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SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

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

REBUTTAL TESTIMONY

OF

JENNIFER A. RAEDER

ON BEHALF OF

ENTERGY TEXAS, INC.

NOVEMBER 2022

ENTERGY TEXAS, INC.
REBUTTAL TESTIMONY OF JENNIFER A. RAEDER
SOAH DOCKET NO. 473-22-04394
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TABLE OF CONTENTS

	<u>Page</u>
I. Introduction and Purpose	1
II. Short-Term Incentive Compensation	2
III. Restricted Stock Program	26
IV. Restoration Benefit Plans	37
V. Conclusion	41

EXHIBIT

Exhibit JAR-R-1 Cities' Response to ETI RFI 1-3

I. INTRODUCTION AND PURPOSE

Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.

A. My name is Jennifer A. Raeder. My business address is 639 Loyola Avenue, New Orleans, Louisiana 70113. I am the Vice President, Human Resources (“HR”) – Total Rewards for Entergy Services, LLC (“ESL”) – the service company for the five Entergy Operating Companies (“EOCs”), including Entergy Texas, Inc. (“ETI” or the “Company”).¹

Q2. ARE YOU THE SAME JENNIFER A. RAEDER WHO FILED DIRECT TESTIMONY IN THIS CASE ON BEHALF OF ETI?

A. Yes.

Q3. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the arguments relating to compensation and benefits made by Cities² witness Mark E. Garrett, Office of Public Utility Counsel (“OPUC”) witness Constance T. Cannady, and Staff of the Public Utility Commission of Texas (“Staff”) witness Emily Sears.

¹ The five EOCs are Entergy Arkansas, LLC (“EAL”); Entergy Louisiana, LLC (“ELL”); Entergy Mississippi, LLC (“EML”); Entergy New Orleans, LLC (“ENO”); and ETI.

² Cities include 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.

1 **II. SHORT-TERM INCENTIVE COMPENSATION**

2 Q4. PLEASE IDENTIFY THE INTERVENORS AND STAFF WITNESSES
3 THAT HAVE PROVIDED RECOMMENDATIONS RELATING TO ETI'S
4 SHORT-TERM INCENTIVE COMPENSATION.

5 A. Cities witness Mr. Garrett, OPUC witness Ms. Cannady, and Staff witness Ms.
6 Sears address ETI's short-term incentive compensation in their direct
7 testimonies.

8
9 Q5. PLEASE SUMMARIZE THE POSITION TAKEN BY MR. GARRETT IN
10 HIS DIRECT TESTIMONY WITH RESPECT TO THE COMPANY'S
11 SHORT-TERM INCENTIVE COMPENSATION.

12 A. Mr. Garrett argues that because funding for the Executive Annual Incentive
13 Program ("EAIP"), Exempt Incentive Program ("EXIP"), System Management
14 Incentive Program ("SMIP"), and Operational Supervisor Incentive Program
15 ("OSIP") is determined by the Entergy Achievement Multiplier ("EAM"), and
16 the EAM includes tax adjusted earnings per share ("EPS") as one of the five
17 measures that determine the overall funding level, 50% of the funding
18 attributable to this measure should be disallowed based on Docket Nos. 43695
19 and 46449.³ Mr. Garrett's proposal would decrease ETI's proposed incentive
20 compensation expense by \$2,120,483. Mr. Garrett also argues that the

³ Direct Testimony of Mark E. Garrett ("M. Garrett Direct") at 16-17.

1 requested level of incentive compensation expense should be reduced to target
2 levels.⁴ This would further decrease ETI's proposed incentive compensation
3 expense by \$1,930,041. Mr. Garrett does not take issue with the Teamsharing
4 Incentive Program ("TSIP") or the Teamsharing Program for Selected
5 Bargaining Units ("TSBP"), because those plans do not use the EAM as a
6 funding mechanism and EPS is not a component of achievement for these
7 incentive programs.

8 As I explain below, Mr. Garrett's recommendation, as well as the
9 similar recommendations of Ms. Cannady and Ms. Sears, should be rejected.
10 Mr. Garrett ignores the fact that the use of the EAM is for the sole purpose of
11 assuring adequate funding of the incentive compensation programs and is not a
12 measure used to determine incentive awards made to employees under these
13 programs except with respect to payouts awarded to the nine members of the
14 Office of the Chief Executive under the EAIP, which ETI has removed from its
15 request in this case. Moreover, limiting recovery in rates of incentive
16 compensation to target levels runs counter to the purpose of such programs,
17 which is to incentivize excellence in performance.

18
19 Q6. YOU TESTIFIED ON DIRECT THAT "ALL BUT ONE OF ENTERGY'S
20 ANNUAL INCENTIVE PLANS AWARD COMPENSATION USING
21 SOLELY OPERATIONS-BASED METRICS—E.G., CUSTOMER

⁴ *Id.*, at 24.

1 SERVICE, OPERATIONAL PERFORMANCE, AND SAFETY
2 MEASURES.”⁵ MR. GARRETT ASSERTS YOUR TESTIMONY IS
3 INCONSISTENT WITH THE PLAN DATA IN EXHIBIT JAR-1 (HSPM).⁶
4 DO YOU AGREE?

5 A. No, I do not. The EAM formula, which includes EPS as one of five
6 components, is not used in the measurement of individual performance or in
7 determining the amount of individual short-term incentive (“STI”) awards. In
8 contrast, the EAM is used solely for the purposes of determining the maximum
9 level of funding for Entergy’s funded incentive programs (EAIP, SMIP, OSIP,
10 EXIP). Each employee’s STI award is determined based on individual and
11 operational performance, except with respect to payouts awarded to the nine
12 members of the Office of the Chief Executive under the EAIP.

13

14 Q7. MR. GARRETT CLAIMS THAT ENTERGY’S BUSINESS UNITS
15 CONTINUE TO HAVE PLAN METRICS FOR OPERATIONS AND
16 MAINTENANCE (“O&M”) COSTS WHICH ARE LABELED
17 “OPERATIONAL,” IN CONFLICT WITH THE COMMISSION’S
18 TREATMENT IN DOCKET NO. 49421. MR. GARRETT CLAIMS THAT IT
19 WOULD BE APPROPRIATE TO REMOVE THESE COSTS FROM

⁵ Direct Testimony of Jennifer A. Raeder at 9.

⁶ M. Garrett Direct at 10-11.

1 RATES.⁷ DO YOU AGREE?

2 A. No, I do not. First, I would like to clarify that the Commission did not in Docket
3 No. 49421 hold that an O&M expenditures goal is a financial measure. Thus,
4 Mr. Garrett’s suggestion that Entergy’s treatment of an O&M expenditures goal
5 as an operational measure within its plans is “in conflict with the Commission
6 treatment in Docket No. 49421” is inaccurate. And his reliance on the Proposal
7 for Decision (“PFD”) in Docket No. 49421 as support for his claimed “conflict”
8 is misplaced given that the PFD was not adopted by the Commission. Instead,
9 the Commission approved a black-box settlement agreement the parties entered
10 into subsequent to the issuance of the PFD. That settlement agreement did not
11 address the treatment or recovery of incentive compensation expense. A fact
12 that Mr. Garrett subsequently acknowledges on page 19, lines 6-11, of his
13 testimony.

14 Second, I disagree with Mr. Garrett’s argument that a disallowance of
15 costs related to the O&M metrics would be appropriate. In fact, reductions in
16 O&M expenses benefit customers. It is incorrect to categorize O&M metrics
17 aimed at controlling expenses as financial metrics. Rather, Entergy considers
18 these metrics to be aligned with its goal of maintaining affordable customer
19 rates, which is why it categorizes them as operational goals.

⁷ *Id.*, at 18-19.

1 Q8. MR. GARRETT CLAIMS THAT USE OF EPS AS PART OF EAM PUTS
2 SHAREHOLDERS' PROFIT FIRST.⁸ THEREFORE, HE INSISTS THAT
3 THE FINANCIAL COMPONENT OF THE FUNDING TRIGGER MUST BE
4 REMOVED. DO YOU AGREE?

5 A. No, I do not. The use of EPS as part of incentive funding does not put
6 shareholder profit first. Rather, the use of EPS assures that Entergy has the
7 financial wherewithal to award incentive compensation for the performance
8 year. Employees are only paid incentive compensation to the extent
9 operational-based targets set for the respective employee's workgroup or
10 personal performance are achieved.

11

12 Q9. ON PAGE 30, LINES 7-9, MR. GARRETT STATES THAT "SO LONG AS
13 THE OVERRIDING GOAL OF THE INCENTIVE PLAN IS TO INCREASE
14 SHAREHOLDER EARNINGS, THE ENTIRE INCENTIVE
15 COMPENSATION SHOULD BE FUNDED OUT OF THE INCREASED
16 EARNINGS THAT TRIGGER THE PAYMENTS." DO YOU AGREE?

17 A. No, I do not. I would not characterize Entergy's incentive programs' overriding
18 goal as increasing shareholder earnings simply because Entergy prudently
19 ensures that it is in the financial position to fund any incentive compensation
20 payable before individual awards are determined. Rather, as explained in my

⁸ *Id.*, at 13.

1 direct testimony, Entergy designed the incentive programs to achieve the
2 following primary goals:

- 3 • Attract and retain reliable, experienced, and highly skilled employees to
4 ensure that ETI provides safe and reliable service to its customers.
- 5 • Meet or exceed operational performance goals, including:
6 (1) operational goals (e.g., minimizing customer interruptions and
7 outages); (2) safety goals (e.g., compliance with safety inspections);
8 (3) customer service goals (e.g., improve the customer experience and
9 satisfaction); and (4) a combination of customer, operational, and safety
10 goals—deemed composite goals.
- 11 • Incentivize employees to achieve their own business unit's or
12 organization's operational-based goals.

13 The benefits that ETI's customers receive from the operational-based goals in
14 the incentive compensation programs should not be diminished by Entergy's
15 use of the EAM to ensure its ability to pay out any incentives earned. Lack of
16 prudent financial controls would not be in the best interest of ETI's customers,
17 employees, or shareholders.

18

19 Q10. MR. GARRETT STATES THAT THE FUNDING MECHANISM FOR
20 INCENTIVE COMPENSATION IS PRIMARILY CALCULATED BASED
21 ON EPS. HOW DO YOU RESPOND?⁹

22 A. As discussed on page 11, beginning with line 18 of my direct testimony, the
23 EAM is comprised of EPS (60%), as well as: customer net promoter score
24 (10%); safety (10%); diversity, inclusion & belonging ("DIB") (10%); and
25 environmental stewardship (10%). The slightly higher weighting of EPS above

⁹ *Id.*, at 31.

1 the total weighting of the four other EAM measures is consistent with the
2 purpose of the EPS as a threshold measure of financial ability to payout any
3 incentives earned through achievement of workgroup goals and individual
4 performance.

5

6 Q11. MR. GARRETT ARGUES THAT IN THE EVENT THE COMPANY
7 REDUCES OR MAKES NO INCENTIVE PAYMENTS IF THE EPS GOALS
8 ARE NOT MET, AMOUNTS COLLECTED THROUGH RATES FOR
9 INCENTIVE PROGRAMS WOULD BE RETAINED BY THE
10 SHAREHOLDERS. DO YOU AGREE?¹⁰

11 A. No, I do not. As discussed in ETI witness Allison Lofton's rebuttal testimony,
12 incentive accruals are adjusted periodically based on the expected payout. If
13 EPS goals were not met, the accrual is decreased to match the expected payout.
14 There would not be excess amounts collected through rates that could be
15 retained by shareholders.

16

17 Q12. ON PAGE 31, LINES 10-18, MR. GARRETT ARGUES THAT ENTERGY
18 WILL NOT BE FINANCIALLY HARMED FROM HIS PROPOSAL TO
19 EXCLUDE FINANCIALLY BASED INCENTIVE COMPENSATION. DO
20 YOU AGREE?

21 A. No. I am not a lawyer, but based on my experience, whether or not ETI will be

¹⁰ *Id.*

1 financially harmed by the disallowance is not the standard for recovery of
2 reasonably incurred expenses. Rather, I have been advised by counsel that
3 Public Utility Regulatory Act (PURA)¹¹ § 36.051 dictates that the regulatory
4 authority “shall establish the utility’s overall revenues at an amount that will
5 permit the utility a reasonable opportunity to earn a reasonable return on the
6 utility’s invested capital used and useful in providing service to the public in
7 excess of the utility’s reasonable and necessary operating expenses.” Mr.
8 Garrett has made no argument that Entergy’s short-term incentive
9 compensation plans are not reasonable or necessary.

10 Entergy’s market-competitive compensation and the benchmarking
11 analysis discussed on page 17, line 7 through page 27, line 11 of my direct
12 testimony, on the other hand, demonstrate that the costs relating to these plans
13 are both reasonable and necessary. Absent short-term incentive compensation,
14 ETI’s total annual compensation amount would be well below a market-
15 competitive total annual compensation amount. ETI needs to maintain
16 competitive compensation to attract and retain highly qualified employees to
17 continue to provide exceptional service to its customers. In addition, because a
18 percentage of each employee’s compensation is at-risk and based on
19 performance, each employee has an incentive to achieve his or her operational
20 goals, which the Commission has previously found as benefitting customers.

¹¹ PURA is codified at Tex. Util. Code Ann. §§ 11.001 – 66.016.

1 Q13. MR. GARRETT ARGUES THAT ETI IS NOT PUT AT A COMPETITIVE
2 DISADVANTAGE BECAUSE IT IS COMPETING WITH OTHER
3 UTILITIES FOR TALENT AND THE COSTS ASSOCIATED WITH THOSE
4 UTILITIES' INCENTIVE COMPENSATION PROGRAMS ARE
5 SIMILARLY REDUCED. DO YOU AGREE?¹²

6 A. No, I do not. Mr. Garrett's argument fails to recognize the fact that ETI is also
7 competing with the energy services industry and the general industry. For
8 example, ETI's service territory includes parts of Texas with a significant oil
9 and gas presence. As I state in my direct testimony, ETI recruits from and loses
10 qualified employees to these industries. For this reason, ETI's total annual
11 compensation levels must be competitive with these labor markets.

12 The Public Service Commission of Utah ("PSCU")—which regulates
13 electric utilities in one of the states Mr. Garrett claims disallows financially
14 based incentive compensation—recently acknowledged that failing to provide
15 a total compensation package on par with competitors risks attracting and
16 retaining qualified personnel, which could harm both the utility and
17 customers.¹³ Specifically, in 2020, the PSCU considered Rocky Mountain
18 Power's ("RMP") application to increase its retail rates.¹⁴ As part of its

¹² *Id.*, at 32.

¹³ *Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, Docket No. 20-035-04, Order at 28-29 (Pub. Serv. Comm. of Utah, Dec. 30, 2020) ("Rocky Mountain Power").

¹⁴ *Id.*, at 1-2.

1 application, RMP requested recovery of its annual incentive compensation plan
2 expense.¹⁵

3 RMP offers its employees an annual incentive compensation plan that
4 provides cash awards to employees based on the company, department, and
5 individual performance.¹⁶ In addition, a percentage of each RMP employee's
6 incentive compensation award is based on achieving RMP's allowed return on
7 equity and a greater percentage is based on an RMP affiliate achieving a
8 particular net income.¹⁷

9 Similar to Mr. Garrett's position in this case, the Utah Association of
10 Energy Users ("UAE") argued: (1) RMP should not be allowed to recover in
11 customer rates the portion of the incentive compensation expense associated
12 with rewarding employees for RMP financial performance rather than
13 customer-serving performance goals such as improving customer satisfaction,
14 operating efficiency, and safety; and (2) the benefits of providing employees
15 cash incentives based on RMP's financial performance accrue to shareholders
16 and not customers.¹⁸ In support, UAE cited a 1995 order from the PSCU
17 disallowing a telephone utility's cost recovery of cash awards provided to its
18 executives under its incentive compensation plan.¹⁹ UAE's reliance on the

¹⁵ *Id.*, at 27-29.

¹⁶ *Id.*, at 27.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

1 1995 PSCU order is notable given that Mr. Garrett also cites that order for the
2 proposition that Utah excludes the cost of incentive compensation plans tied to
3 financial performance measures for ratemaking purposes.²⁰ The PSCU
4 declined to make UAE's requested adjustment to RMP's revenue
5 requirement.²¹ In reaching its decision the PSCU found that the incentive goals
6 in RMP's incentive compensation plan predominantly benefit customers
7 because they reward operational excellence, environmental respect, customer
8 service, and other beneficial attributes of employee performance.²² The PSCU
9 further found that the evidence supports RMP's contention that aggregate
10 employee base pay plus all available incentive awards generally reflect the
11 average market rate.²³ Based on these findings, the PSCU concluded that it was
12 prudent for RMP to pay its employees awards related to the incentive
13 components, regardless of RMP's internal incentive plan structure, because
14 doing so avoids potential harm to customers that could occur if total
15 compensation less than the market rate resulted in RMP's employees lacking
16 necessary and appropriate skills.²⁴ The same holds true for Entergy.

²⁰ M. Garrett Direct at 27, n. 54.

²¹ Rocky Mountain Power, Docket No. 20-035-04, Order at 29.

²² *Id.*, at 28.

²³ *Id.*

²⁴ *Id.*, at 28-29.

1 Q14. MR. GARRETT OPINES THAT EVEN THOUGH REGULATORS
2 GENERALLY DISALLOW INCENTIVE COMPENSATION TIED TO
3 FINANCIAL PERFORMANCE FOR RATEMAKING PURPOSES,
4 UTILITIES CONTINUE TO INCLUDE FINANCIAL PERFORMANCE AS
5 A KEY COMPONENT OF THEIR PLANS. HE ARGUES THIS OCCURS
6 BECAUSE UTILITIES ACHIEVE THE PRIMARY OBJECTIVE OF THE
7 INCENTIVE PLANS, WHICH HE ARGUES IS INCREASING
8 CORPORATE EARNINGS.²⁵ DO YOU AGREE?

9 A. No, I do not. The primary objective of Entergy's incentive programs is not to
10 increase corporate earnings. Please see my response to Q9 above, which
11 summarizes the goals the incentive programs are designed to achieve.
12

13 Q15. DO YOU HAVE ANY CONCERNS REGARDING MR. GARRETT'S
14 INCENTIVE COMPENSATION SURVEY OF THE 24 WESTERN
15 STATES?

16 A. Yes. I have several concerns regarding the validity of Mr. Garrett's survey.²⁶
17 In particular, the survey is not thorough or comprehensive nor does it seem to
18 be a methodically researched or reliable presentation of data. I am concerned
19 about the accuracy and verification of the results of the survey as well as how
20 those results are being interpreted for use in this case. I also have concerns

²⁵ M. Garrett Direct at 23 and 30.

²⁶ Cities provided a copy of Mr. Garrett's survey in response to ETI RFI 1-3. A copy of this RFI response is attached as Exhibit JAR-R-1 to this testimony.

1 about the potential bias in both the survey results and the manner in which it
2 was conducted. These fundamental flaws highlight why the Commission
3 should not rely on it as a basis for its decision on incentive compensation issues
4 in this case.

5

6 Q16. WHY DO YOU THINK THE SURVEY IS NOT THOROUGH,
7 COMPREHENSIVE, METHODICALLY RESEARCHED, OR RELIABLE?

8 A. Mr. Garrett offers no justification as to why his survey has not been updated
9 since 2018 nor why it continues to be limited to this set of states. He does not
10 indicate whether states that allow substantial or full recovery were excluded and
11 if so, why. Mr. Garrett explains that the states selected were chosen on the basis
12 of their proximity to the places he was testifying at the time the survey was
13 developed.²⁷ However, it is unclear why the study has remained limited to these
14 particular states when Mr. Garrett has since provided testimony in other regions
15 of the United States. Moreover, the information provided for the states included
16 in the study appears to be either incomplete and selective or not properly
17 researched and verified. The information for Nevada does not address the fact
18 that the Commission has permitted full recovery of short-term incentive

²⁷ Cities' Response to ETI RFI 1-3(b) ("The 24 western states were selected because, at the time the survey was originally developed, Mr. Garrett primarily testified in states in close proximity to the western states included in the survey – the 24 states west of the Mississippi river. Selecting a sample size of 24 states, rather than 50, was also a way of reducing the time it took to conduct and update the survey.").

1 compensation plans consistent with its precedent.²⁸ Further, as noted above,
2 the Public Service Commission in Utah recently acknowledged the value and
3 benefits of incentive compensation plans and permitted the applicant
4 company's requested recovery.²⁹ While left out of the survey of states west of
5 the Mississippi River, the Mississippi Public Service Commission has approved
6 Entergy Mississippi, LLC's ("EML") recovery of 100% of its short-term
7 incentive compensation plan costs in rates.³⁰

8 As a practical matter, the survey presented in this case appears to be
9 drawn from telephone conversations that someone at the Garrett Group had with
10 certain utility commission staff member participants.³¹ There is nothing that
11 reflects a verification process for the second-hand information received or the
12 subsequent characterization of how the survey state commission treats short-
13 term incentive compensation plan costs and recovery for ratemaking purposes

²⁸ *Application of Nevada Power Company for Authority to Increase its Annual Revenue Requirement for General Rates Charged to All Classes of Electric Customers and for Relief Properly Related thereto*, Docket Nos. 06-11022 and 06-110023, Modified Order at 45, Finding 169 (Nevada Pub. Util. Comm. July 17, 2007) (hereinafter "Nevada Power Company") ("The Commission in Docket No. 05-1 0003 allowed SPPC to fully recover its costs related to STIP, citing the overall improvement of many critical aspects of SPPC's operations, including the financial standing of SPPC. Staff noted that this was also the case for NPC. Based upon the foregoing, the Commission finds that MGM's and the BCP's adjustments are denied.").

²⁹ *See, e.g.,* Rocky Mountain Power, Docket No. 20-035-04, Order at 28-29.

³⁰ *Notice of Intent of Entergy Mississippi, Inc. to Implement Revisions to the Formula Rate Plan*, Docket No. 2018-UN-205, Order at 11 (Mississippi Pub. Serv. Comm. June 6, 2021) (referring to Stipulation at 7 authorizing recovery of 100% of short-term incentive plan costs); *see also id.*, Joint Stipulation at 7, ¶10(h) (June 1, 2021) (agreeing that EML should recover 100% of short-term incentive compensation).

³¹ Cities' Response to ETI RFI 1-3(a).

1 in the respective jurisdictions.³² For example, the survey data related to Nevada
2 identifies no survey participant and contains no reference to particular
3 commission orders supporting the inclusion of the Nevada Commission's
4 treatment in the "Financial Performance Rule Followed" column.³³ And for
5 2018, the survey result is based on Mr. Garrett's opinion without support or
6 citation to authority.³⁴ But as discussed herein, there are Commission orders
7 that do not align with Mr. Garrett's assignment of the states listed in the
8 summary of the Garrett Group survey presented in Table 6 of his testimony.³⁵

9 Another obvious problem with Mr. Garrett's underlying preparation and
10 maintenance of this study is the lack of verification of the results and of the
11 statements received from the survey participants. Not only have the survey
12 results not been updated since 2018, Mr. Garrett has since testified on incentive
13 compensation plans of other utilities in states that are not represented on the
14 survey. For example, Mr. Garrett's recommendations and his reference to
15 outcomes in other jurisdictions were recently expressly rejected by the Indiana

³² See Cities' Response to ETI RFI 1-3(a) (requesting a description of the methodology for the survey). There are several entries in the Attachment MEG-1-3(c) survey summary that provide no authoritative source for the treatment claimed.

³³ But see *Nevada Power Co.*, Docket No. 06-11022.

³⁴ M. Garrett Direct at 22; Attachment MEG 1-3(c) at 14. The survey results for Oklahoma similarly lack reference to support or authority and rely on Mr. Garrett's response for 2018.

³⁵ For example, Mr. Garrett's Table 6 includes Utah and Nevada as states that follow the "Financial Performance Rule." But as discussed above, the Commissions in both of these states have issued orders to the contrary.

1 Utility Regulatory Commission.³⁶

2 Finally, the interpretation of the survey results is a concern. Mr. Garrett
3 seems to extrapolate from a particular instance, even where only embodied in a
4 settlement agreement, what the respective regulatory authority's policy on
5 incentive compensation issues may be rather than derive that information from
6 a review or study of all of the relevant available Commission precedent for a
7 particular jurisdiction.³⁷ Then, he relies on this limited set of information as
8 illustrating the relevant jurisdiction's rule to be applied on incentive
9 compensation issues.

10

11 Q17. DO YOU HAVE ANY OTHER CONCERNS REGARDING
12 MR. GARRETT'S INCENTIVE COMPENSATION SURVEY OF THE
13 24 WESTERN STATES?

14 A. Yes. First, the Garrett Group conducted the survey, and I am not aware of any
15 case in which a consultant at that firm has recommended full recovery of
16 incentive compensation costs. As such, the survey may be biased in favor of

³⁶ The Indiana commission's long-standing precedent recognizes the value of incentive compensation plans. *Petition of Indiana Michigan Power Company, an Indiana Corporation, for Authority to Increase its Rates and Charges for Electric Utility Service through a Phase in Rate Adjustment and for Approval of Related Relief*, Docket No. 45235, Order at 61 (Indiana Regulatory Comm. Mar. 11, 2020) ("The Commission has long recognized the value of incentive compensation plans as part of an overall compensation package to attract and retain qualified personnel."); *Id.* at 62 ("As to the suggestion of Mr. M. Garrett and Mr. Gorman that the Commission should exclude from recovery the portion of incentive compensation that is related to financial metrics, this has not been the standard, and it is an argument the Commission has specifically rejected.") (citations omitted).

³⁷ M. Garrett Direct at 27 (referring to selectively cited cases as support for "many jurisdictions" excluding the cost of incentive plans tied to financial performance). The Utah case above specifically distinguishes the first case cited in footnote 54. Some of the cases cited in footnote 54 actually describe a failure of proof by the company rather than a rule or policy for exclusion.

1 presenting results of those states' cases that support Mr. Garrett's
2 recommendation for the disallowance of incentive compensation tied to
3 financial performance. Further, it cannot be ignored that the survey
4 “participants” appear to be commission staff at the respective regulatory
5 jurisdictions. This survey was not directed to disinterested third parties but
6 another party in the electric utility rate cases before the regulatory authorities,
7 who advocate for and take positions on issues in those cases, including the issue
8 of incentive compensation.

9

10 Q18. DO YOU THINK MR. GARRETT'S INCENTIVE COMPENSATION
11 SURVEY OF THE 24 WESTERN STATES PROVIDES GUIDANCE IN
12 ANALYZING THE INCENTIVE COMPENSATION PLANS AT ISSUE IN
13 THIS CASE?

14 A. No. Mr. Garrett's survey is not a comprehensive or thorough analysis across
15 the selected jurisdictions nor does the analysis identify any real trends across
16 the selected regulatory jurisdictions. At best, the summary of telephone
17 conversations and the limited set of orders referenced in Mr. Garrett's testimony
18 simply present a collection of instances that have been identified to support a
19 particular position. Critically, Mr. Garrett fails to make any comparison to
20 ETI's incentive compensation plans and thus offers no support as to why his
21 general conclusions about other states would be applicable to the facts at hand.
22 Indeed, as a number of jurisdictions have emphasized, including several

1 commissions listed in Mr. Garrett's survey, adjustments to requests for short-
2 term incentive compensation are based on specific facts and proof in each case.

3

4 Q19. MR. GARRETT CLAIMS THAT THE COMMISSION'S POLICY OF
5 DISALLOWING A PORTION OF SHORT-TERM INCENTIVE
6 COMPENSATION EXPENSE BASED ON A UTILITY'S USE OF A
7 FINANCIALLY BASED FUNDING TRIGGER IS CONSISTENT WITH
8 TREATMENT IN OTHER STATES.³⁸ PLEASE RESPOND.

9 A. This is simply not the case in every state. For example, as noted above, in
10 Docket No. 2018-UN-205, the Mississippi Public Service Commission
11 approved 100% recovery of EML's short-term incentive costs. In doing so, the
12 Mississippi Commission agreed that "Entergy Corporation's Compensation
13 Programs, including the annual short-term incentive and base pay portions of
14 employees' annual compensation and the related costs incurred on behalf of
15 EML that are included in EML's revenue requirement, are reasonable and
16 necessary. The Staff and Company further agree that the Company should be
17 authorized to recover 100% of its short-term incentive compensation."³⁹

³⁸ *Id.*, at 20-22.

³⁹ *See Entergy Mississippi, Inc.*, MPSC Docket No. 2018-UN-205, Order at 10-11 (approving stipulation that provided for recovery of 100% of short-term incentive compensation).

1 Q20. MR. GARRETT MAINTAINS THAT ETI HAS FAILED TO MAKE A
2 COMPELLING CASE TO CHANGE COMMISSION POLICY.⁴⁰ DO YOU
3 AGREE?

4 A. No, I do not. As explained in my direct testimony, the Commission should
5 reconsider its policy for two reasons. First, as the Administrative Law Judges
6 (“ALJs”) stated in the PFD in Docket No. 43695, an “earnings-per-share
7 [affordability] trigger is indicative of sound fiscal policy: if [SPS’s parent] fails
8 to meet its specific goal, the [annual incentive compensation] is not paid.” The
9 affordability trigger ensures that utilities only pay incentive compensation when
10 they are financially able to do so. It would be imprudent for a utility to pay
11 incentive compensation for operationally based achievable goals regardless of
12 its financial state. For example, if a utility were required to pay incentive
13 compensation for achievement of operational goals, but failed to generate
14 sufficient revenue or cash, then paying the incentives simply because the
15 operational metrics were met without regard to the financial health of the
16 company could weaken the utility’s credit rating and its ability to attract capital
17 at reasonable rates. A utility needs to be financially sound in order to have
18 access to capital on reasonable terms to fund the investments necessary to
19 provide safe and reliable service.

20 Second, ETI is not seeking recovery of the financially based portion of
21 the EAIP awards to the nine members of the Office of the Chief Executive.

⁴⁰ M. Garrett Direct at 19-20.

1 Consequently, the disallowance of additional incentive compensation
2 expense—which was awarded solely based on the achievement of operational
3 metrics—simply because of the use of a financially based funding mechanism
4 would deprive ETI of recovery of reasonable and necessary compensation
5 expense incurred to provide customers with safe and reliable service. Entergy
6 has designed its total compensation package, including the annual incentive
7 compensation portion, to be market competitive, which is necessary to attract
8 and retain highly qualified individuals to provide exceptional service to the
9 customers in its service area. It is important that Entergy and ETI provide
10 compensation comparable to its competitors, or it will experience high rates of
11 attrition, leading to higher costs for training and lower quality of service,
12 negatively impacting customers.

13 In my experience, employees are focused on achieving their own
14 business unit's or organization's operational-based objectives, not Entergy's
15 incentive funding metrics, over which they have little control. This
16 demonstrates that Entergy's focus in establishing and implementing its
17 incentive programs is based on operational metrics and that the financially
18 based funding metric is just a backstop to ensure it is in a position financially
19 to issue the payments.

1 Q21. MR. GARRRETT CLAIMS THAT ETI HAS FAILED TO DEMONSTRATE
2 THAT ITS INCENTIVE COSTS ARE SET AT COMPETITIVE LEVELS.⁴¹
3 IS THIS TRUE?

4 A. No. As described in my direct testimony, Entergy performs a benchmarking
5 analysis in order to structure its compensation so that it can compete to attract
6 and retain employees who can provide safe, reliable, and affordable electric
7 service. In other words, potential and existing employees want the same
8 opportunities at Entergy to improve their pay through incentive compensation
9 as they could obtain elsewhere.

10

11 Q22. MR. GARRETT AND MS. CANNADY ASSERT THAT ETI'S SHORT-
12 TERM INCENTIVE COMPENSATION RECOVERY SHOULD BE
13 LIMITED TO 100% OF THE TARGET PERCENTAGE BY EMPLOYEE
14 POSITION.⁴² DO YOU AGREE?

15 A. No, I do not. As mentioned above, limiting recovery in rates of incentive
16 compensation to target levels runs counter to the purpose of such programs,
17 which is to incentivize excellence in performance. It is standard practice for
18 incentive programs to recognize and reward employees for performance that
19 exceeds what was expected. There are a few mechanisms built into the funded
20 incentive programs to ensure that both incentive funding and individual awards

⁴¹ M. Garrett Direct at 23-24.

⁴² *Id.*, at 24-25; Direct Testimony of Constance T. Cannady ("C. Cannady Direct") at 34-38.

1 are reasonable. First, the EAM is used to determine overall incentive funding,
2 and achievement of the overall EAM cannot exceed 200% regardless of actual
3 achievement on the five measures that comprise EAM. Further, the funded
4 incentive programs generally do not allow individual awards in excess of 200%
5 of target.

6

7 Q23. MS. CANNADY ALSO PROPOSES A DISALLOWANCE RELATING TO
8 SHORT-TERM INCENTIVE COMPENSATION.⁴³ PLEASE SUMMARIZE
9 THE POSITION SHE HAS TAKEN IN HER DIRECT TESTIMONY.

10 A. Ms. Cannady proposes that ETI's proposed net plant in service be reduced by
11 \$3,525,289 for capitalized short-term incentive compensation that she believes
12 was awarded based on financial performance measures.

13 As noted above, Ms. Cannady also proposes that the short-term
14 incentive compensation be set at a maximum of 100% of target incentive rates
15 for each employee because the compensation studies compare the targets used
16 by other companies, not the actual awards. Ms. Cannady argues that ETI may
17 choose to reward employees for achieving greater than 100% of their respective
18 targets, but it is not necessary to attract and retain employees.

19 Finally, Ms. Cannady proposes that \$3,309,626 be removed from ETI's
20 adjusted level of STI compensation expense to limit the level of STI

⁴³ C. Cannady Direct at 19-21 and 38-42.

1 compensation based on the STI target percentages by employee and to reflect
2 the 30% of the STI plans for the financial performance metric of the EAM.

3 I believe that Ms. Cannady's recommendations should be rejected on
4 the same bases as Mr. Garrett's arguments.

5

6 Q24. MS. CANNADY INSISTS THAT THE EAM IS THE TRIGGER FOR
7 PAYMENT OF SHORT-TERM INCENTIVE COMPENSATION IN FOUR
8 OF ENTERGY'S SIX PLANS.⁴⁴ IS THIS ACCURATE?

9 A. No, it is not. EAM is an affordability trigger that ensures the company is
10 financially in a position to pay incentive compensation. EAM is a mechanism
11 to determine the maximum amount of funding. As noted in response to Q6
12 above, each employee's STI award is determined based on individual and
13 operational performance, except with respect to payouts awarded to the nine
14 members of the Office of the Chief Executive under the EAIP, the recovery of
15 which ETI is not requesting.

16

17 Q25. MS. SEARS ALSO PROPOSES A DISALLOWANCE RELATING TO
18 SHORT-TERM INCENTIVE COMPENSATION.⁴⁵ PLEASE SUMMARIZE
19 HER POSITION.

20 A. Ms. Sears recommends a reduction of \$1,947,854 for short-term direct plans

⁴⁴ *Id.*, at 38.

⁴⁵ Direct Testimony of Emily Seans ("E. Seans Direct") at 10-13.

1 and \$1,638,875 for short-term affiliate allocated plans to reflect the 30% of the
2 STI plans for the financial performance metric of the EAM. She also
3 recommends removing amounts related to ETI's category "Not Assigned."

4

5 Q26. WHAT IS YOUR RESPONSE?

6 A. Please refer to my responses above to Mr. Garrett and Ms. Cannady regarding
7 why disallowing 30% of the STI plans for the financial performance metric of
8 the EAM is unreasonable. Please refer to ETI witness Allison P. Lofton's
9 rebuttal testimony for her response regarding the amounts in the "Not
10 Assigned" category.

11

12 Q27. PLEASE SUMMARIZE YOUR RECOMMENDATIONS WITH RESPECT
13 TO ETI'S SHORT-TERM INCENTIVE PROGRAMS.

14 A. Entergy must offer total annual compensation that is market competitive so the
15 Company can attract and retain employees to provide safe and reliable power
16 to our customers at a reasonable cost. With a combination of base and variable
17 pay, the Company structures its compensation programs similarly to most large
18 employers. Short-term incentives are designed to reward employees when
19 performance goals are achieved. In order to pay short-term incentive awards,
20 the Company must ensure that it is fiscally responsible and is in a financial
21 position to pay those awards; therefore, a funding mechanism that determines
22 the Company's financial performance is necessary. To disallow any portion of

1 variable pay because it is indirectly tied to a funding mechanism that includes
2 a financially based metric would be unreasonable. As detailed above, there is
3 no over-arching policy followed by all utility commissions with respect to the
4 recovery of STI expense. Indeed, some commissions have allowed recovery of
5 100% of STI expense and recognized that providing compensation plans
6 comparable to market competitors is essential to attracting and retaining
7 qualified employees. Thus, for all of the reasons expressed above, the
8 Commission should not disallow any of ETI's short-term incentive
9 compensation program expense. If, however, the Commission disagrees, ETI
10 witness Ms. Lofton addresses the appropriate amounts to remove from ETI's
11 requested rate recovery.

12

13 **III. RESTRICTED STOCK PROGRAM**

14 Q28. PLEASE IDENTIFY THE INTERVENORS AND STAFF WITNESSES
15 THAT HAVE PROVIDED RECOMMENDATIONS RELATING TO ETI'S
16 RESTRICTED STOCK PROGRAM.

17 A. Cities witness Mr. Garrett and Staff witness Ms. Sears address ETI's restricted
18 stock program in their direct testimonies.

1 Q29. PLEASE SUMMARIZE THE POSITIONS TAKEN BY THESE WITNESSES
2 WITH RESPECT TO THE COMPANY'S RESTRICTED STOCK
3 PROGRAM.

4 A. Mr. Garrett suggests removing the restricted stock expense in the amount of
5 \$2,516,320 as being related to financial performance.⁴⁶ Similarly, Ms. Sears
6 recommends adjustments to ETI's requested long-term incentive compensation
7 of \$237,669 of direct costs and \$2,074,370 of affiliate allocated costs to reflect
8 the removal of costs associated with the restricted stock program.⁴⁷ She
9 similarly asserts that ETI's plan is not strictly tied to vesting conditions and is
10 thus not recoverable from ratepayers.

11 As explained below, these witnesses' recommendations are contrary to
12 Commission precedent and should be rejected.

13

14 Q30. HAS MR. GARRETT SIMILARLY RECOMMENDED THE
15 DISALLOWANCE OF EXPENSE ASSOCIATED WITH RESTRICTED
16 STOCK PROGRAMS IN PAST CASES ON THE GROUND THAT SUCH
17 AWARDS ARE TIED TO FINANCIAL PERFORMANCE?

18 A. Yes. Mr. Garrett made a similar recommendation in Southwestern Electric
19 Power Company's ("SWEPCO") last three base-rate cases—Docket
20 Nos. 40443, 46449, and 51415. In Docket No. 40443, Mr. Garrett testified that

⁴⁶ M. Garrett Direct at 34-37.

⁴⁷ E. Seans Direct at 13-16.

1 “[I]ike performance stock units, restricted stock units are tied exclusively to
2 financial performance measures, since the value of the restricted units is tied to
3 the appreciation of AEP’s stock price over the vesting period.”⁴⁸ In Docket
4 No. 46449, Mr. Garrett objected to SWEPCO’s recovery of costs associated
5 with its restricted stock program on the ground the restricted stock at issue “was
6 tied to financial performance because the value of the [restricted stock] is
7 directly tied to the value of the Company’s common stock.”⁴⁹ Finally, in
8 Docket No. 51415, Mr. Garrett again recommended the disallowance of costs
9 associated with SWEPCO’s restricted stock program, repeating his claim that
10 the restricted stock awards “are tied to financial performance because the value
11 of the [restricted stock] is directly tied to the value of the Company’s common
12 stock.”⁵⁰

13

14 Q31. DID THE COMMISSION AGREE WITH MR. GARRETT’S ARGUMENTS
15 IN THOSE CASES?

16 A. No. In Docket No. 40443, the PFD rejected the claimed similarity between
17 performance units and restricted stock, finding:

18 In contrast, restricted stock units, while generally similar in
19 value to shares of AEP common stock, are awarded based solely

⁴⁸ *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Direct Testimony of Mark Garrett at 37 (Dec. 10, 2012).

⁴⁹ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Direct Testimony & Exhibits Mark E. Garrett at 24-25 (Apr. 25, 2017).

⁵⁰ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415, Direct Testimony & Exhibits Mark E. Garrett at 24 (Mar. 31, 2021).

1 on an employee's satisfaction of certain vesting requirements.
2 Restricted stock units have no associated financial performance
3 target and are awards, in the words of SWEPCO's brief, "paid
4 because an employee sticks around long enough to earn them."⁵¹

5 Based on this finding, the ALJs in Docket No. 40443 recommended inclusion
6 of SWEPCO's long-term incentive expense associated with restricted stock.⁵²

7 The Commission adopted the PFD's recommendation on this point.⁵³

8 In Docket No. 46449, the PFD recommended inclusion of costs
9 associated with restricted stock expense based on the Commission precedent
10 from Docket No. 40443.⁵⁴ Consistent with its precedent, the Commission
11 allowed recovery of expense associated with restricted stock, finding that
12 SWEPCO's restricted stock units are not based on financial measures.⁵⁵

13 Finally, in Docket No. 51415, the PFD found that restricted stock
14 awards "have no financial performance target and are awards paid only for
15 time" and recommended SWEPCO recover the associated costs.⁵⁶ The
16 Commission agreed, finding that "[r]estricted stock units are not based on
17 financial measures and are appropriate to include in SWEPCO's rates."⁵⁷

⁵¹ Docket No. 40443, PFD at 84 (May 20, 2013).

⁵² *Id.*

⁵³ Docket No. 40443, Order on Rehearing at 1-2 and 13 and Finding of Fact 219-220 (Mar. 16, 2014).

⁵⁴ Docket No. 46449, PFD at 245-46 (Sept. 22, 2017).

⁵⁵ Docket No. 46449, Order on Rehearing at Finding of Fact 199 (Mar. 19, 2018).

⁵⁶ Docket No. 51415, PFD at 219 (Aug. 27, 2021).

⁵⁷ Docket No. 51415, Order at Finding of Fact 145 (Jan. 14, 2022).

1 Q32. IS ETI'S RESTRICTED STOCK PROGRAM SIMILAR TO SWEPCO'S IN
2 DOCKET NOS. 40443, 46449, AND 51415?

3 A. Yes, like SWEPCO's restricted stock units, ETI's program is based on an
4 employee's satisfaction of the time-vesting requirements. The restricted stock
5 program has no associated financial performance target and awards are paid
6 because an employee remains continuously employed long enough to earn
7 them. Consistent with the Commission's decisions allowing the costs
8 associated with SWEPCO's restricted stock units, ETI is seeking to include its
9 costs stemming from its restricted stock program in its cost of service.

10

11 Q33. DO YOU BELIEVE THAT ENTERGY'S RESTRICTED STOCK
12 PROGRAM IS JUSTIFIABLE FOR RATEMAKING PURPOSES BASED
13 ON THE ORDERS IN SWEPCO'S LAST THREE BASE RATE CASES?

14 A. Yes. As mentioned in my response to Q32, Entergy's restricted stock program
15 is designed similarly to SWEPCO's so I believe the restricted stock program is
16 justifiable for inclusion in the rate base.

1 Q34. MR. GARRETT RELIES ON DOCKET NOS. 39896 AND 44704 FOR THE
2 PROPOSITION THAT ETI HAS INDICATED THAT ITS RESTRICTED
3 STOCK PROGRAM IS RELATED TO ITS FINANCIAL
4 PERFORMANCE.⁵⁸ WHAT IS YOUR RESPONSE?

5 A. This is an inaccurate conclusion. Mr. Garrett's contention that the Company
6 voluntarily excluded the restricted stock program in Docket No. 44704 is
7 factually inaccurate. On page 31, lines 1–4 of my direct testimony in Docket
8 No. 44704, I state that "consistent with the Commission's decision in Docket
9 Nos. 39896 and 40443, Ms. McCloskey's adjustment removes the cost of the
10 LTIP and stock options but does not remove the costs of the restricted stock
11 program." Mr. Garrett's reliance on a past ETI rate case ignores that the
12 Commission's policy on the recovery expense associated with restricted stock
13 programs has evolved since Docket No. 39896.

14 Restricted stock awards are granted based on employees' individual
15 performance, along with other factors. As discussed above, the achievement of
16 financial goals is not a requirement for vesting in the restricted stock program.
17 Therefore, the restricted stock program is not tied to financial performance.

18

19 Q35. MR. GARRETT ALSO CLAIMS THAT ENTERGY HAS INDICATED
20 THAT ITS RESTRICTED STOCK PROGRAM IS RELATED TO ITS
21 FINANCIAL PERFORMANCE IN RECENT RATE CASES FOR ENTERGY

⁵⁸ M. Garrett Direct at 35-36.

1 ARKANSAS, LLC (“EAL”) BEFORE THE ARKANSAS COMMISSION.⁵⁹

2 IS THIS TRUE?

3 A. No. In the 2015 EAL rate case, Docket No. 15-015-U, before the Arkansas
4 Commission, EAL did not indicate that the restricted stock program is related
5 to Entergy’s financial performance. Rather, EAL simply did not request
6 recovery for long-term incentive compensation in that case.

7

8 Q36. MR. GARRETT ARGUES THAT RESTRICTED STOCK AWARDS ARE
9 TIED TO THE FINANCIAL PERFORMANCE OF THE COMPANY
10 BECAUSE THE VALUE IS TIED TO THE COMPANY’S COMMON
11 STOCK PRICE.⁶⁰ DO YOU AGREE?

12 A. No. While the restricted stock awards are tied to the Company’s stock price at
13 a future date, this does not mean that the program is tied to financial
14 performance. That would be akin to arguing that because short term incentive
15 compensation is paid in cash, it is tied to financial performance. Rather, the
16 future value of the restricted stock award is irrelevant because awards are based
17 on an employee’s satisfaction of the time-vesting requirements as mentioned
18 above.

⁵⁹ *Id.*, at 36-37.

⁶⁰ *Id.*, at 37-38.

1 Q37. MR. GARRETT ARGUES THAT, BASED ON THE 2019 OMNIBUS
2 INCENTIVE PLAN, THE RESTRICTED STOCK PROGRAM
3 PREDOMINANTLY BENEFITS SHAREHOLDERS.⁶¹ WHAT IS YOUR
4 RESPONSE?

5 A. The language identified by Mr. Garrett regarding aligning the interests of
6 management with those of the shareholders needs to be understood in the
7 context of the overall 2019 Omnibus Incentive Plan, which covers all three of
8 Entergy's long-term incentives—(1) restricted stock, (2) stock options, and
9 (3) performance units under the Performance Unit Program ("PUP"). As
10 discussed, the restricted stock program is just one of three long-term incentive
11 programs, and ETI has already excluded the costs associated with the stock
12 option and performance unit programs from its cost of service.

13 As discussed, the restricted stock program awards stock to certain
14 employees based on their individual performance and, while the restricted stock
15 does have value associated with Entergy's stock, the vesting of the employees'
16 awards is tied solely to them remaining with the Company for a certain period
17 of time. And, as I have explained with respect to the short-term incentive
18 compensation, incentives tied to performance, and the retention of highly
19 qualified employees, is critical to ensuring high-quality service to ETI's
20 customers.

⁶¹ *Id.*, at 38-39.

1 Q38. WHAT IS YOUR RESPONSE TO MR. GARRETT'S ASSERTION THAT
2 LONG-TERM INCENTIVE COMPENSATION PLANS ALIGN
3 EMPLOYEE AND SHAREHOLDER INTERESTS SUCH THAT THE
4 COSTS SHOULD BE BORNE SOLELY BY SHAREHOLDERS?⁶²

5 A. The shareholders are bearing the costs with respect to the costs associated with
6 the stock options and performance units. However, the restricted stock program
7 provides value to and benefits ETI's customers through recruiting and retaining
8 highly qualified individuals and rewarding their performance on individual
9 performance goals. For this reason, it is proper to include these costs in rates.
10

11 Q39. LIKE THE SHORT-TERM INCENTIVE COMPENSATION,
12 MR. GARRETT ARGUES THAT ETI IS NOT PUT AT A COMPETITIVE
13 DISADVANTAGE BECAUSE IT IS COMPETING WITH OTHER
14 UTILITIES FOR TALENT AND THE COSTS ASSOCIATED WITH THOSE
15 UTILITIES' LONG-TERM INCENTIVE COMPENSATION PROGRAMS
16 ARE SIMILARLY REDUCED.⁶³ DO YOU AGREE?

17 A. No, I do not for the same reasons I discussed above with respect to short-term
18 incentive compensation.

⁶² *Id.*, at 39-40.

⁶³ *Id.*, at 40-41.

1 Q40. MR. GARRETT ARGUES THAT THE COMMISSION SHOULD
2 DISALLOW RECOVERY OF RESTRICTED STOCK PROGRAM
3 EXPENSE HERE BECAUSE IT DID SO IN ETI'S LAST LITIGATED RATE
4 CASE, DOCKET NO. 39896.⁶⁴ PLEASE RESPOND.

5 A. As noted above, the Commission has repeatedly allowed recovery of restricted
6 stock in multiple rate cases since Docket No. 39896. The Commission should
7 do so in this case for the same reasons.

8

9 Q41. MR. GARRETT ARGUES THAT THE COSTS FOR ETI'S RESTRICTED
10 STOCK PROGRAM SHOULD BE REMOVED BECAUSE THERE IS NO
11 CASH ASSOCIATED WITH STOCK AWARDS.⁶⁵ DO YOU AGREE?

12 A. No, I do not agree. There is no basis to remove the restricted stock based on
13 whether or not cash is associated with restricted stock. ETI is entitled to
14 recover its reasonable and necessary operating expenses, and restricted stock
15 awards are part of those expenses. Restricted stock is part of Entergy's market-
16 competitive compensation program. Compensation is not limited to "cash."
17 ETI must maintain competitive compensation to attract, retain, and motivate
18 highly qualified employees. It is important that Entergy and ETI provide
19 comparable compensation to its competitors or it will experience high rates of
20 attrition, leading to higher costs for training and lower quality of service,

⁶⁴ *Id.*, at 42.

⁶⁵ *Id.*, at 45-46.

1 negatively impacting customers. Only through providing market-competitive
2 compensation can ETI attract, retain, and motivate highly qualified individuals
3 to provide exceptional service to the customers in its service area.

4

5 Q42. WHAT DO YOU CONCLUDE WITH RESPECT TO ETI'S INCLUSION OF
6 EXPENSES ASSOCIATED WITH ITS RESTRICTED STOCK PROGRAM?

7 A. Similar to short-term incentive compensation, Entergy and ETI must provide
8 long-term incentives to ensure that its employees' total compensation is
9 comparable to the utility industry, energy sector industry, and the general
10 industry. As demonstrated in my direct testimony, publicly-traded companies
11 generally provide their employees with long-term incentives and ETI's long-
12 term incentives during the Test Year fall within a reasonable range of the market
13 median. In addition, because ETI's restricted stock program is not tied to its
14 financial performance, the associated costs should be allowed in ETI's cost of
15 service.

16

17 Q43. DO YOU AGREE WITH MS. SEARS'S RECOMMENDATION WITH
18 RESPECT TO THE RESTRICTED STOCK AWARDS?

19 A. No. Ms. Sears's recommendation should be rejected for the same reasons
20 provided in my responses to Q30 through Q41 regarding Mr. Garrett's similar
21 recommendation. In sum, inclusion of ETI's restricted stock program expense

1 in its cost of service is consistent with Commission precedent and should be
2 allowed.

3

4

IV. RESTORATION BENEFIT PLANS

5 Q44. PLEASE IDENTIFY THE INTERVENORS AND STAFF WITNESS THAT
6 HAVE PROVIDED RECOMMENDATIONS RELATING TO ETI'S NON-
7 QUALIFIED RETIREMENT PLAN.

8 A. Cities witness Mr. Garrett, OPUC witness Ms. Cannady, and Staff witness
9 Ms. Sears address ETI's non-qualified retirement plan expense in their direct
10 testimonies.

11

12 Q45. PLEASE SUMMARIZE MR. GARRETT'S POSITION WITH RESPECT TO
13 THE NON-QUALIFIED RETIREMENT PLAN COSTS.

14 A. Mr. Garrett suggests an adjustment to remove the non-qualified retirement plan
15 expense in the amount of \$1,329,421.⁶⁶

16

17 Q46. MR. GARRETT REFERS TO THESE BENEFITS AS SUPPLEMENTAL
18 RETIREMENT BENEFITS.⁶⁷ IS THAT WHAT THE \$1,329,421
19 REPRESENTS?

20 A. No. Entergy's non-qualified retirement programs fall into two categories:

⁶⁶ *Id.*, at 54-55.

⁶⁷ *Id.*, at 55.

1 (1) restoration benefit plans and (2) supplemental benefit plans. Mr. Garrett
2 ignores the distinction between Entergy's two types of non-qualified retirement
3 program, and instead repeatedly refers to supplemental retirement benefits and
4 supplemental executive retirement plans ("SERP"); however, as indicated in
5 my direct testimony, ETI is not seeking recovery of costs associated with its
6 supplemental benefit plans, and Ms. Lofton sponsors the adjustment that
7 removes those costs from the requested cost of service.⁶⁸ The \$1,329,421,
8 which ETI seeks to include in rates, relates solely to the restoration benefit
9 plans.

10
11 Q47. WHAT IS THE DISTINCTION BETWEEN RESTORATION BENEFITS
12 AND SUPPLEMENTAL BENEFITS?

13 A. Restoration benefit plans are designed to keep employees whole with respect to
14 certain limitations placed on tax-qualified retirement plans by IRC Section
15 401(a)(17) (i.e., the compensation limit) and IRC Section 415 (limitations on
16 benefits and contributions). All non-bargaining employees who participate in
17 the tax-qualified retirement benefit plans may be eligible for restoration benefits
18 (these benefits are not limited to executives). Supplemental benefit plans are
19 designed to provide executives with a different benefit level than the tax-

⁶⁸ As indicated in the filing, Schedule P (WP/P AJ 08 and WP/P AJ19H), the \$1,112,111 SERP related expense has been removed from ETI's cost of service.

1 qualified plan or a restoration plan would normally provide. Entergy closed its
2 supplemental benefit plans to new participants effective July 1, 2014.

3

4 Q48. MR. GARRETT RELIES ON DOCKET NOS. 39896, 40443, AND 46449
5 FOR THE PROPOSITION THAT \$1,329,421 SHOULD BE EXCLUDED.⁶⁹
6 IS THERE AN IMPORTANT DISTINCTION YOU WOULD LIKE TO
7 RAISE?

8 A. Yes, Docket Nos. 39896, 40443, and 46449 involved the disallowance of the
9 SERP. As stated above, ETI has included an adjustment to remove the SERP
10 expense in this proceeding already. It is my understanding that the Commission
11 has not previously disallowed recovery for costs related to restoration benefit
12 plans, to which the \$1,329,421 relates.

13

14 Q49. DOES THE SAME HOLD TRUE WITH RESPECT TO DOCKET
15 NO. 13-028-U OUT OF ARKANSAS REFERENCED BY MR. GARRETT?⁷⁰

16 A. Yes. In Docket No. 13-028-U, the Arkansas Commission disallowed Entergy
17 Arkansas's SERP expenses. Again, the costs at issue here relate to restoration
18 benefit plans, which the Arkansas Commission allowed in Docket
19 No. 15-015-U.

⁶⁹ M.Garrett Direct at 56-57.

⁷⁰ *Id.*, at 55.

1 Q50. MS. CANNADY AND MS. SEARS ALSO RECOMMEND REMOVAL OF
2 THE \$1,329,421.⁷¹ DO YOU AGREE?

3 A. No, I do not. Ms. Cannady and Ms. Sears argues that the \$1,329,421 should be
4 removed because of the Commission's decision in Docket No. 39896.
5 Ms. Cannady also argues that these benefits should be removed because they
6 are not generally available to all employees and require ratepayers to fund
7 benefits that may not even be provided in the future.

8 As explained above, Docket No. 39896 is distinguishable because it
9 involved the disallowance for SERP expenses. Also, all non-bargaining
10 employees whose earnings are limited by the by IRC Section 401(a)(17) (i.e.,
11 the compensation limit) and IRC Section 415 (limitations on benefits and
12 contributions) are eligible to participate in the restoration benefits plans;
13 participation is not limited to executives or officers of the Company.

14

15 Q51. MS. CANNADY ALSO RECOMMENDS THE REMOVAL OF THE
16 \$225,334 OPEB OVER/UNDER BALANCE. DO YOU AGREE?

17 A. No, I do not. The OPEB reserve balance should not be removed, as this benefit
18 is reasonable.

⁷¹ C. Cannady Direct at 43-46; E. Seans Direct at 16-17.

1 Q52. IS ETI'S INCLUSION OF ITS COSTS RELATING TO THE
2 RESTORATION BENEFIT PLANS REASONABLE AND NECESSARY?

3 A. Yes, it is necessary for ETI to incur the costs to provide its employees with
4 competitive benefits packages that are comparable to the benefits provided by
5 its competitors in the market. The inclusion of restoration benefit plans is both
6 reasonable and necessary. Inclusion of such costs was allowed by the Arkansas
7 Commission in Docket No. 15-015-U.⁷²

8

9 **V. CONCLUSION**

10 Q53. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

11 A. Yes.

⁷² *In the Matter of the Application of Entergy Arkansas, Inc. for Approval of Changes in Rates for Retail Electric Service*, Docket No. 15-015-U, Order No. 18 (Arkansas Pub. Serv. Comm. Feb. 23, 2016).

AFFIDAVIT OF JENNIFER A. RAEDER

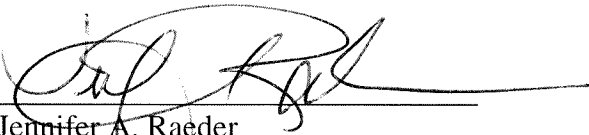
THE STATE OF LOUISIANA

COUNTY OF Orleans


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This day, Jennifer A. Raeder the affiant, appeared in person before me, a notary public, who knows the affiant to be the person whose signature appears below. The affiant stated under oath:

My name is Jennifer A. Raeder. I am of legal age and a resident of the State of Louisiana. The foregoing testimony and exhibits offered by me are true and correct, and the opinions stated therein are, to the best of my knowledge and belief, accurate, true and correct.


Jennifer A. Raeder

SUBSCRIBED AND SWORN TO BEFORE ME, notary public, on this the 11th day of November 2022.


Notary Public, State of Louisiana

My Commission expires:

At Death

**JOHN P. CERISE
NOTARY PUBLIC
Bar Number 18833
State of Louisiana
My Commission is issued for Life.**

Responding Party: Cities
Requesting Party: ETI
Prepared by: Mark Garrett
Sponsoring Witness: Mark Garrett

Docket No.: 53719
Question No.: ETI-CITIES 1-3

REQUEST:

ETI-CITIES 1-3 Please refer to the discussion of the Incentive Compensation Survey taken by the Garrett Group LLC (“Garrett Group Survey”) on pages 21-22, 27, and 45 of Mr. Mark Garrett’s testimony.

- a. Please describe the methodology for conducting and evaluating the results of the Garrett Group Survey.
- b. Please discuss the basis for selecting the 24 states included in the Garrett Group Survey.
- c. Please provide the results of the Garrett Group Survey taken in 2007, and updated in 2009, 2011, 2015, and 2018.
- d. Please provide all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for Mr. Garrett in anticipation of his testimony concerning the Garrett Group Survey.
- e. Please provide all materials used in the preparation of the Garrett Group Survey.
- f. Provide all orders, or if publicly available, all docket numbers or citations for such orders, relied on in completing the Garrett Group Survey.

RESPONSE:

- a. The Garrett Group Incentive Compensation Survey is a telephonic survey of commission staff personnel with knowledge of the treatment of incentive compensation issues in each jurisdiction surveyed. The responses of the participants are recorded, transcribed, summarized, and returned to the survey participant for approval.
- b. The 24 western states were selected because, at the time the survey was originally developed, Mr. Garrett primarily testified in states in close proximity to the western states included in the survey – the 24 states west of the Mississippi river. Selecting a sample size of 24 states, rather than 50, was also a way of reducing the time it took to conduct and update the survey.
- c. The results of the Garrett Group Incentive Compensation Survey taken in 2007, and updated in 2009, 2011, 2015, and 2018 are provided in Attachment MEG 1-3(c).

- d. See response to ETI-Cities-1-3(c).
- e. See response to ETI-Cities-1-3(c).
- f. These orders are publicly available. The docket numbers have been provided in the Direct Testimony of Mark E. Garrett and in Attachment MEG 1-3(c).

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 1 of 22

Garrett Group Consulting, Inc.
Incentive Compensation Survey
of the 24 Western States
2007-2018

Results by State

Alaska 2011: (Regulatory Commission, Tyler Clark, Finance Manager, 907-276-6222) Incentive Compensation is not an issue in rate cases in Alaska. There is no relevant regulation or policy.

Alaska 2015: (Regulatory Commission, Tyler Clark, Chief Utility Financial Analyst, 907-276-6222) Incentive is not a contested issue yet in Alaska. There are no regulations, policies or cases addressing the issue.

Alaska 2018: (Regulatory Commission, Julie Vogler, Chief Utility Financial Analyst, 907-276-6222) The Commission in Alaska reviews requests to include incentive compensation in rates to determine if they are reasonable and if they benefit ratepayers. Short and long-term incentives receive the same treatment. The issue is handled on a case by case basis. In a recent Enstar Natural Gas case, U-16-066, the Commission allowed the Company's short and long-term incentive expense to be included in revenue requirement. The Final Order in U-16-066 (19), page 62, lines 6 through 14, states:

The record establishes that the overall cost of ENSTAR's incentive compensation is reasonable in a regulatory context. The scope and mechanics of the STIP and LTIP are clearly defined and described. And incentive compensation payments under the STIP and LTIP have been consistent and are expected to recur at levels comparable to the test year. ENSTAR's incentive compensation plans benefit ratepayers by setting and holding employees to goals that directly relate to customer service and cost controls, and by attracting and retaining highly qualified employees to provide safe and reliable service. We find that inclusion of the incentive compensation amounts as an expense in ENSTAR's revenue requirement is reasonable.

The Enstar case is the first adjudicated case since the last survey results were provided in 2015, so there are no other recent orders that set forth a treatment of the issue.

Arizona 2007: (Corporation Commission, Darron Carlson, 602-542-0834) Arizona deals with incentive compensation plans on a case by case basis. They generally do not allow the costs for these programs to be included in rate base. They have at times allowed 50% of the cost of a particularly good plan to be included in rates.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 2 of 22

Arizona 2009: (Corporation Commission, Darron Carlson, 602-542-0834) Arizona deals with incentive compensation plans on a case by case basis. It first compares overall compensation to the state norm, then asks if the cost are prudent and reasonable. They lean toward disallowing programs which benefit only the shareholder even if total compensation is comparable to the state norm.

Arizona 2011: (Corporation Commission, Darron Carlson, 602-542-0834) Still examining case by case, the Arizona Staff's position is that if the company fails to demonstrate that an incentive compensation plan is tied to operational performance issues it is considered unnecessary for the provision of service. Staff feels shareholders should pay for plans tied to financial measures such as earning per share. Most cases settle here and there are no orders on point.

Arizona 2015: (Corporation Commission, Darron Carlson, Manager, Financial and Regulatory Analysis Section, Utility Division, 602-542-0834) Incentive programs are still considered case by case. Evaluation centers around the criteria of benefit to customers. This treatment tends to make long-term programs harder to justify, but the same criteria are used to evaluate all plans including those for executives. This treatment is set forth in the most recent Epcor Water rate case (Docket No. WS-01303A-14-0010). The current treatment represents a somewhat more liberalized approach compared to Arizona's former position of excluding all incentive compensation from rates.

Arizona 2017: A review of Commission decisions in cases since the 2001 Decision 64172 is provided in the testimony of staff witness Ralph C. Smith in Docket No. E-0134SA-16-0036 (pp.81-89). This review demonstrates that the Commission recognizes that financial goals primarily benefit the shareholder and operational goal can benefit the customer. The Commission accordingly shares the cost of short-term incentives equally between ratepayers and the shareholders. In Decision No. 71914 (September 30, 2010), in UNS Electric, Inc. rate case, Docket No. E-04204A-09-0206, the Commission stated at page 28:

We believe that the Staff and RUCO recommendations, to require a 50/50 sharing of incentive compensation costs, provide a reasonable balancing of the interests between ratepayers and shareholders. The equal sharing of such costs recognizes that the program is comprised of elements that relate to the parent company's financial performance and cost containment goals, matters that primarily benefit shareholders, while at the same time recognizing that a portion of the program's incentive compensation is based on meeting customer service goals. This offers the opportunity for the Company's customers to benefit from improved performance in that area.

Arizona Incentive Compensation Treatment by Case

Short-Term Incentives*

Year	Company	Docket/Decision Number	Lit./Settmt.	Outcome
2001	SWG	G-01551A-00-0309 / 64172 (p. 13)	Litigated	50:50 Sharing
2007	APS	E-013451-05-0816 / 69663 (p. 37)	Litigated	Allowed**
2008	APS	E-01345A-08-0172	Settlement	50:50 Sharing
2011	APS	E-01345A-11-0224	Settlement	50:50 Sharing
2007	UNS	G-04204A-06-0463 / 70011 (p. 27)	Litigated	50:50 Sharing
2008	UNS	E-04204A-06-0783 / 70360 (p. 21)	Litigated	50:50 Sharing
2006	SWG	G-01551A-04-0876 / 68487 (p. 18)	Litigated	50:50 Sharing

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 3 of 22

2008	SWG	G-01551A-07-0504 / 70665 (p. 16)	Litigated	50:50 Sharing
2010	UNS	G-04204A-08-0571 / 71623 (pp. 30-31)	Litigated	50:50 Sharing
2010	UNS	E-04204A-09-0206 / 71914 (pp. 28-29)	Litigated	50:50 Sharing

* See Staff witness Smith in APS 2016 Rate Case E-0134SA-16-0036 pp. 81-89.

** The Commission accepted Staff's position: "Staff did not oppose inclusion of the TY variable incentive expense in cost of service, noting that although corporate earnings serve as a threshold or precondition to the payout, the TY level of expense is tied primarily to performance measures that directly benefit APS customer." (page 37)

Arizona 2018: (Corporation Commission, Darron Carlson, Public Utilities Analyst Manager, Revenue Requirements and Audits, 602-542-0834) There have been no changes to the treatment of incentives in Arizona. The issue is still dealt with on a case by case basis centered on benefit to the customer. The treatment is the same for short and long-term plans as well as executive incentives. There are no new orders setting forth the treatment.

Arkansas 2007: (PSC, Alice Wright, 501-682-2051) In the current Entergy Arkansas Rate Case Docket No. 06-101-U, staff witness Jeff Hilton recommends excluding 50% of the portion of plans tied to financial performance, which means disallowing half of the executive's plan. See attached direct and surrebuttal testimony.

Arkansas 2009: (PSC, Jeff Hilton, Manager, Audit Section, General Staff, APSC 501-682-2051) The treatment of incentive compensation has changed recently in Arkansas. The traditional treatment had been to allow in rates those plans based on operational goals (which were seen as benefitting ratepayers), and sharing 50:50 between shareholders and ratepayers the costs of programs which included operational and financial goals (and thereby benefitting both ratepayers and shareholders). The current change is that now, executive plans which are based solely on increasing corporate stock value are seen as benefitting only the shareholders and are excluded from rates. A further refinement of Commission policy is to allow, for any given plan, 50% of the *portion* of that plan which has value for both ratepayers and shareholders. This new treatment is documented in the Entergy order 06-101-U, Order 10, and in the settlement adopted in the latest OG&E case 08-103-U. One reason for the change to exclude these executive plans was that while they were being subsidized by ratepayers they were growing astronomically.

Arkansas 2011: (PSC, Jeff Hilton, Manager, Audit Section, General Staff, APSC 501-682-2051) The Arkansas Commission has uniformly maintained its treatment based on the 2006 Entergy case (06-101-U) cited above. Long-term plans, typically based on stock price, are excluded from rates 100%. Short-term incentive plans are evaluated to determine if they are based on financial or operational measures. Operational-based plans are allowed. 50% of plans containing financial measures are disallowed. Any plans based solely on the discretion of the company are seen as having no direct benefit to ratepayers and are disallowed 100%. Settlements in recent cases have upheld this treatment.

Arkansas 2015: (PSC, Jeff Hilton, Director of Revenue Requirements, 501-682-2051) Commission rulings on Incentive Compensation have remained generally consistent, excluding 100% of long-term plans and 50% of the portion of short-term plans that are financially based. This treatment has been qualified in recent cases based on differing plan structures. In the most recent contested Entergy rate case (Docket No. 13-028-U), 50% of all short-term incentive compensation was excluded because the plans

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 4 of 22

included a financially-based multiplier. The criteria of distinguishing between financial and operational measures that results in different treatment for short and long-term plans is used to evaluate all plans including those for executives. Arkansas' treatment of this issue is considered case by case and is based on prior Commission orders, not legislation. While the Commissioners' position has remained consistent, Staff's recommendation in the last several cases, including 13-028-U and two currently under review, has shifted. Staff has recently considered that any incentive compensation plan which they find is prudent and is necessary for the provision of utility service to ratepayers should be included in rates. Based on these criteria, Staff has recommended no disallowance in these three cases, a position which the Commission did not adopt in the 13-028-U Entergy case.

Arkansas 2018: (PSC, Jeff Hilton, Director of Revenue Requirements, 501-682-5185) The Arkansas Commission continues to follow the precedent of its previous orders and generally disallows 50% of financially based Short-term incentive plans and 100% of Long-term plans (which include the executive plans). There is some flexibility for considering a utility's particular situation on a case by case basis, but the two larger utilities in Arkansas, Entergy and CenterPoint, are both on formula rate plans and the 50%/100% disallowance treatment is incorporated in those FRPs, based on their most recent respective rate cases, 15-015-U and 15-098-U, in which the Commission specifically expressed this preference.¹

California 2007: (PUC, Pamela Thompson, Div. of Ratepayer Advocacy, 415-703-5581, Mark Pocta, 415-703-2871) In CPUC Decision 00-02-046 the Commission established that utilities could recover 50% of the regular employee's incentive compensation costs from rates. Mark Pocta says they advocate for some type of sharing arrangement and points out that PGE has a 50/50 arrangement for both executive and employee plans, while Southern California Edison passes 50% of its executive plan and all of its employee plan to ratepayers.

California 2009: (PUC, Mark Pocta, Division of Ratepayer Advocacy, 415-703-5581) In California, incentive compensation funding is always an issue and is typically litigated. In California's latest litigated rate case, Southern California Edison (Application #: 07-11-011, Decision #: 09-03-025) the DRA argued for disallowing of incentive compensation in rates citing vague performance measure and the fact that all the plans were, at least in part, based on the Company's financial performance. The Commission, however, decided that the non-executive plans (at Edison there are plans for all employees) and 50% of the short-term executive plans will be funded in rates, while only the long-term executive stock option plans will be disallowed. In 2000, in the PGE case (CPUC Decision 00-02-046), the Commission allocated a 50:50 sharing of all the management incentive compensation programs between ratepayers and shareholders.

California 2011: (PUC, Matthew Tisdale (CPUC), Pamela Thompson, Mark Pocta, Division of Ratepayer Advocacy, 415-703-5581) No response from California in 2011.

California 2015: (PUC, Richard Rauschmeier, Financial Examiner, DRA - Division of Water and Audits, 415-703-2732) The Commission considers incentive compensation on a case by case basis. Plans are evaluated in the context of an overall reasonableness standard. The Commission has also established

¹ In Docket No. 15-015-U, Order No.18, pp. 18-20, the Commission reversed a settlement treatment which disallowed only 25% of financially-based Short-term incentives, imposing instead a 50% disallowance.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 5 of 22

precedence for evaluating plans based on who benefits from the plans' goals, ratepayer or shareholders. This approach quite often results in different outcomes for short-term and long-term plans. In determining overall reasonableness, the Commission also considers many other criteria such as comparisons with similarly sized utilities, benchmarking to related industry, internal historical trends and overall compensation. In a recent case, A.10-07-007, staff recommended that, "customer funding should be limited to the portion of the incentive plan payments that are aligned with operational objective that provide customer benefits. This means that 70% of AIP be funded by shareholders, and 30% be funded by ratepayers." In the settlement, the Commission disallowed 50% of the plan's expense. One change that may impact consideration of incentives going forward is the Commission's renewed focus on safety since the San Bruno pipeline explosion. The Commission is establishing metrics for observing historical trends and industry comparisons, and is emphasizing neutral third-party benchmarking.

California 2018: (CPUC, Richard Rauschmeier, Financial Examiner, Public Advocate's Office, 415-703-2732) The CPUC examines utility company requests to include incentive compensation in rates on a case by case basis, but the criteria are well established. Generally, incentive compensation expense can be charged to ratepayers only to the extent it is aligned with ratepayer interests. Typically, this treatment results in disallowance of the portion of short-term incentives tied to financial performance². The Commission's consistent practice is to reject recovery of long-term incentives, "because, LTI does not align executives' interests with ratepayer interests."³ Since the 2010 San Bruno pipeline explosion (and other events including the Aliso Canyon Leak, and the Witch, Guejito and Rice Wildfires which were found to be caused by utilities), legislative and regulatory interest in utility safety has intensified⁴. Consequently, the treatment of incentives is increasingly framed by asking whether the incentives are safety-focused or earnings-focused.

Colorado 2007: (PUC, Rob Trokey, 303-894-2121) Colorado has no regulatory or statutory rules governing incentive compensation and considers it on a case by case basis. In the 2006 PSC Colorado (electric utility) Rate Case 06-S-234-EG, the Office of Consumer Council argued for removing the costs of the plan not benefiting ratepayers. That case settled without the Commission ruling. In the current gas utility rate case staff is removing incentive compensation from rate base.

Colorado 2009: (PUC, Karl Kunzie, Financial Analyst: Economics Section, 303-894-2882, P.B. Scheckter, Office of Consumer Counsel (OCC), 303-894-2124) Colorado has no rules or statutes and, due to black-box settlements, no recent orders on point. Historically, the policy of the OCC has been to disallow plans tied to goals such as price per share, and allow in rates those plans tied to quality of service and goals that benefit ratepayers. The PUC has tended not to oppose the company's historic test year payouts. However, in the current Public Service Company of Colorado (Xcel Energy) rate case, Staff has argued to exclude all types of incentive compensation from rates. This treatment holds that incentive compensation, in general, benefits only the shareholder, that it is discretionary and sometimes is not be paid out, and that all of it should be paid for by the shareholders. The goals related to ratepayer benefit

² Examples of this treatment: Decision 15-11-021, Decision 12-11-051 and Decision 14-08-032.

³ Decision 15-11-021 at 262

⁴ CPUC's view of incentives in terms of promoting a positive or negative safety culture is discussed at length in Decision 16-06-054 (San Diego Gas & Electric). Also see R.15-09-010, D.11-06-017 and Public Utilities Code Section 706.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 6 of 22

should be considered part of the job and compensated for by regular wage and salary. In this treatment, if total compensation is then non-competitive the regular, non-optional component of compensation should be raised.

Colorado 2011: (PUC, Karl Kunzie, Financial Analyst: Economics Section, 303-894-2882) Colorado staff has made the decision not to seek to eliminate all incentive compensation (rolling compensation for goals benefitting ratepayers into regular salaries). All executive incentives are still excluded from rates and no longer sought in company filings. Regular employee programs are judged on their benefit to ratepayers versus stockholders. Plans with metrics for goals benefitting ratepayers but dependent on an earnings per share trigger are considered to benefit shareholders and opposed by staff. Staff's approach is set forth most recently, in 10AL-963G by staff witness Kahl. The settlement in that case removed the dollar amount opposed by Kahl without specifically stating the rationale.

Colorado 2015: (PUC, Karl Kunzie, Financial Analyst: Economics Section, 303-894-2882) Colorado still excludes long-term executive incentive compensation from rates. However, with respect to annual incentive pay (AIP), Colorado's treatment has changed significantly. In the most recent rate case for Public Service Company of Colorado, staff recommended the Commission, "limit reimbursement of incentive pay to no more than 15 percent of employee base salary." In this Proceeding No. 14AL-0660E / Order C15-0292, the Settling Parties agreed to reduced the revenue requirement by a dollar amount without agreeing to any specific adjustments. However, on the issue of AIP, the Settlement Agreement included the statement, "the Settling Parties agree AIP incentive payment recovery in the 2017 Rate Case will be capped at 15% of an employee's salary." This treatment does not evaluate incentive compensation plans based on some criteria such as their prudence, or which stakeholder group benefits from the goals of a plan. With respect to choosing a straight percentage of salary, Staff's witness, Fiona Sigalla, noted in her testimony of November 7, 2014: "Annual incentive plan payments to employees exceed 10 percent of salary for most workers and tops 100 percent of salary for some executives." "In 2014, the top 20 highest paid Xcel Energy executives received AIP payments that averaged over 100 percent of salary. Limiting reimbursement of incentive pay to 15 percent of base pay would mostly impact these higher paid employees." "Fifty-six percent of the impact for 2013 affects reimbursement of incentive pay for Company executives." This treatment is expected to continue at least through the term of the 2017 PSCo rate case.

Colorado 2018: (PUC, Karl Kunzie, Financial Analyst: Economics Section, 303-894-2882) There have been no changes to the treatment of incentive compensation in Colorado since the last update to the survey. Long-term incentives are not allowed recovery in rates. Recovery of short-term plans is limited to 15% of base salary without evaluating plan goals. This treatment was followed in the PSCo Gas rate case in 2018, Proceeding No. 17AL-0363G. No change to this treatment is anticipated.

Hawaii 2011: (PUC, Steven J. Iha, Chief Auditor, 808-586-2020) Hawaii does not allow incentive compensation to be included in rates. This policy was set forth in Docket No. 6531, in the October 17, 1991 Order No. 11317. Prior Dockets in which the Commission disallowed incentive compensation include No. 3216, No. 4215, No. 4588 and No. 5114. In 6531 the Commission agreed that bonus awards tied to company income and earnings benefit stockholders, not ratepayers. The Commission further states, "...we believe that a utility employee, especially at the executive level, should perform at an optimum level without additional compensation. Ratepayers should not be burdened with additional

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 7 of 22

costs for expected levels of service." In the 1991 case, the Commission also excluded the negative deferred income taxes associated with incentive plans which were disallowed from the deferred income taxes that are deducted from the rate base.

Hawaii 2015: (PUC, Steven J. Iha, Chief Auditor, 808-586-2020) Hawaii's general policy toward incentive compensation has not changed. Incentive compensation of all types is excluded from rates. The Commission upholds the position stated in Docket No. 6531 that incentives tied to company income and earnings benefit stockholders, not ratepayers. The Commission further stated, "...we believe that a utility employee, especially at the executive level, should perform at an optimum level without additional compensation. Ratepayers should not be burdened with additional costs for expected levels of service." Utilities in Hawaii no longer petition to have incentive compensation expense included in rates.

Hawaii 2018: (PUC, Jan K. Mulvey, Chief Auditor, 808-586-2020) Hawaii's longstanding policy to exclude all incentive compensation expense from rates remains firmly in place. The Commission upholds the position stated in Docket No. 6531 that incentives tied to company income and earnings benefit stockholders, not ratepayers. The Commission stated at page 59, "We recognize that incentives encourage cost reductions in some instances. However, we believe that a utility employee, especially at the executive level, should perform at an optimum level without additional compensation. Ratepayers should not be burdened with additional costs for expected levels of service." This treatment is not challenged by the utilities.

Idaho 2007: (PUC, Terri Carlock, Accounting Section Supervisor, 208-334-0356) As general policy, Idaho does not allow into rates the costs associated with profits and earnings performance, but does allow a portion of plans that benefit the ratepayer through improved customer service, etc. Executive's incentive compensation plans are evaluated using the same criteria and are not often allowed. See Idaho Power Company Rate Case IPC-E-05-28 Corrected Motion for Approval of Stipulation 3/1/06, 6e, p. 4; Idaho Power Company IPC-05-28 Order No. 30035, p. 4/10.

Idaho 2009: (PUC, Terri Carlock, Accounting Section Supervisor, 208-334-0356) The Commission's basic policy for evaluating incentive compensation plans involves determining who benefits, the customer or the company. This treatment has been refined (in the recent Idaho Power Company general rate case) for plans which benefit the customer but require a financial trigger (e.g. must meet a certain dividend level) to be paid. For these plans the Commission reduced the percentage allowed in rates. The Commission also now does not include any executive compensation in rates. The Commission's focus on customer benefit is reflected in the direct testimony of Staff witness, Leckie, and in the final order for the recent IPC General Rate Case IPC-E-08-10. For earlier examples of the basic policy, see Idaho Power Company Rate Case IPC-E-05-28 Corrected Motion for Approval of Stipulation 3/1/06, 6c, p. 4; Idaho Power Company IPC-05-28 Order No. 30035, p. 4/10 (attached '07).

Idaho 2011: (PUC, Terri Carlock, Utility Division Deputy Administrator, Accounting Section Supervisor, 208-334-0356) Treatment of incentive compensation remains unchanged in Idaho. Ms. Carlock summarizes the Idaho Public Utility Commission treatment as follows, "For Idaho utility companies, the short answer is that incentives that are based on targets that provide customer benefits, i.e. customer service, reliability, O&M budgets, safety etc., are included in rates. Incentives that are based on targets that provide shareholder value are excluded." Executive plans typically fall into the second category and are excluded. More specifically: Idaho Power has an Executive Incentive Plan that is

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETT's 1st RFI,
Attachment MEG 1-3(c)
Page 8 of 22

separate from the Annual Employee Incentive Plan, and it is excluded from rates. Avista has one plan Incentive Plan that has different targets based on different criteria. Executives participate in this plan, but because executives have a different set of targets, only the targets associated with customer service and reliability are included in rates. Pacificorp Incentive Plan, each individual employee has their own set of goals and targets in order to achieve an incentive payment, and those targets are different for executives. Executive incentives have not requested for rate recovery.

Idaho 2015: (PUC, Terri Carlock, Utility Division Deputy Administrator, Accounting Section Supervisor, 208-334-0356) Idaho's treatment of incentives has not changed - most is disallowed. To be included in rates a plan must benefit ratepayers. Plans based on measures which benefit shareholders, such as increased earnings, are excluded. This treatment is the same for all plans including those for executives. There are no recent orders on point, but the three rate case scheduled this year are expected to reflect this treatment.

Idaho 2018: (PUC, Terri Carlock, Utility Division Administrator, Accounting Section Supervisor, 208-334-0356) There has been no change to the treatment of incentives in Idaho. The Commission allows in rates those incentives that benefit customers and exclude those based on financial measures that benefit shareholders. This treatment is the same for incentives at all levels, but executive plans receive closer scrutiny as it is often harder to find customer benefit in these plans. There are no recent orders on point and no changes are anticipated in the near future.

Iowa 2007: (Utilities Board, Wes Birchman, 515-281-5979) Incentive compensation is not an issue here as they do not do many rate cases.

Iowa 2009: (Utilities Board, Wes Birchman, 515-281-5979, Dan Fritz, 515-281-5451) Mid-America has an incentive compensation plan but hasn't filed a rate case in many years. For the state's other utilities, it has been a long time since they have filed a rate case or had a rate increase. The standing treatment is to look at incentive compensation plans on a case by case basis and evaluate whether or not they are reasonable and prudently incurred.

Iowa 2011: (Utilities Board, Dan Fritz, 515-725-7316) Both of the investor owned utilities in Iowa are under rate freezes until 2013 and 2014. There has been no change in the treatment of utility incentive compensation.

Iowa 2015: (Utilities Board, Dan Fritz, 515-725-7316) Incentive Compensation has not been an issue in Iowa. There are no specific treatments in place and the Commission will review the merits and prudence of a proposed plan on a case by case basis. There are no recent orders on point, and no treatment changes are anticipated.

Iowa 2018: (Utilities Board, Dan Fritz, 515-725-7316) There have been no changes in the treatment of Incentive Compensation. There are no specific treatments in place and the issues is handled on a case by case basis. There are no recent orders on point.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 9 of 22

Kansas 2007: (Corporation Commission, Utilities Div., Larry Holloway, Chief of Engineering Operations, 785-271-3222) On a case by case basis staff opposes plans without ratepayer benefit or are lacking objective measures.

Kansas 2009: (Corporation Commission, Utilities Division, Bob Glass, Chief of Economic Section, 785-271-3175) The Commission views incentive compensation plans that are based solely on financial performance as benefitting only the shareholders and not something that belongs in rates. In the last 5 to 10 years the Commission has not seen incentive compensation as a major issue and tends not to challenge plans that are reasonable by industry standards as long as they are based on a multidimensional set of criteria involving both reliability and financial goals. In Kansas, the Commission also funds the Citizens Utility Rate Board (CURB), an advocacy group for the residential and commercial ratepayers. CURB argues that any portion of a plan that relates to financial measures should be disallowed.

Kansas 2011: (Corporation Commission, Utilities Division, Jeff McClanahan, Chief of Accounting and Financial Analysis, 785-271-3212) The Kansas Commission recently has changed its stance on incentive compensation. In the litigated 2010 KCP&L rate case (10-KCPE-415-RTS) the Commission stated that relying on peer group statistics "can result in a continuing upward spiral [instead] the Commission must examine the elements of incentive packages, and the behavior they incent". For executive incentive programs, the Commission disallowed 100% of payments based on purely financial measures and 50% for plans using a balance of financial and operational measures. The Commission allowed in rates the non-executive annual incentive program after Staff found that KCP&L had modified the measures used in this plan and, "eliminated all focus on profitability or earning [which might incent employee behavior] detrimental to customers."

Kansas 2015: (Corporation Commission, Utilities Division, Justin Grady, Chief of Accounting and Financial Analysis, 785-271-3164) The Kansas Corporation Commission continues to rely on the treatment it established in the litigated 2010 KCPL rate case (10KCPE-415-RTS) and followed in the 2012 case, 12-KCPE-764-RTS. For officer level incentives, plans are evaluated to determine whether the objectives of the plan are geared to improve the company's financial results or to improve operational objectives. The financially-based portion is borne by the shareholders and the portion supporting operational goals is allowed in rates. The exception to this evaluation process are any time-based restricted stock plans which vest solely on the passage of time. Such plans are seen as being neutral and therefore split 50:50 between shareholders and ratepayers. Non-officer incentive compensation plans for workers are allowed in rates. This treatment is becoming established as the Commission's general policy⁵ and has guided Staff's position on these issues in both of its current rate cases for KCPL (15-KCPE-116-RTS) and Westar (15-WSEE-115-RTS). However, the consumer advocacy branch, Citizens' Utility Ratepayer Board (CURB) has consistently recommended the more aggressive position of applying the same financial/operational criteria to non-officer plans as well. In the current KCPL rate case the company has voluntarily excluded 50% of the restricted stock plans, 100% of the performance-based plans, 50% of the short-term plans which are based on an earnings-per-share qualifier. The Company has also removed the earnings-per-share portion of their Value Rewards Plan which is open to all employees. This was seen as an attempt to find the middle ground between staff's position and that of CURB. In this case CURB did not make an adjustment challenging the company's proposed recovery.

⁵ In the 2012 KCPL rate case (12-KCPE-764-RTS) this treatment resulted in a 50:50 split of the short-term plan. For the long-term incentives, the Commission excluded 50% of the time-based restricted stock portion of the plan, and 100% of the portion based on stockholder return.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 10 of 22

Kansas 2018: (Corporation Commission, Utilities Division, Kristina Luke-Fry, Managing Auditor, 785-271-3171) Kansas still allows all employee-level incentives in rates. For management and executive incentives, the Commission only allows in rates those incentives related to safety and other operational objectives, and excludes incentives related to financial measures such as earnings per share. This treatment is based on prior orders, especially 10KCPE-415-RTS and 12-KCPE-764-RTS. This treatment has the result of excluding the majority of executive incentives due to the fact that they are usually tied to company earnings. There are no recent orders on point, and no changes in treatment are anticipated.

Louisiana 2009: (PSC, Brian McManus, Economist, Division of Economics and Rates Analysis, 225-342-2720; Bill Barta, Henderson Ridge consulting, 770-205-8828) Louisiana has traditionally held that the incentive compensation plan for upper level management and officers are excluded from rates, while those of lower level of managers and employees are included in rates. The criteria originally used to arrive at this treatment considered whether the goals of each plan more directly benefitted ratepayers or shareholders. Recently, an ALJ's report in the Entergy Louisiana Formula Rate Plan 2006 (Docket # U - 20925, 2006 Evaluation Period) has recommended excluding all stock option plans for all levels. The Commission has also recently chastised Entergy for excessive bonuses.

Louisiana 2011: (PSC, Brian McManus, Economist, Division of Economics and Rates Analysis, 225-342-2720) The Louisiana Commission does not allow Executive Bonuses to be recovered from ratepayers. This is especially true for the larger utilities. For incentive awards to employees that are not Executives, the Commission may allow recovery. For some of the smaller utilities the Commission may allow bonuses to management if the whole compensation package is reasonable. There has not been any docketed proceeding since 2006.

Louisiana 2015: (PSC, Brian McManus, Economist, Division of Economics and Rates Analysis, 225-342-2720) No response from Louisiana at this time.

Louisiana 2018: (PSC, Robin Pendergrass, Audit Director, (225-342-1457) The treatment of incentive compensation in Louisiana has not changed. The LPSC does not allow Executive incentive compensation plans to be recovered from ratepayers. Lower level management and employee incentive awards may be included, assuming they are reasonable. To determine reasonableness, the Commission looks at the amount of the incentive in relation to 1) the size of the company 2) the job duties of the employee and 3) the average hours worked during the test year. The Commission also looks at who benefits, ratepayers or shareholders. This is a general auditing policy utilized in all LPSC rate reviews. Recent dockets which followed this treatment, where disallowances were made using these criteria, include Dockets U-34667 and U-34669, which are the 2017 annual RSP filings for CenterPoint Arkla and CenterPoint Entex, respectively. Both dockets show disallowances for competitive and incentive pay and other executive compensation.

Minnesota 2007: (PUC, Louis Sickmann, Financial Analyst, 651-201-2243) Minnesota looks at incentive packages on a case by case basis. Since the 1991 decision to deny incentive compensation costs in the

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETL's 1st RFI,
Attachment MEG 1-3(c)
Page 11 of 22

ESP Electric Rate Case, the Commission has begun to allow inclusion of employee plans. It capped these plans (at 15% of base salary) out of a concern that larger percentages tied the employees too closely to shareholders' interests. Current caps are at 25% of base salaries. The portions of these plans that are allowed into rates are tracked and must be returned to ratepayers if they are not paid to employees (as has been the case when earnings per share targets were not met). Executive plans are largely not allowed. See General Rate Case E002/GR/05/1428, September 1, 2006.

Minnesota 2009: (PUC, Louis Sickmann, Financial Analyst, 651-201-2243) Minnesota's treatment of incentive compensation has changed recently. One influence that has allowed this change is that Minnesota's utilities have move away from asking the Commission to include in rates those plans that are tied strictly to company earnings. Currently plans which are based on earnings and don't include goals that benefit the ratepayer are limited to long-term management plans which are excluded from rates. The two new parts of Minnesota's treatment of plans that do benefit ratepayers are, first, to cap those plans at 25% of base salary and , second, to refund all portions of the plan which are not actually paid out to employees.

Minnesota 2011: (PUC, Jerry Dasinger, Financial Analyst, 651-201-2235) Minnesota continues to distinguish between incentive plans tied to financial triggers (such as a threshold ROE), and plans tied to criteria benefitting the ratepayer. Plans based on goals which benefit ratepayers are allowed in rates, but their costs are still capped at 25% of base salaries. This cap is being challenged by arguments to lower it to 15%. This general policy is demonstrated in recent orders in the Minnesota Power and Ottertail rate cases: E002/GR-09-1151 and E002/GR-10-239 respectively.

Minnesota 2015: (PUC, Sundra Bender, Financial Analyst, 651-201-2247) Minnesota continues to distinguish between incentive plans tied to financial triggers (such as a threshold ROE) and plans tied to criteria benefitting the ratepayer. Plans based on goals which benefit ratepayers are generally allowed in rates, but their costs are frequently capped at a percentage of base salaries such as 15% or 25% (the percentage can vary from case to case). Utilities are usually required to return to ratepayers any portion of incentive pay that was allowed into rates and is not subsequently paid out to employees. Executive and long-term IC measures are frequently more closely aligned with shareholder interests and thus are not usually allowed in rates. An example of the Commission's treatment is set forth in General Rate Case G-008/GR-13-316, June 9, 2014 Findings of Fact, Conclusions, and Order at pages 13-17 and page 58.

Minnesota 2018: (PUC, Sundra Bender, Financial Analyst, 651-201-2247) Minnesota continues to determine allowable incentive compensation on a case by case basis. Annual incentive plan compensation is usually allowed in rates, but the costs are frequently capped at a percentage of base salaries, for example: 15%, 20%, or 25% (the percentage can vary from case to case). Utilities are usually required to return to ratepayers any portion of incentive pay that was allowed into rates and is not subsequently paid out to employees. Long-term incentive compensation measures are not usually allowed in rates. A recent case example is the Minnesota Power General Rate Case E-015/GR-16-664, March 12, 2018 Findings of Fact, Conclusions, and Order at pages 31-34 and 110.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETT's 1st RFI,
Attachment MEG 1-3(c)
Page 12 of 22

Missouri 2007: (PSC, Utility Services Div., Bob Schallenberg, 573-751-7162) On a case by case basis, Missouri includes plans that benefit consumers and otherwise disallows incentive compensation plans. The same criteria are used for executive plan – few are allowed. See recent Kansas City Power and Light and Empire Electric District orders on the Commission's website.

Missouri 2009: (PSC, Utility Services Div., Bob Schallenberg, Manager, 573-751-7162) In Missouri, value to the customer is the general policy that informs their treatment of incentive compensation plans. A plan's goals must be beneficial to the customer or the plan is not allowed in rates. Plans based on rate of return, for example, are not allowed. This treatment also applies to executive plans which generally have less chance of being allowed in rates. See Ameren ER 2009-0318.

Missouri 2011: (PSC, Utility Services Div., Bob Schallenberg, Manager, 573-751-7162) Missouri's treatment remains consistent in disallowing incentives tied to goals benefitting primarily the stockholders (e.g. tied to earnings per share) while allowing plans with customer-specific goals (e.g. safety). However, even these plans must be reasonable to be allowed. For example, in the last Missouri American rate case (WR-2010-0131), not only were plans based on financial goals disallowed, but incentive payments based on customer satisfaction were disallowed due to the unreasonably small sample size used to establish a positive rating (a phone survey of 927 of roughly 450,000 customers). The Commission also removed incentive payments tied to lobbying and charitable activity. In the most recent case processed, the Ameren UE rate case, the company didn't seek even short-term incentive compensation tied to earnings demonstrating that staff's practice is becoming accepted by the companies. In that case, the Commission did allow some payments related to service, but only the amounts actually paid, not those accrued. All incentive compensation adjustment were made not only to expense charges, but to construction charges as well.

Missouri 2015: (PSC, Utility Services Div., Bob Schallenberg, Manager, 573-751-7162) Incentives are addressed on a case by case basis. Plans are analyzed to determine who benefits. Plans that can show a direct benefit to customers (and that are found to be prudent) are allowed in rates. Plans that benefit shareholders are excluded. This treatment does not typically result in a different outcome (being allowed or disallowed in rates) for short-term versus long-term plans. Executive plans are less often allowed in rates due to ties to rate of return. There are no recent orders which demonstrate this treatment.

Missouri 2018: (PSC, Commission Staff Div., Mark Oligschlaeger, Manager, Auditing Department, 573-751-7443) Missouri's treatment for incentives, generally, is to allow rate recovery for those plans with goals that, if achieved, would lead to improved or more economical service to customers and with the goals known to employees in advance so as to be a real motivational tool. Incentives tied to financial goals such as earnings per share, net income or stock price growth are not allowed. These criteria are used to evaluate all incentive plans, short or long-term, as well as those for executives. This treatment is not proscribed by statute or rule, but has been the longstanding policy of the Commission, and was followed in the recent Spire Missouri rate cases, Case Nos. GR-2017-0215 and GR-2017-0216. There have been no recent changes to this treatment, and none are anticipated in the near future.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 13 of 22

Montana 2007: (PSC, Eric Eck, Chief, Revenue Requirement Bureau, 406-444-6183) Montana has no rule or policy concerning incentive compensation and no recent cases on point. They deal with the issue on a case by case basis.

Montana 2009: (PSC, Eric Eck, Chief, Revenue Requirement Bureau, 406-444-6183) Montana has no rules or recent cases dealing with incentive compensation.

Montana 2011: (PSC, Eric Eck, Chief, Revenue Requirement Bureau, 406-444-6183) Montana has no changes in its treatment of incentive compensation. It has no specific treatment directive and considers the issue on a case by case basis. In a recent NorthWestern Energy rate case, as part of a stipulation agreement, the company took a portion of its incentive compensation out of rates, but reserved the right to propose that it be included in a later filing.

Montana 2015: (PSC, Eric Eck, Chief, Revenue Requirement Bureau, 406-444-6183) Due to the low volume of litigated cases in the past 10 to 15 years in Montana, incentive compensation has not been an important issue before the Commission. This Commission is focused more on significant investment in infrastructure, such as the ongoing distribution project by NorthWestern. Incentive compensation is considered the responsibility of the utility's Board of Directors and is generally not challenged. However, the Commission tends to become more concerned by incentive plans that are tilted toward financial performance instead of operational goals. Short and long-term plans are handled similarly, and the Commission prefers plans that are broadly available to employees.

Montana 2018: (PSC, Gary Duncan, Revenue Requirements and Audits, 406-444-6189) Incentive compensation has not been a contested issue in the three rate cases in Montana since the 2015 survey. All utility compensation, including incentives, is recovered through rates in Montana.

Nebraska 2007: (Public Service Commission, Laura Demman, Director and Legal Counsel, Natural Gas Department, NPSC, 402-471-3101) Nebraska is unique in that all of its electric demand is supplied by consumer-owned power districts, cooperatives, and municipalities. The Natural Gas Department of the NPSC regulates the rates and service quality of investor-owned natural gas public utilities pursuant to the state's Natural Gas Regulation Act passed in 2003. Nebraska does not have rules regarding incentive compensation and considers the issue on a case by case basis. In a 2007 rate case, NG-0041, with Aquila (later acquired by Black Hills), the Commission allowed in rates only the actual amounts paid, an adjustment to provide for a known and measurable expense. This order further adjusted the company's application by half, directing that cost should follow benefit and stating, "However, the Commission further finds that the nature of the objectives appear to benefit both ratepayers and shareholders and it would be improper for the ratepayers to bear the full cost of this benefit." In a subsequent Black Hills case, NG-0061, the Commission again ordered a "known and measurable" adjustment. In NG-0060 the Commission disallowed the entire amount requested by SourceGas for cash incentive bonuses citing insufficient information on the record to adequately describe the bonuses.

Nebraska 2015: (Public Service Commission, Angela Melton, Director and Legal Counsel, Natural Gas Department, NPSC, 402-471-3101) There has been no change in the treatment of incentive compensation as a ratemaking issue in Nebraska.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 14 of 22

Nebraska 2018: (Public Service Commission, Nichole Mulcahy, Director and Legal Counsel, Natural Gas Department, 402-471-0234) There have been no changes in Nebraska's handling of incentives. The Commission still practices the policy that cost should follow benefit and allows in rates the actual amount paid on incentive plans that benefit ratepayers. This treatment is the same for all incentive plans. There are no recent orders on point and no changes are anticipated.⁶

Nevada: 100% of long-term incentives are disallowed. Short-term incentives are divided between financial and operational goals with 100% of financially based plans disallowed. In Nevada Power's 2008 rate case, the Commission excluded 100% of the long-term plan for executives and key employees of the company, based on the fact that these costs mainly benefit shareholders. In Nevada Power's 2011 rate case, Docket No. 11-06006, the Company voluntarily excluded the costs of its long-term plan.

Nevada 2015: No change in Nevada's treatment.

Nevada 2018: (Nevada response provided by Mark Garrett) No change in Nevada's treatment.

New Mexico 2007: (Public Regulation Commission, Charles Gunter, Accounting Bureau, 505-827-6940) The technical staff takes the general position that the portion of an incentive program that is based on increasing share value should be paid for by shareholders. Any that benefits ratepayers and makes up part of a reasonable base pay should be part of rates. Plans are evaluated on a case by case basis. Charles Gunter writes, "Staff took the position that 20 percent of Public Service Company of New Mexico's Results Based Pay costs were properly allocable to customers, because 20 percent of the maximum possible RBP award was tied to achieving goals pertaining to customer satisfaction, cost control, safety, reliability and operations efficiency. By comparison, 80 percent of the maximum possible award was tied to achieving corporate financial goals and EPS targets. See pages 11-13 of Andria Delling's (505-827-6962) testimony in 06-00210-UT."

New Mexico 2009: (Public Regulation Commission, Charles Gunter, Accounting Bureau Chief, Economist, 505-827-6975) The Commission does not favor incentive compensation plans that are tied to financial goals and tends to allow in rates those based on operational goals. This standard is applied to plans at all levels of utility employees and tends to knock out a greater proportion of executive plans. See Docket 07-00077-UT

New Mexico 2011: (Public Regulation Commission, Charles Gunter, Accounting Bureau Chief, Economist, 505-827-6977) There has been no change in NMPRC's treatment of incentive compensation except that due to the current economic conditions, Staff is even more opposed to incentive compensation and wage increases.

⁶ In a 2007 rate case, NG-0041, the Commission disallowed 50%, directing that cost should follow benefit and stating, "However, the Commission further finds that the nature of the objectives appear to benefit both ratepayers and shareholders and it would be improper for the ratepayers to bear the full cost of this benefit."

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETT's 1st RFI,
Attachment MEG 1-3(c)
Page 15 of 22

New Mexico 2015: (Public Regulation Commission, Charles Gunter, Accounting Bureau Chief, Economist, 505-827-6977) Incentive programs tied to measures that benefit ratepayers (such as operation and safety) are allowed in rates. Programs tied to the financial performance of the utility (e.g. stock price or ROE) are not allowed in rates. Executive incentive plans receive more scrutiny as they are more likely to have financial measures. They can also be challenged if the overall percentage is out of line. One major utility in New Mexico no longer includes the compensation of its top 5 executives in rate applications. The treatment of incentive compensation as a ratemaking issue has become generally established by practice and plans are considered on a case by case basis. There are no recent orders setting out this treatment, and no changes are anticipated.

New Mexico 2018: (Public Regulation Commission, Charles Gunter, Accounting Bureau Chief, Economist, 505-827-6977)) There has been no major change in the treatment of incentive compensation since the last update. The Commission considers this issue on a case by case basis and generally allows recovery through rates of those incentives that are reasonable in amount and tied to metrics that have benefit for customers, such as operational excellence and safety. Incentives that are financially based, for example those tied to stock price performance or earnings, are not allowed in rates. This treatment was followed in the Southwest Public Service Company's 2017 rate case, 17-00255-UT. The Commission described this treatment as its longstanding practice in the order in Public Service Company of New Mexico's rate case, 15-00261-UT. Some utilities in New Mexico no longer seek recovery of management incentives in rates.

North Dakota 2007: (PSC, Mike Diller, Director of Accounting, 701-328-4079) In North Dakota, the general policy is the portion that relates to earnings of the shareholders is disallowed and the rest is included.

North Dakota 2009: (PSC, Mike Diller, Director of Accounting, 701-328-4079) Historically, North Dakota has followed the general policy that the portion of incentive compensation that relates to shareholder earnings is disallowed and the rest is included. The issue has recently been reframed. In the last rate case (Xcel/Northern States Power Company) the Commission followed the "Minnesota Solution": they capped incentive compensation for employees at 15% of base pay (company had asked for 25%). Any incentive compensation over the 15% level was not included in rates. Executive incentive compensation was not allowed in rates, and was not sought by the company to be in rates in this case nor in the last Xcel case (see p. 2, of McDaniel, Direct – attached; and p. 46, C of A.E. Heuer).

North Dakota 2011: (PSC, Mike Diller, Director of Accounting, 701-328-4079) The Commission has not accepted the financial verses performance, or shareholder verses ratepayer perspective on incentive compensation as recently argued by witness George Mathai. The Commission chose to look at the overall compensation and judge whether or not it was reasonable compared to the market. Other than Xcel, the utilities in North Dakota (Otter Tail and MDU) are highly diversified now (with mostly unregulated operations, e.g. MDU 90%). This allows utility executives to draw on the unregulated components for their compensation.

North Dakota 2015: (PSC, Mike Diller, Director of Accounting, 701-328-4079) Incentive compensation is dealt with on a case by case basis and there is no standard policy for the issue. The Commission has in the past limited incentives to 15% of salary. The general approach is to determine if

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 16 of 22

incentive compensation is reasonable and fair based on market analysis. There have been no recent orders on point, and no changes in treatment are anticipated.

North Dakota 2018: (PSC, Patrick Fahn, Director of Public Utilities Division, 701-328-4079) Incentives are treated on a case by case basis, but the Commission's general policy is to allow in rates incentive compensation that is tied to customer benefit and to disallow incentives tied to company financials and corporate benefit. This treatment is the same for all types of incentive plans. Executive incentives are always requested by the utilities but are historically not allowed in rates unless shown that the incentive compensation is tied to customer benefits. The current 2017 Otter Tail rate case, PU-17-398, is expected to follow this treatment. No changes to this treatment are anticipated in the near future.

Oklahoma 2007: The Commission excludes incentive payments tied to financial performance. From a practical perspective this means that all executive stock plans are excluded and some portion of the annual cash plan for all employees. Since the Commission has not been able to determine in recent years the precise portion of the annual plans tied to financial measures, the Commission has excluded 50% of the expense. All of the executive stock plan costs are routinely excluded. (See Commission orders in AEP-PSO Cause No. PUD 06-285; OG&E Cause No. PUD 05-151; and ONG Cause No. PUD 04-610).

Oklahoma 2009: The Commission's policy toward incentive compensation is unchanged in 2009. In AEP-PSO's recently decided rate case (final order issued 1-14-09), the Commission exclude all of the long-term incentive compensation plans and 50% of the annual plans. (See Final Order No. 464437 in AEP-PSO Cause No. 08-144).

Oklahoma 2011: The Commission's policy toward incentive compensation is unchanged in 2011.

Oklahoma 2015: No change in Oklahoma's treatment.

Oklahoma 2018: (Oklahoma response provided by Mark Garrett) No change in Oklahoma's treatment.

Oregon 2007: (PUC, Judy Johnson, Mgr. Rates and Tariffs, 503-378-6636) Oregon PUC's general policy is that all officer bonuses are 100% deleted from rates. For employee incentives plans, the part that is based on customer service is allowed and the part that is based on increased return is disallowed, resulting in 50-50 to 70-30 splits between shareholders and ratepayers. Utilities have begun to adopt this structure in their IC plans.

Oregon 2009: (PUC, Judy Johnson, Mgr. Rates and Tariffs, 503-378-6636) No substantial change in treatment. The Commission's general policy is to evaluate plans based on whether they benefit the customers or the company. Customer-based plans (involving reliability, response speed, etc) are called "merit" plans. Company-based plans (which track increases to the bottom line, ROE, etc) are called "performance" plans. 50% of the cost of merit plans is disallowed from rates and 75% of performance plans are disallowed from rates. 100% of officer bonuses are disallowed. A recent order reflecting this policy is found in Docket UE 197, Order No. 09-020 (attached).

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 17 of 22

Oregon 2011: (PUC, Judy Johnson, Mgr. Rates and Tariffs, 503-378-6636) No change in treatment. Still categorize "merit" or "performance" plans and disallow from rates 50% and 75% respectively. 100% of officer bonuses are disallowed.

Oregon 2015: (PUC, Judy Johnson, Mgr. Rates and Tariffs, 503-378-6636) The Commission's general policy is based on the idea that customers should not have to pay for incentive compensation based on financial goals such as rate of return. This treatment typically results in 50% to 75% of short-term incentives being allowed in rates. However, in the case of a plan with 3 of its 4 goals based on financial measures, 75% of the cost of that plan would be excluded from rates. The only long-term plans are for officers, and 100% of officer incentives are excluded from rates. This treatment is not expected to change.

Oregon 2018: (PUC, John Crider, Administrator - Energy Rates, Finance and Audits Division, 503-373-1536) The treatment of incentives in Oregon has not changed. Short-term, non-officer incentive plans are seen as having benefit to ratepayers; 50% of merit-based plans are disallowed from rates and 75% of plans related to company performance are disallowed⁷. Long-term officer and executive plans are seen as benefitting shareholders and are 100% disallowed⁸. This is a long-standing policy based on previous orders.

South Dakota 2007: (PUC, Dave Jacobson, Analyst, 605-773-3201) The criteria used here is incentives that are triggered by shareholder returns are disallowed.

South Dakota 2009: (PUC, Dave Jacobson, Analyst, 605-773-3201) The Commission's general policy is to disallow the portion of incentive plans that are based strictly on returns. Current treatment also includes disallowing both executive and non-executive management incentive compensation. Also, there are no incentive compensation plans for union employees. Rate cases settle here so there are no orders on point.

South Dakota 2011: (PUC, Dave Jacobson, Analyst, 605-773-3201) South Dakota PUC is opposed to including in rates incentive compensation plans based on the company's financial performance. In Docket No. EL 08-030 the settlement excluded bonuses related to "stockholder-benefitting financial goals." The settlement in Xcel rate case Docket No. EL09-009 removed payments based on financial performance indicators. In the settlement agreement signed July 7, 2010 in the Black Hills Power rate case Docket No. EL09-018 the Staff Memorandum states, "The settlement removes financial based incentive payments that were included in the capitalized labor costs for plant. Shareholders are the overwhelming beneficiaries of incentive plans that promote the financial performance of the Company and therefore should be responsible for the cost of such compensation." Jacobson noted that several utilities have whole incentive programs that hinge on whether or not the company earns a certain return. These financial prerequisites cause the whole plans to be excluded from rates. The same treatment is used for management and employee plans.

⁷ See Orders: 76-601 p.13, 77-125 p. 10, 87-406 pp. 42-43

⁸ See Orders: 99-033 p. 62 and 97-171 pp.74-76

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 18 of 22

South Dakota 2015: (PUC, Eric Paulson, Utility Analyst, 605-773-6347) South Dakota considers incentive compensation on a case by case basis. Their general policy is to evaluate each plan and disallow the portion based on financial performance indicators. This treatment is set forth in the recent case EL14-026 in which the order specifically excluded the amount "tied to the Company's financial results." This policy is not anticipated to change.

South Dakota 2018: (PUC, Eric Paulson, Utility Analyst, 605-773-6347) There has been no change in South Dakota's treatment of incentives since 2015. Incentives with stockholder-benefiting financial goals are excluded from rates. This treatment is the same for incentive plans at all levels. Recent orders (issued 6/15/16) which follow this treatment are found in dockets EL 15-024 and NG 15-005. This treatment is not expected to change.

Texas: The Public Utility Commission regulates the electric utilities in Texas. The PUC's general rule is that incentive payments designed to increase the financial position of the utility are excluded. For example, in PUC Docket No. 28840, the Commission disallowed sixty-six percent (66%) of AEP-Texas Central's test year incentive payments in the amount of \$4.2 million. This was the portion of the utility's incentive payments that was based on financial performance measures. (See Application of AEP Texas Central Company for Authority to Change Rates, Docket No. 28840; SOAH Docket No. 473-04-1033, Final Order, August 15, 2005; ALJ's Proposal for Decision at page 113 in PUC Docket No. 28840, SOAH Docket No. 473-04-1033, issued July 1, 2004. The PFD with respect to the treatment of incentive compensation was adopted by the Commission in its Final Order.)

Gas utilities are regulated by the Railroad Commission. The treatment of the RRC is consistent; financial incentives are out of rates and customer-related incentives are allowed in. Examples of this treatment can be found in Atmos 9670 Order and Order on Rehearing, Texas Gas Service Company 9988 Final Order, Centerpoint 9902 Final Order and Centerpoint 10106 Final Order. In Docket 9670 both the executive and employee plans for Atmos Mid-Tex were found not to be just and reasonable because they, "advanced the interest of shareholders, and [are] driven by Company earnings." None of the costs of these programs were allowed in rates. In Docket 9988 the RRC found 100% of long-term and 90% of short-term incentives expense was "unreasonable" because it was related to the financial performance of ONEOK Inc. 10% of the short-term plan was allowed in rates because it was based on safety metrics.

Texas 2015: (PUC, Larry Reed, Senior Fuel Analyst, 512-936-7357) No response from Texas PUC at this time. A recent example of the Texas commission's well established policy of excluding financially based incentives is set forth in 2011 rate case of Entergy Texas Inc. (PUC Docket No. 39896). In PUC Docket No. 40295, Entergy's application for rate case expense in the 39896 case, the Commission also disallowed the amount of rate-case expenses related to financially-based incentive compensation. The 40295 Order reads at page 2:

The Commission affirms the proposal for decision regarding the need to reduce Entergy's recoverable expenses due to an unreasonable position pursued by Entergy in the rate case and also affirms the use of the "issue-specific reduction approach" to determine how to calculate an appropriate reduction in rate-case expenses when the utility takes positions that are in conflict with Commission precedent.

Specifically, the Commission agrees with the ALJ that reductions should be made to Entergy's recoverable rate-case expenses for Entergy

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 19 of 22

attempting to recover financially-based incentive compensation in base rates. The Commission has repeatedly ruled that a utility cannot recover the cost of financially-based incentive compensation because financial measures are of more immediate benefit to shareholders and financial measures are not necessary or reasonable to provide utility services.⁹ The Commission concludes that it should follow its well-established policy here.

However, the ALJ did not include all of the impacts attendant to the disallowance for incentive compensation.¹⁰ To calculate the amount of the reduction in rate-case expenses related to financially-based incentive compensation, the Commission starts with Entergy's initial rate-case expense request, reduced by \$208,494 in disallowances made by the ALJ and affirmed by the Commission. The Commission further reduces this amount by an additional \$522,244.66, which is the amount of rate-case expenses related to financially-based incentive compensation using the issue-specific reduction approach.

Texas 2015: (Railroad Commission, Mark Evarts, Director, Market Oversight and Safety Services Division, 512-427-9057) No response from Texas RRC at this time.

Texas 2018: (PUC, Anna Givens, Director, Financial Review, 512-936-7462) The longstanding policy of the Commission is to exclude from rates all financially-based incentives. Incentives based on operational goals may be included in rates. Long-term incentives are typically financially based and are excluded. Executive incentives receive the same treatment. This treatment is not proscribed by statute or rule, but has been the consistent policy of the Commission since 2005 when it issued the Final Order in Docket No. 28840. Recent orders in litigated cases that set forth this treatment include SWEPCO rate cases Docket Nos. 40443 and 46449, and the SPS rate case Docket No. 43695. One recent refinement to the treatment of this issue in Texas is that for plans that are otherwise based on acceptable operational metrics but are paid only if a financial goal is met, only 50% of the portion that is subject to the financially-based proviso is allowed in rates. This split occurs before consideration of the individual components of the compensation plan goals and 100% of incentive plan goals tied directly to financial goals are further excluded. In the SWEPCO proceeding, Docket No. 46449, the Company's EPS funding goal was weighted 75%, so the disallowance was 50% of the 75% weighting and resulted in an adjustment that was less than 50% of the total plan that was otherwise based upon acceptable operational metrics. This refinement reflects that a plan has a financially-based funding trigger and requires employees to meet metrics that include financial goals, in addition to performance-

⁹ *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 28840, Proposal for Decision at 92-97, Findings of Fact Nos. 164-170, Order at 35 (Aug. 15, 2005); *Application of AEP Texas Central Company for Authority to Change Rates*, Docket No. 33309, Proposal for Decision at 116-121, Finding of Fact No. 82, Order on Rehearing at 12 (March 4, 2008); *Application of Oncor Electric Delivery Company, LLC, for Authority to Change Rates*, Docket No. 35717, Proposal for Decision at 96-100, Finding of Fact No. 93, Order on Rehearing at 22 (Nov. 30, 2009); and *Application of CenterPoint Electric Delivery Company, LLC, for Authority to Change Rates*, Docket No. 38339, Proposal for Decision at 66-67, Findings of Fact Nos. 81-83, Order on Rehearing at 22 (June 23, 2011).

¹⁰ Docket No. 39896, Order on Rehearing at 5-6, 7-8 (Nov. 2, 2012).

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 20 of 22

related goals. There are no imminent changes in the PUC's treatment, however there are some efforts to have it codified as a Commission Rule.

Texas 2018: (Railroad Commission, Mark Brock, Utility Analyst, 512-463-7018) The Commission handles incentive compensation on a case by case basis.

(Texas Railroad Commission Update) A statute (H.B. 1767) passed in 2019 for gas utilities, but not electric utilities, establishes a rebuttable presumption that short-term incentives for utility employees are reasonable and necessary if the utility can show they are market-based. The statute does not include financial-based incentives for named executives. Also, it is not clear if the statute covers incentives allocated from corporate or from a service company.

Utah 2007: (PSC, Jim Logan, Commission Utility Economist (PSC), 801-530-6716) The general policy in Utah is the portion of the plan based on rate payer benefit, such as service quality, is allowed and the portion that relates to earning and rate of return are disallowed. See US West Communications Rate Case Docket 95-049-05; Missouri Corp. Rate Case Docket 97-035-01 Order signed 3/4/99, pp. 10-12.

Utah 2009: (PSC, Jim Logan PhD, Commission Utility Economist (PSC), 801-530-6707) The Commission's general policy (backed by orders) is to allow in rates the parts of a plan that are tied to ratepayer benefit and disallow the parts tied to financial goals. Executive incentive compensation is excluded from rates. The recent final order in 07-035-93 follows this general policy. See also US West Communications Rate Case Docket 95-049-05; Missouri Corp. Rate Case Docket 97-035-01 Order signed 3/4/99, pp. 10-12.

Utah 2011: (PSC, Carol Revelt, Energy and Electric Economist, 801-530-6711) There have been no changes in Utah's treatment of incentive compensation. The Commission's general policy is to allow in rates the parts of a plan that are tied to ratepayer benefit and disallow the parts tied to financial goals.

Utah 2015: (PSC, Carol Revelt, Energy and Electric Economist, 801-530-6711) The Commission's general policy is to allow in rates the parts of a plan that are tied to ratepayer benefit and disallow the parts tied to financial goals. This policy was followed in the PacifiCorp General Rate Case Docket No. 07-035-93, pp. 61-62; the US West Communications Rate Case Docket 95-049-05; and Missouri Corp. Rate Case Docket 97-035-01, pp. 10-12. There are no recent orders on point and no changes in policy are anticipated.

Utah 2018: (PSC, Carol Revelt, Energy and Electric Economist, 801-530-6711) The Commission considers incentive compensation on a case by case basis and whether the incentive compensation program is reasonable. Historically the general policy has been to allow in rates the parts of a plan that are tied to ratepayer benefit and disallow the parts tied to financial goals. There have been no recent commission decisions addressing this issue.

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 21 of 22

Washington 2007: (WUTC, Roland Martin, staff, 360-664-1304) Treated on a case by case basis. Typically allow the component tied to efficiency increases and disallow the part that results from increasing the bottom line. See Docket 061546, Pacific Power and Light, Order

Washington 2009: (WUTC, Roland Martin, staff, 360-664-1304) No change in treatment. Evaluated on a case by case basis, this treatment allows the parts of plans tied to measures such as reliability and customer satisfaction and disallows the parts tied to financial measures and the bottom line.

Washington 2011: (WUTC, Roland Martin, Regulatory Analyst, 360-664-1304) No change in treatment. Still addressed on case by case basis, allowing in rates those incentives that are tied to operational efficiency or other measures which benefit ratepayers, and disallowing incentives based on return on earnings or other measures that benefit the shareholders. Recommended website: www.utc.wa.gov.

Washington 2015: (WUTC, Roland Martin, Regulatory Analyst, 360-664-1304) No change in treatment. Still addressed on case by case basis, allowing in rates those incentives that are tied to operational efficiency or other measures which benefit ratepayers, and disallowing incentives based on return on earnings or other measures that benefit the shareholders.

Washington 2018: (WUTC, Amy Andrews, Senior Policy Advisor, 360-664-1304) Washington's treatment of incentive compensation is largely based on previous cases, but remains a case-by-case basis. Generally, Short-term incentives are allowed in rates with Long-term incentives being excluded. There are no recent orders that set forth this treatment.

Wyoming 2007: (PSC, Marci Norby, Senior Rate Analyst, 307-777-5720) Wyoming considers incentive compensation on a case by case basis. The general approach is to determine if the program is reasonable.

Wyoming 2009: (PSC, Marci Norby, Senior Rate Analyst, 307-777-5720) Executive incentive compensation plans are all excluded from rates. Employee incentive compensation plan are evaluated on a case by case basis. Criteria for evaluation include that optional portions of the plans are based on performance goals not financial measures, and the total compensation is compared to a market standard. Currently most employee plans meet these criteria and are allowed in rates.

Wyoming 2011: (PSC, Marci Norby, Senior Rate Analyst, 307-777-5720) Policy here remains the same, distinguishing between employee programs that benefit the ratepayer or the stockholders and requiring the benefitting party to pay. Executive plans are excluded.

Wyoming 2015: (PSC, Marci Norby, Senior Rate Analyst, 307-777-5720) Incentive compensation has not been an issue in some time here. There are no governing regulations, statutes or general policies and the issue would be decided on a case by case basis after considering the history and goals of a program in the context of a rate case. There are no recent orders on point, and no changes in treatment are anticipated.

Wyoming 2018: (PSC, Marci Norby, Senior Rate Analyst, 307-777-5720) There has been no change in the way that incentives are treated in Wyoming. Incentives are generally evaluated on a case by case basis to determine if they are just and reasonable, giving attention to plan goals

SOAH DOCKET NO. 473-22-04394
PUC DOCKET NO. 53719

Cities' Responses to ETI's 1st RFI,
Attachment MEG 1-3(c)
Page 22 of 22

and historical context. There are no governing regulations, statutes or general policies in place, and there are no recent orders on point. No changes in treatment are anticipated.