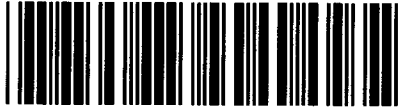


Control Number: 39366



Item Number: 69

Addendum StartPage: 0



Entergy Services, Inc.
919 Congress Ave., Suite 701
Austin, TX 78701
Tel 512-487-3943
Fax 512-487-3958

Legal

September 30, 2011

Ms. Tracie Lowery
Filing Clerk
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78701

RE: SOAH Docket No. 473-11-5074; PUC Docket No. 39366, *Application of Entergy Texas, Inc. for Authority to Redetermine Rates for the Energy Efficiency Cost Recovery Factor Tariff and Request to Establish a Revised Energy Efficiency Goal and Cost Caps*

Dear Ms. Lowery:

Attached please find the unanimous Stipulation of the parties to the above styled case. You will note that the Stipulation and Proposed Order is being provided twice: Once as part of the Stipulation, and again as an attachment to the Proposed Order.

Because the Proposed Order references the Stipulation (which in turn references the Proposed Order), ETI is providing all of the documents referenced in the Stipulation and Proposed Order.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula Cyr".

Paula Cyr
Assistant General Counsel

Attachment

cc: All Parties of Record

**SOAH DOCKET NO. 473-11-5074
PUC DOCKET NO. 39366**

APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO REDETERMINE RATES FOR THE ENERGY EFFICIENCY COST RECOVERY FACTOR TARIFF AND REQUEST TO ESTABLISH A REVISED ENERGY EFFICIENCY GOAL AND COST CAPS	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
--	--	--

JOINT MOTION TO ADMIT EVIDENCE AND REMAND TO THE COMMISSION

Entergy Texas, Inc. (ETI or the Company), the Public Utility Commission (Commission) Staff, the Office of Public Utility Counsel (OPC), the Cities of Anahuac, Beaumont, Bridge City, Conroe, Groves, Houston, Huntsville, Montgomery, Navasota, Nederland, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Silsbee, Sour Lake, Vidor and West Orange (Cities), and Texas Industrial Energy Consumers (TIEC) through their duly authorized representatives (collectively, the Parties) submit this request that evidence be admitted and this proceeding be remanded to the Commission.

The Parties request that the following evidence be admitted: the Application, which includes the Direct Testimony of John K. Carson and Phillip B. Gillam and attached exhibits; the errata filed by ETI on May 23, 2011 and on June 20, 2011; the Proof of Notice filed by ETI on June 3, 2011; the Direct Testimony of Cities' witness Karl Nalepa filed on July 19, 2011; the Direct Testimony and Exhibit of TIEC witness Jeffry Pollock filed on July 19, 2011; the Direct Testimony of Staff witness William B. Abbott filed on July 26, 2011; the errata filed by Cities on August 5, 2011; the rebuttal testimonies of ETI witnesses John K. Carson and Phillip B. Gillam filed on August 5, 2011; the Cross-Rebuttal Testimony and Workpapers of Nathan A. Benedict filed on August 5, 2011; and this Agreement and its attachments.

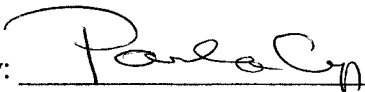
As evidenced by the concurrently filed Stipulation and Settlement Agreement and accompanying Proposed Order,¹ there are no disputed issues, and no hearing is required in this proceeding. Therefore, the Parties request this docket be remanded to the Commission in order to allow the Commission to review and consider the Stipulation and Settlement Agreement as soon as possible.

¹ For the convenience of the ALJ, the Proposed Order contains footnotes that identify supporting information from the application and testimony.

Respectfully Submitted,

Paula Cyr
ENTERGY SERVICES, INC.
Suite 701
919 Congress
Austin, Texas 78701
(512) 487-3957 telephone
(512) 487-3958 facsimile

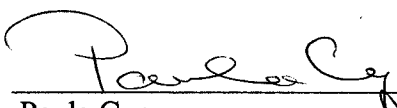
Bret J. Slocum
Evan D. Johnson
DUGGINS WREN MANN & ROMERO, LLP
P.O. Box 1149
Austin, Texas 78767
(512) 744-9300 telephone
(512) 744-9399 facsimile

By: 
Paula Cyr
State Bar No. 16385200

**ATTORNEYS FOR ENTERGY TEXAS,
INC.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by facsimile, hand-delivery, overnight delivery, or 1st Class U.S. Mail on all parties of record in this proceeding on September 30, 2011.


Paula Cyr

**SOAH DOCKET NO. 473-11-5074
PUC DOCKET NO. 39366**

APPLICATION OF ENTERGY	§	BEFORE THE STATE OFFICE
TEXAS, INC. FOR AUTHORITY TO	§	
REDETERMINE RATES FOR THE	§	
ENERGY EFFICIENCY COST	§	OF
RECOVERY FACTOR TARIFF AND	§	
REQUEST TO ESTABLISH A REVISED	§	
ENERGY EFFICIENCY GOAL AND	§	ADMINISTRATIVE HEARINGS
COST CAPS	§	

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (Agreement) is entered into by Entergy Texas, Inc. (ETI or the Company), the Public Utility Commission Staff (Staff), the Office of Public Utility Counsel (OPC), the Cities of Anahuac, Beaumont, Bridge City, Conroe, Groves, Houston, Huntsville, Montgomery, Navasota, Nederland, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Silsbee, Sour Lake, Vidor and West Orange (Cities), and Texas Industrial Energy Consumers (TIEC) through their duly authorized representatives (collectively, Signatories). The Signatories stipulate and agree as follows:

I. BACKGROUND

1. On April 29, 2011, ETI filed an application with the Commission requesting authority to revise its energy efficiency cost recovery factor (EECRF) and to establish revised goals and cost caps applicable to its energy efficiency program for the year 2012. On May 23, 2011, ETI filed its first errata correcting certain errors contained in the initial filing. On June 20, 2011, ETI filed its second errata correcting certain errors contained in the initial filing.
2. In its application, ETI indicated that its current EECRF costs to meet a 20% goal in 2011 already exceed the Commission's cost caps, as set out in P.U.C. SUBST. R. 25.181(f)(8), for all but its Large Industrial Power Service (LIPS) customers. ETI also asserted that it is not reasonably possible for ETI to comply with a 25% energy efficiency goal in 2012, as set out in P.U.C. SUBST. R. 25.181(e)(1)(B), without increasing its EECRF rates above the current level and further exceeding the Commission's cost caps for those customers. For instance, ETI asserted that the EECRF rate for residential customers would increase

from the current \$0.001008 per kWh to a rate of \$0.001235 per kWh, which is a 23% increase. Both of these rates exceed the EECRF cost cap for residential customers of \$0.001 per kWh.

3. ETI offered the following proposals in its application:
 - a) that the Commission establish ETI's residential rate cap and non-residential cost caps at a level so that the Company can meet a 25% energy efficiency goal in 2012;
 - b) that the Commission establish for ETI a 20% energy efficiency goal and establish the Company's non-residential cost caps at a level so that the Company can meet a 20% energy efficiency goal in 2012.

These proposals were made pursuant to P.U.C. SUBST. R. 25.181(e)(2), which allows the Commission to establish a lower goal than the goal specified in P.U.C. SUBST. R. 25.181(e)(1) or a higher budget cap than the caps specified in P.U.C. SUBST. R. 25.181(f)(8) if the utility demonstrates that compliance with that goal or cap is not reasonably possible and that good cause supports the lower goal or higher cap.

4. OPC, Commission Staff, TIEC, and the Cities submitted testimony in this case disputing certain issues raised by ETI's EECRF application, including the amount of costs to be recovered through the EECRF, the allocation of program costs among the rate classes, and the allocation of the performance bonus among the rate classes.
5. The Signatories believe a negotiated resolution of this proceeding pursuant to the terms set out below is desirable and in the public interest because the result is reasonable under the circumstances and will conserve the public's and the Signatories' resources and eliminate controversy.

II. AGREEMENT

The Signatories have reached agreement on the issues as set out below and agree that the Commission should enter an order consistent with this Agreement:

1. **Notice.** The Signatories agree that ETI's notice was adequate and in compliance with P.U.C. SUBST. R. 22.55.
2. **Costs Recovered Through the EECRF.** The Signatories agree that ETI's EECRF should be revised to collect \$8,617,684, which reflects the following three components:

\$7,976,900 in energy efficiency program costs projected to be incurred in 2012 to achieve a 25% energy efficiency goal; a refund of \$771,230 in energy efficiency program costs recovered under the Company's EECRF implemented for calendar year 2010 that exceeded actual program costs; and \$1,412,014 representing ETI's 2010 performance bonus for achieving demand savings that exceeded its statutory goal for 2010. The Signatories also agree that the level of energy efficiency costs to be recovered through the EECRF will be effective beginning with the first billing cycle of the Company's January 2012 billing month, which begins December 30, 2011.

3. **Energy Efficiency Goal for 2012.** The Signatories agree that ETI's goals for 2012 should be 15.5 MW of demand savings and 27,156 MWh of energy savings, which is equivalent to a 25% energy efficiency goal.
4. **Non-residential Cost Caps for 2012.** The Signatories agree that good cause exists for the Commission to establish a revised cost cap for the Small General Service, General Service and Large General Service rate classes in order to allow the Company to recover its energy efficiency expenditures necessary to meet a 25% energy efficiency goal in 2012.
5. **Allocation of the Performance Bonus in 2012.** The Signatories agree that the performance bonus portion of the EECRF will not be allocated to the LIPS industrial customers taking transmission-level service, effective January 1, 2012.
6. **Previous Performance Bonus Allocations.** TIEC agrees to waive any argument in this proceeding and future proceedings regarding the legality of performance bonus allocations charged to transmission-level LIPS industrial customers prior to January 1, 2012.
7. **Allocation of 2012 Projected Program Costs.** The Signatories agree that there are currently no energy efficiency programs in place in 2012 in which customers taking service under the Lighting rate class are anticipated to participate and that the Lighting rate class would not be allocated any projected program costs for recovery through the 2012 EECRF. The Signatories also agree that if Lighting customers participate in programs in 2012, applicable program costs will be recovered through the 2013 true-up of 2012 program costs (for recovery in 2014).

8. **2012 Cost Recovery Factors.** ETI's 2012 EECRF rates are identified in Attachment A to this Agreement.
9. **Future Tracking of Costs.** During the 2012 program year and each year thereafter, ETI shall segregate and account for all EECRF program costs and all EECRF revenues by each rate class taking service from ETI.
10. **Obligation to Support this Stipulation.** The Signatories agree that they will support this Agreement before the Commission and will take reasonable steps to support Commission entry of an order consistent with this Agreement.
11. **Evidence and Proposed Order.** The Signatories agree that the Commission should issue the proposed order, included as Attachment B, which is consistent with the terms of this Agreement. The Signatories agree to the admission into evidence of the following documents for the limited purpose of supporting this Agreement: the Application, which includes the Direct Testimony of John K. Carson and Phillip B. Gillam and attached exhibits; the errata filed by ETI on May 23, 2011 and on June 20, 2011; the Proof of Notice filed by ETI on June 3, 2011; the Direct Testimony of Cities' witness Karl Nalepa filed on July 19, 2011; the Direct Testimony and Exhibit of TIEC witness Jeffry Pollock filed on July 19, 2011; the Direct Testimony of Staff witness William B. Abbott filed on July 26, 2011; the errata filed by Cities on August 5, 2011; the rebuttal testimonies of ETI witnesses John K. Carson and Phillip B. Gillam filed on August 5, 2011; the Cross-Rebuttal Testimony and Workpapers of Nathan A. Benedict filed on August 5, 2011; and this Agreement and its attachments. The Signatories waive cross-examination.
12. **Effect of Stipulation and Settlement Agreement.**
 - a) The Agreement urges the Commission to adopt an appropriate order consistent with the terms stated herein. The terms of this Agreement may not be used either as an admission or concession of any sort or as evidence in any other proceeding. The Signatories further agree that all oral or written statements made during the course of the settlement negotiations may not be used for any purpose and are governed by TEX. R. EVID. 408. The obligations set forth in this subsection shall continue and be enforceable, even if this Agreement is terminated as provided below.

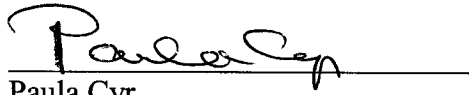
- b) This Agreement is binding on each Signatory only for the purpose of settling the issues as set out herein and for no other purpose. Except to the extent that this Agreement expressly governs a Signatory's rights and obligations for future periods, this Agreement, including all terms provided herein, shall not be binding or precedential on a Signatory outside of this case except for a proceeding to enforce the terms of this Agreement. The Signatories acknowledge and agree that a Signatory's support of the matters contained in this Agreement may differ from its position or testimony in other proceedings not referenced in this Agreement. To the extent there is a difference, a Signatory does not waive its position in such other proceedings. Because this is a settlement agreement, a Signatory is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement, whether those proceedings present the same or a different set of circumstances. A Signatory's agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.
- c) The Signatories acknowledge and agree that the determination of energy efficiency program costs, performance bonus, the EECRF, revenue requirements and design of the rates proposed in this Agreement have been entered into as a matter of compromise and are not intended to create a precedent for resolving such issues in any future proceeding, including use as a measure of program performance in other years, and are not binding or precedential on any signatory or its representatives in any other proceeding before the Commission or any court, tribunal, or similar authority.
- d) This Agreement reflects a compromise, settlement and accommodation among the Signatories, and the Signatories agree that the terms and conditions stated herein are interdependent. If the Commission does not accept this Stipulation as presented or enters an order inconsistent with any material term of this Stipulation, any Signatory shall have the right to withdraw from all commitments

and obligations and to seek a hearing on all issues, present evidence, and advance any positions it desires, as if it had not been a Signatory.

- e) This Agreement contains the entire understanding and agreement of the Signatories, supersedes all other written and oral exchanges or negotiations among them or their representatives with respect to the subjects contained herein. Neither this Agreement nor any of the terms of this Agreement may be altered, amended, waived, terminated, or modified, except by a writing properly executed by the Signatories.
 - f) There are no third-party beneficiaries of this Agreement. Although this Agreement represents a settlement among the Signatories with respect to some of the issues presented in this proceeding, this Agreement is merely a settlement proposal submitted to the Commission, which has the authority to enter an order resolving these issues.
 - g) This Agreement is a true and complete resolution of all contested issues in this proceeding.
13. **Execution.** The Signatories agree that this document may be executed in multiple counterparts and filed with facsimile signatures. The Signatories agree that they will use their best efforts to obtain expeditious implementation of this Agreement by entry of appropriate orders.

Signatures are on the following pages.

AGREED:



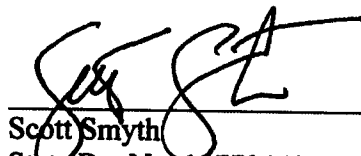
Paula Cyr
State Bar No. 16385200
ENTERGY SERVICES, INC.
Suite 701
919 Congress
Austin, Texas 78701
(512) 487-3957 telephone
(512) 487-3958 facsimile

Bret J. Slocum
State Bar No. 18508200
Evan D. Johnson
State Bar No. 24065498
DUGGINS WREN MANN & ROMERO, LLP
P.O. Box 1149
Austin, Texas 78767
(512) 744-9300 telephone
(512) 744-9399 facsimile

Attorneys for Entergy Texas, Inc.

Docket No. 39366 – Stipulation and Settlement Agreement

AGREED:

A handwritten signature in black ink, appearing to read 'Scott Smyth', is written over a horizontal line.

Scott Smyth
State Bar No. 18779450
Attorney – Legal Division
1701 N. Congress Ave.
P.O. Box 13326
Austin, Texas 78711-3326

Public Utility Commission of Texas Staff

AGREED:

Stephen Mack 9/29/11

Daniel J. Lawton

State Bar. No. 00791082

Stephen Mack

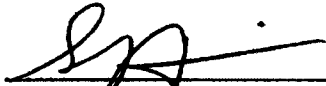
State Bar No. 24041374

701 Congress Ave., Suite 500

Austin, Texas 78701

Attorneys for Cities

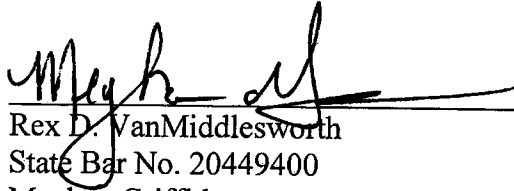
AGREED:



Sara J. Ferris
State Bar No. 50511915
Assistant Public Counsel
Office of Public Utility Counsel
1701 N. Congress Ave., Ste. 9-180
P.O. Box 12397
Austin, Texas 78711-2397

Attorney for the Office of Public Utility Counsel

AGREED:

A handwritten signature in black ink, appearing to read 'Rex D. VanMiddlesworth', is written over a horizontal line.

Rex D. VanMiddlesworth

State Bar No. 20449400

Meghan Griffiths

State Bar No. 24045983

Andrews Kurth LLP

111 Congress Ave., Ste. 1700

Austin, TX 78701

Attorneys for Texas Industrial Energy Consumers

**2012 ETI EECRF
Docket No. 39366 Proposed Rates**

Customer Class	EECRF
Residential Service	\$0.000837 per kWh
Small General Service	\$0.001081 per kWh
General Service	\$0.000731 per kWh
Large General Service	\$0.000572 per kWh
Large Industrial Power Service (excluding Industrial Transmission Customers)	\$0.000229 per kWh
Large Industrial Power Service (Industrial Transmission Customers Only)	\$0.000000 per kWh
Lighting	\$0.000000 per kWh

**SOAH DOCKET NO. 473-11-5074
PUC DOCKET NO. 39366**

APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO REDETERMINE RATES FOR THE ENERGY EFFICIENCY COST RECOVERY FACTOR TARIFF AND REQUEST TO ESTABLISH A REVISED ENERGY EFFICIENCY GOAL AND COST CAPS	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
--	--------------------------------------	--

JOINT PROPOSED ORDER

This Order addresses the application of Entergy Texas, Inc. (ETI) for authority to redetermine the rates for its Energy Efficiency Cost Recovery Factor (EECRF) tariff and related relief pursuant to PURA¹ § 39.905 and P.U.C. SUBST. R. 25.181(f). ETI, the Public Utility Commission of Texas (Commission) Staff, Office of Public Utility Counsel (OPC), certain Cities served by ETI (Cities),² and Texas Industrial Energy Consumers (TIEC) are the parties to this proceeding. This docket was processed in accordance with applicable statutes and Commission rules. More than 15 days have passed since completion of notice. There are no factual or legal issues in dispute. Accordingly, the Commission adopts this Order, and ETI's application and the stipulation and settlement agreement of the parties (Stipulation) are approved.

The Commission adopts the following findings of fact and conclusions of law.

I. Findings of Fact

Procedural History

1. On April 29, 2011, ETI filed an application with the Commission requesting authority to redetermine rates for its EECRF tariff beginning with the first billing cycle of ETI's January 2012 billing month, which begins on December 30, 2011.

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2008 & Supp. 2010) (PURA).

² "Cities" includes the Cities of Anahuac, Beaumont, Bridge City, Conroe, Groves, Houston, Huntsville, Montgomery, Navasota, Nederland, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Silsbee, Sour Lake, Vidor, and West Orange.

2. On May 2, 2011, this proceeding was referred to the State Office of Administrative Hearings (SOAH) for assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision, if necessary.
3. The following parties were granted intervenor status in this proceeding: OPC, TIEC, and the Cities of Anahuac, Beaumont, Bridge City, Conroe, Groves, Houston, Huntsville, Montgomery, Navasota, Nederland, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Silsbee, Sour Lake, Vidor, and West Orange (Cities).
4. ETI provided notice by one-time publication in newspapers of general circulation in the counties comprising ETI's Texas service territory and to all parties that participated in ETI's last EECRF proceeding, *Application of Entergy Texas, Inc. for Authority to Redetermine Rates for the Energy Efficiency Cost Recovery Factor Tariff*, Docket No. 38212 (Aug. 19, 2010).
5. On May 23, 2011, ETI filed its first errata correcting certain errors contained in the initial filing.
6. On June 3, 2011, ETI filed proof that notice had been provided.
7. On June 20, 2011, ETI filed its second errata correcting certain errors contained in the initial filing.
8. ETI's application included energy efficiency program costs for calendar year 2012, calculations of its performance bonus for having achieved demand savings that exceeded its goal for 2010, and calculations for over-recovery of 2010 energy efficiency expenses.
9. Commission Staff, OPC, the Cities and TIEC submitted testimony disputing certain issues raised by ETI's EECRF application, including the amount of costs to be recovered through the EECRF, the allocation of program costs among the rate classes, and the allocation of the performance bonus among the rate classes.
10. On _____, ETI, Commission Staff, OPC, the Cities and TIEC (the signatories) filed the attached Stipulation (Attachment 1), executed by all of the parties, which

resolved all issues in this proceeding. Select salient terms of the Stipulation are provided in the findings of fact below. All terms of the Stipulation are set forth in Attachment 1. Also on _____, the signatories filed a joint motion to admit evidence and remand the proceeding from SOAH to the Commission consistent with the Stipulation.

11. On _____, SOAH issued Order No. __, admitting evidence and remanding the docket to the Commission for further processing.

Request to Re-establish Non-residential Cost Caps

12. ETI presented testimony showing that, in order to meet the program year 2012 energy efficiency goals established by the Commission under P.U.C. SUBST. R. 25.181(e)(1)(B), ETI would have to significantly increase its 2012 energy efficiency expenditures and its EECRF rates, which are already at a level above the residential and non-residential budget caps set for 2012.³
13. ETI presented evidence showing that, in order to meet the 2012 goal prescribed in the rules, the EECRF rate for residential customers would increase from the current rate of \$0.001008 per kWh to a rate of \$0.001235 per kWh, which is a 23% increase.⁴ By comparison, the rate cap in P.U.C. SUBST. R. 25.181(f) for residential customers is \$0.001 per kWh, which is substantially below the EECRF rates ETI determined would be necessary to comply with the goals set out in the rules.⁵ ETI also presented testimony showing that all non-residential rate classes except the Large Industrial Power Service rate class would have exceeded the non-residential cost cap of \$0.0005 per kWh.
14. ETI presented testimony showing that even if it reduced its 2012 projected program costs to its 2011 levels in order to meet a reduced energy efficiency goal, it would still exceed

³ Direct Testimony of John K. Carson at 9-11 (Errata No. 1).

⁴ Direct Testimony of Phil B. Gillam at Exh. PBG-3 (Errata No. 2); ETI Application at 7-8 (Errata No. 1).

⁵ ETI Application at n.5 (Errata No. 2).

the non-residential customer cost caps based on the costs allocated to the Small General Service, General Service and Lighting rate classes.⁶

15. ETI also presented testimony showing that, if it were to dramatically reduce its program costs in 2012 to meet the Commission's budget caps, it would weaken the integrity and long-term sustainability of its energy efficiency programs, especially its standard offer programs where its energy efficiency project sponsors rely on some consistency in the Company's program offerings from year to year.⁷ The Company noted that reducing its program costs in 2012 would reduce the reliability of its network of project sponsors, which would cause the Company to lose existing opportunities to achieve energy efficiency savings in 2012 and undermine its ability to take advantage of opportunities to achieve energy efficiency in future program years when its energy efficiency goal will probably be higher than it is now.⁸
16. Pursuant to P.U.C. SUBST. R. 25.181(e)(2), ETI requested that the non-residential cost caps be established at a level that would allow the Company to recover \$7,456,000 in energy efficiency program costs in 2012 in order to achieve a 20% energy efficiency goal. Alternatively, the Company requested that the residential and non-residential budget caps be established at a level that would allow the Company to recover \$10,744,000 in energy efficiency program costs in 2012 in order to achieve a 25% energy efficiency goal.⁹
17. The Stipulation provides that ETI will attempt to meet a 25% energy efficiency goal in 2012 but at a reduced total program cost budget of \$7,976,900, thus mitigating the cost

⁶ Direct Testimony of John K. Carson at 10 (Errata No. 1); Direct Testimony of Phil B. Gillam at Exh. PBG-2 (Errata No. 2).

⁷ Rebuttal Testimony of John. K. Carson at 8-9 (Errata No. 1).

⁸ *Id.*

⁹ ETI Application at 4-6 (Errata No. 2); Direct Testimony of John K. Carson at 17-18 (Errata No. 2).

impact of meeting a 25% goal on all of its customers while maintaining the integrity and long-term sustainability of most of its energy efficiency program offerings.¹⁰

18. The signatories agreed that good cause exists for the Commission to establish a revised cost cap for the Small General Service, General Service and Large General Service to allow the Company to recover its energy efficiency expenditures necessary to meet a 25% energy efficiency goal in 2012.¹¹
19. The Stipulation and record evidence support ETI's request for good cause to establish a revised non-residential cost cap consistent with the agreement reached by the signatories.
20. ETI's energy savings goal and costs caps for 2012 as set forth in the Stipulation are reasonable and consistent with PURA and the Commission's rules.

Allocation of Program Costs

21. Under the Stipulation, the signatories agreed that there are currently no energy efficiency programs in place in 2012 in which customers taking service under the Lighting rate class are anticipated to participate and that the Lighting rate class would not be allocated any projected program costs for recovery through the 2012 EECRF. The signatories agreed that if Lighting customers participate in programs in 2012, applicable program costs will be recovered through the 2013 true-up of 2012 program costs (for recovery through the 2014 EECRF).¹²

Allocation of the Performance Bonus

22. Under the Stipulation, the signatories agreed that the performance bonus portion of the EECRF will not be allocated to LIPS industrial customers taking transmission-level service, effective January 1, 2012.¹³

¹⁰ Stipulation and Settlement Agreement at 3.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Requested EECRF

23. Consistent with the Stipulation, the requested EECRF consists of an updated EECRF tariff, which reflects the proposed EECRF rates for the billing period January 2012 through December 2012 and defines the procedure by which ETI shall implement and adjust rates for the recovery of costs associated with energy efficiency programs from the customer classes that receive services under these programs pursuant to P.U.C. SUBST. R. 25.181.
24. Under the Stipulation, the total amount requested to be collected through ETI's 2011 EECRF is \$8,617,684, consisting of the following components: \$7,976,900 in energy efficiency program costs projected to be incurred in 2012; a refund of \$771,230 in energy efficiency program costs recovered under the Company's EECRF implemented for calendar year 2010 that exceeded actual program costs; and \$1,412,014 representing a performance bonus for the Company's having achieved demand savings that exceeded its statutory goal for 2010.¹⁴
25. In support of its application, ETI presented testimony and schedules that demonstrated: (a) the costs to be recovered through the EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and meet ETI's goals for 2012 under P.U.C. SUBST. R. 25.181; (b) the calculation of any under-recovery of EECRF revenues is consistent with P.U.C. SUBST. R. 25.181; (c) the Company's performance bonus is consistent with P.U.C. SUBST. R. 25.181; (d) the allocations of such costs to the customer classes are reasonable and consistent with P.U.C. SUBST. R. 25.181; (e) the estimate of billing determinants used in calculating the EECRF are reasonable; and (f) the estimates of billing determinants used in calculating the 2012 EECRF are reasonable. The estimates of billing determinants were made at the meter, so no adjustment for system or line losses was necessary.

¹⁴ *Id.*

26. The proposed rate class factors in the updated EECRF tariff included in the Agreement are as follows:¹⁵

<u>Customer Class</u>	<u>EECRF</u>
Residential Service	\$0.000837 per kWh
Small General Service	\$0.001081 per kWh
General Service	\$0.000731 per kWh
Large General Service	\$0.000572 per kWh
Large Industrial Power Service (excluding Industrial Transmission Customers)	\$0.000229 per kWh
Large Industrial Power Service (Industrial Transmission Customers Only)	\$0.000000 per kWh
Lighting	\$0.000000 per kWh

27. The EECRF approved by this Order should be effective beginning with the first billing cycle of ETI's January 2012 billing month, which begins on December 30, 2011.¹⁶

Future Tracking of Program Costs

28. Under the Stipulation, the signatories agreed that during the 2012 program year and each year thereafter, ETI will segregate and account for all EECRF program costs and all EECRF revenues by each rate class taking service from ETI.¹⁷

Informal Disposition

29. More than 15 days have passed since completion of the notice provided in this docket.

II. Conclusions of Law

1. ETI is a "public utility" as that term is defined in PURA § 11.004(1) and an "electric utility" as that term is defined in PURA § 31.002(6).
2. The Commission exercises regulatory authority over ETI and the subject matter of this application pursuant to PURA §§ 14.001, 36.204, 39.452(d)(1), and 39.905 and P.U.C. SUBST. R. 25.181.

¹⁵ *Id.* at Attachment A.

¹⁶ ETI Application at 8.

¹⁷ Stipulation and Settlement Agreement at 4.

3. This docket was processed in accordance with the requirements of PURA and the Texas Administrative Procedure Act, TEX. GOV'T. CODE ANN. chapter 2001 (Vernon 2008 & Supp. 2010).
4. ETI's notice provided in this case was reasonable and in accordance with P.U.C. PROC. R. 22.55.
5. Under PURA § 39.905(b) and P.U.C. SUBST. R. 25.181(f)(1), an electric utility may request an EECRF, and, under PURA § 39.905(b-1) and P.U.C. SUBST. R. 25.181(f)(4), a utility shall apply to adjust the EECRF each year to reflect changes in costs and bonuses and minimize any over- or under-collection of energy efficiency costs resulting from the use of the EECRF.
6. The level of 2012 projected energy efficiency program costs, 2010 over-recovered energy efficiency program costs, and the 2010 performance bonus to be recovered through the EECRF are consistent with PURA § 39.905 and P.U.C. SUBST. R. 25.181(f).
7. ETI has met the burden of proof in demonstrating that it is entitled to the level of energy efficiency program costs and performance bonus set forth in its application.
8. Pursuant to P.U.C. SUBST. R. 25.181(e)(2), there is good cause to establish a revised non-residential cost cap for the Small General Service, General Service and Large General Service rate classes consistent with the agreement of the parties.
9. ETI's allocation of its 2012 energy efficiency costs as presented in Attachment A to the Stipulation is consistent with PURA § 39.905 and P.U.C. SUBST. R. 25.181.
10. ETI's allocation of its unrecovered 2010 energy efficiency costs is consistent with PURA § 39.905 and P.U.C. SUBST. R. 25.181.
11. ETI's allocation of its performance bonus for achieving demand savings that exceeded its statutory goal for 2010 is consistent with PURA § 39.905 and P.U.C. SUBST. R. 25.181.
12. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Stipulation is approved, and ETI's application, as modified by the Stipulation, is approved.
2. The EECRF implemented by ETI pursuant to this Order shall be comprised of \$7,976,900 in energy efficiency program costs projected to be incurred in 2012; a refund of \$771,230 in energy efficiency program costs recovered under the Company's EECRF implemented for calendar year 2010 that exceeded actual program costs; and \$1,412,014 representing a performance bonus for the Company's having achieved demand savings that exceeded its statutory goal to be achieved by December 31, 2010. The total amount requested to be collected through ETI's 2012 EECRF is \$8,617,684.
3. Upon approval of ETI's tariff, ETI is authorized to apply the approved EECRF, consistent with these findings of fact and conclusions of law, beginning on and after December 30, 2011.
4. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS on the _____ day of _____ 2011.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER

**SOAH DOCKET NO. 473-11-5074
PUC DOCKET NO. 39366**

APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO REDETERMINE RATES FOR THE ENERGY EFFICIENCY COST RECOVERY FACTOR TARIFF AND REQUEST TO ESTABLISH A REVISED ENERGY EFFICIENCY GOAL AND COST CAPS	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
--	--------------------------------------	---

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (Agreement) is entered into by Entergy Texas, Inc. (ETI or the Company), the Public Utility Commission Staff (Staff), the Office of Public Utility Counsel (OPC), the Cities of Anahuac, Beaumont, Bridge City, Conroe, Groves, Houston, Huntsville, Montgomery, Navasota, Nederland, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Silsbee, Sour Lake, Vidor and West Orange (Cities), and Texas Industrial Energy Consumers (TIEC) through their duly authorized representatives (collectively, Signatories). The Signatories stipulate and agree as follows:

I. BACKGROUND

1. On April 29, 2011, ETI filed an application with the Commission requesting authority to revise its energy efficiency cost recovery factor (EECRF) and to establish revised goals and cost caps applicable to its energy efficiency program for the year 2012. On May 23, 2011, ETI filed its first errata correcting certain errors contained in the initial filing. On June 20, 2011, ETI filed its second errata correcting certain errors contained in the initial filing.
2. In its application, ETI indicated that its current EECRF costs to meet a 20% goal in 2011 already exceed the Commission's cost caps, as set out in P.U.C. SUBST. R. 25.181(f)(8), for all but its Large Industrial Power Service (LIPS) customers. ETI also asserted that it is not reasonably possible for ETI to comply with a 25% energy efficiency goal in 2012, as set out in P.U.C. SUBST. R. 25.181(e)(1)(B), without increasing its EECRF rates above the current level and further exceeding the Commission's cost caps for those customers. For instance, ETI asserted that the EECRF rate for residential customers would increase

from the current \$0.001008 per kWh to a rate of \$0.001235 per kWh, which is a 23% increase. Both of these rates exceed the EECRF cost cap for residential customers of \$0.001 per kWh.

3. ETI offered the following proposals in its application:
 - a) that the Commission establish ETI's residential rate cap and non-residential cost caps at a level so that the Company can meet a 25% energy efficiency goal in 2012;
 - b) that the Commission establish for ETI a 20% energy efficiency goal and establish the Company's non-residential cost caps at a level so that the Company can meet a 20% energy efficiency goal in 2012.

These proposals were made pursuant to P.U.C. SUBST. R. 25.181(e)(2), which allows the Commission to establish a lower goal than the goal specified in P.U.C. SUBST. R. 25.181(e)(1) or a higher budget cap than the caps specified in P.U.C. SUBST. R. 25.181(f)(8) if the utility demonstrates that compliance with that goal or cap is not reasonably possible and that good cause supports the lower goal or higher cap.

4. OPC, Commission Staff, TIEC, and the Cities submitted testimony in this case disputing certain issues raised by ETI's EECRF application, including the amount of costs to be recovered through the EECRF, the allocation of program costs among the rate classes, and the allocation of the performance bonus among the rate classes.
5. The Signatories believe a negotiated resolution of this proceeding pursuant to the terms set out below is desirable and in the public interest because the result is reasonable under the circumstances and will conserve the public's and the Signatories' resources and eliminate controversy.

II. AGREEMENT

The Signatories have reached agreement on the issues as set out below and agree that the Commission should enter an order consistent with this Agreement:

1. **Notice.** The Signatories agree that ETI's notice was adequate and in compliance with P.U.C. SUBST. R. 22.55.
2. **Costs Recovered Through the EECRF.** The Signatories agree that ETI's EECRF should be revised to collect \$8,617,684, which reflects the following three components:

\$7,976,900 in energy efficiency program costs projected to be incurred in 2012 to achieve a 25% energy efficiency goal; a refund of \$771,230 in energy efficiency program costs recovered under the Company's EECRF implemented for calendar year 2010 that exceeded actual program costs; and \$1,412,014 representing ETI's 2010 performance bonus for achieving demand savings that exceeded its statutory goal for 2010. The Signatories also agree that the level of energy efficiency costs to be recovered through the EECRF will be effective beginning with the first billing cycle of the Company's January 2012 billing month, which begins December 30, 2011.

3. **Energy Efficiency Goal for 2012.** The Signatories agree that ETI's goals for 2012 should be 15.5 MW of demand savings and 27,156 MWh of energy savings, which is equivalent to a 25% energy efficiency goal.
4. **Non-residential Cost Caps for 2012.** The Signatories agree that good cause exists for the Commission to establish a revised cost cap for the Small General Service, General Service and Large General Service rate classes in order to allow the Company to recover its energy efficiency expenditures necessary to meet a 25% energy efficiency goal in 2012.
5. **Allocation of the Performance Bonus in 2012.** The Signatories agree that the performance bonus portion of the EECRF will not be allocated to the LIPS industrial customers taking transmission-level service, effective January 1, 2012.
6. **Previous Performance Bonus Allocations.** TIEC agrees to waive any argument in this proceeding and future proceedings regarding the legality of performance bonus allocations charged to transmission-level LIPS industrial customers prior to January 1, 2012.
7. **Allocation of 2012 Projected Program Costs.** The Signatories agree that there are currently no energy efficiency programs in place in 2012 in which customers taking service under the Lighting rate class are anticipated to participate and that the Lighting rate class would not be allocated any projected program costs for recovery through the 2012 EECRF. The Signatories also agree that if Lighting customers participate in programs in 2012, applicable program costs will be recovered through the 2013 true-up of 2012 program costs (for recovery in 2014).

8. **2012 Cost Recovery Factors.** ETI's 2012 EECRF rates are identified in Attachment A to this Agreement.
9. **Future Tracking of Costs.** During the 2012 program year and each year thereafter, ETI shall segregate and account for all EECRF program costs and all EECRF revenues by each rate class taking service from ETI.
10. **Obligation to Support this Stipulation.** The Signatories agree that they will support this Agreement before the Commission and will take reasonable steps to support Commission entry of an order consistent with this Agreement.
11. **Evidence and Proposed Order.** The Signatories agree that the Commission should issue the proposed order, included as Attachment B, which is consistent with the terms of this Agreement. The Signatories agree to the admission into evidence of the following documents for the limited purpose of supporting this Agreement: the Application, which includes the Direct Testimony of John K. Carson and Phillip B. Gillam and attached exhibits; the errata filed by ETI on May 23, 2011 and on June 20, 2011; the Proof of Notice filed by ETI on June 3, 2011; the Direct Testimony of Cities' witness Karl Nalepa filed on July 19, 2011; the Direct Testimony and Exhibit of TIEC witness Jeffry Pollock filed on July 19, 2011; the Direct Testimony of Staff witness William B. Abbott filed on July 26, 2011; the errata filed by Cities on August 5, 2011; the rebuttal testimonies of ETI witnesses John K. Carson and Phillip B. Gillam filed on August 5, 2011; the Cross-Rebuttal Testimony and Workpapers of Nathan A. Benedict filed on August 5, 2011; and this Agreement and its attachments. The Signatories waive cross-examination.
12. **Effect of Stipulation and Settlement Agreement.**
 - a) The Agreement urges the Commission to adopt an appropriate order consistent with the terms stated herein. The terms of this Agreement may not be used either as an admission or concession of any sort or as evidence in any other proceeding. The Signatories further agree that all oral or written statements made during the course of the settlement negotiations may not be used for any purpose and are governed by TEX. R. EVID. 408. The obligations set forth in this subsection shall continue and be enforceable, even if this Agreement is terminated as provided below.

- b) This Agreement is binding on each Signatory only for the purpose of settling the issues as set out herein and for no other purpose. Except to the extent that this Agreement expressly governs a Signatory's rights and obligations for future periods, this Agreement, including all terms provided herein, shall not be binding or precedential on a Signatory outside of this case except for a proceeding to enforce the terms of this Agreement. The Signatories acknowledge and agree that a Signatory's support of the matters contained in this Agreement may differ from its position or testimony in other proceedings not referenced in this Agreement. To the extent there is a difference, a Signatory does not waive its position in such other proceedings. Because this is a settlement agreement, a Signatory is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement, whether those proceedings present the same or a different set of circumstances. A Signatory's agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.
- c) The Signatories acknowledge and agree that the determination of energy efficiency program costs, performance bonus, the EECRF, revenue requirements and design of the rates proposed in this Agreement have been entered into as a matter of compromise and are not intended to create a precedent for resolving such issues in any future proceeding, including use as a measure of program performance in other years, and are not binding or precedential on any signatory or its representatives in any other proceeding before the Commission or any court, tribunal, or similar authority.
- d) This Agreement reflects a compromise, settlement and accommodation among the Signatories, and the Signatories agree that the terms and conditions stated herein are interdependent. If the Commission does not accept this Stipulation as presented or enters an order inconsistent with any material term of this Stipulation, any Signatory shall have the right to withdraw from all commitments

and obligations and to seek a hearing on all issues, present evidence, and advance any positions it desires, as if it had not been a Signatory.

- e) This Agreement contains the entire understanding and agreement of the Signatories, supersedes all other written and oral exchanges or negotiations among them or their representatives with respect to the subjects contained herein. Neither this Agreement nor any of the terms of this Agreement may be altered, amended, waived, terminated, or modified, except by a writing properly executed by the Signatories.
 - f) There are no third-party beneficiaries of this Agreement. Although this Agreement represents a settlement among the Signatories with respect to some of the issues presented in this proceeding, this Agreement is merely a settlement proposal submitted to the Commission, which has the authority to enter an order resolving these issues.
 - g) This Agreement is a true and complete resolution of all contested issues in this proceeding.
13. **Execution.** The Signatories agree that this document may be executed in multiple counterparts and filed with facsimile signatures. The Signatories agree that they will use their best efforts to obtain expeditious implementation of this Agreement by entry of appropriate orders.

Signatures are on the following pages.

AGREED:

Paula Cyr
State Bar No. 16385200
ENTERGY SERVICES, INC.
Suite 701
919 Congress
Austin, Texas 78701
(512) 487-3957 telephone
(512) 487-3958 facsimile

Bret J. Slocum
State Bar No. 18508200
Evan D. Johnson
State Bar No. 24065498
DUGGINS WREN MANN & ROMERO, LLP
P.O. Box 1149
Austin, Texas 78767
(512) 744-9300 telephone
(512) 744-9399 facsimile

Attorneys for Entergy Texas, Inc.

AGREED:

Scott Smyth
State Bar No. 18779450
Attorney – Legal Division
1701 N. Congress Ave.
P.O. Box 13326
Austin, Texas 78711-3326

Public Utility Commission of Texas Staff

AGREED:

Daniel J. Lawton
State Bar. No. 00791082
Stephen Mack
State Bar No. 24041374
701 Congress Ave., Suite 500
Austin, Texas 78701

Attorneys for Cities

AGREED:

Sara J. Ferris
State Bar No. 50511915
Assistant Public Counsel
Office of Public Utility Counsel
1701 N. Congress Ave., Ste. 9-180
P.O. Box 12397
Austin, Texas 78711-2397

Attorney for the Office of Public Utility Counsel

AGREED:

Rex D. VanMiddlesworth
State Bar No. 20449400
Meghan Griffiths
State Bar No. 24045983
Andrews Kurth LLP
111 Congress Ave., Ste. 1700
Austin, TX 78701

Attorneys for Texas Industrial Energy Consumers

**2012 ETI EECRF
Docket No. 39366 Proposed Rates**

Customer Class	EECRF
Residential Service	\$0.000837 per kWh
Small General Service	\$0.001081 per kWh
General Service	\$0.000731 per kWh
Large General Service	\$0.000572 per kWh
Large Industrial Power Service (excluding Industrial Transmission Customers)	\$0.000229 per kWh
Large Industrial Power Service (Industrial Transmission Customers Only)	\$0.000000 per kWh
Lighting	\$0.000000 per kWh