

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter H. ELECTRICAL PLANNING.**

**DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES.**

**§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) contractor 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 rates authorized by the commission for over- and under-billing for the year in which the over- or under-recovery occurred and the immediately subsequent year. 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.

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- (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

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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 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;

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- (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;

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- (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; the extent to which the costs recovered were reasonable and necessary to reduce demand and energy growth; and a determination of whether the costs to be recovered through an EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet or exceed the utility's energy efficiency goals. 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, EM&V contractor costs, any shareholder bonus awarded to the utility, and actual or allocated research and development and administrative costs, but shall not include any interest amounts applied to over- or under-recoveries. 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

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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.