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DOCKET NO. _____

EXPEDITED PETITION FOR	§	PUBLIC UTILITY
APPROVAL OF INTERIM LOAD	§	
MANAGEMENT PROGRAMS FOR	§	COMMISSION OF TEXAS
NONRESIDENTIAL CUSTOMERS AND	§	
FOR AN ACCOUNTING ORDER	§	

EXPEDITED PETITION FOR APPROVAL OF INTERIM LOAD MANAGEMENT PROGRAMS FOR NONRESIDENTIAL CUSTOMERS AND FOR AN ACCOUNTING ORDER

AEP Texas Inc.; CenterPoint Energy Houston Electric, LLC; and Texas-New Mexico Power Company (collectively, the Joint TDUs) file this Expedited Petition. The Joint TDUs request that the Public Utility Commission of Texas (Commission) approve, on an expedited basis, Joint TDUs: (1) designing and operating load management programs for nonresidential customers during the period of December 1, 2021 - February 28, 2022 (the Interim Load Management Programs) and (2) recording a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs and for future load management programs for nonresidential customers. The Joint TDUs request that the Commission consider and approve, on an expedited basis, this Expedited Petition at either the regularly scheduled Open Meetings on October 28, 2021 or November 18, 2021, or at a duly scheduled Open Meeting prior to December 1, 2021. In support of its Expedited Petition, the Joint TDUs state the following:

I. Summary of the Joint TDUs’ Request

On June 8, 2021, the Governor of Texas signed S.B. 3¹ into law which, among other things, requires the Commission to “allow a transmission and distribution utility to design and operate a load management program for nonresidential customers to be used where the independent organization certified under [PURA²] Section 39.151 for the ERCOT power region has declared a Level 2 Emergency or a higher level of emergency or has otherwise directed the transmission and distribution utility to shed load.”³ Additionally, a “transmission and distribution utility

¹ S.B. 3, 87th Leg., R.S. (2021).

² Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2014).

³ S.B. 3, Section 16, creating PURA § 38.075.

implementing a load management program . . . shall be permitted to recover the reasonable and necessary costs of the load management program under Chapter 36 [of PURA].”⁴ The Commission is currently scheduled to initiate its rulemaking for load management programs for nonresidential customers in January 2022, with a proposal for adoption scheduled for June 2022.⁵ As part of preparing for the upcoming winter season, which will occur before and during the Commission’s scheduled rulemaking, the Joint TDUs believe it is appropriate and prudent to have in place load management programs for nonresidential customers. Similar to the phased approach that the Commission is taking for other recently-enacted legislation,⁶ the Joint TDUs request that the Commission take a two-phased approach for the implementation of load management programs for nonresidential customers, with the first phase approving the Interim Load Management Programs, and the second phase being the formal rulemaking that is scheduled to begin in January 2022 that will address future load management programs for nonresidential customers.

Thus, as part of the first phase, the Joint TDUs request that the Commission approve, on an expedited basis, the Joint TDUs:

- designing and operating the Interim Load Management Programs; and
- recording a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs and for future load management programs for nonresidential customers, with such costs being addressed and recovered in a subsequent proceeding.

II. Authorized Representatives for the Joint TDUs

The authorized legal representatives for the Joint TDUs are:

AEP Texas Inc.

CenterPoint Energy Houston Electric, LLC

Melissa A. Gage
Associate General Counsel

Sam Chang
Senior Counsel

⁴ *Id.*

⁵ *87th Regular Legislative Session Implementation Schedule*, Project No. 51715 (Jul. 14, 2021).

⁶ *See generally Rulemaking to Establish Electric Weatherization Standards*, Project No. 51840, Proposal for Publication at 1 (Aug. 24, 2021).

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III. The Commission’s Jurisdiction Over This Proceeding

PURA grants the Public Utility Commission of Texas (Commission) “the general power to regulate and supervise the business of each public utility.”⁷ The Commission “has exclusive original jurisdiction over the rates, operations, and services of an electric utility in . . . areas outside a municipality”⁸ and in the municipalities that cede jurisdiction to the Commission. The Texas Supreme Court has recently ruled that the Commission’s jurisdiction is “limited to the charging of rates and provision of electricity.”⁹ S.B. 3 specifically requires the Commission to permit the Joint TDUs to design and operate load management programs for nonresidential customers. With regard to the Joint TDUs’ request for an accounting order, the Commission “may prescribe the form of books, accounts, records, and memoranda to be kept by a [transmission and distribution utility].”¹⁰

IV. Potentially Affected Parties and Notice

The parties that may be potentially affected by the Joint TDUs’ request are commercial

⁷ PURA § 14.001.

⁸ PURA § 32.001(a).

⁹ *In re Oncor Electric Delivery Company LLC*, Case No. 19-0662, Opinion at 8 (Jun. 25, 2021) (orig. proceeding).

¹⁰ PURA § 14.151. *See also Proceeding to Investigate and Address the Effects of Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-owned Utility Companies*, Project No. 47945, Order Related to Changes in Federal Income Tax Rates at 2 (Jan. 25, 2018)

and industrial customers that may qualify and that may elect to participate in any of the Interim Load Management Programs. Given that the specifically affected parties are unknown at this time and will not be known until the implementation of the Interim Load Management Programs, the Joint TDUs propose that notice of this proceeding be provided via publication in the *Texas Register*.¹¹

V. The Joint TDUs Request

a. Approval of the Interim Load Management Programs

S.B. 3, which was effective June 8, 2021, requires the Commission to allow the Joint TDUs to design and operate load management programs for nonresidential customers. Rather than waiting until June 2022, the scheduled rulemaking completion date, the Joint TDUs believe it is appropriate and prudent to have in place load management programs for nonresidential customers that can be utilized for the upcoming winter season. Otherwise, there is a risk that the Joint TDUs will not be able to have load management programs for nonresidential customers until winter 2022. The Joint TDUs believe that a potential implementation delay until winter 2022 is not beneficial to customers and contrary to the immediacy intended by the June 8, 2021 effective date.

To minimize the potential implementation delay, the Joint TDUs request that the Commission take a two-phased approach for the implementation of S.B. 3. The first phase would be the approval of the design and operation of the Interim Load Management Programs, which would be in place for the upcoming winter season. The second phase would entail the formal rulemaking that is scheduled to begin in January 2022 and would address future load management programs for nonresidential customers. A benefit to this two-phased approach is that the performance of the Interim Load Management Programs in the first phase would provide the Commission with empirical data that could be used for the rulemaking in the second phase. Thus, the Joint TDUs request that the Commission approve, on an expedited basis, the design and operation of the Interim Load Management Programs. In Commission approval of the design and operation of the Interim Load Management Programs, the Joint TDUs also request that the Commission state that the Interim Load Management Programs would be operated outside their respective Commission-approved energy efficiency programs.

¹¹ *See generally* 16 Tex. Admin. Code § 22.55 (which provides for reasonable notice to affected persons).

b. Accounting Order for the Interim Load Management Programs

The Commission has previously exercised its authority over the books and records of the Joint TDUs. For example, in response to the Tax Cuts and Jobs Act,¹² which reduced the federal income tax rate for corporations from 35% to 21%, the Commission ordered the Joint TDUs to record a regulatory liability that represents the difference in revenues attributable to the reduction of the federal income tax rate from 35% to 21% and the balance of excess accumulated deferred federal income taxes that are attributable to the reduction of the federal income tax rate from 35% to 21%.¹³ The reconciliation of the regulatory liabilities was addressed in subsequent proceedings.

The Joint TDUs request similar treatment with regard to any and all costs related to the Interim Load Management Programs. Specifically, the Joint TDUs request that the Commission issue, on an expedited basis, an accounting order that approves the Joint TDUs recording a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs and for future load management programs for nonresidential customers, including carrying charges calculated at the Joint TDUs' respective weighted average cost of capital. The recording of a regulatory asset would preserve the Joint TDUs' ability to "recover the reasonable and necessary costs of the load management program under Chapter 36 [of PURA]."¹⁴ The Joint TDUs recognize that costs associated with the Interim Load Management Programs will be addressed and recovered in a subsequent proceeding.

VI. Conclusion

The Joint TDUs are committed to providing safe and reliable service to customers. The newly-enacted legislation that permits load management programs for nonresidential customers is another tool that would further enhance the provision of safe and reliable service to customers. Thus, the Joint TDUs request approval, on an expedited basis, of the design and operation of the

¹² See generally Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, 113 Stat. 2054 (Dec. 22, 2017).

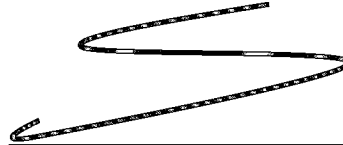
¹³ See *Proceeding to Investigate and Address the Effects of Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-owned Utility Companies*, Project No. 47945, Order Related to Changes in Federal Income Tax Rates at 2 (Jan. 25, 2018).

¹⁴ *Id.*

Interim Load Management Programs and an accounting order, on an expedited basis, that permits the recording of a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs and for future load management programs for nonresidential customers. The Joint TDUs request that the Commission consider and approve, on an expedited basis, this Expedited Petition at either the regularly scheduled Open Meetings on October 28, 2021 or November 18, 2021, or at a duly scheduled Open Meeting prior to December 1, 2021.

Date: October 8, 2021

Respectfully submitted,



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On Behalf of the Joint TDUS

CERTIFICATE OF SERVICE

I, Michael Burleson, certify that a copy of this document was served on all parties of record in this proceeding on October 8, 2021, by e-mail pursuant to the Order Suspending Rules - PUC Docket No. 50664.



Proposed Order

DOCKET NO. _____

**EXPEDITED PETITION FOR
APPROVAL OF INTERIM LOAD
MANAGEMENT PROGRAMS FOR
NONRESIDENTIAL CUSTOMERS AND
FOR AN ACCOUNTING ORDER**

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**PUBLIC UTILITY
COMMISSION OF TEXAS**

**ORDER APPROVING THE DESIGN AND OPERATION OF INTERIM LOAD
MANAGEMENT PROGRAMS FOR NONRESIDENTIAL CUSTOMERS AND
APPROVING THE ESTABLISHMENT OF A REGULATORY ASSET FOR
ASSOCIATED COSTS**

This Order approves AEP Texas Inc.; CenterPoint Energy Houston Electric, LLC; and Texas-New Mexico Power Company (collectively, the Joint TDUs) designing and operating load management programs for nonresidential customers during the period of December 1, 2021 - February 28, 2022 (the Interim Load Management Programs). Additionally, this Order permits the Joint TDUs to establish a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs, to the extent that they choose to design and operate such programs. On June 8, 2021, the Governor of Texas signed into law S.B. 3,¹ which, among other things, requires the Public Utility Commission (Commission) of Texas to “allow a transmission and distribution utility to design and operate a load management program for nonresidential customers to be used where the independent organization certified under [PURA²] Section 39.151 for the ERCOT power region has declared a Level 2 Emergency or a higher level of emergency or has otherwise directed the transmission and distribution utility to shed load.”³ Additionally, under S.B. 3, a “transmission and distribution utility implementing a load management program under this subsection shall be permitted to recover the reasonable and necessary costs of the load management program under Chapter 36 [of PURA].”⁴

The Commission is currently scheduled to initiate its rulemaking for load management programs for nonresidential customers in January 2022, with a proposal for adoption scheduled

¹ S.B. 3, 87th Leg., R.S. (2021).

² Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2014).

³ S.B. 3, Section 16, creating PURA § 38.075.

⁴ *Id.*

for June 2022.⁵ This rulemaking will detail the terms and conditions under which transmission and distribution utilities design and operate their respective future load management programs for nonresidential customers and will also address issues related to cost recovery. Until a rate change is approved by the Commission, the Joint TDUs must charge their currently approved rates, which do not and would not include any costs associated with the design and operation of future load management programs for nonresidential customers, including the Interim Load Management Programs.

Through this Order, the Commission believes it is prudent to allow the Joint TDUs to design and operate the Interim Load Management Programs, to be operated outside existing energy efficiency programs, in preparation for the upcoming winter season. The Commission exercises its authority under PURA over the books and records of Joint TDUs to permit them to record a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs and for future load management programs for nonresidential customers.⁶ The Joint TDUs may also include carrying charges, calculated at their respective weighted average cost of capital, in this regulatory asset. The costs associated with the Interim Load Management Programs and for future load management programs for nonresidential customers will be addressed and recovered in a subsequent proceeding.

Based on the discussion in this Order, the Commission approves Joint TDUs: (1) designing and operating the Interim Load Management Programs and (2) recording a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact:

1. The Joint TDUs provide electric transmission and distribution services in the Electric Reliability Council of Texas power region.
2. On _____, 2021, the Joint TDUs filed an Expedited Petition requesting Commission

⁵ 87th Regular Legislative Session Implementation Schedule, Project No. 51715 (Jul. 14, 2021).

⁶ PURA § 14.151.

approval of the design and operation of the Interim Load Management Programs and the recording of a regulatory asset for any and all costs associated with the Interim Load Management Programs.

3. On _____, 2021, notice of this proceeding was published in the *Texas Register*.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under PURA §§ 14.001, 14.151, 32.101, 38.075.
2. The Joint TDUs are each an electric utility as defined by PURA § 31.002(6) and each a transmission and distribution utility as defined by PURA § 31.002(19).
3. Under PURA § 38.075, the Joint TDUs are permitted to design and operate load management programs for nonresidential customers and are permitted to recover reasonable and necessary costs of such programs.
4. Under PURA § 14.151, the Commission has authority over the books and records of the Joint TDUs.
5. Reasonable notice of this proceeding was provided via publication in the *Texas Register* on _____, 2021.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Joint TDUs may design and operate the Interim Load Management Programs, as defined in this Order, to be operated outside their existing energy efficiency programs.
2. The Joint TDUs may record a regulatory asset for any and all costs associated with the design and operation of the Interim Load Management Programs and for future load management programs for nonresidential customers, including carrying charges calculated at their respective weighted average cost of capital.
3. The costs associated with the Interim Load Management Programs and for future load management programs for nonresidential customers will be addressed and recovered in a subsequent proceeding.

Signed at Austin, Texas the ____ day of _____, 2021

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

PROPOSED ORDER