

**PROJECT NO. 37623**

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

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.181  
AS APPROVED AT THE JANUARY 28, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.181 relating to Energy Efficiency Goal. The amendment raises an electric utility's energy efficiency goal from 20% of growth in demand to 30% of the electric utility's annual growth in demand of residential and commercial customers by program year 2012; the larger of either 40% of the electric utility's annual growth in demand or 0.7% of the electric utility's peak load by program year 2013; and the larger of either 50% of the electric utility's annual growth in demand or 1.0% of the electric utility's peak load by program year 2014. A smaller utility with less than 3,000 MW in peak demand will be subject to the growth in demand goals but not to the peak demand goals.

The amendment also updates the cost effectiveness standard by adjusting the avoided cost of capacity and the avoided cost of energy. In addition, the amendment will increase the performance bonus for an electric utility that exceeds its goal. Pursuant to Public Utility Regulatory Act (PURA) §14.001 and §36.204, the amendment will also apply the rule to all electric utilities, not just electric utilities subject to PURA §39.905. Project Number 37623 is assigned to this proceeding. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e).

When commenting on specific subsections of the amendment, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states that have implemented energy efficiency programs, particularly in the context of a competitive retail market, if the parties believe that Texas would benefit from application of the same policies. The commission is interested only in receiving "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state energy efficiency efforts.

Theresa Gross, Energy Efficiency Program Manager, Competitive Markets Division, has determined that for each year of the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Gross has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be an increase in energy efficiency services available to Texas customers and a decrease in overall energy consumption. Ms. Gross has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of the amendment. There is an anticipated economic cost to persons who are required to comply with the section as proposed, however the public benefit outweighs the anticipated costs.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received not later than 45 days after publication.

Initial comments on the amendment may be submitted not later than 31 days after publication and reply comments may be submitted not later than 45 days after publication to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment.

The commission also invites comments on the following questions:

1. Should the commission adopt a lost revenue adjustment mechanism for an electric utility's programs administered pursuant to §25.181?
2. Each utility is requested to, and other parties may, provide an estimate of the customer impact of the cost caps in the rule under subsection (f)(8), Cost Recovery.
3. Should the commission adopt a cost cap based on customer impact, rather than total program cost?

All comments should refer to Project Number 37623.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 36.204, and 39.905 (Vernon 2007 and Supplement 2009) (PURA). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §36.204 authorizes the commission to establish rates for an electric utility that allow timely recovery of the reasonable costs for conservation and load management and that include additional incentives for conservation and load management; and §39.905 requires the commission to provide oversight of energy efficiency programs of electric utilities subject to that section and adopt rules and procedures to ensure that electric utilities subject to that section can achieve their energy efficiency goals, including rules establishing an energy efficiency cost recovery factor and an incentive for electric utilities that meet the energy efficiency goals.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 36.204, and 39.905.

**§25.181. Energy Efficiency Goal.**

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

- (1) (No change.)
- (2) all customers, in all eligible customer classes and all areas of an electric utility's service area, have a choice of and access to 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 ~~equivalent to~~ achieve the goals in subsection (e) of this section at least:
  - ~~(A) 10% of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2007;~~
  - ~~(B) 15% of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2008; and~~
  - ~~(C) 20% of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2009.~~

(b) (No change.)

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

(1) – (26) (No change.)

(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)~~(28)~~ **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)~~(29)~~ **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) (No change.)
- (2) The avoided cost of capacity shall be \$80/kW-year for the 2011 program year for all electric utilities, unless the commission establishes a different cost of capacity. The cost of capacity shall be revised for subsequent years in accordance with this paragraph.~~The avoided capacity cost shall be based on the estimated capital cost of a new gas turbine, and the avoided energy costs shall be based on wholesale energy costs.~~
  - (A) Commission staff shall post a notice of a revised avoided cost of capacity each year on the commission's website, on a webpage designated for this purpose, effective for the next program year. If the cost of capacity has not changed, staff shall post a notice that the cost of capacity remains the same.~~The initial avoided cost of capacity is \$80/kW per year. The avoided cost of capacity shall be adjusted annually based on the annual capacity costs of a new simple cycle gas turbine, using a recognized industry source of information, adjusted for line losses.~~
    - (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 (EIA). 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 between \$650 and \$800 per kW, inclusive, 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 other than that otherwise determined according to this subparagraph 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. ~~The initial avoided cost of energy is \$0.055/kWh. The avoided cost of energy shall be adjusted annually to the simple average of the market clearing price in ERCOT for balancing energy~~

~~for all hours during the peak period for the previous calendar year. When ERCOT nodal prices are available, the avoided energy price shall be adjusted to the zonal average of nodal prices for all hours during the peak period. For areas outside of ERCOT with a regional transmission organization that has been approved by the Federal Energy Commission and operates a balancing market and publicly reports prices in the market, the avoided energy cost may be adjusted to the simple average of the market clearing price in the region for balancing service for peak hours. For areas that do not have such a regional transmission organization, the ERCOT avoided energy cost shall be used unless the commission determines a different avoided cost for an area.~~

(3) The avoided cost of energy is \$0.10/kWh for the 2011 program year for all electric utilities, unless the commission establishes a different cost of energy. The cost of energy shall be revised for subsequent years 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 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 shall be based on actual or projected peak period energy costs of the utility.

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

(1) An electric utility with peak demand equal to or greater than 3,000 MW 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) 30% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2012 program year;

(C) 40% reduction of the electric utility's annual growth in demand of residential and commercial customers or 0.7% reduction of the electric utility's peak load, whichever is greater, for the 2013 program year;

(D) 50% reduction of the electric utility's annual growth in demand of residential and commercial customers or 1.0% of the electric utility's

peak load, whichever is greater, for the 2014 program year and for subsequent program years.

(2) An electric utility with peak demand less than 3,000 MW shall administer energy efficiency programs to achieve the following minimum goals:

(A) 30% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2012 program year;

(B) 40% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2013 program year;

(C) 50% reduction of the electric utility's annual growth in demand of residential and commercial customers for the 2014 program year and for subsequent program years.~~Electric utilities shall administer energy efficiency programs to achieve at least a 15% reduction in the electric utility's annual growth in demand of residential and commercial customers by December 31, 2008; and 20% of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2009.~~

~~(3)(1) A utility may carry over any reduction in growth in residential and commercial demand that is achieved in 2007 in excess of 10% of its growth in demand to apply to the required savings in 2008, to the extent that the reduction is consistent with the definition of demand reduction in this section.~~

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 this subsection, to the average growth in demand, calculated in accordance with subparagraph (A) of this paragraph.
  - (C) A utility may submit for commission approval an alternative method to calculate its growth in demand, for good cause.
  - (D) The demand reduction goal for a utility with peak demand less than 3,000 MW in any program year from 2012 through 2014 shall not be less than 130% of the previous year's goal.~~Beginning in 2009 a utility's demand reduction goal in megawatts for any year shall not be less than the previous year's goal.~~
  - (E) Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.
  - (F) A utility may provide a set-aside of 10% of the utility's demand goal for solar and other distributed renewable technologies.
- ~~(4)(2)~~ Beginning in ~~2012~~~~2008~~, an electric utility shall administer an energy efficiency program designed to meet an energy savings goal calculated from its demand savings goal, using a ~~25%~~~~20%~~ capacity factor.

~~(5)(3)~~ 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 relocation 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.

(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.~~An Energy Efficiency Cost Recovery Factor (EECRF) rate schedule shall be included in the utility's tariff to permit the utility to timely recover the reasonable costs of providing energy efficiency programs. The forecast of the energy efficiency program costs shall reflect the spending necessary to meet the utility's goals under this section, subject to the limitations established in this section.~~

(1) – (3) (No change.)

(4) Not later than May 1 of each year, ~~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 subparagraph shall in order to reflect changes in program costs and bonuses and shall minimize any over- or under-collection of energy efficiency costs resulting from the use of the EECRF. The EECRF shall be designed to permit the utility to recover any under-recovery of energy efficiency program costs or return any over-recovery of costs. ~~An application to change an EECRF that will take effect in January of the following year shall be filed not later than May 1.~~

(5) If a utility is recovering energy efficiency costs through base rates, the ~~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. or, if a general rate proceeding has not been conducted in the preceding year, an electric utility may petition to adjust its EECRF on an annual basis.~~

(6) – (7) (No change.)

(8) A ~~utility shall not recover utility's~~ program expenditures for ~~2012 that 2008~~ shall not exceed 175% of ~~the utility's its~~ program budget for ~~20102007 for residential and commercial customers~~, as included in its April 1, ~~20092006~~, filing. A ~~utility shall not recover utility's~~ program expenditures for ~~2013 that2009 shall not~~ exceed 250% of ~~the utility's its~~ program budget for ~~20102007 for residential and commercial customers~~, as included in ~~its~~the April 1, ~~20092006~~, filing. ~~A utility shall not recover program expenditures for 2014 that exceed 300% of the utility's program budget for 2010, as included in its April 1, 2009 filing.~~

(9) A utility's application to establish or ~~adjust~~change 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, but at a minimum~~ 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) – (D) (No change.)

- (10) Upon a utility's filing of an application to establish or ~~adjust~~change 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) – (B) (No change.)

- (11) In any proceeding to establish or ~~adjust~~change an EECRF, the utility must show that:

(A) – (F) (No change.)

- (12) (No change.)

- (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) (No change.)

- (h) **Energy efficiency performance bonus.** A utility that exceeds its demand reduction goal 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) – (2) (No change.)

(3) A utility that exceeds 100% of its demand reduction goal (~~DRG~~) shall receive a bonus calculated as follows: equal to 1% of the net benefits for every 2% that the demand reduction goal has been exceeded, with a maximum of a 20% of the utility's program costs.

(A) for demand reductions that do not exceed 108% of the utility's demand goal, the bonus shall be equal to 1% of the net benefits for every 2% that the demand reduction goal has been exceeded;

(B) for demand reductions that exceed 108% of the utility's demand goal, the bonus shall be equal to 1% of the net benefits for every 1% that the demand reduction exceeds 108% of the goal; and

(C) the bonus shall not exceed 20% of the utility's program costs for 2010 and 2011, 30% of the utility's program costs for 2012, and 2013, and 40% of the utility's program costs for 2014 and 2015.

(4) A utility ~~that meets at least 120% of its demand reduction goal~~ with at least 10% of its savings achieved through Hard-to-Reach programs shall receive an additional bonus equal to 10% of the bonus calculated under paragraph (3) of this subsection.

(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.~~Any energy or demand savings~~

~~achieved in 2007 that are applied to a utility's goal in 2008 are not eligible for a performance bonus.~~

(6) (No change.)

(i) **Utility administration.** The cost of administration ~~shall~~may not exceed ~~15%~~10% of a utility's total program costs. ~~The cost of research~~Research and development ~~costs~~ 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) ~~for utilities outside of ERCOT,~~ providing informational programs to improve customer awareness of energy efficiency programs and measures;

(C) – (E) (No change.)

(2) – (4) (No change.)

(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 as energy efficiency service companies 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 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.

(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) (No change.)

(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) – (3) (No change.)

(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) (No change.)

(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.

(1) (No change.)

(2) Each electric utility's plan and report shall include:

(A) – (I) (No change.)

(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) – (S) (No change.)

(T) ~~beginning with the report filed in 2009,~~ a list of any counties that in the prior year were under-served by the energy efficiency program; ~~and~~

(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.~~An electric utility's energy efficiency program is subject to review, which may be initiated by the commission staff or informal review through the EEIP process. The review under this section may relate to an existing program, proposed new programs, or the failure of the utility to implement a program. The initiation of a formal review of a utility's energy efficiency plan does not preclude the utility from carrying out existing or planned programs, unless a presiding officer or the commission issues an order requiring it to make a change in a program.~~

(o) – (p) (No change.)

(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) – (5) (No change.)

(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 and review of proposals for changes to a utility's energy efficiency plans for a future year;

(7) – (8) (No change.)

(r) **Retail providers.** Each ~~electric~~ utility in an area in which customer choice is offered ~~the ERCOT region~~ 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. ~~Electric utilities outside of the ERCOT region shall provide customers with energy efficiency education materials.~~

- (s) (No change.)
- (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)(7) 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) (No change.)

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

**ISSUED IN AUSTIN, TEXAS ON THE 29<sup>th</sup> DAY OF JANUARY 2009 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**