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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

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PUBLIC UTILITY COMMISSION  
OF TEXAS

2015-12-11 2:53  
FILING CLERK

**COMMENTS OF THE REP COALITION ADDRESSING  
STAFF STRAWMAN PROPOSAL**

**I. Introduction**

The REP Coalition<sup>1</sup> files these Comments in response to the Staff Strawman Proposal (Strawman Proposal) filed on October 19, 2015 in this project. The Strawman Proposal addresses the impact of the elimination of the System Benefit Fund (SBF) and its existing accumulated balance by the Legislature, most recently in the enactment of House Bill 1101.<sup>2</sup> Specifically, it proposes to address the impact of this legislation by (1) repealing the five electric substantive rules in Subchapter Q in Chapter 25 of the Texas Administrative Code (TAC) relating to the SBF, including the rate reduction program in 16 TAC § 25.454; (2) adopting a new electric substantive rule, 16 TAC § 25.499, Late Penalty Waivers and Deposit Installment Benefits, that specifies the eligibility requirements and processes for verifying customer eligibility for the late penalty payment and deposit installment requirements in 16 TAC § 25.480(c) and 16 TAC § 25.478(e)(3), respectively; and (3) amending two existing rules to reference new proposed 16 TAC § 25.499 and modifying the definition of “Low-Income Discount Administrator (LIDA)” in Subchapter A in Chapter 25 to designate the third-party administrator managing the Lifeline

<sup>1</sup> The REP Coalition consists of the following: Alliance for Retail Markets (“ARM”); NRG Retail Texas; the Texas Energy Association of Marketers (“TEAM”); and TXU Energy Retail Company LLC. Members of ARM participating in this proceeding are: Ambit Energy, LP; Champion Energy Services, LLC; Constellation NewEnergy, Inc.; Direct Energy, LP; and Green Mountain Energy. Members of TEAM participating in this proceeding are: Accent Energy d/b/a IGS Energy; Amigo Energy, LLC; APG&E; Cirro Energy; Entrust Energy; Infinite Energy; Just Energy; Spark Energy; StarTex Power; Stream Energy; Tara Energy, LLC; and TriEagle Energy. NRG Retail Texas includes: Reliant Energy Retail Services, LLC; Green Mountain Energy Company; Everything Energy, LLC; US Retailers, LLC; Cirro Energy; and Energy Plus Holdings, LLC.

<sup>2</sup> HB 1101 amended Public Utility Regulatory Act (PURA) §§ 39.903(m) and 39.9039. PURA § 39.903(m) establishes a new September 1, 2017 expiration date for the SBF. PURA § 39.9039(b)(2) expands the rate reduction program to the entire 12-month period of the current fiscal year (September 2015—August 2016) and authorizes the Commission to adopt a discount rate necessary to exhaust the SBF during this period. PURA § 39.9039(b)(3) also authorizes the Commission to extend the rate reduction program into the next fiscal year beginning September 1, 2016 if monies continue to remain in the SBF and to adopt a discount rate necessary to exhaust the SBF.

Service Program pursuant to 16 TAC § 26.412 of the Commission's telecommunications substantive rules as the LIDA referenced in the Commission's electric substantive rules, instead of the third-party administrator currently managing the SBF-funded low-income rate reduction program being phased out pursuant to HB 1101. Of these proposed changes to the electric substantive rules, the transition to using the Lifeline Service Program list to identify qualifying low-income customers eligible for the late penalty waivers and deposit installments in new proposed 16 TAC § 25.499 is a marked departure from the status quo, one with potentially significant operational and cost ramifications for retail electric providers (REPs).

The REP Coalition is currently researching and analyzing the impact of the proposed method for identifying qualifying customers eligible for the late penalty waivers and deposit installments under the Strawman Proposal. The proposal discontinues the use of the LITE UP list to identify those qualifying customers and instead requires the use of a completely different list, *i.e.*, the Lifeline Service Program list used today to identify qualifying customers and households eligible for the local exchange telephone service offering outlined in 16 TAC § 26.412. Based on the REP Coalition's initial review, the eligibility criteria used for the Lifeline list are substantially different from those used to compile the LITE UP list. Consequently, using the Lifeline list to administer the two retail electric service-related requirements specified by the Strawman Proposal in the future may materially alter the pool of qualifying customers, which would potentially impose significant incremental costs on REPs.

At this time, the REP Coalition has not formulated a specific position on any of the issues raised by the Strawman Proposal, including any redline recommendations for affected rules. Rather, these Comments only identify some of the general issues, questions, and concerns raised in the review of the Strawman Proposal during the last two weeks. The REP Coalition hopes to engage in informal discussions with the Commission Staff between now and the workshop scheduled for Monday, November 16, 2015 and to fully participate in the workshop to better understand the impacts and ramifications of the Strawman Proposal on the competitive retail electric market. If possible, the presence of one or more subject matter experts at the workshop who can address key questions about the eligibility criteria for the Lifeline Service Program customer list compared to the LITE UP list; the LIDA's use of the Lifeline list in administering

the two low-income requirements in new proposed 16 TAC § 25.499; and any operational and cost impacts of using the Lifeline list to identify qualifying low-income customers eligible for the late penalty waivers and deposit installments would be most helpful.

## **II. Issues Raised by the Strawman Proposal**

### *Scope of Affected Rules*

The Strawman Proposal includes the repeal of or amendment to eight existing Commission electric rules, as well as the creation of a new electric substantive rule. Based on the REP Coalition's review of the impact of HB 1101 and the Strawman Proposal on the electric substantive rules in Chapter 25, the REP Coalition questions whether the scope of the Strawman Proposal captures all affected rules. The low-income rate reductions program and associated definitions are frequently referenced in Chapter 25 of the Commission's rules. Granted, it is possible the rules not included within the scope of the Strawman Proposal will be addressed in future rulemaking proceedings, depending on the outcome of this project, or lack urgency to be amended in the first instance. The REP Coalition believes, at a minimum, that the scope of this initial rulemaking project should include amendments to existing rules that would operationally impact REPs or create enforcement risks for REPs.

### *Rule Structure of Strawman Proposal Objectives*

On a related note, the REP Coalition questions whether new proposed rule 16 TAC § 25.499 is necessary if the Commission decides to continue the late penalty waiver and deposit installment requirements for low-income customers. Amendment of the current rules addressing those requirements without cross-referencing other related rules would avoid the domino effect that would occur when modifying any of those rules in the future, given the REP Coalition's observation of the considerable number of rules affected by the Strawman Proposal.

### *Effective Date of Rule Changes*

The Strawman Proposal does not specify an effective date for the proposed rule amendments and new rule. HB 1101 contemplates that the SBF and associated rate reduction program for low-income customers will end in August 2016, though it's possible for the

accumulated funds to deplete before or after such date. It also directs the Commission to extend the rate reduction program into the following 2017 fiscal year if unspent funds remain as of September 1, 2016. The relative uncertainty of the termination of the SBF and associated rate reduction program may explain the absence of an effective date for any of the revisions to the electric substantive rules in the Strawman Proposal. While this omission may be intentional for this reason, the REP Coalition cautions that the effective date of any new rule or rule amendments relating to the use of the Lifeline list for the purpose of determining eligibility for the two low-income requirements in new proposed 16 TAC § 25.499 must allow REPs sufficient time to operationally integrate this different list into their businesses (*e.g.*, effect necessary system changes, train staff, update business documentation, educate customers) after the Commission has adopted those rule changes by order.

#### *Continuation of Two Service Requirements*

The Strawman Proposal continues to mandate the late penalty payment and deposit installment requirements with which REPs are currently required to comply under 16 TAC 25.480(c) and 25.478(e)(3), respectively. Given the relative maturity of the competitive retail electric market at this time, the REP Coalition believes the Commission should examine whether its rules should continue to mandate those low-income service requirements and instead allow the market to voluntarily offer those types of services to low-income customers on a competitive basis. Moreover, if the Commission continues to mandate the late penalty waivers and deposit installments using the Lifeline list to determine customer eligibility, REPs will incur costs to integrate this different method of customer identification into their businesses and will possibly experience greater risk exposure and higher costs (*e.g.*, bad debt) if the new eligibility requirements expand the pool of qualifying eligible customers. As a matter of economic principle, REPs will attempt to socialize the recovery of any higher costs resulting from the low-income mandates under the Commission's rules.

#### *Consequences of Using the Lifeline List*

As previously stated, the REP Coalition does not have sufficient information to determine the impact of using the Lifeline list to identify low-income customers eligible for late penalty waivers and deposit installments, though it appears that the expanded eligibility criteria used to

compile the Lifeline list may result in a greater number of eligible customers, translating into greater cost and bad debt exposure for REPs. It is also unclear whether some customers currently qualified under the LITE UP list would no longer be qualified under the Lifeline list (e.g., they do not subscribe to local telecommunications service), or how the LIDA will identify eligible customers in the matching process using the Lifeline list and the customer lists provided by REPs on a monthly basis if the information on the two lists does not facilitate straightforward comparisons. It is critical for the REP Coalition to better understand these and other ramifications before it can take a position on this central element of the Strawman Proposal.

Aside from these questions, on its face it is questionable whether it makes rational sense to employ a list used to identify customers eligible for the Lifeline discounts applicable to telecommunications service for purposes of identifying customers eligible for the late penalty payment and deposit installment requirements applicable to electric service, particularly if myriad problems will arise from the use of the Lifeline list for such purposes. In addition to these Comments' aforementioned identification of additional costs REPs will likely bear if the Lifeline list is employed, it is unclear whether REPs will bear a portion of the basic cost of the LIDA's administration of the Lifeline list or all of any additional costs the LIDA must incur to determine retail electric customer eligibility for the two low-income requirements in the Strawman Proposal.

Finally, the Lifeline Service Program is a creature of law addressing telecommunications service. As a legal matter, is it permissible to use the Lifeline LIDA arrangement and the Lifeline list for a purpose wholly unrelated to such service?

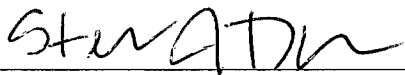
#### *Other Means to Identify Qualifying Low-Income Customers*

If using the Lifeline list to identify qualifying low-income customers eligible for the two mandates specified in the Strawman Proposal will result in adverse operational or cost consequences for REPs, among other unfavorable consequences, the REP Coalition believes the Commission should explore the possibility of other avenues to identify those customers if the late penalty waivers and deposit installment requirements continue in effect. The REP Coalition has no recommendations in this regard at this time.

### **III. Conclusion**

The REP Coalition appreciates the opportunity to provide the input reflected in these Comments on the Strawman Proposal. It looks forward to working with Staff to better understand the ramifications of the proposal on REPs so it may provide more concrete input in the future.

Respectfully submitted on behalf of  
The REP Coalition

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