

CHAPTER 25. SUBSTANTIVE RULES RELATING TO ELECTRIC SERVICE PROVIDERS.

Subchapter S. WHOLESALE MARKETS.

§25.512. Texas Energy Fund Grants for Facilities outside of the ERCOT Region.

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §34.0103 and §34.0106 and establish requirements and terms for grants to finance modernization, weatherization, reliability and resiliency enhancements, and vegetation management for transmission and distribution infrastructure and electric generating facilities in this state outside of the ERCOT region.
- (b) **Eligibility.**
- (1) **Applicant eligibility.** To be eligible for a grant under this section, an applicant must:
- (A) be an electric utility, electric cooperative, municipally owned utility, or river authority that owns or manages transmission or distribution infrastructure or one or more electric generating facilities in this state outside of the ERCOT region; or
- (B) own a qualifying facility as defined by the Public Utility Regulatory Policies Act of 1978 (PURPA) §201, codified at 16 U.S.C.A. §§796(17) and (18); and
- (C) be compliant with the requirements in the Lone Star Infrastructure Protection Act (codified at Texas Business and Commerce Code §117.002).
- (2) **Project eligibility.** A project consists of one or more measures that share a specific objective over a defined duration. A measure may be an action or series of actions, acquisition of equipment, or construction of infrastructure. Measures that are inter-dependent must be submitted within the same project.
- (3) **Objectives.** To be eligible for a grant under this section, a project must meet one of the following objectives. Only projects within the subcategories listed for each objective in subparagraphs (A) through (D) of this paragraph are eligible for a grant under this section.
- (A) **Facility modernization.** This objective relates to upgrading or replacing infrastructure or equipment and improvements to facility or system situational awareness. Advanced metering installation and analytics, substation automation, water conservation, cooling system upgrades, and installation of heat-resistant technologies are subcategories of the facility modernization objective.
- (B) **Facility weatherization.** This objective relates to measures that protect, strengthen, or improve the energy efficiency, operational parameters, or safety of a structure against the natural elements. Elevation of critical equipment, drainage system improvements, structure reinforcement, insulation and heating of critical areas and equipment, installation of advanced irrigation systems, and installation of weather-resistant equipment and fire or flood barriers are subcategories of the facility weatherization objective.
- (C) **Reliability and resiliency.** This objective relates to helping transmission and distribution infrastructure and electric generating facilities prevent, withstand, mitigate, or more promptly recover from power outages and events involving extreme weather conditions, uncontrolled events, cyber and physical attacks, cascading failures, or unanticipated loss of system components that pose a material threat to the safe and reliable operation of an eligible applicant's transmission, distribution, and generation systems. Fortification against flooding, undergrounding, pole upgrading, electric transmission and distribution infrastructure hardening, battery storage or generation resource that serves to maintain or restore energization of transmission or distribution infrastructure, onsite fuel storage capacity increases, generation uprates, cybersecurity enhancements, and fortification against physical threats are subcategories of the reliability and resiliency objective.
- (D) **Vegetation management.** This objective relates to capital costs for vegetation management not already included in the eligible applicant's rate base to prevent or curtail vegetation from interfering with electric transmission and distribution infrastructure. New data-driven trimming and removal scheduling technology, new GIS-based vegetation mapping technology, drought-resistant vegetation installation,

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and capital costs to prevent the growth of trees, shrubs, and other vegetation are subcategories of the vegetation management objective.

- (4) **Funding exclusions.** Proceeds of a grant received under this section must not be used for the following:
- (A) compliance with weatherization standards adopted before December 1, 2023;
 - (B) debt payments;
 - (C) upgrades to or operation of an electric generating facility that will be used primarily to serve an industrial load or private use network (PUN), as described by paragraph (5) of this subsection;
 - (D) construction of, upgrades to, or operation of transmission and distribution infrastructure that serves an industrial load or PUN and is on the customer's side of the settlement meter;
 - (E) construction or operation of a natural gas transmission pipeline, or any project related to natural gas transmission or distribution infrastructure;
 - (F) construction of a new electric generation resource, including any battery storage project, that will be used to sell electricity or ancillary services at wholesale or to serve end user load;
 - (G) operations expenses associated with a project funded by a grant under this section;
 - (H) construction of or upgrades to a facility that is not geographically located within Texas;
 - (I) any proposed project that will not provide the majority of its benefits to consumers of electricity that are located in Texas and outside of the ERCOT region; or
 - (J) any proposed project that is included as a measure in a resiliency plan approved under §25.62 of this title.
- (5) For purposes of this section, an electric generating facility does not primarily serve an industrial load or PUN if that electric generating facility operates in such a manner that the portion of nameplate capacity that will serve the maximum non-coincident peak demand of the industrial load or PUN is less than 50 percent of the facility's total nameplate capacity.:
- (c) **Application.** An eligible applicant may submit one or more applications for a grant under this section. Each application may contain multiple projects. An applicant must not submit an application containing a project with an objective, as described in subsection (b)(3) of this section, within 24 months of the date the applicant entered into a grant agreement for a project with that objective. Each application must be submitted electronically in a form and manner prescribed by the commission and contain the information required by this subsection.
- (1) **Applicant.** An application must be submitted at the highest entity level (e.g., most senior parent or owner) that holds a Texas certificate of convenience and necessity, if applicable. An entity eligible under subsection (b)(1) of this section that is not required to hold a Texas certificate of convenience and necessity must submit its application at the highest entity level that operates the electric generating facility or transmission and distribution infrastructure that is the subject of the application. An application for a project with multiple owners must be submitted by the highest level of the entity with managing authority (e.g., owner with controlling interest, managing partner, or cooperative). A joint application for a project must be submitted by a single prime applicant with partner applicants listed as sub-applicants.
- (A) **Applicant information.** Each application must include applicant information, including:
- (i) the applicant's legal name;
 - (ii) the applicant's form of organization; and
 - (iii) the applicant's primary contact name and title, mailing address, business telephone number, business e-mail address, and web address.

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- (B) **Applicant experience.** Each application must include information on the applicant's history and experience, including:
 - (i) the applicant's history of transmission, distribution, and electric generation operations in this state and this country;
 - (ii) information describing the applicant's quality of services and management;
 - (iii) information describing the applicant's efficiency of operations;
 - (iv) evidence that the applicant is in good standing with financial institutions and is meeting all compliance requirements; and
 - (v) evidence of past grant management and administration.
- (2) **Project.** An application must be organized by project and objective. Each application must include the following information for each project:
 - (A) Project information, including:
 - (i) proposed project name;
 - (ii) project objective and subcategory, as specified in subsection (b)(3) of this section;
 - (iii) grant amount requested for the project;
 - (iv) description of the proposed project;
 - (v) demonstration of the project's eligibility under subsection (b) of this section;
 - (vi) a description of the operational attributes of the transmission or distribution infrastructure or electric generating facility for which the applicant is requesting a grant;
 - (vii) the name, location, owner, and applicable share of ownership of the transmission or distribution infrastructure or electric generating facilities included in the project; and
 - (viii) the priority of the project relative to any other projects also proposed under this section by the same applicant.
 - (B) Expected benefits of the proposed project receiving a grant under this section, including:
 - (i) a description of the expected benefits for the entire project, including the location and magnitude of the expected benefits, and, if applicable, a description of the expected benefits for each state and power region in which the project will provide benefits;
 - (ii) a description of the project's ability to address regional and reliability needs;
 - (iii) evidence of past performance of similarly sized and scoped projects, as applicable; and
 - (iv) an explanation for why this project should be funded by a grant under this section, as opposed to other available funding sources.
 - (C) Project implementation details, including:
 - (i) a proposed project schedule with anticipated dates for major project milestones;
 - (ii) evidence of the technical feasibility of the project, including staffing plans, material contracts, and required permits, as applicable;
 - (iii) evidence of how any assets purchased with a grant under this section will be maintained through the depreciable life of the asset; and
 - (iv) performance metrics and targets for the project.
 - (D) Budget information and a description of estimated project costs, including, as applicable:
 - (i) capital costs, such as equipment, hardware, software, development, construction, and capital commitments required for the project to reach completion;
 - (ii) operating expenses in conjunction with the project and that result from the project, such as maintenance;

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- (iii) estimated timing requirements of the funds;
 - (iv) the portions of the proposed budget funded by:
 - (I) this grant program, limited to capital costs;
 - (II) applicant cost-share; and
 - (III) other sources, including federal grants; and
 - (v) in the case of a joint application, a proposed allocation of the award to each involved entity.
 - (3) Information submitted to the commission in an application for a grant under this section is confidential and not subject to disclosure under Government Code chapter 522.
 - (4) An applicant must separately file a statement indicating that an application for a grant award has been presented to the commission for review with the date of the application submission, the eligible objective and project, and the total grant amount requested per objective.
- (d) **Application review.** The commission will approve in full, approve in part, or deny each project in an application based on the screening and evaluation criteria outlined in this subsection. Evaluations and other recommendations provided by the TEF administrator are advisory only. All final decisions on whether to approve or deny each project will be made by the commission.
 - (1) Applications will be reviewed in the order in which the commission receives them.
 - (2) Applications and proposed projects will be screened for eligibility under subsection (b) of this section.
 - (3) Each eligible project will be evaluated to determine whether it is reasonable. The following factors may also be considered in the evaluation:
 - (A) the applicant's past performance, personnel, and resources to implement the project;
 - (B) the project's expected benefits;
 - (C) the project's ability to address regional and reliability needs;
 - (D) the applicant's stated priority level for the project;
 - (E) the project's attributes;
 - (F) the project's cost; and
 - (G) any other factors the commission deems appropriate.
 - (4) The TEF administrator may request that an applicant provide any additional information necessary to screen and evaluate any project in an application.
- (e) **Grant award amount.**
 - (1) The amount of a grant award is based on program funding availability and application evaluation by the TEF administrator. Applications may be funded entirely, or the commission may fund a portion of the proposed application.
 - (2) If a project is expected to benefit multiple states or power regions, the amount of grant funding will be based on the percentage of the project's benefits that are expected to be provided to areas in Texas and outside of the ERCOT region.
 - (3) If a project is awarded for an electric generating facility that serves an industrial load or PUN, the amount of grant funding will be based on the percentage of that electric generating facility's capacity that exclusively serves the power region or grid in which the electric generating facility is located.
 - (4) Grants will be awarded only to fund eligible capital costs to implement a project in an approved application. Any costs funded by a grant under this section must not be included in rates, or otherwise collected from customers.
 - (5) A single applicant will not be awarded more than \$200 million in grants under this section. For purposes of this paragraph, grant funds awarded to joint applicants will be allocated to each applicant based on terms in the grant agreement mutually agreed to by the joint applicants and the TEF administrator.
 - (6) To receive a grant payment under this section, an applicant must enter into a grant agreement in the form and manner specified by the commission. The TEF administrator may separate or

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combine projects across applications into one or more grant agreements. An uncured breach of the executed grant agreement will be grounds for the TEF administrator to determine that an applicant is ineligible to obtain any future grant payments under this section. The TEF administrator may tailor any applicable reporting requirements, period of performance, milestones, performance metrics and targets, deliverables, and payment schedules for individual projects, all of which will be included in the grant agreement.

(f) **Grant payment terms.**

- (1) Payment terms for each project will be determined by the TEF administrator and specified in the corresponding grant agreement. A grantee must comply with all terms and conditions outlined in the grant agreement, including all reporting requirements, and all federal or state statutes, rules, regulations, or guidance applicable to the grant award to be eligible for grant fund disbursement.
- (2) A grantee may receive grant funds in advance of incurring costs, as specified in the grant agreement.
- (3) The commission will withhold or require the return of payments for costs that are found ineligible, or if a grantee fails to comply with the requirements described in paragraph (1) of this subsection.

(g) **Period of performance.**

- (1) Each project's period of performance will be stated in the respective grant agreement based on the project schedule provided in the grantee's application. The grant agreement will specify project milestones.
- (2) Activities related to eligible costs of the project must commence within 12 months of execution of the grant agreement. Project deadlines will be specified in the grant agreement.

(h) **No contested case or appeal.** An application for a grant under this section is not a contested case. A commission decision on a grant award is not subject to a motion for rehearing or appeal under the commission's procedural rules.

(i) **Project monitoring.** Reporting and monitoring requirements for each grantee will be specified in the grant agreement. Asset performance and maintenance will be monitored for a period specified in the grant agreement for any asset funded by a grant under this section. The TEF administrator must track each grantee's project progress and provide the commission with regular updates.

(j) **Expiration.** This section expires September 1, 2050.