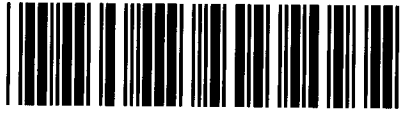




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SOAH DOCKET NO. 473-15-3684
PUC DOCKET NO. 44677

APPLICATION OF EL PASO ELECTRIC §
COMPANY FOR APPROVAL TO §
REVISE ITS ENERGY EFFICIENCY §
COST RECOVERY FACTOR AND §
REQUEST TO ESTABLISH REVISED §
COST CAP §

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PRELIMINARY ORDER

On May 1, 2015, El Paso Electric Company filed an application for approval to adjust its energy-efficiency cost recovery factor (EECRF) and to establish a revised cost cap for program year 2016 pursuant to § 39.905 of the Public Utility Regulatory Act (PURA)¹ and 16 Texas Administrative Code § 25.181(f). El Paso Electric is requesting a 2016 EECRF to recover \$5,505,457, which includes (a) \$4,384,650 in projected energy-efficiency program costs for program year 2016, (b) \$33,842 in evaluation, measurement and verification costs, (c) \$1,012,131 for a performance bonus based on El Paso Electric's 2014 program-year performance, (d) \$181,470 for rate-case expenses incurred in Docket No. 42449,² and (e) a true-up adjustment by rate class of \$106,636 of net over-recovered costs from program year 2014. El Paso Electric also requests that the Commission find good cause to allow El Paso Electric to establish a revised cost cap for commercial customers. El Paso Electric requests that its 2016 EECRF become effective January 4, 2016.

Pursuant to a 2013 stipulation and a subsequent Commission order issued in Docket No. 41403, El Paso Electric is obligated to conduct a study of the savings from its Solar Photovoltaic Pilot Program and to file a petition for approval of deemed savings for the program based on the study.³ El Paso Electric states in its application that it plans to discontinue the Solar

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001 – 66.016 (West 2007 & Supp. 2014) (PURA).

² *Application of El Paso Electric Company for Approval to Revise its Energy Efficiency Cost Recovery Factor and Request to Establish Revised Cost Cap*, Docket No. 42449 (Nov. 24, 2014).

³ *Application of El Paso Electric Company for Approval to Revise its Energy Efficiency Cost Recovery Factor and Request to Establish Revised Cost Caps*, Docket No. 41403, Ordering Paragraph No. 3 (Dec. 20, 2013).

Photovoltaic Pilot Program beginning in 2016, and it requests to be relieved of its obligation to complete the study and to file the petition for deemed savings.⁴

This docket was referred to the State Office of Administrative Hearings (SOAH) on May 4, 2015. The city of El Paso filed a motion to intervene on May 11, 2015. Commission Staff, El Paso Electric and the city of El Paso timely filed proposed lists of issues on May 11, 2015.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.⁵ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Application

1. Does the utility's EECRF application comply with 16 Texas Administrative Code (TAC) § 25.181(f) and contain the testimony and schedules in Excel format with formulas intact as required by 16 TAC § 25.181(f)(10) and address the factors required by 16 TAC § 25.181(f)(11)?

2016 Program Year

2. What is the utility's growth in demand as defined in 16 TAC § 25.181(c)(25) and (44) calculated at source under 16 TAC § 25.181(e)(3)(A)?
3. What are the utility's appropriate demand reduction goal and energy savings goal for program year 2016 consistent with 16 TAC § 25.181(e)?
 - A. Has the utility requested a lower demand reduction goal under 16 TAC § 25.181(e)(2)?
If so, has the utility demonstrated that compliance with the goal specified in 16 TAC

⁴ *Application of El Paso Electric Company for Approval to Revise its Energy Efficiency Cost Recovery Factor and Request to Establish Revised Cost Cap*, Docket No. 44677, Application at 5 (May 1, 2015).

⁵ Tex. Gov't Code Ann. § 2003.049(e) (West 2008 and Supp. 2014).

- § 25.181(e)(1) is not reasonably possible and demonstrated that good cause supports the lower demand reduction goal proposed by the utility?
- i. Is the utility requesting in this application a performance bonus for a prior program year for which it has been granted a lowered demand reduction goal?
 - ii. Were the factors that led to the utility being granted a lowered demand goal for the prior program year similar to the factors that the utility is relying upon to demonstrate that good cause supports the lower demand reduction goal proposed in this docket? If so, should the Commission consider the utility's prior performance in determining whether to award a lowered demand goal?
- B. Has the utility received any identification notices under 16 TAC § 25.181(w)? If so, has the utility's demand reduction goal for program year 2016 been properly adjusted to remove any load that is lost as a result of identification notices submitted to the utility under that rule?
4. What is the appropriate amount of projected energy-efficiency-program costs to be recovered through the utility's 2016 EECRF?
- A. Are these costs reasonable estimates of the costs necessary to provide energy-efficiency programs and to meet the utility's goals under 16 TAC § 25.181?
 - B. Does the utility currently recover any energy-efficiency costs in its base rates? If so, what is the amount of projected program costs in excess of revenues collected through base rates?
 - C. Are the projected costs of administration and costs of research and development in compliance with the administrative spending caps in 16 TAC § 25.181(i)? If not, has the utility requested an exception to those caps under 16 TAC § 25.181(e)(2)? If so, has the utility demonstrated that compliance with the administrative spending cap is not reasonably possible and that good cause supports the higher administrative spending cap proposed by the utility?
 - i. Is the utility requesting in this application a performance bonus for a prior program year for which it has been granted a higher administrative spending cap?

- ii. Were the factors that led to the utility being granted a higher administrative spending cap for the prior program year similar to the factors that the utility is relying upon to demonstrate that good cause supports the higher administrative spending cap proposed in this docket? If so, should the Commission consider the utility's prior performance in determining whether to award a higher administrative spending cap?
5. What are the evaluation, measurement, and verification (EM&V) costs assigned to the utility for program years 2015 and 2016, and have any of these costs already been recovered in a prior EECRF proceeding?⁶

Program Year 2014 and 2014 EECRF proceeding

6. Have the costs recovered by the utility through its EECRF for program year 2014 complied with PURA § 39.905 and 16 TAC § 25.181?
7. Were the costs recovered by the utility through its EECRF for program year 2014 reasonable and necessary to reduce demand growth or energy consumption?
 - A. Were the actual costs of administration and costs of research and development for program year 2014 in compliance with the administrative spending caps in 16 TAC § 25.181(i) or higher spending caps otherwise established by the Commission? If otherwise established by the Commission, in which docket were the higher spending caps established?
 - B. Did any costs for program year 2014 result from payments to an affiliate? If so, do those costs meet the requirements for affiliate expenses in PURA § 36.058?
 - C. Does the EECRF application seek recovery of rate-case expenses for the utility's immediately previous EECRF proceeding? If so, what amount, if any, should the Commission award pursuant to PURA §§ 36.062 and 36.061(b)?
 - i. Did the utility file sufficient information that details and itemizes all rate-case expenses as required by 16 TAC § 25.245(b)(1)-(6)?

⁶ 16 TAC § 25.181(q)(10).

- ii. What amount of rate-case expenses actually and reasonably incurred by the utility, if any, does a preponderance of the evidence support using the factors of 16 TAC § 25.245(c)(1)-(6)?
 - iii. Does the presiding officer find any of the utility's rate-case expenses should be disallowed under 16 TAC § 25.245(d)? If so, how was the disallowance calculated?
- D. Does the EECRF application include any municipality's request for rate-case expenses for the immediately previous EECRF proceeding? If so, what amount, if any, should the Commission award pursuant to PURA §§ 36.062 and 33.023(b)?
 - i. Did the municipality file sufficient information that details and itemizes all rate-case expenses as required by 16 TAC § 25.245(b)(1)-(6)?
 - ii. What amount of rate-case expenses actually and reasonably incurred by the municipality, if any, does a preponderance of the evidence support using the factors of 16 TAC § 25.245(c)(1)-(6)?
 - iii. Does the presiding officer find any of the municipality's rate-case expenses should be disallowed under 16 TAC § 25.245(d)? If so, how was the disallowance calculated?
- 8. For each EECRF rate class, what is the appropriate amount, if any, of under- or over-recovered EECRF costs consistent with 16 TAC § 25.181 for program year 2014?
 - A. Did the utility recover any of its energy-efficiency costs through base rates for program year 2014? If so, what is the actual amount of energy-efficiency revenues collected through base rates consistent with 16 TAC § 25.181(f)(2)?
 - B. What was the actual revenue collected through the utility's EECRF for program year 2014?
 - C. What were the actual costs that comply with 16 TAC § 25.181(f)(12) of the utility's energy-efficiency programs for program year 2014?

Performance Bonus

9. What were the utility's demand and energy reduction goals for program year 2014? If the Commission granted an exception for a lower demand goal, in what docket was the lower goal established?
10. What is the appropriate energy-efficiency performance bonus, if any, consistent with 16 TAC § 25.181(h) for program year 2014?
 - A. Did the utility exceed its demand and energy reduction goals for program year 2014? If so, by what amounts?
 - B. What are the net benefits of the utility's energy-efficiency program for program year 2014?
 - C. Did the utility exceed the EECRF cost caps in 16 TAC § 25.181(f)(7)?
 - D. Did the Commission grant a good-cause exception, establishing a lower demand-reduction goal, higher administrative-spending cap, or higher EECRF-cost cap for the utility for program year 2014? If so, should the Commission reduce the utility's performance bonus, consistent with 16 TAC § 25.181(h)(4)?
 - i. For the program year 2014, what factors did the utility rely upon to demonstrate that compliance with its demand-reduction goal, the administrative-spending cap, or the EECRF-cost cap was not reasonably possible?
 - ii. Has the utility established that the factors the utility relied upon to demonstrate that compliance with the demand-reduction goal, administrative-spending cap or EECRF-cost cap was not reasonably possible actually occurred?
 - iii. What other considerations, if any, should the Commission weigh in determining whether to reduce the utility's performance bonus?⁷

⁷ See *Rulemaking Project to Amend Energy Efficiency Rules*, Project No. 39674, Order Adopting Amendments to § 25.181 as Approved at the September 28, 2012 Open Meeting at 75 ("The [C]ommission notes that performance bonuses are awarded on a case-by-case basis for utilities that have received good-cause exceptions. The purpose of a performance bonus is to reward exceptional achievement in administering energy efficiency programs and to provide an incentive to a utility to achieve successful energy efficiency programs. However, the

- iv. What amount, if any, should the Commission reduce the utility's performance bonus?

EECRF Design

11. What are the appropriate 2016 EECRFs for each rate class consistent with 16 TAC § 25.181(f)?

A. What is the total cost that should be recovered through the utility's 2016 EECRFs?

B. What are the appropriate EECRF rate classes for the utility's 2016 EECRF?

- i. What retail rate classes were approved in the utility's most recent base-rate proceeding, excluding non-eligible customers? 16 TAC § 25.181(c)(49).
- ii. Has the utility proposed an EECRF for each eligible rate class?
- iii. Has the utility requested a good-cause exception under 16 TAC § 25.181(f)(2) to combine one or more rate classes? If so, for each rate class that is proposed to be combined, does it have fewer than 20 customers, is it similar to the other rate classes, and does it receive services under the same energy-efficiency programs as the other rate classes? Has the utility demonstrated that good cause supports the proposed combining of rate classes?

C. Are the costs assigned or allocated to rate classes reasonable and consistent with 16 TAC § 25.181?

- i. Are the utility's program costs directly assigned to each EECRF rate class that receives services under the programs to the maximum extent possible?
- ii. Is any bonus allocated consistent with 16 TAC § 25.181(h)(6)?
- iii. Are administrative costs, including rate-case expenses, and research and development costs allocated consistent with 16 TAC § 25.181(i)?
- iv. How are the EM&V costs assigned to the rate classes, and is the assignment consistent with PURA § 39.905 and 16 TAC § 25.181?

commission also notes, as mentioned by Joint Utilities, that a good-cause exception is generally granted by the commission when circumstances outside the utility's control prevent it from meeting the requirements of the rule.")

- v. Are any under- or over-recovered EECRF costs allocated to the rate classes consistent with 16 TAC § 25.181(f)(2)?
 - D. Does the utility propose an EECRF for any commercial rate classes as a demand charge? If so, for each such rate class, do the base rates for that class contain demand charges? For each such rate class, should the EECRF for that rate class be an energy charge or a demand charge?⁸
 - E. What is the appropriate estimate of billing determinants for the 2016 program?
 - F. What are the most current, available calculated or estimated system losses and line losses for each eligible retail rate class? Were these losses used in calculating the 2016 EECRF charges?
12. Do the total 2016 EECRF costs, excluding EM&V costs and municipal rate-case expenses, exceed the EECRF cost caps prescribed in 16 TAC § 25.181(f)(7)? If so, did the utility request an exception to the EECRF cost caps pursuant to 16 TAC § 25.181(e)(2) and, if so, has the utility demonstrated that compliance with the EECRF cost caps is not reasonably possible and demonstrated that good cause supports the higher EECRF cost caps?
- A. Is the utility requesting in this application a performance bonus for a prior program year for which it has been granted a higher EECRF cost cap?
 - B. Were the factors that led to the utility being granted a higher EECRF cost cap for the prior program year similar to the factors that the utility is relying upon to demonstrate that good cause supports a higher EECRF cost cap in this docket? If so, should the Commission consider the utility's prior performance in determining whether to award a higher EECRF cost cap?
13. Do the incentive payments for each customer class in program year 2014 comply with 16 TAC § 25.181(g)?

⁸ *Application of Oncor Electric Delivery Company, LLC for 2013 Energy Efficiency Cost Recovery Factor*, Docket No. 40361 at 110 (Aug. 29, 2012) (“For rate classes that are billed on a demand basis, whether to design the EECRF to provide for an energy or demand charge will be determined in the EECRF proceedings based on the particular relevant facts.”)

Tariff

14. What tariff schedule should be adopted for the utility in compliance with 16 TAC § 25.181?
15. Has the utility shown good cause for the Commission to grant its request for relief from its obligation to complete the study of the savings from its Solar Photovoltaic Pilot Program and then file a petition for approval of deemed savings for the program?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary by the ALJ, or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the 22nd day of May 2015.

PUBLIC UTILITY COMMISSION OF TEXAS


KENNETH W. ANDERSON, JR., COMMISSIONER


BRANDY MARTY MARQUEZ, COMMISSIONER

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