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SOAH DOCKET NO. 473-22-2603
PUC DOCKET NO. 53517

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

COMMISSION STAFF’S FINAL RECOMMENDATION

On May 2, 2022, Entergy Texas, Inc. (ETI) filed an application to revise its Energy Efficiency Cost Recovery Factor (EECRF) for program year 2023 under PURA¹ § 39.905 and 16 Texas Administrative Code (TAC) §§ 25.181 and 25.182. ETI requests approval to recover a total of \$12,466,315² through its Rider EECRF in 2023.

On August 12, 2022, the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) filed SOAH Order No. 4, requiring the parties to file a motion for remand or status report. The Staff (Staff) of the Public Utility Commission of Texas (Commission) now offers this final recommendation in support of the Joint Motion to Admit Evidence and Proposed Notice of Approval that will be filed on or before September 6, 2022 in coordination with the parties.

I. FINAL RECOMMENDATION

Staff has reviewed the Application and as supported by the attached memoranda of Mark Filarowicz and Charles Rudolph of the Rate Regulation Division and James Harville of the Infrastructure Division, recommends that ETI's application be approved.

II. CONCLUSION

For the reasons discussed above, Staff respectfully requests that ETI’s application be approved pursuant to the recommendation above.

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

² The requested \$12,466,315 consists of the following: (1) estimated 2023 energy efficiency program costs of the ETI’s forecasted energy efficiency program budget amount of \$7,930,830; (2) a performance bonus of \$4,598,049 for 2021 program achievements; (3) evaluation, measurement, and verification costs of \$93,437 to be collected in 2023; (4) a \$240,672 refund for the over-recovery of 2021 program costs, including \$1,454 in interest; and (5) \$16,988 for Cities’ rate case expenses and \$67,682 for ETI’s rate case expenses in Docket No. 52067, ETI’s 2021 EECRF Application.

Dated: August 23, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Keith Rogas
Division Director

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/s/ Arnett D. Caviel
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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 23, 2022, in accordance with the Order Suspending Rules, filed in Project No. 50664.

/s/ Arnett D. Caviel
Arnett D. Caviel

Public Utility Commission of Texas

Memorandum

TO: Arnett Caviel, Attorney
Legal Division

FROM: Mark Filarowicz, Senior Financial and Accounting Analyst
Rate Regulation Division

DATE: August 23, 2022

RE: SOAH Docket No. 473-22-2603 and PUC Docket No. 53517 – *Application of Entergy Texas, Inc. to Adjust Its Energy Efficiency Cost Recovery Factor*

Analysis and Recommendation

Regarding Certain Accounting Aspects of the Application to Adjust the Energy Efficiency Cost Recovery Factor

Background and Recommendation

On May 2, 2022, Entergy Texas, Inc. (ETI) filed an application in this docket to adjust its Energy Efficiency Cost Recovery Factor (EECRF) (Application) for program year 2023 under Public Utility Regulatory Act § 39.905 and 16 Texas Administrative Code (TAC) §§ 25.181 and 25.182.

In its Application, ETI requested a 2023 EECRF of \$12,466,315 comprising the following components:

- recovery of \$7,930,830 in projected energy efficiency program costs for ETI's 2023 program year;
- a performance bonus of \$4,598,049 for 2021 program achievements;
- an adjustment to refund the over-recovery of \$240,672 in 2021 for program costs including \$1,454 in interest;
- projected evaluation, measurement, and verification contractor costs of \$93,437 to be collected in 2023; and

- recovery of \$67,682 for ETI's 2021 EECRF-proceeding expenses and \$16,988 for the Cities'¹ rate-case expenses incurred in Docket No. 52067.²

The scope of my review of the Application is limited to determining compliance with a couple of accounting or financial standards relating to EECRF proceedings. My review confirmed the correctness of the calculation of the interest on the over-recovery, ensured that the requested EECRF did not contain controversial accounting items disallowed by precedent (namely, financially based incentive compensation and carrying costs on shared assets), and confirmed that the requested amounts for rate-case expenses were reasonable and were accompanied by the necessary supporting documentation to meet the standards in the Commission rules for rate-case expenses.

Having performed my (limited) accounting review of the Application and other documents filed on the record, I recommend, for the reasons outlined in this memorandum, that the Commission approve ETI's Application to adjust its EECRF.

Analysis

As part of my review, I confirmed that ETI correctly calculated interest of \$1,454 on its over-recovery from the previous year's EECRF, in accordance with 16 TAC 25.182 (d).³

In response to requests for information, ETI confirmed that it removed all amounts for financially based incentive compensation from its request to adjust its EECRF in this proceeding and that its request does not include any amounts for carrying charges on shared assets.⁴

My review included an examination of the reasonableness of ETI's and the Cities' 2021 EECRF rate-case expenses incurred in Docket No. 52067. In reviewing the itemized rate-case expense invoices for the 2021 EECRF program year, I applied the standards of 16 TAC § 25.245(b), which states:

Requirements for claiming recovery of or reimbursement for rate-case expenses. A utility or municipality requesting recovery of or reimbursement for its rate-case expenses shall have the burden to prove the reasonableness of such rate-case expenses by a preponderance of the evidence. A utility or municipality seeking recovery of or reimbursement for rate-case expenses shall file sufficient information that details and

¹ "Cities" refers to 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, Splendora, Vidor, West Orange, and Willis.

² *Application of Entergy Texas, Inc. to Adjust Its Energy Efficiency Cost Recovery Factor*, Docket No. 52067, Order (Dec. 16, 2021).

³ Application at Exhibit JAL-1, Page 4 of 6 (May 2, 2022; refiled June 3, 2022).

⁴ Response of Entergy Texas, Inc. to Commission Staff's First Request for Information at Response to Question No. Staff 1-8 and Response to Question No. Staff 1-12 (May 31, 2022).

itemizes all rate-case expenses, including, but not limited to, evidence verified by testimony or affidavit, showing:

- (1) the nature, extent, and difficulty of the work done by the attorney or other professional in the rate case;
- (2) the time and labor required and expended by the attorney or other professional;
- (3) the fees or other consideration paid to the attorney or other professional for the services rendered;
- (4) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials;
- (5) the nature and scope of the rate case, including:
 - (A) the size of the utility and number and type of consumers served;
 - (B) the amount of money or value of property or interest at stake;
 - (C) the novelty or complexity of the issues addressed;
 - (D) the amount and complexity of discovery;
 - (E) the occurrence and length of a hearing; and
- (6) the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associated with each issue.

I also applied the standards of 16 TAC § 25.245(c), which states:

Criteria for review and determination of reasonableness. In determining the reasonableness of the rate-case expenses, the presiding officer shall consider the relevant factors listed in subsection (b) of this section and any other factor shown to be relevant to the specific case. The presiding officer shall decide whether and the extent to which the evidence shows that:

- (1) the fees paid to, tasks performed by, or time spent on a task by an attorney or other professional were extreme or excessive;
- (2) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials were extreme or excessive;
- (3) there was duplication of services or testimony;

(4) the utility's or municipality's proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of commission precedent;

(5) rate-case expenses as a whole were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section; or

(6) the utility or municipality failed to comply with the requirements for providing sufficient information pursuant to subsection (b) of this section.

The testimony of Jay Andrew Lewis, Jr., an attorney licensed in the State of Louisiana, supports the reasonableness and necessity of the amount of \$66,491.21 incurred by ETI for affiliate rate-case expenses in Docket No. 52067.⁵ An Affidavit of Erika N. Garcia, an attorney licensed in the State of Texas, supports the reasonableness and necessity of the amount of \$1,209.00 incurred by ETI for external legal counsel, court reporter service, and courier service in Docket No. 52067.⁶ (I note that ETI's request includes a total of \$67,682 for its own rate-case expenses in Docket No. 52067, which is approximately \$18 less than the amount for which ETI provided attestation and supporting documentation.) A Declaration of Molly Mayhall Vandervoort, an attorney with Lawton Law Firm, P.C. (and licensed in the State of Texas), supports the reasonableness and necessity of the amount of \$16,988.00 incurred by Cities for its participation in Docket No. 52067.⁷

I reviewed the itemized billings to make certain that all rate-case expenses met the requirements of 16 TAC § 25.245(b) and (c), and I confirmed that:

- a. All rate-case expenses were supported with appropriate third-party documentation.
- b. The hourly rates for each attorney or professional were reasonable.
- c. The daily billable hours for each attorney or professional were reasonable.

Furthermore, I reviewed the computation of the total fee billed for accuracy and determined:

- d. The calculation in computing the fee was accurate.
- e. The total request in rate-case expenses was reasonable when compared to the individual invoices.
- f. Expenses incurred for lodging, meals and beverages, transportation, or other services or materials were reasonable.
- g. The description of the service and work performed demonstrated reasonableness and necessity within the nature and scope of the EECRF proceeding.
- h. The time and labor required and expended by the attorney or other professional was reasonable.
- i. No duplication of service occurred.

⁵ Application, Direct Testimony of Jay Andrew Lewis, Jr. at Page 15 of 15.

⁶ Application, Affidavit of Erika N. Garcia at Page 1 of 5.

⁷ *Id.*, Declaration Regarding Reasonableness of Cities' Rate Case Expenses for the Docket No. 52067 at Page 1.

Based upon the procedures described above, and my review of the Application, testimony, affidavits, and supporting documents, I recommend that the requested rate-case expenses of \$67,682 for ETI and \$16,988 for Cities related to ETI's 2021 EECRF under Docket No. 52067 be deemed reasonable and necessary. Additionally, I confirmed that ETI correctly calculated the interest in the amount of \$1,454 related to the 2021 program cost over-recovery and that ETI's request to adjust its EECRF does not contain any amounts for financially based incentive compensation or carrying charges on shared assets.

Conclusion

Based on my limited accounting review of the Application and other documents filed on the record as described in this memorandum, I recommend that the Commission approve ETI's Application to adjust its EECRF.

Public Utility Commission of Texas

Memorandum

To: Arnett Caviel, Legal Division

From: Charles Rudolph, Tariff & Rate Analysis, Rate Regulation Division

Date: June 22, 2022

Re: **Docket No. 53517** – *Application of Entergy Texas, Inc. to Adjust its Energy Efficiency Cost Recovery Factor*

On May 2, 2022, Entergy Texas, Inc. (ETI) filed an application requesting approval of its Energy Efficiency Cost Recovery Factor (EECRF) for the 2023 year (2023 EECRF application). On June 3, 2022, ETI filed a supplement to its petition. In its 2023 EECRF application, ETI sought approval of its 2023 EECRF in the amount of \$12,466,315. This amount is composed of the following:

- a. Efficiency expenses of \$7,930,830 forecasted for the 2023 program year;
- b. Minus \$240,672 for the over-recovery of energy efficiency costs for 2021, inclusive of interest;
- c. Plus a \$4,598,049 energy efficiency performance bonus based on ETI's energy efficiency achievements in 2021;
- d. Plus \$84,670 in 2021 total EECRF proceeding expenses;
- e. Plus \$93,437 in evaluation, measurement and verification expenses.

My review of ETI's 2023 EECRF application included an examination of the assignment and allocation of the various EECRF components to the rate classes, as well as the mathematical calculation of the EECRF rates. The following are ETI's proposed per-kWh EECRF factors:

Rate Class	EECRF Charge (\$/kWh)
Residential	\$0.001167
Small General Service	\$0.000361
General Service	\$0.000967
Large General Service	\$0.000920
Large Industrial Power Service: Industrial Transmission	\$0.000000
Large Industrial Power Service: Other	\$0.000822
Lighting	\$0.000001

Based upon my review of ETI's 2023 EECRF Application and accompanying work papers, I have determined that ETI's proposed assignments and allocations of the various EECRF components to the rate classes are reasonable and consistent with 16 Texas Administrative Code (TAC) § 25.182, and that the rates have been calculated correctly.

Public Utility Commission of Texas

Memorandum

TO: Arnett Caviel, Attorney
Legal Division

FROM: James Harville, Infrastructure Analyst
Infrastructure Division

DATE: August 23, 2022

RE: Docket No. 53517 – *Application of Entergy Texas, Inc. to Adjust its Energy Efficiency Cost Recovery Factor*

On May 2, 2022, Entergy Texas, Inc. (ETI) filed an application with the Public Utility Commission of Texas (Commission) to adjust its Energy Efficiency Cost Recovery Factor (EECRF) for program year 2023 under Public Utility Regulatory Act (PURA) § 39.905 and 16 Texas Administrative Code (TAC) §§ 25.181 and 25.182.

In its Application, ETI requested a 2023 EECRF of \$12,466,315 comprised of the following components:

- ETI's estimated 2023 energy efficiency program costs of the forecasted energy efficiency program budget amount of \$7,930,830;
- A performance bonus of \$4,598,049 for 2021 program achievements;
- Evaluation, measurement, and verification costs of \$93,437 to be collected in 2023;
- A \$240,672 refund for the over-recovery of 2021 program costs, including \$1,454 in interest; and \$16,988 for Cities' rate case expenses and \$67,682 for ETI's rate case expenses in Docket No. 52067, the Company's 2021 EECRF Application.

My review included examination of ETI'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); the demand-reduction and energy-savings goals with proposed line loss under 16 TAC § 25.181(e); the reasonableness of ETI's forecasted energy efficiency expenses under 16 TAC § 25.182(d) for program year 2023; the cost-benefit of the utility's portfolio of energy efficiency programs under 16 TAC § 25.181(d); and identification notices under 16 TAC § 25.181(u). My review also included ETI's compliance with 16 TAC § 25.182(e) to determine the program year 2021 performance bonus and net benefits; EECRF cost caps under 16 TAC § 25.182(d)(7); administrative-spending caps and costs of research and development under 16 TAC § 25.181(g); and ETI's energy efficiency expenses in program year 2021 to verify that they were reasonable and necessary to reduce demand and energy growth.

Based upon my review of ETI's Application, associated exhibits, testimonies, and responses to requests for information, I have determined that ETI's total requested energy efficiency expenses for the 2023 program year are reasonable, and that ETI's Application meets the requirements of 16 TAC §§ 25.181 and 25.182.