



Control Number: 52067



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APPLICATION OF ENTERGY TEXAS, § BEFORE THE STATE OFFICE  
INC. TO ADJUST ITS ENERGY §  
EFFICIENCY COST RECOVERY § OF  
FACTOR AND REQUEST TO ESTABLISH §  
REVISED COST CAPS § ADMINISTRATIVE HEARINGS

**ENTERGY TEXAS, INC.’S OBJECTIONS TO CITIES’ FIRST SET OF REQUESTS FOR INFORMATION**

Entergy Texas, Inc. (“ETI”) files these Objections to Cities’<sup>1</sup> First Set of Requests for Information (“RFIs”) and respectfully shows as follows:

**I. PROCEDURAL HISTORY**

ETI received Cities’ First Set of RFIs on May 27, 2021. Pursuant to agreement with Cities, these objections are timely filed.

**II. NEGOTIATIONS**

Counsel for ETI and Cities have negotiated diligently and in good faith regarding Cities’ First Set of RFIs. Thus far, the parties have been unable to reach agreement on all issues, necessitating the filing of these Objections. ETI will continue to work with counsel for Cities in an attempt to resolve this discovery dispute.

**III. GENERAL OBJECTIONS AND SUMMARY**

ETI generally objects to the “Definitions and Instructions” preceding Cities’ RFIs to the extent they seek to expand ETI’s obligations under the relevant procedural rules. ETI will provide responses consistent with the Commission’s rules, the Texas Rules of Civil Procedure, the Administrative Procedure Act, and the Protective Order, as applicable.

The Public Utility Commission of Texas’s (“Commission”) Procedural Rules permit discovery of information that is “not privileged or exempted under the Texas Rules of Civil

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<sup>1</sup> Cities includes the Cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Rose City, Shenandoah, Silsbee, Sour Lake, Splendor, Vidor, West Orange, and Willis.

Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.”<sup>2</sup> Texas Rule of Evidence 401 provides the test for relevant evidence: “Evidence is relevant if: (a) it has any tendency to make a factor more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”

#### IV. SPECIFIC OBJECTION

ETI objects to the following RFI:

##### **Cities 1-3:**

Please provide the avoided cost of capacity and avoided cost of energy in Midcontinent Independent System Operator (MISO) Zone 9 (Entergy) in 2020.

##### **Objections:**

ETI objects to this request on the grounds that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.<sup>3</sup> Discovery requests must be reasonably tailored to include only matters relevant to the subject proceeding, and requests “must show a reasonable expectation of obtaining information that will aid the dispute’s resolution.”<sup>4</sup> Cities 1-3 requests that ETI provide the avoided cost of capacity and energy in MISO, the regional transmission organization in which ETI operates. However, that information is not relevant to this proceeding based on the manner in which the Commission’s energy efficiency rules require the avoided costs of capacity and energy to be calculated for purposes of establishing utilities’ Energy Efficiency Cost Recovery Riders (“EECRF”).

The avoided costs of capacity and energy are used to determine the cost-effectiveness of an electric utility’s energy efficiency programs and, in turn, the performance bonus received by that utility under the Commission’s energy efficiency rules.<sup>5</sup> 16 TAC § 25.181(d)(2)(A)(i) dictates exactly how the avoided cost of capacity “shall” be established by Commission Staff:

Staff shall calculate the avoided cost of capacity from the base overnight cost using the lower of a new conventional combustion turbine or a new advanced combustion turbine, as reported by the United States Department of Energy’s Energy Information Administration’s (EIA) Cost and Performance Characteristics of New

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<sup>2</sup> 16 Tex. Admin. Code (“TAC”) § 22.141.

<sup>3</sup> Tex. R. Civ. P. 192.3(a); Tex. R. Evid. 401; 16 TAC § 22.141(a).

<sup>4</sup> *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003); *In re American Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998).

<sup>5</sup> 16 TAC §§ 25.181(d) and 25.182(e).

Central Station Electricity Generating Technologies associated with EIA's Annual Energy Outlook. If EIA cost data that reflects current conditions in the industry does not exist, staff may establish an avoided cost of capacity using another data source.

ETI has utilized the value established by Commission Staff for the avoided cost of capacity in this proceeding.<sup>6</sup> 16 TAC § 25.281(d)(2)(A)(iii) provides the process for challenging Commission Staff's calculation within 45 days of its filing at the Commission. To ETI's knowledge, Cities did not avail itself of that process. 16 TAC § 25.181(d)(2)(B) provides a process by which *a utility* may petition the Commission to use a different avoided cost of capacity and the burden of proof a utility must meet in doing so. ETI filed no such petition.

16 TAC § 25.181(d)(3)(A) dictates exactly how the avoided cost of energy "shall" be established by the Electric Reliability Council of Texas ("ERCOT"):

By November 1 of each year, ERCOT shall file the avoided cost of energy for the upcoming year for the ERCOT region, as defined in §25.5(48) of this title (relating to Definitions), in the commission's central records under the control number for the energy efficiency implementation project. ERCOT shall calculate the avoided cost of energy by determining the load-weighted average of the competitive load zone settlement point prices for the peak periods covering the two previous winter and summer peaks.

ETI has utilized the value established by ERCOT for the avoided cost of energy in this proceeding.<sup>7</sup> 16 TAC § 25.281(d)(3)(A) provides the process for challenging ERCOT's calculation within 45 days of its filing at the Commission. To ETI's knowledge, Cities did not avail itself of that process. 16 TAC § 25.181(d)(3)(B) provides a process by which *a utility* may petition the Commission to use a different avoided cost of energy and the burden of proof a utility must meet in doing so. ETI filed no such petition.

Given the prescriptive nature of the Commissioner's EECRF Rule in this regard, Cities' request seeks information that is not relevant or reasonably likely to lead to the discovery of admissible evidence. The prescriptive nature of the Commission's EECRF Rule is a key reason most EECRF proceedings are streamlined, efficient proceedings that routinely settle. Presumably Cities seeks this information to highlight any disparity between the avoided costs of capacity and energy in MISO and those values as calculated under the Rule for purposes of attacking ETI's

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<sup>6</sup> Direct Testimony of John "Kelley" Carson ("Carson Direct") at Exhibit JKC-9, Cell B3 (May 3, 2021).

<sup>7</sup> Carson Direct at Exhibit JKC-9, Cell B4.

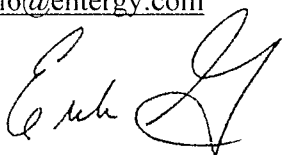
performance bonus as calculated under the Rule. But any such disparity, should one exist, is irrelevant under the Rule. Cities should not be permitted to collaterally attack and relitigate this generally applicable aspect of the Commission's EECRF Rule in ETI's EECRF docket.

**V. CONCLUSION AND PRAYER**

For the above stated reasons, ETI requests that these Objections be sustained, that ETI be relieved of responding to the RFI identified herein, and that ETI be granted such other relief to which it may be entitled.

Respectfully submitted,

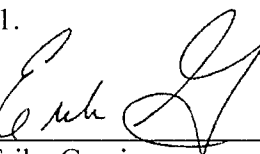
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By:   
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Erika Garcia

ATTORNEY FOR ENTERGY TEXAS, INC.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this document was served by email on the parties of record in this proceeding on June 8, 2021.

By:   
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Erika Garcia