

**PROPOSED NEW 16 TAC §7.480
TO IMPLEMENT HB 2263**

§
§
§

**BEFORE THE
RAILROAD COMMISSION
OF TEXAS**

**CENTERPOINT ENERGY RESOURCES CORP.,
COMMENTS TO PROPOSED NEW 16 TAC § 7.480 TO IMPLEMENT HB 2263**

CenterPoint Energy Resources Corp. (“CenterPoint Energy” or the “Company”) submit these timely filed comments in response to 16 Tex. Admin. Code § 7.480 (“proposed § 7.480”) approved for publication by the Railroad Commission of Texas (“Commission”) on September 19, 2023, and published in the October 6, 2023 issue of the *Texas Register*.

I. INTRODUCTION

During the 88th Texas Legislature, lawmakers passed House Bill 2263 (“HB 2263”), which provides that a local distribution company (an “LDC”) may offer their customers and prospective customers energy conservation programs. Furthermore, HB 2263 provides that an LDC may recover costs of energy conservation programs if approved by the Commission. CenterPoint Energy is an LDC and plans to offer energy conservation programs pursuant to HB 2263. Proposed § 7.480 is intended to implement HB 2263. CenterPoint Energy is overall pleased with the proposed rule but identifies below areas that are omitted or need further clarification and recommends corresponding changes. In particular, HB 2263 authorizes the Commission to allow an LDC to recover an amount equal to the reduction in the LDC’s marginal revenues due to lower sales or demand resulting from its energy conservation programs. Tex. Utils. Code § 104.403(c). The rule adopted in this proceeding should include the procedures that the Commission will use to exercise that authority. However, such procedures were not contained in the proposed § 7.480, and the Company’s comments below are intended to add those procedures to the proposed rule.

II. COMMENTS ON PROPOSED § 7.480

Subsection (b) Definitions

CenterPoint Energy recommends the following changes in subsection (b) of the proposed rule:

- (1) Administrative costs--~~The~~ All prudently incurred costs of creating, managing, and administering an ECP portfolio.

(2) Director--The Director of the Gas Services Department of the Oversight and Safety Division or the Director's delegate.

(3) Energy conservation program (ECP)--A particular program that promotes energy conservation or energy efficiency.

(4) ~~Energy conservation program~~ ECP rate--The energy conservation program rate approved by the Commission in the form of a monthly customer charge designed to recover an LDC's administrative and portfolio costs.

(5) Gas Services--The Gas Services Department of the Oversight and Safety Division of the Commission.

(6) Local distribution company (LDC)--An investor-owned gas utility that operates a retail gas distribution system.

(7) Lost marginal revenues (LMR)--The amount of lost annual marginal revenues resulting from the reduction of sales or demand due to the ECP portfolio.

~~(7)~~ ECP ~~Portfolio~~ portfolio--The entire group of energy conservation programs offered by a local distribution company as described in subsection (f) of this section. The portfolio may consist of one or more programs.

~~(8)~~ Portfolio costs--~~Costs prudently incurred by an LDC to design, market, implement, administer, and deliver an ECP portfolio that has been approved by the Commission~~ All prudently incurred non-administrative costs that an LDC seeks to recover through the ECP rate to implement and deliver an ECP portfolio to customers and prospective customers, including but not limited to research and development costs, payment of rebates, material costs, the costs associated with installation and removal of replaced materials and/or equipment, and the cost of education and customer awareness materials related to conservation or efficiency.

(10) Portfolio term--The term during which an approved ECP portfolio will be in effect, which is three successive program years.

~~(9)~~ Program year--The first program year of an approved ECP portfolio shall begin on ~~12-month period beginning~~ the first day of the month following the Commission's approval of the ~~program~~ ECP portfolio and end on December 31 of the succeeding year. Each succeeding program year during the portfolio term shall be one calendar year beginning on January 1 of the next succeeding year.

(12) Research and development costs--The costs prudently incurred by an LDC to conduct market and engineering studies for the feasibility and design of potential ECPs; provided, however, that an LDC's total research and development costs may not exceed 10% of the LDC's sum total amount of portfolio costs and administrative costs during a portfolio term. Research and development costs are portfolio costs.

The above changes are intended to reduce ambiguity in the rules by clarifying and incorporating additional defined terms, including the addition of the term "lost marginal revenues (LMR)" that tracks the statutory language. CenterPoint Energy's changes also redefine "program year" to mean a calendar year beginning January 1 except for the first program year, since the first program year will likely start on a date

other than January 1, and adds the defined term “portfolio term” as meaning three program years in recognition of the fact that the first program year may not necessarily be a calendar year beginning January 1. The Company’s changes also try to remove any ambiguity in distinguishing between an administrative costs and portfolio costs, specifically defining and designating research and development (R&D) costs as portfolio costs, and by capping the level of R&D costs that an LDC may seek to recover through the ECP rate at 10% of total portfolio and administrative costs to be recovered during the portfolio term. Finally, the definition of administrative costs has been changed to specifically include the LDC’s reimbursement obligation to the Commission under subsection (k).

Subsection (c) General Requirements

CenterPoint Energy recommends the following changes in subsection (c) of the proposed rule:

- (1) An LDC may recover its LMR and administrative and portfolio costs of an through a cost recovery mechanism described in subsection (g) of this section if its ECP portfolio ~~if it~~ is approved by the Commission pursuant to this section and the LDC complies with the approved ECP portfolio. An LDC seeking to implement an ECP portfolio in one or more of its service areas shall apply with Gas Services and receive a final order from the Commission before beginning to recover the costs.
- (2) An LDC applying for approval of an ECP portfolio shall submit an application for each service area in which it seeks to implement an ECP.
- (3) ~~If the Commission approves the LDC’s application or approves the application with modifications, the LDC may recover costs prudently incurred to implement the ECP portfolio, including costs incurred to design, market, implement, administer, and deliver the ECP portfolio. Any~~ All LMR and administrative and portfolio costs included in an ECP portfolio recovered through a cost recovery mechanism approved by the Commission pursuant to subsection (g) of this section shall be fully subject to review by the Commission for reasonableness and prudence. ~~ECP Administrative and portfolio costs that are imprudent or, and LMR recovered from customers without approval of the Commission, are subject to refund as determined by the Commission.~~

The above changes are intended to ensure that the Commission is able to exercise its authority to approve an ECP rate that includes the LDC’s LMR. It does this by specifying that LMR, in addition to administrative and portfolio costs, may be recovered through the cost recovery mechanism described in subsection (g). The changes also ensure that any LMR recovered without the Commission’s approval will be subject to refund.

Subsection (d) Contents of Application

CenterPoint Energy recommends the following changes in subsection (d)(1) of the proposed rule:

(1) Initial ECP portfolio application. An LDC's initial application for approval of an ECP portfolio shall include:

- (A) a list and detailed description of each proposed ECP;
- (B) the objectives for each proposed ECP;
- (C) the proposed annual-per-program year budget for portfolio costs for each ECP and the ECP portfolio;
- (D) the proposed per-program year budget for administrative costs for each ECP and the ECP portfolio;
- ~~(E) the proposed proportion of ECP portfolio costs to be funded by customers;~~
- ~~(F) the proposed proportion of ECP portfolio costs to be funded by shareholders;~~
- (G) the projected annual-per-program year consumption reduction per customer class for each ECP and the ECP portfolio;
- (H) the projected annual-per-program year cost savings per customer class for each ECP and the ECP portfolio;
- (I) a copy of the notice of the application sent to customers and an affidavit stating the method of notice and the date or dates on which the notice was given;
- (J) copies of written correspondence received by the LDC in response to the notice;
- (K) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if an ECP portfolio is approved;
- (L) copies of the proposed ECP rate schedule or schedules; and
- (M) the name of the LDC's representative, business address, telephone number, and email address.

The above changes to proposed subsection (d)(1) are intended to clarify the information requirements for the submission of an LDC's initial ECP portfolio application. The changes require a "program year" budget for both administrative costs and portfolio costs, rather than an annual budget, in light of the previously mentioned fact that the first program year likely will not equate to a calendar year. The Company also strikes the proposed § 7.480 requirement for the LDC to include in its application a description of the ECP costs to be funded by customers and shareholders. All reasonable and prudent ECP costs should rightly be recoverable through the ECP rate, and all unreasonable or imprudent ECP costs

should rightly be borne by shareholders. Since that determination of prudence will be made during the annual program review process described in subsection (j), it is not appropriate to be included in the application review process. The above changes also strike other specific provisions that are not required by statute.

CenterPoint Energy recommends the following changes in subsection (d)(2) of the proposed rule:

(2) Subsequent ECP portfolio application. An LDC shall re-apply for approval of its ECP portfolio every three years. The subsequent application shall be filed no later than 90 days prior to the third anniversary of the LDC's program year end of the portfolio term of the previously approved ECP portfolio. A subsequent application for approval of an ECP portfolio shall include:

- (A) a list and detailed description of each proposed ECP;
- (B) the objectives for each ECP;
- (C) the proposed annual per-program year budget for portfolio costs for each ECP and ECP portfolio;
- (D) the proposed per-program year budget for administrative costs for each ECP and the ECP portfolio;
- (E) the actual per-program year historical annual budget portfolio costs for each ECP and the ECP portfolio during the previous portfolio term;
- (F) the actual per-program year historical administrative costs for each ECP and the ECP portfolio during the previous portfolio term;
- ~~(G) the proposed proportion of ECP portfolio costs to be funded by customers;~~
- ~~(H) the proposed proportion of ECP portfolio costs to be funded by shareholders;~~
- (I) the projected and actual historical annual per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the previous portfolio term;
- (J) the projected and actual historical annual per-program year cost savings per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year cost savings per customer class for each ECP and the ECP portfolio over the previous portfolio term;
- (K) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if the ECP portfolio is approved;
- (L) copies of the proposed ECP rate schedule or schedules;
- (M) the name of the LDC's representative, business address, telephone number, and email address; and

(N) if the LDC proposes a new ECP, or proposes changes to an existing ECP such that costs to customers increase, the LDC shall provide notice in accordance with subsection (e) of this section and include in its subsequent application the documents required by paragraph (1)(I) and (J) of this subsection.

CenterPoint Energy's changes in subsection (d)(2) are like its changes in subsection (d)(1). The changes also clarify the time period to be covered by the historical cost savings and consumption reduction information that must be provided with subsequent ECP portfolio applications, which is presently open-ended. The Company prescribes the prior portfolio term (defined as the three program years of the previously approved ECP portfolio) as the relevant historical period for this information. The above changes also strike specific provisions that are not required by statute.

Subsection (g) Cost Recovery Mechanism

CenterPoint Energy recommends the following changes in subsection (g) of the proposed rule:

The initial and each subsequent ECP portfolio application, and each ECP rate adjustment requested pursuant to subsection (j) of this section, for approval of an ECP portfolio shall include a proposed ECP rate. Cost recovery through the ECP rate shall be limited to LMR and the incremental administrative and portfolio costs of providing an ECP portfolio that are not already included in the then-current cost of service rates of the LDC. Administrative ~~Except for the first program year,~~ administrative costs in excess of 15% of the total costs of the portfolio shall not be included in the ECP rate ~~or recovered from customers in any way.~~

(1) A separate ECP rate shall be calculated for each customer class in accordance with the following formula: $ECP\ rate = (CCR\ per\ Class + BA\ per\ Class + LMR\ per\ Class) / \text{Number of Annual Bills per Class}$, where:

(A) CCR, Current Cost Recovery, is all projected costs attributable to the local distribution company's energy conservation portfolio for the program year;

(B) BA, Balance Adjustment, is the computed difference between CCR collections by class and expenditures by class, including the pro-rata share of common administrative costs for each class for the program year and collection of the over/under recovery during the prior program year; and

(C) Class is the customer class to which the ECP rate will apply.

(D) LMR is the product of (X) the annual volume of natural gas savings per class during a program year resulting from the LDC's ECP portfolio in effect during that program year, as determined pursuant to subsection (j) of this section, multiplied by (Y) the LDC's volumetric base rate for each class in effect during that program year.

(2) Upon the Commission's approval of the ECP rate, the LDC shall update its residential and commercial tariffs to reflect the approved ECP rate.

The above changes in subsection (g) of the proposed § 7.480 clarify that the ECP cost recovery mechanism applies to LMR as well as incremental administrative and portfolio costs, and that this mechanism is to be used to implement both (1) the ECP rate approved in the initial and subsequent triennial applications and (2) any annual adjustments to the ECP rate approved in accordance with subsection (j). In particular, the Company specifies that the per-class ECP rate calculation may include an LMR amount per rate class. The Company also prescribes the method for calculating the per-class LMR, which should be the product of the class consumption savings (or consumption reduction) attributed to the ECP portfolio, multiplied by the LDC's volumetric base rate applicable to that class. Importantly, it requires that the consumption savings or reduction attributable to the ECP portfolio must be verified pursuant to the procedures described in subsection (j).

Finally, with respect to subsection (g), the above changes would exempt the first program year from the 15% administrative cost limitation, because of the fact that the administrative start-up costs for a new ECP incurred in the first year and will naturally tend to be greater than in subsequent years, while the amount of portfolio costs incurred in the first year will naturally tend to be less than in subsequent years. However, the Company urges the Commission to omit any cap on an LDC's administrative costs. The statute and the rule already limit an LDC's cost recovery to prudently incurred administrative costs, and the determination of whether a cost is prudent is a fact determination. Placing a 15% cap by rule on the amount of administrative costs that can be deemed prudent, without any factual basis, appears to be arbitrary. The Commission's authority to impose such a cap requirement is also not apparent in HB 2263, which expresses a clear intent to allow LDCs to recover all prudently incurred costs to administer their ECP portfolios. For these reasons, CenterPoint Energy believes that the rule should not impose any caps on the amount of prudently incurred administrative costs that an LDC may recover.

Subsection (h) Procedure for review

CenterPoint Energy recommends the following changes in subsection (h) of the proposed rule:

The Director of Gas Services shall ensure that ~~applications for~~ ECP portfolio applications are reviewed for compliance with the requirements of Texas Utilities Code, §§104.401-104.403 and this section. Upon completion of the review, Gas Services will prepare a written recommendation, which shall be provided to the applicant LDC.

(1) The recommendation may include:

(A) approval of the ~~application for an~~ ECP portfolio application as filed;

(B) approval of the ~~application for an~~ ECP portfolio application with modifications; or

(C) rejection of the ~~application for an~~ ECP portfolio application.

(2) The recommendation shall be submitted to the Commission for decision at a scheduled open meeting.

(3) If the Commission approves an ECP portfolio application at an open meeting, the LDC shall file the applicable ECP rate schedules ~~implementing the ECP portfolio~~ in accordance with subsection (i) of this section.

(4) Neither the review of an ECP portfolio application filing nor the review of a proposed ECP rate or rate schedule is a ratemaking proceeding for the purposes of Texas Utilities Code § 103.022.

The above changes are mostly for conciseness. However, the inclusion of paragraph (4) to this subsection tracks the statutory language adopted by HB 2263 and makes it clear that the review process is not a ratemaking proceeding.

Subsection (i) Rate Schedules

CenterPoint Energy recommends the following changes in subsection (i) of the proposed rule:

The LDC shall include proposed rate schedules with its ECP portfolio applications made under subsection (d) of this section ~~for an ECP portfolio~~ and with each ECP rate adjustment request made under subsection (j) of this section. Each ECP rate schedule shall be made on a form approved by the Commission and made available on the Commission's website. If the LDC's proposed ECP portfolio or proposed EP rate adjustment is approved by the Commission, the approved rate schedules shall be electronically filed by the LDC in accordance with §7.315 of this title (relating to Filing of Tariffs). An ECP rate approved by the Commission at an open meeting and implemented by the LDC shall be subject to refund unless and until the rate schedules are electronically filed and accepted by Gas Services in accordance with §7.315 of this title.

These changes clarify that the ECP rate schedule filing requirement applies not only when an LDC files its initial and subsequent ECP portfolio applications pursuant to subsection (d), but also when an LDC files the prescribed ECP annual report and rate adjustment pursuant to subsection (j).

Subsection (j) ECP Annual Report and Rate Adjustment

CenterPoint Energy recommends the following changes in subsection (j) of the proposed rule:

(1) An LDC implementing an approved ECP portfolio pursuant to this section shall file an ECP annual report and rate adjustment request with the Commission. The report and request shall be filed by April 1 of each year during the portfolio term of an approved ECP portfolio is implemented and shall be filed no later than 45 days following beginning after the end of the LDC's first program year. The ECP annual report shall be in the format prescribed by the Commission and shall include the following:

(A) an overview of the LDC's ECP portfolio;

(B) a description of each ECP offered under the portfolio that includes the program's performance for the preceding year, actual program expenditures, and program results;

(C) the LDC's planned ECPs for the upcoming year; ~~and~~

(D) schedules detailing program expenditures for the program year, actual amounts collected for the program year, and the calculation of the adjusted ECP rate for each applicable customer class; and

(E) if the LDC is requesting LMR recovery, a copy of the LDC's Annual Earnings Monitoring Report (EMR) for the previous calendar year.

(2) An LDC shall adjust the ECP rates then in effect

(A) to true up the difference between the program expenditures and actual amounts collected through the ECP rates in effect during the previous program year;

(B) to recover any LMR during the previous program year, but only if the LDC's EMR for the previous calendar year shows that it did not earn above its authorized rate of return established in its last base rate proceeding; and

(C) to account for any changes to the proposed ECP costs.

(3) A separately adjusted ECP rate shall be calculated for each customer class in accordance with the formula described in subsection (g)(1) of this section.

(4) The LDC shall file the adjusted ECP rate schedules after Commission approval in accordance with subsection (i) of this section.

~~(25)~~ The LDC shall not implement any adjusted ECP rates until 30 days after submitting the annual report.

The Company's changes in subsection (j) are more extensive because of the need to prescribe the requirements that must be met in more detail for the Commission to be able to use the grant of authority in HB 2263 to approve an LDC's request to recover LMR. The changes include additional information requirements to be provided in the annual report to be filed by April 1 of each year beginning after the

conclusion of the first program year of a portfolio term. Specifically, if the LDC is requesting LMR recovery, then the LDC's report should include a copy of its previous year's EMR. This information is required for Commission approval of the inclusion of LMR in an LDC's ECP rate.

Subsection (k) Reimbursement

CenterPoint Energy recommends the following changes in subsection (k) of the proposed rule:

An LDC implementing an approved ECP portfolio pursuant to this section shall reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under this section. The Director shall estimate the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall reimburse the Commission for the amount so determined within 30 days after receipt of notice of the amount of the reimbursement. An LDC's reimbursement costs shall be recoverable by the LDC but is not subject to (1) the 15% cap on administrative costs described in subsection (g) of this section or (2) any cost/benefit test used by the Commission to determine the performance of an LDC's ECP in an annual report filed pursuant to subsection (j) of this section.

The purpose of the above changes to subsection (k) of the proposed § 7.480 is to ensure that an LDC's reimbursement under Tex. Utils. Code § 104.403(i) are not counted for any ECP measurement purpose, since they are unavoidable costs that have no bearing on the actual performance of an ECP.

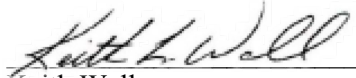
III. Comments on Rule 7.460 Amendments

CenterPoint Energy has reviewed the comments of Atmos Energy Corp regarding the proposed amendments to 16 TAC § 7.460 relating to Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency, and respectfully requests that such comments be incorporated into the amendments to rule 7.460 adopted by the Commission.

Conclusion

CenterPoint appreciates the opportunity to submit these comments and looks forward to working with the Commission, Staff, and other interested parties to develop the final version of this significant rulemaking.

Respectfully submitted,



Keith Wall
Director Regulatory Affairs
1111 Louisiana Street, 19th Floor
Houston, Texas 77002
(713) 207-5946
keith.wall@centerpointenergy.com