

PROJECT NO. 34887

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

**ORDER ADOPTING AMENDMENTS TO §§25.451, 25.454 AND 25.457
AS APPROVED AT THE FEBRUARY 22, 2008 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 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 December 21, 2007 issue of the *Texas Register* (32 TexReg 9483). The amendments revise the calculation of the low-income discount to facilitate the provision of the discount to eligible customers and the management of funds available to the commission for this purpose. In particular, the amendments revise the language in §25.454 regarding the calculation of the discount factors used in the rate reduction; establish the method through which the Provider of Last Resort (POLR) rate will be determined for the purpose of calculating the discount factors when there is not a price-to-beat (PTB) or the PTB is higher than the POLR rate; and establish the time periods to set the discount factors based on POLR rates for a six-month period of time, with allowances for certain revisions. The amendments also amend §25.454 to more clearly reflect the enrollment process; allow companies providing pre-pay service consistent with §25.498, relating to Retail Electric Service Using a Customer Prepayment Device or System, to document the rate reduction on the customer's payment confirmation rather than through a line-item discount on the bill; delete requirements and references that are no longer in effect; and

revise §§25.451, 25.454, and 25.457 consistent with the Bill Payment Assistance provisions addressed in Project Number 33811. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 34887 is assigned to this proceeding.

The commission received comments on the proposed amendments from the Office of Public Utility Counsel, Texas Legal Service Center, and the Texas Ratepayers Organization to Save Energy (Consumer Coalition); Reliant Energy Retail Services, LLC (Reliant); and the Association of Retail Marketers, CPL Retail Energy, Direct Energy, Green Mountain Energy, Stream Energy, Texas Energy Association for Marketers, TXU Energy Company, and WTU Retail Energy (REP Group). The commission received reply comments from the Consumer Coalition.

General Comments

The Consumer Coalition generally supported the proposal to use the minimum POLR rates as established in the electricity facts label. They believed these rates were sufficient to provide a meaningful discount and noted that they are readily available for public review.

Commission response

The commission considered these comments in its responses to the comments and associated changes set forth below.

PUC Substantive Rule §25.454**Subsection (d)(2)**

The Consumer Coalition recommended reinstating the statutory language that refers to both the PTB and the POLR. While they acknowledged there is no longer a PTB in effect, they stated that PURA sets the standard and that should be accurately reflected in the rule. Additionally, new areas could opt into competition, necessitating the need for new PTB offers.

Commission response

The commission agrees that if a territory opts into competition, it is possible that a PTB could be set, and finds that it is more efficient to reinstate the language than to revise the rule at a later date. Therefore, the commission reinstates the deleted language in subsection (d)(2).

Subsection (e)(2)

Reliant commented that proposed subsection (e)(2)(A) provided that a determination regarding the sufficiency of appropriations may be triggered by a fluctuation of five percent or more of the POLR rate calculated pursuant to PUC Substantive Rule §25.43(k) in any month during the six month period. However, Reliant stated that the calculation in PUC Substantive Rule §25.43(k) is to be made on a customer-specific basis by using the actual hourly Market Clearing Prices of Energy for the customer. Therefore, there is no single result of this calculation that the commission staff could monitor to determine whether the five percent threshold had been reached. The calculation is different for each individual customer depending on which hours the customer used electricity. Reliant commented that given that the subject of the five percent

threshold determination must be a single, calculable number, it logically follows that the POLR rate referenced in this phrase is intended to be the minimum POLR rate as that is the only single, calculable POLR rate applicable to all customers. Further, the minimum POLR rate is determined on an annual basis, and does not change monthly. Therefore, Reliant recommended that the five percent threshold apply to the minimum POLR rate.

In reply comments, the Consumer Coalition agreed. They stated that given that every POLR customer's rate can vary, it is "unwieldy" to use actual POLR rates for this calculation. Additionally, they stated their understanding that the commission does not currently maintain a database of actual POLR rates and, that given these limitations, the minimum POLR rate should be used to determine whether there should be an adjustment to the discount. The Consumer Coalition stated that one of the goals of the rulemaking was to simplify the process so that the discount can be set in a way that is both easy to administer and is transparent to the parties, and that using the minimum POLR rate for both setting and changing discount factors will help to achieve this goal.

Commission response

In its proposal to consider adjusting the discount factors based on PUC Substantive Rule §25.43(k), the commission intended to add additional flexibility into the rule for adjusting the discount factors should actual POLR rates vary substantially from the minimum POLR rates. However, the commission agrees with parties that the complexity and limitations that exist in attempting to use this calculation to evaluate a possible change in discount factors make this provision difficult, if not unworkable. Therefore, the

commission amends the subsection as suggested. The commission believes that the rest of the subsection, as adopted, provides sufficient flexibility to adjust the discount factors to ensure that the appropriate amount of funds are available for the discounts for eligible customers.

The Consumer Coalition recommended adding language to require that the commission verify that no new funds will be forthcoming from the legislature to meet any deficiencies in funding. They suggested that the commission revise the discount factor if the Legislative Budget Board (LBB) notifies the commission that there is a projected insufficiency in the appropriations and the commission verifies that supplemental funds are not available for funding the discount at current levels. The Consumer Coalition stated that in this way, the PUC would take an active role in determining whether additional funding might be available.

Commission response

The commission actively monitors the balance of the fund and reports fund activity to the LBB quarterly. PURA §39.903(d) requires that the commission report to the Electric Utility Restructuring Legislative Oversight Committee if the fund is insufficient to fund certain purposes including the rate reduction. The commission does not find it appropriate to set the ability to reduce the discount on notification by the LBB of an insufficiency in funds. If there is an insufficiency in funds and a decrease in the percentage of rate reduction is warranted, it is the commission's responsibility to identify the issue and take action. Should the commission be informed of or find that additional funds are available to

avoid a reduction of the discount, it would not have to take advantage of subsection (e)(2)(B). Therefore, the commission declines to amend subsection (e)(2)(B).

The Consumer Coalition recommended adding a subsection (e)(2)(C) as a “fresh look provision.” They stated that it was their understanding that there is no general repository of publicly-available POLR rates available to the public for review, which makes it difficult for interested parties to conduct an analysis of how much actual POLR rates have changed or fluctuated over time. They suggested that the commission should have maximum flexibility in determining the appropriate discount factors.

Commission response

The commission agrees that it should have flexibility in setting the discount factor and therefore adds a subsection (e)(2)(C) that is generally consistent with the Consumer Coalition’s suggestion.

The Consumer Coalition commented that the proposed rule deleted existing subsections (e)(2)(A), (B), and (C). They stated it was unclear why subsection (e)(2)(A) was deleted and recommended that it be reinstated. They stated that should new territories opt into competition and have a PTB established, there should be language addressing the computation of the discount for those areas.

Commission response

Consistent with the changes made to subsection (d), the commission reinstates language regarding setting discount factors based on the PTB that was previously in subsections (e)(2)(A) and (e)(2)(B). The provisions are reorganized into new subsection (e)(1)(D) to ensure that it is clear which provisions only apply to discount factors based on the PTB and which provisions only apply to discount factors based on the POLR rate.

Subsection (i)

Reliant commented that proposed subsection (i)(1) allows the commission discretion to, in the event that funds for the rate reduction for low-income customers are not available, require the Low-Income Discount Administrator (LIDA) to “maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsections (f)(1) and (f)(2) of this section if funds were available.” Reliant stated that subsection (f)(2) refers to self-enrollment not automatic enrollment, and only (f)(1) should be referenced. If the word “automatic” were to be stricken from the proposed revision to comport with the addition of “and (f)(2)” to the sentence, the required self-enrollment process during a period of insufficient appropriations would add considerable expense for the commission and any third party volunteering to fund the LIDA during that period. Reliant stated that the same addition of “and (f)(2)” is repeated in the following sentence and is problematic for the same reasons. Reliant did not believe that the rule was intended to increase the cost to third parties and the commission to maintain a list of otherwise eligible customers. Reliant recommended that the existing language of subsection (i)(1) be maintained. In reply comments, the Consumer Coalition disagreed. They stated that the customer protection rules have two special provisions that apply to LITE-UP customers. First, retail electric providers (REPs) may not assess a penalty

on delinquent bills for electric service to eligible customers receiving a low-income discount; and second, eligible low-income customers are allowed to pay deposits of more than 50 dollars in two equal installments. The Consumer Coalition stated that the proposed rule includes language that gives the PUC discretion to require LIDA to maintain a list of eligible customers (both automatic and self-enrollment customers) during times when there are insufficient funds to provide rate reductions to customers. The proposed rule recognizes that maintenance of an accurate list is for the explicit purpose of maintaining the late penalty waiver benefits, and maintaining an accurate list helps ensure that REPs comply with this provision of the customer protection rules. The Consumer Coalition stated that the cost of maintaining an accurate database is part of the reasonable cost of doing business in the state of Texas, and REPs are ultimately responsible for complying with the rule and the costs associated with such compliance.

Commission response

The commission did not intend for the proposed changes to be read to mean that REPs would be responsible for the self-enrollment function should funding be insufficient to maintain the electric rate reductions and the costs associated with determining eligibility for the rate reduction. The commission recognizes that the proposed language has caused confusion, and therefore, reverses the proposed changes to subsection (i)(1). However, the commission believes that it may be able to require LIDA to maintain the list of eligible customers to include self-enrollees in times when there is insufficient money for the rate reduction, and that it may be unnecessary to develop procedures outside of the rule for this purpose as currently envisioned in subsection (i)(2). Therefore, the commission amends

subsection (i)(2) to clarify the intent that if funding is available to include self-enrollees on the list of eligible customers, the commission may require LIDA to continue this function.

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

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

§25.451. Administration of the System Benefit Fund.

- (a) **Purpose.** The purpose of this section is to implement the system benefit fund, including its administration, setting its revenue requirement, fee collection, reporting procedures, and review and approval of the fund pursuant to the Public Utility Regulatory Act (PURA) §39.903.
- (b) **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 §39.903. 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 and other obligations of the fund, 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) The collecting utility shall account for all system benefit fees received from the REPs, MOUs, or Coops in its service area separately from any other account in its records.
 - (3) Each TDU, MOU, or Coop collecting and remitting the system benefit fee to the Comptroller shall file with the commission at the time the money is remitted a report, on a commission-prescribed form, stating for each service territory the amount of the system benefit fee billed, the amount remitted to the Comptroller, and electric energy sold, in MWh. The report shall contain monthly amounts and year-to-date totals.
- (h) **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 or one-time bill payment assistance to eligible customers shall keep records of such rate reductions and one-time bill payment assistance for at least three years from the date the rate reduction or one-time bill payment assistance is first provided to a customer to permit the commission or its agent to audit rate reduction and one-time bill payment assistance reimbursements. Reports filed under subsections (g) and (j) of this section and records relating to the identification of eligible customers shall also be subject to audit upon commission request.
- (j) **Reimbursement for rate reductions and one-time bill payment assistance.** Each REP, or MOU or Coop, when applicable, shall submit to the commission a monthly activity report and request for reimbursement on a form prescribed by the commission. The commission's goal for the processing of a request for reimbursement is, not later than five business days after receipt of the monthly report, to prepare and deliver to the comptroller an authorization for reimbursement to the REP, MOU, or Coop. The

Comptroller's goal for the processing of payments is to transfer the funds by the close of the next business day, following receipt of an authorization from the commission. The monthly activity report submitted by the REPs, MOUs, or Coops shall contain the following:

- (1) 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 rate reduction 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 total amount of one-time bill payment assistance provided to customers in the reporting period and the number of customers to which assistance was provided, pursuant to §25.455 of this title (relating to One-Time Bill Payment Assistance Program), as well as pertinent customer information required by the commission-prescribed form.
- (k) **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) that provide electric service in an area that has been opened to customer choice, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).
- (c) **Funding.** The rate reduction requirements set forth by this subchapter are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers, the following shall apply:
- (1) The requirements of subsections (e), (f) and (g) of this section are suspended until sufficient funding and spending authority are available.
 - (2) The requirements of the following sections of this title, insofar as they relate to the rate reduction benefit, are suspended when sufficient funding and spending authority are not available:

- (A) §25.451(j) of this title (relating to Administration of the System Benefit Fund);
 - (B) §25.457(i)-(j) of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives);
 - (C) §25.475(g)(4)(L) of this title (relating to Information Disclosures to Residential and Small Commercial Customers); and
 - (D) §25.43(d)(3)(D), (q)(1)(A)-(B), (q)(2)(A), and (q)(3)(A) of this title (relating to Provider of Last Resort).
- (3) The requirements of §25.480(c)(1) of this title (relating to Bill Payments and Adjustments), insofar as they relate to the rate reduction benefit, are suspended if an eligibility list is not available as provided in subsection (i) of this section.
- (d) **Definitions.** The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **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 minimum 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) **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 (e)(3) of this section.
 - (5) **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.
 - (6) **Minimum POLR rate** — For the purposes of this section, the minimum POLR rate shall be the POLR rate posted on the commission's website on the Electricity Facts Label for each service territory for 1,000 kWh of usage.
- (e) **Rate reduction program.** In each month for which funds are available for the low-income discount, all eligible low-income customers as defined in §25.5 of this title (relating to Definitions) are to receive a rate reduction, as determined by the commission pursuant to this section, on their electric bills from their REP.
- (1) Discount factors shall be determined in accordance with this paragraph, as the lower of the PTB or minimum POLR rate for each service territory multiplied by the approved discount percentage.
 - (A) The commission shall periodically establish the discount percentage. The discount percentage may be set at a level no greater than 20%.
 - (B) The commission staff shall calculate a discount factor for each service territory and post the discount factors on the commission website (www.puc.state.tx.us).

- (C) Each discount factor based on the minimum POLR rate shall be in effect from May through October or November through April, subject to revision pursuant to subsection (e)(2) of this section.
 - (D) Each discount factor based on the PTB shall be recalculated when the PTB rate changes or the commission revises the discount percentage. The discount factor based on the PTB shall reflect any seasonal variation in the PTB.
- (2) The commission may revise the discount factors set pursuant to subsection (e)(1) of this section through a change to the discount percentage because of one of the following occurrences:
- (A) The commission staff determines that there are sufficient remaining appropriations for the fiscal year to support an increase in the discount percentage without exceeding available appropriations for the fiscal year. This determination may be triggered by the routine review by commission staff of disbursements and remaining appropriations, or by a fluctuation of five percent or more of the minimum POLR rate.
 - (B) The commission staff determines that there are insufficient remaining appropriations for the fiscal year, and a decrease to the discount percentage is necessary to ensure that funds spent do not exceed appropriations for the fiscal year.
 - (C) The commission determines that a change in the discount percentage is consistent with the objectives of this section and the public interest.
- (3) All REPs shall provide the rate reduction to eligible low-income customers.

- (A) The discount factors posted on the commission's website shall be used to calculate the rate reduction for each eligible low-income customer's bill. If the discount factor changes for any area, REPs shall implement the resulting change in the discount factor in their billings to customers within 30 calendar days of the date the commission posts the revised discount factor to its website, or on the effective date of the discount factor, whichever is later.
- (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." If a monthly bill is not issued as provided by §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System), the customer's receipt or confirmation of payment, or detailed information accessed by confirmation code, as described by §25.498 of this title, shall indicate that the discount was applied to the customer's charges with the words "LITE-UP" or "LITE-UP Discount."

- (D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Fund) for rate reductions they provide to eligible low-income customers.
- (f) **Customer enrollment.** Eligible customers may 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 the Texas Health and Human Services Commission (HHSC) with customer-specific data from REPs.
- (A) HHSC shall provide client information to LIDA in accordance with subsection (g)(1) of this section.
- (B) REPs shall provide customer information to LIDA in accordance with subsection (g)(3) of this section.
- (C) LIDA shall compare the customer information from HHSC 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 who receive food stamps or medical assistance from HHSC. 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;
 - (D) Determining customers' eligibility by reviewing information submitted through self-enrollment forms and determining whether the applicant meets the program qualifications; and
 - (E) Matching customer information submitted through self-enrollment forms with customer data provided by REPs, creating files of matching customers, enrolling matching customers in the rate reduction programs, and notifying the REPs of their eligible customers.
- (3) In determining customers' eligibility in the self-enrollment process, LIDA shall require that customers submit with a self-enrollment form proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information and shall audit statistically valid samples for accuracy. If a person who self-enrolls claims to be eligible because of participation in a qualifying program, LIDA shall require the customer to submit a copy of proof of enrollment or eligibility letter that indicates enrollment of the applicant in the qualifying program.
- (4) 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 HHSC benefits. Once a customer no longer receives HHSC 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).
- (g) **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 HHSC may be established in the memorandum of understanding between the commission and HHSC.
- (1) **HHSC shall:**
 - (A) assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving HHSC benefits as detailed in the memorandum of understanding between HHSC 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 HHSC 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 HHSC 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; and
- (I) protect the confidentiality of the customer information provided by the REPs and the client information provided by HHSC.

(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.

(h) **Confidentiality of information.**

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

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

- (1) In the event that funding and authorization to expend funds are not sufficient to provide rate reductions for low-income customers that can be reimbursed from the

system benefit fund, the commission may, in its discretion, require LIDA to maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsection (f)(1) of this section if funds were available. The procedures set forth in subsection (f)(1) of this section will be used to the extent practicable. In addition to the requirements in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks undertaken by HHSC may be established in a memorandum of understanding between the commission and HHSC. To assist the commission in implementing this provision, REPs shall upon request:

- (A) 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, ESI ID, service provider account number, and premise code;
- (B) retrieve from LIDA the list of customers who would be eligible for automatic enrollment in the rate reduction program if funds were available;
- (C) 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 3,000 kWh in a month shall be considered a high-usage customer;

- (D) assist LIDA in working to resolve issues concerning customer eligibility; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general 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
 - (E) provide other information and assistance, upon request of the commission, to assist in implementation of this section.
- (2) If funding is available to include self-enrollees in the list of eligible customers, the commission may, in its discretion, require LIDA to include self-enrollees in the list of eligible customers consistent with subsection (f)(2) of this section or set forth processes for determining eligibility in a procedural guide. The processes, to the extent feasible, will be consistent with subsections (f) and (g) of this section.
- (3) If pursuant to subsection (i) of this section, the commission, through the LIDA or other means, provides the REPs with a list of eligible customers §25.480(c)(1) of this title, which requires that a customer receiving a low-income discount pursuant to the Public Utility Regulatory Act §39.903(h) may not be assessed a late penalty, shall be continued based on the customer's eligibility for the discount, rather than the customer's receipt of the discount.

(j) **Deposit Installment Benefits.**

(1) If LIDA is maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, then a customer or applicant who qualifies for the rate reduction program is eligible to pay deposits over \$50 in two installments, pursuant to §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(A) A REP who requires a customer or applicant to provide sufficient information to the REP to demonstrate that the customer or applicant qualifies for the rate reduction program may request the following information:

- (i) a letter from the customer's or applicant's current or prior REP stating that the applicant is on the list of customers who would be eligible for the rate reduction if funds were available;
- (ii) a bill from the current or prior REP that demonstrates that the customer or applicant is enrolled in the rate reduction program; or
- (iii) other documentation that the REP determines to be appropriate and requests on a non-discriminatory basis.

(B) Upon the request of a customer, a REP shall provide a letter stating that the customer is on the list of customers who would be eligible for the rate reduction if funds were available. This letter may be combined with a letter issued to a customer regarding bill payment history.

(2) If LIDA is not maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, a REP shall extend the option to pay deposits

over \$50 in two installments to any residential customers or applicants who qualify for the rate reduction program. The REP may, on a non-discriminatory basis, require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate. The REP shall provide notice of this option in any written notice requesting a deposit from a customer. This paragraph supersedes the provisions of §25.478(c)(3) and (d)(3) of this title that require payment of the entire amount of a deposit within ten days.

(k) **Voluntary Programs.** Nothing in this section is intended to impair a REP's ability to voluntarily provide a low-income discount or other benefits to low-income customers.

- (1) The list of low-income customers who would be eligible for the rate reduction if funds were available, or other non-discriminatory criteria, may be utilized by a REP as evidence of a customer's eligibility for the REP's voluntary low-income program, if offered.
- (2) In the event a REP chooses to voluntarily offer a discount or other benefits to low-income customers, the REP shall treat any information obtained regarding the customer's financial status or enrollment in a government program as confidential information and shall not disclose the information to any other party or use the information for any purpose other than enrollment in a voluntary low-income program.

§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 or one-time bill payment assistance in the service area of an MOU or a Coop shall comply with the billing requirements in §25.451(h) of this title.

- (e) **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) **Service area revenue requirements.** The commission staff shall calculate the amount available for low-income discounts or one-time bill payment assistance for the service area of each MOU and Coop based on the projected system benefit fee revenue from the service area of the MOU or Coop and any reduction in the fee for education or low-income programs approved by the commission. The commission shall, on a request by an MOU or a Coop, reduce the system benefit fee, imposed on the requesting entity's retail customers, by the amount expended by the requesting MOU or Coop, or their retail customers, for local, low-income programs and local programs that educate customers about the retail electric market in a neutral and non-promotional manner. The qualifying low-income programs must reduce the cost of electricity to the recipients of such programs and be targeted at customers whose total household income does not exceed 125% of federal poverty guidelines. The amount available for low-income discounts and one-time bill payment assistance shall be established and may be revised by the commission in the following manner:
- (1) 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) **Allocation of revenue requirement.** An MOU or Coop shall allocate its service area revenue requirement established by the commission staff under subsection (f) of this section among those programs provided by PURA §39.903(e) for which funds have been authorized. The MOU or Coop shall be responsible for determining such allocation.
- (i) **Discount factor and rate reduction.** An MOU or a Coop shall establish a discount factor, consistent with the amount of its service area revenue requirement allocated by the

MOU or Coop by the rate reduction for low-income customers in its service area. Each REP, MOU, or Coop that bills retail customers for electric power and energy shall apply a rate reduction to the bills of eligible low-income customers based on the discount factor established by the MOU or Coop in effect during the billing cycle in which the bill is rendered, multiplied by the customer's total consumption (kWh) for the billing period. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied. The rate reduction will be clearly identified as a line item on the electric portion of the customer's bill. An MOU or Coop may permit the rate reduction to be identified for a pre-pay customer in accordance with §25.454 of this title (relating to the Rate Reduction Program).

- (j) **Reimbursement.** Each REP, and MOU or Coop that provides rate reduction discounts or one-time bill payment assistance in the service area of an MOU or Coop is entitled to reimbursement under §25.451(j) of this title for the rate reductions and one-time bill payment assistance it has provided to eligible customers and shall file a monthly activity report in order to request reimbursement.
- (k) **Monthly reporting requirements.** If an MOU or a Coop continues to bill customers pursuant to PURA §40.057(c) or §41.057(b), as appropriate, then the MOU or Coop shall file with the commission two reports. One report will identify the amount of system benefit fee collected and paid by the reporting entity's retail customers; the other report shall identify the amount of system benefit fee paid by the transmission and distribution only customers. Both reports shall be filed with the commission at the time the system benefit fee is paid pursuant to §25.451(g) of this title.

This agency hereby certifies that the adoption has 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 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.

SIGNED AT AUSTIN, TEXAS the 28th day of FEBRUARY 2008.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER