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| <b>APPLICATION OF TEXAS-NEW<br/>MEXICO POWER COMPANY FOR<br/>APPROVAL OF A SYSTEM<br/>RESILIENCY PLAN</b> | <b>§<br/>§<br/>§<br/>§</b> | <b>PUBLIC UTILITY COMMISSION<br/><br/>OF TEXAS</b> |
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**TEXAS-NEW MEXICO POWER COMPANY’S RESPONSE TO TEXAS ENERGY  
ASSOCIATION FOR MARKETERS MOTION TO COMPEL DISCOVERY  
RESPONSES FROM TEXAS-NEW MEXICO POWER COMPANY**

TEXAS-NEW MEXICO POWER COMPANY (“TNMP”) files this response to Texas Energy Association for Marketers’ (“TEAM”) Motion to Compel (the “Motion”). On October 15, 2024, TEAM submitted its First Request for Information to TNMP (“RFI”). On October 25, 2024, TNMP filed objections to TEAM’s RFI Nos. 1-25 and 1-28 but provided a response to TEAM 1-28 subject to TNMP’s objections. On November 1, 2024, TNMP was served with the Motion. Pursuant to an agreement between the parties, TNMP’s response to this Motion shall be filed by November 11, 2024. This response is therefore timely.

**I. TEAM’s RFI No. 1-25**

TEAM’s RFI No. 1-25 reads as follows:

Reference the SRP at 30 where TNMP states that over the prior five years, it spent “\$1.6B in capital on system hardening and modernization.” Please identify any of these costs associated with system hardening and modernization efforts that have not been included in base rates, TCRF, DCRF, or other tariffed rate.”

In response to TEAM 1-25, TNMP objected as follows:

TNMP objects to this request because it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence in this litigation. *In re State Farm Lloyds*, 2020 Tex. App. LEXIS 7207 at \*16-17 (Tex. App. - Fort Worth [2d Dist.] 2020) (Finding that requested information was irrelevant and not discoverable where it “[did] not appear reasonably calculated to lead to the discovery of evidence that has a tendency to make a fact more probable or less probable than it would be without the evidence.”) Specifically, the referenced \$1.6B expenditure by TNMP mentioned in its SRP related to hardening and modernization efforts to TNMP’s transmission system. TNMP’s SRP does not propose measures to harden or modernize its transmission system, but rather

presents measures that will harden and modernize TNMP's distribution system. Accordingly, TNMP's \$ 1.6B expenditure over the past five years is not relevant to the measures proposed in TNMP's SRP. Moreover, whether TNMP was able to recover these hardening and modernization costs in its base rates, TCRF, DCRF, or other rates is not relevant because the Measures proposed in the SRP are separate and distinct from TNMP's existing activities. Any allowance or disallowance of prior costs incurred has no bearing on whether TNMP's SRP Measures are in the public interest and thus would provide TEAM with no information that can be used to evaluate TNMP's proposed SRP.

TNMP lodged its objection after it was unable to reach agreement with counsel for TEAM via good faith negotiations pursuant to 16 Tex. Admin. Code § 22.144(d), and TEAM subsequently moved to compel.

As an initial matter, TEAM's explanation for the relevance of the requested information is misguided. Specifically, TEAM states that the information TEAM requests "is relevant because TNMP has the burden of proof to demonstrate that its system resiliency plan (SRP) is in the public interest under 16 TAC § 25.62."<sup>1</sup> Importantly, however, it is not the case that *all* information in the possession or control of the applicant becomes relevant and discoverable *because* the applicant generally bears the burden of proof in a case. If that were true, no party bearing the burden of proof could ever successfully assert a relevance objection. TEAM cannot use the fact that TNMP bears the burden of proof to ask for irrelevant information that is outside of the scope of this proceeding, which is what TEAM seeks to do here. Thus, which party bears the burden of proof should not be considered when determining whether the requested information is discoverable; rather, the inquiry is whether the requested information has any tendency to make a fact of consequence more probable or less probable than it would be without the evidence.<sup>2</sup>

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<sup>1</sup> TEAM's Motion to Compel Discovery Responses from TNMP at 2 (Nov. 1, 2024) (D.I. 94).

<sup>2</sup> Tex. R. Evid. 401.

TEAM's other justifications for the relevance of the information are unpersuasive. First, the information that TEAM requests would not actually be useful in determining "whether there are more efficient, cost-effective, or otherwise superior means of preventing, withstanding, mitigating, or more promptly recovering from the risks posed by the resiliency events addressed by the resiliency plan."<sup>3</sup> In other words, the rule requires that part of the Commission's analysis is to determine whether there are alternatives to the applicant's proposed measures that are "superior." In contrast, TEAM is asking *only* that TNMP identify previous expenditures that are not included in its tariffed rates. TEAM is not asking for information sufficient to perform an analysis of alternatives to TNMP's proposed Measures. Identification of such unrecovered expenditures *that are not related to this case* would not include the scope of all work performed, what parts of TNMP's system were hardened or modernized, or whether TNMP's hardening or modernization efforts were efficient or cost-effective. It would also provide no information about the work performed that has been included in rates, so the information requested would necessarily provide an incomplete picture of TNMP's transmission system hardening and modernization efforts over the past five years.

Second, TEAM explains that the information requested would "demonstrate that any expenditures previously found imprudent by the Commission are not included in the SRP..."<sup>4</sup> Significantly, if TEAM is actually looking for costs that have the Commission has previously found imprudent, TNMP does not have any such costs. Nor has TEAM claimed that TNMP has had any such costs.

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<sup>3</sup> Motion at 2.

<sup>4</sup> Motion at 3.

Moreover, TEAM conflates the Commission’s adjudication of whether costs are reasonable and prudent for purposes of inclusion in rates with its adjudication in the current docket of whether the proposed expenditures addressing resiliency are in the public interest. The two analyses are different standards and cannot be used as an apples-to-apples comparison. The SRP rule expressly explains that this proceeding to approve a resiliency plan does not involve a prudence review: “The commission’s denial of a resiliency plan is not a finding on the prudence or imprudence of a measure of estimated cost in the resiliency plan.”<sup>5</sup> To the extent TEAM is searching for information related to costs other than imprudently incurred costs, which is unclear from TEAM’s RFI, any such costs would have even less relevance to the Commission’s analysis of public interest in this docket.

Finally, as already explained in TNMP’s objection, TNMP’s proposed Measures for Distribution System Resiliency and Distribution System Protection Modernization propose work to be proactively performed on TNMP’s distribution system only. The Measures discuss a proactive replacement of aging infrastructure, among other programs, that is materially different than the work performed to reactively harden TNMP’s transmission system over the past five years. Unrecovered costs expended outside of the scope of the SRP and that materially differ from the programs TNMP now proposes in efforts to enhance system resiliency would not provide TEAM with any information that could reasonably be used to somehow conclude that TNMP’s current proposed Measures are not within the public interest.

## **II. TEAM’s RFI No. 1-28**

TEAM’s RFI No. 1-28 reads as follows:

Please refer to the proposed metrics labeled as “Attachment 1 – Oncor SRP Measure Programs Summary” in the Proposed Order filed on September 27, 2024 in Oncor’s Resiliency Plan in Docket No. 56545. Please identify any of these

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<sup>5</sup> 16 TAC § 25.62(d)(5).

metrics that would not be reasonable to apply to TNMP's Resiliency Plan and provide an explanation as to why they should be inapplicable. Please provide any documents supporting this analysis.

After good faith negotiations between the parties, TEAM agreed to revise its RFI as follows:

Please refer to the proposed metrics labeled as "Attachment 1 – Oncor SRP Measure Programs Summary" in the Proposed Order filed on September 27, 2024 in Oncor's Resiliency Plan in Docket No. 56545

(a) Would TNMP be willing to use Oncor's proposed metrics in lieu of or in addition to its proposed metrics. If not, why not?

(b) Would TNMP be willing to include a metric that measures customer interruption minutes, restoration costs, and average restoration time? If not, why not?

TNMP responded as follows:

(a) It would not be feasible to state, at this time, whether TNMP would be willing to include all the metrics in Oncor's proposed order without further analysis of those metrics and requirements for any preexisting capabilities. However, for proposed metrics that could apply to TNMP's specific programs, TNMP is willing to consider the addition of certain metrics, even though not required by statute or rule.

(b) Customer interruption minutes are included in certain proposed metrics in TNMP's SRP. Please refer to TNMP's response to TEAM 1-27.

Despite TNMP's response to TEAM's RFI No. 1-28, TEAM has now moved to compel TNMP to provide a further response to subsection (b), arguing that TNMP's has not sufficiently responded to the request.<sup>6</sup> However, TNMP referred TEAM to its response to TEAM 1-27 which lists each of TNMP's proposed metrics and also confirms in its response that it has metrics that already measure customer interruption minutes. TEAM did not ask TNMP to identify *which* metrics included a measure of customer interruption minutes, but only asked that TNMP answer

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<sup>6</sup> Motion at 5.

*whether* TNMP would be willing to include metrics that measure such information. TNMP confirmed that its metrics already measure some of the information requested. With respect to restoration costs and average restoration time, TNMP would be willing to consider inclusion of those measurements in a specific existing or new metric, if feasible, but no Intervenor has proposed such a metric and TNMP has not performed such further analysis sufficient to commit to include one at this time.

### III. CONCLUSION

For the foregoing reasons, TNMP respectfully requests that the ALJ sustain its objections to TEAM's RFI No. 1-25, find that TNMP's response to TEAM's RFI No. 1-28 is sufficient, and deny TEAM's motion to compel.

Respectfully submitted,

*/s/ Stephanie C. Sparks*

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**ATTORNEYS FOR TEXAS-NEW MEXICO  
POWER COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of November 2024, a true and correct copy of the foregoing document was transmitted to the parties of record in accordance with the Order Suspending Rules, issued in Project No. 50664.

*/s/ Stephanie C. Sparks*  
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Stephanie C. Sparks