

**PROJECT NO. 48692**

<b>RULEMAKING PROCEEDING TO</b>	§	
<b>AMEND 16 TAC §25.181 AND 16 TAC</b>	§	<b>PUBLIC UTILITY COMMISSION</b>
<b>§25.183, AND ADOPT NEW 16 TAC</b>	§	
<b>§25.182, RELATING TO ENERGY</b>	§	<b>OF TEXAS</b>
<b>EFFICIENCY COST RECOVERY</b>	§	
<b>FACTOR</b>	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.181,  
NEW §25.182, AND AMENDMENT TO §25.183  
AS APPROVED AT THE DECEMBER 7, 2018 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.181, relating to energy efficiency goal; new §25.182, relating to energy efficiency cost recovery factor; and amendments to §25.183, relating to reporting and evaluation of energy efficiency programs. The proposed amendments to §25.181 remove the cost recovery and performance bonus subsections, require the inclusion of calculations supporting adjustments between meter and source in the energy-efficiency plan and report, clarify that peak demand is to be calculated at the source, address the process to challenge the determination of avoided cost and the approval of changes to the technical reference manual, and include clarifications of rule language and non-substantive amendments, including the removal of obsolete and unnecessary rule language. The proposed new §25.182 includes the cost recovery and performance bonus subsections removed from §25.181, and it amends those subsections to require the application of interest to over- and under-recovery balances, to clarify the bonus calculation based on recent commission precedent, and to incorporate non-substantive amendments including the removal of obsolete and unnecessary rule language. The proposed amendments to §25.183 remove obsolete and unnecessary rule language.

***Growth Impact Statement***

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that, for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rules will not create a new regulation;
- (6) the proposed rules will not expand, limit, or repeal an existing regulation;
- (7) the proposed rules will not change the number of individuals subject to the rule's applicability; and,
- (8) the proposed rules will not affect this state's economy.

The proposed rules create a new §25.182. The content of new §25.182, however, consists entirely of content that currently exists in §25.181 and amendments to that content, as one of the purposes of this rulemaking is to better organize the commission's rules by splitting the current §25.181 into two rules. To the extent that the language proposed for §25.182 amends the language moved over from §25.181, the commission would have proposed those same amendments even if all language had been retained in §25.181 instead of split between §25.181 and new §25.182.

***Fiscal Impact on Small and Micro-Businesses and Rural Communities***

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

***Takings Impact Analysis***

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

***Fiscal Impact on State and Local Government***

William B. Abbott, Director of Tariff and Rate Analysis in the Rate Regulation Division of the commission, has determined that, for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the rules.

***Public Benefits***

Mr. Abbott has also determined that, for each year of the first five years the proposed rules are in effect, the anticipated public benefits expected as a result of the adoption of the proposed rules will be the codification of past decisions and current practices of the commission along with the removal of obsolete rule language, and that there will be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

***Local Employment Impact Statement***

For each year of the first five years the proposed rules are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

***Costs to Regulated Persons***

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

***Public Hearing***

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on January 22, 2019. The request for a public hearing must be received within 20 days after publication.

***Public Comments***

Comments on the proposed amendments and new section may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, Texas 78711-3326, by January 10, 2019 (20 days after publication). Sixteen copies of comments to the proposed amendments are required to be filed by 16 TAC §22.71(c). Reply comments may be submitted by January 17, 2019 (27 days after publication). Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by,

implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to adopt the rules. All comments should refer to Project Number 48692.

***Statutory Authority***

These amendments and new section are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §36.204, which authorizes the commission to establish rates for an electric utility that allow timely recovery of the reasonable costs for conservation and load management, including additional incentives for conservation and load management; and PURA §39.905, which requires the commission to provide oversight of energy-efficiency programs of electric utilities subject to that section and adopt rules and procedures to ensure that electric utilities subject to that section can achieve their energy-efficiency goals.

Cross reference to statutes: Public Utility Regulatory Act §§14.002, 36.204, and 39.905.

**§25.181. Energy Efficiency Goal.**

(a) **Purpose.** The purpose of this section is to ensure that:

(1) - (2) (No change.)

(3) each electric utility annually provides, through market-based standard offer programs, targeted market-transformation programs, or utility self-delivered programs, incentives sufficient for residential and commercial customers, retail electric providers, and energy efficiency service providers to acquire additional cost-effective energy efficiency, subject to EECRF caps established in [§25.182\(d\)\(7\) of this title \(relating to Energy Efficiency Cost Recovery Factor\)](#) ~~subsection (f)(7) of this section~~, for the utility to achieve the goals in subsection (e) of this section.

(b) **Application.** This section applies to electric utilities [and the Electric Reliability Council of Texas, Inc. \(ERCOT\)](#).

(c) **Definitions.** The following terms, when used in this section [and in §25.182 of this title](#), shall have the following meanings unless the context indicates otherwise:

(1) - (3) (No change.)

(4) **Commercial customer** -- A non-residential customer taking service at a ~~metered~~ point of delivery at a distribution voltage under an electric utility's tariff during the prior program year or a non-profit customer or government entity, including an

educational institution. For purposes of this section, each ~~metered~~ point of delivery shall be considered a separate customer.

(5) - (12) (No change.)

(13) **Energy Efficiency Cost Recovery Factor (EECRF)** -- An electric tariff provision, compliant with ~~§25.182 of this title subsection (f) of this section,~~ ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of PURA §39.905 that provide for a ~~cost-effective~~ portfolio of ~~cost-effective~~ energy efficiency programs ~~under pursuant to~~ this section.

(14) - (29) (No change.)

(30) **Industrial customer** -- A for-profit entity engaged in an industrial process taking electric service at transmission voltage, or a for-profit entity engaged in an industrial process taking electric service at distribution voltage that qualifies for a tax exemption under Tax Code §151.317 and has submitted an identification notice ~~under pursuant to~~ subsection ~~(u)(w)~~ of this section.

(31) - (43) (No change.)

(44) **Peak demand** -- Electrical demand at the times of highest annual demand on the utility's system at the source. Peak demand refers to Texas retail peak demand and, therefore, does not include demand of retail customers in other states or wholesale customers.

(45) **Peak demand reduction** -- Reduction in demand on the utility's system at the source at the times of the utility's summer peak period or winter peak period.

(46) **Peak period** -- For the purpose of this section, the peak period consists of the hours from one p.m. ~~to~~ ~~7~~ seven p.m., during the months of June, July, August,

and September, and the hours of ~~six a.m. 6 to ten 10~~ a.m. and ~~six p.m. 6 to ten 10~~ p.m.; during the months of December, January, and February, excluding weekends and Federal holidays.

(47) - (48) (No change.)

~~(49) — **Rate class** — For the purpose of calculating EECRF rates, a utility's rate classes are those retail rate classes approved in the utility's most recent base rate proceeding, excluding non-eligible customers.~~

~~(49)(50)~~ **Renewable demand side management (DSM) technologies** -- Equipment that uses a renewable energy resource (renewable resource), as defined in §25.173(c) of this title (relating to Goal for Renewable Energy), a geothermal heat pump, a solar water heater, or another natural mechanism of the environment, that when installed at a customer site, reduces the customer's net purchases of energy, demand, or both.

~~(50)(51)~~ **Savings-to-Investment Ratio (SIR)** -- The ratio of the present value of a customer's estimated lifetime electricity cost savings from energy efficiency measures to the present value of the installation costs, inclusive of any incidental repairs, of those energy efficiency measures.

~~(51)(52)~~ **Self-delivered program** -- A program developed by a utility in an area in which customer choice is not offered that provides incentives directly to customers. The utility may use internal or external resources to design and administer the program.

~~(52)(53)~~ **Spillover** -- Reductions in energy consumption and/or demand caused by the presence of an energy efficiency program, beyond the program-related gross

savings of the participants and without financial or technical assistance from the program. There can be participant and/or non-participant spillover.

~~(53)~~(54) **Spillover rate** -- Estimate of energy savings attributable to spillover expressed as a percent of savings installed by participants through an energy efficiency program.

~~(54)~~(55) **Standard offer contract** -- A contract between an energy efficiency service provider and a participating utility or between a participating utility and a commercial customer specifying standard payments based upon the amount of energy and peak demand savings achieved through energy efficiency measures, the measurement and verification protocols, and other terms and conditions, consistent with this section.

~~(55)~~(56) **Standard offer program** -- A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

~~(56)~~(57) **Technical reference manual (TRM)** -- A resource document compiled by the commission's EM&V contractor that includes information used in program planning and reporting of energy efficiency programs. It can include savings values for measures, engineering algorithms to calculate savings, impact factors to be applied to calculated savings (e.g., net-to-gross values), protocols, source documentation, specified assumptions, and other relevant material to support the calculation of measure and program savings.

~~(57)~~(58) **Verification** -- An independent assessment that a program has been implemented in accordance with the program design. The objectives of measure

installation verification are to confirm the installation rate, that the installation meets reasonable quality standards, and that the measures are operating correctly and have the potential to generate the predicted savings. Verification activities are generally conducted during on-site surveys of a sample of projects. Project site inspections, participant phone and mail surveys and/or implementer and participant documentation review are typical activities associated with verification. Verification is also a subset of evaluation.

- (d) **Cost-effectiveness standard.** An energy efficiency program is deemed to be cost-effective if the cost of the program to the utility is less than or equal to the benefits of the program. Utilities are encouraged to achieve demand reduction and energy savings through a portfolio of cost-effective programs that exceed each utility's energy efficiency goals while staying within the cost caps established in §25.182(d)(7) of this title~~subsection (f)(7) of this section.~~
- (1) (No change.)
  - (2) ~~The avoided cost of capacity is \$80 per kW-year for all electric utilities through program year 2012, unless the commission establishes a different avoided cost of capacity in accordance with this paragraph.~~The avoided cost of capacity shall be established revised beginning with program year 2013, in accordance with this paragraph.
    - (A) By November ~~14~~<sup>15</sup> of each year, commission staff shall file the avoided cost of capacity for the upcoming year in the commission's central records under the control number for the energy efficiency implementation

~~project post a notice of a revised avoided cost of capacity on the commission's website, on a webpage designated for this purpose, effective for the next program year. If the avoided cost of capacity has not changed, staff shall post a notice that the avoided cost of capacity remains the same.~~

- (i) (No change.)
- (ii) If the EIA base overnight cost of a new conventional or an advanced combustion turbine, whichever is lower, is less than \$700 per kW, the avoided cost of capacity shall be \$80 per ~~kW-year~~kW. If the base overnight cost of a new conventional or advanced combustion turbine, whichever is lower, is at or between \$700 and \$1,000 per kW, the avoided cost of capacity shall be \$100 per ~~kW-year~~kW. If the base overnight cost of a new conventional or advanced combustion turbine, whichever is lower, is greater than \$1,000 per kW, the avoided cost of capacity shall be \$120 per ~~kW-year~~kW.
- (iii) The avoided cost of capacity calculated by staff may be challenged only by the filing of a petition within 45 days of the date the avoided cost of capacity is filed in the commission's central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection posted on the commission's website on a webpage designated for that purpose. The petition must clearly describe the reasons commission's staff's avoided cost calculation is incorrect,

include supporting data and calculations, and state the relief sought.

- (B) A utility in an area in which customer choice is not offered may petition the commission for authorization to use an avoided cost of capacity different from the avoided cost determined according to subparagraph (A) of this paragraph by filing a petition no later than 45 days after the date the avoided cost of capacity calculated by staff is filed in the commission's central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection~~posted on the commission's website on a webpage designated for that purpose.~~ The petition must clearly describe the reasons a different avoided cost should be used, include supporting data and calculations, and state the relief sought. The avoided cost of capacity proposed by the utility shall be based on a generating resource or purchase in the utility's resource acquisition plan and the terms of the purchase or the cost of the resource shall be disclosed in the filing.
- (3) ~~The avoided cost of energy is \$0.064 per kWh for all electric utilities through program year 2012, unless the commission establishes a different avoided cost of energy in accordance with this paragraph.~~ The avoided cost of energy shall be established revised beginning with program year 2013, in accordance with this paragraph.
- (A) ~~Commission staff shall post a notice of a revised avoided cost of energy by November 15 of each year on the commission's website, on a webpage~~

~~designated for this purpose, effective for the next program year. If the cost of energy has not changed, staff shall post a notice that the cost of energy remains the same.~~—By November 1 of each year, ERCOT shall file calculate the avoided cost of energy for the upcoming year for the ERCOT region, as defined in §25.5(48) of this title (relating to Definitions), in the commission’s central records under the control number for the energy efficiency implementation project. ERCOT shall calculate the avoided cost of energy 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. The avoided cost of energy calculated by ERCOT may be challenged only by the filing of a petition within 45 days of the date the avoided cost of capacity is filed by ERCOT in the commission’s central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection. The petition must clearly describe the reasons ERCOT’s avoided cost of energy calculation is incorrect, include supporting data and calculations, and state the relief sought.

(B) (No change.)

(e) **Annual energy efficiency goals.**

- (1) An electric utility shall administer a portfolio of energy efficiency programs to acquire, at a minimum, the following:

~~(A) — The utility shall acquire no less than a 25% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2012 program year.~~

~~(A)(B)~~ Beginning with the 2013 program year, until the trigger described in subparagraph ~~(B)(C)~~ of this paragraph is reached, the utility shall acquire a 30% reduction of its annual growth in demand of residential and commercial customers.

~~(B)(C)~~ If the demand reduction goal to be acquired by a utility under subparagraph ~~(A)(B)~~ of this paragraph is equivalent to at least four-tenths of 1% of its summer weather-adjusted peak demand for the combined residential and commercial customers for the previous program year, the utility shall meet the energy efficiency goal described in subparagraph ~~(C)(D)~~ of this paragraph for each subsequent program year.

~~(C)(D)~~ Once the trigger described in subparagraph ~~(B)(C)~~ of this paragraph is reached, the utility shall acquire four-tenths of 1% of its summer weather-adjusted peak demand for the combined residential and commercial customers for the previous program year.

~~(D)(E)~~ Except as adjusted in accordance with subsection ~~(u)(w)~~ of this section, a utility's demand reduction goal in any year shall not be lower than its goal for the prior year, unless the commission establishes a goal for a utility ~~underpursuant to~~ paragraph (2) of this subsection.

- (2) The commission may establish for a utility a lower goal than the goal specified in paragraph (1) of this subsection, a higher administrative spending cap than the cap

specified under subsection ~~(g)(+)~~ of this section, or an EECRF greater than the cap specified in ~~§25.182(d)(7) of this title~~~~subsection (f)(7) of this section~~ if the utility demonstrates that compliance with that goal, administrative spending cap, or EECRF cost cap is not reasonably possible and that good cause supports the lower goal, higher administrative spending cap, or higher EECRF cost cap. To be eligible for a lower goal, higher administrative spending cap, or a higher EECRF cost cap, the utility must request a good cause exception as part of its EECRF application under §25.182 of this title. If approved, the good cause exception is limited to the program year associated with the EECRF application.

- (3) Each utility's demand-reduction goal shall be calculated as follows:
- (A) (No change.)
  - (B) The demand goal for energy-efficiency savings for a year under paragraph pursuant to paragraphs ~~(1)(A) or (B)~~ of this subsection is calculated by applying the percentage goal to the average growth in demand, calculated in accordance with subparagraph (A) of this paragraph. The annual demand goal for energy efficiency savings under paragraph pursuant to paragraph ~~(1)(C)(D)~~ of this subsection is calculated by applying the percentage goal to the utility's summer weather-adjusted five-year average peak demand for the combined residential and commercial customers.
  - (C) (No change.)
  - (D) If a utility's prior five-year average load growth, calculated under pursuant ~~to~~ subparagraph (A) of this paragraph, is negative, the utility shall use the demand reduction goal calculated using the alternative method approved

by the commission beginning with the 2013 program year or, if the commission has not approved an alternative method, the utility shall use the previous year's demand reduction goal.

(E) - (G) (No change.)

(4) (No change.)

(5) Electric utilities shall administer a portfolio of energy efficiency programs to effectively and efficiently achieve the goals set out in this section.

(A) (No change.)

(B) Projects or measures under a standard offer, market transformation, or self-delivered program are not eligible for incentive payments or compensation if:

(i) (No change.)

(ii) A measure would be adopted even in the absence of the energy efficiency service provider's proposed energy efficiency project, except in special cases, such as hard-to-reach and weatherization programs, or where free riders are accounted for using a net to gross adjustment of the avoided costs, or another method that achieves the same result. ~~A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.~~

(iii) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

- (C) Ineligibility ~~under pursuant to~~ subparagraph (B) of this paragraph does not apply to standard offer, market transformation, and self-delivered programs aimed at energy code adoption, implementation, compliance, and enforcement under subsection ~~(k)(m)~~ of this section, nor does it preclude standard offer, market transformation, or self-delivered programs promoting energy efficiency measures also required by energy codes to the degree such codes do not achieve full compliance rates.
- (D) A utility in an area in which customer choice is not offered may achieve the goals of paragraphs (1) and (2) of this subsection by:
- (i) (No change.)
  - (ii) developing, subject to commission approval, new programs other than standard offer programs and market transformation programs, to the extent that the new programs satisfy the same cost-effectiveness standard as standard offer programs and market transformation programs using the process outlined in subsection ~~(q)(s)~~ of this section.
- (E) (No change.)

~~(f) Cost recovery. A utility shall establish an energy efficiency cost recovery factor (EECRF) that complies with this subsection to timely recover the reasonable costs of providing a portfolio of cost-effective energy efficiency programs pursuant to this section.~~

~~(1) The EECRF shall be calculated to recover:~~

~~(A) For a utility that does not collect any amount of energy efficiency costs in its base rates, the utility's forecasted annual energy efficiency program expenditures, the preceding year's over or under recovery that includes municipal and utility EECRF proceeding expenses, any performance bonus earned under subsection (h) of this section, and EM&V costs allocated to the utility by the commission.~~

~~(B) For a utility that collects any amount of energy efficiency in its base rates, the utility's forecasted annual energy efficiency program expenditures in excess of the actual energy efficiency revenues collected from base rates as described in paragraph (2) of this subsection, the preceding year's over or under recovery that includes municipal and utility EECRF proceeding expenses, any performance bonus earned under subsection (h) of this section, and EM&V costs allocated to the utility by the commission.~~

~~(2) The commission may approve an EECRF for each eligible rate class. The costs shall be directly assigned to each rate class that receives services under the programs to the maximum extent reasonably possible. In its EECRF proceeding, a utility may request a good cause exception to combine one or more rate classes, each containing fewer than 20 customers, with a similar rate class that receives services under the same energy efficiency programs. For each rate class, the~~

~~under or over recovery of the energy efficiency costs shall be the difference between actual EECRF revenues and actual costs for that class that comply with paragraph (12) of this subsection. Where a utility collects energy efficiency costs in its base rates, actual energy efficiency revenues collected from base rates consist of the amount of energy efficiency costs expressly included in base rates, adjusted to account for changes in billing determinants from the test year billing determinants used to set rates in the last base rate proceeding.~~

~~(3) A proceeding conducted pursuant to this subsection is a ratemaking proceeding for purposes of PURA §33.023. EECRF proceeding expenses shall be included in the EECRF calculated pursuant to paragraph (1) of this subsection as follows:~~

~~(A) For a utility's EECRF proceeding expenses, the utility may include only its expenses for the immediately previous EECRF proceeding conducted under this subsection.~~

~~(B) For municipalities' EECRF proceeding expenses, the utility may include only expenses paid or owed for the immediately previous EECRF proceeding conducted under this subsection for services reimbursable under PURA §33.023(b).~~

~~(4) Base rates shall not be set to recover energy efficiency costs.~~

~~(5) If a utility recovers energy efficiency costs through base rates, the EECRF may be changed in a general rate proceeding. If a utility is not recovering energy efficiency costs through base rates, the EECRF may be adjusted only in an EECRF proceeding pursuant to this subsection.~~

- ~~(6) — For residential customers and for commercial rate classes whose base rates do not provide for demand charges, the EECRF rates shall be designed to provide only for energy charges. For commercial rate classes whose base rates provide for demand charges, the EECRF rates shall provide for energy charges or demand charges but not both. Any EECRF demand charge shall not be billed using a demand ratchet mechanism.~~
- ~~(7) — The total EECRF costs outlined in paragraph (1) of this subsection, excluding EM&V costs and municipal EECRF proceeding expenses shall not exceed the amounts prescribed in this paragraph unless a good cause exception filed pursuant to subsection (e)(2) of this section is granted.~~
- ~~(A) — For residential customers for program years 2016 and 2017, \$0.001266 per kWh; and~~
- ~~(B) — For residential customers for program year 2018, \$0.001263 per kWh increased or decreased by a rate equal to the 2016 calendar year's percentage change in the South urban consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics;~~
- ~~(C) — For commercial customers for program years 2016 and 2017, rates designed to recover revenues equal to \$0.000791 per kWh times the aggregate of all eligible commercial customers' kWh consumption; and~~
- ~~(D) — For commercial customers for program year 2018, rates designed to recover revenues equal to \$0.000790 per kWh increased or decreased by a rate equal to the 2016 calendar year's percentage change in the South~~

~~urban CPI, as determined by the Federal Bureau of Labor Statistics times the aggregate of all eligible commercial customers' kWh consumption.~~

~~(E) — For the 2019 program year and thereafter, the residential and commercial cost caps shall be calculated to be the prior period's cost caps increased or decreased by a rate equal to the most recently available calendar year's percentage change in the South urban CPI, as determined by the Federal Bureau of Labor Statistics.~~

~~(8) — Not later than May 1 of each year, a utility in an area in which customer choice is not offered shall apply to adjust its EECRF effective January 1 of the following year. Not later than June 1 of each year, a utility in an area in which customer choice is offered shall apply to adjust its EECRF effective March 1 of the following year. If a utility is in an area in which customer choice is offered in some but not all parts of its service area and files one energy efficiency plan and report covering all of its service area, the utility shall apply to adjust the EECRF not later than May 1 of each year, with the EECRF effective January 1 in the parts of its service area in which customer choice is not offered and March 1 in the parts of its service area in which customer choice is offered.~~

~~(9) — Upon a utility's filing of an application to establish a new EECRF or adjust an EECRF, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding required by subparagraphs (A), (B), and (C) of this paragraph as follows:~~

~~(A) — For a utility in an area in which customer choice is not offered, the presiding officer shall set a procedural schedule that will enable the~~

~~commission to issue a final order in the proceeding prior to the January 1 effective date of the new or adjusted EECRF, except where good cause supports a different procedural schedule.~~

~~(B) For a utility in an area in which customer choice is offered, the effective date of a new or adjusted EECRF shall be March 1. The presiding officer shall set a procedural schedule that will enable the utility to file an EECRF compliance tariff consistent with the final order within 10 days of the date of the final order. The procedural schedule shall also provide that the compliance filing date will be at least 45 days before the effective date of March 1. In no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility shall service notice of the approved rates and the effective date of the approved rates by the working day after the utility files a compliance tariff consistent with the final order approving the new or adjusted EECRF to retail electric providers that are authorized by the registration agent to provide service in the utility's service area. Notice under this subparagraph may be served by email. The procedural schedule may be extended for good cause, but in no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF, and in no event shall the utility serve notice of the approved rates and the effective date of the approved rates to retail electric~~

~~providers that are authorized by the registration agent to provide service in the utility's service area more than one working day after the utility files the compliance tariff.~~

- ~~(C) For a utility in an area in which customer choice is offered in some but not all parts of its service area and that files one energy efficiency plan and report covering all of its service area, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding prior to the January 1 effective date of the new or adjusted EECRF for the areas in which customer choice is not offered, except where good cause supports a different schedule. For areas in which customer choice is offered, the effective date of the new or adjusted EECRF shall be March 1. The presiding officer shall set a procedural schedule that will enable the utility to file an EECRF compliance tariff consistent with the final order within 10 days of the date of the final order. The procedural schedule shall also provide that the compliance filing date will be at least 45 days before the effective date of March 1. In no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility shall serve notice of the approved rates and the effective date of the approved rates by the working day after the utility files a compliance tariff consistent with the final order approving the new or adjusted EECRF to retail electric providers that are authorized by the registration agent to provide service in~~

~~the utility's service area. Notice under this subparagraph of this paragraph may be served by email. The procedural schedule may be extended for good cause, but in no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF, and in no event shall the utility serve notice of the approved rates and the effective date of the approved rates to retail electric providers that are authorized by the registration agent to provide service in the utility's service area more than one working day after the utility files the compliance tariff.~~

~~(D) If no hearing is requested within 30 days of the filing of the application, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within 90 days after a sufficient application was filed; or~~

~~(E) If a hearing is requested within 30 days of the filing of the application, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within 180 days after a sufficient application was filed. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after a sufficient application is filed.~~

~~(10) A utility's application to establish or adjust an EECRF shall include testimony and schedules, in Excel format with formulas intact, showing the following, by retail~~

rate class, for the prior program year and the program year for which the proposed EECRF will be collected as appropriate:

- (A) ~~the utility's forecasted energy efficiency costs;~~
- (B) ~~the actual base rate recovery of energy efficiency costs, adjusted for load changes in load subsequent to the last base rate proceeding, with supporting calculations;~~
- (C) ~~the energy efficiency performance bonus amount that it calculates to have earned for the prior year;~~
- (D) ~~any adjustment for past over or under recovery of energy efficiency revenues;~~
- (E) ~~information concerning the calculation of billing determinants for the most recent year and for the year in which the EECRF is expected to be in effect;~~
- (F) ~~the direct assignment and allocation of energy efficiency costs to the utility's eligible rate classes, including any portion of energy efficiency costs included in base rates, provided that the utility's actual EECRF expenditures by rate class may deviate from the projected expenditures by rate class, to the extent doing so does not exceed the cost caps in paragraph (7) of this subsection;~~
- (G) ~~information concerning calculations related to the requirements of paragraph (7) of this subsection;~~
- (H) ~~the incentive payments by the utility, by program, including a list of each energy efficiency administrator and/or service provider receiving more~~

~~than 5% of the utility's overall incentive payments and the percentage of the utility's incentives received by those providers. Such information may be treated as confidential;~~

~~(I) the utility's administrative costs, including any affiliate costs and EECRF proceeding expenses and an explanation of both;~~

~~(J) the actual EECRF revenues by rate class for any period for which the utility calculates an under or over recovery of EECRF costs;~~

~~(K) the utility's bidding and engagement process for contracting with energy efficiency service providers, including a list of all energy efficiency service providers that participated in the utility programs and contractors paid with funds collected through the EECRF. Such information may be treated as confidential;~~

~~(L) the estimated useful life used for each measure in each program, or a link to the information if publicly available; and~~

~~(M) any other information that supports the determination of the EECRF.~~

~~(11) The following factors must be included in the application, as applicable, to support the recovery of energy efficiency costs under this subsection.~~

~~(A) the costs are less than or equal to the benefits of the programs, as calculated in subsection (d) of this section;~~

~~(B) the program portfolio was implemented in accordance with recommendations made by the commission's EM&V contractor and approved by the commission and the EM&V contractor has found no material deficiencies in the utility's administration of its portfolio of~~

~~energy efficiency programs. This subparagraph does not preclude parties from examining and challenging the reasonableness of a utility's energy efficiency program expenses nor does it limit the commission's ability to address the reasonableness of a utility's energy efficiency program expenses;~~

- ~~(C) if a utility is in an area in which customer choice is offered and is subject to the requirements of PURA §39.905(f), the utility met its targeted low-income energy efficiency requirements;~~
- ~~(D) existing market conditions in the utility's service territory affected its ability to implement one or more of its energy efficiency programs or affected its costs;~~
- ~~(E) the utility's costs incurred and achievements accomplished in the previous year or estimated for the year the requested EECRF will be in effect are consistent with the utility's energy efficiency program costs and achievements in previous years notwithstanding any recommendations or comments by the EM&V contractor;~~
- ~~(F) changed circumstances in the utility's service area since the commission approved the utility's budget for the implementation year that affect the ability of the utility to implement any of its energy efficiency programs or its energy efficiency costs;~~
- ~~(G) the number of energy efficiency service providers operating in the utility's service territory affects the ability of the utility to implement any of its energy efficiency programs or its energy efficiency costs;~~

- ~~(H) — customer participation in the utility's prior years' energy efficiency programs affects customer participation in the utility's energy efficiency programs in previous years or its proposed programs underlying its EECRF request and the extent to which program costs were expended to generate more participation or transform the market for the utility's programs;~~
- ~~(I) — the utility's energy efficiency costs for the previous year or estimated for the year the requested EECRF will be in effect are comparable to costs in other markets with similar conditions; or~~
- ~~(J) — the utility has set its incentive payments with the objective of achieving its energy and demand goals at the lowest reasonable cost per program.~~
- ~~(12) — The scope of an EECRF proceeding includes the extent to which the costs recovered through the EECRF complied with PURA §39.905 and this section, and the extent to which the costs recovered were reasonable and necessary to reduce demand and energy growth. The proceeding shall not include a review of program design to the extent that the programs complied with the energy efficiency implementation project (EEIP) process defined in subsection (s) of this section. The commission shall not allow recovery of expenses that are designated as non-recoverable under §25.231(b)(2) of this title (relating to Cost of Service). In addition, the order shall contain findings of fact regarding the following:~~
- ~~(A) — the costs to be recovered through the EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet the utility's goals under this section;~~

- ~~(B) — calculations of any under- or over-recovery of EECRF costs is consistent with this section;~~
  - ~~(C) — any energy efficiency performance bonus for which recovery is being sought is consistent with this section;~~
  - ~~(D) — the costs assigned or allocated to rate classes are reasonable and consistent with this section;~~
  - ~~(E) — the estimate of billing determinants for the period for which the EECRF is to be in effect is reasonable;~~
  - ~~(F) — any calculations or estimates of system losses and line losses used in calculating the charges are reasonable;~~
  - ~~(G) — whether the proposed EECRF rates comply with the requirements of paragraph (7) of this subsection; and~~
  - ~~(H) — whether the proposed EECRF rates comply with the requirements of subsection (r) of this section, if the utility is in an area in which customer choice is offered.~~
- ~~(13) — Notice of a utility's filing of an EECRF application is reasonable if the utility provides in writing a general description of the application and the docket number assigned to the application within 7 days of the application filing date to:~~
- ~~(A) — All parties in the utility's most recent completed EECRF docket;~~
  - ~~(B) — All retail electric providers that are authorized by the registration agent to provide service in the utility's service area at the time the EECRF application is filed;~~
  - ~~(C) — All parties in the utility's most recent completed base-rate proceeding; and~~

~~(D) — The state agency that administers the federal weatherization program.~~

~~(14) — The utility shall file an affidavit attesting to the completion of notice within 14 days after the application is filed.~~

~~(f)(g)~~ **Incentive payments.** The incentive payments for each customer class shall not exceed 100% of avoided cost, as determined in accordance with this section. The incentive payments shall be set by each utility with the objective of achieving its energy and demand savings goals at the lowest reasonable cost per program. Different incentive levels may be established for areas that have historically been underserved by the utility's energy efficiency programs or for other appropriate reasons. Utilities may adjust incentive payments during the program year, but such adjustments must be clearly publicized in the materials used by the utility to set out the program rules and describe the programs to participating energy efficiency service providers.

~~(h) — **Energy efficiency performance bonus.** A utility that exceeds its demand and energy reduction goals established in this section at a cost that does not exceed the cost caps established in subsection (f)(7) of this section shall be awarded a performance bonus calculated in accordance with this subsection. 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 this section.~~

~~(1) — The performance bonus shall entitle the utility to receive a share of the net benefits realized in meeting its demand reduction goal established in this section.~~

- ~~(2) Net benefits shall be calculated as the sum of total avoided cost associated with the eligible programs administered by the utility minus the sum of all program costs. Total avoided costs and program costs shall be calculated in accordance with this section.~~
- ~~(3) Beginning with the 2012 program year, 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.~~
- ~~(4) 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 pursuant to subsection (c)(2) of this section. The bonus shall be considered in the EECRF proceeding in which the bonus is requested.~~
- ~~(5) In calculating net benefits to determine a performance bonus, a discount rate equal to the utility's weighted average cost of capital of the utility and an escalation rate of 2 % shall be used. The utility shall provide documentation for the net benefits calculation, including, but not limited to, the weighted average cost of capital, useful life of equipment or measure, and quantity of each measure implemented.~~
- ~~(6) The bonus shall be allocated in proportion to the program costs associated with meeting the demand and energy goals and allocated to eligible customers on a rate class basis.~~

~~(7) A bonus earned under this section 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.~~

~~(g)(i)~~ **Utility administration.** The cost of administration in a program year shall not exceed 15% of a utility's total program costs for that program year. The cost of research and development in a program year shall not exceed 10% of a utility's total program costs for ~~that the previous~~ program year. The cumulative cost of administration and research and development shall not exceed 20% of a utility's total program costs, unless a good cause exception filed under pursuant to subsection (e)(2) of this section is granted. Any portion of these costs ~~that is which are~~ not directly assignable to a specific program shall be allocated among the programs in proportion to the program incentive costs. Any bonus awarded by the commission shall not be included in program costs for the purpose of applying these limits.

(1) Administrative costs include all reasonable and necessary costs incurred by a utility in carrying out its responsibilities under this section, including:

- (A) conducting informational activities designed to explain the standard offer programs and market transformation programs to energy efficiency service providers, retail electric providers, and vendors;
- (B) for a utility offering self-delivered programs, internal utility costs to conduct outreach activities to customers and energy efficiency service providers will be considered administration;

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- (C) providing informational programs to improve customer awareness of energy efficiency programs and measures;
  - (D) reviewing and selecting energy efficiency programs in accordance with this section;
  - (E) providing regular and special reports to the commission, including reports of energy and demand savings;
  - (F) a utility's costs for an EECRF proceeding conducted under §25.182(d) of this title~~pursuant to subsection (f) of this section~~;
  - (G) the costs paid by a utility pursuant to PURA §33.023(b) for an EECRF proceeding conducted under §25.182(d) of this title~~pursuant to subsection (f) of this section~~; however, these costs are not included in the administrative caps applied in this paragraph; and
  - (H) any other activities that are necessary and appropriate for successful program implementation.
- (2) A utility shall adopt measures to foster competition among energy efficiency service providers for standard offer, market transformation, and self-delivered programs, such as limiting the number of projects or level of incentives that a single energy efficiency service provider and its affiliates is eligible for and establishing funding set-asides for small projects.
- (3) A utility may establish funding set-asides or other program rules to foster participation in energy efficiency programs by municipalities and other governmental entities.

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- (4) Electric utilities offering standard offer, market transformation, and self-delivered programs shall use standardized forms, procedures, deemed savings estimates and program templates. The electric utility shall file any standardized materials, or any change to it, with the commission at least 60 days prior to its use. In filing such materials, the utility shall provide an explanation of changes from the version of the materials that was previously used. For standard offer, market transformation, and self-delivered programs, the utility shall provide relevant documents to REPs and EESPs and work collaboratively with them when it changes program documents, to the extent that such changes are not considered in the energy efficiency implementation project described in subsection (q)(~~s~~) of this section.
- (5) Each electric utility in an area in which customer choice is offered shall conduct programs to encourage and facilitate the participation of retail electric providers and energy efficiency service providers in the delivery of efficiency and demand response programs, including:
- (A) Coordinating program rules, contracts, and incentives to facilitate the statewide marketing and delivery of the same or similar programs by retail electric providers;
  - (B) Setting aside amounts for programs to be delivered to customers by retail electric providers and establishing program rules and schedules that will give retail electric providers sufficient time to plan, advertise, and conduct energy efficiency programs, while preserving the utility's ability to meet the goals in this section; and

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(C) Working with retail electric providers and energy efficiency service providers to evaluate the demand reductions and energy savings resulting from time-of-use prices; home-area network devices, such as ~~in-home~~ ~~home~~ displays; and other programs facilitated by advanced meters to determine the demand and energy savings from such programs.

~~(h)~~ ~~(+)~~ **Standard offer programs.** A utility's standard offer program shall be implemented through program rules and standard offer contracts that are consistent with this section. Standard offer contracts will be available to any energy efficiency service provider that satisfies the contract requirements prescribed by the utility under this section and demonstrates that it is capable of managing energy efficiency projects under an electric utility's energy efficiency program.

~~(i)~~ ~~(+)~~ **Market transformation programs.** Market transformation programs are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices. Market transformation programs may be designed to obtain energy savings or peak demand reductions beyond savings that are reasonably expected to be achieved as a result of current compliance levels with existing building codes applicable to new buildings and equipment efficiency standards or standard offer programs. Market transformation programs may also be specifically designed to express support for early adoption, implementation, and enforcement of the most recent version of the International Energy Conservation Code for residential or commercial buildings by local jurisdictions, express support for more effective

implementation and enforcement of the state energy code and compliance with the state energy code, and encourage utilization of the types of building components, products, and services required to comply with such energy codes. The existence of federal, state, or local governmental funding for, or encouragement to utilize, the types of building components, products, and services required to comply with such energy codes does not prevent utilities from offering programs to supplement governmental spending and encouragement. Utilities should cooperate with the REPs, and, where possible, leverage existing industry-recognized programs that have the potential to reduce demand and energy consumption in Texas and consider statewide administration where appropriate. Market transformation programs may operate over a period of more than one year and may demonstrate cost-effectiveness over a period longer than one year.

**(d)(4) Self-delivered programs.** A utility may use internal or external resources to design, administer, and deliver self-delivered programs. The programs shall be tailored to the unique characteristics of the utility's service area in order to attract customer and energy efficiency service provider participation. The programs shall meet the same cost effectiveness requirements as standard offer and market transformation programs.

**(k)(4) Requirements for standard offer, market transformation, and self-delivered programs.** A utility's standard offer, market transformation, and self-delivered programs shall meet the requirements of this subsection. A utility may conduct information and advertising campaigns to foster participation in standard offer, market transformation, and self-delivered programs.

- (1) Standard offer, market transformation, and self-delivered programs:
  - (A) shall describe the eligible customer classes and allocate funding among the classes on an equitable basis;
  - (B) may offer standard incentive payments and specify a schedule of payments that are sufficient to meet the goals of the program, which shall be consistent with this section, or any revised payment formula adopted by the commission. The incentive payments may include both payments for energy and demand savings, as appropriate;
  - (C) shall not permit the provision of any product, service, pricing benefit, or alternative terms or conditions to be conditioned upon the purchase of any other good or service from the utility, except that only customers taking transmission and distribution services from a utility can participate in its energy efficiency programs;
  - (D) shall provide for a complaint process that allows:
    - (i) an energy efficiency service provider to file a complaint with the commission against a utility; and
    - (ii) a customer to file a complaint with the utility against an energy efficiency service provider;
  - (E) may permit the use of distributed renewable generation, geothermal, heat pump, solar water heater and combined heat and power technologies, involving installations of ten megawatts or less;

- (F) may factor in the estimated level of enforcement and compliance with existing energy codes in determining energy and peak demand savings; and
- (G) may require energy efficiency service providers to provide the following:
  - (i) a description of how the value of any incentive will be passed on to customers;
  - (ii) evidence of experience and good credit rating;
  - (iii) a list of references;
  - (iv) all applicable licenses required under state law and local building codes;
  - (v) evidence of all building permits required by governing jurisdictions; and
  - (vi) evidence of all necessary insurance.
- (2) Standard offer and self-delivered programs:
  - (A) shall require energy efficiency service providers to identify peak demand and energy savings for each project in the proposals they submit to the utility;
  - (B) shall be neutral with respect to specific technologies, equipment, or fuels. Energy efficiency projects may lead to switching from electricity to another energy source, provided that the energy efficiency project results in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Utilities may not pay incentives for a customer to switch from gas appliances to electric appliances except

in connection with the installation of high efficiency combined heating and air conditioning systems;

- (C) shall require that all projects result in a reduction in purchased energy consumption, or peak demand, or a reduction in energy costs for the end-use customer;
  - (D) shall encourage comprehensive projects incorporating more than one energy efficiency measure;
  - (E) shall be limited to projects that result in consistent and predictable energy or peak demand savings over an appropriate period of time based on the life of the measure; and
  - (F) may permit a utility to use poor performance, including customer complaints, as a criterion to limit or disqualify an energy efficiency service provider or its affiliate from participating in a program.
- (3) A market transformation program shall identify:
- (A) program goals;
  - (B) market barriers the program is designed to overcome;
  - (C) key intervention strategies for overcoming those barriers;
  - (D) estimated costs and projected energy and capacity savings;
  - (E) a baseline study that is appropriate in time and geographic region. In establishing a baseline, the study shall consider the level of regional implementation and enforcement of any applicable energy code;
  - (F) program implementation timeline and milestones;

- (G) a description of how the program will achieve the transition from extensive market intervention activities toward a largely self-sustaining market;
  - (H) a method for measuring and verifying savings; and
  - (I) the period over which savings shall be considered to accrue, including a projected date by which the market will be sufficiently transformed so that the program should be discontinued.
- (4) A market transformation program shall be designed to achieve energy or peak demand savings, or both, and lasting changes in the way energy efficient goods or services are distributed, purchased, installed, or used over a defined period of time. A utility shall use fair competitive procedures to select EESPs to conduct a market transformation program, and shall include in its annual report the justification for the selection of an EESP to conduct a market transformation program on a sole-source basis.
- (5) A load-control standard-offer program shall not permit an energy efficiency service provider to receive incentives under the program for the same demand reduction benefit for which it is compensated under a capacity-based demand response program conducted by an independent organization, independent system operator, or regional transmission operator. The qualified scheduling entity representing an energy efficiency service provider is not prohibited from receiving revenues from energy sold in ERCOT markets in addition to any incentive for demand reduction offered under a utility load-control standard offer program.

- (6) Utilities offering load management programs shall work with ERCOT and energy efficiency service providers to identify eligible loads and shall integrate such loads into the ERCOT markets to the extent feasible. Such integration shall not preclude the continued operation of utility load management programs that cannot be feasibly integrated into the ERCOT markets or that continue to provide separate and distinct benefits.

~~(1)(a)~~ **Energy efficiency plans and reports (EEPR).** Each electric utility shall file by April 1 of each year an energy efficiency plan and report in a project annually designated for this purpose, as described in this subsection and §25.183(d) of this title. The plan and report shall be filed as a searchable pdf document.

- (1) Each electric utility's energy efficiency plan and report shall describe how the utility intends to achieve the goals set forth in this section and comply with the other requirements of this section. The plan and report shall be based on program years. The plan and report shall propose an annual budget sufficient to reach the goals specified in this section.
- (2) Each electric utility's plan and report shall include:
- (A) the utility's total actual and weather-adjusted peak demand and actual and weather-adjusted peak demand for residential and commercial customers for the previous five years, measured at the source;
- (B) the demand goal calculated in accordance with this section for the current year and the following year, including documentation of the demand, weather adjustments, and the calculation of the goal;

- (C) the utility's customers' total actual and weather-adjusted energy consumption and actual and weather-adjusted energy consumption for residential and commercial customers for the previous five years;
- (D) the energy goal calculated in accordance with this section, including documentation of the energy consumption, weather adjustments, and the calculation of the goal;
- (E) a description of existing energy efficiency programs and an explanation of the extent to which these programs will be used to meet the utility's energy efficiency goals;
- (F) a description of each of the utility's energy efficiency programs that were not included in the previous year's plan, including measurement and verification plans if appropriate, and any baseline studies and research reports or analyses supporting the value of the new programs;
- (G) an estimate of the energy and peak demand savings to be obtained through each separate energy efficiency program;
- (H) a description of the customer classes targeted by the utility's energy efficiency programs, specifying the size of the hard-to-reach, residential, and commercial classes, and the methodology used for estimating the size of each customer class;
- (I) the proposed annual budget required to implement the utility's energy efficiency programs, broken out by program for each customer class, including hard-to-reach customers, and any set-asides or budget restrictions adopted or proposed in accordance with this section. The

proposed budget shall detail the incentive payments and utility administrative costs, including specific items for research and information and outreach to energy efficiency service providers, and other major administrative costs, and the basis for estimating the proposed expenditures;

- (J) a discussion of the types of informational activities the utility plans to use to encourage participation by customers, energy efficiency service providers, and retail electric providers to participate in energy efficiency programs, including the manner in which the utility will provide notice of energy efficiency programs, and any other facts that may be considered when evaluating a program;
- (K) the utility's performance in achieving its energy goal and demand goal for the prior five years, as reported in annual energy efficiency reports filed in accordance with this section;
- (L) a comparison of projected savings (energy and demand), reported savings, and verified savings for each of the utility's energy efficiency programs for the prior two years;
- (M) a description of the results of any market transformation program, including a comparison of the baseline and actual results and any adjustments to the milestones for a market transformation program;
- (N) a description of self-delivered programs;
- (O) expenditures for the prior five years for energy and demand incentive payments and program administration, by program and customer class;

- (P) funds that were committed but not spent during the prior year, by program;
- (Q) a comparison of actual and budgeted program costs, including an explanation of any increase or decreases of more than 10% in the cost of a program;
- (R) information relating to energy and demand savings achieved and the number of customers served by each program by customer class;
- (S) the utility's most recent EECRF, the revenue collected through the EECRF, the utility's forecasted annual energy efficiency program expenditures in excess of the actual energy efficiency revenues collected from base rates as described in §25.182(d)(2) ~~subsection (f)(2)~~ of this ~~title~~section, and the control number under which the most recent EECRF was established;
- (T) the amount of any over- or under-recovery of energy efficiency program costs whether collected through base rates or the EECRF;
- (U) a list of any counties that in the prior year were under-served by the energy efficiency program;
- ~~(V) — a calculation showing whether the utility qualifies for a performance bonus and the amount of any bonus;~~
- ~~(V)(w)~~ a description of new or discontinued programs, including pilot programs that are planned to be continued as full programs. For programs that are to be introduced or pilot programs that are to be continued as full programs, the description shall include the budget and projected demand and energy savings; ~~and~~

~~(W)(X)~~ a link to the program manuals for the current program year; and-  
~~(X)~~ the calculations supporting the adjustments to restate the demand goal  
from the source to the meter and to restate the energy efficiency savings  
from the meter to the source.

~~(m)(p)~~ **Review of programs.** Commission staff may initiate a proceeding to review a utility's energy efficiency programs. In addition, an interested entity may request that the commission initiate a proceeding to review a utility's energy efficiency programs.

~~(m)(p)~~ **Inspection, measurement and verification.** Each standard offer, market transformation, and self-delivered program shall include use of an industry--accepted evaluation and/or measurement and verification protocol, such as the International Performance Measurement and Verification Protocol ~~(IPMVP)~~ or a protocol approved by the commission, to document and verify energy and peak demand savings to ensure that the goals of this section are achieved. A utility shall not provide an energy efficiency service provider final compensation until the provider establishes that the work is complete and evaluation and/or measurement and verification in accordance with the protocol verifies that the savings will be achieved. However, a utility may provide an energy efficiency service provider that offers behavioral programs incremental compensation as work is performed. If inspection of one or more measures is a part of the protocol, a utility shall not provide an energy efficiency service provider final compensation until the utility has conducted its inspection on at least a sample of measures and the inspections confirm that

the work has been done. A utility shall provide inspection reports to commission staff within 20 days of staff's request.

- (1) The energy efficiency service provider, or for self-delivered programs, the utility, is responsible for the determination and documentation of energy and peak demand savings using the approved evaluation and/or measurement and verification protocol, and may utilize the services of an independent third party for such purposes.
- (2) Commission-approved deemed energy and peak demand savings may be used in lieu of the energy efficiency service provider's measurement and verification, where applicable. The deemed savings approved by the commission before December 31, 2007 are continued in effect, unless superseded by commission action.
- (3) Where installed measures are employed, an energy efficiency service provider shall verify that the measures contracted for were installed before final payment is made to the energy efficiency service provider, by obtaining the customer's signature certifying that the measures were installed, or by other reasonably reliable means approved by the utility.
- (4) For projects involving over 30 installations, a statistically significant sample of installations will be subject to on-site inspection in accordance with the protocol for the project to verify that measures are installed and capable of performing their intended function. Inspection shall occur within 30 days of notification of measure installation.

- (5) Projects of less than 30 installations may be aggregated and a statistically significant sample of the aggregate installations will be subject to on-site inspection in accordance with the protocol for the projects to ensure that measures are installed and capable of performing their intended function. Inspection shall occur within 30 days of notification of measure installation.
- (6) Where installed measures are employed, the sample size for on-site inspections may be adjusted for an energy efficiency service provider under a particular contract, based on the results of prior inspections.

~~(o)(4)~~ **Evaluation, measurement, and verification (EM&V).** The following defines the evaluation, measurement, and verification (EM&V) framework ~~to be implemented starting in program year 2013~~. The goal of this framework is to ensure that the programs are evaluated, measured, and verified using a consistent process that allows for accurate estimation of energy and demand impacts.

- (1) EM&V objectives include:
  - (A) Documenting the impacts of the utilities' individual energy efficiency and load management portfolios, comparing their performance with established goals, and determining cost-effectiveness;
  - (B) Providing feedback for the commission, commission staff, utilities, and other stakeholders on program portfolio performance; and
  - (C) Providing input into the utilities' and ERCOT's planning activities.
- (2) The principles that guide the EM&V activities in meeting the primary EM&V objectives are:

- (A) Evaluators follow ethical guidelines.
  - (B) Important and relevant assumptions used by program planners and administrators are reviewed as part of the EM&V efforts.
  - (C) All important and relevant EM&V assumptions and calculations are documented and the reliability of results is indicated in evaluation reports.
  - (D) The majority of evaluation expenditures and efforts are in areas of greatest importance or uncertainty.
- (3) The commission shall select an entity to act as the commission's EM&V contractor and conduct evaluation activities. The EM&V contractor shall operate under the commission's supervision and oversight, and the EM&V contractor shall offer independent analysis to the commission in order to assist in making decisions in the public interest.
- (A) Under the oversight of the commission staff and with the assistance of utilities and other parties, the EM&V contractor will evaluate specific programs and the portfolio of programs for each utility.
  - (B) The EM&V contractor shall have the authority to request data it considers necessary to fulfill its evaluation, measurements, and verification responsibilities from the utilities. A utility shall make good faith efforts to provide complete, accurate, and timely responses to all EM&V contractor requests for documents, data, information and other materials. The commission may on its own volition or upon recommendation by staff require that a utility provide the EM&V contractor with specific information.

- (4) Evaluation activities will be conducted by the EM&V contractor, ~~starting with activities associated with program year 2012,~~ to meet the evaluation objectives defined in this section. Activities shall include, but are not limited to:
- (A) Providing appropriate planning documents.
  - (B) Impact evaluations to determine and document appropriate metrics for each utility's individual evaluated programs and portfolio of all programs, annual portfolio evaluation reports, and additional reports and services as defined by commission staff to meet the EM&V objectives.
  - (C) Preparation of a statewide technical reference manual (TRM), including updates to such manual as defined in this subsection.
- (5) The impact evaluation activities may include the use of one or more evaluation approaches. Evaluation activities may also include, or just include, verification activities on a census or sample of projects implemented by the utilities. Evaluations may also include the use of due-diligence on utility-provided documentation as well as surveys of program participants, non-participants, contractors, vendors, and other market actors.
- (6) The following apply to the development of a statewide TRM by the EM&V contractor.
- (A) The EM&V contractor shall use existing Texas, or other state, deemed savings manual(s), protocols, and the work papers used to develop the values in the manual(s), as a foundation for developing the TRM. The TRM shall include applicability requirements for each deemed savings value or deemed savings calculation. The TRM may also include

standardized EM&V protocols for determining and/or verifying energy and demand savings for particular measures or programs. Utilities may apply TRM deemed savings values or deemed savings calculations to a measure or program if the applicability criteria are met.

- (B) The TRM shall be reviewed by the EM&V contractor at least annually, ~~under pursuant to~~ a schedule determined by commission staff, with the intention of preparing an updated TRM, if needed. In addition, any utility or other stakeholder may request additions to or modifications to the TRM at any time with the provision of documentation for the basis of such an addition or modification. At the discretion of commission staff, the EM&V contractor may review such documentation to prepare a recommendation with respect to the addition or modification.
- (C) Commission staff shall approve the initial TRM and any updated TRMs. The approval process for any TRM additions or modifications, not made during the regular review schedule determined by commission staff, shall include a review by commission staff to determine if an addition or modification is appropriate before an annual update. TRM changes approved by staff may be challenged only by the filing of a petition within 45 days of the date that staff's approval is filed in the commission's central records under the control number for the energy efficiency implementation project described by subsection (d)(2)(A) of this section. The petition must clearly describe the reasons commission staff should not

have approved the TRM changes, include supporting data and calculations, and state the relief sought.

- (D) Any changes to the TRM shall be applied prospectively to programs offered in the appropriate program year.
- (E) The TRM shall be publicly available.
- (F) Utilities ~~may use their existing deemed savings values in their 2013 program year energy efficiency plan and report, submitted in 2012, if the TRM is not available. Starting with their 2014 program year energy efficiency plan and report, submitted in 2013, utilities~~ shall utilize the values contained in the TRM, unless the commission indicates otherwise.
- (7) The utilities shall prepare projected savings estimates and claimed savings estimates. The utilities shall conduct their own EM&V activities for purposes such as confirming any incentive payments to customers or contractors and preparing documentation for internal and external reporting, including providing documentation to the EM&V contractor. The EM&V contractor shall prepare evaluated savings for preparation of its evaluation reports and a realization rate comparing evaluated savings with projected savings estimates and/or claimed savings estimates.
- (8) Baselines for preparation of TRM deemed savings values or deemed savings calculations or for other evaluation activities shall be defined by the EM&V contractor and commission staff shall review and approve them. When common practice baselines are defined for determining gross energy and/or demand savings for a measure or program, common practice may be documented by market

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studies. Baselines shall be defined by measure category as follows (deviations from these specifications may be made with justification and approval of commission staff):

- (A) Baseline is existing conditions for the estimated remaining lifetime of existing equipment for early replacement of functional equipment still within its current useful life. Baseline is applicable code, standard or common practice for remaining lifetime of the measure past the estimated remaining lifetime of existing equipment;
  - (B) Baseline is applicable code, standard or common practice for replacement of functional equipment beyond its current useful life;
  - (C) Baseline is applicable code, standard or common practice for unplanned replacements of failed equipment; and
  - (D) Baseline is applicable code, standard or common practice for new construction or major tenant improvements.
- (9) Relevant recommendations of the EM&V contractor related to program design and reporting should be addressed in the Energy Efficiency Implementation Project (EEIP) and considered for implementation in future program years. The commission may require a utility to implement the EM&V contractor's recommendations in a future program year.
- (10) The utilities shall be assigned the EM&V costs in proportion to their annual program costs and shall pay the invoices approved by the commission. ~~The 2013 and 2014 EM&V expenses outlined in the EM&V contractor's budget shall be recovered through the EECRFs approved by the commission in the EECRF~~

~~proceedings initiated by the utilities in 2013.~~—The commission shall at least biennially review the EM&V contractor's costs and establish a budget for its services sufficient to pay for those services that it determines are economic and beneficial to be performed.

- (A) The funding of the EM&V contractor shall be sufficient to ensure the selection of an EM&V contractor in accordance with the scope of EM&V activities outlined in this subsection.
  - (B) EM&V costs shall be itemized in the utilities' annual reports to the commission as a separate line item. The EM&V costs shall not count against the utility's cost caps or administration spending caps.
- (11) For the purpose of analysis, the utility shall grant the EM&V contractor access to data maintained in the utilities' data tracking systems, including, but not limited to, the following proprietary customer information: customer identifying information, individual customer contracts, and load and usage data in accordance with §25.272(g)(1)(A) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates). Such information shall be treated as confidential information.
- (A) The utility shall maintain records for three ~~(3)~~ years that include the date, time, and nature of proprietary customer information released to the EM&V contractor.
  - (B) The EM&V contractor shall aggregate data in such a way as to protect customer, retail electric provider, and energy efficiency service provider

proprietary information in any non-confidential reports or filings the EM&V contractor prepares.

- (C) The EM&V contractor shall not utilize data provided or received under commission authority for any purposes outside the authorized scope of work the EM&V contractor performs for the commission.
- (D) The EM&V contractor providing services under this section shall not release any information it receives related to the work performed unless directed to do so by the commission.

~~(12) For evaluation of 2012 and 2013 program years' programs and portfolios, the EM&V contractor may implement a reduced level of EM&V activities as the EM&V contractor will not be retained by the commission until after the start of the 2012 program year. Should the EM&V contractor determine that deemed savings values utilized by the utilities for program years 2012 and/or 2013 are different than values the EM&V contractor develops for the TRM, the EM&V contractor shall report two sets of impacts—one with the TRM values and one with the utilities' values for 2012 and/or 2013 program years.~~

~~(p)(r)~~ **Targeted low-income ~~low-income~~ energy efficiency program.** Each unbundled transmission and distribution utility shall include in its energy efficiency plan a targeted low-income energy efficiency program. A utility in an area in which customer choice is not offered may include in its energy efficiency plan a targeted low-income energy efficiency program that utilizes the cost-effectiveness methodology provided in paragraph

(2) of this subsection. Savings achieved by the program shall count toward the utility's energy efficiency goal.

- (1) Each utility shall ensure that annual expenditures for the targeted low-income energy efficiency program are not less than 10% of the utility's energy efficiency budget for the program year.
- (2) The utility's targeted low-income program shall incorporate a whole-house assessment that will evaluate all applicable energy efficiency measures for which there are commission-approved deemed savings. The cost-effectiveness of measures eligible to be installed and the overall program shall be evaluated using the Savings-to-Investment (~~SIR~~)-ratio (SIR).
- (3) Any funds that are not obligated after July of a program year may be made available for use in the hard-to-reach program.

~~(q)~~ **Energy Efficiency Implementation Project - EEIP.** The commission shall use the EEIP to develop best practices in standard offer market transformation, self-directed, pilot, or other programs, modifications to programs, standardized forms and procedures, protocols, deemed savings estimates, program templates, and the overall direction of the energy efficiency program established by this section. Utilities shall provide timely responses to questions posed by other participants relevant to the tasks of the EEIP. Any recommendations from the EEIP process shall relate to future years as described in this subsection.

- (1) The following functions may also be undertaken in the EEIP:

- (A) development, discussion, and review of new statewide standard offer programs;
  - (B) identification, discussion, design, and review of new market transformation programs;
  - (C) determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures;
  - (D) review of and recommendations on the commission EM&V contractor's reports;
  - (E) review of and recommendations on incentive payment levels and their adequacy to induce the desired level of participation by energy efficiency service providers and customers;
  - (F) review of and recommendations on a utility's ~~utility~~ annual energy efficiency plans and reports;
  - (G) utility program portfolios and proposed energy efficiency spending levels for future program years;
  - (H) periodic reviews of the cost-effectiveness methodology; and
  - (I) other activities as identified by commission staff.
- (2) The EEIP projects shall be conducted by commission staff. The commission's EM&V contractor's reports shall be filed in the project at a date determined by commission staff.
- (3) A utility that intends to launch a program that is substantially different from other programs previously implemented by any utility affected by this section shall file

a program template and shall provide notice of such to EEIP participants. Notice to EEIP participants need not be provided if a program description or program template for the new program is provided through the utility's annual energy efficiency report. Following the first year in which a program was implemented, the utility shall include the program results in the utility's annual energy efficiency report.

- (4) Participants in the EEIP may submit comments and reply comments in the EEIP on dates established by commission staff.
- (5) Any new programs or program redesigns shall be submitted to the commission in a petition in a separate proceeding. The approved changes shall be available for use in the utilities' next EEPR and EECRF filings. If the changes are not approved by the commission by November 1 in a particular year, the first time that the changes shall be available for use is the second EEPR and EECRF filings made after commission approval.
- (6) Any interested entity that participates in the EEIP may file a petition to the commission for consideration regarding changes to programs.

**(r)(+) Retail providers.** Each utility in an area in which customer choice is offered shall conduct outreach and information programs and otherwise use its best efforts to encourage and facilitate the involvement of retail electric providers as energy efficiency service companies in the delivery of efficiency and demand response programs.

~~(s)(#)~~ **Customer protection.** Each energy efficiency service provider that provides energy efficiency services to end-use customers under this section shall provide the disclosures and include the contractual provisions required by this subsection, except for commercial customers with a peak load exceeding 50 kW. Paragraph (1) of this subsection does not apply to behavioral energy efficiency programs that do not require a contract with a customer.

- (1) Clear disclosure to the customer shall be made of the following:
  - (A) the customer's right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law;
  - (B) the name, telephone number, and street address of the energy efficiency services provider and any subcontractor that will be performing services at the customer's home or business;
  - (C) the fact that incentives are made available to the energy efficiency services provider through a program funded by utility customers, manufacturers or other entities and the amount of any incentives provided by the utility;
  - (D) the amount of any incentives that will be provided to the customer;
  - (E) notice of provisions that will be included in the customer's contract, including warranties;
  - (F) the fact that the energy efficiency service provider must measure and report to the utility the energy and peak demand savings from installed energy efficiency measures;
  - (G) the liability insurance to cover property damage carried by the energy efficiency service provider and any subcontractor;

- (H) the financial arrangement between the energy efficiency service provider and customer, including an explanation of the total customer payments, the total expected interest charged, all possible penalties for non-payment, and whether the customer's installment sales agreement may be sold;
  - (I) the fact that the energy efficiency service provider is not part of or endorsed by the commission or the utility; and
  - (J) a description of the complaint procedure established by the utility under this section, and toll free numbers for the ~~Office of~~ Customer Protection Division of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.
- (2) The energy efficiency service provider's contract with the customer, where such a contract is employed, shall include:
- (A) work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider;
  - (B) provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs;
  - (C) a disclosure notifying the customer that consumption data may be disclosed to the EM&V contractor for evaluation purposes; and
  - (D) a complaint procedure to address performance issues by the energy efficiency service provider or a subcontractor.

- (3) When an energy efficiency service provider completes the installation of measures for a customer, it shall provide the customer an “All Bills Paid” affidavit to protect against claims of subcontractors.

~~(u)(w)~~ **Grandfathered programs.** An electric utility that offered a load management standard offer program for industrial customers prior to May 1, 2007 shall continue to make the program available, at 2007 funding and participation levels, and may include additional customers in the program to maintain these funding and participation levels.

~~(u)(w)~~ **Identification notice.** An industrial customer taking electric service at distribution voltage may submit a notice identifying the distribution accounts for which it qualifies under subsection (c)(30) of this section. The identification notice shall be submitted directly to the customer’s utility. An identification notice submitted under this section must be renewed every three years. Each identification notice must include the name of the industrial customer, a copy of the customer’s Texas Sales and Use Tax Exemption Certification (~~under pursuant to~~ Tax Code §151.317), a description of the industrial process taking place at the consuming facilities, and the customer’s applicable account number(s) or ESID number(s). The identification notice is limited solely to the metered point of delivery of the industrial process taking place at the consuming facilities. The account number(s) or ESID number(s) identified by the industrial customer under this section shall not be charged for any costs associated with programs provided under this section, including any shareholder bonus awarded; nor shall the identified facilities be eligible to participate in utility-administered energy efficiency programs during the term.

~~Notices Beginning with the 2013 program year, notices~~ shall be submitted not later than February 1 to be effective for the following program year. A utility's demand reduction goal shall be adjusted to remove any load that is lost as a result of this subsection.

- ~~(v)(\*)~~ **Administrative penalty.** The commission may impose an administrative penalty or other sanction if the utility fails to meet a goal for energy efficiency under this section. Factors, to the extent they are outside of the utility's control, that may be considered in determining whether to impose a sanction for the utility's failure to meet the goal include:
- (1) the level of demand by retail electric providers and energy efficiency service providers for program incentive funds made available by the utility through its programs;
  - (2) changes in building energy codes; and
  - (3) changes in government-imposed appliance or equipment efficiency standards.

**§25.182. Energy Efficiency Cost Recovery Factor.**

(a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.905 and establish:

- (1) an energy efficiency cost recovery factor (EECRF) that enables an electric utility to timely recover the reasonable costs of providing a portfolio of cost-effective energy efficiency programs that complies with this section and §25.181 of this title (relating to Energy Efficiency Goal).
- (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.

(b) **Application.** This section applies to electric utilities.

(c) **Definitions.** The definitions provided in §25.181(c) of this title shall also apply in this section. The following terms, when used in this section, shall have the following meaning unless the context indicates otherwise:

- (1) **Billing determinants** -- The measures of energy consumption or load used to calculate a customer's bill or to determine the aggregate revenue from rates from all customers.
- (2) **Rate class** -- For the purpose of calculating EECRF rates, a utility's rate classes are those retail rate classes approved in the utility's most recent base-rate proceeding, excluding non-eligible customers.

(d) Cost recovery. A utility shall establish an EECRF that complies with this subsection to timely recover the reasonable costs of providing a portfolio of cost-effective energy efficiency programs under §25.181 of this title.

(1) The EECRF shall be calculated based on the following:

(A) 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) costs allocated to the utility by the commission for the preceding year under §25.181 of this title.

(B) For a utility that collects any amount of energy efficiency costs in its base rates, the amounts described in subparagraph (A) of this paragraph in excess of the actual energy efficiency revenues collected from base rates as described in paragraph (2) of this subsection.

(2) The commission may approve an EECRF for each eligible rate class. The costs shall be directly assigned to each rate class that received services under the programs to the maximum extent reasonably possible. In its EECRF proceeding, a utility may request a good cause exception to combine one or more rate classes, each containing fewer than 20 customers, with a similar rate class that received services under the same energy efficiency programs in the preceding year. For each rate class, the under- or over-recovery of the energy efficiency costs shall be the difference between actual EECRF revenues and actual costs for that class that comply with paragraph (12) of this subsection, including interest applied on such

over- or under-recovery calculated by rate class and compounded on an annual basis for a two-year period using the annual interest rate authorized by the commission for over- and under-billing. Where a utility collects energy efficiency costs in its base rates, actual energy efficiency revenues collected from base rates consist of the amount of energy efficiency costs expressly included in base rates, adjusted to account for changes in billing determinants from the test year billing determinants used to set rates in the last base rate proceeding.

(3) A proceeding conducted under this subsection is a ratemaking proceeding for purposes of PURA §33.023 and §36.061. EECRF proceeding expenses shall be included in the EECRF calculated under paragraph (1) of this subsection as follows:

(A) For a utility's EECRF proceeding expenses, the utility may include only its expenses for the immediately previous EECRF proceeding conducted under this subsection.

(B) For municipalities' EECRF proceeding expenses, the utility may include only expenses paid or owed for the immediately previous EECRF proceeding conducted under this subsection for services reimbursable under PURA §33.023(b).

(4) Base rates shall not be set to recover energy efficiency costs.

(5) If a utility recovers energy efficiency costs through base rates, the EECRF may be changed in a general rate proceeding. If a utility is not recovering energy efficiency costs through base rates, the EECRF may be adjusted only in an EECRF proceeding under this subsection.

- (6) For residential customers and for non-residential rate classes whose base rates do not provide for demand charges, the EECRF rates shall be designed to provide only for energy charges. For non-residential rate classes whose base rates provide for demand charges, the EECRF rates shall provide for energy charges or demand charges, but not both. Any EECRF demand charge shall not be billed using a demand ratchet mechanism.
- (7) The total EECRF costs outlined in paragraph (1) of this subsection, excluding EM&V costs, excluding municipal EECRF proceeding expenses, and excluding any interest amounts applied to over- or under-recoveries, shall not exceed the amounts prescribed in this paragraph unless a good cause exception filed under §25.181(e)(2) of this title is granted.
- (A) For residential customers for program year 2018, \$0.001263 per kWh increased or decreased by a rate equal to the 2016 calendar year's percentage change in the South urban consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics; and
- (B) For commercial customers for program year 2018, rates designed to recover revenues equal to \$0.000790 per kWh increased or decreased by a rate equal to the 2016 calendar year's percentage change in the South urban CPI, as determined by the Federal Bureau of Labor Statistics times the aggregate of all eligible commercial customers' kWh consumption.
- (C) For the 2019 program year and thereafter, the residential and commercial cost caps shall be calculated to be the prior period's cost caps increased or decreased by a rate equal to the most recently available calendar year's

percentage change in the South urban CPI, as determined by the Federal Bureau of Labor Statistics.

- (8) Not later than May 1 of each year, a utility in an area in which customer choice is not offered shall apply to adjust its EECRF effective January 1 of the following year. Not later than June 1 of each year, a utility in an area in which customer choice is offered shall apply to adjust its EECRF effective March 1 of the following year. If a utility is in an area in which customer choice is offered in some but not all parts of its service area and files one energy efficiency plan and report covering all of its service area, the utility shall apply to adjust the EECRF not later than May 1 of each year, with the EECRF effective January 1 in the parts of its service area in which customer choice is not offered and March 1 in the parts of its service area in which customer choice is offered.
- (9) Upon a utility's filing of an application to establish a new EECRF or adjust an EECRF, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding required by subparagraphs (A), (B), and (C) of this paragraph as follows:
- (A) For a utility in an area in which customer choice is not offered, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding prior to the January 1 effective date of the new or adjusted EECRF, except where good cause supports a different procedural schedule.
- (B) For a utility in an area in which customer choice is offered, the effective date of a new or adjusted EECRF shall be March 1. The presiding officer

shall set a procedural schedule that will enable the utility to file an EECRF compliance tariff consistent with the final order within ten days of the date of the final order. The procedural schedule shall also provide that the compliance filing date will be at least 45 days before the effective date of March 1. In no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility shall serve notice of the approved rates and the effective date of the approved rates by the working day after the utility files a compliance tariff consistent with the final order approving the new or adjusted EECRF to retail electric providers that are authorized by the registration agent to provide service in the utility's service area. Notice under this subparagraph may be served by email. The procedural schedule may be extended for good cause, but in no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF, and in no event shall the utility serve notice of the approved rates and the effective date of the approved rates to retail electric providers that are authorized by the registration agent to provide service in the utility's service area more than one working day after the utility files the compliance tariff.

- (C) For a utility in an area in which customer choice is offered in some but not all parts of its service area and that files one energy efficiency plan and

report covering all of its service area, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding prior to the January 1 effective date of the new or adjusted EECRF for the areas in which customer choice is not offered, except where good cause supports a different schedule. For areas in which customer choice is offered, the effective date of the new or adjusted EECRF shall be March 1. The presiding officer shall set a procedural schedule that will enable the utility to file an EECRF compliance tariff consistent with the final order within ten days of the date of the final order. The procedural schedule shall also provide that the compliance filing date will be at least 45 days before the effective date of March 1. In no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility shall serve notice of the approved rates and the effective date of the approved rates by the working day after the utility files a compliance tariff consistent with the final order approving the new or adjusted EECRF to retail electric providers that are authorized by the registration agent to provide service in the utility's service area. Notice under this subparagraph of this paragraph may be served by email. The procedural schedule may be extended for good cause, but in no event shall the effective date of any new or adjusted EECRF occur less than 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF, and in

no event shall the utility serve notice of the approved rates and the effective date of the approved rates to retail electric providers that are authorized by the registration agent to provide service in the utility's service area more than one working day after the utility files the compliance tariff.

(D) If no hearing is requested within 30 days of the filing of the application, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within 90 days after a sufficient application was filed; or

(E) If a hearing is requested within 30 days of the filing of the application, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within 180 days after a sufficient application was filed. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after a sufficient application is filed.

(10) A utility's application to establish or adjust an EECRF shall include the utility's most recent energy efficiency plan and report, consistent with §25.181(l) and §25.183(d) of this title, as well as testimony and schedules, in Excel format with formulas intact, showing the following, by retail rate class, for the prior program year and the program year for which the proposed EECRF will be collected as appropriate:

(A) the utility's forecasted energy efficiency costs;

- (B) the actual base rate recovery of energy efficiency costs, adjusted for changes in load and usage subsequent to the last base rate proceeding, with supporting calculations;
- (C) a calculation showing whether the utility qualifies for an energy efficiency performance bonus and the amount that it calculates to have earned for the prior year;
- (D) any adjustment for past over- or under-recovery of energy efficiency revenues, including interest;
- (E) information concerning the calculation of billing determinants for the preceding year and for the year in which the EECRF is expected to be in effect;
- (F) the direct assignment and allocation of energy efficiency costs to the utility's eligible rate classes, including any portion of energy efficiency costs included in base rates, provided that the utility's actual EECRF expenditures by rate class may deviate from the projected expenditures by rate class, to the extent doing so does not exceed the cost caps in paragraph (7) of this subsection;
- (G) information concerning calculations related to the requirements of paragraph (7) of this subsection;
- (H) the incentive payments by the utility, by program, including a list of each energy efficiency administrator and/or service provider receiving more than 5% of the utility's overall incentive payments and the percentage of

the utility's incentives received by those providers. Such information may be treated as confidential:

- (I) the utility's administrative costs, including any affiliate costs and EECRF proceeding expenses and an explanation of both;
  - (J) the actual EECRF revenues by rate class for any period for which the utility calculates an under- or over-recovery of EECRF costs;
  - (K) the utility's bidding and engagement process for contracting with energy efficiency service providers, including a list of all energy efficiency service providers that participated in the utility programs and contractors paid with funds collected through the EECRF. Such information may be treated as confidential;
  - (L) the estimated useful life used for each measure in each program, or a link to the information if publicly available; and
  - (M) any other information that supports the determination of the EECRF.
- (11) The following factors must be included in the application, as applicable, to support the recovery of energy efficiency costs under this subsection.
- (A) the costs are less than or equal to the benefits of the programs, as calculated in §25.181(d) of this title;
  - (B) the program portfolio was implemented in accordance with recommendations made by the commission's EM&V contractor and approved by the commission and the EM&V contractor has found no material deficiencies in the utility's administration of its portfolio of energy efficiency programs under §25.181 of this title. This subparagraph

does not preclude parties from examining and challenging the reasonableness of a utility's energy efficiency program expenses nor does it limit the commission's ability to address the reasonableness of a utility's energy efficiency program expenses;

(C) if a utility is in an area in which customer choice is offered and is subject to the requirements of PURA §39.905(f), the utility met its targeted low-income energy efficiency requirements under §25.181 of this title;

(D) existing market conditions in the utility's service territory affected its ability to implement one or more of its energy efficiency programs or affected its costs;

(E) the utility's costs incurred and achievements accomplished in the previous year or estimated for the year the requested EECRF will be in effect are consistent with the utility's energy efficiency program costs and achievements in previous years notwithstanding any recommendations or comments by the EM&V contractor;

(F) changed circumstances in the utility's service area since the commission approved the utility's budget for the implementation year that affect the ability of the utility to implement any of its energy efficiency programs or its energy efficiency costs;

(G) the number of energy efficiency service providers operating in the utility's service territory affects the ability of the utility to implement any of its energy efficiency programs or its energy efficiency costs;

- (H) customer participation in the utility's prior years' energy efficiency programs affects customer participation in the utility's energy efficiency programs in previous years or its proposed programs underlying its EECRF request and the extent to which program costs were expended to generate more participation or transform the market for the utility's programs;
- (I) the utility's energy efficiency costs for the previous year or estimated for the year the requested EECRF will be in effect are comparable to costs in other markets with similar conditions; and
- (J) the utility has set its incentive payments with the objective of achieving its energy and demand goals under §25.181 of this title at the lowest reasonable cost per program.
- (12) The scope of an EECRF proceeding includes the extent to which the costs recovered through the EECRF complied with PURA §39.905, this section, and §25.181 of this title, and the extent to which the costs recovered were reasonable and necessary to reduce demand and energy growth. The proceeding shall not include a review of program design to the extent that the programs complied with the energy efficiency implementation project (EEIP) process defined in §25.181(q) of this title. The commission shall not allow recovery of expenses that are designated as non-recoverable under §25.231(b)(2) of this title (relating to Cost of Service).

- (13) Notice of a utility's filing of an EECRF application is reasonable if the utility provides in writing a general description of the application and the docket number assigned to the application within seven days of the application filing date to:
- (A) All parties in the utility's most recent completed EECRF docket;
  - (B) All retail electric providers that are authorized by the registration agent to provide service in the utility's service area at the time the EECRF application is filed;
  - (C) All parties in the utility's most recent completed base-rate proceeding; and
  - (D) The state agency that administers the federal weatherization program.
- (14) The utility shall file an affidavit attesting to the completion of notice within 14 days after the application is filed.
- (15) The commission may approve a utility's request to establish an EECRF revenue requirement or EECRF rates that are lower than the amounts otherwise determined under this section.

- (e) **Energy efficiency performance bonus.** A utility that exceeds its demand and energy reduction goals established in §25.181 of this title at a cost that does not exceed the cost caps established in subsection (d)(7) of this section shall be awarded a performance bonus calculated in accordance with this subsection. 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.

- (1) The performance bonus shall entitle the utility to receive a share of the net benefits realized in meeting its demand reduction goal established in §25.181 of this title.
- (2) Net benefits shall be calculated as the sum of total avoided cost associated with the eligible programs administered by the utility minus the sum of all program costs. Program costs shall include the cost of incentives, measurement and verification, 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. Total avoided costs and program costs shall be calculated in accordance with this section and §25.181 of this title.
- (3) 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.
- (4) 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(e)(2) of this title. The bonus shall be considered in the EECRF proceeding in which the bonus is requested.
- (5) In calculating net benefits to determine a performance bonus, a discount rate equal to the utility's weighted average cost of capital of the utility and an escalation rate of 2% shall be used. The utility shall provide documentation for the net benefits

calculation, including, but not limited to, the weighted average cost of capital, useful life of equipment or measure, and quantity of each measure implemented.

(6) The bonus shall be allocated in proportion to the program costs associated with meeting the demand and energy goals under §25.181 of this title and allocated to eligible customers on a rate class basis.

(7) A bonus earned under this section 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.

**§25.183. Reporting and Evaluation of Energy Efficiency Programs.**

- (a) **Purpose.** The purpose of this section is to establish reporting requirements sufficient for the commission, in cooperation with Energy Systems Laboratory of Texas A&M University (Laboratory), to quantify, by county, the reductions in energy consumption, peak demand and associated emissions of air contaminants achieved from the programs implemented under §25.181 of this title (relating to the Energy Efficiency Goal) ~~and §25.182 of this title (relating to Energy Efficiency Grant Program).~~
- (b) **Application.** This section applies to electric utilities administering energy efficiency programs implemented under the Public Utility Regulatory Act (PURA) §39.905 and pursuant to §25.181 of this title, ~~and grantees administering energy efficiency grants implemented under Health and Safety Code §§386.201-386.205 and pursuant to §25.182 of this title,~~ and independent system operators (ISO) and regional transmission organizations (RTO).
- (c) **Definitions.** The ~~definitions provided in §25.181(c) words and terms in §25.182(e) of~~ this title shall also apply to this section, unless the context ~~clearly~~ indicates otherwise.
- (d) **Reporting.** Each electric utility ~~and grantee~~ shall file by April 1, of each program year an annual energy efficiency plan and report. The annual energy efficiency plan and report shall include the information required under §25.181 ~~(1)(b)(4)~~ of this title and paragraphs (1) - (5) of this subsection in a format prescribed by the commission.
- (1) Load data within the applicable service area. If such information is available from an ISO or RTO in the power region in which the electric utility ~~or grantee~~

operates, then the ISO or RTO shall provide this information to the commission instead of the electric utility ~~or grantee~~.

(2) The reduction in peak demand attributable to energy efficiency programs implemented under §25.181 ~~and §25.182~~ of this title, in kW by county, by type of program and by funding source.

(3) The reduction in energy consumption attributable to energy efficiency programs implemented under §25.181 ~~and §25.182~~ of this title, in kWh by county, by type of program and by funding source.

(4) - (5) (No change.)

(e) **Evaluation.** ~~(H)~~ Annually the commission, in cooperation with the Laboratory, shall provide the Texas Commission on Environmental Quality (TCEQ) a report, by county, that compiles the data provided by the utilities ~~and grantees~~ affected by this section and quantifies the reductions of energy consumption, peak demand and associated air contaminant emissions.

~~(1)(A)~~ The Laboratory shall ensure that all data that is proprietary in nature is protected from disclosure.

~~(2)(B)~~ The commission and the Laboratory shall ensure that the report does not provide information that would allow market participants to gain a competitive advantage.

~~(2) — Every two years, the commission, in cooperation with the Energy Efficiency Implementation Project shall evaluate the Energy Efficiency Grant Program under §25.182 of this title.~~

~~(f) **Effective date:** This section shall be in effect for any energy efficiency programs pursuant to this section with a start date of January 1, 2003 and thereafter.~~

This agency certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 11th DAY OF DECEMBER 2018 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**