

PROJECT NO. 28149

**PUC RULEMAKING PROCEEDING TO § PUBLIC UTILITY COMMISSION
AMEND P.U.C SUBSTANTIVE RULE §
25.453, RELATING TO TARGETED § OF TEXAS
ENERGY EFFICIENCY PROGRAMS §**

**PROPOSAL FOR PUBLICATION OF AN AMENDMENT
TO §25.453 AS APPROVED AT THE
SEPTEMBER 18, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.453, relating to Targeted Energy Efficiency Programs. The proposed amendment will, in light of the fact that the Legislature did not allocate a portion of the System Benefit Fund for fiscal years 2004 and 2005 to targeted energy efficiency programs administered by the Texas Department of Housing and Community Affairs (TDHCA), terminate TDHCA's responsibilities for developing and maintaining the low-income energy efficiency plan required by §25.453 and will retain only the reporting requirements for the current fiscal year. Project Number 28149 is assigned to this proceeding.

Senate Bill 7 (Act of May 21, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543) established the requirement that the commission, as one of its duties related to administering the System Benefit Fund, adopt rules regarding programs to assist low-income customers on the introduction of customer choice, including targeted energy efficiency programs to be administered by TDHCA in coordination with TDHCA's existing weatherization programs. *See* Public Utility Regulatory Act (PURA), Texas Utilities Code (Vernon 1998, Supplement 2003) §39.903(f). The programs contemplated by PURA §39.903 were funded with a specifically allocated portion of the System Benefit Fund. The commission adopted §25.453 to meet its statutory obligation under PURA §39.903. The commission's rule imposed a number of

requirements on TDHCA in order for the commission to ensure that the System Benefit Fund was adequately administered. However, for the 2004-2005 biennium, no portion of the System Benefit Fund was allocated to the targeted energy efficiency programs. Tex. H.B. 1, 78th Leg., R.S. (May 18, 2003). As a consequence, TDHCA will not receive any portion of the System Benefit Fund to fund its targeted energy efficiency and weatherization programs. Therefore, it is necessary to amend §25.453 to relieve TDHCA of its obligations under the rule; in doing so, the commission proposes to delete most of §25.453. However, the proposed amendment retains the reporting requirements that apply to funds allocated for targeted energy efficiency programs for the remainder of the 2003 fiscal year.

William L. Huie, Staff Attorney, Legal and Enforcement 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, because the amendments to the section are limited to reflecting the Legislature's decision that, for the 2004-2005 biennium, no portion of the System Benefit Fund are to be allocated to the targeted energy efficiency programs addressed in the existing section.

Mr. Huie 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 the removal of obsolete requirements in the rule, because the amendments to the section are limited to reflecting the Legislature's decision that, for the 2004-2005 biennium, no portion of the System Benefit Fund are to be allocated to the targeted energy efficiency programs addressed in the existing

section. 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.

Mr. Huie 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; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested 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. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project Number 28149.

This amendment is proposed under Public Utility Regulatory Act (PURA), Texas Utilities Code (Vernon 1998, Supplement 2003) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and

jurisdiction, and specifically, PURA §39.903, which requires the commission to adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice.

Cross References to Statutes: Public Utility Regulatory Act: §14.002 and §39.903.

§25.453. Targeted Energy Efficiency Programs.

- (a) **Purpose.** ~~This~~ The purpose of this section provides for the reporting requirements related to is to implement the targeted energy efficiency programs for eligible low-income customers, including administration, program design, and program evaluation. All programs carried out under this section must reduce energy consumption and costs for customers.
- (b) **Application.** This section applies to all electric utilities' service areas in the state, except service areas of municipally owned utilities or electric cooperatives that have not opted in to competition and the service area of a utility referred to in the Public Utility Regulatory Act (PURA) §39.102(c).
- (c) ~~**Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:~~
- (1) ~~**Deemed savings** — A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application, which a utility may use instead of energy and peak demand savings, determined through measurement and verification process.~~
- (2) ~~**Demand** — The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).~~

- ~~(3) **Energy efficiency program (program)** — Programs that are aimed at reducing the rate at which electric energy is used by appliances, equipment and processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adopting technologies and processes that reduce heat or other energy losses; or reorganizing of processes to make use of waste heat.~~
- ~~(4) **Energy efficiency measures** — Equipment, materials, and practices which, when installed and used at a customer site, result in a measurable and verifiable reduction in purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both.~~
- ~~(5) **Energy efficiency service provider** — A person who installs energy efficiency measures or performs other energy efficiency services. For the purposes of this section, entities currently under contract with the Texas Department of Housing and Community Affairs (TDHCA) to provide Weatherization Assistance for Low-Income Persons (WAFLIP) services are energy efficiency services providers.~~
- ~~(6) **Energy savings** — A quantifiable reduction in a customer's consumption of energy.~~
- ~~(7) **Inspection** — On-site examination of a program to verify that a measure has been installed and is capable of performing its intended function and is in compliance with TDHCA health and safety standards.~~
- ~~(8) **Measurement and verification (M&V)** — Activities intended to determine the actual kWh and kW savings resulting from energy efficiency programs.~~

~~(d) — **Energy efficiency goal requirement under PURA §39.905.** Electric utilities may count savings achieved under this program towards the requirements of §25.181 of this title (relating to the Energy Efficiency Goal).~~

~~(e) — **Compliance with state and federal law.** Programs offered under the system benefit account shall maintain TDHCA's current service delivery structure and quality standards unless alternative programs are necessary to meet performance requirements under this section. The energy efficiency program under the system benefit account may fund the equivalent of 25% of the state's U.S. DOE WAFLIP allocation to programs structured to comply with the cost sharing requirements under the federal fiscal year 2000 Interior and Related Agencies Omnibus Appropriations Bill. TDHCA shall notify the commission of changes in other state and federal law that affect the system benefit account programs and amend its low income energy efficiency plan as appropriate.~~

~~(f) — **Eligibility criteria.** A beneficiary of the targeted energy efficiency programs must be a low income electric customer of a retail electric provider, or a municipally owned utility or an electric cooperative that offers customer choice. For the purpose of this section, a "low income electric customer" is an electric customer:~~

~~(1) — whose household income is not more than 125% of the federal poverty guidelines;~~

~~or~~

~~(2) who receive food stamps from the Texas Department of Human Services or medical assistance from a state agency administering a part of the medical assistance program.~~

~~(g) **Program transition.** Existing programs to fund low-income weatherization services under contracts between individual utilities and TDHCA shall continue until utilities enter the competitive market. An electric utility currently under contract with TDHCA and entering the competitive market shall enter into a successor in interest agreement with TDHCA by no later than June 1, 2001, to transfer program materials, funding, and responsibilities to TDHCA.~~

~~(c)(h) **Low-income energy efficiency plan schedule.** The Texas Department of Housing and Community Affairs (TDHCA) shall, for the remaining quarters of fiscal year 2003, file quarterly reports in accordance with subsection (d) of this section. No later than April 1, 2004, TDHCA shall file a final annual report in accordance with subsection (e) of this section.~~

~~(1) **Schedule.** TDHCA shall:~~

~~(A) By June 1, 2001, file a low-income energy efficiency plan for the years January 1, 2002 and beyond in accordance with paragraph (2) of this subsection.~~

~~(B) By June 1, 2003, and annually thereafter, file its updated low-income energy efficiency plan in accordance with paragraph (2) of this subsection.~~

~~(C) — No later than April 1, 2002, and quarterly thereafter, file quarterly reports in accordance with subsection (i) of this section.~~

~~(D) — No later than April 1, 2003, and annually thereafter, file final reports in accordance with subsection (j) of this section.~~

~~(2) — **Low income energy efficiency plan.** — The TDHCA low income energy efficiency plan shall describe how TDHCA intends to achieve the legislative mandate under PURA §39.903(e) and the requirements of this section. Beginning in January 1, 2002, the plan shall be on a calendar year cycle and may cover a multiple year period. The plan shall propose an annual budget in accordance with subparagraph (E) of this paragraph. TDHCA's energy efficiency plan shall include:~~

~~(A) — A summary description of every program being implemented through the system benefit account, including programs fully funded, programs funded in part, programs funded statewide and programs funded regionally, including pilot projects. — Each program summary shall include a description of:~~

~~(i) — The manner in which the program reduces energy consumption.~~

~~(ii) — The manner in which energy and demand savings are measured.~~

~~(iii) — The anticipated number of households assisted.~~

~~(iv) — The projected eligible population.~~

~~(v) — The anticipated amount of kW and kWh savings expected to be created in each electric utility service area.~~

- ~~(B) A description of the monitoring responsibilities and reporting requirements of the contractor, TDHCA, and any other parties conducting reviews, audits, inspections, and oversight.~~
- ~~(C) The proposed annual budget required to implement the TDHCA energy efficiency plan. The proposed budget should detail funding allocations to energy efficiency services providers, TDHCA's administrative costs, including monitoring, training, and technical assistance and outreach, and the rationale and methodology used to estimate the proposed expenditures. If the proposed budget is more than 10% higher than the previous year's budget or expenditure level, the plan should include a detailed explanation for the need for additional funding and, if necessary, an implementation plan for an expanded program. In the budget:~~
- ~~(i) The total cost of administration may not exceed 10%.~~
 - ~~(ii) Funding allocations to energy efficiency service providers must reflect the proportional size of the eligible customer base for all applicable areas in the state.~~
- ~~(D) A discussion of the solicitation process TDHCA plans to use to select energy efficiency service providers, including the manner in which TDHCA will post notice of requests for proposals, minimum contractor qualifications, and any other facts that may be considered when evaluating a program. Except for pilot projects and existing contractors under the~~

~~Texas WAFLIP, competitive solicitation shall be the method for contract selection.~~

~~(E) A discussion of the public participation process TDHCA used in the development of programs to be funded through the system benefit account, including a summary of comments submitted by parties during the process.~~

~~(F) A description of the customer protection provisions in the contract appropriate to the program design and implementation structure. The description should include a statement how the process allows:~~

~~(i) The energy efficiency service provider to file a complaint against a TDHCA.~~

~~(ii) A customer to file a complaint against an energy efficiency service provider. TDHCA may use customer complaints as a criterion for disqualifying energy efficiency service providers from participating in the program.~~

~~(iii) Complaints unresolved within 60 calendar days shall be reported to the commission.~~

~~(3) **Minimum program requirements.** Programs shall encourage a comprehensive approach to energy efficiency either by installing multiple measures or through the coordination with other programs. Programs must describe the manner in which they are coordinated with the existing Texas WAFLIP.~~

- ~~(A) Each program must be cost effective. An energy efficiency program is deemed to be cost effective if the cost of the measure installed is less than or equal to the benefits of the measure. The benefit of the measure is the value of the purchased electrical energy saved to the customer, based on 1/1000th of the cost for the first 1000 kWh block at the price to beat for the standard residential rate, seasonally adjusted, as calculated pursuant to §25.454(d)(3)(B) of this title (relating to Rate Reduction Program), in the applicable service area. For programs designed outside the WAFLIP structure, the present value of the measure benefits shall be calculated over the projected life of the measure, not to exceed ten years.~~
- ~~(B) Each program must identify the goal it is intended to achieve and the goal for the calendar year.~~
- ~~(C) Each program must identify a timeline and milestones, including a quarterly production and expenditure schedule.~~
- ~~(D) Programs shall result in consistent and predictable energy savings over a seven-year period.~~
- ~~(E) Programs shall disclose known potential adverse environmental or health effects associated with the energy efficiency measures to be installed.~~
- ~~(F) Programs shall include the procedures for measuring and reporting the energy and peak demand savings from installed energy efficiency measures consistent with the requirements of paragraph (5) of this subsection.~~

- ~~(G) Pilot projects to test new concepts and technologies may be implemented in limited geographic areas prior to making the program available in all appropriate areas of the state.~~
- ~~(H) Programs or projects not eligible for compensation are those that:~~
- ~~(i) Do not reduce the customer's total energy consumption and energy costs.~~
 - ~~(ii) Would achieve demand reduction by eliminating an existing function, shutting down a facility or operation, or would result in building vacancies.~~
 - ~~(iii) Result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.~~
- ~~(4) **Commission review.** Prior to the implementation of the energy efficiency program, the commission shall review the energy efficiency plan. The commission may consider, in addition to the requested budget, the amount of system benefit funds available and the percentage increase in program funding requested from the previous year. Deemed savings shall be reviewed in accordance with the guidelines of §25.181 of this title.~~
- ~~(5) **Monitoring, inspection, and measurement.** Each program shall be subject to monitoring of operation and management of contracts, as well as measurement of savings.~~

- ~~(A) TDHCA is responsible for the monitoring of contract operation and management. Findings of fraud shall be reported to the commission immediately.~~
- ~~(B) TDHCA is responsible for the measurement of energy and peak demand savings, using a commission approved measurement and verification protocol. Commission approved deemed energy and peak demand savings may substitute for a measurement and verification protocol.~~
- ~~(C) Each customer shall sign a certification indicating that the measures contracted for were installed before final payment is made to the energy efficiency service provider.~~
- ~~(D) At least a statistically significant sample of installations will be subject to on-site inspection by TDHCA in accordance with the protocol set out for the program. Failure to meet health and safety, and installation standards may be cause for contract termination.~~

(d)(i) **Quarterly energy efficiency report.** The quarterly energy efficiency report shall provide the information listed below:

- (1) The most current information available comparing the baseline and milestones achieved under the program, including the number of households served under each program.
- (2) A statement of funds expended by energy efficiency service providers and TDHCA program administration during the quarter.

(3) A statement of any funds that were committed but not spent during the quarter.

(e)(f) **Annual energy efficiency report.** The annual energy efficiency report shall provide the information listed below:

(1) The most current information available comparing projected savings to reported savings, including the amount of kW and kWh savings achieved in each electric utility service area.

(2) The most current information available comparing the baseline and milestones achieved under the program.

(3) A statement of funds expended by the energy efficiency service providers and TDHCA program administration.

(4) A statement of any funds that were committed but not spent during the fiscal year, by program.

(5) A statement regarding the number of households served by each program.

(6) A summary of the previous fiscal year's operation and management monitoring and installation inspection findings.

(f)(k) **Legislative report.** The commission shall compile the information submitted by TDHCA in its quarterly and annual reports and any other relevant information bi-annually. The report shall be submitted to the joint legislative oversight committee on electric restructuring.

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

**ISSUED IN AUSTIN, TEXAS ON THE 19th DAY OF SEPTEMBER 2003 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**