082612	10/21/2019	$23,761.50		$23,761.50		$23,761.50	
Oct-19	1086060	11/15/2019	$2,401.00		$2,401.00		$2,401.00	
Nov-19	1088427	12/6/2019	$2,940.00		$2,940.00		$2,940.00	
Dec-19	1093347	1/21/2020	$2,793.00		$2,793.00		$2,793.00	
Feb-20	1100120	3/12/2020	$920.00		$920.00		$920.00	
Mar-20	1104568	4/15/2020	$7,087.00		$7,087.00		$7,087.00	
Apr-20	1109121	5/19/2020	$25,642.00		$25,642.00		$25,642.00	
May-20	1112108	6/15/2020	$18,968.50		$18,968.50		$18,968.50	
Jun-20	1116472	7/21/2020	$931.00		$931.00		$931.00	
Jul-20	1118872	8/13/2020	$392.00		$392.00		$392.00	
Aug-20	1122931	9/15/2020	$1,127.00		$1,127.00		$1,127.00	
Total			$136,800.50	$0.00	$136,800.50	($658.00)	**$136,142.50**	

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Duggins Wren Mann & Romero LLP
Incurred in PUC Docket No. 49916

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested	Comments
Jan-19	30543	2/12/2019	$436.00		$436.00		$436.00	
Feb-19	30750	3/12/2019	$3,410.50		$3,410.50		$3,410.50	
Apr-19	31227	5/10/2019	$2,757.50		$2,757.50		$2,757.50	
May-19	31522	6/13/2019	$6,090.00		$6,090.00	($546.00)	$5,544.00	Entergy denied charges of $252 and $294.
Jun-19	31751	7/11/2019	$31,476.50	$5.49	$31,481.99	($5.49)	$31,476.50	Disputed long distance call charge of $5.49.
Jul-19	31970	8/14/2019	$26,691.67		$26,691.67		$26,691.67	
Aug-19	32195	9/12/2019	$13,636.77		$13,636.77		$13,636.77	
Sep-19	32470	10/14/2019	$5,753.20	$8.00	$5,761.20		$5,761.20	
Oct-19	32720	11/13/2019	$4,548.60		$4,548.60		$4,548.60	
Nov-19	32972	12/9/2019	$10,211.07		$10,211.07		$10,211.07	
Dec-19	33212	1/14/2020	$4,275.00		$4,275.00		$4,275.00	
Feb-20	33745	3/13/2020	$2,411.00		$2,411.00		$2,411.00	
Mar-20	33935	4/10/2020	$18,222.00	$40.00	$18,262.00		$18,262.00	
Apr-20	34088	5/13/2020	$22,198.50		$22,198.50		$22,198.50	
May-20	34240	6/10/2020	$13,751.50	$878.38	$14,629.88		$14,629.88	
Jul-20	34436	7/14/2020	$1,596.00		$1,596.00		$1,596.00	
Jul-20	34629	8/14/2020	$462.00		$462.00		$462.00	
Aug-20	34793	9/15/2020	$1,289.00		$1,289.00		$1,289.00	
Total			$169,216.81	$5.49	$170,148.68	($551.49)	$169,597.19	

ENTERGY TEXAS, INC. RATE CASE EXPENSES
Total Amount Requested in PUC Docket No. 53719
for Fees and Expenses Recorded through December 2022

VENDORS	TOTAL
Eversheds Sutherland (US) LLP	$477,597.00
Duggins Wren Mann & Romero LLP	$898,023.26
Jager Smith LLC	$11,715.00
KFG, Inc.	$105,690.00
Taggart Morton	$20,679.00
Alliance Consulting Group	$70,762.50
Expergy	$43,420.00
Jackson Walker	$45,598.59
Lewis & Ellis, Inc.	$41,178.00
Deloitte	$150,000.00
The Brattle Group, Inc.	$55,652.50
Osprey Energy Group	$3,675.00
ScottMadden, Inc.	$22,705.00
Sargent & Lundy, L.L.C.	$131,089.05
Commonwealth Consulting Group of VA, Inc.	$5,406.25
TOTAL EXTERNAL FEES AND EXPENSES	**$2,083,191.15**

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Eversheds Sutherland (US) LLP
Incurred in PUC Docket No. 53719

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested	Comments
Dec-21	1189434	2/21/2022	$1,188.00		$1,188.00		$1,188.00	
Jan-22	1190584	2/28/2022	$1,860.00		$1,860.00	($78.00)	$1,782.00	Removed charge unrelated to rate case.
Jan-22	1190587	2/28/2022	$7,916.00		$7,916.00		$7,916.00	
Feb-22	1194806	3/29/2022	$7,365.00		$7,365.00		$7,365.00	
Mar-22	1198877	4/29/2022	$17,404.00		$17,890.00	($486.00)	$17,404.00	Removed charge that should have been billed to a
Apr-22	1202737	5/31/2022	$31,459.00		$31,459.00	($1,207.00)	$30,252.00	Removed charge that should have been billed to a
May-22	1206600	6/28/2022	$86,179.00		$86,179.00	($1,630.50)	$84,548.50	Removed charges that should have been billed to
Jun-22	1210306	7/25/2022	$103,694.00		$103,694.00	($962.50)	$102,731.50	Removed charges that should have been billed to
Jul-22	1214298A	8/23/2022	$7,087.00		$7,087.00		$7,087.00	
Aug-22	1219135	9/30/2022	$12,138.00		$12,138.00		$12,138.00	
Sep-22	1223478	10/31/2022	$28,270.00		$28,270.00		$28,270.00	
Sep-22	1227578	11/30/2022	$728.00		$728.00		$728.00	
Oct-22	1226974	11/27/2022	$33,696.50		$33,696.50		$33,696.50	
Oct-22	1227972	12/5/2022	$710.00		$710.00		$710.00	
Nov-22	1227896	12/5/2022	$141,780.50		$141,780.50		$141,780.50	
Total			$481,475.00	$0.00	$481,961.00	($4,364.00)	$477,597.00	

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Duggins Wren Mann & Romero LLP
Incurred in PUC Docket No. 53719

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested	
Oct-21	36961	11/13/2021	$1,501.47		$1,501.47		$1,501.47	
Nov-21	37043	12/6/2021	$14,845.12		$14,845.12		$14,845.12	
Dec-21	37264	1/14/2022	$1,267.12		$1,267.12		$1,267.12	
Jan-22	37391	2/14/2022	$22,004.00		$22,004.00		$22,004.00	
Feb-22	37573	3/13/2022	$53,361.00		$53,361.00		$53,361.00	
Mar-22	37703	4/15/2022	$82,400.00		$82,400.00		$82,400.00	
Apr-22	37861	5/13/2022	$89,566.50		$89,566.50		$89,566.50	
May-22	37993	6/13/2022	$105,965.80		$105,965.80		$105,965.80	
Jun-22	38186	7/15/2022	$188,246.30		$188,246.30		$188,246.30	
Jul-22	38325	8/15/2022	$25,593.60	$711.45	$26,305.05	($397.35)	$25,907.70	Removed
Aug-22	38489	9/15/2022	$62,367.66		$62,367.66		$62,367.66	
Sep-22	38651	10/14/2022	$44,328.86		$44,328.86	($108.75)	$44,220.11	Removed
Oct-22	38772	11/14/2022	$64,786.08		$64,786.08		$64,786.08	
Nov-22	38842	12/5/2022	$141,584.40		$141,584.40		$141,584.40	
Total			$897,817.91	$711.45	$898,529.36	($506.10)	$898,023.26	

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Jager Smith LLC
Incurred in PUC Docket No. 53719

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested
Feb-22	648703012022	2/28/2022	$1,683.00		$1,683.00		$1,683.00
Mar-22	648704012022	3/31/2022	$1,617.00		$1,617.00		$1,617.00
Apr-22	648705012022	4/30/2022	$2,673.00		$2,673.00		$2,673.00
May-22	648706012022	5/31/2022	$2,706.00		$2,706.00		$2,706.00
Jun-22	648707012022	6/30/2022	$2,145.00		$2,145.00		$2,145.00
Oct-22	648711012022	10/31/2022	$528.00		$528.00		$528.00
Nov-22	648712012022	11/30/2022	$363.00		$363.00		$363.00
Total			$11,715.00	$0.00	$11,715.00	$0.00	**$11,715.00**

ENTERGY TEXAS, INC. RATE CASE EXPENSES - KFG Inc.
Incurred in PUC Docket No. 53719

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested	C
Jan-22	K-22-2	3/8/2022	$7,995.00		$7,995.00		$7,995.00	
Feb-22	K-22-3	3/14/2022	$7,605.00		$7,605.00		$7,605.00	
Mar-22	K-22-4	4/15/2022	$9,555.00		$9,555.00		$9,555.00	
Apr-22	K-22-5	5/20/2022	$10,335.00		$10,335.00		$10,335.00	
May-22	K-22-6	6/2/2022	$10,140.00		$10,140.00		$10,140.00	
Jun-22	K-22-8	7/24/2022	$6,825.00		$6,825.00		$6,825.00	
Jul-22	K-22-9	8/5/2022	$3,510.00		$3,510.00		$3,510.00	
Aug-22	K-22-9-a	10/4/2022	$9,555.00		$9,555.00		$9,555.00	
Sep-22	K-22-10	11/23/2022	$10,725.00		$10,725.00		$10,725.00	
Oct-22	K-22-11	12/2/2022	$12,480.00		$12,480.00		$12,480.00	
Nov-22	K-22-12	12/5/2022	$16,965.00		$16,965.00		$16,965.00	
Total			$105,690.00	$0.00	$105,690.00	$0.00	**$105,690.00**	

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Taggart Morton
Incurred in PUC Docket No. 53719

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested	C
Mar-22	32303	4/11/2022	$152.50		$152.50		$152.50	
Apr-22	32426	5/9/2022	$1,952.00		$1,952.00		$1,952.00	
May-22	32586	6/13/2022	$7,960.50		$7,960.50		$7,960.50	
Jun-22	32692	7/11/2022	$2,135.00		$2,135.00		$2,135.00	
Aug-22	32914	9/12/2022	$61.00		$61.00		$61.00	
Oct-22	33162	11/7/2022	$610.00		$610.00		$610.00	
Nov-22	33289	12/5/2022	$7,808.00		$7,808.00		$7,808.00	
Total			$20,679.00	$0.00	$20,679.00	$0.00	**$20,679.00**	

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Alliance Consulting Group
Incurred in PUC Docket No. 53719

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested
Jan-22	22-0108	1/31/2022	$3,465.00		$3,465.00		$3,465.00
Feb-22	22-0208	2/28/2022	$11,128.75		$11,128.75		$11,128.75
Mar-22	22-0310	3/31/2022	$19,111.25		$19,111.25		$19,111.25
Apr-22	22-0412	4/30/2022	$6,850.00		$6,850.00		$6,850.00
May-22	22-0511	5/31/2022	$5,236.25		$5,236.25		$5,236.25
Jun-22	22-0612	6/30/2022	$5,718.75		$5,718.75		$5,718.75
Jul-22	22-0738	7/31/2022	$261.25		$261.25		$261.25
Aug-22	22-0810	8/31/2022	$3,496.25		$3,496.25		$3,496.25
Oct-22	22-1012	10/31/2022	$7,188.75		$7,188.75		$7,188.75
Nov-22	22-1109	11/30/2022	$8,306.25		$8,306.25		$8,306.25
Total			$70,762.50	$0.00	$70,762.50	$0.00	**$70,762.50**

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Expergy
Incurred in PUC Docket No. 53719

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested
Feb-22	ETI-2204	3/8/2022	$11,020.00		$11,020.00		$11,020.00
Mar-22	ETI-2211	4/4/2022	$23,555.00		$23,555.00		$23,555.00
Apr-22	ETI-2216	5/2/2022	$3,625.00		$3,625.00		$3,625.00
May-Jun-22	ETI-2226	7/11/2022	$4,205.00		$4,205.00		$4,205.00
Oct-Nov-22	ETI-2261	12/2/2022	$1,015.00		$1,015.00		$1,015.00
Total			$43,420.00	$0.00	$43,420.00	$0.00	**$43,420.00**

ENTERGY TEXAS, INC. RATE CASE EXPENSES - Jackson Walker LLP
Incurred in PUC Docket No. 53719

Billing Period	Invoice No.	Invoice Date	Fees	Charges	Total Invoice Amount	Less Charge Removed	Total Amount Requested
Jan-22	1822813	2/11/2022	$1,152.00		$1,152.00		$1,152.00
Feb-22	1830049	3/23/2022	$8,165.50	$11.09	$8,176.59		$8,176.59
Apr-22	1839822	5/13/2022	$2,250.00		$2,250.00		$2,250.00
May-22	1846535	6/22/2022	$16,836.00		$16,836.00		$16,836.00
Jun-22	1853201	7/25/2022	$4,266.00		$4,266.00		$4,266.00
Jul-22	1859137	8/23/2022	$720.00		$720.00		$720.00
Aug-22	1862556	9/12/2022	$5,190.00		$5,190.00		$5,190.00
Sep-22	1871011	10/20/2022	$7,008.00		$7,008.00		$7,008.00
Total			$45,587.50	$11.09	$45,598.59	$0.00	**$45,598.59**