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PROJECT NO. 56517

**REVIEW OF ENERGY
EFFICIENCY PLANNING**

**§ PUBLIC UTILITY COMMISSION
§
§ OF TEXAS**

**REP COALITION'S RESPONSE TO STAFF'S
QUESTIONS FOR COMMENT**

The Alliance for Retail Markets (“ARM”) and the Texas Energy Association for Marketers (“TEAM”) (collectively, the “REP Coalition”) timely files these responses to the Public Utility Commission of Texas (“Commission” or “PUCT”) Staff’s Questions for Comment filed in the above-styled proceeding on April 23, 2024. The REP Coalition appreciates the opportunity to provide comments on these important issues to help ensure that competitive energy services are not inadvertently undermined by any changes to Transmission and Distribution Utility (“TDU”) energy efficiency (“EE”) programs that may result from this project.

I. INTRODUCTION AND OVERVIEW

TDU EE programs are established in PURA¹ and implemented through a series of complicated Commission rules.² The costs of TDU EE programs are recovered through the Energy Efficiency Cost Recovery Factor (“EECRF”), a regulated rate that is paid by all residential and small/medium commercial customers.³ The term Demand Response (“DR”) is increasingly conflated with demand reduction through EE in discussions about how to decrease peak demand or increase demand flexibility on the electric grid.⁴ However, both EE and DR are first and

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (“PURA”); *see* PURA §§ 39.905 *et seq.*

² 16 Texas Administrative Code (“TAC”) §§ 25.181-183.

³ Industrial customers taking electric service at distribution voltage can “opt out” of these charges pursuant to 16 TAC § 25.181(u) by submitting notice to the applicable utility. The notice is limited to metered point of delivery of the industrial process taking place at the consuming facilities.

⁴ It should be noted that neither PURA, nor the Commission’s rules specifically define “demand response”; however, the latter defines “demand-side management,” which is a similar concept, as “[a]ctivities that affect the magnitude or timing of customer electrical usage, or both.” *See* 16 TAC § 25.5(28). “Demand response” as used in these comments focuses on automated, dispatchable reductions of demand, which is arguably of most value to the issues facing ERCOT today.

foremost competitive energy services under Commission rule⁵ that are and should be offered in the competitive market. The Commission's rules both reinforce and caveat this distinction by acknowledging the separation of the TDU's administration of EE programs from the prohibited competitive energy services.⁶ Therefore, to the extent EE and DR will also continue to be incentivized through TDU EE programs, it is important to consider how those incentives can be aligned and co-optimized with the organic wholesale market incentives that arise from ERCOT's competitive retail market.

Any financial incentives from TDU EE programs for residential or small commercial DR initiatives should be viewed as a way to augment retail electric providers' ("REPs") economic motivation to offer DR products to those customer segments, not a substitute for those offers. Although PURA § 39.905, *Goals for Energy Efficiency*, contains the words "demand response," they are used in connection with a requirement for TDUs to use their best efforts to work with REPs to deliver DR programs; that is, the comprehensive regulatory scheme embodied in PURA and implemented through the Commission's rules clearly identifies the REP as the natural entity that delivers those programs to customers, not the TDU or other parties.

In considering initiatives to expand the growth of DR in the areas of the state open to retail competition, three fundamental principles should govern:

- (1) DR is a competitive energy service;
- (2) REPs should be the entities that provide DR service to customers; and
- (3) to the extent TDU EE programs remain involved in EE and DR, they should be focused on structural improvements and incentive payments (e.g., AC tune-ups, heat pump installations, funding for smart thermostat deployment, demand-related cost incentives through REP dispatch), which can make DR more effective, rather than through load control programs directed by TDUs.

These principles are expanded upon throughout these comments.

⁵ Specifically, 16 TAC § 25.341(3)(B) includes "the provision of energy efficiency services, the control of dispatchable load management services, and other load-management services" in the non-exclusive list of examples of competitive energy services.

⁶ See, e.g., 16 TAC § 25.181(a)(1) (stating that "The purpose of this section is to ensure that electric utilities administer energy efficiency incentive programs in a market-neutral, nondiscriminatory manner and do not offer competitive services, except as permitted in § 25.343 of this title (relating to Competitive Energy Services) or this section"); see also *id.* § 25.343(c) ("An electric utility shall not provide competitive energy services, except for the administration of energy efficiency programs as specifically provided elsewhere in this chapter, and except as provided in subsections (f) and (g) of this section.").

II. RESPONSES TO QUESTIONS

(1) Should certain hours of the day be considered more valuable within the design of standard offer or targeted market-transformation programs offered by utilities? Please discuss your rationale in detail.

No. Incorporating a fixed-temporal element (e.g., set time periods such as 5pm-7pm) to TDU load management programs raises multiple issues, including potential selection of time periods that could quickly become obsolete as the ERCOT system composition and load usage patterns continue to evolve over time. Instead, there are two different sets of dynamic intervals—i.e., 4CP intervals and periods with high energy prices driven by high demand/low supply conditions—that might inform time-differentiated valuation for standard offer or market transformation programs.

First, transmission costs in ERCOT are (and have long been) allocated based on peak demand. This is the standard practice in North America, including all the restructured eastern Regional Transmission Organizations (“RTOs”), with only a handful of limited exceptions. In ERCOT specifically, the four fifteen-minute intervals that register the highest peak load during each of the months of June, July, August, and September are used as the determinants to allocate the entirety of transmission costs in ERCOT, a methodology known as four coincident peak cost allocation (“4CP”). However, neither residential customers in the competitive retail market of ERCOT nor their REPs face direct incentives to reduce demand during these times,⁷ even though other customer classes do face an incentive and this incentive has historically been a large, if not the largest, driver of DR in the ERCOT market according to ERCOT’s annual DR reports.⁸

Second, DR programs also tend to dispatch around periods of high energy pricing, which in recent years are correlated to peak net load (when load, less intermittent renewable production, is highest). These hours are when REPs often have the greatest motivation to help decrease

⁷ TDU delivery charges to REPs vary by customer class, with residential customers billed on a volumetric cents per kilowatt hour (“kWh”) consumed, with a set per month customer charge regardless of consumption level or time of consumption. This billing method provides simplicity for residential customers and ensures that all customers within that class are billed the same amount of TDU charges based on their usage. By contrast, many TDU delivery charges to larger commercial and industrial (“C&I”) customers are billed on a 4CP basis, which provides a financial incentive for those customers to reduce their demand during 4CP intervals.

⁸ See e.g. Overview of Demand Response ERCOT at 7-8 (April 2023), available at: https://www.ercot.com/files/docs/2023/05/19/ERCOT_Demand_Response_Summary_Spring_2023-update.pdf.

customer consumption to avoid higher wholesale energy prices and ancillary service cost allocation. Additionally, peak net load periods are those that increasingly pose the biggest challenges to the system as it is when generation reserves are at their lowest relative to load and ERCOT conservation calls are most likely.⁹

TDU financial incentives for either gross peak (transmission) or net peak (energy) load reduction should be additive to, but not in conflict with, any other financial value the REP is able to obtain via the economic dispatch of DR. Further, as noted above, those TDU incentives should be focused primarily either on structural improvements, such as customer adoption of new technologies that enable competitive DR, or on financial incentives to REPs to encourage customer participation in REP demand reduction programs during those 4CP or other intervals that are not already incentivized through the ERCOT wholesale market. This should enable REPs to expand and leverage their DR offerings by helping expand the use cases for investment recovery and, in turn, make such offers more attractive to customers.

Realizing that REPs already have an incentive to reduce their cost to serve their retail customers, it is nevertheless the case that certain fixed costs associated with technologies' adoption are unlikely to be repaid by any given year's energy savings. For instance, a retail customer who receives a smart thermostat as an incentive under a one-year REP contract may yield little or no economic energy savings net of program operation costs if the weather is mild. Additionally, if the customer leaves the REP before their contract is over, the device investment may become stranded if interoperability restrictions preclude other REPs from incorporating the brand or device model into their DR programs. These risks and "walled garden" market inefficiencies tend to reduce customer access to DR programs, so TDU EE programs can provide value by encouraging the adoption of "open-access" DR technologies.

(2) What metrics should be used to track the success of low-income and hard-to-reach programs under 16 Texas Administrative Code (TAC) § 25.181?

The REP Coalition does not have comments to this question at this time.

(3) Avoided cost of capacity and energy.

- a. Existing 16 TAC § 25.181(d)(2) calculates the avoided cost of capacity. Should this calculation be revised in a future energy efficiency rulemaking? If so, how? Please discuss your rationale in detail.**

⁹ Peak net load, which increasingly does not occur at the same time as peak load, causes the highest loading on the non-renewable resources in ERCOT.

- b. Existing 16 TAC § 25.181(d)(3) calculates the avoided cost of energy. Should this calculation be revised in a future energy efficiency rulemaking? If so, how? Please discuss your rationale in detail.**

The REP Coalition does not have comments to these questions at this time.

- (4) Existing 16 TAC § 25.182 calculates utility performance bonuses. Should this calculation be revised in a future energy efficiency rulemaking? If so, how? Please discuss your rationale in detail.**

While the REP Coalition is not recommending specific changes to the bonus calculation for TDUs set out in the rule, to the extent that REPs will be leaned on to achieve demand reduction goals in ERCOT, a credit (funded through TDU Energy Efficiency dollars) to REPs that are able to achieve those goals may be appropriate to serve a similar “bonus” purpose for REPs as the existing bonus serves for TDUs.

- (5) Existing 16 TAC §25.181 addresses energy savings and demand reduction goals. Should these existing goals be revised in a future energy efficiency rulemaking? If so, how? Please discuss your rationale in detail.**

Energy savings and demand reduction goals should be evaluated more holistically than simply looking at the savings achieved through programs funded by regulated TDU EE dollars, and that may warrant revisiting the framework in the existing rule when the rule is next opened. Notably, advocacy pieces that rank Texas unfavorably when it comes to EE only count regulated dollars.¹⁰ To truly capture the success of EE in Texas, load reductions that have been achieved through the competitive market must be recognized.

For example, ERCOT performs an annual survey of DR programs in the competitive market. In addition to reporting significant participation by load in ancillary services programs and Emergency Response Service, ERCOT’s latest report demonstrates that REP customers are also participating in numerous DR programs offered by REPs.¹¹ The chart below reflects the number of customers (by electric service identifier (“ESIID”)) that participated in various REP programs between 2014 and 2023, and that total has ranged from nearly 700,000 to over one million unique ESIIDs in each of those past ten years:

¹⁰ *E.g.*, American Council for an Energy-Efficient Economy (ACEEE), 2022 State Energy Efficiency Scorecard at 45 (Dec. 2022), *available at*: <https://www.aceee.org/sites/default/files/pdfs/u2206.pdf>.

¹¹ 2023 Annual Report of Demand Response in the ERCOT Region (December 2023) *available at* <https://www.ercot.com/misdownload/servlets/mirDownload?doclookupId=975814860>.

Category	REP ESIIDs Participating									
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
4CP	247	-	-	-	-	156	393	221	418	696
Block & Index	6795	9,534	14,372	20,967	27,153	47,109				
Real Time Pricing	10,701	5,621	9,806	16,339	22,905	42,080				
Indexed Real Time							104,471	395,062	76,816	45,544
Indexed Day Ahead							940	170	1,062	771
Total Indexed	17,496	15,155	24,178	37,306	50,058	89,199	105,411	395,232	77,878	46,315
Other Load Control	19,296	14,927	8,729	7,292	8,597	2,789	10,461	19,428	21,562	33,006
Other Voluntary DR	1,458	4,923	35,958	60,489	235,647	6	-	-	-	-
Peak Rebate	709,664	434,141	512,162	468,484	486,423	502,589	94,329	95,031	83,252	175,412
Time Of Use	293,314	328,628	336,365	412,493	479,559	567,507	104,094	112,799	321,121	121,539
Free Days/Hours							469,354	486,702	214,708	375,350
Total TOU/FDH							573,448	599,501	535,829	496,909
Total Unique ESIIDs	763,014	647,498	906,992	978,525	1,231,110	1,165,493	764,773	810,274	692,719	782,748

In other words, the competitive market has seen success in delivering innovative DR products to customers. In addition, the Aggregate Distributed Energy Resource (“ADER”) pilot has provided an additional avenue for REPs to engage customers in demand reduction programs. Rather than focus only on goals relating to programs funded by TDU EE dollars, the rule should focus more holistically on the DR programs that exist in the competitive market, in setting goals and evaluating success related to demand reduction programs in ERCOT. ERCOT is already collecting annual data on DR programs offered by REPs, and that data could be incorporated somehow into the setting and achievement of goals in 16 TAC § 25.181 (as well as any future programs, such as those contemplated in SB1699).

(6) In the upcoming rulemaking to implement SB 1699, what other issues should be considered? Should the existing energy efficiency rules be restructured? Please discuss your rationale in detail.

The REP Coalition filed a proposal for a Smart Thermostat Pilot Project in Project No. 38578.¹² That pilot can be used to meet the PUCT’s December 2024 deadline for adopting rules “as necessary” to facilitate the widespread deployment of smart thermostats, and the PUCT need not open a rulemaking project in the near term to implement Senate Bill (“SB”) 1699 from the 88th Legislative Session.¹³ Before rules to implement the other sections of SB 1699 are pursued (e.g.,

¹² Energy Efficiency Implementation Project Under 16 TAC § 25.181, Project No. 38578, Alliance for Retail Markets’ and Texas Energy Association for Marketers’ Proposal on a Smart Thermostat Pilot Market Transformation Program (Apr. 1, 2024).

¹³ 88th Tex. Leg., R.S., Senate Bill 1699 (effective Sept. 1, 2023), *available at*: [88\(R\) SB 1699 - Enrolled version \(texas.gov\)](#).

residential load reduction goals), and before the rule is opened to evaluate some of the ideas suggested above, the Commission should review information from the pilot. Further, REPs—and not TDUs—should be the entities that offer DR programs to customers. PURA § 39.905(a)(1) specifies that the intent of the Legislature in enacting a Goal for Energy Efficiency is that electric utilities will administer EE incentive programs in a market-neutral, nondiscriminatory manner *but will not offer underlying competitive services* (emphasis added). As stated previously, DR products are competitive services. This stated intent is consistent with the unbundling of the ERCOT market and preserves the independent functions of TDUs as the poles and wires companies and REPs as competitive market entities that engage directly with retail customers.

Additionally, as an overarching policy matter (and not necessarily related to SB 1699 implementation), REPs—and not third-party DR vendors—are best suited to facilitate load resource participation within the framework of ERCOT's competitive wholesale and retail markets. Thus, to the extent that this project re-opens the debate about which entities in the competitive market should be engaging with customers with respect to DR, the REP Coalition re-urges comments made previously¹⁴ regarding the host of policy concerns that would arise if third-party DR providers, rather than REPs, are the ones to engage with customers on that front. In competitive portions of ERCOT, REPs are the primary customer-facing entity for electric service and bear responsibility for customer usage in wholesale settlement. Further, a key design feature that has allowed the retail market to be so successful is the requirement for REPs to own the customer relationship for electric service. This simplifies the customer experience, allows competition on a level playing field, and ensures established customer protections will govern the customer/market entity relationship. Further to these concepts:

- Customer Protection: Because every customer in the areas of the state open to competition has a REP, which is an entity that is certificated and regulated by the PUCT, focusing on the REP makes sense. REPs can work with third party DR providers, and PUCT customer protection rules that currently exist will naturally apply.
- Settlement Issues: REPs are responsible for procuring power for their customers, and if the REP does not have direct access or visibility into the customers consumption/habits, that makes it increasingly difficult to forecast the appropriate

¹⁴ See *Rulemaking Regarding Demand Response in the Electric Reliability Council of Texas (ERCOT) Market*, Project No. 41061, Joint Comments of the Retail Electric Provider Group and the Texas Competitive Power Advocates (Jan. 19, 2018).

amount of power to procure for each particular time interval of service. If there are large unanticipated swings in the customer's consumption due to third party DR activity, the REP will have an even more difficult time forecasting and managing their customer load.

(7) What activities should the Energy Efficiency division prioritize over the next twelve months?

The Energy Efficiency division should prioritize defining the proper scope of TDU EE programs over the next 12 months. In doing so, we urge the Commission to view TDU compensation for load reduction as a way to augment competitive market structures, not a solution in and of itself.

The division should also ensure EE programs that are administered in the areas of the state open to retail competition are measured appropriately. In the competitive areas of the state, REPs have the relationship with customers. Therefore, to the extent a REP participates in a TDU load management program, the PUCT's evaluation, measurement, and verification ("EM&V") contractor's measurement of success of a program should be with the REP, not the end user customer, as it has been in the past through customer surveys. For example, when a REP offers a demand response program to a customer, not all of the funding for the incentives provided in the program necessarily comes from TDU EE dollars. From a customer's perspective, the source of the funding is not likely to be relevant to their decision on whether to participate because the incentive is offered by the REP. Thus, surveying those customers to ask what they thought of their utility's load management program would be confusing. Also, such surveys imply the TDU is directly engaged with customers to provide demand response, which is a competitive energy service. Such engagement would run counter to the fundamental tenets of PURA. If surveys are needed, they should be with the REP, who is effectively the TDU's "customer," rather than with the end-use customer, who has no direct relationship with the TDU.

III. CONCLUSION

The REP Coalition appreciates the opportunity to engage in these very important discussions.

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Respectfully submitted,

/s/ Catherine J. Webking* with permission

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PROJECT NO. 56517

**REVIEW OF ENERGY
EFFICIENCY PLANNING**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

REP COALITION'S EXECUTIVE SUMMARY

- Energy efficiency (“EE”) and demand response (“DR”) are competitive energy services.
- To the extent TDU EE programs remain involved in EE and DR, they should be focused on structural improvements and incentive payments (e.g., AC tune-ups, heat pump installations, funding for smart thermostat deployment, demand-related cost incentives through REP dispatch), which can make DR more effective, rather than through load control programs directed by TDUs.
- REPs should be the entity that provides DR service to residential and small commercial customers.
 - Because REPs own the customer relationship for electric service, they are best suited to facilitate load resource participation within the framework of ERCOT’s competitive wholesale and retail markets.
 - Placing the responsibility for DR programs with REPs, rather than third-party DR providers, avoids policy concerns such as the lack of customer protection rules applicable to these third-party providers.
 - REPs are responsible for procuring power for their customers, and if the REP does not have direct access or visibility into the customers consumption/habits, that makes it increasingly difficult to forecast the appropriate amount of power to procure for each particular time interval of service. If there are large unanticipated swings in the customer’s consumption due to third party DR activity, the REP will have an even more difficult time forecasting and managing their customer load.
- Rather than focusing on specific hours of the day, 4CP intervals and periods with high energy prices driven by net peak load should inform any time-differentiated valuation for standard offer or market transformation programs.
- TDU financial incentives for either gross peak (transmission) or net peak (energy) load reduction should be additive to, but not in conflict with, any other financial value the REP is able to obtain via the economic dispatch of DR.
- Energy savings and demand reduction goals should be evaluated more holistically than simply looking at the savings achieved through programs funded by regulated TDU EE dollars.
- The Commission’s rules should focus more holistically on the DR programs that exist in the competitive market, in setting goals and evaluating success related to demand reduction programs in ERCOT.

- To truly capture the success of EE programs in Texas, load reductions that have been achieved through the competitive market must be recognized.
- Section 6 of SB 1699 directed the Commission to adopt rules “as necessary” to facilitate the widespread deployment of smart thermostats. The REP Coalition’s proposal for a Smart Thermostat Pilot Project filed in Project No. 38537 can and should satisfy that rulemaking requirement and the December 2024 deadline. Any broader rulemaking to implement SB 1699 should not take place until data from the Smart Thermostat Pilot is available to inform the rulemaking.
- Over the next 12 months, the Energy Efficiency Division should prioritize defining the proper scope of TDU EE programs.
- The Energy Efficiency Division should also work to ensure that, to the extent a REP participates in a TDU load management program, any survey or other tool used to evaluate the success of that program will be completed by the REP—who is the customer of the TDU—and not the end-use retail customer.