



Control Number: 50095



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SOAH DOCKET NO. 473-20-1773
PUC DOCKET NO. 50095

COMPLAINTS OF TERRY AND SARA	§	BEFORE THE STATE OFFICE
FAUBION AGAINST TEXAS-NEW	§	OF
MEXICO POWER COMPANY	§	ADMINISTRATIVE HEARINGS

DIRECT TESTIMONY
OF
DANNY WELLS, P.E.

ON BEHALF OF
TERRY AND SARA FAUBION

MAY 18, 2020

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Daniel (Danny) W. Wells. Legacy Consultants 220 Livingston Drive Hickory Creek, TX 75065.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. Legacy Consultants. I am the owner/CEO of the company as well as a professional engineer.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?

A. Terry and Sara Faubion (homeowners).

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS.

A. I have a Bachelor of Science degree in Electrical Engineering (BSEE). I have my professional engineering (PE) license in 10 different states as well as the country of Zambia. Additional information regarding my education, qualifications and background can be found in my professional bio has been attached to this testimony as Exhibit DW-1.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS?

A. Yes, I testified in Docket No. 49795 (SOAH Docket No.473-20-1118) on behalf of Rio Grande Electric Cooperative.

Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECT SUPERVISION AND CONTROL?

A. Yes.

Q. DO YOU HAVE ANY ATTACHMENTS TO YOUR TESTIMONY?

A. Yes. My direct testimony includes the following attachments:

Exhibit DW-1	Professional Bio
Exhibit DW-2	Written statements from TNMP employees
Exhibit DW-3	TNMP responses to first set of Requests for production in District Court litigation.
Exhibit DW-4	Line patrol sheets provided by TNMP

1 **Q. WERE THESE EXHIBITS PREPARED BY YOU OR UNDER YOUR DIRECT**
2 **SUPERVISION AND CONTROL?**

3 A. Yes.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

5 A. My testimony is to address the incident of September 12, 2015 at 567 FM 217 in Valley
6 Mills, Texas in which power issues resulted in the energizing of a neutral/ground wire
7 and did significant damage to the Faubions' home.

8 **Q. WHAT IS YOUR UNDERSTANDING OF WHAT HAPPENED DURING THAT**
9 **INCIDENT?**

10 A. My understanding is that on the evening of September 12, 2015 about 7:30 to 8:00 pm, the
11 Faubions were home when an explosion occurred. Mr. Faubion heard a big boom and the
12 power went off. Using a flashlight Mr. Faubion discovered the damage in the home that
13 included electrical arcing in the utility room as well as water spraying in parts of the house.
14 Mr. Faubion stated to me that the weather was good on the night of the incident. He further
15 stated that there had been lots of power issues the prior week with the power going ON and
16 OFF multiple times. Mr. Faubion explained that the day before the incident on September
17 11, 2015 that the local school had been let out early that morning due to power related
18 issues from Texas-New Mexico Power (TNMP). Upon my inspection of the Faubion
19 property, evidence clearly showed that the neutral/ground wire to the home had become
20 energized causing electrical arcing as well as a heating of the soldered copper water pipes.
21 While the energy flowed on the copper water pipes the heating affect resulted in the
22 soldered joints heating and allowing the solder to melt away from the joints. This resulted
23 in leaking water pipes within the home as was reported on the night of the incident. Having
24 investigated numerous matters that involved energized neutral/ground wires the evidence
25 that was found at the Faubion house was consistent with this type of event occurring.

26 **Q. ARE YOU AWARE THAT TNMP IS CONTENDING THAT THE INCIDENT**
27 **WAS CAUSED BY A BIRD STRIKE?**

28 A. Yes, I am aware this has been TNMP's claim of what caused the failure and ultimate
29 energizing of the neutral/ground wire that resulted in damage within the Faubions' home.
30 However, written statements provided by TNMP personnel Mike Piscacek and Dwain
31 Walker conflict with each other as well as provide inaccurate information. Mr. Piscacek

1 states "A dead buzzard was found in a tree next to a pole where damage to TNMP's
2 facilities were discovered." (See Exhibit DW-2). Mr. Walker states "Mr. Faubion and I
3 then went in the field across from his house where we have a transmission line. That's
4 when I found a broken ground wire, busted insulator and a dead buzzard at the bottom of
5 the pole." (See Exhibit DW-2). My interview with Mr. Faubion confirmed that he in fact
6 did take Mr. Walker to the pole in question on the night of the incident as well as helped
7 direct crews to the pole in order to do the repairs that night. Of the multiple times that Mr.
8 Faubion was near and around the pole that night, at no time did he observe a buzzard at the
9 pole or in the tree nor did any of the TNMP personnel point one out to him.

10 I have been provided very blurry photos of what appears to be a dead bird in a tree and a
11 photo of what appears to be part of a bird's wing on the ground. There are no date codes
12 with the photos or nothing that provides any type of scale or measurement of the wing span
13 or size of the bird. There are no closeup photos to show any type of entrance/exit wound
14 of the bird that would indicate electric power had flowed through and potentially killed the
15 bird. There are no closeup photos that show any type of melted aluminum any where on
16 the bird or any type of localized burn marks on the bird.

17
18 **Q. WHAT STEPS WOULD YOU NEED TO TAKE TO DETERMINE THE CAUSE**
19 **OF THIS FAILURE?**

20 Some of these steps have already been taken by inspecting the Faubion's home and the
21 damage that was caused throughout the home. This inspection of items from the Faubion's
22 home is limited to the result, or effects, of the failure and were determined to not be the
23 cause of the failure. What would still need to be completed to determine the cause of the
24 failure is the inspection of any damaged electrical equipment, devices, conductor and
25 inspection of the bird carcass. It is my understanding that NOTHING was retained by
26 TNMP and the photographs provided to date are very limited without clearly depicting the
27 location at which they are being taken or the detail that was needed as outlined in my
28 answer to the question at Page 4, Lines 10 –16 above. The damage to the insulator alone
29 should have required a full replacement of the insulator, but retention of this piece of
30 evidence was not done, even though TNMP personnel was aware of the electrical, fire, and
31 water damage that was done at the Faubion's residence on the night of the event. The

1 burned neutral/ground wire that was trimmed back and replaced was NOT retained by
2 TNMP either or has not been presented to date for inspection. Inspection of any damaged
3 equipment is the only way to gain a better understanding of what has occurred and draw
4 unbiased opinions. This would involve a possible destructive lab examination. The lab
5 examination would include x-rays as needed and inspection of the TNMP's artifacts that
6 should have been recovered for any type of damage and/or heating effects. Lab
7 examinations are very fluid in nature with the various steps to take next being determined
8 after the start of inspecting the various items in evidence. The key to any successful lab
9 examination begins with actually having retained evidence that can be examined; TNMP
10 did NOT retain any evidence for examination that has been provided to date.

11 A proper determination of cause for any failure should follow the scientific method, the
12 steps of this method are as follows:

- 13 1) Recognize the need
- 14 2) Define the problem
- 15 3) Collect data
- 16 4) Analyze the data
- 17 5) Develop a hypothesis
- 18 6) Test the hypothesis
- 19 7) Select a final hypothesis

20 Step #3 is to collect data. In the absence of TNMP collecting the physical data such as the
21 involved equipment from their system, there are other ways that they can provide data
22 regarding events occurring on the system prior to this failure. As mentioned earlier there
23 had been several power issues the week before the night of the event. As you recall Mr.
24 Faubion had even noted that the local school had to close due to power outages on
25 September 11, 2015. Attempts have been made to obtain data from TNMP through the
26 "First set of requests for production" in the District Court action against TNMP. The
27 responses to these requests are included with this testimony as Exhibit DW-3. Upon a
28 review of this exhibit you will see claims that the requests will not aid in the investigation
29 or that there is "no way to search..." for the information being requested. The information
30 that is being requested is easily searched within a GIS system as well much of this
31 information is what is required by the PUC for tracking such things as System Average
32 Interruption Frequency Index (SAIFI) and System Average Interruption Duration Index

(SAIDI) numbers. This claim of not being able to provide key information in an otherwise skewed investigation performed internally by TNMP seems to fly in the face of Rule 25.52(d) which clearly instructs on the keeping of records of interruption for five years.

Q. IN DISCOVERY, TNMP PERSONNEL ARE REPORTED AS SAYING THAT IT IS A TOTAL FLUKE THAT THE BUZZARD GOT IN THE EXACT LOCATION ON THE WIRE FOR THIS TO OCCUR AND THAT HE HAS NOT SEEN THIS BEFORE. HAVE YOU EVER SEEN SUCH AN OCCURANCE?

A. I have not personally seen a bird that has become energized from a power line. That's not to say it is not possible, in fact during my days of designing power lines (Transmission and Distribution) we would ensure reliable service from those power companies by installing "bird guards" as well as design with greater separation between energized wires or proper insulation where energized parts were closer together. To me this seems like a logical approach that any utility should be doing in order to provide safe reliable power to its customers.

Q. IN YOUR OPINION IS THIS A PLAUSIBLE EXPLANATION FOR THE CAUSE OF THE POWER SURGE?

A. If you approach the determination for the cause of this failure with the scientific method steps that I outlined on Page 5, lines 11–19 above, then considering a bird strike would need to be included. As for if it is plausible, that requires the execution of the additional steps in the process. It appears that TNMP found one piece of evidence (a bird carcass), took some blurry photos, and jumped right to the selection of the final hypothesis without considering any other data or retaining any evidence to be looked at more completely.

Q. IN YOUR OPINION IS THERE A MORE LIKELY EXPLAINATTION FOR THE CAUSE OF THE POWER SURGE?

A. Yes, there are several other items that need to be considered that seem to have been ignored in TNMP's approach. The knowledge of other power issues in the week prior to the night of the event as well as the serious power issue(s) that occurred the day before the incident need to be more completely understood to see if there were any other contributing factors or issues from TNMP's electric system. Included with this testimony as Exhibit DW-4 are reports line patrols that were run on this involved transmission line with underbuilt

1 distribution line. The first page of this exhibit shows a line patrol that was conducted on
2 February 3, 2014, some 1 ½ years before the Faubion incident, and shows that a ground
3 support and ground wire were broken at the top of the pole. This type of breakage would
4 allow for a ground wire to hang down and potentially come in contact with a phase of the
5 69kV line without any type of bird strike. This in turn could energize a neutral/ground to
6 any nearby customers. No additional documentation has been provided regarding this issue
7 from February of 2014 or any affected customers that may have received damage due to
8 this ground breakage. The other line patrols show various issues that were identified with
9 the 4th and 5th page being the patrol that was done the night before the Faubion incident.
10 Issues that were found at that time were bad or damaged arms as well as trees in the lines.
11 Typically, after a patrol is done it takes several days before the repairs are completed (see
12 work completed date on the first page of this exhibit). In the case of the patrol completed
13 on the day before it appears that the note indicates a copy was given to D. Foster on
14 September 14, 2015 (3 days after the incident). It is likely, though unconfirmed, that this
15 check list of items found was being given for repairs to be made. I have seen several times
16 throughout my career where trees that are not controlled with proper vegetation
17 management can grow into lines. Since the tree has a certain amount of water content
18 within its branches then a conductive bridge can be made between two energized lines and
19 cause an energizing of the neutral/ground wire. Regarding a bird making the same
20 energized conductive bridge, it is more difficult. A bird's feathers are typically dry and
21 considered more of an insulator than a conductor. Therefore, if a bird is to become the
22 conductive bridge then contact between two energized points must be made between fleshy
23 parts, such as the wrists, feet, or other skin of the bird. This takes us back to the complete
24 examination of the bird carcass for any burn points on the body and then attempting to
25 match them to damaged equipment and wires on the TNMP system.

26 **Q. WHAT IS THE BASIS FOR YOUR OPINION?**

27 A. My experience, background and education help form the basis for my opinions. The data
28 gathered and provided to date in this matter also helps to form my opinions. No evidence
29 was retained by TNMP in this matter that has been provided for inspection to date. TNMP
30 did not properly document the scene which should have included photos with
31 measurements of bird carcass as well as clearly showing distances between the involved

1 electrical equipment. A complete and final opinion that represents the most probable cause
2 can not currently be provided as the proper evidence was not retained and the requested
3 information from TNMP has not be provided to date. The effects observed in the Faubion
4 house is no doubt the result of a failure occurring on the TNMP power line that was
5 designed and maintained by TNMP.

6 **Q. HAVE YOU WORKED WITH OTHER UTILITIES IN DETERMINING THE**
7 **CAUSE OF ELECTRICAL ISSUES?**

8 A. I have. I have worked directly as an employee for two separate investor owned utilities in
9 Missouri. I have also worked cases/files involving electric issues from utilities in multiple
10 states that resulted in property damage, structure fires, wildland fires, shocks and
11 electrocutions. My work with these various electrical issues has included working on behalf
12 of the utilities as well as working opposing various utilities.

13 **Q. DOES THIS CONCLUDE YOUR PREPARED DIRECT TESTIMONY?**

14 A. Yes. However, I request the right to amend, delete, and/or add to my testimony if
15 additional information or facts become known.

Exhibit DW-1

Daniel Wells – Education, Qualifications, and Background



220 Livingston Dr. Hickory Creek, Texas 75065
danny@wellslegacyconsultants.com
214-797-9229

Danny Wells
Electrical Engineer, Senior Consultant
danny@wellslegacyconsultants.com

LICENSURE:

- Country of Zambia - Africa Professional Engineer License #005970
- Arkansas Professional Engineer License #14116
- California Professional Engineer License #19262
- Connecticut Professional Engineer License #PEN0028665
- Florida Professional Engineer License #72001
- Kansas Professional Engineer License #21350
- Louisiana Professional Engineer License #37558
- Missouri Professional Engineer License #2008019615
- New York Professional Engineer License #089356
- Oklahoma Professional Engineer License #24400
- Texas Professional Engineer License #105520
- Missouri Licensed Real Estate Broker License #2006029851

CERTIFICATIONS:

National Council of Examiners for Engineering & Surveying, *NCEES*, #39065
(This certification allows expedited licensing in all 50 states)

EDUCATION:

- BSEE, *University of Missouri-Columbia*, 1996

AFFILIATIONS:

- MEMBER, Institute of Electrical & Electronic Engineers (IEEE)
- MEMBER, National Society of Professional Engineers (NSPE)
- MEMBER, Texas Society of Professional Engineers (TSPE)
- MEMBER, International Association of Arson Investigators (IAAI)
- MEMBER, National Fire Protection Association (NFPA)
- MEMBER, National Association of Fire Investigators (NAFI)
- MEMBER, Central Texas Fire Investigators Association (CTFIA)
- MEMBER, The Engineer Institution of Zambia (EIZ)

EXPERIENCE: (11+ Years in Forensic Engineering)

Legacy Consultants, Hickory Creek, TX – January 2020 - Present

Electrical Engineer, Senior Consultant

Forensic engineering analysis of disaster related incidents/accidents

Integrity Forensics & Engineering, Sanger, TX – November 2013 - Present

Consulting Engineer

Forensic engineering analysis of disaster related incidents/accidents

Verité Forensic Engineering, Conroe, TX – January 2012 - November 2013

Professional Engineer

Forensic engineering analysis of disaster related incidents/accidents



220 Livingston Dr. Hickory Creek, Texas 75065
danny@wellslegacyconsultants.com
214-797-9229

Danny Wells
Electrical Engineer, Senior Consultant
danny@wellslegacyconsultants.com

Haag Engineering, Dallas, TX – November 2008 – January 2012

Forensic Electrical Engineer

Investigations performed included, but were not limited to, electrical failures (transformers, switchgear, commercial equipment, appliances, ground issues, vehicle and machinery), electrocution/electric shock evaluations, lightning damage, electrical causes of fires in residential & commercial properties, electronic & computer failure (internal breakdown, surge damage, reparability), evaluation and scope of damage, and research & testing of various components

Kansas City Power & Light, Kansas City, MO – 2006 - 2008

Project Engineer, Distribution and Standards

Full Faith Outreach Ministries Inc., Lusaka, Zambia-Africa – 2001 – 2006

Director/Founder/Consultant

Empire District Electric Company, Joplin, MO – 1996 - 2001

Distribution, Transmission & Substation Design Engineer

Franklin Technology Center, Joplin, MO – 1997

Department Head/Inst

CONTINUING EDUCATION (INSTRUCTOR):

- "Fire and Explosion: Origin and Cause," Dallas, TX
November 2011
- "Fire Origin and Cause," San Antonio, TX
Eberl Claim Service Annual Meeting, February 2010
- "Ask the Expert Seminar," DFW area, TX
Multiple dates, January 2010 – January 2012

CONTINUING EDUCATION (ATTENDED):

- "Fire and Electrical Analysis," Austin, TX
Central Texas Fire Investigators Association (CTFIA), December 2008
- "Certified Fire and Explosion Investigator Seminar," Denver, CO
National Association of Fire Investigators (NAFI), March 2009
- "Testifying and Forensic Report Writing," Dallas, TX
SEAK Inc., June 2009
- "Certified Vehicle Fire Investigator Seminar," Lexington, KY
National Association of Fire Investigation (NAFI), September 2009



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danny@wellslegacyconsultants.com
214-797-9229

Danny Wells
Electrical Engineer, Senior Consultant
danny@wellslegacyconsultants.com

- "Advanced Arson Investigative Techniques," Brunswick, GA
I.A.A.I., November 2010
- "Advanced Testifying and Forensic Report Writing," Dallas, TX
SEAK Inc., December 2010
- The following seminars were completed:
Red Vector Online, 2008 – 2012
 - "Arc Flash Hazard Analysis" "Fuel Cell Power Systems"
 - "Personal Protective Equipment" "Voltage Regulator Application"
 - "Capacitor Applications" "Electrical Conductor Sizing"
 - "Electric Motors & Generators" "Overview of Electric Power Systems"
 - (Magnetics/Generators/Alternators)" "Telecommunications Fundamentals"
 - "Electrical Characteristics of Conductors" "Electrical Protection Grounding"
- The following seminars were completed (continued):
Red Vector Online, 2008 – 2012
 - "Electric Power Course" "Electrical Installations"
 - "Transformer Standards" "Transformer Connections"
 - "Solar Electric Generation" "Ethical Decision Making for Engineers"
 - "NEC 2008 Changes" "Solar Electric Generation Technologies"
 - "Safety: Electrical – Fundamentals,
Materials & Equipment Grounding"

Exhibit DW-2
Written Statements from TNMP Employees
Provided by TNMP in District Court Litigation

A dead buzzard was found in a tree next to a pole where damage to TNMP's facilities were discovered. A buzzard was apparently electrocuted. While investigating the pole, TNMP crew members saw burn marks on a post type insulator and on a broken pole ground wire. It was evident that the buzzard had made contact between the 69,000 volt phase wire and the pole ground wire. This caused the pole ground wire to burn into falling and coming in contact with an energized 69,000 volt phase, which became energized also. This pole ground serves as a neutral for an under build distribution line serving the customer's house. The normal voltage for the under build line is 14,400 volts which then serves a transformer and is reduced to a voltage of 120 / 240. The increased voltage is apparently what caused the damage to customer's property when it traveled through the neutral.

Mike Piscacek

The following is the ET on call statement.

Dwain Walker

ET 5

Clifton, Texas

REPORTS:

On Saturday September 12th at 7:30pm I received a call from DOC, Distribution Operations Center, for lights out from Olsen Station to Crawford. This was caused by a buzzard getting between the pole ground and phase on our 69kva transmission line. I called for help and crews assisted in patrolling the line. DOC called back and reported that the Valley Mills Fire Department was investigating a house fire. At this time, I went to the house and the customer showed me where there was damage such as fire rings around electrical switches, arcing marks between washer dryer and oven. Customer said he was watching TV and it sounded like a big boom went off when the power went out. He got his flash light and that is when he discovered the damage. He also talked to his neighbor and the neighbor reported that his hot water heater went out because water was all over the floor. His neighbor is on a different lateral that Mr. Faubion. Mr. Faubion and I then went in the field across from his house where we have a transmission line. That's when I found a broken ground wire, busted insulator and a dead buzzard at the bottom of the pole. I called the crews to bring material and equipment and we fixed the problem. Switching was done and all but Mr.

TNMP 000002

Faubions power was restored. This was around 1:45am Sunday the 13th. Mr. Faubion had already instructed me to leave his power off until he could get an electrician to come out and look over everything. I left his lateral fuse open.

Customer name: Terry P Faubion
567 FM 217
Valley Mills Texas

TNMP 000003

The following is a statement dictated by James Anz to Vere Conrad.

Involving a 69kv from Olsen to Valley Mills Transmission line. The 69kv transmission line Breaker opened between Olsen and Valley Mills. After line patrol was done it was deemed a buzzard had landed on our 69kv pole top insulator. The buzzard came in contact with the top primary phase to ground wire coming down the pole causing an arc down the 69kv pole ground, witch is connected to the common netural on the distubution side of line, causing the 69kv line to lock out. The transmission pole had a 22kv disturbuton line under the transmission serving a customer. The primary fuse on disturbuton line never blew due to voltage going down the pole ground. The reason I believe the house caught on fire was the ground wire became energized to transmission voltage into the house from our pole.

TNMP 000004

Exhibit DW-3
TNMP Responses to First Set of Requests For Production
In District Court Litigation

CAUSE NO. CV17197

TERRY AND SARA FAUBION,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	220TH JUDICIAL DISTRICT
	§	
ANCHOR INSURANCE, AND TEXAS	§	
NEW MEXICO POWER COMPANY,	§	
Defendants.	§	BOSQUE COUNTY, TEXAS

**DEFENDANT TEXAS-NEW MEXICO POWER COMPANY'S OBJECTIONS AND
RESPONSES TO DEFENDANT/CROSS-PLAINTIFF ANCHOR SPECIALTY
INSURANCE COMPANY'S FIRST SET OF REQUESTS FOR PRODUCTION**

TO: Co-Defendant/Cross-Plaintiff, Anchor Specialty Insurance Company, by and through its attorney of record, Eric A. Laskowski, THE LEWIS LAW FIRM, 8445 Gladys Avenue, Beaumont, Texas 77706

COMES NOW, Defendant **TEXAS-NEW MEXICO POWER COMPANY**, in the above-styled and numbered cause of action, by and through their attorneys of record, and pursuant to TEXAS RULES OF CIVIL PROCEDURE 196, and serves its *Objections and Responses to Co-Defendant/Cross-Plaintiff's First Set of Requests for Production*.

Respectfully submitted,

**FLETCHER, FARLEY,
SHIPMAN & SALINAS, L.L.P.**

By: /s/ Keith A. Robb
LANE P. FARLEY
STATE BAR NO. 00787451
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KEITH A. ROBB
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**ATTORNEYS FOR DEFENDANT
TEXAS-NEW MEXICO POWER
COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been mailed, served by electronic means, telecopied or hand delivered to all attorneys of record, in compliance with Rule 21a. of the TEXAS RULES OF CIVIL PROCEDURE, on this the 9th day of November, 2018.

/s/ Keith A. Robb
KEITH A. ROBB

OBJECTIONS AND ANSWERS TO REQUESTS FOR PRODUCTION

1. Any and all documents pertaining to power outages and/or power surges within a two-mile radius of the property located at 567 FM 217, Valley Mills, Texas 76689. This request is limited to the one year period preceding the loss which is the subject of this litigation.

RESPONSE: Defendant objects to this Request as overly broad, seeking information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as unduly burdensome. Defendant has no way to search for a two mile radius around the property at 567 FM 217, Valley Mills, Texas. Defendant can search service locations by address, but an arbitrary two-mile radius fails to provide appropriate search parameters and/or service locations. The burden of attempting to determine all of the places that have service within a two mile radius of the property is greatly outweighed by the likely benefit of the information would be found, as a two mile radius is an arbitrary designation. Conducting discovery for miles around the Plaintiffs' house is out of proportion to the potential benefit and is not likely to be important in resolving this litigation where the cause of the electrical incident is identified. There is no reason to believe that everything within a two mile radius could have an electrical effect at 567 FM 217, Valley Mills, Texas.

2. Any and all records of complaints pertaining to electrical service within a two mile radius of the property located at 567 FM 217, Valley Mills, Texas 76689. This request is limited to the one year period preceding the loss which is the subject of this litigation.

RESPONSE: Defendant objects to this Request as overly broad, seeking information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as unduly burdensome. Defendant has no way to search for a two mile radius around the property at 567 FM 217, Valley Mills, Texas. Defendant can search by address, but the Request does not list other addresses to be searched. The burden of attempting to determine all of the places that have service within a two mile radius of the property is greatly outweighed by the likely benefit of the information would be found, as a two mile radius is an arbitrary designation. There is no reason to believe that everything within a two mile radius could have an electrical effect at 567 FM 217, Valley Mills, Texas. Defendant further objects to this Request as overly broad as the phrase "electrical services" is vague and ambiguous. As written, this Request appears to seek discovery of every service call and complaint Defendant has received or performed within a two mile radius of the property for a year. As such, the Request is lacking proportionality and is unduly burdensome. Conducting discovery for miles around the Plaintiffs' house is out of proportion to the potential benefit and is not likely to be important in resolving this litigation where the cause of the electrical incident is identified. Subject to and without waiving these objections, documents related to the lines near the Plaintiffs' house are attached.

3. Any and all documents pertaining to the investigation into the cause and origin of the Subject Occurrence.

RESPONSE: See attached statement of James Anz.

4. Any and all records of electrical services and/or repairs within a two-mile radius of the Property. This request is limited to the one year period preceding the Subject Occurrence.

RESPONSE: Defendant objects to this Request as overly broad, seeking information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as unduly burdensome. Defendant has no way to search for a two mile radius around the property at 567 FM 217, Valley Mills, Texas. Defendant can search by address, but the Request does not list other addresses to be searched. The burden of attempting to determine all of the places that have service within a two mile radius of the property is greatly outweighed by the likely benefit of the information would be found, as a two mile radius is an arbitrary designation. There is no reason to believe that everything within a two mile radius could have an electrical effect at 567 FM 217, Valley Mills, Texas. Therefore Defendant further objects to this Request as overly broad as the phrase “electrical services” is vague but it is not defined. As written, this Request appears to seek discovery of every service call and complaint Defendant has done within a two mile radius of the property for a year. Conducting discovery for miles around the Plaintiffs’ house is out of proportion to the potential benefit and is not likely to be important in resolving this litigation where the cause of the electrical incident is identified. Subject to and without waiving these objections, see attached documents.

5. Please produce any and all documents produced by you to any party in this litigation.

RESPONSE: Defendant copies the non-requesting party when it responds to discovery.

6. Please produce any and all documents produced to you by any party in this litigation.

RESPONSE: Defendant objects to this request because documents produced by the Plaintiff or Co-Defendant are equally available to Co-Defendant.

7. Any and all reports prepared by experts, or persons identified as experts, in the above referenced litigation.

RESPONSE: Defendant objects to this Request as impermissible expert discovery. Discovery regarding testifying expert witnesses is only through a request for disclosure and deposition. (See Rule 195.1)

8. Any and all reports of expert witnesses who are going to testify as witnesses in this case, and any and all reports of consulting experts which were reviewed by testifying experts.

RESPONSE: Defendant objects to this Request as impermissible expert discovery. Discovery regarding testifying expert witnesses is only through a request for disclosure and deposition. (See Rule 195.1)

9. Any and all reports of consulting experts which were reviewed by testifying experts.

RESPONSE: Defendant objects to this Request as impermissible expert discovery.

Discovery regarding testifying expert witnesses is only through a request for disclosure and deposition. (See Rule 195.1) The information reviewed by a testifying expert does not become discoverable until the deadline to designate testifying experts.

10. Any and all documents Defendant, Texas New Mexico Power Company, intends to introduce at trial.

RESPONSE: Defendant has not yet identified its trial exhibits. Defendant will designate its trial exhibits in accordance with the Texas Rules of Civil Procedure and any applicable scheduling order. Otherwise, Defendant objects to any unilateral requirement by Co-Defendant/Cross-Plaintiff that Defendant analyze its trial strategy.

11. Photographs of animals, dead or alive, which you contend caused the subject power surge.

RESPONSE: See attached.

12. Any and all photographs pertaining to the subject power surge.

RESPONSE: Defendant objects to “any and all” to the extent that the phrase makes the remainder of the request overly broad and not requesting documents with reasonable particularity. Subject to and without waiving these objections, see attached photographs.

13. The animal that caused the Subject Incident.

RESPONSE: Defendant photographed the bird but did not take possession of its carcass.

14. Any and all records of service calls to locations within 10 miles of the Property. This is limited to 90 days before the Subject Occurrence.

RESPONSE: Defendant objects to this Request as overly broad, seeking information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as unduly burdensome. Defendant has no way to search for a ten mile radius around the property at 567 FM 217, Valley Mills, Texas. Defendant can search service locations by address, but an arbitrary ten-mile radius fails to provide appropriate search parameters and/or service locations. The burden of attempting to determine all of the places that have service within a ten mile radius of the property is greatly outweighed by the likely benefit of the information would be found, as a two mile radius is an arbitrary designation. There is no reason to believe that everything within a ten mile radius could have an electrical effect at 567 FM 217, Valley Mills, Texas. As written, this Request appears to seek discovery of every service call and complaint Defendant has received or performed within a ten mile radius of the property for a year. Conducting discovery for miles around the Plaintiffs’ house is out of proportion to the potential benefit and is not likely to be important in resolving this litigation where the cause of the electrical incident is identified. Subject to and without waiving these objections, Defendant did not have service calls near the Plaintiffs’ home in the 90 days before the Subject Occurrence.

15. And all records of service problems within 10 miles of the Property. This is limited to 90 days before the Subject Occurrence.

RESPONSE: Defendant objects to this Request as overly broad, seeking information that is irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request as unduly burdensome. Defendant has no way to search for a ten mile radius around the property at 567 FM 217, Valley Mills, Texas. Defendant can search by address, but the Request does not list other addresses to be searched. The burden of attempting to determine all of the places that have service within a ten mile radius of the property is greatly outweighed by the likely benefit of the information would be found, as a ten mile radius is an arbitrary designation. There is no reason to believe that everything within a two mile radius could have an electrical effect at 567 FM 217, Valley Mills, Texas. As written, this Request appears to seek discovery of every service call and complaint Defendant has received or performed within a ten mile radius of the property for a year. Conducting discovery for miles around the Plaintiffs' house is out of proportion to the potential benefit and is not likely to be important in resolving this litigation where the cause of the electrical incident is identified. Subject to and without waiving these objections, Defendant did not have service problems near the Plaintiffs' home in the 90 days before the Subject Occurrence.

16. A true and correct copy of any statement of any fact witnesses ever rendered to you or any of your representatives, prior to suit being filed and regarding the occurrence in question.

RESPONSE: Defendant objects to this Request as duplicative of Rule 194.2(i). Subject to and without waiving this objection, *see* Defendant's response to Rule 194.2(i).

17. A true and correct copy of any incident report or investigative report prepared by you, or any of your representatives, prior to the time that suit was filed and regarding the occurrence in question.

RESPONSE: See produced witness statements.

18. A true and correct copy of any statement of any fact witnesses ever rendered to you or any of your representatives, prior to suit being filed and regarding the occurrence in question.

RESPONSE: Defendant objects to this Request as duplicative of Rule 194.2(i). Subject to and without waiving this objection, *see* Defendant's response to Rule 194.2(i).

19. A true and correct copy of any statement of any fact witnesses ever rendered to you or any of your representatives, prior to suit being filed and regarding the occurrence in question.

RESPONSE: Defendant objects to this Request as duplicative of Rule 194.2(i) and of Request 18. Subject to and without waiving this objection, *see* Defendant's response to

Rule 194.2(i).

20. Any and all photographs and videos of the Plaintiff, Plaintiff's injuries, or anything relevant to this lawsuit.

RESPONSE: Defendant objects to this Request to the extent that requesting "anything relevant to this lawsuit" is not requesting documents with reasonable particularity. Subject to and without waiving this objection, see attached.

21. Any and all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by a testifying expert. If applicable, also include the consulting expert's current resume and bibliography.

RESPONSE: Defendant objects to this Request as improper expert discovery. Discovery regarding testifying expert witnesses is only through a request for disclosure and deposition. (See Rule 195.1)

22. Copies of all demonstrative aids and visual aids Defendant intends to use at the trial of this matter.

RESPONSE: Defendant has not yet identified its trial exhibits. Defendant will designate its trial exhibits in accordance with the rules of civil procedure and any applicable scheduling order. Otherwise, Defendant objects to any unilateral requirement by Co-Defendant/Cross-Plaintiff that Defendant analyze its trial strategy.

23. A true, complete, and correct copy of any and all investigative reports of every person, agency, and entity who investigated the Subject Incident and resulting damages to Plaintiffs' property.

RESPONSE: See produced statements.

24. Please provide a privilege log of all documents for which you claim privilege.

RESPONSE: Defendant objects to this Request as beyond the scope of discovery and as attempting to impose obligations beyond the Texas Rules of Civil Procedure. Subject to and without waiving these objections Defendant will follow Rule 193 regarding the assertion of privilege

25. Any and all documents pertaining to the cause of the Subject Incident.

RESPONSE: Defendant objects to this Request as being overly broad and not requesting documents with reasonable particularity. Subject to and without waiving these objections, see documents produced by any party to this litigation.

26. Any and all materials damaged as a result of the Subject Occurrence. This includes any and all damaged fuses, wires, boxes and breakers.

RESPONSE: Defendant does not possess equipment that was damaged in the Subject

Occurrence, but photographs are attached.

Exhibit DW-4
Line Patrol Sheets Provided By TNMP
Provided by TNMP in District Court Litigation