

**PROJECT NO. 48692**

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

**ORDER ADOPTING AMENDMENT TO §25.181,  
NEW §25.182, AND AMENDMENT TO §25.183  
AS APPROVED AT THE MARCH 13, 2019 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.181, relating to energy efficiency goal; new §25.182, relating to energy efficiency cost recovery factor; and amendments to §25.183, relating to reporting and evaluation of energy efficiency programs as published in the December 21, 2018 issue of the *Texas Register* (43 TexReg 8203). The amendments to §25.181 remove the cost recovery and performance bonus subsections, require the inclusion of calculations supporting adjustments between meter and source in the energy-efficiency plan and report, clarify that peak demand is to be calculated at the source, address the processes to challenge the determination of avoided cost and the approval of changes to the technical reference manual, and include clarifications of rule language and non-substantive amendments, including the removal of obsolete and unnecessary rule language. The new §25.182 includes the cost recovery and performance bonus subsections removed from §25.181, and amends those subsections to require the application of interest to over- and under-recovery balances, clarify the bonus calculation based on recent commission precedent, clarify rule language, and incorporate non-substantive amendments including the removal of obsolete and unnecessary rule language. The amendments to §25.183 remove

obsolete and unnecessary rule language. This new section and amendments are adopted under Project No. 48692.

The commission received comments on the proposed amendments and new section from the Steering Committee of Cities Served by Oncor (Cities); the Office of Public Utility Counsel (OPUC); the Lone Star Chapter of the Sierra Club (Sierra Club); the South-central Partnership for Energy Efficiency as a Resource (SPEER); as well as AEP Texas Inc., CenterPoint Energy Houston Electric LLC, El Paso Electric Company, Entergy Texas Inc., Oncor Electric Delivery Company LLC, Southwestern Electric Power Company, Southwestern Public Service Company, and Texas-New Mexico Power Company (Joint Utilities).

*Section 25.181, Energy Efficiency Goal*

*Subsection 25.181(c)(13), Energy Efficiency Cost Recovery Factor (EECRF)*

SPEER and the Sierra Club expressed opposition to the proposed revision to the definition of EECRF that changes the term “cost-effective portfolio of energy efficiency programs” to “portfolio of cost-effective energy efficiency programs.” SPEER and the Sierra Club opined that this change could have a major impact on the types of energy efficiency programs offered by the Joint Utilities. SPEER and the Sierra Club stated their belief that applying cost-effectiveness tests at the portfolio level affords the Joint Utilities the flexibility to offer some less cost-effective measures or programs as long as their shortfall is more than offset by more cost-effective measures. SPEER and the Sierra Club commented that this flexibility promotes the introduction of new technologies and supports hard-to-reach sectors. They concluded that a requirement that individual energy efficiency programs be cost-effective could prevent pilot

programs and experimental technologies from being tested or implemented due to fear of the potentially high cost of the program.

SPEER and the Sierra Club urged the commission to return the term in the definition back to its original language. In addition, they requested the replacement of the terminology “portfolio of cost-effective energy efficiency programs” used in §25.181(d) and in §25.182(a)(1) with “cost-effective portfolio of energy efficiency programs.”

OPUC expressed concern that the proposed change to the definition of EECRF would result in significant policy changes, and recommended deferring the proposed revision until the commission can give a full consideration to its effect. OPUC noted that the commission’s existing rule, §25.181, is inconsistent regarding whether the term “cost-effective” applies to the portfolio as a whole or to each individual energy efficiency program within a portfolio. OPUC stated its belief that while cost-effectiveness of individual programs is important, there may be important policy reasons to consider applying the cost-effectiveness standard at the portfolio level. As an example, OPUC stated that programs serving low-income or hard-to-reach groups and programs with high upfront costs, such as those that introduce new technologies, may not meet a cost-effectiveness standard measure at the program level.

Cities urged that the commission adopt the proposed change to the definition. Cities commented that each energy efficiency program should be cost-effective. Cities stated that measuring cost-effectiveness at the program level would prevent the utilities from creating experimental and

potentially costly programs at the expense of ratepayers with no guarantee of energy efficiency savings.

Cities noted that the proposed change to the definition aligns with the original language found in §25.181(d), which uses the term “portfolio of cost-effective energy efficiency programs,” and matches the language in proposed §25.182(a)(1) and (d), which use the existing language from §25.181(f).

### *Commission Response*

**The intent of the revision to the definition of EECRF that replaces the term “cost-effective portfolio of energy efficiency programs” with “portfolio of cost-effective energy efficiency programs” is to conform the definition to language used elsewhere in §25.181 and §25.182, and to align the definition with the commission’s intent that a utility offer an energy efficiency program at a cost to the utility that is less than or equal to the benefits of the program. Concerns raised by SPEER and the Sierra Club bear similarity to those raised in Project No. 39674, *Rulemaking Proceeding to Amend Energy Efficiency Rules*, by the Joint Utilities regarding the requirement in §25.181(d) that cost-effectiveness be measured at the program level. Just as it did in Project No. 39674, the commission concludes that all programs, with the exception of the targeted low-income program, must meet a cost-effectiveness standard measured at the program level. To ensure best use of customers’ funds, a program that does not meet the cost-effectiveness standard in the rule may need to be modified to reduce program costs or increase savings, or be discontinued.**

**In response to concerns raised by SPEER, the Sierra Club, and OPUC that cost-effectiveness measured at the program level could prevent implementation of programs that introduce new technology or dampen programs designed to serve hard-to-reach customers, the commission points to §25.181(i), which provides market transformation programs with some flexibility in meeting the cost-effectiveness standard during the first year of implementation. This flexibility gives utilities the opportunity to experiment with pilot programs in order to develop more successful energy efficiency programs. A utility also has the flexibility to use research and development funds to design and develop new programs. Furthermore, the targeted low-income program is not required to meet the generally applicable cost-effectiveness standard in the rule. Instead, the targeted low-income program must meet the savings-to-investment ratio cost-effectiveness standard, which is the widely used cost-effectiveness standard for targeted low-income programs.**

**The commission declines to adopt the revisions proposed by SPEER and the Sierra Club or to defer revision of the existing definition as proposed by OPUC. The commission adopts the proposed change to the definition.**

*Subsection 25.181(c)(44), Peak Demand; Subsection 25.181(c)(45), Peak Demand Reduction; and Subsection 25.181(e)(3)(B), Annual Energy Efficiency Goals*

The Joint Utilities opined that the proposed change to the definition of peak demand and peak demand reduction would significantly alter how energy efficiency goals and savings are calculated. The Joint Utilities noted that under the existing rule, the peak demand at the meter is used to calculate energy efficiency goals, and the peak demand reduction at the meter is used to

report savings based on the Technical Reference Manual. The Joint Utilities commented that the proposed change is intended to promote transparency regarding how peak demand is converted from an “at source” value to an “at meter” value, rather than intended to change how the energy efficiency goals and savings are calculated. The Joint Utilities acknowledged that the proposed definition of peak demand is accurate in that the highest annual demand on a utility’s system is traditionally measured at the source. However, because the peak demand goal is measured at the meter, the Joint Utilities proposed the addition of language to §25.181(e)(3)(B) that clarifies that the annual peak demand at the source is converted to an equivalent demand goal at the meter by applying reasonable line loss factors, such as those approved in each utility’s most recently approved rate case or line loss study. The Joint Utilities also requested a change to the proposed definition of peak demand reduction to reflect that peak demand reduction is measured at the meter.

### *Commission Response*

**The commission agrees with the Joint Utilities that peak demand at the meter is used to calculate the utilities’ energy efficiency goals. In order to clarify that the peak demand at the source is converted to peak demand at the meter for the purpose of calculating the utilities’ goals, the commission has added the Joint Utilities’ proposed language to §25.181(e)(3)(B).**

**It remains the intent of the commission that peak demand reduction be measured at the meter, where the savings originate, in order to determine achievement of the utilities’ goals, which are set at the meter. However, the commission believes there is value in converting**

the peak demand reduction at the meter to peak demand reduction at the source in order to provide an estimate of avoided generation attributable to the utilities' energy efficiency programs.

To address the Joint Utilities' concern regarding the measurement of peak demand reduction for purposes of determining achievement relating to the utilities' goals, which are calculated at the meter, the commission strikes the proposed addition to the definition of demand reduction that requires its measurement at the source. The commission believes the proposed language in §25.181(1)(2)(X) that requires the utilities' energy efficiency plans and reports to include calculations supporting the adjustments to restate the demand goal from the source to the meter and to restate the energy efficiency savings from the meter to the source is sufficient to ensure that the peak demand reduction measured at the meter is also reported at the source.

Because it is appropriate to measure peak demand reduction at the meter in order to determine achievement relating to a utility's goal, and to convert these savings to peak demand reduction at the source for an estimate of avoided generation, the commission declines to add the Joint Utilities' proposed language that would limit peak demand reduction to a measurement made at the meter.

*Subsection 25.181(d), Cost-effectiveness Standard*

Cities expressed support for the proposed revisions to §25.181(d)(2)(A) and §25.181(d)(2)(A)(iii) that change the date by which commission staff must file the avoided cost of capacity, clarify where it must be filed, and require that stakeholders who challenge the avoided cost of capacity provide supporting data and calculations to describe why staff's calculation is incorrect.

Cities proposed the addition of rule language to §25.181(d)(2)(A) to require that staff file supporting data and calculations when the avoided cost of capacity is filed in order to provide more transparency and understanding into the process by which staff establishes the avoided cost of capacity.

*Commission Response*

**The commission agrees with Cities that a requirement to file supporting data when the avoided cost of capacity is filed provides transparency, and the commission adds the requirement to §25.181(d)(2)(A). The commission declines, however, to add language to the rule to require the filing of supporting calculations, because the calculation for the avoided cost of capacity is already laid out in the rule.**

*Subsection 25.181(g)(4), Utility Administration*

To clarify that deemed savings are reviewed and approved by commission staff consistent with the proposed revision to §25.181(o)(6)(C), the Joint Utilities recommended the removal of the

language regarding deemed savings estimates from the list of items that the utility is required to file with the commission.

*Commission Response*

**The commission intends that staff review and approve new deemed savings estimates. The commission agrees with the comments of the Joint Utilities and removes language in §25.181(g)(4) regarding deemed savings estimates.**

*Subsection 25.181(o)(6)(C), Evaluation, Measurement, and Verification (EM&V)*

The Joint Utilities expressed support for commission staff approval of updates to the technical reference manual (TRM), noting that commission staff approval would eliminate the need for deemed savings petition filings for commission approval, reduce staff workload, and streamline the overall process. However, the Joint Utilities expressed concern that the proposed 45-day period to challenge TRM changes approved by staff could result in deemed savings not being approved in a timely manner for program implementation. The Joint Utilities stated their belief that this would negatively impact participants and project sponsors and increase administrative burdens. To address their concerns, the Joint Utilities suggested that the deemed savings for a specified program year be approved by commission staff through the Energy Efficiency Implementation Project (EEIP) process by December 1 of the year preceding the program year and that the Joint Utilities or the EM&V contractor maintain the ability to initiate an approval process for additions or modifications to be incorporated into future versions of the TRM. The Joint Utilities provided language to require the implementation for use in subsequent years of any TRM challenges approved via a petition filing after commission staff approval.

Cities remarked that they do not object to the proposed language related to challenging the TRM, nor do they object to the Joint Utilities' alternative process for challenging the TRM as long as the process is transparent, the timing for the commission to adopt proposed changes is clearly stated in the rule, and stakeholders are adequately notified of the EEIP meeting or the process by which they must participate to petition for TRM updates.

### *Commission Response*

**The commission agrees with the comments of the Joint Utilities and adds language to subsection §25.181(o)(6)(C) to clarify that updates to the TRM are made through the EEIP. Furthermore, it is the intention of the commission that the Joint Utilities, other interested parties, or the EM&V contractor maintain the ability to initiate an approval process for additions or modifications to be incorporated into future versions of the TRM. Although it is the commission's preference that updates to the TRM be approved in the year preceding the program year in which they will take effect, the commission declines to modify the rule to require that staff approve updates to the TRM by December 1 of the year preceding the program year. The commission notes that the timing of staff approval is dependent on when an addition or modification to the TRM is proposed and, depending on the circumstances, it may be preferable that the updates take effect in the year in which they are approved, as has been done in the past.**

**Furthermore, the commission declines to accept the Joint Utilities' proposed language regarding a TRM challenge via a petition filing that would delay implementation of a change approved as a result of a petition to subsequent program years. In order to provide**

**the relief requested by a petition in a timely manner, it may be necessary for the commission to approve an effective date for the relief requested that is the same as the effective date of the version of the TRM that was challenged.**

*Section 25.182, Energy Efficiency Cost Recovery Factor*

*Subsection 25.182(d)(1)(A), Cost Recovery*

Cities stated that because the term “program expenditures” is not defined in §25.181, potential inconsistencies are created with the term “program costs,” which is defined in §25.181 and §25.182. Cities commented that the rule should define the term “program expenditures” in order to differentiate it from the term “program costs.”

In addition, Cities opined that inclusion of EM&V costs in proposed §25.182(d)(1)(A) as a program expenditure could result in double counting of “measurement and verification” as defined in program costs. In addition, Cities stated the belief that if measurement and verification costs are distinct from EM&V costs, the rule should so clarify.

The Joint Utilities opposed the addition of a definition for program expenditures. In response to the Cities’ suggestion that the absence of a definition for “program expenditures” creates potential inconsistencies with the term “program costs,” the Joint Utilities remarked that they were not aware of a situation where such an inconsistency has arisen. Furthermore, the Joint Utilities commented that in order for the commission to consider a proposed definition of “program expenditures,” the Cities should have proposed a definition in their comments to allow other stakeholders the opportunity to comment on the proposed definition.

The Joint Utilities also expressed disagreement with the Cities' suggestion that inclusion of EM&V costs as a program expenditure in proposed §25.182(d)(1)(A) could result in a double counting of "measurement and verification" as defined in program costs. The Joint Utilities noted that measurement and verification costs are not the same as EM&V costs. The Joint Utilities explained that measurement and verification costs are administrative costs included in a utility's program costs; EM&V costs are for the EM&V contractor that, under the energy efficiency rule, do not count against the utility's cost caps or administrative spending caps. The Joint Utilities pointed out that the two terms are specifically defined in §25.181(c)(22) and (38). The Joint Utilities summarized that there is no double counting or need for further clarification.

#### *Commission Response*

**The commission declines to add a definition for "program expenditures." As explained by the Joint Utilities, no issues have arisen from the lack of a definition for "program expenditures" and no definition has been proposed for comment.**

**As required under §25.181(n), a utility must document energy and demand savings using accepted measurement and verification methods. Because §25.181(g)(1) makes clear that administrative costs include all reasonable and necessary costs incurred by a utility in carrying out its responsibilities under the rule, the commission agrees with the Joint Utilities that a utility's costs for its own measurement and verification are included in administrative costs. EM&V costs are costs for the commission's EM&V contractor to conduct independent evaluation, measurement, and verification of the utilities' energy efficiency programs and do not count against a utility's EECRF cost caps or administrative**

spending cap. The utility's measurement and verification costs and the costs for the commission's EM&V contractor are considered when determining the cost-effectiveness of the utility's programs under §25.181(d)(1), and in the calculation of net benefits used to determine a utility's performance bonus under §25.182(e)(2). In its response to comments relating to §25.181(d)(1) in Project No. 39674, the commission confirmed that EM&V costs constitute measurement and verification costs that are specified for inclusion in the program cost calculation under §25.181(d)(1).

Because the utility's measurement and verification costs are properly included in program costs as a component of the utility's administrative costs, the commission believes it is appropriate to strike the term "measurement and verification" in §25.181(d)(1) and proposed §25.182(e)(2), and replace it with the term "EM&V contractor costs" to avoid confusion regarding the terms "measurement and verification" and "EM&V costs." In addition, in order to clarify that the term "EM&V costs" refers to costs for the commission's EM&V contractor and does not refer to a utility's measurement and verification expense, the commission changes the term in §25.182(d)(1)(A) to "EM&V contractor costs."

*Subsections 25.182(d)(1) and (2), Cost Recovery*

The Cities commented that the language regarding the application of interest to the over- or under-recovery of energy efficiency costs, as drafted, was unclear about the calculation of the amount of interest. Cities suggested adding the phrase "applied monthly" to the language in the proposed rule to clarify that interest should be calculated on a monthly basis. Joint Utilities

replied that the Cities' suggested application of interest on a monthly basis would be overly burdensome and that, consistent with Joint Utilities' initial comments, the EECRF proceedings are situations where a simple, annual application of interest works best because the over- or under-recovery balance is calculated on an annual—not a monthly—basis.

Joint Utilities commented that the rule should clarify which commission-authorized rates for over and under-billing should be applied to an over- or under-recovery in an EECRF proceeding. Joint Utilities proposed adding the phrase “in each year for which the over- or under-recovery is calculated” to the rule language. Joint Utilities provided an example for a hypothetical over- or under-recovery in program year 2018, which would be collected or refunded in 2020: the amount to refund or collect in 2020 should be calculated by applying, to the over- or under-recovery from 2018, first the commission-authorized rate for 2018 in the first year, and second, the commission-authorized rate for 2019 in the second year.

### *Commission Response*

**The commission disagrees with Cities, but agrees with Joint Utilities, that it is appropriate to calculate interest on over- or under-recovery on an annual basis in an EECRF proceeding, which mirrors the calculation of the over- or under-recovery balance itself on an annual basis.**

**The commission agrees with Joint Utilities that the rule should clarify which annual commission-authorized rates for over- and under-billing should be applied in calculating**

**interest on over- or under-recovery in an EECRF proceeding. The commission modifies the suggested language from Joint Utilities to provide greater clarity.**

*Subsection 25.182(d)(10), Cost Recovery*

Joint Utilities proposed changes to the currently existing language in proposed §25.182(d)(10) on the basis that certain items, such as incentive payments, administrative costs, and contracts with energy efficiency service providers, often cannot be directly assigned by rate class. Joint Utilities proposed another change, deleting the word “retail” before “rate class,” to clarify that the rule is using the term “rate class” as defined in §25.182(c)(2).

*Commission Response*

**The commission agrees that the word “retail” prior to “rate class” is unnecessary in this subsection, as the term “retail” is already included in the definition of “rate class” in §25.182(c)(2), and the commission modifies the rule language accordingly. The commission declines to adopt the other change to this subsection proposed by Joint Utilities. In Project No. 39674, the commission thoroughly reviewed and considered the issue of direct assignment of costs at the rate class level, and found that the current rule language requiring direct assignment of incentive costs to rate classes to the maximum extent reasonably possible was appropriate to ensure adherence to the requirement under Public Utility Regulatory Act (PURA) §39.905(b)(4). Furthermore, proper due diligence by the utilities in adhering to the requirement of PURA §39.905(b)(4) requires an accurate tracking of energy efficiency cost expenditures to the customers, and therefore rate classes, that receive the services under the programs.**

*Subsection 25.182(d)(12), Cost Recovery*

The Joint Utilities emphasized that it is important for the commission to explicitly approve a utility's energy efficiency goal and budget for the future year as is currently done under the energy efficiency rule. The Joint Utilities acknowledged that while the existing rule does not explicitly provide for approval of the proposed savings goals, it requires a finding of fact that addresses whether the proposed budget is appropriate for the utility to meet the goals. The Joint Utilities opined that this finding of fact in a final order provides the utility with the assurance that its spending level is recoverable if the budget is spent reasonably. The Joint Utilities stated their belief that the proposed rule would no longer clearly provide this assurance because the scope of the EECRF as proposed in §25.182(d)(12) could be interpreted to pertain only to a prior year's goal and costs.

The Joint Utilities commented that their concern could be addressed by including the paragraphs currently found within §25.181(f)(12) in the new §25.182(d)(12), or by indicating in the new rule that the scope of an EECRF proceeding includes a determination of whether the costs to be recovered through an EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet or exceed the utility's energy efficiency goals.

*Commission Response*

**Consistent with existing §25.181, the commission adds language to §25.182(d)(12) to clarify that the scope of an EECRF proceeding includes a determination of whether the costs to be recovered through an EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet or exceed the utility's energy efficiency goals.**

*Subsection 25.182(e)(2), Energy Efficiency Performance Bonus*

OPUC expressed agreement with the proposed language in §25.182(e)(2) that clarifies that the calculation of net benefits includes as a program cost any shareholder bonus awarded to the utility. OPUC stated that the proposed language is consistent with the commission's declaratory order in Docket No. 48297.

*Commission Response*

**The commission agrees with OPUC that the proposed language in §25.182(e)(2) clarifies that the calculation of net benefits includes as a program cost any shareholder bonus awarded to the utility and is consistent with the commission's final order in Docket No. 48297.**

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

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

that section and adopt rules and procedures to ensure that electric utilities subject to that section can achieve their energy-efficiency goals.

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

**§25.181. Energy Efficiency Goal.**

- (a) **Purpose.** The purpose of this section is to ensure that:
- (1) electric utilities administer energy efficiency incentive programs in a market-neutral, nondiscriminatory manner and do not offer competitive services, except as permitted in §25.343 of this title (relating to Competitive Energy Services) or this section;
  - (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 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, targeted market-transformation programs, or utility self-delivered programs, incentives sufficient for residential and commercial customers, retail electric providers, and energy efficiency service providers to acquire additional cost-effective energy efficiency, subject to EECRF caps established in §25.182(d)(7) of this title (relating to Energy Efficiency Cost Recovery Factor) , for the utility to achieve the goals in subsection (e) of this section.
- (b) **Application.** This section applies to electric utilities and the Electric Reliability Council of Texas, Inc. (ERCOT).
- (c) **Definitions.** The following terms, when used in this section and in §25.182 of this title, shall have the following meanings unless the context indicates otherwise:

(1) **Affiliate --**

- (A) A person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider;
- (B) A person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
- (C) A corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider;
- (D) A corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
  - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or
  - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or
- (E) A person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
- (F) A person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider;
- (G) A person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph;
- (H) A person who exercises common control over an energy efficiency service provider, where “exercising common control over an energy efficiency service provider” means having the power, either directly or indirectly, to

direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or

- (1) A person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.
- (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 the time an independent, third-party evaluation of the savings is performed. 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.

- (4) **Commercial customer** -- A non-residential customer taking service at a point of delivery at a distribution voltage under an electric utility's tariff during the prior program year or a non-profit customer or government entity, including an educational institution. For purposes of this section, each point of delivery shall be considered a separate customer.
- (5) **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 industry-wide 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) **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. An electric utility may use deemed savings values instead of energy and peak demand savings determined through measurement and verification activities.

- (9) **Demand** -- The rate at which electric energy is used at a given instant, or averaged over a designated period, usually expressed in kW or megawatts (MW).
- (10) **Demand savings** -- A quantifiable reduction in demand.
- (11) **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) **Energy efficiency** -- Improvements in the use of electricity that are achieved through customer facility or customer equipment improvements, devices, 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 §25.182 of this title, ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of PURA §39.905 that provide for a portfolio of cost-effective energy efficiency programs under this section.

- (14) **Energy efficiency measures** -- Equipment, materials, and practices, including practices that result in behavioral or operational changes, implemented at a customer's site on the customer's side of the meter that result in a reduction at the customer level and/or on the utility's system in electric energy consumption, measured in kWh, or peak demand, measured in 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) **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) **Energy efficiency project** -- An energy efficiency measure or combination of measures undertaken in accordance with a standard offer, market transformation program, or self-delivered program.
- (17) **Energy efficiency service provider** -- A person or other entity that 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 or a non-profit organization, but may not be an electric utility.
- (18) **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 the Technical Reference Manual for values such as per unit savings values and operating hours. These savings estimates may also include adjustments to claimed savings 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) **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) **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) **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.
- (30) **Industrial customer** -- A for-profit entity engaged in an industrial process taking electric service at transmission voltage, or a for-profit entity engaged in an industrial process taking electric service at distribution voltage that qualifies for a tax exemption under Tax Code §151.317 and has submitted an identification notice under subsection (u) of this section.
- (31) **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 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 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) **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) **Load management --** Load control activities that result in a reduction in peak demand, or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.
- (37) **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) **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.

- (39) **Net savings** -- The total change in load that is attributable to an energy efficiency program. This change in energy and/or demand use shall include, implicitly or explicitly, consideration of appropriate factors. These factors may include free ridership, participant and non-participant spillover, induced market effects, changes in the level of energy service, and/or other non-program causes of changes in energy use and/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) **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) **Peak demand** -- Electrical demand at the times of highest annual demand on the utility's system at the source. Peak demand refers to Texas retail peak demand and, therefore, does not include demand of retail customers in other states or wholesale customers.
- (45) **Peak demand reduction** -- Reduction in demand on the utility's system at the times of the utility's summer peak period or winter peak period.
- (46) **Peak period** -- For the purpose of this section, the peak period consists of the hours from one p.m. to seven p.m. during the months of June, July, August, and September, and the hours of six a.m. to ten a.m. and six p.m. to ten p.m. during the months of December, January, and February, excluding weekends and Federal holidays.
- (47) **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 implemented. Are typically estimates of savings prepared for program and/or portfolio design or 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 the Technical Reference Manual. 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) **Renewable demand side management (DSM) technologies** -- Equipment that uses a renewable energy resource (renewable resource), as defined in §25.173(c) of this title (relating to Goal for Renewable Energy), a geothermal heat pump, a solar water heater, or another natural mechanism of the environment, that when installed at a customer site, reduces the customer's net purchases of energy, demand, or both.
- (50) **Savings-to-Investment Ratio (SIR)** -- The ratio of the present value of a customer's estimated lifetime electricity cost savings from energy efficiency measures to the present value of the installation costs, inclusive of any incidental repairs, of those energy efficiency measures.
- (51) **Self-delivered program** -- A program developed by a utility in an area in which customer choice is not offered that provides incentives directly to customers. The utility may use internal or external resources to design and administer the program.
- (52) **Spillover** -- Reductions in energy consumption and/or demand caused by the presence of an energy efficiency program, beyond the program-related gross savings of the participants and without financial or technical assistance from the program. There can be participant and/or non-participant spillover.
- (53) **Spillover rate** -- Estimate of energy savings attributable to spillover expressed as a percent of savings installed by participants through an energy efficiency program.
- (54) **Standard offer contract** -- A contract between an energy efficiency service provider and a participating utility or between a participating utility and a

commercial customer specifying standard payments based upon the amount of energy and peak demand savings achieved through energy efficiency measures, the measurement and verification protocols, and other terms and conditions, consistent with this section.

- (55) **Standard offer program** -- A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.
- (56) **Technical reference manual (TRM)** -- A resource document compiled by the commission's EM&V contractor that includes information used in program planning and reporting of energy efficiency programs. It can include savings values for measures, engineering algorithms to calculate savings, impact factors to be applied to calculated savings (e.g., net-to-gross values), protocols, source documentation, specified assumptions, and other relevant material to support the calculation of measure and program savings.
- (57) **Verification** -- An independent assessment that a program has been implemented in accordance with the program design. The objectives of measure installation verification are to confirm the installation rate, that the installation meets reasonable quality standards, and that the measures are operating correctly and have the potential to generate the predicted savings. Verification activities are generally conducted during on-site surveys of a sample of projects. Project site inspections, participant phone and mail surveys and/or implementer and participant documentation review are typical activities associated with verification. Verification is also a subset of evaluation.

(d) **Cost-effectiveness standard.** An energy efficiency program is deemed to be cost-effective if the cost of the program to the utility is less than or equal to the benefits of the program. Utilities are encouraged to achieve demand reduction and energy savings through a portfolio of cost-effective programs that exceed each utility's energy efficiency goals while staying within the cost caps established in §25.182(d)(7) of this title.

(1) The cost of a program includes the cost of incentives, EM&V contractor costs, any shareholder bonus awarded to the utility, and actual or allocated research and development and administrative costs. 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 shall be established in accordance with this paragraph.

(A) By November 1 of each year, commission staff shall file the avoided cost of capacity for the upcoming year, including supporting data, in the commission's central records under the control number for the energy efficiency implementation project.

(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 per kW, the avoided cost of capacity shall be \$80 per kW-year. If the base overnight cost of a new conventional or advanced combustion turbine, whichever is lower, is at or between \$700 and \$1,000 per kW, the avoided cost of capacity shall be \$100 per kW-year. If the base overnight cost of a new conventional or advanced combustion turbine, whichever is lower, is greater than \$1,000 per kW, the avoided cost of capacity shall be \$120 per kW-year.
- (iii) The avoided cost of capacity calculated by staff may be challenged only by the filing of a petition within 45 days of the date the avoided cost of capacity is filed in the commission's central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection. The petition must clearly describe the reasons commission's staff's avoided cost calculation is incorrect, include supporting data and calculations, and state the relief sought.

- (B) A utility in an area in which customer choice is not offered may petition the commission for authorization to use an avoided cost of capacity different from the avoided cost determined according to subparagraph (A) of this paragraph by filing a petition no later than 45 days after the date the avoided cost of capacity calculated by staff is filed in the commission's central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection. The petition must clearly describe the reasons a different avoided cost should be used, include supporting data and calculations, and state the relief sought. The avoided cost of capacity proposed by the utility shall be based on a generating resource or purchase in the utility's resource acquisition plan and the terms of the purchase or the cost of the resource shall be disclosed in the filing.
- (3) The avoided cost of energy shall be established in accordance with this paragraph.
- (A) By November 1 of each year, ERCOT shall file the avoided cost of energy for the upcoming year for the ERCOT region, as defined in §25.5(48) of this title (relating to Definitions), in the commission's central records under the control number for the energy efficiency implementation project. ERCOT shall calculate the avoided cost of energy by determining the load-weighted average of the competitive load zone settlement point prices for the peak periods covering the two previous winter and summer peaks. The avoided cost of energy calculated by ERCOT may be challenged only by the filing of a petition within 45 days of the date the avoided cost of capacity is filed

by ERCOT in the commission's central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection. The petition must clearly describe the reasons ERCOT's avoided cost of energy calculation is incorrect, include supporting data and calculations, and state the relief sought.

- (B) A 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, the following:

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

- (B) If the demand reduction goal to be acquired by a utility under subparagraph (A) of this paragraph is equivalent to at least four-tenths of 1% of its summer weather-adjusted peak demand for the combined residential and commercial customers for the previous program year, the utility shall meet the energy efficiency goal described in subparagraph (C) of this paragraph for each subsequent program year.
  - (C) Once the trigger described in subparagraph (B) of this paragraph is reached, the utility shall acquire four-tenths of 1% of its summer weather-adjusted peak demand for the combined residential and commercial customers for the previous program year.
  - (D) Except as adjusted in accordance with subsection (u) 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 under paragraph (2) of this subsection.
- (2) The commission may establish for a utility a lower goal than the goal specified in paragraph (1) of this subsection, a higher administrative spending cap than the cap specified under subsection (g) of this section, or an EECRF greater than the cap specified in §25.182(d)(7) of this title if the utility demonstrates that compliance with that goal, administrative spending cap, or EECRF cost cap is not reasonably possible and that good cause supports the lower goal, higher administrative spending cap, or higher EECRF cost cap. To be eligible for a lower goal, higher administrative spending cap, or a higher EECRF cost cap, the utility must request a good cause exception as part of its EECRF application under §25.182 of this

title. If approved, the good cause exception is limited to the program year associated with the EECRF application.

- (3) Each utility's demand-reduction goal shall be calculated as follows:
  - (A) Each year's historical demand for residential and commercial customers shall be adjusted for weather fluctuations, using weather data for the most recent ten years. The utility's growth in residential and commercial demand is based on the average growth in retail load in the Texas portion of the utility's service area, measured at the utility's annual system peak. The utility shall calculate the average growth rate for the prior five years.
  - (B) The demand goal for energy-efficiency savings for a year under paragraph (1)(A) of this subsection is calculated by applying the percentage goal to the average growth in peak demand, calculated in accordance with subparagraph (A) of this paragraph. The annual demand goal for energy efficiency savings under paragraph (1)(C) 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. This annual peak demand goal at the source is then converted to an equivalent goal at the meter by applying reasonable line loss factors.
  - (C) A utility may submit for commission approval an alternative method to calculate its growth in demand, for good cause.
  - (D) If a utility's prior five-year average load growth, calculated under subparagraph (A) of this paragraph, is negative, the utility shall use the

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

- (E) 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.
  - (F) Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.
  - (G) Utilities may apply peak savings on a per project basis to summer or winter peak, but not to both summer and winter peaks.
- (4) An electric utility shall administer a portfolio of energy efficiency programs designed to meet an energy savings goal calculated from its demand savings goal, using a 20% conservation load 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, 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 are not eligible for incentive payments or compensation if:
- (i) A project would achieve demand or energy 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 a location outside of the area served by the utility conducting the program, except for an appliance recycling program consistent with this section.
  - (ii) A measure would be adopted even in the absence of the energy efficiency service provider's proposed energy efficiency project, except in special cases, such as hard-to-reach and weatherization programs, or where free riders are accounted for using a net to gross adjustment of the avoided costs, or another method that achieves the same result.
  - (iii) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.
- (C) Ineligibility under subparagraph (B) of this paragraph does not apply to standard offer, market transformation, and self-delivered programs aimed at energy code adoption, implementation, compliance, and enforcement under subsection (k) 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 (q) 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 efficiency service providers in the rural areas.

(f) **Incentive payments.** The incentive payments for each customer class shall not exceed 100% of avoided cost, as determined in accordance with this section. The incentive payments shall be set by each utility with the objective of achieving its energy and

demand savings goals at the lowest reasonable cost per program. Different incentive levels may be established for areas that have historically been underserved by the utility's energy efficiency programs or for other appropriate reasons. Utilities may adjust incentive payments during the program year, but such adjustments must be clearly publicized in the materials used by the utility to set out the program rules and describe the programs to participating energy efficiency service providers.

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

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

(A) conducting informational activities designed to explain the standard offer programs and market transformation programs to energy efficiency service providers, retail electric providers, and vendors;

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

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

give retail electric providers sufficient time to plan, advertise, and conduct energy efficiency programs, while preserving the utility's ability to meet the goals in this section; and

- (C) Working with retail electric providers and energy efficiency service providers to evaluate the demand reductions and energy savings resulting from time-of-use prices; home-area network devices, such as in-home displays; and other programs facilitated by advanced meters to determine the demand and energy savings from such programs.
  
- (h) **Standard offer programs.** A utility's standard offer program shall be implemented through program rules and standard offer contracts that are consistent with this section. Standard offer contracts will be available to any energy efficiency service provider that satisfies the contract requirements prescribed by the utility under this section and demonstrates that it is capable of managing energy efficiency projects under an electric utility's energy efficiency program.
  
- (i) **Market transformation programs.** Market transformation programs are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices. Market transformation programs may be designed to obtain energy savings or peak demand reductions beyond savings that are reasonably expected to be achieved as a result of current compliance levels with existing building codes applicable to new buildings and equipment efficiency standards or standard offer programs. Market transformation programs may also be specifically

designed to express support for early adoption, implementation, and enforcement of the most recent version of the International Energy Conservation Code for residential or commercial buildings by local jurisdictions, express support for more effective implementation and enforcement of the state energy code and compliance with the state energy code, and encourage utilization of the types of building components, products, and services required to comply with such energy codes. The existence of federal, state, or local governmental funding for, or encouragement to utilize, the types of building components, products, and services required to comply with such energy codes does not prevent utilities from offering programs to supplement governmental spending and encouragement. Utilities should cooperate with the retail electric providers, 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.

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

shall meet the requirements of this subsection. A utility may conduct information and advertising campaigns to foster participation in standard offer, market transformation, and self-delivered programs.

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

- (E) may permit the use of distributed renewable generation, geothermal, heat pump, solar water heater and combined heat and power technologies, involving installations of ten megawatts or less;
  - (F) may factor in the estimated level of enforcement and compliance with existing energy codes in determining energy and peak demand savings; and
  - (G) may require energy efficiency service providers to provide the following:
    - (i) a description of how the value of any incentive will be passed on to customers;
    - (ii) evidence of experience and good credit rating;
    - (iii) a list of references;
    - (iv) all applicable licenses required under state law and local building codes;
    - (v) evidence of all building permits required by governing jurisdictions; and
    - (vi) evidence of all necessary insurance.
- (2) Standard offer and self-delivered programs:
- (A) shall require energy efficiency service providers to identify peak demand and energy savings for each project in the proposals they submit to the utility;
  - (B) shall be neutral with respect to specific technologies, equipment, or fuels. Energy efficiency projects may lead to switching from electricity to another energy source, provided that the energy efficiency project results

in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Utilities may not pay incentives for a customer to switch from gas appliances to electric appliances except in connection with the installation of high efficiency combined heating and air conditioning systems;

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

- (E) a baseline study that is appropriate in time and geographic region. In establishing a baseline, the study shall consider the level of regional implementation and enforcement of any applicable energy code;
  - (F) program implementation timeline and milestones;
  - (G) a description of how the program will achieve the transition from extensive market intervention activities toward a largely self-sustaining market;
  - (H) a method for measuring and verifying savings; and
  - (I) the period over which savings shall be considered to accrue, including a projected date by which the market will be sufficiently transformed so that the program should be discontinued.
- (4) A market transformation program shall be designed to achieve energy or peak demand savings, or both, and lasting changes in the way energy efficient goods or services are distributed, purchased, installed, or used over a defined period of time. A utility shall use fair competitive procedures to select energy efficiency service providers to conduct a market transformation program, and shall include in its annual report the justification for the selection of an energy efficiency service provider to conduct a market transformation program on a sole-source basis.
- (5) A load-control standard-offer program shall not permit an energy efficiency service provider to receive incentives under the program for the same demand reduction benefit for which it is compensated under a capacity-based demand response program conducted by an independent organization, independent system

operator, or regional transmission operator. The qualified scheduling entity representing an energy efficiency service provider is not prohibited from receiving revenues from energy sold in ERCOT markets in addition to any incentive for demand reduction offered under a utility load-control standard offer program.

- (6) Utilities offering load management programs shall work with ERCOT and energy efficiency service providers to identify eligible loads and shall integrate such loads into the ERCOT markets to the extent feasible. Such integration shall not preclude the continued operation of utility load management programs that cannot be feasibly integrated into the ERCOT markets or that continue to provide separate and distinct benefits.
  
- (1) **Energy efficiency plans and reports (EEPR).** Each electric utility shall file by April 1 of each year an energy efficiency plan and report in a project annually designated for this purpose, as described in this subsection and §25.183(d) of this title. The plan and report shall be filed as a searchable pdf document.
  - (1) Each electric utility's energy efficiency plan and report shall describe how the utility intends to achieve the goals set forth in this section and comply with the other requirements of this section. The plan and report shall be based on program years. The plan and report shall propose an annual budget sufficient to reach the goals specified in this section.
  - (2) Each electric utility's plan and report shall include:

- (A) the utility's total actual and weather-adjusted peak demand and actual and weather-adjusted peak demand for residential and commercial customers for the previous five years, measured at the source;
- (B) the demand goal calculated in accordance with this section for the current year and the following year, including documentation of the demand, weather adjustments, and the calculation of the goal;
- (C) the utility's customers' total actual and weather-adjusted energy consumption and actual and weather-adjusted energy consumption for residential and commercial customers for the previous five years;
- (D) the energy goal calculated in accordance with this section, including documentation of the energy consumption, weather adjustments, and the calculation of the goal;
- (E) a description of existing energy efficiency programs and an explanation of the extent to which these programs will be used to meet the utility's energy efficiency goals;
- (F) a description of each of the utility's energy efficiency programs that were not included in the previous year's plan, including measurement and verification plans if appropriate, and any baseline studies and research reports or analyses supporting the value of the new programs;
- (G) an estimate of the energy and peak demand savings to be obtained through each separate energy efficiency program;
- (H) a description of the customer classes targeted by the utility's energy efficiency programs, specifying the size of the hard-to-reach, residential,

and commercial classes, and the methodology used for estimating the size of each customer class;

- (I) the proposed annual budget required to implement the utility's energy efficiency programs, broken out by program for each customer class, including hard-to-reach customers, and any set-asides or budget restrictions adopted or proposed in accordance with this section. The proposed budget shall detail the incentive payments and utility administrative costs, including specific items for research and information and outreach to energy efficiency service providers, and other major administrative costs, and the basis for estimating the proposed expenditures;
- (J) a discussion of the types of informational activities the utility plans to use to encourage participation by customers, energy efficiency service providers, and retail electric providers to participate in energy efficiency programs, including the manner in which the utility will provide notice of energy efficiency programs, and any other facts that may be considered when evaluating a program;
- (K) the utility's performance in achieving its energy goal and demand goal for the prior five years, as reported in annual energy efficiency reports filed in accordance with this section;
- (L) a comparison of projected savings (energy and demand), reported savings, and verified savings for each of the utility's energy efficiency programs for the prior two years;

- (M) a description of the results of any market transformation program, including a comparison of the baseline and actual results and any adjustments to the milestones for a market transformation program;
- (N) a description of self-delivered programs;
- (O) expenditures for the prior five years for energy and demand incentive payments and program administration, by program and customer class;
- (P) funds that were committed but not spent during the prior year, by program;
- (Q) a comparison of actual and budgeted program costs, including an explanation of any increase or decreases of more than 10% in the cost of a program;
- (R) information relating to energy and demand savings achieved and the number of customers served by each program by customer class;
- (S) the utility's most recent EECRF, the revenue collected through the EECRF, the utility's forecasted annual energy efficiency program expenditures in excess of the actual energy efficiency revenues collected from base rates as described in §25.182(d)(2) of this title, and the control number under which the most recent EECRF was established;
- (T) the amount of any over- or under-recovery of energy efficiency program costs whether collected through base rates or the EECRF;
- (U) a list of any counties that in the prior year were under-served by the energy efficiency program;
- (V) a 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;

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

(m) **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.

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

an energy efficiency service provider final compensation until the utility has conducted its inspection on at least a sample of measures and the inspections confirm that the work has been done. A utility shall provide inspection reports to commission staff within 20 days of staff's request.

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

intended function. Inspection shall occur within 30 days of notification of measure installation.

- (5) Projects of less than 30 installations may be aggregated and a statistically significant sample of the aggregate installations will be subject to on-site inspection in accordance with the protocol for the projects to ensure that measures are installed and capable of performing their intended function. Inspection shall occur within 30 days of notification of measure installation.
  - (6) Where installed measures are employed, the sample size for on-site inspections may be adjusted for an energy efficiency service provider under a particular contract, based on the results of prior inspections.
- (o) **Evaluation, measurement, and verification (EM&V).** The following defines the evaluation, measurement, and verification (EM&V) framework. The goal of this framework is to ensure that the programs are evaluated, measured, and verified using a consistent process that allows for accurate estimation of energy and demand impacts.
- (1) EM&V objectives include:
    - (A) Documenting the impacts of the utilities' individual energy efficiency and load management portfolios, comparing their performance with established goals, and determining cost-effectiveness;
    - (B) Providing feedback for the commission, commission staff, utilities, and other stakeholders on program portfolio performance; and
    - (C) Providing input into the utilities' and ERCOT's planning activities.

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

require that a utility provide the EM&V contractor with specific information.

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

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

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

- (d)(2)(A) of this section. The petition must clearly describe the reasons commission staff should not have approved the TRM changes, include supporting data and calculations, and state the relief sought.
- (D) Any changes to the TRM shall be applied prospectively to programs offered in the appropriate program year.
- (E) The TRM shall be publicly available.
- (F) Utilities shall utilize the values contained in the TRM, unless the commission indicates otherwise.
- (7) The utilities shall prepare projected savings estimates and claimed savings estimates. The utilities shall conduct their own EM&V activities for purposes such as confirming any incentive payments to customers or contractors and preparing documentation for internal and external reporting, including providing documentation to the EM&V contractor. The EM&V contractor shall prepare evaluated savings for preparation of its evaluation reports and a realization rate comparing evaluated savings with projected savings estimates and/or claimed savings estimates.
- (8) Baselines for preparation of TRM deemed savings values or deemed savings calculations or for other evaluation activities shall be defined by the EM&V contractor and commission staff shall review and approve them. When common practice baselines are defined for determining gross energy and/or demand savings for a measure or program, common practice may be documented by market studies. Baselines shall be defined by measure category as follows (deviations

from these specifications may be made with justification and approval of commission staff):

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

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

- (D) The EM&V contractor providing services under this section shall not release any information it receives related to the work performed unless directed to do so by the commission.
- (p) **Targeted low-income energy efficiency program.** Each unbundled transmission and distribution utility shall include in its energy efficiency plan a targeted low-income energy efficiency program. A utility in an area in which customer choice is not offered may include in its energy efficiency plan a targeted low-income energy efficiency program that utilizes the cost-effectiveness methodology provided in paragraph (2) of this subsection. Savings achieved by the program shall count toward the utility's energy efficiency goal.
- (1) Each utility shall ensure that annual expenditures for the targeted low-income energy efficiency program are not less than 10% of the utility's energy efficiency budget for the program year.
  - (2) The utility's targeted low-income program shall incorporate a whole-house assessment that will evaluate all applicable energy efficiency measures for which there are commission-approved deemed savings. The cost-effectiveness of measures eligible to be installed and the overall program shall be evaluated using the Savings-to-Investment ratio (SIR).
  - (3) Any funds that are not obligated after July of a program year may be made available for use in the hard-to-reach program.
- (q) **Energy Efficiency Implementation Project - EEIP.** The commission shall use the EEIP to develop best practices in standard offer market transformation, self-directed,

pilot, or other programs, modifications to programs, standardized forms and procedures, protocols, deemed savings estimates, program templates, and the overall direction of the energy efficiency program established by this section. Utilities shall provide timely responses to questions posed by other participants relevant to the tasks of the EEIP. Any recommendations from the EEIP process shall relate to future years as described in this subsection.

- (1) The following functions may also be undertaken in the EEIP:
  - (A) development, discussion, and review of new statewide standard offer programs;
  - (B) identification, discussion, design, and review of new market transformation programs;
  - (C) determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures;
  - (D) review of and recommendations on the commission EM&V contractor's reports;
  - (E) review of and recommendations on incentive payment levels and their adequacy to induce the desired level of participation by energy efficiency service providers and customers;
  - (F) review of and recommendations on a utility's annual energy efficiency plans and reports;
  - (G) utility program portfolios and proposed energy efficiency spending levels for future program years;

- (H) periodic reviews of the cost-effectiveness methodology; and
  - (I) other activities as identified by commission staff.
- (2) The EEIP projects shall be conducted by commission staff. The commission's EM&V contractor's reports shall be filed in the project at a date determined by commission staff.
  - (3) A utility that intends to launch a program that is substantially different from other programs previously implemented by any utility affected by this section shall file a program template and shall provide notice of such to EEIP participants. Notice to EEIP participants need not be provided if a program description or program template for the new program is provided through the utility's annual energy efficiency report. Following the first year in which a program was implemented, the utility shall include the program results in the utility's annual energy efficiency report.
  - (4) Participants in the EEIP may submit comments and reply comments in the EEIP on dates established by commission staff.
  - (5) Any new programs or program redesigns shall be submitted to the commission in a petition in a separate proceeding. The approved changes shall be available for use in the utilities' next EEPR and EECRF filings. If the changes are not approved by the commission by November 1 in a particular year, the first time that the changes shall be available for use is the second EEPR and EECRF filings made after commission approval.
  - (6) Any interested entity that participates in the EEIP may file a petition to the commission for consideration regarding changes to programs.

- (r) **Retail providers.** Each utility in an area in which customer choice is offered shall conduct outreach and information programs and otherwise use its best efforts to encourage and facilitate the involvement of retail electric providers as energy efficiency service companies in the delivery of efficiency and demand response programs.
- (s) **Customer protection.** Each energy efficiency service provider that provides energy efficiency services to end-use customers under this section shall provide the disclosures and include the contractual provisions required by this subsection, except for commercial customers with a peak load exceeding 50 kW. Paragraph (1) of this subsection does not apply to behavioral energy efficiency programs that do not require a contract with a customer.
- (1) Clear disclosure to the customer shall be made of the following:
- (A) the customer's right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law;
  - (B) the name, telephone number, and street address of the energy efficiency service 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 Customer Protection Division of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.
- (2) The energy efficiency service provider's contract with the customer, where such a contract is employed, shall include:
- (A) work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider;

- (B) provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs;
  - (C) a disclosure notifying the customer that consumption data may be disclosed to the EM&V contractor for evaluation purposes; and
  - (D) a complaint procedure to address performance issues by the energy efficiency service provider or a subcontractor.
- (3) When an energy efficiency service provider completes the installation of measures for a customer, it shall provide the customer an “All Bills Paid” affidavit to protect against claims of subcontractors.
- (t) **Grandfathered programs.** An electric utility that offered a load management standard offer program for industrial customers prior to May 1, 2007 shall continue to make the program available, at 2007 funding and participation levels, and may include additional customers in the program to maintain these funding and participation levels.
- (u) **Identification notice.** An industrial customer taking electric service at distribution voltage may submit a notice identifying the distribution accounts for which it qualifies under subsection (c)(30) of this section. The identification notice shall be submitted directly to the customer’s utility. An identification notice submitted under this section must be renewed every three years. Each identification notice must include the name of the industrial customer, a copy of the customer’s Texas Sales and Use Tax Exemption Certification (under Tax Code §151.317), a description of the industrial process taking

place at the consuming facilities, and the customer's applicable account number(s) or ESID number(s). The identification notice is limited solely to the metered point of delivery of the industrial process taking place at the consuming facilities. The account number(s) or ESID number(s) identified by the industrial customer under this section shall not be charged for any costs associated with programs provided under this section, including any shareholder bonus awarded; nor shall the identified facilities be eligible to participate in utility-administered energy efficiency programs during the term. Notices shall be submitted not later than February 1 to be effective for the following program year. A utility's demand reduction goal shall be adjusted to remove any load that is lost as a result of this subsection.

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

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

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.905 and establish:
- (1) an energy efficiency cost recovery factor (EECRF) that enables an electric utility to timely recover the reasonable costs of providing a portfolio of cost-effective energy efficiency programs that complies with this section and §25.181 of this title (relating to Energy Efficiency Goal).
  - (2) an incentive to reward an electric utility that exceeds its demand and energy reduction goals under the requirements of §25.181 of this title at a cost that does not exceed the cost caps established in subsection (d)(7) of this section.
- (b) **Application.** This section applies to electric utilities.
- (c) **Definitions.** The definitions provided in §25.181(c) of this title shall also apply in this section. The following terms, when used in this section, shall have the following meaning unless the context indicates otherwise:
- (1) **Billing determinants** -- The measures of energy consumption or load used to calculate a customer's bill or to determine the aggregate revenue from rates from all customers.
  - (2) **Rate class** -- For the purpose of calculating EECRF rates, a utility's rate classes are those retail rate classes approved in the utility's most recent base-rate proceeding, excluding non-eligible customers.

- (d) **Cost recovery.** A utility shall establish an EECRF that complies with this subsection to timely recover the reasonable costs of providing a portfolio of cost-effective energy efficiency programs under §25.181 of this title.
- (1) The EECRF shall be calculated based on the following:
- (A) The utility's forecasted annual energy efficiency program expenditures, the preceding year's over- or under-recovery including interest and municipal and utility EECRF proceeding expenses, any performance bonus earned under subsection (e) of this section, and evaluation, measurement, and verification (EM&V) contractor costs allocated to the utility by the commission for the preceding year under §25.181 of this title.
- (B) For a utility that collects any amount of energy efficiency costs in its base rates, the amounts described in subparagraph (A) of this paragraph in excess of the actual energy efficiency revenues collected from base rates as described in paragraph (2) of this subsection.
- (2) The commission may approve an EECRF for each eligible rate class. The costs shall be directly assigned to each rate class that received services under the programs to the maximum extent reasonably possible. In its EECRF proceeding, a utility may request a good cause exception to combine one or more rate classes, each containing fewer than 20 customers, with a similar rate class that received services under the same energy efficiency programs in the preceding year. For each rate class, the under- or over-recovery of the energy efficiency costs shall be the difference between actual EECRF revenues and actual costs for that class that comply with paragraph (12) of this subsection, including interest applied on such

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

- (3) A proceeding conducted under this subsection is a ratemaking proceeding for purposes of PURA §33.023 and §36.061. EECRF proceeding expenses shall be included in the EECRF calculated under paragraph (1) of this subsection as follows:
  - (A) For a utility's EECRF proceeding expenses, the utility may include only its expenses for the immediately previous EECRF proceeding conducted under this subsection.
  - (B) For municipalities' EECRF proceeding expenses, the utility may include only expenses paid or owed for the immediately previous EECRF proceeding conducted under this subsection for services reimbursable under PURA §33.023(b).
- (4) Base rates shall not be set to recover energy efficiency costs.
- (5) If a utility recovers energy efficiency costs through base rates, the EECRF may be changed in a general rate proceeding. If a utility is not recovering energy

efficiency costs through base rates, the EECRF may be adjusted only in an EECRF proceeding under this subsection.

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

- (C) For the 2019 program year and thereafter, the residential and commercial cost caps shall be calculated to be the prior period's cost caps increased or decreased by a rate equal to the most recently available calendar year's percentage change in the South urban CPI, as determined by the Federal Bureau of Labor Statistics.
- (8) Not later than May 1 of each year, a utility in an area in which customer choice is not offered shall apply to adjust its EECRF effective January 1 of the following year. Not later than June 1 of each year, a utility in an area in which customer choice is offered shall apply to adjust its EECRF effective March 1 of the following year. If a utility is in an area in which customer choice is offered in some but not all parts of its service area and files one energy efficiency plan and report covering all of its service area, the utility shall apply to adjust the EECRF not later than May 1 of each year, with the EECRF effective January 1 in the parts of its service area in which customer choice is not offered and March 1 in the parts of its service area in which customer choice is offered.
- (9) Upon a utility's filing of an application to establish a new EECRF or adjust an EECRF, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding required by subparagraphs (A), (B), and (C) of this paragraph as follows:
- (A) For a utility in an area in which customer choice is not offered, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding prior to the January 1

effective date of the new or adjusted EECRF, except where good cause supports a different procedural schedule.

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

the utility's service area more than one working day after the utility files the compliance tariff.

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

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

- (D) If no hearing is requested within 30 days of the filing of the application, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within 90 days after a sufficient application was filed; or
  - (E) If a hearing is requested within 30 days of the filing of the application, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within 180 days after a sufficient application was filed. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after a sufficient application is filed.
- (10) A utility's application to establish or adjust an EECRF shall include the utility's most recent energy efficiency plan and report, consistent with §25.181(l) and §25.183(d) of this title, as well as testimony and schedules, in Excel format with formulas intact, showing the following, by rate class, for the prior program year

and the program year for which the proposed EECRF will be collected as appropriate:

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

- (H) the incentive payments by the utility, by program, including a list of each energy efficiency administrator and/or service provider receiving more than 5% of the utility's overall incentive payments and the percentage of the utility's incentives received by those providers. Such information may be treated as confidential;
  - (I) the utility's administrative costs, including any affiliate costs and EECRF proceeding expenses and an explanation of both;
  - (J) the actual EECRF revenues by rate class for any period for which the utility calculates an under- or over-recovery of EECRF costs;
  - (K) the utility's bidding and engagement process for contracting with energy efficiency service providers, including a list of all energy efficiency service providers that participated in the utility programs and contractors paid with funds collected through the EECRF. Such information may be treated as confidential;
  - (L) the estimated useful life used for each measure in each program, or a link to the information if publicly available; and
  - (M) any other information that supports the determination of the EECRF.
- (11) The following factors must be included in the application, as applicable, to support the recovery of energy efficiency costs under this subsection.
- (A) the costs are less than or equal to the benefits of the programs, as calculated in §25.181(d) of this title;
  - (B) the program portfolio was implemented in accordance with recommendations made by the commission's EM&V contractor and

approved by the commission and the EM&V contractor has found no material deficiencies in the utility's administration of its portfolio of energy efficiency programs under §25.181 of this title. This subparagraph does not preclude parties from examining and challenging the reasonableness of a utility's energy efficiency program expenses nor does it limit the commission's ability to address the reasonableness of a utility's energy efficiency program expenses;

- (C) if a utility is in an area in which customer choice is offered and is subject to the requirements of PURA §39.905(f), the utility met its targeted low-income energy efficiency requirements under §25.181 of this title;
- (D) existing market conditions in the utility's service territory affected its ability to implement one or more of its energy efficiency programs or affected its costs;
- (E) the utility's costs incurred and achievements accomplished in the previous year or estimated for the year the requested EECRF will be in effect are consistent with the utility's energy efficiency program costs and achievements in previous years notwithstanding any recommendations or comments by the EM&V contractor;
- (F) changed circumstances in the utility's service area since the commission approved the utility's budget for the implementation year that affect the ability of the utility to implement any of its energy efficiency programs or its energy efficiency costs;

- (G) the number of energy efficiency service providers operating in the utility's service territory affects the ability of the utility to implement any of its energy efficiency programs or its energy efficiency costs;
  - (H) customer participation in the utility's prior years' energy efficiency programs affects customer participation in the utility's energy efficiency programs in previous years or its proposed programs underlying its EECRF request and the extent to which program costs were expended to generate more participation or transform the market for the utility's programs;
  - (I) the utility's energy efficiency costs for the previous year or estimated for the year the requested EECRF will be in effect are comparable to costs in other markets with similar conditions; and
  - (J) the utility has set its incentive payments with the objective of achieving its energy and demand goals under §25.181 of this title at the lowest reasonable cost per program.
- (12) The scope of an EECRF proceeding includes the extent to which the costs recovered through the EECRF complied with PURA §39.905, this section, and §25.181 of this title; the extent to which the costs recovered were reasonable and necessary to reduce demand and energy growth; and a determination of whether the costs to be recovered through an EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet or exceed the utility's energy efficiency goals. The proceeding shall not include a review of program design to the extent that the programs complied with the energy

efficiency implementation project (EEIP) process defined in §25.181(q) of this title. The commission shall not allow recovery of expenses that are designated as non-recoverable under §25.231(b)(2) of this title (relating to Cost of Service).

- (13) Notice of a utility's filing of an EECRF application is reasonable if the utility provides in writing a general description of the application and the docket number assigned to the application within seven days of the application filing date to:
- (A) All parties in the utility's most recent completed EECRF docket;
  - (B) All retail electric providers that are authorized by the registration agent to provide service in the utility's service area at the time the EECRF application is filed;
  - (C) All parties in the utility's most recent completed base-rate proceeding; and
  - (D) The state agency that administers the federal weatherization program.
- (14) The utility shall file an affidavit attesting to the completion of notice within 14 days after the application is filed.
- (15) The commission may approve a utility's request to establish an EECRF revenue requirement or EECRF rates that are lower than the amounts otherwise determined under this section.
- (e) **Energy efficiency performance bonus.** A utility that exceeds its demand and energy reduction goals established in §25.181 of this title at a cost that does not exceed the cost caps established in subsection (d)(7) of this section shall be awarded a performance bonus calculated in accordance with this subsection. The performance bonus shall be based on the utility's energy efficiency achievements for the previous program year. The bonus

calculation shall not include demand or energy savings that result from programs other than programs implemented under §25.181 of this title.

- (1) The performance bonus shall entitle the utility to receive a share of the net benefits realized in meeting its demand reduction goal established in §25.181 of this title.
- (2) Net benefits shall be calculated as the sum of total avoided cost associated with the eligible programs administered by the utility minus the sum of all program costs. Program costs shall include the cost of incentives, EM&V contractor costs, any shareholder bonus awarded to the utility, and actual or allocated research and development and administrative costs, but shall not include any interest amounts applied to over- or under-recoveries. Total avoided costs and program costs shall be calculated in accordance with this section and §25.181 of this title.
- (3) A utility that exceeds 100% of its demand and energy reduction goals shall receive a bonus equal to 1% of the net benefits for every 2% that the demand reduction goal has been exceeded, with a maximum of 10% of the utility's total net benefits.
- (4) The commission may reduce the bonus otherwise permitted under this subsection for a utility with a lower goal, higher administrative spending cap, or higher EECRF cost cap established by the commission under §25.181(e)(2) of this title. The bonus shall be considered in the EECRF proceeding in which the bonus is requested.
- (5) In calculating net benefits to determine a performance bonus, a discount rate equal to the utility's weighted average cost of capital of the utility and an escalation rate

of 2% shall be used. The utility shall provide documentation for the net benefits calculation, including, but not limited to, the weighted average cost of capital, useful life of equipment or measure, and quantity of each measure implemented.

- (6) The bonus shall be allocated in proportion to the program costs associated with meeting the demand and energy goals under §25.181 of this title and allocated to eligible customers on a rate class basis.
- (7) A bonus earned under this section shall not be included in the utility's revenues or net income for the purpose of establishing a utility's rates or commission assessment of its earnings.

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

- (a) **Purpose.** The purpose of this section is to establish reporting requirements sufficient for the commission, in cooperation with Energy Systems Laboratory of Texas A&M University (Laboratory), to quantify, by county, the reductions in energy consumption, peak demand and associated emissions of air contaminants achieved from the programs implemented under §25.181 of this title (relating to the Energy Efficiency Goal).
- (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 independent system operators (ISO) and regional transmission organizations (RTO).
- (c) **Definitions.** The definitions provided in §25.181(c) of this title shall also apply to this section, unless the context indicates otherwise.
- (d) **Reporting.** Each electric utility shall file by April 1, of each program year an annual energy efficiency plan and report. The annual energy efficiency plan and report shall include the information required under §25.181(l) of this title and paragraphs (1) - (5) of this subsection in a format prescribed by the commission.
- (1) Load data within the applicable service area. If such information is available from an ISO or RTO in the power region in which the electric utility operates, then the ISO or RTO shall provide this information to the commission instead of the electric utility.

- (2) The reduction in peak demand attributable to energy efficiency programs implemented under §25.181 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 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 this title (relating to Filing of Pleadings, Documents and Other Materials).
  - (5) Any other information determined by the commission to be necessary to quantify the air contaminant emission reductions.
- (e) **Evaluation.** Annually the commission, in cooperation with the Laboratory, shall provide the Texas Commission on Environmental Quality (TCEQ) a report, by county, that compiles the data provided by the utilities affected by this section and quantifies the reductions of energy consumption, peak demand and associated air contaminant emissions.
- (1) The Laboratory shall ensure that all data that is proprietary in nature is protected from disclosure.
  - (2) The commission and the Laboratory shall ensure that the report does not provide information that would allow market participants to gain a competitive advantage.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.181 relating to energy efficiency goal, §25.182 relating to energy efficiency cost recovery factor, and §25.183 relating to reporting and evaluation of energy efficiency programs are hereby adopted with changes to the text as proposed.

**Signed at Austin, Texas the \_\_\_\_\_ day of March 2019.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**