

The Public Utility Commission of Texas (commission) proposes new §25.451, relating to the Administration of 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. The proposed new rules will implement provisions of the Public Utility Regulatory Act (PURA) §39.901 and §39.903, relating to the System Benefit Fund. Section 25.451 establishes administrative requirements for the setting, collecting, billing, reporting, and reimbursement of the system benefit fee. 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. Project Number 22429 has been assigned to this proceeding.

Project Number 22429, *Rulemaking to Address System Benefit Fee and Associated Programs Pursuant to PURA §39.901 and §39.903*, was established on April 19, 2000, as part of the plan for implementing Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2591 (Vernon) (codified as an amendment to the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.901 and §39.903). Senate Bill 7, the Electric

Restructuring Act, amended several sections of the Public Utility Regulatory Act (Vernon 1998, Supplement 2000), and became effective on September 1, 1999. The commission staff posted questions for comment on its Internet site on April 26, 2000, and published the questions and an invitation to comment in the *Texas Register* on May 5, 2000 (25 TexReg 4245). The questions were discussed at a workshop held on June 2, 2000. The staff prepared drafts of §§25.451, 25.453, and 25.454, which were discussed at a workshop held on July 6, 2000.

Margarita Fournier, Senior Economic Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Margarita Fournier has determined that, for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the availability of discounted rates and weatherization programs for low-income customers. In addition, the customer education program on electric industry restructuring will be funded by the system benefit fee. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Margarita Fournier has also determined that, for each year of the first five years the proposed sections are in effect, there should be no effect on a local economy, and, therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission seeks comments on the proposed rules from interested persons. Parties should organize their comments in a manner that parallels the organization of the proposed rules. When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples, which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

1. The system benefit 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?
2. Given that the pilot project for the competitive electric market in Texas will start on June 1, 2001, but the system benefit fee will not be assessed against the retail electric customers until January 1, 2002, is it appropriate to include in the pilot project the low income discount program? If the answer were yes, what would be the best way to implement such a program?

In conjunction with their comments filed in this rulemaking, interested persons may append sworn affidavits in support of their positions. The commission will consider any comments and affidavits submitted in determining whether to receive further evidence at the public hearing held pursuant to the Administrative Procedure Act, Texas Government Code Annotated §2001.029.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, October 23, 2000, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor.

Comments on the proposed new sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 22429.

These new rules are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and

jurisdiction; and specifically, PURA §39.903(j), which grants the commission authority to adopt rules on enrollment options for eligible customers to participate in the rate reduction 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 and 39.903, 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 customer** – As defined in PURA §31.002(16).
 - (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 electric provider (REP)** – As defined by PURA §31.002(17).
 - (6) **System benefit account** – An account with the Texas Comptroller of Public Accounts (Comptroller) to be administered by the commission.
 - (7) **System benefit fee** – A nonbypassable fee set by the commission to finance the system benefit account. The fee shall be charged to retail electric customers based on the amount of kWh of electric energy used.
 - (8) **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 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 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 electric retail providers within 30 days of the date such order is issued.

- (4) The fee may not exceed \$0.50 per megawatt hour (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.
- (B) The revenue requirement for targeted energy efficiency programs, including a program 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.
- (C) Each REP shall submit to the commission not later than June 1 of each year:
 - (i) A report listing the number of low-income customers enrolled in the rate reduction program in the previous year, except that in the year 2002, the report shall list enrollment for January through May of 2002;

- (ii) The amount of reimbursement requested and received from the fund for the previous year, or for the year 2002 report, the first five months of the year 2002;
 - (iii) The aggregate electric energy consumption in kilowatt hours (kWh) for all low-income customers enrolled in the program for the previous year, or for the 2002 report, the first five months of the year 2002;
 - (iv) The total amount of rate discounts provided to the low-income customers in the previous year, or for the 2002 report, the first five months of the year 2002; and
 - (v) Copies of promotional materials regarding this program provided to customers during the previous 12 months.
- (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.** Based on the Annual Update of Generating Electric Utility Data report, or any report that may replace it, the commission staff shall file its estimate of projected retail sales of electricity in the state for the following fiscal year by June 1 of each year. An

electric utility may seek a change to the staff's estimate by filing its own estimate with support documentation of the estimate. 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 1, 2002, each electric utility, transmission and distribution utility, municipally owned electric utility, or electric cooperative collecting the system benefit fee from the retail electric providers in its service area, shall remit the fees to the Comptroller within five business days of the receipt of fees.
- (2) Remittance of funds to the Comptroller shall comply with the Comptroller's rules governing any such deposits. 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 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 retail electric providers in its service area separately from any other account in its records.

(h) **Billing requirements.**

- (1) A transmission and distribution utility, a municipally owned utility, or an electric cooperative shall send billing statements to the retail electric providers indicating the

amount of system benefit fee owed for the specified period. The billing and payments between the transmission and distribution utility and the retail electric providers 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).

- (2) A retail electric provider shall include on the monthly bill sent to each customer a charge for the system benefit fee, as approved by the commission for that period, and based on the kWh of electric energy consumed by that customer. The charge may be shown as a separate item on the bill. The retail electric provider shall account for the system benefit fee collected from its customers separately from any other account in its records. The retail electric provider shall remit to the transmission and distribution utility an amount equal to the kWh of electric energy consumed by the customer in the utility's service area times the fee approved by the commission.
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- (i) **Reporting and auditing requirements.**
 - (1) A retail electric provider, municipally owned utility, or electric cooperative shall prepare and send to the commission a monthly activity report on a form prescribed by the commission. The monthly report shall be due on the fifteenth day following the end of the reporting month. The report shall include, but not be limited to:
 - (A) The number of MWh of electricity sold;
 - (B) The amount of the system benefit fee billed;
 - (C) The amount of the system benefit fee collected;

- (D) The amount of the system benefit fee remitted to the transmission and distribution utility;
 - (E) The amount of rate reduction discount granted to the eligible low-income customers for the prior month;
 - (F) The number of low-income customers enrolled in its rate reduction program for the prior month; and
 - (G) The amount of reimbursement received for the prior month's discounts provided.
- (2) 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.
- (3) Each transmission and distribution utility, municipally owned utility, or electric cooperative, 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 the commission prescribed form, stating for each service territory the amount of fee billed and the amount forwarded to the Comptroller.
- (j) **Reimbursement for the rate reduction discount.** The retail electric provider, municipally owned utility, or electric cooperative shall include in the monthly report to the commission the amount of the rate reduction discounts granted to their eligible customers. The commission shall, within five working days of receipt of the monthly report, prepare an authorization for

reimbursement to the retail electric provider, a municipally owned utility, or electric cooperative in a form prescribed by the commission. The prescribed form shall include instructions for direct deposit of the reimbursement into the bank account of the retail electric provider, municipally owned utility, or electric cooperative bank account. The Comptroller shall transfer the funds by the close of the next business day following receipt of an authorization from the commission.

- (k) **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 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 that is referenced in 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 United States Department of Energy Weatherization Assistance Program for Low-Income Persons (US DOE WAPFLIP) 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 WAPFLIP 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 customer of a retail electric provider, or a municipally owned utility or an electric cooperative that offers customer choice, and meet the state's income eligibility guidelines for the United

States Department of Health and Human Services Low-Income Home Energy Assistance Program (US DHHS LIHEAP) or US DOE WAPFLIP.

- (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 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 subsection 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 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.
 - (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) A description of outreach efforts, including the development of a publication for statewide distribution explaining the availability of system benefit fund energy efficiency programs. The publication will also provide a toll-free number for

customers to call for information about referrals to participating local energy efficiency service providers.

- (D) A description of the training and technical assistance to be made available to contractors under programs funded through the system benefit account.
- (E) 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.
- (F) A discussion of the solicitation process TDHCA plans to use to select energy efficiency service providers, including the manner in which TDHCA will use to 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 US DOE WAPFLIP, competitive solicitation shall be the method for contract selection. TDHCA may request a waiver from the requirements of a competitive solicitation for good cause.

(G) 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.

(H) All contracts shall include the customer protection provisions required under §25.181(n) of this title. Contracts shall provide a complaint process that 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 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 US DOE WAPFLIP.

- (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 the price to beat in the applicable service area. 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 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 statewide.
- (H) Programs or measures not eligible for incentive payments or compensation are those that:

- (i) Do not reduce 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 SBF 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) 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.
 - (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.
 - (7) Any other information prescribed by the commission.
- (k) **Unspent funds.** TDHCA is responsible for the expenditure of funds in a timely manner, while ensuring that eligible customers receive an equitable share of services. TDHCA will meet production schedules by assigning quarterly expenditure and production goals to each energy efficiency service provider. No later than July 1 of each year, TDHCA shall submit a corrective action plan for contracts experiencing low production and expenditure levels.
- (1) In the case of individual contracts where the expenditure or production level is between 15% and 25% below schedule, TDHCA shall develop a corrective action plan within 30 days that will ensure timely expenditure of funds.
 - (2) In the case of contracts where expenditures are over 25% below production and expenditure schedule, excess funds shall be made available to alternate service providers for the purpose of carrying out projects in the designated county(ies).

- (3) In its annual energy efficiency plan, TDHCA shall provide for the selection of an alternate service provider for the designated area if production was not met in the previous year.
- (4) Alternate service providers shall be selected in accordance with subsection (h)(2)(F) of this section.

§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.** This section applies to electric utilities as defined in the Public Utility Regulatory Act (PURA) §31.002(6); retail electric providers (REPs); providers of last resort (POLR) as defined in PURA §39.106; and the 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.
- (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 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 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.
- (5) **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.
- (6) **Low-Income Discount Administrator (LIDA)** – A third-party administrator contracted by the commission to administer the rate reduction program.
- (7) **POLR rate** – The rate for the standard retail service package offered by the provider of last resort (POLR) in the area under §25.43 of this title (relating to the Provider of Last Resort).
- (8) **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.
- (9) **Rate reduction program** – A program to provide reduced electric rates for eligible low-income customers, in accordance with PURA §39.903(h).
- (10) **Registration agent** – Entity designated by the commission to administer settlement and premise data and other processes concerning a customer's choice of electric service 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.
- (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 were 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. The discount amount shall be calculated by multiplying 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 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 for each kWh of electricity consumed. 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 a low-income discount administrator.
- (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 ISO's registration agent. The transfer of data for the purposes of establishing and maintaining the automatic enrollment process shall occur between TDHS, ERCOT

ISO, and the low-income discount administrator (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) Forwarding to the REPs the list of ESI Ids, with monthly updates.
 - (D) Maintaining a toll-free number for inquiries. This number shall be displayed on the self-certification application.

- (E) Conducting outreach and distributing self-certification applications.
- (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 cycle.
- (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 5-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 ISO 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 5-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 ISO.
- (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 ISO and TDHS databases and identifying records that reasonably match.
- (D) Retrieve on a monthly basis the ERCOT ISO'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 ISO'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 ISO 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.
- (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 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.

(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 retail electric providers 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 municipally owned 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.
- (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 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)(3) 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 29th DAY OF AUGUST 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**