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**SOAH DOCKET NO. 473-22-2610
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| APPLICATION OF EL PASO | § | BEFORE THE STATE OFFICE |
| ELECTRIC COMPANY TO REVISE | § | |
| ITS ENERGY EFFICIENCY COST | § | OF |
| RECOVERY FACTOR AND | § | |
| ESTABLISH REVISED COST CAP | § | ADMINISTRATIVE HEARINGS |

COMMISSION STAFF’S STATEMENT OF POSITION

On May 3, 2022, El Paso Electric Company (EPE) filed an application with the Public Utility Commission of Texas (Commission) to revise its energy efficiency cost recovery factor (EECRF) and request to establish a revised cost cap. On May 16, 2022, EPE filed an updated application. EPE seeks to adjust its EECRF for 2023 to recover a total of \$7,969,507 and requests that the Commission approve the adjusted EECRF to be effective with the first billing cycle of January 2023. 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 June 21, 2022, EPE filed proof of notice. On May 4, 2022, the Commission referred this case to the State Office of Administrative Hearings (SOAH).

On May 26, 2022, SOAH Order No. 3 was filed, requiring the parties to file a Statement of Position under 16 TAC § 22.124 by September 6, 2022. 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 §§ 25.181 and 25.182. Accordingly, Staff recommends that EPE’s EECRF application be approved.

Incentive Payments

On August 2, 2022, the City of El Paso (City) filed the Direct Testimony of Karl Nalepa recommending (1) incentive payments made to implementers for program year 2021 should be excluded from EPE’s EECRF, and (2) in future EECRF filings EPE provide sufficient support for incentives paid to implementers so the Commission can determine whether the payments are

reasonable.¹ Mr. Nalepa raises concern that, “A significant portion of the total energy efficiency program incentives are paid to program implementers rather than to EPE customers.”²

Staff’s Recommendation

16 TAC §25.181(c)(29) defines incentive payment as a payment made by a utility to an energy efficiency service provider, an end-use customer, or third-party contractor to implement and/or attract customers to energy efficiency programs, including standard offer, market transformation and self-delivered programs. Under 16 TAC §25.181(f), the incentive payments for each customer class shall not exceed 100% of avoided cost and the incentive payments shall be set by each utility with the objective of achieving its energy and demand savings goals at the lowest reasonable cost per program.

Staff notes the rule’s objective and does not take a position on City’s request that (1) incentive payments made to implementers for program year 2021 should be excluded from EPE’s EECRF and (2) in future EECRF filings EPE provide sufficient support for incentives paid to implementers so the Commission can determine whether the payments are reasonable.

Historical Administrative and Research & Development Costs

For EPE’s proposed 2023 EECRF administrative and research and development costs, Mr. Nalepa recommended total reduction of \$42,399 broken down as \$21,354 and \$21,045 to Admin and R&D respectively.³

Staff’s Recommendation

Under 16 TAC §25.181(g), the cost of administration in a program year shall not exceed 15% of a utility’s total program costs for that program year. The cost of research and development in a program year shall not exceed 10% of a utility’s total program costs for that program year. Any portion of these costs that is not directly assignable to a specific program shall be allocated among the programs in proportion to the program incentive costs.

Staff does not take a position as to Mr. Nalepa’s request of total reduction of \$42,399.

¹ Direct Testimony of Karl J. Nalepa at 11, (Aug. 2, 2022).

² *Id.* at 8.

³ *Id.* at 13.

Good Cause Exception to Exceed Cost Caps

Mr. Nalepa recommends the Commission adopt his program adjustments of \$675,028 to program budgets with the elimination of the LivingWise and FutureWise market transformation programs in addition to reducing the Appliance Recycling Budget.⁴

Ms. Enoch states in her rebuttal testimony that the LivingWise market transformation program targets sixth grade students and provides an age-appropriate educational curriculum, student learning materials, and energy efficient products. The overall objective of these programs was designed to reduce energy consumption, providing unrealized savings for EPE and other entities.⁵

Staff's Recommendation

16 TAC § 25.181(e)(2) states, the Commission may establish for a utility a lower goal than the goal specified in paragraph (1) of this subsection, a higher administrative spending cap than the cap specified under subsection (g) of this section, or an EECRF greater than the cap specified in §25.182(d)(7) of this title if the utility demonstrates that compliance with that goal, administrative spending cap, or EECRF cost cap is not reasonably possible and that good cause supports the lower goal, higher administrative spending cap, or higher EECRF cost cap. To be eligible for a lower goal, higher administrative spending cap, or a higher EECRF cost cap, the utility must request a good cause exception as part of its EECRF application under §25.182 of this title. If approved, the good cause exception is limited to the program year associated with the EECRF application. In accordance with 16 TAC § 25.181(e)(2), EPE requested that the Commission establish revised cost caps for the residential and commercial classes.⁶ Previously, EPE has requested an exception in revising cost caps.⁷

Staff does not take a position regarding Mr. Nalepa's program adjustments.

⁴ Direct Testimony of Karl J. Nalepa at 15-16, (Aug. 2, 2022).

⁵ Rebuttal Testimony of Crystal A. Enoch at 7, (Aug. 29, 2022).

⁶ Updated Application at 3, (May, 16, 2022).

⁷ *Application of El Paso Electric Company to Adjust its Energy Efficiency Cost Recovery Factor and Establish Revised Cost Cap*, Docket No. 52081, Order (May 3, 2021).

Based off Staff's review of this EPE's application, 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.

Dated: September 6, 2022

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 September 6, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Andy Aus
Andy Aus