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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**

STEERING COMMITTEE OF CITIES SERVED BY ONCOR'S INITIAL BRIEF

APRIL 22, 2025

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TO THE HONORABLE SARAH STARNES ADMINISTRATIVE LAW JUDGE (ALJ), STATE OFFICE OF ADMINISTRATIVE HEARINGS (SOAH):

COMES NOW, Steering Committee of Cities Served by Oncor (OCSC), and files this Initial Brief in the above-styled and numbered docket. In support thereof, OCSC shows the following:

I. INTRODUCTION

On October 3, 2024, the Staff (Staff) of the Public Utility Commission of Texas (Commission) filed a Petition to Establish a Secondary Cap on Performance Bonuses under 16 Texas Administrative Code (TAC) § 25.182(e) for the 2024 Program Year (Petition).[1] OCSC is supportive of Commission Staff's Petition and believes a secondary cap on performance bonuses is an appropriate means to address the impact of the anomalously high summer 2023 energy prices and will promote the continuation of robust energy efficiency programs. However, if Your Honor does not find Commission Staff's proposed secondary cap to be appropriate, OCSC recommends Your Honor approve an alternative solution similar to the one approved in Docket No. 52871,[2] and implement a similar methodology to address the high summer 2023 energy prices.

Under 16 TAC § 25.182(e), a utility may receive a performance bonus based on the success of its energy efficiency programs for the previous program year. An energy efficiency program is deemed to be successful, or cost-effective, if the cost of the program is less than or equal to the

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[1] Commission Staff's Petition to Establish a Secondary Cap on Performance Bonuses Under 16 TAC § 25.182(e) for the 2024 Program Year (Oct. 3, 2024) (Staff Petition).

[2] *Commission Staff's Petition for 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, Order (May 12, 2022).

benefits of the program.[3] The benefits of the program include the value of the demand reductions and energy savings, measured in accordance with the avoided costs.[4] The avoided costs include the avoided cost of energy which is calculated annually for the Electric Reliability Council of Texas (ERCOT) region by ERCOT 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."[5]

An increase in avoided costs results in an increase in the net benefits of a utility's energy efficiency program based on external factors. Increases in net benefits reflect the success of an energy efficiency program and increase the performance bonus a utility may receive. When there is an anomaly that causes a drastic increase in avoided costs, this not only results in an overstated performance bonus, but signals that the utility's energy efficiency programs are more effective than they actual are due to external factors and not the program itself. The resulting impact may negatively impact the energy efficiency goals of utilities in subsequent years, and burden ratepayers with increased rates caused by a higher performance bonus received by a utility.[6]

Commission Staff's Petition avoids this exact scenario caused by increased summer 2023 energy prices[7] by requesting performance bonuses under 16 TAC § 25.182(e)(3) be capped at 25% of a utility's overall spending for program year 2024.[8] Commission Staff proposes a secondary cap to address the summer 2023 energy prices because the cost-effectiveness of an energy efficiency program year for a given year treats the performance bonus from prior years as an expense, a cap on the performance bonus in a given year will help the cost-effectiveness of energy bonuses in subsequent program years, and it would be unfair to judge the effectiveness of an energy efficiency program based on external factors such as anomalously high energy prices.[9]

OCSC appreciates the importance of having stable and robust energy efficiency programs that can be relied on to provide long-term savings for customers while not overburdening

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[3] 16 Tex. Admin. Code (TAC) § 25.181(d).

[4] 16 TAC § 25.181(d).

[5] 16 TAC § 25.181(d)(3)(A).

[6] Direct Testimony of Karl J. Nalepa at 6-7 (Mar. 20, 2025) (Nalepa Direct).

[7] *Id.* at 6; *See also* Staff Petition at Ramya Ramaswamy Memorandum Page 1.

[8] Staff Petition at 2.

[9] *Id.*

ratepayers with the costs for these programs. Commission Staff's proposed secondary cap on performance bonuses is an appropriate means to address the impact of the anomalously high summer 2023 energy prices and will promote the continuation of robust energy efficiency programs. If Your Honor does not find Commission Staff's proposed secondary cap to be appropriate, OCSC recommends Your Honor approve an alternative solution similar to the one approved in Docket No. 52871,[10] and implement a similar methodology to address the high summer 2023 energy prices.

II. COMMISSION STAFF'S PROPOSED SECONDARY CAP ON PERFORMANCE BONUSES IS AN APPROPRIATE MEANS OF ADDRESSING THE IMPACT OF SUMMER 2023 ENERGY PRICES

A. Anomalously High Summer 2023 Energy Prices Result in Good Cause to Deviate from the Formula Used to Calculate a Utility's Performance Bonus in 16 Tex. Admin. Code § 25.182(e).

Pursuant to 16 TAC § 25.3, the Commission may make exceptions to the Commission's substantive rules applicable to electric service providers[11] for good cause. Under this rule, Commission Staff requests a good cause exception to place a cap on performance bonuses pursuant to 16 TAC § 25.182(e)(3) for program year 2024.[12] The cap on the performance bonus is intended to address the consequences from anomalously high energy prices in 2023.

The anomalously high energy prices in summer 2023 resulted in a drastic increase in avoided cost of energy for program year 2024. The increased avoided cost of energy for program year 2024 is used to evaluate the cost effectiveness of energy efficiency programs and the performance bonus utilities may receive in utilities' 2025 energy efficiency cost recovery (EECRF) applications. As noted by OCSC witness, Karl Nalepa, the $166.20 per megawatt-hour (MWh) avoided cost of energy for program year 2024 is the highest avoided cost of energy in the last ten years.[13] The second highest avoided cost of energy in the past ten years was program year

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[10] *Commission Staff's Petition for 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, Order (May 12, 2022).

[11] 16 Tex. Admin. Code §§ 25.1-25.515.

[12] Staff Petition at 3.

[13] Nalepa Direct at 5; *see also* Direct Testimony of Ramya Ramaswamy on Behalf of Commission Staff at 9-10 (citing *Energy Efficiency Implementation Project Under 16 TAC § 25.181,* Docket No. 38578 (referring to ERCOT's annual filings around November 1)) (Jan. 23, 2025) (Ramaswamy Direct).

2022.[14] The avoided cost of energy for program year 2022 was $156.48 per MWh due to the high energy prices during Winter Storm Uri in 2021.[15] Similar to this proceeding, Commission Staff requested, and the Commission ultimately ordered, a good cause exception to 16 TAC § 25.181(d)(3)(A), the calculation of the avoided cost of energy, in order to mitigate the impacts of the high energy prices.[16] If the Commission found good cause due to anomalously high energy prices caused by Winter Storm Uri,[17] then the Commission should find good cause exists in the current docket since the energy prices are even higher.

Joint Utilities witness, Dr. Jay Zarnikau, argues that the increase in avoided cost of energy is part of a trend due to electricity prices fluctuating from year to year, and thus, were not an anomaly.[18] Regardless of whether energy prices fluctuate from year to year, the energy price increase in 2023 resulted in a drastic increase in avoided cost of energy for program year 2024 that needs to be addressed. To put this into perspective, the avoided cost of energy for the program year 2023 was $75.05 per MWh less than program year 2024's avoided cost of energy,[19] and the avoided cost of energy for program year 2025 is $51.47 per MWh less than program year 2024's avoided cost of energy.[20] An over $50 per MWh fluctuation from year to year is an extraordinary circumstance that is exactly what Commission Staff's proposed secondary cap attempts to address. Such extraordinary circumstances caused by anomalously high energy prices are, therefore, good cause to deviate from the formula used to calculate EECRF performance bonus.

B. Commission Staff's Secondary Cap is an Appropriate Means of Addressing the Impact of Summer 2023 Energy Prices.

A drastic increase in energy prices has consequences that Commission Staff's requested secondary cap would reasonably address. As Mr. Nalepa discusses in his Direct Testimony, an anomalously high increase in energy prices in 2023, resulting in high avoided costs in program

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[14] Nalepa Direct at 5.

[15] *Id.*

[16] *Commission Staff's Petition for 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 52871, Order (May 12, 2022).

[17] *Id.* at Conclusion of Law No. 6.

[18] Direct Testimony of Jay Zarnikau on Behalf of Joint Utilities at 3 (Mar. 20, 2025) (Zarnikau Direct).

[19] Nalepa Direct at 5; *see also* Ramaswamy Direct at 9-10. ($166.20 – $91.15).

[20] *Id.* ($166.20 - $114.73).

year 2024, would cause the benefit of utilities' energy efficiency programs to be overstated due to external factors and not from the program itself.[21] This would then cause the calculated performance bonus to be overstated in the current program year resulting in a higher performance bonus that may result in decreases in the utility's energy efficiency program budget, burdening program costs in subsequent years.[22] A higher performance bonus would further burden ratepayers with increased rates.[23] Additionally, overstating the net benefits of energy efficiency programs one year due to an anomalously high increase in energy prices may result in a finding that energy efficiency programs the next year are not cost effective since the net benefits would decrease due to energy prices decreasing to normal levels.[24] If an energy efficiency program is found to no longer be cost effective, it could be terminated.

As discussed above, Joint Utilities Witness, Dr. Jay Zarnikau, classifies the increase of avoided cost of energy as part of a trend due to electricity prices fluctuating from year to year.[25] Although OCSC does not agree with Dr. Zarnikau's reasoning that such a fluctuation should not be addressed through a onetime imposition of a new cap,[26] OCSC does agree with Dr. Zarnikau's assertion that a rulemaking can address concerns with year-to-year fluctuations in energy prices.[27] However, addressing fluctuations in energy prices in a rulemaking is not a reasonable means to address the issue at hand in this proceeding. The intent of Commission Staff's Petition in this proceeding is to address a short-term anomaly that will impact the 2025 EECRF filings. A rulemaking will take months and go well beyond the filing deadline for utilities to file their 2025 EECRF. Since the filing of Commission Staff's Petition, Commission Staff opened Docket No. 57743 to review the energy efficiency rules. Parties concerned with addressing year-to-year fluctuations in energy prices can be more appropriately addressed in the Docket No. 57743 rulemaking. Therefore, Commission Staff's solution to address the impact of the summer 2023 energy prices is an appropriate solution that would adequately address the consequences caused

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[21] Nelpa Direct at 6.

[22] *Id.* at 4.

[23] *Id.* at 7.

[24] Cross Rebuttal Testimony of Karl J. Nalepa at 4 (Apr. 3, 2025).

[25] Zarnikau Direct at 3.

[26] *Id.*

[27] *Id.*

by a drastic increase and allow for utilities to receive a reasonable level of performance bonuses while continuing to incentivize utilities to use the most beneficial energy efficiency programs.

III. ALTERNATIVELY, ADOPTING A SIMILAR METHODOLOGY AS THE ONE COMMISSION APPROVED IN DOCKET NO. 52781 IS AN APPROPRIATE SOLUTION TO ADDRESSING THE IMPACT OF SUMMER 2023 ENERGY PRICES

If Your Honor does not find Commission Staff's proposed 25% cap to be an appropriate means of addressing the impact of summer 2023 energy prices, OCSC recommends Your Honor issue a Proposal for Decision recommending the implementation of similar methodology the Commission approved in response to the high energy prices during Winter Storm Uri.

As briefly discussed above, during Winter Storm Uri in 2021 energy costs increased, resulting in an uncharacteristically high increased avoided cost of energy for program year 2022. The avoided cost of energy for program year 2022 was $156.48 per MWh. Commission Staff filed a petition for good cause exception to address the impact of the anomalously high energy prices caused by Winter Storm Uri in Docket No. 52871. Ultimately, the Commission ordered a cap on the avoided cost of energy for energy efficiency programs for the 2022 program year to be $85 per MWh in order to mitigate the impacts of high energy prices during Winter Storm Uri, and the avoided cost of energy for 2022 for energy efficiency programs for the 2023 program year should be calculated excluding the energy costs for 2021, the year Winter Storm Uri occurred.

OCSC recommends a similar methodology be adopted in this proceeding to address the impact of summer 2023 energy prices. This would be a reasonable solution since the avoided cost of energy for program year 2024 is even higher than the avoided cost of energy caused by Winter Storm Uri. Under this alternative, the avoided cost of energy for program year 2024 could be set at $91.15 per MWh, which is the program year 2023 avoided cost of energy.[28] This alternative solution would appropriately address the impact of the heightened summer 2023 energy prices on the upcoming EECRF filings, and allow utilities similar relief that they would receive under Commission Staff's secondary cap while not burdening ratepayers with increased rates caused by increased performance bonuses.

[28] Nalepa Direct at 7.

IV. CONCLUSION

OCSC respectfully requests that Your Honor issue a Proposal for Decision recommending the Commission find good cause exists to set a secondary cap on utilities' performance bonuses pursuant to Commission Staff's filed petition. Alternatively, OCSC requests that Your Honor issue a Proposal for Decision recommending a finding of good cause to implement a similar methodology to address the high energy prices as the one the Commission approved in response to the high energy prices during Winter Storm Uri. OCSC further requests any relief to which it may be entitled.

Respectfully submitted,

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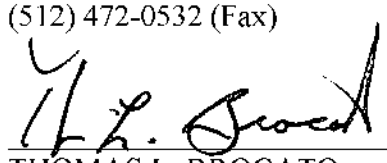

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 22, 2025, in accordance with Project No. 50664.

THOMAS L. BROCATO