

PROJECT NO. 39674

**RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION
AMEND ENERGY EFFICIENCY §
RULES § OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.181
AS APPROVED AT THE APRIL 12, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.181, relating to the Energy Efficiency Goal. The purpose of these amendments is to incorporate the changes from the 82nd legislative session, resulting from the passage of Senate Bill 1125, Senate Bill 1150, Senate Bill 1434, and Senate Bill 1910. The addition of an evaluation, measurement, and verification (EM&V) framework and accompanying definitions will result in the commission hiring an outside consultant(s) to develop a process that ensures accurate estimation of energy and demand impacts and will provide feedback to the commission, utilities, and stakeholders on program performance. The amendments make several revisions to the energy efficiency cost recovery factor (EECRF) proceedings, including revising the procedural schedule and scope of the EECRFs to include allowing an annual consumer price index (CPI) adjustment to the cost caps beginning in 2014; requiring costs to be allocated on a rate class basis and calculating EECRFs as a customer charge for residential customers and an energy charge for each commercial rate class; and replacing the three-year reconciliation proceeding with an expanded annual EECRF proceeding that includes the issue of 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.

Other amendments include updating the avoided cost calculations to account for the transition to a nodal market in the Electric Reliability Council of Texas (ERCOT); increasing the demand

reduction goals to 30% of annual growth in demand beginning in 2013; setting the bonus at a maximum of 10% of total net benefits; adding provisions for utility self-delivered programs; revising load management programs by requiring more coordination with ERCOT; increasing the set-aside for targeted low-income programs to 10% of the utility's budget; formalizing the energy efficiency implementation project (EEIP) process; revising the customer protection standards and applicable definitions to allow behavioral programs; and adding an opt-out provision for industrial customers taking service at distribution voltage. The amendments constitute a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 39674 is assigned to this proceeding.

Katie Rich, Senior Infrastructure Policy Analyst, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Rich has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be an increase in energy efficiency services available to Texas customers and a decrease in overall energy consumption due to the passage of SB 1125, which increases each utility's annual energy efficiency goal to 30 percent of the utility's annual growth in demand beginning in 2013. Ms. Rich has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of the amendments. Therefore, no regulatory flexibility analysis is required. Ms. Rich has determined that there will be economic costs to persons who are required

to comply with the amendments. Utilities will incur additional costs to make the increased energy efficiency services available as required by PURA and subject to a cost cap, and will recover these costs from their customers through EECRFs. The benefits of the amendments are expected to outweigh these costs.

Ms. Rich has also determined that for each year of the first five years the proposed amendments are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, 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 Monday, June 18, 2012, at 10:00 a.m. The request for a public hearing must be received by Monday, June 11, 2012.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, May 28, 2012. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by Monday, June 11, 2012. Comments should be organized in a manner consistent with the organization of the proposed amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the

proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 39674.

In addition to providing comments on the amendments, parties may also comment on the following issues:

- (1) Should the Commission require utilities to transition their load management programs to ERCOT once loads are able to participate in the ERCOT energy market? What changes would need to occur to phase-out existing programs and over what time period?
- (2) Should the Commission develop performance standards for the loads that are similar to the Emergency Response Services (ERS) standards outlined in §25.507? Should the utilities offer incentives to loads for equipment that would enable their participation in the ERCOT market? If so, should the utilities be allowed to count the demand and energy savings associated with the installed equipment toward meeting their goals? How should these savings be calculated?

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 36.204, and 39.905 (West 2007 and Supplement 2011) (PURA). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §36.204 authorizes the

commission to establish rates for an electric utility that allow timely recovery of the reasonable costs for conservation and load management, which includes additional incentives for conservation and load management; §39.905 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, including rules providing for EECRFs and an incentive for electric utilities that meet the energy efficiency goals; SB 1125, which amends PURA §39.905 (a), (b), and (d) and adds subsections (h) and (k), and which increases the energy efficiency goals, defines demand-side renewable systems, expands the list of eligible programs to include behavioral measures, requires the development of an evaluation, measurement, and verification (EM&V) framework, allows non-ERCOT utilities to develop self-directed programs and ERCOT utilities to offer these programs after a contested case proceeding and adds PURA §39.9054, which requires the utilities to submit an annual plan and report; SB 1434, which amends PURA §39.905(f), which requires at least 10 percent of a utility's budget to be set aside for low-income programs; SB 1150, which amends PURA §39.402(a), which requires Southwestern Public Service Company to establish an EECRF; and SB 1910, which adds PURA §39.555, which allows El Paso Electric Company to market an energy efficiency program directly to a retail electric customer.

Cross Reference to Statutes: PURA §§14.001, 14.002, 36.204, 39.905, SB 1125 (codified as PURA §39.905(a), (b), (d), (h), and (k)), SB 1434 (codified as PURA §39.905(f)), SB 1150 (codified as PURA §39.402(a)), and SB 1910 (codified as PURA §39.555).

§25.181. Energy Efficiency Goal.

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

(1) (No change.)

(2) all customers, in all eligible customer classes and all areas of an electric utility's service area, have a choice of and access to the utility's portfolio of energy efficiency programs~~alternatives~~ that allow each customer to reduce energy consumption, summer and winter peak demand, or energy costs; and

(3) each electric utility annually provides, through market-based standard offer programs, ~~or limited,~~ targeted, market-transformation programs, or utility self-delivered programs, incentives sufficient for residential and commercial customers, retail electric providers, and competitive energy service providers to acquire additional cost-effective energy efficiency, subject to EECRF caps established in subsection (f)(8) of this section, for the utility~~residential and commercial customers~~ to achieve the goals in subsection (e) of this section.

(b) (No change.)

(c) **Definitions.** The following terms, when used in this section, shall have the following meanings unless the context indicates otherwise:

(1) (No change.)

- (2) **Baseline** -- A relevant condition that would have existed in the absence of the energy efficiency project or program being implemented, including energy consumption that would have occurred. Baselines are used to calculate program-related demand and energy savings. Baselines can be defined as either project-specific baselines or performance standard baselines (e.g., building codes).
- (3) **Claimed savings** -- Values reported by an electric utility after the energy efficiency activities have been completed, but prior to an independent, third-party evaluation of the savings estimate of the program year(s). As with projected savings estimates, these values may utilize results of prior evaluations and/or values in technical reference manuals. However, they are adjusted from projected savings estimates by correcting for any known data errors and actual installation rates and may also be adjusted with revised values for factors such as per-unit savings values, operating hours, and savings persistence rates. Can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values. Can be indicated as gross savings and/or net savings values.
- ~~(2) Capacity factor -- The ratio of the annual energy savings goal, in kWh, to the peak demand goal for the year, measured in kW, multiplied by the number of hours in the year; or the ratio of the actual annual energy savings, in kWh, to the actual peak demand reduction for the year, measured in kW, multiplied by the number of hours in the year.~~
- ~~(4)~~(3) **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~~ ~~orealendar year~~ and 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)~~**(4) Competitive energy efficiency services** -- Energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).

~~(6)~~ **Conservation load factor** -- The ratio of the annual energy savings goal, in kilowatt hours (kWh), to the peak demand goal for the year, measured in kilowatts (kW) and multiplied by the number of hours in the year.

~~(7)~~ **Deemed savings calculation** -- An agreed to (stipulated) engineering algorithm used to calculate energy and/or demand savings of the installed energy efficiency measure that has been developed from common practice that is widely considered acceptable for the measure and purpose, and is applicable to the situation being evaluated. May include stipulated assumptions for one or more parameters in the algorithm, but typically requires some data associated with actual installed measure. An electric utility may use the calculation with documented measure-specific assumptions, instead of energy and peak demand savings determined through measurement and verification activities or the use of deemed savings.

~~(8)~~**(5) Deemed savings value** -- An estimate of energy or demand savings for a single unit of an installed energy efficiency measure that has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose, and is applicable to the situation being evaluated. AnA-pre-determined, validated estimate of energy and peak demand savings attributable to

~~an energy efficiency measure in a particular type of application that an~~ electric utility may use deemed savings values instead of energy and peak demand savings determined through measurement and verification activities.

~~(9)(6)~~ **Demand** -- The rate at which electric energy is used at a given instant, or averaged over a designated period, usually expressed in ~~kWkilowatts (kW)~~ or megawatts (MW).

~~(10)(7)~~ **Demand savings** -- A quantifiable reduction in demand.

~~(11)(8)~~ **Eligible customers** -- Residential and commercial customers. In addition, to the extent that they meet the criteria for participation in load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007, industrial customers are eligible customers solely for the purpose of participating in such programs.

~~(12)(9)~~ **Energy efficiency** -- Improvements in the use of electricity that are achieved through customer facility or customer equipment improvements, devices, ~~or~~ processes, or behavioral or operational changes that produce reductions in demand or energy consumption with the same or higher level of end-use service and that do not materially degrade existing levels of comfort, convenience, and productivity.

~~(13)~~ **Energy Efficiency Cost Recovery Factor (EECRF)** -- an electric tariff provision, compliant with subsection (f) of this section, ensuring timely recovery of utility expenditures for the reasonable costs of providing a cost-effective portfolio of energy efficiency programs pursuant to this section.

~~(14)~~**(10) Energy efficiency measures** -- Equipment, materials, and practices, including practices that result in behavioral or operational changes, at a customer's site that result in a reduction at the customer level and/or on the utility's system in electric energy consumption, measured in ~~kWh~~kilowatt-hours (kWh), or peak demand, measured in ~~kW~~kilowatts (kW), or both. These measures may include thermal energy storage and removal of an inefficient appliance so long as the customer need satisfied by the appliance is still met.

~~(15)~~**(11) Energy efficiency program** -- The aggregate of the energy efficiency activities carried out by an electric utility under this section or a set of energy efficiency projects carried out by an electric utility under the same name and operating rules.

~~(16)~~**(12) Energy efficiency project** -- An energy efficiency measure or combination of measures undertaken in accordance with a standard offer, ~~or~~ market transformation program, or self-delivered program.

~~(17)~~**(13) Energy efficiency service provider** -- A person who installs energy efficiency measures or performs other energy efficiency services under this section. An energy efficiency service provider may be a retail electric provider or commercial customer, provided that the commercial customer has a peak load equal to or greater than 50 kW. An energy efficiency service provider may also be a governmental entity.

~~(18)~~**(14) Energy savings** -- A quantifiable reduction in a customer's consumption of energy that is attributable to energy efficiency measures, usually expressed in kWh or MWh.

(19) **Estimated useful life (EUL)** -- The number of years until 50% of installed measures are still operable and providing savings, and is used interchangeably with the term “measure life”. The EUL determines the period of time over which the benefits of the energy efficiency measure are expected to accrue.

(20) **Evaluated savings** -- Savings estimates reported by the EM&V contractor after the energy efficiency activities and an impact evaluation have been completed. Differs from claimed savings in that the EM&V contractor has conducted some of the evaluation and/or verification activities. These values may rely on claimed savings for factors such as installation rates and technical reference manuals for values such as per unit savings values and operating hours. However, these values may also be modified from claimed savings, as a result of evaluation and/or verification activities, with adjustments for data errors, per unit savings values, operating hours, installation rates, savings persistence rates, or other considerations. Can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values. Can be indicated as gross savings and/or net savings values.

(21) **Evaluation** -- The conduct of any of a wide range of assessment studies and other activities aimed at determining the effects of a program; or aimed at understanding or documenting program performance, program or program-related markets and market operations, program-induced changes in energy efficiency markets, levels of demand or energy savings, or program cost-effectiveness. Market assessment, monitoring, and evaluation, and measurement and verification (M&V) are aspects of evaluation.

(22) Evaluation, measurement, and verification (EM&V) contractor -- One or more independent, third-party contractors selected and retained by the commission to plan, conduct, and report on energy efficiency evaluation activities, including verification.

(23) Free driver -- Customers who do not directly participate in an energy efficiency program, but who undertake energy efficiency actions in response to program activity.

(24) Free rider -- A program participant who would have implemented the program measure or practice in the absence of the program. Free riders can be total, in which the participant's activity would have completely replicated the program measure; partial, in which the participant's activity would have partially replicated the program measure; or deferred, in which the participant's activity would have completely replicated the program measure, but at a time after the time the program measure was implemented.

(25)(15) Growth in demand -- The annual increase in demand in the Texas portion of an electric utility's service area at time of peak demand, as measured in accordance with this section.

(26) Gross savings -- The change in energy consumption and/or demand that results directly from program-related actions taken by participants in an efficiency program, regardless of why they participated.

(27)(16) Hard-to-reach customers -- Residential customers with an annual household income at or below 200% of the federal poverty guidelines.

(28) Impact evaluation -- An evaluation of the program-specific, directly induced changes (e.g., energy and/or demand reduction) attributable to an energy efficiency program.

(29)(17) Incentive payment -- Payment made by a utility to an energy efficiency service provider, an end-use customer, or third-party contractor to implement and/or attract customers to energy efficiency programs, including standard offer, market transformation and self-delivered programs under an energy efficiency program.

(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 pursuant to subsection (w) of this section.

(31)(18) Inspection -- Examination of a project to verify that an energy efficiency measure has been installed, is capable of performing its intended function, and is producing an energy ~~savings~~saving or demand reduction equivalent to the energy savings or demand reduction reported towards meeting the energy efficiency goals of this section.

(32) Installation rate -- The percentage of measures that receive incentives under an energy efficiency program that are actually installed in a defined period of time. The installation rate is calculated by dividing the number of measures installed by the number of measures that receive incentives under an efficiency program in a defined period of time.

(33) International performance measurement and verification protocol (IPMVP) -- A guidance document issued by the Efficiency Valuation Organization with a framework and definitions describing the four M&V approaches.

(34) Lifetime energy (demand) savings -- The energy (demand) savings over the lifetime of an installed measure(s), project(s), or program(s). May include consideration of measure estimated useful life, technical degradation, and other factors. Can be gross or net savings.

(35)(19) Load control -- Activities that place the operation of electricity-consuming equipment under the control or dispatch of an energy efficiency service provider, an independent system operator, or other transmission organization or that are controlled by the customer, with the objective of producing energy or demand savings.

(36)(20) Load management -- Load control activities that result in a reduction in peak demand, ~~on an electric utility system~~ or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.

(37)(21) Market transformation program -- Strategic programs intended to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services, and practices, as described in this section.

(38)(22) Measurement and verification -- A subset of program impact evaluation that is associated with the documentation of energy or demand savings at individual sites or projects using one or more methods that can involve measurements, engineering calculations, statistical analyses, and/or computer simulation

modeling. M&V approaches are defined in the IPMVP. Activities intended to determine the actual energy and demand savings resulting from energy efficiency projects as described in this section.

(39) Net savings -- The total change in load that is attributable to an energy efficiency program. This change in load may consider the effects of free riders, energy efficiency standards, changes in the level of energy service, and other causes of changes in energy consumption or demand.

(40) Net-to-gross -- A factor representing net program savings divided by gross program savings that is applied to gross program impacts to convert them into net program impacts. The factor may be made up of a variety of factors that create differences between gross and net savings, commonly considering the effects of free riders and spillover.

(41) Non-participant spillover -- Energy savings that occur when a program non-participant installs energy efficiency measures or applies energy savings practices as a result of a program's influence.

(42)(23) Off-peak period -- Period during which the demand on an electric utility system is not at or near its maximum. For the purpose of this section, the off-peak period includes all hours that are not in the peak period.

(43) Participant spillover -- The additional energy savings that occur when a program participant independently installs incremental energy efficiency measures or applies energy savings practices after having participated in the efficiency program as a result of the program's influence.

~~(44)(24)~~ Peak demand -- Electrical demand at the times of highest annual demand on the utility's system. Peak demand refers to Texas retail peak demand and, therefore, does not include demand of retail customers in other states or wholesale customers.

~~(45)(25)~~ Peak demand reduction -- Reduction in demand on the utility's system at the times of the utility's summer peak period or winter peak period~~utility system throughout the utility system's peak period.~~

~~(46)(26)~~ Peak period -- For the purpose of this section, the peak period consists of the hours from one p.m. to seven p.m., during the months of June, July, August, and September, and the hours of 6 to 10 a.m. and 6 to 10 p.m., during the months of December, January, and February, excluding weekends and Federal holidays.

~~(47)(27)~~ Program year -- A year in which an energy efficiency incentive program is implemented, beginning January 1 and ending December 31.

~~(48)~~ Projected savings -- Values reported by an electric utility prior to the time the energy efficiency activities are completed. Are typically estimates of savings prepared for program and/or portfolio planning purposes. These values are based on pre-program or portfolio estimates of factors such as per-unit savings values, operating hours, installation rates, and savings persistence rates. These values may utilize results of prior evaluations and/or values in technical reference manuals. Can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values. Can be indicated as gross savings and/or net savings values.

(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.

(50)(28) 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.

(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.

(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.

(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.

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

~~(55)~~(29) 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.

~~(56)~~(30) Standard offer program -- A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

(57) Technical reference manual (TRM) -- A resource document 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), source documentation, specified assumptions, and other relevant material to support the calculation of measure and program savings.

(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 subsection (f)(8) of this section.
- (1) The cost of a program includes the cost of incentives, measurement and verification except for costs excluded in subsection (q)(12)(B) of this section, any shareholder bonus awarded to the utility, and actual or allocated research and development and administrative costs. The benefits of the program consist of the value of the demand reductions and energy savings, measured in accordance with the avoided costs prescribed in this subsection. The present value of the program benefits shall be calculated over the projected life of the measures installed or implemented under the program.
- (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 revised beginning with program year 2013~~2012~~, in accordance with this paragraph.

(A) By ~~November~~March 15 of each year, commission staff shall 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) Staff shall calculate the avoided cost of capacity from the base overnight cost using the lower of a new conventional combustion turbine or a new advanced combustion turbine, as reported by the United States Department of Energy's Energy Information Administration's (EIA) Cost and Performance Characteristics of New Central Station Electricity Generating Technologies associated with EIA's Annual Energy Outlook. If EIA cost data that reflects current conditions in the industry does not exist, staff may establish an avoided cost of capacity using another data source.

(ii) If the EIA base overnight cost of a new conventional or an advanced combustion turbine, whichever is lower, is less than ~~\$700~~\$650 per kW, the avoided cost of capacity shall be \$80 per kW. If the base overnight cost of a new conventional or advanced combustion turbine, whichever is lower, is at or between ~~\$700~~\$650 and ~~\$1,000~~\$800 per kW, the avoided cost of capacity shall be \$100 per kW. If the base overnight cost of a new conventional or advanced combustion turbine, whichever is lower, is greater than

~~\$1,000~~~~\$800~~ per kW, the avoided cost of capacity shall be \$120 per 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 posted on the commission's website on a webpage designated for that purpose.

(B) ~~A utility in an area in which customer choice is not offered~~~~A non-ERCOT utility~~ 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 posted on the commission's website on a webpage designated for that purpose. 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 revised beginning with program year ~~2013~~~~2012~~, 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 calculate the avoided cost of energy for the ERCOT region, as defined in §25.5(48) of this title (relating to Definitions), 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. ~~Staff shall calculate the avoided cost of energy using the simple average of the market clearing price in ERCOT for balancing energy for all hours during the peak period for the previous two calendar years. When ERCOT nodal prices are available, the avoided energy price shall be adjusted to the zonal average of nodal prices in the real-time market for all hours during the peak period.~~
- (B) A ~~non-ERCOT~~ utility in an area in which customer choice is not offered may petition the commission for authorization to use an avoided cost of energy other than that otherwise determined according to this paragraph. The avoided cost of energy may be based on peak period energy prices in an energy market operated by a regional transmission organization if the utility participates in that market and the prices are reported publicly. If the utility does not participate in such a market, the avoided cost of energy may be based on the expected heat rate of the gas-turbine generating

technology specified in this subsection, multiplied by a publicly reported cost of natural gas.

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

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

~~(A) 20% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2010 and 2011 program years;~~

~~(A)(B) 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;~~ and

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

~~(C) If the demand reduction goal to be acquired by a utility under subparagraph (B) of this paragraph is equivalent to at least four-tenths of one percent 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 (D) of this paragraph for each subsequent program year.

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

(E) Except as adjusted in accordance with subsection (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 pursuant 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 (i) of this section, or an EECRF greater than~~or a higher budget cap than~~ the cap specified in subsection (f)(8) 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. If approved, the good cause exception is limited to the program year associated with the EECRF application~~or cap is not reasonably possible and that good cause supports the lower goal or higher cap.~~

- (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 pursuant to paragraphs (1)(A) or (B) of this subsection is calculated by applying the percentage goal, ~~prescribed in paragraphs (1) and (2) of this subsection,~~ to the average growth in demand, calculated in accordance with subparagraph (A) of this paragraph. The annual demand goal for energy efficiency savings pursuant to paragraph (1)(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. Unless the commission establishes a goal for a utility under paragraph (2) of this subsection, a utility's demand goal in any year shall not be lower than its goal for the prior year.
 - (C) (No change.)
 - (D) If a utility's prior five-year average load growth, calculated pursuant to subsection (e)(3)(A) of this section, 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) A utility shall not claim savings obtained from energy efficiency measures funded through settlement orders or count towards the bonus calculation

any savings obtained from grant incentives that have been awarded directly to the utility for energy efficiency programs.

~~(E)(D)~~ Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.

(4) An electric utility shall administer a portfolio of~~an~~ energy efficiency programs~~program~~ designed to meet an energy savings goal calculated from its demand savings goal, using a 20% conservation load~~capacity~~ factor.

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

(A) Incentive payments may be made under standard offer contracts, ~~or~~ market transformation contracts, or as part of a self-delivered program for energy savings and demand reductions. Each electric utility shall establish standard incentive payments to achieve the objectives of this section.

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

(i)-(iii) (No change.)

(C) Ineligibility 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 (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) providing rebate or incentive funds directly to eligible residential and commercial customers for programs implemented under this section; or

(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 (s) of this section.

(E) For a utility in an area in which customer choice is offered, the utility may achieve the goal of this section in rural areas by providing rebate or incentive funds directly to customers after demonstrating to the commission in a contested case hearing that the goal requirement cannot be met through the implementation of programs by retail electric providers or energy service providers in the rural areas.

(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 commission may approve an EECRF for each eligible rate class. The costs shall be assigned to each rate class that receives services under the programs.

~~(2)(4)~~ A utility ~~shall~~may request that an EECRF be established to recover all of the utility's forecasted annual energy efficiency program costs, any reasonable EECRF proceeding costs pursuant to PURA §33.023(b), any EM&V costs, the preceding year's under- or over-recovery, and any performance bonus earned under subsection (h) of this section, if the commission order establishing the utility's base rates does not expressly include an amount for energy efficiency program costs ~~and any bonus earned under subsection (h)~~. If a utility's existing base rate order expressly includes an amount for energy efficiency program costs, the utility ~~shall~~may request that an EECRF be established to recover forecasted annual energy efficiency program costs, any reasonable EECRF proceeding costs pursuant to PURA §33.023(b), any EM&V costs, the preceding year's under- or over-recovery and any performance bonus earned under subsection (h) of this section in excess of the energy efficiency costs ~~included in~~recovered through base rates.

(A) For each rate class, the under- or over-recovery of the energy efficiency costs shall be calculated to be the difference between actual EECRF

revenues and actual costs for that class. Where a utility collects energy efficiency costs in its base rates, both actual energy efficiency costs expressly included in base rates and actual EECRF revenues shall be included in this calculation.

(B) For a utility's costs for an EECRF proceeding conducted pursuant to this subsection, the utility may include its costs for the immediately previous EECRF proceeding, and shall not include its forecasted costs for the current EECRF proceeding. For the costs paid by a utility pursuant to PURA §33.023(b) for an EECRF proceeding conducted pursuant to this subsection, the utility may include costs paid or owed for the immediately previous EECRF proceeding and costs paid or owed since the immediately previous EECRF proceeding for services reimbursable under PURA §33.023(b) and related to a previous EECRF proceeding.

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

(4)(3) The EECRF shall be calculated to recover the costs, including any EECRF proceeding costs pursuant to PURA §33.023(b), EM&V costs, associated with programs under this section and any performance bonus awarded from the ~~ratecustomer~~ classes that receive services under the programs.

(5)(4) Not later than May 1 of each year, a utility in an area in which customer choice is not offered~~with an EECRF~~ shall apply to adjust ~~its~~the EECRF effective ~~in~~ 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. An application filed pursuant to this paragraph shall reflect changes in program costs and bonuses and shall minimize any over- or under- collection of energy efficiency costs resulting from the use of the EECRF. The EECRF shall be designed to permit the utility to recover any under-recovery of energy efficiency program costs or return any over-recovery of costs. An application filed pursuant to this subsection is a ratemaking proceeding for purposes of PURA §33.023.

~~(6)~~(5) If a utility is recovering 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 must be adjusted in an EECRF proceeding pursuant to this section.

~~(7)~~(6) The commission ~~shall~~may approve an energy charge for commercial customers ~~and~~a monthly customer charge for residential customers for the EECRF. The EECRF shall be set at a rate that will give the utility the opportunity to earn revenues equal to the sum of the utility's forecasted energy efficiency costs, net of actual energy efficiency costs included in base rates, the energy efficiency performance bonus amount that it earned for the prior year under subsection (h) of this section and any adjustment for past over- or under-recovery of energy

efficiency costs, any EECRF proceeding costs pursuant to PURA §33.023(b), and any EM&V costs ~~revenues.~~

~~(7) A utility that is unable to establish an EECRF due to a rate freeze may defer the costs of complying with this section and recover the deferred costs through an energy efficiency cost recovery factor on the expiration of the rate freeze period. Any deferral of costs that are not being recovered in rates shall bear interest at the utility's commission approved cost of capital from the time the costs are incurred until the commission approves an EECRF for the recovery of the costs. A utility that seeks to defer its costs shall file an application for approval of the deferral.~~

(8) The EECRF costs for a utility that is recovering energy efficiency costs exclusively through its EECRF 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. If a utility is recovering energy efficiency costs through an express identified amount in base rates, the sum of the base rate recovery of energy efficiency costs and the EECRF shall not exceed the cost cap amounts prescribed in this paragraph unless a good cause exception filed pursuant to subsection (e)(2) of this section is granted. Costs incurred in participating in an EECRF proceeding conducted pursuant to this subsection and reimbursing the governing body of a municipality pursuant to PURA §33.023(b) shall not count against the utility's cost caps applied in this paragraph.

(A) For residential customers for program year ~~years 2011 and~~ 2012, \$1.30 per month ~~if the EECRF is charged on a monthly basis or \$0.001 per kWh if it~~

~~is charged on an energy basis, or the amount previously authorized by the commission; and~~

- (B) For residential customers for program ~~year 2012, \$1.60 per month~~years 2013 and thereafter, \$1.60 if the EECRF is charged on a monthly basis or \$0.0012 per kWh if it is charged on an energy basis, or the amount previously authorized by the commission;
- (C) For commercial customers for program year 2012, the cost cap is \$0.0005 per kWh for the aggregate of all eligible commercial customers' kWh consumption~~non-residential customers for program years 2011 and 2012, rates designed to recover \$0.0005 per kWh for consumption of non-residential customer classes that are charged an EECRF or a base rate to cover energy efficiency costs; and~~
- (D) For commercial customers for program year 2013, the cost cap is \$0.00075 per kWh for the aggregate of all eligible commercial customers' kWh consumption~~non-residential~~ customers for program year 2013 and thereafter, rates designed to recover \$0.00075 per kWh for consumption of non-residential customer classes that are charged an EECRF or a base rate to cover energy efficiency costs.
- (E) For the 2014 program year and thereafter, the residential and commercial cost caps shall be updated in the utility's EECRF proceeding by an amount equal to the most recent annual change in the South urban consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics.

~~{(9) A utility's application to establish or adjust an EECRF shall include the information and schedules in any commission approved EECRF filing package. If the commission has not approved an EECRF filing package, an application to establish or adjust an EECRF shall include testimony and schedules showing the utility's forecasted energy efficiency costs, energy efficiency costs included in base rates, the Energy Efficiency Performance Bonus amount that it earned for the prior year, any adjustment for past over or under recovery of energy efficiency revenues, information concerning the calculation of billing determinants, information from its last base rate case concerning the allocation of energy efficiency costs to customer classes, and the following:}~~

~~{(A) the incentive payments by the utility, by program; the utility's administrative costs for its energy efficiency programs for the most recent year and for the year in which the EECRF is expected to be in effect, including costs for the dissemination of information and outreach; and other major administrative costs, and the basis for the projection;}~~

~~{(B) billing determinants for the most recent year and for the year in which the EECRF is expected to be in effect;}~~

~~{(C) the actual revenues attributable to the EECRF for any period for which the utility seeks to adjust the EECRF for an under or over recovery of EECRF revenues; and}~~

~~{(D) any other information that supports the determination of the EECRF.}~~

~~(9)(10)~~ 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, ~~except where good cause supports a different procedural schedule:~~

(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, except where good cause supports a different schedule. 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.

- (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, except where good cause supports a different schedule. 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 of this paragraph may be served by email.

~~(D)(A)~~ If no hearing is requested within 60 days after a sufficient application was filed 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)(B)~~ 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 within 120 days after a sufficient application was filed, if a timely request for a hearing is made. 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 showing the following for the prior program year and the program year for which the proposed EECRF will be collected as appropriate:

(A) utility's forecasted energy efficiency costs;

(B) energy efficiency costs included in base rates;

- (C) the energy efficiency performance bonus amount that it 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;
- (F) the allocation of energy efficiency costs to 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 (8) of this subsection;
- (G) information concerning calculations related to the requirements of paragraph (8) of this subsection;
- (H) the incentive payments by the utility, by program;
- (I) the utility's administrative costs and an explanation of those administrative costs;
- (J) the actual revenues attributable to the EECRF by rate class for any period for which the utility seeks to adjust the EECRF for an under- or over-recovery of EECRF costs;
- (K) a list of all energy efficiency service providers that participated in the utility programs. 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 may support the recovery of energy efficiency costs under this subsection. Evidence of such must be included in the application:

(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;

(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;

(E) the utility's energy efficiency program costs and achievements in previous years;

(F) changed circumstances in the utility's service area since the commission approved the utility's budget for the implementation year;

(G) the number of energy efficiency service providers operating in the utility's service territory;

(H) customer participation in the utility's energy efficiency programs in previous years and the extent to which program costs were expended to generate more participation or transform the market for the utility's programs;

(I) comparable costs in other markets with similar conditions; or

(J) other relevant factors.

(12)(44) 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:~~In any proceeding to establish or adjust an EECRF, the utility must show that:~~

(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~~ ~~revenues~~ 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~~ ~~customer~~ 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; ~~and~~
 - (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 (8) of this subsection; and
 - (H) whether the proposed EECRF rates comply with the requirements of subsection (r), 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; and

(C) All parties in the utility's most recent completed base-rate case.

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

~~(12) The scope of a proceeding to establish or adjust an EECRF is limited to the issues of whether the utility's cost estimates are reasonable, calculations of under or over recoveries are consistent with this section, the calculation of any energy efficiency performance bonus is consistent with this section, the assignments and allocations to the classes are appropriate, and the calculation of the EECRF is in accordance with this subsection. The commission shall make a final determination of the reasonableness of the costs and performance bonuses that the utility recovered through the EECRF.~~

~~(13) A utility shall file an application at least every three calendar years to reconcile costs recovered through its EECRF. An application filed pursuant to this paragraph shall be separate from the annual EECRF adjustment application required by paragraph (4) of this subsection. The commission may establish a schedule and form for such applications.~~

(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~~program 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~~program 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 cap~~limit established in subsection (f)(8) 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~~calendar 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) 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%~~20% of the utility's ~~total net benefits~~program costs.
- (4) The commission may reduce the bonus otherwise permitted under this subsection for a utility that ~~exceeds the cost caps and~~ fails to meet the goal ~~under subsections (e) and (f) of this section~~for its under subsection (e) of this section.
- (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 two percent 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)~~ (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)~~~~(6)~~ 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.
- ~~(8)~~~~(7)~~ The amendments to this subsection adopted in 2010 are effective for any bonus requested for performance in program year 2010 or thereafter.

- (i) **Utility administration.** The cost of administration shall not exceed 15% of a utility's total program costs. The cost of research and development shall not exceed 10% of a utility's total program costs for 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 pursuant to subsection (e)(2) of this section is granted. Any portion of these costs 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) (No change.)

(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;

(C)(B) providing informational programs to improve customer awareness of energy efficiency programs and measures;

(D)(C) reviewing and selecting energy efficiency programs in accordance with this section;

~~(E)(D)~~ providing regular and special reports to the commission, including reports of energy and demand savings; ~~and~~

~~(F) a utility's costs for an EECRF proceeding conducted pursuant to subsection (f) of this section; however, these costs are not included in the administrative caps applied in this paragraph;~~

~~(G) the costs paid by a utility pursuant to PURA §33.023(b) for an EECRF proceeding conducted pursuant to subsection (f) of this section; however, these costs are not included in the administrative caps applied in this paragraph; and~~

~~(H)(E)~~ any other activities that are necessary and appropriate for successful program implementation.

(2) A utility shall adopt measures to foster competition among energy 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 service provider and its affiliates is eligible for and establishing funding set-asides for small projects.

(3) (No change.)

(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~~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~~Energy Efficiency Implementation Project~~ described in subsection (s)~~(q)~~ of this section.

- (5) (No change.)
- (j) (No change.)
- (k) **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~~would be achieved through compliance with existing building codes and equipment efficiency standards or standard offer programs.~~ 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.

(1) **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.

~~(m)~~ **Requirements for standard offer, and market transformation, and self-delivered programs.** A utility's standard offer, and market transformation, and self-delivered programs shall meet the requirements of this subsection. A utility may conduct

information and ~~advertising~~ ~~advertising~~ campaigns to foster participation in standard offer, ~~and~~ market transformation, and self-delivered programs.

- (1) Standard offer, ~~and~~ 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~~DSM~~ and combined heat and power technologies, involving installations of ten megawatts or less; ~~and~~

(F) may use typical or actual current building features (such as existing windows, equipment, appliances, etc.) as a baseline for determining energy and peak demand savings for programs that encourage replacement or alteration of such features;

(G) may factor in the estimated level of enforcement and compliance with existing energy codes in determining energy and peak demand savings;
and

~~(H)~~ 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 ~~utility~~-program for the same demand reduction for which it is compensated under a capacity-based demand response program conducted by an independent organization, independent system operator, or regional transmission operator. An energy efficiency service provider is allowed to receive an incentive for demand reduction offered under a utility load-control standard offer program, as well as revenue from energy sold in ERCOT energy markets.
- (6) Within one year after ERCOT is capable of economically dispatching loads, utilities offering load management programs shall work with ERCOT to integrate such loads into the energy markets operated by ERCOT to the extent feasible. Such integration shall not preclude the continued operation of other utility load management programs that cannot be feasibly integrated into those ERCOT markets.

~~(n)(m)~~ **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. The plan and report shall be filed as a [searchable pdfsingle](#) 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 calendar](#) 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;
 - (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)~~(N)~~ expenditures for the prior five years for energy and demand incentive payments and program administration, by program and customer class;

~~(P)(Q)~~ funds that were committed but not spent during the prior year, by program;

~~(Q)(P)~~ 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)(Q)~~ information relating to energy and demand savings achieved and the number of customers served by each program by customer class;

~~(S)(R)~~ the utility's most recent EECRF, the revenue collected through the EECRF, energy efficiency ~~costs expressly included in revenue collected through~~ base rates, and the control number under which the most recent EECRF was established;

~~(T)(S)~~ the amount of any over- or under-recovery energy efficiency program costs whether collected through base rates or the EECRF;

~~(U)(T)~~ a list of any counties that in the prior year were under-served by the energy efficiency program;

~~(V)(U)~~ a calculation showing whether the utility qualifies for a performance bonus and the amount of any bonus; ~~and~~

~~(W)(V)~~ 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~~.

(X) [a link to the program manuals for the current program year.](#)

~~(o)(n)~~ **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.

~~(p)(e)~~ **Inspection, measurement and verification.** Each standard offer, [market transformation](#), [and self-delivered](#) program shall include an industry- accepted measurement and verification protocol, such as the International Performance Measurement and Verification Protocol [\(IPMVP\) or a protocol approved by the commission](#), to measure 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 ~~shall not receive~~ final compensation until ~~the provider~~ establishes that the work is complete and 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 ~~shall not receive~~ final compensation until the utility has conducted its inspection on the 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 measurement of energy and peak demand savings using the approved 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~~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, theThe 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.

(g) 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 demand response portfolios, comparing their performance with established goals, and determining cost-effectiveness;
- (B) Providing feedback for the utilities, commission, and stakeholders on program portfolio performance; and
- (C) Providing input into the utilities' and ERCOT's energy resource planning activities.

- (2) The principles that guide the EM&V activities in meeting the primary EM&V objectives are:
- (A) Evaluators follow ethical guidelines documented in the American Evaluation Association's Guiding Principles for Evaluators, which call for: systematic inquiry, competence, integrity and honesty, respect for people, and responsibility for general and public welfare.
- (B) Transparent methods to estimate savings and impacts will be reviewed in public stakeholder forums to increase quality and reliability.
- (C) All key assumptions used by program planners and administrators are eventually verified in evaluations.
- (D) All evaluation assumptions and calculations are documented and the reliability of results and threats to certainty are indicated in evaluation reports.
- (E) 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, except as required by subparagraph (E) of this paragraph, to meet the evaluation objectives defined in this section. Activities shall include, but are not limited to:

(A) Preparation of the following planning documents:

(i) Annual Portfolio EM&V Plan - An annual plan that indicates the major evaluation activities that will be conducted during the evaluation cycle, including budget and allocation between programs/measures/market sectors, as applicable. Each Annual Portfolio EM&V Plan will indicate which programs will be evaluated in each specific program year and the verification and/or

evaluation approaches that will be utilized for each evaluated program. The programs that will be selected for evaluation and the verification and evaluation approaches to be used will be determined using criteria such as evaluation costs, magnitude of savings to be achieved by program, relative uncertainty associated with program savings, length of time since program was last evaluated, relative importance of program with respect to future efficiency portfolios as well as other criteria recommended and approved by commission staff. Annual Portfolio EM&V Plans shall contain general guidance on baseline definitions to be used in the evaluation activities. Utilities and other stakeholders will have opportunities to provide input on Annual Portfolio EM&V Plans. The Annual Portfolio EM&V Plan will be approved by commission staff before implementation of the Plan. The final plans shall be publicly available.

- (ii) Evaluation Activity-Specific Detailed Research Plans - Research plans are created for the major EM&V activities or studies planned in a given cycle prior to the time each effort is launched. The Evaluation Activity-Specific Detailed Research Plans will indicate definitions of baselines to be used in the program evaluation. Utilities will have opportunities to provide input on the Evaluation Activity-Specific Detailed Research Plans. The Evaluation Activity-Specific Detailed Research Plans will be approved by

commission staff before implementation of the Plan. The final plans shall be publicly available.

(iii) Site-Specific M&V Plans - Site-specific plans may be required for custom project sites that are analyzed and inspected. The Site-Specific M&V Plans will indicate definitions of baselines to be used in the project analysis.

(B) Preparation of annual impact evaluations to determine the following metrics for each utility's individual evaluated programs and portfolio of all programs:

(i) Gross energy and demand savings documented to have been achieved in the first program year the programs are implemented and gross lifetime energy (and demand) savings, incentives paid, administrative costs that were expended, and the program administrator cost test specified in subsection (d) of this section.

(ii) Net energy and demand savings documented to have been achieved in the first program year the programs are implemented and net lifetime energy (and demand) savings, with consideration of all relevant factors.

(iii) Other metrics related to program performance.

(C) Preparation of an assessment of the effectiveness of program operations and recommendations for each evaluated program with respect to possible

improvements that could improve portfolio, program or measure implementation with respect to savings achieved, cost-effectiveness, or other factors. Recommendations may also include suggestions for other program designs or markets to address as well as suggestions for improving the ability to conduct effective evaluation activities.

(D) Preparation of market assessment, saturation and baseline studies as required to prepare impact evaluations.

(E) Preparation of impact evaluations of the programs operated by the utilities during the first three years since an EECRF was first established.

(F) Preparation of a statewide technical reference manual (TRM), including updates to such manual as defined in this subsection.

(G) Additional services as defined by commission staff, which may include, but are not limited to: providing experts for hearings, workshops and other meetings, preparing technical information for possible inclusion in meetings and reports, and informing the commission of opportunities for implementing EM&V best practices.

(5) The impact evaluation activities may include the use of one or more approaches including deemed savings, deemed savings calculations, measurement and verification, or large-scale data analysis with or without the use of control groups. Evaluations may leverage secondary research as appropriate with modifications as deemed necessary by the EM&V contractor and as approved by commission staff. 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.

(A) When net savings are calculated independently from gross savings, net savings may be calculated with one or more of the following approaches:

(i) Self-reporting surveys in which information is reported by participants and non-participants without external verification or review;

(ii) Enhanced self-reporting surveys in which self-reporting surveys are combined with interviews and documentation review and analysis;

(iii) Statistical models that compare participants' and non-participants' energy and demand patterns;

(iv) Customer adoption models applied to specific markets; and

(v) Net-to-gross ratios (ratios that are multiplied by the gross savings to obtain an estimate of net savings) that are based on historic studies of similar programs.

(B) The EM&V contractor shall control for systematic error through best practices and control random error associated with sampling by striving for a 90/10 confidence and precision level (using a two-tailed test) for the metric(s) of interest and requiring an 80/20 confidence level if 90/10 sampling requirements can be shown to be unrealistic. Deviations from

these certainty specifications may be made with justification and approval of commission staff.

(C) Evaluation planning documents shall address approaches to controlling systematic and random errors and evaluation reports shall discuss substantive aspects regarding the uncertainty of indicated savings and other metrics as well as the decision process that determined sample size and confidence/precision level achieved when sampling was used.

(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), and the work papers used to develop the values in the manual, as a foundation for developing the TRM. The TRM shall include, for each deemed savings value or deemed savings calculation, applicability requirements such as measure definition; end-use applications; whether measure is for new construction, early replacement or replacement upon failure; and program delivery mechanism, such as direct install, point of sale rebate, or contractor incentive. 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, pursuant to a schedule determined by commission staff, with the intention of preparing an updated TRM. 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 the annual update.

(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 EM&V contractor shall prepare reports, including, but not limited to:

(A) Site-Specific M&V Reports - Site-specific measurement and verification reports are required for projects for which site-specific M&V Plans were

developed. These reports document the impacts determined for a specific site or measure as well as the methods used to determine the impacts. Utilities will have opportunities to provide input on these reports.

(B) Impact Evaluation Reports - The results of carrying out the evaluation activities described in each Impact Evaluation Plan are documented in an Impact Evaluation Report. The report documents the impacts and cost-effectiveness of a program or bundle of programs as well as the methods used to determine the impacts. Utilities and other stakeholders will have opportunities to provide input on these reports. The final reports shall be publicly available.

(C) Annual Portfolio Evaluation Reports - The results of carrying out the evaluation activities described in an Annual EM&V Portfolio Plan are documented in a Portfolio Evaluation Report. It documents the impact metrics (e.g., gross and net energy and demand savings, first year, and lifecycle) and cost-effectiveness associated with the portfolio of programs as well as the methods used to determine the impacts. Utilities and other stakeholders will have opportunities to provide input on these reports. The final reports shall be publicly available. These reports shall also indicate:

(i) The mix of program offerings at a utility (with descriptions of each), the expected gross savings and budget for each program based on program tracking databases;

(ii) A list of participating energy efficiency service providers; and

(iii) Recommendations for program improvements.

(D) Market assessment, saturation and baseline reports, as required and other reports, as requested by the commission. Utilities and other stakeholders will have opportunities to provide input on these reports. The final reports shall be publicly available.

(8) 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.

(9) The evaluation schedule shall support the evaluation objectives defined in this section and be aligned with the portfolio implementation schedules of the utilities as well as the requirements for regulatory decisions, including those associated with the EECRFs. Starting as soon as possible and according to a schedule approved by commission staff, the EM&V contractor shall prepare Annual Portfolio EM&V Plans and any needed Evaluation Activity-Specific Detailed Research Plans and Site-Specific M&V Plans, Annual Portfolio Evaluation Reports, and publicly available status reports, indicating the status of its activities

and any interim results and/or recommendations. Commission staff will establish the schedule for such status plans and reports.

(10) 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 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 replacement of functional equipment still within its current useful life. Baseline is code, standard or common practice for remaining lifetime of the measure past the estimated remaining lifetime of existing equipment;

(B) Baseline is code, standard or common practice for replacement of functional equipment beyond its current useful life;

(C) Baseline is code, standard or common practice for unplanned replacements of failed equipment; and

(D) Baseline is code, standard or common practice for new construction or major tenant improvements.

- (11) Any 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.
- (12) 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 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.
- (13) 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 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.

(14) 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.

~~(r)(p)~~ **Targeted low income energy efficiency program.** Unless funding is provided under PURA §39.903, each unbundled transmission and distribution utility shall include in its energy efficiency plan a targeted low-income energy efficiency program as described by PURA §39.903(f)(2). Savings achieved by the program shall count toward the transmission and distribution utility's energy efficiency goal. ~~Each utility shall include a proposed funding level for the weatherization program in its energy efficiency plan.~~

~~(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 shall be evaluated using the Savings-to-Investment (SIR) ratio.~~

~~(3) Any unspent funds that remain after July of a program year may be made available for use in the hard-to-reach program.~~

~~(s)(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~~may use an implementation project involving input by interested persons to make recommendations to the commission with regard to best practices in standard offer programs and market transformation 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 ~~in the EEIP that are~~ 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 energy efficiency implementation project~~:

~~(A)(1)~~ development, discussion, and review of new statewide standard offer programs;

~~(B)(2)~~ identification, discussion, design, and review of new market transformation programs;

~~(C)(3)~~ determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures;

~~(D)(4)~~ review of and recommendations on the commission EM&V contractor's reports ~~an independent measurement and verification expert's report~~;

~~(E)(5)~~ 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)(6)~~ review of and recommendations on the utility annual energy efficiency plans and reports; ~~EEIP meetings may be scheduled by commission staff~~

~~for review of the most recent historical year's utility reports, for review of proposals for changes to a utility's energy efficiency plans for a future year, and for midcourse review;~~

~~(G) utility program portfolios and proposed energy efficiency spending levels for future program years;~~

~~(H)(7) periodic reviews of the cost-effectiveness methodology; and~~

~~(I)(8) other activities as identified by commission staff requested by the commission.~~

~~(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.

~~(t)(+)~~ **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.

~~(u)(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 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; ~~and~~
 - (C) a disclosure notifying the customer that consumption data may be disclosed to the EM&V contractor for evaluation purposes; and
 - (D)(E) 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.

~~(v)(+)~~ **Grandfathered programs.** An electric utility that offered a load management standard offer ~~program~~~~programs~~ 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.

~~Notwithstanding subsection (c)(8) of this section, an industrial customer may be considered an eligible customer for programs that will be completed no later than December 31, 2008.~~

(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, 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 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. For the 2013 program year, notices shall be submitted not later than 30 days after the effective date of this section. For subsequent program years, notices shall be submitted

not later than March 15 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.

~~(x)(u)~~ **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 competitive energy 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; ~~;~~
- ~~(4) any actions taken by the utility to identify and correct any deficiencies in its energy efficiency program; and~~
- ~~(5) the utility's effectiveness in administering its energy efficiency program.~~

~~(y)(v)~~ **Effective date.** The effective date of this section is January 1, 2013~~December 1, 2010.~~

This agency hereby 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 16th DAY OF APRIL 2012 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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