The Public Utility Commission of Texas (commission) proposes new rule §25.181 relating to Energy Efficiency Goal. Project Number 21074, *Energy Efficiency Programs*, was assigned to this proceeding on August 7, 1999.

The 76th Legislature determined that the production and sale of electricity is not a monopoly warranting regulation of rates, operations, and services and that the public interest in competitive electric markets requires that, except for transmission and distribution services and for the recovery of stranded costs, electric services and their prices should be determined by customer choices and the normal forces of competition. Senate Bill 7 (SB 7), Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service 2543 (to be codified as amendments to the Public Utilities Regulatory Act (PURA), Texas Utilities Code Annotated), went into effect September 1, 1999. PURA §39.905 requires each electric utility to implement energy efficiency programs to reduce Texas consumers' energy consumption by a minimum of 10% of the utility's annual growth in demand in Texas by January 1, 2004. To achieve this goal, utilities must provide incentives through standard offer programs or limited targeted market transformation programs. The incentives are to be paid to energy services companies or retail electric providers, for the implementation of the energy efficiency programs.

In proposing this rule relating to energy efficiency programs, the commission seeks to achieve the installation of long-lasting energy efficiency measures that will result in reduced energy consumption and energy bills for Texas customers in all customer classes. Each utility will include in its April 1, 2000 rate filing package for transmission and distribution rates, a plan for achieving greater energy efficiency. On January 1, 2002, when the transmission and distribution rates go into effect, standard offer and market transformation programs will be implemented. To ensure that the energy savings goals are reached, the commission seeks to implement interim goals, beginning on January 1, 2000, that will increase over time until the mandatory 10% savings goal is implemented. Utilities will provide incentive payments to participating energy efficiency service providers, through programs designed to reach all customer classes. Verification will be conducted to ensure that the electric utilities' projected savings are achieved, and that the money spent on achieving the savings is cost-effective. The commission also proposes customer protection provisions for these energy efficiency programs.

The commission has determined that a forum for consultation with interested parties should be created to provide advice to the commission on issues relating to the energy efficiency program. The participants in this forum will initially make recommendations to commission staff regarding standard offer programs, market transformation programs, and measurement and verification protocols, and thereafter will review utilities' annual energy efficiency reports, energy efficiency plans, and the independent auditor's annual report, and make recommendations to the commission staff regarding ongoing energy efficiency matters. Commission staff will present these recommendations to the commission for consideration and action.

The commission seeks comments on the proposed rule from interested parties. Parties should organize their comments in a manner consistent with the organization of the proposed rules. Furthermore, when commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states if the parties believe that Texas will benefit from application of the same policies. The commission is interested in receiving only "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state efforts.

In addition, the commission requests that interested parties specifically address the following issues:

1. What should be the cap on the utility's administrative and measurement and verification costs?
2. Energy efficiency programs will be funded through a charge in the transmission and distribution rates that will be adopted following the utilities' the April 1, 2000 rate filing. Should the commission adopt a mechanism for timely cost recovery if the utility can demonstrate that it needs to spend more than what is approved in the rate in order to meet the goal? Should utilities be allowed to roll-over unspent funds from one year into the following program year? If so, under what circumstances?
3. The energy efficiency programs will be subject to review by an independent auditor to verify the accuracy of the savings. What should be the consequences, if any, for the utility if verified savings prove to be less than the projected savings?
4. Contracts under the standard offer program will not be awarded through a competitive solicitation, but will be awarded in the order the project proposals are received. This mechanism potentially limits the ability for the utility to control the quality of

participating contractors. Should the rule provide for minimum criteria for contractor participation?

5. Under the standard offer program, contracts will be awarded in the order that they are received. How should the rule encourage broad participation by all eligible contractors?

6. As of January 1, 2002, very low-income customers will receive targeted energy efficiency services through the System Benefit Fund. The language in PURA §39.903(f)(2) (relating to the System Benefit Fund) does not require that the program be cost-effective, nor does it require verification of energy savings. Should these savings be tracked and counted towards the goal in PURA §39.905?

7. The goal of the market transformation program is the increased adoption of energy efficient technologies, services, and practices. Should utilities be allowed to continue to count the savings after the market has been transformed? How should market transformation be evaluated and should the rule address evaluation of market transformation programs?

8. Should the rule be prescriptive in setting goals or participation levels for individual customer classes? If so, should these goals be expressed in terms of the share of energy savings or in the share of incentive funds allocated to each customer class?

9. The rule requires that residential and small commercial customers have access to a list of participating energy efficiency services providers for the purpose of soliciting multiple bids for services. How should such a list be made available?

10. There is the potential under the standard offer programs for residential and small commercial customers to fall victim to unreliable or fraudulent companies. How should the rule address customer protection in that area?

Nieves López, economic analyst, Office of Regulatory Affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of the enforcing or administering the section. There are no fiscal impacts in addition to these fiscal impacts resulting from SB 7.

Ms. López also has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing this section will be improved energy efficiency, enhanced competition in the provision of energy-related services, reduced energy consumption, and reduced energy bills for consumers. The effect on small businesses or micro-businesses as a result of enforcing these sections will be reduced energy consumption and lower energy bills for those businesses that elect to participate in energy efficiency programs.

It is anticipated that there will be no economic costs incurred by persons who are required to comply with the new section as proposed beyond those costs caused by the underlying statute that this new section implements. The commission staff has prepared an estimate of the cost of this program, which will be made available to interested parties. The costs caused by the underlying statute are likely to vary from utility to utility, and are difficult to ascertain. The benefits accruing from implementation of these rules, however, are expected to outweigh these costs.

Ms. López also has determined that for each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, January 10, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Reply comments may be submitted within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 21074.

This section is proposed under the Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service 2543 (to be codified as amendments to the Public Utilities Regulatory Act (PURA), Texas Utilities Code Annotated, §§11.002, 14.001, 14.002, 14.003, 14.151, 15.023, 36.003, 38.021, 38.022, 39.001, 39.101, 39.102, 39.201, 39,903, and 39.905). Section 11.002 requires establishment of a comprehensive and adequate regulatory system by the commission to ensure just and reasonable rates, operations, and fair and equitable customer services. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 14.003 grants the commission authority to require a utility to report to the commission information relating to its business transactions. Section 14.151 grants the commission authority to prescribe the manner of accounting for all business transacted by a utility. Section 15.023 grants the commission authority to impose an administrative penalty against a regulated entity for violation of a rule adopted under PURA. Section 38.021 requires that utilities not grant an unreasonable preference to or impose an unreasonable disadvantage on different persons in the same classification. Section 38.022 requires that utilities not discriminate against competitors or engage in practices that restrict or impair competition in the electric market. Section 39.001 states the legislative policy and purpose for a competitive electric power industry. Section 39.101 grants the commission authority to ensure that retail customers receive certain protections and safeguards. Section 39.102 gives certain retail customers in this state the right to choose an electric service provider, beginning January 2002. Section 39.201 requires each electric utility to file, on or before, April 1, 2000, proposed tariffs for its proposed transmission and distribution utility. Section 39.903 establishes the System Benefit Fund. Section 39.905 grants the commission authority to provide oversight and adopt rules and procedures as necessary to ensure that certain goals for energy efficiency are achieved on or before January 1, 2004.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002(a), 14.001, 14.002, 14.151, 15.023, 38.021, 38.022, 39.001, 39.101, 39.201, 39.903, and 39.905.

§25.181. Energy Efficiency Goal.

(a) **Purpose**. The purposes of this section are to ensure:

(1) that electric utilities administer energy savings incentive programs in a market-based, non-discriminatory manner, but do not engage in providing competitive energy efficiency services, except as provided for in §25.343 of this title (relating to Competitive Energy Services);

(2) that 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) that each electric utility provides, through market-based standard offer programs and/or limited, targeted market-transformation programs, 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). Electric utilities as described in PURA §39.102(c) are exempt from the requirements of this section until such time as the electric utility's specific rate freeze period expires.

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

(1) **Calendar year**—January 1 through December 31.

(2) **Competitive energy efficiency services**—Energy efficiency services that are defined as competitive under §25.341(6) of this title (relating to Competitive Energy Services).

(3) **Deemed savings**—A pre-determined, validated estimate of energy and demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and demand savings determined through measurement and verification activities.

(4) **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 (kWs) or megawatts (MWs). For the purpose of this section, demand refers to system peak demand.

(5) **Demand side management (DSM)**—Activities that affect the magnitude or timing of customer electrical usage, or both.

(6) **Energy efficiency**—Programs that are aimed at reducing the intensity of electric energy usage equipment or processes. Reduction in energy intensity 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 consumer-owned end-use

devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower total system cost.

(7) **Energy efficiency incentive programs**—Programs administered by electric utilities in which the utility provides funding to an energy efficiency service provider for the installation of measures that save energy and demand at the site where the customer uses energy.

(8) **Energy efficiency measures**—Equipment, materials, and practices that when installed at a customer site result in a measurable and verifiable reduction in purchased energy consumption, measured in kilowatt-hours (kWh) and demand, measured in kilowatts (kW).

(9) **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 a reduction in customers' energy consumption and costs.

(10) **Energy efficiency service provider**—A person who installs energy efficiency measures or performs other energy efficiency services at customer sites. An energy efficiency service provider may be a retail electric provider. A customer may serve as a self-provider if the customer has an executed standard offer contract.

(11) **Energy savings**—A quantifiable reduction in a customer's consumption of energy.

(12) **Existing contracts**—Energy efficiency contracts in effect prior to September 1, 1999, that expire on or after September 1, 1999.

(13) **Growth in demand**—The annual increase in load flowing over the transmission system through the Texas portion of an electric utility's service area at time of peak demand, as measured according to subsection (e) of this section.

(14) **Hard-to-reach customers**—Customers who are generally not offered energy efficiency measures in a competitive environment, or for whom traditional incentive payments alone are an insufficient inducement to invest in energy efficiency measures.

(15) **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.

(16) **Inspection**—Onsite examination of a project to verify installation of measures and proper workmanship.

(17) **Large commercial customers**— Electric customers with a maximum demand that exceeds 300 kW.

(18) **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 electric utility, an energy efficiency service provider, an independent system operator, or other transmission organization.

(19) **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 peak to off-peak.

(20) **Low-income customers**—Customer with an annual household income between 125% and 200% of the annual federal poverty guidelines.

(21) **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 (h) of this section.

(22) **Measurement and verification**—Activities intended to determine the actual kWh and kW savings resulting from energy efficiency projects as more fully described in subsections (i) and (j) of this section.

(23) **Off-peak period**—Period during which the load on an electric 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.

(24) **Peak demand**—Electrical demand at the time of highest demand on the system.

(25) **Peak period**—Period during which a system experiences its maximum load. The peak period is from May 1 through September 30.

(26) **Renewable demand side management (DSM) technologies**—Equipment that uses a renewable energy resource, as defined in §25.5 of this title, that, when installed at a customer site, reduces the customer's net purchases of energy (kWh) and demand (kW).

(27) **Small commercial customers**—Electric customers with a maximum demand that does not exceed 300 kW.

(28) **Spot market benchmark price**—The average price of energy on the spot market. In calculating energy savings, the benchmark price is the average price of commercially traded daily 16-hour blocks of energy over the previous year's off-peak period.

(29) **Standard offer contract**—A contract between an energy efficiency service provider and a participating utility specifying the standard payment, measurement and verification protocols, and other terms and conditions needed to carry out a standard offer program.

(30) **Standard offer program**—A program offering a standard payment to energy efficiency service providers based upon the amount of energy and demand savings achieved through the installation of energy efficiency measures at electric customer sites according to published program requirements, as more fully described in subsection (h) of this section.

(31) **Transition period**—The period from September 1, 1999, through December 31, 2001.

(32) **Very low-income customers**—Customers with an annual household income at or below 125% of the annual federal poverty guidelines.

(d) **Cost-effectiveness and avoided cost calculation.**

(1) **Cost-effectiveness**. An energy efficiency project is deemed to be cost-effective if the cost of the project 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 electrical energy that would have been generated in the absence of the project, 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. These project benefits shall be calculated to reflect current and anticipated market prices for energy and generating capacity in the relevant power region.

(2) **Avoided cost calculation methodology**. The following methodology shall be used to determine the benefits of an energy efficiency project.

(A) A five-year rolling average of daily spot market prices ($/kWh) for the off-peak period shall be used to calculate the value of energy displaced by the project, based on available data.

(B) The capacity cost ($/kWyr) of a new combustion turbine shall be used to calculate the value of avoided capacity. To the extent the information is available, a utility's calculation of the avoided capacity cost shall be consistent with the cost calculations pursuant to §25.345 of this title (relating to Recovery of Stranded Costs Through Competition Transition Charge).

(C) When necessary in order to reach hard-to-reach customers, the cost-effectiveness standard may be set at 125% of avoided energy cost as described in subparagraph (A) of this paragraph and avoided capacity costs as described in subparagraph (B) of this paragraph. For all other customers, the cost effectiveness standard will be set at 100% of avoided energy and capacity costs.

(e) **Annual growth in demand and energy efficiency goal.** 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 consumption in the Texas portion of the utility's service area, measured at system peak for the immediately preceding five years. Growth in retail consumption may be measured by the kW flow over each utility's transmission system at peak time, net of wholesale transactions that are wheeled to other service territories.

(2) The goal for energy-efficiency savings for a year is calculated by applying the percentage goal, prescribed in subsection (f) and (g) of this section, to the average rate of growth in demand. The baseline for calculating demand growth shall be reset each year.

(3) A utility shall submit to the commission its projected growth in demand, and corresponding energy and demand savings, expressed in kWs and kWhs, for each calendar year.

(f) **Basic program elements**. Electric utilities shall administer energy efficiency programs designed to achieve lower energy consumption and reduced energy bills for Texas electric customers in all customer classes through the implementation of standard offer programs or limited targeted market transformation programs. Electric utilities shall meet the minimum mandate of 10% reduction in growth in demand through energy efficiency savings by January 1, 2004.

(1) Each electric utility shall submit an energy efficiency plan to the commission as part of the electric utility's rate-filing package in April 2000. This plan shall detail how the utility intends to achieve the legislative mandate.

(2) Beginning March 1, 2001, each electric utility shall file an annual energy efficiency report, as described in subsection (g)(4) of this section.

(3) All programs shall offer incentive payments for kW and kWh saved. The amount of incentive payment may vary by customer class in order to effectively reach all customer classes, including hard-to-reach customers.

(4) Customer protection provisions shall be included in all electric utilities' energy efficiency programs in accordance with subsection (l) of this section.

(5) All projects shall be subject to inspections, measurement, and verification to ensure that energy savings are achieved.

(6) An Energy Efficiency Working Group, as described in subsection (k) of this section, shall be established to make recommendations to the commission regarding program design and administration. The commission will review and act upon the recommendations.

(g) **Goals, schedule and required filings.**

(1) **Interim goals.** During the transition period, each utility will set interim goals to provide a reasonable progression toward the 10% goal to be achieved by January 1, 2004.

(A) Each utility is required to meet, at a minimum, 5.0% of its growth in demand though energy efficiency by January 1, 2003.

(B) During the transition period, each utility shall set an interim goal that is consistent with approved funding.

(2) **Schedule**. Each electric utility shall:

(A) By January 15, 2000, and annually thereafter, file with the commission for the current calendar year:

(i) The utility's projected annual growth in demand.

(ii) The corresponding energy and demand savings, expressed in kWs and KWhs, for each calendar year.

(B) By April 1, 2000, file with the commission its energy efficiency plan as described in paragraph (3) of this subsection, as part of its application for unbundled transmission and distribution rates. The plan shall cover the nine-month-period up to December 31, 2000 and each calendar year thereafter.

(C) By March 1, 2001, and annually thereafter, file its annual energy efficiency report as described in paragraph (4) of this subsection.

(D) By January 1, 2002, implement standard offer programs or limited, targeted market transformation programs as described in subsection (h) of this section.

(3) **Energy efficiency plan**. Each electric utility's energy efficiency plan shall describe how the utility intends to achieve the legislative mandate. The plan shall cover the nine-month period starting April 1, 2000 through December 31, 2000.

Starting January 2001, the plan shall be on a calendar year cycle. Notwithstanding any other provision of this section, 170 days prior to the expiration of the exemption set forth in PURA §39.102(c), an electric utility that is subject to §39.102(c) shall file its energy efficiency plan as a part of the cost separation proceedings package in accordance with §25.344 of this title (relating to Cost Separation Proceedings). Each electric utility's energy efficiency plan shall include:

(A) A projection of the utility's annual growth in demand and corresponding energy and demand savings to be achieved under the plan.

(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 verified energy and demand savings achieved as a result of projects installed after the effective date of this rule may count towards the amount of energy and demand savings actually achieved each year.

(C) A description of the utility's energy efficiency interim goals for the transition period and how the electric utility will meet those goals. The utility's plan must show that it will expend an amount at least equal to the level of funding approved in current rates for DSM or energy efficiency activities.

(D) An estimate of the energy and demand savings to be obtained through standard offer programs and market transformation programs.

(E) The proposed duration of standard offer contracts and market transformation programs.

(F) A description of the customer classes targeted by the utility's energy efficiency programs, specifying the size of the residential, low and very low-income, small commercial, tenants, and large commercial and industrial customer classes, and the methodology used for estimating the size of each customer class. All customer classes must have access to a proportional or equitable share of the incentive funds.

(G) The proposed incentive levels for each customer class expressed as a percentage of the ceiling established under subsection (d) of this section relating to cost-effectiveness. The proposed incentive levels for each customer class shall be set as a percentage of the ceiling established under the cost-effectiveness. Unless the commission adopts different ceilings for incentive levels, incentive levels may not exceed:

(i) 100% for low-income customers.

(ii) 80% for other residential and small commercial customers.

(iii) 50% for large commercial and industrial customers.

(iv) 5.0% for load management programs.

(H) The proposed annual budget required to implement the utility's standard offer programs and market transformation programs for each customer class, including hard-to-reach customers. The proposed budget should detail incentive payments, utility administrative costs, and measurement and verification costs, and the rationale and methodology used to estimate the proposed expenditures.

(I) A utility may request a revision to its energy efficiency plan for material changes and the commission may grant the request upon determination that good cause exists for the revision. An electric utility may make nonmaterial changes to its energy efficiency plan at any time. A request for a material change may be submitted at any time. Material changes are:

(i) A shift of resources between customer classes.

(ii) A change in funding by over 5.0% for individual contracts.

(iii) An addition or elimination of individual contracts.

(4) **Annual energy efficiency report**. Each electric utility shall submit an energy efficiency report to the commission on March 1, 2001, and annually thereafter. The report shall describe any proposed modifications and provide, at a minimum, the data listed below for the preceding calendar year.

(A) The utility's actual annual growth in demand.

(B) A comparison of projected savings and verified savings for each contract.

(C) A comparison of deemed savings and verified achieved savings as verified by the independent auditor.

(D) A statement of funds expended by the utility for incentive payments, installation inspections, program administration, and independent measurement and verification.

(E) Any funds that were committed but not spent during the year, by project.

(F) Any remaining program funds that were not committed during the year.

(G) A description 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 demand savings achieved by the project, when available.

(H) A description of proposed changes in the energy efficiency plan as described in paragraph (3)(I) of this subsection.

(I) Any other information prescribed by the commission.

(h) **Utility administration, and standard offer and market transformation programs.**

(1) **Utility administration.** Utilities shall administer standard offer programs and market transformation programs to meet the requirements of the energy efficiency goal in PURA §39.905. In administering the energy efficiency programs, the utilities shall:

(A) Conduct informational activities designed to explain the standard offer programs and market transformation programs to energy services providers and vendors.

(B) Review and select proposals for energy efficiency projects in accordance with the guidelines of the standard offer programs and market transformation programs.

(C) Review and approve measurement and verification plans for energy efficiency projects proposed by energy services providers for specific projects in accordance with the standard offer or market transformation program guidelines.

(D) Contract with energy efficiency service providers for energy efficiency projects.

(E) Inspect projects to verify installation of measures and proper workmanship, at the level required in subsection (i) of this section before payments are made.

(F) Compensate energy efficiency service providers for energy efficiency projects in accordance with the contract.

(G) Review and approve energy efficiency services providers' savings monitoring reports.

(H) Provide the periodic reports and filings required under subsection (g) of this section to the commission.

(2) A utility implementing 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.

(3) In the event an energy efficiency service provider does not complete a project within the terms and conditions specified in the contract, the project funding shall be made available for other energy efficiency projects within the same customer class.

(4) 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 contract or market transformation contract. An electric utility may petition the commission for waiver of this limitation if it would not be able to meet its annual energy savings goal under this requirement.

(5) **Standard offer programs.** Statewide standard offer programs shall be developed and submitted to the commission for approval. The standard offer programs shall be conducted through contracts for each customer class that prescribe terms and conditions for energy efficiency service providers for the delivery of energy efficiency services. Standard offer contracts will be available to any entity that satisfies the contract requirements. Utilities may use the commission approved statewide standard offer contracts without further commission review. All other standard offer contracts will require commission review for approval. Standard offer contracts shall meet the following requirements:

(A) A standard offer contract shall be developed to address each customer class. Within a customer class, different contracts may be developed to address hard-to-reach customers as required.

(B) Projects must be cost-effective under the standard set in subsection (d) of this section.

(C) Each standard offer contract will offer a standard incentive payment and specify a schedule of payments. The incentive shall be consistent with the ceiling under subsection (g)(3)(G) of this section or any revised ceiling adopted by the commission. The standard offer incentive payments may include both energy payments and capacity payments, as appropriate.

(i) The incentive payment shall be set at a level not to exceed the cost-effectiveness standard described in subsection (d) of this section sufficient to meet the goals of the program.

(ii) The incentive payment may vary by customer class, but not within a customer class, except when necessary to serve hard-to-reach customers.

(D) Demand and energy savings for each project will be identified in the proposals the energy efficiency service providers submit to the utility.

(E) Standard offer contracts 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.

(F) All projects must result in a reduction in energy consumption 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 to 65% of the savings.

(H) Savings achieved through load management programs, including interruptible rates, may not exceed 15% of the total savings.

(I) Within each project, installed measures must have a minimum useful life of ten years.

(J) 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.

(K) Projects shall identify potential environmental or health impacts associated with the energy efficiency measures to be installed.

(L) Projects shall describe the procedures for measuring and reporting the energy and demand savings from installed energy efficiency measures.

(M) Projects shall result in reliable energy and demand savings over a ten-year period.

(N) Contracts shall state the minimum criteria for contractor participation to assure high quality customer service and be consistent with the customer protection standards in subsection (l) of this section.

(O) Standard offer contracts shall provide a complaint process that allows:

(i) The energy efficiency services provider to file a complaint against a utility.

(ii) A customer to file a complaint against an energy efficiency services provider. The utility may use customer complaints as a criteria for disqualifying energy efficiency service providers from participating in the program.

(P) Renewable DSM technologies are allowed.

(6) **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. Utilities should cooperate in the creation and implementation of regional or statewide programs, to consider statewide administration where appropriate, and where possible, to leverage with existing effective national programs that have the potential to save energy in Texas. Statewide market transformation programs shall be developed by the Working Group to address targeted customer classes, as described in subsection (k) 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 market transformation programs will require commission review for approval. Market transformation programs shall be conducted through contracts that prescribe the terms and conditions for the delivery of energy efficiency services. Market transformation contracts will be available through a competitive solicitation. To qualify under the market transformation program, the project must meet the following criteria:

(A) The project must be cost-effective, under the standard in subsection (d) of this section.

(B) The project must be designed to achieve energy and demand savings or lasting changes in the way energy efficient goods or services are distributed, purchased, installed or used.

(C) Each proposed project must include estimated costs and savings, and document the likelihood that initiatives to promote market transformation for targeted market segments or measures will succeed.

(D) 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.

(7) 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 terminating an existing process, 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 occur even in the absence of the energy services provider's proposed energy efficiency project. For example, a project to install measures that are widely accepted by customers would not be eligible.

(C) A project results in negative environmental or health impacts, including impacts as a result of the likelihood of improper disposal of equipment and materials.

(D) The project involves the installation of self-generation or cogeneration equipment except renewable DSM technologies.

(8) In addition to other factors specified in this subsection, the commission shall consider the relative cost-effectiveness of a program and its contribution in meeting the legislative mandate when deciding whether to approve a program.

(i) **Inspection, measurement and verification.** Each statewide standard offer contract shall include an industry accepted measurement and verification protocol that will be used to measure and verify energy and demand savings to ensure that the goals of this section are achieved. The measurement and verification process will include the following steps:

(1) The energy efficiency service provider is responsible for the measurement of energy and demand savings using the approved measurement and verification protocol.

(2) Deemed savings will be submitted to the commission for approval.

(3) Commission approved deemed energy and demand savings may substitute for the energy efficiency service provider's measurement and verification where applicable.

(4) Each utility is responsible for inspecting projects in accordance with the protocol set out for the project within 30 days of measure installation to ensure that all measures are installed and operating properly. The energy efficiency service provider will not receive compensation until work completion is documented and the utility has conducted its inspection.

(5) All large commercial and industrial projects shall be inspected. Within each project, inspection of individual measures may be limited to a statistically representative sample.

(6) Inspection of residential and small commercial projects may be limited to a statistically representative sample of actual sites or measures.

(j) **Independent auditor.** Independent measurement and verification auditors shall be selected to verify the energy and demand savings, including deemed savings, reported by energy efficiency service providers statewide.

(1) The independent auditors shall be selected by the commission.

(2) The independent auditors shall be funded from the utilities' program administration budget. Funding for the independent auditors shall not exceed 5.0% of each utility's total program cost.

(3) The independent auditors shall conduct an annual audit of program energy and demand savings statewide.

(4) The independent auditors shall perform:

(A) a process evaluation; and

(B) a verification of energy efficiency service providers' reported energy and demand savings based on a statistically representative sample of the projects.

(5) Only energy and demand savings validated by the independent auditors shall be counted towards achieving the legislative goal and reported to the commission in the utilities' annual energy efficiency report.

(k) **Energy Efficiency Working Group**. The commission shall initiate a forum for regular consultation on energy efficiency issues, to be referred to as the Energy Efficiency

Working Group (Working Group). Participation in the Working Group is voluntary and open to all parties who have an interest in the program. The Working Group may make recommendations to the commission with regard to best practices in standard offer programs and market transformation programs, and in measurement and verification protocols. To this end the Working Group may:

(1) Participate in the development of statewide standard offer programs.

(2) Participate in the identification and the design of market transformation programs.

(3) Participate in the determination of measures for which deemed savings are appropriate and participate in the development of deemed savings for those measures.

(4) Recommend to the commission one or more independent, third party auditors to conduct measurement and verification in accordance with subsection (j) of this section.

(5) Comment on the independent auditor's annual report with respect to whether utilities will meet the minimum legislative goal by January 1, 2004.

(6) Comment on incentive payment levels and whether they are adequate to induce the desired level of participation by the energy efficiency service providers.

(7) Comment on the utility annual energy efficiency reports with respect to whether all customer classes have access to energy efficiency programs.

(8) Participate in periodic reviews of the avoided cost methodology.

(9) Engage in other activities as requested by the commission.

(l) **Customer protection.** The customer protection provisions under this section shall apply to residential and small commercial customers only. Each electric utility shall include in all contracts executed with an energy efficiency services provider the following requirements for energy efficiency services providers:

(1) Clear disclosure to the customer of work activities and completion dates.

(2) Terms and conditions designed to protect residential customers in the event of non-performance by the energy efficiency service provider.

(3) Adequate contractor liability insurance to cover property damage, and a performance bond or letter of credit, to compensate the customer for failure to complete a project.

(4) Disclosure in writing and orally of the total of customer payments, the total expected interest charges, and all possible penalties for non-payment.

(5) The name and street address of the energy efficiency services provider and the contractor.

(6) A means for prospective customers to obtain a list of participating contractors to allow customers to solicit bids for energy efficiency services.

(7) Disclosure whether the customer's installment sales agreement may be sold.

(8) Inclusion of a 12-month warranty for the labor and materials used for installation by the contractor.

(9) Requirement that an "All Bills Paid" affidavit be given to the customer to protect against the claims of subcontractors.

(10) Provisions prohibiting the waiver of consumer protection statutes and performance warranties.

(11) Provisions prohibiting misleading claims of energy savings and reductions in energy costs.

(12) Disclosure to the customer of all incentives that are made available to the energy efficiency services provider through a ratepayer funded program, manufacturers or other entities.

(13) Information on complaint procedures offered by the installer's company, the utility, as required under subsection (h)(5)(O) of this section, and toll free numbers for the Office of Customer Protection of the Public Utility Commission of Texas, the Office of the Attorney General's Consumer Protection Hotline, and any other applicable regulatory or licensing authorities.

(14) Disclosure of the customer right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law.

(m) **Enforcement.** This section shall be enforced under PURA, including §15.021, §39.356, and other sections as applicable.

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

ISSUED IN AUSTIN, TEXAS ON THE 26th DAY OF OCTOBER 1999 BY THE PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY