

The Public Utility Commission of Texas (commission) adopts new §25.451, relating to the Administration of the System Benefit Account; §25.453, relating to the Targeted Energy Efficiency Programs; §25.454, relating to the Rate Reduction Program; and §25.457, relating to the Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives with changes to the proposed text as published in the September 15, 2000 *Texas Register* (25 TexReg 9145). The rules are necessary to implement provisions of the Public Utility Regulatory Act (PURA) §39.901 and §39.903, relating to the System Benefit Fund (SBF). Section 25.451 establishes administrative requirements for the setting, collecting, billing, and reporting of the system benefit fee, and reimbursement of the low-income discount. Section 25.453 defines the criteria for energy efficiency programs, administered by the Texas Department of Housing and Community Affairs, that can be funded with the system benefit fee. Section 25.454 establishes requirements for a rate reduction program for qualifying low-income customers and outlines enrollment options for those customers. Section 25.457 establishes the system benefit fee collection and reimbursement process for the municipally owned utilities and electric cooperatives. These new sections were adopted under Project Number 22429.

A public hearing on the proposed sections was held at commission offices on October 23, 2000, at 9:30 a.m. Representatives from TXU Electric Company (TXU); Reliant Energy Inc. (Reliant); American Electric Power Company, Inc. (AEP); Electric Reliability Council of Texas (ERCOT); Texas

Association of Community Action Agencies, Inc. (TACAA); Texas Ratepayers' Organization to Save Energy (Texas ROSE); Entergy Texas (EGSI); Texas Department of Housing and Community Affairs (TDHCA); and Texas Industrial Energy Consumers (TIEC) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new sections from American Electric Power Company, Inc. (AEP ED); American Electric Power Energy Services (AEP Energy Services); Entergy Texas Distribution Company (EGSI-D); Reliant; San Antonio City Public Service (San Antonio); Southwestern Public Service Company (SPS); Texas Electric Cooperatives (TEC); TIEC; Texas Legal Services, Texas ROSE, American Association of Retired Persons (AARP), Consumers Union Southwest Regional Office, and Public Citizen Texas Office (jointly referred to as Consumer Commenters); Community Services, Inc.; TACAA; Panhandle Community Services (PCS); TDHCA; El Paso Electric (EPE); Texas New Mexico Power Company (TNMP-Retail); Texas New Mexico Power Company (TNMP-TDU); and TXU.

In the preamble to the proposed rule, the commission posed the following questions:

Question No. 1: The system benefit fund fee funds four programs pursuant to PURA §39.903(e). The statute does not specify the order in which these programs shall be funded. Should a funding priorities order be established?

AEP Energy Services, Consumer Commenters, TNMP-TDU, TNMP-Retail, and TDHCA stated that a funding priority should not be established. AEP Energy Services, TNMP-TDU, and TNMP-Retail stated that Subchapter Z of PURA contains no mention of funding priorities and developing such priorities may be outside the commission's authority. Consumer Commenters and TDHCA argued the wording of Senate Bill 7 (SB7), 76th Legislature, Regular Session, indicates an intent by the framers to fund all four allowable activities. Consumer Commenters stressed that all activities are equally important and should be fully funded as reflected by the allowance for an enhanced funding level - up to \$0.65 per megawatt hours (MWh) - and the mandates of Senate Bill 86 (SB86), 76th Legislature, Regular Session.

TXU stated that all beneficiaries of the system benefit fund (SBF) are important and should be supported by the fund, but that the fund should be carefully monitored to ensure that it remains viable and stable. TXU argued that the retail electric providers (REPs) should not be required to offer the discount when the risk of a deficit in the SBF would not allow a full reimbursement, and REPs should be allowed to discontinue the discount when no funds are available in the SBF. TXU offered language to that effect. SPS stated that it had no position regarding the order in which programs should be funded, but stated that the targeted energy efficiency programs should be funded at least at a level that complies with the United States Department of Energy Weatherization Assistance for Low Income Persons (U.S. DOE WAFLIP) cost-sharing requirements so as not to place the state at the risk of losing federal funds.

Reliant and TIEC stated that the commission should establish a funding priority for the use of the money under the SBF. Reliant stated that, particularly in the early years, when the school funding loss mechanism is in effect, even \$0.65 per MWh may not be sufficient to cover all activities, and that, absent a legislative directive, the commission should timely tailor the lower priority programs to match available funds. TIEC argued that absent some priority order that separates the low-income discount programs, high revenue requirements for the school funding loss program and targeted energy efficiency programs will cause a revenue shortfall for the low income discount program, and will raise the cap to \$0.65 per MWh. TIEC further argued that the \$0.65 fee cap was not intended to make up for the other programs' potentially higher revenue requirements.

TIEC, in reply comments, disagreed with the assertion that the commission does not have the authority to establish funding priorities and claimed that the Consumer Commenters' reliance on PURA §17.004(a)(11) is misplaced because the provision only established the right to access programs, and not to set new funding levels. TIEC reiterated that a funding order is necessary to address the potential problem of under-collection.

AEP Energy Services, in reply comments, agreed with TXU that the SBF rule should not require REPs to offer the low-income discount if no funds are available for reimbursement to the REPs. AEP Energy Services further argued that if this were not the case, PURA §39.903(d) would not direct the commission to report to the Joint Electric Restructuring Legislative Oversight Committee if the SBF is insufficient to fund the purposes set out in the statute.

The commission takes note of the fact that while the statute lists four separate programs to be funded by the SBF, it does not establish a funding priorities order. The one potential clarification is provided through the commission's ability to raise the fee cap to \$0.65 if the amounts generated by the fee are not sufficient to cover the low income discount program. The commission agrees with TIEC that PURA §17.004(a)(11) provides for access to services, but says nothing about funding levels. Since no provision in the statute sets out priorities for the SBF, the commission finds that a funding priorities order is not a timely issue to be resolved in this rulemaking, and thus will not address this issue here. The commission does, however, agree with those commenters who stressed the need to ensure that the fund remain viable and stable. To achieve this goal, the commission will have to rely on accurate estimates for the fund revenues and expenditures, and closely monitor the fund's cashflow to insure that revenues do not exceed costs. At this time, it is reasonable to believe that the fee will generate revenues adequate to cover all programs. Should the amount of revenues in the fund not be sufficient to cover all programs, the commission has the ability to revise the fee at any time during the year to make up for any potential shortfalls. In addition, the commission has the responsibility pursuant to PURA §39.903(d) to report to the electric utility restructuring legislative oversight committee if the system benefit fee is insufficient to fund all programs. For these reasons, the commission declines to make the change requested by AEP Energy Services and TXU that would expressly allow the REPs to stop providing the low-income discount if there is a risk of a shortfall in the fund.

Question No. 2: The pilot project for the competitive electric market in Texas will start June 1, 2001. Should this pilot program include a low-income customer discount program? If so, what would be the best way to implement such a program?

Consumer Commenters, TDHCA, and Reliant stated that the low-income discount program should be included in the pilot project. Consumer Commenters stated that the system benefit programs must be available for eligible low-income pilot project participants, who represent 20% of residential customers, to test the market in the same manner in which full customer choice will be offered beginning January 1, 2002. TDHCA stated that it is necessary to test a variety of enrollment techniques, including automatic enrollment through the Texas Department of Human Services (TDHS) programs and enrollment via the TDHCA Comprehensive Energy Assistance Program at all 51 TDHCA subgrantees, who cover all 254 Texas counties. Reliant stated that given the limited resources available, these activities should be restricted to testing procedures rather than providing benefits to low-income customers, particularly since PURA §39.903(g) prohibits utilities from reducing existing programs available to low-income customers prior to the commencement of customer choice.

AEP Energy Services, AEP-ED, TNMP-TDU, TNMP-Retail, and TXU stated that the SBF programs should not be included in the pilot project. The companies asserted that including the low income customer discount may cause confusion in the administration of low-income programs, particularly since, consistent with Reliant's comments, PURA §39.903(g) prohibits utilities from reducing existing programs available to low-income customers prior to the commencement of customer choice. Similarly

to Reliant, TXU stated that time would be more wisely spent working to develop fully the necessary components, such as the Low Income Discount Administrator (LIDA), during the pilot project. AEP-ED further argued that the inclusion of low-income programs in the pilot program would be administratively burdensome and confusing. AEP-ED reiterated its position in reply comments in response to the position held by the Consumer Commenters.

TIEC had no position on this issue other than to say that the rule should be clarified to reflect that any funds raised through the SBF prior to January 1, 2002, are limited to funds appropriated for the commission and Office of Public Utility Counsel (OPUC) by the legislature. TIEC further stated that any funds collected for any other purpose should not be recovered from retail customers through a surcharge or any other means.

There are two low-income programs mandated under PURA §39.903 to be funded by the SBF. One concerns weatherization and energy efficiency services; however, pursuant to PURA §39.903(g), the utilities cannot stop providing these services until after the onset of customer choice. The other one is the rate discount program, which is built on the premise of having a large number of customers enrolled and identified by each REP in order to provide the monthly discount. The process of developing the databases and systems necessary to effect customer enrollment may be lengthy and will require frequent testing before it can be utilized on a large scale. It is not certain that such a system will be in place by June 1, 2001, when the pilot project begins. The commission, therefore, declines to require that the low-income programs be included in the pilot project, as requested by the Consumer Commenters.

The commission does, however, agree with Reliant and TXU who propose to use the period after the start of the pilot project to test various aspects of the low-income discount program, including the enrollment procedures. Given this conclusion, it is not necessary to address TIEC's comments regarding the funds raised prior to January 1, 2002; in addition, the recovery of funds already raised has been adequately addressed in the commission orders.

Comments on the Text of the Proposal

With regard to §25.451, AEP Energy Services commented that the rules are burdensome and costly for the REPs, particularly the reporting requirements. SPS commented that the rules represent a reasonable compromise by all parties and expressed support for the rules as published. AEP-ED stated that the general framework of the rules is reasonable, but the company is concerned with a few specifics.

San Antonio suggested that the "retail electric provider" definition in §25.451(c) is not broad enough to encompass municipally owned utilities and electric cooperatives (MOUs and Coops) that have adopted choice and that a new definition of "competitive retailer" should be added to include those MOUs and Coops.

While the commission agrees in principle with San Antonio regarding the limited meaning of "retail electric provider," creating a new definition for "competitive retailer" may prove to be confusing, and existing definitions in commission rules do not fit exactly. The commission will, however, add the words

"municipally owned utility and electric cooperative" in §§25.451, 25.453, and 25.454, wherever the reference to REPs also implies responsibilities for the MOUs and Coops.

With regard to §25.451(c)(1), AEP Energy Services and TNMP-Retail proposed to change the word "electric" to "retail" as it relates to the definition of a customer.

The commission has made this change; the amended definition is now in §25.451(c)(5).

With regard to §25.451(c)(7) as proposed, AEP Energy Services recommended deleting the last sentence in this subsection, which clarifies how the SBF fee is assessed. In §25.451(d)(3), the word "retail" should be moved before "electric." TIEC stated that the commission had previously made a decision on the allocation of the SBF fee in P.U.C. Substantive Rule §25.344(h)(2)(F) (relating to Cost Separation Proceedings); specifically that it be based on the amount of kWh of electric energy used, "as measured at the meter and adjusted for voltage level losses." TIEC suggested adding language reflecting this decision to the definition of SBF fee in proposed §25.451(c)(7). In its replies, AEP-ED agreed with the language proposed by TIEC regarding voltage level adjustment based on line loss factors approved for each customer class.

The commission declines to delete the last sentence in the proposed §25.451(c)(7), as requested by AEP Energy Services. While the sentence does repeat the statute, it is necessary to maintain clarity.

The commission also agrees with TIEC's proposed language regarding the way energy usage is

measured and has made the corresponding change in the new §25.451(c)(8). The commission also has made the change in §25.451(d)(3), relating to moving the word electric before retail.

With regard to §25.451(d)(1) and (d)(3), AEP-ED requested clarification of the system benefit fee determination process, mainly whether new tariffs would have to be filed whenever the fee is changed. Consumer Commenters suggested specifying that the fee setting process would start in July 2001.

The commission finds that a clarification regarding filing of tariffs whenever the system benefit fee changes is needed and agrees to add new language requiring filing of annually updated tariff sheets in §25.451(d)(3). The commission finds that the change proposed by Consumer Commenters is not necessary.

With regard to §25.451(e)(3)(B), Consumer Commenters stated that a minimum funding level should be established in the rule for the targeted energy efficiency programs because PURA intended that these programs stay at the current level of funding; local weatherization agencies require a predictable funding levels; utilities have the option of including targeted energy efficiency program savings in their plans; and the commission has provided direction for establishing the funding level. Consumer Commenters pointed to a summary filed in Project Number 22979, *PUC Proceeding to Monitor Utility Funding Commitments and Expenditures in Energy Efficiency and Low-Income Programs*, which contains a calculation of each company's planned low-income energy efficiency funding for 2001. Although the funding levels were at 0.12% of projected 2002 revenues, TXU's and Reliant's expenditures fell below

that target. Consumer Commenters stated that the imbalance is the result of electric industry restructuring. Consumer Commenters further stated that TXU and Reliant were supposed to work out their agreements with the low-income intervenors regarding energy efficiency funding, which were also supported by customers in the deliberative polls, but after SB7 passed, the companies delayed consideration of the integrated resource planning (IRP). Consumer Commenters argued that since the legislature did not intend for the low-income programs to be abolished, the SBF rule is the appropriate place to even the scales and remedy the commission failure to promote funding of such programs in the two largest service areas. Consumer Commenters stated that they had asked the commission to establish a floor of \$17 million annually for these programs and that this standard should carry into the restructured market. They recommended that the rule be amended to include either annual funding at the level of 0.12% of total annual unadjusted gross industry revenue in the preceding year, or a funding level of \$17 million to be adjusted annually based on the consumer price index or growth in system sales.

Panhandle Community Services (PCS) stated it supports the TDHCA weatherization program because it is the only program that addresses the problem of high utility bills on a permanent basis. PCS further stated that it currently has over 420 qualified families on its waiting list for the TDHCA administered weatherization services, and that the SBF should provide sufficient funding of at least \$17 million to increase services and meet the needs of low-income people. EGSI-D stated that it supports uniform statewide funding for targeted energy efficiency programs at the level of 0.12% of gross Texas revenues.

In its reply, TXU asserted that contrary to the Consumer Commenters' statements regarding the stipulation on funding for low-income weatherization programs, the only commitment TXU made was to use its best efforts to extend its then-current amount to the TDHCA weatherization program through December 31, 2001. TXU also stated that it had complied with that promise and that Consumer Commenters were incorrect to say that TXU was under a requirement to resolve low income energy efficiency issues in TXU's energy efficiency filing.

TXU filed additional comments, after the due date, in support of the TDHCA's funding level at the 0.12% of Texas electric utilities' annual total unadjusted gross revenues, after January 1, 2002.

The commission, in agreement with PCS and Consumer Commenters, expresses strong support for low-income energy efficiency programs and encourages TDHCA to develop a comprehensive and cost-effective plan to deliver such services to those in need. The commission, however, finds that contrary to Consumer Commenters' comments, PURA does not contain language that provides for a specific funding level for the low-income energy efficiency programs. Historically, the amounts utilities spent on low income energy efficiency efforts were a matter to be negotiated between the utilities and the low-income intervenors. While some utilities had pledged to spend 0.12% of total Texas revenues, there were others who had not. The commission notes that pursuant to this rule, the revenue requirement for the various programs will be determined annually at the time the system benefit fee is set, and part of this process will be consideration of a plan that TDHCA is required to file. The funds

requested by TDHCA are also subject to the final appropriation by the legislature. In addition, the commission must consider that funding needs of some of the programs covered by SBF are uncertain at this time and may remain difficult to estimate even in the future. Because of this uncertainty, the commission must preserve a level of flexibility when determining SBF revenue requirements. The commission, therefore, declines to set a specific funding level for any of the programs. It is, however, the commission's intention to fund all programs at their requested levels.

With regard to §25.451(e)(3)(C), AEP Energy Services and TNMP-Retail stated that the reporting requirements in this section are misplaced and that the information needed to develop revenue requirement will be gathered in §25.451(i). AEP Energy Services suggested including year-to-date totals in the monthly reports and having the commission staff estimate the low-income discount reimbursement based on the monthly reports. AEP Energy Services, TXU, Reliant, and TNMP-Retail also suggested that providing information through May 2002, by June 1, 2002, is not possible, and that either the reporting period or the due date needs to be changed. TXU suggested June 30th as the deadline. Reliant asked that the deadline be extended by three months. "Previous" year should be clarified to mean "calendar" year and not state fiscal year, as recommended by AEP Energy Services. AEP Energy Services and TNMP-Retail objected to the inclusion of the aggregate electric energy consumption in kWh for all enrolled low-income customers for the purposes of determining revenue requirement, and proposed to delete this requirement. AEP Energy Services, TXU, and TNMP-Retail also objected to the requirement to provide the commission with copies of promotional materials about the discount program and asked that it be deleted. TXU suggested that the education process should

be carried out by the Texas Department of Human Services because SB7 does not require the REPs to spend money on customer education and there is no provision for reimbursement from the fund. Also, a broad education program may cause too many inquiries from ineligible people and overwhelm the fund. TXU recommended deleting §25.451(e)(3)(C)(v). Reliant did not object to the requirement to provide promotional materials, but wanted to make it clear that the commission would not be approving such materials. Reliant also proposed moving this requirement to §25.454(f)(4).

The commission finds that the reporting in proposed §25.451(e)(3)(C) was required for different reasons than the reporting in subsection (i); specifically, it was proposed to help determine revenue requirement for the low-income discount program. To simplify reporting requirements, the commission agrees that the several reports can be combined into one, along the lines of AEP Energy Services' proposal, for monthly reporting with year-to-date totals, and has made the corresponding change. In addition, the commission has moved the reporting requirement to §25.451(j), relating to reimbursement. The reports will be due on the 20th of each month, starting in January 2002. The commission also has made the clarifying change by adding the word "calendar" after the word "previous," as recommended by AEP Energy Services. The commission finds that aggregate data, provided by the REPs, municipally owned utilities, or electric cooperatives, regarding the enrolled low-income customers' electric energy usage is necessary for the purposes of creating accurate estimates of expenditures for the discount program. The commission, therefore, declines to delete this requirement. The commission also declines to delete the requirement to provide promotional materials; however, the commission has made the

change requested by Reliant to clarify that the commission will not be approving such materials. This requirement has been moved to new subsection §25.454(f)(4)(E).

TNMP-Retail recommended a change in §25.451(f) by adding "or retail electric provider" after the words "an electric utility" because it would be the REPs who would be most concerned about the impact of the non-bypassable charges on headroom. AEP-ED asked for a clarification of this subsection, particularly the provision that allows an electric utility to seek a change to the commission staff's estimate of electric sales because it is not clear why TDUs would be interested in the staff's estimates. AEP-ED asserted that REPs would be more concerned about these estimates. AEP-ED also stated that the reference to the annual update of generating utility data report should be deleted and replaced with a requirement for the commission staff to file an estimate of sales.

In its reply, AEP-ED clarified that it was not suggesting elimination of the commission staff's electric sales estimates, but that in the new world, the staff should not be estimating statewide retail sales but only those sales subject to the SBF fee.

The commission agrees with AEP-ED that this subsection needs to be clarified. It seems likely that in the competitive marketplace, the commission will no longer publish reports, such as the Annual Update of Generating Electric Utility Data. At this time, it is not clear what type of report, if any, will replace it. The commission, however, will need to know the amount of retail sales of electricity in the areas initially under competition and, eventually, other areas as they opt in, in order to set the system benefit fee. The

commission finds that the issue here is not so much who is concerned about the correct estimates, as who has the most accurate sales numbers and can provide them. Consequently, the commission makes the following change to §25.451(f): "The TDUs, and when applicable, the MOUs and Coops, upon request by the commission, shall supply an aggregate number of the amount of electric retail sales in their service areas for the preceding calendar year, by April 1 of each year. Upon receipt of such information, the commission will file the aggregated retail electric sales in the relevant areas, after adjusting for projected growth."

With regard to §25.451(g), TNMP-TDU and AEP-ED claimed that giving TDUs five days to forward the payments to the comptroller is not enough time and suggested amending the language to extend the time until the 20th day of the following month. Both claimed that the companies need time to close their books for the month before sending payments; and AEP-ED concluded that any concerns regarding the cashflow should be resolved in the legislative appropriations process. Reliant acknowledged that electronic payments could be handled within five business days, but expressed concern that manual payments may take longer for the TDUs to process. Reliant suggested amending this subsection to specify that TDUs should forward collected fees to the comptroller by the 15th of the following month.

The commission agrees that forwarding payments every five days may prove burdensome for the TDUs. Therefore, the commission has made the change to a once-a-month payment, with the due date on the 20th day of each month. To forward system benefit fee payments collected from the REPs, it should not be necessary for the TDUs to close their books, since this is a pass-through transaction. The new

due date will provide more than sufficient time for the TDUs to process the system benefit fee payments from the REPs and forward them to the Comptroller of Public Accounts. At the same time, the new due date should not affect the fund's cashflow or its capacity to cover full discount reimbursements.

With regard to §25.451(h)(1), San Antonio suggested that this subsection should also include a reference to the Terms and Conditions for Retail Distribution Service Provided by MOUs and Coops (proposed new §25.215). AEP-ED noted a new issue that arose in the Terms and Conditions of Transmission and Distribution Utilities' Retail Distribution Service (new §25.214), relating to a possibility that a retail customer may avoid the system benefit fee by switching to new on-site generation. AEP-ED suggested that such customers should be treated in a way that is consistent with the way they will be treated for the purposes of stranded cost collections, as defined in PURA §39.262(k).

In its reply, AEP-ED recognized that because the system benefit fee is a matter between a TDU and a REP, its initial recommendation to treat those customers who switch to on-site generation in the same manner as for the purposes of stranded cost collection would not work. Alternatively, AEP-ED proposed that the commission staff include in its revenue requirement a recognition of the reduction in MWh attributable to such customers.

The commission agrees with San Antonio's suggestion regarding the reference to the Terms and Conditions for Retail Distribution Service Provided by MOUs and Coops (§25.215), since this new rule defines the relationship between the REPs and the MOUs and Coops, and has made the

corresponding change. As mentioned by AEP-ED, retail customers who switch to on-site generation may be able to avoid paying the system benefit fee. However, to the extent that they consume any power, such as standby, delivered to them by a TDU, the commission finds that they should be assessed the system benefit fee based on the amount of actual power consumption. The commission has added corresponding language in the new §25.451(h)(3).

With regard to §25.451(h)(2), AEP Energy Services and TNMP-Retail objected to the requirement that the system benefit fee be accounted for separately in the REPs' records because the TDUs bill the REPs for the fee. TIEC recommended adding language to clarify that the system benefit fee be based on the kWh of electric energy used by a customer, as measured at the meter and adjusted for voltage level losses. Consumer Commenters suggested that the unbundling of the system benefit fee on a consumer's bill should be deferred to Project Number 22255, *Rulemaking Proceeding for Customer Protection Rules for Electric Restructuring Implementing Senate Bill 7 and Senate Bill 86*.

The REPs will receive a monthly bill from the TDUs indicating the amount of the fee; therefore, the commission finds that there is no need for further separate accounting of the system benefit fee. The commission has made the corresponding change. The commission finds that TIEC's recommendation has already been addressed in new §25.451(c)(8). The commission finds that the issue raised by Consumer Commenters has been adequately addressed in the customer protection rules.

With regard to §25.451(i), AEP Energy Services, AEP-ED, and TNMP-Retail stated that the due date for the monthly reports does not allow enough time to prepare such reports; the due date should, therefore, be postponed to the second following month; AEP-ED suggested the 20th of the following month. AEP Energy Services asserted that there is no reason for expedited reports and that if a REP wants to be reimbursed earlier, it can always choose to file sooner. AEP Energy Services suggested replacing "prior" with "reporting." AEP Energy Services, TXU, AEP-ED, and TNMP-Retail stated that the data in §25.451(i)(1)(A), (B), (C), and (D) is not necessary, is costly and burdensome, and should be deleted. The requirement, if kept, should apply to all REPs. AEP Energy Services asserted that billing and collection of the SBF fee is a matter between the TDUs and the REPs and is governed by the provisions in Project Number 22187, *Rulemaking to Establish the Terms and Conditions of Transmission and Distribution Utilities' Retail Distribution Service*. AEP-ED additionally stated that the commission needs the following information to monitor the SBF collections: total MWh billed in the reporting month; total amount of system benefit fee billed; total amount of the system benefit fee collected; adjustments for uncollectibles from prior months; total fees remitted to the comptroller; and any other information as determined by the commission staff, TDUs, and others to be necessary. AEP-ED recommended revising the subsection as described. TXU suggested revising §25.451(i)(3) to say that for each REP, information related to the amount of MWh consumed, the amount of fee billed, and the amount of fee collected should be included. Reliant commented that unless §25.451(g)(1) is changed, §25.451(i)(3) could result in TDUs having to file a report with the commission each business day when a remittance is made to the Comptroller; consequently, if subsection (g)(1) is not changed, then subsection (i)(3) should be rewritten to require a report by the TDUs only once a month.

In their replies, AEP-ED and AEP Energy Services stated that they agree with TXU's observation regarding billing and collection of the SBF fee – TDU bills the REP and REP pays the fee to TDU – consequently, subparagraphs (A)-(D) should be deleted because REPs will not track the fee by individual customer.

The commission notes that it may be preferable for the REPs not to have to file any reports; however, reports are necessary for the purposes of accurate and prompt reimbursement to the REPs. In addition, the commission will use such reports for precise estimating, auditing, and fund management purposes. Therefore, all REPs who serve residential customers must file one monthly report. The commission finds merit in combining the reports into one type of report pursuant to §25.451(j), due monthly and with running year-to-date totals. In addition, the commission has shifted part of the information, mainly proposed §25.451(i)(1)(A)-(B), to be reported by the TDUs, and shifted subparagraphs (C)-(G) to §25.451(j). The commission finds that the due date on the 20th of the following month should give REPs enough time to compile the needed information. The commission declines the change suggested by AEP Energy Services to replace "reporting" with "prior." The commission does not agree with the inclusion of "adjustments for uncollectibles" as suggested by AEP-ED, and emphasizes that the amount of the system benefit fee paid by the REPs, MOUs, or Coops cannot be adjusted for uncollectibles. The commission also notes that with the new fee payment due date, on the 20th day of each month, Reliant's concern should be alleviated.

With regard to §25.451(j), TXU commented that while the commission has five working days to prepare an authorization for reimbursement to the REPs, there is no deadline for the commission to deliver the authorization to the Comptroller. TXU suggested adding the words "deliver to the Comptroller" in the third sentence of this subsection.

The commission finds that TXU's proposed change clarifies the commission's responsibility, and has made the corresponding change.

With regard to proposed §25.451(k), TNMP-TDU and Reliant proposed amending this subsection to allow the utilities to recover the SBF assessment prior to January 1, 2002, through their annual reports for 2001. TXU suggested that language regarding cost recovery through an annual report or, for those utilities that do not have earnings, by petitioning for regulatory relief, should be added to this subsection.

In its reply, AEP-ED agreed with TXU's addition to this subsection regarding the recovery of system benefit fees assessed to utilities prior to January 1, 2002.

The commission has issued several orders that deal with the collection of the system benefit fee prior to January 1, 2002. Each order states the amounts to be collected, the assessment per utility, the timing of payments, and the recovery method. The commission finds the utilities' comments are sufficiently addressed in each order and that there is no need to restate these details in the rule, particularly since the period within which they apply is very limited.

With regard to §25.453, Consumer Commenters indicated that the proposed section is overly prescriptive and ambiguous. Consumer Commenters and TACAA stated that the TDHCA weatherization providers are not utilities or competitive energy service providers, and that it is not within the commission's authority to monitor TDHCA.

The commission strongly supports comprehensive and cost-effective energy efficiency programs and all efforts that make them available to people in need. The commission, however, recognizes that funding of targeted energy efficiency programs is subject to final appropriations by the legislature. In addition, the commission has no oversight authority over TDHCA and the administration of its programs, as that lies with the legislature. The commission emphasizes that it is the responsibility of TDHCA to administer its programs in the most cost-effective manner, while ensuring that all eligible customers receive an equitable share of services. The commission finds that the rule provides proper guidelines to ensure quality services to low-income customers, while maintaining the integrity of the program with minimal oversight by the commission. To avoid any potential interpretation that the commission has authority over TDHCA regarding administration of the energy efficiency programs, the commission has deleted subsection (k) relating to unspent funds, and has made changes to proposed subsection (h)(2)(F) and (H), and deleted proposed subparagraphs (C) and (D). The commission, however, is responsible for the proper administration of the SBF and is answerable to the legislature in this regard. Therefore, the commission will make information on targeted energy efficiency programs available to the legislative

oversight committee. The commission has replaced §25.453(k) regarding unspent funds with new subsection (k) relating to legislative reports.

Consumer Commenters claimed that PURA is clear in its intent that existing programs, in particular the piggyback programs, operated by the TDHCA through the existing weatherization network, are to continue under the SBF, and that PURA gives no indication that the programs should operate any differently than they do today. Consumer Commenters claimed that these programs have a proven track record in bringing quality services, reductions in energy consumption, and lower energy bills to low-income Texans. Consumer Commenters stated that the rule should recognize the advantages and benefits of the existing piggyback programs. TDHCA stated that the language in PURA §39.903 implies that it is to continue the current program structure of operating utility funds in coordination with the federally funded weatherization assistance program under the SBF, with the new obligation to report energy and demand savings achieved under these programs so that utilities may count these savings towards the energy efficiency goal mandated in PURA §39.905. TACAA stated that it generally supported the comments provided by TDHCA because the programs are continually monitored to assure that the measures are cost-effective, properly installed, and that all health and safety codes are met. TACAA argued that imposing additional requirements would increase cost and threaten the economics of the program.

In reply comments, TDHCA stated that many of the TDHCA's previous comments were specific to energy efficiency programs based on the U.S. DOE WAFLIP, and may not be applicable to programs developed outside of the U.S. DOE WAFLIP network.

PURA §39.903(e) requires that TDHCA administer targeted energy efficiency programs in coordination with existing weatherization programs. The term "coordination" is defined as harmonious functioning of parts for the most effective results. This does not necessarily require that the SBF funded programs operate in conjunction with the WAFLIP. The commission does, however, recognize the value and quality of the existing weatherization programs. It is for this reason that the rule is structured such that these programs can continue under the SBF without revision, as reflected in §25.453(e), which states that "programs offered under the system benefit account shall maintain TDHCA's current delivery structure and quality standards unless alternative programs are necessary to meet performance requirements under this section" and proposed §25.453(h)(2)(F), relating to solicitation process. The commission, however, also recognizes the need for flexibility to allow for alternative programs if the current delivery mechanism fails to expend all available funding. The commission finds that the rule provides for the proper structure to allow for both the continuation of current programs and the development and implementation of alternative programs when the need arises.

Consumer Commenters and TACAA claimed that there are too many references to §25.181, relating to the Energy Efficiency Goal, in proposed §25.453.

The commission finds only three references in proposed §24.453 to §25.181. References under §24.453(d) and §24.453(h)(4) are designed to harmonize §24.453 with the provisions in §24.181 that allow electric utilities to count savings achieved under the SBF towards the legislative mandate of PURA §39.905. The third reference is found in proposed §25.453(h)(2)(H), and refers to the customer protection provisions in §25.181(n). The commission recognizes that the customer protection provisions under §25.181(n) do not easily apply to services rendered under the piggyback program. The commission, however, believes that low-income customers should enjoy the same level of customer protections as do residential and small commercial customers who receive energy efficiency services through §25.181. As the rule only provides the general requirements for targeted energy efficiency programs under the SBF, rather than program design, the commission finds that the rule should encourage TDHCA to develop customer protection provisions that fit specific program designs. The commission has revised the language accordingly.

TDHCA requested that whenever the reference of U.S. DOE WAPFLIP is used that this be corrected to the acronym U.S. DOE WAFLIP (Weatherization Assistance for Low Income Persons).

The commission has made the revision.

With regard to §24.453(a), TDHCA and CSI requested that the wording "...and cost for customers" be deleted from §24.453(a) for there are factors beyond energy consumption, such as fuel cost and cost per kWh, that impact the cost of energy, but over which TDHCA has no control. TACAA emphasized

that the goal of the weatherization program is to reduce energy consumption and energy costs. In reply comments, TDHCA clarified that one of the primary goals of its weatherization assistance program is to reduce energy consumption and energy costs for low-income customers. TDHCA recommended, therefore, that wording pertaining to costs to customers be retained, but that these costs be defined as the cost of energy at the time of measure installation.

The commission recognizes that the cost of energy may increase due to other factors, such as increases in price of energy on the wholesale market or a customer choosing a REP who offers higher rates. However, it is also possible to design energy efficiency programs that do not reduce energy costs even if other factors, such as increases in the price of energy, do not come into play. Energy efficiency providers will not be held responsible for increases in energy costs due to factors beyond their control, as long as the program is designed to reduce energy costs at the time of measure installation. This is implicit in substantive rule §25.181, and will be implicit in the requirements for programs funded through the SBF. Adopting the language proposed by TDHCA would in effect eliminate this implicit requirement, because it does not include this clarification. The commission therefore declines to make the proposed revision.

With regard to §25.453(d), TXU, at the request of staff during the public hearing, provided further comments as to the structure, under which savings should be reported under §25.453(d) so that they may count towards the requirements of §25.181. TXU recommended that TDHCA (1) include an estimate of the amount of the savings that will be produced in each utility's service area in its annual low-

income energy efficiency plan required under §25.453(h); and (2) include the amount of savings actually achieved in each utility's service area in its annual energy efficiency report required under §25.453(j). TXU offered draft language to this effect to be incorporated into the rule. AEP-ED agreed with TXU that the rule should establish a procedure for requiring TDHCA to report to the TDUs the amount of deemed savings achieved in the TDUs' respective service areas. Consumer Commenters, in their reply comments, stated that meeting the energy efficiency goal is solely the responsibility of the TDU, and it is the TDU's choice to have savings achieved in the SBF-funded targeted energy efficiency programs count towards the TDU's energy efficiency goal. Consumer Commenters disagreed with TXU and AEP-ED that the rule should define a mechanism for how and when TDHCA will provide the utilities with information regarding projected and achieved savings.

TDUs have the sole responsibility to achieve the demand saving goals set out in PURA §39.905. However, §25.181, relating to the Energy Efficiency Goal, does allow the TDUs to count demand savings achieved under targeted energy efficiency programs funded through the SBF. For planning and budgeting purposes, the TDUs must be able to project the savings achieved under the SBF in their Energy Efficiency Plans and be able to report actual demand savings in the Annual Energy Efficiency Report as required under §25.181. The language proposed by TXU does not require that TDHCA report to the TDUs. It requires that TDHCA report the information to the commission in a format that allows the utilities to use the information for the purposes outlined in §25.181. The commission, therefore, adopts the language as proposed by TXU. The commission has added new subparagraph §25.453(h)(2)(A)(v) and has revised the language in §25.453(j)(1).

With regard to §25.453(g), Entergy-D stated that it supported a seamless transition between the current utility-funded programs and the programs supported by the SBF, and that in order to do so adequate funding levels must be maintained to protect local providers against payment delays. Consumer Commenters agreed with Entergy-D, but recommended that the language be clarified to require that transition agreements be completed and signed by June 1, 2001.

The commission finds that the rule should provide for a schedule by which transition agreements are to be completed to ensure a seamless transition of the programs from the current direct utility funding mechanism to the SBF funding mechanism. The commission has revised the rule accordingly.

With regard to §25.453(h), TDHCA requested that the wording in §25.453(h) referencing the "low-income energy efficiency plan" be changed to read "operational plan for low-income energy efficiency program" because an energy efficiency plan relates to an electric utility, not to a state agency.

The commission finds that TDHCA's interpretation of the reference to energy efficiency plan is overly restrictive. The current wording in the rule allows TDHCA to operate multiple programs under one plan if needed. The commission therefore declines to make the revision.

With regard to §25.453(h)(2), TDHCA requested that the wording referring to the "legislative mandate and" be struck from §25.453(h)(2), for the mandate refers to an electric utility, not a state agency. CSI commented that the legislative mandate should be specified because it may be open to interpretation.

The legislative mandate referred to in the rule does not refer to a utility but to the mandate of PURA §39.903(e). However, in order to avoid any potential confusion, the commission will adopt the recommendation by CSI and specify the proper citation. The rule has been revised accordingly.

With regard to §25.453(h)(2)(A), CSI suggested a change in wording that, according to CSI, would eliminate the interpretation that these requirements are placed on individual contracts, rather than for all programs.

Section §25.453(h)(2)(A) clearly refers only to programs. The commission, therefore, finds a revision unnecessary.

With regard to §25.453(h)(2)(E), TDHCA requested that the word "costs" be added after the word "outreach" because outreach costs are a separate and in addition to the administrative costs.

The commission finds that outreach activities are an administrative function, and that it is not appropriate to allocate additional funds for this purpose outside the administrative cap. The commission therefore declines to make the revision. However, the commission has deleted subparagraphs (C) and (D) as

they are duplicative of subparagraph (E) and may create the impression that outreach and technical assistance are functions separate from administrative functions.

With regard to proposed §25.453(h)(2)(F), TDHCA requested that the first sentence be struck and replaced with "A statement of the TDHCA process used to identify new energy efficiency service providers" because TDHCA has a solicitation process in place that complies with state law and U.S. DOE requirements.

The commission finds that the current language will allow TDHCA to use its current solicitation process as one method to select providers. The commission finds that it is not appropriate to restrict TDHCA's solicitation process for programs funded through the SBF to only one approved by U.S. DOE. The commission, therefore, declines to make the revision.

With regard to proposed §25.453(h)(2)(G), TDHCA requested that any reference to a public participation process be struck because TDHCA has policies in place that comply with state and federal law.

The current language merely requires that TDHCA describe its public participation process. Prescribing a specific public participation process in a rule applicable to programs funded through the SBF would be too restrictive. The commission, therefore, declines to make the proposed change.

With regard to proposed §25.453(h)(2)(H), TDHCA requested that all wording regarding grievance procedures be struck because TDHCA has a U.S. DOE-approved grievance procedure in place. CSI suggested changing the wording from complaint to grievance in the second sentence, that clauses (i) through (iii) be deleted, and that TDHCA's existing procedures should be referenced. In reply comments, TDHCA requested that the wording be changed to reflect that all contracts shall include the U.S. DOE-approved or similar grievance procedure.

As discussed, the rule has been revised to reflect language that encourages TDHCA to have a grievance procedure in place for customers and energy efficiency providers. Prescribing a specific grievance procedure in a rule applicable to programs funded through the SBF would be too restrictive. The commission therefore declines to make the proposed changes.

With regard to proposed §25.453(h)(3), CSI commented that the rule should be clarified to reflect that not all programs which are coordinated with weatherization program are subject to TDHCA or commission review, and that units under WAFLIP receiving SBF funds may also be funded through the Low Income Home Energy Assistance Program.

The current language merely encourages a comprehensive approach through coordination with other programs. This is consistent with PURA §39.903(e), which requires that targeted energy efficiency programs be implemented in coordination with existing weatherization programs. As discussed, the commission recognizes that the programs are not subject to commission review. The commission also

recognizes that not all units under the WAFLIP are funded by U.S. DOE, and will, therefore, delete the reference to U.S. DOE.

With regard to §25.453(h)(3)(A), AEP-ED recommended that, since no final determination has been made regarding the proposed price to beat, the language should be modified to reflect that the value of the saved energy shall be based on the applicable price to beat.

The commission recognizes that no final determination has been made regarding proposed §25.41 (relating to the Price to Beat). In addition, as currently proposed, each utility's area may have multiple price to beat rates for residential customers. In order to maintain consistency, the commission finds that the cost-effectiveness standard for the purposes of the targeted energy efficiency programs funded through the SBF should be the price to beat based on the standard residential rate, seasonally adjusted, and revises the rule accordingly.

TDHCA requested that the criteria in §25.453(h)(3)(A) be changed from not to exceed ten years, to not to exceed 20 years, because the TDHCA U.S. DOE approved energy audit includes measures with a life expectancy of 20 years. In reply comments, TDHCA commented that limiting the life of the measure to ten years for the purpose of calculating the cost-effectiveness and compensation levels for programs other than the current program structure is appropriate. TDHCA also clarified that this language should only apply to programs implemented outside the existing weatherization network, but funded through the SBF. Consumer Commenters, in reply comments, agreed with TDHCA that

minimum program requirements should only apply to programs that may be offered outside the existing weatherization program network.

It is the commission's understanding that providers in the WAFLIP are compensated for the full price of the measure if the measure is deemed cost-effective by the EASY for Texas computerized audit tool. It is, therefore, acceptable that the audit recognize the full life of a measure, even if it exceeds ten years. However, programs that do not make use of the EASY for Texas computerized audit tool should limit the cost-effectiveness criteria to up to ten years or the life of the measure, whichever is less. In addition, the reported savings required under §25.453(d) should be consistent with §25.181, relating to the Energy Efficiency Goal, which limits the calculated savings to ten years of the measure life. The commission has revised the language accordingly.

TDHCA requested that the wording in §25.453(h)(3)(E) be changed to "TDHCA shall advise the PUC of any known potential health hazards associated with the energy efficiency measures to be installed" because this is the responsibility of TDHCA, not its subgrantees. CSI stated this subparagraph should be deleted because individual providers cannot list all the potential adverse environmental effects, and that listing even the known adverse effects may be detrimental to the program. In reply comments, TDHCA indicated that it retracted its earlier comments with the understanding that "programs" did not refer to individual providers.

The commission determines that it is necessary to identify environmental or health impacts associated with the measures installed. The intent is to protect customers from potential health and safety hazards associated with the installation of certain measures. The commission agrees that requiring the disclosure of all "potential" adverse or health effects may be too broad. The commission, therefore, finds that the disclosure should be limited to "known potential" adverse environmental or health effects, and has made the corresponding change.

TDHCA requested that the word "programs" be replaced with "TDHCA" in §25.453(h)(3)(F) because this is the responsibility of TDHCA, not its subgrantees.

The current language allows TDHCA, as administrator of the programs, to accept the responsibility to develop the procedures for measuring and reporting the energy and peak demand savings. However, it also provides TDHCA the flexibility to require programs to develop the procedures. This flexibility is particularly necessary and cost-effective in case a need arises to develop programs outside the existing WAFLIP program structure. The commission, therefore, finds it unnecessary to revise the language.

TDHCA requested that the word "statewide" be replaced with "all appropriate areas of the state" in §25.453(h)(3)(G) because new technologies, such as solar water heaters, that require a certain amount of sunlight may not be effective in all areas of the state.

The commission agrees that certain programs, projects, and technologies may not be effective in all areas of the state. The language proposed by TDHCA is acceptable because it ensures that these programs, projects, and technologies will be made available statewide as appropriate. The rule has been revised accordingly.

TDHCA requested that §25.453(h)(3)(H) be deleted because TDHCA programs or measures are not eligible for incentive payments or compensation. CSI also suggested deleting the reference to incentive payments, unless it would allow units to be addressed with SBF funds only. CSI also commented that the subparagraph should be clarified to reflect that this pertained to SBF funds only, and offered language to allow for repairs necessary to protect the weatherization measures.

Energy efficiency service providers who contract under the TDHCA program would be eligible for compensation. Units addressed under the program may be compensated entirely with SBF funds, as long as the program is coordinated with existing weatherization programs. As incentive payments are only a method of compensation, the commission agrees to delete the wording because it would not preclude TDHCA from using an incentive payment method if it wishes to do so. The commission also finds that limiting compensation to individual measures may be too restrictive and would preclude TDHCA from compensating providers for repairs necessary to protect energy efficiency measures. It therefore replaces the word "measures" with "projects."

In addition, CSI commented that reference to energy costs in §25.453(h)(3)(H)(i) should be deleted, consistent with the requested change to subsection (a). CSI also requested that §25.453(h)(3)(H)(iii) be deleted because providers cannot always predict the adverse environmental effects of the weatherization work and should not be subject to questionable customer complaints.

The commission declines to make the revision to §25.453(h)(3)(H)(i) based on the discussion under §25.453(a). The language in §25.453(h)(3)(H)(iii) refers to programs or projects, not individual contractors. The commission further determines that it is necessary to identify known environmental or health impacts associated with the measures installed. The intent is to protect customers from potential health and safety hazards associated with the installation of certain measures. Accordingly, the commission declines to modify the language.

With regard to §25.453(h)(4), AEP-ED commented that if the commission intends to allow public input in the commission review process of the TDHCA low-income energy efficiency plan that the language should be revised accordingly.

Proposed §25.453(h)(2)(G), now (h)(2)(E) of the rule, requires that TDHCA provide a discussion of its public participation process in the development of the Low-Income Energy Efficiency Plan, including a summary of comments received. It would, therefore, be duplicative to have the commission engage in a public review process once the plan is filed.

TDHCA requested that the word "final" be struck from §25.453(h)(5)(C) because TDHCA always requires that all work be completed before any payment is made.

The current language allows TDHCA the flexibility to withhold any payment until full work completion. However, prohibiting any payment unless the work is fully completed may unduly preclude TDHCA from developing certain programs if the need arises. The wording provides TDHCA the flexibility to devise different payment arrangements to suit specific programs. The commission, therefore, declines to modify the language.

TDHCA requested that the words "statistically significant" be deleted from §25.453(h)(5)(D) because in compliance with U.S. DOE regulations, TDHCA routinely inspects 10% of all completed units. CSI concurred with TDHCA's comments and requested that the reference to contract termination be deleted.

A statistically significant sample is usually less than 10% of installations. The rule, however, should be flexible enough to allow TDHCA to inspect more than a statistically significant sample. The language has been revised to reflect that at least a statistically significant sample of program installations is subject to on-site inspections.

CSI requested that the wording in §25.453(i)(2) be clarified to reflect that the energy efficiency report data pertains to programs rather than individual providers. CSI requested the same clarification for §25.453(j)(3).

Section 25.453(i)(2) and (j)(3) do pertain to individual providers. This requirement is put in place to ensure that SBF funds are allocated and expended equitably across the state, since the fee is generated from electric retail customers on a statewide basis. The commission declines to make the revision.

TDHCA requested that in proposed §25.453(k) all wording after "No later than..." be deleted and replaced with "TDHCA shall follow its established procedures for monitoring, termination, and the identification of new service providers." CSI's comments were consistent with TDHCA's. In addition, CSI claimed that the requirements under §25.453(k)(2), (3), and (4) that would require TDHCA to reallocate funds and/or select alternate providers when program goals are not met is not feasible. According to CSI, this would also require the termination of U.S. DOE WAFLIP contracts, because the law requires that the SBF targeted energy efficiency programs operate in conjunction with the U.S. DOE WAFLIP.

Consumer Commenters, in reply comments, agreed with the aspects of the rule that would outline performance criteria and corrective action where the goals of the program are not met. However, Consumer Commenters recommended that the language be revised to allow TDHCA to work with

contractors to expand program operations on a fixed timetable or to respond to events and circumstances that are outside of the provider and TDHCA's control.

As discussed, the commission recognizes that funding of targeted energy efficiency programs is subject to appropriations by the legislature and that the commission has no oversight authority over TDHCA and the administration of its programs. Oversight responsibilities over TDHCA and the commission lie with the legislature. The commission emphasizes that it is the responsibility of TDHCA to administer its programs in the most cost-effective manner, while ensuring that all eligible customers receive an equitable share of services, based also on the fact that the system benefit fee is collected statewide. Accordingly, the original language in §25.451(k) has been deleted, and replaced by a reporting requirement for the commission to a legislative oversight committee.

TDHCA requested the addition of new §25.453(l) to relate to the funding mechanism for the targeted energy efficiency programs under the SBF. The TDHCA-proposed wording would require monthly funding based on a 30-day need, and funds be transferred via an interagency transaction within five days of receipt of an invoice.

Funding transfers to TDHCA for the purpose of the targeted energy efficiency programs shall occur by interagency agreement consistent with the requirements set out in the new §25.451(k).

EPE commented that the company is exempted from the requirements of these rules and suggested that this be noted also in §25.454 and §25.457.

The commission agrees with EPE that an exemption needs to be noted in §25.454(b), relating to applicability, and makes the corresponding change. Section 25.457, however, very clearly applies only to the municipally owned utilities and the electric cooperatives; consequently, the commission declines to make the additional change.

With regard to §25.454, Consumer Commenters expressed general support for the rules with certain policy-related exceptions. For example, the rules do not define rates that are eligible for the low-income discount as PURA implies. Consumer Commenters stated that their previous comments supported the low-income customers exercising choice to be able to take advantage of rates that will be lower than POLR or the price to beat; consequently, the rule should define the type of competitive rate package that would qualify for the discount and provide for affordable rates and a high level of service. Consumer Commenters also stated that the rules should reflect that the service package must be similar to that of the affiliated REP under the price to beat, with no interruptions or time-of-use prices; the cost should be lower than the price to beat or POLR; and the discount should not be applied to electricity sold in combination with other services.

The commission disagrees with the Consumer Commenters that "the rules do not define rates that are eligible for the low-income discount as PURA implies." PURA §39.903(h) states: "The commission

shall adopt rules for a retail electric provider to determine a reduced rate for eligible customers to be discounted off the standard retail service package ... or the price to beat..., whichever is lower." The proposed rules set out a way for the REPs to determine a reduced rate by calculating the discount in a specified manner; in addition, the discount is linked to the price to beat (since, it is assumed, this will be the lower rate) as directed by PURA. In developing the discount calculation, the commission was guided by some of the same principles mentioned by the Consumer Commenters; i.e., preserving low-income customers' ability to choose from a variety of rate offerings, access to rates lower than the price to beat, same level of service for all customers, and discount to be applied only to electric service. The commission finds that the proposed language assures that low-income customers will have access to the benefits of competition, while at the same time maintaining high service standard and affordable rates.

When setting the amount of discount pursuant to §25.454, Consumer Commenters proposed that the commission invite testimony from other state agencies, serving low-income customers, and the public regarding the impact of high electric bills on poor people.

When the legislature established the system benefit fund, it no doubt did so based on a basic understanding that electric bills pose a higher burden on low-income customers and that competition may remove historic subsidies. The rate reduction program under the fund was created with the sole purpose of alleviating this burden. The commission finds that additional testimony would not illuminate this issue further and is, therefore, unnecessary.

Consumer Commenters also noted that under the current proposal for establishing the price to beat, the existing rate plans may be continued and, therefore, there will not be only one price to beat per service area. This would make calculating the discount as it is proposed in the rules difficult and the commission must return to setting a straight percentage discount. Consumer Commenters expressed concern over the possibility - and regulatory conflict - that customers may receive a discount that would be less than 10%, and supported capping the eligible rates at the provider of last resort (POLR) rates or price to beat, and also at the fact that the customer's ability to return to the affiliated REP and the price to beat is still undecided in two other projects. Consumer Commenters urged that this ability be clarified, otherwise some customers may be unable to receive the minimum 10% discount. Consumer Commenters proposed that the amount of discount be identified on the bill. Consumer Commenters supported the customer enrollment part of the rules with only minor technical changes.

The commission agrees with the Consumer Commenters that if the current proposal to establish the price to beat is adopted, the originally proposed discount calculation would have to be changed. The commission also finds that the considerations that underlie the original proposal are still valid and must be taken into account when amending the discount calculation. Consequently, the commission makes the change in the discount calculation that will preserve the idea of a single price to beat by calculating "a baseline" price to beat for each service territory, by amending §25.454(d)(3)(B), and then applying a percentage discount to that price to determine the specific amount of discount per kWh. In addition, the commission notes that the discount, as defined in PURA §39.903(h) should be at least 10% off the lower of the POLR rate or price to beat. The discount calculation is set up to maintain this provision.

Also, under the most current proposal for the customer protection rules, a customer would be able to return to the affiliated REP under the original terms of service.

In its reply, AEP Energy Services disagreed with the Consumer Commenters that the rates other than POLR or price to beat are eligible for the discount. Pursuant to PURA §39.903(h), the discount should be off POLR or price to beat rate, whichever is lower. AEP Energy Services also disagreed with the Consumer Commenters suggestion that the amount of discount be identified on each bill; while some designation of the discount is acceptable, Consumer Commenters calculation is too complicated.

The commission agrees with the AEP Energy that the discount must be linked to either the POLR rate or price to beat, whichever is lower. The commission also agrees with the Consumer Commenters that the discount needs to be identified on the customers' bills, and adds the corresponding language to §25.454(d).

Consumer Commenters in their replies expressed support for the low-income discount administrator (LIDA), including collection of telephone numbers that can later improve access to telephone lifeline programs. They also reiterated all of their initial comments regarding the definition of the rate that can be reduced; a concern that some customers may receive a discount lower than 10%; and a concern that the current proposals for the price to beat and the discount calculation may be in conflict and lead to contentious proceedings when determining the discount. Consumer Commenters stated that many states provide a straight percentage-off discount and that this would be appropriate in Texas, applied

equally across the state, because it is meaningful and simple. The rate discount should not be complicated, but rather a fixed percentage off the customer's bill, shown on the bill, and not be offered off predatory rates.

The commission notes that the discount calculation was crafted as a best acceptable compromise, taking into account concerns of many parties, while at the same time following the directive of PURA to base the discount off the lower of the POLR rate or price to beat. While Consumer Commenters may be correct to say that many states offer a simple discount, the commission must follow the Texas statute when determining the discount. The current proposal also closely follows one of the Consumer Commenters' expressed concerns to allow low-income customers to benefit from competition by having access to a variety of rate offerings. The commission, therefore, declines Consumer Commenters' proposed change.

With regard to §25.454(b), AEP Energy Services and TNMP-Retail both noted that some REPs may choose not to serve residential customers and recommended that the phrase "except for REPs certified under PURA §39.352(d)" should be inserted after "REPs." AEP-ED stated that the rate reduction program does not apply to electric utilities as defined in PURA §31.002(6) and the subsection should be revised accordingly.

The commission agrees with the addition proposed by AEP Energy Services and has made the corresponding change. Additionally, the commission agrees with AEP-ED's comment regarding applicability to electric utilities as defined in §31.002(6) and has deleted the reference.

With regard to §25.454(c)(9), previously §25.454(c)(8), AEP Energy Services stated that as the rulemaking for the Price to Beat is still pending, it is unclear at this time whether each utility will have only one or multiple price to beat rates for residential customers.

The commission agrees with AEP Energy Services' position and notes that the rule offers sufficient flexibility to accommodate different rate structures.

With regard to §25.454(d)(2), EGSI-D supported developing guidelines by the commission for determining the amount of rate discount. The guidelines should take into account the relative energy burdens of low-income customers.

The commission finds that the rules as proposed establish sufficient guidelines for determining the rate discount. As stated earlier, since the main reason for establishing the rate discount program is to alleviate the potential burden of higher electric rates on low-income customers, the commission finds that no additional guidelines are necessary.

With regard to proposed §25.454(d)(3), AEP Energy Services recommended that the commission publish the prevailing price to beat and the POLR rates for each area on its WEB site so that the REPs can calculate the discount. Reliant proposed to amend subsection (d)(3)(B) to include establishment of a baseline rate (lower of the price to beat or the POLR for 1000 kWh), which would then be multiplied by the discount percentage and divided by 1000. In addition, Reliant suggested rewriting subsection (d)(3)(D) to state that the REPs were not required to provide low-income discount if they could not be reimbursed from the SBF.

In its reply, AEP Energy Services agreed with the comments made by Reliant that the discount amount be revised to associate assumed kWh with the baseline rate, otherwise it will be impossible for a REP to know the exact amount of the discount to be applied to either the POLR or price to beat rate.

The commission finds that publishing the prevailing price to beat or the POLR rates for each area on the commission Web site will not be necessary because the discount amount will be calculated at the time the fee is set. The REPs will not have to calculate the discount amount themselves. The commission may decide in the future to publish the amount of discount on its Web site for each service area. The commission agrees with the Reliant's suggestion to calculate a baseline rate for 1000 kWh and the revised discount calculation in the amended §25.454(d)(3)(B) follows Reliant's suggestion. The commission does not agree with the Reliant's suggestion to rewrite proposed subsection (d)(3)(D) regarding reimbursement, but finds that adequate safeguards exist to assure that the fund will have

sufficient revenues fully to reimburse the REPs, and eventually, the MOUs and Coops, for the discount provided.

With regard to proposed §25.454(d)(4), Reliant proposed to amend the subsection to state: "Each eligible low-income customer shall be entitled to receive from any REP in the customer's area a discount equal to the discount amount times the number of kWh of electricity that the customer has consumed."

The commission agrees with the Reliant's suggestion and has made the corresponding change.

With regard to §25.454(e)(2), TXU expressed concern that the self-certification process for enrollment in the low-income discount program lacks a verification requirement. TXU proposed adding language that would make it one of LIDA's responsibilities to verify income of self-certifying customers.

In its reply, TXU stated that tax returns, pay stubs, or letters from employers could be used to verify income eligibility of self-certifying customers.

The commission agrees in principle with TXU's comment and has made the corresponding change in the new §25.454(e)(2)(G), which will give the LIDA an option to require income verification using tax returns, pay stubs, or letters from employers.

With regard to §25.454(f)(2)(C), Consumer Commenters stated that ERCOT will not be able to provide the move-in/move-out information; therefore, Texas Department of Human Services (TDHS) should be responsible for reporting client address changes and those who self-certify should send address changes to LIDA.

The commission notes that ERCOT has indicated it may have at least some address change information, therefore, the commission will not delete this requirement. However, to the extent that TDHS will have this information, too, the commission adds the same requirement for TDHS to provide address changes to LIDA. The commission also notes that TDHS' ability to provide this information depends on the clients' supplying such changes to the department.

With regard to §25.454(f)(3)(H) and §25.454(f)(4)(C), AEP Energy Services and TNMP-Retail pointed out that these subsections contain identical language on customer notification and that the REPs' only responsibility in this area is notification when the rate changes, using commission-approved standard language. AEP Energy Services, TXU, and TNMP-Retail pointed out that the low-income discount administrator should have the responsibility to notify the customers about the discount's expiration. AEP Energy Services recommended either creating a new subsection, Terms of Customer Enrollment, or amending language in LIDA and REP sections, to describe outreach responsibilities. TXU recommended adding the above notification requirements for LIDA to §25.454(f)(3). Consumer Commenters recommended that this subsection be changed to require LIDA to maintain address changes reported by self-certified customers.

The commission agrees that the language regarding customer notification for LIDA and the REPs is similar; however, the reasons and outcome should be different. The proposed language is broad enough to allow both the LIDA and REPs to develop procedures best suited to their goals. The commission, therefore, declines to add a new subsection on outreach responsibilities; in addition, such responsibilities for LIDA will be worked out in the actual contract. The commission agrees with the Consumer Commenters recommendation to have LIDA keep the address changes for the self-certified customers and modifies subparagraph (G) accordingly.

With regard to §25.454(f)(4)(D), AEP Energy Services objected to the requirement that the REPs notify customers twice a year about the availability of the discount program. TXU objected to the education requirement by REPs and asked that it be deleted.

In their reply, Consumer Commenters stated that outreach is important to make the program work and that the companies' complaints about outreach are baseless; on the contrary, outreach is mandatory and the requirement in the rules should be expanded. Consumer Commenters also stated that LIDA cannot be responsible for all outreach activities because of added costs; however, requiring REPs to provide bill inserts should not be too costly. Consumer Commenters supported the reporting requirements, and disagreed with the REPs that those would be burdensome. The information is crucial as a cross-reference and a measure of the program's success.

The commission notes AEP Energy Services' and TXU's objection to the twice-annual notification requirement; however, the commission disagrees that this is a burdensome requirement. The commission agrees with the Consumer Commenters that bill notifications should not be too costly and that this minimal requirement is needed to make eligible customers aware of the program.

With regard to §25.457(a), San Antonio proposed to add language to the subsection that would further clarify the entire section applies to those municipally owned utilities and electric cooperatives that have adopted customer choice for service provided by them in their service territories.

The commission agrees with San Antonio and makes the proposed change as indicated in §25.457(b).

With regard to §25.457(b), TEC suggested changing plural MOUs and Coops to singular and adding "in its certificated service area" at the end of the sentence.

The commission agrees with TEC and makes the corresponding change.

With regard to §25.457(g), Consumer Commenters noted that the language in this subsection describing qualifying programs is insufficient and should be changed to include only those programs that accomplish the same or better results than the programs under the SBF. Less effective or higher cost programs should not be credited.

The commission does not disagree with the Consumer Commenters regarding the type of programs to be included. The commission finds that the rule as proposed contains sufficient guidelines on this matter, and declines to add further restrictions, particularly, since there is no basis for such restrictions in the statute.

With regard to §25.457(j), San Antonio recommended that the language on reimbursement in this subsection should be modified to state that the MOUs and Coops "shall be reimbursed," based on the language in PURA §39.903(i). San Antonio also suggested that "proportional," as the word relates to the distributions from the fund, including the establishment of the proportional amount in §25.457(j)(1)-(3), be deleted because the discount program is to be fully funded by the SBF fee allocated to the MOUs and Coops by the commission.

The commission finds that the language in this and other subsections regarding reimbursement for the rate discount makes it clear that once requested, reimbursement to the MOUs and Coops, and REPs will be provided. Therefore, the commission declines to make the requested change. The commission disagrees with San Antonio's interpretation of PURA §39.903(c) and (h), and declines to delete the specified subsection.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (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(h), which requires that the commission adopt rules on determining a reduced rate for the low income discount program, and PURA §39.903(j), which requires that the commission adopt rules on enrollment options for eligible customers to participate in the low income discount program, and which requires the commission to provide for an automatic enrollment option.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.901, 39.903, and 39.905.

§25.451. Administration of the System Benefit Account.

- (a) **Purpose.** The purpose of this section is to implement the system benefit account, including its administration, establishment of a revenue requirement, fee collection procedures, and review and approval of accounts pursuant to the Public Utility Regulatory Act (PURA) §39.901 and §39.903.
- (b) **Application.** Except as provided in PURA §39.102(c), this subchapter applies to electric utilities, retail electric providers, retail electric providers pursuant to PURA §39.352(g), and transmission and distribution utilities. This section applies to municipally owned electric utilities and electric cooperatives no sooner than six months preceding the date on which a municipally owned electric utility or an electric cooperative 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) **Electric cooperative (Coop)** – As defined in §25.5 of this title (relating to Definitions).
 - (2) **Electric utility** – As defined in PURA §31.002(6).
 - (3) **Fiscal year** – The State of Texas fiscal year, starting on September 1 of a calendar year, and ending on August 31 of the next year.

- (4) **Low-income customer** – For the purposes of rate reduction program, as defined in §25.454(c) of this title (relating to the Rate Reduction Program). For the purposes of targeted weatherization programs, as defined in §25.453(f) of this title (relating to Targeted Energy Efficiency Programs).
 - (5) **Retail customer** – As defined in PURA §31.002(16).
 - (6) **Retail electric provider (REP)** – As defined by PURA §31.002(17).
 - (7) **System benefit account** – An account with the Texas Comptroller of Public Accounts (Comptroller) to be administered by the commission.
 - (8) **System benefit fee** – A nonbypassable fee set by the commission to finance the system benefit account. 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.
 - (9) **Transmission and distribution utility (TDU)** – As defined in PURA §31.002(19).
- (d) **System benefit fee.**
- (1) 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.
 - (2) The amount of the fee will 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.

- (3) The commission may, at any time during the fiscal year, review the revenue requirement, projected retail sales of electricity, or the system benefit account payments and balance, and revise the system benefit fee for the remainder of the year to accomplish the purposes of PURA §39.901 and §39.903. The commission may issue an order revising the fee amount. 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, or at least once annually, the TDUs will file with the commission an updated tariff sheet, reflecting the new fee.
 - (4) The fee may not exceed \$0.50 per MWh, except beginning in January 1, 2002, and until December 31, 2006, it may be set in an amount not to exceed \$0.65 per MWh if necessary to fund at least a 10% reduction in rates for qualifying low-income customers.
- (e) **Revenue requirement.** The revenue requirement used by the commission to set the system benefit fee for each fiscal year shall be established as provided by this subsection.
- (1) The total revenue requirement used to set the amount of the system benefit fee will be the total of the revenue requirements determined under paragraphs (2)-(5) of this subsection, including the shortfall, if any, in funding for the Texas Education Agency (TEA) from the previous year.
 - (2) TEA shall provide by June 1 of each year its estimate of the amount required to fund school funding losses as determined under PURA §39.901(b) and (c) for the next fiscal year. If TEA does not provide its estimate by this date, the commission may use the

amount determined by TEA under PURA §39.901(b) and (c) for the current fiscal year in setting the amount of the fee for the following fiscal year.

- (3) The revenue requirement needed to effect the rate reduction for low-income customers and the targeted energy efficiency programs shall be determined as follows:
 - (A) The revenue requirement for reduced rates as provided by PURA §39.903(h)-(l) shall be based on the average annual consumption of electric energy by low-income customers and the number of such customers enrolled in a rate reduction program as of June 1 of each year, or the number of eligible participants as listed in the Texas Department of Human Services' client database, plus a projection for new enrollees, to account for growth in enrollment, based on the latest available census data and as determined by the commission. The average annual expenditure by a low-income customer for electric energy shall be derived from the latest available data. The commission may use information provided by the REPs for the purposes of estimating rate discount revenue requirement.
 - (B) The revenue requirement for targeted energy efficiency programs, including a low-income energy efficiency plan, to be administered by the Texas Department of Housing and Community Affairs (TDHCA) shall be provided to the commission by June 1 of each year. If TDHCA does not provide an estimate by that date, the commission may use the estimate from the previous fiscal year,

the actual amount spent on the programs in the prior fiscal year, or any other amount the commission determines to be reasonable.

- (4) The commission shall include in the calculation of revenue requirement any additional amounts authorized by the legislature, including appropriations to the Public Utility Commission for customer education programs and any other authorized purpose, and for the Office of Public Utility Counsel.
 - (5) The commission shall include in the calculation of the revenue requirement the operating costs for the low-income discount administrator.
- (f) **Electric sales estimate.** The TDUs, and when applicable, the municipally owned utilities (MOUs) and Coops, upon request by the commission, shall supply an aggregate number of the amount of retail electric sales in their service areas for the preceding calendar year, by April 1 of each year. Upon receipt of such information, the commission will file the aggregated retail electric sales in the relevant areas, after adjusting for projected growth. The commission shall determine the most reasonable estimate when it sets the system benefit fee.
- (g) **Remittance of fees after January 1, 2002.**
- (1) Beginning in January 2002, each TDU, MOU, or Coop, collecting the system benefit fee from the REP, MOUs or Coops, in its service area, shall remit the fees to the Comptroller on the 20th day of each month.

- (2) Remittance of funds to the Comptroller shall comply with the Comptroller's rules governing any such deposits. Any amounts over \$250,000 shall be transferred electronically.
 - (3) Deposits due to the system benefit account pursuant to PURA §39.352(g) shall be transferred 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)).
 - (4) The collecting utility shall account for all system benefit fees received from the REPs, and MOUs or Coops, in its service area separately from any other account in its records.
- (h) **Billing requirements.**
- (1) 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).
 - (2) 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.

- (3) 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. The TDU will calculate and bill any such fee, and will forward the payment, once received, to the Comptroller on the next fee payment due date. The TDUs will separately identify these sales when submitting the aggregate number of electric retail sales.
- (i) **Reporting and auditing requirements.**
- (1) Each retail electric provider offering rate reduction discounts to eligible customers shall keep records of such discounts to enable an audit by the commission or its agent, for at least three years from the date the discount is first given to the customer. Reports filed under subsection (j) of this section will also be used for auditing purposes.
 - (2) Each TDU, MOU, or Coop collecting and forwarding the system benefit fee to the Comptroller shall file with the commission at the time the money is sent a report, on a commission-prescribed form, stating for each service territory the amount of the system benefit fee billed, the amount forwarded to the Comptroller, and the number of MWh of electric energy sold. The report shall contain monthly amounts and year-to-date totals.
- (j) **Reimbursement for the rate reduction discount.** Each REP, or MOU or Coop, when applicable, shall submit to the commission a monthly activity report on a form prescribed by the commission listing information in paragraphs (1)-(5) of this subsection. The commission shall,

within five business days of receipt of the monthly report, prepare and deliver to the comptroller an authorization for reimbursement to the REP, MOU, or Coop in a form prescribed by the commission. The prescribed form shall include, but not be limited to, instructions for direct deposit of the reimbursement into the bank account of the REP, MOU, or Coop. The Comptroller shall 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 be due on the 20th day following the reporting month and contain the following:

- (1) The number of low-income customers enrolled in the rate reduction program;
 - (2) The amount of reimbursement requested and received from the fund for the month;
 - (3) The aggregate electric energy consumption in kWh for all low-income customers enrolled in the program for the previous month;
 - (4) The total amount of rate discounts provided to the low-income customers in the previous month; 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 interagency agreements.
- (l) **Establishment of fee and collection of funds prior to January 1, 2002.** Prior to the beginning of customer choice on January 1, 2002, the commission shall determine the level of

the system benefit fee based upon the expenses authorized for payment out of the system benefit account or as needed for purposes of PURA.

- (1) An estimate of projected retail sales of electricity for the period shall be filed by the commission staff prior to the issuance of a commission order.
- (2) The commission shall issue an order setting the amount of the system benefit fee, assessing that amount against each electric utility in proportion to its retail electric sales out of the total retail sales in the state, and directing the utilities on the method and timing of payment.

§25.453. Targeted Energy Efficiency Programs.

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

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

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

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

- (f) **Eligibility criteria.** A beneficiary of the targeted energy efficiency programs must be a low-income electric customer of a retail electric provider, or a municipally owned utility or an electric cooperative that offers customer choice. For the purpose of this section, a "low-income electric customer" is an electric customer:
 - (1) whose household income is not more than 125% of the federal poverty guidelines; or

- (2) who receive food stamps from the Texas Department of Human Services or medical assistance from a state agency administering a part of the medical assistance program.
- (g) **Program transition.** Existing programs to fund low-income weatherization services under contracts between individual utilities and TDHCA shall continue until utilities enter the competitive market. An electric utility currently under contract with TDHCA and entering the competitive market shall enter into a successor in interest agreement with TDHCA by no later than June 1, 2001, to transfer program materials, funding, and responsibilities to TDHCA.
- (h) **Low-income energy efficiency plan.**

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

 - (A) By June 1, 2001, file a low-income energy efficiency plan for the years January 1, 2002 and beyond in accordance with paragraph (2) of this subsection.
 - (B) By June 1, 2003, and annually thereafter, file its updated low-income energy efficiency plan in accordance with paragraph (2) of this subsection.
 - (C) No later than April 1, 2002, and quarterly thereafter, file quarterly reports in accordance with subsection (i) of this section.
 - (D) No later than April 1, 2003, and annually thereafter, file final reports in accordance with subsection (j) of this section.
 - (2) **Low-income energy efficiency plan.** The TDHCA low-income energy efficiency plan shall describe how TDHCA intends to achieve the legislative mandate under

PURA §39.903(e) and the requirements of this section. Beginning in January 1, 2002, the plan shall be on a calendar year cycle and may cover a multiple-year period. The plan shall propose an annual budget in accordance with subparagraph (E) of this paragraph. TDHCA's energy efficiency plan shall include:

- (A) A summary description of every program being implemented through the system benefit account, including programs fully funded, programs funded in part, programs funded statewide and programs funded regionally, including pilot projects. Each program summary shall include a description of:
 - (i) The manner in which the program reduces energy consumption.
 - (ii) The manner in which energy and demand savings are measured.
 - (iii) The anticipated number of households assisted.
 - (iv) The projected eligible population.
 - (v) The anticipated amount of kW and kWh savings expected to be created in each electric utility service area.
- (B) A description of the monitoring responsibilities and reporting requirements of the contractor, TDHCA, and any other parties conducting reviews, audits, inspections, and oversight.
- (C) The proposed annual budget required to implement the TDHCA energy efficiency plan. The proposed budget should detail funding allocations to energy efficiency services providers, TDHCA's administrative costs, including monitoring, training, and technical assistance and outreach, and the rationale and

methodology used to estimate the proposed expenditures. If the proposed budget is more than 10% higher than the previous year's budget or expenditure level, the plan should include a detailed explanation for the need for additional funding and, if necessary, an implementation plan for an expanded program. In the budget:

- (i) The total cost of administration may not exceed 10%.
 - (ii) Funding allocations to energy efficiency service providers must reflect the proportional size of the eligible customer base for all applicable areas in the state.
- (D) A discussion of the solicitation process TDHCA plans to use to select energy efficiency service providers, including the manner in which TDHCA will post notice of requests for proposals, minimum contractor qualifications, and any other facts that may be considered when evaluating a program. Except for pilot projects and existing contractors under the Texas WAFLIP, competitive solicitation shall be the method for contract selection.
- (E) A discussion of the public participation process TDHCA used in the development of programs to be funded through the system benefit account, including a summary of comments submitted by parties during the process.
- (F) A description of the customer protection provisions in the contract appropriate to the program design and implementation structure. The description should include a statement how the process allows:

- (i) The energy efficiency service provider to file a complaint against a TDHCA.
 - (ii) A customer to file a complaint against an energy efficiency service provider. TDHCA may use customer complaints as a criterion for disqualifying energy efficiency service providers from participating in the program.
 - (iii) Complaints unresolved within 60 calendar days shall be reported to the commission.
- (3) **Minimum program requirements.** Programs shall encourage a comprehensive approach to energy efficiency either by installing multiple measures or through the coordination with other programs. Programs must describe the manner in which they are coordinated with the existing Texas WAFLIP.
 - (A) Each program must be cost-effective. An energy efficiency program is deemed to be cost-effective if the cost of the measure installed is less than or equal to the benefits of the measure. The benefit of the measure is the value of the purchased electrical energy saved to the customer, based on 1/1000th of the cost for the first 1000 kWh block at the price to beat for the standard residential rate, seasonally adjusted, as calculated pursuant to §25.454(d)(3)(B) of this title (relating to Rate Reduction Program), in the applicable service area. For programs designed outside the WAFLIP structure, the present value of the

measure benefits shall be calculated over the projected life of the measure, not to exceed ten years.

- (B) Each program must identify the goal it is intended to achieve and the goal for the calendar year.
- (C) Each program must identify a timeline and milestones, including a quarterly production and expenditure schedule.
- (D) Programs shall result in consistent and predictable energy savings over a seven-year period.
- (E) Programs shall disclose known potential adverse environmental or health effects associated with the energy efficiency measures to be installed.
- (F) Programs shall include the procedures for measuring and reporting the energy and peak demand savings from installed energy efficiency measures consistent with the requirements of paragraph (5) of this subsection.
- (G) Pilot projects to test new concepts and technologies may be implemented in limited geographic areas prior to making the program available in all appropriate areas of the state.
- (H) Programs or projects not eligible for compensation are those that:
 - (i) Do not reduce the customer's total energy consumption and energy costs.

- (ii) Would achieve demand reduction by eliminating an existing function, shutting down a facility or operation, or would result in building vacancies.
 - (iii) Result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.
- (4) **Commission review.** Prior to the implementation of the energy efficiency program, the commission shall review the energy efficiency plan. The commission may consider, in addition to the requested budget, the amount of system benefit funds available and the percentage increase in program funding requested from the previous year. Deemed savings shall be reviewed in accordance with the guidelines of §25.181 of this title.
- (5) **Monitoring, inspection, and measurement.** Each program shall be subject to monitoring of operation and management of contracts, as well as measurement of savings.
 - (A) TDHCA is responsible for the monitoring of contract operation and management. Findings of fraud shall be reported to the commission immediately.
 - (B) TDHCA is responsible for the measurement of energy and peak demand savings, using a commission-approved measurement and verification protocol. Commission-approved deemed energy and peak demand savings may substitute for a measurement and verification protocol.

- (C) Each customer shall sign a certification indicating that the measures contracted for were installed before final payment is made to the energy efficiency service provider.
 - (D) At least a statistically significant sample of installations will be subject to on-site inspection by TDHCA in accordance with the protocol set out for the program. Failure to meet health and safety, and installation standards may be cause for contract termination.

- (i) **Quarterly energy efficiency report.** The quarterly energy efficiency report shall provide the information listed below:
 - (1) The most current information available comparing the baseline and milestones achieved under the program, including the number of households served under each program.
 - (2) A statement of funds expended by energy efficiency service providers and TDHCA program administration during the quarter.
 - (3) A statement of any funds that were committed but not spent during the quarter.

- (j) **Annual energy efficiency report.** The annual energy efficiency report shall provide the information listed below:
 - (1) The most current information available comparing projected savings to reported savings, including the amount of kW and kWh savings achieved in each electric utility service area.

- (2) The most current information available comparing the baseline and milestones achieved under the program.
 - (3) A statement of funds expended by the energy efficiency service providers and TDHCA program administration.
 - (4) A statement of any funds that were committed but not spent during the year, by program.
 - (5) A statement regarding the number of households served by each program.
 - (6) A summary of the previous year's operation and management monitoring and installation inspection findings.
- (k) **Legislative report.** The commission shall compile the information submitted by TDHCA in its quarterly and annual reports and any other relevant information bi-annually. The report shall be submitted to the joint legislative oversight committee on electric restructuring.

§25.454. Rate Reduction Program.

- (a) **Purpose.** The purpose of this section is to define the low-income electric rate reduction program, establish the discount rate calculation, and specify enrollment options and processes.
- (b) **Application.** Except as provided in the Public Utility Regulatory Act (PURA) §39.102(c) and retail electric providers (REPs) certified under PURA §39.352(d), this section applies to REPs, to providers of last resort (POLR) as defined in PURA §39.106, and to municipally owned electric utilities and electric cooperatives no sooner than six months preceding the date on which a municipally owned utility or an electric cooperative implements customer choice in its certificated area.
- (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 amount** – The amount of discount an eligible low-income customer is entitled to receive from any REP in the customer's area, expressed as cents per kilowatt-hour (kWh).
- (2) **Discount percentage** – The percentage of discount established by the commission annually, or as needed, and applied to the lower of the price to beat or POLR rate in a particular service territory.

- (3) **Discount rate** – A rate charged by a REP or POLR that includes the commission-established discount.
- (4) **Electric Reliability Council of Texas (ERCOT)** – a non-profit Texas corporation that represents an area of Texas served by electric utilities, municipally owned utilities, and electric cooperatives, and which is not synchronously inter-connected with electric utilities outside the state of Texas.
- (5) **Electric service identifier (ESI ID)** – The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by ERCOT or another independent organization.
- (6) **Low-income customer** - An electric customer, whose household income is not more than 125% of the federal poverty guidelines, or who receives food stamps from the Texas Department of Human Services (TDHS) or medical assistance from a state agency administering a part of the medical assistance program.
- (7) **Low-Income Discount Administrator (LIDA)** – A third-party administrator contracted by the commission to administer the rate reduction program.
- (8) **Provider of last resort (POLR) rate** – The rate for the standard retail service package offered by the provider of last resort in the area under §25.43 of this title (relating to the Provider of Last Resort).
- (9) **Price to beat (PTB)** – A price for electricity, as determined pursuant to PURA §39.202, charged by an affiliated REP to customers in its service area.

- (10) **Rate reduction program** – A program to provide reduced electric rates for eligible low-income customers, in accordance with PURA §39.903(h).
 - (11) **Registration agent** – Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.
- (d) **Rate reduction program.** All eligible low-income customers shall be entitled to receive a discount rate, as determined by the commission pursuant to this section, on their electric bills from their retail electric providers. The discount will be identified on each eligible customer's bill and applied only to the electric service portion of the bill.
- (1) **Eligibility criteria.** A low-income customer, as defined in subsection (c) of this section, is entitled to receive a discount rate.
 - (2) **Discount percentage.** The commission shall establish a discount percentage each year at the time the commission sets the system benefit fee. The discount percentage:
 - (A) Shall not be less than 10% and may, if there are funds sufficient to support a higher level, be set as high as 20%.
 - (B) May be recalculated during the year as necessary.
 - (3) **Discount amount.** A REP shall provide to each eligible low-income customer a rate discounted by an amount as established by this subsection for the area in which the customer is located.

- (A) The commission shall calculate and establish the low-income discount amount for distinct geographical areas, which shall correspond to the certified electric utility service areas, or smaller areas designated by the commission as POLR service areas.
- (B) The discount amount shall be calculated by taking the lower of the POLR rate and the PTB to establish the baseline rate. If there are multiple price to beat rates available to a residential customer, the commission will calculate the baseline rate by using the standard residential rate, seasonally adjusted; multiply it by the cost of the first 1000kWh of usage; and then divide it by 1000 to obtain a cents per kWh cost. The discount amount shall be calculated by multiplying the cents per kWh cost of the baseline rate by the discount percentage.
- (C) If the commission changes the discount amount, by either changing the discount percentage or establishing a new baseline rate for any area, then REPs must implement the resulting change in the discount amount in their billings to customers within 30 calendar days of the date the commission issues its order.
- (D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Account) for amounts equal to the documented discount amounts they have provided to eligible low-income customers.

- (4) Each eligible low-income customer shall be entitled to receive from any REP in the customer's area a discount rate equal to the discount amount times the number of kWh of electricity, which the customer has consumed during a billing cycle. The discount rate shall be the rate the customer would otherwise be charged by that REP minus the discount amount.
- (e) **Terms of customer enrollment.** Eligible customers will be enrolled in the low-income discount rate program through automatic enrollment or a self-certification process implemented by LIDA.
- (1) **Automatic enrollment.** Automatic enrollment is an electronic process of identifying customers eligible for the low-income discount rate by matching data from agencies that operate programs serving eligible clients with electric utility data maintained by the ERCOT's registration agent. The transfer of data for the purposes of establishing and maintaining the automatic enrollment process shall occur between TDHS, ERCOT, and the LIDA. To accomplish the purposes of this subsection, the commission shall:
 - (A) Contract with a person to perform the LIDA function. This person shall perform all necessary tasks to establish and maintain the automatic enrollment system, or any other related task, as specified in the contract.
 - (B) Enter into a memorandum of understanding with TDHS to establish the respective duties of the two agencies.

- (C) Develop a protocol to define the automatic enrollment process and the respective duties of the participating entities sharing data.
- (2) **Self-certification.** Self-certification is a form of alternate enrollment available to those eligible electric customers who do not receive benefits from TDHS, but whose combined household income does not exceed 125% of federal poverty guidelines. Self-certification enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:
- (A) Processing the self-certification applications, which shall be filed on a form developed by the commission.
 - (B) Adding qualified applicants to the list of eligible electric service identifiers (ESI IDs).
 - (C) Processing and maintaining a list of applicants' address changes.
 - (D) Forwarding to the REPs the list of ESI IDs, with monthly updates.
 - (E) Maintaining a toll-free number for inquiries. This number shall be displayed on the self-certification application.
 - (F) Conducting outreach and distributing self-certification applications.
 - (G) LIDA may, at its discretion, verify the self-certification applicants' income by requesting copies of tax returns, pay stubs, or letters from employers.
- (3) **Period of customer enrollment:** Once enrolled, the eligible customer shall receive the discount rate for 13 months from the date of enrollment.

- (A) The continued eligibility status of the customer shall be reviewed during the twelfth month after the date of initial enrollment, and every 12 months thereafter.
 - (B) Customer who continues to receive TDHS benefits as defined in subsection (c) of this section, will have eligibility for the discount rate renewed for a new 13-month period.
- (f) **Protocol.** The purpose of the protocol is to define responsibilities of the participating entities. Other technical information may be added to the request for proposal for the LIDA and memoranda of understanding between the parties as necessary to establish the automatic enrollment process, in accordance with this section.
- (1) **TDHS shall:**
 - (A) No later than April 1, 2001, provide the LIDA with a complete database of its clients, stripped of all information except as listed below, and sorted by ZIP codes. For each client, the database shall include:
 - (i) Full name; and
 - (ii) Service and mailing addresses, including city, state, and five-digit ZIP code, following the U.S. Postal Service standards;
 - (B) Provide the LIDA with monthly updates of the names, or ESI ID if available, and addresses of new clients and any address changes for existing clients who move.

- (C) Provide monthly updates of clients who are no longer receiving benefits from TDHS as of the twelfth month of client enrollment in the low-income discount program.
 - (D) Distribute the self-certification applications in TDHS offices statewide.
- (2) **ERCOT shall:**
- (A) No later than April 1, 2001, allow the LIDA to have access to a database of residential premises that includes for each premise:
 - (i) Service address, including city, state, and five-digit ZIP code, following the U.S. Postal Service standards; and
 - (ii) ESI ID.
 - (B) Provide the LIDA with monthly updates of new residential premises and their ESI IDs.
 - (C) Provide the LIDA with monthly updates of residential premises that have had a change of tenant (i.e., move-out/move-in).
 - (D) Provide the LIDA with monthly updates of those customers and ESI IDs who switched retail electric providers.
- (3) **LIDA shall:**
- (A) Retrieve the initial database of residential premises and ESI IDs from ERCOT.
 - (B) Retrieve the initial database of clients from TDHS.

- (C) Establish a list of eligible ESI IDs by initially, and then periodically, comparing the addresses from the ERCOT and TDHS databases and identifying records that reasonably match.
 - (D) Retrieve on a monthly basis the ERCOT's update of change of tenants and remove those ESI IDs from the list of eligible ESI IDs.
 - (E) Retrieve on a monthly basis the ERCOT's list of new premises and add those to the database used for matching.
 - (F) Retrieve on a monthly basis the TDHS list of addresses of new clients and clients who have moved and add those that reasonably match the ERCOT list to the list of eligible ESI IDs.
 - (G) Implement a program whereby potential low-income customers can self-certify for enrollment in the rate reduction program, as specified in subsection (e)(2) of this section. The program must enable the customer to submit a change of address.
 - (H) Develop procedures to notify customers of enrollment, expiration, and opportunities for renewal of the rate discount program.
 - (I) Annually report to the commission as to the number of customers enrolled through the automatic enrollment process and the number of customers enrolled through self-certification.
 - (J) Make the database of eligible ESI IDs available to the REPs.
- (4) **A REP shall:**

- (A) Retrieve on a monthly basis the list of eligible ESI IDs from the LIDA.
- (B) Compare the list of its customers with the list of eligible ESI IDs, and enroll those ESI IDs that match in the rate discount program. The customer enrollment shall take place within the first billing cycle if notification is received within seven days before the end of the billing cycle or within 30 calendar days after the REP receives notification from the LIDA, whichever comes first.
- (C) Develop procedures to notify customers of enrollment, expiration, and opportunities for renewal of the rate discount program.
- (D) Notify customers twice a year about the availability of the rate discount program.
- (E) Provide to the commission copies of materials regarding the rate discount program given to customers during the previous 12 months.

(g) **Confidentiality provision.**

- (1) All data transfers shall be conducted under the terms and conditions of a TDHS confidentiality agreement so as to protect customer privacy. The acquired data shall only be used for the purposes of implementing automatic enrollment.
- (2) Data shall not be provided to the REPs in advance of registering customers. LIDA's protocols and procedures shall be developed in a way that maintains the customer eligibility for the rate discount as proprietary data not to be used for any other purpose.

§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 municipally owned utilities and electric cooperatives.
- (b) **Applicability.** This section applies to a municipally owned utility and electric cooperative, no sooner than six months preceding the date on which a municipally owned utility or an electric cooperative implements customer choice in its certificated service area.
- (c) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) **Electric cooperative** – As defined in §25.5 of this title (relating to Definitions).
 - (2) **Municipally owned utility** – As defined in §25.5 of this title.
- (d) **Implementation of fee collection.** Not earlier than six months before the onset, and not later than the day of implementation of customer choice in its service territory, a municipally owned utility or an electric cooperative shall impose on its customers, including its transmission and distribution customers who choose to receive a single bill from the municipally owned utility or electric cooperative, 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 Account).

- (e) **Billing requirements.** Each municipally owned utility or electric cooperative shall comply with the billing requirements in §25.451(h) of this title.

- (f) **Remittance of funds.** The system benefit fee collected by a municipally owned utility or an electric cooperative shall be remitted to the Texas Comptroller of Public Accounts (Comptroller) pursuant to §25.451(g) of this title.

- (g) **Fee reduction.** The commission shall, on a request by a municipally owned utility or an electric cooperative, reduce the system benefit fee, imposed on its retail customers, by an amount equal to the amount provided by the requesting municipally owned utility or an electric cooperative, 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. At the time of its request, and once a year thereafter, the municipally owned utility or an electric cooperative shall provide to the commission the following:
 - (1) The total in kWh of electric power sold to its retail customers in the 12 months preceding the request;

- (2) The total amount spent on the qualifying, local, low-income programs, for which the reduction is being sought, in the 12 months preceding the date of request;
 - (3) The total amount spent on qualifying, local, educational programs, for which the reduction is being sought, in the 12 months preceding the date of request;
 - (4) The total amount projected to be spent on qualifying, local, low-income programs, for which reduction is being sought, in the 12 months following the date of request; and
 - (5) The total amount projected to be spent on local, qualifying, educational programs, for which reduction is being sought, in the 12 months following the date of request.
- (h) **Reduced rate.** A municipally owned utility or an electric cooperative shall establish a reduced rate for its low-income customers, who are eligible for a rate discount pursuant to §25.454(d) of this title (relating to the Rate Reduction Program), which will be discounted off the standard retail service package established under the Public Utility Regulatory Act (PURA) §40.053 or §41.053, as appropriate.
- (i) **Reduction in program funding.** If a municipally owned utility or an electric cooperative requests a reduction in fees paid pursuant to subsection (g) of this section, then the portion of the system benefit fee proceeds allocated for low-income or education programs for that municipally owned utility or electric cooperative shall be reduced by the amount of such reduction.

- (j) **Reimbursement.** To receive reimbursement for the rate discounts provided to eligible low-income retail customers, the municipally owned utility or electric cooperative shall comply with §25.451(j) of this title. The municipally owned utility or electric cooperative may seek reimbursement for the difference between the reduced rate charged to its low-income customers and the standard retail service package established under PURA §40.053 or §41.053, as appropriate. The total annual reimbursement for a municipally owned utility or electric cooperative shall not be more than the proportional amount a municipally owned utility or electric cooperative has paid into the system benefit account. The proportional amount shall be established by the commission in the following manner:
- (1) By calculating a share of the total revenue in the system benefit account that is spent on each of the programs as described in PURA §39.903(e) in the preceding 12 months;
 - (2) By calculating the share of total spending on programs pursuant to PURA §39.903(e)(1) paid by each municipally owned utility or electric cooperative into the system benefit account; and
 - (3) Any such calculations can be amended by the commission as necessary throughout the year.
- (k) **Reporting requirements.** If a municipally owned utility or an electric cooperative continues to bill customers pursuant to PURA §40.057(c) or §41.057(b), as appropriate, then the municipally owned utility or electric cooperative shall file with the commission two types of reports. One report will identify the amount of system benefit fee collected and paid by its retail

customers pursuant to §25.451(i)(1) of this title; the second 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 types of 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 the Administration of System Benefit Account, §25.453, relating to Targeted Energy Efficiency Programs, §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.

ISSUED IN AUSTIN, TEXAS ON THE 18th DAY OF DECEMBER 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

JUDY WALSH, COMMISSIONER

BRETT A. PERLMAN, COMMISSIONER