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The Honorable Rebecca S. Smith  
Administrative Law Judge  
State Office of Administrative Hearings  
Clements Building  
300 W 15<sup>th</sup> Street, Room 504  
Austin, Texas 78701

RE: **SOAH Docket No. 473-21-2427, PUC Docket No. 52081 – *Application of El Paso Electric Company to Revise its Energy Efficiency Cost Recovery Factor and Establish Revised Cost Caps***

### **Recent Rulings by the Public Utility Commission**

Dear Judge Smith:

On behalf of El Paso Electric Company, I would like to point out a recent decision by the Public Utility Commission of Texas (“PUC”) that is directly pertinent to one of the key issue at dispute in EPE’s case pending before you. The decision was made after the dates for filing briefs in this proceeding, so it could not be cited at that time. The PUC has issued a decision in the Energy Efficiency Cost Recovery Factor case for another non-ERCOT utility and found that using the Commission Staff’s posted avoided cost for purposes of computing savings and the performance bonus, as EPE did in its case, complies with the requirements of the rules. In the Order in PUC Docket No. 52073 (SOAH Docket No. 473-21-2426) issued on September 30, 2021, *Application of Southwestern Electric Power Company to Adjust its Energy Efficiency Cost Recovery Factor*, the Commission adopted the following findings of fact (FOF) and conclusion of law (COL):

FOF 43. In 2020, SWEPCO's program costs were \$4,884,887 and the total avoided costs were \$25,552,777 on energy-efficiency programs.

[EPE would like to point out that the two numbers in this FOF net to the total net benefits found in the next FOF upon which the performance bonus was based and that FOF 48 below says that SWEPCO used the Staff’s posted avoided costs, which would underlie the \$25 million in avoided costs shown here.]

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FOF 44. Under 16 TAC § 25.182(e)(3), SWEPCO's application sought the maximum allowable performance bonus, which is 10% of the net benefits of \$20,667,891 achieved through its energy-efficiency-incentive program costs, for exceeding its goal for calendar year 2020. The resulting performance bonus from this calculation is \$2,066,789 and is allocated in proportion to the program costs for eligible customers on a rate-class basis.

FOF 48. SWEPCO used an avoided cost capacity of \$80 per kW for 2020 and 2021. SWEPCO used Commission Staff's posted avoided cost of energy of \$0.11366 per kWh for 2020 and \$0.10161 per kWh for 2021.

COL 21. SWEPCO qualified for and accurately calculated its energy efficiency-performance bonus of \$2,066,789 for its energy-efficiency achievements in program year 2020 in compliance with the requirements of PURA § 39.905(b)(2) and 16 TAC § 25.182(e).

While the order in this case does not indicate there was any challenge to the utility's application, the Commission determinations are nonetheless findings on these issues and have precedential value. There is no indication in the ordering paragraphs or otherwise that the Commission intended to limit the precedential value of its findings.

It should also be noted that the Commission adopted the same findings of fact and conclusion of law in another, very recent decision for another non-ERCOT utility, Southwestern Public Service Company, although the order reflects the proceeding was resolved with a settlement agreement. See Docket No. 52072 (SOAH Docket No. 473-21-2425), FOFs 44, 45 and 49, and COL 22.

It should be noted that EPE used the same avoided cost of \$0.1136 that the other non-ERCOT utilities in these cases, SWEPCO and SPS, used for 2020. The Commission found that SWEPCO's and SPS's use of the Commission Staff's posted avoided cost complied with the PUC rules. It is the use of that avoided cost that the City of El Paso and its witness objects to in this case to erroneously support an adjustment to the performance bonus.



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Sincerely,

Laura Bradshaw Kennedy  
Attorney for El Paso Electric Company

cc: All parties of record