

**PROJECT NO. 33487**

**AMENDMENTS TO ENERGY § PUBLIC UTILITY COMMISSION**  
**EFFICIENCY RULES AND TEMPLATES §**  
**§ OF TEXAS**

**COMMENTS BY PUBLIC CITIZEN, ENVIRONMENTAL DEFENSE,  
AND SUSTAINABLE ENERGY & ECONOMIC DEVELOPMENT COALITION**

The undersigned organizations representing various environmental interests – cooperating specifically to support public policies that protect human health and our shared environment through increased end-use energy efficiency and distributed renewable energy supply – commend the PUC staff for their generally thorough and clear rewrite of the energy efficiency rule to reflect HB 3693. These Comments consist of the following: responses to staff questions, expression of priorities that should guide the Commission’s rule revisions, and specific comments and recommendations on sections of the rule. We also urge the Commission to initiate work on the studies required by HB 3693 to allow time for discussion, review and comment by interested parties.

**Responses to Staff Questions**

- 1. Should §25.181 specify a third party to advertise or act as an informational clearinghouse for the utilities’ energy efficiency programs? If so, who should that third party be and how should this function be funded?*

We do not believe that the Texas statutory framework leaves much operating space for a third party administrator for the regulated utilities’ efficiency programs. The responsibility and resources for advertising should not be separated from the limited reward/risk position of the utility. This assures that the regulated utility retains sufficient motivation and flexibility of action to earn a performance bonus and avoid an administrative penalty. However, a

clearinghouse function, to make information on programs offered in each area of the state accessible to the public – and therefore to potential competitive energy efficiency service providers – could be readily developed by the commission with information already required to be reported.

On a related issue, it should be a requirement on retail electric providers to use their direct customer access to periodically provide notice of availability of all energy efficiency programs within a utility service territory. This EEIP information requirement is even more important if an Energy Efficiency Cost Recovery Factor will appear on customers' bills.

2. *Should the calculation of avoided costs include avoided transmission costs?*

Yes. A goal of the energy efficiency legislation, stated in public testimony as well as in author/sponsor comments in laying out the bill, is to increase the deployment of energy efficiency. Testimony referred to avoiding both new generating capacity and new transmission and distribution capacity. In order to ensure that adequate investments are encouraged in energy efficiency, the cost effectiveness standard should reflect avoided costs of the additional transmission and distribution in the electricity cost avoided. A reasonable way to do this for residential and commercial customers is to use the **retail** costs avoided by the customer. Retail rates of electricity maintained by the commission for public comparisons in its *Power To Choose* web site ([www.powertochoose.org](http://www.powertochoose.org)) could be used for this purpose for the residential programs in the ERCOT area. In addition, we suggest that this avoided cost (retail cost avoided) be calculated by utility service area. Commercial retail rates can be determined by escalating the MCPE averages by adders that account for the retailers' additional costs and transmission and distribution rates. This would have the effect of allowing higher total program budgets and higher incentive payments especially in those areas which have the greatest difficulty attracting

energy efficiency service providers to reach rural or widely dispersed customers and result in a more realistic value of the economic savings derived from the program.

### **Priorities for the Commission's Rule Revisions**

In addition to the above responses to specific staff questions, we wish to express several priorities that should guide the revision of the proposed rules.

1. Cost-effectiveness standard. The avoided cost calculation should include avoided cost of transmission and distribution and should reflect avoided customer cost (retail) as closely as practicable.
2. Energy Efficiency Goal. The legislation establishes minimum goals and a requirement to study energy efficiency potential and report by January 2009 whether higher minimum goals (30% by 2010 and 50% by 2015) are achievable. We think that the study should be expanded to analyze the maximum achievable amounts of efficiency over a longer period of time, and include investigation of appropriate market signals and milestones to assure orderly development. The Western Governor's Association 2006 Energy Efficiency Task Force found that adoption of best practices and policies for energy efficiency alone could reduce load growth by about 75 percent over the next 15 years ( by 2020).<sup>1</sup> A recent Optimal Energy study found that 80% of Texas' projected energy needs can be met by 2021 through a combination of energy efficiency, demand response and demand-side

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<sup>1</sup> Clean and Diversified Energy Initiative, Western Governors' Association, Energy Efficiency Task Force Report, Executive Summary, January, 2006.

renewable energy and CHP at costs less than that of building coal plants.<sup>2</sup> The American Council for an Energy- Efficient Economy, ACEEE, recently found that Dallas could meet 101% and Houston could meet 76% of projected load growth through energy efficiency, combined heat and power and onsite renewable energy generation by 2023, saving 24% of their demand.<sup>3</sup> Some states are already meeting 100% of their load growth and more through efficiency measures. A new report, *Vision for 2025: Developing a Framework for Change*<sup>4</sup>, released in November 2007 by the National Action Plan for Energy Efficiency, outlines a goal to “achieve all cost-effective energy efficiency by the year 2025.” The report projects that the efficiency resource available may be able to meet 50 percent or more of the expected load growth over this time frame. Since we have a head start in Texas, we can do better than that. The commission and its rules should ensure that minimum efficiency goals are reset annually until they more accurately reflect this potential – and award financial incentives (performance bonus) for efforts that accelerate projected savings.

3. Differential Incentives. The flexibility allowed to utilities in establishing incentive levels should encourage or require higher incentives to be paid for hard-to-reach customers, underserved areas, innovative and emerging technologies and market transformation, especially as regards renewable DSM (customer site-based renewable energy installations).

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<sup>2</sup> Power to Save – An Alternative Path to Meet Electric Needs in Texas, Produced by Optimal Energy, Inc., Report commissioned by the Natural Resource Defense Council and Ceres, January 2007.

<sup>3</sup> American Council for an Energy-Efficient Economy, Role of Energy Efficiency and Onsite Renewables in Meeting Energy and Environmental Needs in the Dallas/Fort Worth and Houston/Galveston Metro Areas, September 2007.

<sup>4</sup> Vision for 2025: Developing a Framework for Change, A Report by the National Action Plan for Energy Efficiency, November, 2007.

4. Market Transformation. Incorporate the recommendation of the Summit Blue Report<sup>5</sup> to measure the impact of market transformation programs over a multi-year period, with multi-year targets, and allow incentives to be evaluated over the market transformation period rather than by single year results. We believe that achieving the available potential demand and energy reduction will require strategic market interventions on several fronts and a degree of mutual support between public policies affecting efficiency. We recommend addition of specific language intended to provide flexibility for utility programs to support adoption and implementation of state and local advanced building energy codes and efficiency standards. We also believe that market transformation programs are critical to move new construction toward net zero energy buildings.<sup>6</sup> We request that the commission approve and encourage net zero energy buildings market transformation program options. HB 3693 specifically includes, and the proposed rule would permit such programs. We request that the procedures established by the commission for evaluating market transformation programs consider environmental and reliability benefits as well as reduced costs to customers through reduced demand, energy savings and relief of congestion. Also, we respectfully request the commission to consider how it may cause a periodic review or workshop of best practices and program ideas on an annual or biennial basis.
  
5. Industrial Participation. The removal of industrial customers from the energy efficiency baseline has the unintended consequence of reducing the state targets and resource calculations – although the clear legislative intent was to increase both of these. From the point of view of environmental and economic impacts and overall system operation, we

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<sup>5</sup> “Independent Audit: Texas Energy Efficiency,” Final Report to Public Utility Commission of Texas, Summit Blue, September 6, 2006.

<sup>6</sup> This goal, a building so efficient that it is able to balance its annual energy requirements with on-site renewable energy production, is incorporated in targets adopted by the City of Austin (zero-net capable by 2015); the US Department of Energy Building America Program (zero net energy homes equal or more economical than conventional construction by 2025); and Western Governors Association, US Conference of Mayors, AIA, ASHRAE and others (zero net energy buildings required by code by 2030).

are all in this together -- and realizing the state's energy efficiency potential will require the participation of industrial customers. Recognizing that a few industrial customers successfully lobbied to be excluded from participation in the state's efficiency goals and programs, we think that limiting this exclusion to those customers taking service at transmission voltage for industrial processes is an appropriate resolution. We support the eligibility of non-profit and governmental entities for the full range of energy efficiency programs.

6. Municipal and Other Public Partnerships. As a general principle, we believe that the opportunities for public benefit from cooperation between utilities and local government entities, especially cities and counties, justify some recognition in the rule and some flexibility for cooperatively planning mutually supporting policies and programs. This could be set-asides for delivering weatherization or other standard offer programs to target low-income neighborhoods, market transformation programs to improve compliance and enforcement of existing codes and standards or to support adoption of higher standards, or programs directed toward improving the efficient use of electricity in publicly owned facilities. This may be particularly useful in reaching hard-to-reach and underserved areas.
7. Demand response – We suggest that a definition of demand response be included in the rule and that some allowance be made for these programs. We do not believe this should include reliability programs administered by the independent system operator, nor should incentives be paid for “market signal” time-of-use rate programs offered by the retail electric providers. The latter are valuable, but should be fairly compensated by the unregulated market. As far as practicable, we would prefer that utility-based demand

response programs employ long term contracts for an aggregate response consistent with the average life of efficiency measures, and encourage demand reductions over deferral of consumption.

8. Reporting consistency – We recommend that the commission prescribe the reporting format and data transmittal to be followed by public entities that are required to report to SECO. The data should be gathered in a consistent manner to enable meaningful and timely reporting to the Legislature and quantification by ERCOT.

### **Comments and Recommendations on Specific Sections**

Following are comments and recommendations with respect to specific sections of the rule:

1. 25.181 (c) Definitions. We suggest that “demand response” be added to definitions, as it has significant untapped potential in residential and commercial markets and will be important in conversations going forward, especially with availability of advanced meters. It would be sufficient for the definition to state “See ‘load management’.” Add new definition (6) “Demand response – see ‘Load management’” and renumber remaining items.
2. 25.181 (c) Definitions. In the definition of “load control,” we believe that reference to the independent system operator is potentially misleading. Revise current definition (19) as follows: 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~~ electric utility or that are controlled by the customer, with the objective of producing energy or demand savings. Load control activities of the independent system operator are not subject to this rule.

3. 25.181 (d) Cost-effectiveness standard. A goal of the energy efficiency legislation, stated in public testimony as well as in author/sponsor comments in laying out the bill, is to increase the deployment of energy efficiency as an alternative to either capacity shortfalls or additional emissions affecting air quality. Testimony referred to avoiding both new generating capacity and new transmission capacity. In order to ensure that adequate investments are encouraged in energy efficiency, the cost effectiveness standard should reflect avoided costs of the additional transmission and distribution in the retail electricity cost avoided. The purpose of this should be to increase available budget for energy efficiency programs and incentives.
4. Paragraph 25.181(d)(2) and 25.181(d)(2)(B) should be amended as follows:
  - (2) 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 retail electricity costs.
  - (B) The initial avoided cost of ~~energy~~ electricity is ~~\$0.055~~ \$0.12 cents/kWh for residential programs and \$0.10 for commercial programs. The avoided cost of energy shall be adjusted annually to the monthly average, by service area, of the residential offers for a 12 month term shown on the commission's Power to Choose website. The commercial cost shall be adjusted annually to reflect the market clearing price for each zone in ERCOT for balancing energy for the previous calendar year, adjusted as follows. The average MCPE shall be escalated by adders for retail mark-up of 2 cents and the average TDSP charges by service territory based on the commission approved tariff for secondary service assuming a low-load factor customer profile.



5. 25.181 (h) Energy efficiency performance bonus. In order to encourage long term energy reductions and avoid over-dependence on short-term solutions, there should be some limitation on demand response strategies. Edit paragraph (3) to read: “A utility that exceeds 100% of its demand reduction goal (DRG), *and achieves at least 80% of its total demand savings from programs that save both demand and energy*, 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 a 20% net benefits bonus.”  
  
Insert a new paragraph (5) as follows and renumber the remaining paragraph: “*A utility that meets at least 120% of its demand reduction goal with at least 10% of its savings achieved through Renewable DSM Technology programs shall receive an additional bonus equal to 10% of the bonus calculated under paragraph (3) of this subsection.*”
6. 25.181 (i) between (E) and (F): Delete “and” at the end of (E); add new (F) “*funding independent verification of program results ordered by the commission; and*” and renumber remaining.
7. 25.181 (l) Requirements for standard offer and market transformation programs. In subparagraph (1)(F), change “may” to “shall.”
8. 25.181 (l) Requirements for standard offer and market transformation programs. In subparagraph (1)(F), Add a new item “*(iii) evidence of installation best practices;*” and renumber remaining.
9. 25.181 (l) Requirements for standard offer and market transformation programs. Insert new paragraph (5) as follows, and renumber remaining paragraph: “A market

transformation program, including a pilot program, that is estimated to cost \$500,000 or more must select an energy efficiency service provider through competitive solicitation .”

10. 25.181 (l) Requirements for standard offer and market transformation programs. In existing paragraph (5) paragraph, renumbered (6), replace the words “from receiving” with “to receive.” Affected phrase should read “A load-control standard offer program shall not permit an energy efficiency service provider ~~from receiving~~ to receive incentives under the utility program for the same....”
11. 25.181 (k) Market transformation programs. Add/edit after the first sentence to read: *“Market transformation programs may be tracked, and cost-effectiveness determined, over multiple years with multi-year targets.* Market transformation programs shall be designed to obtain energy savings or peak demand reductions beyond savings that ~~would be~~ are being achieved through compliance with existing building codes and equipment efficiency standards or standard offer programs. *Market transformation programs may be designed to improve compliance with, or enforcement of newly adopted state or local building energy codes for a transition period defined by a baseline study or by specific agreement with the adopting authority. Market transformation programs may also be designed to increase participation in standard offer programs.* Utilities should cooperate with the Retail Electric Providers, ~~where possible, leverage existing industry-recognized programs that have the potential to reduce demand and energy consumption in Texas~~ consider statewide administration where appropriate and, where possible, leverage existing industry-recognized programs that have the potential to reduce demand and energy consumption in Texas.”
12. 25.181 (m) Energy efficiency plans and reports: Add new paragraphs (2), (3) and (4):

(2) In the Annual Energy Efficiency Report that is required to be filed by each participating utility in 2008, each utility shall provide the commission with any information and data necessary for the commission's report to the legislature due by January 15, 2009. Each utility shall include in its report:

- (A) an assessment of energy efficiency potential achievable in its service area under the current cost-effectiveness criteria, and programs needed to achieve an energy efficiency goal of at least 30% of demand growth by December 31, 2010, and 50% of demand growth by 2015 or sooner;
- (B) an assessment of the maximum achievable amounts of efficiency in its service area by 2024;
- (C) an assessment of available energy efficiency service trades, skills and training resources impacting achievement of potential;
- (D) an assessment of the potential for combined heating and power technology applications in its service area;
- (E) an assessment of alternatives to utility funding of energy efficiency in its service area;
- (F) an assessment of the need for education programs to be conducted or caused to be conducted by the commission regarding the provision of energy efficiency services;
- (G) an estimate of the costs and rate impacts of meeting higher energy efficiency goals in (a) and (b);

(H) an assessment of participation by retail electric providers in delivery of energy efficiency services within its service area, identifying any potential barriers.

(3) The commission shall report the following to ERCOT for inclusion in the annual long range forecast of future capacity, demand and reserves:

(A) the projected energy savings and potential demand impacts for each entity in the ERCOT region;

(B) the findings of SECO's ongoing renewable energy potential study;

(C) the findings of SECO's analysis of actual and potential savings from implementation of updated and more stringent building codes in its long-term demand forecast;

(D) the reports of the municipal and cooperative electric utilities on efficiency potential and achievements submitted to SECO;

(E) the report on the potential for combined heat & power (CHP).

(4) The Commission shall promulgate a standard format for reporting usage information required by this section.

13. 25.181(s) Customer protection. Change subparagraph (1)(I) as follows: “The final arrangement between the energy efficiency service provider and customer, including an estimate of energy cost savings and an approximate payback period based on that estimate, 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;”