

**PROJECT NO. 27711**

**RULEMAKING TO MODIFY THE            §        PUBLIC UTILITY COMMISSION  
ELECTRIC LOW-INCOME DISCOUNT   §  
RULES     §     OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §25.451, §25.454, AND §25.457 AS  
APPROVED AT THE DECEMBER 30, 2003 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.451, relating to Administration of the System Benefit Fund, §25.454, relating to the Rate Reduction Program, and §25.457, relating to Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives, with changes to the proposed text as published in the August 1, 2003 issue of the *Texas Register* (28 TexReg 5965). The amendments refine the program to better meet the purposes set out in the Public Utility Regulatory Act (PURA) §39.903 for the System Benefit Fund (SBF). The amendments are intended to insure that the low-income discount rules and practices are consistent and enforceable, improve the administration of the System Benefit Fund and Rate Reduction Program, and provide for the creation of a customer-based eligibility matching process for the Rate Reduction Program. The amendments are adopted under Project Number 27711.

The commission received written comments on the proposed amendments on September 2, 2003 and reply comments on September 9, 2003. On October 31, 2003, commission staff filed a draft of the Low-income Discount Procedural Guide (the Guide) in Project Numbers 27711 and 28056, *Rulemaking to Modify P.U.C. Subst. R. 26.412 Regarding Lifeline and Link Up Services for Low Income Discount Administration (LIDA)*. On November 7, 2003, a joint workshop for Project Numbers 27711 and 28056 was held at the commission to discuss the draft of the Guide,

its purpose and correlation with the amended rules, and any questions, comments and suggestions from parties. Input from representatives of electric and telecommunications utilities was received at the workshop. The commission received written comments on the Guide on November 12, 2003. The commission also accepted supplemental comments on the proposed amendments on November 12, 2003. Parties submitting written comments on the rule included CPL Retail Energy, WTU Retail Energy, and Direct Energy, LP (jointly the Centrica REPs); Entergy Solutions Select Ltd. and Entergy Solutions Essentials Ltd. (jointly the Entergy REPs); First Choice Power; Green Mountain Energy Company (GMEC); Reliant Resources, Inc.; the Texas Energy Association for Marketers (TEAM), consisting of Entergy Solutions, Cirro Energy, Gexa Energy and Texas Commercial Energy and TXU Energy Retail Company LP (hereinafter jointly referred to as REP Coalition or Coalition); Texas Legal Services Center (TLSC) and Texas Ratepayers' Organization to Save Energy (TX ROSE); GMEC; and San Patricio Electric Cooperative (San Patricio). The comments and reply comments on the Proposal for Publication, supplemental comments, and comments on the Guide that pertain to proposed amendments, are addressed below.

The commission had requested a response to a preamble question, as well as any comments on the rules. Parties responded with comments on the preamble question, comments on specific sections of the rules, and general comments on the rules.

Preamble Question:

*Should the Low-Income Discount Procedural Guide be approved by the Executive Director or the Commissioners?*

The REP Coalition stated that the Commissioners should adopt the Guide, rather than the Executive Director, and that there should be a minimum comment period of ten days. The REP Coalition found that this would discourage frequent changes which could be burdensome to the market. The REP Coalition agreed that administrative details may be appropriate for the Guide, but found that substantive matters would need to be addressed in the rule.

TLSC and TX ROSE stated that the answer to the preamble question hinged on the contents of the Guide. TLSC and TX ROSE emphasized that the purpose of the Guide must be purely procedural. TLSC and TX ROSE stated that a hybrid procedure could be adopted to approve the Guide in which the first draft would be adopted by the commission and minor changes could be adopted by the Executive Director. TLSC and TX ROSE found that the initial Guide should be published in the *Texas Register* for comments, that a procedure for amending the Guide should be established, and that all changes should be noticed and provided for comment with opportunity for objection. TLSC and TX ROSE stated that if a change was perceived by any party to affect the rights of customers that the matter would need to be docketed for consideration by the commission. Additionally, TLSC and TX ROSE commented that matters solely affecting REPs do not have the same protection since REPs have agreed to abide by the customer protection rules to maintain certification status. In reply comments, the REP Coalition

stated that this implication was incorrect and that REPs are afforded the same rights under the Administrative Procedural Act (APA) as any other group.

In comments on the Guide, the REP Coalition restated that the Guide should be approved by the commission, and TLSC and TX ROSE restated that the initial Guide should be approved by the commission.

*Commission response*

The Guide will serve several purposes, but its main purpose is to serve as a stand-alone document that includes all of the program requirements for participants in the Rate Reduction Programs. To the extent that the Guide includes details about participants' program requirements, such as the format for the exchange of files in the matching process, the commission does not believe that APA procedures are required, but it will afford interested parties an opportunity to comment on the initial Guide. Any changes in substantive requirements for participants will be established in commission rules, which will be modified through an APA rulemaking process. The corresponding changes to the Guide, such as the incorporation of new requirements adopted in a commission-approved rule and the calculation of new discount factors will be made by the Executive Director, without a comment period. The commission notes that the calculation of the factors will be the most frequent reason for change and that it is purely a ministerial function, based on the rule, the commission's decisions on the discount percentage, and commission-approved changes in the price to beat (PTB).

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

TLSC and TX ROSE supported the changes to the amended administrative provisions of the rule, but disagreed with the deletion of §25.451(e)(3) and (4) of the current rule, which outline the process which estimates the revenue requirement for the rate discount, targeted energy efficiency programs, and customer education. TLSC and TX ROSE found that the decisions resulting from the past legislative session are not a reasonable basis for wholesale revision of the method for establishing the revenue requirement, and that PURA §39.903 has remained unchanged.

In reply comments, the REP Coalition agreed with TLSC and TX ROSE that the method for establishing the revenue requirement should remain the same and that §25.451(e)(3) and (4) of the current rule should be retained. The REP Coalition stated that this is a substantive issue which should be addressed in the rule, consistent with the APA requirements.

*Commission response*

The commission does not agree with the comments to the extent that they assume the revised §25.451(e) discontinues consideration of the specific programs identified in the current rule when determining the revenue requirement. The commission emphasizes that the revision of §25.451(e) is not intended to remove these programs from inclusion in the revenue requirement, should they be funded at a later date; the revision was intended to encompass all purposes to be funded by the SBF in a more concise manner. The commission clarifies that the revenue

requirement will include purposes required by future legislative appropriations, and refines the description of the revenue requirement in §25.451(e) to clarify the intent of the language.

The commission modifies references throughout §25.451 to specify the applicability of the subsections to REPs, have been made in response to the concern of San Patricio, located in *General Comments*, that entities to which each section or subsection apply are clearly addressed.

Additional changes have been made to §25.451 to either clarify the intent of the language, remove unnecessary language, or improve organization. The changes are as follows:

- (1) Section 25.451(a) clarifies the purpose of this section to include “setting” the revenue requirement, and removes “establishment of” the revenue requirement. Since the revenue requirement has already been established, it is more accurate to state that future changes would set the requirement at a different amount.
- (2) Section 25.451(b) clarifies that this section applies to areas in which customer choice has been implemented, or the commission has issued an order requiring that the rule be applied. With this clarification, this section will apply where customer choice has been implemented and where the commission has issued an order to include a group of customers in the Rate Reduction Program, as it has done in the case of certain customers of Mutual Energy SWEPCO. In addition, the commission makes a corresponding change in §25.454(b).
- (3) The commission modifies the organization of §25.451(d), (g), (h), and (i).

- (4) The commission clarifies §25.451(d)(3) (§25.451(d)(2) as adopted) in order to explain more clearly the review that is performed to determine the system benefit fee.
- (5) The commission clarifies §25.451(d)(3) (§25.451(d)(2) as adopted) to state that each transmission and distribution utility (TDU) is required to file an updated rate schedule for inclusion in the TDU's tariff manual when a new fee is implemented.
- (6) The commission clarifies §25.451(d)(4) (§25.451(d)(3) as adopted) to state that the average fee may not exceed \$0.65 per MWh. This clarification is necessary because the fee assessed by the TDU, in the commission approved rate schedule, differs by customer class.
- (7) The commission refines §25.451(f) to explain more clearly how the electric sales estimate is derived.
- (8) The commission removes references to January 1, 2002 from §25.451(g) and (g)(1) (§25.451(g) as adopted). This language is no longer necessary because January 1, 2002 has past.
- (9) The commission clarifies the language in §25.451(g)(1), (g)(2), (g)(3) and (g)(4) (§25.451(g), (g)(1), (g)(2), and (g)(3) as adopted) to clarify the intent of the subsection and add administrative flexibility.
- (10) The commission modifies §25.451(g) to include (g)(4), containing language previously found in proposed §25.451(i)(2). The commission also modifies this language to more clearly explain the information to be provided.

- (11) The commission removes from §25.451(h)(3) (§25.451(h)(2)), language which it finds duplicative of the remittance requirement, and language which it finds unnecessary for the intent of this subsection.
- (12) The commission reorganizes and clarifies the language in §25.451(i)(1) (§25.451(i) as adopted) to explain the intent of the subsection more clearly.
- (13) The proposed rule in §25.451(j), set out deadlines for commission and Comptroller action on reimbursement requests. The commission has concluded that the rule should not include deadlines but, rather, goals. The commission and Comptroller have been prompt in processing reimbursements, and there does not appear to be a compelling reason to include timing requirements. The commission therefore modifies §25.451(j) to restate deadlines as goals, to allow for administrative flexibility.
- (14) The commission clarifies §25.451(j), §25.451(j)(2), §25.451(j)(3), §25.451(j)(4), and §25.451(k) to more clearly explain the intent of the language.
- (15) The commission clarifies §25.451(j)(1) to state that REPs should report the number of customers who actually received discounts, as opposed to the number of customers listed by LIDA as eligible. This revision should ensure that the correct number is reported, because there may be a gap between the customers who are listed by LIDA as eligible, and the customers who are actually billed by that REP for that billing period.

*§25.454, Rate Reduction Program.*

The REP coalition suggested that the term “discount credit” in §25.454(c)(1), was redundant and should be replaced with “discount factor.” In supplemental comments, the REP Coalition also suggested clarifying that the discount must be provided by any REP.

*Commission response*

The commission agrees and has changed the definition in the proposed amendments accordingly. References throughout §25.454 and §25.457 to “discount credit” have been removed and replaced with “discount factor.” The commission also clarifies §25.454(c)(1) to clearly state that the discount must be provided by any REP.

The REP Coalition commented that the definition of the Guide in §25.454(c)(4), should clarify that it will not expand the obligations and responsibilities of Low-income Discount Program participants beyond the scope provided by the substantive rules. The REP Coalition, TLSC, and TX ROSE emphasized that the Guide should not include substantive requirements and should be limited and directly related to obligations and responsibilities delineated in the substantive rules.

*Commission response*

The commission recognizes the concern of participants that the Guide be purely administrative and procedural. The commission has amended this section to clarify the purpose of the Guide, and has amended applicable sections in the rule, to ensure that all substantive issues have been addressed within the rule. The commission has made changes throughout §25.454 specifically to

address parties' concerns. Nevertheless, the Guide will be used to prescribe additional details of program requirements that are set out in the rule, such as the format for files that are provided in the automatic enrollment process. Section 25.454(c)(4) and (h) have been amended to describe the Guide and the relationship between the Guide and the rules.

The REP Coalition suggested that the definition of rate reduction in §25.454(c)(5) be “The total amount credited to the consumption portion of an eligible customer's electric bill.”

*Commission response*

The commission declines to make this change as it finds the current language more accurately reflects the method of calculating and reflecting the rate reduction on the eligible customers' bills.

The REP Coalition commented that the proposed amendments to §25.454(d)(2)(B) delete the description of the method used to calculate the discount. The REP Coalition recommended that this language be retained as it directly affects the benefit delivered to eligible customers. The REP Coalition noted that PURA §39.903 requires that the commission “adopt rules for a retail electric provider to determine a reduced rate for eligible customers....” In supplemental comments, the REP Coalition also requested that the commission specify within the rule the difference in applying the discount factor to current bills and to retracts/rebills.

*Commission response*

The commission declines to retain the language as suggested because the rule now requires REPs to use the discount factors calculated and posted to the commission's website by the commission staff. Given this change, the commission concludes that the rule provides adequate detail concerning the calculation of the discount factor. The rule does prescribe that the discount factors are calculated based on the PTB or provider of last resort (POLR) rate for each TDU service area and the percentage set by the commission, as set out in the rule. The rule also prescribes that the discount factors will reflect seasonal variations in these rates. It is not necessary that the rule address the calculation of the factors in greater detail, because REPs will have access to discount factors calculated by the commission staff, based on the rule, which will be located on the commission website. The rule also includes directions for the REPs on how to calculate the rate reduction on bills for current billing cycles and on retracts/rebills.

The REP Coalition stated that proposed §25.454(d)(2)(C) requires REPs to implement changes to a discount factor within 30 calendar days of the date the commission issues its order, but does not include procedures for promptly notifying REPs of such changes. The REP Coalition suggested that the rule require the commission to post the revised discount on the website and distribute the order to REPs via the commission's listserve system. Additionally, the REP Coalition suggested that the 30 calendar days start the day that the commission provides notice of the change. In supplemental comments, the REP Coalition added that the term "baseline rate" has not been defined in the rule and noted that the subsection does not clearly require REPs to implement changes resulting from commission approved changes in POLR or PTB rates.

*Commission response*

The commission has modified the proposed rule to state that each REP has 30 days from the date the commission posts the changes to the discount factor on the website, and has added a clarification in §25.454(d)(2) that this information will be posted on the commission's website. While notice is routinely provided when discount changes occur, the commission concludes that it is each REP's responsibility to follow the filings at the commission, monitor the Open Meetings, check the website for updates, and to notify commission staff of email and personnel changes.

The commission agrees with the REP Coalition with respect to the use of the term "baseline" and replaces the term baseline with "PTB or POLR" to remove confusion of the term baseline.

In supplemental comments, the REP coalition stated that the requirement in §25.454(d)(3)(A), for REPs to maintain a current record of the commission-posted discount factors, is unclear and should be deleted because the REPs will use the factors posted by the commission.

*Commission response*

The commission agrees and has deleted this requirement.

TLSC and TX ROSE commented that each customer should be billed in a format that reflects the receipt of the reduction as a separate item on each customer's bill and that if the REP discontinues the discount, the REP should be required to notify the customer in two billings of the reason for the change. In reply comments, the REP Coalition disagreed that any requirement

for notice be the burden of the REP because the identification of the customer's eligibility is made by LIDA, and thus any requirement for notice should be fulfilled by LIDA.

*Commission response*

The commission has already addressed the issue of itemizing the discount on the bill under §25.454(d)(3)(C). The commission has addressed the issue of notification under §25.454(f)(2)(F) by adding the requirement to LIDA's duties.

In supplemental comments, the REP Coalition stated that the current requirement for REPs to print the discount amount on a separate line item is sufficient. The REP Coalition found that the language as proposed in §25.454(d)(3)(C) would require REPs to reprogram their billing systems, and would likely confuse customers by wrapping the information to a separate line. The REP Coalition recommended changing the language in this section so that the language requirement for the line item is that it includes "LITE-UP Discount."

*Commission response*

The commission agrees with the REP Coalition that "LITE-UP Discount" will be sufficient to notify the customer of the discount. This will be uniform terminology, and should minimize the cost to the REP. The commission also clarifies the language of §25.454(d)(3)(C) to more clearly explain the intent of the subsection.

The REP Coalition commented that the method for processing automatic enrollments, currently found in §25.454(e)(1), should be retained and revised to reflect the exchange of information

between LIDA and the REPs. The REP Coalition also commented that the details of the self-certification process currently found in §25.454(e)(2) should be retained. The REP Coalition found that the specific discount eligibility periods applicable to customers enrolled by different methods, and any extension of such eligibility period for re-enrollment, should not be subject to change outside of a rulemaking process. Additionally, the REP Coalition stated that the effective date of the customer's enrollment in the program, and the time periods for processing a self-certification application, should be specifically stated in the rule because they impact the rights of customers and obligations of LIDA.

The REP Coalition had no objection to the change in proposed §25.454(e)(3)(A) (§25.454(e)(5)(A) as adopted) and §25.454(e)(3)(B) (§25.454(e)(5)(B) as adopted) of the self-certification enrollment period to seven months but suggested that the commission clarify, either in the rule or the Guide, that the customer's eligibility begins when LIDA places the Electric Service Identifier (ESI ID) on the monthly file.

TLSC and TX ROSE noted that the current expectation that the customer will receive the discount within 60 days is only established in the application, and noted that commission internal correspondence has demonstrated that the staff will informally intervene when timelines are not met. TLSC and TX ROSE stated that the initial date of registration should be the date that LIDA receives a completed enrollment form or the date of automatic enrollment data transfer from the Texas Department of Human Services (TDHS). TLSC and TX ROSE also stated that LIDA should maintain enrollment procedures, which would provide that all applications received by the 15<sup>th</sup> of the month would be verified and transferred to the appropriate REP by the first of the

following month. TLSC and TX ROSE found that the Guide could establish shorter timeframes, if appropriate safeguards are put in place. TLSC and TX ROSE also suggested that LIDA be required to review the applications within three days of receipt. TLSC and TX ROSE suggested that LIDA verify incomplete information by telephone to facilitate enrollment or return the application to the customer, with a postage paid envelope and additional instructions for completion. TLSC and TX ROSE found that the Guide should establish procedures for LIDA to remove customers who opt out of automatic enrollment from the rate reduction program.

In reply comments, the REP Coalition acknowledged the TLSC and TX ROSE suggestion for a schedule of delivery of lists to REPs, but urged the commission to consider a different schedule. The REP Coalition found that a schedule which revolves around the second business day before the end of the month, would work better, and would allow REPs to have the file in time for the next month's cycle of billing. Additionally, the REP Coalition supported a mechanism to allow customers to opt out of the discount. In supplemental comments, the REP Coalition stated that the data that LIDA will use for automatic enrollment should be clarified as customer-specific data.

*Commission response*

The commission agrees that the proposed language in §25.454(e) and §25.454(f), as initially proposed, lacked specificity, and has amended §25.454(e) and §25.454(f) to detail the roles of LIDA and the REPs in the enrollment processes. The commission also clarifies proposed §25.454(e)(3) (§25.454(e)(5) as adopted) to detail the length of the eligibility period. The commission declines to specify the time periods for processing a self-enrollment application, the

time period in which the customer will match to a REP, the effective date of the customer's enrollment, and the method by which LIDA will verify incomplete information, because these are administrative issues to be worked out between the commission and LIDA.

The commission agrees with the REP Coalition that it would be beneficial to the customers for their eligibility start date to be the day that the customer is first placed on a REP's file, rather than the date the customer is entered into LIDA's system. However, it is unknown at this time whether or not the contracted LIDA will be able to accommodate such a change, and therefore the commission finds that the issue of the eligibility start date must be addressed in the Guide.

The suggestion of TLSC and TX ROSE that customers be provided with a postage paid envelope is also an administrative detail that need not be included in the rule. The commission has added the phrase "customer-specific data" to §25.454(e)(1), consistent with the REP Coalition's comments.

TLSC and TX ROSE noted that they were disturbed that the recent Request for Proposals for a new LIDA suggested requirements that the contractor may be required to review documentation for self-certified customers. TLSC and TX ROSE noted that if this requirement is for audit purposes based on a sample, then the requirement should not be an issue, but if the commission is considering substituting certification by the customer, with certification by LIDA, in which LIDA would review pay stubs, etc., the references to "self-certification" should be abolished.

TLSC and TX ROSE also opposed the proposed changes that shorten the customer's term of enrollment and found that the changes introduced a "hassle factor" into the program. TLSC and TX ROSE stated that when the rule was originally adopted, parties were sensitive to setting up a system that provided benefits to eligible customers without spending unreasonable amounts on operation and management.

TLSC and TX ROSE suggested that the commission evaluate the costs and benefits of verifying proof of income and of doubling the amount of renewal activity in the program. TLSC and TX ROSE further commented that income verification was considered too expensive by working groups involved in the original rulemaking. TLSC and TX ROSE found that income verification costs range from \$60 to \$150 per application. TLSC and TX ROSE found that the long-term nature of poverty is the reason that the 13-month enrollment was originally recommended. TLSC and TX ROSE also found that the amount of the benefit is considerably less than TDHS benefits, and that the increased cost of TDHS operations could be partially underwritten by federal monies. In contrast, TLSC and TX ROSE noted that if less money is available in the SBF due to administrative expenses, less money is available for paying the discount. Additionally TLSC and TX ROSE stated that increased transaction costs at the state level also result in increased transaction costs for the REPs which will ultimately be factored into overhead and electricity pricing.

*Commission response*

The commission clarifies proposed amendments to §25.454(e)(2)(E) (now §25.454(e)(3)) to explain the intended use of the requested documentation. The commission modifies

§25.454(e)(2), (3) and (4), and other subparts as necessary to refer to the process as self-enrollment instead of self-certification, in response to the concern of TLSC and TX ROSE that the term “self-certification” is not accurate. The commission notes that the current rule allows for an auditing process, in which LIDA can request pay stubs, tax returns, etc. The commission believes that it is important to the integrity of the program to require that documentation be submitted in connection with self-enrollment, so that LIDA may review the documentation to verify customers’ eligibility before enrolling them in the program.

When the rule was originally adopted, emphasis was placed on customer ease and minimal administration costs. However, the fact that some customers were receiving the discount after their TDHS benefits expired has led to a re-evaluation of the current processes. It is difficult to conduct a precise cost-benefit analysis of the increased administration costs, because the commission does not know precisely how many customers will be affected and does not know what the costs will be for postage, materials and labor for increased re-enrollment efforts and verification. However, the average discount per customer in September 2003 was \$17.59; therefore assuming it may cost \$1.20 for postage and materials for each re-enrollment notice, ensuring that discounts are being given to the correct customers, through increased re-enrollment efforts costs less than 7.0% of one month’s discount. Beyond the question of the costs and benefits, the commission believes that it has a responsibility to ensure that only the eligible electric customers are receiving the discount. One of the statutory SBF programs was not funded by the legislature during the current biennium, and a reduction in the level of funding for the Rate Reduction Discount program was required. The commission believes that continued public acceptance of the program is dependent upon operating it in a fiscally responsible manner.

The REP Coalition had no objection to the change of the automatic enrollment period, but suggested that proposed §25.454(e)(3)(B) (now§25.454(e)(5)(B) as adopted) be clarified to specify the length of the continued eligibility once a customer no longer receives TDHS benefits. The REP Coalition also noted that the section refers to TDHS benefits as defined in “subsection (c) of this section;” however, there is no definition of “TDHS” benefits in subsection (c).

*Commission response*

The commission clarifies §25.454(e)(3)(B) (now§25.454(e)(5)(B) as adopted) to state that the period of continued eligibility once a customer no longer receives TDHS benefits is no more than 60 days and has removed the reference in subsection (c) to a definition of TDHS benefits.

TLSC and TX ROSE noted that the current informal dispute resolution process has worked well. However, they noted that the Guide may establish criteria that adversely affect the rights of customers, and, therefore, an appeals process must be in place. TLSC and TX ROSE also noted that in all cases affecting statutorily created benefits, an individual is constitutionally entitled to be notified of a disqualification in benefits by the administering governmental entity. TLSC and TX ROSE also stated that should a REP discontinue the rate reduction, the customer should be notified within two billings of the reasons for change. TLSC and TX ROSE noted that there is not an informal appeals or hearing process available at the commission and that no notices are issued by LIDA since LIDA does not currently have the job of denying benefits to households. Additionally, TLSC and TX ROSE stated that the rules as presently written only define market expectations and fail to recognize customers’ legal rights and expectations. TLSC and TX

ROSE found that the consumer protection rules define and establish customer expectations in many respects, but that low-income customers are not provided with specific expectation as to how their applications will be processed. TLSC and TX ROSE found that should the commission change from self-certification to external certification by LIDA, procedural and due process safeguards would need to be established, such as an appeals process, a definition of household income, whether or not it is monthly, or averaged annual levels, and whether household exemptions are allowed.

*Commission response*

In response to the TLSC and TX ROSE concern that notification be sent to the customers, the commission modifies §25.454(f)(2)(F) to require LIDA to notify self-enrolled customers of the determination of their eligibility and to notify self-enrolled and automatically enrolled customer of the expiration of their eligibility, and opportunities for re-enrollment. The commission has added §25.454(e)(4) to specify opportunities for re-enrollment. The commission also added §25.454(e)(6) to address TLSC and TX ROSE's concerns that there is no informal appeals or fair hearing process. The added subsection (e)(6) provides customers adequate opportunities to contest the termination of the discount or the denial of eligibility for the discount, consistent with the suggestions of TLSC and TX ROSE.

Regarding §25.454(f), the REP Coalition commented that the rule must define the roles and responsibilities of entities involved in the administration of the Low-Income Discount Program. The REP Coalition found that the proposed rule defers the description of key roles to the Guide, which denies the market participants procedural protections mandated by the APA.

The following changes were also recommended by the REP Coalition:

- (1) The REP Coalition found that the proposed rule maintains the current low-income discount process which requires REPs to provide discounts based on the enrollment lists provided by LIDA. The REP Coalition noted that these lists have contained several errors causing REPs to dedicate resources to rectifying the errors of others. The REP Coalition appreciates efforts to decrease the errors but requests direction in the rule to deal with such situations in the future. The REP Coalition suggests that should future lists fail to include eligible customers, LIDA be required to extend the customer's eligibility by the number of months in which the error existed and to report such occurrences to the commission, for performance considerations.
- (2) The REP Coalition suggested that the transition from the old matching process to the new matching process may result in customer inquiries. The REP Coalition suggested that the rule specify that LIDA is the appropriate entity to interact with customers and respond to inquiries and complaints, and that REPs should be responsible for providing customer information to LIDA. Furthermore, the REP Coalition found that responsibilities described in proposed §25.454(f)(2) and (3), should clarify that LIDA is primarily responsible for dealing with consumers concerning the program, as proposed §25.454(f)(3)(E) (§25.454(f)(3)(F) as adopted) places too much burden on the REPs. In supplemental comments, the REP Coalition emphasized that LIDA should have the designated primary role of

problem resolution and that REPs should only be expected to assist in such efforts.

- (3) The REP Coalition found the proposed requirement for REPs to monitor “high usage customers” in §25.454(f)(3)(B) (§25.454(f)(3)(C) as adopted) is vague and burdensome, and imposes responsibilities of LIDA on the REPs. The REP Coalition also suggested that the new matching system should adequately ensure that commercial premises are not sent to LIDA.
- (4) The REP Coalition recommended that the provision stating that LIDA send eligibility records to REPs on a monthly basis be refined to require that the lists be provided by a scheduled date each month. The REP Coalition stated that as long as the rule requires that a deadline be set and followed, the specific date may be included in the Guide. The REP Coalition requested that the list be made available no later than the second to last business day of the month.

TLSC and TX ROSE supported the provisions requiring REPs to monitor high usage to screen out ineligible customers that may be receiving the discount. TLSC and TX ROSE noted that this requirement could also be used to refer high-usage customers to a low-income weatherization program. TLSC and TX ROSE found that high usage should be defined in the rule, and recommended that each REP be required to investigate the upper tenth percentile of LITE-UP usage, and usage below the tenth percentile that is inconsistent with residential load profiles. TLSC and TX ROSE found that REPs should be required to file reports to the commission on their findings and referrals of customers to weatherization programs.

In reply comments, the REP Coalition opposed the recommendations of TLSC and TX ROSE that they be required to actively monitor and publicly report whether or not high-usage customers are properly classified, and to refer them to weatherization programs. The REP Coalition emphasized that the classification is designated by the TDU. The REP Coalition found that REPs do not have field staff with capabilities to inspect high-usage customers. The REP Coalition stated that this appears to be an intrusion on low-income customer's privacy, and that it is not the responsibility of REPs to refer customers to weatherization programs on an unsolicited basis.

In supplemental comments, the REP Coalition stated that REPs routinely examine unusually high meter reads received from TDUs for quality assurance and that the TDUs populate transactions with a premise code as part of the enrollment process, and that the REPs do not modify these codes. The REP Coalition, therefore, stated that it does not support this unnecessary monitoring and reporting, and supports the elimination of §25.454(f)(3)(B) (§25.454(f)(3)(C) as adopted).

*Commission response*

The commission recognizes the REP Coalition's concern that specific roles of market participants be detailed within the rule. The commission has amended proposed §25.454(f) to clarify such roles. The commission modifies the responsibilities of LIDA in §25.454(f)(2) to include information retrieval and matching for purposes of enrollment, customer notification of eligibility decisions, confidentiality of information, problem resolution and the transition of the matching process. The commission modifies the responsibilities of REPs in §25.454(f)(3) to

include providing and retrieving customer information for enrollment and assisting in problem resolution. The commission modifies §25.454(f)(4) to specify the continued responsibilities of the Electric Reliability Council of Texas (ERCOT) in the enrollment and problem resolution process until the new matching process is fully implemented. The commission also clarifies existing language within §25.454(f) to more clearly reflect the intent of the subsection.

The additional suggestions by the REPs were considered as follows:

- (1) The commission does not believe that extending a customer's eligibility period is an appropriate remedy for the possibility that future errors in the lists provided by LIDA will continue to burden REPs with rectifying errors they did not cause. The extra month in which the customer would receive the discount could yield a different monetary amount than the customer was actually eligible for; and delaying the discount until the end of the customers' eligibility will not help customers during the period in which they are actually low-income, which is when the program is intended to provide assistance.
- (2) The commission agrees that LIDA should be the primary point of customer contact for customer inquiries and problems and has clarified the language in proposed §25.454(f)(2)(G), added §25.454(f)(2)(H) (as adopted), and clarified proposed §25.454(f)(3)(E) (§25.454(f)(3)(F) as adopted) to address this concern. This clarification specifies that LIDA is the primary contact for customer inquiries and problems, and that REPs will assist LIDA in resolving issues and problems when LIDA does not have sufficient information. The commission

emphasizes, however, that REPs should help each customer as much as possible with general questions.

- (3) The commission acknowledges that monitoring high-usage customers may be burdensome for REPs, and has therefore modified §25.454(f)(3)(B) (§25.454(f)(3)(C) as adopted) to require this information only upon commission request, as discussed in further detail below.
- (4) The commission finds that a monthly deadline is appropriate, and has added modified language in proposed §25.454(f)(2)(E) to specify that the information will be made available to REPs on a date prescribed by the commission. The commission notes that it is apparent the selected LIDA will need to play a role to finalize such a deadline. The REP Coalition suggested that the deadline be the second to last day of every month, while the current deadline is the first of each month. The commission believes that this issue is better suited for inclusion in the Guide.

The commission clarifies proposed §25.454(f)(3)(B) (§25.454(f)(3)(C) as adopted) to state that 3000 kWh will be considered high usage and that this information will only be required upon commission request. The commission finds that 3000 kWh is an appropriate consumption level for checking a customer's residential status. This number was decided upon because 1000 kWh is generally considered an average customer usage, but it is common for residential customers to have usage of 2000-2500 kWh. The commission notes, however, that if the suggested process of matching residential information by customer name is implemented, the current risk of enrolling group homes or other businesses should be averted. Therefore, the commission concludes that

this information should only be required by commission request. Such commission requests may be made if the information provided to LIDA appears to include customers who are not residential. The commission does not agree with the suggestion of TLSC and TX ROSE that REPs should monitor the upper tenth percentile of LITE-UP customer usage, or that REPs should refer high-usage customers to a weatherization program because such requirements would be unduly burdensome for REPs.

The REP Coalition stated that the criteria to determine whether a customer is eligible for the discount should be addressed in the rule. The REP coalition suggested language be added to §25.454(f)(2)(B). The current requirement for §25.454(f)(2)(B) states that LIDA shall “Retrieve the database of clients from TDHS on a monthly basis.” The REP Coalition suggested the addition of the following language: “and remove from such lists persons who are not electric customers. For the purposes of this rule, an electric customer is any individual that is deemed by law to have the capacity to contract with a REP for the provision of electric service.”

TLSC and TX ROSE also address the fact that households which receive the discounts must be defined by rule. Under the current practice, the listed customer’s household has been enrolled into the program by virtue of the fact that a family member receives benefits from TDHS. TLSC and TX ROSE stated that almost all persons receiving TDHS benefits qualify based on *household income*, and some members of the household may be disqualified because of immigration status. TLSC and TX ROSE find that this could deem an entire family ineligible if an undocumented wage earner is the customer whose name appears on the electric bill.

TLSC and TX ROSE noted that PURA §39.903(1) defines a low-income customer as an electric customer whose household income is not more than 125% of the federal poverty level or who receives food stamps or medical assistance. TLSC and TX ROSE stated that this leaves very little discretion to the commission to restrict or expand the definition of who is eligible for the low-income rate discount and that the definition clearly allows customers to qualify under other provisions; therefore, the commission cannot impose additional eligibility criteria on customers. TLSC and TX ROSE proposed that an electric customer may apply on behalf of an eligible household and that for self-certification purposes, an eligible household (income) should “be defined to include regularly expected recurring income from all sources for the listed customer and non-listed adults residing in the same dwelling unit.”

In reply comments, the REP Coalition stated that there is a reasonable basis for the commission to conclude the use of the term “electric customer” in PURA §39.903(1) refers to the person responsible for the electric bill, because PURA §31.002(16) defines a “retail customer” as the person who purchases electricity, and because §25.471(d)(4) defines a customer to be the “person who is currently receiving retail electric service from a REP in the person’s own name or the name of the person’s spouse.” The REP Coalition notes that once the commission makes the policy decision on who should receive the discount, reasonable requirements should apply to the administration and delivery of the discount. The REP Coalition found that there is no point in pursuing the proposed matching process involving REP data if matches will not be based on customer specific criteria.

*Commission response*

PURA §39.903(1)(1) states: “For the purposes of this section, a ‘low-income electric customer’ is an electric customer: (1) whose household income is not more than 125 percent of federal poverty guidelines; or (2) who receives food stamps from the TDHS or medical assistance from a state agency administering a part of the medical assistance program.” Because the statute specifies “electric customer,” refining the matching process to match by electric customer instead of electric premise is consistent with the concept in the statute that the discount is to be provided to customers. The commission previously adopted a matching system that was primarily based on matching residences (premises receiving electric service) with addresses listed for TDHS beneficiaries, but it is not precluded from modifying that system to rely on matching customers. Relying on premises matches has resulted in some cases where it seems clear that the address used by a TDHS beneficiary was not the actual place of residence, so that the discount was provided to persons who did not meet the statutory criteria. Matching for the actual customer, through the new matching process, will be more effective in ensuring that the discount is applied to the correct customer. This is necessary in order to make sure that funds are spent for the purpose for which they are appropriated, namely, to provide discounts to low-income customers. The commission notes that the self-enrollment process still exists and is available to any customer who is eligible based on household income.

In reply comments on §25.452(f)(3) as proposed, the REP Coalition stated that requirements such as standardized reporting dates for REPs and uniform data fields for customer addresses are substantive and should be addressed in the rule.

*Commission response*

The commission has addressed these concerns in §25.454(f)(3)(A) by specifying the data fields which shall be sent by the REPs, and has added language which specifies that the information will be provided on a date to be prescribed by the commission. The commission notes that the REP Coalition has requested an earlier date for enrollment notification than originally contemplated, and that a new matching process may require longer processing than the current process; therefore, staff, REPs, and LIDA shall finalize a standard reporting date for REPs. This reporting date will be located in the Guide.

All parties requested the consideration of a pilot program to examine the changes in the system prior to implementation. The REP Coalition emphasized the need for a smooth transition.

*Commission response*

The commission agrees that a pilot or transition period is necessary and plans for the old matching process to continue until it is determined that the new matching process correctly matches the appropriate customers. A transition process is necessary, and in that process staff will work with the selected LIDA and REPs to ensure continuation of the discounts and the introduction of the new processes with minimum impacts on REP systems and on customers. The commission modifies the rule to include §25.454(f)(4)(B) to require ERCOT to continue providing information on residential premises, until the transition to the new matching process is completed. The commission also modifies §25.454(f)(2) to include subsection (f)(2)(J) which addresses LIDA's role in the transition.

In supplemental comments on §25.454(f)(3)(F) (§25.454(f)(3)(G) as adopted), the REP Coalition stated the requirement that the REPs provide the commission with copies of materials given to customers about the rate reduction program contains no requirement of when REPs are required to submit this information. The REP Coalition requested that the subsection be amended to specify that the requirement is necessary upon commission request.

*Commission response*

The commission agrees with this comment and has modified §25.454(f)(3)(F) (§25.454(f)(3)(G) as adopted) accordingly.

The REP Coalition requested that in §25.454(g), the proposed rule be revised to ensure that if confidential customer information were to be provided by REPs to LIDA, it would be protected from public disclosure, and that REPs would be indemnified against liability or harm associated with misuse or misdirection of customer information by LIDA

*Commission response*

The commission has modified §25.454(g) as proposed, to include a new paragraph (2) to address the REP Coalition's concern regarding customer data. The REP Coalition has agreed to draft a standard confidentiality agreement to be used between LIDA and the REPs. Commission staff will work with the REPs, LIDA, and other interested persons on the final standard confidentiality agreement to be utilized for this purpose. The commission also clarifies §25.454(g), (g)(1) and (g)(2) (§25.454(g)(3) as adopted) to more clearly reflect the intent of the section.

TSLC and TX ROSE requested a subsection to specifically address customer protections and enrollment processes because customer rights and expectations should be defined by rule.

*Commission response*

The customer protection and enrollment process information suggested for this subsection related specifically to issues addressed throughout the rule; therefore, a separate subsection is not needed. The concerns of TLSC and TX ROSE regarding customer protections and enrollment processes have been addressed in various subsections of §25.454.

The commission notes modified references throughout §25.454 to specify the applicability of the subsections to REPs, have been made in response to the concern of San Patricio, located in *General Comments*, that entities to which each section or subsection apply are clearly addressed.

Additionally, the commission clarifies the language in §25.454(c)(3), §25.454(d), §25.454(d)(3) and §25.454(d)(3)(D) to more clearly express the intent of the language.

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

The REP Coalition commented in §25.454(c)(1), that the term “discount credit” was redundant and should be replaced with “discount factor.” This comment also affects §25.457.

*Commission response*

The commission replaces references to “discount credit” throughout §25.457 with “discount factor.”

The commission modifies references throughout §25.457 to specify the applicability of the subsections to REPs, have been made in response to the concern of San Patricio, located in *General Comments*, that entities to which each section or subsection apply are clearly addressed.

Additional changes have been made to §25.457 to either clarify the intent of the language or remove unnecessary language. The changes are as follows:

- (1) The commission modifies §25.457(f) to more clearly explain the process for determining the required revenue and resulting system benefit fee which will be imposed on the retail customers of an MOU or Coop. Additionally, the commission modifies this subsection to include language previously located in §25.457(i) which is more appropriately addressed in this subsection.
- (2) The commission adds §25.457(g) as adopted to include language previously found in §25.457(f) detailing the annual reporting requirements of an MOU or a Coop. The commission also modifies the existing language to more clearly explain the annual reporting requirements of an MOU or a Coop.
- (3) The commission modifies §25.457(g) (§25.457(h) as adopted) to clarify the intent of the language and ensure consistency with §25.454.

- (4) The commission removes §25.457(h) because the language is of language now contained in §25.457(f) and is therefore unnecessary.
- (5) The commission modifies §25.457(i) to more clearly express the intent of the subsection, and removes language from the subsection which is repetitive of information now contained in §25.457(f), and therefore is unnecessary.

#### *General Comments*

GMEC supported the comments of the REP Coalition and also suggested that the preamble discussion of the costs of implementing the LITE-UP discount delivery process is flawed. GMEC argued that the primary cost to REPs associated with any new LITE-UP process will be the same regardless of the number of customers, and will therefore have a disproportionate effect on smaller REPs, and greater impact on competitive REPs compared to affiliated REPs.

#### *Commission response*

The commission disagrees that the primary cost to REPs associated with any new LITE-UP process will be the same regardless of the number of customers and will therefore necessarily have a disproportionate effect on smaller REPs. On May 21, 2003, a workshop was held to discuss the proposed modifications of the LITE-UP information exchange processes. On May 28, 2003, all REPs were requested to submit information on their ability to meet the proposed modifications discussed in the workshop. On June 11, 2003, TXU Energy Retail Company LP, POLR Power/Mutual Energy SWEPCO, Reliant Resources Incorporated, Utility Choice, LLC, Entergy Solutions, and Republic Power, LP, filed information in response to this request. Gexa

Energy and GMEC submitted responses by email. The range of estimates from the REPs that submitted information was broad.

The commission agrees that, from a conceptual basis, it is likely that changing the matching process may affect smaller REPs more on a cost-per-customer basis than larger REPs. However, it is important to recognize that the cost of implementing the new matching process is not an absolute cost that will apply equally to each REP. The information provided to the commission in response to its request for implementation cost information has shown the new matching process does not generally trend either toward disproportionate effects on smaller or larger REPs. The commission has no way to ensure that the financial effect on individual REPs will not, in some cases, differ on a cost-per-customer basis from the economic effect on other REPs. The implementation costs need to be weighed against the nature of the program and the benefit that is expected from changes in the matching process. The discount program is a statutory program in which REPs that serve residential customers are obliged to participate. The changes are being made because of concerns about the integrity of the current matching process, and the commission concludes that the changes must be made, for that reason. It is the commission's understanding that the REPs' various estimates of the cost of implementing a new matching system are essentially based on a conceptual design of the new process. The changes to the program outlined in this rulemaking are essential to ensuring the integrity of the rate reduction program, and the estimates of financial impact on REPs do not reveal disproportionate effects. As a detailed design of the new process is developed, the commission will continue to consult with REPs about the feasibility and cost of the new process.

TLSC and TX ROSE stated that each customer should receive the discount in the period that they are certified by LIDA, without interruption, and that REPs should maintain billing records to assure that when a continuing customer changes service addresses, the change will not result in an interruption of the rate reduction. TLSC and TX ROSE found that the Guide could address such transfer protocols.

Additionally, TLSC and TX ROSE noted that a problem that currently occurs in the LIDA database is that there are instances where enrollment for a household is duplicated because of a customer moving to or from a premise, or a switch in REPs being in process. The problem is created by the inability of the current system to track this activity. This inability also creates a lag time when customers have to re-enroll, which was supposed to take less than 30 days, but is often taking 60-90 days. TLSC and TX ROSE propose the following solutions to this problem:

- (1) Alternative One: TLSC and TX ROSE proposed that a REP could communicate changes to LIDA by updating the REPs' records when a LITE-UP customer moves in or out, or switches, and report that information to LIDA. TLSC and TX ROSE stated that for a move-in and move-out, the REP could provide LIDA with both the old and new addresses, and that in the case of a customer switching REPs, LIDA could send a customer's ESI ID to ERCOT to obtain the new REP of record. Once this information is obtained, LIDA could then contact the new REP of record with the information. TLSC and TX ROSE noted that the rule would have to authorize the REP to change the status of an ESI ID independent of direction from LIDA.

- (2) Alternative Two: ERCOT and LIDA could exchange transaction records. TLSC and TX ROSE suggested that LIDA could forward the records of all ESI IDs receiving the discount to ERCOT. ERCOT could then use this information to query their database to identify all move-in/move-out and switching transactions processed for those ESI IDs. With this information, LIDA could forward updated information to the REPs. TLSC and TX ROSE acknowledged that the shortcoming of this concept is that LIDA could only discontinue discounts from premises where moves or switches have occurred. This would not move the discount to the customers' new premise because ERCOT would not have information on where the customer had moved.
- (3) Alternative Three: LITE-UP Eligibility Status could be included in the Texas Standard Electronic Transaction (TX SET) 814\_04. TLSC and TX ROSE suggested that LITE-UP eligibility could be maintained by the TDU in the same data set that transfers critical care status. REPs and LIDA would be required to forward the LITE-UP eligibility information to the TDU. TLSC and TX ROSE noted that this would allow data to be automatically provided which could reduce the number of transactions needed to track eligibility, and would require only a low level of effort to maintain. However, this process would require the participation of TDUs and a standard process to communicate changes to LIDA would have to be developed.

The REP Coalition, in reply comments, disagreed with the comments of TLSC and TX ROSE regarding this matter and stated that they are opposed to Alternatives One, Two and Three. The

REP Coalition stated that under Alternative One, REPs would be responsible for maintaining customers' eligibility independent of LIDA. Then, LIDA would have to develop the capability to process REP data and communicate changes to ERCOT, and ERCOT would have to extract switch information and send it to LIDA. This process would maintain ERCOT's role in the LITE-UP process, which is a role that the proposed processes are trying to eliminate. The REP Coalition stated that the process of Alternative Two is defined in the current rule, but has never been implemented. This process also maintains ERCOT's role; however, eliminating ERCOT's role is one of the goals of the new matching process. The REP Coalition stated that Alternative Three would add TDUs to the process and would require development of standard processes for communicating record changes to LIDA. Additionally, unless the benefit outweighs the cost to the market, and the new flag could be included in TX SET changes, the alternative is not viable. The REP Coalition also pointed out that the flag would reside with the premise, not with the customer. The REP Coalition found that the alternatives offered by TLSC and TX ROSE are technically problematic and would be unnecessary if the new matching process is implemented. While a flag may be created for a mass transfer, tracking routine premise movement would be problematic because of the inability of the current systems to track individual customers.

*Commission response*

The commission agrees that the inability of the current system to track customer moves and switches has presented problems; moves and switches create the possibility of a gap in the discount for eligible customers. The new process should eliminate the possibility of duplicate discounts because the electric customer will be the basis of the matching as opposed to the premise. The new process should also eliminate the gap caused by switches because two REPs

will be allowed to claim a customer for one month, allowing the customer to receive a discount on the final bill from the losing REP and on the initial bill from the gaining REP. The commission believes that the proposed matching process will work more effectively and will not result in significant gaps as a result of a customer move. This is an issue that can be monitored in the implementation of the new process, and adjustments can be made if the commission's expectations are not realized. The commission believes that the REP Coalition has pointed out legitimate problems with the alternatives suggested by TX ROSE and TLSC; the commission is not adopting these alternatives at this time.

In supplemental comments, San Patricio stated that certain provisions of §§25.451, 25.454 and 25.457 are inconsistent. San Patricio noted there are places in the rules that refer to the "TDU, MOU, or Coop" to describe an entity that provides transmission and/or distribution service; however, other provisions refer only to a TDU. It was San Patricio's understanding that the provisions should also apply to MOUs and Cooperatives. San Patricio also stated that there are similar inconsistencies with regard to the use of the term "REP" and "REP, and MOU or Coop."

*Commission Response*

The commission notes the confusion and modifies §§25.451, 25.454, and 25.457 to ensure that the entities to which each section or subsection apply are clearly addressed.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2004) (PURA), which provides the 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 review and

approve system benefit fund accounts, projected revenue accounts, proposed non-bypassable fees, to adopt rules providing for enrollment of customers eligible to receive reduced rates under PURA §39.903(h), to adopt rules for a retail electric provider to determine a reduced rate, and to adopt rules providing for reimbursement.

Cross Reference to Statutes: Public Utility Regulatory Act §§39.106, 39.352, 39.262, 39.901, 39.903, 40.053, 40.057, 41.053, and 41.057.

**§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) §39.901 and §39.903.
- (b) **Application.** This subchapter applies to retail electric providers (REPs), and transmission and distribution utilities (TDUs) in an area where customer choice has been implemented, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated service area.
- (c) **Definitions.** The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.
- (1) **Fiscal year** — The State of Texas fiscal year, beginning September 1 of one calendar year, and ending on August 31 of the subsequent calendar year.
  - (2) **System Benefit Fund** — A fund with the Texas Comptroller of Public Accounts (Comptroller) to be administered by the commission, into which all fee collections are deposited and from which all disbursements of the fund are withdrawn.

- (3) **System benefit fee** — A nonbypassable fee set by the commission to finance the System Benefit Fund. The fee shall be charged to electric retail customers based on the amount of kilowatt hours (kWh) of electric energy used, as measured at the meter and adjusted for voltage level losses.
- (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) The amount of the fee shall be based on the total revenue requirement as determined in subsection (e) of this section and the projected retail sales of electricity in megawatt hours (MWh) in the state as determined in subsection (f) of this section.
  - (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 §39.901 and §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) The average fee may not exceed \$0.65 per MWh.
- (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, a necessary fund reserve balance, and any other purpose required by statute or legislative appropriations.

- (f) **Electric sales estimate.** The TDUs, and when applicable, the MOUs and Coops, upon request by the commission, shall provide information on total retail electric sales in their service areas for the preceding calendar year, by April 1 of each year.
  
- (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) Remittance of funds to the Comptroller shall comply with the Comptroller's rules governing payments and the method for making them.
  - (2) Payments to the System Benefit Fund pursuant to PURA §39.352(g) shall be remitted to the Comptroller at the time of the filing of the annual report pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).
  - (3) 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.
  - (4) 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) **Billing requirements.** A TDU, an MOU, or a Coop shall send billing statements to the REPs indicating the amount of system benefit fee owed for the specified period. The billing and payments between the TDU and the REPs shall be governed by §25.214 of this title (relating to Terms and Conditions of Retail Distribution Service Provided by Investor Owned Transmission and Distribution Utilities), and between MOUs and Coops and the REPs by §25.215 of this title (relating to Terms and Conditions of Retail Distribution Service Provided by MOUs and Coops).
- (1) The REP shall remit to the TDU, an MOU, or a Coop an amount equal to the kWh of electric energy consumed by its customers in the utility's service area times the fee approved by the commission for that period.
- (2) For those retail customers who switch to on-site generation pursuant to PURA §39.262(k), the system benefit fee shall be based on the amount of actual power delivered to them by a TDU.
- (i) **Reporting and auditing requirements.** Each REP, and each MOU or Coop when applicable, providing rate reductions to eligible customers shall keep records of such rate reductions for at least three years from the date the rate reduction is first provided to a customer to permit the commission or its agent to audit rate reduction 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.** 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) The number of low-income customers that were provided rate discounts during the reporting period;
  - (2) The amount of reimbursement requested;
  - (3) The aggregate electric energy consumption in kWh for all low-income customers enrolled in the program for the reporting period;
  - (4) The total amount of rate reductions provided to the low-income customers in the reporting period; and
  - (5) The amount of the system benefit fee billed by and remitted to the TDU.

- (k) **Transfer of funds to other state agencies.** Payment transfers to other state agencies pursuant to this rule shall be governed by statute, the Appropriations Act, and any procedures established by the Comptroller.

**§25.454. Rate Reduction Program.**

- (a) **Purpose.** The purpose of this section is to define the low-income electric rate reduction program, establish the rate reduction calculation, and specify enrollment options and processes.
- (b) **Application.** This section applies to retail electric providers (REPs) as defined in Public Utility Regulatory Act §39.106, 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) **Definitions.** The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Discount factor** — The amount of discount an eligible low-income customer must be provided by any REP, or MOU or Coop when applicable, in the customer's area, expressed as cents per kilowatt-hour (kWh).

- (2) **Discount percentage** — The percentage of discount established by the commission and applied to the lower of the price to beat (PTB) or provider of last resort (POLR) rate in a particular service territory.
- (3) **Low-Income Discount Administrator (LIDA)** — A third-party vendor with whom the commission has a contract to administer the rate reduction program.
- (4) **Low-Income Discount Procedural Guide** — A written reference Guide which compiles the regulatory and statutory requirements for and roles of participants in the rate reduction program, including LIDA, REPs, the Electric Reliability Council of Texas (ERCOT), the Texas Department of Human Services (TDHS), and customers. The Guide sets out the discount factors and administrative information relating to the rate reduction program, including the required data formats and deadlines for transmitting information to LIDA, other program participants, and the commission. The initial version of the Guide will be approved by the commission, but it may be updated to reflect statutory or commission-approved changes in rules and program requirements, discount factors and POLR or price to beat rates, or to modify the format or timing of the provision of information by REPs and LIDA with the approval of the Executive Director.
- (5) **Rate reduction** — The total discount to be deducted from a customer's electric bill. This reduction is derived from the discount factor and total consumption in accordance with subsection (d)(3) of this section.

- (6) **REP** — For the purposes of this section, a retail electric provider and an MOU or Coop that provides retail electric service in an area that has been opened to customer choice.
- (d) **Rate reduction program.** 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) The commission shall periodically establish a discount percentage. The discount percentage shall not be less than 10% and may, if there are funds sufficient to support a higher level, be set as high as 20%.
- (2) The commission staff shall calculate and post on the commission website ([www.puc.state.tx.us](http://www.puc.state.tx.us)) the discount factor for an eligible low-income customer in accordance with this subsection.
- (A) The discount factor shall be separately calculated for each transmission and distribution utility service area and shall be recalculated when the PTB or POLR rate changes or the commission revises the discount percentage.
- (B) The discount factor shall be calculated by applying the discount percentage to the lower of the POLR rate or the standard residential PTB rate. The discount amount shall reflect any seasonal variation in the lower of the PTB or the POLR rate.
- (C) If the discount factor changes for any area because of a change to the discount percentage or a change to the PTB or POLR rate 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.

- (3) **Rate reduction.** 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.
- (B) The rate reduction shall be calculated by multiplying the customer's total consumption (kWh) for the billing period by the discount factor (in cents/kWh) in effect during the billing cycle in which the bill is rendered. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied.
- (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."
- (D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Fund) for rate reductions they have provided to eligible low-income customers.
- (e) **Customer enrollment.** Eligible customers will be enrolled in the rate reduction program through automatic enrollment or self-enrollment.

- (1) Automatic enrollment is an electronic process to identify customers eligible for the rate reduction by matching client data from TDHS with customer-specific data from REPs.
  - (A) TDHS shall provide client information to LIDA in accordance with subsection (f)(1) of this section.
  - (B) REPs shall provide customer information to LIDA in accordance with subsection (f)(3) of this section.
  - (C) LIDA shall compare the customer information from TDHS and REPs, create files of matching customers, enroll these customers in the rate reduction program, and notify the REPs of their eligible customers.
- (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 receive food stamps or medical assistance from TDHS. The self-enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:
  - (A) Distributing and processing self-enrollment applications, as developed by the commission, for the purposes of initial self-enrollment, and for re-enrollment of self-enrolled and automatically enrolled customers;
  - (B) Maintaining customer records for all applicants;
  - (C) Providing information to customers regarding the process of enrolling in the low-income discount program; and
  - (D) Determining customers' eligibility by matching customer information submitted through self-enrollment forms with customer data provided by

REPs and reviewing proof of income documentation submitted by 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.
- (4) The following procedures govern a customer's re-enrollment.
  - (A) A self-enrolled customer may re-enroll by submitting a completed self-enrollment form.
  - (B) A customer who was formerly, but is no longer, automatically enrolled may re-enroll through self-enrollment.
  - (C) LIDA shall send a customer who is eligible to re-enroll a self-enrollment form which specifies a date for submitting the completed form that is not more than 30 days after the date the form is mailed. If the customer submits a completed form before the date specified on the form and LIDA determines that the customer is eligible for re-enrollment, the customer shall receive the rate reduction without interruption.
  - (D) If a customer does not return a properly completed form before the time specified by LIDA, the customer's rate reduction may be interrupted until LIDA determines that the customer is eligible.
- (5) The eligibility period of each customer will be determined by the customer's method of enrollment.

- (A) The eligibility period for self-enrolled customers is seven months from the date of enrollment.
  - (B) Automatically enrolled customers will continue to be eligible as long as the customers receive TDHS benefits. Once a customer no longer receives TDHS benefits, the customer will continue to receive the rate reduction benefit for a period, of no more than 60 days, during which the customer may self-enroll.
- (6) A customer who believes that a self-enrollment application has been erroneously denied may request that LIDA review the application, and the customer may submit additional proof of eligibility.
  - (A) A customer who is dissatisfied with LIDA's action following a request for review under this paragraph may request an informal hearing to determine eligibility by the commission staff.
  - (B) A customer who is dissatisfied with the determination after an informal hearing under subparagraph (A) of this paragraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).
- (f) **Responsibilities.** In addition to the requirements established in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; program responsibilities for tasks undertaken by TDHS may be established in the memorandum of understanding between the commission and TDHS.

(1) **TDHS shall:**

- (A) assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving TDHS benefits as detailed in the memorandum of understanding between TDHS and the commission; and
- (B) assist in the distribution of promotional and informational material as detailed in the memorandum of understanding.

(2) **LIDA shall:**

- (A) receive customer lists from REPs on a monthly basis through data transfer;
- (B) retrieve the database of clients from TDHS on a monthly basis;
- (C) conduct the self-enrollment, automatic enrollment, and re-enrollment processes;
- (D) establish a list of eligible customers, by comparing customer lists from the REPs with TDHS databases and identifying customer records that reasonably match;
- (E) make available to each REP, on a date prescribed by the commission on a monthly basis, a list of low-income customers eligible to receive the rate reduction;
- (F) notify customers that have applied for the rate reduction through the self-enrollment process of their eligibility determination and notify automatically enrolled and self-enrolled customers of their expiration of eligibility, and opportunities for re-enrollment in the rate reduction program;

- (G) answer customer inquiries regarding the rate reduction program, and provide information to customers regarding enrollment for the rate reduction program and eligibility requirements;
  - (H) resolve customer enrollment problems, including issues concerning customer eligibility, the failure to provide discounts to customers who believe they are eligible, and the provision of discounts to customers who do not meet eligibility criteria;
  - (I) protect the confidentiality of the customer information provided by the REPs and the client information provided by TDHS; and
  - (J) continue the matching process implemented prior to the adoption of amendments to this section using TDHS and ERCOT data until a new matching process is in operation, based on customer information submitted by REPs.
- (3) **A REP shall:**
- (A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;
  - (B) retrieve from LIDA the list of customers who are eligible to receive the rate reduction;

- (C) upon commission request, monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3000 kWh in a month shall be considered a high-usage customer;
- (D) apply a rate reduction to the electric bills of the eligible customers identified by LIDA within the first billing cycle in which it is notified of a customer's eligibility, if notification is received no later than seven days before the end of the billing cycle, or, if not, apply the rate reduction within 30 calendar days after notification is received from LIDA;
- (E) notify customers twice a year about the availability of the rate reduction program, and provide self-enrollment forms to customers upon request;
- (F) assist LIDA in working to resolve issues concerning customer eligibility, including the failure to provide discounts to customers who believe they are eligible and the provision of discounts to customers who may not meet the eligibility criteria; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general LITE-UP processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and
- (G) provide to the commission copies of materials regarding the rate reduction program given to customers during the previous 12 months upon commission request.

- (4) **ERCOT.** ERCOT shall provide information to, and receive information from, LIDA including:
- (A) information regarding the REP of record, transactional history, or other pertinent information for the purposes of problem resolution; and
  - (B) information on each residential premise in the ERCOT territory, including premise address, ESI ID and REP of Record, until a new matching process is in operation, based on customer information submitted by REPs.
- (g) **Confidentiality of information.** All data transfers shall be conducted under the terms and conditions of confidentiality agreements to protect customer privacy and competitively sensitive information.
- (1) The data acquired from TDHS is subject to a TDHS confidentiality agreement and shall only be used for the purposes of enrolling customers in the rate reduction program, providing rate reductions to customers, resolving problems, and other purposes directly related to the program.
  - (2) All data transfers from REPs to LIDA shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information. The data acquired from REPs shall be used only for the purposes of enrolling customers into LITE-UP, providing rate reductions to customers, resolving problems, and other purposes directly related to the program.
  - (3) LIDA shall treat information relating to customer eligibility for the rate reduction as proprietary and confidential data and may not use it for any other purpose.

- (h) **Low-Income Discount Procedural Guide.** In the event of conflicts between the language of the Guide and the language of this section, this section shall prevail.

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

- (a) **Purpose.** The purpose of this section is to implement the system benefit fee and associated programs as they relate to the service areas of municipally owned utilities (MOUs) and electric cooperatives (Coops).
- (b) **Applicability.** This section applies to an MOU and Coop, no sooner than six months preceding the date on which an MOU or Coop implements customer choice in its certificated service area.
- (c) **Implementation of fee collection.** Not earlier than six months before customer choice begins, and not later than the day of implementation of customer choice in its service territory, an MOU or a Coop shall impose on its customers, including its transmission and distribution customers who choose to receive a single bill from the MOU or Coop, a system benefit fee, as determined by the commission pursuant to §25.451(d) of this title (relating to the Administration of the System Benefit Fund).
- (d) **Billing requirements.** Each retail electric provider (REP), MOU, and Coop that provides rate reduction discounts in the service area of an MOU or a Coop shall comply with the billing requirements in §25.451(h) of this title.

- (e) **Remittance of funds.** The system benefit fee collected by an MOU or a Coop shall be remitted to the Texas Comptroller of Public Accounts (Comptroller) pursuant to §25.451(g) of this title.
- (f) **Area revenue requirements.** The commission shall calculate the amount available for low-income discounts 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 shall be established and may be revised by the commission in the following manner:
- (1) By calculating a share of the total revenue in the System Benefit Fund that is spent on each of the programs as described in Public Utility Regulatory Act (PURA) §39.903(e) in the preceding 12 months for all service areas; and
  - (2) By applying the share of total spending on programs pursuant to PURA §39.903(e)(1) to the projected payments of each MOU or Coop into the System

Benefit Fund, reduced by any adjustment for authorized education or low-income programs.

- (g) **Annual reports.** Upon request by the commission and annually on a schedule established by the commission, an MOU or a Coop shall provide to the commission the following:
- (1) The total in kWh of electric power sold to its retail customers in a recent 12-month period specified by the commission;
  - (2) The total amount spent on qualifying, local, low-income programs, for which the reduction is being sought, in such a recent 12-month period;
  - (3) The total amount spent on qualifying, local, educational programs, for which the reduction is being sought, in such a recent 12-month period;
  - (4) The total amount projected to be spent on qualifying, local, low-income programs, for which reduction is being sought, in a future 12-month period specified by the commission; and
  - (5) The total amount projected to be spent on local, qualifying, educational programs, for which reduction is being sought, in such a future 12-month period.
- (h) **Discount factor and rate reduction.** An MOU or a Coop shall establish a discount factor, consistent with the area revenue requirements established by the commission under subsection (f) of this section, for its low-income customers. The discount factor will be calculated on the basis of the standard retail service package established under PURA §40.053 or §41.053, as appropriate. 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 and calculated in accordance with §25.454(d)(3)(B) of this title (relating to the Rate Reduction Program). The rate reduction will be clearly identified as a line item on the electric portion of the customer's bill.

- (i) **Reimbursement.** Each REP, and MOU or Coop that provides rate reduction discounts in the service area of an MOU or Coop is entitled to reimbursement under §25.451(j) of this title for the rate reductions they have provided to eligible low-income customers and shall file a monthly activity report in order to request reimbursement.
  
- (j) **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 pursuant to §25.451(i)(1) of this title; the other report shall identify the amount of system benefit fee paid by the transmission and distribution only customers pursuant to §25.451(i)(2) of this title. 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 rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.451, relating to Administration of the System Benefit Fund, §25.454, relating to the Rate Reduction Program and §25.457, relating to Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives are hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 16<sup>th</sup> DAY OF JANUARY 2004.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**REBECCA KLEIN, CHAIRMAN**

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**JULIE PARSLEY, COMMISSIONER**

**CONCURRENCE AND DISSENT OF COMMISSIONER PAUL HUDSON**

On this rule, I concur with the majority on the adoption of all parts, with the sole exception of the requirement that self-enrolling customers re-submit proof of eligibility every seven months.

Although I believe it important to ensure only eligible customers receive the discounted rates for electric service and lifeline telephone service circumscribed by PURA, a reasonable balance must be achieved between excluding ineligible persons and discouraging participation by otherwise eligible customers.

I believe that this balance would best be achieved through the allowance of 13 months of eligibility for self-enrolling individuals. If our eligibility screening rejected a large number of ineligible persons from the discount, then the Commission could require more frequent submission of proof-of-eligibility.

As in our open meeting discussion on December 18th and December 30th, I reiterate that an analysis of eligibility requirements for other Texas program reveals a range of acceptable options including allowances for longer eligibility than the majority's preferred seven-month time period.

Examples include:

- Food stamps – eligibility varies. Fixed income elderly persons, for example, are allowed to keep benefits for one year without re-enrolling.
- Temporary Assistance for Needy Families transitional childcare program allows 12 months continuous eligibility.
- Transitional Medicaid program allows 12 months continuous eligibility.

For the reasons stated in our Open Meeting discussion and summarized here, on this issue I respectfully dissent.

**ISSUED IN AUSTIN, TEXAS ON THE 16<sup>TH</sup> DAY OF JANUARY 2004.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAUL HUDSON, COMMISSIONER**