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COMMISSION STAFF'S PETITION §  
FOR A DECLARATORY ORDER §  
INTERPRETING 16 TEXAS §  
ADMINISTRATIVE CODE § 25.181 §

PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

ORDER

This Order addresses Commission Staff's petition for a declaratory order interpreting 16 TAC § 25.181 regarding how to calculate the energy-efficiency performance bonus. Commission Staff requested that the Commission determine whether the sum of all program costs used to calculate net benefits for a given program year under 16 TAC § 25.181(h)(2) includes the performance bonus, if any, the utility was awarded for that program year for exceeding its energy-efficiency goals during the previous year.

For the reasons discussed in this Order, the Commission concludes that, to calculate the performance bonus, 16 TAC § 25.181(h)(2) requires program costs to be calculated in accordance with § 25.181 and program costs are defined in § 25.181(d)(1) to include any shareholder awarded to the utility. Consequently, in calculating the performance bonus in a given program year under 16 TAC § 25.181(h)(2), utilities must include as a program cost the performance bonus awarded for exceeding their goals during the previous year.

The applicable statutory provision, § 39.905 of the Public Utility Regulatory Act (PURA),<sup>1</sup> does not define program costs or incentives, nor does it specify how the performance bonus is to be calculated. The calculation of the performance bonus is left to the Commission's discretion. While PURA § 39.905 uses terms and phrases like *utility expenditures*, *the costs associated with programs*, and *incentive*, contrary to the arguments of the joint utilities in this docket, PURA § 39.905 does not clearly distinguish between the concepts of a cost and an incentive. Rather an incentive to the utilities is a cost to ratepayers, and an incentive to ratepayers is a cost to the utilities.

The Commission has interpreted PURA § 39.905 by rule at 16 TAC § 25.181. In paragraphs (h)(1) and (2), the rule states, as follows:

<sup>1</sup> Tex. Util. Code Ann. § 39.905 (West 2016 & Supp. 2017).

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- (1) The performance bonus shall entitle the utility to receive a share of the net benefits realized in meeting its demand reduction goal established in this section.
- (2) Net benefits shall be calculated as the sum of total avoided cost associated with the eligible programs administered by the utility minus the sum of all program costs. Total avoided costs and program costs shall be calculated in accordance with this section.

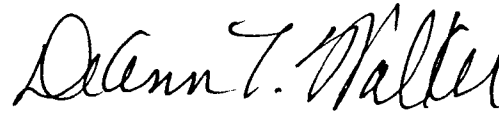
Thus, the performance bonus is based on a net-benefits analysis, which is calculated as the avoided costs minus all program costs. Because the entire rule is *this section*, the rest of the rule must be analyzed to determine how to calculate program costs.

Besides subsection (h), two parts of 16 TAC § 25.181 describe a calculation of program costs: paragraph (d)(1) and subsection (i). Subsection (i), which pertains to calculating limits for research-and-development and administration costs, states that “[a]ny bonus awarded by the commission shall not be included in program costs for the purpose of applying these limits.” Thus, when calculating cost limits under subsection (i), the previous year’s performance bonus is specifically excluded from program costs, but the exclusion applies only to calculating cost limits under that subsection. By contrast, paragraph (d)(1), which pertains to cost effectiveness, states that “[t]he cost of a program includes . . . any shareholder bonus awarded to the utility . . . .” The previous year’s performance bonus is a shareholder bonus and therefore is included in the calculation of program costs with respect to cost effectiveness. Paragraph (d)(1) does not have limiting language similar to subsection (i). Therefore, paragraph (h)(2) necessarily refers to paragraph (d)(1) when it states that “program costs shall be calculated in accordance with this section.” Because the previous year’s performance bonus is included in program costs under paragraph (d)(1), it is also included in program costs under paragraph (h)(2).

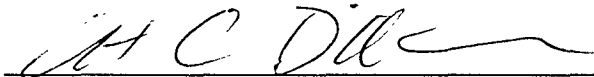
The Commission does not address policy arguments or past practice because the plain meaning of the Commission’s rule is clear: When calculating the energy-efficiency performance bonus in a given program year under 16 TAC § 25.181(h)(2), utilities must include as a program cost the performance bonus, if any, that was awarded for exceeding their goals during the previous year.

Signed at Austin, Texas the 21<sup>st</sup> day of June 2018.

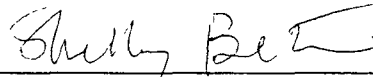
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**SHELLY BOTKIN, COMMISSIONER**

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