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PROJECT NO. 57743

**REVIEW OF ENERGY EFFICIENCY
RULES**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

**STEERING COMMITTEE OF CITIES SERVED BY ONCOR’S
COMMENTS ON THE ENERGY EFFICIENCY SUBSTANTIVE RULES**

COMES NOW, the Steering Committee of Cities Served by Oncor (OCSC) and submits these comments in response to the Staff (Staff) of the Public Utility of Commission of Texas’ (Commission) request for feedback filed in Project No. 57743 relating to the review of 16 Texas Administrative Code (TAC) §§ 25.181- 25.182 (Energy Efficiency Rules). On February 24, 2025, Commission Staff specifically requested comments on proposed definitions for the terms “low income” and “hard-to-reach,” and responses to questions regarding calculating cost-effectiveness and the appropriate level at which to compare costs to benefits. Commission Staff requested interested persons to file comments by March 20, 2025.¹ Therefore, these comments are timely filed.

I. COMMENTS

As a general matter, OCSC appreciates the Commission Staff’s efforts to further evaluate the Energy Efficiency Rules and the opportunity to provide comments related to the same. OCSC supports effective energy efficiency programs as they are beneficial to ratepayers and the environment but is mindful of burdening consumers with additional costs that do not provide savings. The current level of energy efficiency funding provides a reasonable balance between the costs reflected in rates and program benefits.

1. Low Income Definition

The Energy Efficiency Rules require a utility to include in its energy efficiency plan a targeted low income energy efficiency program,² yet the rules do not define “low income.” In the current Project, Commission Staff proposes the definition of low-income to be “Residential households with income levels at or under 80% of the calculated area median income.”³ OCSC supports Commission Staff’s initiative to define “low income.” However, OCSC suggests the

¹ Request for Comments (Feb. 24, 2025).

² 16 Tex. Admin. Code (TAC) § 25.181(p).

³ Request for Comments at 1.

Commission establish a definition for “low income” that is consistent across each of the Commission Substantive Rules.⁴ A review of the Commission Substantive Rules reveals that “low income” is referenced in a number of rules but is not commonly defined. OCSC has identified just four Commission rules that provide any definition of “low income.” These include:

16 TAC § 25.45. Low-Income List Administrator. Subsection (c) Customer identification process. The Low-Income List Administrator (LILA) must identify eligible low-income customers through a monthly automatic identification process in cooperation with the Texas Health and Human Services Commission (HHSC). (1) Automatic identification is an electronic process to identify customers eligible for the low-income list by matching client data from the HHSC with residential customer-specific data from participating REPs. (A) The HHSC must provide client information to the LILA in accordance with subsection (d)(1) of this section. (d)(1) (1) HHSC's responsibilities. The HHSC must assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving qualifying HHSC benefits as detailed in the memorandum of understanding between the HHSC and the commission.

16 TAC § 25.478. Credit Requirements and Deposits. Subsection (a)(3)(E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually: (i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider;

16 TAC § 26.5. Definitions. Subsection (194) Qualifying low-income consumer. A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program (LIHEAP).

16 TAC § 26.412. Lifeline Service Program. (c) Definitions. (1) Qualifying low-income customer. A customer who meets the qualifications for Lifeline Service, as specified in subsection (d) of this section. (d) Customer Eligibility Requirements. A customer is eligible for Lifeline Service if they meet one of the criteria of paragraph (1), (2), or (3) of this subsection as determined by the Low-Income Discount Administrator (LIDA). (1) The customer's household income is at or below 150% of the federal poverty guidelines as published by the United States Department of Health and Human Services and updated annually; (2) A customer who receives benefits from or has a child that resides in the customer's household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Federal Public Housing Assistance, Low

⁴ 16 TAC §§ 24.1 – 26.469.

Income Home Energy Assistance Program (LIHEAP), or health benefits coverage under the State Child Health Plan (CHIP) under Chapter 62, Health and Safety Code, National School Lunch Program--Free Lunch Program, Temporary Assistance for Needy Families (TANF);

The definition proposed by Commission Staff creates a different definition that does not track other Commission rules. Furthermore, the proposed definition introduces a new term, “calculated area median income,” that must also be defined. In particular, “area” can be a portion of a county, a county, or multi-county, so the calculated median income will vary depending on which “area” is used.

OCSC recommends the Commission adopt a definition for “low income” that is consistent with the existing definitions, and suggests the following:

Low Income Customer: A customer whose household income is at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider, a customer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program (LIHEAP).

2. Hard-to-Reach Definition

The Energy Efficiency Rules anticipate programs for Hard-to-Reach customers.⁵ The Rules define “Hard-to-Reach Customer” as “residential customers with an annual household income at or below 200% of the federal poverty guidelines.”⁶ This definition focuses on annual income as the differentiator between hard-to-reach customers and other customers. The rule aligns low income and hard-to-reach customers as evidenced in 16 TAC § 25.181(p)(3), which states that any targeted low-income energy efficiency program funds that are not obligated after July of a program year may be made available for use in the hard-to-reach program.

In contrast, Commission Staff’s proposed definition shifts the character of hard-to-reach customers from income-based (annual household income) to location-based (rural area). OCSC supports this shift because rather than conflating low income and hard-to-reach customers, it explicitly recognizes two different groups of customers with potentially different energy efficiency needs. However, the specific definition proposed by Commission Staff introduces a vague standard that is based on the inability of the utility to administer programs *in a manner similar to*

⁵ 16 TAC § 25.181(c), (l), and (p).

⁶ 16 TAC § 25.181(c)(27).

other areas served. This relative standard may well differ from utility-to-utility and even year-to-year or program-by-program for the same utility. Furthermore, the definition delegates to Commission Staff and other parties the difficult task of verifying that the hard-to-reach programs were properly applied to customers for which the utility could not administer programs in a manner similar to other areas served.

OCSC recommends the Commission adopt a definition for “hard-to-reach” that has a more tangible measurement. Specifically, OCSC recommends a definition that incorporates a definition for “rural area” that is population based or based on a threshold number of customers in a particular area or in a particular circuit, or customer density (customers per square mile) in a particular area. After a review of Commission Substantive Rules, “rural area” is defined in only one rule:

16 TAC § 26.143(c) Definitions. Subsection (6) Rural area or rural service area. Any community located in a county not included within a Metropolitan Statistical Area (MSA) boundary, as defined by the United States Office of Management and Budget, and any community within an MSA with a population of 20,000 or fewer not adjustment to the primary MSA city.

A similar definition based on a tangible measurement such as on a threshold number of customers in a particular area or in a particular circuit, or customer density (customers per square mile) in a particular area should be adopted.

3. 16 Texas Administrative Code (TAC) §25.181, Cost-Effectiveness Standard.

a. What changes should be considered when calculating cost-effectiveness?

i. Discuss changes, if any, that may be warranted to elements of the cost calculation, including measurement and allocation of costs.

The Commission should evaluate the parameters for earning an energy efficiency performance bonus. Currently, a performance bonus is earned by a utility that exceeds its demand and energy reduction goals at a cost that does not exceed the established cost caps.⁷ 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.⁸

Exceeding the required demand and energy reduction goals is encouraged, and a performance bonus may be appropriate, but the parameters for earning a bonus should be made

⁷ 16 TAC § 25.182(c).

⁸ 16 TAC § 25.182(e)(5).

more stringent. For example, Oncor claimed a \$16.6 million bonus for its 2023 performance, when it exceeded its demand reduction goal by 93%.⁹ This suggests that Oncor's demand reduction goals should be increased, or perhaps the claimed savings (based on the Technical Reference Manual (TRM)) are overstated. Either way, the relationship between the goal and the results should be revisited by the Commission to reduce the margin. Another option to manage bonuses would be a secondary cap equivalent to 25% of the utility's overall program spend as proposed by Commission Staff in Docket No. 57172.

Moreover, under the Energy Efficiency Rules, a bonus shall not be included in the utility's revenues or net income for the purpose of establishing a utility's rates or Commission assessment of its earnings. This exemption should be reconsidered as there is no reason that bonus revenues, like any other utility revenue, should be exempt from consideration in rate proceedings or assessment of utility earnings.

In addition to evaluating the parameters for earning an energy efficiency performance bonus, the Commission should consider whether load management programs should be treated as energy efficiency programs. Load management programs comprised more than 60% of the utilities' demand savings claimed in 2023. Although these programs are effective demand reduction options, they do not provide more efficient or permanent reductions in demand or energy use. Due to a temporary program resulting in high demand savings, load management programs should not be considered when measuring the cost effectiveness since they do not provide permanent benefits.

Furthermore, under the Energy Efficiency Rules, a utility in an area in which customer choice is not offered may petition the Commission for authorization to use an avoided cost of energy other than that otherwise determined according to this paragraph, where the default avoided cost of energy is based on ERCOT energy prices.¹⁰ The Commission should allow parties other than the utility to request that the utility use an avoided cost other than ERCOT prices since a utility in an area in which customer choice is not offered is not in ERCOT; thus, the ERCOT avoided cost of energy is not representative of the utility's costs.

⁹ *Application of Oncor Electric Delivery Company LLC to Adjust its Energy Efficiency Cost Recovery Factor*; Docket No. 56682; *Application of Oncor Electric Delivery Company LLC to Adjust its Energy Efficiency Cost Recovery Factor* at 47 (May 31, 2024).

¹⁰ 16 TAC § 25.181(d)(3)(B).

Finally, the Commission should ensure that the TRM is updated to incorporate actual results realized by Texas utilities so that the information used in program planning and reporting of energy efficiency programs is supported by actual results.

ii. Discuss changes, if any, that may be warranted to elements of the benefits determination, including measurement and avoided costs.

Commission Staff's current petition in Docket No. 57172 highlights the issue with benefits based on volatile measure such as avoided cost of energy. However, it is necessary that energy efficient programs be cost effective so that the benefits derived from the programs exceed the implementation costs. Because program lives extend over multiple years, the Commission should consider averaging the avoided cost of energy over multiple years to mirror the program lives and provide more stability in the avoided costs.

Additionally, as discussed above, the TRM should be updated to incorporate actual results realized by Texas utilities so that the information used in program planning and reporting of energy efficiency programs is supported by actual results. The savings associated with an energy efficiency program must be realistic, or the resulting net benefits will be flawed.

a. What is the appropriate level at which to compare costs to benefits?

It is not clear what levels Commission Staff is considering, but OCSC suggests that the level of comparison be commensurate with the amount of time and effort needed to track that level of comparison. Currently, utilities track individual programs for residential and commercial customer classes. Further detailing these programs may increase costs to track these programs without a meaningful increase in demand and energy savings. OCSC supports effective energy efficiency programs but is mindful of burdening consumers with additional costs that do not provide savings.

iii. What are the benefits of considering sector-level cost-effectiveness?

It is not clear what sector-level benefits Commission Staff is considering in its request for comments, but as already discussed, OCSC suggests that the level of comparison be commensurate with the amount of time and effort needed to track that level of comparison. Currently, utilities track individual programs for residential and commercial customer classes. Further detailing these programs may increase costs to track these programs without a meaningful increase in the benefits the program provides. OCSC supports effective energy efficiency programs but is mindful of burdening consumers with additional costs that do not provide increased benefits.

II. CONCLUSION

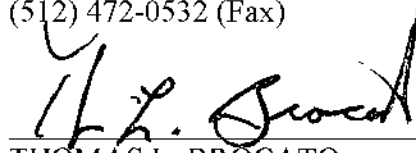
OCSC appreciates the opportunity to comment on Commission Staff's request for comments on proposed definitions for the terms "low income" and "hard-to-reach," and responses to questions regarding calculating cost-effectiveness and the appropriate level at which to compare costs to benefits. OCSC looks forward to continued opportunities to provide comments on the Energy Efficiency Rules.

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Respectfully submitted,

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