

**PROJECT NO. 34887**

**PUC RULEMAKING TO AMEND            §            PUBLIC UTILITY COMMISSION  
METHOD FOR CALCULATION OF       §  
ELECTRIC LOW-INCOME DISCOUNT §            OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §§25.451, 25.454 AND 25.457  
AS APPROVED AT THE DECEMBER 7, 2007, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.451, relating to Administration of the System Benefit Fund, §25.454 relating to Rate Reduction Program, and §25.457 relating to Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives. The proposed amendments will revise language in §25.454 regarding the calculation of the discount factors used in the rate reduction to reflect the fact that price-to-beat is no longer in effect; establish the method through which the Provider of Last Resort (POLR) rate will be determined for the purpose of calculating the discount factors; and set the discount factor for each service territory for a six-month period of time, with allowances for certain revisions. These changes are expected to minimize the changes in discount factors throughout the year which may result from using the POLR rate as the reference rate for calculating low-income discounts. Pursuant to §25.43, relating to Provider of Last Resort (POLR), the calculation of the POLR rate includes an energy charge that is the sum over the billing period of the actual hourly Marginal Clearing Prices of Energy. Consequently, unless the POLR rate is calculated at or below the minimum POLR rate contemplated in §25.43, it is possible for the POLR rate in each territory to fluctuate throughout the year. Depending on the frequency and timing of corresponding changes to discount factors, this could cause confusion for customers, be administratively burdensome for retail electric providers (REPs), and may be

difficult for the commission staff to audit to ensure that customers are getting the correct rate reduction by each REP in each territory.

The proposed amendments will also amend §25.454 to more clearly reflect the enrollment process; allow companies providing pre-pay service consistent with §25.498, relating to Retail Electric Service Using a Customer Prepayment Device or System, to document the rate reduction on the customer's payment confirmation rather than through a line-item discount on the bill; delete requirements and references that are no longer in effect; and revise §§25.451, 25.454, and 25.457 consistent with the Bill Payment Assistance provisions addressed in Project Number 33811. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 34887 is assigned to this proceeding.

Ms. Lauren Damen, Director of Retail Markets, Competitive Markets Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Damen has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be for low-income customers to have more clarity as to the amount of low-income discounts to expect and to reduce the administrative burden on REPs of administering the low-income discount. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this

section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Damen has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the commission staff will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, January 22, 2008, at 9:30 a.m. in the Commissioner's Hearing Room. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 34887.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 2007): (1) §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; (2) §39.101(e) provides that the commission has the authority to adopt necessary or appropriate rules for minimum service standards, relating to customer deposits; and (3) §39.903 grants the commission the authority to adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice.

Cross Reference to Statutes: PURA §§14.002, 39.101, and 39.903.

**§25.451. Administration of the System Benefit Fund.**

- (a) **Purpose.** The purpose of this section is to implement the system benefit fund, including its administration, setting its revenue requirement, fee collection, reporting procedures, and review and approval of the fund pursuant to the Public Utility Regulatory Act (PURA) §39.903.
- (b) - (c) (No change.)
- (d) **System benefit fee.** The commission shall set the amount of the system benefit fee for the next fiscal year at or before the last open meeting scheduled for July of each year.
- (1) (No change.)
- (2) The commission may, at any time during the fiscal year, review the revenues, fund balance, and projected disbursements, revise the system benefit fee amount, and issue an order for the remainder of the year to accomplish the purposes of PURA §39.903. The TDUs shall implement the new fee in billings to the REPs within 30 calendar days of the date such order is issued. Whenever the fee is changed, the TDUs shall file with the commission an updated rate schedule for inclusion in the TDU's tariff manual, reflecting the new fee.
- (3) (No change.)
- (e) **Revenue requirement.** The revenue requirement shall be an amount of revenue necessary to fund the purposes outlined in PURA §39.903 consistent with legislative appropriations and expected fund revenue, operating costs of the Rate Reduction

Program and other obligations of the fund, a necessary fund reserve balance, and any other purpose required by statute or legislative appropriations.

- (f) (No change.)
- (g) **Remittance of fees.** Each TDU, MOU, or Coop collecting the system benefit fee from the REPs, MOUs, or Coops in its service area, shall remit the fees to the Comptroller on a monthly basis.
  - (1) (No change.)
  - (2) The collecting utility shall account for all system benefit fees received from the REPs, MOUs, or Coops in its service area separately from any other account in its records.
  - (3) Each TDU, MOU, or Coop collecting and remitting the system benefit fee to the Comptroller shall file with the commission at the time the money is remitted a report, on a commission-prescribed form, stating for each service territory the amount of the system benefit fee billed, the amount remitted to the Comptroller, and electric energy sold, in MWh. The report shall contain monthly amounts and year-to-date totals.
- (h) (No change.)
- (i) **Reporting and auditing requirements.** Each REP, and each MOU or Coop when applicable, providing rate reductions or one-time bill payment assistance to eligible customers shall keep records of such rate reductions and one-time bill payment assistance for at least three years from the date the rate reduction or one-time bill payment

assistance is first provided to a customer to permit the commission or its agent to audit rate reduction and one-time bill payment assistance reimbursements. Reports filed under subsections (g) and (j) of this section and records relating to the identification of eligible customers shall also be subject to audit upon commission request.

- (j) **Reimbursement for rate reductions and one-time bill payment assistance.** Each REP, or MOU or Coop, when applicable, shall submit to the commission a monthly activity report and request for reimbursement on a form prescribed by the commission. The commission's goal for the processing of a request for reimbursement is, not later than five business days after receipt of the monthly report, to prepare and deliver to the comptroller an authorization for reimbursement to the REP, MOU, or Coop. The Comptroller's goal for the processing of payments is to transfer the funds by the close of the next business day, following receipt of an authorization from the commission. The monthly activity report submitted by the REPs, MOUs, or Coops shall contain the following:

- (1) - (2) (No change.)
- (3) The aggregate electric energy consumption in kWh for all low-income customers enrolled in the rate reduction program for the reporting period;
- (4) (No change.)
- (5) The total amount of one-time bill payment assistance provided to customers in the reporting period and the number of customers to which assistance was provided, pursuant to §25.455 of this title (relating to One-Time Bill Payment Assistance Program), as well as pertinent customer information required by the commission-prescribed form.

(k) (No change.)

**§25.454. Rate Reduction Program.**

- (a) (No change.)
- (b) **Application.** This section applies to retail electric providers (REPs) that provide electric service in an area that has been opened to customer choice, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).
- (c) **Funding.** The rate reduction requirements set forth by this subchapter are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers, the following shall apply:
  - (1) (No change.)
  - (2) The requirements of the following sections of this title, insofar as they relate to the rate reduction benefit, are suspended when sufficient funding and spending authority are not available:
    - (A) (No change.)
    - (B) §25.457(i)-(j) of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives);

(C) - (D) (No change.)

(3) The requirements of §25.480(c)(1) of this title (relating to Bill Payments and Adjustments), insofar as they relate to the rate reduction benefit, are suspended if an eligibility list is not available as provided in subsection (i) of this section.

(d) **Definitions.** The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) **Discount percentage** — The percentage of discount established by the commission and applied to the minimum provider of last resort (POLR) rate in a particular service territory.

(3) – (5) (No change.)

(6) **Minimum POLR rate** — For the purposes of this section, the minimum POLR rate shall be the POLR rate posted on the commission's website on the Electricity Facts Label for each service territory for 1,000 kWh of usage.

(e) **Rate reduction program.** In each month for which funds are available for the low-income discount, all eligible low-income customers as defined in §25.5 of this title (relating to Definitions) are to receive a rate reduction, as determined by the commission pursuant to this section, on their electric bills from their REP.

(1) Discount factors shall be determined in accordance with this paragraph, as the minimum POLR rate for each service territory multiplied by the approved discount percentage.

- (A) The commission shall periodically establish the discount percentage. The discount percentage may be set at a level no greater than 20%.
- (B) The commission staff shall calculate a discount factor for each service territory and post the discount factors on the commission website ([www.puc.state.tx.us](http://www.puc.state.tx.us)). Each discount factor shall be in effect from May through October or November through April, subject to revision pursuant to subsection (e)(2) of this section.(2)
- The commission may revise the discount factors set pursuant to subsection (e)(1) of this section through a change to the discount percentage because of one of the following occurrences:
- (A) The commission staff determines that there are sufficient remaining appropriations for the fiscal year to support an increase in the discount percentage without exceeding available appropriations for the fiscal year. This determination may be triggered by the routine review by commission staff of disbursements and remaining appropriations, or by a fluctuation of five percent or more of the POLR rate calculated pursuant to §25.43(k) of this title, in any month during the six month period.
- (B) The commission staff determines that there are insufficient remaining appropriations for the fiscal year, and a decrease to the discount percentage is necessary to ensure that funds spent do not exceed appropriations for the fiscal year.
- (3) All REPs shall provide the rate reduction to eligible low-income customers.
- (A) The discount factors posted on the commission's website shall be used to calculate the rate reduction for each eligible low-income customer's bill.

If the discount factor changes for any area, REPs shall implement the resulting change in the discount factor in their billings to customers within 30 calendar days of the date the commission posts the revised discount factor to its website, or on the effective date of the discount factors, whichever is later.

- (B) (No change.)
- (C) The customer's discount amount shall be clearly identified as a line item on the electric portion of the customer's bill, including the description "LITE-UP Discount." If a monthly bill is not issued as provided by §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System), the customer's receipt or confirmation of payment, or detailed information accessed by confirmation code, as described by §25.498 of this title, shall indicate that the discount was applied to the customer's charges with the words "LITE-UP" or "LITE-UP Discount."
- (D) (No change.)

(f) **Customer enrollment.** Eligible customers may be enrolled in the rate reduction program through automatic enrollment or self-enrollment.

- (1) (No change.)
- (2) Self-enrollment is an alternate enrollment process available to eligible electric customers who are not automatically enrolled and whose combined household income does not exceed 125% of federal poverty guidelines or who receive food

stamps or medical assistance from HHSC. The self-enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:

(A) – (B) (No change.)

(C) Providing information to customers regarding the process of enrolling in the low-income discount program;

(D) Determining customers' eligibility by reviewing information submitted through self-enrollment forms and determining whether the applicant meets the program qualifications; and

(E) Matching customer information submitted through self-enrollment forms with customer data provided by REPs, creating files of matching customers, enrolling matching customers in the rate reduction programs, and notifying the REPs of their eligible customers.

(3) In determining customers' eligibility in the self-enrollment process, LIDA shall require that customers submit with a self-enrollment form proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information and shall audit statistically valid samples for accuracy. If a person who self-enrolls claims to be eligible because of participation in a qualifying program, LIDA shall require the customer to submit a copy of proof of enrollment or eligibility letter that indicates enrollment of the applicant in the qualifying program.

(4) – (6) (No change.)

(g) (No change.)

(h) **Confidentiality of information.**

- (1) The data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement.
- (2) All data transfers from REPs to LIDA pursuant to this section shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information.
- (3) LIDA may use information obtained pursuant to this section only for purposes prescribed by commission rule, including use in determining eligibility for assistance under §25.455 of this title (relating to One-Time Bill Payment Assistance Program).

(i) **Eligibility List for Continuation of Late Penalty Waiver Benefits.**

- (1) In the event that funding and authorization to expend funds are not sufficient to provide rate reductions for low-income customers that can be reimbursed from the system benefit fund, the commission may, in its discretion, require LIDA to maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsections (f)(1) and (f)(2) of this section if funds were available. The procedures set forth in subsections (f)(1) and (f)(2) of this section will be used to the extent practicable. In addition to the requirements in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks undertaken by HHSC may be established in a memorandum of understanding between the commission and HHSC. To assist the commission in implementing this provision, REPs shall upon request:

(A) - (E) (No change.)

(2) – (3) (No change.)

(j) **Deposit Installment Benefits.**

(1) (No change.)

(2) If LIDA is not maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, a REP shall extend the option to pay deposits over \$50 in two installments to any residential customers or applicants who qualify for the rate reduction program. The REP may, on a non-discriminatory basis, require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate. The REP shall provide notice of this option in any written notice requesting a deposit from a customer. This paragraph supersedes the provisions of §25.478(c)(3) and (d)(3) of this title that require payment of the entire amount of a deposit within ten days.

(k) (No change.)

**§25.457. Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives.**

(a) - (c) (No change.)

(d) **Billing requirements.** Each retail electric provider (REP), MOU, and Coop that provides rate reduction discounts or one-time bill payment assistance in the service area of an MOU or a Coop shall comply with the billing requirements in §25.451(h) of this title.

(e) (No change.)

(f) **Service area revenue requirements.** The commission staff shall calculate the amount available for low-income discounts or one-time bill payment assistance for the service area of each MOU and Coop based on the projected system benefit fee revenue from the service area of the MOU or Coop and any reduction in the fee for education or low-income programs approved by the commission. The commission shall, on a request by an MOU or a Coop, reduce the system benefit fee, imposed on the requesting entity's retail customers, by the amount expended by the requesting MOU or Coop, or their retail customers, for local, low-income programs and local programs that educate customers about the retail electric market in a neutral and non-promotional manner. The qualifying low-income programs must reduce the cost of electricity to the recipients of such programs and be targeted at customers whose total household income does not exceed 125% of federal poverty guidelines. The amount available for low-income discounts and one-time bill payment assistance shall be established and may be revised by the commission in the following manner:

- (1) – (2) (No change.)
- (g) (No change.)
- (h) **Allocation of revenue requirement.** An MOU or Coop shall allocate its service area revenue requirement established by the commission staff under subsection (f) of this section among those programs provided by PURA §39.903(e) for which funds have been authorized. The MOU or Coop shall be responsible for determining such allocation.
- (i) **Discount factor and rate reduction.** An MOU or a Coop shall establish a discount factor, consistent with the amount of its service area revenue requirement allocated by the MOU or Coop by the rate reduction for low-income customers in its service area. Each REP, MOU, or Coop that bills retail customers for electric power and energy shall apply a rate reduction to the bills of eligible low-income customers based on the discount factor established by the MOU or Coop in effect during the billing cycle in which the bill is rendered, multiplied by the customer's total consumption (kWh) for the billing period. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied. The rate reduction will be clearly identified as a line item on the electric portion of the customer's bill. An MOU or Coop may permit the rate reduction to be identified for a pre-pay customer in accordance with §25.454 of this title (relating to the Rate Reduction Program).
- (j) **Reimbursement.** Each REP, and MOU or Coop that provides rate reduction discounts or one-time bill payment assistance in the service area of an MOU or Coop is entitled to

reimbursement under §25.451(j) of this title for the rate reductions and one-time bill payment assistance it has provided to eligible customers and shall file a monthly activity report in order to request reimbursement.

**(k)Monthly reporting requirements.** If an MOU or a Coop continues to bill customers pursuant to PURA §40.057(c) or §41.057(b), as appropriate, then the MOU or Coop shall file with the commission two reports. One report will identify the amount of system benefit fee collected and paid by the reporting entity's retail customers ; the other report shall identify the amount of system benefit fee paid by the transmission and distribution only customers. Both reports shall be filed with the commission at the time the system benefit fee is paid pursuant to §25.451(g) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 7<sup>TH</sup> DAY OF DECEMBER 2007 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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