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**SOAH DOCKET NO. 473-24-25125  
PUC DOCKET NO. 56954**

<b>APPLICATION OF TEXAS-NEW MEXICO POWER COMPANY FOR APPROVAL OF A SYSTEM RESILIENCY PLAN</b>	<b>§ § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**ALLIANCE OF TEXAS-NEW MEXICO POWER MUNICIPALITIES  
MOTION TO COMPEL RESPONSES TO ATM 1<sup>ST</sup> RFI**

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**ALLIANCE OF TEXAS-NEW MEXICO POWER MUNICIPALITIES  
MOTION TO COMPEL RESPONSES TO ATM 1<sup>ST</sup> RFI**

The Alliance of Texas-New Mexico Power Municipalities (“ATM”) hereby files its Motion to Compel Responses to ATM’s First Request for Information (“RFI”) to Texas-New Mexico Power Company (“TNMP” or “Company”) regarding RFI No. 1-1, and shows as follows:

Pursuant to SOAH Order No. 2, motions to compel are due within five (5) business days from receipt of a party’s objections to discovery. ATM received TNMP’s objections on Friday, October 11, 2024; thus, ATM’s Motion to Compel is due no later than October 18, 2024. Therefore, ATM’s Motion to Compel is timely filed.

**I. GOOD FAITH NEGOTIATIONS**

Counsel for TNMP and ATM have engaged in good faith negotiations pursuant to 16 TAC § 22.144(d); however, the parties were unable to reach an agreement regarding TNMP’s objections to ATM’s First RFIs.

**II. ATM’S RFI NO. 1-1**

ATM’s RFI No. 1-1 to which TNMP objected asked:

**ATM 1-1** TNMP proposes to spend \$2,782 per customer under its system resiliency plan (SRP)<sup>1</sup>. Other utilities and their respective SRP costs per customer are shown in the following table:

Docket No.	Utility	Cost (\$ million)	No. of Customers	\$ per Customer
56545	Oncor	\$3,412	4,000,000	853
56548	CenterPoint	\$2,278	2,800,000	814

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<sup>1</sup> \$751.1 million (Application at 12) / 270,000 customers (Application at 1) = \$2,782 per customer.

56735	Entergy Texas	\$335	512,000	654
57057	AEP Texas	\$352	1,100,000	320

Please provide an explanation for TNMP’s significantly higher proposed spending per customer compared to other utilities’ proposed spending for similar resiliency program activities.

### III. LEGAL STANDARDS

#### The “Overbroad and Unduly-Burdensome Standard”

TNMP objected to ATM’s RFI No. 1-1 as “overbroad, unduly burdensome, and disproportionate to the needs of the case because it would require TNMP to perform a fulsome review and analysis of each of Oncor, CenterPoint, Entergy Texas, and AEP Texas’ System Resiliency Plans.”<sup>2</sup> A request is “unduly burdensome” if the “burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, *the amount in controversy*, the parties’ resources, the *importance of the issues at stake in the litigation*, and the importance of the proposed discovery.”<sup>3</sup>

Crucially, a party resisting discovery cannot make conclusory allegations that the requested discovery is unduly burdensome.<sup>4</sup> Rather, the party resisting discovery on the grounds that a request is unduly burdensome “has the affirmative duty to plead and prove the work necessary to comply with the discovery.”<sup>5</sup> Further, the Commission’s Procedural Rules require an objecting party to set forth all its arguments in support of its objection *in the objection itself*.<sup>6</sup>

Additionally, the Texas Rules of Civil Procedure protect parties only from an *undue* burden of discovery. But simply asserting without proof, as TNMP has done in their objections, that having to respond to an RFI would be “unduly burdensome” is insufficient to comprise a valid

<sup>2</sup> TNMP’s Objection at 3.

<sup>3</sup> See TEX. R. CIV. P. 192.4(b) (emphasis added).

<sup>4</sup> *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999).

<sup>5</sup> *In re HEB Grocery Co., L.P.* 2010 WL 4523765 at \*1 (Tex. App.—Corpus Christi).

<sup>6</sup> 16 TAC § 22.144(d)(1) (“[...] All arguments upon which the objecting party relies shall be presented in full in the objection.”) [emphasis added].

objection. A party contending that it is unduly burdensome to respond to discovery must provide proof of the undue burden.<sup>7</sup>

Specifically, courts have held that “A party resisting discovery ... cannot simply make conclusory allegations that the requested discovery is unduly burdensome or unnecessarily harassing.”<sup>8</sup> In *Independent Insulating Glass/Southwest, Inc. v. Street*,<sup>9</sup> the court stated:

Any party who seeks to exclude matters from discovery on grounds that the requested information is unduly burdensome, costly or harassing to produce, has the affirmative duty to *plead and prove the work necessary to comply with discovery*. Otherwise, the trial court cannot make an informed judgment on whether to limit discovery on this basis or place the cost for complying with the discovery. Failure to follow this procedure constitutes a waiver of any complaint of the trial court’s action. In reaching this holding, we are extending the ruling made by the Supreme Court in the *Peeples* case. *Peeples* did not deal with allegations of unduly burdensome, costly or harassing discovery. However, the rationale of the *Peeples* opinion applies to the instant case. Any party seeking to limit discovery has the burden of pleading and proving that contention.<sup>10</sup>

Here, TNMP has done nothing more than to assert in a conclusory manner that some of ATM RFI No. 1-1 is overbroad, unduly burdensome, and disproportionate to the needs of the case. Crucially, TNMP has provided no evidence to support their claim. Case law and prior rulings by SOAH ALJs make clear that its objections are without foundation. For example in Docket No. 48836, SOAH ALJs overruled an “unduly-burdensome” objection for lack of evidence to support the objection:

*The City also emphasizes that Petitioners did not provide any support for their contention that producing the information would be unduly burdensome.*

*The ALJs find that Petitioners’ claim that the RFI is unduly burdensome is conclusory.*<sup>[Footnote Omitted]</sup> *Petitioners also did not show that requesting information back to 2002 is per se unreasonable here, particularly when Mr. Scheig’s CV*

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<sup>7</sup> See Tex. R. Civ. P. 193.4(a) and 199.6.

<sup>8</sup> *In re American Home Assur. Co.*, 88 S.W.3d 370, 374 (Tex. App. – Texarkana 2002) (citing *Garcia v. Peeples*, 734 S.W.2d 343, 345 (Tex. 1987); *Independent Insulating Glass/Southwest, Inc. v. Street*, 722 S.W.2d 798, 802 (Tex. App. – Fort Worth 1987, writ dismissed)).

<sup>9</sup> *Independent Insulating Glass/Southwest, Inc. v. Street*, 722 S.W.2d 798, 802 (Tex. App. – Fort Worth 1987, writ dismissed).

<sup>10</sup> *Id.* [emphasis added].

*expressly references publications from that period. Accordingly, the objections are OVERRULED.* <sup>[Footnote Omitted]</sup> 11

By not providing any evidence to create a foundation supporting its objection, TNMP has failed to meet its burden to establish that ATM's First RFI, RFI No. 1-1, is over broad, unduly burdensome, or disproportionate to the needs of the case. Instead, TNMP presented nothing more than conclusory statements that answering ATM RFI No. 1-1 would require a "fulsome review and analysis." Thus, on this basis alone the ALJ should overrule TNMP's objections and grant ATM's motion to compel.

Moreover, ATM RFI No. 1-1 is not requesting that TNMP undertake a fulsome review and analysis of each of Oncor, CenterPoint, Entergy Texas, and AEP Texas' System Resiliency Plans as TNMP contends, but simply asks TNMP to explain why its plan is markedly higher per customer than other utilities' cost for their SRPs.

### **The Scope of Discovery, aka, the "Relevance Standard"**

TNMP objected to ATM RFI No. 1-1 on the grounds of "relevance" and "outside the scope of this proceeding." TNMP's "outside the scope objection" is redundant, as this is the same objection as the Company's relevance objection, albeit without any supporting reasoning from TNMP.

A party may obtain discovery regarding *any* matter that is not privileged and is relevant to the subject matter of the pending action,<sup>12</sup> and may obtain discovery of information that is reasonably calculated to lead to the discovery of admissible evidence.<sup>13</sup>

The scope of discovery is broader than the "relevance" standard under the Texas Rules of Evidence. In discovery disputes, relevance is a low threshold consistent with the purpose of "seek[ing] truth so that disputes may be decided by facts that are revealed rather than concealed."<sup>14</sup> Pursuant to the Texas Rules of Evidence, information is "relevant if it has any tendency to make

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<sup>11</sup> Docket No. 48836 - *Petition of Paloma Lake Municipal Utility District No. 1, Paloma Lake Municipal Utility District No. 2, Vista Oaks Municipal Utility District, Williamson County Municipal Utility District No. 10, and Williamson County Municipal Utility District No. 11 Appealing the Ratemaking Actions of the City of Round Rock in Travis and Williamson Counties*, Order No. 48 – Denying Motion to Compel City's 11th Set of RFIs and Granting Motion to Compel City's 12th Set of RFIs at 10-11 (July 18, 2024) (Docket No. 48836).

<sup>12</sup> Texas Rules of Civil Procedure ("TEX. R. CIV. P.") Rule 192.3; and 16 TAC § 22.141(a).

<sup>13</sup> *Id.*

<sup>14</sup> *Tom L. Scott, Inc. v. McIlhenny*, 798 S.W.2d 556, 559 (Tex. 1990).

the existence of any fact that is of consequence to the determination of the action more, probable or less probable, than it would be without the evidence.”<sup>15</sup>

Crucially, the Texas Supreme Court has held that the phrase “relevant to the subject matter” is to be “liberally construed to allow the litigants to obtain the fullest knowledge of the facts and issues prior to trial.”<sup>16</sup> In fact, the information a party seeks through a discovery request is proper even if it is not admissible, so long as the request appears “reasonably calculated to lead to the discovery of admissible evidence.”<sup>17</sup>

Consequently, preemptive denial of discovery is improper unless there exists “no possible relevant, discoverable testimony, facts, or material to support or lead to evidence” that would support a claim or defense at issue in this case.<sup>18</sup>

The data ATM seeks in its RFI No. 1-1 informs whether TNMP’s SRP is in the public interest, as required by in Public Utility Regulatory Act (PURA) § 38.078(e). Additionally, TNMP notes its unique service area, but what is also unique about TNMP’s service area is that it abuts or is near Oncor’s, CenterPoint Energy Houston Electric’s, Entergy’s, and AEP’s respective services areas. Yet, TNMP’s SRP is markedly more costly than those other transmission and distribution utilities’ (TDUs) costs. TNMP’s response to ATM RFI No. 1-1 is relevant and inside the scope of this proceeding as it may provide further information to parties and the Commission as to the very points TNMP asserts in its “System Resiliency Plan” appended to its application.<sup>19</sup>

Therefore, ATM urges the ALJs to overrule TNMP’s relevance and outside the scope-based objections.

Thus, for the reasons stated below, ATM 1-1, is within the scope of discovery and ATM urges the ALJs to overrule TNMP’s “relevance” and “scope” based objections.

### **Vague and Ambiguous Standard**

Discovery requests under 16 TAC § 22.144(b)(1) “shall identify with *reasonable* particularity the information documents or material sought.” As well, if a party is unclear as to

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<sup>15</sup> Texas Rules of Evidence (“TEX. R. EVID.”) 401.

<sup>16</sup> *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009).

<sup>17</sup> TEX. R. CIV. P. 192.3(a).

<sup>18</sup> *Castillo*, 279 S.W.3d at 664.

<sup>19</sup> *See, e.g.*, [https://interchange.puc.texas.gov/Documents/56954\\_2\\_1423622.PDF](https://interchange.puc.texas.gov/Documents/56954_2_1423622.PDF); see also Attachment A – TDU Map in ERCOT.

what a party is seeking in an RFI, the party seeking clarity can gain such clarity from the requesting party.

#### **IV. ATM’S RESPONSE TO TNMP’S OBJECTIONS TO ATM RFI NO. 1-1**

##### **ATM’s Response to TNMP’s Overbroad, Unduly Burdensome, and Disproportionate Based Objection to ATM 1-1**

TNMP objects that ATM RFI No. 1-1 is “overbroad, unduly burdensome, and disproportionate to the needs of the case because it would require TNMP to perform a fulsome review and analysis of each Oncor, CenterPoint, Entergy Texas, and AEP Texas’ System Resiliency Plans.”<sup>20</sup>

It is unclear what part of ATM’s request TNMP considers to be overbroad, what part TNMP considers to be unduly burdensome, and what part TNMP considers to be disproportionate to the needs of the case.

In regards to TNMP’s objection that ATM 1-1 is “overbroad,” the RFI limits the question to a time-period that is less than six months, as Oncor was the first utility listed in the RFI to file their respective SRP application on May 6, 2024. Thus, unlike some discovery requests that ask a party to provide documents that go back years, ATM 1-1 merely seeks TNMP to review data that is less than 6 months old. Therefore, ATM 1-1 is not overbroad and ATM urges the ALJ to overrule TNMP’s objection.

In regards to TNMP’s objection that ATM 1-1 is “unduly burdensome, and disproportionate to the needs of the case,” ATM will address these two objections together since they are highly related. First and foremost, TNMP has provided nothing more than a conclusory assertion that responding to ATM 1-1 is unduly burdensome and disproportionate to the needs of the case.

As ATM explains above, a party resisting discovery cannot make conclusory allegations that the requested discovery is unduly burdensome.<sup>21</sup> Rather, the party resisting discovery on the grounds that a request is unduly burdensome “has the affirmative duty to plead and prove the work

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<sup>20</sup> TNMP’s Objection to ATM 1-1 at 3.

<sup>21</sup> *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999).



necessary to comply with the discovery.”<sup>22</sup> Here, as TNMP’s objection makes clear, TNMP has failed to satisfy this burden of proof.

Further, the Commission’s Procedural Rules require an objecting party to set forth all its arguments in support of its objection in the objection.<sup>23</sup> Here, TNMP has failed in every respect to meet its burden to establish that ATM 1-1 is overbroad, unduly burdensome, or disproportionate to the needs of the case. Instead, TNMP presented nothing more than conclusory statements that answering ATM 1-1 would require a “fulsome review and analysis,” while simultaneously mischaracterizing the nature of ATM 1-1.

TNMP is attempting to avoid providing an explanation as to why its resiliency plan costs more than other utilities’ plans because “material portions of [the other utilities’ plans] are filed confidentially.”<sup>24</sup> Nothing in ATM 1-1 seeks TNMP to divulge or access confidential information. Rather, the question merely provides TNMP with an opportunity to clarify to the parties, Your Honor, and ultimately the Commission, why their plan costs 3.5X to 9X more than SRPs filed by other utilities in Texas. ATM 1-1 is simply seeking an explanation as to why TNMP’s plan is so much more expensive than the other utilities’ plans, especially given that TNMP’s service area abuts or is near Oncor’s, CenterPoint Energy Houston Electric’s, Entergy’s, and AEP’s respective services areas.

Moreover, TNMP has not provided so much as an explanation as to how much time, resources, and/or money it would cost the Company, much less an affidavit attesting to the undue burden providing the explanation sought in ATM RFI No. 1-1 would place on the Company. With no explanation by TNMP, ATM 1-1 is in no way disproportionate to the proposed resiliency plan that will cost a staggering \$751 million that amounts to \$2,782 per customer. Thus, on this basis and for other the reasons stated above, ATM urges the ALJ to overrule TNMP’s objections and grant ATM’s motion to compel.<sup>25</sup>

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<sup>22</sup> *In re HEB Grocery Co., L.P.* 2010 WL 4523765 at \*1 (Tex. App.—Corpus Christi).

<sup>23</sup> 16 TAC § 22.144(d)(1) (“[...] All arguments upon which the objecting party relies shall be presented in full in the objection.”).

<sup>24</sup> TNMP Objections to ATM 1-1 at 3.

<sup>25</sup> *See* Docket No. 48836, Order No. 48.

### ATM's Response to TNMP's Relevance and Scope Based Objection

TNMP also objects to ATM RFI No. 1-1 as seeking “information that is irrelevant and not likely to lead to the discovery of admissible evidence and would result in no benefit to this litigation.”<sup>26</sup> TNMP did not provide one word in support of this relevance objection. Rather, the Company merely repeated the standard for a relevance-based objection. Similarly, TNMP's outside the scope objection simply states that ATM RFI No. 1-1 “requests information outside the scope of this proceeding.”<sup>27</sup> TNMP again stated an objection without providing a legal or factual explanation as to why Your Honor should sustain the Company's objection.

Importantly, TNMP cannot lodge an objection without explanation only to wait to try and substantiate its objection in its reply to ATM's Motion to Compel. The Commission's rules for discovery very specifically require that “all arguments upon which the objecting party relies shall be presented in full *in the objection*.”<sup>28</sup> Here, TNMP failed to provide any arguments in support of its relevance objection beyond making the conclusory assertion that ATM RFI No. 1-1 seeks information that is irrelevant. TNMP's failing in and of itself warrants Your Honor to overrule the Company's relevance objection, ATM, below, provides a substantive response regarding why ATM RFI No. 1-1 is relevant.

Here, TNMP is requesting approval to implement a plan that would cost ratepayers \$751 million while serving 270,000 homes and businesses. On a per-customer basis, TNMP's plan equates to approximately \$2,782 per home and/or business. Thus, when compared to the other recently filed resiliency plans, TNMP's plan, on a per-customer basis, is 3.5X-9X more expensive. This comparison is illustrated in the table below with sources added for Your Honor's convenience.

Docket No.	Utility	Cost (\$ million)	No. of Customers	\$ per Customer
56954	TNMP	\$751 <sup>29</sup>	270,000 <sup>30</sup>	2,782 <sup>31</sup>

<sup>26</sup> TNMP Objections to ATM 1-1 at 3.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> 16 TAC § 22.144(d)(1).

<sup>29</sup> *Application of Texas-New Mexico Power Company for Approval of a System Resiliency Plan*, Docket No. 56954, Application at 12 (Aug. 28, 2024).

<sup>30</sup> *Id.* at 5.

<sup>31</sup> \$751 million/270,000 customers = \$2,782 per customer.

56545	Oncor	\$3,412 <sup>32</sup>	4,000,000 <sup>33</sup>	853 <sup>34</sup>
56548	CenterPoint	\$2,278 <sup>35</sup>	2,800,000 <sup>36</sup>	814 <sup>37</sup>
56735	Entergy Texas	\$335 <sup>38</sup>	512,000 <sup>39</sup>	654 <sup>40</sup>
57057	AEP Texas	\$352 <sup>41</sup>	1,100,000 <sup>42</sup>	320 <sup>43</sup>

In determining whether to approve a plan, TNMP has the burden to demonstrate that it SRP is in the public interest, as the Commission *will not* approve a plan that is not in the public interest.<sup>44</sup> In evaluating the public interest, the Commission may consider both “the estimated time and *costs of implementing the measures proposed in the resiliency plan*,” and “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>45</sup>

The Company’s proposed plan is orders of magnitude more costly than other resiliency plans filed by utilities in Texas. As the party with the burden of proof it is incumbent on TNMP to demonstrate, among other things, that its plan is in the public interest, and relatedly why TNMP’s plan is markedly more expensive than other utilities’ plans.

<sup>32</sup> *Application of Oncor Electric Delivery Company LLC for Approval of a System Resiliency Plan*, Docket No. 56545, Application at 6 (May 6, 2024).

<sup>33</sup> *Id.* at 3.

<sup>34</sup> \$3.412 billion/4,000,000 customers = \$853 per customer.

<sup>35</sup> *Application of CenterPoint Energy Houston Electric, LLC for Approval of its Transmission and Distribution System Resiliency Plan*, Docket No. 56548, Application at 2 (Apr. 29, 2024).

<sup>36</sup> *Id.* at 5.

<sup>37</sup> \$2.278 billion/2,800,000 customers = \$814 per customer.

<sup>38</sup> *Application of Entergy Texas, Inc. For Approval of a Resiliency Plan*, Docket No. 56735, Application at 5 (Jun. 21, 2024).

<sup>39</sup> *Id.* at Attachment A, page 9 of 24 (Jun. 21, 2024).

<sup>40</sup> \$335 million/512,000 customers = \$654 per customer.

<sup>41</sup> *Application of AEP Texas, Inc. for Approval of a System Resiliency Plan*, Docket No. 57057, Application at 6-7 (Sep. 25, 2024).

<sup>42</sup> *Id.* at 1.

<sup>43</sup> \$352 million/1,100,000 customers = \$320 per customer.

<sup>44</sup> 16 TAC § 25.62(d)(4).

<sup>45</sup> 16 TAC § 25.62(d)(4)(C)(ii)-(iii).

TNMP also asserts that the measures in its plan are different from the other utilities; however, both Rule 25.62(c)(1) and PURA § 38.078(b) list ten specific methods for utilities to use in implementing their plan's measures.<sup>46</sup> Therefore, while TNMP's plan may not be exactly the same as Oncor's, CenterPoint, Entergy, or AEP Texas' respective plan, each utility's plan does contemplate implementing major measures such as wildfire mitigation, vegetation management, flood mitigation (for coastal utilities such as CEHE and Entergy), system hardening, and grid security (both physical and cyber-security).

In Oncor, CenterPoint, Entergy, and AEP Texas' respective applications, each utility provided a table that showed what measures it was proposing to implement and at what costs. The tables provided by each utility provide TNMP with a basis for comparing what measures TNMP is similarly proposing in its SRP. From there, TNMP can explain why those same or similar measures it is proposing to implement are more expensive (or less expensive) than other utilities' plans.

The table below provides links to tables in Oncor's, CenterPoint's, Entergy's, and AEP Texas' respective filings, illustrating the measures and corresponding costs that each utility's plan contemplates.

<b>Utility</b>	<b>Page Number of Table</b>	<b>Link to Commission Interchange</b>
TNMP	Application at native p. 11-12	<a href="https://interchange.puc.texas.gov/Documents/56954_2_1423622.PDF">https://interchange.puc.texas.gov/Documents/56954_2_1423622.PDF</a>
Oncor	Application at p. 3	<a href="https://interchange.puc.texas.gov/Documents/56545_3_1390820.PDF">https://interchange.puc.texas.gov/Documents/56545_3_1390820.PDF</a>
CenterPoint	Application at native p. 2	<a href="https://interchange.puc.texas.gov/Documents/56548_2_1388595.PDF">https://interchange.puc.texas.gov/Documents/56548_2_1388595.PDF</a>
Entergy	Application at native p. 5	<a href="https://interchange.puc.texas.gov/Documents/56735_2_1404727.PDF">https://interchange.puc.texas.gov/Documents/56735_2_1404727.PDF</a>
AEP Texas	Application at native pp. 6-7	<a href="https://interchange.puc.texas.gov/Documents/57057_2_1430646.PDF">https://interchange.puc.texas.gov/Documents/57057_2_1430646.PDF</a>

<sup>46</sup> 16 TAC § 25.62(c)(1); and PURA § 38.078(b).

Moreover, it is not uncommon for the Commission to compare one utility to another to see if a utility's request is in line with what other utilities are asking for and what the Commission is approving. For example, if five utilities file a base rate case with the Commission in a given year, and four of those utilities request a return on equity (ROE) in the range of 9.5% to 9.8%, but the fifth utility seeks approval for a ROE of 12%, the Commission would likely have questions as to why this fifth utility warrants such a significantly higher ROE.

In the case of SRP applications, Rule 25.62 and PURA § 38.078 are a relatively novel rule and statute. Therefore, it would seem impractical for TNMP to not at a minimum examine the non-confidential portions of the other utilities' plans – particularly given TNMP's proximity to those other utilities' service areas – to get a better sense of how other utilities were going about implementing their respective resiliency plans.

Therefore, ATM urges the ALJ to overrule TNMP's relevance and outside the scope objection and grant ATM's Motion to Compel.

#### **ATM's Response to TNMP's Speculation Objection to ATM 1-1**

TNMP objects to ATM RFI No. 1-1 on the grounds that the RFI "calls for speculation because TNMP does not have access to information filed confidentially by the aforementioned utilities ... and because TNMP does not have personal knowledge regarding the plans set forth in the System Resiliency Plans of the aforementioned utilities."<sup>47</sup>

TNMP is mischaracterizing ATM RFI No. 1-1 in an attempt to try and frame the question as one seeking more information than what the question is asking for on its face. ATM RFI No. 1-1 asks for TNMP to "provide an explanation for TNMP's significantly higher proposed spending per customer compared to other utilities' proposed spending for similar resiliency program activities."<sup>48</sup> TNMP is more than capable of providing an explanation where appropriate and to equally explain where it is unable to provide an explanation due to information being confidential or lacking personal knowledge. Therefore, ATM is not asking nor expecting TNMP to speculate in its response.

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<sup>47</sup> TNMP Objection to ATM 1-1 at 3.

<sup>48</sup> ATM 1-1.

Crucially, the point of ATM RFI No. 1-1 is for TNMP to explain why *TNMP's* SRP is more expensive when compared to other utilities' plans. This question is an opportunity for TNMP to explain why its plan is, on per-customer basis, more expensive than other utilities' plans.

Moreover, ATM 1-1 provides TNMP with the docket number for each utilities' plan, so TNMP is not without access to each utilities' SRP applications. Therefore, TNMP is able to review each listed SRP application, and to the extent the information is publicly available provide an explanation based on the information that is publicly available to TNMP. Ironically, TNMP speculates in its objection that all the information it would need to respond to ATM 1-1 is confidential. TNMP makes this speculative objection without even attempting to provide the ALJ with any evidence demonstrating that the data necessary to respond to ATM 1-1 is in fact confidential.

Therefore, ATM urges the ALJ to overrule TNMP's speculation-based objection and grant ATM's Motion to Compel.

#### **ATM's Response to TNMP's Vague and Ambiguous Based Objection to ATM 1-1**

TNMP objects to ATM 1-1 on the ground that "it is vague and ambiguous to the extent it requests a comparison 'to other utilities' proposed spending for similar resiliency program activities' because language is capable of varying interpretation and it is unclear to TNMP whether only identical measures or programs must be compared or if measures or programs that address the same or similar objectives must be compared." TNMP's vague and ambiguous objection should be overruled for two reasons.

First, ATM is gladly willing to discuss with the Company exactly what ATM is looking for in response to ATM RFI No. 1-1, and those discussions TNMP could have and should have raised during the parties' good-faith negotiations. This dialogue between ATM and TNMP will ensure that there is no possibility of a varying interpretation by TNMP. Specifically, ATM RFI No. 1-1 asks TNMP to identify areas where its programs may be identical to other utilities and where its programs are the same or similar. Given that no utility does a plan exactly the same, ATM RFI No. 1-1 is most concerned with TNMP's explanation regarding its program's costs versus the costs of other utilities' same or similar programs.

Second, ATM would urge Your Honor to look askance at TNMP's assertion that it was somehow unable to decipher what measures or programs ATM RFI No. 1-1 seeks TNMP to compare for purposes of its explanation. TNMP had seven days to reach out to ATM to seek

clarity on “whether only identical measure or programs must be compared or if measures or programs that address the same or similar objectives must be compared.” ATM acknowledges that even after this clarification, TNMP may nevertheless lodge other objections, but TNMP could have easily consulted with ATM to potentially obviate the need to lodge this specific objection.

Therefore, ATM urges Your Honor to sustain TNMP’s vague and ambiguous objection to ATM 1-1 and grant ATM’s Motion to Compel.

## **V. CONCLUSION AND PRAYER**

For the foregoing reasons ATM urges the ALJ to overrule TNMP’s objections; to grant the ATM’s Motion to Compel; and to direct the TNMP to respond expeditiously to ATM’s RFI No. 1-1 to which the Company objected.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of October, 2024, a true and correct copy of the *Alliance of Texas-New Mexico Power Municipalities Motion to Compel Responses to ATM's First RFI* was served upon all parties of record via electronic mail, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Mariann Wood

Mariann Wood



Docket No. 56954  
ATM Motion to Compel  
Attachment A

Source: <https://ftp.puc.texas.gov/public/puct-info/industry/maps/maps/tdumap.pdf>

