

PROJECT NO. 33811

RULEMAKING TO IMPLEMENT	§	PUBLIC UTILITY COMMISSION
REQUIREMENT OF PURA	§	
§39.903(e)(1)(B) CONCERNING A ONE-	§	OF TEXAS
TIME BILL PAYMENT ASSISTANCE	§	
PROGRAM	§	

**PROPOSAL FOR PUBLICATION OF NEW §25.455 AND AMENDMENT TO §25.497
AS APPROVED AT THE JULY 20, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.455, relating to One-Time Bill Payment Assistance Program, and amendment to §25.497, relating to Critical Care Customers. Conforming amendments to §25.451, relating to Administration of the System Benefit Fund, §25.454, relating to Rate Reduction Program, and §25.457, relating to Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives, will be considered during a subsequent rulemaking relating to the low-income discount calculation. The proposed new rule and amendment will define a one-time bill payment assistance program for an eligible residential customer who has been threatened with disconnection of electric service and who is or has in his or her household a low-income person who is seriously ill or disabled and whose health or safety may be injured by the disconnection. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 33811 is assigned to this proceeding.

Jonathan Griffin, Retail Market Analyst, Electric Industry Oversight Division, has determined that for each year of the first five years the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Griffin has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be to implement PURA §39.903(e)(1)(B), and thereby assist low-income persons in need of electric service for certain medical reasons with the payment of their household's electric bills. While the program would be funded by the system benefit fund, there may be economic costs to retail electric providers who are required to comply with the new section and amendment. Specifically, retail electric providers would be required to communicate with the low-income discount administrator regularly, and would be required to continue to serve customers who apply for this assistance. These costs are likely to vary from business to business, and are difficult to ascertain. However, these costs are necessary to implement PURA §39.903(e)(1)(B).

The bill payment assistance program provided by PURA §39.903(e)(1)(B) requires that funds be appropriated from the system benefit fund by the Legislature. Funds were not appropriated for this purpose for the 2008-09 biennium, and so the bill payment assistance program will not immediately be available to customers. The commission is conducting this rulemaking proceeding so that the program may be implemented in the future should funds be appropriated.

Mr. Griffin has determined that for each year of the first five years the proposed section is in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested, under the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, September 25, 2007, at 2:00 p.m. in the Commissioners' Hearing Room. The request for a public hearing must be received by September 10, 2007.

Comments on the proposed new section and amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be received by Monday, September 10, 2007. Reply comments may be submitted, and must be received by Tuesday, September 25, 2007. Comments and reply comments should be organized in a manner consistent with the organization of the proposed rule(s). Sixteen copies of comments and reply comments must be filed. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 33811. In addition to the proposed language, the commission requests that the parties submit comments on the following questions:

- 1. One method by which the low-income discount administrator (LIDA) could notify retail electric providers (REPs) of applications for one-time bill payment assistance would be for the LIDA to post to a file transfer protocol (FTP) site lists of customers applying for assistance. REPs would then review the FTP site on a daily basis. Are there alternative methods by which the*

LIDA could notify REPs of applications for one-time bill payment assistance, to ensure that customers are not disconnected during the application process?

2. *How many customers do you expect would obtain assistance through this one-time bill payment assistance program each year? What do you expect the average assistance amount would be per customer, keeping in mind the limits provided by new P.U.C. Substantive Rule §25.455(d)(2)?*

This new section and amendment are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (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 PURA §39.903(j-1), which requires the commission to adopt rules governing the one-time bill payment assistance program provided by §39.903(e)(1)(B).

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

§25.455. One-Time Bill Payment Assistance Program.

- (a) **Purpose.** The purpose of this section is to define and implement a one-time bill payment assistance program for an eligible customer who has been threatened with disconnection of electric service and who is or has in his or her household one or more seriously ill or disabled low-income persons whose health or safety may be injured by the disconnection.
- (b) **Application.** This section applies to retail electric providers (REPs) that provide electric service in an area that has customer choice, or an area for which the commission has issued an order applying the system benefit fund or one-time bill payment assistance. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).
- (c) **Funding.** The one-time bill payment assistance requirements set forth by this section are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the program and fund assistance for customers, the commission may reduce the level of the assistance payments prescribed in subsection (d)(2) of this section. Alternatively, the commission may take the following actions:
- (1) Suspend the requirements of subsections (d) - (f), with the exception of subsection (d)(3), of this section until sufficient funding and spending authority are available.
 - (2) Suspend the requirements of the following provisions of this title, insofar as they relate to the one-time bill payment assistance program, until sufficient funding and spending authority are available:

- (A) §25.451(j) of this title (relating to Administration of the System Benefit Fund);
- (B) §25.457(i) of this title; and
- (C) §25.43(d)(3)(D) of this title (relating to Provider of Last Resort).

(d) **One-time bill payment assistance program.** Bill payment assistance under this section shall be available to an eligible customer one time per calendar year. REPs shall make this bill payment assistance program available to eligible customers, shall inform customers of its availability, pursuant to §25.483(k) and (l) of this title (relating to Disconnection of Service) and §25.480(g) of this title (relating to Bill Payment and Adjustments), and shall provide credits to customers, consistent with subsection (g)(1)(B) of this section. All REPs shall direct customers who may be eligible for this program to contact the Low-Income Discount Administrator (LIDA) for the purpose of determining eligibility.

- (1) A customer shall be eligible for assistance through the one-time bill payment assistance program if the customer submits to LIDA a one-time bill payment assistance self-enrollment application on a form approved by the commission, and meets all of the following criteria:
 - (A) The customer is a residential electric customer and has received a notice from the customer's REP that electric service will be disconnected for nonpayment;
 - (B) The customer is or has in the customer's household a seriously ill or disabled person whose health or safety may be injured by the disconnection of electric service, as demonstrated pursuant to subsection (e) of this section. If the seriously ill or disabled person is not the customer, the customer shall attest that the seriously ill or disabled person resides in the household;
 - (C) The seriously ill or disabled person in the household meets the low-income parameters in the definition of low-income customer in §25.5 of this title (relating to Definitions), as demonstrated through the self-

enrollment application and a determination by LIDA pursuant to subsection (f) of this section; and

(D) The customer has not already received assistance under this section during the current calendar year.

(2) The amount of assistance a customer may receive under this section in a single instance of assistance shall not exceed the lesser of \$1,000 or the outstanding balance from the last three monthly bills for electric service. The commission may periodically adjust this limit.

(3) A customer may receive assistance under this section one time per calendar year, regardless of how many seriously ill or disabled low-income persons reside in the household. LIDA shall maintain a record of all electric customers who have received assistance under this section in the current calendar year. LIDA shall not approve assistance for electric customers who have already received assistance under this section in the current calendar year. For the purpose of determining whether a customer has already received assistance in the current calendar year, the date the customer contacted LIDA to request assistance under this section shall be considered the date of assistance.

(4) A seriously ill or disabled low-income person may be the subject of only one application for this one-time bill payment assistance program in any one calendar year. LIDA and the commission may audit applications for this program, and the commission may limit or prohibit further assistance under this section to any person found to have violated this section or to have provided a false statement to obtain assistance under this section.

(e) Establishment of seriously ill or disabled status.

(1) To establish that a household member is seriously ill or disabled and that the person's health or safety may be injured by the disconnection of electric service, the customer shall, in a timely manner, submit an application using the commission-approved self-enrollment form to LIDA, including a statement from the seriously ill or disabled person's attending physician indicating how the

disconnection of service could cause injury to the health or safety of the seriously ill or disabled person residing at that residence. For purposes of this section, “physician” shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

- (2) If the form has been properly completed by the physician, LIDA shall accept the physician’s statement, and need not make further inquiry in order to make a determination of the customer’s eligibility.

(f) **Establishment of low-income status.**

- (1) If the seriously ill or disabled person is the customer, the low-income requirement of subsection (d)(1)(C) of this section shall be satisfied in either of the following ways:

(A) If the customer is enrolled in the rate reduction program described in §25.454 of this title (relating to Rate Reduction Program), the customer may indicate on the self-enrollment application that he or she is enrolled in the rate reduction program, and LIDA verifies that the assertion is correct; or

(B) If the customer is not enrolled in the rate reduction program, the customer may complete the income and assistance eligibility portion of the self-enrollment application, attesting to and providing proof of level of household income or of enrollment in an applicable Texas Health and Human Services Commission (HHSC) program, and LIDA determines that the customer qualifies as a low-income customer under §25.454 of this title.

- (2) If the seriously ill or disabled person is a household member other than the customer, the low-income requirement of subsection (d)(1)(C) of this section shall be satisfied if the customer or the seriously ill or disabled person completes the income and assistance eligibility portion of the self-enrollment application, attesting to and providing proof of level of household income or of the seriously

ill or disabled person's enrollment in an applicable HHSC program, and LIDA determines that the seriously ill or disabled person qualifies as a low-income person.

- (3) LIDA shall determine whether the seriously ill or disabled person is low-income by reviewing the completed income and assistance eligibility portion of the self-enrollment application. A seriously ill or disabled person who is not enrolled in the rate reduction program shall submit with the self-enrollment application proof of enrollment in an applicable HHSC program, or proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information, consistent with §25.454 of this title. LIDA shall audit statistically valid samples of such enrollment forms for accuracy.

(g) **Protection against disconnection for nonpayment.**

- (1) To prevent disconnection during the application process, the customer must contact LIDA at least one business day before the stated date of disconnection and inform LIDA that disconnection of service may injure the health or safety of a seriously ill or disabled low-income person residing at that residence, and that the customer is applying for assistance under this section. LIDA shall notify the appropriate REP of any such notification received from the customer as soon as possible, but not later than the next business day.

(A) A REP that has received notification from LIDA that a customer is applying for assistance under this section shall not authorize disconnection of the customer's service for non-payment until it has been determined whether the customer meets the eligibility requirements of this section, and shall cancel any pending transactions authorizing the disconnection of the customer for non-payment. A REP shall issue a cancellation of disconnection as soon as possible, but not later than the business day following the date it was notified that a customer is applying for assistance under this section. A REP shall request as soon as possible that a customer who has been disconnected be reconnected, at the REP's

expense, if the customer contacted LIDA and began the process of applying for assistance under this section at least one business day before the stated date of disconnection, as required by paragraph (1) of this subsection.

(B) If the customer is ultimately deemed to be eligible for assistance under this section, and the customer has not yet received assistance in the current calendar year, then the REP shall provide the customer a credit in the full amount of the customer's outstanding balance, up to the limit described in subsection (d)(2) of this section. If the REP or LIDA is aware at the time of the request that the customer has received this assistance in the current calendar year, the REP or LIDA shall inform the customer that he or she is not eligible to receive the bill payment assistance again in the current calendar year, and this paragraph shall not apply.

(2) A customer who receives assistance under this section, but for whom the assistance does not completely satisfy the customer's outstanding balance for electric service, shall be considered to have satisfied the requirements of §25.483(g)(1)(A) and (B) of this title, and shall be afforded the protection of that subsection, if the customer requests to enter into a deferred payment plan for the outstanding balance owed to the REP. If so, the requirements set forth in §25.480(j)(5) of this title shall apply.

(h) **Responsibilities.** In addition to the requirements established in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks undertaken by HHSC may be established in the memorandum of understanding between the commission and HHSC.

(1) LIDA shall administer the process of self-enrollment for the purpose of determining eligibility for the one-time bill payment assistance program. LIDA's responsibilities include:

- (A) Distributing and processing self-enrollment applications, as developed by the commission, for the purpose of applying for one-time bill payment assistance;
 - (B) Maintaining records for all applicants;
 - (C) Notifying the REP when a customer indicates that the customer will be applying for assistance under this section;
 - (D) Determining in a timely manner whether the customer is eligible for assistance in accordance with subsections (d) - (f) of this section. If, in the course of determining eligibility for one-time bill payment assistance, LIDA determines the customer is eligible for the rate reduction program under §25.454 of this title, LIDA shall also treat the application for one-time bill payment assistance as a self-enrollment application for the rate reduction program; and
 - (E) Notifying the REP by email and the customer in writing whether the customer qualifies for assistance under this section. If the customer is notified that he or she is not eligible for assistance, the notification shall indicate the reason for this determination, and shall inform the customer of the appeals process available under subsection (i) of this section.
- (2) The REP's responsibilities shall include:
- (A) Directing the customer to contact LIDA directly to apply for assistance under this section, and providing the customer with LIDA's contact information;
 - (B) Postponing disconnection activity upon notification of a customer's application for assistance pursuant to subsection (g)(1)(A) of this section;
 - (C) Communicating with LIDA to ascertain the eligibility status of each customer who has requested one-time bill payment assistance;
 - (D) Assisting LIDA in working to resolve issues concerning eligibility. This obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general assistance processes and information, and assigning problem resolution staff to work

with LIDA on problems that LIDA does not have sufficient information to resolve. This obligation also requires the REP to provide customer information to LIDA upon request. Customer information includes, for each applicant for assistance, 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;

- (E) Applying the appropriate credit for assistance to an eligible customer's account;
- (F) Providing to the commission copies of materials regarding assistance provided to customers during the previous 12 months upon commission request; and
- (G) Fulfilling reporting requirements as required by §25.451 of this title.

(i) **Appeals process.** In instances in which the REP receives from LIDA a notice that the customer is ineligible for assistance under this section for reasons other than the customer has already received assistance in the current calendar year, the REP shall not submit authorization for disconnection of the customer until the fifth business day after learning of the customer's ineligibility, in order to afford the customer time to receive notice of ineligibility and to appeal that determination if the customer so desires. In such circumstances, if the customer believes the self-enrollment application has been erroneously denied, the customer may appeal the eligibility determination as follows:

- (1) The customer may request that LIDA review its denial of the application, and the customer may submit additional proof of eligibility. If, prior to the REP's submission of authorization for disconnection, the customer requests a review from LIDA and the REP receives notification from the customer of the request, the REP may not authorize disconnection of the customer until after the completion of LIDA's review of the application. If upon review, LIDA affirms that the customer is ineligible for assistance, the REP shall not submit

authorization for disconnection of the customer until the fifth business day after receiving notice of LIDA's affirmation of ineligibility, in order to afford the customer time to receive notice of LIDA's affirmation of ineligibility and to appeal that affirmation if the customer so desires, pursuant to paragraph (2) of this subsection.

- (2) The customer may request in writing an informal review by commission staff to determine eligibility. If, prior to the REP's submission of authorization for disconnection, the customer requests an informal review by commission staff and the REP receives notification from the customer of the request, the REP may not authorize disconnection of the customer until after the informal review is completed. If commission staff affirms that the customer is ineligible for assistance, the REP may authorize disconnection of the customer after proper notice and not before the first day after the disconnection date in the notice. The REP may issue this notice any time after the REP receives notification of commission staff's determination, and shall adhere to the requirements of §25.483(k) and (l) of this title.
- (3) A customer who is dissatisfied with the commission staff's determination pursuant to paragraph(2) of this subsection may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).
- (4) A customer who appeals more than one rejected application for assistance in a given calendar year shall not have the protections from disconnection provided by paragraphs (1) and (2) of this subsection available to him or her, and the REP shall not be required to issue a new disconnection notice pursuant to paragraph (2) of this subsection, for any appeal other than the first appeal of the calendar year. For the purpose of determining whether a customer has already appealed a decision in a calendar year, the date the customer contacted LIDA to request assistance pursuant to subsection (d) of this section shall be considered the date of appeal, even if the actual appeal was submitted in a subsequent calendar year. Any reconnection costs associated with such additional appeals shall be borne by the customer.

(j) Confidentiality of information.

- (1) Any data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement.
- (2) All data transfers pursuant to this section from REPs to LIDA shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information.
- (3) LIDA may use information obtained pursuant to this section only for purposes prescribed by commission rule.

§25.497. Critical Care Customers.

(a)-(b) (No change.)

(c) **Effect of critical care status on payment obligations.** Qualification under this section does not relieve the customer of the obligation to pay the REP or the TDU for services rendered. However, a critical care residential customer may qualify for deferral of disconnection by following the procedures set forth in §25.483~~(g)(h)~~ of this title (relating to Disconnection of Service) or Section 5.3.7.4~~(1)(D)(3)~~ of the TDU's tariff for retail electric delivery service, or may contact the REP regarding other forms of payment assistance, such as the one-time bill payment assistance program provided by §25.455 of this title (relating to One-Time Bill Payment Assistance Program).

~~(d) — This section is effective June 1, 2004.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF JULY 2007 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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