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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 INITIAL BRIEF**

Date: September 19, 2022

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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<b>ELECTRIC COMPANY TO REVISE</b>	<b>§</b>	
<b>ITS ENERGY EFFICIENCY COST</b>	<b>§</b>	<b>OF</b>
<b>RECOVERY FACTOR AND</b>	<b>§</b>	
<b>ESTABLISH REVISED COST CAP</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**I. INTRODUCTION**

El Paso Electric Company’s (EPE) application to adjust its energy efficiency cost recovery factor (EECRF) and request to establish a revised cost cap should be granted as filed. EPE’s application has substantially satisfied all applicable requirements under 16 Texas Administrative Code (TAC) § 25.182, and therefore should be approved as filed. The City of El Paso (City) raised concerns regarding Incentive payments, Historical Administrative and Research Development Costs, and Good Cause Exceptions to Exceed Cost Caps. Staff takes no position on the recommendations suggested by City regarding this application.

**A. Incentive Payments**

The City’s witness Karl Nalepa recommends 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.<sup>1</sup> 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.”<sup>2</sup>

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

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<sup>1</sup> Direct Testimony of Karl J. Nalepa, City of El Paso Ex. 1 at 11.

<sup>2</sup> *Id.* at 10.

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.

## **B. Historical Administrative and Research & Development Costs**

The City recommends, that EPE's proposed 2023 EECRF administrative and research and development costs of \$42,399 be broken down as \$21,354 and \$21,045 to administrative and research & development respectively.<sup>3</sup>

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. As such, Staff does not take a position as to City's request of total reduction of \$42,399.

## **C. Good Cause Exception to Exceed Cost Caps**

In its application, EPE projects that it will not reasonably be able to operate its energy efficiency programs and meet its energy and demand goals at the residential customer cost cap established under 16 TAC § 25.182(d)(7)(A) and the commercial customer cost cap established under 16 TAC § 25.182(d)(7)(B).<sup>4</sup> Accordingly, EPE's EECRF application includes a request for a good cause exception to the rule and permission to raise its residential and commercial customer cost cap for calendar year 2023.<sup>5</sup>

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<sup>3</sup> Direct Testimony of Karl J. Nalepa, City of El Paso Ex. 1 at 13.

<sup>4</sup> Application, EPE Ex. 1 at 3.

<sup>5</sup> *Id.*

The City recommends the Commission adopt its 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.<sup>6</sup>

EPE witness Crystal 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.<sup>7</sup>

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.<sup>8</sup> Previously, EPE has requested an exception in revising cost caps.<sup>9</sup> Therefore, Staff does not take a position regarding Mr. Nalepa's program adjustments.

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.

## II. CONCLUSION

It is Staff's position that, EPE complied with all applicable requirements of 16 TAC § 25.182, and therefore, EPE's application should be approved.

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<sup>6</sup> Direct Testimony of Karl J. Nalepa, City of El Paso Ex. 1 at 15-16.

<sup>7</sup> Rebuttal Testimony of Crystal A. Enoch, EPE Ex. 5 at 7.

<sup>8</sup> Application, EPE Ex. 1 at 3.

<sup>9</sup> *Application of El Paso Electric Company to Adjust its Energy Efficiency Cost Recovery Factor and Establish Revised Cost Cap*, Docket No. 52081, Application at 3, (May 3, 2021).

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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 19, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Andy Aus  
Andy Aus