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COMMISISON 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**

COMMISSION STAFF'S PETITION TO ESTABLISH A SECONDARY CAP ON PERFORMANCE BONUSES UNDER 16 TAC § 25.182(e) FOR THE 2024 PROGRAM YEAR

For the reasons discussed below, Staff respectfully requests that the Public Utility Commission of Texas issue an order setting a cap on the performance bonus for program year 2024 that would be considered in the Energy Efficiency Cost Recovery Factor (EECRF) filings to be submitted in calendar year 2025.[1]

I. SUMMARY

An electric utility may receive a performance bonus based on the success of its energy efficiency program in accordance with 16 Texas Administrative Code (TAC) § 25.181(d)(3)(A). Calculation of any bonus for a given program year is based in part on the avoided costs of energy as calculated in 16 TAC § 25.182(d)(3).[2] Due to the unique circumstances associated with energy prices during calendar year 2023, Commission Staff contends that the avoided cost of energy for program year 2024, and the resulting performance bonus, would not accurately reflect the success of the energy efficiency programs.[3] Summer 2023 energy prices were anomalous; therefore, energy efficiency programs for 2024 would appear to be unduly effective in so far as the economic value of energy savings would seem higher. Moreover, these higher apparent energy savings for 2024 would affect the energy efficiency goals for subsequent years.

[1] *See* 16 Texas Administrative Code (TAC) § 25.182.

[2] Utilities inside the ERCOT region utilize a calculation provided by ERCOT. 16 TAC § 25.181(d)(3)(A). Utilities outside of the ERCOT region can petition to use ERCOT's calculation, which is their current practice. 16 TAC § 25.181(d)(3)(B).

[3] Under 16 TAC § 25.181(d)(3), the avoided cost of energy for program year 2024 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.

Assuming that energy prices during 2024 return to expected levels,[4] the effectiveness of energy efficiency programs for subsequent years will be diminished due to factors unrelated to the actual effectiveness of the energy efficiency programs. In addition to a reduction in the performance bonus for 2024, the anomalously high energy prices for summer 2023 could result in an energy efficiency program being deemed not cost-effective in future years. If an energy efficiency program is deemed not cost-effective, it could result in the termination of the program.[5] Commission Staff respectfully submits that this would be unfair to judge the effectiveness of an energy efficiency program based on external factors. To ameliorate this problem, Commission Staff proposes that performance bonuses under 16 TAC § 25.182(e)(3) be capped at 25% of the utility overall spending for the program year 2024, as described in Attachment A. Because the cost-effectiveness of an energy efficiency program for a given year treats the performance bonus from prior years as an expense, a cap on the performance bonus in a given program year will help the cost-effectiveness of energy bonuses in subsequent program years. The relief requested by this petition would apply to program year 2024 and would affect the EECRF filings in 2025.

In order for the Commission to evaluate this petition, consider intervenor responses, and issue a ruling with sufficient time for utilities to incorporate any such decision in their 2025 EECRF filings, due as early as May 1, 2025, Commission Staff recommends that this petition not be referred to the State Office of Administrative Hearings, if at all possible.

II. NOTICE

Notice in this proceeding is governed by 16 TAC § 22.55, which provides that the presiding officer may require a party to provide reasonable notice to affected persons. Commission Staff proposes that notice of this proceeding be provided via e-mail to the following entities:

- Office of Public Utility Counsel (OPUC)
- Electrical Reliability Council of Texas (ERCOT)
- All electric utilities subject to 16 TAC § 25.181
- All entities which were intervenors in an energy efficiency cost recovery docket filed in 2024 under 16 TAC § 25.182

[4] Based on initial market data, energy prices averaged $32.03/MWh during the first 8 months of 2024 compared to $60.59/MWh during the same period in 2023.

[5] *See* Public Utility Regulatory Act (PURA) § 39.905.

- The email distribution list for the Energy Efficiency Implementation Project, Project No. 38578.

Commission Staff will provide notice of this proceeding to the entities identified above contemporaneously with the filing of this motion, and will be prepared to provide any additional notice ordered by the Commission.

III. ARGUMENT

Under 16 TAC § 25.3(b), Staff respectfully requests a good cause exception to place a cap on performance bonuses pursuant to 16 TAC § 25.182(e)(3) for program year 2024. This will mitigate the effect of unusually high prices during the summer of 2023, which will have the effect of distorting the apparent effectiveness of energy efficiency programs.

Pursuant to 16 TAC § 25.182(d)(1)(A), and to the extent not included in base rates, a utility's EECRF is based on the following:

- The utility's forecasted annual energy efficiency program expenditures,
- the preceding year's over- or under-recovery including interest and municipal and utility EECRF proceeding expenses,
- any performance bonus earned under subsection (e) of this section, and
- evaluation, measurement, and verification (EM&V) contractor costs allocated to the utility by the commission for the preceding year under §25.181 of this title.

Significantly, the EECRF for a given program year is subject to a cap that adjusts in accordance with the "South urban consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics."[6]

Under 16 TAC § 25.182(e), the "performance bonus shall be based on the utility's energy efficiency achievements for the previous program year." Furthermore, the energy efficiency performance bonus is based on "net benefits", which is calculated as "the sum of total avoided cost associated with the eligible programs administered by the utility minus the sum of all program costs." The avoided cost of energy for an energy efficiency program year is calculated by ERCOT, which determines the load-weighted average of the competitive load zone settlement point prices for the two previous winter and summer peak periods.[7] This determination is filed in Project No. 38578 by November 1 of each year, and establishes the avoided cost of energy for the upcoming

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[6] 16 TAC § 25.182(d)(7).

[7] 16 TAC § 25.181(d)(3)(A).

year.[8] 16 TAC § 25.182(e) also provides that, "Program costs shall include the cost of incentives, EM&V contractor costs, any shareholder bonus awarded to the utility, and actual or allocated research and development and administrative costs, but shall not include any interest amounts applied to over- or under-recoveries." The performance bonus is further capped at 10% of the utility's net benefits.[9]

Considering the cost cap provision and the performance bonus calculation together, the performance bonus in a given program year can have a downstream effect on subsequent program years. Therefore, to stay under the cost cap for a subsequent program year, a utility may be encouraged to reduce program expenditures in the next program year to fully claim a prior year's performance bonus.[10] Given the unique circumstances of 2023, utilities have a further incentive to reduce program spending in order to maintain the apparent cost effectiveness of their energy efficiency programs. If the total avoided costs for program year 2024 are less than the total avoided costs for 2023, which Commission Staff believes is likely, there is a risk that an otherwise effective energy efficiency program will appear to lack cost effectiveness due to circumstances. In other words, a significant reduction in energy consumption could seem less successful because it happens to occur following a period of abnormally high energy costs. Commission Staff respectfully submits that the collection of performance bonuses should not require sacrificing expenditures on programs that promote energy efficiency. Therefore, it is appropriate to limit performance bonuses under these circumstances, which would ultimately be borne by customers.

A. Performance bonuses should not include fortuitous events.

According to 16 TAC § 25.182(e), "The performance bonus shall be based on the utility's energy efficiency achievements for the previous program year. The bonus calculation shall not include demand or energy savings that result from programs other than programs implemented under §25.181 of this title." Obviously, the fact that the performance bonus is based on the avoided costs of energy indicates that it was always intended to rely on factors outside a utility's control.

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[8] *Energy Efficiency Implementation Project Under 16 TAC §25.181*, Project No. 38578 (pending). On November 1, 2023, ERCOT filed the results of its avoided cost of energy calculations for 2024.

[9] 16 TAC § 25.182(e)(3).

[10] A utility might also request a good cause exception to exceed the total EECRF cap provided by 16 TAC § 25.182(d)(7). However, that could affect subsequent performance bonuses. 16 TAC § 25.182(e) ("The commission may reduce the bonus otherwise permitted under this subsection for a utility with a lower goal, higher administrative spending cap, or higher EECRF cost cap established by the commission under §25.181(c)(2) of this title.")

However, this provision does indicate that the energy efficiency performance bonus was intended to primarily reward beneficial conduct—not fortuitous happenstance. Accordingly, it is appropriate to impose a secondary cap to mitigate the effect of happenstance while providing sufficient incentives to promote energy efficiency.

B. A secondary cap on performance bonus would help mitigate the problems with minimum disruption.

In order to mitigate the problems associated with the energy prices in 2023, Commission Staff proposes a secondary cap on performance bonuses that would apply to program year 2024. The implementation of the proposed secondary cap is explained in the attached memorandum of Ramya Ramaswamy, Director of the Energy Efficiency Division. In short, Commission Staff proposes that in the upcoming 2025 EECRF filings that the performance bonus calculated under 16 TAC § 25.182(e) be subject to a secondary cap equivalent to 25% of the utility's overall spend. With the exception of this cap on the performance bonus, all other EECRF calculations would remain unchanged. Accordingly, the burden on utilities to implement this change would be minimal.

IV. PROCEDURAL SCHEDULE

Commission Staff proposes the following procedural schedule for processing of this petition:

Event	Date
Deadline for Commission Staff to file proof of notice	October 10, 2024,
Deadline for Intervention	October 31, 2024
Deadline for Intervenors to Respond to Petition	November 7, 2024
Deadline for Commission Staff to Reply to any responses	November 21, 2024

Commission proposes the above schedule to provide the Commission ample opportunity to render a decision well before the filing deadline for 2025 EECRF submissions, which is either May 1, 2025, or June 1, 2025, depending on whether the utility is an area in which customer choice is offered.[11]

[11] 16 TAC § 22.182(d)(8).

Commission Staff respectfully submits that this petition relates to policy issues and that no factual determinations are necessary to consider this petition. Accordingly, Commission Staff respectfully requests that the Commission not refer this petition to SOAH for a preliminary determination. However, to the extent that any intervenor believes that there are fact issues to be resolved, Commission Staff requests that any such proposed fact issues be identified in their responses to this petition.

V. CONCLUSION

For the reasons detailed above, Staff respectfully requests that the Commission grant a good cause exception to 16 TAC § 25.181(d)(3), and impose a secondary cap on the performance bonus for program year 2024 equivalent to 25% of the utility's overall spend.

Dated: October 3, 2024

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS
ENERGY EFFICIENCY DIVISION

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Division Director

PUBLIC UTILITY COMMISSION OF TEXAS
MARKET ANALYSIS DIVISION

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Public Utility Commission of Texas

Memorandum

TO: Floyd Walker, Market Analysis

FROM: Ramya Ramaswamy, Energy Efficiency

DATE: October 3, 2024

RE: Docket No. 57172 – *Commission Staff's Petition to Establish a Secondary Cap on Performance Bonuses under 16 TAC § 25.182(e) for the 2024 Program Year*

<u>Background</u>

The Electric Reliability Council of Texas (ERCOT) market confronted unique challenges and issues in 2023, including unprecedented load growth during record-breaking summer temperatures. Hot summer temperatures caused ERCOT to set new demand records 49 times, the highest of which was 85.7 gigawatts, 3.4% higher than 2022 peak demand and high energy prices.

Under 16 Texas Administrative Code (TAC) § 25.181(d)(3)(A), ERCOT must calculate the avoided cost of energy for energy efficiency programs by determining the load-weighted average of the competitive load zone settlement point prices for the two previous winter and summer peak periods. Hence, avoided cost of energy calculations for program year (PY) 2024 will include the price of energy for the summer of 2023. Electric utilities governed by 16 TAC 25.181 utilize the avoided cost calculated by ERCOT to calculate their performance bonus for each program year.

<u>Secondary Cap:</u>

I propose a secondary cap to calculate the performance bonus for electric utilities for PY2024 as follows.

a) Using 16 TAC § 25.181 and § 25.182, calculate utility overall spending as the sum of:

    a. Actual program spend for PY2024,

b. Evaluation, measurement and verification cost for PY2024;
c. Performance bonus earned for PY2024; and
d. Rate case costs as applicable.

b) Once performance bonus is calculated per §25.182 for PY2024, Staff proposes a secondary cap on the performance bonus calculated (by the utility for PY2024) equivalent to 25% of the utility overall spend.

<u>Reasoning:</u>

The secondary cap limits the performance bonus for the electric utility for PY2024 and allows the electric utilities to stay within their program cost caps in future years. If an energy efficiency program is deemed not cost-effective, it could result in the termination of the program and this would be unfair to judge the effectiveness of an energy efficiency program based on external factors.[1] Capping the performance bonus might help the utilities to avoid having to request good cause exceptions, because the cost-effectiveness of an energy efficiency program for a given year treats the performance bonus from prior years as an expense. A cap on the performance bonus in a given program year should help the cost-effectiveness of the programs in subsequent program years. In the past, electric utilities have requested good cause exceptions to their cost caps in order not to collect a prior year's performance bonus without reducing program spending. If granted, this type of good cause exception typically includes modifications to performance bonus calculations for that program year. The proposed cap could avoid the need for processing good cause exceptions in each Energy Efficiency Cost Recovery Factor proceeding.

[1] *See* Public Utility Regulatory Act (PURA) § 39.905.