

**PROPOSED NEW 16 TAC §7.480
AND PROPOSED AMENDMENTS TO
16 TAC §7.460**

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**RAILROAD COMMISSION
OF TEXAS**

**COMMENTS OF THE SOUTH-CENTRAL PARTNERSHIP FOR ENERGY
EFFICIENCY AS A RESOURCE**

NOW COMES the South-central Partnership for Energy Efficiency as a Resource (“SPEER”), and files these comments in response to the Commission staff request for written comment filed in this proceeding on September 19, 2023.

Introduction

The South-central Partnership for Energy Efficiency as a Resource (SPEER) is a 501(c)(3) non-profit regional energy efficiency organization (REEO). We are one of six in the country that aims to accelerate the adoption of advanced building systems and energy efficient products and services throughout the nation. We work collaboratively to strengthen local economies, improve health and quality of life, and improve the environment.

Comments

House Bill 2263 establishes the opportunity for local distribution companies (LDC) to develop programs to increase efficiency of gas services and reduce statewide consumption. These efforts are paramount to building resiliency and reliability to our homes and businesses across the state. Texas has maintained electric efficiency programs for over two decades and we believe that they lay the groundwork for gas efficiency policies that can allow LDC’s to optimize their own programs quickly and effectively, while reducing overall costs to consumers.

The importance of energy efficiency broadly cannot be understated. Energy efficiency measures like weatherization of building envelopes provides Texans with the same level of comfort while reducing their monthly bills. It also provides those with efficiency upgrades to stay in their homes longer during extreme weather events like we see annually in both summer and winter periods. SPEER applauds the legislature and Railroad Commission for allowing for weatherization measures and other energy efficiency technologies to be included in these

programs for that reason. Additionally, it is important to note that weatherization and other energy efficiency measures are critical to reducing gas and electric consumption year-round. By keeping the air in buildings warmer for longer with proper insulation or more efficient windows, gas furnaces do not need to work more to keep a home or business at safe temperatures thereby reducing gas consumption during peak demand periods.

As these programs become more established, it is imperative that the Commission review and update as needed to ensure ratepayer dollars are being spent effectively while increasing gas efficiency for the state.

We have provided a redline version of the proposed rule with our recommendations beginning on page 4. However, to add some context to our recommendations we have listed out the main points below.

SPEER Recommendations:

Low-income Minimum – Low-income (LI) customers bear the highest energy burden of all Texans. We appreciate the proposed rules have included a designed weatherization for LI customer item in an energy conservation program (ECP) portfolio. While this is an important first step, it is necessary to ensure LI customers receive an equitable portion of all funds from these programs. As a result, we recommend the Commission consider a minimum percentage of 15% of ECP portfolio expenditures for a program year be focused on LI customers included in the rule. According to the most recent census data, 14% of Texans are considered low-income. By setting aside a relatively proportional share of expenditures to go towards these communities specifically, we can begin reduce the energy burden of those hardest hit by higher energy bills.

Cost-effective Criteria – While we recognize the ECP policies for the state are in their nascent stages of development, we believe it is important for the Commission to require that any programs offered to customers should be cost-effective at the program level. Considering that these programs may need time to become cost-effective, we recommend the LDC's re-application process every three years provide a benefit/cost analysis and if each ECP for a participated LDC are not greater than 1.0 on the Total Resource Cost (TRC) Test the programs be rejected and re-evaluated by LDC to ensure there is a benefit to the consumers before being approved by the Commission. Additionally, for the initial application for an ECP, we

recommend that the LDC's provide a similar analysis on their annual reporting to the Commission, however, they will be allowed to continue until re-applying for that ECP.

Gas Conservation Technical Reference Manual – Currently the state's electric utilities go through a rigorous evaluation, measurement, and verification (EM&V) process annually to ensure accurate estimation of energy and demand impacts from energy efficiency programs. The EM&V contractor is intended to provide objective calculations for deemed savings of programs. These measurements are published in an annually updated Technical Reference Manual (TRM) for all stakeholders to see and utilize as necessary. Under the current proposed rules, these programs on the gas side are voluntary and will reside under the Gas Services Division of the Railroad Commission. We believe the Gas Services Director should begin the process of developing a TRM for ECP's deployed in Texas. This process would include working directly with LDC's, manufacturers, and other stakeholders to ensure objective and accurate measurement of an ECP's effectiveness provided to customers.

Stakeholder Engagement – Transparency is important for programs like these that will use ratepayer funds to provide benefits to the state at large. The Public Utility Commission of Texas currently holds bi-annual public meetings from their Energy Efficiency Implementation Project (EEIP) docket where stakeholders from across the sector can learn about the performance of the energy efficiency programs, goals, impacts, and provide input for improvements or concerns. We recommend that the Commission require a similar stakeholder engagement process to that of the EEIP where stakeholders can meet and discuss any issues or improvements to the on-going ECP's in the state. This may also serve as a forum for other LDC's to learn about programs they had not considered or potentially increase interest for those that have not developed an ECP yet to do so.

Goals and Cost-Caps – At this stage of the implementation process, it seems to be too early to consider establishing set goals for savings from these programs. Additionally, goals may disincentivize some LDC's from participating currently. Similarly, establishing a cost-cap on the programs that may be very new for an LDC and may be too soon and cause confusion and deter participation. That said, we do advise that while establishing both goals for savings and cost-caps for programs is too early and should not be done now, it is something that the Director of Gas

Services and the Commission should begin to think about moving forward in the event that future legislation is passed or if the Commission deems necessary.

Redline Recommendations:

§7.480 Energy Conservation Programs.

(a) Energy conservation program authority. A local distribution company may offer to residential and commercial customers and prospective residential and commercial customers and provide to those customers an energy conservation program pursuant to this section and Texas Utilities Code, §§104.401- 104.403. The Commission has exclusive original jurisdiction over energy conservation programs implemented by local distribution companies. A political subdivision served by a local distribution company that implements an energy conservation program approved by the Commission pursuant to this section shall not limit, restrict, or otherwise prevent an eligible customer from participating in the energy conservation program based on the type or source of energy delivered to its customers.

(b) Definitions.

(1) Administrative costs--The costs of creating, managing, and administering an ECP portfolio.

(2) Director--The Director of the Gas Services Department of the Oversight and Safety Division or the Director's delegate.

(3) Energy conservation program (ECP)--A particular program that promotes energy conservation or energy efficiency.

(4) Energy conservation program rate--The energy conservation program rate approved by the Commission in the form of a monthly customer charge.

(5) Gas Services--The Gas Services Department of the Oversight and Safety Division of the Commission.

(6) Local distribution company (LDC)--An investor-owned gas utility that operates a retail gas distribution system.

(7) ECP Portfolio--The entire group of energy conservation programs offered by a local distribution company as described subsection (f) of this section. The portfolio may consist of one or more programs.

(8) Portfolio costs--Costs prudently incurred by an LDC to design, market, implement, administer, and deliver an ECP portfolio that has been approved by the Commission, including but not limited to payment of rebates, material costs, the costs associated with

installation and removal of replaced materials and/or equipment, and the cost of education and customer awareness materials related to conservation or efficiency.

(9) Program year--The 12-month period beginning the first day of the month following the Commission's approval of the program.

(10) Technical Reference Manual (TRM) – A resource document compiled by the Director of Gas Services that includes information used in the program planning and reporting of ECP's. 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.

(c) General requirements.

(1) An LDC may recover costs of an ECP portfolio if it is approved by the Commission pursuant to this section and the LDC complies with the approved ECP portfolio. An LDC seeking to implement an ECP portfolio in one or more of its service areas shall apply with Gas Services and receive a final order from the Commission before beginning to recover the costs.

(2) An LDC applying for an ECP portfolio shall submit an application for each service area in which it seeks to implement an ECP.

(3) If the Commission approves the LDC's application or approves the application with modifications, the LDC may recover costs prudently incurred to implement the ECP portfolio, including costs incurred to design, market, implement, administer, and deliver the ECP portfolio. Any costs included in an ECP portfolio approved by the Commission shall be fully subject to review by the Commission for reasonableness and prudence. ECP costs that are imprudent or recovered from customers without approval of the Commission are subject to refund as determined by the Commission.

(d) Cost-effectiveness standard. An ECP is deemed to be cost-effective if the cost of the ECP to the LDC is less than or equal to the benefits of the program. ECP's shall be in compliance of this cost-effectiveness standard upon re-applying for approval every three years. If an ECP is found to be not cost-effective by that time the Commission shall reject the re-application and require the LDC rectify the ECP to become in compliance before approval can be given. An LDC shall work with the Director of Gas Services or an approved third-party consultant to identify how to make the ECP cost-effective.

~~(e)~~ Contents of application. An LDC may apply for approval of an ECP portfolio by submitting an application to Gas Services.

(1) Initial ECP portfolio application. An initial application for approval of an ECP portfolio shall include:

- (A) a list and detailed description of each proposed ECP;
- (B) the objectives for each proposed ECP;
- (C) the proposed annual budget for each ECP and the ECP portfolio;
- (D) the proposed administrative costs for each ECP and the ECP portfolio;
- (E) the proposed proportion of ECP portfolio costs to be funded by customers;
- (F) the proposed proportion of ECP portfolio costs to be funded by shareholders;
- (G) the projected annual consumption reduction per customer class for each ECP and the ECP portfolio; ECP portfolio; and the date or dates on which the notice was given;
- (H) the projected annual cost savings per customer class for each ECP and the
- (I) a copy of the notice to customers and an affidavit stating the method of notice
- (J) copies of written correspondence received by the LDC in response to the notice;
- (K) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if an ECP portfolio is approved;
- (L) copies of the proposed ECP rate schedule or schedules; and
- (M) the name of the LDC's representative, business address, telephone number, and email address.

(2) Subsequent ECP portfolio application. An LDC shall re-apply for approval of its ECP portfolio every three years. The subsequent application shall be filed 90 days prior to the third anniversary of the LDC's program year. A subsequent application for approval of an ECP portfolio shall include:

- (A) a list and detailed description of each proposed ECP;
- (B) the objectives for each ECP;
- (C) the proposed annual budget for each ECP and ECP portfolio;
- (D) the proposed administrative costs for each ECP and the ECP portfolio;
- (E) the actual historical annual budget for each ECP and the ECP portfolio;

(F) the actual historical administrative costs for each ECP and the ECP portfolio;

(G) the actual expenditures spent on low-income customer;

~~(H)(G)~~ the proposed proportion of ECP portfolio costs to be funded by customers;

~~(I)(H)~~ the proposed proportion of ECP portfolio costs to be funded by shareholders;

~~(J)(I)~~ the projected and actual historical annual consumption reduction per customer class for each ECP and the ECP portfolio;

~~(K)(J)~~ the projected and actual historical annual cost savings per customer class for each ECP and the ECP portfolio;

~~(L)(K)~~ copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if the ECP portfolio is approved;

~~(M)(L)~~ copies of the proposed rate schedule or schedules;

~~(N)(M)~~ the name of the LDC's representative, business address, telephone number, and email address; ~~and~~

~~(O)(N)~~ if the LDC proposes a new ECP, or proposes changes to an existing ECP such that costs to customers increase, the LDC shall provide notice in accordance with subsection (e) of this section and include in its subsequent application the documents required by paragraph (1)(I) and (J) of this subsection; and:

(P) a benefit/cost analysis to show ECP is in compliance with cost-effectiveness standard.

(3) Addition of new programs to existing ECP portfolio. An initial or subsequent application may contain information on one or more ECPs. If an LDC proposes to add a new ECP to its portfolio after approval of its initial application, the LDC shall propose the new ECP in its subsequent application and include the information required by paragraph (1) of this subsection for the proposed new ECP .

(f)(e) Notice and promotional materials.

(1) Notice. An LDC shall print the notice of its application for an ECP portfolio in type large enough for easy reading. The notice shall be the only information contained on the piece of paper on which it is written or in the emailed notice if applicable. An LDC may give the notice required by this section either by separate mailing or by otherwise delivering the notice with its billing statements. Notice may be provided by email if the customer to receive the notice has consented to receive notices by email. Notice by mail

shall be presumed to be complete three days after the date of deposit of the paper upon which it is written, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care of the United States Postal Service. The notice shall be provided in English and Spanish. The notice to customers shall include the following information:

- (A) a description of each ECP in its proposed portfolio;
- (B) the effect the proposed ECP portfolio is expected to have on the rates applicable to each affected customer class and on an average bill with and without gas cost for each affected customer class;
- (C) the service area or areas in which the proposed ECP portfolio would apply;
- (D) the date the proposed ECP portfolio application was or will be filed with the Commission;
- (E) the LDC's address, telephone number, and web site where the application for approval of an ECP portfolio may be obtained; and
- (F) a statement that any affected person may file written comments or a protest concerning a proposed ECP portfolio with Gas Services by email to MOS@rrc.texas.gov and to an email address for the LDC company included in its notice.

(2) Promotional materials. Any promotional materials shall be provided to customers in English and Spanish.

~~(g)(f)~~ Portfolio. An ECP portfolio:

- (1) shall be designed to overcome barriers to the adoption of energy-efficient equipment, technologies, and processes, and be designed to change customer behavior as necessary; and
- (2) may include measures such as:
 - (A) direct financial incentives;
 - (B) technical assistance and information, including building energy performance analyses performed by the LDC or a third party approved by the LDC;
 - (C) discounts or rebates for products; and
 - (D) weatherization for low-income customers.

(3) an LDC providing an approved ECP shall ensure that annual expenditures for low-income customers are not less than 15% of ECP portfolio budget for the program year.

~~(h)~~(g) Cost recovery mechanism. The application for approval of an ECP portfolio shall include a proposed ECP rate. Cost recovery shall be limited to the incremental costs of providing an ECP portfolio that are not already included in the then-current cost of service rates of the LDC. Administrative costs in excess of 15% of the total costs of the portfolio shall not be included in the ECP rate or recovered from customers in any way.

(1) A separate ECP rate shall be calculated for each customer class in accordance with the following formula: $ECP\ rate = (CCR\ per\ Class + BA\ per\ Class) / \text{Number of Annual Bills per Class}$, where:

(A) CCR, Current Cost Recovery, is all projected costs attributable to the local distribution company's energy conservation portfolio for the program year;

(B) BA, Balance Adjustment, is the computed difference between CCR collections by class and expenditures by class, including the pro-rata share of common administrative costs for each class for the program year and collection of the over/under recovery during the prior program year; and

(C) Class is the customer class to which the ECP rate will apply.

(2) Upon the Commission's approval of the ECP rate, the LDC shall update its residential and commercial tariffs to reflect the approved ECP rate.

~~(i)~~(h) Procedure for review. The Director of Gas Services shall ensure that applications for ECP portfolios are reviewed for compliance with the requirements of Texas Utilities Code, §§104.401-104.403 and this section. Upon completion of the review, Gas Services will prepare a written recommendation, which shall be provided to the applicant LDC.

(1) The recommendation may include:

(A) approval of the application for an ECP portfolio as filed;

(B) approval of the application for an ECP portfolio with modifications; or

(C) rejection of the application for an ECP portfolio.

(2) The recommendation shall be submitted to the Commission for decision at a scheduled open meeting.

(3) If the Commission approves an ECP portfolio at an open meeting, the LDC shall file the applicable rate schedules implementing the ECP portfolio in accordance with subsection ~~(l)~~(i) of this section.

(4) The Director of Gas Services may contract a third-party consultant to assist with identifying ways to make ECP's cost-effective in accordance with subsection (d) of this

chapter, develop a Technical Reference Manual in accordance with subsection (j) of this chapter. The third-party consultant may assist with facilitation of ECP public meetings in accordance with subsection (k) of this chapter.

(j) Technical Reference Manual. The Director of Gas Service shall develop a technical reference manual (TRM) for all approved ECP measures. The TRM will be reviewed and updated on an on-going basis to add new measures as needed. The TRM will be made available to the public via the Railroad Commission web site.

(k) Stakeholder engagement. On an annual basis the Railroad Commission shall hold a public meeting to review ECP performance, develop best practices in ECP portfolios, and allow for public engagement and education of ECP's. Railroad Commission staff and LDC's shall provide timely responses to questions posed by other participants relevant to the administration and implementation of ECP's.

(1) The following functions may also be undertaken in the annual ECP public meeting:

(A) development, discussion, and review of new ECP's being offered in Texas;

(B) review of and recommendations on annual ECP reports and programs;

(C) review of ECP portfolio performance and spending levels;

(D) periodic reviews of the cost-effectiveness methodology; and

(E) other activities as identified by commission staff.

(2) the ECP public meeting shall be held during the month of November each year. The meeting will be conducted by Commission staff.

(l)(+) Rate schedules. The LDC shall include proposed rate schedules with its application for an ECP portfolio. Each ECP rate schedule shall be made on a form approved by the Commission and made available on the Commission's website. If the LDC's proposed ECP portfolio is approved by the Commission, the approved rate schedules shall be electronically filed by the LDC in accordance with §7.315 of this title (relating to Filing of Tariffs). An ECP rate approved by the Commission at an open meeting and implemented by the LDC shall be subject to refund unless and until the rate schedules are electronically filed and accepted by Gas Services in accordance with §7.315 of this title.

(m)(+) ECP annual report.

(1) An LDC implementing an approved ECP portfolio pursuant to this section shall file an ECP annual report with the Commission. The report shall be filed each year of an approved ECP portfolio is implemented and shall be filed no later than 45 days following the end of the LDC's program year. The ECP annual report shall be in the format prescribed by the Commission and shall include the following:

- (A) an overview of the LDC's ECP portfolio;
- (B) a description of each ECP offered under the portfolio that includes the program's performance for the preceding year, actual program expenditures, [a benefit/cost analysis](#), and program results;
- (C) the LDC's planned ECPs for the upcoming year; and
- (D) schedules detailing program expenditures for the program year, actual amounts collected for the program year, and the calculation of the adjusted ECP rate for each applicable customer class.

(2) The LDC shall not implement any adjusted ECP rates until 30 days after submitting the annual report.

~~(n)(k)~~ Reimbursement. An LDC implementing an approved ECP portfolio pursuant to this section shall reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under this section. The Director shall estimate the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall reimburse the Commission for the amount so determined within 30 days after receipt of notice of the amount of the reimbursement.

Conclusion

SPEER appreciates your consideration of the important issues discussed in these comments and stands ready to participate as the proceeding moves forward.

Respectfully Submitted,

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