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**SOAH DOCKET NO. 473-23-12836  
PUC DOCKET NO. 54674**

<b>APPLICATION OF ENTERGY TEXAS, INC. TO REVISE FIXED FUEL FACTOR (SCHEDULE FF) IN COMPLIANCE WITH ORDER IN DOCKET NO. 32915</b>	<b>§ § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**THE JOINT EXCEPTIONS OF COMMISSION STAFF AND THE OFFICE OF PUBLIC  
UTILITY COUNSEL'S TO THE PROPOSAL FOR DECISION**

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**October 6, 2023**

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**THE JOINT EXCEPTIONS OF COMMISSION STAFF AND THE OFFICE OF PUBLIC  
UTILITY COUNSEL TO THE PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Staff (Staff) of the Public Utility Commission of Texas (Commission) and the Office of Public Utility Counsel (OPUC), (collectively, the Joint Parties) have reviewed the Proposal for Decision (PFD) filed on September 15, 2023, by the State Office of Administrative Hearings (SOAH).<sup>1</sup> On September 19, 2023, the Office of Policy and Docket Management (OPDM) filed a memorandum establishing a deadline of October 6, 2023, for parties to file exceptions to the PFD.<sup>2</sup> Therefore these Joint Exceptions are timely filed.

The Joint Parties are grateful for the consideration by the SOAH Administrative Law Judge (ALJ) of the many nuanced issues in this proceeding. Nevertheless, the Joint Parties except to numerous findings in the PFD. Broadly, the Joint Parties except to the recommendation that Entergy Texas, Inc.'s (ETI) Application to revise its fixed fuel factor complies with Public Utility Regulatory Act (PURA) § 36.203 and 16 Texas Administrative Code (TAC) § 25.237(c)(2)(B). The Joint Parties recommend that the Stipulations forming the basis for ETI's filing<sup>3</sup> should *not* be treated as a waiver of Commission rules. Even if the Commission concludes the Application is not subject to 16 TAC § 25.237(c)(2)(B) due to the Final Order in Docket No. 40654, the Stipulation in that proceeding should not control the outcome of this proceeding. To the extent the Commission finds that Docket No. 40654 is controlling, ETI failed to comply with

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<sup>1</sup> Proposal for Decision (Sept. 15, 2023) (PFD).

<sup>2</sup> Exception and Replies Memorandum (Sept. 19, 2023).

<sup>3</sup> See *Application of Entergy Gulf States, Inc. to Revise Fuel Factor Formula*, Docket No. 32915, Order (Sept. 8, 2006). (32915 Order); See also *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No. 32915*, Docket No. 40654, Order (Mar. 28, 2013). (40654 Order).

the order at the time it filed the application. Adopting this PFD would result in ETI's customers paying for ETI's cost of fuel before ETI provides those customers with the fundamental underlying data and calculations to support that cost. ETI's most recent Application to revise its fixed fuel factor illustrates that ETI has failed to comply with 16 TAC § 25.237(c)(2)(B).<sup>4</sup>

## II. ARGUMENT

### A. ETI's Application is in violation of 16 TAC § 25.237(c)(2)(B), and the Order in Docket No. 40654 does not effectuate a waiver thereof.

The Joint Parties except to the PFD's finding that the stipulated biennial line loss process approved in the Final Order in Docket No. 40654 supersedes the requirement to use a Commission-approved line loss factor as set forth in the Order in Docket No. 32915 and 16 TAC § 25.237(c)(2)(B). ETI, like all investor-owned utilities outside of the Electric Reliability Council of Texas (ERCOT), is bound by the requirements of 16 TAC § 25.237(c)(2)(B) that proposed fuel factors are to utilize a "commission-approved adjustment to account for line losses corresponding to the voltage at which the electric service is provided." ETI's Application in this docket failed to comport with this requirement at the time of filing. As the PFD notes, "[A]t the time the Application was filed, the loss study had not been approved by the Commission."<sup>5</sup> The Application was filed on February 22, 2023,<sup>6</sup> and the Commission approved the loss factors set out in the Application over six months later on August 24, 2023 in

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<sup>4</sup> See *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No. 32915 and 40654*, Docket No. 55390, Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Aug. 21, 2023); See also *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No. 32915 and 40654*, Docket No. 55390, Office of Public Utility Counsel's Initial Brief at 10 (Sept. 13, 2023) (noting, "While ETI's Application offers its proposed line loss multipliers by voltage levels, its Application is conspicuously absent of: (1) a fully-functioning copy of the loss study based upon the calendar year ended December 31, 2022; (2) fully-functioning copies of all workpapers used in the development of the December 31, 2022 loss study; and (3) fully-functioning copies of all calculations used by ETI to develop the loss multipliers shown on Attachment A, page 1 to the Application."); See also *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No. 32915 and 40654*, Docket No. 55390, Response of Entergy Texas, Inc. to OPUC's First Request for Information: OPUC 1:1 Through 2 (Sept. 27, 2023).

<sup>5</sup> PFD at 22.

<sup>6</sup> Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No. 32915, Motion for Expedited Referral to SOAH, and Expedited Approval of Revised Interim Fixed Fuel Factor on an Interim Basis (Feb. 22, 2023). (Application).

the Final Order in Docket No. 53719.<sup>7</sup> The PFD seems to suggest that ETI's loss factors are approved even though the Commission has not reviewed or approved them in a prior proceeding, as required by 16 TAC § 25.237(c)(2)(B), and results in treating ETI favorably to other non-ERCOT investor-owned utilities. The PFD states:

In this instance, the stipulated terms are prospective in nature and require ETI to perform a biennial line loss study in December of every even-numbered year, beginning with 2012, and to incorporate the results of that study in its interim fuel factor revisions following the completion of said studies. Thus, the stipulated biennial line loss process in Order 40654 is a Commission-approved adjustment to the proposed [Fixed Fuel] Factors and ETI appropriately complied with the Commission's directive to use that adjustment in this case.<sup>8</sup>

OPUC was not a party to Docket Nos. 32915 and 40654, and the Joint Parties assert that the PFD's approval of ETI's fuel factor formula is flawed because ETI contends the formula includes a component that mandates Commission-approval of the line loss factors presented in ETI's Applications, even though those line losses that have not actually been reviewed and approved by the Commission. 16 TAC § 25.237(c)(2) requires ETI to obtain Commission approval of its loss study's line loss adjustment *in advance of* the fixed fuel factor filing incorporating the respective loss study results in order to ensure that its "proposed fuel factors utilize a *commission-approved adjustment to account for line losses* corresponding to the voltage at which the electric service is provided."<sup>9</sup> All other non-ERCOT investor owned utilities must adhere to the requirements of 16 TAC § 25.237(c)(2),<sup>10</sup> and ETI should not be subject to an exception.

The Joint Parties disagree with the PFD's contention that the "stipulated biennial line loss process in Order 40654 is a Commission-approved adjustment to the proposed [Fixed Fuel]

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<sup>7</sup> *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, Order at 29 (Aug. 24, 2023).

<sup>8</sup> PFD at 16.

<sup>9</sup> 16 Texas Administrative Code (TAC) § 25.237(c)(2)(b) (Emphasis added).

<sup>10</sup> See *Application of El Paso Electric Company to Change Rates, to Reconcile Fuel Costs, to Establish Formula-based Fuel Factors, and to Establish an Energy Efficiency Cost Recovery Factor*, Docket No. 37690 (Jul. 30, 2010), *Application of Southwestern Electric Power Company for Authority to Revise its Fixed Fuel Factors and Implement an Interim Fuel Surcharge*, Docket No. 44701 (Jul. 30, 2015), and *Application of Southwestern Public Service Company for Authority to Revise its Fuel Factor Formulas; Change its Fuel Factors; and for Related Relief*, Docket No. 51625 (Nov. 19, 2021).

Factors.”<sup>11</sup> The “adjustment” contemplated by 16 TAC § 25.237(c)(2) is a mathematical adjustment, not a procedural adjustment.

**B. Adoption of the PFD would bind the Commission to stipulated terms that ETI has routinely violated.**

The PFD relies on the terms of the Stipulation set out in Docket No. 40654 as the Commission’s implicit approval of any loss factors set out in any fixed fuel factor Application filed by ETI, while also acknowledging that ETI’s Application in this docket *does not* meet the terms of the Stipulation. As the SOAH ALJ:

A Commission Order approving the terms of a settlement unquestionably results in a directive by the Commission for the parties to adhere to the approved settlement terms and produce results consistent therewith. Otherwise, such an order would serve no purpose. Therefore, while Order 40654 does not result in the Commission’s endorsement or approval of any principle or methodology that underlies the Stipulation, it does require ETI to adhere to the Stipulation’s terms as recited in the Order.<sup>12</sup>

However, ETI did not adhere to the Stipulation’s terms, and as such, the docket is not indicative of the “results consistent therewith.” Given that the Stipulation in Docket No. 40654 reads, “[t]he Signatories agree that ETI will perform a line loss study in December of every even-numbered year, beginning with December 2012, and incorporate the results of that study in the interim fuel factor revision following the completion of the study,”<sup>13</sup> it follows that the loss study filed in the instant Application should have been performed based on the period ending December 2020. It was not.

The PFD states, “ETI’s loss studies were delayed and therefore the loss study used in this case included six months of data from 2020 and six months from 2021.”<sup>14</sup> As such, ETI’s utilization in this fuel factor proceeding of the line loss multipliers from a line loss study based on the annual period ending June 30, 2021, is improper and is actually inconsistent with the

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<sup>11</sup> PFD at 16.

<sup>12</sup> *Id.*

<sup>13</sup> Docket No. 40654, Final Order at 2.

<sup>14</sup> See PFD at 17 (mistakenly identifying ETI’s witness Scott Celino as a Staff witness).

provisions of the Stipulation in Docket No. 40654. Therefore, at the time of its initial filing, the proposed line loss factors utilized in ETI's current application were improper *even as it relates to ETI's own interpretation* of the Order in Docket No. 40654.

Furthermore, a review of ETI's previous fuel factor revision filings does not indicate that ETI performed a line loss study in December of every even-numbered year and incorporated the results of that study in its interim fuel factor revision filing that followed the completion of the respective study.<sup>15</sup> Accordingly, the Joint Parties contend that ETI has waived any exception established by the Final Order in Docket No. 40654. Adoption of the PFD would bind the Commission to a Stipulation that ETI has repeatedly violated.

The Joint Parties also note that the Stipulation set out in the Final Order in Docket No. 40654 states, "The Signatories further agree that the adjustments to the fuel factor contemplated by this agreement *do not affect the methodology for updating ETI's fuel factor formula set forth in Docket No. 32915.*"<sup>16</sup> This means that ETI remains bound by the methodology set out in the Order in Docket No. 32915 that "the fixed fuel factors implemented . . . will be adjusted for voltage levels at which service is provided *utilizing the loss multipliers most recently approved by the Commission.*"<sup>17</sup> The PFD suggests ETI is bound by some, but not all, terms of the Stipulation.

The Final Order in Docket No. 40654 states: "[E]ntry of an Order consistent with the Stipulation does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Stipulation [and] should not be regarded as binding precedent

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<sup>15</sup> See *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No 32915*, Docket No. 41767 (Oct. 7, 2013); See also: *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No 32915*, Docket No. 42253 (Apr. 9, 2014); *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No 32915*, Docket No. 42772 (Oct. 17, 2014); *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No 32915*, Docket No. 44466 (Mar. 27, 2015); *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Final Order in Docket No 32915*, Docket No. 50568 (Apr. 24, 2020); *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Final Order in Docket No 32915*, Docket No. 51196 (Nov. 16, 2020); *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No 32915*, Docket No. 51815 (Apr. 12, 2021); *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No 32915*, Docket No. 52452 (Oct. 12, 2021); and *Application of Entergy Texas, Inc. to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Order in Docket No 32915*, Docket No. 53255 (Jun. 3, 2022).

<sup>16</sup> Docket No 40654, Final Order at 3 (Emphasis added).

<sup>17</sup> Docket No. 32915, Final Order at 3 (Emphasis added).



as to the appropriateness of any principle that may underlie the Stipulation.” Adoption of the PFD would ignore this conclusion of law.

ETI’s use of Commission-approved line loss adjustments in this Application at the time of filing need not undermine the Stipulation in Docket 40654. ETI may “incorporate the results of that study in the interim fuel factor revision following the completion of the study,”<sup>18</sup> provided the incorporated study used a period ending in December of an even-numbered year, and the results maintain the most recent “commission-approved adjustment to account for line losses corresponding to the voltage at which the electric service is provided.”<sup>19</sup> This methodology complies with the Stipulations in Docket Nos. 40654 and 32915 and 16 TAC § 25.237(c)(2)(B).

### **III. PROPOSED FINDINGS OF FACT**

The Joint Parties except to the proposed Findings of Fact to the extent they are inconsistent with these Joint Exceptions. The Joint Parties respectfully requests that the findings of Fact be conformed as necessary to grant the Joint Exceptions and urge adoption of the findings of fact previously proposed by OPUC.<sup>20</sup>

### **IV. PROPOSED CONCLUSIONS OF LAW**

The Joint Parties except to the proposed conclusions of laws to the extent they are inconsistent with these Joint Exceptions. The Joint Parties respectfully requests that the conclusions of law be conformed as necessary to grant the Joint Exceptions and urge adoption of the conclusions of law previously proposed by OPUC.<sup>21</sup>

### **V. PROPOSED ORDERING PARAGRAPHS**

The Joint Parties except to the proposed Ordering Paragraphs to the extent they are inconsistent with these Joint Exceptions. The Joint Parties respectfully requests that the ordering

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<sup>18</sup> Docket No. 40654, Stipulation and Settlement Agreement at 2.

<sup>19</sup> *Id.*

<sup>20</sup> Office of Public Utility Counsel’s Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs (Jul. 19, 2023).

<sup>21</sup> *Id.*

paragraphs be conformed as necessary to grant the Joint Exceptions and urge adoption of the ordering paragraphs previously proposed by OPUC.<sup>22</sup>

## **VI. CONCLUSION**

The Joint Parties respectfully requests that the Commission grant their Exceptions to the PFD, as set forth above, and require ETI's fixed fuel factor Applications to comply with the requirements in 16 TAC § 25.237(c)(2)(B). The Joint Parties further request to be granted any other relief to which they may be entitled.

Date: October 6, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
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<sup>22</sup> *Id.*

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**CERTIFICATE OF SERVICE**  
SOAH DOCKET NO. 473-23-12836  
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I certify that, unless otherwise Ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 6, 2023, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Justin Swearingen  
Justin Swearingen