

October 25, 2023

VIA EMAIL

Rules Coordinator
RAILROAD COMMISSION OF TEXAS
Office of General Counsel
P.O. Drawer 12967
Austin, TX 78711-2967

Re: *Proposed Amendments to 16 TAC § 7.480, relating to Energy Conservation Programs*—Atmos Cities Steering Committee and the City of Austin's Comments

Dear Sir or Madam:

On September 19, 2023, the Railroad Commission of Texas ("RRC" or "Commission") published a proposed new rule in the Texas Register and requested comments from interested parties be filed by October 25, 2023. The Atmos Cities Steering Committee ("ACSC") and the City of Austin (collectively, "Cities") appreciate the opportunity to submit comments regarding proposed new 16 TAC § 7.480, relating to Energy Conservation Programs ("ECP").

ACSC is a coalition of over 180 cities in North and Central Texas and has been a regular participant in the rate cases of Atmos Energy Corp. and its predecessors for approximately 27 years. More generally, these cities' involvement in gas utility matters has a long history in Texas, and the cities have been active and productive partners of the RRC in regulating gas utility rates within their municipal boundaries. The City of Austin is the 10th largest city in the United States with a population of over 975,000. Part of the City of Austin's mission is to protect and improve the quality of life now and for future generations by leading efforts to achieve energy conservation.

As a general matter, Cities support the proposed rule and commend the RRC for taking steps to contribute to the health and welfare of Texas citizens and businesses. The proposed rule is pursuant to House Bill 2263 ("HB 2263"), which was enacted during the 88th Legislature and added new Subchapter J, Natural Gas Energy Conservation Programs, in Chapter 104, Texas Utilities Code. The proposed rule includes the required contents of both the initial application ("Initial ECP Portfolio Application") in which a local distribution company ("LDC") will present its proposed portfolio energy conservation programs ("ECP Portfolio") and the application which

the LDC must submit every three years for re-approval (“Subsequent ECP Portfolio Application”) (together, with the Initial ECP Portfolio Application, the “ECP Portfolio Applications”). The proposed rule also outlines a cost recovery mechanism (“ECP Rate”) and establishes a procedure for review.

While Cities support a rulemaking to implement HB 2263, Cities have several concerns with the proposed rule. Among them, the proposed rule does not define a cost-effective standard and does not require the ECPs to be cost-effective. The rule does not require a prudence review by the RRC yet expects costs to implement the ECP Portfolio to be prudently incurred. The rule falls short on information to be included in ECP Portfolio Applications and ECP Annual Reports. The rule should include a deadline for review of the Applications.

These concerns are detailed below along with relevant recommendations.

I. EXECUTIVE SUMMARY

Cities provide the following executive summary to its comments:

- The rule should include and define a cost-effective standard;
- The rule should require an LDC to demonstrate that each conservation program is cost-effective;
- The rule should expressly require a prudence review of each conservation program and all associated costs;
- The Initial ECP Portfolio Application should require more detailed information;
- The rule should enable an LDC to modify programs more often than every three years;
- The rule should replace the three-year application process with an annual ECP Portfolio Application;
- The rule should provide a deadline for review of Applications by the Commission;
- The ECP Annual Report should require more information; and
- The Commission should adopt the rule revisions recommended by Cities in their comments.

II. COMMENTS

A. Define Cost-Effectiveness in Relation to the Programs

All ECPs implemented by LDCs should be subject to the same cost-effectiveness standard. Yet, the proposed rule does not define cost-effective nor even requires the ECPs to be cost-effective. There must be an explicit way for an LDC to demonstrate that each of its ECPs is cost-effective. Otherwise, the costs of the ECP could outweigh the benefits. Along those lines, the cost-effectiveness standard must center around whether the costs of the ECP are less than or equal to the benefits of the ECP. Costs should include administrative costs and portfolio costs. Benefits should consist of the value of the demand reductions and energy savings. The cost-effectiveness of each ECP should be included in both the Initial ECP Portfolio Application and the ECP Annual Report. Also, the cost-effectiveness standard should be subject to review by an independent auditor to verify the accuracy of the benefits versus the costs. A definition of “cost-effective” should be added to 16 TAC § 7.480(b).

B. Allow for a Prudence Review

16 TAC § 7.480(c)(3) states that an LDC may recover costs “prudently incurred” to implement the ECP Portfolio. Accordingly, the proposed rule should require a prudence review through a contested case. Under 16 TAC § 1.2(1), the RRC either makes rules or determines contested cases. A rulemaking is the “process to adopt a new rule or to amend or repeal an existing rule pursuant to Texas law.”¹ In contrast, a contested case is a “proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Commission pursuant to the APA after an opportunity for adjudicative hearing.”² Here, review of an ECP Portfolio is not a rulemaking because it is not a new rule or amendment to a rule. Therefore, the review must be completed using a contested case. Moreover, the prudence review should focus on whether the costs to implement the ECP Portfolio were prudently incurred.

C. Provide More Detail in the Initial ECP Portfolio Application

16 TAC § 7.480(d)(1) lays out the requirements for an Initial ECP Portfolio Application. Ultimately, that application should be more detailed. The Initial ECP Portfolio Application should

¹ 16 TAC § 1.2(31).

² Id. at § 1.2(9).

include at least the following additional information: (1) description of any existing conservation or energy efficiency programs offered by the LDC; (2) payments made under each ECP and the ECP Portfolio; (3) projected annual demand reduction per customer class for each ECP and the ECP Portfolio; (4) calculation of the proposed ECP Rate; and (5) any other information that supports the determination of the ECP Rate. As proposed, the Initial ECP Portfolio Application does not require any information to support either the proposed annual budget for each ECP and ECP Portfolio or the proposed administrative costs for each ECP and ECP Portfolio.

D. Allow for Modifications of Programs More Often Than Once Every Three Years

16 TAC § 7.480(d) lists the required contents for both an Initial ECP Portfolio Application and a Subsequent ECP Portfolio Application. Importantly, an LDC under 16 TAC § 7.480(d)(2) must re-apply for approval of its ECP Portfolio every three years. Under the rule, programs can only be modified every three years. The rule should allow an opportunity for more frequent reviews, especially if the Commission-approved cost-recovery mechanism allows for over-recovery of costs. The Commission should allow for a review every year so that rates can be adjusted to match revenues against energy efficiency costs. In addition, more frequent reviews would allow an LDC to modify or discontinue an ECP if it is no longer cost-effective. It would be unreasonable for an LDC to retain such an ECP for three years as envisioned under the proposed rule. Along the same lines, it would be unreasonable if the LDC had to wait three years to add a new ECP if it can demonstrate that the ECP is cost-effective. To allow for more frequent reviews, Cities propose that the rule must require an ECP Portfolio application every year. To accommodate a more frequent review, the Initial ECP Portfolio Application and Subsequent ECP Portfolio Application should be consolidated into one application (the “ECP Portfolio Application”), which includes the requirements listed in 16 TAC § 7.480(d)(1) and those additional requirements proposed in these comments. If the LDC proposes no changes to its ECP Portfolio and has provided adequate support for the cost-effectiveness of the ECPs, then after review, the Commission may expedite approval of the ECP Portfolio Application. Moreover, the proposed rule should enable the Commission to inspect any ECP in the ECP Portfolio during the year to ensure that the ECP remains cost-effective. Thus, Cities suggest the proposed rule require an LDC to provide a report to the Commission detailing the energy savings and progress of the ECP.

E. Provide a Deadline for Review of the Applications by the Commission

16 TAC § 7.480(h) calls for review of an application for ECP Portfolios by the Director of Gas Services. Once the Director of Gas Services finishes the review, Gas Services will do one of three things: (1) approve the application as filed; (2) approve the application with modifications; or (3) reject the application. The rule should include a deadline by which the Commission must complete the review. Otherwise, the review could last indefinitely which increases the cost of the review and delays implementation of the ECP Portfolio. In light of the limited nature of ECP Portfolio Applications, Cities recommend a 120-day deadline for processing these cases.

F. Provide More Detail in the ECP Annual Report

The ECP Annual Report addressed in § 7.480(j) should include more details. Currently, the ECP Annual Report only requires the LDC to give an overview of the ECP Portfolio, a description of each ECP, including performance, expenditures, and results for the program year, the LDC's planned ECPs for the upcoming year, and schedules which detail ECP expenditures and actual amounts collected for the program year. The rule also requires the ECP Annual Report to include the calculation of the adjusted ECP Rate for each customer class. These requirements are necessary but insufficient. The Report should also include the revenue collected through the ECP Rate by customer class during the program year, the number of customers participating in each ECP, the actual energy and demand savings achieved through each ECP by customer class, and the actual cost-effectiveness calculations for each ECP. These additional requirements will help the RRC understand how successful each ECP is and where improvements can be made. If the Commission adopts Cities' recommendation that LDCs file an annual ECP Portfolio Application, then the ECP Report may be filed along with the Application.

G. Miscellaneous Provisions

In 16 TAC § 7.480(c)(1), Cities suggest revising "...and the LDC **complies** with the approved ECP portfolio..." to "...and the LDC **implements the** approved ECP portfolio..."

In 16 TAC § 7.480(e)(1)(F), Cities suggest revising "...to an email address for the LDC **Company** included in..." to "...to an email address for the LDC included in..."

In 16 TAC § 7.480(j)(1)(B), Cities suggest revising "...the program's performance for the **preceding** year..." to "...the program's performance for the **program** year..."

III. CONCLUSION

Cities appreciate the opportunity to comment on the proposed rule and respectfully urge the Commission to consider the foregoing comments and to adopt a rule consistent with the principles discussed in these comments.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



THOMAS L. BROCATO
State Bar No. 03039030
tbrocato@lglawfirm.com

ATTORNEY FOR CITIES