

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter H. ELECTRICAL PLANNING.

DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES.

§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 energy efficiency alternatives that allow each customer to reduce energy consumption, peak demand, or energy costs; and
 - (3) each electric utility provides, through market-based standard offer programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional cost-effective energy efficiency for residential and commercial customers to achieve the goals in subsection (e) of this section.
- (b) **Application.** This section applies to electric utilities.
- (c) **Definitions.** The following terms, when used in this section, 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
 - (I) 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.

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- (2) **Capacity factor** -- The ratio of the annual energy savings goal, in kWh, to the peak demand goal for the year, measured in kW, multiplied by the number of hours in the year; or the ratio of the actual annual energy savings, in kWh, to the actual peak demand reduction for the year, measured in kW, multiplied by the number of hours in the year.
- (3) **Commercial customer** -- A non-residential customer taking service at a metered point of delivery at a distribution voltage under an electric utility's tariff during the prior calendar year and a non-profit customer or government entity, including an educational institution. For purposes of this section, each metered point of delivery shall be considered a separate customer.
- (4) **Competitive energy efficiency services** -- Energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).
- (5) **Deemed savings** -- A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that an electric utility may use instead of energy and peak demand savings determined through measurement and verification activities.
- (6) **Demand** -- The rate at which electric energy is used at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- (7) **Demand savings** -- A quantifiable reduction in demand.
- (8) **Eligible customers** -- Residential and commercial customers. In addition, to the extent that they meet the criteria for participation in load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007, industrial customers are eligible customers solely for the purpose of participating in such programs.
- (9) **Energy efficiency** -- Improvements in the use of electricity that are achieved through facility or equipment improvements, devices, or processes 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.
- (10) **Energy efficiency measures** -- Equipment, materials, and practices at a customer's site that result in a reduction in electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both. These measures may include thermal energy storage and removal of an inefficient appliance so long as the customer need satisfied by the appliance is still met.
- (11) **Energy efficiency program** -- The aggregate of the energy efficiency activities carried out by an electric utility under this section or a set of energy efficiency projects carried out by an electric utility under the same name and operating rules.
- (12) **Energy efficiency project** -- An energy efficiency measure or combination of measures undertaken in accordance with a standard offer or market transformation program.
- (13) **Energy efficiency service provider** -- A person who installs energy efficiency measures or performs other energy efficiency services under this section. An energy efficiency service provider may be a retail electric provider or commercial customer, provided that the commercial customer has a peak load equal to or greater than 50kW.
- (14) **Energy savings** -- A quantifiable reduction in a customer's consumption of energy that is attributable to energy efficiency measures.
- (15) **Growth in demand** -- The annual increase in demand in the Texas portion of an electric utility's service area at time of peak demand, as measured in accordance with this section.
- (16) **Hard-to-reach customers** -- Residential customers with an annual household income at or below 200% of the federal poverty guidelines.
- (17) **Incentive payment** -- Payment made by a utility to an energy efficiency service provider under an energy-efficiency program.

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- (18) **Inspection** -- Examination of a project to verify that an energy efficiency measure has been installed, is capable of performing its intended function, and is producing an energy saving or demand reduction.
 - (19) **Load control** -- Activities that place the operation of electricity-consuming equipment under the control or dispatch of an energy efficiency service provider, an independent system operator or other transmission organization or that are controlled by the customer, with the objective of producing energy or demand savings.
 - (20) **Load management** -- Load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.
 - (21) **Market transformation program** -- Strategic programs intended to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services, and practices, as described in this section.
 - (22) **Measurement and verification** -- Activities intended to determine the actual energy and demand savings resulting from energy efficiency projects as described in this section.
 - (23) **Off-peak period** -- Period during which the demand on an electric utility system is not at or near its maximum. For the purpose of this section, the off-peak period includes all hours that are not in the peak period.
 - (24) **Peak demand** -- Electrical demand at the times of highest annual demand on the utility's system. Peak demand refers to Texas retail peak demand and, therefore, does not include demand of retail customers in other states or wholesale customers.
 - (25) **Peak demand reduction** -- Reduction in demand on the utility system throughout the utility system's peak period.
 - (26) **Peak period** -- For the purpose of this section, the peak period consists of the hours from one p.m. to seven p.m., during the months of June, July, August, and September, excluding weekends and Federal holidays.
 - (27) **Program year** -- A year in which an energy efficiency incentive program is implemented, beginning January 1 and ending December 31.
 - (28) **Renewable demand side management (DSM) technologies** -- Equipment that uses a renewable energy resource (renewable resource), as defined in §25.173(c) of this title (relating to Goal for Renewable Energy) that, when installed at a customer site, reduces the customer's net purchases of energy, demand, or both.
 - (29) **Standard offer contract** -- A contract between an energy efficiency service provider and a participating utility 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.
 - (30) **Standard offer program** -- A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.
- (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.
- (1) The cost of a program includes the cost of incentives, measurement and verification, 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 under the program.
 - (2) The avoided cost of capacity is \$80 per kW-year for all electric utilities, unless the commission establishes a different avoided cost of capacity in accordance with this

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paragraph. The avoided cost of capacity shall be revised beginning with program year 2012, in accordance with this paragraph.

- (A) By March 15 of each year, commission staff shall post a notice of a revised avoided cost of capacity on the commission's website, on a webpage designated for this purpose, effective for the next program year. If the avoided cost of capacity has not changed, staff shall post a notice that the avoided cost of capacity remains the same.
 - (i) Staff shall calculate the avoided cost of capacity from the base overnight cost of a new conventional 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 combustion turbine is less than \$650 per kW, the avoided cost of capacity shall be \$80 per kW. If the base overnight cost of a new conventional combustion turbine is at or between \$650 and \$800 per kW, the avoided cost of capacity shall be \$100 per kW. If the base overnight cost of a new conventional combustion turbine is greater than \$800 per kW, the avoided cost of capacity shall be \$120 per kW.
 - (iii) The avoided cost of capacity calculated by staff may be challenged only by the filing of a petition within 45 days of the date the avoided cost of capacity is posted on the commission's website on a webpage designated for that purpose.
 - (B) A non-ERCOT utility may petition the commission for authorization to use an avoided cost of capacity different from the avoided cost determined according to subparagraph (A) of this paragraph by filing a petition no later than 45 days after the date the avoided cost of capacity calculated by staff is posted on the commission's website on a webpage designated for that purpose. The avoided cost of capacity proposed by the utility shall be based on a generating resource or purchase in the utility's resource acquisition plan and the terms of the purchase or the cost of the resource shall be disclosed in the filing.
- (3) The avoided cost of energy is \$0.064 per kWh for all electric utilities, unless the commission establishes a different avoided cost of energy in accordance with this paragraph. The avoided cost of energy shall be revised beginning with program year 2012, in accordance with this paragraph.
- (A) Commission staff shall post a notice of a revised avoided cost of energy each year on the commission's website, on a webpage designated for this purpose, effective for the next program year. If the cost of energy has not changed, staff shall post a notice that the cost of energy remains the same. Staff shall calculate the avoided cost of energy using the simple average of the market clearing price in ERCOT for balancing energy for all hours during the peak period for the previous two calendar years. When ERCOT nodal prices are available, the avoided energy price shall be adjusted to the zonal average of nodal prices in the real-time market for all hours during the peak period.
 - (B) A non-ERCOT utility 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

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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 energy efficiency programs to achieve the following minimum goals:
 - (A) 20% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2010 and 2011 program years;
 - (B) 25% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2012 program year; and
 - (C) 30% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2013 program year and for subsequent program years.
- (2) The commission may establish for a utility a lower goal than the goal specified in paragraph (1) of this subsection or a higher budget cap than the cap specified in subsection (f) of this section if the utility demonstrates that compliance with that goal or cap is not reasonably possible and that good cause supports the lower goal or higher cap.
- (3) Each utility's demand-reduction goal shall be calculated as follows:
 - (A) 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 is calculated by applying the percentage goal, prescribed in paragraphs (1) and (2) of this subsection, to the average growth in demand, calculated in accordance with subparagraph (A) of this paragraph. Unless the commission establishes a goal for a utility under paragraph (2) of this subsection, a utility's demand goal in any year shall not be lower than its goal for the prior year.
 - (C) A utility may submit for commission approval an alternative method to calculate its growth in demand, for good cause.
 - (D) Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.
- (4) An electric utility shall administer an energy efficiency program designed to meet an energy savings goal calculated from its demand savings goal, using a 20% capacity factor.
- (5) Electric utilities shall administer energy efficiency programs to effectively and efficiently achieve the goals set out in this section.
 - (A) Incentive payments may be made under standard offer contracts or market transformation contracts, 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 either the standard offer or market transformation programs 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

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- 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.
- (f) **Cost recovery.** A utility shall establish an energy efficiency cost recovery factor (EECRF) that complies with this subsection to timely recover the reasonable costs of providing energy efficiency programs pursuant to this section.
- (1) A utility may request that an EECRF be established to recover all of the utility's forecasted annual energy efficiency program costs, if the commission order establishing the utility's base rates does not expressly include an amount for energy efficiency program costs and any bonus earned under subsection (h). If a utility's existing base rate order expressly includes an amount for energy efficiency program costs, the utility may request that an EECRF be established to recover forecasted annual energy efficiency program costs and any bonus earned under subsection (h) in excess of the costs recovered through base rates.
 - (2) Base rates shall not be set to recover energy efficiency costs.
 - (3) The EECRF shall be calculated to recover the costs associated with programs under this section from the customer classes that receive services under the programs.
 - (4) Not later than May 1 of each year, a utility with an EECRF shall apply to adjust the EECRF effective in January of the following year. An application filed pursuant to this paragraph shall reflect changes in program costs and bonuses and shall minimize any over- or under-collection of energy efficiency costs resulting from the use of the EECRF. The EECRF shall be designed to permit the utility to recover any under-recovery of energy efficiency program costs or return any over-recovery of costs.
 - (5) If a utility is recovering energy efficiency costs through base rates, the EECRF may be changed in a general rate proceeding. If a utility is not recovering energy efficiency costs through base rates, the EECRF must be adjusted in an EECRF proceeding pursuant to this section.
 - (6) The commission may approve an energy charge or a monthly customer charge for the EECRF. The EECRF shall be set at a rate that will give the utility the opportunity to earn revenues equal to the sum of the utility's forecasted energy efficiency costs, net of energy efficiency costs included in base rates, the energy efficiency performance bonus amount that it earned for the prior year under subsection (h) of this section and any adjustment for past over- or under-recovery of energy efficiency revenues.
 - (7) A utility that is unable to establish an EECRF due to a rate freeze may defer the costs of complying with this section and recover the deferred costs through an energy efficiency cost recovery factor on the expiration of the rate freeze period. Any deferral of costs that are not being recovered in rates shall bear interest at the utility's commission approved cost of capital from the time the costs are incurred until the commission approves an EECRF for the recovery of the costs. A utility that seeks to defer its costs shall file an application for approval of the deferral.
 - (8) The EECRF for a utility that is recovering energy efficiency costs exclusively through its EECRF shall not exceed the amounts prescribed in this paragraph. If a utility is recovering energy efficiency costs through an identified amount in base rates, the sum of the base rate

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recovery of energy efficiency costs and the EECRF shall not exceed the amounts prescribed in this paragraph.

- (A) For residential customers for program years 2011 and 2012, \$1.30 if the EECRF is charged on a monthly basis or \$0.001 per kWh if it is charged on an energy basis, or the amount previously authorized by the commission; and
 - (B) For residential customers for program years 2013 and thereafter, \$1.60 if the EECRF is charged on a monthly basis or \$0.0012 per kWh if it is charged on an energy basis, or the amount previously authorized by the commission;
 - (C) For non-residential customers for program years 2011 and 2012, rates designed to recover \$0.0005 per kWh for consumption of non-residential customer classes that are charged an EECRF or a base rate to cover energy efficiency costs; and
 - (D) For non-residential customers for program year 2013 and thereafter, rates designed to recover \$0.00075 per kWh for consumption of non-residential customer classes that are charged an EECRF or a base rate to cover energy efficiency costs.
- (9) A utility's application to establish or adjust an EECRF shall include the information and schedules in any commission approved EECRF filing package. If the commission has not approved an EECRF filing package, an application to establish or adjust an EECRF shall include testimony and schedules showing the utility's forecasted energy efficiency costs, energy efficiency costs included in base rates, the Energy Efficiency Performance Bonus amount that it earned for the prior year, any adjustment for past over- or under-recovery of energy efficiency revenues, information concerning the calculation of billing determinants, information from its last base rate case concerning the allocation of energy efficiency costs to customer classes, and the following:
- (A) the incentive payments by the utility, by program; the utility's administrative costs for its energy efficiency programs for the most recent year and for the year in which the EECRF is expected to be in effect, including costs for the dissemination of information and outreach; and other major administrative costs, and the basis for the projection;
 - (B) billing determinants for the most recent year and for the year in which the EECRF is expected to be in effect;
 - (C) the actual revenues attributable to the EECRF for any period for which the utility seeks to adjust the EECRF for an under- or over-recovery of EECRF revenues; and
 - (D) any other information that supports the determination of the EECRF.
- (10) Upon a utility's filing of an application to establish 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 as follows, except where good cause supports a different procedural schedule:
- (A) within 60 days after a sufficient application was filed if no hearing is requested within 30 days of the filing of the application; or
 - (B) within 120 days after a sufficient application was filed, if a timely request for a hearing is made. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after a sufficient application is filed.
- (11) In any proceeding to establish or adjust an EECRF, the utility must show that:
- (A) the costs to be recovered through the EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet the utility's goals under this section;
 - (B) calculations of any under- or over-recovery of EECRF revenues is consistent with this section;
 - (C) any energy efficiency performance bonus for which recovery is being sought is consistent with this section;

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- (D) the costs assigned or allocated to customer classes are reasonable and consistent with this section;
 - (E) the estimate of billing determinants for the period for which the EECRF is to be in effect is reasonable; and
 - (F) any calculations or estimates of system losses and line losses used in calculating the charges are reasonable.
- (12) The scope of a proceeding to establish or adjust an EECRF is limited to the issues of whether the utility's cost estimates are reasonable, calculations of under- or over-recoveries are consistent with this section, the calculation of any energy efficiency performance bonus is consistent with this section, the assignments and allocations to the classes are appropriate, and the calculation of the EECRF is in accordance with this subsection. The commission shall make a final determination of the reasonableness of the costs and performance bonuses that the utility recovered through the EECRF.
- (13) A utility shall file an application at least every three calendar years to reconcile costs recovered through its EECRF. An application filed pursuant to this paragraph shall be separate from the annual EECRF adjustment application required by paragraph (4) of this subsection. The commission may establish a schedule and form for such applications.
- (g) **Incentive payments.** The incentive payments for each customer class shall not exceed 100% of avoided cost, as determined in accordance with this section. The incentive payments shall be set by each utility with the objective of achieving its energy and demand savings goals at the lowest reasonable cost per program. Different incentive levels may be established for areas that have historically been underserved by the utility's energy efficiency program or for other appropriate reasons. Utilities may adjust incentive payments during the program year, but such adjustments must be clearly publicized in the materials used by the utility to set out the program rules and describe the program to participating energy efficiency service providers.
- (h) **Energy efficiency performance bonus.** A utility that exceeds its demand and energy reduction goals established in this section at a cost that does not exceed the limit established in this section shall be awarded a performance bonus. The performance bonus shall be based on the utility's energy efficiency achievements for the previous calendar year. The bonus calculation shall not include demand or energy savings that result from programs other than programs implemented under this section.
- (1) The performance bonus shall entitle the utility to receive a share of the net benefits realized in meeting its demand reduction goal established in this section.
 - (2) Net benefits shall be calculated as the sum of total avoided cost associated with the eligible programs administered by the utility minus the sum of all program costs. Total avoided costs shall be calculated in accordance with this section.
 - (3) A utility that exceeds 100% of its demand and energy reduction goals shall receive a bonus equal to 1% of the net benefits for every 2% that the demand reduction goal has been exceeded, with a maximum of 20% of the utility's program costs.
 - (4) The commission may reduce the bonus otherwise permitted under this subsection for a utility that fails to meet the goal for its under subsection (e) of this section.
 - (5) In calculating net benefits to determine a performance bonus, a discount rate equal to the utility's weighted average cost of capital of the utility and an escalation rate of two percent shall be used.
 - (6) A bonus earned under this section shall not be included in the utility's revenues or net income for the purpose of establishing a utility's rates or commission assessment of its earnings.

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- (7) The amendments to this subsection adopted in 2010 are effective for any bonus requested for performance in program year 2010 or thereafter.
- (i) **Utility administration.** The cost of administration shall not exceed 15% of a utility's total program costs. The cost of research and development shall not exceed 10% of a utility's total program costs. The cumulative cost of administration and research and development shall not exceed 20% of a utility's total program 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) providing informational programs to improve customer awareness of energy efficiency programs and measures;
 - (C) reviewing and selecting energy efficiency programs in accordance with this section;
 - (D) providing regular and special reports to the commission, including reports of energy and demand savings; and
 - (E) any other activities that are necessary and appropriate for successful program implementation.
- (2) A utility shall adopt measures to foster competition among energy service providers, such as limiting the number of projects or level of incentives that a single energy service provider and its affiliates is eligible for and establishing funding set-asides for small projects.
- (3) 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 shall use standardized forms, procedures, deemed savings estimates and program templates. The electric utility shall file any standardized materials, or any change to it, with the commission at least 60 days prior to its use. In filing such materials, the utility shall provide an explanation of changes from the version of the materials that was previously used. The utility shall provide relevant documents to REPs and EESPs and work collaboratively with them when it changes program documents, to the extent that such changes are not considered in the Energy Efficiency Implementation Project 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.

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- (j) **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.
- (k) **Market transformation programs.** Market transformation programs are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices. Market transformation programs may be designed to obtain energy savings or peak demand reductions beyond savings that would be achieved through compliance with existing building codes and equipment efficiency standards or standard offer programs. Utilities should cooperate with the REPs, and, where possible, leverage existing industry-recognized programs that have the potential to reduce demand and energy consumption in Texas and consider statewide administration where appropriate. Market transformation programs may operate over a period of more than one year and may demonstrate cost-effectiveness over a period longer than one year.
- (l) **Requirements for standard offer and market transformation programs.** A utility's standard offer and market transformation programs shall meet the requirements of this subsection. A utility may conduct information and advertizing campaigns to foster participation in standard offer and market transformation programs.
 - (1) Standard offer and market transformation 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 renewable DSM and combined heat and power technologies, involving installations of ten megawatts or less; and
 - (F) 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 programs:

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- (A) shall require energy efficiency service providers to identify peak demand and energy savings for each project in the proposals they submit to the utility;
 - (B) shall be neutral with respect to specific technologies, equipment, or fuels. Energy efficiency projects may lead to switching from electricity to another energy source, provided that the energy efficiency project results in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Utilities may not pay incentives for a customer to switch from gas appliances to electric appliances except in connection with the installation of high efficiency combined heating and air conditioning systems;
 - (C) shall require that all projects result in a reduction in purchased energy consumption, or peak demand, or a reduction in energy costs for the end-use customer;
 - (D) shall encourage comprehensive projects incorporating more than one energy efficiency measure;
 - (E) shall be limited to projects that result in consistent and predictable energy or peak demand savings over an appropriate period of time based on the life of the measure; and
 - (F) may permit a utility to use poor performance, including customer complaints, as a criterion to limit or disqualify an energy efficiency service provider or its affiliate from participating in a program.
- (3) A market transformation program shall identify:
- (A) program goals;
 - (B) market barriers the program is designed to overcome;
 - (C) key intervention strategies for overcoming those barriers;
 - (D) estimated costs and projected energy and capacity savings;
 - (E) a baseline study that is appropriate in time and geographic region. In establishing a baseline, the study shall consider the level of regional implementation and enforcement of any applicable energy code;
 - (F) program implementation timeline and milestones;
 - (G) a description of how the program will achieve the transition from extensive market intervention activities toward a largely self-sustaining market;
 - (H) a method for measuring and verifying savings; and
 - (I) the period over which savings shall be considered to accrue, including a projected date by which the market will be sufficiently transformed so that the program should be discontinued.
- (4) A market transformation program shall be designed to achieve energy or peak demand savings, or both, and lasting changes in the way energy efficient goods or services are distributed, purchased, installed, or used over a defined period of time. A utility shall use fair competitive procedures to select EESPs to conduct a market transformation program, and shall include in its annual report the justification for the selection of an EESP to conduct a market transformation program on a sole-source basis.
- (5) A load-control standard-offer program shall not permit an energy efficiency service provider to receive incentives under the utility program for the same demand reduction for which it is compensated under a demand response program conducted by an independent organization, independent system operator, or regional transmission operator.
- (m) **Energy efficiency plans and reports.** Each electric utility shall file by April 1 of each year an energy efficiency plan and report, as described in this subsection. The plan and report shall be filed as a single document.

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- (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 calendar years. The plan and report shall propose an annual budget sufficient to reach the goals specified in this section.
- (2) Each electric utility's plan and report shall include:
 - (A) the utility's total actual and weather-adjusted peak demand and actual and weather-adjusted peak demand for residential and commercial customers for the previous five years;
 - (B) the demand goal calculated in accordance with this section for the current year and the following year, including documentation of the demand, weather adjustments, and the calculation of the goal;
 - (C) the utility's customers' total actual and weather-adjusted energy consumption and actual and weather-adjusted energy consumption for residential and commercial customers for the previous five years;
 - (D) the energy goal calculated in accordance with this section, including documentation of the energy consumption, weather adjustments, and the calculation of the goal;
 - (E) a description of existing energy efficiency programs and an explanation of the extent to which these programs will be used to meet the utility's energy efficiency goals;
 - (F) a description of each of the utility's energy efficiency programs that were not included in the previous year's plan, including measurement and verification plans if appropriate, and any baseline studies and research reports or analyses supporting the value of the new programs;
 - (G) an estimate of the energy and peak demand savings to be obtained through each separate energy efficiency program;
 - (H) a description of the customer classes targeted by the utility's energy efficiency programs, specifying the size of the hard-to-reach, residential, and commercial classes, and the methodology used for estimating the size of each customer class;
 - (I) the proposed annual budget required to implement the utility's energy efficiency programs, broken out by program for each customer class, including hard-to-reach customers, and any set-asides or budget restrictions adopted or proposed in accordance with this section. The proposed budget shall detail the incentive payments and utility administrative costs, including specific items for research and information and outreach to energy efficiency service providers, and other major administrative costs, and the basis for estimating the proposed expenditures;
 - (J) a discussion of the types of informational activities the utility plans to use to encourage participation by customers, energy efficiency service providers, and retail electric providers to participate in energy efficiency programs, including the manner in which the utility will provide notice of energy efficiency programs, and any other facts that may be considered when evaluating a program;
 - (K) the utility's 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;

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- (N) expenditures for the prior five years for energy and demand incentive payments and program administration, by program and customer class;
 - (O) funds that were committed but not spent during the prior year, by program;
 - (P) a comparison of actual and budgeted program costs, including an explanation of any increase or decreases of more than 10% in the cost of a program;
 - (Q) information relating to energy and demand savings achieved and the number of customers served by each program by customer class;
 - (R) the utility's most recent EECRF, the revenue collected through the EECRF, energy efficiency revenue collected through base rates, and the control number under which the most recent EECRF was established;
 - (S) the amount of any over- or under-recovery energy efficiency program costs whether collected through base rates or the EECRF;
 - (T) a list of any counties that in the prior year were under-served by the energy efficiency program;
 - (U) a calculation showing whether the utility qualifies for a performance bonus and the amount of any bonus; and
 - (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.
- (n) **Review of programs.** Commission staff may initiate a proceeding to review a utility's energy efficiency programs. In addition, an interested entity may request that the commission initiate a proceeding to review a utility's energy efficiency programs.
- (o) **Inspection, measurement and verification.** Each standard offer program shall include an industry-accepted measurement and verification protocol, such as the International Performance Measurement and Verification Protocol, to measure and verify energy and peak demand savings to ensure that the goals of this section are achieved. An energy efficiency service provider shall not receive final compensation until it establishes that the work is complete and measurement and verification in accordance with the protocol verifies that the savings will be achieved. If inspection of one or more measures is a part of the protocol, an energy efficiency service provider shall not receive final compensation until the utility has conducted its inspection on the sample of measures and the inspections confirm that the work has been done.
- (1) The energy efficiency service provider is responsible for the measurement of energy and peak demand savings using the approved measurement and verification protocol, and may utilize the services of an independent third party for such purposes.
 - (2) Commission-approved deemed energy and peak demand savings may be used in lieu of the energy efficiency service provider's measurement and verification, where applicable. The deemed savings approved by the commission before December 31, 2007 are continued in effect, unless superseded by commission action.
 - (3) 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.

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- (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) 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.
- (p) **Targeted energy efficiency program.** Unless funding is provided under PURA §39.903, each unbundled transmission and distribution utility shall include in its energy efficiency plan a targeted low-income energy efficiency program as described by PURA §39.903(f)(2). Savings achieved by the program shall count toward the transmission and distribution utility's energy efficiency goal. Each utility shall include a proposed funding level for the weatherization program in its energy efficiency plan.
- (q) **Energy Efficiency Implementation Project - EEIP.** The commission may use an implementation project involving input by interested persons to make recommendations to the commission with regard to best practices in standard offer programs and market transformation programs, modifications to programs, standardized forms and procedures, 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 participants in the EEIP that are relevant to the tasks of the EEIP. The following functions may also be undertaken in the energy efficiency implementation project:
- (1) development, discussion, and review of new statewide standard offer programs;
 - (2) identification, discussion, design, and review of new market transformation programs;
 - (3) determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures;
 - (4) review of and recommendations on an independent measurement and verification expert's report;
 - (5) review of and recommendations on incentive payment levels and their adequacy to induce the desired level of participation by energy efficiency service providers and customers;
 - (6) review of and recommendations on the utility annual energy efficiency plans and reports; EEIP meetings may be scheduled by commission staff for review of the most recent historical year's utility reports, for review of proposals for changes to a utility's energy efficiency plans for a future year, and for midcourse review;
 - (7) periodic reviews of the cost effectiveness methodology; and
 - (8) other activities as requested by the commission.
- (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.
- (1) Clear disclosure to the customer shall be made of the following:

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- (A) the customer's right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law;
 - (B) the name, telephone number, and street address of the energy efficiency services provider and any subcontractor that will be performing services at the customer's home or business;
 - (C) the fact that incentives are made available to the energy efficiency services provider through a program funded by utility customers, manufacturers or other entities and the amount of any incentives provided by the utility;
 - (D) the amount of any incentives that will be provided to the customer;
 - (E) notice of provisions that will be included in the customer's contract, including warranties;
 - (F) the fact that the energy efficiency service provider must measure and report to the utility the energy and peak demand savings from installed energy efficiency measures;
 - (G) the liability insurance to cover property damage carried by the energy efficiency service provider and any subcontractor;
 - (H) the financial arrangement between the energy efficiency service provider and customer, including an explanation of the total customer payments, the total expected interest charged, all possible penalties for non-payment, and whether the customer's installment sales agreement may be sold;
 - (I) the fact that the energy efficiency service provider is not part of or endorsed by the commission or the utility; and
 - (J) a description of the complaint procedure established by the utility under this section, and toll free numbers for the Office of Customer Protection of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.
- (2) The energy efficiency service provider's contract with the customer shall include:
- (A) work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider;
 - (B) provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs; and
 - (C) a 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 programs for industrial customers prior to May 1, 2007 shall continue to make the program available, at 2007 funding and participation levels, and may include additional customers in the program to maintain these funding and participation levels. Notwithstanding subsection (c)(8) of this section, an industrial customer may be considered an eligible customer for programs that will be completed no later than December 31, 2008.
- (u) **Administrative penalty.** The commission may impose an administrative penalty or other sanction if the utility fails to meet a goal for energy efficiency under this section. Factors that may be considered in determining whether to impose a sanction for the utility's failure to meet the goal include:

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- (1) the level of demand by retail electric providers and competitive energy service providers for program incentive funds made available by the utility through its programs;
 - (2) changes in building energy codes;
 - (3) changes in government-imposed appliance or equipment efficiency standards;
 - (4) any actions taken by the utility to identify and correct any deficiencies in its energy efficiency program; and
 - (5) the utility's effectiveness in administering its energy efficiency program.
- (v) **Effective date.** The effective date of this section is December 1, 2010.