

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter H. ELECTRICAL PLANNING.

DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES.

§25.181. Energy Efficiency Goal.

- (a) **Purpose.** The purposes of this section are to ensure that:
- (1) electric utilities administer energy savings incentive programs in a market-neutral, non-discriminatory manner, and do not provide competitive energy efficiency services, except as permitted in §25.343 of this title (relating to Competitive Energy Services);
 - (2) all customers, in all customer classes, have a choice of and access to energy efficiency alternatives that allow each customer to reduce energy consumption and energy costs; and
 - (3) each electric utility provides, through market-based standard offer programs, or limited, targeted market-transformation programs, or both, incentives sufficient for retail electric providers and competitive energy efficiency service providers to acquire additional cost-effective energy efficiency savings equivalent to at least 10% of the electric utility's annual growth in demand by January 1, 2004, and each year thereafter, as mandated by the Public Utility Regulatory Act (PURA) §39.905.
- (b) **Application.** This section applies to electric utilities, as that term is defined in §25.5 of this title (relating to Definitions). This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1) Affiliate —
 - (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider;
 - (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
 - (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider;
 - (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
 - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or
 - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or
 - (E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
 - (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider;
 - (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph;
 - (H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or
 - (I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

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- (2) **Calendar year** — January 1 through December 31.
- (3) **Competitive energy efficiency services** — Energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).
- (4) **Deemed savings** — A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.
- (5) **Demand** — The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- (6) **Demand savings** — A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or average over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- (7) **Demand side management (DSM)** — Activities that affect the magnitude or timing of customer electrical usage, or both.
- (8) **Energy efficiency** — Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.
- (9) **Energy efficiency measures** — Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.
- (10) **Energy efficiency project** — An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.
- (11) **Energy efficiency service provider (EESP)** — A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or large commercial customer, if the person has executed a standard offer contract.
- (12) **Energy savings** — A quantifiable reduction in a customer's consumption of energy.
- (13) **Existing contracts** — Energy efficiency contracts in effect prior to September 1, 1999, that expire on or after September 1, 1999.
- (14) **Growth in demand** — The annual increase in load, measured on the transmission system, in the Texas portion of an electric utility's service area at time of peak demand, as measured according to subsection (f) of this section.
- (15) **Hard-to-reach customers** — Customers with an annual household income at or below 200% of the federal poverty guidelines.
- (16) **Incentive payment** — Funding that reduces the cost of installing energy efficiency measures, or provides a service or benefit that would otherwise not be available to the end-use customer for installing energy efficiency measures.
- (17) **Inspection** — Onsite examination of a project to verify that a measure has been installed and is capable of performing its intended function.
- (18) **Large commercial customers** — Retail commercial or industrial customers with a demand that exceeds 100 kW. For the purpose of this subsection, a customer's load within a service territory that is under common ownership shall be combined.

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- (19) **Load control** — Activities that place the operation of electricity-consuming equipment located at an electric user's site under the control or dispatch of an energy efficiency service provider, an independent system operator, or other transmission organization.
 - (20) **Load factor** — The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.
 - (21) **Load management** — Load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period.
 - (22) **Market transformation program** — Strategic efforts to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services, and practices, as more fully described in subsection (k) of this section.
 - (23) **Measurement and verification (M&V)** — Activities intended to determine the actual kWh and kW savings resulting from energy efficiency projects as more fully described in subsections (l) and (m) of this section.
 - (24) **Off-peak period** — Period during which the load on an electric utility system is not at or near its maximum volume. For the purpose of this section, the off-peak period will be all hours from October 1 through April 30.
 - (25) **Peak demand** — Electrical demand at the time of highest annual demand on the utility's system, measured in 15 minute intervals.
 - (26) **Peak demand reduction** — Peak demand reduction on the utility system during the utility system's peak period, calculated as the maximum average demand reduction over a period of one hour during the peak period.
 - (27) **Peak period** — Period during which a utility's system experiences its maximum demand. For the purposes of this section, the peak period is from May 1 through September 30, during the hours between 1:00 p.m. and 7:00 p.m., excluding federal holidays and weekends.
 - (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 (kWh), electrical demand (kW), or both.
 - (29) **Small commercial customers** — Retail commercial customers with a maximum demand that does not exceed 100 kW.
 - (30) **Standard offer contract** — A contract between an energy efficiency service provider and a participating utility specifying the standard payment based upon the amount of energy and peak demand savings achieved through the installation of energy efficiency measures at electric customer sites, the measurement and verification protocols, and other terms and conditions, according to the program requirements.
 - (31) **Standard offer program** — A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers. For the purposes of this section, the targeted weatherization programs under PURA §39.903 (relating to the System Benefit Fund) to be administered by the Texas Department of Housing and Community Affairs shall be considered a standard offer program.
- (d) **Procedure for determining affiliate status.**
- (1) The utility shall have the burden to investigate each energy efficiency service provider that participates in a standard offer or market transformation program to determine whether such energy efficiency service provider is an affiliate of any other energy efficiency service provider that has submitted a project.

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- (2) In any proceeding to determine affiliate status, the Energy Efficiency Service Provider (EESP) shall have the burden of proof.
 - (3) Upon discovering evidence that an energy efficiency service provider is affiliated with another energy efficiency service provider, the utility shall notify such energy efficiency service providers in writing and shall include evidence supporting the allegation with the notification; the utility shall file this notification together with supporting evidence with the commission. If the utility relies upon an affidavit to demonstrate the existence of an affiliate relationship, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and Texas cases construing this rule.
 - (4) Upon discovering evidence that an energy efficiency service provider is affiliated with another energy efficiency service provider, any party (complainant) may file such claim, together with supporting evidence, with the commission. If the complainant relies upon an affidavit to demonstrate the existence of an affiliate relationship, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and Texas cases construing this rule. A complainant shall notify the energy efficiency service provider and utility in writing and include all supporting evidence with the notification.
 - (5) Upon receipt of a utility's or complainant's notification, the energy efficiency service provider will timely respond to the utility's or complainant's allegations and file such response, together with documentation supporting the response, with the commission. If the energy efficiency service providers rely upon an affidavit to contradict any of the utility's evidence, the affidavit shall conform to Texas Rules of Civil Procedure §166a(f) and all Texas cases construing the rule.
 - (6) All filings submitted pursuant to paragraphs (3), (4), and (5) of this subsection will be used as evidence by the commission to render a decision on affiliate status.
- (e) **Cost-effectiveness standard.**
- (1) **Cost-effectiveness.** An energy efficiency project is deemed to be cost-effective if the cost of the project to the utility is less than or equal to the benefits of the project. The cost of a project includes the cost of incentives, the measurement and verification costs, and program administrative costs. The benefits of the project include the value of the purchased electrical energy saved, the value of the corresponding generating capacity requirements, and associated reserves displaced or deferred by the project. The present value of the project benefits shall be calculated over the projected life of the measure, not to exceed ten years.
 - (2) **Avoided cost.** Incentives shall be set as a percentage of the avoided cost. The avoided cost shall be the estimated cost of a new gas turbine.
 - (A) Initially, the avoided cost of capacity savings shall be set at \$78.5/kW saved annually at the customer's meter.
 - (B) Initially, the avoided cost energy savings shall be set at 2.68 cents/kWh saved annually at the customer's meter.
 - (C) The commission may adjust the cost effectiveness standard prescribed in subparagraphs (A) and (B) of this paragraph by using an environmental adder up to 20% for targeted projects conducted in an area that is not in attainment for air emission that is subject to the regulations of the Texas Commission on Environmental Quality (TCEQ). The environmental adder is available only for targeted energy efficiency projects that would not be implemented without the adder.

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- (f) **Annual growth in demand and energy efficiency goal.** Electric utilities shall meet the minimum mandate of 10% reduction in growth in demand through energy efficiency savings by January 1, 2004. Each utility is required to meet, at a minimum, 5.0% of its growth in demand through energy efficiency by January 1, 2003. Each utility's energy efficiency goal shall be specified as a percent of its historical five-year average rate of growth in demand, calculated as follows:
- (1) Each year's historical demand growth data shall be adjusted for weather fluctuations, using weather data for the most recent ten years. The utility's growth in 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 for the immediately preceding five years.
 - (2) The goal for energy-efficiency savings for a year is calculated by applying the percentage goal, prescribed in this subsection, to the average rate of growth in demand, based on the average of the five preceding annual growth rates. The baseline for calculating demand growth shall be reset each year.
 - (3) A utility may submit for commission approval an alternative method to calculate its growth in demand, for good cause.
 - (4) The utility, subject to commission approval, may increase its energy efficiency goal for targeted projects conducted in an area that is an affected county or a nonattainment area, as defined in §25.182 of this title (relating to the Energy Efficiency Grant Program).
- (g) **Basic program elements.** Electric utilities shall administer energy efficiency programs designed to achieve reductions in the customer's purchased energy consumption or demand, or both, and lower energy costs through the implementation of standard offer programs or limited, targeted market transformation programs.
- (1) Each electric utility shall submit energy efficiency plans and reports to the commission in accordance with subsection (h) of this section.
 - (2) Incentive payments shall be made under either standard offer contracts or market transformation contracts, or both, for kW and kWh saved. The amount of the incentive payment may vary by customer class in order to effectively reach all customer classes, including hard-to-reach customers. Market transformation programs may offer other incentives or benefits as approved by the commission.
 - (3) Customer protection provisions shall be included in all electric utilities' energy efficiency programs in accordance with subsection (o) of this section.
 - (4) All projects performed under a standard offer program shall be subject to inspections, measurement, and verification in accordance with subsection (l) of this section. Energy and peak demand savings under market transformation projects shall be verified in accordance with subsection (k) of this section.
 - (5) The commission shall establish an implementation project, as described in subsection (n) of this section, to address program design, implementation and administration, and make recommendations to the commission.
- (h) **Energy efficiency plans.**
- (1) **Schedule.** Each electric utility shall by April 1, 2001, and annually thereafter, file its updated energy efficiency plan and an annual energy efficiency report as described in paragraph (4) of this subsection.
 - (2) **Energy efficiency plan.** Each electric utility's energy efficiency plan shall describe how the utility intends to achieve the legislative mandate and the requirements of this section. Beginning January 1, 2002, the plan shall be on a calendar year cycle and shall project at least a four-year period. The plan shall propose an annual budget sufficient to reach the 10% legislative goal by January 1, 2004, and annually thereafter. Each electric utility's energy efficiency plan shall include:

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- (A) A projection of the utility's annual growth in demand based on actual historical data calculated using the methodology and corresponding energy and peak demand savings goal to be achieved under the plan, as defined in subsection (f)(2) of this section.
- (B) A description of existing contract obligations and an explanation of the extent to which these contracts will be used to meet the utility's annual energy efficiency requirements. Only additional energy and peak demand savings achieved as a result of projects installed after the effective date of this section may count towards the amount of energy and peak demand savings actually achieved on an annual basis.
- (C) An estimate of the energy and peak demand savings to be obtained through each separate standard offer program, market transformation program, or both.
- (D) The proposed design and plan for each of the utility's standard offer programs and market transformation programs, including measurement and verification plans when appropriate. For statewide standard offer programs or market transformation programs previously approved by the commission, the program may simply be identified with a description of how it will be implemented in the service territory of the utility. Programs not previously approved by the commission should be presented in detail, including baseline studies, for review and approval.
- (E) A description of the customer classes targeted by the utility's energy efficiency programs, specifying the size of the hard-to-reach, residential, small commercial, and large commercial and industrial customer classes, and the methodology used for estimating the size of each customer class.
- (F) The incentive levels for each customer class shall be a percentage of the avoided cost set forth in subsection (e) of this section. The incentive levels for individual programs shall be set by each utility subject to the incentive ceilings outlined below and other provisions of this section. Utilities may adjust incentive levels for individual programs during the program year, but such adjustments must be clearly publicized in the program application guidelines. Until the commission adopts different ceilings for incentive levels, incentive levels for standard offer programs may not exceed:
 - (i) 100% for hard-to-reach customers.
 - (ii) 50% for other residential and small commercial customers.
 - (iii) 35% for large commercial and industrial customers.
 - (iv) 15% for load management programs.
- (G) The proposed annual budget required to implement the utility's standard offer program, market transformation program, or both, broken out by program for each customer class, including hard-to-reach customers, and the amount for the small contractor set-aside pursuant to subsection (i)(4) of this section. The proposed budget should detail incentive payments, utility administrative costs, including the independent M&V expert, and the other administrative functions pursuant to subsection (i)(1) of this section, and the rationale and methodology used to estimate the proposed expenditures.
- (H) Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.
- (I) Savings achieved through load management programs, including interruptible rates, may not exceed 15% of the utility's total demand reduction goal.
- (J) A discussion of the types of informational activities the utility plans to use to encourage participation in standard offer programs or market transformation programs, including the manner in which utilities will use to post notice of standard offer programs, market transformation programs, and any other facts that may be considered when evaluating a project.

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- (3) Prior to the implementation of the energy efficiency program, the commission shall:
 - (A) Approve market transformation programs and standard offer programs.
 - (B) Review and approve measurement and verification plans, including deemed savings in accordance with the standard offer or market transformation program guidelines. Projects that require installation-specific measurement and verification may have a measurement and verification process approved by the utility. At the utility's option, the measurement and verification process or deemed savings may be submitted for pre-approval by the commission.
- (4) **Annual energy efficiency report** The annual energy efficiency report shall provide information listed below:
 - (A) The utility's projected annual growth in demand calculated using the methodology prescribed in subsection (f) of this section.
 - (B) The corresponding energy and peak demand savings goal for the utility, as defined in subsection (f)(2) of this section, expressed in kW and kWhs, for the current calendar year.
 - (C) The utility's actual annual growth in demand for the preceding calendar year.
 - (D) The most current information available comparing projected savings to reported savings for each of the utility's standard offer programs and market transformation programs.
 - (E) The most current information available comparing reported savings and verified achieved savings as verified by the independent M&V expert for all programs.
 - (F) The most current information available comparing the baseline and milestones to be achieved under market transformation programs.
 - (G) A statement of funds expended by the utility for incentive payments, program administration pursuant to subsection (i)(1) of this section, including inspections, and the independent M&V expert.
 - (H) A statement of any funds that were committed but not spent during the year, by project.
 - (I) Any decreases by more than 10% in total program cost, with an explanation for the decrease in cost.
 - (J) Any remaining program funds that were not committed during the year.
 - (K) The most current information available of ongoing and completed energy efficiency projects by customer class that includes:
 - (i) Number of customers served by each project.
 - (ii) Project expenditures.
 - (iii) Verified energy and peak demand savings achieved by the project, when available.
 - (L) A description of proposed changes in the energy efficiency plans.
 - (M) Any other information prescribed by the commission.
- (i) **Utility administration.** Utilities shall administer standard offer programs, market transformation programs, or both, to meet the requirements of the energy efficiency goal in PURA §39.905. The cost of administration may not exceed 10% of the total program costs.
 - (1) Administrative costs include costs necessary for utility conducted inspection and the independent M&V expert as required under subsections (l) and (m) of this section, and the costs necessary to meet the following requirements:
 - (A) Conduct informational activities designed to explain the standard offer programs and market transformation programs to energy efficiency service providers and vendors.
 - (B) Review and select proposals for energy efficiency projects in accordance with the guidelines of the standard offer programs under subsection (j) of this section, and market transformation programs under subsection (k) of this section.

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- (C) Inspect projects to verify that measures under a standard offer contract were installed and capable of performing their intended function, as required in subsection (1) of this section, before final payment is made. Such inspections shall comply with PURA §39.157 and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).
- (D) Review and approve energy efficiency service providers' savings monitoring reports for both standard offer contracts and market transformation contracts.
- (E) Any other costs as necessary and justifiable for successful program implementation.
- (2) A utility administering a standard offer program or a market transformation program shall not be involved in directly providing customers any energy efficiency services, including any technical assistance for the selection of energy efficiency services or technologies, unless the customer is a large commercial customer and the activities are limited to the outreach activities outlined in paragraph (1)(A) of this subsection, or unless a petition for waiver has been granted by the commission pursuant to §25.343 of this title. A utility may provide interested parties a list of EESPs who have participated or are currently participating in the utility's energy efficiency programs. In providing the list, the utility may not endorse or favor any EESP.
- (3) The utility shall compensate energy efficiency service providers for energy efficiency projects in accordance with the contract and the requirements of this section. An individual energy efficiency service provider and its affiliates may not receive more than 20% of the total incentive payments available for a particular standard offer program, unless the program is not fully subscribed after 180 days, and the utility has demonstrated that it has performed adequate outreach.
- (4) The utility, in its energy efficiency plan pursuant to subsection (h)(2) of this section, shall have a funding set-aside in an amount appropriate to the utility's program budgets for hard-to-reach or residential and small commercial customers for small projects. The commission may adjust the allocation of the set-aside for individual utilities at any time. Under this funding set-aside:
 - (A) Each incentive request for the hard-to-reach, residential and small commercial customer projects may not exceed \$5,000.
 - (B) A utility may petition the commission for waiver of this limitation if the utility can demonstrate that the utility would not be able to meet its annual energy savings goal under this limitation.
- (5) Incentive reserve requests for projects for individual sites or customers exceeding \$10,000 shall require a signed affidavit of participation by the project host.
- (6) Projects or measures under either the standard offer or market transformation programs are not eligible for incentive payments or compensation if:
 - (A) A project would achieve demand reduction by eliminating an existing function, shutting down a facility, or operation, or would result in building vacancies, or the re-location of existing operations to locations outside of the facility or area served by the participating utility.
 - (B) A measure would be installed even in the absence of the energy efficiency service provider's proposed energy efficiency project. For example, a project to install measures that have wide market penetration would not be eligible.
 - (C) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.
 - (D) The project involves the installation of self-generation or cogeneration equipment, except for renewable DSM technologies.

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- (7) **Cost recovery and unspent funds.** Funds for achieving the energy efficiency goal will be included in each utility's transmission and distribution rates. Each utility shall track its energy efficiency expenditures separately from other expenditures and report these in their annual energy efficiency report. Funds not spent within a given year shall be considered as a source of funding for the following year, and the commission shall consider utilities' requests to roll over unspent funds on a case-by-case basis in connection with the utilities' annual energy efficiency report filing under subsection (h)(4) of this section.
- (8) Each utility shall meet its energy efficiency goal annually through the acquisition of cost-effective energy and demand savings, in accordance with this section . A utility shall be deemed to have met its energy efficiency goal when the utility achieves a 10% reduction in growth in demand calculated as prescribed in subsection (f) of this section.
 - (A) Funds approved in the utility's rates for the purpose of the energy efficiency goal under PURA §39.905 shall be used exclusively to acquire cost-effective energy efficiency savings, even if such savings exceed the utility's energy efficiency goal.
 - (B) Notwithstanding the costs approved in the utility's cost of service rates, the utility must acquire cost-effective energy efficiency savings equivalent to at least 10% of the utility's annual growth in demand by January 1, 2004, and each year thereafter, by administering programs consistent with this section.
- (j) **Standard offer programs.** A utility's standard offer program shall be implemented through standard offer contracts. The standard offer contract shall describe the terms and conditions according to the requirements of this section for energy efficiency service providers for the delivery of energy efficiency services. Standard offer contracts will be available to any energy efficiency service provider that satisfies the contract requirements within the commission approved program parameters.
 - (1) Statewide standard offer programs shall be developed and submitted to the commission for approval. Utilities may use the commission approved statewide standard offer programs without further commission review. Other standard offer programs will require commission review for approval.
 - (2) A utility's standard offer program shall meet the following requirements:
 - (A) A standard offer program shall be developed to address each customer class. Specific different programs may be developed to address hard-to-reach customers. All customer classes must have access to an equitable share of the incentive funds.
 - (B) Each standard offer program will offer a standard incentive payment and specify a schedule of payments. The incentive shall be set at a level sufficient to meet the goals of the program and shall be consistent with the ceiling under subsection (h)(2)(F) of this section, or any revised ceiling adopted by the commission. The standard offer incentive payments may include both payments for kW and kWh savings, as appropriate. Except for load management projects, the incentive payment may vary by customer class, but not within a customer class.
 - (C) Peak demand and energy savings for each project shall be identified in the proposals the energy efficiency service providers submit to the utility.
 - (D) Standard offer programs shall not limit eligibility to specific technologies, equipment, or fuels, but shall be neutral with respect to such factors. Energy efficiency projects may lead to switching from electricity to another energy source, provided the energy efficiency project results in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Switching from gas to electricity is not allowable under the program.

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- (E) Standard offer programs may require maximum load factor criteria for project eligibility.
 - (i) Increasing load factors may be subject to a decreasing incentive scale.
 - (ii) Load factor caps and corresponding incentive scales must be clearly publicized in the program application guidelines.
 - (F) All projects must result in a reduction in purchased energy consumption, or peak demand, or both, and a reduction in energy costs for the end-use customer.
 - (G) Comprehensive projects incorporating more than one energy efficiency measure shall be encouraged. Lighting measures shall be limited to 65% of the savings of each project. When a project consists of lighting measures only, compensation shall not exceed 65% of the ceiling for that class under subsection (h)(2)(F) of this section.
 - (H) Projects shall result in consistent and predictable energy and peak demand savings over a ten-year period.
 - (I) A utility shall not condition the provision of any product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the utility or its competitive affiliate, except that only customers taking transmission and distribution services from a utility can participate in its energy efficiency programs.
 - (J) Projects shall disclose potential adverse environmental or health effects associated with the energy efficiency measures to be installed.
 - (K) Projects shall include the procedures for measuring and reporting the energy and peak demand savings from installed energy efficiency measures, consistent with the requirements under subsection (l) of this section.
 - (L) Standard offer programs shall provide a complaint process that allows:
 - (i) The energy efficiency service provider to file a complaint against a utility.
 - (ii) A customer to file a complaint against an energy efficiency service provider. The utility may use customer complaints as a criterion for disqualifying energy efficiency service providers from participating in the program.
 - (M) Renewable DSM technologies are allowed.
 - (N) A standard offer program shall require contractors to provide the following:
 - (i) Evidence of good credit rating.
 - (ii) List of references.
 - (iii) All applicable licenses required under state law and local building codes.
 - (iv) Evidence of all building permits required by governing jurisdictions.
 - (v) Evidence of all necessary insurance.
 - (O) A utility may use poor performance as a criterion to limit or disqualify an energy efficiency service provider or its affiliate from participating in the programs.
- (k) **Market transformation programs.** Market transformation programs are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices. Market transformation programs must be designed to obtain energy savings and peak demand reductions beyond savings that would be achieved through compliance with building codes and equipment efficiency standards. Utilities should cooperate in the creation of regional or statewide programs, consider statewide administration where appropriate, and where possible, leverage with existing effective national programs that have the potential to save energy in Texas. Statewide market transformation programs shall be developed under the implementation project to address targeted customer classes, as described in subsection (n) of this section. The programs shall be filed for commission review and approval. Utilities may use the statewide commission approved market transformation programs without further commission review. All other

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market transformation programs will require commission review for approval. Market transformation programs shall be conducted through projects that describe the terms and conditions as required under this section for the delivery of energy efficiency services. Market transformation programs must meet the following criteria:

- (1) Competitive solicitation shall be the preferred method for contract selection. Pilot projects may be developed by an individual utility, a group of utilities, or an energy efficiency service provider. A utility may request a waiver from the requirements of a competitive solicitation for good cause.
 - (2) A market transformation project shall identify:
 - (A) Project goals.
 - (B) Market barriers the project is designed to overcome.
 - (C) Key intervention strategies for overcoming those barriers.
 - (D) Estimated costs and projected energy and capacity savings.
 - (E) A baseline study that is appropriate in time and geographic region. In establishing a baseline, the study shall consider the level of regional implementation and enforcement of the International Energy Conservation Code (IECC), when applicable. However, this consideration shall not preclude establishment of a baseline below the IECC "prescriptive" component performance compliance levels where such compliance is permitted by the IECC through alternative building designs or alternative measures. The baseline for new construction programs shall be developed by the Energy Efficiency Implementation Project (EEIP) and submitted to the commission for approval.
 - (F) Project implementation timeline and milestones.
 - (G) Method for measuring and verifying savings.
 - (H) Period over which savings shall be considered to accrue, including a date for final market transformation.
 - (I) Each proposed project shall include a description of how it will achieve the transition from extensive market intervention activities toward a largely self-sustaining market.
 - (3) The project must be cost-effective, under the standard in subsection (e) of this section.
 - (4) The project must 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.
- (1) **Inspection, measurement and verification.** Each standard offer program shall include an industry accepted measurement and verification protocol approved by the commission as part of the detailed energy efficiency plan that will be used to measure and verify energy and peak demand savings to ensure that the goals of this section are achieved.
- (1) The energy efficiency service provider is responsible for the measurement of energy and peak demand savings using the approved measurement and verification protocol, and may utilize the services of an independent third party for such purposes.
 - (2) Commission approved deemed energy and peak demand savings may substitute for the energy efficiency service provider's measurement and verification where applicable.
 - (3) Each customer shall sign a certification indicating that the measures contracted for were installed before final payment is made to the energy efficiency service provider.
 - (4) An energy efficiency service provider may request a utility inspection at its own expense in the event a customer refuses to sign the measure installation certification.

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- (5) For residential and small commercial customer projects involving over 30 installations, a statistically significant sample of installations will be subject to on-site inspection in accordance with the protocol set out for the project. Inspection shall occur within 30 days of notification of measure installation to ensure that measures are installed and capable of performing their intended function. The energy efficiency service provider shall not receive final compensation until the customer documents work completion and the utility has conducted its inspection on the sample of installations.
 - (6) Residential and small commercial customer projects of less than 30 installations may be aggregated and a statistically significant sample of the aggregate installations will be subject to on-site inspection in accordance with the protocol set out for the projects. Inspection shall occur within 30 days of notification of measure installation to ensure that measures are installed and capable of performing their intended function. The energy efficiency service provider shall not receive final compensation until the customer documents work completion and the utility has conducted its inspection on the sample of installations.
 - (A) An energy efficiency service provider shall not be penalized for the inspection failure rate of another energy efficiency service provider.
 - (B) An energy efficiency service provider with unsatisfactory inspection results shall be subject to further inspections.
 - (7) The sample size for on-site inspections may decrease over time for a contractor under a particular contract that has consistently yielded satisfactory inspection results.
- (m) **Independent measurement and verification (M&V) expert.** An independent M&V expert shall be selected to verify energy and peak demand savings, including deemed savings, reported by energy efficiency service providers statewide for the calendar year 2002, and periodically thereafter as determined by the commission.
- (1) The independent M&V expert shall be selected by the commission by competitive solicitation.
 - (2) The independent M&V expert shall be funded from the utilities' program administration budgets.
 - (3) The independent M&V expert shall perform:
 - (A) A verification of energy efficiency service providers' reported energy and peak demand savings, based on a statistically representative sample of completed projects;
 - (B) A limited process evaluation; and
 - (C) Any other task the commission deems necessary.
 - (4) By March 1, 2003, the independent M&V expert shall report its preliminary conclusions to the commission and make a recommendation whether the utilities' energy and peak demand savings should be adjusted. By March 2004, the independent M&V expert shall provide its full report.
- (n) **Energy efficiency implementation project.** The commission shall initiate an implementation project to make recommendations to the commission for its consideration with regard to best practices in standard offer programs and market transformation programs. All orders approved by the commission under Project Number 22241, *Energy Efficiency Program Implementation Docket*, and that are consistent with this section shall be transferred to the energy efficiency implementation project. Material submitted to the commission in this project believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The following functions may be undertaken in the energy efficiency implementation project:

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- (1) Development and review of statewide standard offer programs.
 - (2) Identification, design, and review of market transformation programs.
 - (3) Development of the appropriate baseline for programs addressing new construction.
 - (4) Determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures.
 - (5) Recommendation to the commission of one or more independent M&V expert to conduct the audit in accordance with subsection (m) of this section.
 - (6) Review of and recommendations on the independent M&V expert's report with respect to whether utilities will meet the minimum legislative goal by January 1, 2004, and annually thereafter.
 - (7) Review of and recommendations on incentive payment levels and the adequacy to induce the desired level of participation by the energy efficiency service providers and customer classes.
 - (8) Review of and recommendations on the utility annual energy efficiency reports with respect to whether all customer classes have access to energy efficiency programs.
 - (9) Periodic reviews of the cost effectiveness methodology.
 - (10) Development of information packets for potential residential and commercial customers.
 - (11) Other activities as requested by the commission.
- (o) **Customer protection.** The customer protection provisions under this section shall apply to residential and small commercial customers only. Each energy efficiency service provider who provides energy efficiency services to the end-use utility customer shall provide:
- (1) Clear disclosure to the customer of the following:
 - (A) The customer's right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law.
 - (B) The name, telephone number, and street address of the energy services provider, the contractor, and written disclosure of all warranties.
 - (C) The fact that incentives are made available to the energy efficiency services provider through a ratepayer funded program, manufacturers or other entities.
 - (D) Notice of provisions that will be included in the customer's contract as described in paragraph (3) of this subsection.
 - (2) A form developed and approved by the commission may be used to satisfy the requirements of paragraph (1) of this subsection
 - (3) Contractual provisions to be included:
 - (A) Information on work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider.
 - (B) Written and oral disclosure of the financial arrangement between the energy efficiency service provider and customer. This includes 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.
 - (C) Disclosure of contractor liability insurance to cover property damage.
 - (D) An "All Bills Paid" affidavit to be given to the customer to protect against claims of subcontractors.
 - (E) Provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs.

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- (F) Information on complaint procedures offered by the contractor, or the utility, as required under subsection (j)(2)(L) of this section, and toll free numbers for the Office of Customer Protection of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.
 - (G) Disclosure that the energy efficiency service provider is not part of, or endorsed by the commission or the utility.
- (p) **Effective date:** This section shall be in effect for any energy efficiency programs pursuant to this section with a start date of January 1, 2003 and thereafter.