

PROJECT NO. 24391

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

**ORDER ADOPTING SUBSTANTIVE RULES §25.182 AND §25.183
OCTOBER 15, 2001 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.182, relating to Energy Efficiency Grant Program, and new §25.183, relating to Reporting and Evaluation of Energy Efficiency Programs, with changes to the proposed text as published in the September 7, 2001 *Texas Register* (26 TexReg 6817). The new rules will provide guidance for the implementation of an energy efficiency grant program and reporting requirements regarding energy and demand savings, and associated air contaminant emissions reduction as mandated under the Health and Safety Code, Title 5, Subtitle C, Chapter 386, Subchapter E, Energy Efficiency Grant Program.

Under the new 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 contaminant emissions 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. The Electric Reliability Council of Texas (ERCOT) or other applicable regional transmission organizations (RTO) or independent system operators (ISO) will assist the grantees and utilities in providing the necessary load data that will facilitate the development of a

model by which to quantify air contaminant emission reductions resulting from energy efficiency programs. The utilities that administer energy efficiency programs pursuant to §25.181 and grantees that are not members of a RTO or an ISO will provide the necessary data individually. Annually, the commission will report, by county, the energy and demand savings, and the reduction of associated emissions of air contaminants resulting from programs administered under these sections and programs pursuant to §25.181, to the Texas Natural Resource and Conservation Commission (TNRCC).

The commission initiated the rulemaking proceeding on July 17, 2001 under Project Number 24391, *Implementation of Energy Efficiency Grant Program Under Senate Bill 5*. The commission hosted one workshop on August 3, 2001, to elicit input from stakeholders on various aspects of the rulemaking. In addition, staff and parties held informal meetings to resolve issues. At the Open Meeting on August 23, 2001, the commission voted to publish the proposed rule for comments in the September 7, 2001 issue of the *Texas Register*.

Written comments were filed on September 17, 2001. Cardinal Glass Industries (Cardinal), Frontier Associates LLC (Frontier), Public Citizen's Office of Texas (Public Citizen), Reliant Energy, Incorporated (Reliant), and Texas Energy Services Coalition (TESCO) filed written comments. On September 20, 2001, commission staff held a public hearing pursuant to the Administrative Procedures Act (APA) §2001.029. The purpose for the hearing was to give parties the opportunity to provide additional comments, clarifying comments and replies to

written comments. Austin Energy; American Electric Power Company (AEP); Cardinal; Clark, Thomas & Winters; Entergy Gulf States (EGS); Frontier; Lennox International (Lennox); Public Citizen; Reliant; TESCO; and TXU Electric Company (TXU) attended the hearing. Five parties provided comments that either addressed provisions set forth in the proposed sections, replied to written comments, or reiterated previous comments. ERCOT was allowed to file late comments on September 28, 2001. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

Comments on the preamble to the proposed rules

Public Citizen commented that the second paragraph of the preamble was unclear whether electric cooperatives as well as municipally owned utilities can apply for the grants.

The commission finds that the second paragraph of the preamble discusses the possible negative fiscal impact the enforcement of this section may have on state and local government. An electric cooperative is not a governmental entity, and as such, the analysis does not apply to electric cooperatives.

General comments regarding energy demand and peak load

A number of parties provided comments regarding the terminology "energy demand" and "peak energy demand." These comments are summarized below as a group rather than in relation to specific sections in the rule.

Lennox suggested that the definition of "energy demand" in §25.182(c)(3) be titled "energy consumption," consistent with the use of the term in §25.183(d)(3). TESCO and Public Citizen commented that the language in Health and Safety Code §386.205, which reads "reductions of energy demand, peak loads, and associated emissions" and which appears in §25.183(a) should be interpreted as meaning "reductions of energy consumption, peak demand and associated emissions." TESCO and Public Citizen recommended that §25.183(a) be revised to incorporate the latter phrasing. TESCO and Public Citizen further recommended that "energy demand" in §25.182(c), relating to definitions, be changed to "energy consumption," which, they claimed, would be a more useful definition for evaluating energy efficiency measures. Reliant stated that the definition for and usage of the term "energy demand" in §25.182 differs from the definition and usage of the term in §25.181, and recommended that it be made consistent with §25.181. Frontier suggested replacing the term "energy savings" with "energy demand savings" throughout the rule. Frontier reasoned that "energy demand" is consistent with the rule definitions and with the statute.

Health and Safety Code §386.205 formulates the purpose of the program to be "the retirement of materials and appliances that contribute to peak energy demand with the goal of reducing energy demand, peak loads, and associated air emissions of air contaminants." The commission finds that the intent of the program is the reduction of energy consumption during the period of peak demand with the overall goal of reducing energy consumption and peak demand. The commission therefore defines the term "energy demand" as used in the statute as "energy consumption," and "peak load" as "peak demand." In order to make the language in the body of the rule consistent with industry standards and other commission rules, particularly §25.181 of this title, §25.182(a), relating to the purpose, has been revised to read: "Programs shall include the retirement of materials and appliances that contribute to energy consumption during periods of peak demand with the goal of reducing energy consumption, peak load, and associated emissions of air contaminants." All other terminology related to "energy demand" has been eliminated from both §25.182 and §25.183.

Comments on specific sections

§25.182(a), Purpose

TESCO said that subsection (a) should clarify that the goal of the grant program is to reduce peak demand as well as reduce the amount of energy used at peak times.

Consistent with the discussion regarding "energy demand," the commission has revised the rule to reflect that the purpose of the program is the reduction of energy consumption during the period of peak demand with the goal of reducing energy consumption and peak load.

§25.182(b), Eligibility for grants

Reliant suggested that the rule be revised to clarify that with the unbundling of integrated utilities it is the transmission and distribution utilities that are eligible to receive the grants.

The commission has added a definition of electric utility to §25.182(c) that would limit eligibility to the transmission and distribution utility component of the unbundled utility.

§25.182(c), Definitions

In reference to paragraph (4), Public Citizen commented that there appears to be a word or phrase missing in the definition of "energy efficiency," and offered additional language to complete the definition. Reliant stated that the definition should be consistent with the manner in which the term is defined in §25.181(c). TESCO commented that the term "energy usage equipment" should be changed to "energy using equipment" and that the terminology "technically more advanced" should be deleted.

The commission agrees with Public Citizen that there is a phrase missing from the definition and agrees with Reliant that it is inconsistent with §25.181(c). It has revised the definition to be consistent with the manner in which the term is defined in §25.181(c). In order to maintain consistency with the term as defined in §25.181(c), the commission rejects TESCO's proposed revision.

Reliant stated that the definition for "energy efficiency service provider" under paragraph (5) of this subsection should be consistent with the definitions provided in other commission substantive rules, particularly §25.181(c).

The commission agrees that the definition should be consistent with the manner in which this term is defined in §25.181(c) and has revised the rule accordingly.

Reliant stated that the definition for "peak demand" under paragraph (8) of this subsection should be consistent with the definition provided in other commission substantive rules, particularly §25.181(c). TESCO proposed that the definition be revised to "electrical demand at the time of highest annual energy consumption" to be consistent with the definition of "peak energy demand" under paragraph (10). Frontier proposed that §25.182(c)(8) be revised to use hourly, rather than 15-minute intervals in relation to a utility's "super peak period." In addition, Frontier proposed to add a definition for a utility's "super peak period." Frontier argued this was necessary because basing the measurement on a 15-minute interval would prevent a utility

from being able to comply with the cost-effectiveness provisions under §25.181(e), because it can exceed the actual hourly system demand by a factor of four. Frontier proposed that a "super peak period" be defined as the hours from 4:00 p.m. to 7:00 p.m. during the months of June, July, August and September.

The commission finds that no need exists to establish a utility "super peak period" since the existing definition for "peak period" is adequate. The commission believes that the existing definition is valid and disagrees that the 15-minute demand interval reference in §25.182(c)(8) should be changed. Associating the peak demand with 15-minute intervals does not preclude using hourly load data for the purpose of providing incentives and the reporting purposes under §25.183(d)(1). The commission agrees with Reliant that the definition should be consistent with the manner in which this term is defined in §25.181(c) and has revised the rule accordingly.

Reliant stated that the definition for "peak demand reduction" under paragraph (9) of this subsection should be consistent with the definition provided in other commission substantive rules, particularly §25.181(c). Frontier proposed deleting this definition because "peak demand" is defined, and "reduction" is a common word, and is therefore redundant.

The commission disagrees with Frontier. Section 25.181(c)(23) contains this same definition, in addition to the definition for "peak demand," and the inclusion provides a cue for a reader that the term is being used in some fashion within this rule. Also, the inclusion eliminates any

possibility that the reader will fail to use the word "reduction" in any manner other than that which is intended. The commission agrees with Reliant that the definition should be consistent with the manner in which this term is defined in §25.181(c) and has revised the rule accordingly.

In reference to proposed §25.182(c)(13), regarding "retirement," Public Citizen recommended that the definition be clarified to ensure that all equipment be retired and to prohibit functioning equipment from being resold. Public Citizen argued that the intent of the law was to ensure that the inefficient equipment was permanently retired from use so that it does not continue to use energy inefficiently. At the public hearing, Public Citizen added that the definition should ensure that the electric-consuming components (e.g. compressor) be permanently removed from consumer use, but allow for proper recycling of those components that are not electric consuming devices. Lennox disagreed with Public Citizen. Lennox claimed the definition contained two concepts: recycling and disposal, whereas the main focus of Senate Bill 5 (SB 5), 77th Legislature, is removal of the appliances from customer use. Lennox proposed to limit the definition to proper disposal.

The commission agrees with Public Citizen and Lennox that all energy consuming equipment that is retired under this program must be permanently removed from use. This can be done through disposal or recycling of energy consuming equipment. The commission disagrees that the definition needs to be changed to reflect this clarification.

§25.182(e), Criteria for making grants

Public Citizen stated that there should be a limit on the amount of funding a single entity may receive in order to encourage programs in a variety of service areas. Public Citizen recommended a limit of 40%.

The available funds under this program are subject to legislative appropriations and therefore funding levels may vary from year to year. In order to meet the goal of SB 5 -- reductions in air contaminant emissions -- the rule must have sufficient flexibility to allow the commission to allocate funds in a manner that has maximum impact. If and when funding is low, this may require funding a single grantee or a small number of grantees. The commission, however, agrees that potential applicants should have information available to them regarding the maximum funding levels for individual applicants prior to submitting an application. Accordingly, the commission has added language to §25.182(d)(1)(B), commission administration, to clarify that the grant application form shall include information regarding maximum and minimum funding levels available to individual applicants.

Cardinal stated that the proposed criteria for awarding grants might cause detrimental competition among energy efficiency programs and result in unreasonable additional administrative effort and expense. Cardinal argued that grants should be awarded on a "first come, first serve" basis, consistent with the manner in which projects are awarded under a

standard offer program and that templates already approved by the commission should not be made to compete against each other. In addition, Cardinal pointed out that utilities would consider the incentive levels tailored to each specific program template when choosing a particular program for a grant application. In reference to proposed §25.182(e)(1)(D), TESCO commented that grant applications should be reviewed on the amount of reduced energy consumption at peak time per dollar rather than simply on the reduced energy consumption.

The ultimate goal of the programs under SB 5 is the reduction of air contaminant emissions in nonattainment areas and affected counties. In addition, the statute states that this goal be achieved through a grant program available to utilities, electric cooperatives and municipally owned utilities. The program is voluntary and available statewide. Allowing grants to be awarded on a "first-come, first-serve" basis may result in the allocation of grants to projects that have no impact on air contaminant emissions in nonattainment areas or affected counties. The commission must be able to select proposals that have the greatest potential of reducing air contaminant emissions in the intended areas, and the only way to achieve this end is to evaluate each individual proposal. As the cost-effectiveness standard for the programs and incentive levels are already prescribed in §25.181(d), the cost for energy and demand savings for project proposals within individual customer classes will not vary. The commission, however, agrees that under this criterion the lowest incentive price based on energy and demand savings would give a competitive advantage to projects for large commercial and industrial customers, when

the project itself may not necessarily reduce energy consumption during the period of peak demand. The commission has therefore eliminated §25.182(e)(1)(C) and (D) as proposed, and created new subparagraph (C) that would have the commission evaluate a grant based on the amount of energy savings during periods of peak demand that would be achieved under the proposal. In addition, the commission emphasizes that projects will also be evaluated on criteria (A) and (B).

In reference to §25.182(e)(1)(B), TESCO stated that while it is the intent of SB 5 to reduce air contaminant emissions, it is premature to base the awards of energy efficiency grants on air contaminant emission reductions before an accurate model has been developed to estimate the reductions in air contaminant emissions associated with energy efficiency. TESCO stated that until such time that a model has been developed, it is sufficient to base the awards on the reduction in peak demand and reduction in energy consumption at peak times.

As stated above, the ultimate goal of the programs under SB 5 is the reduction of air contaminant emissions in nonattainment areas and affected counties. The program is available statewide, and applications may be submitted for areas that will have absolutely no impact on non-attainment areas or affected counties. The commission must ensure that grants are made based on the best potential to reduce air contaminant emissions. The rule does not require that the commission use this model in evaluating applications. The primary purpose of this model is to quantify air contaminant emission reductions *after* projects have been installed. Once the

model is developed it may be appropriate to use it to evaluate applications. Therefore, the commission declines to eliminate this criterion.

§25.182(f), Use of approved program templates

Cardinal disagreed with the requirement that all programs funded through the grant program be program templates developed pursuant to §25.181. Cardinal stated that in addition to the programs developed pursuant to §25.181, the proposed rule should permit the development of additional programs designed to implement SB 5, while remaining consistent with §25.181. Cardinal expressed the concern that the proposed rule seems to prohibit the development of new program templates. Frontier proposed a revision to subsection (f) of this section that would require that the programs funded under the grant programs "conform with" program templates developed pursuant to §25.181, rather than a requirement that these programs "be" such program templates.

Program templates approved by the commission will have been developed under the guidance of and fully reviewed by all stakeholders in Project Number 22241, *Energy Efficiency Implementation Docket* (EEID). Requiring that only these program templates be used ensures that projects have the best possibility of success and allows for timely evaluation of grant applications. Potential program templates are not, however, limited to those templates in place today. Parties are encouraged to submit program templates concepts that better fit the purpose

of this program to the EEID for review and commission approval. In response to comments filed by Frontier, the commission finds that the usage of the term "conform" will allow for minor deviations from program templates adopted by the commission. This, in turn, would require additional scrutiny when evaluating individual grant proposals. The commission declines to revise the rule based on these comments.

In reference to §25.182(f)(5)(B), Lennox agreed that the proposed rule should exclude measures that would be installed in the absence of the energy efficiency service provider's proposed energy efficiency project. However, Lennox disagreed with the clarification to exclude measures that have "wide market penetration." Lennox argued that this would eliminate an air conditioning unit at a seasonal energy efficiency ratio (SEER) of 12 as an eligible measure. Lennox claimed that requiring customers to purchase a SEER 13 air conditioner is cost prohibitive, would discourage customers from buying SEER 12 units, and would cripple the program. Public Citizen responded that Lennox's argument reflects the cost to the customer in the market place, not the actual incremental cost of production of a SEER 13 unit over a SEER 12 unit. Public Citizen further commented that Lennox's arguments do not take into consideration economies of scale once the market moves towards a SEER 13. Public Citizen further argued that the Department of Energy will adopt a future standard that will be at least SEER 12, but may be as high as SEER 13.

The ultimate goal of energy efficiency programs is to encourage the market to offer products at ever increasing energy efficiency levels. The programs do so by offering incentives for high efficiency products that customers would not decide to purchase on their own. It is therefore appropriate that incentives are only given to projects that offer energy efficiency levels that exceed the common market practice but that are within the technological capability of the manufacturers. It is also appropriate that these requirements exceed current regulatory standards, for it would be inappropriate for an energy efficiency program to provide subsidies for products that are well within the range of the market options. The commission has made the previous finding in its discussions in the preamble to §25.181 that it will disallow measures that already have wide market penetration. The commission created the EEID to provide advice as to the eligibility of measures on a case-by-case basis under this criterion. As a result of this process, the commission has set the minimum standard of eligibility for air conditioning units under the commission approved program templates at a SEER 13. The commission concludes that the rule, as proposed, is consistent with this view of energy efficiency and with §25.181.

§25.182(g) Grantee administration

Reliant and Frontier commented that the rule should specify that grantees may only implement energy efficiency projects within their own service territories to ensure that there will not be competing energy efficiency programs within service areas.

The commission agrees with Reliant and Frontier and has added a new paragraph (3) to disallow the installation of projects outside the grantee's service areas under this program.

Frontier and TESCO recommended revising §25.182(g) such that the cost of administration would not exceed 10% of the total program budget before January 1, 2003, and should not exceed 5.0% of the budget afterwards. The proposed rule mandates that these caps should take effect before and after January 1, 2002, respectively. These parties noted that this is just a few months after the rule is to be adopted.

The commission agrees with Frontier and TESCO and has revised the rule accordingly.

In reference to §25.182(g)(1)(C), Frontier suggested that inspections be conducted not only in accordance with §25.181(k) of this title, but also the provisions required by the program templates. Frontier claims that the templates allow for lower cost inspections than the applicable rules.

The commission finds that inspections must be conducted in accordance with the requirements of §25.181(k). Neither the program templates nor §25.181 address the cost of inspections. The commission declines to implement the proposed suggestion.

In reference to proposed §25.182(g)(3), Reliant stated that not allowing grantees to count energy and demand savings achieved under this program towards the energy efficiency goal in the Public Utility Regulatory Act (PURA) §39.905 will be a disincentive for utilities to participate in this program. TESCO suggested that §25.182(g)(3) be reworded to clarify that utilities, cooperatives and municipalities may not count any emission reductions resulting from this program to count towards "its own" reductions under state or federal programs. Frontier stated that the requirement only apply to peak demand savings rather than all demand savings.

In response to Reliant's comment, the commission finds that this is a statutory provision under Health and Safety Code §386.205 and cannot eliminate this requirement. The commission also finds that TESCO's and Frontier's suggestions change the intent of this statutory requirement and declines to make the revision.

Regarding proposed §25.182(g)(4), Frontier stated it was unclear what constitutes supplementing or increasing funds.

Grantees may expand their existing standard offer programs with this grant program. Grantees may not, however, pay for the same energy and demand savings from both the existing programs and the grant programs. The commission has revised the rule to clarify this issue.

Frontier suggested that proposed §25.182(g)(6) be revised to add inspection requirements.

Section 25.182(g)(6) (now (g)(7)) details the compensation of energy efficiency services providers. Inspection requirements are already detailed under §25.182(g)(1)(C). Frontier has not adequately supported its suggestion for additional inspection requirements. The commission declines to make the suggested revision.

§25.183. Reporting and Evaluation of Energy Efficiency Programs

§25.183(a) Purpose

TESCO suggested that the purpose be revised to read that the report will quantify reductions in "energy consumption" rather than "energy demand."

Consistent with the commission's discussion regarding §25.182 and the intent of SB 5 in using the term "energy demand," the commission revises the wording in this section to "energy consumption."

Public Citizen suggested adding language to §25.183(a) to specify that the commission and the Energy Systems Laboratory of Texas A&M University (Laboratory) report meets the reporting requirements of the TNRCC and Environmental Protection Agency (EPA). At the APA hearing, Public Citizen clarified that its main concern was that the metrics contained in the commission's reports (e.g. MWh, tons of emissions per kWh, etc.) match the metrics used by TNRCC and EPA in the State Implementation Plan.

The commission's main reporting responsibility is to provide, by county, data regarding reductions in energy consumption and peak demand, and associated emissions of air contaminants. The commission will cooperate with the TNRCC to meet its reporting requirements with the EPA to the maximum feasible extent. However, the commission's reporting standards will not be subject to formal approval by either TNRCC or EPA. The commission declines to add this requirement to the rule.

§25.183(d) Reporting

Frontier said that an applicant's ISO or RTO should be required to file a plan describing how it would achieve the reporting requirements, including milestones and target dates for data acquisition, consolidation and reporting. Frontier explained that the data collection responsibilities are unclear in the event that the ISO or RTO cannot report hourly load data. In

addition, Frontier argued, grantees should not have to report information that is duplicated by the ISO or RTO. According to Frontier, the only way to ensure communication to those secondary sources of information is to add the proposed additional reporting requirement to the ISO's or RTO's duties.

ERCOT submitted comments opposing the reporting requirements placed on ERCOT. ERCOT argued that grantees and utilities are already required to provide extensive information to the commission in the energy efficiency reports. ERCOT commented that the only load information it would have for a grantee or utility is originally obtained from the utility itself. According to ERCOT, it therefore makes no sense to place the additional reporting requirement proposed in §25.183(d) on ERCOT. Moreover, specific customer load information is proprietary as per the contractual arrangements between ERCOT and market participants as well as ERCOT's commission-approved ERCOT Protocol 1.3 that prohibits it from disclosing "Proprietary Customer Information" and "Protected Information." In addition, ERCOT claimed that these requirements would require substantial staff and financial resources on the part of ERCOT.

In reply comments, TXU agreed with the reporting system in proposed §25.183(d). According to TXU, this system will enable load data throughout the entire ERCOT system to be most efficiently generated and reported to the Laboratory. Although, TXU recognized ERCOT's concern with being asked to take on an additional responsibility, TXU argued that the solution is

not as simple as ERCOT's comments lead one to believe. TXU stated that it does *not* generate, much less report to ERCOT, load data in the form required by the proposed rule, and it suspects that other transmission and distribution service providers (TDSP) are similarly situated. Moreover, the information that the utilities are currently required to provide under §25.181(g)(5) is considerably different from the load information required by proposed §25.183. Having ERCOT perform the reporting function would result in economies of scale and would be much more efficient than having each individual TDSP perform the tasks necessary to generate the required information and reports. Moreover, ERCOT is already experienced in functioning as a clearing-house for information, acting to take information from ERCOT TDSPs and to combine them into one standard format.

TXU also disputed ERCOT's argument that it cannot provide the requested load data because of ERCOT Protocol 1.3. According to TXU, this argument is without merit because ERCOT Protocol 1.3.5 (Exceptions) provides in section (1) that "Receiving Party may, without violating this Subsection 1.3, Confidential Information, Disclose Protected Information to governmental officials, Market Participant(s), the public, or others as required by any law, regulation, or order, or by these Protocols, provided that any Receiving Party make reasonable efforts to restrict public access to the Disclosed Protected Information by protective order, by aggregating information, or otherwise if reasonably possible;"

TXU Electric agrees that the load information required by the draft rule to be provided to Laboratory may be competitively sensitive and may rise to the level of "Protected Information." However, according to TXU, ERCOT Protocol 1.3 specifically addresses the ability of ERCOT to provide Protected Information to necessary persons, as determined by the commission, and provides procedures to govern the disclosure of such information. Furthermore, if ERCOT acts as a clearing-house to receive and aggregate load data, then the information provided to the Laboratory may, in cases where more than one TDSP serves a service area, be less competitively-sensitive because it has been more comprehensively aggregated. Accordingly, not only is ERCOT not prohibited from performing the reporting of load function required by the draft rule, it is the most appropriate entity to perform such function. Reliant indicated that it supported TXU's reply comments and emphasized that ERCOT is the only entity capable of providing the data required under proposed §25.183.

The commission concludes that there are significant opportunities to report information more efficiently, if it is reported by a single organization and is already being gathered in large part as part of that organization's normal operations. In the case of an ISO or RTO that is operating ancillary service and balancing energy markets, the information is probably available. While a grantee or utility may be the originator of the load information in the ERCOT database, for example, ERCOT may be able to provide information for a number of grantees in the same format. It may also be necessary to gather information from ERCOT relating to entities that are not grantees. Consequently, the commission agrees with Frontier, TXU and Reliant that

grantees should not have to report to the commission information that is also maintained by the ISO or RTO. The commission finds that the level of detail of the data necessary to develop the model should be determined at a later date in coordination with all the stakeholders, and has revised the rule accordingly. The commission also finds that the RTO or ISO will not be required to perform additional analysis or devote substantial resources to the data necessary to develop this model. The commission has also added language to both §25.183(d) and (e) to protect the proprietary nature of this data.

Reliant said grantees should not be required to report energy efficiency information they are also required to report under §25.181(g)(5). It said the information reported under the existing rule should be sufficient for the purposes of the proposed rule.

While the commission recognizes that the information required under the two rules comes from the same sources, the purposes are different. The commission finds, however, that it would be acceptable for a grantee to file one report to satisfy the requirements of both §25.181 and §25.183, as long as SB 5 related items are clearly itemized and summarized. For example, if a utility were to receive an energy efficiency grant under an Energy Star Homes Market Transformation Program (ESH) template, the utility could file one report showing how much of its own funds were disbursed for ESH, how much grant money was disbursed for ESH, total energy savings attributable to ESH, and then allocate the ESH energy savings between the

utility-funded and grant-funded ESH programs on the basis of total disbursements. The commission does not find the need to revise the rule to clarify this intent.

Public Citizen suggested expanding the reporting requirements under §25.183(d)(2) and (3) to include zip code and substation level. This would make these two paragraphs consistent with §25.183(d)(1), which requires interval load data by county, zip code and/or substation.

The commission finds that county-level summaries are sufficient for the purposes of paragraphs (2) and (3). While §25.183(d)(1) deals strictly with raw data on load that can be simply measured, §25.183(d)(2) and (3) involve inferences drawn from the measured load and consumption data. It is unrealistic to expect that the inferences of paragraphs (2) and (3) will be of the same precision as the measurements in paragraph (1). The commission therefore declines to amend these paragraphs as suggested by Public Citizen.

Entergy stated that the company does not have an ISO or RTO, and it may be difficult for the company to provide the required data, particularly the emissions data.

The commission recognizes the utility may not operate under an ISO or RTO. Where this is the case, the primary responsibility for providing the data will be on the grantee and utility. The data reporting requirement in the rule relates to load profiles, not air emissions. As such, the company should have this information for its day-to-day operations. If the company does not

have this information, it should file a good cause exception explaining why it does not have access to this data and how the objectives of the program can be met without it. The commission declines to revise the rule.

§25.183(e) Evaluation

TESCO also suggested that the reports pursuant to §25.183(e)(1) be submitted by January 1 of each year, because providing a fixed date would help the commission, TNRCC and other parties make corrective adjustments to the program on a regular basis.

The report requires data from both SB 7 and SB 5 programs. The SB 7 data is due to the commission by April 1st each year. Because SB 5 energy efficiency programs will be evaluated during the summer months, and these data reporting requirements are currently being developed, the date of January 1st might not be the best choice for utilities to provide SB 5 data. The commission finds that it will set a due date for the report when it develops the data reporting requirements. The commission declines to make the proposed revision.

In reference to §25.183(e), Public Citizen stated the rule should include a provision to estimate the magnitude of the cost-effective peak demand reductions that could occur as a result of investments in energy efficiency, i.e., the extent to which peak demand reduction would be cheaper than the average market price of electricity.

The commission is required to provide the TNRCC with a report that quantifies the energy and demand savings, and associated air contaminant emission reduction. The commission may include any other data or information it deems relevant. The commission declines to add the additional requirement to this rule.

Public Citizen recommended adding a new paragraph (3) to subsection (e). This recommendation would mandate the commission suggest changes to the Texas Emission Reduction Plan Board concerning the statute or funding levels.

The commission is required to provide the TNRCC with a report that quantifies the energy and demand savings, and concomitant air contaminant emission reduction. The commission may include any other data or information it deems relevant. It is, however, the responsibility of the TNRCC to report to the Texas Emissions Reduction Plan Board. The commission declines to add the additional requirement to this rule.

These new sections are adopted 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 Senate Bill 5 (An Act of the 77th 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 §§386.201-386.205.

§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 energy consumption during periods of peak demand with the goal of reducing energy consumption, 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.

An affected county may include a nonattainment area, at which point it will be considered a nonattainment area.

- (2) **Demand side management (DSM)** — Activities that affect the magnitude or timing of customer electrical usage, or both.
- (3) **Electric utility** — As defined in the Public Utility Regulatory Act (PURA) § 31.002(6).
- (4) **Energy efficiency** — Programs that are aimed at reducing the rate at which energy is used by equipment or processes. Reduction in the rate of energy used 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 lower customer 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 standard offer 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, measured in 15 minute intervals.
 - (9) **Peak demand reduction** — Peak demand reduction on the utility system during the utility system's peak period.
 - (10) **Peak load** — Peak demand.
 - (11) **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.
 - (12) **Retirement** — The disposal or recycling of all 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, including minimum and maximum funding levels available to individual applicants;
 - (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 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)(8) 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)-(F) of this paragraph.

- (A) The extent to which the proposal would reduce emissions of air pollutants in a nonattainment area.
 - (B) The extent to which the proposal would reduce emissions of air pollutants in an affected county.
 - (C) The amount of energy savings achieved during periods of peak demand.
 - (D) 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.
 - (E) The extent to which the proposal is credible, internally consistent, and feasible and demonstrates the applicants ability to administer the program.
 - (F) 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 adopted under this program shall include the retirement of materials and appliances that contribute to energy consumption during periods of peak 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) 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, 2003, 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 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) Only projects installed within the grantee's service area are eligible for compensation under this program.
 - (4) 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.

- (5) Incentives paid for energy and demand savings under the energy efficiency grant program may not supplement or increase incentives made for the same energy and demand savings under programs pursuant to PURA §39.905.
- (6) An electric utility, electric cooperative or municipally owned utility may not count air contaminant 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.
- (7) 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.
- (8) 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 consumption, peak demand and associated emissions of air contaminants achieved from the programs implemented under §25.181 of this title (relating to the Energy Efficiency Goal) and §25.182 of this title (relating to Energy Efficiency Grant Program).
- (b) **Application.** This section applies to electric utilities administering energy efficiency programs implemented under the Public Utility Regulatory Act (PURA) §39.905 and pursuant to §25.181 of this title, and grantees administering energy efficiency grants implemented under Health and Safety Code §§386.201-386.205 and pursuant to §25.182 of this title, and independent system operators (ISO) and regional transmission organizations (RTO).
- (c) **Definitions.** The 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) Load data within the applicable service area. If such information is available from an ISO or RTO in the power region in which the electric utility or grantee operates, then the ISO or RTO shall provide this information to the commission instead of the electric utility or grantee.
- (2) The reduction in peak demand attributable to energy efficiency programs implemented under §25.181 and §25.182 of this title, in kW by county, by type of program and by funding source.
- (3) The reduction in energy consumption attributable to energy efficiency programs implemented under §25.181 and §25.182 of this title, in kWh by county, by type of program and by funding source.
- (4) Any data to be provided under this section that is proprietary in nature shall be filed in accordance with §22.71(d) of the commission's Procedural Rules.
- (5) Any other information determined by the commission to be necessary to quantify the air contaminant 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 contaminant emissions.

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

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

(2) Every two years, the commission, in cooperation with the Energy Efficiency Implementation Docket under Project Number 22241, 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. It is therefore ordered by the Public Utility Commission of Texas that §25.182 relating to Energy Efficiency Grant Program, and §25.183, relating to Reporting and Evaluation of Energy Efficiency Programs are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 9th DAY OF NOVEMBER 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Max Yzaguirre

Commissioner Brett A. Perlman

Commissioner Rebecca Klein