

PROJECT NO. 48337

RULEMAKING TO AMEND 16 TAC § PUBLIC UTILITY COMMISSION
§25.45 TO PROVIDE FOR A LILA §
OPT-IN PROCESS § OF TEXAS

**ORDER ADOPTING AMENDMENT TO §25.45
AS APPROVED AT THE JUNE 13, 2019 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to 16 Texas Administrative Code §25.45 (TAC), relating to the low-income list administrator (LILA), with changes to the proposed text as published in the February 8, 2019 issue of the *Texas Register* (44 TexReg 528). The amendment continues implementation of Senate Bill 1976 of the 85th Regular Legislative Session, which provides that the commission may not submit a request to the Health and Human Services Commission (HHSC) to develop a list of low-income electric customers unless the commission receives a request from one or more retail electric providers (REPs) not later than July 31 of the previous fiscal year, and each REP that submits a request to the commission agrees to reimburse the commission for the cost of developing of the list. This amendment is adopted under Project Number 48337.

The commission received comments on the proposed amendment from the Alliance for Retail Markets (ARM). ARM supports the proposed published amendments and offered limited revisions, primarily for clarification. No other party filed comments. No party requested a hearing.

Subsection (g)(1)

ARM believes that early public notice of the total annual cost of the list service will provide greater transparency to REPs about the service. ARM offered language revising subsection (g)(1) to require commission staff to file notice of the total annual cost of the service in the project at the time the project is opened or as soon as practicable.

Commission response

The commission agrees with ARM that including the total annual cost of the service provides greater transparency. The commission adopts ARM's proposal and revises subsection (g)(1) to require commission staff to provide notice of the total annual cost of the service at the time the project is opened or as soon as practicable.

Subsection (g)(2)

ARM recommended requiring each REP requesting the service to include its certificate number in the request. ARM further recommended clarifying in the rule that each requesting REP must agree to pay its allocated share of the total cost of the service as determined under subsection (g)(4) to avoid confusion about a requesting REP's reimbursement commitment. Finally, ARM recommended substituting the word "service" for the word "list." ARM asserted that the term "service" more appropriately reflects that the service provided by the LILA is the identification of eligible low-income customers through a comparison of separate data sets provided by REPs and the HHSC independently, rather than the creation and maintenance of a master list of all low-income electric customers. ARM also pointed out that the term "service" is consistent with the language used in other proposed amendments to this section.

Commission response

The commission agrees with ARM’s comments regarding proposed subsection (g)(2) and modifies the subsection accordingly. Requiring each requesting REP to include its certificate number will clearly identify the requesting REP. In making a request for the service from the commission, a REP will be required to acknowledge its obligation to pay its allocated share of costs for the service. Replacing the word “list” with “service” is consistent with the remainder of the rule and better describes the interaction between the LILA, the REP, and the HHSC.

Subsection (g)(4)

ARM recommended clarifying that the commission may use an alternative cost allocation method, based on the agreement of requesting REPs. ARM explained that an alternative method may result in a REP agreeing to reimburse an amount greater than the REP’s equally allocated share. ARM stated that the clarification is consistent with past commission practice.

Commission response

The commission agrees with ARM’s suggestion regarding subsection (g)(4) and modifies the subsection accordingly to clarify that the commission may order payment arrangements other than an equal allocation among the REPs requesting the service. Current practice allows a REP to pay more than its equally allocated share of the cost of the service.

In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under §14.002 of the Public Utility Regulatory Act (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and PURA §17.007, which requires the commission to develop a process for identifying low-income customers if a REP that requests the service agrees to reimburse the commission for the cost of developing the list.

Cross reference to statutes: PURA §§14.002 and 17.007.

§25.45. Low-Income List Administrator.

- (a) **Purpose.** The purpose of this section is to define the responsibilities of the Low-Income List Administrator (LILA) to establish and maintain a list of eligible low-income customers and to specify the process for a retail electric provider (REP) who voluntarily seeks to obtain the low-income customer identification service from the LILA pursuant to Public Utility Regulatory Act (PURA) §17.007.
- (b) **Application.** This section applies to the LILA, which has been contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007 in cooperation with the Texas Health and Human Services Commission (HHSC). This section also applies to REPs that provide retail electric service in an area that has been opened to customer choice and that voluntarily seek to obtain the low-income customer identification service from the LILA.
- (c) **Customer identification process.** The LILA must identify eligible low-income customers through a monthly automatic identification process in cooperation with the HHSC.
- (1) Automatic identification is an electronic process to identify customers eligible for the low-income list by matching client data from the HHSC with residential customer-specific data from participating REPs.
- (A) The HHSC must provide client information to the LILA in accordance with subsection (d)(1) of this section.

- (B) REPs must provide customer information to the LILA in accordance with subsection (d)(3) of this section.
 - (C) The LILA shall compare the customer information from the HHSC and REPs, create files of matching customers and notify the REPs of their eligible customers.
- (2) Automatically identified customers shall continue to be included on the LILA's list of eligible low-income customers as long as the customers receive qualifying HHSC benefits. Once a customer no longer receives qualifying HHSC benefits, the customer will no longer be identified by the LILA's process as an eligible low-income customer that is sent to the customer's REP.
- (d) **Responsibilities.** In addition to the requirements established in this section, program responsibilities for the LILA may be established in the commission's contract with the LILA; program responsibilities for tasks undertaken by the HHSC may be established in the memorandum of understanding between the commission and the HHSC.
- (1) **HHSC's responsibilities.** The HHSC must assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving qualifying HHSC benefits as detailed in the memorandum of understanding between the HHSC and the commission.
 - (2) **The LILA's responsibilities.** The LILA must:
 - (A) receive customer lists from participating REPs on at least a monthly basis through data transfer;
 - (B) retrieve the database of clients from the HHSC on at least a monthly basis;

- (C) establish a list of eligible customers, by comparing customer lists from the REPs with HHSC databases and identifying customer records that reasonably match;
 - (D) make available to each participating REP, on a date prescribed by the commission on at least a monthly basis, a list of eligible low-income customers; and
 - (E) protect the confidentiality of the customer information provided by the REPs and the client information provided by the HHSC.
- (3) **A participating REP's responsibilities.** A REP that voluntarily seeks to obtain a list of eligible low-income customers must:
- (A) provide residential customer information to the LILA through data transfer on a date prescribed by the commission on at least a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;
 - (B) retrieve from the LILA the list of eligible low-income customers; and
 - (C) assist the LILA in working to resolve issues concerning customer eligibility.
- (e) **Confidentiality of information.**
- (1) The data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement.

- (2) All data transfers from REPs to the LILA pursuant to this section shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REPs' competitively sensitive information.
 - (3) The LILA may use information obtained pursuant to this section only for purposes prescribed by commission rule.
- (f) **Delegation of authority.** The commission may delegate to the executive director the authority to contract with a third-party vendor to administer aspects of the low-income customer identification process established under PURA §17.007 in cooperation with HHSC, and to negotiate the LILA's annual fee for the provision of the low-income customer identification service.
- (g) **REP annual election process.** REPs may elect to obtain the low-income customer identification service from the LILA on an annual basis.
- (1) Not later than May 1 of each year, commission staff must open a project in which a REP may request the low-income customer identification service for the upcoming fiscal year beginning September 1. Commission staff must file notice in the project of the total annual cost of the service at the time the project is opened or as soon as practicable.
 - (2) Not later than July 31 of each year, a REP must file its request for the low-income customer identification service in the project opened for that purpose. The filing must include the REP's certificate number. In its filing, the REP must state that it

agrees to reimburse the commission for its allocated share of the total cost of providing the service.

- (3) Not later than August 31 of each year, if the commission has received a request from one or more REPs under paragraph (2) of this subsection, the commission will enter an order listing the name of each REP that filed a request, and establishing the amount that each REP will pay as determined under paragraph (4) of this subsection.
- (4) The total cost of the low-income customer identification service will be allocated equally among the REPs that have filed a request under paragraph (2) of this subsection unless otherwise provided by the commission based on the agreement of REPs requesting the low-income customer identification service.
- (5) Provided that at least one REP requests the low-income customer identification service in a program year in accordance with paragraph (2) of this subsection, a REP that is newly certificated after July 31 may obtain the low-income customer identification service at no cost to the REP until the next program year, when the REP has the opportunity to submit a timely request under paragraph (2) of this subsection. To obtain the low-income customer identification service, the newly-certificated REP must file a request in the project opened under paragraph (1) of this subsection.

This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.45, relating to low-income list administrator, is hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of _____ 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER