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**DOCKET NO. 40293**  
**SOAH DOCKET NO. 473-12-5653**

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APPLICATION OF SOUTHWESTERN PUBLIC SERVICE COMPANY TO ADJUST ITS ENERGY EFFICIENCY COST RECOVERY FACTOR	§ § § § §	PUBLIC UTILITY COMMISSION  OF TEXAS
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**DOCKET NO. 40343**  
**SOAH DOCKET NO. 473-12-6040**

APPLICATION OF EL PASO ELECTRIC COMPANY TO REVISE ITS ENERGY EFFICIENCY COST RECOVERY FACTOR AND REQUEST TO ESTABLISH REVISED GOALS AND COST CAPS	§ § § § §	PUBLIC UTILITY COMMISSION  OF TEXAS
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**DOCKET NO. 40348**  
**SOAH DOCKET NO. 473-12-6064**

APPLICATION OF TEXAS NEW MEXICO POWER COMPANY FOR APPROVAL OF AN ENERGY EFFICIENCY COST RECOVERY FACTOR	§ § § § §	PUBLIC UTILITY COMMISSION  OF TEXAS
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**DOCKET NO. 40356**  
**SOAH DOCKET NO. 473-12-6077**

APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR APPROVAL OF AN ADJUSTMENT TO ITS ENERGY EFFICIENCY COST RECOVERY FACTOR	§ § § § §	PUBLIC UTILITY COMMISSION  OF TEXAS
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**DOCKET NO. 40357**  
**SOAH DOCKET NO. 473-12-6078**

<b>APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY TO ADJUST ITS ENERGY EFFICIENCY COST RECOVERY FACTOR AND RELATED RELIEF</b>	<b>§ § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**DOCKET NO. 40358**  
**SOAH DOCKET NO. 473-12-6079**

<b>APPLICATION OF AEP TEXAS NORTH COMPANY TO ADJUST ENERGY EFFICIENCY COST RECOVERY FACTOR AND RELATED RELIEF</b>	<b>§ § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**DOCKET NO. 40359**  
**SOAH DOCKET NO. 473-12-6080**

<b>APPLICATION OF AEP TEXAS CENTRAL COMPANY TO ADJUST ENERGY EFFICIENCY COST RECOVERY FACTOR AND RELATED RELIEF</b>	<b>§ § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**DOCKET NO. 40360**  
**SOAH DOCKET NO. 473-12-6081**

<b>APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO REDETERMINE RATES FOR THE ENERGY EFFICIENCY COST RECOVERY FACTOR TARIFF</b>	<b>§ § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**DOCKET NO. 40361**  
**SOAH DOCKET NO. 473-12-6082**

<b>APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY, LLC FOR 2013 ENERGY EFFICIENCY COST RECOVERY FACTOR</b>	<b>§ § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**DOCKET NO. 40364**  
**SOAH DOCKET NO. 473-12-6083**

<b>APPLICATION OF SHARYLAND UTILITIES, L.P. TO ESTABLISH ENERGY EFFICIENCY COST RECOVERY FACTOR AND FOR APPROVAL OF GOOD CAUSE EXCEPTION TO ENERGY EFFICIENCY SAVINGS GOAL</b>	<b>§ § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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## **COMMISSION STAFF'S BRIEF ON THRESHOLD LEGAL/POLICY ISSUES**

Comes now the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this response to the Commission's order. The order requests briefing on the appropriate treatment of "rate-case expenses" associated with an energy efficiency cost recovery factor (EECRF) proceeding. Staff interprets the term "rate-case expenses" to include both a utility's own expenses in litigating an EECRF case, as well as the utility's expense in reimbursing the governing body of a municipality under Section 33.023(b) of the Public Utility Regulatory Act (PURA).

Based on the discussion below, Staff concludes that rate-case expenses associated with EECRF proceedings are properly classified as EECRF administrative costs, that such costs may be recovered in an EECRF proceeding, and that it is appropriate in an EECRF proceeding to consider rate-case expenses from a prior year's EECRF proceeding. Staff notes that its conclusion is based on applicable statutes, rules, and recent Commission decisions, but the conclusion is also consistent with proposed amendments to the Commission's rules in Project No. 39674, *Rulemaking Proceeding to Amend Energy Efficiency Rules*.

### **1. Are Rate-Case Expenses for EECRF Proceedings Properly Classified as EECRF Administrative Costs?**

PURA § 39.905 establishes the energy efficiency goals that utilities must meet and the manner in which utilities must meet their goals and recover associated costs. Two sections of this statute are relevant to the cost recovery at issue here. Section 39.905(b)(1) provides for the Commission to adopt rules including "establishing an energy efficiency cost recovery factor for ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of

this section.” Section 39.905(b-1) then provides, “The energy efficiency cost recovery factor under Subsection (b)(1) may not result in an over-recovery of costs but may be adjusted each year to change rates to enable utilities to match revenues against energy efficiency costs and any incentives to which they are granted. The factor shall be adjusted to reflect any over-collection or under-collection of energy efficiency cost recovery revenues in previous years.”

P.U.C. SUBST. R. 25.181(f) contains the rules adopted by the Commission to implement PURA §§ 39.905(b)(1) and (b-1). Rule 25.181(f) provides that a utility must establish an EECRF that complies with Subsection (f) to timely recover the reasonable costs of providing energy efficiency programs. Subsection (f)(2) provides for the EECRF to recover “all of the utility’s forecasted annual energy efficiency program costs” if the utility’s base rates do not include energy efficiency costs. Subsection (f)(4) provides for a utility to adjust its EECRF each year to reflect changes in program costs and to minimize or correct any over- or under-collection of costs. Subsection (f)(9)(A) requires that the utility’s application to adjust its EECRF must include “the utility’s administrative costs for its energy efficiency programs for the most recent year and for the year in which the EECRF is expected to be in effect.” Finally, Subsection (f)(11)(A) requires the utility in an EECRF proceeding to show that “the costs to be recovered through the EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet the utility’s goals under this section.”

P.U.C. SUBST. R. 25.181(i) limits the amount of administrative costs to 15% of total program costs. Rule 25.181(i)(1) provides that administrative costs “include all reasonable and necessary costs incurred by a utility in carrying out its responsibilities under this section.” Subsections 25.181(i)(1)(A)-(E) provide that such reasonable and necessary costs include, without limitation, informational activities and programs, review and selection of energy

efficiency programs, provision of reports to the Commission, and any other activities that are necessary and appropriate for successful program implementation.

Staff believes that rate-case expenses are recoverable generally under PURA § 39.905(b)(1) and P.U.C. SUBST. R. 25.181(f)(11)(A) as costs necessary to provide energy efficiency programs and satisfy the goals of PURA and Commission rules. Rule 25.181(f)(4) requires utilities to file EECRF proceedings every year. In filing and prosecuting an EECRF proceeding, the utility will necessarily incur certain expenses, and under PURA §33.023(b) the utility must reimburse the governing bodies of municipalities for any expenses they incur in participating in the proceeding in the event a municipality intervenes in an EECRF proceeding. This is because an EECRF proceeding is a ratemaking proceeding since rates will be set as a result of the proceeding.<sup>1</sup> A utility will also incur its own expenses in prosecuting an EECRF proceeding. Rate-case expenses are thus necessary to comply with PURA and Commission rules.

Furthermore, with respect to recovery of rate case expenses as administrative costs, Rule 25.181(i)(1) defines “administrative costs” as including all “reasonable and necessary costs incurred by a utility in carrying out its responsibilities under [Rule 25.181],”<sup>2</sup> Administrative costs are further defined by Rule 25.181(i)(1)(E) to include “any other activities that are necessary and appropriate for successful program implementation.” Since a utility must initiate an EECRF proceeding and because the costs of an EECRF proceeding are “necessary and appropriate for successful program implementation,” rate case expenses are properly categorized as administrative costs under the rule.

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<sup>1</sup> See *Southwestern Pub. Service Co. v. Pub. Util. Comm. Of Texas*, 962 S.W.2d 207 (Tex. App.—Austin 1998, pet. denied).

<sup>2</sup> P.U.C. SUBST. R. 25.181(i)(1).

**2. If Not, Should the Rate-Case Expenses for EECRF Proceedings be Addressed in an EECRF Rate Proceeding or in a Utility's Base Rate Case?**

As a reasonable and necessary cost to satisfy a utility's energy efficiency goals and carry out its responsibilities under Commission rules, rate-case expenses are recoverable as an administrative cost in EECRF proceedings under P.U.C. SUBST. R. 25.181(f) and (i) as Staff argues in Section 1 of this Brief.

**3. If it is Appropriate to Consider Rate-Case Expenses for an EECRF Proceeding in an EECRF Rate Proceeding, is it Appropriate to Consider Rate-Case Expenses from a Prior Year's EECRF Proceeding?**

PURA § 39.905(b-1) provides for a utility in a current EECRF proceeding to adjust its EECRF "to reflect any over-collection or under-collection of energy efficiency cost recovery revenues in previous years." P.U.C. SUBST. R. 25.181(f)(9) requires a utility's application to show "any adjustment for past over- or under-recovery of energy efficiency revenues," as well as "the utility's administrative costs for its energy efficiency programs for the most recent year and for the year in which the EECRF is expected to be in effect."

Under this framework of statute and rules, if the rate-case expenses incurred by a utility in a prior year's EECRF proceeding have not been recovered, the utility may show such prior year's administrative costs in its application and may adjust its EECRF to reflect the prior year's rate-case expenses as an under-recovery of energy efficiency revenues. Furthermore, and consistent with the proposed amendments to the energy efficiency rule,<sup>3</sup> Staff believes that a utility should not be allowed to recover the rate case expenses it incurs or are incurred on behalf of a municipality in the same EECRF case since at the time the application is filed those

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<sup>3</sup> *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Project No. 39674, Proposal for Publication at 31 (Apr. 20, 2012).



expenses are estimated expenses and the Commission has previously determined that estimated rate case expenses are not recoverable.<sup>4</sup>

Respectfully Submitted,

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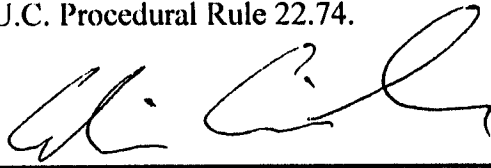
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<sup>4</sup> *Application of Southwestern Electric Power Company for Rate-Case Expenses Pertaining to Docket No. 37364, Docket No. 37772, Order at 3 (Oct. 21, 2010).*

### **CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this the 30th day of May, 2012, in accordance with P.U.C. Procedural Rule 22.74.

A handwritten signature in black ink, appearing to read 'A. Eissler', is written above a horizontal line.

Adrian Eissler