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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** |

# JOINT UTILITIES' INITIAL BRIEF

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# JOINT UTILITIES' INITIAL BRIEF

## I. INTRODUCTION

AEP Texas Inc. ("AEP Texas"), El Paso Electric Company ("EPE"), Entergy Texas, Inc. ("ETI"), and Southwestern Electric Power Company ("SWEPCO") (collectively "Joint Utilities") file this initial brief and would respectfully show as follows:

The energy efficiency programs administered by the state's eight investor-owned electric utilities have proven extremely successful.[1] These programs have consistently achieved overall demand reduction that has exceeded the Legislative goal for energy efficiency[2] in a cost-effective manner.[3] The State of Texas expressly and intentionally incentivizes utilities administering energy efficiency programs that exceed the goal.[4] This incentive or bonus mechanism has been a key to these programs' success.[5]

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[1] Direct Testimony of Jay Zarnikau, Joint Utilities Ex. 1 at 6:13-14 (using the Bates number located at the top center of the page), citing J. Zarnikau, S. Isser, A. Martin, Energy efficiency programs in a restructured market: The Texas framework, *The Electricity Journal* (2015). Available at: https://www.sciencedirect.com/science/article/pii/S1040619015000287 (last accessed Apr. 17, 2025).

[2] Public Utility Regulatory Act, Tex. Util. Code Ann. § 39.905 (PURA).

[3] Joint Utilities Ex. 1 at 6:14-16, citing the series of Evaluation, Measurement and Verification (EM&V) documents posted at: https://texasefficiency.com/emv-docs/ (last accessed Apr. 17, 2025), for insights into the cost-effectiveness of the programs.

[4] PURA § 39.905(b)(2).

[5] *See* Joint Utilities Ex. 1 at 6:17 – 7:11. As Dr. Zarnikau explains, energy efficiency efforts that lead to a reduction in energy sales (i.e., throughput) might not necessarily be in the interest of utility shareholders, absent some regulatory mechanism to compensate the utility for lost profits, and many states other than Texas have lost-revenue adjustment (LRAM) mechanisms, or "decouple" rates from profits in the ratemaking process. These regulatory mechanisms compensate utilities for the profits lost due to energy efficiency achievements, and/or remove any "throughput incentive." The performance bonus mechanism in Texas, along with the decoupling and LRAM schemes in other states to better align utility incentives with societal goals, are all intended to reward energy efficiency achievements – or at least remove any financial disincentives associated with energy efficiency actions.

In its petition, Staff seeks to change the results of the bonus mechanism that has successfully supported the energy efficiency efforts of the state's utilities in recent decades. In particular, Staff requests that the Public Utility Commission of Texas ("Commission") grant a good-cause exception to 16 Tex. Admin. Code § 25.182(e) ("TAC") in order to impose a secondary cap on utility performance bonuses for the 2024 program year.[6] According to its 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."[7] 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."[8] In addition to contending the calculated performance bonus for the program year will be in excess of the success achieved,[9] Staff expressed concern that greater bonuses will distort the cost/benefit analysis of the effectiveness of the programs in subsequent years.

For the reasons detailed below, the relief sought by Staff in its petition should be denied. Energy prices in 2023 reflect a pattern based on a number of trending factors, not unprecedented or extraordinary circumstances. The Commission's energy efficiency rule already addresses energy price volatility by using data from the winter and summer seasons over a two-year period to account for any abnormalities such as changes in wholesale prices and weather, and the rule already has an overall cost cap and a cap on the level of the performance bonus as compared to program benefits. The proposed after-the-fact changes to the bonus calculation lean in the

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[6] In particular, the proposed secondary cap would limit utility performance bonuses to 25% of the utility's overall spending for energy efficiency for program year 2024. [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.] The Staff proposal would prevent a performance bonus for program year 2024 from exceeding 25% of the utility's overall program year 2024 program expenditure. Performance bonuses for 2024 are calculated pursuant to the energy efficiency rule and approved by the Commission in 2025 and will be collected from residential and commercial sector ratepayers through the Energy Efficiency Cost Recovery Factor (EECRF) in 2026.

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

[8] Commission Staff's Petition at 1.

[9] *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").

direction of retroactive ratemaking. While the Joint Utilities contend the Commission's existing rules are operating as intended, to the extent Staff contends otherwise or that those existing rules are no longer appropriate, the impact of this ongoing trend in energy prices is more appropriately addressed on a prospective basis through a rulemaking. Staff's concerns regarding the long-term consequences and impact of elevated performance bonus amounts are speculative and not supported by its own evidence. Moreover, even if the circumstances at issue are viewed as unprecedented or extraordinary and deserving of a good-cause exception to impose a secondary cap on performance bonuses, the proposed cap level is unreasonable, arbitrary, and not appropriately aligned with the purported purpose of Staff's petition or with past levels of approved performance bonuses.

## II. PROCEDURAL SUMMARY

Staff filed its petition on October 3, 2024. Commission Order No. 1 filed on October 7, 2024, established the initial procedural schedule for this proceeding. Commission Order Nos. 2, 3, 4, and 5, filed on October 21 and 28, 2025, and November 1 and 12, 2025, respectively, granted the requests to intervene of ETI, Oncor Electric Delivery Company LLC ("Oncor"), Texas-New Mexico Power Company ("TNMP"), the Steering Committee of Cities Serviced by Oncor ("OCSC"), CenterPoint Energy Houston Electric, LLC ("CEHE" or "CenterPoint"), AEP Texas, SWEPCO, the City of El Paso ("El Paso"), the City of Houston ("Houston"), the Office of Public Utility Counsel ("OPUC"), EPE, Southwestern Public Service Company ("SPS"), Sierra Club, and the Electric Reliability Council of Texas, Inc. ("ERCOT").

On November 7, 2024, parties filed responses to and comments regarding Staff's petition.

On November 15, 2025, the Commission issued an order referring this proceeding to the State Office of Administrative Hearings ("SOAH"). On December 12, 2025, the Commission issued a preliminary order identifying the issues to be addressed in this proceeding.

On December 4, 2024, the SOAH Administrative Law Judge ("ALJ") convened a prehearing conference over the Zoom videoconference platform, at which time a procedural schedule was addressed. On December 9, 2024, in SOAH Order No. 3, the SOAH ALJ

prescribed the procedural schedule for this proceeding, including the date for the hearing on the merits.

On January 23, 2025, Commission Staff filed the direct testimony of its witness, Ramya Ramaswamy. On March 20, 2025, Joint Utilities filed the direct testimony of its witness, Jay Zarnikau, OCSC filed the direct testimony of its witness, Karl Nalepa, and Sierra Club filed comments. On April 3, 2025, Commission Staff filed the rebuttal testimony of its witness, Ramya Ramaswamy, and OCSC filed the cross-rebuttal testimony of its witness, Karl Nalepa.

A hearing on the merits was convened and concluded before SOAH ALJ Sarah Starnes via the Zoom videoconference platform on April 15, 2025. The following parties made appearances and participated in the hearing: OCSC, ERCOT, OPUC, Sierra Club, El Paso, Houston, ETI, EPE, Oncor, SPS, CenterPoint, and Commission Staff.[10]

Pursuant to SOAH Order No. 3, initial briefs are due April 22, 2025, and reply briefs are due April 29, 2025, which will also be the date the administrative record closes.

## III. JURISDICTION

Commission Staff's petition does not identify the statutory basis for the Commission's jurisdiction over its petition, but the Joint Utilities do not contest the Commission's jurisdiction over this matter. Staff seeks to establish a good cause exception to the calculation of performance bonuses under 16 TAC § 25.182(e). Good-cause exceptions to the Commission's substantive rules are addressed in 16 TAC § 25.3(b), which states: "[t]he commission may make exceptions to this chapter for good cause." What constitutes good cause has typically been determined in a case-by-case basis. Additionally, as the petitioner, Staff bears the burden of proof in this proceeding.

16 TAC § 25.182(a) provides that "[t]he purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.905 and establish," among other things, "(2) an incentive to reward an electric utility that exceeds its demand and energy reduction goals under the requirements of §25.181 of this title at a cost that does not exceed the cost caps established in subsection (d)(7) of this section."

[10] Tr. at 9:22 – 12:20. (Apr. 15, 2025).

16 TAC § 25.182(e)(3) states that "A utility that exceeds 100% of its demand and energy reduction goals shall receive a bonus equal to 1% of the net benefits for every 2% that the demand reduction goal has been exceeded, with a maximum of 10% of the utility's total net benefits."

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. Staff's proposal is not a mere "good-cause exception" to the rule and would be better described as a proposal that the rule be re-written or amended. For the reasons described below, the requested relief should be denied.

## IV. PRELIMINARY ORDER ISSUES

### A. Issue No. 1: Did Commission Staff provide sufficient notice of the petition?[11]

Joint Utilities did not contest the notice or provision of notice.

### B. Issue No. 2: Is it appropriate for the Commission to grant the petition?

No. 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. To the contrary, as detailed in Section IV.C. below, the direct testimony of Joint Utilities' witness Jay Zarnikau demonstrates that the higher energy prices are part of a trend, not an anomaly.

Energy prices naturally fluctuate and are widely known to be volatile.[12] The Commission's energy efficiency rule accounts for such volatility because the avoided cost of energy for program year 2024 is not an isolated data point from 2023, but reflects a calculation based on data from winter and summer seasons over a two-year period including, here, the

[11] *See* 16 Tex. Admin. Code § 22.55 (TAC).

[12] Joint Utilities Ex. 1 at 5:19-22; 12:16.

winter periods December 2021 to February 2022 and December 2022 to February 2023, and the summer periods June to September 2022 and June to September 2023.[13]

In its petition, Staff contends that using the actual avoided cost in this scenario "would not accurately reflect the success of the energy efficiency programs."[14] 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 actual market-price of 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 performance.

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 will account for any abnormalities such as changes in wholesale prices and weather."[15] At that time, the Commission determined two years is long enough to smooth out market irregularities.[16] Thus, setting aside whether 2023 energy prices were, in fact anomalous, such situations were contemplated and addressed within the existing rule.

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[13] Commission Staff's Petition at n. 3.

[14] Commission Staff's Petition at 1.

[15] *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. 17, 2012).

[16] 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 that 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 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.

If Staff believes two years is not a sufficient period of time to smooth out volatility in the avoided cost calculation inputs, then a rulemaking is the more appropriate mechanism. As Staff noted in its petition, the Joint Utilities have no control over energy prices, 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 ERCOT market conditions or adjustments to the avoided cost calculation should be made, Joint Utilities will collaborate 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's petition also voices a concern 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. Notwithstanding, as detailed below in Section IV.C, that this concern is not supported by the evidence, 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 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 preemptively 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 absent extraordinary circumstances, 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 could be explored either in the context of a comprehensive rulemaking.

In sum, with regard to the appropriateness of granting the Staff petition, if Staff has concerns regarding the efficacy of the framework of the energy efficiency rule, the appropriate forum for addressing changed circumstances that are expected to affect the programs for many years into the future is a rulemaking proceeding. Staff announced its intention to initiate a rulemaking within the coming months at a recent meeting of the Energy Efficiency Implementation Project.[17] More permanent changes to the energy efficiency framework to resolve any concerns raised by Commission Staff in this docket should be considered in a more deliberate manner in the forthcoming rulemaking proceeding.[18]

## C. Issue No. 3: Is there good cause to impose a secondary cap on EECRF performance bonuses for program year 2024?[19]

**a. Did any unprecedented or extraordinary circumstances affect summer 2023 energy prices? If so, identify each circumstance.**
- **i. How did each circumstance affect summer 2023 energy prices?**
- **ii. What was the aggregate effect of the circumstances on summer 2023 energy prices?**
- **iii. Did the circumstances result in energy price fluctuations that were significant in comparison to price fluctuations affecting previous summer energy prices?**

**b. Did unprecedented or extraordinary circumstances affect summer 2023 energy prices to the extent that there is good cause to deviate from the formula used to calculate EECRF performance bonuses for program year 2024? If so, please address the following subissues:**
- **i. What is the appropriate means of addressing the impact of summer 2023 energy prices on the calculation of performance bonuses for program year 2024?**
- **ii. Will capping program year 2024 performance bonuses at a percentage of a utility's overall spending for program year 2024 address the impact of the 2023 energy prices? If so, is it appropriate to set the cap at 25% of a utility's overall spending for program year 2024?**

### 1. Summary Response

As detailed below, good cause does not exist to impose a secondary cap on EECRF performance bonuses for program year 2024. The evidence demonstrates that the summer 2023

[17] Joint Utilities Ex. 1 at 17:14-15.

[18] *See, e.g., Review of Energy Efficiency Rules*, Project No. 57743, Request for Comments (Feb. 24, 2025).

[19] 16 TAC. § 25.3(b); § 25.182(c).

energy prices reflected trends, not unprecedented or extraordinary circumstances. To the extent the Commission nonetheless concludes that the summer 2023 energy prices were due to unprecedented or extraordinary circumstances and constitute good cause to deviate from the formula used to calculate the EECRF performance bonus and that imposing a cap will address the impact of the 2023 energy prices, the proposed 25% cap is not the appropriate level to address such impacts.

### 2. Introduction of Joint Utilities' Witness

In response to Staff's petition and the direct testimony of Staff's witness, Ms. Ramaswamy, Joint Utilities presented the direct testimony of Jay Zarnikau, Ph.D. Dr. Zarnikau, who received his Ph.D. in Economics from the University of Texas, is himself a former member of Commission Staff, from 1983-1991. Among other things, Dr. Zarnikau:

- served as the Manager of Economic Analysis at the Commission from 1985 through 1988; as the Assistant Director of the Electric Division from 1987 to 1988; and as the Director of the Electric Division from September 1988 to 1991;
- was employed as a vice president at Planergy, Inc., a consulting firm focused on energy efficiency and demand response, from 1992 to 1999; co-founded Frontier Associates LLC in 1999 and served as its President until it was acquired by the Gas Technology Institute ("GTI") in 2016 and, once GTI consolidated its subsidiaries, became the Senior Vice President of Frontier Energy, responsible for managing consulting operations in California and Texas;
- has written over 120 articles in academic journals and trade publications on the topics of electric utility energy efficiency programs, resource planning, energy policy, rate design, demand-side management, and electric utility restructuring, and is included in lists of the world's leading researchers, based on the impact of published academic articles.[20]
- has taught, for over 20 years, graduate-level classes in applied statistics and energy economics in the departments of Economics, Statistics, and Public Affairs at the University of Texas as a (part-time) faculty member and, in recent years, has taught a graduate-level course entitled *Markets for Electricity* in the Economics Department; and,
- worked as a consultant for the electric utilities affected by 16 TAC § 25.181; contributed to the development of this rule and its amendments and assisted the regulated utilities with the design, implementation, and evaluation of their energy

[20] Joint Utilities Ex. 1 at 3:27 – 4:2 citing for example: https://elsevier.digitalcommonsdata.com/datasets/btchxktzyw/6 (last accessed Apr. 17, 2025).

efficiency programs for roughly 30 years through Frontier Energy, Frontier Associates LLC and Planergy.[21]

### 3. Overview of Dr. Zarnikau's Review

After examining Staff's petition and the direct testimony and attachments of its witness, Dr. Zarnikau concludes as follows:

- Increasing electricity prices in the ERCOT market – and, thus, the increase in the avoided energy costs used in the Commission's energy efficiency rule, is part of a trend. While electricity prices inevitably fluctuate from year to year due to variations in weather and market conditions, the summer wholesale energy prices in ERCOT in 2023 were not an anomaly.

- Staff's proposed temporary one-time secondary cap will not prevent "long-term consequences for the consumer" that Staff witness Ms. Ramaswamy has cited as justification for Staff's petition.

- Market trends affecting the performance bonus calculation should not be addressed through the one-time imposition of a new cap. If necessary, the treatment of year-to-year fluctuations in wholesale energy prices should be considered in a rulemaking proceeding.

- "Changing the rules" this late in the regulatory filing schedule will create many practical problems. The Procedural Schedule in this proceeding does not align with the schedule for energy efficiency filings required by the Commission.

- Staff's petition should be denied.[22]

The basis for these conclusions is discussed below.

### 4. 2023 Energy Prices Reflect Trending Factors, Not Unprecedented or Extraordinary Circumstances

With regard to whether 2023 energy prices were unprecedented or extraordinary, Dr. Zarnikau explains that the energy prices in ERCOT in 2023 and 2024 reflect longer-term patterns and the energy prices in those years and the factors responsible for those prices were not unique or anomalous.[23]

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[21] Joint Utilities Ex. 1 at 4:7-12.

[22] Joint Utilities Ex. 1 at 5:17 – 6:7.

[23] Joint Utilities Ex. 1 at 10:25 – 11:1.

The contributing factors to the longer-term pattern trending upward include:

- the introduction of the ERCOT Contingency Reserves ("ECRS") ancillary service;
- other changes at ERCOT to implement "conservative operations;"
- an upward trend in summer temperatures in Texas; and
- electrical load growth in Texas.

None of these factors are going away anytime soon; they are contributing to a trend of increasing wholesale electricity prices and avoided energy costs.[24]

First, a very large component of the increase in energy prices in 2023 and 2024 may have resulted from the introduction of the ECRS, according to analysis by the Independent Market Monitor ("IMM") for ERCOT, Potomac Economics.[25] While subsequent analysis from Aurora disputes the magnitude of the impact of ECRS,[26] the effects of ECRS – whatever its contribution to increased prices – is not purely a one-time impact. ECRS is a new market feature and will continue to have an impact on prices into the future.[27]

Second, the introduction of ECRS was part of a broader scheme to encourage "conservative operations" at ERCOT.[28] In particular, following Winter Storm Uri in February 2021, ERCOT adopted a set of "conservative operations" which has raised energy prices.[29] These have included higher procurement levels for the traditional ancillary services (particularly, non-spinning reserves) and bringing more resources online sooner.[30] These factors are also reflected in the trend in the Avoided Cost of Energy depicted on page 10 of Ms. Ramaswamy's testimony.[31]

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[24] Joint Utilities Ex. 1 at 3:5-12.

[25] Joint Utilities Ex. 1 at 11:15-17, citing Potomac Economics, Item 8: IMM 2023 State of the Market Report for ERCOT Electricity Markets (Jun. 18, 2024), available at: https://www.ercot.com/files/docs/2024/06/11/8%20Independent%20Market%20Monitor%20(IMM)%202023%20State%20of%20the%20Market%20Report%20for%20the%20ERCOT%20Electricity%20Markets%20v2.pdf (last accessed Apr. 17, 2025) (emphasis added).

[26] Joint Utilities Ex. 1 at 11:17-18, citing https://auroracr.com/insight/ecrs-analysis-of-2023-ercot-market-price-impacts/ (last accessed Apr. 17, 2025).

[27] Joint Utilities Ex. 1 at 11:18-21.

[28] Joint Utilities Ex. 1 at 11:22-23 (emphasis added).

[29] Joint Utilities Ex. 1 at 12:3-4, citing, for an example: https://www.utilitydive.com/news/a-conservative-approach-to-texas-grid-operations-is-raising-costs-for-con/620312/ (last accessed Apr. 17, 2025).

[30] Joint Utilities Ex. 1 at 12:4-6.

[31] Joint Utilities Ex. 1 at 12:6-7.

Third, with regard to Staff claims that 2023 temperatures were unprecedented or extraordinary, Dr. Zarnikau explains that, in 2023, Texas had temperatures similar to those recorded in 2011.[32] In fact, Ms. Ramaswamy asserts on page 12 of her direct testimony that the summer of 2011 was hotter than the summer of 2023.[33] It is noteworthy that Commission Staff did not request a secondary cap on performance bonuses in years 2012 and 2013 in light of the high temperatures in the summer of 2011.[34]

Moreover, summer temperatures, while volatile, also reflect long-term trends. In his direct testimony, Dr. Zarnikau graphed summer average temperatures for Dallas-Fort Worth ("DFW") and Houston as reported by the National Weather Service to demonstrate the average annual increase in degrees Fahrenheit from 1986 to 2024.[35] For DFW the average annual increase was 0.0985 degrees Fahrenheit (per the formula presented on the graph), while it was a little smaller for Houston.[36] While the graphs show that that temperatures in the summer of 2023 were high in DFW and Houston, they are not outliers.[37] An upward trend in summer temperatures in recent years is evident.

As previously noted and as further explained by Dr. Zarnikau, avoided energy costs, which are based on two years of data as prescribed by the energy efficiency rule, and average summer temperatures in the following year, 2024, were well-below the trend line in DFW and were along the trend line in Houston.[38] To some extent, the temperatures of the two years balance-out each other.[39] The use of two years of data to determine avoided energy costs thus inherently limits the impact of any single year on the amount of a utility's performance bonus.[40]

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[32] Joint Utilities Ex. 1 at 12:11.

[33] Direct Testimony of Ramya Ramaswamy, Staff Ex. 1 at 12: 5-6.

[34] Joint Utilities Ex. 1 at 12:12-15.

[35] Joint Utilities Ex. 1 at 12:16-22.

[36] Joint Utilities Ex. 1 at 12:22-24.

[37] Joint Utilities Ex. 1 at 13:1-5.

[38] Joint Utilities Ex. 1 at 13:6-13.

[39] Joint Utilities Ex. 1 at 13:8-9.

[40] Joint Utilities Ex. 1 at 13:9-11.

Fourth, with regard to increasing demand, Dr. Zarnikau concurs with Ms. Ramaswamy that increasing demand or load growth likely contributed to high prices in the summer of 2023.[41] Yet, even higher demand growth is expected in future years, as can be seen in ERCOT's latest load forecasts, as reported on the two figures (from an ERCOT report) presented in Mr. Zarnikau's direct testimony.[42] Demand growth over the past couple of years was not an anomaly. Increased demand will place upward pressure on prices if supply cannot keep pace.[43] Demand is clearly increasing over time and this is expected to continue at an accelerated rate in upcoming years.[44] Some of the utilities that serve in Texas but are outside of the ERCOT market similarly expect high load growth over the next few years.[45]

In sum, wholesale market energy prices are trending upward and that trend is likely to continue for at least over the next few years.[46] This is evident from the figure on page 14 of Mr. Zarnikau's direct testimony, which plots the avoided costs used by the utilities in their calculations of program cost-effectiveness and performance bonuses since 2013.[47] The figure highlights the upward pattern of the avoided energy costs.

Accordingly, the wholesale market energy prices to be used in the performance bonus calculations for 2024 do not reflect unique or anomalous factors. Rather, this is the "new normal," and reflects changes in operational practices at ERCOT and trends in temperatures and electricity demand in ERCOT.[48] The factors responsible for high prices cited by Ms. Ramaswamy will continue to impact prices into the future.[49]

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[41] Joint Utilities Ex. 1 at 14:5-6.

[42] Joint Utilities Ex. 1 at 14:6-8. Joint Utilities understand that more recent forecasts announced by ERCOT project even more robust levels of growth. *See* https://ercot.new.swagit.com/videos/303514 (Item 5) (last accessed Apr. 21, 2025).

[43] Joint Utilities Ex. 1 at 14:6-8.

[44] Joint Utilities Ex. 1 at 14:10-11, explaining that these graphs are from ERCOT, 2024 ERCOT System Planning Long-Term Hourly Peak Demand and Energy Forecast Mid-Year Update (Jul. 18, 2024); available at: https://www.ercot.com/files/docs/2024/01/18/2024_LTLF_Report.docx (last accessed Apr. 17, 2025).

[45] Joint Utilities Ex. 1 at 16:1-2.

[46] Joint Utilities Ex. 1 at 16:7-9.

[47] Joint Utilities Ex. 1 at 16:9-15.

[48] Joint Utilities Ex. 1 at 17:1-6.

[49] Joint Utilities Ex. 1 at 17:6-8.

Further, even if summer 2023 energy prices were regarded as an anomaly, the energy efficiency rule, as explained above, incorporates two years' worth of data into the avoided cost calculation to "account for any abnormalities, such as changes in wholesale prices...."[50] Thus, fluctuations in wholesale prices were contemplated when the rule was refined and the anticipated fluctuations were addressed by averaging price data over two years.[51]

The recent upward trend in wholesale prices highlights the growing value of utility commitments to energy efficiency.[52] These programs provide opportunities for consumers to reduce their electric bills, and this becomes more critical when electricity prices rise.[53] Fundamentally, Staff's petition does not dispute the underlying policy or logic that ties the energy efficiency rule's performance bonus to the avoided cost of energy or demonstrate the rule is not working to achieve that policy. When energy prices rise, the value of energy efficiency also rises, and thus a higher bonus increasingly incentivizes energy efficiency.

### 5. Staff Conclusions Regarding the Impact of Performance Bonuses Are Not Supported by Staff's Own Evidence

On page 14 of her direct testimony, Ms. Ramaswamy states:

> failing to add a secondary cap for PY2024 bonus payments could result in two-fold, long-term consequences for the consumer:
> - decreases in the utility energy efficiency program budget; and
> - higher energy bills for consumers resulting directly from the higher performance bonus awarded to the utility.

Dr. Zarnikau's testimony addresses each of these points as well as the general allegation of long-term consequences for the consumer if the proposed cap is not approved.

#### a. The data does not support allegations regarding decreases in program budgets

Dr. Zarnikau acknowledges conceptually there is a possibility that a utility with energy efficiency costs approaching the EECRF cap will face a tradeoff between receiving bonuses (based

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[50] Joint Utilities Ex. 1 at 17:11-12, citing Project No. 39674, Order Adopting Amendments to §25.181 as Approved at the September 28, 2012, Open Meeting.

[51] Joint Utilities Ex. 1 at 17:12-14.

[52] Joint Utilities Ex. 1 at 17:15-16.

[53] Joint Utilities Ex. 1 at 17:16-18.

on program performance two years earlier) and current-year program costs.[54] However, based on the graphs provided in Ms. Ramaswamy's testimony, no historical relationship is evident.[55]

On the top of page 15 of her testimony, the "Performance Bonus" and "Program Spend" for AEP Texas are reported.[56] Under Ms. Ramaswamy's contention, the relatively high bonuses earned by AEP Texas in 2020 and 2021 would lead to smaller Program Spend two years later – 2022 and 2023.[57] The two-year lag is explained on page six of her testimony.[58] However, there is no decline in Program Spend, which she defines as the "[s]um of the incentive paid for the energy efficiency program to implementers and service providers, research and development costs, administration costs and EM&V costs."[59]

On the bottom of page 15 of her testimony, CenterPoint's "Performance Bonus" and "Program Spend" are reported. Under Ms. Ramaswamy's contention, the relatively high bonuses earned by CenterPoint in 2020 and 2021 would lead to smaller Program Spend two years later – 2022 and 2023. However, CenterPoint's Program Spend in 2023 was the highest among all of the years reported on that graph – it *increased* following the relatively-high bonuses.[60]

Similarly, there is no evidence in the next six graphs (for the other utilities) that would suggest that an increase in a Performance Bonus leads to a reduction in Program Spend two years later. [61]

Ms. Ramaswamy's attempt in her rebuttal testimony to rescue her argument on this point likewise fails to persuade. The data she presents on her pages 10-11 would seem to contradict her conclusion. CenterPoint's largest performance bonus was in 2021, not 2020. Two years later, CenterPoint's "program spend" went up by 9%. Regardless, there is no clear relationship between program spend and the performance bonus awarded two years earlier unless the EECRF cost cap comes into play to force a tradeoff.

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[54] Joint Utilities Ex. 1 at 8:4-6.

[55] Joint Utilities Ex. 1 at 8:6-8.

[56] Staff Ex. 1 at 15:1; Joint Utilities Ex. 1 at 8:9-10.

[57] Joint Utilities Ex. 1 at 8:10-12.

[58] Joint Utilities Ex. 1 at 8:12-13.

[59] Joint Utilities Ex. 1 at 8:13-16, citing Staff Ex. 1 at 14, n. 12.

[60] Joint Utilities Ex. 1 at 8:17-22 (emphasis in original).

[61] Joint Utilities Ex. 1 at 8:23-24.

**b. Performance bonus changes have relatively small impacts on customers**

Performance bonuses are recovered through the Energy Efficiency Cost Recovery Factor ("EECRF"). Thus, a higher performance bonus *might* lead to a higher EECRF.[62] However, as Dr. Zarnikau describes in his testimony that the EECRF is capped, energy efficiency activities are often undertaken with a goal of reducing utility bills, and the size of the impacts may be very small.[63]

The energy efficiency rule contains caps on the EECRF.[64] These caps are designed to prevent energy efficiency charges from reaching excessive levels. The rule also already caps performance bonuses at 10% of a utility's realized net benefits, bringing into question the rationale for an additional cap as proposed by Staff in this proceeding.[65]

Moreover, energy efficiency costs represent a very small part of an electric bill for a residential or commercial energy consumer. Dr. Zarnikau demonstrates that energy efficiency costs constitute far less than 1% of a consumer's bill.[66] A change in the component of the EECRF designed to recover the Performance would have even a smaller impact.[67]

Further, even in Staff's rebuttal testimony,[68] there seems to be some confusion between "bills" and "rates." The EECRF rate could go up, but energy efficiency should lead to reduced energy bills for program participants. Based on the policy that energy efficiency bonuses incentivize energy efficiency savings and are capped at 10% of such savings, the bonuses are by design a subset of the overall savings customers would not have otherwise achieved. Thus, they cannot result in increased customer costs.

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[62] Joint Utilities Ex. 1 at 9:3-4.

[63] Joint Utilities Ex. 1 at 9:4-6.

[64] 16 TAC § 25.182.

[65] 16 TAC § 25.182(c).

[66] Joint Utilities Ex. 1 at 9:12 – 10:1.

[67] Joint Utilities Ex. 1 at 10:1-2.

[68] Rebuttal Testimony of Ramya Ramaswamy, Staff Ex. 5.

### c. Alleged long-term consequences are speculative and not supported by the evidence

The "long-term consequences" mentioned by Ms. Ramaswamy on her page 14 of her direct testimony are nowhere to be seen in the evidence. As noted in her figure on page 6 of her direct testimony, a bonus calculated for program year 2024 achievements will only affect utility bills (via the EECRF) in the year 2026.[69] Absent the need for a reconciliation between actual EECRF collections and an amount approved by the Commission, the bonus awarded in a particular year has no impact on utility bills in later years.[70]

Further, in her rebuttal, Ms. Ramaswamy argues that Dr. Zarnikau "fails to address the fact that higher performance bonuses incentivize reduced program spend which can lead to reduced energy efficiency in the future."[71] Ms. Ramaswamy's rebuttal does not provide support for the supposed "fact." She attempts to make this point by noting that seven of the eight utilities' highest bonuses were earned for program year 2020, and then observing that five of the eight utilities reduced their spend in 2022 when the bonus earned in 2020 would be recovered. The suggestion is that there is cause and effect, but Ms. Ramaswamy offers no proof that there is, only an observed coincidence. She offers no analysis that the correlation between the 2020 bonus and the 2022 spend has any statistical significance, nor even acknowledges that there is a myriad of other factors that can affect the spend. Furthermore, the lightest of scrutiny of these mere observations show her supposition is unfounded. Two of those five utilities decreased their spend by only 1% according to her tables, which hardly seems to be of any consequence when those tables show that utility spend consistently varies, and often widely varies, sometimes exceeding 20%. With regard to the two utilities that reduced their spend by 1%, under the Staff witnesses proposition, AEP reduced its total program spend by only $220,000 in response to a $8.7 million bonus earned for performance year 2020, which was more than double the previous year, and that CenterPoint decreased its spend by only $480,000 in response to a $21.8 million bonus for 2020 performance, or nearly double the bonus of the previous year. On the face of it, it is not reasonable to conclude that those utilities reduced their spend because of the size of the bonus to be recovered that year.

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[69] Joint Utilities Ex. 1 at 10:3-8.

[70] Joint Utilities Ex. 1 at 10:6-8.

[71] Staff Ex. 5 at 4:4-6.

So, a fair assessment of the data is that five of the eight utilities did not decrease, or show any meaningful decrease, in their spend, which disproves her supposition that a large bonus will lead to a reduced spend.[72]

To the contrary, the performance bonus mechanism "incentivizes" utilities to keep spending money on cost-effective programs that reduce electricity consumption to enable them to earn higher performance bonuses in the future. As Dr. Zarnikau indicates, the performance bonus mechanism has been a key to the success of the utility's energy efficiency programs.[73]

In summary, there is no evidence to support the contention that higher bonuses in a single year lead to higher bills in the long run.[74] Any causal relationship is also suspect when you consider that the goal of energy efficiency programs is to *reduce the bills* – at least for participants in the programs.[75] This is a key reason that utilities are awarded a bonus for program success.[76]

Notably, again, avoided energy costs are based on a two-year average, and when bonus calculations are repeated one year from now, the summer 2023 will no longer be a part of the two-year average.[77] This too calls into question whether there are "long-term consequences for the consumer" of relatively high wholesale energy costs in 2023 that need to be addressed here.[78]

### 6. The cap level is inappropriate

Even assuming summer 2023 energy prices were due to unprecedented, "unique" or "anomalous" circumstances as Staff claims, and further assuming that capping program year 2024 performance bonuses at a percentage of a utility's overall spending for program year 2024 will address the impact of the 2023 energy prices, the proposed cap level is not aligned with the purported purpose of the cap. The basis of Staff's claim of good cause is that the energy prices

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[72] Moreover, even if Ms. Ramaswamy were correct with regard to the bonus's impact on program spending (which she is not), the more obvious solution would be to remove the bonus from the calculation of program costs to avoid this effect.

[73] Joint Utilities Ex. 1 at 6:16-18.

[74] Joint Utilities Ex. 1 at 10:9-10.

[75] Joint Utilities Ex. 1 at 10:10-12.

[76] Joint Utilities Ex. 1 at 10:12-13.

[77] Joint Utilities Ex. 1 at 10:14-16.

[78] Joint Utilities Ex. 1 at 10:16-18.

of the summer of 2023 were due to "unique" circumstance and were "anomalous," not that they were just above the long term average.[79] To Joint Utilities' understanding, the purpose of Staff's proposed cap is to mitigate the effect of *unusually* high prices during the summer of 2023; accordingly, even if a secondary cap were appropriate (which it is not), it would be more logical to limit bonuses only to the extent they are above the past approved performance bonus levels. In other words, it should only be the *unusually high* portion of the bonus that is eliminated because that is the part that results from the alleged *unusually high* energy prices. However, instead of just ensuring that the 2024 bonus is no higher than the past approved bonuses, Staff's remedy is to impose a cap that is substantially below previously approved performance bonus levels for the state's utilities and to cap the bonus at essentially the long-term average. Past performance bonus levels have not attracted Staff requests for lowering, and each EECRF is approved with a conclusion of law stating "[t]he rates approved by this Order are just and reasonable under PURA § 36.003(a)."[80]

For example, as shown on pages 19-20 of Staff witness Ramaswamy's direct testimony, the historic performance bonus percentage amounts approved by the Commission for 2020 ranged up to 41.4% of program spend. In fact, the average of the top ten approved performance bonuses is substantially higher, at 37.4%, than Staff's proposed 25% cap.[81] Those ten bonuses represent 1/8 of the total number of bonus percentages presented by Staff witness Ramaswamy and such frequency of occurrence could hardly be claimed to be "unique" or "anomalous." Staff's proposed 25% cap is based on historic averages going back to 2014 and ignores obvious trends in performance cap levels in more recent years as can be seen in the tables on Ms. Ramaswamy's direct testimony. Staff offers no explanation of why it is appropriate to cap bonuses at average levels. Using previously approved performance bonus levels would better

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[79] Staff's Petition at 1.

[80] *See Application of Entergy Texas, Inc. to Adjust its Energy Efficiency Cost Recovery Factor*, Docket No. 56544, Order at Conclusion of Law (CoL) No. 38 (Dec. 12, 2024); *Application of Southwestern Electric Power Company to Adjust its Energy Efficiency Cost Recovery Factor*, Docket No. 56552, Order at CoL No. 33 (Nov. 14, 2024); *Application of AEP Texas Inc. to Adjust its Energy Efficiency Cost Recovery Factor and Related Relief*, Docket No. 56553, Order at CoL No. 36 (Dec. 12, 2024); and *Application of El Paso Electric Company to Adjust its Energy Efficiency Cost Recovery Factor*, Docket No. 56572, Order at CoL No. 34 (Dec. 12, 2024).

[81] 37.41% is the average of the following bonus percentages presented by Ramaswamy: ETI 2020-41.4,% SPS 2020-39.7%, ETI 2021-38.5%, Oncor 2020-38.3%, CenterPoint 2021-38.5%, CenterPoint 2020-7.4%, SPS 2021-35.7%, EPE 2020-35.6%, Oncor 2021-35.6%, and SWEPCO 2020-33.4%.

align with the purported purpose of Staff's petition to mitigate excess bonus levels and should be considered in setting the secondary cap level, if a secondary cap is to be imposed at all.

Staff bears the burden of proof in this proceeding, but it provides no explanation of why it is appropriate to cap bonuses at past average percentage levels. Staff's proposed 25% cap should be rejected.

## V. SUMMARY AND CONCLUSION

The circumstances addressed in Staff's petition reflect trending factors, not unprecedented or extraordinary circumstances. To the extent Staff's concerns require changes to the current energy efficiency framework established by the Commission's rules, such changes are more appropriately addressed in a forward-looking manner in a rulemaking. To the extent the Commission concludes that a secondary cap is necessary for bonuses reflecting program year 2024 achievements, Staff's proposed cap level is unsupported and arbitrary and should not be approved.

Joint Utilities request that the Commission deny Staff's petition and grant Joint Utilities such further relief to which they are entitled.

Respectfully submitted,

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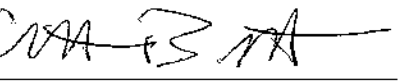
**ATTORNEYS FOR ENTERGY TEXAS, INC. ON BEHALF OF JOINT UTILITIES**

## CERTIFICATE OF SERVICE

I certify that on April 22, 2025, a true and correct copy of this document was served on all parties of record by electronic service in accordance with the Commission's Second Order Suspending Rules issued on July 16, 2020 in Project No. 50664.



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