LOUISIANA PUBLIC SERVICE COMMISSION

DOCKET NO. R-31106

**LOUISIANA PUBLIC SERVICE COMMISSION,
EX PARTE**

In re: Rulemaking to study the possible development of financial incentives for the promotion of energy efficiency by jurisdictional electric and gas utilities.

NOTICE OF FINAL PHASE II ENERGY EFFICIENCY RULES

The Louisiana Public Service Commission ("LPSC" or "Commission") Staff ("Staff") hereby issues the attached Final "*Phase II Energy Efficiency Rules*" ("Phase II Rules") as **Attachment A** to this Notice. Staff also attaches hereto as **Attachment B** a timeline of activities included within the Phase II Rules at the request of several stakeholders. Further, Staff has attached, as **Attachment C**, a redline comparison of the Phase II Rules and the Final Proposed Phase II Rules filed October 31, 2023. Commission consideration of the Phase II Rules is anticipated at the December 2023 Business and Executive Session ("B&E").

OVERVIEW

This docket has a lengthy history spanning over 13 years. After several years of stakeholder collaboration, technical conferences, and written comments, the Commission approved a voluntary Quick Start energy efficiency program intended to include a two-phased implementation approach of establishing energy efficiency programs in Louisiana.[1] The Commission's goal in implementing a Quick Start phase was to encourage utilities, and their customers, to become more energy efficient and discourage inefficient or wasteful use of energy as quickly as possible rather than wait on fully-vetted rules to be established.[2] Staff and stakeholders agreed, a Quick Start program would be focused on an initial, limited set of energy efficiency programs designed to be

[1] *See* General Order dated September 20, 2013, also discussed in more detail below.

[2] *See* General Order dated January 10, 2013.

implemented quickly and economically while allowing all parties to begin developing rules and the associated infrastructure to support the successful implementation of long-term energy efficiency rules.

As is evident by the abundant record in this Docket, the Commission's intent was to allow for an initial Quick Start program while permanent, more longer-term rules were established with, to the extent possible, a seamless transition from Quick Start programs to what has been coined in this Docket as Phase II rules. The establishment of Phase II rules proved difficult given the diverging opinions amongst stakeholders, Staff, and the Commission. Staff's Phase II Rules are based on Commission guidance and direction as well as consideration of comments and proposed changes received by stakeholders in an attempt to produce a reasonable, fair rule. The Phase II Rules recommend a statewide administrator model, which includes the Commission hiring experts to assist in the creation, implementation, and evaluation of energy efficiency programs under a single statewide program in lieu of different programs offered by each utility. Staff attempted to resolve as many concerns as possible, and clarified components of the rules; however, Staff did not attempt to address every unknown issue raised in comments. The Phase II Rules are intended to be the minimum requirements an administrator and evaluation, measurement, and verification ("EM&V") contractor shall adhere to when planning, designing, and implementing a statewide energy efficiency program on behalf of the Commission. At all times, the Commission shall be the arbitrator of the plan.

PROCEDURAL HISTORY

Docket No. R-31106 was initiated by publication in the Commission's Official Bulletin dated August 7, 2009, with numerous parties intervening. Initial interventions were received from the Association of Electric Cooperatives ("ALEC"),[3] the Alliance for Affordable Energy ("Alliance"), Atmos Energy Corporation ("Atmos"), Boise Packaging & Newsprint, LLC

[3] At the time of filing its motion, the ALEC members consisted of Beauregard Electric Cooperative, Claiborne Electric Cooperative, Dixie Electric Membership Corporation, Jefferson Davis Electric Cooperative, Inc., Northeast Louisiana Power Cooperative, Inc., Panola-Harrison Electric Cooperative, Inc., Pointe Coupee Electric Membership Corporation, South Louisiana Electric Cooperative Association, Valley Electric Membership Corporation, and Washington-St. Tammany Electric Cooperative, Inc.

("Boise"),[4] CenterPoint Energy-Arkla and CenterPoint Energy Entex ("CNP"), Cleco Power, LLC ("Cleco Power"), Entergy Louisiana LLC ("ELL"),[5] the Louisiana Energy Users Group ("LEUG"), Marathon Oil Company ("Marathon"), and Southwestern Electric Power Company ("SWEPCO"). Petitions for late intervention were filed, and granted, for CLEAResult, EnerNOC, Inc., Global Green USA, Green & Healthy Homes Initiative, Ken Smith, Louisiana Association of Community Action Partnerships, Inc., NRG Energy, Inc.,[6] Opower, Inc., Sierra Club, Southwest Louisiana Electric Membership Corporation ("SLEMCO"), Tagos Group, LLC, Together Louisiana, the U.S. Department of Energy, Vermont Energy Investment Corporation, and Walmart Stores, Inc. There were also several parties who filed for, and received, Interested Party status. Those parties are the APTIM, Asyndant Energy, Cadmus, EP2 Consulting, LLC, Greater New Orleans Housing Alliance, M&M Contractors, LLC, and Southeast Energy Efficiency Alliance ("SEEA").

Given the lengthy history and filings made in this Docket, not every request for comment, comments received, and technical conference will be summarized herein; however, Staff attempts to summarize the key moments that occurred throughout this Docket.

Phase I – Quick Start

Staff filed its *Initial Request for Comments* on March 8, 2010 seeking both specific and general comments, including but not limited to how should energy efficiency be defined for this rulemaking, what should the Commission's role be in promoting energy efficiency, whether energy efficiency programs existed in Louisiana at the time, and whether the Commission should offer utilities financial incentives to promote energy efficiency. Responses were received from the Alliance, Atmos, Cleco Power, CNP, ELL, LEUG, and SWEPCO. Generally, there was consensus throughout all comments that the Commission should promote the use of energy efficiency and establish rules to assist in such efforts. Further, the comments received also indicated the need to

[4] Since filing its intervention, Boise has changed its name to Packaging Corporation of America.

[5] At the time of intervention, Entergy Louisiana LLC was two independent companies, Entergy Gulf States Louisiana, LLC and Entergy Louisiana, LLC.

[6] On May 3, 2019, NRG Energy, Inc. withdrew its intervention.

determine an ability for the participating jurisdictional utilities to recover, through rates, any program costs.

The first technical conference was noticed on December 29, 2010 for January 25, 2011, and included the issuance of a preliminary report. The preliminary report presented Staff's initial findings, established a list of issues for further discussion at the technical conference, and contemplated the concept of pilot energy efficiency programs by the utilities. Several topics were discussed at the technical conference, but most seemed to agree that it was reasonable for the Commission to promote the use of energy efficiency in Louisiana. In *Staff's Summary of January 25, 2011 Technical Conference and Second Request for Comments,*[7] Staff requested comments on whether comprehensive rules should be developed first or should the Commission adopt a phased implementation, with Phase I relying on high level guidelines resulting in modest level energy efficiency programs being implemented and Phase II consisting of comprehensive rules and programs being implemented. Responses to Staff's second request for comment were received by the Alliance, Atmos, Cleco Power, CNP, ELL, Global Green, LEUG, SEEA, Sierra Club, and SWEPCO, with the general consensus agreeing to a phased implementation approach so long as such approach still provided clear guidelines as well as cost recovery for the utilities on implementing the programs.

Staff filed the *Notice of Proposed Rule and Third Request for Comments* ("First Proposed Rule") based upon the general acceptance of a phased implementation approach.[8] In the First Proposed Rule, Staff developed a Quick Start energy efficiency program for jurisdictional investor-owned electric and natural gas utilities. Staff recognized the Commission's purpose in implementing a Quick Start phase was to encourage utilities, and their customers, to quickly become more energy efficient and discourage inefficient or wasteful use of energy. Staff's proposed Quick Start program recognized that while it addressed many stakeholder concerns, there were several areas that remained to be addressed in the next implementation phase. Some of those areas were whether electric cooperatives should be required to participate, whether opt-out

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[7] Filed February 11, 2011.

[8] Filed September 21, 2011.

provisions for industrial customers should be included, and whether lost contribution to fixed costs should be included in the cost of energy efficiency programs.

After an additional round of comments, Staff filed a *Notice of Issuance of Staff Proposed Energy Efficiency Rules for Electric and Gas Utilities in the State of Louisiana and Final Request for Comment* ("Second Proposed Rule") indicating a request for one final round of limited comments based on the modifications to the First Proposed Rule.[9] Staff's Second Proposed Rule maintained the two-phase implementation approach discussed in the First Proposed Rule, but included modifications to allow for an industrial opt-out, increased the proposed annual program budget caps, limited participation to the investor-owned electric utilities and the group I gas utilities, and provided additional detail to the Quick Start rules. Staff deferred a decision on Lost Contribution to Fixed Costs ("LCFC") and other utility incentives to the second phase of the energy efficiency rules. The Commission considered Staff's Second Proposed Rule at its December 12, 2012 B&E whereby the phased implementation approach was approved, with modifications read into the record at the B&E. General Order dated January 10, 2013 was issued memorializing the Commission's action.

General Order dated January 10, 2013 set the framework for Phase I-Quick Start whereby the utilities would implement an initial set of programs and anticipated a Phase II, which would consist of a more detailed energy efficiency policy development and the implementation of Commission approved comprehensive programs. At the Commission's June 26, 2013, the Commission voted to stay the implementation of the January 10, 2013 General Order and allow public comment to be reopened. Pursuant to this direction, Staff filed a *Notice of Proposed Modifications to Energy Efficiency Rules and Request for Specific Comments* ("Proposed Modifications").[10] The Proposed Modifications included allowing the Commission's Quick Start program to be voluntary, ensuring program costs are incurred only from customers eligible to participate, among other modifications. The majority, if not all intervenors, provided comments to the Proposed Modifications, and at the Commission's August 21, 2013 B&E, the Commission

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[9] Filed October 15, 2012.

[10] Filed July 3, 2013.

voted to lift the stay of the Commission's energy efficiency rules adopted in General Order dated January 10, 2013, subject to Amendment 2013-R-31106 filed into the record August 21, 2013.

The Commission issued General Order dated September 20, 2013 memorializing the Commission's action at the August 2013 B&E lifting the stay of the Quick Start program ("Quick Start Order"). The Quick Start Order established a process for expedited energy efficiency program implementation, recognized a Phase II implementation consisting of more detailed energy efficiency policy development, and required all electric and gas utilities to notify the Commission, in writing, by October 1, 2013 of their election to participate in the Quick Start program. Cleco Power, ELL, and SWEPCO (the "IOUs") were the only utilities who elected to participate in the Quick Start program.[11]

Pursuant to General Order dated September 20, 2013, Staff filed *Notice of Scheduling of Technical Conference on November 22, 2013* as the initial stakeholder meeting for the Quick Start process.[12] From approximately November 2013 until October 2014, Staff, the IOUs, and Interested Parties worked through various components of the Quick Start implementation, including approval of program design, rate riders, as well as an LCFC recovery mechanism. After Quick Start program design, including riders and LCFC recovery were approved, Cleco Power, ELL, and SWEPCO began implementation of energy efficiency programs within their respective service territories. All three IOUs have complied with General Order dated September 20, 2013 related to filing annual reports on energy efficiency activities, annually updating rate riders, and coordinating with Staff on audits of the respective IOUs' program every two years.

Parties contemplated the Quick Start program continuing until October 2017; therefore, in January 2017, Staff recommended the Commission maintain the Quick Start program pending finalization of Phase II rules. At the Commission's January 18, 2017 B&E, the Commission adopted Staff's recommendation to maintain the Quick Start program, but also modified the requirements of the Quick Start program such that participating utilities shall allocate 50% of their annual program budgets to programs for which eligibility is limited to school districts, local

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[11] In December 2021, Atmos filed its Quick Start energy efficiency program and proposed riders, which was reviewed by Staff, with a determination of compliance with the Quick Start rules filed on February 4, 2022.

[12] Filed October 11, 2013.

governments, state agencies, and higher education institutions or any other public entity. The Commission also provided that such proposals may be presented directly to the Commission for consideration, separate from the plans developed by the utility's third-party administrator(s). The Commission's action was memorialized in Commission General Order dated April 13, 2017, and this component of the Quick Start program became known as the Public Entities program. The Quick Start program was extended for an additional year at the Commission's September 20, 2017 B&E, including the Public Entities program. Commission General Order dated December 12, 2017 memorialized the Commission's action, including clarification to establish a separate budget for the Public Entities program requiring utilities to allocate 0.50% of the utility's 2012 retail revenue to fund Public Entities programs. The Quick Start program, including the Public Entities program, has been renewed by the Commission in subsequent years pending finalization of Phase II Rules.[13]

Phase II

On November 3, 2016, Staff filed a *Notice of Phase II Rulemaking* thereby formally initiating the second implementation phase for energy efficiency rules in Louisiana. Staff's *Notice* was filed in the Commission's Official Bulletin dated November 4, 2016 to allow for additional intervention; however, those parties that had previously intervened were not required to intervene a second time. New parties that intervene for participation in Phase II were Bayou Steel,[14] and Occidental Chemical Corporation.

Staff also filed a *Notice of Scheduling of Technical Conference and Initial Request for Comments* setting the initial technical conference for Phase II on March 8, 2017 and requested comments to facilitate the discussion at the technical conference.[15] Topics requested by Staff included other utility participation in Phase II, whether the Commission should maintain an opt-out, should the program spending limits should be adjusted, cost recovery by the participating

[13] *See* General Orders dated September 20, 2017, January 11, 2019, November 27, 2019, December 22, 2020, December 2, 2021, and May 4, 2023 for a two-year period.

[14] On July 14, 2022, Bayou Steel withdrew its intervention.

[15] Filed February 7, 2017.

utilities, a proposed timeframe for Phase II, evaluation metrics, and general feedback from the Quick Start program, among other topics. Comments were received by the Alliance, Atmos, Boise, Cleco Power, CNP, ELL, LEUG, SEEA, and SWEPCO.

The March 8, 2017 technical conference was held whereby presentations were given by Wally Nixon, Attorney for the Arkansas Public Service Commission, Phil Hayet of J. Kennedy & Associates, Staff consultant on Docket No. R-31106, Cleco Power, ELL, and SWEPCO. After the conclusion of the presentations, next steps were discussed, including Staff anticipating filing a strawman proposal and seek additional comments from stakeholders, as well as specific requests for comments on a variety of topics anticipated to be addressed in Phase II rules. Comments were received from the Alliance, Atmos, Boise, CNP, Cleco Power, ELL, LEUG, PosiGen of Louisiana, LLC, SEEA, SWEPCO, and Walmart.

After reviewing and considering all comments, and receiving guidance from the Commissioners, Staff filed *Notice of Phase II Proposed Energy Efficiency Rule, Third Request for Comments, and Notice of a Technical Conference* ("First Proposed Phase II Rules").[16] In Staff's First Proposed Phase II Rules, Staff recognized the diverging interests among stakeholders on important issues in Phase II, included a number of substantive changes compared to the Quick Start program, and indicated the proposed rule was a starting point for further discussion. The First Proposed Phase II Rules also noticed a technical conference, with Staff's objective being a discussion of the proposed rules and attempt to reach a consensus on outstanding issues. The technical conference was held on July 22, 2019 where Staff consultant, Phil Hayet, provided an overview of Docket No. R-31106's history, including the Quick Start program and the ongoing work on implementation of Phase II. After Mr. Hayet's overview, a great deal of discussion surrounded the topic of performance incentives, LCFC, opt-out provisions, and the Public Entities program. The technical conference concluded with Staff outlining its anticipated path forward, which included another request for comments and another proposed draft of Phase II Rules. Consistent with the approach discussed at the technical conference, Staff issued a *Notice of Second Draft of Phase II Energy Efficiency Rules, and Fourth Request for Comments* ("Second Proposed

[16] Filed April 16, 2019.

Phase II Rules") with changes based upon discussion at the technical conference and comments received in response to the First Proposed Phase II Rules.[17]

Prior to issuing a third proposed Phase II rules, Staff issued a *Notice on Expansion of Scope* and *Request for Comments on Expansion of Scope* ("Notice"), which indicated that the Commission's intent for energy efficiency rules had shifted.[18] The Commission's intent shifted to exploring alternative administrative options, including alternatives to utility incentivized programs in order to ensure the most dollar-for-dollar benefit, accountability, and transparency in the execution of energy efficiency ("EE") programs throughout Louisiana. The Commission wanted to explore whether utility-led programs made the most sense for Louisiana residents, and was concerned with the lack of transparency and what it perceived as a lacking of the most dollar-for-dollar benefit with utility-led programs. Comments were received from the Alliance, Atmos, CNP, Cleco Power, ELL, Green & Healthy Homes Initiative, LEUG, SWEPCO, and Vermont Energy Investment Corporation.

Overall the comments received from the utilities opposed a shift to alternative administrative options. The utilities questioned whether a shift would provide more/better benefits, indicated a shift would result in the state starting over with energy efficiency programs, and that a shift could result in a reduction of local jobs for trade allies, among other topics. Other intervenors, such as the Green & Healthy Homes Initiative and Vermont Energy Investment Corporation did not support or oppose a statewide program, but provided information to help guide Staff in making its decision. The Alliance and the SEEA supported the concept of a statewide energy efficiency program.

After conducting independent research and reviewing the comments filed in response to Staff's Notice, Staff filed the *Notice of Third Proposed Draft Phase II Energy Efficiency Rule, and Sixth Request for Comment* ("Third Proposed Phase II Rules").[19] The Third Proposed Phase II Rules proposed a Third-Party Administrator model based upon the Commission's intent to implement alternative energy efficiency programs within Louisiana. A few of the Commission's

[17] Filed October 8, 2019.

[18] Filed November 20, 2020.

[19] Filed March 7, 2022.

goals were to have consistent branding, more uniform energy efficiency offerings available, greater customer awareness, and ultimately increased energy savings while lowering utility bills. Comments were received from ALEC, the Alliance, Atmos, Cleco Power, CNP, ELL, LEUG, and SWEPCO. Again, the utilities generally opposed the Third-Party Administrator model citing the same, or similar, reasons received in response to Staff's Notice, as well as concerns over an aggressive timeline to implement and a steep funding ramp up. Many comments also indicated that the selected approach for energy efficiency implementation is not critical to the overall success of a program, but other factors, such as savings targets and accountability are more likely to have an impact. In response to concerns raised in response to the Third Proposed Phase II Rules over an increase in the program's cost, and in an attempt to propose an adequate, fair budget for Phase II, Staff also issued a *Request for Information to Investor-Owned Utilities regarding rate impact analysis* seeking rate impact analysis associated with the Quick Start Program.[20]

At the May 17, 2023 B&E, the Commission approved a directive from Commissioner Greene directing Staff to publish proposed Phase II Rules no later than May 26, 2023:

> … Staff to publish a new version of the Draft Phase II Energy Efficiency rules, which contemplates the creation of a Commission led State-Wide EE Administrator program. This new version shall be based upon the conversations Staff has had with Commissioners over the past few months. This Draft Rule should be published in the docket no later than May 26, 2023, such that we can move forward with the process for receiving input for a final draft, with the goal that final rules will be considered by this Commission at the September 2023 B&E, but no later than October B&E.

Pursuant to this directive, Staff issued *Notice of Fourth Proposed Phase II Energy Efficiency Rules and Attachment* ("Fourth Proposed Phase II Rules"), which sought stakeholder comments on a strawman Commission-led statewide energy efficiency program.[21] Comments were received on July 11, 2023 by ALEC, Alliance, Atmos, Cleco Power, CNP, Dixie Electric Membership Corporation ("DEMCO"), ELL, LEUG, Northeast Louisiana Power Cooperative, Inc. ("NELPCO"), Pointe Coupee Electric Membership Corporation ("PCME"), Southwest Louisiana Electric Membership Corporation ("SLEMCO"), and SWEPCO.

[20] Filed July 11, 2022.

[21] Filed May 26, 2023.

The IOUs, the gas utilities (CNP and Atmos), and ALEC (representing seven member-owned electric cooperative utilities) filed comments against the Commission's proposed statewide energy efficiency program. The IOUs and Atmos also filed a joint redlined proposed rule, but instead of providing revisions to the Fourth Proposed Phase II Rules, the parties submitted a redline of the Second Proposed Phase II Rules. This joint redline proposed allowing the utilities the option of implementing energy efficiency programs themselves using internal utility staff, hiring a joint contractor to implement programs on their behalf, or using a combination of the joint contractor and internal utility staff to implement energy efficiency programs.[22]

NELPCO and SLEMCO filed comments in support of the Commission-led program on the basis of the cooperatives being over-burdening if they were to administer energy efficiency programs. While supportive, both cooperatives also had separate concerns related to a Commission-led energy efficiency program. NELPCO emphasized the importance of the utilities being able to still recover LCFC, and SLEMCO raised the concern of potential customer confusion related to contractor/vendor work performed not on SLEMCO's behalf, but on behalf of the Commission. The Alliance was also supportive of the Fourth Proposed Phase II Rules, and provided not only comments, but also redlined proposed changes to areas the Alliance found lacking, including a savings goal.

ELL raised legal arguments within its comments, including that the rules did not allow utilities to recover costs associated with energy efficiency programs, the proposed funding mechanism is an unconstitutional tax, the Commission is unconstitutionally delegating its authority, and the proposed Commission-led program is regulation incidental to ownership. These legal arguments are either based on a misunderstanding of the Fourth Proposed Phase II Rules or are misplaced, far reaching grasps at unconstitutional arguments. The Fourth Proposed Phase II Rules do allow utilities to recover costs associated with administering/implementing the programs, as well as LCFC in certain instances. Further, the Commission is not unconstitutionally delegating its authority to an administrator, or anyone. Throughout the Fourth Proposed Phase II Rules, it is

[22] The Utilities referred to the joint contractor in their draft as a TPA, however, the distinction between their version of a TPA and what Staff has referred to as a TPA is that in the Utilities version, the Utilities would be responsible for hiring and managing the TPA, whereas in Staff's version, the Commission and Staff would be responsible for hiring and managing the TPA.

clear that the Commission makes the ultimate determination on varying aspects of the statewide program, including budget allocations, program design, and any necessary deviations once the program has been approved by the Commission. ELL also argued a statewide program, specifically its funding mechanism, creates an unconstitutional tax as its purpose is to generate revenue. Despite ELL's arguments, the energy efficiency fee is not to generate revenue, but is a regulatory fee designed to implement a regulatory program within the Commission's exercise of its authority. The energy efficiency fee would be implemented to support a regulatory program – the energy efficiency program – established by the Commission.[23]

After reviewing comments received, and making revisions based off those comments, Staff issued the *Final Proposed Phase II Energy Efficiency Rules* ("Final Proposed Phase II Rules") for final stakeholder input and comment.[24] Comments were received by ALEC, the Alliance, CNP, Cleco Power, ELL, PCME, SLEMCO, SWEPCO, and Together Louisiana. The Alliance, Cleco Power, ELL, and SWEPCO provided proposed redline changes.

Cleco Power and SWEPCO still maintained opposition to the statewide administrator model for the same reasons provided in comments to prior versions of the proposed rule. And, while ELL still opposed the statewide administrator approach, it did provide some helpful redline changes and requests for clarification that Staff considered and attempted to address.[25] For example, Staff accepted ELL's proposal that the first audit of the statewide program should occur after two years instead of four, and Staff accepted a two-year transition period instead of one.

Similarly, while CNP prefers to allow utilities participating in Quick Start to continue to have utility-led programs, CNP's main concern seems to be fuel switching or potential cross-fuel competition if one administrator is used. Staff is sympathetic to CNP's concern; however, without any documentation to show this is a recurring issue in other states, or something more than a concern, Staff is hesitant to incur the additional costs of a second administrator at this time. Staff

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[23] *See Voicestream v. LPSC*, 943 So.2d 349 (La. 2006) finding that the Commission established state universal service fund to all telecommunications service providers was a fee rather than an unconstitutionally levied tax as the fee was not intended to raise revenue and was used in the Commission's regulatory authority to allocated the costs for the administration of a regulatory program.

[24] Filed October 31, 2023.

[25] SWEPCO and CLECO also provided redline changes, but they were mostly oriented towards permitting utilities with existing utility-led EE programs the option to continue offering those programs.

also reiterates the Commission's prohibition on fuel switching and will ensure the administrator hired by the Commission adheres to the Commission's prohibition.

PCME and SLEMCO had similar comments and concerns mainly related to the costs of implementation of the statewide program. SLEMCO proposed a three-year cap on collection of program revenues should not all revenue be expended within those three years. Staff accepted SLEMCO's suggestion, but revised the timeframe to be at the end of a four-year budget cycle. Staff's proposal allows a utility to request cessation of funds should not all funds be expended within the budget cycle. Staff also decreased the electric cooperatives savings target recognizing no energy efficiency programs have been established by any of the cooperatives throughout the Quick Start program.

The Alliance and Together Louisiana support the statewide administrator approach, and sought some clarifications. Together Louisiana opposes allowing utilities to recover LCFC in any capacity. Together Louisiana views LCFC as a short-term solution, which was allowed, and utilized, during the Commission's Quick Start program when the utilities were determining their decrease in load and in turn, decreased revenue. Together Louisiana also referred to the 2022 ACEEE Scorecard Report, which stated there are 31 states that offer policies to address energy efficiency investment disincentives for electric utilities, including 14 states that offer an LCFC adjustment, and 27 states that have a decoupling mechanism.[26]

The Alliance sought changes to the proposed savings targets and suggested the elimination of inclusion of a budget cap. Staff understands the Alliance's goal to seek higher savings targets; however, other parties are concerned that Staff's targets are already ambitious. Given this, Staff made no changes to the targets for electric IOUs. In the future, there will be an opportunity for the EM&V contractor to conduct a study to examine whether a higher savings target would be beneficial. With regard to the Alliance's recommendation of no budget cap, it is Staff's opinion that the budget cap is in place as ratepayer protection, and thus, should remain; however, Staff raised the budget cap to 1.5% as discussed further below. The Alliance made several other

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[26] *See* American Council for an Energy-Efficient Economy, "2022 State Energy Efficiency Scorecard," December 2022, p.48, https://www.aceee.org/sites/default/files/pdfs/u2206.pdf

recommendations, some of which were adopted, including the request concerning LCFC and to limit recovery to when the utility has earnings that are below the bottom of the utility's deadband.

FINAL RULE FOR COMMISSION CONSIDERATION

Working through numerous rounds of comments from a diverse group of stakeholders, both in writing and at technical conferences, Staff issued five drafts of proposed Phase II rules prior to the final rules attached hereto. The Phase II Rules, while based on a statewide administrator model, focus on minimizing the amount of administrative oversight that traditional third-party administrator models typically include, and as such Staff proposed the Commission retain an Administrator and an EM&V Contractor. In the Phase II Rules, Staff has incorporated the concept of retaining a fiscal agent should the determination be made during the design and planning process that one is necessary. Should that determination be made, the hiring of a fiscal agent shall be approved by the Commission.

Further, the Phase II Rules attempt to limit costs that customers pay, which helps ensure the majority paid by customers are going directly toward energy efficiency projects. As such, Staff drafted the Phase II Rules to allow utilities to recover their direct costs incurred related to the statewide energy efficiency program, as well as a LCFC component, but does not allow for utility incentives. Staff does restrict LCFC recovery to losses that directly impact the utility's earnings bandwidth, and allows for recovery only after the true-up at the end of each program cycle year. Considering comments provided, Staff did revise the Phase II Rules to allow for all cost recovery to flow through the Commission approved energy efficiency rider. This approach should ease confusion with the application of cost recovery through the utility's various cost recovery mechanisms while also ensuring only those individuals eligible to participate in the energy efficiency program are contributing to the program.

Staff also accepted the concerns of several intervenors and extended the transition period from Quick Start to a statewide energy efficiency program to two-years. As currently proposed, the Phase II Rules would begin January 1, 2026 with Quick Start programs continuing until that time. All utilities are expected to cooperate during this transition period.

The Phase II Rules maintain a four-year budget cycle, but Staff increased the annual budget cap for the first four-year budget cycle to no more than 1.5% of the average of a utility's five most recent year's revenue. This increase was based on the Investor-Owned Utilities indicating Staff's savings targets could not be achieved based on a 1.0% average, and the Alliance's concern with having any budget cap. Staff's opinion is that 1.5% is a good compromise while maintaining ratepayer protections.

Staff did not alter the proposed savings target of 0.4% by the end of the first year of the first budget cycle, with the goal to increase by 0.05% each year within the budget cycle, for the Investor-Owned Electric Utilities and the Group 1 Gas Utilities. Staff's proposal is in line with the average savings targets achieved during the Quick Start program (0.22%),[27] as well as the Southeast average of 0.19%.[28] Staff did propose a lower savings target for the Electric Cooperatives, which was by the end of the first year of the first budget cycle, the savings target shall be to achieve a minimum energy savings target of 0.1% of the average of the previous five-year's energy sales, with an increase by 0.05% each year within the budget cycle. Therefore, the Electric Cooperatives shall achieve an energy savings goal of 0.25% by the end of the first budget cycle. Staff did revise the Investor-Owned Utilities and Group 1 Gas Utilities savings goal to align with the Electric Cooperatives, with all participating utilities savings goal being the average of the previous five-year's energy sales.

While there seemed to be a consensus that the Commission's statewide energy efficiency program should have a dedicated percentage of budget allocated to low-income or high energy burden households, Staff's position is that the specific allocation to all program categories is a decision for the Commission to make prior to each budget cycle. Staff agrees low-income or high energy burden households should receive a dedicated allocation of the energy efficiency program budget, and is of the opinion that an allocation within the range of 10% - 15% is reasonable. Staff recommends that when the budget allocation for all energy efficiency program categories is

[27] Data from Audit Reports based on data supplied by utilities.

[28] Energy Efficiency in the Southeast, Fifth Annual Report, Southern Alliance for Clean Energy, March 2023, https://cleanenergy.org/wp-content/uploads/Energy-Efficiency-in-the-Southeast-Fifth-Annual-Report.pdf, p. 4.

proposed by the Administrator to the Commission, an allocation for low-income or high energy burden households should be included for Commission approval.

Further, there seemed to be concern about the proposed Request For Proposal ("RFP") process to retain the administrator and the evaluation, measurement, and verification ("EM&V") contractor. Staff reiterates the Commission's standard RFP process will not be adhered to for the vetting and hiring of the administrator and the EM&V contractor. Staff anticipates utilizing both a Request for Qualifications and an RFP, as was previously suggested by intervenors and agreed to by Staff. Staff is of the opinion that discussion of such processes is not necessary to include within the Phase II Rules. Further, Staff reiterates the Commission's Qualified Consultant List is not the list of potential administrators and EM&V contractors. Staff has already issued a letter of inquiry to several administrator groups and EM&V contractors to gauge interest, and Staff received positive feedback. Again, such protocols and processes of what Staff should do in conducting an RFP for an administrator and EM&V contractor should not be included in the Commission's Phase II Rules. Should the determination be made that a Fiscal Agent should be retained, Staff anticipates utilizing a similar protocol as reiterated herein and not the Commission's standard retention process for outside consultants.

Based on the foregoing and Attachment A hereto, **Staff submits the Phase II Rules for Commission consideration, which is anticipated to be at the Commission's December 2023 B&E.**

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing *Notice of Final Phase II Energy Efficiency Rules* on behalf of the Louisiana Public Service Commission has been served upon all parties of record by email this 1st day of December 2023.

Kathryn H. Bowman

ATTACHMENT A

DOCKET NO. R-31106
FINAL PHASE II ENERGY EFFICIENCY RULES

December 1, 2023

Table of Contents

I. Overview

The following provides the Louisiana Public Service Commission's ("LPSC" or "Commission") Phase II Energy Efficiency ("EE") Rules ("EE Rules"), which replace the Quick Start EE Rules ("QS Rules") that have been in effect since the QS Rules General Order[1] was issued. These EE Rules provide the framework for transitioning from the current QS program to a comprehensive Commission-led statewide EE program implemented on a mandatory basis for all jurisdictional Electric Investor Owned Utilities ("IOUs"), Group 1 Gas Utilities, and Electric Cooperatives.[2]

Upon passage of these EE Rules, the Commission will conduct a Request For Qualifications ("RFQ")/Request For Proposals ("RFP") process to hire a Program Administrator (the "Program Administrator" or "Administrator") and an Evaluation, Measurement, & Verification ("EM&V") Contractor, discussed further herein, with the goal of hiring both by the August 2024 Business and Executive Session ("B&E"). The Administrator, in collaboration with the EM&V Contractor, will utilize through the end of 2025 as a transition period to design and seek Commission approval of the EE Program and Budget Cycle Plan for the first budget cycle, as discussed further below, pursuant to the goals and objectives outlined in these EE Rules. The objective will be to begin the Commission's first four-year EE program cycle on January 1, 2026.

All utilities operating existing QS programs shall continue to operate those programs, without interruption, until the Commission's energy efficiency program begins. These rules do not initially contemplate that a Fiscal Agent will be required; however, further consideration of the need for a Fiscal Agent will be contemplated, and should a determination be made that one is necessary, the hiring of a Fiscal Agent will be proposed to the Commission for approval.

The Commission's primary goal with the EE Rules is to utilize energy efficiency projects designed to reduce energy usage and make homes and businesses more energy efficient, thereby reducing a customer's overall energy bill. The specific goals for the Commission's EE Rules are:

1. Increase the ability and potential for customers to decrease energy usage with the overall goal of reducing energy bills;
2. Promote the use of least costs energy resources;
3. Provide expanded energy savings benefits;
4. Be cost effective and implemented efficiently;
5. Reduce overall emissions;

[1] The QS EE General Order was decided at the Commission's August 21, 2013 B&E Session, and was issued on September 20, 2013 in Docket R-31106.

[2] Throughout these EE Rules, "utilities" is synonymous for both electric and gas utilities, unless specifically stated otherwise.

6. Reduce the need for supply-side resource additions;
7. Reduce price volatility; and
8. Strive to expand energy efficiency throughout Louisiana.

II. Definitions

Administrator (or Program Administrator) - The person, or entity, responsible for creating energy efficiency programs or a portfolio of programs pursuant to these EE Rules. The Administrator will manage the implementation process after the programs are approved by the Commission.

Cost-effectiveness - A comparison of the approved categories of costs and benefits of an EE program or measure, to determine the net benefits of the program or measure. Typically, present value benefits are compared to present value costs to determine if the program or measure is economic.

Customer Transformation Programs – Strategic efforts to induce lasting structural or behavioral changes by customers that result in increased adoption of energy efficient technologies, services and practices. Energy savings customer transformation programs must be beyond that which would be achieved through compliance with building codes and appliance and equipment efficiency standards.

Demand Response ("DR") - Changes in energy use by end use customers from their normal consumption patterns in response to changes in the price of energy over time, or in response to incentive payments designed to induce lower energy use at times of high market prices or when system reliability is jeopardized. DR programs are excluded from being programs the Program Administrator can implement, as utilities are permitted to implement DR programs based on Commission General Order dated May 26, 2021.[3]

Deemed Savings - Deemed Savings are used to define energy and peak demand savings values for projects with well-known and documented savings. Deemed Savings are pre-determined, validated estimates of energy and peak demand savings attributable to energy efficiency measures whose performance characteristics and use conditions are well known and consistent. Deemed savings may be based on engineering calculations, baseline studies, and/or reasonable assumptions. Deemed savings estimates may be derived from other evaluations previously performed and conducted by

[3] *See*, Docket No. R35136, LPSC, ex parte. In re: Rulemaking to Determine Need for Rate Schedules and Programs Offering Demand Response Products, Development of Such Rate Schedules and Programs, Determination of Customer Participation in such Programs, Allocation and Recovery of Program Costs, and Whether Such Programs Shall be mandatory or Voluntary for Utilities as set forth in Sec. 3 of the Rule Adopted in General Order Dated march 7, 2019 in Docket No. R-34948. ("Commission DR Order").

the utility, other utilities or other governmental/regulatory agency studies. The Administrator may use these estimates when energy and peak demand savings estimated through measurement and verification (M&V) activities are infeasible or impractical. Deemed savings should be revised periodically to reflect new technologies and new federal, state, or local policies and codes.[4] The Commission approved the use of the Arkansas Technical Reference Manual ("TRM") for deriving deemed savings estimates in the Quick Start Phase. Until such time that a Louisiana specific TRM is developed, the Commission continues to recommend use of the most recent Arkansas TRM in Phase II, with appropriate adjustments for Louisiana, such as adjustments for different climate zones and weather conditions.[5]

Energy Burden – Households that are overburdened by unaffordable energy bills, which typically disproportionately affect low income, older adults, households of color, and indigenous households. Typically, these customers live in inefficient housing and face systemic barriers that limit their ability to pay for energy services.

Energy Efficiency – Refers to a decrease in the use of energy, while maintaining or improving the customer's existing level of comfort and end-use functionality at lower customer cost. Reducing the rate at which energy is used may be achieved by substituting more advanced technology, or by reorganizing the process to reduce waste heat, waste cooling, or energy.

Energy Efficiency Savings – Those kW, kWh, or Ccf savings realized by comparing measured energy use before and after implementation of an energy efficiency measure, or by reference to a set of deemed savings approved by the Commission.

Evaluation, Measurement and Verification ("EM&V") – Studies and activities intended to determine the actual savings and other effects from energy efficiency programs and measures. The full scope of the EM&V process includes the evaluation of program design, implementation, cost effectiveness, market penetration, and verification of savings achieved from the programs.

Evaluation – Evaluation refers to methods used to determine impacts resulting from the implementation of EE programs, including program performance, program markets and operations, expected levels of energy and demand savings, and program cost-effectiveness.

Measurement and Verification ("M&V") – M&V is the form of evaluation performed after implementation that relies on data collection, monitoring, and analysis associated with the calculation of overall energy and demand savings at individual sites or projects using one or more

[4] Note that whenever the phase "peak demand savings" is mentioned, it applies to electric utilities, not gas utilities.
[5] The latest version of the Arkansas TRM, Version 9.1, was approved on October 20, 2022 in APSC Docket 10-100-R and may be found at https://apsc.arkansas.gov/wp-content/uploads/AR_TRM_V9.1_Volume_1_2_and_3_on_8-31-22.pdf

methods that can involve measurements, engineering calculations, statistical analyses, and/or computer simulation modeling with the goal of verifying the level of savings achieved.

Low-Income Customers – Customers whose income levels are below 200% of the most recent year's federal poverty level.

Measure – The equipment, materials and practices that, when installed or implemented at a customer site, result in a measurable and verifiable reduction in either purchased energy consumption, measured energy or peak demand, or both.

Measured Savings – is an approach to estimate savings for larger or less well-known measures, in which savings are calculated using methods that can involve measurements, engineering calculations, statistical analyses, experimental design, metering and monitoring, computer simulation modeling, etc.

Portfolio – The entire group of programs that are offered.

Portfolio Plan- A plan to deliver a Portfolio of EE programs, which includes a set of benefit/cost test results, specific objectives that can be evaluated using quantifiable measures, and provisions to evaluate, monitor, and verify results.

Program – A group of projects with similar characteristics and installed in similar applications or targeting a particular population.

Program Year – The calendar year in which programs are administered and delivered, for the purposes of planning and reporting.

Public Entity – Public Schools, public higher education institutions, local government facilities, state agency facilities, or any other public entity facility approved by the Commission.

Screening Tests – These are evaluations that should be performed to determine which conservation and energy efficiency options should be eligible for further consideration in the EE portfolio. Screening tests shall follow the guidelines published by the California Public Utility Commission in its California *Standard Practice Manual for Economic Analysis of Demand-Side Programs and Projects,* which was first published in February 1983, and last updated in 2001.[6] The manual defines the following standard tests:

- *Participants Test* - This test measures the *quantifiable* benefits and costs to the customer. The *benefits* to a customer include the reduction in the customer's utility bill (using the retail rate), any incentives customers receive, and any other benefits to the customer that can be

[6] https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/idsm

quantified. Savings estimates should be based on gross energy savings, as opposed to net savings.[7] The *costs* to a customer are all out-of-pocket expenses incurred, plus any increases in the customer's utility bill. The out-of-pocket expenses include all costs of purchasing and installing equipment or materials, any ongoing operation and maintenance costs; any removal costs (less salvage value); and the value of the customer's time in arranging for the installation of the measure, if significant.

- *The Ratepayer Impact Measure (RIM) Test* - This test measures what happens to customer bills or rates due to changes in utility revenues and operating costs caused by the program. Rates will go up if revenues collected are less than the total costs incurred to implement the program. The *benefits* calculated in the RIM test are the savings from avoided supply costs. These avoided costs include the reduction in transmission, distribution, generation, and capacity costs for periods when load has been reduced, and includes the increase in revenues for any periods in which load has been increased. Both the reductions in supply costs and the revenue increases should be calculated using net energy savings. The *costs* for this test are the incremental program costs directly incurred by the Program Administrator and the utility to implement the EE program,[8] the incentives paid to participants, decreased revenues for any periods in which load has been decreased, and increased supply costs for any period when load has increased. The program costs include incremental initial and annual costs, such as the cost of equipment, operation and maintenance, installation, program administration, and customer dropout and removal of equipment (less salvage value).

- *Program Administrator Cost Test* – This test measures the net costs of a program based on the costs incurred by the Program Administrator and the utility. The *benefits* are the avoided supply costs of energy and demand, the reduction in transmission, distribution, generation, and capacity valued at marginal costs for the periods when there is a load reduction. The avoided supply costs should be calculated using net program savings. The *costs* for this test are the incremental direct costs incurred by the Program Administrator and the utility, including the incentives paid to the customers, increased supply costs for the periods in which load is increased, program costs, which include initial and annual costs, such as the cost of equipment, operation and maintenance, installation, program administration, and costs due to customer dropout and removal of equipment (less salvage value).

- *The Total Resource Cost Test* – This test measures the net cost of a program based on the total costs of the program, including the participants', the Program Administrator's, and the

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[7] Gross energy savings are the energy savings attributed to the program seen by the participant at the meter. Net savings are gross savings minus changes in energy use and demand that would have happened even if the program were not implemented (i.e., from "free-riders").

[8] Most of the direct program costs will be incurred by the Program Administrator, however, it is anticipated that utilities will also incur some direct costs, and those costs should also be captured in the appropriate Screening Tests.

utility's costs. The *benefits* calculated in the Total Resource Cost Test are the avoided supply costs, the reduction in transmission, distribution, generation, and capacity costs valued at marginal cost for the periods when there is a load reduction. The avoided supply costs should be calculated using net program savings. The *costs* in this test are the direct program costs incurred by the Program Administrator, the utility, and the participants plus the increase in supply costs for the periods in which load is increased. Thus, all equipment costs, installation, operation and maintenance, cost of removal (less salvage value), and administration costs, no matter who pays for them, are included in this test. Any tax credits are considered a reduction to costs in this test.

- *Societal Cost Test* – This test measures the economic impact to the Program Administrator, utility, service territory, state or broader region, as measured by the Total Resource Cost Test, plus indirect impacts such as environmental impacts.

Parties that desire to change the benefit-cost framework may hold discussions in the EE Working Group ("EEWG") and may propose changes to the Commission for approval.

III. Program Requirements and Design

The Commission's EE Rules transition from individual utility-led programs to a consistent set of statewide programs[9] allowing all jurisdictional customers of Electric IOUs, Group 1 Gas Utilities, and Electric Cooperatives to participate. The statewide energy efficiency program will be administered by a Program Administrator and funded through an energy efficiency rider ("EER"). Similar to the energy efficiency rate riders implemented in the Quick Start Program, EER revenues will be collected by jurisdictional Electric IOUs, Group 1 Gas Utilities, and Electric Cooperatives from their respective customers through a line-item on customer's bills. Jurisdictional utilities are directed to fully cooperate to ensure a seamless transition from individual utility EE programs to a comprehensive statewide Commission-led program, including the creation of the EER for Commission approval.

A. Program Cycle

The EE Program will be developed and implemented based on a four-year program cycle, beginning January 1, 2026. The Administrator shall design, implement, monitor/oversee, and report on a multi-year budget for the program cycle, including meeting the goals and guidelines of design and implementation described in these EE Rules. Such design, implementation, monitoring/overseeing, and reporting are at the direction of, and with the approval of, the Commission. The Administrator shall meet with Staff and Commissioners to make presentations and have discussions as frequently

[9] While the Commission's EE Rules should strive for a consistent set of programs, the Administrator may propose to customize programs to groups of customers, as deemed appropriate. The Administrator should consult with and seek Commission approval for such customization changes.

as Staff and the Commission requires, and shall provide a detailed report annually, as described further below.

B. Administrator and EM&V Contractor

Upon Commission approval, the Administrator shall be responsible for developing and managing natural gas and electric EE programs on a statewide basis. Once an EE program is approved by the Commission, the Administrator will continue to coordinate and seek Commission approval, as necessary, throughout implementation of the four-year program cycle. While retaining an Administrator shall be in accordance with the Commission's RFP process pursuant to the Commission's General Order dated November 10, 2014 (Docket No. R-33197), potential applicants shall not be limited to the Commission's Qualified Consultant list and are anticipated to be selected from a broader pool of applicants with experience and expertise in energy efficiency. Further, in addition to an RFP process, it is anticipated that an RFQ process will precede the RFP process. Past and present EE program administrators are not prohibited from submitting qualifications and proposals to the Commission's RFQ/RFPs.

The Administrator's EE Program and Budget Cycle Plan, discussed further below, shall detail the program goals, strategies, plans and budgets, and shall discuss customer transformation activities, and other program services that the Administrator will implement after Commission approval. The Plans shall detail the specific program objectives, including quantified energy savings (annual and lifetime), peak demand savings, budget allocations by program, including budget allocations serving low-income customers and other targets for customer equity, cost-effectiveness, and customer transformation activities. The Plans shall discuss the economic and environmental benefits the Administrator expects to achieve, and explain how programs will be designed to reach as many LPSC jurisdictional customers as possible. The Plans shall include baseline assumptions and information about the strategy that will be employed to implement programs.

Further, to provide checks and balances and enhanced program accountability, the Commission shall retain an EM&V Contractor, independent from the Administrator, to determine actual savings and other effects from the Commission's EE program, and provide meaningful and detailed recommendations on opportunities for achieving efficiency savings through existing and potential new program offerings. The EM&V Contractor will be responsible for developing and filing EM&V plans for Commission approval prior to the start of each budget cycle, which shall provide details on how the EM&V contractor will evaluate the program design, implementation, cost effectiveness, and verification of savings achieved. As with the Administrator, the EM&V Contractor shall be retained through a formal RFQ/RFP process, and while pursuant to the Commission's General Order dated November 10, 2014 (Docket No. R-33197) potential applicants shall be through a broader pool than the Commission's Qualified Consultant list. Past and present EM&V contractors are not prohibited from submitting qualifications and proposals to the Commission's RFQ/RFPs.

The Commission will conduct an RFQ/RFP hiring process for both the Administrator and EM&V Contractor at least at the end of every two program cycles. The existing Administrator and EM&V Contractor may participate in any RFP issued by the Commission, and is not limited to a set number of program cycles.

While the Administrator and EM&V Contractor shall be retained through the Commission's RFQ/RFP process, these contractor's budgets shall be considered within the total overall EE budget, as discussed herein and approved by the Commission.

Additionally, the Commission will require an independent audit be performed. The audit will review not only the program costs incurred by the Administrator and other parties, but also revenues collected by the utilities and managed by the Administrator. See additional discussion of the Audit process in Section IV below.

C. Savings Targets

Prior to the start of each four-year budget cycle, the Administrator shall design a program that aligns with the Commission's objectives described herein, and seek Commission approval of the proposed EE program. The Administrator shall have a goal of reaching a specified annual incremental energy savings target as compared to the average of each utility's total energy sales over the past five years (subtracting out opt-out energy) as reported in the Electric Utility's FERC Form 1, Cooperative Electric Utility's Rural Utilities Services Form 7, or Gas Utility's FERC Form 2-A. The energy savings target should be based on the previous five-year's energy sales data for which data is available prior to the start of each budget cycle (e.g., energy and gas sales data for 2020 to 2024 may be used for the 2026-2029 program cycle).

For electric and gas IOUs, by the end of the first year of the first budget cycle, the energy savings goal shall be to achieve a minimum energy savings target of 0.4% of the average of the previous five-year's energy sales, and the energy savings goal shall increase by 0.05% each year within the budget cycle, with the goal of achieving 0.55% by the end of the first budget cycle. For electric cooperatives, which are much smaller utilities and did not participate in the Quick Start phase, by the end of the first year of the first budget cycle, the energy savings goal shall be to achieve a minimum energy savings target of 0.1% of the average of the previous five-year's energy sales, and the energy savings goal shall increase by 0.05% each year with the budget cycle, with the goal of achieving 0.25% by the end of the first budget cycle.

During the first four-year cycle, and during each successive budget cycle, the EM&V Contractor shall conduct an EE utility-wide potential study ("Potential Study") to determine potentially achievable energy savings for each utility to assist the Commission in setting savings goals in future years. Utilities will be required to fully cooperate with this process by providing information to the EM&V Contractor as needed to complete the Potential Studies. The energy savings goals for future budget cycles will be established and approved by the Commission at a later time, taking into consideration the results from the first budget cycle, the results from the Potential Study, and results from recent IRPs, for those utilities that have conducted IRPs.

D. Minimum Criteria for Cost-Effectiveness

The Total Resource Cost ("TRC") test shall be the primary test used for determining cost effectiveness for the Commission's EE programs. The Administrator shall evaluate the cost effectiveness of its proposed programs and must demonstrate that the portfolio of programs as a whole is cost effective using the TRC test. The TRC test will consider all electric and gas savings. Quantifiable non-energy benefits may also be considered, subject to Commission approval. At a minimum, the Administrator's entire portfolio of EE programs must equal or exceed a 1.0 TRC requirement each year, though it is preferable for each individual program within a portfolio to have a benefit cost ratio of at least 1.0. EE programs shall be reported at the program and portfolio levels, as well as at any other sub-program levels.

The Commission retains the authority to approve programs that, by design, will not meet or exceed a 1.0 TRC, including possibly low-income programs. Justification for all programs that do not exceed a 1.0 TRC must be provided to the Commission.

Should any party desire to replace the TRC test with some other test, that test should be discussed in the EEWG, with the Administrator seeking Commission approval for such a change in the cost effectiveness test.[10]

E. Program Design and Implementation

1. Budget Cycle Plans

Prior to the start of each four-year budget cycle, the Administrator shall prepare and submit for approval to the Commission the Budget Cycle Plan for the upcoming four-year cycle, consistent with these Commission EE Rules. The schedule for the Budget Cycle Plan is discussed in the Approval Section below (Section III.E.4) and in the Timeline of Activities (Attachment B). If necessary, the Administrator may submit an update to the Budget Cycle Plan to the Commission for approval, detailing any revisions specific to the upcoming plan year, such as changes to incentive levels, changes to expand or discontinue programs, or changes to move funds from one program to another. The Administrator shall include, at a minimum, the following details in the Budget Cycle Plan:

- A list of EE programs it plans to implement,
- Estimated budgets for its programs and portfolios as a whole.

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[10] The EE Working Group is discussed in Section IV below.

- Cost effectiveness analyses of its programs and portfolio as a whole.
- Estimated kWh annual and lifetime savings, summer and winter peak capacity savings, and lifetime customer total resource benefits.
- Program Implementation plans.

In addition, prior to the start of each budget cycle, the EM&V Contractor shall prepare and submit for approval to the Commission the EM&V Plan for the upcoming four-year budget cycle. If necessary, the EM&V Contractor may submit an update to the EM&V Plan to the Commission for approval, detailing any revisions specific to the upcoming plan year. The EM&V Contractor shall include the following details in the EM&V Plan:

- Evaluation budget for the budget cycle (not to exceed 4% of total program budget).
- Process for conducting ex post EM&V impact evaluations.
- Approach to performing process evaluation of program implementation (customer satisfaction, leveraging trade allies, marketing and outreach, etc).
- Key dates for EM&V activities.

As directed by the Commission, the EM&V Contractor will also be expected to perform additional studies from time-to-time that shall also be discussed in the EM&V Plan. One potential study will be for a Louisiana-specific TRM. Early in the first budget cycle, the EM&V Contractor shall be responsible to coordinate with the Administrator and the EEWG to evaluate whether a Louisiana-specific TRM would be beneficial for Louisiana customers. If it is determined it would be beneficial, then the EM&V Contractor shall be responsible to coordinate with the Administrator and the EEWG to produce and seek Commission approval of a Louisiana-specific TRM by the end of the first budget cycle.

2. <u>Budget Cycle Program Allocations</u>

To develop the Budget Cycle Plan, budgets shall be allocated to various customer classes. Prior to the start of each budget cycle, the Administrator shall meet with each Commissioner and Commission Staff to understand the specific goals and types of EE programs that are important to each Commissioner and work to include said priorities in the finalization of the EE program. The Administrator is expected to have a thorough understanding of the Commissioners' objectives for the allocation of energy efficiency budgets and the budget allocations will be approved by the Commission. For example, budgets may be allocated to categories including, but not limited to:

- Low Income Residential Programs and/or Programs for Customers with High Energy Burdens[11]
- Public Entities
- Residential Programs
- Commercial Programs
- Industrial Programs

Stakeholders in Docket No. R-31106, including participants in the EEWG, may also submit recommendations to the Administrator for additional program categories to be considered. While the Administrator shall develop budget allocations based on Commissioner priorities as much and as reasonably possible, the Administrator is encouraged to provide Commissioners with guidance based on the Administrator's industry knowledge and expertise to ensure the overall EE portfolio is reasonable, cost effective, and meets the Commission's goals stated above in Section I.

An important objective that shall be adhered to is that programs should be designed such that funds collected within one utility's service territory should be expended on EE programs for customers within that service territory, and funds collected from residential and non-residential customers should be expended on programs for those customers roughly in proportion to the amount of funds collected from those customers. The Administrator shall provide information to Staff and Utilities to allow tracking of funds spent by service territories and Commission districts.

As budgets are developed, budget flexibility should be considered to address customer equity objectives, to develop programs for certain target markets, and/or to shift budgets within a range, or over a number of years. Other parameters to be considered may include fund-shifting between programs (funds shall not be shifted between residential and non-residential programs), and other spending requirements to address equity considerations.

Once the budget allocations are set and approved by the Commission, the Administrator shall present the Budget Cycle Plan and EE program design for Commission approval along with an estimate of anticipated rate and bill impacts.

3. <u>Public/Private Collaboration</u>

The Administrator shall coordinate and collaborate with stakeholders including contractors, the EM&V Contractor, program participants, Commission Staff, utility companies, government organizations, businesses, professional and trade associations, and trade allies, for purposes of

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[11] When designing programs for Low Income Customers, the Administrator should consider designing programs to reduce those customers' energy burden.

leveraging work, reducing duplication, fostering innovation, and efficiently delivering energy efficiency services in Louisiana.

The Administrator will also coordinate its efforts with other public and private program efforts, at the local, state, regional, and national levels related to the adoption of cost-effective energy efficiency measures and practices, including efforts to facilitate the development of independent funding mechanisms that leverage non-Program funds. For example, the Administrator should examine all opportunities for grants, and other funding opportunities that may be available from the Infrastructure and Jobs Act ("IIJA") that was signed into law on November 15, 2021, and the Inflation Reduction Act ("IRA") that was signed into law on August 16, 2022. Other state, regional or national initiatives or organizations may emerge in the future. The Administrator will be expected to evaluate the potential benefits of those efforts, coordinate with entities as necessary, and support and participate in those efforts as necessary, under the Commission's direction.

The Administrator's coordination and collaboration efforts shall include education and training of entities and/or market participants, subcontracting for the delivery of services, cooperation regarding service delivery, and/or other means of coordination and collaboration. The Administrator shall be expected to provide coordination and collaboration plans, as required by the Commission. Additional funding for energy efficiency generated through coordination with other public and private efficiency programs are additive, and should not be considered a replacement for Commission programs.

4. Approvals

As mentioned above, prior to the start of each four-year cycle, the Administrator shall prepare budget cycle allocations, which shall be submitted for approval at the January B&E Session. Once the Commission approves the budget cycle allocations, the Administrator shall design and submit to the Commission Budget Cycle Plans for the upcoming four-year cycle that will contain plans, budgets, cost-effectiveness evaluations, etc. Both the Administrator's and the EM&V Contractor's plans shall be filed with the Commission by May 1, prior to the start of each budget cycle. The Budget Cycle Plans shall be docketed and noticed in the Commission's Official Bulletin for stakeholder participation. This participation shall not be to object to the statewide Administrator approach, but to assist in refining the Administrator's proposed portfolio to best fit Louisiana customer's needs. After the Commission approves the Budget Cycle Plans, by the October B&E Session, the Administrator shall make a final compliance filing containing the detailed program plan and implementation strategy for the first program cycle by the end of November, prior to the start of each budget cycle.

Within the four-year budget cycle, when necessary, the Administrator and EM&V Contractor shall prepare and submit updated annual plans to the Commission, for approval, detailing any revisions to the approved plans by June 1, with the goal of Commission approval at the November Business and Executive ("B&E") Session. These revised plans will be filed into the docket, though any revisions to the original four-year program plans are expected to be minimal.

F. Budget and Cost Recovery

1. <u>Program Budget</u>

Prior to the start of the first four-year budget cycle, the proposed budget for each year within the budget cycle should be established on no more than 1.5% of the average of a utility's five most recent years' revenue (e.g., revenue data for 2020 to 2024 may be used for the 2026-2030 Program Cycle), accounting for excluded revenue associated with opt-out customers.[12]

Proposed budgets for future four-year cycles will be revised based upon how successful the prior four-year cycles are in achieving the Commission's EE goals, while balancing the impact to customers, and based on results of any IRP analyses performed, the Potential Studies performed to determine potentially achievable energy savings across the state and/or in response to customer market demand.

The Commission's goal will be to approve proposed budgets for each four-year cycle by the October B&E Session in advance of each new budget cycle term (for example, by the October 2025 B&E Session). In the event a majority of the Commission cannot approve the proposed budget after the first budget cycle, the Administrator shall continue to use the prior cycle's budget. While there is a budget for each four-year cycle, should program modifications/budget reallocations be necessary to annual budgets for a given program year, the Commission must approve those adjustments.

The Commission's EE Program funds shall be allocated by the Commission according to utility service territories and Commission Districts, such that there is roughly proportional distribution throughout the LPSC Districts over the four-year cycle, and any monies collected from a utility are utilized for the customers of that utility through the Commission's EE program. Revenues collected by jurisdictional utilities through the EER shall be maintained by the respective jurisdictional utility until notified by the Administrator that an EE project has been completed and that funds can be released. The Administrator, with the assistance of the respective utility, will be responsible for tracking and reporting revenues collected by utility service territory and Commission district to ensure revenues collected by a utility are being utilized for the benefit of that utility's customers, and that the revenues are being roughly proportionally distributed to the LPSC districts within the utility.

At the end of each four-year budget cycle, if excess EE funds have been collected from customers that have not been fully used, a utility may request that the Commission pause any further collections until the previously collected funds are used in accordance with the EE programs in existence.

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[12] See Section IV below for more information concerning opt-out requirements.

2. Administrator and EM&V Contractor Budget

The budget for the Administrator and EM&V Contractor shall be included within the overall budget of the Commission's EE program. It is the Commission's goal to minimize all administrative costs, and to maximize customer incentives, as much as possible. In order to minimize administrative costs, the Administrator and EM&V Contractor will be selected through a competitive procurement process in order to identify the most qualified and cost-effective consultants for Louisiana customers. The Commission's goal of minimizing administrative costs shall be emphasized in any RFP bid documents sent to prospective Program Administrators and EM&V Contractors, and will be part of the Commission's consideration of any consultant who provides a bid proposal in response. Additional program performance incentive payments will not be allowed under the Commission's EE program; however, a portion of the Administrator's costs will be held "At Risk" for meeting energy savings goals, customer satisfaction objectives, on time payments of incentive funds, etc. Other than the "At Risk" payments, compensation of the Administrator and the EM&V Contractor shall be based strictly on the proposed costs included within the respective RFP bids. Additional specifications of the payment requirements will be specified in the bid documents in the bid solicitation process.

With regard to financial management, the Administrator must maintain financial and accounting records consistent with general accounting standards, and must develop, implement, and maintain the necessary budgeting and financial accounting systems to ensure the EE programs are implemented efficiently.

The Program Administrator shall also render an invoice on a monthly basis to utilities for implementation services that trade allies have performed and billed to the Program Administrator and that the Program Administrator deems completed. All Program invoices will be paid in full when funds are available.

3. Energy Efficiency Rider

To the extent possible, jurisdictional utilities should cooperate to create and seek approval of uniform EERs - one for Electric IOU Utilities, one for Group 1 Gas Utilities, and one for Electric Cooperatives. Utilities should seek approval for uniform EERs in a joint filing submitted to the Commission by no later than April 1, 2025. However, the uniform rate riders can be adjusted to meet a specific utility's needs. The electric utilities must comply with Commission General Order dated July 1, 2019 when submitting an EER for approval. If the EER would result in a change in rates charged by the respective utility, then Section 501(B) of Commission General Order dated July 1, 2019 shall be followed. Individual utilities must seek Commission approval for any utility specific adjustments they would like to implement.

The EER rate shall be designed to recover the entire EE budget, including the Administrator and EM&V Contractor costs, incentive payments to customers and trade allies, recovery of the utility's direct costs, and the utility's Lost Contribution of Fixed Costs ("LCFC"). A utility's recovery of direct costs and LCFC is further described in the next section. The EER rate shall be adjusted by utilities in a reconciliation filing made by May 1 after the end of each program year, to the extent that an over or under-collection of costs occurred. Each utility shall calculate any carrying costs on the under/over-recovered costs at the Prime Interest Rate or the utility's respective short-term debt rate, whichever is lower.

Each utility shall file supporting workpapers with the reconciliation filing, with working spreadsheets, all formulae intact, and no hard-coded values. In addition to having a uniform rate rider, documentation, including supporting workpapers, shall be standardized amongst all utilities (at least among utility categories), and the utilities shall be required to collaborate to propose such standardized documents to the Commission for approval by April 1, 2025, and this approval shall be sought from the Commission at the same time that utilities seek approval for the uniform EER Rate Riders.

4. <u>Utility Cost Recovery</u>

Utilities are allowed to recover their direct costs in facilitating the collection, retention, and implementation of the EER through the EER. Utilities are allowed to recover LCFC costs based on the actual energy savings derived by the Administrator pursuant to an earnings test being performed. If a utility has a Formula Rate Plan ("FRP") or a Rate Stabilization Plan ("RSP") that allows for an annual reset of rates, LCFC should be reviewed within the utility's annual review and recovered via the EER rider, as indicated below.

For a utility that has an approved FRP/RSP in place that allows for an annual reset of rates, it shall be permitted to recover its LCFC costs if the EE program caused the utility to underearn, i.e., below the lower end of the utility's earnings deadband. Because LCFC revenues are not accounted for in a utility's FRP/RSP annual review, another evaluation shall be performed after the annual review has been completed to determine if as a result of having EE programs, the utility under-recovered its allowed revenues. If a utility has earnings that are below the bottom of its earnings deadband as a result of the Commission's EE programs, the utility shall be entitled to recover the amount of LCFC revenue that allows the utility to meet the lower end of the deadband. If an adjustment for LCFC revenue has to be made, such an adjustment, with interest (accrued beginning from January 1st of the prior Plan Year), shall be accounted for at the time that the utility's next EE rate redetermination process occurs in order to reset its EER rates accordingly. Interest shall be calculated using the Prime Interest Rate or the utility's respective short-term debt rate, whichever is lower, and shall only apply to the adjusted amount for the period of time between the effective date of the EER and the FRP/RSP.

Utilities that do not have an FRP/RSP in place that allows for an annual reset of rates, may accumulate LCFC costs until base rates are reviewed in a base rate proceeding, at which time the effects of the EE programs will be considered; however, the accumulation of LCFC costs shall not be permitted to accrue for utilities with no approved FRP/RSP for longer than three years.

G. Program Reporting

The Program Administrator and the EM&V Contractor shall each be responsible for developing and filing annual post plan year reports by April 1st after the end of a plan year, as described below.

1. Program Administrator – Annual Reports

a) Program descriptions, customer classes the programs apply to, participation rates, activity, and objectives for the programs.

b) The same Standard Annual Reporting Programs ("SARP"), as had been provided by electric utilities through the Quick Start program. These reports should be provided electronically, with all formulae intact. All avoided cost assumptions should be readily available, though some of the information may be treated confidentially.

c) Implementation issues, such as barriers against increased participation.

d) Recommendations for program improvements.

e) Efforts by the Administrator to staff and train employees regarding the development and implementation of EE programs and infrastructure (such as the development of trade allies in the utilities' regions).

f) Marketing, communication, media coverage.

g) Actual and budgeted expenditures, broken out by customer classes, LPSC district, and service territory, and by the following cost components: (a) administration and planning; (b) promotion and advertising; (c) customer incentives; (d) delivery and vendors; (e) participant contributions; and (f) monitoring and verification.

h) Actual and budgeted energy savings (gas savings in case of a gas utility), broken out by customer classes and service territory.

i) Actual and budgeted peak demand savings (gas savings in case of a gas utility), broken out by customer classes and service territory.

j) Comparison of budgeted and actual costs of EE program to total utility revenue.

k) Comparison of budgeted and actual energy savings to total utility sales energy.

l) Program customer incentive payments, broken out by customer classes and by program.

m) Participants' costs. Since tracking may be difficult, estimates may be provided.

n) Annual and cumulative present value of benefits, costs, net benefits, and benefit/cost ratios, based on the primary TRC test, but also provide the RIM, Program Administrator, and Participants test results.

o) Discussion of LCFC costs charged to customers based on actual energy savings derived by the Administrator.

p) Discussion of the EE projects that are ongoing and planned by Commission district.

q) To the extent the Commission deems it necessary, the Administrator shall be responsible for reporting to organizations beyond the Commission including EIA, ACEEE, etc.

2. <u>EM&V Contractor – Annual Reports</u>

a) Summary of EE program options offered, and a description of the general evaluation methodologies.

b) Verified savings evaluation. Evaluation of capacity and energy savings, both estimated and realized.

c) Verified cost evaluation. Evaluation of all costs spent, both estimated and realized.

d) Verified cost effectiveness evaluation. Cost effectiveness evaluation, both estimated and realized.

e) Process Findings – Program changes and developments, customer satisfaction surveys, evaluation findings and conclusions.

f) Recommendations – Recommendations for program design and implementation improvements.

The Administrator and EM&V Contractor should be available upon request to answer any questions of the Commission and/or Commissioners related to the EE program. Further, the EM&V contractor should assist the Administrator to achieve greater energy and cost savings.

IV. Miscellaneous Provisions

A. EE Working Group

1. <u>Working Group Goals</u>

The Commission will establish the EEWG, including the participants therein. While there is no set limitation on the number of participants, the Administrator shall seek participation of parties that have appropriate experience with EE programs, and shall consider having at least minimum representation on the EEWG that includes utilities participating in the EE program, trade allies, other state agencies, low-income advocacy groups, and intervenors and interested parties participating in

Docket No. R-31106. Further, there will be no compensation for stakeholder participation in the EEWG. The first meeting of the EEWG shall be held prior to July 1, 2024 with a main goal being to determine whether the EEWG shall establish protocols, including the frequency that the EEWG will meet, whether sub-committees should be established, and whether voting rights should be established.

The Administrator shall also coordinate the activities of the EEWG, with guidance and direction from the Commission, and further the goal of providing input regarding the design and implementation of EE programs, and to recommend, when appropriate, changes to either the EE Rules or specific EE programs over time. The EEWG shall not replace or circumvent the Commission's Rules of Practice and Procedure, or policy, related to review, evaluation, and revisions to Commission's Orders and Rules. As appropriate, the Commission may open a docket to allow public input and consideration of topics stemming from the EEWG, which will adhere to the Commission's Rules of Practice and Procedure.

The EEWG (by way of the Administrator) shall issue an annual report to the Commission, including details of the topics taken up by the EEWG, any recommendations for updates to EE programs or the EE Rules, and proposals for future topics for the EEWG to consider.

2. <u>Development of Technical Reference Manual</u>

During the Quick Start Program, utilities relied on the Arkansas TRM, which includes a list of all measure characterizations and assumptions that were used for determining measure eligibility, and for calculating energy savings for approved EE projects. While the Arkansas TRM should continue to be used when Phase II of the EE program begins, the EM&V Contractor, in collaboration with the EEWG and the Administrator shall investigate the benefits of developing a Louisiana specific TRM. If a Louisiana specific TRM is found to be desirable, then the EM&V Contractor should seek Commission approval for developing the Louisiana specific TRM. Should the Commission approve the development of a Louisiana TRM, the EM&V Contractor, in consultation with the EEWG and the Administrator, shall develop the TRM for Commission approval, and upon approval, maintain the TRM, updating it on an annual basis, as necessary.

B. Trade Allies

The Administrator shall partner with or hire trade allies that are licensed and experienced with EE programs to ensure customers receive quality service when they participate in the Commission's EE program. In implementing the Commission's EE program, the Administrator shall make all reasonable efforts to utilize local, verified trade allies, and in particular, to continue to rely on trade allies that have assisted in the implementation of Phase I Quick Start programs, assuming those local trade allies can deliver services more efficiently, cost effectively, and/or with a higher degree of quality.

The Administrator shall work with trade allies to implement EE projects within a utilities' respective service territory, including to ensure quality performance and completion of projects. The Administrator should ensure that payments are made to all trade allies on a timely basis upon completion of EE projects. It will be the responsibility of the trade ally to demonstrate to the Administrator that an EE project is one hundred percent (100%) complete.

C. Transition Period

During the Transition Period in 2024 and 2025, the Administrator, with the Commission's guidance, shall be responsible to develop and manage a plan to transition from the utility-led Quick Start Efficiency Program to the new Commission-led statewide EE program with as little disruption as possible for trade allies, suppliers, customers, and utilities. Such plan shall be presented to the Commission for approval. Jurisdictional utilities are expected to fully cooperate and support the transition, and utilities will continue to recover their costs during the transition period as they did during the Quick Start Phase.

The Administrator shall be granted secure and confidential access to customer information and data relevant to implementing a successful EE program, such as but not limited to, kWh usage and likely billing assistance program participants so that the Administrator may understand where the greatest need for EE is within a utility's footprint. The Administrator should include information about the relative cooperation and collaborative data sharing by each utility in the Administrator's annual report.

Also, during the Transition Period, utilities shall continue to maintain Quick Start Residential and Commercial programming at existing budget levels through the 2025 calendar year, and shall work closely with the Administrator to transfer information and to communicate with customers and trade allies about the transition.

D. Legacy Public Entity Programs

Public Entity programs will continue to exist under the statewide EE program; however, the overall budget for Public Entity programs will be determined as part of the budget allocation process. Nothing prohibits two or more Commissioners from working together, including combining EE program funds, to complete an EE project. As described further in Section III.E.I., the Commission will determine how much budget will be allocated to all categories, such as public entities, low-income, or other categories of programs.

Once an overall budget is established, the Public Entity Program will operate as the program did under the Quick Start Rule, including the means by which the overall budget is allocated between Commission Districts, applications being received from interested public entities, Commissioners having input in the applications selected, and one main goal being to replace out dated equipment and fixtures with new, more efficient equipment and fixtures to reach a desire energy consumption reduction.

Any Commissioner who no longer desires to have direct implementation of Public Entity programs within his respective district may request the Administrator utilize that Commissioner's budget allocation to develop and implement EE programs for public entities within that Commissioner's district. If a Commissioner selects this option, the Administrator shall implement programs within that Commissioner's district that are designed toward public entities.

Given the Public Entity program will be a part of the overall statewide EE budget, there is no longer the need for a separate rate rider for Public Entity program costs. For Phase II, one uniform rate rider for Electric IOUs, Group 1 Gas Utilities, and Electric Cooperatives will be established, which will include the costs of the Public Entity program.

Further, given the Public Entity program will be a component of the statewide EE program, all responsibilities that were previously performed by Commission Staff related to the Public Entity program will transition to the Administrator.

E. Fuel Switching

The Commission's EE program prohibits any offerings that encourage customers to switch from electric to natural gas or from natural gas to electric appliances and services as a marketing initiative. However, every effort should be made to coordinate the delivery of both gas and electric efficiency improvements to dual fuel customers. In the future if decarbonization becomes mandated at the Federal or State level, or if it becomes a policy of the state to promote decarbonization, the Commission reserves its right to revisit this prohibition to determine whether strategic marketing programs involving fuel switching are desirable. If such a Federal or State mandate or policy goes into effect, stakeholders may encourage the Commission to reconsider this issue at that time. For example, parties may evaluate the impacts of the Infrastructure Investment and Jobs Act ("IIJA") and Inflation Reduction Act ("IRA") in considering if any changes should be made to this policy.

F. Industrial Opt-Out

Industrial customers of the jurisdictional Electric IOU and Group 1 Gas Utilities will have the option to opt out of the EE Program. In order to allow the Commission, the Administrator, and the respective utility the opportunity to account for such customers in developing the EE program and corresponding budgets, existing customers must provide written notice to the Commission, via the Administrator and the customer's respective utility provider no later than April 1, prior to the start of the four-year program cycle. Customers who opt out are not eligible to participate in the Commission's EE programs. A customer who has previously opted out that choses to opt back in can only do so at the start of the next four-year program cycle, and must remain opted in for the full budget cycle. The means by which opt-out notice will be given will be consistent with the way it was done during the Quick Start phase.

For new customers that begin receiving service in any given year after the opportunity to opt-out has passed, the notice requirement is modified such that the new customer must provide written notice of the decision to opt-out within thirty (30) days of receiving service.

The following opt-out provisions will be in effect at the start of the Commission's EE program; however, these rules may be revised in the future, at the discretion of the Commission. The Commission reserves the right to further evaluate the opt-out policy and may revise it at a later time.

Electric: Industrial customers having one or more individual electric service accounts within a utility service provider's service territory with a combined aggregate demand of five thousand (5,000) kW or more may elect to be excluded from participation in the EE program administered by the Commission for all of their accounts within that utility service provider's territory, and from all costs associated with such program. However, if such a customer does not elect to opt-out, they are considered a participant in the EE program and will be assessed the EER rate. Only customers with annual peak loads equal to or greater than two hundred (200) kW, located within a utility's service territory, may aggregate. To be clear, the aggregation procedures are to remain the same as existed during the Quick Start phase.

Gas: Industrial customers having one or more individual natural gas service accounts within a utility service provider's service territory with a combined aggregate demand of seventy thousand (70,000) MMBtu or more may elect to be excluded from participation in the EE program administered by the Commission for all their accounts within that utility service provider's territory, and from all costs associated with such program. However, if such customer does not elect to opt-out, they are considered a participant in EE program and will be assessed the EER rate. Only customers with annual usage equal to or greater than fourteen thousand (14,000) MMBtu, located within a utility's service territory, may aggregate. To be clear, the aggregation procedures are to remain the same as existed during the Quick Start phase.

G. Information Management System and Data Confidentiality

1. <u>Information Management System</u>

During the Transition Period, and with the cooperation of utilities, the Administrator shall create or contract services to implement an information management system.

It is understood that utilities and their current program administrators have been collecting and analyzing data, including from subcontractors, such as customer data, usage information, program measures, trade data, program results, etc., and have been storing data electronically in database format. The current Quick Start Program databases and tools used by utilities for their current EE programs shall be made available to the incoming Administrator. The Administrator shall be responsible for any monthly operational fees and duties to either continue operation of any databases currently used, or to transition to another system that shall provide substantially similar tasks, reports, and functionality. These costs will be included as part of the EE budget.

The Administrator's information management system shall maintain the list of customers interested in participating in the Commission's EE program, and the Administrator shall select customers for non-Public Entity Program implementation based on when the customer signed up; in other words, on a first-come, first-serve basis. The information management system should follow a participant from sign-up to completion of the respective EE project, and store the data as needed for the EM&V Contractor for a period of time that suffices the EM&V Contractor's review, reporting in their required evaluations, and Commission oversight. The record retention for data stored in the information management system shall be for the entire four-year budget cycle plus seven years thereafter.

In addition to tracking and maintaining participation data, the information management system should also be used for other purposes, including EM&V assessments, financial analysis, managing program services and operations, research and program strategies, program modification and improvements, reporting, etc. The Commission also envisions that the data will assist in the identification and characterization of customer classes, and ultimately to develop innovative scalable, and sustainable programs and services.

Administrative and financial records included in the information management system should be data consistent with the needs outlined in these EE Rules, and with Generally Accepted Accounting Principles ("GAAP") as defined by both the Governmental Accounting Standards Board and the Financial Accounting Standards Board. This includes systems to track general project management, invoicing, payroll and subcontractor payments, and to produce the necessary reports for monitoring these tasks.

At any time, upon request of the Commission and/or Staff, the Administrator should have the capability of providing reports on the total number of participants signed up, approved projects not yet complete, completed projects, and the total amount of budget expended in any given year as allocated by District and jurisdictional utility, as well as the remaining budget. The system should also have the ability to produce ad-hoc reports for periodic information requests from the Commission and/or Staff. Further, upon request, the Administrator shall make reasonable, non-confidential, data and information available to the utilities.

The Administrator's informational management system and the data contained therein will be the property of the State/Commission, and shall be maintained in a relational database format and organized such that the Administrator can access and utilize necessary information for performing program assessment tasks. The Administrator shall maintain current, clear documentation describing data fields, database structures and interactions, and other information sufficient to enable a third-party to understand, access, use, and transfer data.

2. Data Confidentiality

To the extent that any information required to be provided by the Commission's EE Rules is provided to the Federal Energy Regulatory Commission or any other public agency, and is published, reported, or otherwise disseminated outside of the Administrator or the utilities or is otherwise a matter of public record, it will not be considered proprietary or confidential or trade secret information. If a claim is made that information is proprietary, confidential, or a trade secret, that issue shall be addressed in accordance with the provisions of Rule 12.1 of the Commission's Rules of Practice and Procedure and the Commission's General Order dated August 31, 1992.

The Administrator must develop, manage, and maintain systems that provide appropriate protections in the collection, processing, storage and retrieval of customer-specific information or information that could provide an unfair competitive advantage to an entity delivering services outside of the energy efficiency programs approved by the Commission for Administrator implementation. The Administrator is responsible for managing such systems, and when appropriate, providing the information to subcontractors, regulators, approved third-parties, and utilities. Appropriate non-disclosure agreements shall be executed with the utilities for protection of customer-specific information.

H. Audit Procedure

For the first budget cycle, the Commission will require an independent audit to be performed following the completion of the second plan year. For future budget cycles, the Commission will require audits to be performed at the end of each budget cycle. The audit will review not only the program costs incurred by the Administrator, but also revenues collected by the utilities and managed by the Administrator, as well as the EM&V costs incurred. The Auditor will be selected through a competitive solicitation process, and the Auditor's costs will be included with the overall budget of the Commission's EE program.

The Program Administrator, EM&V Contractor, and the jurisdictional utilities must maintain records to support their costs for a period of at least seven years from the end of the Budget Cycle. In addition, should any audit of an EER Rate become the subject of a Commission investigation, all documents pertaining to those costs must be maintained by the Program Administrator, EM&V Contractor, and the utilities until all final appeals of any Commission action have been exhausted.

I. Rule Revisions

The EE Rules recognize specific adjustments may be desired or necessary over time, which may require revisions or separate rules/orders addressing a narrowed area within energy efficiency. These adjustments will be determined on a case-by-case basis, and considered by the Commission. Upon request, or upon its own action, the Commission may review and analyze these EE Rules, the EE program, or specific EE project(s) at any time in the future. Such review and analysis will follow the Commission's Rules of Practice and Procedure, including initiating a new docketed proceeding, allowing for public participation, and may result in rule revisions or separate orders.