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**SOAH DOCKET NO. 473-21-2427
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APPLICATION OF EL PASO	§	BEFORE THE STATE OFFICE
ELECTRIC COMPANY TO ADJUST	§	
ITS ENERGY EFFICIENCY COST	§	OF
RECOVERY FACTOR AND	§	
ESTABLISH REVISED COST CAP	§	ADMINISTRATIVE HEARINGS

COMMISSION STAFF’S STATEMENT OF POSITION

On May 3, 2021, El Paso Electric Company (EPE) filed an application with the Public Utility Commission of Texas (Commission) to adjust its energy efficiency cost recovery factor (EECRF) and request to establish a revised cost cap. EPE seeks to adjust its EECRF for 2022 to recover a total of \$8,495,031 and requests that the Commission approve the adjusted EECRF to be effective with the first billing cycle of January 2022. EPE also requests a good cause exception to establish a higher cost cap for its residential and commercial rate classes than is prescribed in 16 Texas Administrative Code (TAC) § 25.182(d)(7)(C). On May 13, 2021, EPE filed proof of notice. On May 25, 2021, the Commission referred this case to the State Office of Administrative Hearings (SOAH).

On June 23, 2021, SOAH Order No. 2 was filed, requiring the parties to file a Statement of Position under 16 TAC § 22.124 by August 13, 2021. Therefore, this pleading is timely filed.

I. STATEMENT OF POSITION

Staff has reviewed the record and recommends that EPE’s application has substantially satisfied all applicable requirements under 16 TAC § 25.182. Accordingly, Staff recommends that EPE’s EECRF application be approved.

Avoided cost of energy

Under 16 TAC § 25.182(e), a utility that exceeds its demand and energy reduction goals at a cost that does not exceed the cost caps established under 16 TAC § 25.182(d)(7) is entitled to a performance bonus. However, 16 TAC § 25.181(e)(2) provides that a utility that cannot reasonably operate its energy efficiency programs at the established cost caps may petition for a good cause exception to the rule and a higher EECRF cost cap. In its application, EPE projects that it will not reasonably be able to operate its energy efficiency programs and meet its energy and demand goals

at the residential customer cost cap established under 16 TAC § 25.182(d)(7)(A) and the commercial customer cost cap established under 16 TAC § 25.182(d)(7)(B). Accordingly, EPE's EECRF application includes a request for a good cause exception to the rule and permission to raise its residential and commercial customer cost cap for calendar year 2022.

On July 19, 2021, the City of El Paso (City) filed the Direct Testimony of Karl J. Nalepa, asserting that EPE's "bonus (before adjustment) be limited to the amount it would have otherwise been calculated under alternative avoided cost values."¹ EPE also asserts that "the reduction to the bonus that EPE proposes because it has exceeded the commercial cost cap should also be applied."²

Under 16 TAC § 25.182(e), a utility that exceeds its demand and energy reduction goals without exceeding the applicable cost caps is entitled to a performance bonus based on the utility's energy efficiency achievements for the previous program year. The performance bonus is a share of the net benefits (the sum of total avoided costs associated with the eligible programs administered by the utility, minus the sum of all program costs) realized in meeting the demand reduction goal. The avoided costs included in the calculation of net benefits include the avoided cost of capacity and the avoided cost of energy, which is calculated by the Electric Reliability Council of Texas (ERCOT) by determining the load-weighted average of the competitive load zone settlement point prices for peak periods covering the two previous winter and summer peaks. Accordingly, a utility's net benefits rise alongside the avoided cost of energy unless it is offset by changes to the avoided cost of capacity or program costs. While the ERCOT-calculated avoided cost of energy for program year 2020 was higher than normal, the calculation was not challenged in Project No. 38578.

Though EPE is a utility outside of the ERCOT region, EPE is authorized to use the ERCOT-calculated avoided cost of energy under 16 TAC § 25.181(d)(3)(B). Alternatively, 16 TAC § 25.181(d)(3)(B) also permits EPE to petition the Commission for authorization to use an alternative avoided cost of energy; however, EPE has not petitioned the Commission for such authorization. Staff notes that 16 TAC § 25.181(d)(3)(B) does not require utilities to petition for an alternative avoided cost of energy, and no other utility ever has petitioned to use an alternative

¹ Direct Testimony of Karl J. Nalepa at 18 (July 19, 2021).

² *Id.*

avoided cost of energy in an EECRF proceeding. Because EPE did not petition the Commission for authorization to use an alternative avoided cost of energy, EPE is required to use the ERCOT-calculated alternative cost of energy in calculating its performance bonus.

Staff's recommendation

Staff recognizes that the higher-than-normal avoided cost of energy calculated by ERCOT for program year 2020 increased the amount of performance bonus that EPE is eligible for under 16 TAC § 25.182(e). Staff notes that the performance bonus is an important tool for incentivizing utilities' energy efficiency programs, which help reduce demand and increase reliability of the electric grid. Here, EPE complied with all requirements when calculating its performance bonus and is not required to seek authorization to use a lower avoided cost of energy than other utilities in the state. EPE included a reduction to its bonus for exceeding its commercial cost caps in this docket using the method approved by the Commission in Docket No. 48332. Thus, EPE is requesting a performance bonus for 2020 that reflects a reduction because it exceeded its commercial cost cap in 2020.³

EPE is requesting if the Commission believes that the amount of performance bonus warrants adjustment in light of the revised cost caps EPE requests for the 2022 program year, the Commission has the authority to reduce the performance bonus in the EECRF proceeding in which the bonus is requested⁴ as it has done in previous years and as EPE is requesting in the current EECRF for exceeding its commercial cost cap for 2020.

Further, it is Commission Staff's position that Cities' request to adjust EPE's avoided cost of energy is outside the scope of an EECRF proceeding. The process for establishing a utility's EECRF is governed by 16 TAC § 25.182, which does not contemplate a challenge to the avoided cost of energy used by a utility in its calculations. While 16 TAC § 25.181(d)(3)(A) provides a mechanism for challenging the ERCOT-calculated avoided cost of energy and 16 TAC § 25.181(d)(3)(B) provides that a utility in an area without customer choice may petition the Commission to use an alternative avoided cost of energy, both mechanisms contemplate action in a proceeding outside from a utility's EECRF.

³ Application at 4.

⁴ *Application of El Paso Electric Company to Adjust its Energy Efficiency Cost Recovery Factor and Establish Revised Cost Cap*, Docket No. 48332, Final Order at Findings of Fact No. 42 and 42A, Conclusion of Law No. 9 (Jan. 17, 2019).

Mr. Nalepa also asserted in his testimony that the FutureWise pilot market transformation program be entirely removed from EPE's application because the City was unable to verify that the requested \$300,000 was not spent on non-energy benefits.⁵ The Public Utility Regulatory Act § 39.905(a)(5) includes one of the energy efficiency goals as providing customers education materials on energy efficiency. In addition, the FutureWise is a proposed pilot program for 2022. The proposed pilot program provides high school students with a kit that includes energy saving devices that will contribute to EPE's energy efficiency savings goals, as well as provide education materials.⁶ The program will also teach other skills such as being able to read a utility bill or knowing about green energy, which Mr. Nalepa thinks disqualifies the program, are in fact part of behavior changes that result in savings. Though EPE does not quantify behavior change savings, they are allowed under 16 TAC § 25.181(e)(5). Removing the FutureWise pilot market transformation program from EPE's EECRF would disincentivize utilities from testing novel programs to address energy efficiency education, which contributes to EPE's ability to meet its energy reduction goals. Therefore, EPE should be given the opportunity to explore different programming options for addressing the energy efficiency goals established in PURA.

Accordingly, Staff recommends that, because EPE complied with all applicable requirements, EPE's application should be approved as filed.

II. CONCLUSION

It is Staff's position that EPE complied with all applicable requirements and that EPE's application should be approved.

⁵ Direct Testimony of Karl J. Nalepa at 4 (July 19, 2021).

⁶ Direct Testimony of Crystal A. Enoch at 9 (May 3, 2021).

Dated: August 13, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 13, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kourtnee Jinks

Kourtnee Jinks