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

JOINT UTILITIES' RESPONSE
TO COMMISSION STAFF'S PETITION

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

AEP Texas Inc., El Paso Electric Company, Entergy Texas, Inc., and Southwestern Electric Power Company (collectively, "Joint Utilities") respectfully submit this response to the petition filed by the Staff of the Public Utility Commission of Texas ("Commission") to establish a secondary cap on performance bonuses under 16 TAC § 25.182(e).

I. Background

In its petition, Staff requests that the Commission grant a good cause exception to the Commission's existing energy efficiency rule in order to impose a secondary cap on utility performance bonuses for the 2024 program year. The proposed secondary cap would limit utility performance bonuses to 25% of the utility's overall spending for energy efficiency for program year 2024.[1] Through this petition, Commission Staff requests the imposition of a secondary cap on performance bonuses to "mitigate the effect of unusually high prices during the summer of 2023."[2] Staff asserts that, due to "unique circumstances associated with energy prices during calendar year 2023," the 2024 avoided cost of energy, and the performance bonuses calculated based on those costs pursuant to the Commission's energy efficiency rule, "would not accurately reflect the success of the energy efficiency programs."[3] In addition to contending the calculated

[1] Staff defines "overall spending" as the sum of the actual program spend for 2024, the evaluation, measurement, and verification costs for 2024, the performance bonus earned for 2024, and the applicable rate case costs.

[2] Commission Staff's Petition at 3 (Oct. 3, 2024).

[3] Commission Staff's Petition at 1.

performance bonus for the program year will be in excess of the success achieved,[4] Staff expressed concern that greater bonuses will distort the cost/benefit analysis of the effectiveness of the programs in subsequent years. The rationale provided by the memorandum attached to Staff's petition focuses on the impact of the larger bonuses on the evaluation of the effectiveness of energy efficiency programs in subsequent years.

II. Joint Utilities' Response

Joint Utilities respectfully disagree with the asserted need and justification for a secondary cap. First, 16 TAC § 25.182(e)(3), which was adopted by the Commission after a full rulemaking process involving consideration and comment by all interested stakeholders, already includes language capping the performance bonus at 10% of the utility's total net benefits.

Second, Staff does not provide sufficient evidence in support of key contentions in its petition, such as support for its contention that there were "unique circumstances" and "anomalous" factors affecting summer 2023 energy prices. Energy prices naturally fluctuate and are widely known to be volatile. As explained in more detail below, the rule accounts for such volatility because the avoided cost of energy for program year 2024 is not an isolated data point from 2023, but includes the winter periods, December 2021 through February 2022 and December 2022 to February 2023, and the summer periods, June to September 2022 and June to September 2023.[5] Staff further contends that using the actual avoided cost in this scenario "would not accurately reflect the success of the energy efficiency programs."[6] Joint Utilities respectfully suggest that the more appropriate perspective, and the basis for the Commission-approved cost-effectiveness formula in the energy efficiency rule, is that the value of energy efficiency is tied in part to the cost of the energy that is avoided. That is why it was logical to tie the size of performance bonuses not only to the utility's costs of providing programs and those programs' effectiveness in reducing energy consumption, but also to the avoided cost of that energy. In other words, an increasing avoided cost of energy does not distort utility performance (which can still be measured independently); instead, it measures the increased value of a given *level* of

[4] *See* Commission Staff's Petition at 4-5 (suggesting that performance bonuses based on 2024 avoided costs would not reflect achievement, but rather "fortuitous happenstance.").

[5] Commission Staff's Petition at footnote 3.

[6] Commission Staff's Petition at 1.

performance. Staff also does not provide evidence to support its contention that utilities would face challenges related to future program cost-effectiveness or cost cap overages requiring a good cause exception as a direct result of utilizing the 2024 avoided cost of energy.

As noted earlier, the Commission established the avoided cost of energy calculation methodology (and its direct relation to the performance bonus) understanding its potentially volatile nature. During the rulemaking to amend the energy efficiency rules in Project No. 39674, the Commission updated the avoided cost of energy calculation to account for the transition to a nodal market design. As part of this change, the Commission mandated using "two years' worth of data [to] account for any abnormalities such as changes in wholesale prices and weather."[7] At that time, the Commission determined two years is long enough to smooth out market irregularities (which have yet to be demonstrated with regard to 2023 energy prices), acknowledging it may occur, as a result of a myriad of factors.[8] Thus, setting aside whether 2023 energy prices were, in fact anomalous, such situations were contemplated and addressed within the existing rule.

As Staff noted, the Joint Utilities have no control over this variable, whether it results in an avoided cost of energy that is lower or higher than the previous year. If the Commission believes the performance bonuses should not be directly tied to Electric Reliability Council of Texas market conditions or adjustments to the avoided cost calculation should be made, Joint Utilities will work collaboratively with Staff and other stakeholders through an appropriate process to find a reasonable, long-term approach that is not reactionary and results-oriented with respect to the performance bonus.

Staff is concerned that a larger bonus for 2024 performance resulting from energy costs in 2023 will result in a distortion of cost effectiveness when that bonus is included in the cost effectiveness calculation for a future program year. Staff's cure is to take away a portion of the bonus that the utilities otherwise earned for its 2024 performance. If the problem was that the utilities were getting an undeserved bonus, this might be an appropriate measure. However, the

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[7] Rulemaking Proceeding to Amend Energy Efficiency Rules, Project No. 39674, Order Adopting Amendments to § 25.181 as Approved at the September 28, 2012 Open Meeting at 68 (Oct. 11, 2012).

[8] While the avoided cost of energy has never been increased due to one of these potential factors, in Docket No. 52871, the Commission approved a settlement agreement that revised the avoided cost of energy for program year 2021 due to the extreme and unique circumstances associated with Winter Storm Uri. It is Joint Utilities' position this was in response to an extreme event and does not provide a basis for future adjustments to the avoided cost calculation for any future market pricing abnormalities (which have not been established in this proceeding). Moreover, Joint Utilities note that in that docket, Staff proposed to smooth the effects of an extreme weather event on the avoided cost of energy by excluding affected days, rather than arbitrarily capping all utility bonuses.

basis of Staff's suggestion that the bonus does not reflect success achieved is a second-guessing of the market. It is also counter-intuitive to proactively reduce properly calculated utility bonuses now to spare utilities the risk that a future bonus is reduced, which is uncertain and depends on facts and circumstances specific to each utility. Staff has offered no support for its contention that using the actual avoided cost of energy artificially inflates, rather than demonstrates, the value of energy efficiency programs, during summer weather conditions. The bonus is calculated based on that avoided cost as determined by the market, which should not be second guessed, and the bonus is already capped at 10% of the associated net benefits.

Joint Utilities agree with Commission Staff that the collection of performance bonuses should not require sacrificing expenditures on programs that promote energy efficiency; however, there are many potential solutions to manage this potential friction (should it occur). For example, one potential method to mitigate this issue in the future would be to remove the bonus from the customer cost caps altogether such that program spending is never impacted by earned performance bonuses. Joint Utilities respectfully suggest that such ideas be explored either in the context of a comprehensive rulemaking or on a utility specific basis as part of consideration of each utility's Energy Efficiency Cost Recovery Rider ("EECRF") proceedings.

Finally, Staff offers no explanation as to why, if a cap is appropriate, 25% is reasonable or the appropriate limit to apply to all utilities.

For all these reasons, performance bonuses calculated pursuant to the Commission-approved rule accurately reflect the success and value of the energy efficiency programs, and should not be revised in this proceeding.

III. Request for a Hearing

As detailed above, there are unresolved issues of fact in this docket, including, among others: (1) whether and the extent to which energy costs in 2023 were abnormal; (2) whether a particular year's avoided cost of energy distorts the utility's energy efficiency program performance in reducing energy consumption at a given cost; (3) whether and to what extent the avoided cost in a particular year may present challenges for a particular utility in implementing cost-effective energy efficiency programs in the future; and (4) the basis for proposing a cap of 25% and why that percentage is reasonable or appropriate for all utilities. Accordingly, while the Joint Utilities assert that any proposed modifications to the Commission's energy efficiency rule should be addressed through the rulemaking process and factual considerations specific to individual utilities should be addressed in their individual EECRF proceedings, rather than in this contested case, the Joint utilities respectfully request that any further consideration of the instant petition be addressed through a referral to the State Office of Administrative Hearings ("SOAH") for the development of an evidentiary record and a hearing on the merits.

IV. Conclusion

For the above stated reasons, Joint Utilities respectfully request that this docket be referred to SOAH for a hearing on the merits.

Respectfully submitted,

/s/ Leila Melhem

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ON BEHALF OF JOINT UTILITIES

Certificate of Service

I certify that on November 7, 2024, a true and correct copy of this document was served on all parties of record by electronic service consistent with the Commission's Second Order Suspending Rules filed on July 16, 2020 in Project No. 50664.

/s/ Leila Melhem