ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2012

Mr. Stephen Journeay, Director
Commission Advising and Docket Management Division
Public Utility Commission of Texas
1700 N Congress Avenue
Austin, Texas 78701

Via E-Mail

Re: Outside Counsel Contract Approval:
OCC No. 2012-473-0152 - Jennings Strouss & Salmon, PLC

Dear Mr. Journeay:

Enclosed please find a copy of the Outside Counsel Agreement noting approval by this Office. In signing this Outside Counsel Contract, this office has not substituted our judgement for your Agency's as to the qualification of, need for, dollar amounts and appropriate expenditures of taxpayer resources for this firm's representation.

If you have any questions or require further information, please contact me at the number below.

Sincerely,

James A. Person III
Assistant Attorney General
General Counsel Division
(512) 936-1207

Enclosures

OUTSIDE COUNSEL CONTRACT
OCC No. 2012-473-0152

STATE OF TEXAS §
§

This contract is made and entered into by and between the Public Utility Commission of Texas, hereinafter referred to as the "Agency," and **Jennings, Strouss & Salmon, PLC**, hereinafter referred to as "Outside Counsel."

RECITALS

WHEREAS, the Agency requires the assistance of outside legal counsel in carrying out its responsibilities; and

WHEREAS, Counsel desires to act as outside legal counsel to the Agency, subject to the authority of the Attorney General of Texas. Tex. Gov't Code, Section 402.0212.

NOW, THEREFORE, in consideration of the mutual covenants and terms and conditions herein contained, and of the execution hereof, the parties agree and bind themselves to the obligations and performance of the tasks as follows:

SECTION 1. PURPOSE

The Attorney General hereby approves Outside Counsel as legal counsel to Agency during the term of this Agreement and for the purposes expressed in this Agreement and in Addendum A, attached hereto and incorporated herein by reference for all purposes. The purpose of this Agreement is for the Agency to obtain Outside Counsel to advise and assist the Agency in the course and scope of the Agency's performance of duties, or provision of services, as described in Addendum A. Nothing in this Agreement is intended to prevent the Agency and the Outside Counsel from amending this Agreement in the future to expand the scope of the Agreement.

SECTION 2. CONTRACT PERIOD

Term. This Agreement shall commence on March 15, 2012 and shall terminate at the end of all litigation and litigation-related matters associated with the Statement of Work attached hereto as Addendum A, unless terminated earlier pursuant to Section 6 of this Agreement.

SECTION 3. OBLIGATIONS OF OUTSIDE COUNSEL

3.1 **Duties.** It is expressly understood that services provided to the Agency will be subject to the authority of the Attorney General, should the Attorney General, in his sole discretion, deem it necessary, expedient, or in the best interest of the State of Texas to assert such authority. Outside Counsel will advise and assist the Agency on legal issues as requested by the Agency. "Advise and assist" may include advice and assistance with respect to litigation, unless otherwise provided in Addendum A. It is understood that no litigation will be initiated by Outside Counsel without the prior approval of the Attorney General.

3.2 **Appeals.** Irrespective of any authorization to engage in litigation in this Agreement, in a subsequent amendment, or in a writing outside of this Agreement, Outside Counsel is not authorized to proceed on any appeal, in any capacity, whether interlocutory or otherwise, whether as appellant, appellee, respondent, applicant, or otherwise, without first obtaining the written permission of the Chief of the Solicitor General Section of the Office of the Attorney General.

3.3 **Staff.** The attorneys expected to perform substantial services for the Agency and the method and amount or rate of their compensation are specified in Addendum B, attached to and made a part hereof. If additional staff of Outside Counsel is to perform compensable services pursuant to this Agreement, the hourly rate(s), if applicable, for

each assigned additional staff will be as shown in Addendum B. Outside Counsel agrees to comply with section 8.2 of this Agreement if Outside Counsel determines it is reasonable and necessary to subcontract for the services of local or other counsel to assist in the legal representation contemplated by this Agreement. If Outside Counsel subcontracts for legal services, then Outside Counsel will provide written notice of the name, address, hourly rate (if applicable) and reason for the subcontract to the Agency and Attorney General within ten (10) calendar days of entering into the subcontract.

3.4 **Reports.** The Outside Counsel acknowledges that documents generated in the course of representation of a governmental body may be subject to the Texas Public Information Act. The Outside Counsel will exercise professional judgment and care not to generate documents which are subject to public information requests that are intended to be confidential or confidential attorney-client communications. This is particularly important in the presentation of invoices where incidental notation may tend to reveal litigation strategies or confidential information. This subsection shall not be interpreted to limit Outside Counsel's duty to provide full disclosure to the Agency and the Attorney General as necessary in Outside Counsel's judgment to represent the Agency with due professional care or required by applicable law or disciplinary rules.

SECTION 4. SCHEDULE FOR PERFORMANCE OF SERVICES BY OUTSIDE COUNSEL

Schedule. The parties agree to develop a schedule for the performances to be delivered by Outside Counsel when assignments are made.

SECTION 5. COMPENSATION

5.1 **Maximum Liability.** The total liability for legal services and expenses under this Agreement shall not exceed $0 for the duration of this Agreement. Any increase to this fee cap during the term of this Agreement and any subsequent renewals thereof must be in writing and approved by the Attorney General. The parties acknowledge and agree that nothing in this Agreement will be interpreted to create an obligation or liability in excess of the funds currently appropriated to the Agency during this biennium. Outside Counsel is not required to perform services that cannot be compensated due to the limitations of this agreement. Nothing herein shall prevent the parties from amending the total amount of this Agreement in accordance with Section 8.16 herein.

5.2 **Payments to Outside Counsel.** The Outside Counsel agrees to abide by the following payment structure and schedule:

5.2.1 **Compensation for Time.** In consideration of full and satisfactory performance of the services hereunder, the Agency shall direct Entergy Texas, Inc. (ETI) to pay Outside Counsel pursuant to the Public Utility Regulatory Act §39.4525 for each hour of work performed pursuant to this Agreement according to the fee schedule attached hereto as Addendum B and incorporated herein by reference. The Agency gives its informed consent to acceptance of payment for Outside Counsel's services from a third party. Payment by a third party shall not affect Outside Counsel's independence of professional judgment or the attorney-client relationship between Outside Counsel and the Agency, nor shall such payment diminish the obligations of Outside Counsel to maintain client confidences.

Compensation for time will be paid only for time actually spent working on Agency legal matters. Under no circumstances will Outside Counsel be compensated for off-duty hours while traveling. Outside Counsel agrees to follow the Outside Counsel Billing Guidelines set forth in Addendum C, attached hereto and incorporated by reference.

Nor will Outside Counsel be compensated for administrative costs or overhead.

5.2.2 **Reimbursement of Expenses.** The Agency will direct ETI to reimburse Outside Counsel pursuant to the Public Utility Regulatory Act §39.4525 for reasonable actual expenses incurred in the performance of the services herein. The Agency will also direct ETI to reimburse Outside Counsel for travel expenses related to the services to be delivered under this Agreement, including reasonable mileage at the rate of $0.555 per mile and actual costs not to exceed a per diem at the rate of $100 for each attorney for each day requiring overnight travel. Outside Counsel must provide copies of original receipts as evidence of actual expenditures. Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for coach fares for commercial airlines. Unless otherwise agreed upon by the parties in writing in advance, in state (Texas) lodging or overnight accommodations

will be reimbursed at the lesser amount of the actual expense or $200 per night. Unless otherwise agreed upon by the parties and approved by the Attorney General in writing in advance, out of state lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or $250 per night. All other expenses will be invoiced at actual cost. No mark-up will be allowed on reimbursable contracts, expenses or subcontract expenses.

5.3 **Invoice for Payment.** Unless otherwise specified in Addendum A, all statements for legal services and expenses incurred shall be submitted to the Agency on a monthly basis. Upon approval of the statements by the Agency, the Agency will direct ETI to make payment to Outside Counsel. On submission of the statements, Outside Counsel is certifying to the following: that invoices accurately describe the services performed, that the legal services have been performed in compliance with the Agreement, and that the charges and expenses shown on the invoice are reasonable, and either necessary, or advisable and have been approved by the Agency, and do not exceed any limitation provided for in this Agreement. Invoices for work performed at hourly rates shall provide a detailed accounting of the time charged and the respective charge for each increment of time. On each invoice, Outside Counsel will identify the total due and payable.

Each invoice presented must include the Outside Counsel Contract (OCC) number. The invoice must specify the Texas Comptroller issued vendor identification number or social security number, a description of the services provided, and the name and division of the Agency Contract manager. The invoices from the Outside Counsel to the Agency must be submitted to:

Payables
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326
payables@puc.state.tx.us

Within ninety (90) business days after incurring any expenses (other than hourly compensation for Outside Counsel's time and except as provided in Addendum "B"), including travel expenses related to this Agreement, Outside Counsel shall submit a request for reimbursement and provide such information, copies of original receipts or other documentation as requested by the Agency.

SECTION 6. TERMINATION

6.1 **Convenience of the State.** The Attorney General or Agency reserve the right, in their sole discretion and at their sole option, to terminate this Agreement, in whole or in part, without penalty, by notifying Outside Counsel in writing of such termination prior to the effective date of such termination. In the event of such termination, Outside Counsel shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services which are necessary to wind-up, in a cost effective manner, all services being provided. The Agency shall be liable for payments for all services performed to the effective date of termination, plus any necessary services to cost effectively wind-up. Such notification of termination shall state the effective date of such termination.

6.2 **Cause/Default.** In the event that Outside Counsel fails to provide the agreed upon services according to the provisions of this Agreement, or fails to comply with any of the terms or conditions of this Agreement, the Agency may, upon written notice of default to Outside Counsel, immediately terminate all or any part of this Agreement. In the event ETI fails to remit payment for invoices according to this provisions of this Agreement, Outside Counsel may, upon written notice to Agency, terminate all or any part of this Agreement. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law, or under this Agreement.

6.3 **Rights Upon Termination or Expiration.** Upon expiration or termination of the Agreement for any reason, Outside Counsel shall immediately transfer to the Agency all information and associated work products prepared by the Outside Counsel or, otherwise prepared for the Agency pursuant to this Agreement, in whatever form such information and work products may exist, to the extent requested by the Agency. The Agency is granted

the unrestricted right to use, copy, modify, prepare derivative works from, publish and distribute, at no additional cost to the Agency, in any manner the Agency deems appropriate in its sole discretion, any component of the information, work products, or other deliverable made the subject of this Agreement.

6.4 **Remedies.** Notwithstanding any exercise by the Agency of its rights of early termination pursuant to this section, Outside Counsel shall not be relieved of any liability to the Agency for damages due to the Agency by virtue of any breach of this Agreement by Outside Counsel or for amounts otherwise due the Agency by Outside Counsel.

6.5 **Termination by Outside Counsel.** Outside Counsel may terminate upon reasonable notice: (1) for substantial breach by the State; or (2) at Outside Counsel's request, provided that Outside Counsel fully cooperates with all reasonable requests of the State to effect an orderly transition to the State or other counsel designated by the State of matters in which Outside Counsel was involved, including the transfer of all related records and files. In the event of termination at the request of Outside Counsel pursuant to clause (2) of the preceding sentence, Outside Counsel shall be compensated for services rendered up through the effective date of such termination.

SECTION 7. CERTIFICATIONS OF OUTSIDE COUNSEL

By agreeing to and signing this Agreement, the Outside Counsel hereby makes the following certifications and warranties required by statute:

7.1 **Delinquent Child Support Obligations.** Under Section 231.006 of the Texas Family Code, Outside Counsel certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

7.2 **Prohibited Bids and Agreements.** Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and agreements), Outside Counsel, by signing this Agreement, certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

7.3 **Buy Texas.** With respect to all services, if any, purchased pursuant to this Agreement, Outside Counsel represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.

7.4 **Gift to Public Servant.** Outside Counsel warrants that it has not given, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the award of this Agreement.

7.5 **Corporate Franchise Tax.** By signing this Agreement, Outside Counsel certifies that its Texas franchise tax payments are current, or that it is exempt from, or not subject to, such tax.

7.6 **Outside Counsel License/Conduct.** Each attorney listed in Addendum B is an attorney in good standing under the laws of the State of Texas or jurisdiction where the representation occurs. Outside Counsel will notify the Agency and the Attorney General in writing within one (1) business day of any lapse in his/her licensed status. Outside Counsel acknowledges that, in performing services under this Agreement, Outside Counsel and its attorneys must adhere to the Texas Disciplinary Rules of Professional Conduct or to the professional conduct code of the jurisdiction where the representation occurs.

7.7 **Debt to State.** Outside Counsel acknowledges and agrees that, to the extent Outside Counsel owes any debt or delinquent taxes to the State of Texas, any payments Outside Counsel are owed under this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Outside Counsel owes the State of Texas until the debt or delinquent taxes are paid in full.

SECTION 8. GENERAL TERMS AND CONDITIONS

8.1 Independent Contractor. Outside Counsel agrees and acknowledges that during the existence of this Agreement, it acts in the capacity of an independent contractor and that Outside Counsel is not an employee of the Agency.

8.1.1 Outside Counsel will be solely and entirely responsible for its acts and the acts of its agents, employees, subcontractors, and representatives in the performance of this Agreement.

8.1.2 Outside Counsel agrees and acknowledges that during the existence of this Agreement, Outside Counsel shall be entirely responsible for the liability and payment for Outside Counsel or Outside Counsel's employees or assistants, of all taxes of whatever kind, arising out of the performances in this Agreement. Other than the payments described in this Agreement, Outside Counsel agrees and acknowledges that Outside Counsel or Outside Counsel's employees or assistants shall not be entitled to any state benefit on account of the services provided hereunder. THE AGENCY SHALL NOT BE LIABLE TO THE OUTSIDE COUNSEL, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION, OR ANY BENEFIT DUE TO A STATE EMPLOYEE. If Agency or the State of Texas shall nonetheless become liable for the payment of taxes, unemployment insurance premiums, or workers compensation benefits owed by Outside Counsel or any of its members, shareholders, or employees as a result of performance by Outside Counsel of its obligations under this Agreement, Outside Counsel shall promptly pay or reimburse Agency or the State of Texas for such liability.

8.2 Subcontracting. In the event that the Outside Counsel should determine that it is necessary or expedient to subcontract for any of the performances, or in support of any of the performances herein, Outside Counsel may enter into such subcontracts. If Outside Counsel elects to enter into a subcontract for any legal services, then the parties agree that the Agency shall not be liable to Outside Counsel for hourly rates greater than the highest hourly rate specified in Addendum B, for a greater amount than the total liability for legal services specified in Section 5.1, or for expenses greater than the expenses specified in Section 5.2.2, unless prior written approval from the Agency and the Attorney General is obtained. Outside Counsel, in subcontracting for any performances or in support of any of the performances specified herein, expressly understands and agrees that the Agency shall not be directly liable in any manner to the Outside Counsel's subcontractor(s). In the event Outside Counsel subcontracts for any performances hereunder, the subcontractor shall directly invoice Outside Counsel and Outside Counsel shall then invoice the Agency for the work performed. The actual work performed by subcontractor shall be specifically identified in the invoice. In no event shall this section or any other provision of this Agreement be construed as relieving Outside Counsel of the responsibility for ensuring that all performances rendered under this Agreement, and any subcontracts thereto, are rendered in compliance with all of the terms of this Agreement.

8.3 Assistants. The Outside Counsel agrees that any person employed or engaged by Outside Counsel and who assists in performing the services agreed to herein shall not be considered employees or agents of the Agency or the State of Texas. Outside Counsel shall be responsible for any payments and other claims due such persons for work performed under this Agreement. Further, the Outside Counsel agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Agency shall not be liable to Outside Counsel, its employees, agents, or others for the provision of unemployment insurance and/or workers' compensation.

8.4 Assignment of Agreement. Outside Counsel may not assign this Agreement, or assign or delegate any right or duty under this Agreement, without prior written approval from the Agency and the Attorney General.

8.5 Records Retention. Unless otherwise directed by the Agency, Outside Counsel shall retain all records relating to the provision of services herein for a period of five (5) years following the termination of this Agreement. Upon the request of the Agency, Outside Counsel shall allow representatives or designees of the Attorney General or Agency to review and/or audit said records at all reasonable times. Upon the request of the Agency, after the expiration of the records retention period, Outside Counsel shall return all files and records to the Agency. Outside Counsel may destroy all records in whatever media that are not returned at the expiration of the record retention period.

8.6 Survival. The obligations of Outside Counsel under Section 8, shall survive this Agreement.

8.7 Copyright/Intellectual Property. Outside Counsel shall take reasonable measures to protect Agency from material risks of Agency liability known to Outside Counsel for copyright or patent infringement or disclosure of trade secrets resulting from the use of any equipment, materials, information, or ideas furnished by Outside Counsel pursuant to this Agreement, other than equipment, materials, information, or ideas specified by Agency or its employees or other agents. Outside Counsel and the Agency agree to furnish timely written notice to each other, and the Attorney General, of any claim of copyright, patent, trade secret, or other intellectual property infringement arising out of services under this Agreement.

8.8 Media Releases or Pronouncements. Outside Counsel understands that the Attorney General and Agency do not endorse any vendor, commodity, or service. Outside Counsel, its employees, representatives, other agents or subcontractors may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Agreement or the services or project to which this Agreement relates or which mentions the Attorney General or Agency without the prior written approval of the Attorney General and Agency.

8.9 Written Notice Delivery. Any notice required or permitted to be given under this Agreement by one party to the other party shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the recipient's address set forth in this section, or on the date shown on the certificate of receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address hereinafter specified.

8.10.1 Outside Counsel's Address. The address for the Outside Counsel for all purposes under this Agreement and for all notices hereunder shall be:

Firm Name: Jennings, Strouss & Salmon, PLC
c/o: Debra D. Roby
Address: 1350 I Street NW
Suite 810
Washington, DC 20005-3305
T: 202.464.0539
F: 202.371.9025
C: 703.785.9270
droby@jsslaw.com
www.jsslaw.com

8.10.2 Attorney General and Agency's Address. The address for the Attorney General and the Agency for all purposes under this Agreement and for all notices hereunder shall be:

Outside Counsel Contract Coordinator
Office of the Attorney General
General Counsel Division, Mail Code 074
Post Office Box 12548
Austin, Texas 78711-2548

Stephen Journeay
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326
512-936-7215

8.11 Dispute Resolution.

8.11.1 The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by the Agency and by Outside Counsel to attempt to resolve any claim for breach of Agreement made by the Outside Counsel.

8.11.1.1 Outside Counsel's claims for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Outside Counsel shall submit written notice, as required by subchapter B, to the First Assistant Attorney General, his successor, or his designee and **Stephen Journeay, Public Utility Commission of Texas, his successor or his designee**. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Outside Counsel and the Agency otherwise entitled to notice under the parties' Agreement. Compliance by Outside Counsel with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

8.11.1.2 The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Outside Counsel's sole and exclusive process for seeking a remedy for any and all alleged breaches of Agreement by Agency or the State of Texas if the parties are unable to resolve their disputes under Section 8.11.1.

8.11.1.3 Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Agreement by Agency nor any other conduct of any representative of Agency relating to the Agreement shall be considered a waiver of sovereign immunity to suit.

8.11.2 The submission, processing, and resolution of Outside Counsel's claim is governed by the published rules (1 TAC § 68) adopted by the Office of the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

8.12 **CONFLICT OF INTEREST.** If the legal services to be performed by an attorney pursuant to this Agreement involve representation of Agency in a contested matter, Outside Counsel represents that Outside Counsel, and such attorney, does not, and shall not during the term hereof, represent a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies.

Outside Counsel represents that it does not now represent, and has not for a six-month period preceding this Agreement represented, a client before Agency; furthermore, Outside Counsel represents that it will not for a six-month period following the termination of this Agreement represent a client before Agency.

8.13 **Taxes.** This Agreement shall not be construed so as to supersede the laws of the United States or the State of Texas which accord the State of Texas, the Agency, and all departments, agencies, and instrumentalities of the State of Texas exemptions from the payment(s) of all taxes of whatever kind. More specifically, the Agency shall not directly or indirectly be liable for taxes of any kind. To the extent allowed by law, the Agency will provide, upon the request of Outside Counsel, all applicable tax exemption certificates.

8.14 **Signatories.** Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have authority to enter into this Agreement.

8.15 **Applicable Law and Venue.** This Agreement and its incorporated documents shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought concerning this Agreement or its incorporated documents is fixed in any court of competent jurisdiction in Travis County, Texas, and all payments shall be due and payable in Travis County, Texas.

8.16 **Amendments.** This Agreement may be amended only upon written Agreement signed by the parties and approved by the Attorney General.

8.17 **Severability/Interpretation.** The fact that a particular provision in this Agreement is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions and the Agreement will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be interpreted by the parties or the courts to be replaced with language that is as close as possible to the intent of the original provision so as to effectuate the purpose of this Agreement. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Agreement.

8.18 Insurance Required. Outside Counsel presently maintains malpractice insurance in an amount of not less than one million dollars and agrees to maintain at least this amount of insurance coverage during the term of this Agreement. Further, Outside Counsel agrees to give notice to the Agency and to the Attorney General in the event the amount of malpractice insurance is canceled. Outside Counsel also agrees to furnish to Agency or the Attorney General certified copies of such insurance policies when requested. Outside Counsel agrees that no claim by the Agency and the State of Texas for damages resulting from breach of Outside Counsel's duties to the Agency in connection with the representation shall be limited to the amount of malpractice insurance maintained by Outside Counsel.

IN WITNESS THEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS CONTRACT IN MULTIPLE COUNTERPARTS.

Outside Counsel:

Signature:

J. Scott Rhodes, Managing Attorney
Jennings, Strouss & Salmon, PLC
One East Washington Street
Suite 1900
Phoenix, AZ 85004-2554
T: 602.262.5862
F: 602.495.2648
srhodes@jsslaw.com
Tax Id #86-0108229

Approved:

By the Office of the Attorney General of Texas

by Attorney General/Designee

Agency:

Public Utility Commission of Texas

By Brian Lloyd
Executive Director
Public Utility Commission of Texas
P.O. Box 13326
Austin, TX 78711-3326

Addendum A
Services

(Pursuant to paragraph 3.1 above, it is understood that no litigation will be initiated by Outside Counsel without the prior approval of the Attorney General.)

STATEMENT OF WORK

The contractor will provide legal services to the Public Utility Commission of Texas (PUCT) related to certain proceedings before the Federal Energy Regulatory Commission (FERC) concerning the membership of Entergy Texas, Inc. in a power region, regional transmission organization (RTO), independent system operator (ISO), or related to the Entergy System Agreement.

The legal services to be provided by outside counsel may include, but are not limited to, the following:

a. Advising the commission on how a proceeding before FERC may impact matters within the jurisdiction of the PUCT.
b. Advising the commission on the procedural and substantive issues related to a proceeding at FERC.
c. Advising the commission on a litigation strategy at FERC.
d. Advising the commission on the need for witnesses and, if appropriate, obtaining witnesses and preparing those witness to testify at the FERC proceeding.
e. In consultation with the commission, developing and preparing briefs or other legal pleadings before FERC.
h. Representing the commission at proceedings before FERC.
i. In consultation with the commission, determining whether to appeal any decision by FERC and prosecuting that appeal in the courts.
j. Representing the commission in any appeals to a court.

The use of the term commission in this statement of work includes an individual commissioner and commission staff.

Addendum B

(Alternative 2)

Individual Hourly Rates

Professionals	Hourly Rate
Alan I. Robbins, Member	$465
Debra D. Roby, Member	$375
Elizabeth Teuwen, Member	$365
Associates	$225 – $315
Paralegals	$50 – $150
Daniel C. Cooper, Consulting Engineer	$250

Addendum C

Outside Counsel Billing Guidelines

These guidelines are intended to give structure and predictability to Agency's relationship with Outside Counsel. From Agency's perspective, teamwork is the key to quality and cost-effective legal representation. Agency expects to be billed in accordance with the following Outside Counsel Billing Guidelines:

1. Hourly Rates. The hourly rates for each partner, of counsel, associate, and paralegal working on Agency matters will be in accordance with the hourly rates or ranges as agreed between Agency and Outside Counsel (not to exceed $500 per hour). The hourly rate or rate range will remain unchanged during the Agreement Period. If a rate range is specified, an attorney may be moved within the range or reclassified no more often than once in each 12-month period, with the approval of Agency.

2. Billable Time.

   A. Agency will only pay for the services of attorneys, paralegals, patent agents, and technical specialists. All time must be billed in no more than one-tenth hour increments, and must reflect only actual time spent. Block billing (where the description of legal services rendered is given without dates, attorney's time spent, etc.) will not be reimbursed. Formula or value billing (where billing is based on the result or value to the client rather than actual time spent) will not be reimbursed. Time entries must note the date performed, identify the legal professional performing the task, describe the task(s) completed, show the time taken to complete each task, and state the applicable hourly rate. Tasks referencing correspondence and filings must describe the document received or authored. Agency expects to be billed for the actual time it takes to modify standardized forms, filings, and/or correspondence for use on the matter being billed. Agency will not reimburse Outside Counsel for the time it originally took to prepare any such standardized documents. Agency will not pay for review, execution, and processing of the standard Outside Counsel Contract.

   B. Agency will not pay for the education or training of attorneys, law clerks, interns or paralegals of Outside Counsel, including assigning such staff on a transient basis to an Agency matter. Each designated professional is expected to perform work of a type commensurate with his/her professional title. Without prior approval, Agency will not pay for more than one attorney or legal professional to perform any task. Agency will also not pay for duplicate review, analysis, or legal research of or on documents unless prior approval is obtained. Agency's view is that the most efficient use of attorney time is to maintain continuous contact with the file so that it is not necessary to review the file to become reacquainted with it. Thus, repeated time spent reviewing the file should not be necessary and will not be reimbursed.

   C. Extensive legal research must be pre-approved by Agency. A request to undertake legal research should provide Agency with an estimate of either time or dollar amount to be expended. The need for legal research will be addressed on a case-by-case basis. In general, Agency should be paying Outside Counsel to apply their knowledge and expertise for which it was hired, not paying them to obtain that knowledge. However, Agency understands that situations arise that justify research on how best to proceed in order to achieve a desired result.

   D. All conferences must describe the attendees and purpose of the meeting and, if more than one Outside Counsel member is in attendance, a justification for multiple attendees from Outside Counsel.

   E. Agency will not pay for law clerks, law interns, summer interns, or administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, including but not limited to the following: overtime, file opening, file organization, docketing , and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter.

3. Expenses. Agency expects Outside Counsel to anticipate and include expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate. Accordingly, Agency will not reimburse Outside Counsel for:

A. Copying charges (routine, day-to-day);

B. Fax charges;

C. Routine postage;

D. Office supplies;

E. Local, long distance or cellular telephone charges;

F. Local travel (within 20-mile radius of office), including mileage, parking, and tolls;

G. All delivery services incurred by internal staff;

H. Air-conditioning;

I. Electricity or other utilities;

J. Internet charges; and

K. Any other overhead expenses.

Agency will reimburse the actual cost for the following expenses:

A. Pre-approved volume copying;

B. Overnight courier charges and third party courier services, with an explanation of the nature and purpose of the charge (i.e., why the task was not completed in a timely manner to permit reduced rates); and

C. Travel expenses as stated in Outside Counsel Contract.

All other expenses are considered included within the hourly rates of Outside Counsel unless they are truly extraordinary and Agency's advance approval has been obtained prior to incurring the expense.

4. Invoices. Agency expects Outside Counsel's invoices to show the same high quality and care it takes with its legal work. Professional time and disbursements should be reviewed by the billing partner, and those portions that are not necessary for the legal task(s) described should be deleted before the bill is submitted for payment.

A. Invoices for legal services shall be submitted to the person designated in Outside Counsel Contract within 10 business days of the end of the month in which legal services are rendered.

B. Each statement should indicate the matter for which the legal services were performed and the Outside Counsel Contract number under which the legal services were performed.

C. Allowable costs and expenses should be billed in accordance with the guidelines set forth in paragraph 3 above and supported by attached copies of invoices for amounts in excess of $50.00.

D. A summary sheet should be included indicating the total legal fees and expenses, the amount of the contract, and the total legal fees and expenses invoiced to date.

It is estimated that the total amount of legal fees and expenses to be paid by ETI under this Agreement is

$900,000. It is the responsibility of Outside Counsel to monitor the total amount of legal fees and expenses invoiced under the Agreement. Once the billable hours exceed 75% of the estimated $900,000 in legal fees and expenses, the firm should advise Agency in writing requesting an increase in the total estimated legal fees and expenses stating the reason for the additional legal fees and expenses. Legal services rendered exceeding the total estimated legal fees and costs are not allowed and will not be paid without advance written approval by Agency. It is Outside Counsel's responsibility to advise Agency prior to exceeding the Agreement limit. Nothing herein shall prevent the parties from amending the total estimated legal fees and expenses. Any amendment of the total estimated legal fees and expenses must be in writing, signed by both the Agency and Outside Counsel. No approval by the Attorney General is required for an amendment of the total estimated legal fees and expenses.

If you have questions regarding these guidelines or any outside counsel matters, please contact Agency.