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RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright

FROM: Haley Cochran, Assistant General Counsel
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: March 19, 2024

SUBJECT: Adopt New 16 TAC §7.480, relating to Energy Conservation Programs

Attached is Staff's recommendation to adopt new 16 Texas Administrative Code §7.480, relating to Energy Conservation Programs, pursuant to House Bill 2263 (88th Session, 2023) which added new Subchapter J, Natural Gas Energy Conservation Programs, in Texas Utilities Code Chapter 104.

House Bill 2263 relates to energy conservation programs that may be offered by a local distribution company (LDC) to its residential and commercial customers and requires an LDC seeking to recover the costs of the program to apply to the Commission before beginning recovery of the costs. New §7.480 describes the process through which an LDC may apply for Commission approval of its energy conservation program.

On September 19, 2023, the Commission approved the publication in the *Texas Register* of proposed new rule §7.480, relating to Energy Conservation Programs. The public comment period ended on October 25, 2023. Staff recommends that the Commission adopt new §7.480 with changes to the proposed text published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5796). The recommended changes are described in the attached adoption preamble.

cc: Wei Wang, Executive Director
Kari French, Director, Oversight and Safety Division
Mark Evarts, Director, Gas Services Section
Sarah Montoya-Foglesong, Director, Market Oversight Section
Natalie Dubiel, Assistant General Counsel, Office of General Counsel

1 The Railroad Commission of Texas (the "Commission") adopts new §7.480, relating to Energy
2 Conservation Programs, with changes to the proposed text as published in the October 6, 2023, issue of the
3 *Texas Register* (48 TexReg 5796). The Commission adopts the new rule pursuant to House Bill 2263, 88th
4 Legislative Session (2023) which added new Subchapter J, Natural Gas Energy Conservation Programs, in
5 Chapter 104, Texas Utilities Code. House Bill 2263 relates to energy conservation programs that may be offered
6 by a local distribution company (LDC) to its residential and commercial customers and requires an LDC seeking
7 to recover the costs of the program to apply to the Commission. New §7.480 describes the process through
8 which an LDC may apply for Commission approval. In the October 6th issue of the *Texas Register*, the
9 Commission also proposed amendments to §7.460, relating to Suspension of Gas Utility Service Disconnection
10 During an Extreme Weather Emergency. The Commission adopted amendments to §7.460 effective December
11 5, 2023 (48 TexReg 7044).

12 Regarding proposed new §7.480, the Commission received eleven comments: four from associations
13 (Atmos Cities Steering Committee joined by the City of Austin (Atmos Cities), Commission Shift, the Lone Star
14 Chapter of the Sierra Club, and the South-Central Partnership for Energy Efficiency as a Resource (SPEER)),
15 three from companies (Atmos Energy Corporation (Atmos Energy), CenterPoint Energy Resources Corp.
16 (CenterPoint), and Texas Gas Service Company (Texas Gas)), one from the City of Houston, one from the
17 Office of Public Utility Counsel (OPUC), one from Public Citizen, and one from an individual.

18 The Commission appreciates these comments.

19 Atmos Cities, CenterPoint, OPUC, and SPEER expressed general support for §7.480. Commission Shift
20 and an individual expressed general opposition to §7.480.

21 Atmos Cities, the City of Houston, Commission Shift, Public Citizen, Sierra Club, SPEER, and one
22 individual requested that a cost-effectiveness standard be incorporated into §7.480. The City of Houston
23 commented that the proposed rule does not ensure the measures included in an LDC's energy conservation
24 program (ECP) are effectively reducing gas consumption or are cost-effective in reducing consumption. The
25 ECP should require program evaluation by a third party to verify and report on performance of the program and
26 measures and ensure the cost-effectiveness and efficacy of the program. Commission Shift supported
27 establishing cost-effective criteria that ensures good management of the program and not the creation of another
28 form of income or wasteful spending on the part of the LDC. Atmos Cities, the City of Houston, one individual,
29 Sierra Club, and Public Citizen commented that cost-effectiveness should be subject to review by an
30 independent auditor.

31 The Commission disagrees that a cost-effectiveness standard should be incorporated at this time. Texas
32 Utilities Code §104.403 states that an LDC may recover costs that are prudently incurred in the manner required
33 by Subchapter J, Natural Gas Energy Conservation Programs. Subchapter J does not require a finding of cost-
34 effectiveness. However, in lieu of incorporating a cost-effectiveness standard, the Commission adopts a change
35 to limit the ECP rate that can be charged to residential and commercial customers. The Commission agrees with

1 a comment from Sierra Club that a maximum ECP rate should be established and adopts subsection (g) with a
2 change such that an ECP rate may not exceed a volumetric charge of \$0.20/Mcf for residential customers and
3 \$0.20/Mcf for commercial customers. The rate increase due to an ECP charge would be no more than
4 approximately 1.2% of the 2023 average cost of residential gas service in Texas according to the U.S. Energy
5 Information Administration. The Commission notes that this ECP rate cap will also limit the impact of the ECP
6 rate on all customer bills including low-income customers.

7 Further, in accordance with subsection (f), the LDC may utilize third party verification of its ECP
8 portfolio performance, including the cost-effectiveness and efficacy of the program. If an LDC chooses to
9 evaluate cost-effectiveness itself or through a third-party independent auditor, the LDC is required to report the
10 findings in its annual report as required by subsection (j). The Commission adopts subsection (j) with a change
11 to require that any evaluation of cost-effectiveness be included in the LDC's annual report. The Commission
12 intends to reevaluate the addition of a cost-effectiveness finding after successful implementation of the new rule.

13 SPEER recommended the Commission require periodic stakeholder meetings where stakeholders can
14 meet and discuss any issues or improvements to the ongoing ECP's in the state.

15 The Commission declines to make any changes to the rule in response to this comment but will consider
16 SPEER's suggestion as it implements new §7.480.

17 Sierra Club expressed concern that ECPs could be designed more to sell gas appliances versus
18 encouraging customers to save gas through shifting use at peaks, using more efficient appliances, or other
19 efficiency measures like insulation. Similarly, Public Citizen recommended a more stringent review of ECPs
20 that incentivize the purchase of appliances because the incentives are especially likely to be used as a means for
21 growing market share rather than conserving energy.

22 The Commission declines to make any changes in response to these comments. Utilities Code §104.403
23 allows LDCs to offer programs that promote energy conservation or energy efficiency. Gas appliances may help
24 consumers achieve these goals.

25 Regarding subsection (b), Definitions, CenterPoint suggested several changes to proposed definitions.
26 Atmos Energy commented that it supports CenterPoint's comments. First, CenterPoint suggested that
27 administrative costs be defined as all prudently incurred costs of creating, managing, and administering an ECP
28 portfolio. The Commission agrees that "prudently incurred" should be added to the definition and adopts
29 subsection (b)(1) with that change.

30 CenterPoint recommended changes to the definition of energy conservation program rate in subsection
31 (b)(5). CenterPoint recommended the definition be changed to "ECP rate," and that the monthly customer
32 charge be designed to recover an LDC's administrative and portfolio costs.

33 The Commission agrees with CenterPoint's recommended changes. The Commission agrees that the
34 charge is designed to recover an LDC's authorized administrative and portfolio costs and adopts the definition
35 with that change. Further, the Commission clarifies that the monthly charge is a volumetric charge, rather than a

1 monthly customer charge based on comments from the City of Houston and the Sierra Club discussed below.

2 Next, CenterPoint recommended adding a definition of “lost marginal revenues.” The Commission
3 disagrees because the Commission declines to allow recovery of lost marginal revenues, as explained in the
4 discussion of subsection (c) below.

5 CenterPoint provided a revised definition of portfolio costs, which defined these costs as, “All prudently
6 incurred non-administrative costs that an LDC seeks to recover through the ECP rate to implement and deliver
7 an ECP portfolio to customers and prospective customers, including but not limited to research and development
8 costs, payment of rebates, material costs, the costs associated with installation and removal of replaced materials
9 and/or equipment, and the cost of education and customer awareness materials related to conservation or
10 efficiency. The Commission agrees with this revised definition and adopts the changes in subsection (b)(8).

11 CenterPoint recommended defining portfolio term. The Commission agrees that subsection (b) should
12 include a definition of portfolio term, but does not agree with all of CenterPoint’s proposed definition. Instead,
13 the Commission adopts subsection (b) with new paragraph (9), which defines portfolio term as the term during
14 which an approved ECP portfolio will be in effect.

15 CenterPoint also recommended revising the definition of program year to ensure the program year
16 corresponds to a calendar year. The Commission disagrees because the program year for an approved ECP is
17 dependent on the date of Commission approval. However, the Commission agrees the program year and
18 portfolio term concepts may need clarification and addresses those issues in the discussion on subsection (d)
19 below. The Commission also adopts the definition of “program year” with a change to clarify that the program
20 year begins the first day of the month following the Commission’s approval of the portfolio.

21 CenterPoint’s last recommendation in subsection (b) was to add a definition of research and
22 development costs. The Commission agrees and adopts most of CenterPoint’s recommended language in
23 subsection (b)(11).

24 Regarding subsection (c), CenterPoint requested revisions to allow an ECP rate that includes an LDC’s
25 lost marginal revenue. The City of Houston and Sierra Club requested that a formula or detailed instructions be
26 included for quantifying lost marginal revenue.

27 The Commission recognizes that Texas Utilities Code §104.403 allows the Commission to approve an
28 ECP that accounts for the reduction in the company’s marginal revenues due to lower sales or demand resulting
29 from the ECP. Though the statute allows for the recovery of lost marginal revenues, the language is not
30 mandatory. The Commission declines to include lost marginal revenue because allowing the LDC to recover the
31 amount of its lost marginal revenues through the ECP rate is harmful to the ratepayer. First, it increases the ECP
32 rate for each residential and commercial customer irrespective of whether a particular customer has chosen to
33 participate in an ECP program offered as part of an ECP portfolio. Utilities Code §104.403 already allows LDCs
34 to pass through ECP costs to customers who have chosen not to participate in an ECP. Second, it reduces the
35 incentive for a customer to participate in an ECP, and is counterintuitive for such a customer to participate if the

1 customer will ultimately reimburse the LDC for lost profits resulting from his or her participation in the very
2 program promoted and marketed by the LDC to the customer.

3 Atmos Cities commented that subsection (c)(1) should be revised to use “implements” rather than
4 “complies with.” The Commission agrees and adopts this change in subsection (c)(1).

5 Subsection (c)(3) relates to costs prudently incurred. CenterPoint commented that the rule should be
6 revised to remove the ability of the Commission to approve a program with modifications. The Commission
7 disagrees because its review and oversight of an ECP requires that it retain discretion.

8 Regarding subsection (c)(3), Atmos Cities stated that the prudence review should be accomplished
9 through a contested case. Sierra Club requested clear standards governing intervention for customers, cities, and
10 non-profit organizations.

11 The Commission notes that review of ECP applications will be conducted administratively by
12 Commission staff in accordance with this rule. Commission staff will consider written comments received in
13 accordance with subsection (e)(1)(F) when presenting its determination to the Commission for approval.
14 Customers and intervening parties will be provided an opportunity to scrutinize and contest the prudence of ECP
15 costs and the ECP portfolio in the LDC’s statement of intent rate proceeding. This is similar to how the
16 Commission handles interim rate adjustment (IRA filings), for which an evidentiary, contested case is not held,
17 but costs are scrutinized for prudence at the LDC’s base rate proceeding. To clarify the intent of subsection
18 (c)(3), the Commission adopts the paragraph with changes and makes a related change to subsection (e) to
19 remove the reference to a protest. The Commission’s changes in subsection (c)(3) include a requirement for the
20 LDC to provide support for the reasonableness and prudence of ECP costs in its next statement of intent
21 application.

22 Subsection (d) contains the requirements for an LDC’s initial ECP application. Atmos Cities’ comment
23 requested that a description of any existing ECP programs offered by the LDC and payments made under each
24 ECP be included in the application.

25 The Commission agrees that the initial application should include a description of any existing energy
26 conservation programs offered by the LDC in the applicable service area prior to the effective date of §7.480.
27 This change is adopted in subsection (d)(1)(A). The Commission declines to add a request for payments made
28 under each ECP because it is unclear what Atmos Cities meant by “payments.”

29 Atmos Cities also requests that the application include the projected annual demand reduction per
30 customer class for each ECP, the proposed ECP rate calculation, and any other information that supports
31 determination of the ECP rate.

32 The Commission declines to include a requirement for projected annual demand reduction because
33 subsection (d)(1)(H) already requires the applicant to include projected annual consumption reduction per
34 customer class for each ECP and the ECP portfolio. However, the Commission adopts changes in subsections
35 (d)(1) and (d)(2) requiring the initial and subsequent application to include normalized historical annual volumes

1 per customer class and projected volumes for the upcoming program year per customer class. This change
2 corresponds to the change in subsection (b)(5), regarding the volumetric rate. The Commission agrees that the
3 initial application should include the proposed ECP rate calculation and any other information that supports
4 determination of the ECP rate. Those changes are adopted in subsection (d)(1)(N) and (Q). The Commission
5 also adds these requirements in the subsequent application in subsection (d)(2).

6 CenterPoint recommended striking subsection (d)(1)(F) and (d)(1)(G), which require the application to
7 include the proposed proportion of ECP portfolio costs to be funded by customers and the proposed proportion
8 to be funded by shareholders. CenterPoint states that all reasonable and prudent ECP costs should be
9 recoverable through the ECP rate from rate payers and only unreasonable or imprudent ECP costs should be
10 borne by shareholders.

11 The Commission disagrees. ECP programs implemented prior to House Bill 2263 and this rule included
12 information on the proportion of costs funded by customers versus shareholders and the Commission finds the
13 information will continue to be useful. The Commission supports allowing an LDC the opportunity to share
14 ECP program costs between its ratepayers and its shareholders.

15 CenterPoint made two other suggestions on subsection (d)(1). First, CenterPoint recommended
16 "proposed annual" be revised to "proposed per-program year" to ensure consistency with the definition of
17 program year. Second, it recommended the application include per-program year budget rather than requesting
18 the proposed budget for portfolio costs and administrative costs separately.

19 The Commission agrees with CenterPoint's first suggestion but declines to combine portfolio and
20 administrative costs into one application requirement. The Commission prefers to receive information on
21 portfolio costs and administrative costs separately for each ECP and the ECP portfolio. The Commission
22 clarifies its intent with changes to subsection (d)(1)(D) and (d)(2)(C) to replace "budget" with "portfolio costs."
23 The Commission also replaces "annual" with "per program year" where appropriate.

24 Atmos Cities and CenterPoint commented on the frequency of subsequent ECP applications. Atmos
25 Cities requested that the Commission allow program modifications or new programs more frequently than once
26 every three years. CenterPoint requested the ability to file subsequent applications no later than 90 days prior to
27 the end of the portfolio term of the previously approved ECP portfolio.

28 The Commission declines to allow applications for new programs at an LDC's discretion due to the
29 Commission's limited staff resources. Dictating application filing timelines will allow Commission staff to
30 prioritize and prepare for ECP reviews among other responsibilities such as statement of intent and IRA filings.
31 However, the Commission agrees that once every three years may be too limited. Therefore, the Commission
32 adopts subsection (d)(2) to allow new program applications every other year. The subsequent application will be
33 required 45 days following the end of the ECP portfolio's second program year.

34 Atmos Cities also asked that the Commission review the ECP every year to ensure rates match ECP
35 costs.

1 The Commission agrees. The proposed and adopted versions of §7.480 contemplate an annual review of
2 the ECP by Commission staff based on the annual report required under subsection (j). If staff's review
3 determines the ECP rate as adjusted by the LDC's annual report is miscalculated or misapplied, staff will
4 instruct the LDC to adjust its rate for the next program year.

5 CenterPoint offered additional comments on the subsequent application requirements in subsection
6 (d)(2). CenterPoint suggested that its revisions to the initial application contents be incorporated into the
7 subsequent application as well. The Commission agrees and adopts subsection (d)(2) with changes to ensure the
8 application list is consistent with the list in subsection (d)(1).

9 CenterPoint also requested revisions to subsection (d)(2)(I) and (J) to require information on the
10 consumption reduction and cost savings per customer class over the new portfolio term and the actual historical
11 per-program year consumption reduction/cost savings for each ECP and the ECP portfolio over the previous
12 portfolio term. This change will clarify the period to be covered, which is open-ended in the proposed version.
13 The previous portfolio term would be the three program years of the previously approved ECP portfolio.

14 The Commission agrees and adopts subsection (d)(2)(I) as, "The projected per-program year
15 consumption reduction per customer class for each ECP and the ECP portfolio over the new portfolio term and
16 the actual historical per-program year consumption reduction per customer class for each ECP and the ECP
17 portfolio over the previous portfolio term." The Commission adopts subsection (d)(2)(J) as, "The projected per-
18 program year net cost savings per customer class for each ECP and the ECP portfolio over the new portfolio
19 term and the actual historical per-program year net cost savings per customer class for each ECP and the ECP
20 portfolio over the previous portfolio term." The Commission notes that due to changes discussed above, the
21 portfolio term will be less than three program years.

22 Regarding subsection (e), notice requirements for ECP applications, the City of Houston and the Sierra
23 Club requested additional notice of an ECP application to the intervenors in the LDC's most recent general rate
24 proceeding.

25 The Commission disagrees. As mentioned below, a list of filed ECP portfolio applications will be in the
26 Gas Utilities Information Bulletins, which are published twice a month on the Commission's website. This
27 information is sufficient to notify interested persons who do not receive direct notice required by subsection (e).

28 Texas Gas Service commented that subsection (e) should be revised to include a date by which public
29 comments must be submitted.

30 The Commission disagrees. The Commission will conduct the ECP review process similar to an IRA
31 proceeding. In IRA proceedings, the public is not provided a deadline by which to submit comments. The
32 Commission prefers to mirror the IRA proceeding where possible to ensure consistency and predictability in its
33 proceedings.

34 Public Citizen, one individual, and Sierra Club commented that the public should be invited to
35 participate in the review of all ECP applications and renewals.

1 The Commission disagrees. The ECP application review, like an IRA, is administrative and will not
2 result in a contested case. However, the notice provided to customers alerts customers to their opportunity to file
3 written comments with Commission staff and intervene as a party to contest the ECP during the LDC's next
4 statement of intent rate case proceeding. The Commission recognizes the language in subsection (e)(1)(F) may
5 cause confusion regarding the nature of the ECP process, and so the Commission adopts subparagraph (F) with a
6 change.

7 Public Citizen and Sierra Club asked that all affected customers be notified of an ECP by mail and by
8 email if that is how the customer receives bills. These commenters also suggested that notice be posted on the
9 Commission's website. Sierra Club further suggested the Commission require LDCs to post their public input
10 and outreach processes on their websites. Commission Shift asked the Commission to consider requiring LDCs
11 to provide public access to their ECPs.

12 The Commission disagrees that notice should be sent by mail and email. The Commission notes that a
13 list of filed ECP portfolio applications will be in the Gas Utilities Information Bulletins, which are published
14 twice a month on the Commission's website. The Commission agrees LDCs should make information about
15 ECPs available on their websites. The Bulletins, information on LDC websites, and mail or email notice will
16 ensure interested persons are notified of ECP applications. The Commission adopts subsections (e) and (j) with
17 changes to require an LDC to post its ECP portfolio applications and annual reports on its website. The LDC
18 will be required to provide the specific webpage on which the filing is located.

19 Atmos Cities alerted the Commission to a typographical error in subsection (e)(1)(F). The Commission
20 appreciates this comment and corrects "LDC Company" to "LDC."

21 Subsection (g) describes the cost recovery mechanism for an ECP. Atmos Energy requested that the
22 Commission remove the requirement limiting administrative costs to 15% of the total portfolio costs. Atmos
23 Energy notes their ECP has been successful in cost-effectiveness, but administrative costs may exceed 15%.
24 CenterPoint commented that the ECP should be exempt from the 15% cap in its first program year because
25 administrative start-up costs for a new ECP will be greater than costs in subsequent years, while the amount of
26 portfolio costs in the first year will naturally be less than in subsequent years.

27 The Commission declines to remove or alter the cap on administrative costs. The rule does not prohibit
28 administrative costs in excess of 15% - it simply limits the recovery of administrative costs in excess of 15%
29 from ratepayers. Additionally, an existing ECP, previously approved in a rate case, has been in existence for
30 over ten years and has successfully limited administrative costs to 15%.

31 Commission Shift commented that a 15% cap for administrative costs is meaningless without a cap on
32 total costs.

33 The Commission disagrees. The cap discourages unreasonable or excessive spending on costs not
34 directly related to the ECP. The Commission also notes that adopted §7.480 limits the ECP rate that may be
35 charged to customers.

1 CenterPoint requested clarification that the ECP cost recovery mechanism applies to lost marginal
2 revenue as well as incremental administrative and portfolio costs.

3 The Commission disagrees. The cost recovery mechanism applies to reasonable incremental
4 administrative costs subject to the 15% cap and reasonable incremental portfolio costs. It does not apply to lost
5 marginal revenue because recovery of lost marginal revenue is not authorized in §7.480.

6 CenterPoint also requested clarification regarding whether the cost recovery mechanism applies to both
7 the initial ECP application and adjustments in subsequent years. The Commission confirms it does and adopts
8 subsection (g) with a change to address this comment.

9 Texas Gas asked that the Commission clarify the time period for when approved ECP rates would be
10 subject to refund. For example, whether ECP rates are subject to refund until reviewed in the LDC's next full
11 rate case but not in a COSA, GRIP, or similar Interim Rate Case filing.

12 The Commission responds that ECP costs, including imprudent ECP costs or ECP costs recovered from
13 customers without approval of the Commission will be subject to review and refund at the LDC's next statement
14 of intent rate proceeding. The change adopted in subsection (c)(3) clarifies this issue.

15 The City of Houston, one individual, and the Sierra Club requested that the ECP rate be designed as a
16 volumetric consumption rate and charged to customers on a volumetric or therm basis per month. They state that
17 based on the formula in the proposal, the costs of the ECP are recovered on a monthly bill basis from customers
18 within each class. However, natural gas conservation programs reduce consumption, or the volumes/therms sold
19 to customers. Thus, the costs should be recovered on a volumetric or therm rate basis by the ECP rate.

20 The Commission agrees that the ECP rate should be designed as a volumetric consumption rate and
21 adopts subsection (g) and (b)(5) with revisions to reflect that rate.

22 SPEER and the Sierra Club asked the Commission to consider a minimum percentage of 15% of ECP
23 portfolio expenditures for a program year be focused on low-income customers included in the rule. According
24 to the most recent census data, 14% of Texans are considered low-income. By setting aside a relatively
25 proportional share of expenditures to go towards these communities specifically, we can begin to reduce the
26 energy burden of those hardest hit by higher energy bills.

27 The Commission declines to adopt the recommended change because the Commission does not want to
28 limit the overall impact of the program.

29 Subsection (h) relates to the Commission's procedure for reviewing ECP applications. CenterPoint
30 recommended adding, "Neither the review of an ECP portfolio application filing nor the review of a proposed
31 ECP rate or rate schedule is a ratemaking proceeding for the purposes of Texas Utilities Code § 103.022."
32 CenterPoint noted this language is consistent with the governing statute.

33 The Commission agrees and adopts subsection (h) with a change to include the recommended language.

34 Atmos Cities and Texas Gas requested that the rule include a deadline for when Commission staff's
35 administrative review of an ECP application must be completed. Atmos Cities requested 120 days and Texas

1 Gas requested 60 days.

2 The Commission agrees and adopts subsection (h) with a change to require staff's review to be
3 completed within 120 days of the date the application is filed with Gas Services.

4 Regarding subsection (i), CenterPoint asked that the Commission clarify that the ECP rate schedule
5 filing requirement applies not only during initial and subsequent ECP applications but also when filing the ECP
6 annual report and rate adjustment under subsection (j).

7 The Commission agrees and adopts changes in subsection (i) to clarify its intent.

8 Subsection (j) requires an LDC implementing an approved ECP portfolio to file an ECP annual report
9 with the Commission. Atmos Cities requested the following items be included in the annual report in addition to
10 the items proposed in subsection (j): the revenue collected through the ECP rate by customer class; the number
11 of customers participating in each ECP; actual energy and demand savings achieved by customer class; and
12 actual cost-effectiveness calculations.

13 The Commission notes that revenue collected is already required in subsection (j) but agrees a change is
14 needed to clarify that the "per customer class" language applies to each annual report component in subsection
15 (j)(1)(D). The Commission adopts subsection (j)(1)(D) with that change. The Commission also agrees to add the
16 number of customers participating in each ECP and includes a requirement to provide normalized historical
17 annual volumes and projected volumes per customer class as well. The Commission declines to require the
18 actual energy and demand savings achieved by customer class because subsection (j) already requires the LDC
19 to provide a description of each program's performance for the program year, actual program expenditures, and
20 program results. As discussed above, the Commission also incorporates a requirement for a cost-effectiveness
21 evaluation to be included in the report if a cost-effectiveness evaluation is conducted. The Commission declines
22 to require cost-effectiveness calculations because the Commission did not incorporate a cost-effectiveness
23 standard in §7.480.

24 Texas Gas requested that the Commission extend the time for filing the annual report to 60 days
25 following the end of the program year.

26 The Commission disagrees. Subsection (j) requires the annual report be submitted no later than 45 days
27 after the end of the program year. This filing timeline is necessary for the Commission and LDCs to comply
28 with the statutory requirement that subsequent applications must be made no later than 3 years following the
29 previous application.

30 CenterPoint recommended additional language in subsection (j) to clarify how ECP rates may be
31 adjusted after each program year.

32 The Commission agrees and adopts subsection (j) with changes to require that the annual report include
33 a rate adjustment request which adjusts the ECP rates then in effect to (1) true up the difference between the
34 program costs and actual amounts collected through the ECP rates in effect during the previous program year;
35 and (2) account for any changes to the proposed ECP costs and projected recovery.

1 Under the schedule for filing annual reports and subsequent applications reflected in subsections (d)(2)
2 and (j), the LDC's first annual report will be due no later than 45 days following the end of the program year as
3 that term is defined in subsection (b). The next program year will begin on the same day as the previous year,
4 and any adjusted rates may begin 30 days after the LDC submits the annual report.

5 Similarly, the LDC must submit its annual report on its second program year 45 days following the end
6 of the second program year. At the same time, the LDC must submit its subsequent application. The next
7 portfolio term and program year start dates will depend on when the Commission approves the subsequent ECP
8 application.

9 The Commission demonstrates the timeline with the following example. Suppose the Commission
10 approves an ECP at an open meeting on May 15, 2024. The start date for the ECP is June 1, 2024, because the
11 definition of program year in subsection (b) is "the 12-month period beginning the first day of the month
12 following the Commission's approval of the ECP portfolio." The program year would end on May 31, 2025.
13 According to subsection (j), the first annual report must be submitted no later than 45 days following the end of
14 the program year, which would be July 15, 2025. The ECP rate charged during the first program year would
15 remain in effect until an adjusted rate is implemented based on the first annual report filing. An LDC could
16 begin charging any adjusted ECP rate 30 days after filing the annual report. The second program year would
17 begin on June 1, 2025, and end on May 31, 2026. The second annual report and subsequent ECP application
18 would both be due on July 15, 2026. The subsequent ECP application's program year would depend on the date
19 the subsequent application is approved at the Commission open meeting. The ECP rate implemented after the
20 second annual report filing would remain in effect until the subsequent ECP portfolio application is approved.
21 The Commission adopts changes in subsection (h)(4) and (h)(5) to clarify the effect of existing ECP rates during
22 review of an annual report or application.

23 Atmos Cities recommends replacing "preceding" with "program" in proposed subsection (j)(1)(B),
24 which required in the annual report a description of each ECP offered under the portfolio that includes the
25 program's performance for the preceding year, actual program expenditures, and program results.

26 The Commission agrees and adopts subsection (j)(1)(B) with this clarification.

27 Subsection (k) relates to the requirement for an LDC to reimburse the Commission for the LDC's share
28 of the Commission's estimated costs related to administration of reviewing and approving or denying cost
29 recovery applications under §7.480.

30 Regarding subsection (k), CenterPoint commented requesting that an LDC's reimbursement costs not be
31 counted for any ECP measurement purpose since they are unavoidable costs that have no bearing on the actual
32 performance of the ECP. To that end, CenterPoint suggested adding the following: An LDC's reimbursement
33 costs shall be recoverable by the LDC but is not subject to (1) the 15% cap on administrative costs described in
34 subsection (g) of this section or (2) any cost/benefit test used by the Commission to determine the performance
35 of an LDC's ECP in an annual report filed pursuant to subsection (j) of this section.

1 The Commission disagrees. The Commission intends to treat these costs as they are treated in an IRA
2 proceeding, in which reimbursement costs cannot be passed to customers as part of the IRA rate.

3 Again, the Commission appreciates the review and input from commenters. As described above, the
4 Commission adopts changes to subsections (b), (c), (d), (e), (g), (h), (i) and (j). The remaining subsections are
5 adopted without changes. Those subsections are summarized below.

6 New subsection (a) explains the energy conservation program authority given to an LDC to offer such
7 programs to current and prospective residential and commercial customers pursuant to House Bill 2263.

8 Subsection (a) also states that the Commission has exclusive original jurisdiction over energy conservation
9 programs implemented by LDCs.

10 New subsection (f) describes what the ECP portfolio must accomplish, including that it be designed to
11 overcome barriers to the adoption of energy-efficient equipment, technologies, and processes, and to change
12 customer behavior as necessary.

13 New subsection (k) states the procedure for an LDC implementing an approved ECP portfolio to
14 reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of
15 reviewing and approving or denying cost recovery applications under this section. The Director shall estimate
16 the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall
17 reimburse the Commission for the amount so determined within 30 days after receipt of notice of the
18 reimbursement amount.

19 The Commission adopts the new rule pursuant to Texas Utilities Code, §§104.401-104.403.

20 Statutory authority: Texas Utilities Code, §§104.401-104.403.

21 Cross-reference to statute: Texas Utilities Code, Chapter 104.

22

23 §7.480 Energy Conservation Programs.

24 (a) Energy conservation program authority. A local distribution company may offer to residential and
25 commercial customers and prospective residential and commercial customers and provide to those customers an
26 energy conservation program pursuant to this section and Texas Utilities Code, §§104.401-104.403. The
27 Commission has exclusive original jurisdiction over energy conservation programs implemented by local
28 distribution companies. A political subdivision served by a local distribution company that implements an
29 energy conservation program approved by the Commission pursuant to this section shall not limit, restrict, or
30 otherwise prevent an eligible customer from participating in the energy conservation program based on the type
31 or source of energy delivered to its customers.

32 (b) Definitions.

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

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

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

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

8 (5) ECP rate--The energy conservation program rate approved by the Commission in the form
9 of a monthly volumetric charge designed to recover an LDC's authorized administrative and portfolio costs.

10 (6) Gas Services--The Gas Services Department of the Oversight and Safety Division of the
11 Commission.

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

14 (8) Portfolio costs--All prudently incurred non-administrative costs that an LDC seeks to
15 recover through the ECP rate to implement and deliver an ECP portfolio to customers and prospective
16 customers, including but not limited to research and development costs, payment of rebates, material costs, the
17 costs associated with installation and removal of replaced materials and/or equipment, and the cost of education
18 and customer awareness materials related to conservation or efficiency.

19 (9) Portfolio term--The term during which an approved ECP portfolio will be in effect.

20 (10) Program year--The 12-month period beginning the first day of the month following the
21 Commission's approval of the ECP portfolio.

22 (11) Research and development costs--The costs prudently incurred by an LDC to conduct
23 market and engineering studies for the feasibility and design of potential ECPs. Research and development costs
24 cannot exceed 5% of portfolio costs.

25 (c) General requirements.

26 (1) An LDC may recover costs of an ECP portfolio if the ECP portfolio is approved by the
27 Commission pursuant to this section and the LDC implements the approved ECP portfolio. An LDC seeking to
28 implement an ECP portfolio shall apply with Gas Services and receive a final order from the Commission before
29 beginning to recover the approved costs of the ECP portfolio.

30 (2) An LDC applying for an ECP portfolio shall submit an application for each service area in
31 which it seeks to implement an ECP.

32 (3) If the Commission approves the LDC's application or approves the application with
33 modifications, the LDC may recover costs to implement the ECP portfolio, including costs incurred to design,
34 market, implement, administer, and deliver the ECP portfolio. Any costs included in an ECP portfolio approved
35 by the Commission shall be fully subject to review by the Commission for reasonableness and prudence during

1 the LDC's next statement of intent rate proceeding. The LDC shall include support for this determination in its
2 next statement of intent application. ECP costs that are imprudent or recovered from customers without approval
3 of the Commission are subject to refund as determined by the Commission.

4 (d) Contents of application. An LDC may apply for approval of an ECP portfolio by submitting an
5 application to Gas Services.

6 (1) Initial ECP portfolio application. An initial application for approval of an ECP portfolio
7 shall include:

8 (A) a description of any existing energy conservation programs offered by the LDC in
9 the applicable service area prior to the effective date of this section;

10 (B) a list and detailed description of each proposed ECP;

11 (C) the objectives for each proposed ECP;

12 (D) the proposed per-program year portfolio costs for each ECP and the ECP portfolio;

13 (E) the proposed per-program year administrative costs for each ECP and the ECP
14 portfolio;

15 (F) the proposed per-program year amount and proportion of ECP portfolio costs and
16 administrative costs to be funded by customers;

17 (G) the proposed per-program year amount and proportion of ECP portfolio costs and
18 administrative costs to be funded by shareholders;

19 (H) the projected annual consumption reduction per customer class for each ECP and
20 the ECP portfolio;

21 (I) the projected annual net cost savings per customer class for each ECP and the ECP
22 portfolio;

23 (J) a copy of the notice to customers and an affidavit stating the method of notice and
24 the date or dates on which the notice was given;

25 (K) copies of written correspondence received by the LDC in response to the notice;

26 (L) copies of any proposed advertisements or promotional materials that the LDC
27 intends to distribute to customers if an ECP portfolio is approved;

28 (M) copies of the proposed ECP rate schedule or schedules;

29 (N) calculation of the proposed ECP rate;

30 (O) normalized historical annual volumes per customer class;

31 (P) projected volumes for the upcoming program year per customer class;

32 (Q) any other information that supports determination of the ECP rate; and

33 (R) the name of the LDC's representative, business address, telephone number, and
34 email address.

1 (2) Subsequent ECP portfolio application. An LDC shall re-apply for approval of its ECP
2 portfolio in accordance with this paragraph. A subsequent application shall be filed 45 days following the end of
3 the ECP portfolio's second program year. A subsequent application for approval of an ECP portfolio shall
4 include:

5 (A) a list and detailed description of each proposed ECP;

6 (B) the objectives for each ECP;

7 (C) the proposed per-program year portfolio costs for each ECP and the ECP portfolio;

8 (D) the proposed per-program year administrative costs for each ECP and the ECP

9 portfolio;

10 (E) the actual historical per-program year portfolio costs for each ECP and the ECP

11 portfolio;

12 (F) the actual historical per-program year administrative costs for each ECP and the

13 ECP portfolio;

14 (G) the historical and proposed per-program year amount and proportion of ECP

15 portfolio costs and administrative costs to be funded by customers;

16 (H) the historical and proposed per-program year amount and proportion of ECP

17 portfolio costs and administrative costs to be funded by shareholders;

18 (I) the projected per-program year consumption reduction per customer class for each

19 ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year consumption

20 reduction per customer class for each ECP and the ECP portfolio over the previous portfolio term;

21 (J) the projected per-program year net cost savings per customer class for each ECP and

22 the ECP portfolio over the new portfolio term and the actual historical per-program year net cost savings per

23 customer class for each ECP and the ECP portfolio over the previous portfolio term;

24 (K) copies of any proposed advertisements or promotional materials that the LDC

25 intends to distribute to customers if the ECP portfolio is approved;

26 (L) copies of the proposed rate schedule or schedules;

27 (M) calculation of the proposed ECP rate;

28 (N) normalized historical annual volumes per customer class;

29 (O) projected volumes for the upcoming program year per customer class;

30 (P) any other information that supports determination of the ECP rate; and

31 (Q) the name of the LDC's representative, business address, telephone number, and

32 email address.

33 (3) Notice of subsequent application. If in the subsequent application the LDC proposes a new
34 ECP or proposes changes to an existing ECP such that costs to customers increase, the LDC shall provide notice

1 in accordance with subsection (e) of this section and include in its subsequent application the documents
2 required by paragraph (1)(J) and (K) of this subsection.

3 (4) Addition of new programs to existing ECP portfolio. An initial or subsequent application
4 may contain information on one or more ECPs. If an LDC proposes to add a new ECP to its portfolio after
5 approval of its initial application, the LDC shall propose the new ECP in its subsequent application and include
6 the information required by paragraph (1) of this subsection for the proposed new ECP.

7 (e) Notice and promotional materials.

8 (1) Notice. An LDC shall print the notice of its application for an ECP portfolio in type large
9 enough for easy reading. The notice shall be the only information contained on the piece of paper on which it is
10 written or in the emailed notice if applicable. An LDC may give the notice required by this section either by
11 separate mailing or by otherwise delivering the notice with its billing statements. Notice may be provided by
12 email if the customer to receive the notice has consented to receive notices by email. Notice by mail shall be
13 presumed to be complete three days after the date of deposit of the paper upon which it is written, enclosed in a
14 postage-paid, properly addressed wrapper, in a post office or official depository under the care of the United
15 States Postal Service. The notice shall be provided in English and Spanish. The notice to customers shall include
16 the following information:

17 (A) a description of each ECP in its proposed portfolio;

18 (B) the effect the proposed ECP portfolio is expected to have on the rates applicable to
19 each affected customer class and on an average bill with and without gas cost for each affected customer class;

20 (C) the service area in which the proposed ECP portfolio would apply;

21 (D) the date the proposed ECP portfolio application was or will be filed with the
22 Commission;

23 (E) the LDC's address, telephone number, and web address of the specific webpage on
24 which the ECP portfolio application may be obtained; and

25 (F) a statement that any affected person may file written comments concerning a
26 proposed ECP portfolio with Gas Services by email to MOS@rrc.texas.gov and to an email address for the LDC
27 included in its notice.

28 (2) Promotional materials. Any ECP program or portfolio promotional materials shall be
29 provided to customers in English and Spanish.

30 (f) Portfolio. An ECP portfolio:

31 (1) shall be designed to overcome barriers to the adoption of energy-efficient equipment,
32 technologies, and processes, and be designed to change customer behavior as necessary; and

33 (2) may include measures such as:

34 (A) direct financial incentives;

1 (B) technical assistance and information, including building energy performance
2 analyses performed by the LDC or a third party approved by the LDC;

3 (C) discounts or rebates for products; and

4 (D) weatherization for low-income customers.

5 (g) Cost recovery mechanism. The application for approval of an ECP portfolio shall include a
6 proposed ECP rate. Cost recovery shall be limited to the incremental costs of providing an ECP portfolio that
7 are not already included in the then-current cost of service rates of the LDC. Administrative costs in excess of
8 15% of the portfolio costs shall not be included in the ECP rate or recovered from customers in any way. The
9 cost recovery mechanism applies to both initial and subsequent ECP applications.

10 (1) A separate ECP rate shall be calculated for each customer class in accordance with the
11 following formula: $ECP\ rate = (CCR\ per\ Class + BA\ per\ Class) / Projected\ Volume\ per\ Class\ per\ Program\ Year$,
12 where:

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

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

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

19 (2) An ECP rate may not exceed \$0.20/Mcf for the residential customer class and \$0.20/Mcf for
20 the commercial customer class.

21 (3) Upon the Commission's approval of the ECP rate, the LDC shall update its residential and
22 commercial ECP rate schedules to reflect the approved ECP rate.

23 (h) Procedure for review. The Director of Gas Services shall ensure that applications for ECP portfolios
24 are reviewed for compliance with the requirements of Texas Utilities Code, §§104.401-104.403 and this section.
25 Upon completion of the review, Gas Services will prepare a written recommendation, which shall be provided to
26 the applicant LDC. The written recommendation shall be provided to the applicant LDC within 120 days of the
27 date the application is filed with Gas Services.

28 (1) The recommendation may include:

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

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

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

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

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

1 (4) Previous ECP rates shall remain in effect while an annual report or a subsequent ECP
2 portfolio application is under review.

3 (5) Previous ECP rates shall cease to be in effect 30 days after an LDC fails to meet a required
4 filing deadline.

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

7 (i) Rate schedules. The LDC shall include proposed rate schedules with its initial application, each
8 subsequent application, and each annual report for an ECP portfolio. Each ECP rate schedule shall be made on a
9 form approved by the Commission and made available on the Commission's website. If the LDC's proposed
10 ECP portfolio is approved by the Commission, the approved rate schedules shall be electronically filed by the
11 LDC in accordance with §7.315 of this title (relating to Filing of Tariffs). If an ECP rate is adjusted in an annual
12 report filing, the LDC shall also file an adjusted rate schedule. An ECP rate approved by the Commission at an
13 open meeting and implemented by the LDC or adjusted in an annual report filing pursuant to subsection (j) of
14 this section shall be subject to refund unless and until the rate schedules are electronically filed and accepted by
15 Gas Services in accordance with §7.315 of this title and reviewed for prudence and reasonableness in a
16 subsequent statement of intent rate proceeding.

17 (j) ECP annual report.

18 (1) An LDC implementing an approved ECP portfolio pursuant to this section shall file an ECP
19 annual report with the Commission. The report shall be filed each year an approved ECP portfolio is
20 implemented and shall be filed no later than 45 days following the end of the LDC's program year. The ECP
21 annual report shall be in the format prescribed by the Commission and shall include the following:

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

23 (B) a description of each ECP offered under the portfolio that includes the program's
24 performance for the program year, including any evaluation of cost-effectiveness, actual program expenditures,
25 and program results;

26 (C) the LDC's planned ECPs for the upcoming program year;

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

30 (E) the number of customers participating in each ECP per customer class per the
31 applicable program year;

32 (F) normalized historical annual volumes per customer class per the applicable program
33 year; and

34 (G) projected volumes for the upcoming program year per customer class.

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1 (2) In its annual report, an LDC shall include an ECP rate adjustment request if applicable. A
2 separately adjusted ECP rate shall be calculated for each customer class in accordance with the formula
3 described in subsection (g) of this section. The rate adjustment request shall adjust the ECP rates then in effect
4 to:

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

7 (B) account for any changes to the proposed ECP costs and projected recovery.

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

10 (4) Each annual report filed with the Commission shall be made available on the LDC's
11 website.

12 (k) Reimbursement. An LDC implementing an approved ECP portfolio pursuant to this section shall
13 reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of
14 reviewing and approving or denying cost recovery applications under this section. The Director shall estimate
15 the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall
16 reimburse the Commission for the amount so determined within 30 days after receipt of notice of the amount of
17 the reimbursement.

18
19 This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be
20 a valid exercise of the agency's legal authority.

21 Issued in Austin, Texas, on 3/19/2024, 2024.

22 Filed with the Office of the Secretary of State on 3/19/2024, 2024.

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