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PROPOSED NEW 16 TAC §7.480 § 16 TAC §7.460

The Lone Star Chapter of the Sierra Club appreciates the opportunity to provide brief comments related to a rulemaking to add certain protections to individual customers from disconnection, and to rules related to implementation of House Bill 2263, 88th Legislative Session (2023). First, we do appreciate and support the addition of measures meant to protect residential customers from disconnection during extreme weather conditions. We would note that the Commission may consider putting information on its website about federal, state and other payment assistance programs, or at least provide a link to TDHCA and other agencies that offer such services. Again, we support the additions found in *§7.460.Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency.*

In terms of the Energy Conservation Programs (7.480), the Sierra Club officially supported this legislation by Rep Drew Darby and appreciated improvements made during the session. We believe that just as electric utilities offer demand response and energy efficiency programs - paid for by ratepayers - gas distribution companies should offer cost-effective gas conservation and other programs to lower peak use during weather extremes. Nonetheless, we have some concerns that the rule does not address certain aspects to assure that conservation programs are cost-effective, actually save gas and money, and allow for public input, including the opportunity for stakeholders to formally oppose the rules. We also think some consideration should be given to existing programs required by municipalities. Gas companies should be encouraged to build on these programs by extending them to other areas without programs and increasing their offerings, not ending them or decreasing their availability.

We think the RRC would be well served by considering hiring an EMV (Evaluation, Measurement and Verification) consultant or company, much in the same way that the PUCT has hired a third-party (Tetra Tech) to assess electric utility demand response and energy efficiency programs. That process has led to the development of programs, accepted “deemed” savings and a process to verify that the savings claimed by utilities actually occur. While the legislation does not require the Commission or utilities to establish specific goals, having a process to annually assess how the programs are working would be of benefit and allow the different LDCs to share best practices.

Among the specific suggestions we have to improve the rules are:

- Provide improved notice to customers and potential intervenors in gas conservation programs;
- Include some language related to cost-effective criteria so that the Commission is required to assess LDC plans;
- Change from a fixed cost per customer to a volumetric charge, which would be more reflective of how energy efficiency programs are paid for - the more you use, the more you contribute to the fund to conserve gas.
- Consider requiring a consultant or third party contractor to perform an annual assessment.
- LDCs should be required to present their public input and outreach process, and be required to have their information put on a website
- A process for commenting on any proposed LDC conservation program should be developed, and a process to formally oppose rates through intervention should be established. While we understand this process is not a full ratemaking process, and does not include for example, recovery of costs, there still must be a public input and intervention process.
- A stakeholder input and engagement process similar to PUCT’s EEIP should be developed so that lessons learned can be assessed. Having LDCs present each year could be developed so the public can learn about the programs.
- Consider establishing some basic goals for the programs in terms of BTUs or a percentage of use, or at least require utilities to list their expectation
- Consider establishing a cap on the total amount of money that can be charged residential and commercial customers.
- Establishing a goal or at least a budgetary requirement for low-income programs.
- Clearly define a lost revenue provisions to create an expectation of what customers might be charged for lost revenue due to lower sales.

- Assure programs are designed to conserve energy and make more efficient use of gas, not expand or market gas programs

Require Better Notice to Participants. The rule requires the LDC to provide notice to consumers but does not include notice requirements for other interested parties. Therefore, Houston recommends that the rule include the requirement to provide notice of the ECP application or subsequent annual reports to the intervenors in LDC's most recent general rate proceeding.

Require Cost-Effective Criteria. The proposed rules do not seem to establish a specific standard by which to judge the cost-effectiveness of any programs. We would suggest adding some language that requires that the costs of any program be judged by a cost-effectiveness test. We would suggest adding language that allows LDCs to use either the utility cost test, total resource cost or program administrator test, which are common standards in the utility world. 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. Programs should 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.

A Societal Benefit Test could also be useful, but in general this more "liberal" test has not been used at the state level in Texas in other proceedings. Instead we would focus on the other tests.

Require a consultant or third-party to annually assess the programs

While the rule doesn't prohibit such a process, we think the program would be improved by requiring an annual EMV process. Adding a provision for the measurement, verification, and quantification of the proposed programs once implemented to monitor gas savings or benefits to customers that would inform future ECP measure and program choices. Without such a process, it will be impossible to assure that the measures included in a LDC's ECP are effectively reducing gas consumption or cost effective in reducing consumption. In the case of the PUCT, such an evaluation is required for electric utilities. Thus, the ECP should require program evaluation by a third party to verify and report on performance of the program and measures and ensure the cost effectiveness and efficacy of the program.

Create a participatory process

Require LDCs to develop a public input and outreach program for their programs, and accessible information on their website. There is language in statute requiring a public input process, but we do not see any specific language in the rule about how LDCs must list their programs, and how they can make suggestions. We would suggest requiring LDCs to list their proposed programs and plan on their website, and requiring them as part of the application process to have a public outreach and input plan.

Create a participatory stakeholder input process

The RRC should consider creating a participatory stakeholder input process, either through rules or as a general principle. As an example, 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 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.

Create clear standards to intervene for customers, cities and non-profit organizations

While we understand that statutorily this program is not akin to a larger rate case, the rules should make clear that individuals, cities and nonprofit organizations can both make comments on proposed ECPs and rates, and can intervene in a hearing. The rules are not clear here.

Create cost caps for residential and commercial customers

While the statutes does not establish specific costs caps, we believe that either initial or later, perhaps after the initial programs are established, the Commission should consider a maximum amount that could be charged to residential and commercial customers. Some reasonable amount such as $2 per month on an average use bill would be reasonable. We would again suggest such caps be established on a volumetric basis.

Create an expectation for goals, and specific goals for low-income customers

While the legislature did not establish specific goals for LDCs, we think there should be an expectation for the LDC to establish specific volumetric savings and other goals. We think this could in particular be very important for low-income customers. As a percentage of their income, low-income customers bear the highest energy burden of all Texans. We do recognize the proposed rules have included a designed weatherization for LI customer item as part of an energy conservation program (ECP) portfolio. Still, there is no requirement that this low-income program meet any specific goals or budgetary requirement. We recommend the Commission consider a minimum percentage of ECP portfolio expenditures for a program year be focused on low income customers included in the rule. We would suggest an amount such as 20 percent, which would be similar to what many electric utilities set aside for low-income customers.

Assure programs are designed to conserve energy and make more efficient use of gas, not expand or market gas programs.

We are concerned that LDC ECPs could be designed more to sell gas appliances or offer incentives to new development to hook up to gas lines, versus encouraging customers to save gas through shifting use at peaks, using more efficient appliances, or measures like insulation or even water saving devices. The ECPs should not be used as a way to lock in the use of gas in new developments, but conserve gas for residential and commercial buildings that currently utilize gas. In the same way that our eclectic utilities do not create programs that encourage fuel switching from gas to electric using ratepayer funds, we would not want the ECP programs to be used for switching from electric go gas.

Require a Volumetric Charge Versus a Fixed Charge. If the Commission authorizes a fixed charge, the ECP cost recovery mechanism for the ECP becomes regressive to smaller customers. The rule requires the development of a separate ECP rate to be charged to each customer class. That is appropriate, but the ECP rate for each customer class is a fixed monthly charge versus volumetric or therm charge. Based on the formula provided in the proposed rule, the costs of the ECP are recovered on a monthly bill basis from customers within each class. However, natural gas conservation programs reduce consumption, or the volumes/therms sold to customers. Thus, the costs should be recovered on a volumetric or therm rate basis by the ECP rate.

This would be more similar to the process at the PUCT. That process requires the development of an Energy Efficiency Cost Recovery Factor (EECRF). This is recovered through a volumetric or energy kilowatt-hour rate, not monthly customer charge. Maintaining the monthly customer rate for cost recovery would penalize or shift more costs to smaller consumers in the classes and unduly benefit larger customers within each customer class.

Require Measurement, Verification and Quantification of Proposed Programs. The proposed new rule does not include a provision for the measurement, verification, and quantification of the proposed programs once implemented to monitor actual gas savings or conservation or benefits to customers that would inform future ECP measure and program choices. Without any measurement and verification of the program measures for their performance, there is no way to ensure the measures included in a LDC's ECP are effectively reducing gas consumption or cost effective in reducing consumption. Similar to the EECRF evaluation measurement, and verification (EM&V) requirements, the ECP should require program evaluation by a third party to verify and report on performance of the program and measures and ensure the cost effectiveness and efficacy of the program.

Clearly Define Lost Revenue Provisions. Texas Utilities Code, §104.403 (c) states the LDC may apply for additional cost recovery if the LDC does not earn above the rate of return established in the current rates. Thus, the Commission may allow the company to recover an amount equal to the reduction in the company's marginal revenues due to lower sales or demand resulting from the ECP. The section and rule do not provide any formula or detailed instructions for quantifying the possible margin lost from conservation. The allowance for increased cost recovery should be quantified and a detailed formula should be provided for calculating the lost margin directly due to the ECP.

Conclusion

The Lone Star Chapter of the Sierra Club hopes these comments and recommendations will be considered, which we believe will improve the proposed rules. We would be happy to provide a redline of the proposed rule if needed.