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**SOAH DOCKET NO. 473-22-4394
PUC DOCKET NO. 53719**

APPLICATION OF ENTERGY TEXAS,	§	BEFORE THE STATE OFFICE
INC. FOR AUTHORITY TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

REDACTED
CROSS REBUTTAL TESTIMONY
OF
KARL J. NALEPA

ON BEHALF OF
CITIES SERVED BY ENTERGY TEXAS INC.

NOVEMBER 16, 2022

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ATTACHMENT A RELIED UPON

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1. Reject Mr. Pollock's recommendation that the costs and revenues from backup generators installed at two HEB stores should be removed from ETI's test-year revenue requirement,¹ and
2. Reject Mr. Pollock's proposal to allocate MGRT costs to customer classes on the basis of inside-city revenues² and affirm ETI's existing methodology to allocate MGRT to all retail customer classes based on customer class revenues relative to total revenues.

III. HEB BACKUP GENERATION

Q. WHAT IS ETI REQUESTING WITH REGARDS TO BACKUP GENERATION?

A. ETI is requesting to recover in its cost of service the cost of backup generators installed at HEB stores in Beaumont, Texas, and The Woodlands, Texas. Each project consists of three 400 kW natural gas generators, totaling 1.2 MW.³

ETI considers these projects experimental programs intended to supply power to HEB during an outage while at other times the backup generators are available to supply power to the grid to mitigate energy prices when market conditions are favorable.⁴ The projects also provide a small amount of capacity value to ETI.

Q. HAS THE BACKUP GENERATION BEEN USED TO SUPPLY POWER TO THE GRID TO MITIGATE ENERGY PRICES?

A. Yes. Both units have been called on to provide power to the electric grid during favorable market conditions.⁵

¹ Direct Testimony of Jeffry Pollock at 22.

² *Id.* at 31.

³ Direct Testimony of Stuart Barrett at 27.

⁴ *Id.*

⁵ *Id.* at 28.

1 **Q. HAS THE BACKUP GENERATION BEEN USED TO KEEP THE HEB STORES**
2 **OPEN DURING AN OUTAGE?**

3 A. Yes. The backup generator in The Woodlands was activated and supplied power to the
4 HEB store during Hurricane Laura and Winter Storm Uri, allowing the store to remain
5 open and serve local residents during those emergency situations.⁶

6 **Q. WILL HEB PAY FOR USE OF THE BACKUP GENERATION?**

7 A. Yes. Under both projects, HEB is billed for the backup service through the Company's
8 existing Additional Facilities Charge Rider – Schedule AFC.⁷

9 **Q. DOES ETI INTEND TO EXPAND THE AVAILABILITY OF BACKUP**
10 **GENERATION?**

11 A. Yes. ETI explained that through these programs it is gaining experience to potentially
12 broaden the scope and availability of backup service to a broader customer base.⁸ In fact,
13 ETI filed with the Commission its "Power Through" application to initiate a similar backup
14 service on a larger scale in Docket No. 53992.⁹

15 **Q. WHAT ARE MR. POLLOCK'S CONCERNS REGARDING BACKUP**
16 **GENERATION AT THE HEB STORES?**

17 A. Mr. Pollock summarized his concerns as follows:¹⁰

- 18 1. the backup generators would virtually guarantee an uninterruptible power supply
19 to the two HEB stores.
- 20 2. The full cost of the backup generators that would be included in base rates would
21 be only partially offset by the payments received from HEB.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Docket No. 53992, *Entergy Texas, Inc.'s Statement of Intent and Application for Approval of Rate Schedule UODG (Utility-Owned Distributed Generation)* (August 31, 2022).

¹⁰ Direct Testimony of Jeffry Pollock at 4.

- 1 3. ETI did not quantify the benefits of the backup generators to ETI's captive
2 customers and the potential capacity benefits to ETI's captive customers are
3 insignificant.
- 4 4. ETI's captive customers are subsidizing HEB's backup generators and this is
5 contrary to the Commission's long-standing policy to set rates that reflect the cost
6 to provide service.
- 7 5. Backup generation is not a natural monopoly. ETI can offer to help customers
8 install backup generators provided that the costs are not subsidized by captive
9 customers.
- 10 6. The Commission should not charge captive ratepayers for the costs of HEB's
11 backup generators.

12 **Q. DO YOU AGREE WITH MR. POLLOCK?**

13 A. No. Mr. Pollock misses the point with regards to the backup generation.

14 **Q. PLEASE EXPLAIN YOUR ANSWER.**

15 A. Mr. Pollock downplays any benefit of the programs to ETI's customers and focuses only
16 on the cost. In fact, the only benefit he addresses is the small amount of capacity value
17 provided by the 2.4 MW of backup generation. And while the capacity value of one unit
18 may be small, the HEB generation can be included in a broader program such as proposed
19 by ETI in its recent "Power Through" application. Thus, the combined capacity value of
20 all the generation under the program will potentially have a larger impact.

21 In addition, there is the potential for energy savings mentioned by ETI witness
22 Barrett. ETI reported that the backup generation provided [REDACTED] kWh¹¹ to the grid not
23 related to outages since the units have been in service and another [REDACTED] kWh¹² during
24 outages to keep the HEB stores running.

25 And the most significant value to customers is the fact that the HEB stores can
26 remain open when there is a system power outage. While it may be hard to quantify this
27 value, it is nonetheless real. If the HEB is open, ETI customers will have access to food

¹¹ Response to OPUC RFI 7-19, Attachment 1 (HSPM).

¹² Response to OPUC RFI 7-18, Attachment 1 (HSPM).

1 and water, medicines, consumable products, cleaning supplies, and the myriad of other
2 items that are necessary under normal conditions and critical under extreme conditions.
3 And in the event the power outage is caused by extreme weather conditions, the open HEBs
4 may even serve as a refuge for some customers to escape the cold, wind or rain.

5 **Q. ARE THERE OTHER BENEFITS TO THE BACKUP GENERATION**
6 **PROGRAM?**

7 A. Yes. While the HEB backup generation is a limited experimental program, any future
8 expansion of a similar nature may allow other commercial or municipal entities access to
9 backup generation they may not be able to fund otherwise. For a city, this could mean
10 backup generation for water system pumping, water treatment, storm water pumping,
11 emergency operations centers, emergency services, civic centers, hospitals, airports, or
12 other city-owned facilities, all for the benefit of its citizens.

13 **Q. HOW WILL THE ADDITIONAL FACILITIES CHARGE RIDER COMPENSATE**
14 **CUSTOMERS FOR HEB'S USE OF THE BACKUP GENERATION?**

15 A. Under ETI's Additional Facilities Charge Rider, when a customer requests and the
16 Company installs facilities other than those normally furnished for like levels of service to
17 similar customers, the customer will enter into an agreement for additional facilities with
18 the Company and pay to the Company a net monthly charge based on the investment by
19 Company in those additional facilities.¹³ The revenues received under the Rider are used
20 to reduce the overall proposed cost of service.¹⁴

¹³ Entergy Texas, Inc. *Additional Facilities Charge Rider*, Sheet No. 47.

¹⁴ Direct Testimony of Crystal Elbe at 27.

1 **Q. DOES MR. POLLOCK COMPARE THE BACKUP GENERATORS TO MOBILE**
2 **GENERATION IN ERCOT?**

3 A. Yes. Mr. Pollock claims that the backup generators are similar in concept to the mobile
4 generators leased by various ERCOT utilities to facilitate power restoration during a major
5 outage event.¹⁵ But they are not similar at all:

- 6 • ETI does not operate in ERCOT, it operates in MISO under MISO rules,
- 7 • ETI is a vertically integrated utility, ERCOT utilities do not own generation,
- 8 • Mobile generation is trailer-mounted and can be transported around the distribution
9 system as needed, while the backup generation is a permanent installation,
- 10 • Mobile generation is intended to accelerate service restoration to areas of the
11 distribution system, not to specific customers, while the backup generation serves
12 specific HEB stores during an outage,
- 13 • Mobile generation is not interconnected with nor dispatched into the ERCOT
14 system, it is held in reserve until a legislatively defined outage occurs, while the
15 backup generation can be dispatched to the grid when market conditions are
16 favorable,
- 17 • Mobile generation is leased by ERCOT utilities because the utilities cannot own
18 generation, ERCOT utilities arguably define mobile generation as distribution
19 assets,
- 20 • Mobile generation costs are included in cost of service and there is no offsetting
21 revenue collected from customers benefiting from mobile generation.

22 **Q. IS MR. POLLOCK'S POSITION ON THE HEB BACKUP GENERATION**
23 **CONSISTENT WITH HIS POSITION ON OTHER BACKUP SERVICES?**

24 A. No. In his direct testimony, Mr. Pollock takes issue with certain proposed changes to ETI's
25 Schedule SMS, but apparently does not oppose the tariff.¹⁶

¹⁵ Direct Testimony of Jeffry Pollock at 18.

¹⁶ *Id.* at 42-47.

1 **Q. WHAT IS SCHEDULE SMS?**

2 A. Schedule SMS is intended to provide standby and maintenance service to customers who
3 have their own generation equipment.¹⁷ For a qualifying facility, standby (or backup) power
4 is electric energy or capacity supplied to replace energy or capacity ordinarily generated
5 by a qualifying facility's own generation equipment during an unscheduled outage of the
6 qualifying facility.¹⁸ Maintenance power is electric energy or capacity supplied during
7 scheduled outages of the qualifying facility.¹⁹ SMS customers pay a customer charge, a
8 demand charge and an energy charge for the service²⁰ and, like Schedule AFC, the revenues
9 received under Schedule SMS are used to reduce the overall proposed cost of service.²¹

10 **Q. TO BE CLEAR, WHAT IS THE PURPOSE OF SCHEDULE SMS?**

11 A. The purpose of Schedule SMS is for ETI to provide backup service to certain customers to
12 allow those customers to maintain operations when their owned generation is interrupted.

13 **Q. BUT ISN'T THIS ESSENTIALLY WHAT ETI'S BACKUP GENERATION AT**
14 **THE HEB STORES DOES?**

15 A. Yes, it is.

16 **Q. DID MR. POLLOCK EXPLAIN WHY HE THINKS BACKUP GENERATION AT**
17 **HEB AND SMS SERVICE ARE NOT THE SAME?**

18 A. No. Although Mr. Pollock opines that maintenance service is of a lower quality than
19 backup service,²² he does not differentiate between backup generation to serve the HEB
20 load and backup generation to service an SMS customer. But it is interesting to note that

¹⁷ Entergy Texas, Inc. *Standby and Maintenance Service*, Sheet No. 58.

¹⁸ 16 TAC 25.242(c)(2).

¹⁹ 16 TAC 25.242(c)(7).

²⁰ Entergy Texas, Inc. *Standby and Maintenance Service*, Sheet No. 58.

²¹ Direct Testimony of Crystal Elbe at 27.

²² Direct Testimony of Jeffry Pollock at 43.

1 Mr. Pollock concluded that backup generation is not a service that ETI should provide
2 through its regulated operations.²³ By his logic, if ETI does not provide backup generation
3 to serve the HEB load then ETI should not provide SMS service to customers owning
4 generation.

5 **Q. WHAT DO YOU CONCLUDE?**

6 A. The Commission should reject Mr. Pollock's recommendation that the costs and revenues
7 from backup generators installed at two HEB stores should be removed from ETI's test-
8 year revenue requirement. Mr. Pollock fails to recognize the significant community value
9 that access to food, household items and shelter during a power outage provides. He also
10 attempts to compare the backup generation with mobile generation, which have little in
11 common. Finally, his position with regards to the backup generation is disingenuous when
12 at the same time he supports Schedule SMS, which provides ETI backup power to
13 customers that own generation.

14 **IV. ALLOCATION OF MISCELLANEOUS GROSS RECEIPTS TAX**

15 **Q. ARE YOU RESPONDING TO MR. POLLOCK'S DIRECT TESTIMONY ON**
16 **MISCELLANEOUS GROSS RECEIPTS TAX?**

17 A. Yes. My testimony responds to Mr. Pollock's proposal to allocate Miscellaneous Gross
18 Receipts Tax ("MGRT") costs to customer classes on the basis of inside-city revenues.²⁴

19 **Q. WHAT IS AN MGRT?**

20 A. An MGRT is a state tax applied to the gross receipts from business done by a utility
21 company in an incorporated city or town having a population of more than 1,000.²⁵

²³ *Id.* at 22.

²⁴ Direct Testimony of Jeffry Pollock at 31.

²⁵ www.comptroller.texas.gov/taxes/misc-gross-receipts/

1 **Q. HOW DOES ETI ALLOCATE MISCELLANEOUS GROSS RECEIPTS TAXES?**

2 A. ETI witness Lain testified that the Company allocated gross receipts taxes in the same
3 manner as the Commission ordered in ETI Docket No. 39896, and as ETI proposed in
4 Docket No. 48371.²⁶

5 **Q. AND WHAT IS THAT METHOD?**

6 A. ETI proposes to allocate MGRT to all retail customer classes based on customer class
7 revenues relative to total revenues. In Docket No. 39896, the Commission found that:²⁷

8 178. Municipal Franchise Fees (“MFF”) is a rental expense paid by utilities for the right
9 to use public rights-of-way to locate its facilities within municipal limits.

10 179. ETI is an integrated utility system. ETI’s facilities located within municipal limits
11 benefit all customers, whether the customers are located inside or outside of the
12 municipal limits.

13 180. Because all customers benefit from ETI’s rental of municipal right-of-way,
14 municipal franchise fees should be charged to all customers in ETI’s service area,
15 regardless of geographic location.

16 181. It is reasonable and consistent with the Public Utility Regulatory Act (“PURA”)
17 § 33.008(b) that MFF be allocated to each customer class on the basis of in-city
18 kilowatt hour (“kWh”) sales, without an adjustment for the MFF rate in the
19 municipality in which a given kWh sale occurred.

20 182. The same reasons for allocating and collecting MFF as set out in Finding of Fact
21 Nos. 178-181 also apply to the allocation and collection of Miscellaneous Gross
22 Receipts Taxes. The company’s proposed allocation of these costs to all retail
23 customer classes based on customer class revenues relative to total revenues is
24 appropriate.

25 **Q. CAN YOU CONFIRM HOW ETI ALLOCATED MGRT IN DOCKET NO. 48371?**

26 A. ETI witness Lain testified in that Docket that the Company allocated gross receipt taxes in
27 the same manner as the Commission ordered in ETI Docket No. 39896.²⁸ However Docket

²⁶ Direct Testimony of Richard E. Lain at 16.

²⁷ Docket No. 39896, *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment*, Order on Rehearing, FoF 178-182 (November 1, 2012).

²⁸ Docket No. 48371, *Application of Entergy Texas, Inc. for Authority to Change Rates*, Direct Testimony of Richard E. Lain at 13.

1 No. 48371 resulted in a settled revenue requirement and class revenue allocation,²⁹ so the
2 final allocation of MGRT was not explicitly determined.

3 **Q. DID MR. POLLOCK RAISE THIS ISSUE IN THE PREVIOUS ETI DOCKETS?**

4 A. Yes. Mr. Pollock proposed the same change to the allocation of MGRT in Docket Nos.
5 39896 and 48371. And as I stated earlier, the Commission rejected his proposed change in
6 Docket No. 39896 and it was not specifically addressed in Docket No. 48371.

7 **Q. WHAT IS THE BASIS FOR MR. POLLOCK'S PROPOSED CHANGE TO ETI'S**
8 **METHOD TO ALLOCATE MGRT?**

9 A. Mr. Pollock opines that MGRT are not caused by total revenues but by taxable receipts
10 from business done inside incorporated municipalities, thus ETI's approach is not
11 consistent with cost causation.³⁰ Mr. Pollock also points to Southwestern Electric Power
12 Company ("SWEPCO") and Southwestern Public Service ("SPS") cases that allocate
13 MGRT based on inside-city revenues.³¹

14 **Q. IS THE MGRT "CAUSED" BY CUSTOMERS WHO RESIDE IN CITIES?**

15 A. No. The MGRT is part of the utility's cost of doing business. While the tax is calculated on
16 a subset of ETI's total revenues, the tax is the tax – it is not caused by those customers.
17 Furthermore, in terms of aligning the allocation of costs with the corresponding customer
18 benefits, the governmental benefit associated with the state imposed MGRT is not limited
19 to inside-city customers.

²⁹ *Id.*, Final Order at 1.

³⁰ Direct Testimony of Jeffry Pollock at 30.

³¹ *Id.*

1 **Q. SHOULD THE PREVIOUS CASES MENTIONED BY MR. POLLOCK BE**
2 **RELIED ON IN THIS CASE?**

3 A. No. In Docket No. 40443, one of the SWEPCO cases Mr. Pollock mentioned, SWEPCO
4 proposed in its filed case to allocate MGRT to customer classes based on total revenues.
5 But in its rebuttal testimony SWEPCO changed its proposal to allocate MGRT costs based
6 on in-city revenues.³² In Docket No. 46449, a subsequent SWEPCO case also mentioned
7 by Mr. Pollock, allocation of MGRT was not a contested issue. However, the Commission
8 ordered that the class revenue distribution be modified by gradualism,³³ so the resulting
9 class revenue allocations were not ultimately based on the class cost of service study. In
10 Docket No. 43695, an SPS case mentioned by Mr. Pollock, allocation of MGRT was not a
11 contested issue. Regardless of how or why other utilities might allocate MGRT to their
12 respective customer classes, the Commission has found ETI's methodology to allocate
13 MGRT appropriate. Nothing has changed to alter the Commission's decision.

14 **Q. WHAT IS YOUR RECOMMENDATION RELATED TO MGRT?**

15 A. The Commission should reject Mr. Pollock's proposal to allocate MGRT costs to customer
16 classes on the basis of inside-city revenues and affirm ETI's existing methodology to
17 allocate MGRT to all retail customer classes based on customer class revenues relative to
18 total revenues.

19 **Q. DOES THIS CONCLUDE YOUR CROSS REBUTTAL TESTIMONY?**

20 A. Yes, it does.

³² Docket No. 40443, *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*. Proposal for Decision at 258.

³³ Docket No. 46449, *Application of Southwestern Electric Power Company for Authority to Change Rates*. Order on Rehearing, FoF 311-314.

ENTERGY TEXAS, INC.
PUBLIC UTILITY COMMISSION OF TEXAS
DOCKET NO. 53719

Response of: Entergy Texas, Inc.
to the Seventh Set of Data Requests
of Requesting Party: Office of Public Utility
Counsel

Prepared By: Chris Cahall, Ryan Gay
Sponsoring Witness: N/A
Beginning Sequence No. EV2085
Ending Sequence No. EV2086

Question No.: OPUC 7-18

Part No.:

Addendum:

Question:

Please refer to ETI's Response to TIEC's First RFI, No. 1-24. For each month since each of the generators have been placed into service, please provide the kWh generated by each facility related to outages and identify the fuel cost associated with that kWh.

Response:

Information included in the response contains highly sensitive protected ("highly sensitive") materials. Specifically, the responsive materials are protected pursuant to Texas Government Code Sections 552.101 and/or 552.110. Highly sensitive materials will be provided pursuant to the terms of the Protective Order in this docket.

See the highly sensitive attachment (TP-53719-00OPC007-X018_HSPM) for the customer utility outages for the H-E-B locations. In order to develop specific fuel costs associated with the individual outages, an estimated cost was developed as fuel is billed on a monthly basis.

Highly sensitive materials have been included on the secure ShareFile site provided to the parties that have executed protective order certifications in this proceeding.

**DESIGNATION OF PROTECTED MATERIALS PURSUANT TO
PARAGRAPH 4 OF DOCKET NO. 53719 PROTECTIVE ORDER**

The Response to this Request for Information includes Protected Materials within the meaning of the Protective Order in force in this Docket. Public Information Act exemptions applicable to this information include Tex. Gov't Code Sections 552.101 and/or 552.110. ETI asserts that this information is exempt from public disclosure under the Public Information Act and subject to treatment as Protected Materials because it concerns competitively sensitive commercial and/or financial information and/or information designated confidential by law.

Counsel for ETI has reviewed this information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials Designation.

Kristen F. Yates
Entergy Services, LLC.

ENTERGY TEXAS, INC.
PUBLIC UTILITY COMMISSION OF TEXAS
DOCKET NO. 53719

Response of: Entergy Texas, Inc.
to the Seventh Set of Data Requests
of Requesting Party: Office of Public Utility
Counsel

Prepared By: Chris Cahall, Ryan Gay
Sponsoring Witness: N/A
Beginning Sequence No. EV2087
Ending Sequence No. EV2088

Question No.: OPUC 7-19

Part No.:

Addendum:

Question:

Please refer to ETI's Response to TIEC's First RFI No. 1-24. For each month since each of the H-E-B Backup Generators have been placed into service, please provide the kWh generated by each facility not related to outages and identify the fuel cost associated with that kWh.

Response:

Information included in the response contains highly sensitive protected ("highly sensitive") materials. Specifically, the responsive materials are protected pursuant to Texas Government Code Sections 552.101 and/or 552.110. Highly sensitive materials will be provided pursuant to the terms of the Protective Order in this docket.

Please see the highly sensitive attachment (TP-53719-00OPC007-X019_HSPM) for the customer utility outages for the H-E-B locations. Highly sensitive materials have been included on the secure ShareFile site provided to the parties that have executed protective order certifications in this proceeding.

**DESIGNATION OF PROTECTED MATERIALS PURSUANT TO
PARAGRAPH 4 OF DOCKET NO. 53719 PROTECTIVE ORDER**

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Counsel for ETI has reviewed this information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials Designation.

Kristen F. Yates
Entergy Services, LLC.