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PUBLIC UTILITY COMMISSION
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OPEN MEETING COVER SHEET

MEETING DATE: December 17, 2015

DATE DELIVERED: December 10, 2015

AGENDA ITEM NO.: 13

CAPTION: Project No. 45189 – *Rulemaking Amending PUC Substantive Rules to Implement HB 1101, 84th Legislative Session, Related to the Elimination of the System Benefit Fund Balance*

ACTION REQUESTED: Discussion and possible action

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Public Utility Commission of Texas

Memorandum

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PUBLIC UTILITY COMMISSION
FILING CLERK

TO: Chairman Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy Marty Marquez

FROM: Julia Harvey, Competitive Markets Division *JH*
Mandeep Chatha, Legal Division

DATE: December 10, 2015

RE: **Agenda Item No. 13**, Project No. 45189 – *Rulemaking Amending PUC Substantive Rules to Implement HB 1101, 84th Legislative Session, Related to the Elimination of the System Benefit Fund Balance*

Staff provides this memorandum to seek guidance from the Commission regarding its pending Proposal for Publication in this rulemaking project. Staff's memorandum focuses on two issues: (1) the identification of low-income customers and (2) the provision of certain low-income electric benefits in the absence of the System Benefit Fund (SBF).

Identifying Eligible Low-Income Customers in the Absence of the SBF

HB 1101¹ sunsets the SBF on September 1, 2017. By this date, the Commission is required to exhaust the balance of the SBF, and the Commission's relationship with the Health and Human Services Commission (HHSC) for the purposes of identifying eligible low-income electric customers will cease.

Without the HHSC-facilitated identification process, the Commission will no longer be able to apply its current method of automatically identifying low-income electric customers. A problem arises because this method is not only used to determine eligibility for SBF discounts, but is also used to determine eligibility for other low-income electric benefits. Furthermore, throughout the Commission's rules there are numerous references to eligible low-income electric customers. Because the Commission can no longer rely on HHSC data to determine eligibility, identifying low-income customers in the absence of the SBF is a fundamental issue to be addressed this rulemaking project.

Treatment of Ancillary Electric Benefits

More narrowly, if the Commission were simply to repeal its rules governing the SBF to reflect HB 1101, doing so would also repeal two specific electric benefits that are not dependent on SBF funding, but which

¹ Elimination of the System Benefit Fund Balance, 84th Leg., R.S., ch. 706 (HB 1101), § 1, amended subsec. (m), sec. 39.903, § 2, amended subsec. (a)(b)(c), sec. 39.9093, 2015 Tex. Sess. Law Serv. (West).

are dependent on the list of eligible low-income customers. The ancillary benefits at issue are late penalty waivers and deposit installment allowances. Customers eligible for the rate reduction program provided by the SBF are automatically eligible for these ancillary benefits.

Threshold Policy Questions

In the course of identifying the scope of this project, and after soliciting written comment and hosting a public workshop, Staff has encountered the following threshold policy questions:

1. Should Retail Electricity Providers (REPs) be required to continue to provide the ancillary low-income benefits (late penalty waivers and deposit installments) that are described in 16 Tex. Admin. Code § 25.454 (TAC) alongside the low-income discount?
2. If so, and if the Commission maintains its treatment of low-income customers specified in other rules (detailed in Attachment E), given that the method used by the Commission to identify eligible customers will be retired along with the enabling statute, how should the Commission determine low-income customer eligibility?

With this memorandum, Staff offers a set of options to determine future treatment of ancillary benefits and provides suggestions for maintaining an eligibility determination post-SBF. In seeking direction from the Commission to resolve the above-described issues, Staff includes several attachments as follows:

- **Attachment A** provides a high level summary of options for Commission consideration.
- **Attachment B** contains background information.
- **Attachment C** further outlines policy alternatives.
- **Attachment D** briefly summarizes current stakeholder positions on the issues.
- **Attachment E** details existing Commission rules that may be affected by this project.

Staff looks forward to further discussion of Project No. 45189 at the December 17, 2015 Open Meeting. Please contact Julia Harvey at 6-7371 or Mandeep Chatha at 6-7163 with additional questions.

Attachment A: Summary of Options

Options	Eligibility Determination	Description and Impact
Option 1: Take no immediate rulemaking action, effectively requiring REPs to offer low-income benefits until 9/1/17. This would give the Legislature an opportunity to provide guidance in 2017.	Maintains the current eligibility criteria until the expiration of the enabling statute	<ul style="list-style-type: none"> Discount continued through FY 2016 Beginning FY 2017 (9/1/16), discount would be set to 0% Remaining balance of SBF would fund automatic enrollment for another year Identify eligibility determination as an unresolved issue in the 2017 <i>Scope of Competition Report</i> Reinitiate rulemaking in 2017

If the Commission selects Option 1, but the Legislature then declines to provide further direction on the matter, the Commission would need to be ready to move forward with an alternative course of action (such as Options 2, 3, or 4 below) after the Legislative Session concludes in May, 2017, but before HB 1101 takes effect on September 1, 2017. This would significantly compress the normal time available for a rulemaking.

If the Commission chooses to take action now, Staff offers the following options:

Options	Eligibility Determination	Description and Impact
Option 2: Require REPs to provide electric benefits using the Lifeline Service Program list	Customers identified by the Low Income Discount Administrator (LIDA) using Lifeline Service Program eligibility criteria	<ul style="list-style-type: none"> LIDA would run a secondary match off the Lifeline list, comparing the list of customers qualifying for Lifeline with the list of customers provided by REPs New Commission rule required to formalize matching process New Commission rule would replace current SBF rule references (see Attachment E)
Option 3: Require REPs to offer optional electric benefits and ask customers to self-enroll	Customers identified via a self-enrollment process facilitated by the REP	<ul style="list-style-type: none"> REPs authorized to request documentation from customers to determine eligibility REPs may use own non-discriminatory criteria or criteria may be set by a new Commission rule LIDA would no longer maintain a list of eligible low-income electric customers
Option 4: Allow REPs to voluntarily provide electric benefits	Individual REPs set own qualifying criteria	<ul style="list-style-type: none"> REPs would provide low-income benefits at their own discretion LIDA would no longer maintain a list of eligible low-income electric customers Uncertain what criteria would replace current SBF rule references (Attachment E)

Attachment B: Background Information

How is Customer Eligibility Currently Determined?

The Commission's relationship with the Health and Human Services Commission (HHSC) for the purposes of automatically enrolling eligible customers in the rate reduction program was established pursuant to PURA § 39.903² and promulgated in 16 TAC § 25.454. This relationship enables the Commission's contracted Low-Income Discount Administrator (LIDA) to determine eligibility via a matching process. On a monthly basis, a list of qualifying customers is provided to LIDA by HHSC. LIDA then compares this list against a list of customers provided by REPs to identify matching customer records. In addition to this automatic matching process, customers can submit forms to LIDA to self-enroll in the rate reduction program. LIDA then matches these customers against the list of customer records provided by REPs. LIDA's matched list comprises the database of customers eligible for both the rate reduction program and for late penalty waivers and deposit installment benefits.

This list of eligible customers additionally determines eligibility for benefits described in several other Commission rules. If customers qualify for the benefits detailed in 16 TAC § 25.454, this same set of customers are also eligible for deferred payment plans, preferential distribution of funds for deposit payment assistance in the event of a mass transition, and free in-home monitoring devices (see Attachment E for more details).

Determining Eligibility in the Absence of the SBF

Currently, PURA § 39.903(j) authorizes HHSC and the Commission to enter into a Memorandum of Understanding (MOU) establishing the respective duties of the Commission and HHSC for the purposes of automatic enrollment. However, following the sunset of PURA § 39.903 on September 1, 2017, not only will the funding for the eligibility determination cease to exist, but LIDA access to HHSC data to enable automatic enrollment will also cease to be supported by the enabling statute.

If the Commission concludes that REPs must continue to provide ancillary electric benefits³ and maintains other low-income provisions as detailed in Attachment E, the Commission could either seek clarity from the Legislature in 2017 regarding access to HHSC data (Option 1 of this memorandum), apply a new method

² Public Utility Regulatory Act, Tex. Util. Code Ann. § 39.903 (West 2007 & Supp. 2015) (PURA).

³ Staff uses the term "ancillary benefits" specifically to refer to late penalty waivers and deposit installment allowances.

to identify low-income customers (Option 2), or direct REPs to identify eligible customers through a self-enrollment process (Option 3).

Existing Commission Rules

Certain Commission rules offer some guidance on determining eligibility for ancillary benefits in the event that funds are not sufficient to administer the rate reduction program. While these rules appear to contemplate a temporary lapse of funding, rather than the sunset of the underlying statute, Staff describes them here for informational purposes.

Late Penalty Waivers

Existing 16 TAC § 25.454(c)(3) specifies that if an eligibility list is not available per 16 TAC § 25.454(i), the requirements of 16 TAC § 25.480(c) regarding late penalty waivers for eligible customers are suspended.

The provisions for determining eligibility for late penalty waivers in the event that funding for the rate reduction program is insufficient are provided in 16 TAC § 25.454(i). If SBF funding is not sufficient to provide rate reductions, the Commission may, in its discretion, using LIDA (or other means), maintain a list of customers who would be eligible for the rate reduction if funding were available.⁴ Existing 16 TAC § 25.454(i)(3) requires REPs to provide late penalty waivers “based on the customer’s eligibility for the discount, rather than the customer’s receipt of the discount.” To the extent practicable, LIDA can maintain a list of eligible customers through an automatic enrollment process (as specified in 16 TAC § 25.454(f)(1)), and, if funding is available, the Commission can require LIDA to additionally determine eligibility by facilitating a self-enrollment process (as specified in 16 TAC § 25.454(f)(2)).

Deposit Installment Benefits

Existing 16 TAC § 25.454(j)(1) provides that if LIDA is maintaining a list of eligible customers described in subsection (f) or (i), then a customer who qualifies for the rate reduction benefit is also entitled to pay deposits over \$50 in two installments. Existing 16 TAC § 25.454(j)(2) provides that if LIDA is not maintaining a list of eligible customers under subsection (f) or (i), a REP is nevertheless required to provide the deposit installment benefit to any residential customers or applicants who would have qualified for the rate reduction benefit. Under subsection (j)(2), REPs may, on a non-discriminatory basis, require customers to provide documentation of their eligibility for this benefit.

⁴ 16 TAC § 25.454(i)(1).

Attachment C: Summary of Options

Option 1: No Immediate Rulemaking Action

Due to the uncertainty posed by the elimination of the SBF as it relates to automatic enrollment, HHSC data, and eligibility, the Commission could maintain its current rules through fiscal year 2017, awaiting further guidance from the Legislature next session. The Commission would describe this unresolved issue in the 2017 *Scope of Competition Report*.

Because PURA §§ 39.903 and 39.9039 authorize the Commission to allocate SBF funding to the low-income discount and related administrative expenses and to enter into an MOU with HHSC through August 2017, maintaining the current approach to automatic enrollment for another year would not conflict with the statutory authority granted to the Commission to access low-income data from HHSC. By setting the discount to 0% and using the remaining balance of the SBF to continue to fund an automatic identification process, customers identified via HHSC data would receive the same ancillary benefits and be subject to the same low-income provisions detailed in Commission rules until September 1, 2017. However, the remaining balance of the SBF may not be sufficient to continue to fund the more costly LIDA-facilitated self-enrollment process through FY2017. In this case, over time, the portion of customers who currently self-enroll would no longer be captured in LIDA's database of eligible customers.⁵

If this approach is taken and no further direction is provided next session, the Commission would need to be prepared to move forward with an alternative solution (such as Options 2, 3, or 4 below) and adopt new rules to reflect HB 1101 before it takes effect on September 1, 2017.

Option 2: Continue Providing Benefits, Applying the Lifeline Program Eligibility Criteria

Option 2 was presented in Staff's strawman proposal in this project.⁶ It maintains the requirement that REPs provide ancillary benefits to eligible customers, and identifies these customers by applying the corresponding eligibility criteria used in administering the Lifeline Service Program.⁷

Determining Eligibility Using the Lifeline Service Program List

The Lifeline Service Program, described in 16 TAC § 26.412, provides discounted telephone service to qualifying low-income customers through the Universal Service Fund. As with the rate reduction program, HHSC identifies eligible customers (or customers self-enroll through LIDA), and LIDA then compares this

⁵ In FY2015, approximately 60,000 customers, or 11%, self-enrolled in the rate reduction program per month. Customers who self-enroll are eligible for seven months from the date of enrollment, per 16 TAC § 25.454(f)(5)(A).

⁶ *Rulemaking Amending PUC Substantive Rules to Implement HB 1101, 84th Legislative Session, Related to the Elimination of the System Benefit Fund Balance*, Project No. 45189, Strawman Proposal (Oct. 19, 2015).

⁷ The Lifeline Service Program eligibility criteria is defined in 16 TAC § 26.412(d).

list to a list of customers provided by the telecommunications provider. The resulting matched list, generated for use by the Commission, constitutes the pool of customers eligible for the Lifeline program. The Commission could use this list to determine eligibility for electric benefits by running a secondary match, comparing the list of customers qualifying for Lifeline with the list of customers provided by REPs. If the Commission adopts this approach, Staff proposes that a new 16 TAC § 25.499 be created to formalize this matching process. In addition to determining eligibility for ancillary benefits, this new section could provide an eligibility criteria for other low-income provisions as detailed in Attachment E.

Using the Lifeline list for matching purposes would likely result in a different set of qualifying customers in comparison with the current SBF-supported method because of data matching issues (slight differences between a record provided by the telecommunications provider and a record provided by the REP may result in an unsuccessful match). Staff is currently evaluating how applying the Lifeline list would affect the size of the eligible customer pool.

Option 3: Require REPs to Continue to Provide Benefits, Asking Customers to Self-Enroll

Option 3 would mandate that REPs offer optional ancillary electric benefits to customers. Eligible customers would be identified via a self-enrollment process facilitated by the REP. Authorizing REPs to request documentation from customers to determine their eligibility for optional benefits aligns with the provisions regarding deposit installment allowances described in 16 TAC § 25.454(j)(2). If the Commission determines that REPs should administer a self-enrollment process, customers would be asked to submit certain documentation to their REP, either as determined by the REP using their own non-discriminatory criteria or as specified in the Commission's new rule.

Option 4: Allow REPs to Provide Low-Income Benefits Voluntarily

Option 4 suggests an approach wherein REPs voluntarily offer low-income benefits at their discretion. The Commission would remove relevant requirements from its rules, and REPs would determine their own approach to identifying eligible customers. A provision supporting voluntary low-income electric programs is described in existing 16 TAC § 25.454(k).

If benefits are offered voluntarily and no formal means of determining customer eligibility is adopted, this approach could affect the treatment of eligible customers in other rules, because the Commission would no longer have a method to consistently and reliably identify these customers.

Attachment D: Summary of Comments

Parties filed written comments on Staff's strawman proposal and had an opportunity for discussion at a Staff-led workshop. While written comments may have been preliminary, Staff provides a brief summary to indicate stakeholder positions as they pertain to the central issue of the provision of ancillary benefits.

At the time of filing, **The REP Coalition** had not yet formulated specific positions on the strawman proposal. The REP Coalition questioned the use of the Lifeline Service Program list to identify eligible low-income customers and requested additional information about this proposal to understand its ramifications. The REP Coalition noted that, if the Commission applies the Lifeline list to determine customer eligibility, REPs may incur costs to integrate this new method and could assume greater risk exposure if the new methodology expands the pool of qualifying customers. The REP Coalition stated that given the maturity of the competitive retail electric market it may be inappropriate for the Commission to require that REPs continue to provide late penalty waivers and deposit installment benefits.

In contrast, **Texas Legal Services Center (TLCS)** and **Texas Ratepayers' Organization to Save Energy (Texas ROSE)** were strongly in favor of preserving the requirement that REPs continue to provide ancillary low-income electric benefits, which they asserted will become even more critical in the absence of the low-income discount. TLCS and Texas ROSE argued that applying the Lifeline Service Program eligibility criteria may result in fewer or different customers receiving these benefits, and urged the Commission to conceive an alternative method to expand the number of qualifying customers. TLCS and Texas ROSE further suggested that the Commission ensure that its new approach to determining low-income eligibility apply to all instances wherein low-income customers are given special consideration in Commission rules.

The Steering Committee of Cities Served by Oncor (Cities) filed comments generally in support of the TLCS and Texas ROSE comments. Cities maintained that REPs should be required to provide low-income benefits in addition to their voluntary programs. Cities argued that the Commission should determine an alternative approach to determining eligibility that captures a greater number of low-income customers, because customers enrolled in Lifeline Service Program have telephone service, and customers without telephone service are likely those with the greatest need for electric benefits. Cities acknowledged that while it may be administratively convenient to apply the Lifeline criteria, that convenience should not be prioritized over the provision of electric low-income benefits for customers in need.

Attachment E: Rules Potentially Affected⁸

Rule	Description
§25.5. Definitions	Generally provides the definitions for Chapter 25 Electric Rules.
§25.5(65) Definition of Low-income customer ⁹	An electric customer whose household income is not more than 125% of federal poverty guidelines or who receives food stamps from the Texas Department of Human Services (TDHS) ¹⁰ or medical assistance from a state agency administering a part of the medical assistance program.
§25.5(66) Definition of Low Income Discount Administrator (LIDA)	A third-party administrator contracted by the Commission to administer aspects of the rate reduction program established under Public Utility Regulatory Act § 39.903 (PURA).
§25.5(101) Definition of Rate Reduction Program	A program to provide reduced electric rates for eligible low-income customers, in accordance with PURA § 39.903(h).
§25.41. Price to Beat	Generally promotes competitiveness of the retail electric market, which requires affiliated Retail Electric Provider's (REP) to offer a price to beat pursuant to PURA § 39.202.
§25.41(c)(8) Definition of Registration Agent	As defined in 16 TAC § 25.454 of this title (relating to Rate Reduction Programs).
§25.41(h) Non-price to beat offers	Limits the timeframe in which affiliated REPs can offer rates other than a price to beat to residential customers, except as provided by 16 TAC § 25.454 (relating to the rate reduction program). §25.454 provides for discount factors to be determined as the lower of the price to beat or minimum POLR rate.
§25.43. Provider of Last Resort (POLR)	Generally sets forth the requirements for the availability of POLR service.
§25.43(d)(4) POLR Service	Requires POLR providers to offer benefits for low-income customers as provided for under PURA § 39.903.
§25.43(p)(A) & (B) REP obligations in a transition of customer to POLR service	Requires, at time of mass transition, that funds shall be distributed first to provide deposit payment assistance for transitioned customers enrolled in the rate reduction program. Further requires that proceeds be distributed proportionate to the number of customers received in the mass transition, who at the time of the transition, are enrolled in the rate reduction program.

⁸ While Attachment E provides a comprehensive list of rules that reference the SBF, §39.903, or the rate reduction program, the Commission's rulemaking to implement HB 1101 may not necessitate amendment of each such rule. For example, §25.344 (relating to Cost Separation Proceedings) may not require amendment at this time. Staff provides this Attachment to inform the Commission of the scope of potentially affected rules.

⁹ Low-Income Customer is also mentioned in §25.43(d)(4)(C) relating to POLR service, §25.454(e) relating to rate reduction program, §25.455(d)(1)(c) relating to one time bill payment assistance program, and §25.455(e)(1)(B) relating to establishment of low-income status for one-time bill payment assistance program. The definition of a low-income customer aligns with the definition provided in PURA § 39.903(l).

¹⁰ HB 2292 (78TH Regular Session) consolidated TDHS along with several other agencies into the Texas Department of Human Services. The Health and Human Services Commission (HHSC) currently administers the TDHS.

§25.43(s) Reporting Requirements	Requires REPs designated to provide POLR, to report, for each month of the reporting quarter, the total number of new customers acquired under this section including the number of customers eligible for the rate reduction program pursuant to 16 TAC § 24.454. This information shall be filed with the Commission on a quarterly basis. Further requires quarterly reporting of disconnection notices issued for customers who are eligible for the rate reduction program.
§25.43(w) Deposit payment assistance	Requires REPs to provide POLR deposit payment assistance, when proceeds are available, to customers enrolled in the rate reduction program. Allows amounts credited as deposit payment assistance in this section to be refunded to the customer in accordance with 16 TAC § 25.478(j).
§25.107. Certification of REPS	Generally provides the requirements that REPs must meet to be certified.
§25.107(f)(A)	Requires that proceeds from an irrevocable standby letter of credit be given priority to first pay the deposits to REPs that volunteer to provide service in a mass transition event (related to POLR) of low-income customers enrolled in the SBF rate reduction program. Second priority is given to REPs that do not volunteer.
§25.344. Cost Separation Proceedings	Generally establishes procedures by which affected utilities will file cost separation case.
§25.344(c) Compliance and Timing	Requires filings include supporting cost data for determination of utilities non-by passable delivery charges which includes the system benefit fund fee.
§25.344(f) System Benefit Fund Fee	Describes the system benefit fund fee as established and implemented by the Commission.
§25.344(h)(2)(F) Jurisdiction and Texas retail class allocation - SBF Fee	Definition of the SBF Fee. Requires that the fee be allocated among customers based on the customer's actual kW hours used, as measured at the meter and adjusted for voltage level losses.
§25.431. Retail Competition Pilot Projects	Generally establishes the parameters under which an electric utility shall offer customer choice for 5% of the load in its Texas service area beginning 2001 through the implementation of retail competition pilot projects.
§25.431(j) Evaluation of the pilot projects by the Commission; reporting	Requires the SBF administrator to report the number of customers receiving a low-income rate discount to the Commission.
§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers	Generally, requirements for REPs in connection with the provision of service and marketing to residential and small commercial customers.
§25.475(f) Terms of Service Contract	Requires terms of service contracts to include the rights of customer who qualifies for the rate reduction program to pay a required deposit that exceeds \$50 in two equal installments pursuant to 16 TAC § 25.478.
§25.478. Credit Requirements and Deposits	Generally, lists the credit requirements that a REP may require a residential customer to establish and maintain as a condition of providing service.

§25.478(e) Amount of Deposit	Allows a customer that qualifies for the rate reduction program be eligible to pay any deposit that exceeds \$50 in two equal installments. Notice of this option shall be included in any written notice to a customer requesting a deposit. Provides obligations of the customer and length of time in which installments must be made.
§25.479. Issuance and Format of Bills	Generally, beginning 2010, provides the frequency, delivery, bill content etc.
§25.479(c)(2)(j) Bill Content	Provides the definition of SBF.
§25.480. Bill payment and adjustments	Generally, discusses bill due date, penalty on delinquent bills, over and under billing by a REP, disputed bills etc.
§25.480(c) Penalty on delinquent bills for electric service	Allows REPs to currently charge a one-time penalty not to exceed 5% on a delinquent bill. This section currently removes the penalty for residential or small commercial customers serviced by POLR or customers receiving the low-income discount
§25.480(h) Level and average payment plans	Requires REPs to make payment plans available to a residential customer receiving a rate reduction pursuant to the program, even if the customer is delinquent in payment to the REP.
§25.480(j) Deferred payment plans and other alternative payment arrangements	Requires REPs make a payment plan available, upon request, to a residential customers during an extreme weather emergency (as defined in 16 TAC § 25.483(j)). Plans must be made available to customers receiving the LITE-UP discount and customers declared as critical care under 16 TAC § 25.297. Additionally, provides options for payment plans.
§25.497. Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers	Generally, provides designation criteria and benefits for certain critical load customers.
§25.497(d) Notice to customers concerning Critical Care Residential Customer and Chronic Condition Residential Customer status	Allows a REP to include information related to the low-income rate reduction program in the same notification sent to residential applicants of the right to apply for Critical Care Residential customer or chronic condition residential customer.
§25.498. Prepaid Service	Generally, provides the requirements for prepaid service.
§25.498(h)(2)(H) Summary of Usage and Payment (SUP)	If applicable, requires a SUP to include a statement that indications the customer is receiving or has received during the usage summary period the LITE-UP Discount, pursuant to the Rate Reduction Program.
§25.498(h)(3)(J)	Definition of the SBF.
Subchapter Q. System Benefit Fund	Provides guidelines for administration and implementation of the SBF rate reduction program and related programs.
Advanced Metering System (AMS) Low-Income Program (Project No. 36234)	The AMS Low-Income Implementation Plan identifies customers as eligible for an in-home device based on their eligibility for the rate reduction program described in 16 TAC § 25.454.