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SOAH DOCKET NO. 473-21-2427

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APPLICATION OF EL PASO § **PUBLIC UTILITY COMMISSION**
ELECTRIC COMPANY TO REVISE ITS §
ENERGY EFFICIENCY COST § **OF TEXAS**
RECOVERY FACTOR AND §
ESTABLISH REVISED COST CAPS §

**ORDER OF REFERRAL
AND PRELIMINARY ORDER**

El Paso Electric Company filed an application to adjust its energy-efficiency cost recovery factor (EECRF) for program year 2022 under § 39.905 of the Public Utility Regulatory Act (PURA)¹ and 16 Texas Administrative Code (TAC) §§ 25.181 and 25.182.

The Commission refers this docket to the State Office of Administrative Hearings (SOAH) and requests the assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision if the parties contest one or more issues. The Commission has delegated authority to the Office of Policy and Docket Management to issue this preliminary order, which is required under Texas Government Code § 2003.049(e). This preliminary order identifies the issues that must be addressed in this proceeding.

All subsequent pleadings in this docket must contain both the SOAH and Commission docket numbers to allow for efficient processing. Parties must make filings in accordance with 16 TAC § 22.71(c) regarding the number of copies to be filed or 16 TAC § 22.71(d)(1)(C) regarding the number of confidential items to be provided. In addition, if any party has filed confidential material before referral of this matter to SOAH, that party must provide a copy of each such confidential filing to the SOAH ALJ assigned to this matter, if ordered.

I. The Application

The applicant is requesting a 2022 EECRF to recover \$8,495,031. That amount includes the following:²

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.017 (PURA).

² Application at 2 (May 3, 2021).

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- (a) \$5,129,232 in projected costs for the 2022 energy-efficiency program;
- (b) \$2,783,387 for a performance bonus based on achieving demand savings in 2020 in excess of its 2020 goal;
- (c) \$57,216 in projected evaluation, measurement, and verification costs;
- (d) \$486,514 to be surcharged to customers for under-recovery of 2020 program costs; and
- (e) \$6,965³ for municipalities' rate-case expenses and \$31,717⁴ related to rate-case expenses for EPE in Docket No. 50806,⁵ which was EPE's 2020 EECRF proceeding.

The effective date of this 2022 EECRF is January 1, 2022.⁶ Accordingly, a final order should be issued in this docket in time to allow this deadline to be met.

II. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.⁷ The Commission identifies the following issues that must be addressed in this docket:

Application

1. Does the utility's EECRF application comply with 16 TAC § 25.182(d)? Does the application contain the testimony and schedules in Excel format with formulas intact as required by 16 TAC § 25.182(d)(10) and address the factors required by 16 TAC § 25.182(d)(11)?

2022 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)?
3. What are the utility's demand-reduction goal and energy-savings goal for program year 2022 determined under 16 TAC § 25.181(e)?

³ Direct Testimony of Rene F. Gonzales at 4.

⁴ *Id.*

⁵ *Application of El Paso Electric Company to Revise Its Energy Efficiency Cost Recovery Factor and Establish a Revised Cost Cap*, Docket No. 50806 (Nov. 5, 2020).

⁶ 16 TAC § 25.182(d)(8).

⁷ Tex. Gov't Code § 2003.049(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 § 25.181(e)(1) is not reasonably possible and 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 lower demand-reduction goal?
 - ii. If so, were the factors that led to the utility being granted a lower demand goal for the prior program year similar to the factors that the utility is relying on 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 lower demand goal?
 - b. Has the utility received any identification notices under 16 TAC § 25.181(u)? If so, has the utility's demand-reduction goal for program year 2022 been properly adjusted to remove any load (stated in terms of megawatts) that is lost because of identification notices submitted to the utility under that rule? Please address lost load in terms of the number of megawatts.
4. Do the total 2022 EECRF costs, excluding evaluation, measurement, and verification costs, municipal rate-case expenses, and any interest amounts applied to under- or over-recoveries, exceed the EECRF cost caps prescribed in 16 TAC § 25.182(d)(7)? If so, did the utility request an exception to the EECRF cost caps under 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 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. If so, 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 on 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 establish a higher EECRF cost cap?

5. What amount of projected costs for the utility's portfolio of energy-efficiency programs should be recovered through the utility's 2022 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(e)?
 - b. Is the cost to the utility of the utility's portfolio of energy-efficiency programs less than or equal to the benefits of the programs under 16 TAC § 25.181(d)?
 - c. 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?
 - d. Are the projected costs of administration and costs of research and development in compliance with the administrative-spending caps in 16 TAC § 25.181(g)? 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. If so, 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 on 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?
 - e. Are the utility's projected annual expenditures for the targeted low-income energy-efficiency program budget for 2022 in compliance with 16 TAC § 25.181(p)?
6. Does the utility include evaluation, measurement, and verification costs assigned to the utility, and have any of these costs already been recovered in a prior EECRF proceeding?

Program Year 2020 Reconciliation

7. Were the costs recovered by the utility through its EECRF for program year 2020 in compliance with PURA § 39.905 and 16 TAC §§ 25.181 and 25.182?
8. Were the costs recovered by the utility through its EECRF for program year 2020 reasonable and necessary to reduce demand growth or energy consumption?
 - a. Are the actual costs of administration and costs of research and development for program year 2020 in compliance with the administrative-spending caps in 16 TAC § 25.181(g) or higher spending caps otherwise established by the Commission? If the higher spending caps were otherwise established by the Commission, in which docket were they established?
 - b. Did any costs for program year 2020 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 include, as administrative costs or otherwise, EECRF rate-case expenses for the utility's immediately previous EECRF proceeding under 16 TAC § 25.182(d)(1)(A)? If so,
 - i. Do the requested EECRF rate-case expenses comply with 16 TAC § 25.245(b)(1) through (6)?
 - ii. Using the factors in 16 TAC § 25.245(c)(1) through (6), what amount of rate-case expenses actually and reasonably incurred by the utility, if any, does a preponderance of the evidence support?
 - iii. Should any of the utility's rate-case expenses be disallowed under 16 TAC § 25.245(d)? If so, how should the disallowance be calculated?
 - iv. What amount, if any, of the utility's rate-case expenses should the Commission award under PURA §§ 36.061 and 36.062?
 - d. Does the EECRF application include, as administrative costs or otherwise, any municipality's EECRF rate-case expenses for the immediately previous EECRF proceeding?

- i. Do the municipality's requested EECRF rate-case expenses comply with 16 TAC § 25.245(b)(1) through (6)?
 - ii. Using the factors of 16 TAC § 25.245(c)(1) through (6), what amount of rate-case expenses actually and reasonably incurred by the municipality, if any, does a preponderance of the evidence support?
 - iii. Should any of the municipality's rate-case expenses be disallowed under 16 TAC § 25.245(d)? If so, how should the disallowance be calculated?
 - iv. What amount, if any, of the municipality's rate-case expenses should the Commission award under PURA § 33.023(b) that are not excluded by PURA § 36.062?
9. For each EECRF rate class, what is the amount, if any, of under- or over-recovered EECRF costs under 16 TAC § 25.182 for program year 2020?
- a. Did the utility recover any of its energy-efficiency costs through base rates for program year 2020? If so, what is the actual amount of energy-efficiency revenues collected through base rates under 16 TAC § 25.182(d)(2)?
 - b. What was the actual revenue collected through the utility's EECRF for program year 2020?
 - c. What were the actual costs of the utility's energy-efficiency programs for program year 2020 that comply with 16 TAC § 25.182(d)(12)?
 - d. What is the amount of interest applied to under- or over-recovery for each rate class?

Performance Bonus

10. What were the utility's demand-reduction and energy-reduction goals for program year 2020? If the Commission granted an exception for a lower demand-reduction goal, in what docket was the lower goal established?
11. What is the performance bonus, if any, calculated under 16 TAC § 25.182(e) for program year 2020?
- a. Did the utility exceed its demand- and energy-reduction goals for program year 2020? If so, by what amounts?
 - b. Did the utility exceed the EECRF cost caps in 16 TAC § 25.182(d)(7)?

- c. What are the net benefits of the utility's energy-efficiency programs for program year 2020?
- d. Is a performance bonus requested for program year 2020? If so, for the purposes of calculating the net benefits, do the program costs deducted from the total avoided cost include the previous performance bonus?
- e. Did the Commission grant a good-cause exception to establish a lower demand-reduction goal, higher administrative-spending cap, or higher EECRF cost cap for the utility for program year 2020?
 - i. For program year 2020, what factors did the utility rely on 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 actual occurrence of the factors relied on by the utility to demonstrate that compliance with the demand-reduction goal, administrative-spending cap, or EECRF cost cap was not reasonably possible?
 - iii. What other considerations, if any, should the Commission weigh in determining whether to reduce the utility's performance bonus?⁸
 - iv. Should the Commission deny the entire amount of the requested performance bonus? If not, what amount of the utility's requested performance bonus should be approved? In answering this issue, what are the parties' proposed methodologies for Commission approval of a portion of the bonus, and are the calculations and the data on which any proposed methodologies are based included in the evidentiary record?

EECRF Rate Classes

12. What are the proper EECRF rate classes for the utility's 2022 EECRF?

⁸ See *Rulemaking Proceeding 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 (Oct. 17, 2012) ("The commission 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 commission also notes . . . 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.").

- a. What retail rate classes were approved in the utility's most recent base-rate proceeding, excluding non-eligible customers, and therefore under 16 TAC § 25.182(c)(2) should be used to calculate the utility's 2022 EECRF?
- b. Has the utility proposed an EECRF for each eligible rate class?
- c. Has the utility requested a good-cause exception under 16 TAC § 25.182(d)(2) to combine two 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?

EECRF Rate Design

13. What is the total cost that should be recovered through the utility's 2022 EECRFs under 16 TAC § 25.182(d)(1)?
14. What are the 2022 EECRFs for each rate class calculated under 16 TAC § 25.182(d)(2)?
 - a. Are the costs assigned or allocated to rate classes reasonable and in compliance with 16 TAC §§ 25.181 and 25.182?
 - i. Are the utility's program costs directly assigned to each EECRF rate class that receives services under the programs to the maximum extent reasonably possible in accordance with 16 TAC § 25.182(d)(2)?
 - ii. Is any bonus allocated in accordance with 16 TAC § 25.182(e)(6)?
 - iii. Are administrative costs, including rate-case expenses and research and development costs, allocated in accordance with 16 TAC § 25.181(g)?
 - iv. If applicable, how are the evaluation, measurement, and verification costs assigned to the rate classes, and is the assignment in compliance with PURA § 39.905 and 16 TAC § 25.181(o)(10)?
 - v. Are any under- or over-recovered EECRF costs allocated to the rate classes in accordance with 16 TAC § 25.182(d)(2)?

- b. 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?
 - c. What is the estimate of billing determinants for the 2022 program?
 - d. What are the most current, available calculated or estimated system losses and line losses for each eligible retail rate class?
 - i. Were these line losses used in calculating the 2022 EECRF charges?
 - ii. Are the calculated or estimated line losses in evidence in this docket?
15. Do the incentive payments for each customer class in program year 2020 comply with 16 TAC § 25.181(f)?

Tariff

16. What tariff schedule should be adopted for the utility in compliance with 16 TAC §§ 25.181 and 25.182?

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, subject to any limitations imposed 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 Texas Government Code § 2003.049(e).

III. 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 25th day of May 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

Electronically signed by Stephen Journey
STEPHEN JOURNEY
COMMISSION COUNSEL