

**PROJECT NO. 24391**

**IMPLEMENTATION OF ENERGY § PUBLIC UTILITY COMMISSION  
EFFICIENCY GRANT PROGRAM §  
UNDER SENATE BILL 5 § OF TEXAS**

**PROPOSAL FOR PUBLICATION AS APPROVED AT THE  
AUGUST 23, 2001 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.182, relating to Energy Efficiency Grant Program, and new §25.183, relating to Reporting and Evaluation of Energy Efficiency Programs. The proposed new rules will provide guidance for the implementation of an energy efficiency grant program and reporting requirements regarding energy and demand savings, and concomitant air emission reduction as mandated under the Health and Safety Code, Title 5, Subtitle C, Chapter 386, Subchapter E, Energy Efficiency Grant Program. Under the proposed rules, electric utilities, electric cooperatives and municipally owned utilities may apply for grants from the commission to administer energy efficiency programs. The program is not mandatory and is available statewide, but will give priority to proposals that will reduce air emission in non-attainment areas and affected counties. The program and allowable activities will be consistent with §25.181 of this title, relating to the Energy Efficiency Goal. Project Number 24391 has been assigned to this proceeding.

Nieves López, Policy Analyst with the Policy Development Division has determined that for each year of the first five-year period the proposed section is in effect there will be no negative fiscal implications for state or local government as a result of enforcing or administering the

section. Municipally owned utilities may, at their option, apply for an energy efficiency grant. The energy efficiency grant is expected to fully cover the costs of the program. The extent to which municipally owned utilities will apply for and receive an energy efficiency grant is unknown. The potential positive fiscal impact is therefore undeterminable.

Nieves López has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be reductions in energy consumption, peak demand and air emissions. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Nieves López has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, September 20, 2001 at 9:30 a.m. in the Commissioners' Hearing Room on the seventh floor.

Comments on the proposed new rules (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within ten days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 24391.

These new rules are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically SECTION 11(c) of S.B. 5 (An Act of the 77<sup>th</sup> Leg., R.S., Ch. 967, eff. Sept. 1, 2001) which require(s) the commission to adopt all rules necessary to carry out its duties under the Act within 45 days after the effective date of the Act.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.905; Texas Health and Safety Code §§386.201, 386.202, 386.203, 386.204, and 386.205.

**§25.182. Energy Efficiency Grant Program.**

- (a) **Purpose.** The purpose of this section is to provide implementation guidelines for the Energy Efficiency Grant Program mandated under the Health and Safety Code, Title 5, Subtitle C, Chapter 386, Subchapter E, Energy Efficiency Grant Program. Programs offered under the Energy Efficiency Grant Program shall utilize program templates that are consistent with §25.181 of this title (relating to the Energy Efficiency Goal). Programs shall include the retirement of materials and appliances that contribute to peak energy demand with the goal of reducing energy demand, peak loads, and associated emissions of air contaminants.
- (b) **Eligibility for grants.** Electric utilities, electric cooperatives, and municipally owned utilities are eligible to apply for grants under the Energy Efficiency Grant Program. Multiple eligible entities may jointly apply for a grant under one energy efficiency grant program application. Grantees shall administer programs consistent with §25.181 of this title.
- (c) **Definitions.** The following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise:

- (1) **Affected counties** — Bastrop, Bexar, Caldwell, Comal, Ellis, Gregg, Guadalupe, Harrison, Hays, Johnson, Kaufman, Nueces, Parker, Rockwall, Rusk, San Patricio, Smith, Travis, Upshur, Victoria, Williamson, and Wilson.
- (2) **Demand side management (DSM)** — Activities that affect the magnitude or timing of customer electrical usage, or both.
- (3) **Energy demand** — Energy consumption in kilowatt hour (kWh) or megawatt hour (MWh).
- (4) **Energy efficiency** — Programs that are aimed at reducing the intensity of electric energy usage equipment or processes. Reduction in energy intensity may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by consumer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower total system cost.
- (5) **Energy efficiency service provider** — A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or a customer, if the person has executed a contract with the grantee.
- (6) **Grantee** — the entity receiving Energy Efficiency Grant Program funds.

- (7) **Nonattainment area** — An area so designated under the federal Clean Air Act §107(d) (42 U.S.C. §7407), as amended. A nonattainment area does not include affected counties.
  - (8) **Peak demand** — Electrical demand at the time of highest annual demand on the utility's system, in 15 minute intervals.
  - (9) **Peak demand reduction** — Peak demand reduction on the utility system during the utility's peak period.
  - (10) **Peak energy demand** — Energy consumption during the period of peak demand.
  - (11) **Peak load** — Peak demand.
  - (12) **Peak period** — Period during which a utility's system experiences its maximum demand. For the purposes of this section, the peak period is May 1 through September 30.
  - (13) **Retirement** — The disposal or recycling of equipment and materials in such a manner that they will be permanently removed from the system with minimal environmental impact.
- (d) **Commission administration.** The commission shall administer the Energy Efficiency Grant Program, including the review of grant applications, allocation of funds to grantees and monitoring of grantees. The commission shall:

- (1) Develop an energy efficiency grant program application form. The grant application form shall include:
    - (A) Application guidelines;
    - (B) Information on available funds;
    - (C) Listing of applicable affected counties and counties designated as nonattainment areas; and
    - (D) Information on the evaluation criteria, including points awarded for each criterion.
  - (2) Evaluate and approve grant applications, consistent with subsection (e) of this section.
  - (3) Enter into a contract with the successful applicant.
  - (4) Reimburse participating grantees quarterly from the fund for costs incurred by the grantee in administering the energy efficiency grant program.
  - (5) Monitor grantee progress on an ongoing basis, including review of grantee reports provided under subsection (g)(7) of this section.
  - (6) Compile data provided in the annual energy efficiency report, pursuant to §25.183 of this title (relating to Reporting and Evaluation of Energy Efficiency Programs).
- (e) **Criteria for making grants.**

- (1) Grants shall be awarded on a competitive basis. Applicants will be evaluated on the minimum criteria established in subparagraphs (A)-(G) of this paragraph.
  - (A) The extent to which the proposal would reduce air emissions of pollutants in a nonattainment area.
  - (B) The extent to which the proposal would reduce air emissions of pollutants in an affected county.
  - (C) The amount of peak demand reductions to be achieved under the proposal.
  - (D) The amount of energy savings to be achieved under the proposal.
  - (E) The extent to which the applicant has achieved verified peak demand reductions and verified energy savings under this or other similar energy efficiency programs and has complied with the requirements of the grant program established under this section.
  - (F) The extent to which the proposal is credible, internally consistent, and feasible and demonstrates the applicants ability to administer the program.
  - (G) Any other criteria the commission deems necessary to evaluate grant proposals.
- (2) Applicants who receive the most points under the evaluation criteria shall be awarded grants, subject to the following constraints:

- (A) The commission reserves the right to set maximum or minimum grant amounts, or both.
  - (B) The commission reserves the right to negotiate final program details and grant awards with a successful applicant.
- (f) **Use of approved program templates.** All programs funded through the energy efficiency grant program shall be program templates developed pursuant to §25.181 of this title.
- (1) Program templates shall include the retirement of materials and appliances that contribute to peak energy demand to ensure the reduction of energy, peak demand, and associated emissions of air contaminants.
  - (2) Cost effectiveness and avoided cost criteria shall be consistent with §25.181(d) of this title.
  - (3) Incentive levels shall be consistent with program templates and in accordance with §25.181(g)(2)(F) of this title.
  - (4) Inspection, measurement and verification requirements shall be consistent with program templates and in accordance with §25.181(k) of this title.
  - (5) At the sole discretion of the commission, projects or measures under this program are not eligible for incentive payments or compensation if:
    - (A) A project would achieve demand reduction by eliminating an existing function, shutting down a facility, or operation, or would result in

building vacancies, or the re-location of existing operations to locations outside of the facility or area served by the participating utility.

- (B) A measure would be installed even in the absence of the energy efficiency service provider's proposed energy efficiency project. For example, a project to install measures that have wide market penetration would not be eligible.
  - (C) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.
  - (D) The project involves the installation of self-generation or cogeneration equipment, except for renewable demand side management technologies.
- (g) **Grantee administration:** The cost of administration may not exceed 10% of the total program budget before January 1, 2002, and may not exceed 5.0% of the total program budget thereafter. The commission reserves the right to lower the allowable cost of administration in the application guidelines.
- (1) Administrative costs include costs necessary for grantee conducted inspections and the costs necessary to meet the following requirements:
    - (A) Conduct informational activities designed to explain the program to energy efficiency service providers and vendors.

- (B) Review and select proposals for energy efficiency projects in accordance with the program template guidelines and applicable rules of the standard offer contracts under §25.181(i) of this title, and market transformation contracts under §25.181(j) of this title.
  - (C) Inspect projects to verify that measures were installed and are capable of performing their intended function, as required in §25.181(k) of this title, before final payment is made. Such inspections shall comply with Public Utility Regulatory Act (PURA) §39.157 and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates) or, to the extent applicable to a grantee, §25.275 of this title (relating to the Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).
  - (D) Review and approve energy efficiency service providers' savings monitoring reports.
- (2) A grantee administering a grant under this program shall not be involved in directly providing customers any energy efficiency services, including any technical assistance for the selection of energy efficiency services or technologies, unless a petition for waiver has been granted by the commission pursuant to §25.343 of this title (relating to Competitive Energy Services), to the extent that section is applicable to a grantee.

- (3) An electric utility may not count the energy and demand savings achieved under the energy efficiency grant program towards satisfying the requirements of PURA §39.905.
- (4) Funding awarded under the energy efficiency grant program may not supplement or increase incentives available under programs pursuant to PURA §39.905.
- (5) An electric utility, electric cooperative or municipally owned utility may not count air emissions reductions achieved under the energy efficiency grant program towards satisfying an obligation to reduce air contaminant emissions under state or federal law or a state or federal regulatory program.
- (6) The grantee shall compensate energy efficiency service providers for energy efficiency projects in accordance with the applicable rules of the standard offer contracts under §25.181(i) of this title, and market transformation contracts under §25.181(j) of this title, and the requirements of this section.
- (7) The grantee shall provide reports consistent with contract requirements and §25.183 of this title.

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

- (a) **Purpose.** The purpose of this section is to establish reporting requirements sufficient for the commission, in cooperation with Energy Systems Laboratory of Texas A&M University (Laboratory), to quantify, by county, the reductions in energy demand, peak demand and associated emissions of air contaminants achieved from the programs implemented under §25.181 of this title (relating to the Energy Efficiency Goal) and §25.182 of this title (relating to Energy Efficiency Grant Program).
- (b) **Application.** This section applies to electric utilities administering energy efficiency programs implemented under the Public Utility Regulatory Act (PURA) §39.905 and pursuant to §25.181 of this title, and grantees administering energy efficiency grants implemented under the Health and Safety Code §§386.201-386.205 and pursuant to §25.182 of this title.
- (c) **Definitions.** The words and terms in §25.182(c) of this title shall apply to this section, unless the context clearly indicates otherwise.
- (d) **Reporting.** Each electric utility and grantee shall file by April 1, of each program year an annual energy efficiency report. The annual energy efficiency report shall include the information required under §25.181(g)(5) of this title and paragraphs (1)-(4) of this subsection in a format prescribed by the commission.

- (1) Hourly (or 15 minute) load data within the applicable service area by county, zipcode and/or substation. If the grantee serves fewer than 100,000 retail customers, the grantee or its member organizations may report this information on a total system basis, i.e., the data need not be reported by county, zipcode and/or substation. If such information is available from an Independent System Operator (ISO) or Regional Transmission Organization (RTO) in the power region in which the electric utility or grantee is a member, then the ISO or RTO shall provide this information to the commission instead of the electric utility or grantee.
  - (2) The reduction in peak demand attributable to energy efficiency programs implemented under §25.181 and §25.182 of this title, in kW by county, by type of program and by funding source.
  - (3) The reduction in energy consumption attributable to energy efficiency programs implemented under §25.181 and §25.182 of this title, in kWh by county, by type of program and by funding source.
  - (4) Any other information determined by the commission to be necessary to quantify the air emission reductions.
- (e) **Evaluation.**
- (1) Annually the commission, in cooperation with the Laboratory, shall provide the Texas Natural Resources and Conservation Commission (TNRCC) a report,

by county, that compiles the data provided by the utilities and grantees affected by this section and quantifies the reductions of energy consumption, peak demand and associated air emissions.

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

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

**ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF AUGUST 2001 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**