



## **Filing Receipt**

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**SOAH DOCKET NO. 473-24-13232  
PUC DOCKET NO. 56211**

**APPLICATION OF CENTERPOINT  
ENERGY HOUSTON ELECTRIC,  
LLC FOR AUTHORITY TO CHANGE  
RATES**

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§

**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**



**DIRECT TESTIMONY OF  
VONETTA JACKSON  
RATE REGULATION DIVISION  
PUBLIC UTILITY COMMISSION OF TEXAS  
JUNE 26, 2024**

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1    **I.        STATEMENT OF QUALIFICATIONS**

2    **Q.        Please state your name and business address.**

3    A.        My name is Vonetta Jackson. My business address is 1701 N. Congress Avenue, Austin,  
4              Texas.

5    **Q.        By whom are you employed and in what position?**

6    A.        I am employed by the Public Utility Commission of Texas (Commission) as a Regulatory  
7              Accountant in the Rate Regulation Division.

8    **Q.        What are your principal responsibilities at the Commission?**

9    A.        My responsibilities include testifying as an expert witness on accounting matters in rate  
10             cases and other applications filed with the Commission and participating in the overall  
11             examination, review, and analysis of such applications.

12   **Q.        Please describe your professional and educational background.**

13   A.        In May 2003, I graduated from Xavier University of Louisiana with a Bachelor of Science  
14             degree in accounting. In June 2012, I obtained a Master of Accounting and Financial  
15             Management from Keller Graduate School of Management. Having earned 150 hours, the  
16             Texas State Board of Public Accountancy has ruled me an eligible candidate to sit for the  
17             Uniform Certified Public Accountant Exam. From November 2011 to July 2022, I was  
18             employed by the Railroad Commission of Texas as an auditor. In August 2022, I began  
19             employment with the Commission in my current position. I also serve as an accounting  
20             adjunct at Houston Community College and Lone Star College.

21   **Q.        Have you previously filed testimony in regulatory proceedings before the**  
22             **Commission?**

23   A.        Yes. Please see Attachment VJ-3 for a list of my previously filed testimony.

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**II. PURPOSE AND SCOPE OF TESTIMONY****Q. What is the purpose of your testimony?**

A. The purpose of my testimony is to provide my recommendation related to the review of rate-case expenses incurred by CenterPoint Energy Houston Electric, LLC (CenterPoint Houston), the Gulf Coast Coalition of Cities (GCCC), the Houston Coalition of Cities (HCC), and the Texas Coast Utilities Coalition (TCUC) in Docket Nos. 53442,<sup>1</sup> 54825,<sup>2</sup> 54830,<sup>3</sup> 55993<sup>4</sup>, and the *Application of CenterPoint Energy Houston Electric, LLC for Authority to Change Rates* (Application).<sup>5</sup> My recommendation addresses the following issues from the Commission's Preliminary Order that was filed on April 11, 2024, in this case:

25. What are CenterPoint Houston's reasonable and necessary rate-case expenses in accordance with PURA § 36.061(b)(2) and 16 TAC § 25.245? Does this amount include any anticipated expenses to appeal this proceeding or a prior rate-case proceeding? Is it appropriate to recover expenses associated with appeals of prior Commission orders before the appeals are completed?

a. If attorney's fees are included in the rate-case expenses, are they supported by the testimony or affidavit of a licensed attorney qualified to render admissible opinions on the reasonableness of the attorney's fees?

26. What are the intervening cities' reasonable rate-case expenses, in accordance with PURA § 33.023(b) and 16 TAC § 25.245? Does this amount include any anticipated expenses to appeal this proceeding or a prior rate-case proceeding?

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<sup>1</sup> *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend its Distribution Cost Recovery Factor*, Docket No. 53442, Order (Apr. 5, 2023).

<sup>2</sup> *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend its Distribution Cost Recovery Factor*, Docket No. 54825, Order (Sept. 14, 2023).

<sup>3</sup> *Application of CenterPoint Energy Houston Electric, LLC to Amend its Temporary Emergency Electric Energy Facilities Rider*, Docket No. 54830, Order (Feb. 1, 2024).

<sup>4</sup> *Application of CenterPoint Energy Houston Electric, LLC for Approval to Amend its Distribution Cost Recovery Factor*, Docket No. 55993, Order (Mar. 7, 2024).

<sup>5</sup> *Application of CenterPoint Energy Houston Electric, LLC for Approval to Change Rates*, Docket No. 56211, Direct Testimony of Kristie L. Colvin at 869 (Mar. 6, 2024).

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1   **Q.    What is the basis of your recommendation?**

2    A.    The basis of my recommendation is my review of CenterPoint Houston's rate filing  
3          package, 45-Day Update, accompanying work papers, responses to requests for  
4          information (RFIs), and the testimony filed on behalf of CenterPoint Houston, HCC,  
5          GCCC and the TCUC. I verified the accuracy of the schedules in the application and RFI  
6          responses and reviewed expenditure categories for reasonableness and necessity.

7   **Q.    What standard do you use to make your determination concerning the overall**  
8   **reasonableness of the rate-case expenses?**

9    A.    The standard that I rely upon is 16 Texas Administrative Code (TAC) § 25.245(b), which  
10       states:

11           Requirements for claiming recovery of or reimbursement for rate-case expenses.  
12           A utility or municipality requesting recovery of or reimbursement for its rate-case  
13           expenses shall have the burden to prove the reasonableness of such rate-case  
14           expenses by a preponderance of the evidence. A utility or municipality seeking  
15           recovery of or reimbursement for rate-case expenses shall file sufficient  
16           information that details and itemizes all rate-case expenses, including, but not  
17           limited to, evidence verified by testimony or affidavit, showing:

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

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

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

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

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

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

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

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

30                (D) the amount and complexity of discovery;

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

32           (6) the specific issue or issues in the rate case and the amount of rate-case  
33           expenses reasonably associated with each issue.  
34

**Q. Do you use an additional standard to make your determination concerning the overall reasonableness of the rate-case expenses?**

**A.** Yes. I rely additionally upon 16 TAC § 25.245(c), which states:

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.

**Q. On whose behalf are you testifying?**

**A.** I am testifying on behalf of Commission Staff.

### **III. DISCUSSION OF CENTERPOINT HOUSTON'S REQUEST**

**Q. Please describe CenterPoint Houston's request for recovery of rate-case expenses.**

**A.** In this proceeding, CenterPoint Houston requests \$9,027,264 in total rate-case expenses that it incurred or expects to incur in the following dockets.<sup>6</sup>

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<sup>6</sup> Application at Workpaper WP II-E-4.1a Adj 3.

**Table VJ-1: CenterPoint Houston's Requested Rate-Case Expenses<sup>7</sup>**

<b>Docket</b>	<b>Total</b>
53442 –2022 DCRF Filing Expenses	\$1,191,195
54825 – 2023 DCRF Filing Expenses	\$310,819
54830 – 2023 TEEEF Filing Expenses	\$278,642
Consultant Expenses (Includes estimate of \$6,400,000)	\$7,243,291
Company Expenses	\$3,318
<b>Total Requested Amount</b>	<b>\$9,027,264</b>

Additional filings of rate-case expenses incurred by the intervening cities produce the following total requested rate case expenses incurred thus far, exclusive of estimated amounts.

**Table VJ-2: Cities' Requested Rate-Case Expenses**

<b>Docket</b>	<b>Total</b>
56211 – TCUC's RCE	\$116,601.50 <sup>8</sup>
53442 – TCUC's RCE	\$75,285.00 <sup>9</sup>
54825 – TCUC's RCE	\$54,280.00 <sup>10</sup>
54830 – TCUC's RCE	\$68,111.50 <sup>11</sup>
55993 – TCUC's RCE	\$34,654.50 <sup>12</sup>

<sup>7</sup> *Id.*

<sup>8</sup> Affidavit of Alfred R. Herrera Related to Rate Case Expenses Incurred by TCUC at 4 (June 19, 2024) (Herrera Affidavit).

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 11.



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GCCC's total RCE	\$49,541.80 <sup>13</sup>
HCC's total RCE	\$110,429.00 <sup>14</sup>
<b>Total Requested Amount</b>	<b>\$508,903.30</b>

1

2 **Q. Please describe the rate-case expenses that CenterPoint Houston seeks to recover in**  
3 **relation to the current proceeding.**

4 A. As shown in Table VJ-3 below, the composition of CenterPoint Houston's Docket No.  
5 56211 rate-case expenses in the requested amount of \$7.2 million consist of the listed  
6 disciplines and amounts. The components do not include the deferred expenses from prior  
7 dockets.<sup>15</sup>

**Table VJ-3 (Docket No. 56211 Expenses of CenterPoint Houston)**

<b>Discipline</b>	<b>Amount</b>
Consultant (Includes Estimated expenses of \$6,400,000)	\$7,243,205 <sup>16</sup>
Company	\$3,318 <sup>17</sup>
<b>Total</b>	<b>\$7,246,523</b>

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<sup>13</sup> Direct Testimony of Lane Kollen (June 19, 2024).

<sup>14</sup> Direct Testimony of Mark E. Garrett (June 19, 2024); Direct Testimony of Steven D. Hunt (June 19, 2024); Direct Testimony of Micheal E. Ivey (June 19, 2024); Direct Testimony of Bredan T. Mac Mathuna (June 19, 2024); Direct Testimony of Kit Pevoto (June 21, 2024).

<sup>15</sup> Application at Direct Testimony of Myles Reynolds at WP-MFR-04-Rate Case Expense Summary all Dockets.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

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1 **Q. Of the \$7,246,523 total requested rate-case expenses, how much represents actual**  
2 **unamortized Docket No. 56211 expenses as of December 31, 2023?**

3 A. As of December 31, 2023, CenterPoint Houston's actual unamortized rate-case expenses  
4 for Docket No. 56211 were \$888,209.<sup>18</sup>

5 **Q. Please describe the expenses incurred by CenterPoint Houston related to Docket No.**  
6 **53442.**

7 A. Docket No. 53442 rate-case expenses are \$1,191,195, which represent the 2022 DCRF  
8 Filing Expenses.<sup>19</sup>

9 **Q. In this proceeding, does CenterPoint Houston seek recovery of rate-case expenses**  
10 **related to Docket No. 54825?**

11 A. Yes. Docket No. 54825 rate-case expenses requested by CenterPoint Houston equal  
12 \$310,770, which represent the 2023 DCRF Filing Expenses.<sup>20</sup>

13 **Q. In this proceeding, does CenterPoint Houston seek recovery of rate-case expenses**  
14 **related to Docket No. 54830?**

15 A. Yes. Docket No. 54830 rate-case expenses requested by CenterPoint Houston equal  
16 \$278,642, which consists of the 2023 TEEEF Filing Expenses.<sup>21</sup>

17 **IV. RECOMMENDATION RELATED TO CENTERPOINT HOUSTON'S**  
18 **DOCKET NO. 52611 RATE-CASE EXPENSES**

19 **Q. What is your recommendation regarding CenterPoint Houston's requested Docket**  
20 **No. 52611 rate-case expenses?**

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

A. I propose a reduction of \$145,633 to CenterPoint Houston's requested expenses paid to date, which is composed of several categories of expenses. My recommended adjustment is summarized in Table VJ-4 below and results in my recommendation that CenterPoint Houston recover reasonable and necessary rate-case expenses incurred and supported through December 31, 2023, in the amount of \$742,576 (\$888,209 - \$145,633). Additionally, as part of my recommendation, I do not recommend recovery of any of the \$6,400,000<sup>22</sup> estimated remaining expenses unless CenterPoint Houston presents documentation supporting the reasonableness and necessity of the costs it actually incurs.

**Table VJ-4 (Staff's Recommended Adjustments)**

<b>Billing Entity</b>	<b>Amount</b>
Baker Botts, L.L.P	(\$109,920)
Brattle Consulting Firm	(\$ 9,150)
Hunton Andrews Kurth LLP	(\$ 16,815)
Dean Koujak	(\$ 9,000)
Meals and Travel	(\$ 748)
<b>Total</b>	<b>(\$145,633)</b>

**Q. What does the \$748 adjustment to meals and travel expenses represent?**

A. The \$748 adjustment reflects an adjustment made to the previously reported meals and travel expenses. This deduction is due to the expense incurred for lodging and meals being excessive.

**Q. Based upon your review of the supporting documentation presented in this proceeding, do you recommend any adjustments to CenterPoint Houston's requested rate-case expenses?**

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<sup>22</sup> *Id.*

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1 A. After reviewing the supporting documentation presented in CenterPoint Houston's  
2 response to Staff's Second RFI,<sup>23</sup> I recommend an adjustment of (\$144,885) to the amount  
3 requested for Baker Botts, Brattle, Hunton Andrews Kurth LLP, and Dean Koujak legal  
4 fees and services. The documentation that I reviewed included hourly legal rates more  
5 than \$550 per hour. The reason for my adjustment is to remove the amount of hourly fees  
6 more than \$550 per hour that total \$144,885.<sup>24</sup> Please see Attachment VJ-2 for Staff's  
7 Calculation of Adjustments to CenterPoint Houston's Request.

8 **Q. Why do you recommend an adjustment to remove hourly legal fees in excess of \$550**  
9 **per hour?**

10 A. I recommend the use of the \$550 hourly rate referenced in Findings of Fact 306 through  
11 311 from the Commission's Order in Docket No. 51415 as a reasonable benchmark for  
12 capping the recovery from ratepayers of the hourly rate for SWEPCO's outside legal  
13 counsel.<sup>25</sup> In the referenced Southwestern Electric Power Company proceeding, a  
14 comprehensive base rate proceeding of a vertically integrated electric utility, the  
15 Commission found that rate-case expenses that were reasonable and necessary and in  
16 compliance with 16 TAC § 25.245 were those expenses in which the hourly rate for any  
17 service did not exceed \$550. To the extent the hourly rate for any service exceeded \$550,  
18 only \$550 was included in the rate-case expenses. For consistency and regulatory  
19 certainty, I recommend that the \$550 limit apply to the hourly rates billed by the attorneys  
20 employed by Baker Botts, Brattle, Hunton Andrews Kurth LLC, and Dean Koujak.  
21 Attachment VJ-2 provides the detailed adjustment to the billings from those entities  
22 related to this proceeding.

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<sup>23</sup> CenterPoint Energy Houston Electric, LLC's Response to the Public Utility Commission of Texas Second Requests for Information (May 10, 2024).

<sup>24</sup> Application at Direct Testimonies of John R. Durland and Myles F. Reynolds.

<sup>25</sup> *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415, Order at Findings of Fact 306-311 (Jan. 14, 2022).

306. The Office of the Attorney General issued a memorandum in 2016 that limited the maximum outside counsel per-hour fee to \$525 but allowed the Deputy Attorney General to authorize a higher fee. This memorandum was addressed to, among others, state agencies and addressed "Outside Counsel Contract Rules and Templates."<sup>26</sup>

307. The Office of the Attorney General issued a follow-up memorandum, in 2019 that did not increase the \$525 per-hour fee cap. This follow-up memorandum also was directed to state agencies and addressed Outside Counsel Contract Rules and Templates.<sup>27</sup>

308. SWEPCO did not meet its burden of proof to show that the nature, extent, and difficulty of the work performed by the attorneys who charged in excess of \$550 per hour justified hourly rates in excess of \$550 in this base-rate case.<sup>28</sup>

309. The rates SWEPCO paid to outside attorneys in excess of \$550 per hour are excessive and not reasonable.<sup>29</sup>

310. The fact that other entities may be willing to pay an attorney a rate in excess of \$550 per hour does not mean that the rate is reasonable and not excessive in the context of a Commission electric utility rate proceeding.<sup>30</sup>

311. SWEPCO's request to recover \$65,167 in rate-case expenses related to outside attorney fees billed in excess of \$550 per hour should be denied.<sup>31</sup>

**Q. Has the Office of the Attorney General updated its 2016 memorandum and if so, does the update change the previous hourly rate guidance?**

**A.** The Office of the Attorney General updated its 2016 memorandum with its July 17, 2023, memorandum, which did not change the previous hourly rate guidance.<sup>32</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Memorandum from Office of the Attorney General to State Agencies, University Systems, and Institutions of Higher Education (Jul. 17, 2023) (Attachment VJ-1).

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**V. RECOMMENDATION RELATED TO RATE-CASE EXPENSES RELATED  
TO OTHER PROCEEDINGS**

**Q. Based upon your review of the supporting documentation presented in this proceeding, do you recommend any adjustments to CenterPoint Houston's requested legal expenses for the various other dockets?**

**A.** After reviewing the supporting documentation presented in CenterPoint Houston's Application, I recommend adjustments to remove the amounts associated with hourly billing rates in excess of \$550 per hour. The basis for my recommended adjustments follows the rationale presented above and is consistent with recent Commission precedent. Additionally, please see Attachment VJ- 2 for the details supporting each recommended adjustment.

**VI. RECOMMENDATION RELATED TO RATE-CASE EXPENSES  
INCURRED BY THE INTERVENING CITIES**

**Q. Based upon your review of the supporting documentation presented in this proceeding, do you recommend any adjustments to intervening cities' requested legal and consulting expenses for the various other dockets as well as this proceeding?**

**A.** After reviewing the supporting documentation presented by the intervening cities through their June 19, 2024, direct testimony, I do not recommend adjustments to their requested rate-case expenses.

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**VII. TOTAL RECOMMENDED RATE-CASE EXPENSE RECOVERY AND  
SURCHARGE PERIOD**

**Q. Please summarize the total amount of rate-case expenses that you recommend for CenterPoint Houston to recover as a result of this proceeding.**

A. Table VJ-5 summarizes the total amount of rate-case expenses that I recommend for recovery by CenterPoint Houston in this proceeding.

**Table VJ-5: Staff's Recommended Total Rate-Case Expenses**

<b>Docket</b>	<b>Staff Recommended Total CenterPoint Houston</b>	<b>Staff Recommended Total Cities</b>	<b>Staff Recommended</b>
<b>Staff Recommended Total Amount</b>	<b>\$2,481,631</b>	<b>\$508,903.30</b>	<b>\$2,990,534.3</b>

**Q. Please explain CenterPoint Houston's requested method of recovery of rate-case expenses.**

A. CenterPoint Houston proposes a change to its Rider RCE to recover the rate-case expenses reviewed in this proceeding over a three-year period.<sup>33</sup>

**Q. Do you agree with CenterPoint Houston's requested three-year recovery period?**

A. CenterPoint Houston's requested three-year recovery period is reasonable.

**VIII. ONGOING RATE-CASE EXPENSES**

**Q. Please describe your recommendation related to the recovery of the rate-case expenses incurred and supported subsequent to December 31, 2023, for CenterPoint Houston and the intervening cities.**

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<sup>33</sup> Application at Direct Testimony of John R. Durland at 36.

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1 A. Because CenterPoint Houston and the intervening cities continue to incur rate-case  
2 expenses related to this proceeding, I recommend that both provide updates to the rate-  
3 case expense reporting along with their reply briefs to support the amount of rate-case  
4 expenses incurred during the hearing on the merits and post hearing briefing. This  
5 reporting will allow the presiding officer to consider the final rate-case expense updates  
6 in the Proposal for Decision to be issued in this docket.

7 **Q. What is your recommendation related to the rate-case expenses CenterPoint**  
8 **Houston incurs after it files its post-hearing briefing?**

9 A. I recommend that CenterPoint Houston record a regulatory asset for its rate-case expenses  
10 incurred after it files its post-hearing briefing, along with the expenses incurred. I  
11 recommend that the Commission allow CenterPoint Houston to request recovery of the  
12 trailing expenses included this regulatory asset in its next full base rate case and require it  
13 to provide supporting documentation at that time.

14 **Q. Does this conclude your testimony?**

15 A. Yes.





THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

To: State Agencies, University Systems, Institutions of Higher Education and Prospective  
Outside Counsel for any of the aforementioned

From: Office of the Attorney General — General Counsel Division

Date: July 17, 2023

Re: Outside Counsel Contract Rules, Process Changes, and Community System Updates

Pursuant to its statutory duties, the Office of the Attorney General (“OAG”) has adopted administrative rules related to outside counsel contracts for state agencies, university systems, and institutions of higher education (individually “agency” and collectively “agencies”) pursuant to statute.<sup>1</sup> In light of continuing updates made to the processes and procedures governing these contracts, the OAG is taking this opportunity to provide agencies updated direction regarding Outside Counsel Contracts (OCCs), including OCC amendments, invoice submission and approval, and administrative fees. Please note that the guidance in this letter supersedes all previously issued Letters to State Agencies. The OAG reserves the right, under its statutory authority, to revise this document and the policies and procedures it details at any time. The best source for information concerning outside counsel matters (including the latest version of this letter) is the OAG’s website at: [Texas Attorney General, Outside Counsel Contracts](https://oag.texas.gov/outside-counsel-contracts). Questions which are not answered herein, or in other resources available on the OAG’s website, may be directed to the OAG’s General Counsel Division<sup>2</sup> at: [GCDCContracts@oag.texas.gov](mailto:GCDCContracts@oag.texas.gov)

**Introductory Notes**

The Attorney General serves as legal counsel for the state and all its agencies. Agencies may not retain, or utilize services provided by, outside counsel without first receiving authorization and approval from the OAG. If an agency requires any legal services whatsoever from any outside counsel, regardless of the source of funds that would be used to pay for such legal services, or if the services would be provided at no cost, it must first electronically submit to the OAG a Request to Retain Outside Counsel (“RtR”) through the OAG’s online Community system ([Community](#)<sup>3</sup>).

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<sup>1</sup> See Tex. Gov’t Code § 402.0212(f).

<sup>2</sup> Those involved with the outside counsel process in the past may recall the division formerly handling these matters was Financial Litigation and Charitable Trusts (FLD or FinLit), but the unit responsible for outside counsel has been absorbed by the General Counsel Division.

<sup>3</sup> The Community User Guide is on our website here: [Community User Guide](#).

Upon receipt of an RtR from an agency through the online Community system, the OAG will review the agency's submission to determine whether the requested legal services should be provided by the OAG or whether retaining outside counsel would be in the best interests of the state, and for compliance with applicable rules and statutes. Within ten (10) business days after receiving the RtR submission, the OAG will notify the agency that the OAG either (1) approves the RtR and will process an OCC for the agency and outside counsel, (2) denies the RtR, or (3) will notify the agency that additional or corrected information or documentation is required to make a determination. Please be aware that in the outside counsel process the OAG is acting primarily as a regulatory body and not as counsel for state agencies; therefore, the OAG is unable to provide legal counsel and advice regarding the specific business terms the agency negotiates with its proposed outside counsel.

Although the OAG generally will not approve any deviation from the OCC template and the policies and procedures detailed in this document, the OAG recognizes that exceptional and compelling circumstances could necessitate changes or exceptions in rare cases. As a result, the OAG reserves the right to make changes to the OCC or grant exceptions to these policies and procedures if the OAG determines, in its discretion, that it is in the State's best interest to do so. Because the electronic submission process does not allow for any changes to be made to the OCC template, agencies wishing to deviate from the OAG's OCC template must include comprehensive details about its requested changes in its RtR so that the OAG can evaluate them. The OCC template is updated each biennium to incorporate new applicable legislation and improve efficacy. Agencies should not sign engagement letters with any potential outside counsel as they do not comply with applicable laws, rules, and procedures, and are not compatible with the OAG's contract template.

When an RtR is approved, the OAG will route the resulting OCC electronically via DocuSign for signature by the agency and outside counsel.

### **Requests to Retain Outside Counsel**

There are several requirements in the Community system for submitting an RtR and a summary is provided below.

#### *a. Designation of Agency Contact and Responsible Attorney*

Agencies must designate an individual employed by the agency to act as the agency contact and handle all matters and correspondence with the OAG related to the RtR and any resulting contract. If the agency contact is not an attorney, then the agency must also designate a responsible attorney, employed by the agency's Office of General Counsel, or otherwise representing the agency, who must be familiar with all aspects of the RtR and maintain familiarization with any resulting OCC throughout the life of the contract. Agencies must ensure the information for the designated agency contact and/or the responsible attorney is accurate as long as the RtR is in process and any resulting contract is in place.

*b. University Systems and Institutions of Higher Education Requirement for System-Wide Contracts*

University systems and institutions of higher education may not submit separate RtRs on behalf of the system's or institution's individual member schools or universities. More specifically, the system must submit its RtR(s) where the system is the contracting party, and the terms of the resulting contract encompass the system and all its member schools together. Importantly, this requires the system to request the entire amount of the proposed limitation of liability (maximum contract value) applicable to the system and all its member schools in the RtR.

*c. Start and end dates for Outside Counsel Contracts*

The requested start date for an OCC may be a date in the future, or any date from the date of the RtR's submission to the first day of the calendar month in which the RtR was submitted. For example, an RtR submitted April 30<sup>th</sup> may have a start date of April 1<sup>st</sup>, but an RtR submitted May 1<sup>st</sup> may only have a May 1<sup>st</sup> or later start date. Best practice is to submit RtRs well in advance of a requested start date to allow for complete processing of the request including, if necessary, resolution of any issues with the submission. Any request for a start date earlier than the first day of the month the RtR is submitted would only be permitted if the OAG, in its sole discretion, determined that unusual and compelling circumstances exist.

Requested end dates may be any date within the current fiscal biennium (for example, August 31, 2023). If outside counsel services are needed beyond the end of the biennium, then an RtR for a new contract must be submitted. For certain litigation OCCs, there is a potential exception to allow the OCC to extend to the end of the litigation matter, as determined by the agency in consultation with the OAG. Where the date is indeterminate due to ongoing litigation, it may be acceptable to submit an end date for one or more bienniums in the future (e.g., 8/31/2029 or 8/31/2031).

*d. Guidance for Requested Scopes of Service for Outside Counsel Contracts*

In the RtR, the text entered (or attached) for the proposed Scope of Services *will directly become part of the OCC, in its entirety (as Addendum A)*. The Scope of Services must be narrowly tailored to provide the OAG with enough information to make an informed decision about whether the proposed outside counsel representation is appropriate, while still fulfilling the agency's objectives for the representation. Failure to narrowly tailor the Scope of Services will, at best, result in a delay in processing the RtR, and, at worst, could result in the RtR being rejected. Agencies should draft the Scope of Services carefully to obtain the desired results from the proposed outside counsel representation. Additionally, no single OCC may contain a Scope of Services that permits legal representation across more than one practice area unless each is *clearly related to the central subject matter* of the representation. Accordingly, please ensure the Scope of Services in the RtR is limited to one practice area or is specifically tied to one central subject matter to which one or more practice areas clearly relate.

*e. Documents that Must Accompany Requests to Retain*

When submitting an RtR, agencies must attach: (1) an outside counsel's signed Conflicts Disclosure statement<sup>4</sup>; (2) the agency's Affirmation Statement indicating that it has reviewed the Disclosure statement and is satisfied with its choice of outside counsel notwithstanding anything contained in the Conflicts Disclosure<sup>5</sup>; and (3) documentation of the eligibility of the requested Lead Counsel attorney to practice law in the State of Texas, where required, or in the jurisdiction in which the services will be performed. These documents will be included in the DocuSign routing envelope if an OCC is approved. Any RtR not accompanied by these documents will be automatically rejected by the Community system. Additional information about the specific requirements for these documents is below. The agency may submit additional documents if desired (for example, a biography of the proposed Lead Counsel attorney).

Conflicts Disclosures and Agency Affirmation Statements: As mentioned above, outside counsel's Conflicts Disclosure statement must be attached to the agency's electronic submission of the RtR and must be dated no more than 30 (thirty) calendar days prior to the date the RtR is either initially submitted, or, if the RtR requires revisions, the date submitted in its final acceptable form. Outside counsel must sign the statement and attest to its completeness and accuracy. Under section 57.4(d)(1) of the Texas Administrative Code, the Conflicts Disclosure must identify:

[E]very matter in which the firm represents, or has represented, within the past calendar year, any entity or individual in any litigation matter in which the entity or individual is directly adverse to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed agency officials in connection with their official job duties and responsibilities.<sup>6</sup>

And, where matters are listed, it must also "include a short description of the nature of the matter and the relief requested or obtained in each matter and any identifying cause or case number."<sup>7</sup> Additionally, the agency must affirm that it has reviewed the Conflicts Disclosure statement and is satisfied with the choice of the proposed outside counsel notwithstanding anything contained in the disclosure statement.<sup>8</sup> Agency Affirmation Statements must be dated after (or simultaneously with) outside counsel's final Conflicts Disclosure. Meaning, if a Conflicts Disclosure is updated during the RtR process, then an updated Affirmation Statement must also be submitted.

As a point of clarification, the OAG requires that outside counsel disclose any and all conflicts that the entire firm (including any offices located outside the State of Texas) has to any and all agencies of the State of Texas, not merely the agency that is a party to the OCC and that requirement is an ongoing obligation for outside counsel which continues throughout the life of the contract. Outside counsel must monitor its conflicts for the duration of its representation and

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<sup>4</sup> 1 Tex. Admin. Code § 57.5(e).

<sup>5</sup> *Id.*

<sup>6</sup> 1 Tex. Admin. Code § 57.4(d)(1).

<sup>7</sup> *Id.* § 57.4(d)(2).

<sup>8</sup> *Id.* § 57.4(c).

disclose to the agency and the OAG any existing or potential conflicts that arise concerning the agency, the OAG, or the State of Texas.

The OAG will not modify, alter, waive, or allow agencies to waive this disclosure requirement absent exceptional and compelling circumstances unique to the specific law firm or representation sought.

*f. Total Liability to Outside Counsel*

The limitation of liability amount specified in the contract is the maximum value of the contract and is entered in Community as the “Anticipated Legal Costs.” The total of all legal service fees and expenses, regardless of the funding source or method, cannot exceed the limitation of liability amount (i.e., no payment over this amount may be made to outside counsel). Under no circumstances will expenses or fees relating to the representation be exempted from the limitation of liability.

*g. Competitive Procurement Process*

Unless good cause exists, an agency is required to publish a Request for Qualifications (“RFQ”) before selecting outside counsel, regardless of the anticipated maximum liability of the OCC.<sup>9</sup> The RFQ must be published in the Electronic State Business Daily for a minimum of 30 (thirty) calendar days. The RFQ may also be placed in other publications, such as the Texas Register, at the agency’s discretion. Because the OAG will not review or approve an agency’s RFQ, the agency is not required to provide a copy of the RFQ to the OAG. Likewise, it is up to the respective agency to determine how long a response to a published RFQ will be valid.

If an agency would like an exemption from the RFQ process requirements, it must *affirmatively certify in its RfR that the agency has good cause or a reasonable justification* for the exemption. The OAG does not determine what constitutes good cause or a reasonable justification; rather, such determinations must be made independently by the agency in consultation with agency’s internal legal counsel and/or agency leadership.

*h. Addendum B of the Outside Counsel Contract*

When submitting an RfR in the Community system, please be mindful of the following for Addendum B, which includes, Timekeepers, Rates (including Travel Rates), and Billing Period:

Timekeeper Rates and Classifications: Unless expressly approved by the First Assistant Attorney General in advance, hourly rates for attorneys shall not exceed \$525/hour, and hourly rates for non-attorney legal work (generally limited to paralegals, legal secretaries and legal assistants) shall not exceed \$225/hour.

- All other timekeepers (for example, Patent Agents) must be identified as “Other” with their specific title(s) entered in the classification field. These timekeepers are also generally limited to \$225/hr, but an agency may provide written justification for an increased rate for the OAG’s consideration.

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<sup>9</sup> 1 Tex. Admin. Code § 57.4.

- “Not to exceed” — Agencies that wish to use hourly rates to identify an entire classification of employees must use a “not to exceed” rate. For example, such a rate would appear as “Partners’ rates shall not exceed \$300/hr.” This would mean that all partners are covered for any rate up to \$300/hour. If the agency wants to ensure that only certain individuals are providing their legal services, naming each individual and their specific hourly rate can be done. An example of identifying a particular individual, the individual’s classification, and the individual’s hourly rate would be “Susan Smith, Partner, not to exceed \$250/hr.”
- Be aware that outside counsel may not bill for administrative staff/support, law clerks, or interns under Section 5.5 of the OCC (if the contract is based on the OAG’s current template).
- Additionally, a Default Classification is included in Addendum B to allow the OAG more flexibility to approve invoices containing time billed by Attorneys, Paralegals, and Legal Assistants not otherwise listed in Addendum B. For example, if Addendum B includes “Attorney, Partner: \$525” and “Attorney, Associate: \$450,” but does not include “Attorney, Of Counsel,” and an invoice is submitted for OAG approval with time billed for “Attorney, Of Counsel,” rather than deny that billed time, the “Of Counsel” attorney’s hourly rate may default to the lower of either the lowest attorney rate expressly listed in Addendum B, or the hourly rate listed in the invoice.

Fixed Fee or Fee Schedule for Projects or Matters: Instead of using hourly rates, some legal services (for example, immigration, bond, or intellectual property work), may be appropriately billed by a fixed fee per project. An example of a fixed fee per project would be “H-1B Visa Petition, \$900.” If the agency is requesting an OCC with both fixed fee and hourly rates, an agency must draft and upload its own Addendum B that includes language specifically directing when either the fixed fee or hourly rate ranges will be used because the Community system cannot populate billing terms for mixed and hourly services into a standard Addendum B. For example, a contract involving both fixed fees for H-1B Visa Petitions and hourly rates for other services would state “Preparation of H-1B Visa Petition, \$900. All other services are governed by the identified hourly rates.” *Please note, fixed fees should be treated as set amounts, rather than as not-to-exceed limitations.*

For any Invoices with amounts deviating from the fees established by the Outside Counsel Contract, the reason(s) for the deviation(s) must be clearly identified on the Invoice itself. Otherwise, the OAG will be unable to approve payment of the Invoice.

If a subcontractor is providing legal services at a fixed fee, a statement must be provided to the OAG certifying that the time spent on the flat fee work was, at a minimum, comparable to what would have been spent had the firm been billing at the maximum hourly rate allowed under Addendum B of the Outside Counsel Contract.

Billing Period: The billing period is the interval that determines the frequency outside counsel will submit Invoices to the agency. The agency and outside counsel will determine and specify the billing period in each contract. Most frequently, the billing period will be monthly and in a calendar month format (i.e., beginning the first day and ending the last day of the calendar month). Additionally, outside counsel must submit the Invoice(s) to the agency within one calendar month from the end of the relevant billing period covered by the Invoice. Any untimely invoice

submissions by Outside counsel will delay processing and may constitute breach of the outside counsel contract, which could result in an Invoice being disapproved for payment. Agencies likewise must review Invoices and submit Voucher Requests to the OAG in a timely manner.

Travel: By setting hourly travel rates in an OCC, the agency and outside counsel are permitted, but not required, to pay for time spent traveling to or from a place where legal services are to be provided to the agency. Note that an attorney's travel rate may not exceed half of that attorney's standard hourly rate under the OCC. The OAG does not consider it a best practice for attorneys to provide legal services while traveling; however, if an attorney is providing legal services while traveling, the attorney may charge the standard hourly rate for the time spent providing those legal services. Additionally, any timekeepers traveling for work must either be named or fall under one of the timekeeper classifications in Addendum B of the contract; this applies even if the firm is only providing work under a fixed fee schedule.

### **Invoices for Legal Services and Expenses Under Outside Counsel Contracts**

Please note, the OAG establishes a contract number for each OCC upon its approval. An agency may establish its own contract number in addition to the OAG's contract number; however, an agency must note the OAG contract number in all correspondence with the OAG.

#### *a. Invoices*

Outside counsel must prepare and submit to the agency correct and complete Invoices and Invoice Summaries for legal services and expenses in accordance with the OCC and the OAG's administrative rules. Invoices cannot be paid by the agency, regardless of the source of funds used, without the prior approval of the OAG. Therefore, after the agency reviews and approves an outside counsel Invoice in accordance with the Outside Counsel Contract and the administrative rules, it must seek approval from the OAG to pay the Invoice.

When an agency determines that an Invoice, or a portion thereof, should be paid, the agency must submit a Request for Voucher Approval through the online Community system. The completed Request for Voucher Approval, a copy of the subject Invoice(s), and all other information required to be submitted by the administrative rules make up one "Voucher Request".

An agency should submit one Voucher Request per billing period per contract (as specified in the OCC). However, one Voucher Request may include multiple Invoices from the same billing period. Multiple Voucher Requests covering the same billing period as other Voucher Requests for the same contract will be rejected as incomplete and may result in an Invoice not being approved for payment.

Outside counsel must submit Invoice(s) to the agency for review withing one calendar month from the end of the relevant billing period covered by the Invoice. The agency must submit Invoices and the corresponding Request for Voucher Approval to the OAG within 25 (twenty-five) days<sup>10</sup> of the agency's receipt of a "correct and complete Invoice"<sup>11</sup> from outside counsel.

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<sup>10</sup> Tex. Gov't Code § 402.0212(b)(1).

<sup>11</sup> See 1 Tex. Admin. Code § 57.6(b) (defining "correct and complete Invoice").

The 25-day-period begins once the last, timely, correct and complete Invoice for the relevant billing period has been received by the agency.

Outside counsel's failure to timely submit each Invoice constitutes a breach of the OCC. Failure to timely submit a Voucher Request to the OAG for review may result in the OAG declining to approve payment of the Invoice(s) included in the Voucher Request, unless the OAG determines that good cause exists for the delay. *No late Voucher Request submissions that include late Invoices will be reviewed by the OAG unless a reasonable justification for the delay has been provided.*

Once the Voucher Request is received and reviewed by the OAG, the Invoice(s), or a portion thereof, will either be approved or rejected, or the agency will be notified that more information is required. If approved, the OAG will issue a Voucher Approval to the agency. The agency may then enter the payment information into the Uniform Statewide Accounting System ("USAS") or, if permitted, otherwise proceed to pay the Invoice. Agencies should use Comptroller Code 7258 when entering payment information into USAS. Once an agency receives a Voucher Approval from the OAG, payment can occur when the agency enters the payment information and approves the documentation in USAS.

If any Invoices under a Voucher Request are rejected, or if the OAG has questions regarding a Voucher Request, it will contact the agency to attempt to resolve the issue. *The OAG cannot discuss invoice issues with outside counsel.*

#### *b. Expenses*

If outside counsel bills for allowable expenses, copies of actual, itemized receipts must be submitted to the agency. Additional details of what may and may not constitute reimbursable expenses are found in Sections 5 and 6 of the OCC (if the contract is based on the OAG's current template). Examples of expenses that are not reimbursable include, without limitation: gratuities; alcohol; non-coach class airfare or premium or preferred benefits related to airfare; routine copying charges; fax charges; routine postage; office supplies; telephone charges; local travel (within 20-mile radius of office), including mileage, parking, and tolls; all delivery services incurred by internal staff; air-conditioning; electricity or other utilities; and internet charges.

The OAG shall review outside counsel's Invoices only to determine whether the legal services for which the agency is billed were performed within the term of the contract, and are within the scope of the legal services authorized by the contract, and are therefore eligible for payment.<sup>12</sup> Agencies shall submit to the OAG a statement with each Invoice confirming the agency-approved amounts to be paid to outside counsel for legal services and expenses allowed under the contract and the amount of any expenses allowed under the contract which were paid for directly by the agency or any party other than outside counsel.

The agency shall also include with any Voucher Request (and associated Invoices) submitted to OAG for approval, a written certification, as provided by the Request for Voucher Approval, that the legal services for which the agency is billed were performed within the term of the contract,

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<sup>12</sup> Tex. Gov't Code § 402.0212(b).



are within the scope of the legal services authorized by the contract and are reasonably necessary to fulfill the purpose of the contract.<sup>13</sup> This certification is part of the submission process in the Community system.

### **Administrative Fee**

Outside counsel must pay an administrative fee to the OAG for the review of Invoices.<sup>14</sup> The fee is non-refundable and is due each fiscal biennium. Outside counsel may not charge or seek reimbursement from the agency for the fee.

The initial administrative fee is due to the OAG within 30 (thirty) calendar days of the date the proposed OCC has received final approval by the OAG and been returned to the agency. If outside counsel has not submitted the required administrative fee within that time, the OAG's approval of the OCC may be withdrawn. Any Invoice submitted to the OAG for review as part of a Voucher Request prior to the receipt of the administrative fee will be deemed ineligible for payment until outside counsel submits the requisite administrative fee to the OAG. For OCCs that cross the State's fiscal biennium, separate administrative fees are due to the OAG on September 1 of each subsequent biennium covered by the term of the contract. *Please note that an administrative fee is not due for each Invoice submitted.*

The OAG has granted a very narrow and limited exemption from the administrative fee and Invoice review only for university systems and institutions of higher education regarding certain legal services that are solely related to the prosecution and management of system or institution intellectual property, which includes patents, trademarks, and copyrights. This limited exemption does not apply to the enforcement of intellectual property rights—including litigation—or corporate legal services relating to the monetization of intellectual property. The OAG may rescind this limited exemption at any time. If the OAG decides to conduct periodic testing of Invoices under an OCC that qualified for this limited exemption, the exemption will be deemed rescinded, and the applicable non-refundable administrative fee is due immediately upon notice by the OAG that testing will occur. If an exemption is not requested and/or the OCC's Scope of Services does not qualify for the exemption, but it is subsequently discovered that the agency has been paying invoices without submitting and receiving approval of Voucher Requests, the agency must contact the OAG immediately.

The administrative fee is set on a sliding scale, based on the contract maximum value<sup>15</sup>, as follows:

<b>Limitation of Liability Amount</b>	<b>Administrative Fee</b>
Less than \$2,000.00, but more than \$0.00	\$100.00
Equal to or greater than \$2,000.00 but less than \$10,000.00	\$200.00
Equal to or greater than \$10,000.00 but less than \$50,000.00	\$500.00
Equal to or greater than \$50,000.00 but less than \$150,000.00	\$1,000.00

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<sup>13</sup> Id. § 402.0212(b-1).

<sup>14</sup> Tex. Gov't Code § 402.0212(c).

<sup>15</sup> Please note, the full administrative fee is owed regardless of what, if any, amount is subsequently invoiced under the OCC.

Equal to or greater than \$150,000.00 but less than \$1,000,000.00	\$1,500.00
Equal to or greater than \$1,000,000.00	\$2,000.00

**Please note that no administrative fee is due on a contract with a maximum liability of \$00.00.**

If the OCC is amended and the original limitation of liability amount is increased to an amount that would require a higher fee, outside counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee upon the OAG's approval of the amendment and its return to the agency.

Outside counsel must submit the administrative fee to the following address:

Outside Counsel Invoice  
Office of the Attorney General  
P.O. Box 13175  
Austin, TX 78711-3175

Checks or money orders must be made payable to the "Office of the Attorney General" and reference the OCC Number.

### **Amending an Outside Counsel Contract**

Any change to an executed and OAG-approved OCC must be supported by a written amendment and that amendment must also be approved by the OAG. An agency wishing to amend a contract must submit an amendment request through the Community system. Common reasons for amendment requests include increasing the limitation of liability amount or extending the term (end date). Please ensure the data entered in Community for the amendment terms conform to the OCC amendment template. A copy of the template is available in Community.

### **Access to the Community System**

Community may be used by anyone within an agency who needs access to OCC information. We strongly encourage agencies to review the [Community User Guide](#) for comprehensive details. User profiles in Community are broken into categories:

- Agency Head: Responsible for reviewing and administering the rights for users with Contract and Voucher Requester roles for their agency. The Agency Head also has all the rights of the Contract and Voucher Requester roles. Only one Agency Head permitted per agency.
- Contract and Voucher Requester: Has access to all Community activities except for user administration. Agencies may have more than one Contract and Voucher Requester.
- Contract or Voucher Requester: May only view and submit information and documents related to either RtRs or requests for voucher approval for their agency. An agency may have more than one Contract Requestor or Voucher Requester. Note, these roles are not required if a user with the Contract and Voucher Requester role will manage both RtRs and Voucher Requests for the agency.

### **In Closing**

Should you have any additional questions regarding the outside counsel process, please do not hesitate to contact the OAG's General Counsel Division using the information below. Thank you for your attention to these important matters and the Attorney General looks forward to being of service to you.

### **Important Addresses and Contact Information**

Requests to Retain Outside Counsel and Outside Counsel Contracts and Amendments:  
GCDContracts@oag.texas.gov

Requests for Voucher Approval:  
OCCInvoice@oag.texas.gov

Mail may be sent to:  
Outside Counsel Contracts  
Office of the Attorney General  
General Counsel Division, Mail Code 074-1  
Post Office Box 12548  
Austin, Texas 78711-2548

Outside Counsel must submit administrative fees to:  
Outside Counsel Invoice Office  
of the Attorney General  
P.O. Box 13175  
Austin, TX 78711-3175

If you have additional questions, you may reach the General Counsel Division at:  
(512) 936-1403 or  
(512) 463-9906

The following files are not convertible:

6.7.2024.xlsx                      Docket#56211 rate case expenses as of

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact [centralrecords@puc.texas.gov](mailto:centralrecords@puc.texas.gov) if you have any questions.

VONETTA JACKSON  
PUBLIC UTILITY COMMISSION OF TEXAS  
LIST OF PREVIOUS TESTIMONY

**Docket No. 54040**

Application of Southwestern Electric Power Company for Approval to Amend Its Transmission Cost Recovery Factor

Testimony on TCRF Revenue Requirement filed February 2023

Testimony in Support of Unanimous Stipulation filed March 2023

**Docket No. 54807**

Application of Texas-New Mexico Power Company to Amend its Distribution Cost Recovery Factor

Testimony in Support of Unopposed Stipulation and Settlement Agreement filed June 2023

**Docket No. 54634**

Application of Southwestern Public Service Company for Authority to Change Rates

Testimony on Rate-Case Expenses filed August 11, 2023

**Docket No. 54142**

Application of El Paso Electric Company for Authority to Reconcile Fuel Costs

Testimony on Over-/Under-Recovered Fuel Costs filed September 2023

**Docket No. 54657**

Application of the City of Lubbock, Acting By and Through Lubbock Power & Light (LP&L) to Change Rates for Wholesale Transmission Service

Testimony on Revenue Requirement filed December 8, 2023