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COMMISSION STAFF'S PETITION TO ESTABLISH A SECONDARY CAP ON PERFORMANCE BONUSES UNDER 16 TAC § 25.182(E) FOR THE 2024 PROGRAM YEAR	§ § § § §	**BEFORE THE STATE OFFICE** **OF** **ADMINISTRATIVE HEARINGS**

COMMISSION STAFF'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

The Staff of the Public Utility Commission of Texas filed a petition for a good cause exception to 16 Texas Administrative Code (TAC) § 25.182(d)(3)(A). Commission Staff requested that the Commission find good cause to impose a secondary cap on the performance bonus collected as part of energy efficiency cost recovery factors (EECRFs) for program year 2024 (PY2024). The Commission grants Commission Staff a good cause exception to 16 TAC § 25.181(d)(3)(A), to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petition

1. On October 3, 2024, Commission Staff filed a petition for a good cause exception to 16 TAC § 25.181(d)(3).
2. In its petition, Commission Staff requested that the Commission set a secondary cap on performance bonuses for Program Year 2024 (PY2024) that is set at 25% of the program spend for PY2024 that is to be applied in the corresponding EECRF proceeding for the eight applicable utilities.

Notice

3. Commission Staff provided notice of the petition by email to the Electric Reliability Council of Texas, Inc. (ERCOT), the Office of Public Utility Counsel (OPUC), all electric

utilities subject to 16 TAC § 25.181, all intervenors in an energy efficiency cost recovery docket filed in 2024, and all entities on the email distribution list in Project No. 38578.[1]

Interventions

4. In Order No. 2, filed on October 21, 2024, the Commission administrative law judge (ALJ) granted motions to intervene by Entergy Texas, Inc. (ETI) and Oncor Electric Delivery Company LLC (Oncor).
5. In Order No. 3 filed on October 28, 2024, the Commission ALJ granted motions to intervene by Texas-New Mexico Power Company (TNMP), the Steering Committee of Cities Served by Oncor (OCSC), and CenterPoint Energy Houston Electric, LLC (CenterPoint).
6. In Order No. 4 filed on November 1, 2024, the Commission ALJ granted motions to intervene by AEP Texas Inc. (AEP), Southwestern Electric Power Company (SWEPCO), the City of El Paso, the City of Houston, and OPUC.
7. In Order No. 5 filed on November 12, 2024, the Commission ALJ granted motions to intervene by El Paso Electric Company (EPE), Southwestern Public Service Company (SPS), the Sierra Club, and ERCOT.

Comments on Petition

8. On October 31, 2024, the South-central Partnership for Energy Efficiency as a Resource filed a statement of position in support of Staff's Petition, but did not intervene as a party.
9. On November 7, 2024, AEP, EPE, ETI. SWEPCO, TNMP, CenterPoint, Oncor, the Sierra Club, the City of El Paso, the City of Houston, and OCSC filed responses to Staff's Petition. The response of AEP, EPE, ETI and SWEPCO was filed collectively as the Joint Utilities.
10. On November 21, 2024, Commission Staff filed a reply to the responses filed by intervenors.

Referral to the State Office of Administrative Hearings (SOAH)

11. On November 7, 2024, the Joint Utilities requested a hearing in their response to Staff's Petition.

[1] *Energy Efficiency Implementation Project Under 16 TAC § 25.181*, Project No. 38578 (pending).

12. On November 15, 2024, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH).

13. On December 12, 2024, the Commission issued a preliminary order.

14. In SOAH Order No. 1 filed on November 18, 2024, the SOAH ALJ set a prehearing conference for December 4, 2024.

15. In SOAH Order No. 2 filed on December 4, 2024, the SOAH ALJ set a deadline of December 6, 2024 for Commission Staff to file a joint proposed procedural schedule.

16. Staff filed a joint proposed procedural schedule on December 6, 2024 that was adopted by SOAH Order No. 3 filed on December 9, 2024.

17. All parties met for a settlement conference on Mach 25, 2025. No agreement was reached.

18. The hearing on the merits was held on April 15, 2025 before SOAH ALJ Sarah Starnes. The parties agreed to waive opening statements, closing statements, and cross-examination and rely on the pre-filed testimony.

19. At the hearing, Commission Staff offered and the ALJ admitted without objection: (i) the Direct Testimony of Ramya Ramaswamy and its exhibits, and (ii) the Rebuttal Testimony of Ramya Ramaswamy.

20. At the hearing, the Joint Utilities offered and the ALJ admitted without objection: the Direct Testimony of Jay Zarnikau and its exhibits.

21. At the hearing, the OCSC offered and the ALJ admitted without objection: (i) the Direct Testimony of Karl J. Nelapa and its exhibits; and (ii) the Cross-Rebuttal Testimony of Karl J. Nalepa.

22. Post-hearing initial briefs were filed on April 22, 2025. Reply briefs were filed on April 29, 2025.

Background

23. Each calendar year, the utility, seeking to recover its reasonable costs for offering energy efficiency programs, proposes an annual program budget for the next calendar year using the EECRF process.

24. The utility program budget for a program year includes: (i) the cost of incentives to the implementer or service provider for the program year; (ii) evaluation, measurement, and verification (EM&V) costs for the program year; (iii) performance bonus awarded to the utility for the second preceding program year (*e.g.*, the PY2026 budget will contain the

PY2024 performance bonus); (iv) allocated research and development costs for the program year; and (v) administrative costs for the program year. During this process, the utility will also true up the actual expenses from the second preceding program year.

25. 16 TAC § 25.182 governs the process for a utility to timely recover the reasonable costs of providing a portfolio of cost-effective energy efficiency programs that comply with 16 TAC § 25.181. It also authorizes an incentive (a performance bonus) when the utility's demand and energy goals are exceeded, up to the cost cap established by 16 TAC § 25.182(d)(7). The performance bonus, determined in a utility's EECRF rate proceeding, is based on the utility's energy efficiency achievements for the previous program year and is equal to 1% of the net benefits for every 2% that the demand reduction goal been exceeded, with a maximum of 10% of the utility's total net benefits.

26. According to 16 TAC § 25.181(d), an energy efficiency program is cost effective if the utility's cost of the program is less than or equal to the benefits provided by the program. The benefits provided by the energy efficiency program consist of the value of the demand reductions and energy savings, measured in kilowatts and kilowatt-hours respectively, and multiplied by an avoided cost value prescribed by the Commission.

27. According to 16 TAC § 25.181(d)(3)(A), ERCOT must calculate the avoided cost of energy annually for the ERCOT region "by determining the load-weighted average of the competitive load zone settlement point prices for the peak periods covering the two previous winter and summer peaks."

28. According to 16 TAC § 25.181(d)(3)(B), utilities outside of ERCOT may petition the Commission for authorization to use an avoided cost of energy other than that based on the ERCOT calculation. Historically, the four outside-of-ERCOT utilities have used the avoided cost of energy as calculated and filed by ERCOT, for the ERCOT region, to calculate their avoided cost and program cost-effectiveness.

29. The avoided cost of energy directly affects the calculation of net benefits. The avoided cost is a representation of how much a consumer would have expected to pay absent the energy efficiency program.

30. The utility collects the performance bonus that was awarded for a program year for meeting and exceeding the demand reduction and energy savings goals under 16 TAC § 25.181.

31. Energy efficiency rules require utilities to include the performance bonus amounts awarded to a utility when evaluating the cost effectiveness of their energy efficiency programs.

Extraordinary Circumstances during the Summer of 2023

32. The summer of 2023 was extraordinarily hot[2] and set new demand records in the ERCOT region. The summer of 2023 was the second hottest summer on record, only exceeded by 2011.
33. ERCOT set new demand records 49 times during that summer, and the highest demand was 85,508 megawatts (MW) on August 10, 2023.[3] This was 7% higher than the previous peak demand record set in 2022.
34. Lower wind output also contributed to high net-load days during the summer of 2023.[4]
35. In addition, Texas has also seen an increase in load growth and population growth across all customer classes, which leads to higher consumption of energy and, therefore, higher energy prices.[5] Average load in ERCOT also grew 3.4% from 2022 to 2023.
36. ERCOT also introduced the ERCOT Contingency Reserve Service (ECRS) during the summer of 2023, which some parties claim lead to higher energy prices.
37. For PY2024, the avoided cost of energy calculated by ERCOT included the summer and winter peaks for calendar year 2022 and 2023.[6]
38. Because the avoided cost of energy calculation is based on historical ERCOT market pricing outcomes, abnormally high energy prices in either the summer or winter seasons will have a corresponding distorting effect on the calculated avoided cost of energy.
39. Utilities recover 100% of the money spent on energy efficiency programs from all participating commercial customers and all residential consumers collected as part of the

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[2] Erin Douglas and Yuriko Schumacher, Texas just recorded its second hottest summer on record, The Texas Tribune (Sep. 7, 2023) (available at https://www.texastribune.org/2023/09/07/texas-hottest-summer-2023/).

[3] Public Utility Commission of Texas, Biennial Agency Report to the 89th Texas Legislature at 11 (Jan. 13, 2025) (Agency Report) (available at https://ftp.puc.texas.gov/public/puct-info/agency/resources/reports/leg/2025_biennial_agency_report.pdf).

[4] ERCOT October 17, 2023 Board Presentation, Item 6: Summer 2023 Operational and Market Review (available at https://www.ercot.com/files/docs/2023/10/10/6 Summer 2023 Operational and Market Review v3.pdf).

[5] *Id.*

[6] *Energy Efficiency Implementation Project under 16 TAC § 25.181*, Project No. 38578, ERCOT Calculation of Avoided Cost of Energy for 2024 (AIS No. 110) (Nov. 1, 2023).

delivery charges consumers pay for each unit of energy they consume per their utility's EECRF.

40. A higher avoided cost of energy has typically resulted in higher performance bonus payments for the utilities and, therefore, results in higher costs being borne by the consumers for each unit of energy consumed.

41. A higher performance bonus could also result in the utility decreasing the actual program budget in order to stay within the cost cap established by the Commission's rule, which could have the effect of further reducing the benefits to the utility's consumers.

42. Importantly, a performance bonus awarded to the utility is a pure profit for the utility. There is no requirement for the utility to invest that bonus for the benefit of Texas consumers.

<u>Good Cause Exception</u>

43. Under 16 TAC § 25.3(b), the Commission may make exceptions to its substantive electric rules for good cause.

44. Staff contends that the high energy prices during the summer of 2023 were sufficiently abnormal to merit corrective action.

45. Commission Staff identified four factors that contributed to higher-than-usual energy prices during the summer of 2023.

46. The Joint Utilities also identified the introduction of the ERCOT Contingency Reserve Service (ECRS) as a factor that contributed to high prices during the summer of 2023.

47. The Joint Utilities allege that the high energy prices that occurred during the summer of 2023 were part of an upward trend in energy prices that is expected to continue to the foreseeable future. However, they do not contend that the summer 2023 energy prices were within normal expectations. Instead, they imply that that the concept of abnormality does not apply to values that are part of a trend. They provided no basis for this contention.

48. It is unnecessary to forecast future energy prices in order to evaluate the unusual nature of the avoided cost of energy for PY2024.

49. As shown in the table below showing the avoided cost of energy for program years 2013 through 2025, PY2024 stands out as the highest on record.

Program Year	Avoided Cost of Energy ($/MWh)
2013	$104.00
2014	$46.19
2015	$53.21
2016	$50.88
2017	$39.89
2018	$37.57
2019	$50.84
2020	$113.66
2021	$101.61
2022[7]	$85.00
2023	$91.15
2024	$166.20
2025	$114.73

50. Even if the unadjusted avoided cost of energy for PY2022, $156.48, were used for comparison, PY2024 would still be the highest on record.

51. Regardless of whether the avoided cost of energy for PY2024 proves to be part of an upward trend, it remains an outlier.

52. Because the avoided cost of energy is used to determine performance bonuses during EECRF proceedings, a higher avoided cost of energy will lead to higher performance bonuses. However, an avoided cost of energy that is based on abnormal circumstances will distort the measured effectiveness of an energy efficiency program. In other words, the performance bonus will be based on chance—rather than performance.

53. Because performance bonuses and program spend are subject to a cost cap, a higher performance bonus tends to disincentivize program spend. Utilities can either: (i) reduce program spend; (ii) reduce their performance bonus; or (iii) request a good cause exception. Given that a reduction in program spend takes the least effort and is not generally subject to review, there is an incentive to take this option even if utilities choose not to take this route for other reasons.

[7] *Commission Staff's Petition for a Good Cause Exception to 16 Texas Administrative Code § 25.181(d)(3)(A) and to set the Avoided Cost of Energy Under § 25.181(d)(3)(A) for 2022 Electric Utility Energy Efficiency Programs*, Docket No. 52871, Ordering Paragraph 2 (May 12, 2022) (setting the avoided cost of energy for PY2022 to $85 per MWh).

54. Accordingly, it is appropriate to place a secondary cap on performance bonuses for PY2024 that is equal to 25% of the program spend in the 2025 EECRF proceedings.

55. A value of 25% appropriately balances incentives for utility spending on program expenditure without overcompensating for happenstance. A significantly higher percentage would be disadvantageous to the consumer as it increases their energy cost burden while they simultaneously pay to "award" the utilities for exceeding their energy goals—while also participating in the programs that help the utilities exceed those goals. A significantly lower percentage could negatively impact the IOUs by disincentivizing their investors, thereby potentially decreasing available energy efficiency programs for consumers.

56. To the extent that a utility is subject to a secondary cap, it will remain incentivized to promote energy efficiency

II. Conclusions of Law

The Commission makes the following conclusions of law:

1. The Commission has authority over this proceeding under PURA[8] §§ 14.001, 32.001, 36.001, and 39.905.

2. The Commission processed this docket in accordance with the requirements of PURA, the Administrative Procedure Act,[9] and Commission rules.

3. Commission Staff's provision of notice of this proceeding complies with 16 TAC § 22.55.

4. Under PURA § 39.905(b), the Commission has oversight over an electric utility's energy efficiency programs, including the authority to adopt appropriate rules.

5. Under 16 TAC § 25.3(b), the Commission may make exceptions to its substantive electric rules for good cause.

6. There is good cause for the Commission to grant an exception to the requirements of 16 TAC § 25.181(d)(3)(A) and to set a secondary cap on performance bonuses for the 2024 program year, as detailed in this Order.

[8] Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

[9] Tex. Gov't Code §§ 2001.001–.903.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission grants Commission Staff's petition for a good cause exception to 16 TAC § 25.181(d)(3)(A), to the extent provided in this Order.
2. For EECRF proceedings concerning Program Year 2024, performance bonuses shall be capped at 25% of the program spend for that program year.
3. Commission Staff must file notice of this order in any pending EECRF proceedings for Program Year 2024.
4. Entry of this Order is premised on the unique circumstances that occurred during the summer of 2023 and should not be construed as endorsing this methodology for other program years.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.