

DOCKET NO. _____

APPLICATION OF SOUTHWESTERN § PUBLIC UTILITY COMMISSION
PUBLIC SERVICE COMPANY TO §
ADJUST ITS ENERGY EFFICIENCY § OF TEXAS
COST RECOVERY FACTOR §

**APPLICATION OF SOUTHWESTERN PUBLIC SERVICE COMPANY
TO ADJUST ITS ENERGY EFFICIENCY COST RECOVERY FACTOR**

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May 1, 2017

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Southwestern Public Service Company (“SPS”) files this Application to Adjust its Energy Efficiency Cost Recovery Factor (“Application”) in accordance with 16 Tex. Admin. Code § 25.181 (“Rule 25.181”). The Energy Efficiency Cost Recovery Factor (“EECRF”) will recover the forecasted costs associated with SPS’s Program Year (“PY”) 2018 energy efficiency programs as adjusted by its PY 2016 net under-recovery balance (including rate case expenses incurred in its 2016 EECRF proceeding) and a proposed performance bonus, effective January 1, 2018. In support thereof, SPS respectfully shows as follows:

I. JURISDICTION

SPS is an electric utility, a public utility, and a utility as those terms are defined in §§ 11.004(1) and 31.002(6) of the Public Utility Regulatory Act (“PURA”).¹ The Public Utility Commission of Texas (“Commission”) has jurisdiction over SPS and the subject matter of this Application under sections 14.001, 32.001, 36.001, 36.204, and 39.905 of PURA and Rule 25.181.

¹ PURA is codified at Tex. Util. Code Ann. §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2016).

II. AUTHORIZED REPRESENTATIVES AND SERVICE OF DOCUMENTS

SPS's authorized representatives for this case are:

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General inquiries concerning this filing should be directed to Mr. Cunningham at the above-stated address and telephone number. SPS requests that all documents (motions, orders, discovery requests, etc.) be served on its authorized representatives.

III. PARTIES AFFECTED

The relief requested in this Application will affect all of SPS's Texas retail customers receiving service at a metered point of delivery at a voltage less than 69 kilovolts ("kV"), except those industrial customers that have opted out of SPS's energy efficiency programs in accordance with Rule 25.181(w). This Application also will affect non-profit customers or governmental entities, including educational institutions that are receiving service at a metered point of delivery at a voltage at or above 69 kV.

IV. BACKGROUND

Rule 25.181(f) authorizes the Commission to approve an EECRF to recover all of a utility's forecasted annual energy efficiency program costs, the preceding year's over- or under-recovery that includes municipal and utility EECRF rate-case expenses, any performance bonus earned, and Evaluation, Measurement, and Verification ("EM&V") costs allocated to the utility

by the Commission. SPS is required to file an application on or before May 1st of each year to adjust its EECRF to become effective on January 1st of the following year.

SPS received Commission approval to implement its first EECRF rider in Docket No. 39364 to recover \$2.9 million in energy efficiency costs.² The EECRF rider was implemented on January 1, 2012. SPS adjusted its EECRF rider in: (1) Docket No. 40293 to recover \$2.930 million in energy efficiency costs associated with SPS's PY 2013;³ (2) Docket No. 41446 to recover \$3.062 million in energy efficiency costs associated with SPS's PY 2014;⁴ (3) Docket No. 42454 to recover \$2.395 million in energy efficiency costs associated with SPS's PY 2015;⁵ (4) Docket No. 44698 to recover \$2.675 million in energy efficiency costs associated with SPS's PY 2016;⁶ and (5) Docket No. 45916 to recover \$4.775 million in energy efficiency costs associated with SPS's PY 2017.⁷

In accordance with Rule 25.181, SPS seeks Commission approval to adjust its EECRF rider to recover \$4,845,133 during PY 2018, which includes:

- SPS's forecasted energy efficiency costs in PY 2018 (including forecasted incentives, R&D, and administrative costs) of \$3,921,430;
- Projected EM&V expenses for PY 2016 and PY 2017 in the amount of \$67,285;
- \$48,147 for SPS's net under-recovery of PY 2016 energy efficiency costs;⁸
- \$33,777 of rate case expenses incurred in Docket No. 45916, which was SPS's 2016 EECRF proceeding; and

² *Application of Southwestern Public Service Company for Approval of Energy Efficiency Cost Recovery Factor*, Docket No. 39364, Final Order (Sept. 2, 2011).

³ *Application of Southwestern Public Service Company for Approval to Adjust Its Energy Efficiency Cost Recovery Factor*, Docket No. 40293, Final Order (June 28, 2012).

⁴ *Application of Southwestern Public Service Company for Approval to Adjust Its Energy Efficiency Cost Recovery Factor*, Docket No. 41446, Final Order (Nov. 4, 2013).

⁵ *Application of Southwestern Public Service Company for Approval to Adjust Its Energy Efficiency Cost Recovery Factor*, Docket No. 42454, Final Order (Nov. 24, 2014).

⁶ *Application of Southwestern Public Service Company for Approval to Adjust Its Energy Efficiency Cost Recovery Factor*, Docket No. 44698, Final Order (Jan. 6, 2016).

⁷ *Application of Southwestern Public Service Company for Approval to Adjust Its Energy Efficiency Cost Recovery Factor*, Docket No. 45916, Final Order (Sep. 23, 2016).

⁸ The net under-recovery is the total of \$891,741 under-recovery of 2016 EECRF program costs and \$843,595 over-recovery of 2014 EECRF Program costs built into 2016 EECRF rates.

- SPS’s performance bonus of \$774,495 earned in accordance with Rule 25.181(h).

The adjusted EECRF rider to recover SPS’s eligible energy efficiency costs during PY 2018 results in the following cost recovery factors:

EECRF Rate Class	\$/kWh
Residential Service	\$0.000979
Small General Service	\$0.000185
Secondary General Service	\$0.000604
Primary General Service	\$0.000210
Small Municipal and School Service	\$0.011930
Large Municipal Service	\$0.000275
Large School Service	\$0.002270

V. SUPPORTING DOCUMENTATION

SPS’s Application is supported by the testimony, attachments, and workpapers of three SPS witnesses: Shawn M. White, J. Derek Shockley, and Richard M. Luth.

Mr. White: (1) provides an overview of SPS’s filing and requested relief; (2) discusses the calculation of SPS’s demand and energy efficiency goals under Rule 25.181; (3) quantifies the demand and energy amounts associated with industrial customers who have opted out of SPS’s PY 2018 energy efficiency programs in accordance with Rule 25.181(w); (4) provides an explanation of the measurement of the cost-effectiveness and reasonableness of the amounts budgeted for SPS’s energy efficiency programs in PY 2018; (5) demonstrates that SPS has complied with the administrative cost caps; (6) explains that SPS’s affiliate costs associated with implementing energy efficiency programs are reasonable and appropriate; (7) discusses SPS’s allocated EM&V costs; and (8) addresses SPS’s rate case expenses incurred in its 2016 EECRF proceeding (Docket No. 45916).

Mr. Shockley: (1) describes the energy efficiency programs that SPS proposes to provide to eligible customers in PY 2018; (2) quantifies the projected costs for those efficiency programs, demonstrates that those costs are reasonable, and that the costs and achievements are consistent with previous years’ costs and achievements; (3) provides the Estimated Useful Life for each measure in each program; (4) discusses the bidding and engagement process that SPS

undertakes for contracting with energy efficiency service providers (“EESPs”), identifies the EESPs with whom SPS does business, including each EESP that was paid five percent or more of the incentive payments made by SPS in PY 2016; and (5) discusses achievements of the energy efficiency programs in PY 2016.

Mr. Luth: (1) discusses SPS’s current EECRF and describes and quantifies the elements of SPS’s proposed EECRF for PY 2018; (2) supports the allocation of costs among rate classes eligible to participate in the energy efficiency programs whose costs are recovered through the EECRF; (3) supports the billing determinants in PY 2018 and the EECRF rate design; (4) discusses SPS’s PY 2016 net under-recovery balance; (5) discusses SPS’s compliance with the customer cost caps imposed by Rule 25.181; and (6) sponsors the proposed EECRF rider setting forth the amounts to be charged to each rate class eligible to participate in SPS’s energy efficiency programs. A copy of SPS’s proposed EECRF rider is attached to this Application as *Exhibit A*.

VI. PROPOSED NOTICE

To comply with the notice requirements in Rule 25.181(f)(13), SPS intends to provide a copy of this Application, within seven days of filing the Application, to all parties who participated in SPS’s most recently completed EECRF proceeding, Docket No. 45916; SPS’s most recently completed base-rate proceeding, Docket No. 45524;⁹ and to the state agency that administers the federal weatherization program, which is the Texas Department of Housing and Community Affairs (“TDHCA”). In accordance with Rule 25.181(f)(14), SPS will file an affidavit attesting to the notice served upon all parties to Docket Nos. 45916 and 45524 and to TDHCA within 14 days of the filing of this application. SPS requests that the Commission find its proposed method and form of notice sufficient.

VII. PROPOSED SCHEDULE

Rule 25.181(f)(9) provides that, upon a utility’s filing of an application to establish or adjust an EECRF, the presiding officer shall set a procedural schedule that will enable the

⁹ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 45524, Final Order (Jan. 26, 2017).

Commission to issue a final order in the proceeding as follows, except where good cause supports a different procedural schedule:

1. Within 90 days after a sufficient application was filed, if no hearing is requested within 30 days of the filing of the application; or
2. Within 180 days after a sufficient application was filed, if a timely request for hearing is made. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after a sufficient application is filed.

Consistent with the above provisions, SPS proposes the following schedule for this proceeding, assuming no hearing is requested:

Event	Deadline
Proof of Notice	May 15, 2017
Intervention Deadline	May 31, 2017
Request for a Hearing	May 31, 2017
If no hearing is requested:	
Staff's Recommendation	June 28, 2017
Stipulation	June 30, 2017
Open Meeting	July 28, 2017

VIII. REQUEST FOR ENTRY OF PROTECTIVE ORDER

In responses to requests for information, SPS may be required to produce highly sensitive or confidential information, the disclosure of which to third parties would either place SPS at a severe competitive disadvantage or cause it to violate contractual confidentiality obligations. Attached to this Application as *Exhibit B* is a proposed protective order that will facilitate access to the confidential or highly sensitive material while protecting the interests of SPS and the third parties to whom SPS owes confidentiality obligations.

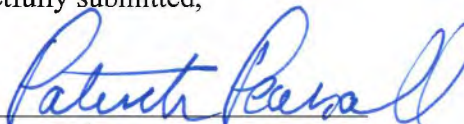
The proposed protective order is substantially the same as the protective order approved by the Commission in Docket No. 45524, SPS's base rate case filed in February 2016. SPS requests that the Commission enter a protective order in the form attached to this Application as *Exhibit B*. SPS further proposes that, pending entry of the protective order, the parties agree to treat the proposed protective order as a confidentiality agreement.

IX. PRAYER

WHEREFORE, premises considered, SPS respectfully requests:

- a. that SPS's Application to Adjust its EECRF be deemed complete, sufficient, and in compliance with Rule 25.181(f);
- b. that SPS's proposed method and form of notice of this filing be approved;
- c. that SPS's proposed protective order be approved;
- d. that SPS's proposed schedule be approved;
- e. that SPS's Application be approved and the adjustment of its EECRF rider become effective on January 1, 2018; and
- f. such other relief to which SPS has shown itself entitled.

Respectfully submitted,



WINSTEAD PC

XCEL ENERGY SERVICES INC.

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ATTORNEYS FOR SOUTHWESTERN PUBLIC SERVICE COMPANY

CERTIFICATE OF SERVICE

I certify that on May 1, 2017, this instrument was filed with the Public Utility Commission of Texas, and a true and correct copy of it was served on the Staff of the Public Utility Commission of Texas, all parties who participated in SPS's most recently completed EECRF proceeding, Docket No. 45916; SPS's most recently completed base-rate proceeding, Docket No. 45524; and to the state agency that administers the federal weatherization program, which is the Texas Department of Housing and Community Affairs by hand delivery, Federal Express, regular first class mail, certified mail, electronic mail, or facsimile transmission.



Patrick Powell



ELECTRIC TARIFF

ENERGY EFFICIENCY COST RECOVERY FACTOR RIDER

APPLICABILITY: To all Texas retail Customers taking service at a metered Point of Delivery less than 69 kV, and to all non-profit Customers and governmental entities, including educational customers, in addition to all other charges under the applicable rate schedule. Not applicable to Industrial Customers that have timely provided appropriate Identification Notice to the Company, as described in 16 Tex. Admin Code § 25.181(w).

RATE: All estimated or metered kWh is charged the rate applicable to the EECRF rate class, as listed below:

<u>Rate Schedule</u>	<u>\$/kWh</u>
Residential Service	\$ 0.000979
Small General Service	\$ 0.000185
Secondary General Service	\$ 0.000604
Primary General Service ¹	\$ 0.000210
Small Municipal and School Service	\$ 0.011930
Large Municipal Service	\$ 0.000275
Large School Service	\$ 0.002270

¹ Primary General Service includes tariff sheets IV-61 and IV-99.
Effective January 1, 2018

**REGIONAL VICE PRESIDENT, RATES AND
REGULATORY AFFAIRS**

PROPOSED PROTECTIVE ORDER

DOCKET NO. _____

**APPLICATION OF SOUTHWESTERN § PUBLIC UTILITY COMMISSION
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PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face “PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____” (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.¹ Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public

¹ Tex. Gov’t Code Ann. §§ 552.001-552.353 (West 2012 & Supp. 2016).

knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.
4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to

unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;² (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. _____” (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party’s designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made in order to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. A record of any copies that are made of Highly Sensitive Protected Material shall be kept and a copy of the record shall be sent to the producing party at the time the copy or copies are made. The record shall include information on the location and the person in possession of each copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a

² Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–58.303 (West 2016), §§ 59.001–66.017 (West 2007 & Supp. 2016).

description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.**

With the exception of Commission Staff, the Office of Public Utility Counsel (“OPUC”), and the Office of the Attorney General (“OAG”) when the OAG is representing a party to the proceeding, and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are: (1) outside counsel for the Reviewing Party; (2) outside consultants for the Reviewing Party working under the direction of Reviewing Party’s counsel; or (3) employees of the Reviewing Party or its members working with and under the direction of Reviewing Party’s counsel who have been authorized by the producing party or by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review each Highly Sensitive Protected document to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives (other than outside counsel) whenever possible. Reviewing Representatives for Commission Staff, OPUC, and OAG, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.**

A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party’s representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to

Commission Staff, OPUC, and the OAG when the OAG is representing a party to the proceeding.

10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPUC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPUC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflicts with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.
11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPUC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPUC, and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPUC, and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPUC and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.
12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPUC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPUC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.

13. **Restriction on Copying by Commission Staff, OPUC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPUC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPUC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.
14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPUC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and, unless I am an employee of the Commission or OPUC, shall be used only for the purpose of the proceeding in Docket No. _____. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of

such material, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

A copy of each signed certification shall be provided by the Reviewing Party to Counsel for the producing party and served upon all parties of record.

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraphs 9 and 11, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.
18. **Procedures Regarding Voluminous Protected Materials.** 16 Tex. Admin. Code § 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.
19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party

seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPUC.
22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials.** Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.
23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to

the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.

24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order Holding Materials are not Protected Materials.** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.
25. **Notice of Intent to Use Protected Materials or Change Materials Designation.** Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. _____ at the Commission, in the event that a

Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.** In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.
27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that

such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28. **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.
29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.** Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.

30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, “conclusion of these proceedings” refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the “conclusion of these proceedings” is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this paragraph. Nothing in this paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,³ the Texas Securities Act⁴ and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
33. **Procedures for Release of Information under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such

³ Tex. Gov’t Code Ann. §§ 551.001-551.146 (West 2012 & Supp. 2016).

⁴ Tex. Rev. Civ. Stat. Ann. Arts. 581-1 to 581-43 (West 2010 & Supp. 2016).

disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

35. **Notify Defined.** “Notify” for purposes of Paragraphs 32, 33, and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission, OAG, or OPUC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure.** If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party shall tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to 16 Tex. Admin. Code § 22.161.
38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

ATTACHMENT A TO PROTECTIVE ORDER

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and, unless I am an employee of the Commission or OPUC, shall be used only for the purpose of the proceeding in Docket No. _____. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date

ATTACHMENT B TO PROTECTIVE ORDER

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Protected Materials and/or Highly Sensitive Protected Materials

Signature

Party Represented

Printed Name

Date