

**P.U.C. DOCKET NO. \_\_\_\_\_**

**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

**APPLICATION OF  
TEXAS-NEW MEXICO POWER COMPANY  
FOR AUTHORITY TO CHANGE RATES**

**PREPARED DIRECT TESTIMONY AND EXHIBITS  
OF  
MICHAEL S. SEAMSTER**

**ON BEHALF OF  
TEXAS-NEW MEXICO POWER COMPANY**

**MAY 30, 2018**

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**EXHIBIT****EXHIBIT MSS-1****Legal Experience and Testimony**

**I. INTRODUCTION AND PURPOSE****Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.**

A. My name is Michael Scott Seamster. I am an attorney employed by PNMR Services Company ("PNMR Services") and I provide services as an Associate General Counsel to Texas-New Mexico Power Company ("TNMP" or "Company") and its affiliates. My office address is 577 N. Garden Ridge Blvd., Lewisville, Texas 75067.

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.**

A. Exhibit MSS-1 describes my background and experience, including proceedings for which I have provided testimony.

**Q. HAVE YOU PREPARED ANY EXHIBITS?**

A. Yes. I am sponsoring Tables 1-6 contained herein and Exhibit No. MSS-1, which is attached to my testimony and incorporated by reference. The exhibit was prepared by me, or under my supervision. As set forth below, TNMP will make a supplemental filing to support the actual rate case expenses incurred in this proceeding. The remaining legal costs addressed by my testimony are voluminous and are included in electronic format labeled WP/Legal Expenses (Voluminous) in compliance with RFP General Instruction No. 15. I also co-sponsor Exhibit 2-L of the AMS Reconciliation Report attached to the testimony of Stacy R. Whitehurst.

**Q. DESCRIBE THE SCOPE OF YOUR WORK FOR TNMP.**

A. I serve as the primary in-house attorney for TNMP. I manage the litigation, administrative proceedings, and routine contractual matters encountered or required by TNMP to protect or advocate TNMP's interests. Like other members of the PNMR Services Company Law Department, I also provide legal services in support of other affiliates of TNMP.

**Q. ARE YOU FAMILIAR WITH THE PROCEDURES AND PRACTICES CONCERNING THE ENGAGEMENT OF OUTSIDE COUNSEL FOR TNMP?**

1 A. Yes. In the usual course of business, TNMP encounters legal issues for which  
2 outside counsel are retained to provide services. Outside counsel are retained  
3 to supplement in-house legal services when internal resources are unable,  
4 either due to lack of expertise or available time, to perform such services.  
5 Further, the internal Law Department is not staffed to litigate every case.  
6 Consequently, outside counsel are often retained to prosecute or respond to  
7 litigated cases and other contested matters.

8 **Q. ARE YOU FAMILIAR WITH THE RATES CHARGED FOR LEGAL SERVICES**  
9 **BY OUTSIDE COUNSEL?**

10 A. Yes. As indicated in Exhibit MSS-1, I served in private practice for  
11 approximately 12 years providing legal services to commercial businesses and  
12 utilities on contractual, administrative, and litigation matters. Since joining the  
13 company in 2005, I have advised TNMP and managed outside counsel for the  
14 same types of matters. I am familiar with the tasks required for such  
15 engagements and the rates charged for such services.

16 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

17 A. I support the reasonableness and recovery of the rate case expenses incurred  
18 by the Company in this and other applicable previous cases as well as the  
19 recovery of legal proceeding and non-proceeding expenses associated with  
20 TNMP's Advanced Meter System since its last reconciliation proceeding.

21 **II. LEGAL EXPENSES**

22 **Q. ARE THERE SPECIFIC LEGAL EXPENSES THAT TNMP IS PRESENTING**  
23 **FOR REVIEW IN THIS CASE?**

24 A. Yes, as discussed above, TNMP is presenting the rate case proceeding  
25 expenses incurred, and to be incurred, in this proceeding as well as rate case  
26 proceeding expenses arising from TNMP's Docket No. 35038,<sup>1</sup> and certain  
27 costs from TNMP's Compliance Tariff Related to Non-Standard Metering

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<sup>1</sup> *Texas-New Mexico Power Company's Tariff Filing in Compliance With the Final Order in Docket No. 33106, Docket No. 35038, Oct. 22, 2008.*

1 Service Pursuant PUC Subst. R. 25.133 in Docket No. 41901.<sup>2</sup> Additionally, I  
2 address legal costs related to TNMP's advanced meter system (AMS). These  
3 are comprised of non-rate case proceeding expenses from TNMP's initial AMS  
4 Reconciliation in Docket No. 45213<sup>3</sup> and the Smart Meter Texas web portal  
5 business requirements case in Docket No. 47472,<sup>4</sup> as well as non-proceeding  
6 legal costs of TNMP's AMS system. Further, I anticipate filing supplemental  
7 testimony regarding any additional expenses incurred in this proceeding either  
8 in this docket or any new docket to which the expenses presented herein are  
9 severed in whole or in part.

10 **A. RATE CASE PROCEEDING EXPENSES**

11 **Q. WHAT CRITERIA GOVERNS THE REVIEW OF SUCH EXPENSES?**

12 A. Under Tex. Util. Code Ann. § 36.061(b)(2) (West 2016 and Supplement 2017),  
13 reasonableness is the standard for recovery of rate case proceeding expenses.  
14 In reviewing the rate case proceeding expenses detailed below, applying my  
15 experience and judgment, I have considered factors used to evaluate the  
16 reasonableness of legal expenses in matters before this Commission and in civil  
17 litigation generally, including the factors delineated by the Third Court of Appeals  
18 in *City of El Paso v. Public Utility Comm'n of Texas*, 916 S.W.2d 515 (Tex. App.-  
19 Austin 1995, writ dismissed by agreement):

20 (1) time and labor required;

21 (2) nature and complexity of the case;

22 (3) amount of money or value of property or interest at stake;

23 (4) extent of responsibilities the attorney assumes;

24 (5) whether the attorney loses other employment because of the undertaking;  
25 and

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<sup>2</sup> *Compliance Tariff of Texas-New Mexico Power Company Related to Non-Standard Metering Service Pursuant to P.U.C. Subst. R. 25.133*, Docket No. 41901, Jun. 20, 2014.

<sup>3</sup> *Application of Texas-New Mexico Power Company to Reconcile Advanced Metering System Costs*, Docket No. 45213, Mar. 25, 2016.

<sup>4</sup> *Commission Staff's Petition to Determine Requirements for Smart Meter Texas*, Docket No. 47472.

(6) benefits to the client from the services.

**Q. HAS THE COMMISSION PROVIDED ANY GUIDANCE FOR THE APPROVAL OF RATE CASE PROCEEDING EXPENSES?**

A. The Commission has addressed the reasonableness of rate case expenses on many prior occasions. Additionally, 16 Tex. Admin. Code § 25.245 (TAC) was adopted by the Commission in August of 2014. The entirety of the expenses presented for Docket Nos. 35038<sup>5</sup> and 41901 were incurred prior to approval of § 25.245. The Rule sets out a variety of factors for determining the reasonableness of rate case expenses.

**Q. DOES YOUR TESTIMONY ADDRESS ANY RELEVANT FACTORS LISTED IN 16 TAC § 25.245?**

A. Yes. As a part of my reasonableness assessment, I have considered the factors set out in the new rule in my separate discussions of the expenses incurred in each docket. However, because the applicability of 16 TAC § 25.245 to expenses incurred prior to its adoption is not settled, my testimony addresses the relevant factors without agreeing that 16 TAC § 25.245 necessarily applies to the particular expenses incurred in either Docket Nos. 35038 and 41901.

**Q. WHAT ARE THE ELEMENTS LISTED IN 16 TAC § 25.245?**

A. Per 16 TAC § 25.245(b), the evidence supporting reasonableness and recovery is to address these factors:

(1) the nature, extent, and difficulty of the work performed;

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

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

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

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<sup>5</sup> *Texas-New Mexico Power Company Tariff Filing In Compliance With The Final Order in Docket 33106, Docket No. 35038, Oct. 22, 2008.*

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

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

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

4 (c) the novelty or complexity of the issues addressed;

5 (d) the amount and complexity of discovery;

6 (e) the occurrence and length of a hearing; and

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

9 The weight and relevance of the foregoing factors will vary from case-to-case.  
10 The Commission provided additional considerations to apply in 16 TAC  
11 § 25.245(c). Thus, if the evidence required by subsection (b) is presented,  
12 determining reasonableness also requires consideration of whether:

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

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

18 (3) there was duplication of services or testimony;

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

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

1 There is not yet clear guidance on how these factors are to be applied in  
2 practice.

3 **(1) CURRENT RATE CASE PROCEEDING EXPENSES**

4 **Q. HAVE ANY ACTUAL OR ESTIMATED LEGAL COSTS FOR LITIGATING THIS**  
5 **RATE CASE FILING BEEN PRESENTED?**

6 A. Yes. In his testimony, Stacy R. Whitehurst presents a list of all incurred and  
7 estimated rate case expenses in Exhibit SRW-15. That exhibit reflects that  
8 TNMP estimates it will incur approximately \$975,000 in outside legal expenses  
9 for litigating this proceeding. Exhibit SWR-15 also denotes that \$100,895.73 in  
10 outside legal expenses preparing for this proceeding were incurred by TNMP as  
11 of March 31, 2018.

12 **Q. PLEASE DESCRIBE THE INCURRED EXPENSES FOR OUTSIDE LEGAL**  
13 **COUNSEL AND STATE WHETHER THEY ARE REASONABLE.**

14 A. TNMP has employed outside legal counsel from Jackson Walker LLP ("Jackson  
15 Walker"), as Jackson Walker has worked with TNMP for several years and has  
16 extensive experience in Texas regulatory matters. Fees have been negotiated  
17 with Jackson Walker based upon a retainer agreement and provides for  
18 payment of the customary fees for experienced regulatory attorneys. Being an  
19 attorney, duly licensed in the State of Texas, I have become familiar with rates  
20 typically charged by attorneys for administrative proceedings like this rate case  
21 proceeding before the Public Utility Commission of Texas. I have reviewed the  
22 invoices of Jackson Walker submitted to TNMP for legal services performed and  
23 expenses incurred as part of the preparation of this rate case through March 31,  
24 2018. None of the charges submitted by Jackson Walker have been recovered  
25 through reimbursement for other expenses or in other proceedings. The  
26 combined invoices support \$100,895.73 in legal fees and expenses for 179.6  
27 hours of work. Considering the complexity of the rate case and the expertise  
28 needed, as well as the volume of testimony and schedules to prepare, revise  
29 and review, the fees and expenses presented in the above listed invoices are  
30 reasonable and necessary.



1 Specifically, the fees and expenses incurred were necessary to advise and assist  
2 TNMP in connection with preparation of the application, identifying and  
3 researching issues, working with consultants, developing strategy, preparing  
4 pleadings, consulting with company personnel, reviewing the supporting  
5 testimony, and performing various other tasks. The attorneys' hourly rates upon  
6 which the billings are based are similar to the hourly rates charged for  
7 comparable services during the same time frame, and are reasonable and  
8 consistent with prevailing standards. The hours spent to perform the tasks  
9 assigned to Jackson Walker were reasonable and necessary to complete those  
10 tasks in a professional manner on a timely basis.

11 **Q. PLEASE DESCRIBE THE ESTIMATED EXPENSES FOR OUTSIDE LEGAL**  
12 **COUNSEL.**

13 A. Based on past experience, TNMP anticipates that some intervenors may highly  
14 contest portions of the filing. As explained in the Testimony of TNMP witness  
15 Leonard D. Sanchez, processes and mechanisms to effectively control the  
16 expenses have been implemented, including the assignment of qualified in-  
17 house counsel to oversee and participate in proceedings, and qualified outside  
18 counsel with substantial experience with regulatory law in general, to assist in  
19 this proceeding. Therefore, in order to manage the responsibilities inherent in a  
20 contested rate case, TNMP expects to rely upon outside counsel to assist the  
21 Law Department's in-house counsel with this proceeding.

22 The estimated fees are based upon on the staffing of this TNMP Rate Case  
23 proceeding with appropriately qualified attorneys of varied levels of experience  
24 (i.e., both partners and associates). While the estimate is based on the total  
25 anticipated costs for such services, the actual amount incurred may vary.  
26 However, TNMP seeks to recover only actual expenses incurred. Therefore,  
27 prior to any hearing in this matter, TNMP will file an updated exhibit, and  
28 supporting testimony, regarding the actual incurred legal fees related to this  
29 proceeding. Such an update will necessarily opine to the reasonableness of the

1 actual rates, expenses, and charges submitted for consideration and address the  
2 relevant factors of 16 TAC § 25.245.

3 **(2) DOCKET NO. 35038 PROCEEDING EXPENSES**

4 **Q. CAN TNMP SEEK RECOVERY NOW FOR LEGAL EXPENSES ASSOCIATED**  
5 **WITH ITS REQUEST FOR APPROVAL OF AN AMS DEPLOYMENT PLAN**  
6 **AND SURCHARGE IN DOCKET NO. 35038?**

7 A. Yes. The costs incurred for Docket No. 35038 relate to the update and appeal  
8 of the interest rate set on TNMP Competition Transition Charge ("CTC") balance  
9 in Docket No. 31994. The Final Order in that docket provides that "[t]he  
10 recovery of any rate-case expenses incurred after May 22, 2006, or not  
11 otherwise filed in this consolidated proceeding by that date, will be requested by  
12 TNMP in a subsequent proceeding and if found to be reasonable should also be  
13 accounted for as a regulatory asset."<sup>6</sup>

14 **Q. WHAT EXPENSES RELATED TO DOCKET NO. 35038 DID TNMP INCUR?**

15 A. TNMP incurred \$230,173.55 in proceeding expenses covering appeals in connection an  
16 interest rate change to the TNMP CTC. These expenses were not presented at that  
17 time and therefore deferred, per the Final Order, for consideration in a subsequent  
18 reconciliation proceeding. The invoices and receipts supporting these TNMP legal  
19 expenses are included in WP/Legal Expenses (Voluminous).

20 **Q. ARE YOU FAMILIAR WITH THE NATURE OF THE PROCEEDINGS IN**  
21 **DOCKET NO. 35038?**

22 A. Yes. I am familiar with the proceeding and have reviewed the filings in the case.  
23 The case turned on the application of interest rate change to the TNMP CTC  
24 balance initially approved in Docket No. 31994<sup>7</sup> and then updated in Docket

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<sup>6</sup> *Application of Texas-New Mexico Power Company to Adjust the Competition Transition Charge Pursuant to PURA § 39.262*, Docket No. 31994, Final Order, Nov. 2, 2006.

<sup>7</sup> *Texas-New Mexico Power Company's Application to Establish a Competition Transition Charge Pursuant to P.U.C. Subst. R. 25.263(n)*, Docket No. 31994, *rev'd sub nom. Texas-New Mexico Power Co. v. Pub. Util. Com'n of Texas* (Tex. Dist. July 26, 2010), *rev'd sub nom. Office of Pub. Util. Counsel v. Texas New Mexico Power Co.*, 344 S.W.3d 446 (Tex. App.-Austin 2011, pet. denied) and *aff'd sub nom. Office of Pub. Util. Counsel v. Texas-New Mexico Power Co.*, 344 S.W.3d 446 (Tex. App.-Austin 2011, pet. denied).

1 No. 33106.<sup>8</sup> Specifically, the primary dispute was whether the interpretation of  
2 the Settlement in Docket No. 33106 imposed a retroactive application of a  
3 change in the governing interest rate rule. The amount in controversy exceeded  
4 one million dollars. The expenses presented represent TNMP's defense of its  
5 successful appeal to the District Court before the 3<sup>rd</sup> Court of Appeals and its  
6 request for petition for review to the Texas Supreme Court.

7 **Q. WHAT WERE THE ISSUES ADDRESSED IN THE COSTS FOR DOCKET**  
8 **NO. 35038?**

9 A. The dispute over the timing of the interest rate change involved arguments on  
10 statutory construction, interpretation of prior settlements, scope of Commission  
11 authority, and retroactive ratemaking. The charges reflect a variety of needed  
12 activities/issues and are apportioned later in my testimony among the following  
13 categories: Cities' Amicus Status, Appellate Brief, Oral Argument, Petition for  
14 Review, Petition Reply, Brief on the Merits, Reply Brief, Retroactive  
15 Ratemaking, Rehearing, Settlement and Case Expenses.

16 **Q. WAS THE CASE COMPLEX OR UNIQUE IN DOCKET NO. 35038?**

17 A. The application of the interest rate was unique in that the terms of the Docket  
18 No. 33106 settlement, specific to TNMP's circumstances, and the legal issues  
19 were moderately complex.

20 **Q. DID THE SIZE OF TNMP'S SERVICE TERRITORY OR THE NUMBER OF**  
21 **RETAIL CONSUMERS SERVED, IMPACT THE AMOUNT OF RATE CASE**  
22 **EXPENSES INCURRED?**

23 A. No. While there may be cases where the utility's size might affect incurred  
24 expenses, I did not find any such correlation impacted the amount of case  
25 expenses incurred by TNMP in the appeals of Docket No. 35038. TNMP's  
26 investment in the case was not affected by the size of its territory but by the  
27 issues presented.

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<sup>8</sup> *Application of Texas-New Mexico Power Company to Adjust Carrying Charges Pursuant to PUC Subst. R. § 25.263, Docket No. 33106, aff'd sub nom. Cities of Dickinson, et al. v. Pub. Util. Com'n of Texas*, 284 S.W.3d 449 (Tex. App.-Austin 2009, no pet.)

1 **Q. HOW DID THE COMPANY STAFF DOCKET NO. 35038 IN REGARD TO**  
2 **LEGAL SERVICES?**

3 A. TNMP relied upon outside legal counsel from Jackson Walker as regulatory  
4 counsel to assist in-house counsel's advocacy and appeal of the Commission's  
5 Order in Docket No. 35038. Jackson Walker has worked with TNMP since 2007  
6 and has extensive experience in Texas regulatory matters. Patrick Cowlshaw  
7 and Stephanie Sparks were the principal attorneys providing services in the  
8 case. Mr. Cowlshaw and Ms. Sparks have ably represented TNMP in  
9 Commission proceedings in the past, including in previous energy efficiency  
10 proceedings, base rate proceedings, the advanced metering proceeding, and  
11 other matters. Additionally, lawyers who concentrate on appellate matters and  
12 associates provided assistance during the proceedings, with paralegal support.

13 **Q. PLEASE DESCRIBE THE INCURRED EXPENSES FOR OUTSIDE LEGAL**  
14 **COUNSEL AND ANY INTERNAL EXPENSES.**

15 A. Fees were negotiated with Jackson Walker and included in a retainer  
16 agreement. As an attorney familiar with Texas fees and through the course of  
17 my duties, I am familiar with rates typically charged by attorneys for appeals  
18 such as occurred in this Docket No. 35038. I have reviewed the following  
19 invoices for Jackson Walker's legal services performed and expenses incurred  
20 as part of that proceeding: Invoice Nos. 1193768, 1193794, 1197059, 1197060,  
21 1201041, 1201042, 1205887, 1210530, 1216006, 1216015, 1220523, 1220556,  
22 1224837, 1230965, 1236747, 1240891, 1240892, 1244221, 1248430, 1248405,  
23 1252415, 1252428, 1257016, 1261588, 1261591, 1270840, 1270861, 1274189,  
24 and 1275508. I have also reviewed \$772.54 in internal travel expenses  
25 associated with the proceeding. None of the charges submitted in those  
26 invoices or receipts have been recovered through reimbursement for other  
27 expenses or in other proceedings. These combined legal invoices and internal  
28 case expenses support \$230,173.55 in legal fees and expenses.

1 **Q. ARE THE RATES CHARGED BY JACKSON WALKER FOR LEGAL**  
2 **SERVICES WITHIN THE RANGE OF REASONABLE RATES CHARGED FOR**  
3 **SIMILAR SERVICES?**

4 A. Yes. The invoices reflect hourly rates incurred over two years and subject to  
5 different retainer agreements reflecting charged Jackson Walker hourly rates for  
6 attorneys was either \$310, \$375, \$385, or \$495, depending upon the year  
7 incurred and whether the attorney was a partner or associate. Hourly rates for  
8 legal support services were either \$160 or \$180 depending upon the year  
9 incurred. The effective rate for all Jackson Walker hourly services was \$377.30.  
10 Based on my experience, the hourly rates contained in the Jackson Walker  
11 billings are consistent with the hourly rates charged for comparable services by  
12 experienced regulatory attorneys during the same time frame, and are  
13 reasonable and consistent with prevailing standards. The hours spent to  
14 perform the tasks assigned to TNMP's outside counsel were reasonable and  
15 necessary to appropriately complete those tasks in a professional manner.

16 **Q. WHAT DID YOUR REVIEW REVEAL ABOUT THE GENERAL CHARACTER**  
17 **OF THE BILLINGS AND EXPENSES CONTAINED IN THE JACKSON**  
18 **WALKER INVOICES?**

19 A. The billings were sufficiently detailed to permit me to evaluate the sufficiency of  
20 the charges. Further, Jackson Walker did not include any charges which result  
21 from a single person billing in excess of 12 hours in one day. No charges for  
22 alcohol, first class or charter airfare, expenses associated with sporting events,  
23 or extravagant meal expenses were included in the Jackson Walker charges.

24 **Q. PLEASE DESCRIBE THE NATURE OF THE WORK PERFORMED BY**  
25 **JACKSON WALKER IN THE UNPRESENTED EXPENSES RELATED TO**  
26 **DOCKET NO. 35038.**

27 A. Specifically, the fees and expenses incurred were necessary to advise and  
28 assist TNMP in identifying issues, developing strategy, related research,  
29 consulting with and reporting to company personnel, drafting and responding to  
30 appellate briefs and motions at the 3<sup>rd</sup> Court of Appeals and the Texas Supreme

1 Court, and participation in conferences with intervenors and the Attorney  
2 General. The specific tasks performed and expenses incurred are contained in  
3 the invoices referenced above.

4 **Q. CAN YOU FURTHER DESCRIBE THE EFFORTS ASSOCIATED WITH THE**  
5 **IDENTIFIED ISSUES?**

6 A. Yes. "Appellate Brief" refers to research, analysis, discussion, review of the  
7 Appellant's Brief, drafting and filing Appellee's Brief with the 3rd Court of  
8 Appeals. "Oral Argument" includes the time preparing, traveling, and attending  
9 the oral argument before the 3rd Court of Appeals. Further, "Petition for  
10 Review" captures the work involved in reviewing the 3rd Court of Appeal's  
11 opinion, research, drafting, preparing, and filing a petition for review with the  
12 Texas Supreme Court. The "Petition Reply" category denotes the work  
13 associated with reviewing the responses to TNMP's petition and crafting and  
14 filing TNMP's reply. "Brief on the Merits" and the "Reply Brief" topics include the  
15 time invested in drafting, revising, and filing TNMP's initial brief and its reply  
16 brief at the Texas Supreme Court. The "Retroactive Ratemaking" category  
17 includes the time specifically denoted for review, research and analysis of  
18 whether the Commission's action constituted retroactive ratemaking in  
19 implementing the surcharge. The "Rehearing" category addresses the specific  
20 work on seeking rehearing at the Texas Supreme Court. Finally, the  
21 "Settlement" category encompasses client communication and party  
22 communications related to settlement. "Cities' Amicus Status" reflects research,  
23 analysis, consultation and response regarding the scope and availability of  
24 amicus for a prior party to an appeal that did not perfect a separate appeal.  
25 Lastly, "Case Expenses" reflects costs such as copying, delivery, and travel  
26 expenses incurred in support of the case.

27 **Q. WHAT AMOUNT OF THE RATE CASE EXPENSES ARE REASONABLY**  
28 **APPORTIONED TO THE CATEGORIES YOU IDENTIFIED ABOVE?**

29 A. The following Table 1 allocates the expenses among the identified activities:  
30

1      **TABLE 1.**

<b>ISSUE</b>	<b>HOURS</b>	<b>AMOUNT</b>
Cities' Amicus Status	8.1	\$3,028.50
Appellate Brief	72.3	\$27,835.50
Retroactive Ratemaking	25.6	\$9,772.00
Oral Argument	58.8	\$22,638.00
Petition for Review	216	\$66,937.50
Petition Reply	58	\$21,750.00
Brief on the Merits	69.1	\$22,440.00
Reply Brief	69.8	\$29,596.00
Rehearing	57	\$19,942.00
Settlement	3.4	\$1,309.00
Case Expenses	N/A	\$4,924.55
<b>TOTAL</b>		<b>\$230,173.55</b>

2      **Q.      WAS THE AMOUNT OF DISCOVERY RELATED TO DOCKET NO. 35038**  
3      **EXCESSIVE OR COMPLEX?**

4      A.      No. Given the nature of the appellate proceedings, no discovery was applicable  
5      to the case at either stage.

6      **Q.      DID YOUR REVIEW OF THE JACKSON WALKER INVOICES REVEAL ANY**  
7      **CIRCUMSTANCE WHERE EITHER THE FEES PAID, TASKS PERFORMED,**  
8      **OR TIME SPENT ON A TASK WERE EXTREME OR EXCESSIVE?**

9      A.      No.

10     **Q.      IS THE TOTAL AMOUNT OF PROCEEDING EXPENSES FOR DOCKET**  
11     **NO. 35038 REQUESTED IN THIS DOCKET EXCESSIVE FOR A REQUEST**  
12     **FOR APPROVAL OF AN AMS DEPLOYMENT PLAN AND SURCHARGE?**

13     A.      No.

14     **Q.      ARE THE OUTSIDE LEGAL FEES AND EXPENSES CHARGED TO TNMP**  
15     **REASONABLE AND NECESSARY?**

16     A.      Yes. The attorneys' hourly rates upon which the billings are based are  
17     consistent with the hourly rates charged for comparable services during the  
18     same time frame, and are reasonable and consistent with prevailing standards.  
19     The hours spent to perform the tasks assigned to TNMP's outside counsel were

1 reasonable and necessary to complete those tasks in a professional manner on  
2 a timely basis.

3 **(3) DOCKET NO. 41901 PROCEEDING EXPENSES**

4 **Q. CAN TNMP SEEK RECOVERY NOW FOR LEGAL EXPENSES ASSOCIATED**  
5 **WITH ITS COMPLIANCE TARIFF RELATED TO NON-STANDARD METERING**  
6 **SERVICE IN DOCKET NO. 41901?**

7 A. Yes. The Final Order in that docket provides that “[t]he Stipulation provides for  
8 TNMP to apply deferred accounting to any rate case expenses incurred after  
9 March 31, 2014, in connection with this proceeding, and recognizes that TNMP  
10 may request recovery of those expenses through non-standard metering  
11 charges in any future proceeding pursuant to P.U.C. SUBST. R. 25.133(e)(2), or  
12 in a future base rate proceeding, provided that non-standard metering charges  
13 are subject to review in a base rate proceeding.”<sup>9</sup>

14 **Q. DID TNMP INCUR ANY UNPRESENTED EXPENSES FOR DOCKET**  
15 **NO. 41901?**

16 A. Yes. In support of the Settlement Agreement in Docket No. 41901, TNMP  
17 included in the revenue requirement model and presented to the Commission  
18 TNMP rate case expenses of \$106,058, which were approved in the June 20,  
19 2014 Final Order approving the parties’ Stipulation.<sup>10</sup> TNMP subsequently  
20 received invoices for \$22,808.81 in legal expenses, covering services that had  
21 been provided in connection with the settlement and entry of a final order after  
22 March 31, 2014. These expenses were not presented at that time and therefore  
23 deferred, per the Final Order, for consideration in a subsequent base rate  
24 proceeding. The invoices supporting these TNMP legal expenses included in  
25 WP/Legal Expenses (Voluminous).

26 **Q. ARE YOU FAMILIAR WITH THE NATURE OF THE PROCEEDINGS IN**  
27 **DOCKET NO. 41901?**

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<sup>9</sup> *Compliance Tariff of Texas-New Mexico Power Company Related to Non-Standard Metering Service Pursuant to P.U.C. Subt. R. 25.133, Docket 41901; Final Order, pg. 6, Item 122 (Jun. 20, 2014).*

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



1 A. Yes. I am familiar with the proceeding and have reviewed the filings in the case.  
2 I am familiar with the issues and effort associated with resolution of that  
3 proceeding. The presented expenses are associated with the settled tariff for  
4 those customers desiring to "opt-out" of receiving an advanced meter by  
5 selecting non-standard metering service.

6 **Q. WHAT WERE THE ISSUES ADDRESSED IN THE EXPENSES FOR DOCKET**  
7 **NO. 41901 THAT TNMP IS PRESENTING IN THIS DOCKET?**

8 A. The final charges can be grouped under a single heading: Settlement  
9 Completion and Approval. That activity encompassed several substantive  
10 issues and a number of activities.

11 **Q. WAS SETTLEMENT COMPLETION AND APPROVAL COMPLEX OR UNIQUE**  
12 **IN DOCKET NO. 41901?**

13 A. Since various individual intervenors actively participated *pro se*, their relative  
14 lack of knowledge and experience posed some challenges and increased the  
15 effort necessary to otherwise complete the settlement's approval.

16 **Q. DID THE SIZE OF TNMP'S SERVICE TERRITORY OR THE NUMBER OF**  
17 **RETAIL CONSUMERS SERVED, IMPACT THE AMOUNT OF RATE CASE**  
18 **EXPENSES INCURRED?**

19 A. No. While there may be cases where the utility's size might affect incurred  
20 expenses, I did not find any such correlation impacted the amount of case  
21 expenses incurred by TNMP in Docket No. 41901. TNMP was required to  
22 address the full range of issues presented to establish the initial and monthly  
23 charges for non-standard metering service. The \$22,808.81 incurred reflects  
24 the fact that, irrespective of the utility's size, there is a fundamental amount of  
25 effort and expense that will be necessary to reasonably complete any case  
26 following agreement on a stipulation. As detailed further in my testimony, the  
27 expenses incurred by TNMP represent reasonable expenses appropriately  
28 incurred in concluding the settlement in Docket No. 41901.

29 **Q. HOW DID THE COMPANY STAFF DOCKET NO. 41901 IN REGARD TO**  
30 **LEGAL SERVICES?**

1 A. TNMP relied upon outside legal counsel from Jackson Walker as regulatory  
2 counsel to prosecute the non-standard metering compliance tariff in Docket  
3 No. 41901. As mentioned previously, Jackson Walker has worked with TNMP  
4 since 2007 and has extensive experience in Texas regulatory matters. Patrick  
5 Cowlshaw was the sole attorney providing services for these final charges. Mr.  
6 Cowlshaw has ably represented TNMP in Commission proceedings in the past,  
7 including in previous energy efficiency proceedings, base rate proceedings, the  
8 advanced metering proceeding, and other matters.

9 **Q. PLEASE DESCRIBE THE INCURRED EXPENSES FOR OUTSIDE LEGAL**  
10 **COUNSEL.**

11 A. Fees were negotiated with Jackson Walker and included in an applicable  
12 retainer agreement. Through my position in the Law Department, I am familiar  
13 with rates typically charged by attorneys for contested administrative  
14 proceedings like Docket No. 41901. I have reviewed the following invoices for  
15 legal services performed and expenses incurred as part of that proceeding:  
16 Invoice Nos. 1372273, 1372669, 1377400, 1377413, and 1381916. None of the  
17 charges submitted in those invoices have been recovered through  
18 reimbursement for other expenses or in other proceedings. No duplicate entries  
19 were included. These combined invoices support \$22,808.81 in legal fees and  
20 expenses.

21 **Q. ARE THE RATES CHARGED BY JACKSON WALKER FOR LEGAL**  
22 **SERVICES WITHIN THE RANGE OF REASONABLE RATES CHARGED FOR**  
23 **SIMILAR SERVICES?**

24 A. Yes. The invoices reflect hourly rates charged of \$520 for attorneys. Based on  
25 my experience, the hourly rates contained in the Jackson Walker billings are  
26 consistent with the hourly rates charged for comparable services by experienced  
27 regulatory attorneys during the same time frame, and are reasonable and  
28 consistent with prevailing standards. The hours spent to perform the tasks  
29 assigned to TNMP's outside counsel were reasonable and necessary to  
30 appropriately complete those tasks in a professional manner.

1 **Q. WHAT DID YOUR REVIEW REVEAL ABOUT THE GENERAL CHARACTER**  
2 **OF THE BILLINGS AND EXPENSES CONTAINED IN THE JACKSON**  
3 **WALKER INVOICES?**

4 A. The billings were sufficiently detailed to permit me to evaluate the sufficiency of  
5 the charges. Further, Jackson Walker did not include any charges which result  
6 from a single person billing in excess of 12 hours in one day. No charges for  
7 alcohol, first class or charter airfare, expenses associated with sporting events,  
8 or meal expenses were included in the Jackson Walker charges.

9 **Q. PLEASE DESCRIBE THE NATURE OF THE WORK PERFORMED BY**  
10 **JACKSON WALKER IN THE UNPRESENTED EXPENSES FOR DOCKET**  
11 **NO. 41901;**

12 A. Specifically, the fees and expenses incurred were necessary to advise and  
13 assist TNMP in finalizing the settlement Stipulation, preparing submittals and  
14 evidence in support of the Stipulation, preparing a detailed proposed Final Order  
15 and negotiating its terms with intervenors and Commission Staff, identifying  
16 issues, developing strategy, consulting with company personnel, drafting and  
17 responding to motions/corrections to the proposed final order, consultation with  
18 TNMP employees and participation in conferences with intervenors and  
19 Commission Staff, and performing various other tasks associated with approval  
20 of the settlement. The specific tasks performed and expenses incurred are  
21 contained in the invoices referenced above.

22 **Q. WHAT AMOUNT OF THE RATE CASE EXPENSES ARE REASONABLY**  
23 **APPORTIONED TO THE ISSUE YOU IDENTIFIED ABOVE?**

24 A. For the Docket No. 41901 expenses presented in this proceeding, the entirety of  
25 the \$22,808.81 is appropriately apportioned to Settlement Completion and  
26 Approval, whether that item is viewed as a single "issue" or as a combination of  
27 the substantive issues and activities that had to be addressed and completed.

28 **Q. WAS THE AMOUNT OF DISCOVERY IN DOCKET NO. 41901 EXCESSIVE OR**  
29 **COMPLEX?**

1 A. Not at all. The charges presented focused on settlement entry and approval  
2 rendering this concern moot.

3 **Q. DID YOUR REVIEW OF THE JACKSON WALKER INVOICES REVEAL ANY**  
4 **CIRCUMSTANCE WHERE EITHER THE FEES PAID, TASKS PERFORMED,**  
5 **OR TIME SPENT ON A TASK WERE EXTREME OR EXCESSIVE?**

6 A. No.

7 **Q. IS THE TOTAL AMOUNT OF PROCEEDING EXPENSES FOR DOCKET**  
8 **NO. 41901 REQUESTED IN THIS DOCKET EXCESSIVE FOR A REQUEST**  
9 **FOR APPROVAL OF AN AMS DEPLOYMENT PLAN AND SURCHARGE?**

10 A. No.

11 **Q. ARE THE OUTSIDE LEGAL FEES AND EXPENSES CHARGED TO TNMP**  
12 **REASONABLE AND NECESSARY?**

13 A. Yes. The attorneys' hourly rates upon which the billings are based are  
14 consistent with the hourly rates charged for comparable services during the  
15 same time frame, and are reasonable and consistent with prevailing standards.  
16 The hours spent to perform the tasks assigned to TNMP's outside counsel were  
17 reasonable and necessary to complete those tasks in a professional manner on  
18 a timely basis. The efforts set forth above associated with Settlement  
19 Completion and Approval were appropriate and necessary to represent TNMP  
20 and assist in concluding Docket No. 41901.

21 **B. AMS LEGAL EXPENSES**

22 **(1) AMS-RELATED PROCEEDING EXPENSES**

23 **Q. WHAT AMS-RELATED LEGAL EXPENSES DO YOU SUPPORT?**

24 A. Below I address the legal proceeding and non-proceeding expenses associated  
25 with TNMP's AMS since its last AMS reconciliation proceeding.

26 **Q. WHAT CRITERIA GOVERNS THE REVIEW OF SUCH EXPENSES?**

27 A. These expenses are no different from the other categories of expenses incurred  
28 by TNMP pursuant to its approved AMS deployment plan – they must be

1 reasonable and necessary. If they are, TNMP is entitled to recovery. In  
2 reviewing the AMS-related proceeding expenses detailed below, I rely on my  
3 own judgment and experience in assessing legal expenses, and I have  
4 considered the factors delineated by the Third Court of Appeals in *City of El*  
5 *Paso v. Public Utility Comm'n of Texas*, 916 S.W.2d 515 (Tex. App.-Austin  
6 1995, writ dismissed by agreement) discussed previously in my testimony.

7 **Q. DO YOU 16 TAC § 25.245 APPLY TO THESE EXPENSES?**

8 A. I have applied 16 TAC § 25.245 criteria to the AMS-related proceeding  
9 expenses to further demonstrate the reasonableness of the expenses.

10 **Q. WHAT AMS-RELATED PROCEEDING EXPENSES ASSOCIATED WITH**  
11 **ADVANCED METERS DID TNMP INCUR DURING THE RECONCILIATION**  
12 **PERIOD?**

13 A. Proceeding expenses were incurred in TNMP's initial AMS reconciliation in  
14 Docket No. 45213 and Docket No. 47472 as discussed below.

15 **a) DOCKET NO. 45213 PROCEEDING EXPENSES**

16 **Q. WHAT EXPENSES ASSOCIATED WITH THE AMS RECONCILIATION FILING**  
17 **DID TNMP INCUR?**

18 A. In Docket No. 45213, TNMP filed a reconciliation of its AMS deployment costs  
19 per 16 TAC § 25.130(k)(6). The matter was ultimately approved with no  
20 corrections. TNMP incurred \$166,672 in fees and expenses associated with  
21 that proceeding. This amount is included on Line No. 82 and Exhibit 2-L of the  
22 AMS Reconciliation Report attached to the testimony of Stacy R. Whitehurst.

23 **Q. IS TNMP REQUESTING RECOVERY OF PROCEEDING EXPENSES**  
24 **INCURRED IN DOCKET NO. 45213?**

25 A. Yes, to the extent they are reasonable and necessary.<sup>11</sup>

26 **Q. ARE YOU FAMILIAR WITH THE NATURE OF THE PROCEEDINGS IN**  
27 **DOCKET NO. 45213?**

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<sup>11</sup> *Application of Texas-New Mexico Power Company to Reconcile Advanced Metering System Costs*, Docket No. 45213, Final Order, FOF 30; Item 28; Mar. 25, 2016.

1 A. Yes. TNMP's application requested reconciliation of all costs and investments  
2 made as of August 31, 2015, that are in accordance with TNMP's Deployment  
3 Plan. It further requested a final determination of the net operating costs  
4 savings through August 31, 2015, from AMS deployment be used to reduce the  
5 amount of costs that ultimately can be recovered through the surcharge. TNMP  
6 did not request to adjust the AMS surcharge rates as part of the filing.

7 **Q. WHAT WERE THE ISSUES ADDRESSED FOR DOCKET NO. 45213?**

8 A. No List of Issues was issued by the Commission for this proceeding. The  
9 central subject matter of the proceeding was reconciliation of all costs and  
10 investments made as of August 31, 2015, that are in accordance with TNMP's  
11 Deployment Plan. The invoices reflect the following categories: Application  
12 Preparation, AMS Costs, Tax, BTS, Regulatory, Legal Expenses, Allocation,  
13 Procedural, Settlement, and Case Expenses.

14 **Q. WERE THE ISSUES FOR DOCKET NO. 45213 COMPLEX OR UNIQUE?**

15 A. The Commission has processed reconciliation filings previously. However, it  
16 was unique to TNMP in that it was its first reconciliation of AMS costs. The  
17 necessary scope and detail of the filing added some complexity.

18 **Q. DID THE SIZE OF TNMP'S SERVICE TERRITORY OR THE NUMBER OF**  
19 **RETAIL CONSUMERS SERVED IMPACT THE AMOUNT OF RATE CASE**  
20 **EXPENSES INCURRED?**

21 A. No. The amount of expenses was not affected by TNMP's service territory or  
22 the number of retail customers served. As detailed further in my testimony, the  
23 expenses incurred by TNMP represent the reasonable expenses appropriately  
24 incurred in Docket No. 45213.

25 **Q. WHAT EXPENSES WERE INCURRED IN DOCKET NO. 45213?**

26 A. The expenses related to Docket No. 45213 constitute \$166,672.05 in outside  
27 legal service charges and noticing expenses associated with the case. The  
28 invoices and receipts supporting TNMP's proceeding expenses are included in  
29 WP/Legal Expenses (Voluminous). TNMP seeks to recover only the reasonable  
30 expenses it actually incurred in connection with that docket.

1 **Q. HOW DID THE COMPANY STAFF DOCKET NO. 45213 RELATIVE TO LEGAL**  
2 **SERVICES?**

3 A. As in other proceedings, TNMP relied upon Jackson Walker attorneys to assist  
4 in-house counsel in preparing and presenting the Application of Texas-New  
5 Mexico Power Company to Reconcile Advanced Metering System Costs in  
6 Docket No. 45213. As stated previously, Jackson Walker has extensive  
7 experience in Texas regulatory matters. Patrick Cowlshaw and Jeffery Kitner  
8 were the principal attorneys providing services in the case with some assistance  
9 from Stephanie Sparks due to the number of witnesses. Mr. Cowlshaw, Ms.  
10 Sparks, and Mr. Kitner have ably represented TNMP in Commission  
11 proceedings in the past, including in previous energy efficiency proceedings,  
12 base rate proceedings, the advanced metering proceeding, and other matters.  
13 Pamela Collins, with Jackson Walker, provided paralegal support on the matter  
14 as well.

15 **Q. PLEASE DESCRIBE THE INCURRED EXPENSES FOR OUTSIDE LEGAL**  
16 **COUNSEL.**

17 A. As indicated previously, fees were contracted with Jackson Walker via a retainer  
18 agreement. I am familiar with rates typically charged by attorneys for contested  
19 administrative proceedings like the Application of Texas-New Mexico Power  
20 Company to Reconcile Advanced Metering System Costs in Docket No. 45213.  
21 I have reviewed the following invoices for legal services performed and  
22 expenses incurred as part of that proceeding: Invoice Nos. 1439399, 1443313,  
23 1448413A, 1453715, 1453720, 1458440A, 1458441, 1464949, 1464950,  
24 1469076, 1473452, 1473453, 1479202, 1479219, and 1483236. I have also  
25 reviewed the internal receipts for notice publication totaling \$14,825.20. None of  
26 the charges submitted in those invoices or receipts have been recovered  
27 through reimbursement for other expenses or in other proceedings. These  
28 combined invoices and receipts support \$166,672.05 in legal fees.

29 **Q. ARE THE RATES CHARGED BY JACKSON WALKER FOR LEGAL**  
30 **SERVICES WITHIN THE RANGE OF REASONABLE RATES CHARGED FOR**  
31 **SIMILAR SERVICES?**

1 A. Yes. For the time period covered by the invoices, the hourly rates charged were  
2 \$540 to \$555 for the attorney and \$205 to \$210 for paralegal services. As the  
3 case was not concluded within a single year, hourly rates are dependent upon  
4 the retainer agreement applicable when the fees were charged. The effective  
5 rate for all Jackson Walker hourly services was \$527.23. Based on my  
6 experience, the hourly rates contained in the Jackson Walker billings are within  
7 the range of hourly rates charged for comparable services during the same time  
8 frame, and are reasonable and consistent with prevailing standards. The hours  
9 spent to perform the tasks assigned to TNMP's outside counsel were  
10 reasonable and necessary to appropriately complete those tasks in a  
11 professional manner.

12 **Q. WHAT IS YOUR OPINION ABOUT THE GENERAL CHARACTER OF THE**  
13 **BILLINGS FOR EXPENSES CONTAINED IN THE JACKSON WALKER**  
14 **INVOICES?**

15 A. Based on my review, the billings were sufficiently detailed to permit me to  
16 evaluate the sufficiency of the charges. Further, there were no charges which  
17 resulted from a single person billing in excess of 12 hours in one day. No  
18 charges for alcohol, first class or charter airfare, expenses associated with  
19 sporting events, or extravagant meal expenses were included in the Jackson  
20 Walker charges.

21 **Q. PLEASE DESCRIBE THE NATURE OF THE WORK PERFORMED BY**  
22 **JACKSON WALKER.**

23 A. Jackson Walker expended 284.2 hours in preparing and presenting TNMP's  
24 interests in Docket No. 45213. Specifically, the fees and expenses incurred  
25 were necessary to advise and assist TNMP in connection with preparation of the  
26 Application, review and revision of the filing package, identifying and  
27 researching of issues, preparing pleadings, consulting with company personnel,  
28 reviewing and consultation on supporting testimony, publishing notice,  
29 conferring with PUCT Staff, settling the case, and performing various other  
30 tasks. The specific tasks performed and expenses incurred are contained in the  
31 invoices referenced above (See WP/Legal Expenses (Voluminous)).



**Q. WHAT AMOUNT OF THE RATE CASE EXPENSES ARE REASONABLY APPORTIONED TO THE ISSUES YOU IDENTIFIED ABOVE?**

A. The following Table 2 allocates the fees and expenses among the identified activities:

**TABLE 2.**

ISSUE	HOURS	AMOUNT
Application Preparation	50.4	\$27,066.00
AMS Costs	102.9	\$56,037.50
Tax	7.4	\$4,033.00
BTS	28.7	\$15,641.50
Regulatory	9.7	\$5,286.50
Legal Expenses	13.6	\$6,137.00
Allocation	1	\$545.00
Procedural	33.8	\$14,780.50
Settlement	36.7	\$20,313.00
Case Expenses	N/A	\$16,832.05
<b>TOTAL</b>	<b>284.2</b>	<b>\$166,672.05</b>

**Q. CAN YOU FURTHER DESCRIBE THE EFFORTS ASSOCIATED WITH THE IDENTIFIED ISSUES?**

A. Yes. "Application Preparation" represents drafting and revisions to the application and reconciliation package, conferences with clients, global review of reconciliation package, and associated efforts to prepare and file the AMS application and supported reconciliation package. "AMS Costs" includes work reviewing and advising TNMP concerning the testimony and exhibits supporting the AMS accounting treatment, AMS program cost schedules, the overview of the AMS program and reconciliation request. The services provided under "AMS Costs" necessarily included the review and comment on testimony, exhibits and schedules, client conferences, as well as the review and response to associated discovery. The "Tax" category includes tax testimony review, client conferences, analysis, and advice on tax-related testimony and issues. Similarly, the "BTS" category includes time reviewing testimony and related exhibits on the technological costs presented by Business Technology Services

1 (“BTS”) in the reconciliation model, client conferences, receipt and review of  
2 discovery on BTS costs, and responding to BTS cost-related discovery.  
3 “Regulatory” refers to testimony review and advice on distinct regulatory issues  
4 related to the testimony and the filing. Further, the fees allocated to “Legal  
5 Expenses” contain the AMS-related legal expenses included review and  
6 revisions to testimony on AMS legal costs and AMS-related proceedings,  
7 conferences with both clients and opposing counsel, and review of, and  
8 responses to legal expense discovery. The “Allocation” category represents  
9 review and counsel on a discrete allocation issue. Additionally, the work  
10 associated with routine procedural efforts is compiled under the “Procedural”  
11 category and includes the filing and review of notices and orders during the  
12 case, filing and processing discovery, serving notices, and most  
13 communications between the administrative law judge (ALJ) and Staff. Further,  
14 “Settlement” captures the conferences with clients and Staff regarding resolution  
15 of the case as well the work to compose, prepare and file the support stipulation  
16 and orders with the ALJ, and ultimately entry of a Final Order. Lastly, “Case  
17 Expenses” captures the legal costs for notice, travel and expenses associated  
18 with the case.

19 **Q. WAS THE AMOUNT OF DISCOVERY IN DOCKET NO. 45213 EXCESSIVE OR**  
20 **COMPLEX?**

21 A. No. Considering the extensive and detailed evidence and information  
22 presented, discovery was not excessive.

23 **Q. DID YOUR REVIEW OF THE JACKSON WALKER INVOICES REVEAL ANY**  
24 **CIRCUMSTANCE WHERE EITHER THE FEES PAID, TASKS PERFORMED,**  
25 **OR TIME SPENT ON A TASK WERE EXTREME OR EXCESSIVE?**

26 A. No.

27 **Q. WAS THE TOTAL AMOUNT OF PROCEEDING EXPENSES FOR DOCKET**  
28 **NO. 45213 EXCESSIVE FOR AN APPLICATION TO RECONCILE ADVANCED**  
29 **METERING COSTS?**

1 A. No. The \$166,672.05 incurred reflects a fair, appropriate cost amount  
2 necessary to reasonably prepare and present such a detailed application.

3 **Q. ARE THE OUTSIDE LEGAL FEES AND EXPENSES CHARGED TO TNMP**  
4 **REASONABLE AND NECESSARY?**

5 A. Yes. Considering the nature of TNMP's AMS cost reconciliation proceeding, the  
6 necessary expertise, as well as the volume of testimony and schedules  
7 prepared, reviewed and revised, and motions and responses advocated, the  
8 fees and expenses presented in the invoices listed above are reasonable and  
9 necessary. Specifically, the fees and expenses incurred were necessary to  
10 advise and assist TNMP in connection with preparation of the Application,  
11 review and revision to the filing package, consulting with company personnel,  
12 reviewing and commenting on supporting testimony, conferring with PUC Staff,  
13 and performing various other tasks. The attorneys' hourly rates upon which the  
14 billings are based are consistent with the hourly rates charged for comparable  
15 services during the same time frame, and are reasonable and consistent with  
16 prevailing standards. The hours spent to perform the tasks assigned to TNMP's  
17 outside counsel were reasonable and necessary to complete those tasks in a  
18 professional manner on a timely basis.

19 **Q. HOW DOES TNMP PROPOSE TO RECOVER THESE COSTS?**

20 A. Approved costs will be included in the over / under collection that is being  
21 recorded from April 1, 2018 through the effective date of the new base rates, for  
22 recovery following the final AMS cost reconciliation.

23 **b) DOCKET No. 47472 PROCEEDING EXPENSES**

24 **Q. DID TNMP INCUR ANY OTHER PROCEEDING EXPENSES RELATED TO ITS**  
25 **AMS DEPLOYMENT AND SURCHARGE?**

26 A. Yes. TNMP has incurred \$116,739.94 through March 31, 2018 participating in  
27 Docket No. 47472, Commission Staff's Petition to Establish Requirements for  
28 Smart Meter Texas. TNMP and other transmission and distribution utilities  
29 deployed Smart Meter Texas ("SMT") as part of the utilities' AMS deployments.  
30 SMT is an interoperable, web-based information system that stores AMS electric

usage data, provides secure access to that data to end-use customers and various other entities, and enables secure communications with customer home area network devices. Docket No. 47472 is addressing the potential to change SMT's business requirements regarding how AMS information must be made available on the SMT web portal, and ultimately what TNMP and other SMT owners will have to invest in order to achieve the new requirements and/or maintain the portal.

**Q. IS TNMP REQUESTING RECOVERY OF PROCEEDING EXPENSES INCURRED IN DOCKET NO. 47472?**

A. Yes. As part of TNMP's AMS Deployment order in Docket No. 38306, TNMP is required to "...continue to support the common portal, as required by Commission rules and orders, with all associated costs subject to recovery through AMS surcharge reconciliation proceedings."<sup>12</sup> Such costs include costs associated with SMT (i.e., the "common portal"). Therefore, TNMP is presenting these costs associated with the SMT business requirement determination for recovery.

**Q. ARE YOU FAMILIAR WITH THE NATURE OF THE PROCEEDINGS IN DOCKET NO. 47472?**

A. Yes. As stated above, I directly manage legal services for TNMP matters.

**Q. WHEN WERE THE PRESENTED EXPENSES INCURRED?**

A. These expenses were incurred in 2017 and 2018. Costs incurred between April 1, 2018, and the effective date of new base rates will be recorded and presented for review and approval in the final AMS reconciliation.

**Q. WHAT WERE THE ISSUES ADDRESSED FOR DOCKET NO. 47472?**

A. The Commission issued a Preliminary Order with the following single issue: "What changes, if any, should be made to the existing business requirements for Smart Meter Texas? In answering this issue, please specifically address what changes, if any, should be made to the existing business requirements relating

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<sup>12</sup> *Texas New-Mexico Power Company's Request For Approval of An Advanced Meter System (AMS) Deployment and Surcharge*, Docket No. 38306, Final Order, Item 257; FOF 67, pg. 16 (Jul. 11, 2011).

1 to the registration of third-party entities that will use customer data for the  
2 purpose of providing customer-approved services other than electric utility  
3 service.”<sup>13</sup> However, the global nature of the issue does not lend itself to fee  
4 assignment. Instead, I have identified the following issues which best represent  
5 the assignment of the specific activities in the case: Procedural, Direct  
6 Testimony Preparation, Intervenor Testimony Review, Technical Conferences,  
7 List of Issues, Business Requirement Revisions, Settlement, Statement of  
8 Position, Utility Rebuttal Testimony Preparation, HAN Issues, Letter of  
9 Authorization (LOA) Issues, SMT Operations, Joint Utilities Initial Briefing,  
10 Hearing on the Merits, and Case Expenses.

11 **Q. WERE THE ISSUES FOR DOCKET NO. 47472 COMPLEX OR UNIQUE?**

12 A. The matter does cover a fair amount of technical complexity. Additionally, I  
13 consider a contested case to determine functional business requirements as  
14 somewhat unique and certainly rare in terms of reviewing potential policy-setting  
15 issues. However, the ability of the parties to ultimately agree to an efficient  
16 process for addressing the competing positions and data inquiries avoided  
17 potential expense.

18 **Q. DID THE SIZE OF TNMP’S SERVICE TERRITORY OR THE NUMBER OF**  
19 **RETAIL CONSUMERS SERVED, IMPACT THE AMOUNT OF RATE CASE**  
20 **EXPENSES INCURRED?**

21 A. No.

22 **Q. WHAT PROCEEDING EXPENSES WERE INCURRED IN DOCKET**  
23 **NO. 47472?**

24 A. As the matter is not yet concluded, the costs through March 31, 2018 total \$116,739.94  
25 in outside legal service charges. The invoices supporting TNMP’s legal expenses are  
26 included in WP/Legal Expenses (Voluminous). TNMP seeks to recover only the  
27 reasonable expenses it actually incurred in connection with that docket. This amount

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<sup>13</sup> *Commission Staff’s Petition To Determine Requirements for Smart Meter Texas*, Docket No. 47472, Preliminary Order, Item 71 (Oct. 26, 2017).

1 is included on Line No. 82 and Exhibit 2-L of the AMS Reconciliation Report  
2 attached to the testimony of Stacy R. Whitehurst.

3 **Q. HOW DID THE COMPANY STAFF DOCKET NO. 47472 RELATIVE TO LEGAL**  
4 **SERVICES?**

5 A. TNMP relied upon outside legal counsel Stephanie Sparks from Jackson Walker  
6 to assist TNMP's involvement in Docket No. 47472. As stated previously, Ms.  
7 Sparks has represented TNMP in previous Commission proceedings, including  
8 previous energy efficiency proceedings, base rate proceedings, the advanced  
9 metering proceeding, and other matters. Ms. Sparks was the sole attorney  
10 providing outside service in the case.

11 **Q. PLEASE DESCRIBE THE INCURRED EXPENSES FOR OUTSIDE LEGAL**  
12 **COUNSEL.**

13 A. As indicated previously, fees were contracted with Jackson Walker via a retainer  
14 agreement. Being an attorney duly licensed in the State of Texas, and in the  
15 course of my duties for TNMP, I am familiar with rates typically charged by  
16 attorneys for contested administrative proceedings such as Docket No. 47472. I  
17 have reviewed the following invoices for legal services performed and expenses  
18 incurred as part of that proceeding: Invoice Nos. 1566200, 1566513, 1571628,  
19 1571633, 1575942, 1576374, 1580326, 1584473, 1580311, and 1584490.  
20 None of the charges submitted in those invoices have been recovered through  
21 reimbursement for other expenses or in other proceedings. No duplicate entries  
22 were included. These combined invoices support \$116,739.94 in legal fees and  
23 expenses.

24 **Q. ARE THE RATES CHARGED BY JACKSON WALKER FOR LEGAL**  
25 **SERVICES WITHIN THE RANGE OF REASONABLE RATES CHARGED FOR**  
26 **SIMILAR SERVICES?**

27 A. Yes. For the time period covered by the invoices, the hourly rates charged were  
28 \$560, \$570, and \$575 for Ms. Spark's time. The difference reflects the fact that  
29 the case covers two separate years with different retainer agreements. The  
30 effective rate for all Jackson Walker hourly services was \$568.45. Based on my

1 experience, the hourly rates contained in the Jackson Walker billings are within  
2 the range of hourly rates charged for comparable services during the same time  
3 frame, and are reasonable and consistent with prevailing standards. The hours  
4 spent to perform the tasks assigned to TNMP's outside counsel were  
5 reasonable and necessary to appropriately complete those tasks in a  
6 professional manner.

7 **Q. WHAT IS YOUR OPINION ABOUT THE GENERAL CHARACTER OF THE**  
8 **BILLINGS FOR EXPENSES CONTAINED IN THE JACKSON WALKER**  
9 **INVOICES?**

10 A. Based on my review, the billings were sufficiently detailed to permit me to  
11 evaluate the sufficiency of the charges. Further, there were no charges which  
12 resulted from a single person billing in excess of 12 hours in one day. No  
13 charges for alcohol, first class or charter airfare, expenses associated with  
14 sporting events, or meal expenses were included in the Jackson Walker  
15 charges.

16 **Q. PLEASE DESCRIBE THE NATURE OF THE WORK PERFORMED BY**  
17 **JACKSON WALKER.**

18 A. Jackson Walker expended 199.9 hours in representing TNMP's interests in  
19 Docket No. 47472 through March 31, 2018. Specifically, the fees and expenses  
20 incurred were necessary to advise and assist TNMP in connection with review of  
21 direct and rebuttal testimony, identifying and researching of issues, preparing  
22 pleadings, analyzing and consulting with company personnel regarding business  
23 requirements, conferring with intervenors, the utility parties and Staff, preparing  
24 for hearings, attending hearings, attending settlement conferences, reviewing  
25 and editing briefing, and performing various other tasks. . The specific tasks  
26 performed and expenses incurred are contained in the identified invoices. (See  
27 WP/Legal Expenses (Voluminous).

28 **Q. WHAT AMOUNT OF THE CASE EXPENSES ARE REASONABLY**  
29 **APPORTIONED TO THE ISSUES/TASKS YOU IDENTIFIED ABOVE?**

30 A. The following Table 3 allocates the expenses among the identified activities:

1      **TABLE 3.**

<b>ISSUE</b>	<b>HOURS</b>	<b>AMOUNT</b>
Procedural	8.9	\$5,074.00
Direct Testimony Preparation	15.6	\$8,870.00
Intervenor Testimony Review	22.1	\$12,498.00
Technical Conference	26.1	\$14,858.00
List of Issues	.8	\$456.00
Business Requirement Revisions	2.6	\$1,456.00
Settlement	78.9	\$44,635.50
Statement of Position	3.6	\$2,016.00
Utility Rebuttal Testimony Preparation	5.6	\$3,154.00
HAN and LOA Issues	6.7	\$3,752.00
SMT Operations	2.2	\$1,265.00
Joint Utility Initial Briefing	0.5	\$280.00
Hearing on the Merits	26.3	\$14,728.00
Case Expenses	NA	\$3,697.44
<b>TOTAL</b>	<b>199.9</b>	<b>\$116,739.94</b>

2

3      **Q.      CAN YOU FURTHER DESCRIBE THE EFFORTS ASSOCIATED WITH THE**  
4      **IDENTIFIED ISSUES?**

5      A.      Yes. “Procedural” efforts reflect the necessary routine work generally indicative  
6      of most cases such as pre-hearing conferences, conferring with clients and  
7      other parties on schedules/deadlines, and monitor filings. “Direct Testimony  
8      Preparation” refers to the efforts expended in preparing possible individual  
9      TNMP testimony as well as collaborative work crafting the joint utilities’



1 testimony and issues. "Intervenor Testimony Review" includes the time needed  
2 to analyze, review, comment and confer with both TNMP, as well as aligned  
3 parties on the issues raised by the Intervenors. "Technical Conferences"  
4 represents the preparation and attendance at the technical data exchanges  
5 between the parties that were arranged in lieu of formal discovery. The "List of  
6 Issues" category refers to the examination and discussion of proposed issues.  
7 "Business Requirement Revisions" includes the work examining proposed and  
8 potential revision to the actual business requirements. Unsurprisingly, the  
9 "Settlement" category encompasses the preparation, client communication,  
10 party communications, and attendance at formal meetings with the parties in an  
11 effort to create a settlement and review any resulting agreement documents.  
12 The number of parties and complex technical and business issues resulted in  
13 numerous conferences among the parties covering settlement discussions  
14 throughout the entirety of the case. Work discussing and drafting TNMP's  
15 position statement is reflected under "Statement of Position." All of the effort  
16 conferring with TNMP, aligned parties, and the review and input that resulted in  
17 the joint utilities' rebuttal testimony is reflected under the "Utility Rebuttal  
18 Testimony Preparation" topic. "HAN and LOA Issues" includes review and  
19 conferences with clients and other parties specifically regarding the home-area-  
20 network (HAN) and letter of authorization (LOA) business requirements.  
21 Similarly, "SMT Operations" refers to analysis and conference with clients and  
22 other parties regarding the SMT terms and conditions for operation. Also  
23 unsurprisingly, the "Hearing on the Merits" category encompasses preparation,  
24 travel, and participation at the hearing on the merits. The "Joint Utilities Initial  
25 Briefing" captures discussions between aligned parties on the initial briefing.  
26 Lastly, "Case Expenses" reflects costs such as copying, delivery, and travel  
27 expenses incurred in support of the case.

28 **Q. WAS THE AMOUNT OF DISCOVERY IN DOCKET NO. 47472 EXCESSIVE OR**  
29 **COMPLEX?**

1 A. No. Traditional discovery was avoided by the agreement to utilize written  
2 questions and technical conferences, which provided information exchanges  
3 that normally would have been addressed by standard discovery methods.

4 **Q. DID YOUR REVIEW OF THE JACKSON WALKER INVOICES REVEAL ANY**  
5 **CIRCUMSTANCE WHERE EITHER THE FEES PAID, TASKS PERFORMED,**  
6 **OR TIME SPENT ON A TASK WERE EXTREME OR EXCESSIVE?**

7 A. No.

8 **Q. WAS THE TOTAL AMOUNT OF PROCEEDING EXPENSES FOR DOCKET**  
9 **NO. 47472 EXCESSIVE?**

10 A. No. The number of intervenors and the technical complexity of the issues  
11 involved necessitated the efforts for TNMP.

12 **Q. ARE THE OUTSIDE LEGAL FEES AND EXPENSES CHARGED TO TNMP**  
13 **REASONABLE AND NECESSARY?**

14 A. Yes. Considering the nature of the proceeding, the necessary expertise, as well  
15 as the complexity of the technical issues, and the nature of the positions  
16 explored and advocated, the fees and expenses presented in the invoices listed  
17 above are reasonable and necessary. Specifically, the fees and expenses  
18 incurred were necessary to advise and assist TNMP in connection with  
19 responding to Staff's Petition, review and revision of testimony, issue  
20 identification and research, preparing pleadings, consulting with company  
21 personnel, conferring with other utilities, intervenors, the Office of Public Utility  
22 Counsel (OPUC), and Staff, settlement efforts, and performing various other  
23 tasks. The attorney's hourly rates upon which the billings are based is  
24 consistent with the hourly rates charged for comparable services during the  
25 same time frame, and are reasonable and consistent with prevailing standards.  
26 The hours spent to perform the tasks assigned to TNMP's outside counsel were  
27 reasonable and necessary to complete those tasks in a professional manner on  
28 a timely basis.

29 **Q. HOW DOES TNMP PROPOSE TO RECOVER THESE COSTS?**

1 A. Approved costs will be included in the over / under collection that is being  
2 recorded from April 1, 2018 through the effective date of the new base rates, for  
3 recovery following the final AMS cost reconciliation.

4 **Q. HAS TNMP INCURRED COSTS AFTER MARCH 31, 2018 FOR THIS**  
5 **PROCEEDING?**

6 A. Yes. Costs incurred between April 1, 2018, and the effective date of new base  
7 rates will be recorded and presented for review and approval in the final AMS  
8 reconciliation.

9 **(2) AMS NON-PROCEEDING EXPENSES**

10 **Q. WHAT NON-PROCEEDING LEGAL EXPENSES ASSOCIATED WITH**  
11 **ADVANCED METERS DID TNMP INCUR DURING THE RECONCILIATION**  
12 **PERIOD?**

13 A. TNMP incurred legal expenses associated with completing its 2G remediation  
14 and extension of a support agreement for its outage management system.  
15 Further, TNMP incurred legal expenses associated with negotiation, drafting and  
16 executing agreements with TNMP's AMS vendor to support the back-office data  
17 management necessary for TNMP to comply with the Final Order in Docket  
18 No. 38306. 16 TAC § 25.245 does not apply to these non-proceeding legal  
19 costs.

20 **a) OUTAGE MANAGEMENT SYSTEM (OMS) EXPENSES**

21 **Q. DID TNMP INCUR LEGAL EXPENSES ASSOCIATED WITH OUTAGE**  
22 **MANAGEMENT SYSTEM?**

23 A. Yes. Included in the expenses reflected in the testimony of TNMP Witness  
24 Robert K. Roberts regarding OMS expenses, TNMP incurred \$1,320 in legal  
25 expenses to extend service terms for its OMS vendor.

26 **Q. WHAT CUSTOMER EDUCATION EXPENSES WERE INCURRED?**

27 A. The legal expenses related to AMS customer education are set forth in Table 4  
28 below listing the \$1,320 in outside legal charges.

**TABLE 4 – CUSTOMER EDUCATION EXPENSES.**

INVOICE	AMOUNT	AMOUNT REQUESTED
1510743	\$1,320.00	\$1,320.00
<b>TOTAL REQUESTED</b>		<b>\$1,320,00</b>

**Q. CAN TNMP SEEK RECOVERY NOW FOR LEGAL EXPENSES ASSOCIATED WITH ITS OMS EXPENSES?**

A. Yes. Docket No. 38306 approved TNMP's AMS deployment plan. Findings of Fact Nos. 50-53 in the Docket No. 38306 Final Order permit TNMP to reconcile and then move to base rates the capital, operations, and maintenance costs of its OMS.<sup>14</sup>

**Q. PLEASE DESCRIBE THE INCURRED LEGAL EXPENSES FOR OMS.**

A. TNMP engaged outside legal assistance related to review and drafting of an amendment to extend terms and services of its OMS provider.

**Q. WHO PROVIDED THE LEGAL SERVICES RELATED TO THE OMS?**

A. The customer education expenses listed in Table 4 were provided by Jackson Walker.

**Q. PLEASE DESCRIBE THE NATURE OF THE WORK PERFORMED BY JACKSON WALKER RELATED TO OMS.**

A. Raman Dewan with Jackson Walker assisted TNMP in reviewing and revising the amendment for extension of terms and services. The incurred charges were necessary to assist TNMP in ongoing operation of its OMS system.

**Q. DID YOU REVIEW FEES AND EXPENSES PROVIDED BY JACKSON WALKER?**

A. Yes. As indicated previously, fees negotiated with Jackson Walker are based upon a retainer agreement, which provides for payment of the customary fees

<sup>14</sup> *Texas New-Mexico Power Company's Request For Approval of An Advanced Meter System (AMS) Deployment and Surcharge*, Docket 38306, Final Order, Item 257;vFOF 50,51, 52, and 53, pg. 13 (Jul. 11, 2011).

1 for experienced regulatory attorneys. Being an attorney duly licensed in the  
2 State of Texas, and in the course of my duties for TNMP, I am familiar with rates  
3 typically charged by attorneys for providing representation and counsel  
4 regarding transactional work like the amendment extending the OMS support  
5 terms and services. I have reviewed the following Jackson Walker invoice for  
6 legal services and expenses listed in Table 4 Invoice No. 1510743. None of the  
7 charges submitted in that invoice has been recovered through reimbursement  
8 for other expenses or in other proceedings. No duplicate entries were included.  
9 This invoice supports \$1,320 in legal fees. The specific tasks performed and  
10 expenses incurred are contained in the invoice. (See WP/Legal Expenses  
11 (Voluminous)).

12 **Q. WERE THE RATES CHARGED BY JACKSON WALKER FOR LEGAL**  
13 **SERVICES WITHIN THE RANGE OF REASONABLE RATES CHARGED FOR**  
14 **SIMILAR SERVICES?**

15 A. Yes. The invoice listed in Table 4 reflects that the charged Jackson Walker  
16 hourly rate for Mr. Dewan was \$550. Based on my experience, the hourly rate  
17 contained in the Jackson Walker billing is within the range of hourly rates  
18 charged for comparable services during the same time frame, and are  
19 reasonable and consistent with prevailing standards. The hours spent to  
20 perform the tasks assigned to TNMP's outside counsel were reasonable and  
21 necessary to appropriately complete those tasks in a professional manner.

22 **Q. WHAT IS YOUR OPINION ABOUT THE GENERAL CHARACTER OF THE**  
23 **BILLINGS FOR OMS RELATED EXPENSES LISTED IN TABLE 4?**

24 A. The billing was sufficiently detailed to permit me to evaluate the sufficiency of  
25 the charges. Further, there were no charges which resulted from a single  
26 person billing in excess of 12 hours in one day. Neither were there any charges  
27 for alcohol, first class or charter airfare, expenses associated with sporting  
28 events, or meal expenses were included in the Jackson Walker charges.

29 **Q. ARE THE OUTSIDE LEGAL FEES AND EXPENSES CHARGED TO TNMP**  
30 **FOR OMS EXPENSES REASONABLE AND NECESSARY?**

A. Yes. Considering the nature of the issues involved, the necessary expertise and the amount of time and attention to the tasks described, the fees presented in the invoice listed above are reasonable and necessary. The attorney's hourly rate upon which the billing is based is similar to the hourly rates charged for comparable services during the same time frames, and are reasonable and consistent with prevailing standards. The hours spent to perform the tasks assigned to TNMP's outside counsel were reasonable and necessary to complete those tasks in a professional manner on a timely basis.

**b) 2G REMEDIATION EXPENSES**

**Q. WHAT LEGAL O&M EXPENSES ASSOCIATED WITH AMS 2G REMEDIATION WERE INCURRED BY TNMP?**

A. TNMP incurred \$23,958.50 in legal expenses to implement the 2G Remediation approved in TNMP's Amended Deployment Plan approved in Docket No. 43239. These costs are part of the meter plant investment addressed by TNMP witness Robert K. Roberts. Table 5 below lists those charges:

**TABLE 5. AMS 2G REMEDIATION EXPENSES.**

INVOICE	AMOUNT	AMOUNT REQUESTED
1448408	\$2,452.50	\$2,452.50
1459756	\$1,199.00	\$1,199.00
1466271	\$1,026.00	\$1,026.00
1466272	\$4,212.00	\$4,212.00
1468954	\$4,752.00	\$4,752.00
1473460	\$832.50	\$832.50
1473461	\$3,940.50	\$3,940.50
1479212	\$943.50	\$943.50
1483242	\$1,165.50	\$1,165.50
1487553	\$2,608.50	\$2,608.50
1492747	\$166.50	\$166.50
1510744	\$660.00	\$660.00
<b>TOTAL REQUESTED</b>		<b>\$23,958.50</b>

**Q. GENERALLY DESCRIBE THE INCURRED AMS 2G REMEDIATION LEGAL EXPENSES.**

1 A. The nature of the work included contractual work and consultation regarding  
2 amendments to its Deployment agreement to address the retirement of 2G  
3 service by telecom providers and provide for the acquisition of meters  
4 compatible with the Verizon network.

5 **Q. WHO PROVIDED THE LEGAL SERVICES RELATED TO AMS**  
6 **IMPLEMENTATION MATTERS?**

7 A. TNMP was primarily assisted by Stephanie Sparks and Linda Donohoe with  
8 Jackson Walker. Both attorneys are partners in their firm and are familiar with  
9 TNMP. Ms. Sparks has assisted TNMP in regulatory proceedings and handled  
10 contractual matters for TNMP. Similarly, Ms. Donohoe is a transactional  
11 attorney with extensive experience in electric power industry matters, who has  
12 assisted TNMP and its affiliates in negotiation and drafting of contractual  
13 engagements.

14 **Q. WHAT MATTERS DID JACKSON WALKER ADDRESS FOR TNMP?**

15 A. Jackson Walker counseled and advised TNMP regarding the retirement of 2G  
16 service by AT&T and its impact to the TNMP AMS deployment. Further legal  
17 services were provided to draft amendments to the deployment agreements with  
18 TNMP's AMS vendor regarding the replacement of 2G meters and to secure  
19 Verizon network compatible meters for deployment in limited locations not  
20 served by AT&T.

21 **Q. PLEASE DESCRIBE THE TASKS AND INCURRED CHARGES SET FORTH IN**  
22 **TABLE 5.**

23 A. The previously identified Jackson Walker attorneys provided legal services for  
24 payment of the customary fees attributed to experienced regulatory attorneys.  
25 Being an attorney duly licensed in the State of Texas, and in the course of my  
26 duties for TNMP, I am familiar with rates typically charged by attorneys for  
27 advice and counsel on regulatory-related matters. I have reviewed the legal  
28 services performed and expenses in the invoices listed in Table 5. None of the  
29 charges submitted in those invoices have been recovered through  
30 reimbursement for other expenses or in other proceedings. No duplicate entries

1           were included. Those combined invoices support \$23,958.50 in legal fees and  
2           expenses. The specific tasks performed and expenses incurred are contained  
3           in the identified invoices. (See WP/Legal Expenses (Voluminous)).

4   **Q.   WERE THE RATES CHARGED FOR LEGAL SERVICES SUPPORTING 2G**  
5   **REMEDATION WITHIN THE RANGE OF REASONABLE RATES CHARGED**  
6   **FOR SIMILAR SERVICES?**

7   A.   Yes. Since the invoices listed in Table 5 reflect charges incurred in 2015 and  
8           2016, the charged Jackson Walker hourly rates for attorneys were either \$540,  
9           \$545, or \$555, depending upon the year incurred. As indicated earlier, the rates  
10          for any particular year were negotiated retainer rates and not the standard rates  
11          that Jackson Walker would otherwise charge. The effective rate for all Jackson  
12          Walker services was \$547. Based on my experience, the attorneys hourly rates  
13          contained in the Jackson Walker billings are consistent with the hourly rates  
14          charged for comparable services during the same time frames, and are  
15          reasonable and consistent with prevailing standards. The hours spent to  
16          perform the tasks assigned to TNMP's outside counsel were reasonable and  
17          necessary to appropriately complete those tasks in a professional manner.

18   **Q.   WHAT IS YOUR OPINION ABOUT THE GENERAL CHARACTER OF THE**  
19   **BILLINGS LISTED IN TABLE 5?**

20   A.   The billings were sufficiently detailed to permit me to evaluate the sufficiency of  
21          the charges. No charges resulted from a single person billing in excess of 12  
22          hours in one day. Neither were there any charges for alcohol, first class or  
23          charter airfare, expenses associated with sporting events, or meal expenses.

24   **Q.   ARE THE OUTSIDE LEGAL FEES CHARGED FOR SERVICES SUPPORTING**  
25   **2G REMEDIATION REASONABLE AND NECESSARY?**

26          Yes. Considering the complexity and sensitivity of the issues involved, the  
27          necessary expertise, the novelty of the issues, and the amount of time and  
28          attention to the tasks described, the fees and expenses presented in the invoices  
29          listed in Table 5 above are reasonable and necessary.



1 **c) TEXAS AMS MANAGED SERVICES EXPENSES**

2 **Q. AS PART OF TNMP'S AMS OPERATION, WHAT EXPENSES DID TNMP**  
3 **INCUR ASSOCIATED WITH CONTRACTING WITH TNMP'S AMS VENDOR?**

4 A. TNMP entered into a Managed Services Agreement with Itron, Inc. ("Itron"),<sup>15</sup>  
5 TNMP's AMS vendor. The Managed Services Agreement and associated  
6 individual task agreements (ITAs) acquired software and services for meter data  
7 receipt and processing previously performed by TNMP internally.

8 **Q. ARE THE AMS LEGAL EXPENSES ASSOCIATED WITH THE ABOVE**  
9 **AGREEMENT REFLECTED IN THE AMS RECONCILIATION REPORT?**

10 A. Yes. Line No. 55 of the AMS Reconciliation Report includes \$451,872.35 in  
11 legal expenses incurred in securing the Managed Services Agreement identified  
12 above.

13 **Q. PLEASE SUMMARIZE THE TERMS OF THE AGREEMENT AND ITS**  
14 **SUBPARTS.**

15 A. Each of the above referenced agreements is summarized below:

16  
17 Master Agreement: The Master Project, Sales and Services Agreement sets forth  
18 the general terms and conditions under which TNMP and Itron may enter into  
19 Orders pursuant to which TNMP purchases from Itron, and Itron furnishes to  
20 TNMP, equipment and services. The terms of this Master Agreement apply to  
21 each Order. This Master Agreement was entered into in connection with the  
22 migration over four stages of TNMP's current-state system architecture designed  
23 around the Transaction Management System software to the end-state  
24 architecture designed around the OpenWay software, the implementation of Itron  
25 Analytics, and the provision by Itron of software licenses, cloud infrastructure  
26 services, managed services, and maintenance and support services. This 112-  
27 page Master Agreement was developed from several different sets of contracts  
28 proposed by Itron and was negotiated and customized to specifically address  
29 TNMP's migration project. This Master Agreement includes the following:

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<sup>15</sup> Itron acquired TNMP's initial AMS vendor, SmartSynch, Inc., in 2012.

1           *Main Body of the Master Agreement* – includes provisions for entering into  
2 Orders for specific projects, equipment and services, invoicing and payment,  
3 taxes, changes in scope, dispute resolution, confidentiality, intellectual property  
4 and marks, data privacy and security (including security audits), insurance,  
5 indemnification (including indemnification in favor of TNMP in the event of  
6 infringement, violation or misappropriation of intellectual property rights),  
7 warranties, termination, limitation of liability, force majeure, compliance with law,  
8 and other general terms and conditions.

9           *Equipment Purchase & Warranty Addendum* – includes certain terms and  
10 conditions applicable to purchases of equipment by TNMP under the Master  
11 Agreement, including terms for ordering equipment, pricing, meter specifications,  
12 testing and certification, firmware and software licenses, invoicing, forecasts,  
13 shipping and delivery, title, risk of loss, inspection and rejection, and warranty.  
14 Meters have a warranty and discounted pricing for certain volumes purchased.

15           *Software License Addendum* – includes certain terms and conditions  
16 applicable to the license of software by Itron to TNMP, including license grant,  
17 third-party software, restrictions, delivery, warranties, termination, and  
18 bankruptcy provisions.

19           *Maintenance & Support Services Addendum* – includes certain terms and  
20 conditions applicable to the maintenance and support services furnished by Itron,  
21 including software configuration management, end of support (including  
22 requirements for Itron to furnish replacement software on the terms set forth  
23 therein), termination, training, service requests, support services, field services,  
24 software maintenance (including error fixes and maintenance releases), testing  
25 of maintenance releases, local installation and support for local installation,  
26 equipment maintenance and repair, fees and invoicing, support for third-party  
27 equipment, and warranties. This Addendum sets forth service level requirements  
28 to be achieved by Itron for the maintenance and support services, which service  
29 level requirements vary depending on the severity of the error.

1           *Installation/Implementation/Professional Services Addendum* – includes  
2       certain terms and conditions applicable to installation services for equipment,  
3       implementation services for the set-up, configuration, and validation of licensed  
4       software, and other services furnished by Itron, including invoicing, standards of  
5       performance, and warranty.

6           *Cloud Infrastructure Services Addendum* – includes certain terms and  
7       conditions applicable to cloud infrastructure services furnished by Itron, including  
8       term, operational and technical specifications, configuration and validation,  
9       termination, and planned maintenance. This Addendum sets forth service level  
10      requirements to be achieved by Itron for the availability for each of the computer  
11      programs comprising the licensed software. Service level credits are to be  
12      credited or paid to TNMP in the event Itron fails to meet the service level  
13      requirements.

14          *Managed Services Addendum* - includes certain terms and conditions  
15      applicable to managed services furnished by Itron, including data collection, data  
16      export and delivery, incident reporting, management and resolution, backhaul  
17      service management, business continuity, network and data security, and  
18      termination. This Addendum sets forth service level requirements to be achieved  
19      by Itron for meter read rate performance, meter data delivery performance,  
20      incidence response and resolution, and business continuity and recovery.  
21      Service level credits are to be credited or paid to TNMP in the event Itron fails to  
22      meet the service level requirements.

23          Order Number One. This Order was entered into by TNMP and Itron under the  
24      Master Agreement for the licensing by TNMP of the following software: TMS,  
25      OpenWay Collection Engine, Itron Enterprise Edition, MV-90 xi, MV-PBS, and  
26      Itron Analytics. This 8-page Order includes provisions for the term of the license,  
27      endpoints, and fees.

28          Order Number Two. This Order was entered into by TNMP and Itron under the  
29      Master Agreement for the provision of maintenance and support services by Itron  
30      for the licensed software and for equipment specified therein. This 13-page

1 Order includes provisions for the commencement of the services, term, fees, and  
2 termination.

3 Order Number Three. This Order was entered into by TNMP and Itron under the  
4 Master Agreement for the provision of cloud infrastructure services and managed  
5 services by Itron for the Itron software and third-party software identified therein.  
6 This 19-page Order includes provisions for the commencement of the services,  
7 term, fees, sizing criteria for cloud infrastructure, terms for the set up and  
8 configuration of cloud infrastructure, managed services transaction summary,  
9 and termination.

10 Order Number Four. This Order was entered into by TNMP and Itron under the  
11 Master Agreement for the provision of services and deliverables by Itron for the  
12 migration over four stages of TNMP's current-state system architecture designed  
13 around the Transaction Management System software to the end-state  
14 architecture designed around the OpenWay software and the implementation of  
15 Itron Analytics. This 111-page Order includes provisions for a description of the  
16 scope of services to be provided, a description of each of the four stages for the  
17 migration and implementation of Itron Analytics and the schedule and milestones  
18 therefor, fees and expense reimbursement, transitioning from existing contracts  
19 for the Transaction Management System to the Master Agreement and Orders,  
20 the preliminary business requirements document, the preliminary technical  
21 architecture design document, the scope of work for stage one of the migration,  
22 and the framework for developing the scopes of work for stages two, three and  
23 four of the migration. Following execution of Order Number Four, the following  
24 additional scopes of work were entered into by TNMP and Itron for the migration:

25 *Stage 2A SOW.* This 7-page scope of work covers the MV-90 xi upgrade  
26 and network system migration to Itron managed services.

27 *Stage 2B SOW.* This 10-page scope of work covers the IEE v7.0 SP4,  
28 MV-PBS 6.0 and Archive system migration to Itron managed services.

29 Order Number Five. This Order was entered into by TNMP and Itron under the  
30 Master Agreement for the provision by Itron of services and deliverables

regarding analysis of TNMP's AMS data and the preparation of load research schedules. This 15-page Order includes provisions for fees, expense reimbursement, and a scope of work for the services and deliverables.

**Q. WHAT LEGAL EXPENSES WERE INCURRED IN DEVELOPING AND EXECUTING THE MANAGED SERVICE AGREEMENT?**

A. TNMP incurred \$451,872.35 in negotiating, drafting and implementing the foregoing documents. Table 6 below lists those charges:

**TABLE 6 AMS MANAGED SERVICES AGREEMENT EXPENSES.**

INVOICE	AMOUNT	AMOUNT REQUESTED
1434317	\$1,090.00	\$1,090.00
1442612	\$21,854.50	\$21,854.50
1443315	\$11.25	\$11.25
1443351	\$23,598.50	\$23,598.50
1448412	\$5,995.00	\$5,995.00
1454530	\$3,488.00	\$3,488.00
1458457	\$5,995.00	\$5,995.00
1464948	\$10,962.00	\$10,962.00
1468946	\$16,794.00	\$16,794.00
1473451	\$7,825.50	\$7,825.50
1479198	\$46,786.50	\$46,786.50
1479201	\$346.40	\$346.40
1483235	\$51,171.00	\$51,171.00
1483245	\$215.03	\$215.03
1486935	\$62,715.00	\$62,715.00
1486936	\$445.18	\$445.18
1492743	\$26,473.50	\$26,473.50
1492760	\$52.25	\$52.25
1496718	\$44,344.50	\$44,344.50
1496722	\$40.41	\$40.41
1501690	\$59,290.00	\$59,290.00
1501916	\$57.09	\$57.09
1505695	\$45,485.00	\$45,485.00
1510736	\$46.74	\$46.74
1538256	\$9,545.00	\$9,545.00
1542993	\$2,990.00	\$2,990.00
1551705	\$3,967.50	\$3,967.50
1557033	\$287.50	\$287.50
<b>TOTAL REQUESTED</b>		<b>\$451,872.35</b>

1 **Q. PLEASE DESCRIBE THE INCURRED LEGAL EXPENSES FOR THE**  
2 **MANAGED SERVICES AGREEMENT.**

3 A. To maintain its AMS program and provide for the ongoing obligations and risks  
4 attendant with a project exceeding \$50 million, TNMP relied upon assistance  
5 from outside counsel with negotiation of the terms covering the varied aspects of  
6 the engagement, confer with TNMP personnel on negotiation strategy, advise  
7 TNMP on impact or proposals and counter-proposals, communicate with the  
8 counter-party and its attorney, draft and revise documents, review documents,  
9 and manage the execution of the final contractual documents.

10 **Q. WHO PROVIDED THE LEGAL SERVICES RELATED TO MANAGED**  
11 **SERVICE AGREEMENT?**

12 A. Legal counsel from Jackson Walker provided assistance in the negotiation,  
13 development and execution of the Managed Service Agreement identified  
14 previously. Jackson Walker has worked with TNMP since 2006 and has  
15 extensive experience in contractual transactions in Texas. Linda Donohoe and  
16 Raman Dewan, partners, were the principal attorneys assisting TNMP and  
17 managed the other Jackson Walker attorneys that helped support the project.  
18 Ms. Donohoe has ably advised and supported both TNMP and its affiliates in the  
19 past and has extensive experience in electric industry transactional matters.  
20 Raman Dewan, partner with particular expertise in software licensing and  
21 technology procurement, provided assistance on aspects of the various  
22 agreements. Over the course of the agreement, Steven Moore and Stephanie  
23 Sparks provided input and assistance on supporting issues and tasks  
24 appropriate to their skill level, subject matter expertise, and experience.

25 **Q. PLEASE DESCRIBE THE NATURE OF THE WORK PERFORMED BY**  
26 **JACKSON WALKER RELATED TO THE MANAGED SERVICE AGREEMENT.**

27 A. Specifically, the fees and expenses incurred were necessary to advise and  
28 assist TNMP in negotiating the terms for the varied aspects of the engagement,  
29 confer with TNMP personnel on negotiation strategy, advise TNMP on impact of  
30 proposals and counter-proposals, communicate with the counter-party and its

1 attorney, draft and revise documents, review documents, research impact of  
2 proposed terms, and manage the execution of the final contractual documents.

3 **Q. DID YOU REVIEW FEES AND EXPENSES PROVIDED BY JACKSON**  
4 **WALKER?**

5 A. Yes. As indicated previously, fees negotiated with Jackson Walker are based  
6 upon a retainer agreement. Being an attorney duly licensed in the State of  
7 Texas, and in the course of my duties for TNMP, I am familiar with rates typically  
8 charged by attorneys for providing representation and counsel regarding  
9 implementation of regulatory initiatives like the customer education campaign for  
10 TNMP's AMS deployment. I have reviewed the following Jackson Walker  
11 invoices for legal services and expenses listed in Table 6. None of the charges  
12 submitted in those invoices or receipts have been recovered through  
13 reimbursement for other expenses or in other proceedings. No duplicate entries  
14 were included. These combined invoices and accompanying receipts support  
15 \$451,872.35 in legal fees. The specific tasks performed and expenses incurred  
16 are contained in the identified invoices. (See WP/Legal Expenses (Voluminous).

17 **Q. WERE THE RATES CHARGED BY JACKSON WALKER FOR LEGAL**  
18 **SERVICES WITHIN THE RANGE OF REASONABLE RATES CHARGED FOR**  
19 **SIMILAR SERVICES?**

20 A. Yes. Since the invoices listed in Table 6 reflect charges incurred in 2015  
21 through 2017, the reflected charged Jackson Walker hourly rates for attorneys  
22 was between \$540, \$545, \$550, \$555, and \$575. As indicated earlier, the rates  
23 for any particular year were negotiated retainer rates and the experience of the  
24 charging attorney. The blended hourly rate for all Jackson Walker services was  
25 \$552.21. Based on my experience, the attorneys hourly rates contained in the  
26 Jackson Walker billings are similar to the hourly rates charged for comparable  
27 services during the same time frame(s), and are reasonable and consistent with  
28 prevailing standards. The hours spent to perform the tasks assigned to TNMP's  
29 outside counsel were reasonable and necessary to appropriately complete  
30 those tasks in a professional manner.

1 **Q. WHAT IS YOUR OPINION ABOUT THE GENERAL CHARACTER OF THE**  
2 **BILLINGS FOR THE AMS MANAGED SERVICE EXPENSES LISTED IN**  
3 **TABLE 6?**

4 A. The billings were sufficiently detailed to permit me to evaluate the sufficiency of  
5 the charges. Further, there were no charges which resulted from a single  
6 person billing in excess of 12 hours in one day. Neither were there any charges  
7 for alcohol, first class or charter airfare, expenses associated with sporting  
8 events, or meal expenses were included in the Jackson Walker charges.

9 **Q. ARE THE OUTSIDE LEGAL FEES AND EXPENSES CHARGED TO TNMP**  
10 **FOR THESE CONTRACT EXPENSES REASONABLE AND NECESSARY?**

11 A. Yes. For an engagement supporting a project exceeding \$50 million, TNMP  
12 expended less than 1% in attorney's fees to secure the Managed Services  
13 Agreement necessary to secure the hardware, systems, and services to effect  
14 the enhanced AMS managed services discussed in the testimony of TNMP  
15 witness Robert K. Roberts. Considering the complexity and sensitivity of  
16 securely managing the capture and transmission of meter data and  
17 appropriately operating its AMS across TNMP's entire service territory, TNMP  
18 appropriately engaged attorneys with the necessary expertise to secure the  
19 necessary software and services required to operate its system. Consequently,  
20 the amount of time and attention to the tasks described, the fees and expenses  
21 presented in the invoices listed in Table 6 above are reasonable and necessary.

22 **III. CONCLUSION**

23 **Q. WHAT IS YOUR RECOMMENDATION REGARDING THE RECOVERY OF**  
24 **LEGAL EXPENSES RELATED TO THE ABOVE MATTERS?**

25 A. I recommend that the legal charges and expenses presented for each of the  
26 foregoing proceedings and non-proceeding matters be approved as reasonable  
27 and necessary expenses and authorized for recovery, specifically by including  
28 them in TNMP's approved costs in this proceeding.

29 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**



1 A. Yes.

**AFFIDAVIT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF DENTON       §

BEFORE ME, the undersigned authority, on this day personally appeared Michael Scott Seamster, who, upon proving his identity to me and by me being duly sworn, deposes and states the following:

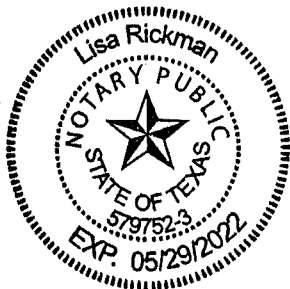
“My name is Michael Scott Seamster. I am of legal age, a resident of the State of Texas, and have never been convicted of a felony. I certify that the foregoing testimony, offered by me on behalf of Texas-New Mexico Power Company, is true and correct and based upon my personal knowledge and experience.”

Michael Scott Seamster

Witness

\* \* \* \* \*

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 18<sup>th</sup> day of May 2018, to certify which witness my hand and seal of office.



SEAL:

Lisa Rickman

NOTARY PUBLIC in and for the  
State of TEXAS

Printed Name: LISA RICKMAN

My Commission expires: 5/29/2022

Notary ID# 579752-3