

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	§	

**ORDER ADOPTING NEW §25.455 AND AMENDMENTS TO §25.497
AS APPROVED AT THE DECEMBER 19, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.455, relating to One-Time Bill Payment Assistance Program, with changes to the proposed text as published in the August 3, 2007 issue of the *Texas Register* (32 TexReg 4699); and amendments to §25.497, relating to Critical Care Customers, with no changes to the proposed text as published in the August 3, 2007 issue of the *Texas Register* (32 TexReg 4699). The commission also adopts a new form to accompany §25.455. 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 define a one-time bill payment assistance program for an eligible residential customer who has been threatened with disconnection of electric service for non-payment 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. The new rule is required by Public Utility Regulatory Act (PURA) §39.903(e)(1)(B) and (j-1), and is a competition rule subject to judicial review as specified in

PURA §39.001(e). The commission adopts this new rule and amendment under Project Number 33811.

The commission received written comments on the proposed new rule and rule amendment from Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy (collectively "TLSC and Texas ROSE"); and from CPL Retail Energy, Direct Energy, Green Mountain Energy Company, Liberty Power, Stream Energy, WTU Retail Energy, TXU Energy, Reliant Energy, the Alliance for Retail Markets (ARM), and the Texas Energy Association for Marketers (TEAM) (collectively "the REP Coalition"). The commission received written reply comments from TLSC, Texas ROSE, CPL Retail Energy, WTU Retail Energy, Direct Energy, TXU Energy, Reliant Energy, and Liberty Power (collectively "the Consumer/REP Coalition"); the Office of Public Utility Counsel (OPUC); and TEAM. The commission subsequently received proposed rule language to support the reply comments of the Consumer/REP Coalition.

Responses to the Preamble Questions

In addition to seeking comments on the proposed new rule and rule amendment, the commission posed two questions for comment:

- 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?

TLSC and Texas ROSE proposed that this one-time bill payment assistance program be administered by REPs and local assistance agencies, which would obviate the need for such communication between REPs and the commission's contracted LIDA. According to TLSC and Texas ROSE, this would allow REPs to leverage existing communication channels, and would reduce the cost of administering this program.

The REP Coalition proposed changes to the new rule that would obviate the need for the LIDA to notify REPs of applications for one-time bill payment assistance, by having REPs (rather than the LIDA) receive proof of health status from the customer.

Commission response

The commission has addressed these proposals from TLSC and Texas ROSE and the REP Coalition in the General Comments section of this order.

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)?*

In response to Question #2, TLSC and Texas ROSE stated that, in the absence of more sophisticated industry-supplied estimates, the number of critical care customers receiving disconnect notices, along with poverty rates, could be used to estimate the number of customers that could be expected to apply for one-time bill payment assistance in a given year. Based on its analysis of Commission Staff's Disconnect for Non-Pay Report for April 2006 through May 2007 (PUC Project No. 29760, *Compliance Filings Relating to Disconnection of Electric Service Pursuant to PUC Subst. R. 25.483(b)(2)(C)*), TLSC and Texas ROSE estimated that approximately 930 customers per year might apply for assistance through this program. TLSC and Texas ROSE asserted that it has no basis for estimating the average amount of assistance that would be required per customer.

The REP Coalition stated that insufficient information is available at this time to predict the number of customers who would obtain assistance through this program. However, the REP Coalition believes the number to be less than 10,000.

Commission response

The commission has taken TLSC and Texas ROSE's and the REP Coalition's comments regarding Staff's second preliminary question into account in its consideration of this rule.

General Comments

TLSC and Texas ROSE proposed that this one-time bill payment assistance program be administered by REPs and local assistance agencies, rather than by REPs and the LIDA. According to TLSC and Texas ROSE, these agencies: already have experience administering

similar programs, already have procedures in place to prevent disconnection while customer applications are being processed, may already serve the customers intended to benefit from this program, routinely serve customers who have been referred to them by REPs, and are already authorized to receive customer information for their clients directly from REPs. The Consumer/REP Coalition supported this proposal in its reply comments, because it would provide multiple channels by which eligible customers could obtain assistance through this program. Furthermore, the Consumer/REP Coalition asserted that this approach would minimize the cost of administering the program, because it would leverage existing channels of communication between REPs and local agencies, would utilize REP and local assistance agency staff already involved in the operation of energy assistance programs, and could eliminate the necessity for the LIDA to play a role in qualifying eligible customers. The Consumer/REP Coalition supported the use of the existing LITE-UP reimbursement process to reimburse REPs for one-time bill payment assistance provided to eligible customers.

Commission response

The commission agrees that local assistance agencies can aid customers in applying for assistance through this program, and encourages REPs to work with the agencies to provide an additional point of access to this program. The commission envisions the agencies bringing this program to the attention of customers who may be eligible, helping those customers submit the appropriate proof of health status to REPs (to satisfy the seriously ill or disabled portion of the program eligibility requirements), and helping those customers submit the appropriate proof of income status to the LIDA (if necessary to satisfy the low-income portion of the program eligibility requirements). However, the

commission does not find it appropriate to allow parties other than the commission's contracted LIDA to determine a customer's income eligibility for this program, and thus believes the ill or disabled household member's income status and corresponding eligibility must ultimately be determined by the LIDA. This approach is consistent with the determination of eligibility for the existing rate reduction program, and provides greater certainty that eligibility determinations will be made correctly and documented appropriately. The commission believes the relationship between REPs and the local assistance agencies, for the purpose of this program, is most appropriately handled by REPs themselves, rather than through this rule. Therefore, the commission has declined to include language pertaining to the agencies in new §25.455.

The Consumer/REP Coalition proposed that the commission allocate a portion of the appropriated program funds to each REP, based on the number of low-income customers served by each REP. Under this proposal, funds would not be disbursed to REPs until after credits are provided to eligible customers. A REP would be allowed to provide assistance through this program in an amount up to its allocated allowance of the appropriated funds. A REP could allocate all or part of its allowance to local assistance agencies. The commission could update REPs' fund allocations every six months, to account for changes in the numbers of low-income customers served by each REP. The Consumer/REP Coalition believes this allocation methodology would allow REPs to better manage program funds, and would eliminate the potential for a situation in which a REP provides a bill credit to an eligible customer without realizing that appropriated program funds may have already been exhausted.

Commission response

The commission agrees that funds appropriated for this program should be allocated among REPs based on each REP's share of the total number of low-income customers. However, the commission wishes to reduce the possibility of situations in which an eligible customer is denied assistance by his or her REP because that REP has exhausted its own allocated program funds, even though funds are still available from other REPs who have not yet exhausted their allocated program funds. Therefore, the commission has amended the Consumer/REP Coalition's proposal, to retain 20% of authorized program funds for eligible customers of REPs that (a) have exhausted their allocated funds, or (b) were not allocated funds (*e.g.*, REPs who initiate retail electric service to residential customers after allocations are determined). Thus, 20% of the available funds would not be allocated to REPs but would be reserved to be used as needed, to ensure that customer needs are met as equitably as possible. The commission would also allocate available funds at six-month intervals. Allocation at six-month intervals will better reflect different demands on the fund by the customers of different REPs, based on customers transferring from one REP to another, or other factors. As discussed above, the commission believes the relationship between REPs and the local assistance agencies, for the purpose of this program, is most appropriately handled by REPs themselves, rather than through this rule. Therefore, the commission has declined to include language pertaining to the agencies in new §25.455.

The REP Coalition proposed that this new rule leverage existing REP processes that are used to qualify eligible customers for the 63-day protection against disconnection afforded by §25.483(g), relating to Disconnection of Service, and allow REPs, rather than the LIDA, to

determine whether a customer is seriously ill or disabled for the purpose of this program. A customer would thus be able to, at the same time, establish eligibility both for the 63-day protection against disconnection and for the health status portion of this one-time bill payment assistance program. According to the REP Coalition, the REP could then counsel the customer to apply for one-time bill payment assistance, if the ill or disabled household member meets the low-income requirement. This approach would limit the LIDA's responsibilities to the determination of income status, would reduce the amount of communication required between the LIDA and REPs, and would automatically provide eligible customers with the benefit of 63-day protection against disconnection for non-payment. The REP Coalition also argued that this approach would be beneficial in that it would limit the length of time in which it is to be determined whether a customer qualifies for one-time bill payment assistance. The REP Coalition supported the use of the LIDA to determine eligibility for the low-income portion of the program requirements.

Commission response

The commission agrees with the REP Coalition's approach, and has made most of the REP Coalition's suggested changes and deletions in several subsections of §25.455. The commission has made other changes to ensure the entire rule conforms to this approach. The commission believes this approach will reduce the amount of communication required between the LIDA and REPs, and will avoid the duplication of processes already in place to administer §25.483(g). This approach will also allow REPs to determine program eligibility when the customer is ill or disabled and the customer is already receiving the

LITE-UP discount, because the customer, in such a situation, has previously been qualified as a low-income person by the LIDA.

However, the commission disagrees that this program's seriously ill or disabled eligibility criteria should rely completely on the language in §25.483(g). The REP Coalition proposed that a customer demonstrate compliance with the seriously ill or disabled eligibility requirement by establishing "that disconnection of service will cause some person residing at the residence to become seriously ill or more seriously ill pursuant to §25.483(g) of this title." The commission believes the "seriously ill or more seriously ill" criterion of §25.483(g) may be less inclusive than the criteria of PURA §39.903(j-1), which requires that this program be available to a customer who "is or has in the customer's household one or more seriously ill or disabled low-income persons whose health or safety may be injured by the disconnection." The commission has therefore adjusted the Consumer/REP Coalition's proposed language. The commission's substitute language appears in §25.455(d)(1)(B) and (f)(2)(A), but still allows REPs to determine whether a customer is seriously ill or disabled for the purpose of this program.

The Consumer/REP Coalition proposed that REPs be able to automatically determine customer eligibility using the LITE-UP Texas eligibility list and the documentation in the REP's records of critical care status. OPUC supported these suggestions in its reply comments.

Commission response

The commission agrees that, if it is the customer who is ill or disabled (rather than a member of the customer's household), and the customer is already on the LITE-UP Texas eligibility list, then the REP can consider that customer to have satisfied the low-income requirement of this program. The commission has addressed the critical care recommendation elsewhere in this order.

§25.455(a)

The REP Coalition proposed that "for nonpayment" be inserted into §25.455(a), to clarify that this program is limited to customers who are threatened with disconnection for non-payment, rather than for other reasons, such as theft of service or unsafe facilities.

TLSC and Texas ROSE proposed to add additional language to §25.455(a), to expand the purpose of the new rule to include: providing an alternative to using disconnection as a collection tool for customers who are unable to increase their income because they are seriously ill or disabled and may be dependent on medical equipment for life support, and to assure that seriously ill and disabled customers have an uninterrupted supply of electricity.

Commission response

The commission agrees with the REP Coalition's proposal, and has made the recommended addition.

The commission disagrees with TLSC and Texas ROSE's proposal. The purpose of this program, as stated in PURA, is to provide one-time bill payment assistance to eligible electric customers who have been threatened with disconnection for non-payment and who are or who have in their households one or more seriously ill or disabled low-income persons whose health or safety may be injured by disconnection of electric service. The purpose of this program is not to guarantee an uninterrupted supply of electricity.

§25.455(c)

The REP Coalition proposed that changes be made to §25.455(c), to automatically suspend certain requirements of §25.455 if the one-time bill payment assistance program is not funded.

Commission response

The commission agrees, and has made the recommended changes, except that it has retained the exception in subsection (c)(2)(A), which requires REPs to maintain a record of customers who have used the program in the current fiscal year, in the event that funding is restored later in a year.

§25.455(d)

The REP Coalition proposed three clarifying changes to §25.455(d). First, the REP Coalition proposed that "shall be" be changed to "is." This change would clarify that assistance through this program is available, but would avoid requiring that REPs actively seek out all eligible customers. Second, the REP Coalition proposed that references to the notice requirements in §25.483 and §25.480, relating to Bill Payment and Adjustments, be deleted, to eliminate any

ambiguity as to whether the one-time bill payment assistance program must be specifically mentioned in the disconnection notice. Third, the REP Coalition proposed to add a new subsection to §25.455(d), to clarify that REPs are entitled to reimbursement for one-time bill payment assistance they provide to eligible customers. This is consistent with §25.454(e)(3)(D), relating to Rate Reduction Program, which states that REPs are entitled to reimbursement for the low-income discounts they provide to eligible customers. The REP Coalition also recommended that the commission revise §25.451(j), relating to Reimbursement for Rate Reductions, so that it addresses reporting and reimbursement for both the LITE-UP and one-time bill payment assistance programs.

TLSC and Texas ROSE proposed that a person who has been determined to be disabled for the purpose of Supplemental Security Income (SSI) automatically meet the health status portion of the one-time bill payment assistance program's eligibility criteria. TLSC and Texas ROSE raised concerns that some disabled persons may face difficulty in getting to the physician, and that Medicaid may not cover a visit to a physician for the purpose of establishing eligibility for this program.

TLSC and Texas ROSE would change §25.455(d) to allow critical care status to automatically qualify a customer for the seriously ill and disabled portion of this program's eligibility requirements. TLSC and Texas ROSE stated that a critical care customer is seriously ill or disabled and should not have to further verify information, because the customer's REP already knows the customer's critical care status. The Consumer/REP Coalition supported this suggestion in its reply comments, as did OPUC.

Commission response

The commission agrees that, while REPs are obligated by rule to inform their customers of available bill payment assistance options, this program should be driven by customers seeking assistance. Therefore, the commission has made the first recommended change. The commission also agrees with the REP Coalition regarding the references to notice requirements, and so has made the recommended deletions. The commission agrees with the REP Coalition's suggestion to add a new subsection to §25.455(d), and has made the recommended addition. The commission plans to make conforming amendments to §25.451 in a subsequent rulemaking.

The commission disagrees that a person who has been determined to be disabled for the purpose of SSI should automatically meet the health status portion of the one-time bill payment assistance program's eligibility criteria. There is no way to verify, without a physician's statement, that a person who meets the SSI disability criteria could have their health or safety injured by the disconnection of electric power, as required by PURA §39.903(j-1). TLSC suggested that, if a physician's statement is required of such a person, the person be allowed to use the same physician's statement more than once when applying for this program. Because of the mobility and cost concerns expressed by TLSC and Texas ROSE, the commission agrees that a person who meets the SSI disability criteria, and has obtained a physician's statement for the purpose of this program, may re-submit a copy of that same physician's statement in a limited number of future applications for this assistance, as long as the person continues to meet the requirements of SSI disability, and

proves that status to his or her REP. The commission has added this new provision as §25.455(d)(4).

The commission does not believe that the critical care designation should automatically qualify a customer for the seriously ill and disabled portion of this program's eligibility requirements. Section 25.497, relating to Critical Care Customers, has never provided critical care residential customers with financial assistance or protection from disconnection for non-payment, and in fact requires critical care residential customers to satisfy the requirements of §25.483(g) to qualify for the protection against disconnection afforded by that subsection. Because a critical care customer must have a physician provide medical information to meet the requirements of §25.483(g) to qualify for the 63-day protection against disconnection for non-payment, the effort required of the customer to satisfy that existing requirement will, at the same time, satisfy the seriously ill and disabled portion of this program's eligibility requirements, if the medical condition meets the criteria for assistance under this section.

§25.455(d)(1)(C)

TLSC and Texas ROSE proposed to change §25.455(d)(1)(C), to delete the reference to the low-income customer definition in §25.5, and define the term explicitly as, "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."

Commission response

The commission disagrees that the link to the definition of low-income customer in §25.5 should be deleted. This link will allow §25.455 to remain consistent with the definition, should the definition change in the future.

§25.455(d)(2)

TLSC and Texas ROSE proposed to change §25.455(d)(2), to allow certain customers to exceed the annual cap on assistance per customer. These exceptions would be made for (1) persons who have been discharged within 30 days from a hospital or other inpatient care facility, and (2) persons who submit certification that they are currently being treated for a terminal illness.

TLSC and Texas ROSE recommended tying the cap in §25.455(d)(2) to the maximum LIHEAP allowance (which is currently \$1,200) because the LIHEAP benefits are reviewed regularly, and the one-time bill payment assistance benefit could then increase independently of the need for study by the commission.

The Consumer/REP Coalition proposed that the cap be applied to the state fiscal year, rather than on a calendar year basis, so that it would coincide with appropriations for this program, which are granted on a fiscal year basis.

The REP Coalition proposed that §25.455(d)(2) be changed to clarify that a rulemaking would not be required for the commission to adjust the cap on assistance available per customer.

OPUC proposed that the cap in §25.455(d)(2) be a floating cap, to take into account the seasonal nature of electric bills (*i.e.*, Texas residential customers generally use more electricity during the summer months), and increases in the cost of natural gas (which impacts the price of electricity).

Commission response

The commission is sympathetic to the needs of persons in the situations described by TLSC and Texas ROSE. However, the commission disagrees that it can provide more benefits to one group of seriously ill persons than to another through this program.

The commission disagrees that the annual assistance cap for this program should be tied to the LIHEAP allowance. The commission should retain the ability to adjust this program's cap in light of the amount of funds available for the program and improvements over time in the ability to estimate the number of customers who may seek this assistance. The commission agrees that the cap should be applied on a fiscal year, rather than a calendar year, basis, and has made the appropriate changes.

The commission agrees that a change to the cap by the commission should not require a rulemaking. The commission has made the recommended change, except that it has retained the ability to adjust both restrictions that make up the cap, rather than just the dollar amount limit. The commission disagrees that the cap should automatically account for seasonality or natural gas prices. The commission has included significant flexibility in the amount of the cap, by allowing for adjustments to it.

§25.455(d)(3)

TLSC and Texas ROSE proposed that the term “one-time” in PURA §39.903(e)(1)(B) should not restrict the provision of assistance through this program to one time per customer per year, as in §25.455(d)(3). Rather, “one-time” should mean that assistance through this program is available to an eligible customer each time that customer is threatened with disconnection for non-payment, so long as the aggregate amount of assistance received by that customer does not exceed the annual cap. TLSC and Texas ROSE submitted that the “one-time” language is meant to distinguish this program from the LITE-UP Texas program, in which customers receive *ongoing* assistance each and every month. Unlike the LITE-UP Texas program, this bill payment assistance program, restricted by the “one-time” language, would only be available one time per disconnection notice received. The Consumer/REP Coalition supported this proposal.

Commission response

The commission disagrees that an eligible customer should be able to receive assistance through this program more than one time per year. While it is true the statute does not specifically define “one-time,” to allow an eligible customer to access the program each time he or she is threatened with disconnection for non-payment would render the limitation essentially meaningless. The commission believes assistance through this program is meant to be available to eligible customers during times of acute financial hardship. Using TLSC and Texas ROSE’s definition of “one-time” would allow a customer to rely on assistance through this program on a regular basis, as often as every month, rather than during specific times of hardship. Furthermore, allowing customers to access assistance through this program more than once per year, up to a dollar cap, would

exhaust funding more quickly, and could lead to a lack of available funds for eligible customers who seek assistance later in the year. The commission believes this program should be available to assist as many eligible customers as possible, and so should be limited in the number of times a customer may access it in a single year.

§25.455(f)

The REP Coalition and the Consumer/REP Coalition proposed changes to the Responsibilities subsection of §25.455. These changes would conform §25.455(f) to their suggestions to allocate appropriated program funds to REPs, include local assistance agencies in the rule language, and allow for the determination of seriously ill or disabled status by REPs, rather than by the LIDA.

Commission response

As discussed elsewhere in this order, the commission agrees that REPs should determine seriously ill or disabled status, and that the commission should allocate program funds among REPs, but disagrees that the local assistance agencies should be specifically assigned a role in this rule. The commission has amended this subsection accordingly. The commission has also amended this subsection to ensure that no REP provides assistance to an eligible customer, only to be informed during the reimbursement process that program funds have already been exhausted. This concern had been articulated by REPs as one of the reasons to allocate 100% of the program funds among the REPs, as opposed to 80% as decided upon by the commission.

§25.455(g)

The REP Coalition proposed to remove the Appeals Process subsection, as it does not believe a separate appeals process is necessary for this program. The REP Coalition suggested that, if the commission adopts the REP Coalition's proposal to allow REPs to determine whether a customer meets the seriously ill and disabled portion of this program's eligibility requirements, then there will be no need for a new appeals process. The REP Coalition stated that the determination by the LIDA as to a customer's income status already has an appeals process, in §25.454(f)(6). The REP Coalition stated a customer could appeal the determination as to health status through the REP, pursuant to §25.485(d), relating to Customer Access and Complaint Handling, and then, if necessary, through the Commission's informal complaint process. The REP Coalition expressed the view that a customer could complete all available appeals processes during the 63-day disconnection deferral period afforded by §25.483(g).

OPUC proposed that customers be allowed ten business days, instead of five, to make appeals requests under §25.455(g).

Commission response

The commission believes this one-time bill payment assistance program does require appeals provisions in addition to those already in place in existing rules. For example, the appeals process in §25.454(f)(6) is specific to the rate reduction program, and so does not contemplate protection against disconnection during the LIDA's review. Therefore, the commission has included in §25.455 a review of the LIDA's income status determination, while also protecting the customer from disconnection during that review process. Because

the 63-day disconnection deferral period afforded by §25.483(g) begins on the date the bill is issued, the commission is skeptical that all appeals could be completed during the 63-day period, and has thus included protection against disconnection during an appeal.

However, changes to the Appeals Process subsection are needed as a result of the commission's acceptance of the REP Coalition's proposal that REPs, rather than the LIDA, be responsible for determining whether the customer meets the seriously ill or disabled eligibility requirement. The commission agrees that the existing appeals provisions of §25.485 would provide a customer with the necessary recourse, in the event that he or she is dissatisfied with the REP's determination as to health status eligibility. The commission has included a provision to protect the customer from disconnection during a REP's review and supervisory review.

The commission understands the REP Coalition's concern that the Proposal for Publication's appeals process could go on indefinitely, and so has made changes to address this issue.

Regarding OPUC's proposal, the commission has increased to eight calendar days the number of days in which a customer may appeal. The commission has also provided the customer protection against disconnection during the REP review process and while the customer submits additional proof of eligibility to the LIDA.

§25.483(g)

TLSC and Texas ROSE suggested that, in addition to adopting this one-time bill payment assistance program, the commission consider amending §25.483(g) to completely prohibit the disconnection of low-income seriously ill and disabled customers.

Commission response

The commission believes that the amendments to PURA relating to the one-time bill payment assistance program were adopted in recognition that electric service providers use disconnection as a means of collecting unpaid bills. Nothing in PURA prescribes an additional protection against disconnection that is as broad as the TLSC and Texas ROSE proposal. Accordingly, the commission does not adopt their proposal.

§25.497

OPUC expressed concern that seriously ill, disabled, and critical care customers' eligibility for deferred payment plans is restricted by the provisions of §25.480(j)(3). OPUC proposed that changes be made to prevent this, and to require that REPs provide a longer repayment period for these customers.

Commission response

The commission notes that the protections afforded ill and disabled customers under §25.483(g) already require a REP to allow such a customer to enter into a deferred payment plan, notwithstanding the provisions of §25.480(j)(3). A change to extend the repayment period for ill and disabled customers is outside the scope of this rulemaking.

Application Form for One-Time Bill Payment Assistance Program

TLSC and Texas ROSE proposed that the application form for this program be created outside of this rulemaking proceeding, after the final rule is adopted. The Consumer/REP Coalition supported this proposal.

The REP Coalition proposed the standardization of a form for customers to receive benefits as a seriously ill or disabled person. This would allow the standardization of the format by which physicians submit that a customer (or household member) is seriously ill or disabled, and qualifies for protection under §25.483(g).

The REP Coalition suggested that, because the income requirements for the one-time bill payment assistance program will mirror those of the LITE-UP program, it may be possible to add a box on the existing LITE-UP form simply asking if the person applying for low-income status is the electric customer or a member of the household.

Commission response

The commission disagrees with the proposal to create the form outside this rulemaking proceeding. The form reflects the provisions of new §25.455, and is approved with the new rule. However, because the LIDA will not be reviewing the health status portion of the customer's application, as had been contemplated in the Proposal for Publication, the commission is at this time only approving a form related to the seriously ill or disabled household member's health status. As for a form related to the income status of the

seriously ill or disabled household member, the commission believes this may be accomplished with changes to the existing LITE-UP form, as the REP Coalition suggested, and will address any such changes in the future. The commission has made changes to §25.455 to conform the rule to this approach.

Regarding the REP Coalition's first suggestion, the commission has not proposed changes to §25.483 in this rulemaking proceeding, and so cannot mandate a form for use in the determination of eligibility for §25.483(g). However, the commission agrees that a form used to determine health status for the purpose of this one-time bill payment assistance program could also be used in determining health status for the purpose of §25.483(g), and encourages REPs to use this form when qualifying customers under §25.483(g).

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting §25.455, the commission makes other minor modifications for the purpose of clarifying its intent.

This new section and amendment are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.002 and 39.903(j-1) (Vernon 2007) (PURA). PURA §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction. PURA §39.903(j-1) requires the commission to adopt rules governing the one-time bill payment assistance program provided by PURA §39.903(e)(1)(B).

Cross Reference to Statutes: PURA §§14.002 and 39.903(j-1).

§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 for nonpayment 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.
- (1) Authorized program funds shall be allocated by the commission semi-annually, as follows:

- (A) Forty percent of the program funds authorized for a state fiscal year shall be allocated to REPs not later than September, for use from September through February. Another 40% of the program funds authorized for a state fiscal year shall be allocated to REPs not later than March, for use from March through August. These allocations to REPs shall be based on the ratio of: the number of low-income customers served by the REP in the prior July or January to the total number of low-income customers served by all REPs in the prior July or January. The number of low-income customers served shall be based on actual rate reductions provided pursuant to §25.454 of this title (relating to the Rate Reduction Program). Funds shall not be allocated to a REP that would have an allocation of less than \$1,000 under the ratio prescribed in this subparagraph. Such funds shall instead be added to the amount available pursuant to subparagraph (B) of this paragraph.
- (B) Ten percent of the program funds authorized for a state fiscal year shall be available during the period September through February. Another 10% of the program funds authorized for a state fiscal year shall be available during the period March through August. Such funds shall be available to eligible customers of REPs who have exhausted their pro rata share of the authorized program funds for that same six-month period, and to eligible customers of REPs who were not allocated a share of the authorized program funds for that same six-month period.

- (C) A REP shall not retain access to funds allocated to it based on subparagraph (A) of this paragraph beyond the six-month period for which those funds were allocated. After each six-month period has ended, the commission may re-allocate any unused funds from subparagraphs (A) and (B) of this paragraph. The commission may do so based on the methodology described in subparagraphs (A) and (B) of this paragraph, so long as the unused funds remain authorized for this program.
 - (D) An allocation of funds under this paragraph is not a payment to a REP. Funds will be paid to a REP as a reimbursement of benefits provided to customers, based on a REP's report to the commission in accordance with §25.451(j) of this title (relating to Administration of the System Benefit Fund).
 - (E) Commission staff administering this program may make the allocations under this section without commission action, and may notify REPs of their fund allocation.
- (2) In the event that funding and authorization to expend funds are not sufficient to administer the program and fund assistance for customers, the following shall apply:
- (A) The requirements of subsections (d) and (e), with the exception of subsection (d)(3), of this section are suspended until sufficient funding and spending authority are available.

- (B) The requirements of the following provisions of this title, insofar as they relate to the one-time bill payment assistance program, are suspended until sufficient funding and spending authority are available:
- (i) §25.451(j) of this title;
 - (ii) §25.457(j) of this title; and
 - (iii) §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 is available to an eligible customer one time per state fiscal year. REPs shall make this bill payment assistance program available to eligible customers, and shall provide credits to customers, consistent with subsection (f)(2)(F) of this section, to the extent that program funds are available to that REP.
- (1) A customer shall be eligible for assistance through the one-time bill payment assistance program if the customer 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. The customer shall prove satisfaction of this criterion pursuant to §25.483(g)(1) of this title (relating to Disconnection of Service), except that the physician's written statement shall be submitted on a form approved by the commission for the purpose

of this program. A REP shall afford a customer the protection provided by §25.483(g) of this title when that customer has fulfilled the requirements of this subparagraph. 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 determined pursuant to subsection (e) of this section; and
 - (D) The customer has not already received assistance under this section during the current state fiscal year (September through August).
- (2) The commission may adjust the limit on the amount of assistance a customer may receive under this section in a single instance of assistance. Initially, the maximum amount of assistance a customer may receive under this section in a single instance of assistance is set at the lesser of \$1,000 or the outstanding balance from the last three monthly bills for electric service.
- (3) A customer may receive assistance under this section one time per state fiscal year, regardless of how many seriously ill or disabled low-income persons reside in the household. A REP shall inform a customer seeking assistance of this provision, shall maintain a record of its electric customers who have received assistance under this section in the current state fiscal year, and shall not approve assistance for electric customers to whom the REP has already provided assistance under this section in the current state fiscal year. For the purpose of determining

whether a customer has already received assistance in the current state fiscal year, the stated date of disconnection in the disconnection notice used by the customer to apply for assistance shall be considered to be the date of assistance. 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 state fiscal year. The commission may audit applications for this program, and 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.

- (4) If the seriously ill or disabled person has been deemed disabled for the purpose of Supplemental Security Income (SSI), and has obtained a physician's statement on the commission-approved form to satisfy the requirements of subsection (d)(1)(B) of this section, that person may re-submit a copy of that same physician's statement to satisfy the requirements of subsection (d)(1)(B) of this section for up to three years from the time the statement is signed by the physician. The seriously ill or disabled person must be considered to be disabled for the purpose of SSI at the time the statement is signed by the physician, and at the time that same physician's statement is used again for the purpose of this one-time bill payment assistance program. The seriously ill or disabled person must provide current proof of SSI disability when re-submitting a copy of a previous physician's statement for the purpose of this program. A seriously ill or disabled person may only re-submit a copy of a previous physician's statement for the purpose of this program, and may not satisfy the requirements of §25.483(g) of this title in this manner.

- (5) A REP is entitled to reimbursement under §25.451(j) of this title for one-time bill payment assistance provided to an eligible customer in accordance with this section.

(e) **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) The customer is enrolled in the rate reduction program described in §25.454 of this title; or
- (B) If the customer is not enrolled in the rate reduction program, the customer may complete the appropriate commission-approved form, 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 the Low-Income Discount Administrator (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 appropriate commission-approved form, 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 commission-approved form. A seriously ill or disabled person who is not enrolled in the rate reduction program shall submit with the appropriate commission-approved form 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 enrollments for accuracy.

- (f) **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 income eligibility for the one-time bill payment assistance program.

LIDA's responsibilities include:

- (A) Distributing and processing low-income 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) Determining in a timely manner whether the customer is eligible for assistance in accordance with subsections (d)(1)(C) and (e) 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
 - (D) Notifying the REP and customer whether the customer has met the low-income requirements of this section. If the customer is notified that he or she has not met the low-income requirements of this section, LIDA shall inform the customer of the appeals process available under subsection (g) of this section.
- (2) The REP's responsibilities shall include:
- (A) Directing the customer how to establish, pursuant to subsection (d)(1)(B) of this section, that 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, and determining whether the customer has met the requirements of subsection (d)(1)(B) of this section;
 - (B) Postponing disconnection activity in accordance with subsection (d)(1)(B) of this section;
 - (C) Directing the customer to contact LIDA directly, when necessary to establish low-income status of the seriously ill or disabled household member;

- (D) Communicating with LIDA to ascertain the eligibility status of each customer for whom LIDA must determine income eligibility;
 - (E) 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 available 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;
 - (F) Applying the appropriate credit for assistance to an eligible customer's account, to the extent that program funds are available to that REP;
 - (G) Maintaining all records demonstrating compliance with subsections (d)(1)(A) through (d)(1)(C) of this section;
 - (H) Providing to the commission copies of materials regarding assistance provided to customers as necessary for commission monitoring and auditing purposes; and
 - (I) Fulfilling reporting requirements as required by §25.451 of this title.
- (3) The commission's responsibilities shall include:

- (A) Calculating the allocations prescribed by subsection (c)(1) of this section, and informing each REP of the REP's allocated amount.
 - (B) Monitoring the use of that portion of program funds determined pursuant to subsection (c)(1)(B) of this section. In the event that portion of program funds has been drawn down to a point at which REPs may not be fully reimbursed in the upcoming month for assistance provided to eligible customers, providing notice to REPs that they should discontinue the program unless they still have funds remaining available pursuant to subsection (c)(1)(A) of this section.
 - (C) Facilitating the reimbursement of REPs for credits provided to eligible customers through this one-time bill payment assistance program, as required by §25.451(j) of this title.
- (g) **Appeals process.** A REP shall not authorize disconnection of a customer who meets the requirements of subsection (d)(1)(B) of this section before the protection afforded by that subsection has expired. A customer who believes the REP has erroneously determined that the household member does not qualify as seriously ill or disabled for the purpose of this program may submit a complaint to the REP or to the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling). The REP shall not disconnect the customer during the REP's review or supervisory review. The REP shall inform the customer of the customer's right to submit an informal complaint to the commission, pursuant to §25.485(e)(1)(A) of this title. In instances in which the REP receives from LIDA notice that the seriously ill or disabled person in the household does

not qualify as a low-income person, the REP shall not submit authorization for disconnection of the customer until the eighth 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 LIDA has erroneously determined that the seriously ill or disabled person does not qualify as a low-income person, the customer may appeal that eligibility determination as follows:

- (1) The customer may request that LIDA review its determination, and the customer shall have seven days from the day of his or her request to LIDA to 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. LIDA shall conduct any such review within the two commission working days after the receipt of additional proof of eligibility from the customer, and shall inform the REP and the customer of its determination at that time. If upon review, LIDA affirms that the seriously ill or disabled person does not qualify as a low-income person, 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 LIDA's determination upon review, and shall adhere to the requirements of §25.483(k) and (l) of this title.

- (2) If the customer is not satisfied with LIDA's determination upon review, the customer may request in writing an informal review by commission staff to determine the income status of the seriously ill or disabled household member.
 - (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 state fiscal year shall not have the protections from disconnection provided by this subsection available to him or her, and the REP shall not be required to issue a new disconnection notice pursuant to paragraph (1) of this subsection, for any appeal other than the first appeal of the state fiscal year. For the purpose of determining whether a customer has already appealed a decision in a state fiscal year, the stated date of disconnection in the disconnection notice used by the customer to apply for assistance shall be considered to be the date of appeal, even if the actual appeal was submitted in a subsequent state fiscal year. Any reconnection costs associated with such additional appeals shall be borne by the customer.
- (h) **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) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise.

(1) **Critical load public safety customer** – A customer for whom electric service is considered crucial for the protection or maintenance of public safety, as defined in §25.52 of this title (relating to Reliability and Continuity of Service) is a “critical load public safety customer.” Such customer shall qualify as a “critical load” under §25.52(c)(1) of this title and qualify for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the transmission and distribution utility’s (TDU) tariff for retail electric delivery service. In order to be eligible for this status, the customer must have a determination of eligibility pending with or approved by the TDU. The customer shall notify the retail electric provider (REP) that the customer may qualify. The REP shall convey any such notice to the TDU. Pursuant to a process determined collaboratively between the TDU and REP, eligibility will be determined through a collaborative process between the customer, REP and TDU.

(2) **Critical care industrial customer** – An industrial customer, for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition on the retail customer’s premises, is a “critical care industrial customer.” Such customer shall qualify for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the TDU’s tariff for retail electric delivery service. In order to be eligible for this

status, the customer must have a determination of eligibility pending with or approved by the TDU. The customer shall notify the REP that the customer may qualify. The REP shall convey any such notice to the TDU. Eligibility will be determined through a collaborative process between the customer, REP, and TDU.

- (3) **Critical care residential customer** – A residential customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition is a “critical care residential customer.” Such customer shall qualify as a “critical load” under §25.52(c)(1) of this title and for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the TDU’s tariff for retail electric delivery service. In order to be eligible for this status, the customer must have the commission standardized Critical Care Eligibility Determination Form pending with or approved by the TDU. The customer shall notify the REP that the customer may qualify. The REP shall convey any such notice to the TDU. Eligibility will be determined by the TDU, pursuant to the procedures described in subsection (b) of this section.

(b) **Procedure for qualifying critical care residential customers.**

- (1) A REP shall advise customers of their rights relating to critical care designation in the terms of service documents.
- (2) Upon a customer’s request, the REP shall provide to the customer the commission’s standardized Critical Care Eligibility Determination Form via the method of transmittal agreed to by the customer.

- (3) The customer shall then return the completed form to the REP.
- (4) After the REP receives the form, it shall evaluate the form for completeness, and if the form is complete, the REP shall then forward the form to the appropriate TDU. If the form is incomplete, the REP shall notify the customer and return the form to the customer, informing the customer of what information is needed to complete the form.
- (5) A customer shall be considered “qualified” when the TDU receives the completed Critical Care Eligibility Determination Form, but the TDU shall remove the “qualified” designation should the customer ultimately not qualify after evaluation of the information by the TDU.
- (6) If the TDU needs additional information from the customer, the TDU shall notify the REP before contacting the customer to request such information.
- (7) The evaluation and qualification process shall not take longer than one month from the date the TDU receives the Critical Care Eligibility Determination Form.
- (8) The TDU shall first notify the customer’s REP and then the customer of its ultimate determination.
- (9) A customer may appeal the eligibility determination directly to the TDU. The TDU may set guidelines for the appeals process. A TDU shall first notify the customer’s REP and then the customer of any change in qualification based on the appeal. A TDU shall inform a customer of the customer’s option to file a complaint with the commission pursuant to §25.485 of this title if the customer is dissatisfied with the results of the appeal.

- (10) Qualification is valid for one year from date qualification was granted. If a TDU renews all customers once a year, regardless of qualification date, a renewal shall not be required for customers qualified less than one year.
 - (11) The TDU is responsible for notifying the customer's current REP of record 60 days prior to the annual expiration date of the qualification, so the REP can begin the renewal process.
 - (12) To commence renewal, the REP shall provide the customer with the commission standardized Critical Care Eligibility Determination Form and shall inform the customer that, unless renewed by the date specified by the TDU, the customer's critical care designation will expire. The renewal process shall be the same as the initial qualification process.
- (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) of this title (relating to Disconnection of Service) or Section 5.3.7.4(1)(D) 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).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.455, relating to One-Time Bill Payment Assistance Program, is hereby adopted with changes to the text as proposed; and that §25.497, relating to Critical Care Customers, is hereby adopted with no changes to the text as proposed. The commission also adopts a new form to accompany §25.455.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 20__.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE CARUTHERS PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER