

The Competitive Retail Electricity Markets and Customer Protections:

Are customers really better off?

March, 2009



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THE COMPETITIVE RETAIL ELECTRICITY MARKET AND CUSTOMER PROTECTIONS

Are Texans Really Better Off?

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THE QUESTION

How well are Texans protected in today's competitive retail electricity market?

Many observers of the Texas retail electricity market believe that competition and consumer choice have been beneficial to Texans. They cite to robust price competition among retail electric providers and the wide range of new products and services now offered in the competitive areas of Texas. Others have argued that restructuring of the retail electricity market has caused higher electric rates and thus hurt consumers. This debate has gone on for several years. However, missing from the debate so far has been a careful analysis of the consumer protections available today in the competitive retail electricity market and how well these protect consumers. This report is intended to fill that gap.

The Old Regulated Monopoly World

First, let's start with a primer on how regulated, monopoly utilities are structured and regulated. A regulated utility is responsible for the three main components necessary to produce and distribute electricity: generation, transmission & distribution, and retail support services. They provide these services in a bundled fashion in the service territory granted to them by the state. In return for operating as a monopoly provider, their rate of return is regulated so as to mitigate excessive costs from being passed along to Texans. Additionally, the procedures by which they provide service to Texans are governed both by rules and by tariffs which are approved by the Public Utility Commission of Texas. Of particular interest in this report are the "customer protection" rules. These rules still govern regulated, monopoly utilities today, (companies like Entergy, SPS and El Paso) as they did prior to competition and consumer choice and are contained in the Public Utility Commission of Texas' (PUCT) substantive rules §§25.21-25.31. None of these rules have been amended since May 6, 1999.

The Competitive World

As part of the transition to the competitive world created by the passage of Senate Bill 7 in 1999, the regulated monopoly utilities that provided service within ERCOT were mandated to separate into three distinct companies: a power generation company, a transmission & distribution service provider, and retail services company. The TDSP would remain a monopoly, be fully regulated by the PUCT and would provide delivery, metering, and outage restoration services to all retail providers. The Power Generation Company would be largely unregulated, while the REP would not have its prices set by the PUCT, but would be subject to a variety of certification, reporting and customer protection regulations. While use of the term "deregulation" and "deregulated" have been repeatedly used to describe the competitive world, it is more appropriate to refer to this market as "restructured." It is still very heavily regulated.

Senate Bill 7 Consumer Safeguards

As part of Senate Bill 7, the Public Utility Regulatory Act was amended, to include the provision of many consumer safeguards. These safeguards are prescribed in section 39.101 and are presented below.

Sec. 39.101. CUSTOMER SAFEGUARDS.

- (a) Before customer choice begins on January 1, 2002, the commission shall ensure that retail customer protections are established that entitle a customer:
- (1) to safe, reliable, and reasonably priced electricity, including protection against service disconnections in an extreme weather emergency as provided by Subsection (h) or in cases of medical emergency or nonpayment for unrelated services;
 - (2) to privacy of customer consumption and credit information;
 - (3) to bills presented in a clear format and in language readily understandable by customers;
 - (4) to the option to have all electric services on a single bill, except in those instances where multiple bills are allowed under Chapters 40 and 41;
 - (5) to protection from discrimination on the basis of race, color, sex, nationality, religion, or marital status;
 - (6) to accuracy of metering and billing;
 - (7) to information in English and Spanish and any other language as necessary concerning rates, key terms and conditions, in a standard format that will permit comparisons between price and service offerings, and the environmental impact of certain production facilities;
 - (8) to information in English and Spanish and any other language as necessary concerning low income assistance programs and deferred payment plans; and
 - (9) to other information or protections necessary to ensure high quality service to customers.
- (b) A customer is entitled:
- (1) to be informed about rights and opportunities in the transition to a competitive electric industry;
 - (2) to choose the customer's retail electric provider consistent with this chapter, to have that choice honored, and to assume that the customer's chosen provider will not be changed without the customer's informed consent;
 - (3) to have access to providers of energy efficiency services, to on site distributed generation, and to providers of energy generated by renewable energy resources;
 - (4) to be served by a provider of last resort that offers a commission approved standard service package;
 - (5) to receive sufficient information to make an informed choice of service provider;
 - (6) to be protected from unfair, misleading, or deceptive practices, including protection from being billed for services that were not authorized or provided; and
 - (7) to have an impartial and prompt resolution of disputes with its chosen retail electric provider and transmission and distribution utility.
- (c) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not refuse to provide retail electric or

electric generation service or otherwise discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status. A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not refuse to provide retail electric or electric generation service to a customer because the customer is located in an economically distressed geographic area or qualifies for low income affordability or energy efficiency services. The commission shall require a provider to comply with this subsection as a condition of certification or registration.

- (d) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service shall submit reports to the commission and the office annually and on request relating to the person's compliance with this section. The commission by rule shall specify the form in which a report must be submitted. A report must include:
 - (1) information regarding the extent of the person's coverage;
 - (2) information regarding the service provided, compiled by zip code and census tract; and
 - (3) any other information the commission or the office considers relevant to determine compliance.
- (e) The commission has the authority to adopt and enforce such rules as may be necessary or appropriate to carry out Subsections (a) (d), including rules for minimum service standards for a retail electric provider relating to customer deposits and the extension of credit, switching fees, levelized billing programs, interconnection and use of on site generation, termination of service, and quality of service. The commission has jurisdiction over all providers of electric service in enforcing Subsections (a) (d) and may assess civil and administrative penalties under Section 15.023 and seek civil penalties under Section 15.028.
- (f) On or before June 30, 2001, the commission shall modify its current rules regarding customer protections to ensure that at least the same level of customer protection against potential abuses and the same quality of service that exists on December 31, 1999, is maintained in a restructured electric industry.

It is clear, that from the beginning of the competitive market, customer protections were vital.

As conveyed by subsection (f) it is also clear that the substantive rules found at §§25.21-25.31 were the baseline for customer protections now applicable to the competitive retail electricity market. As a result, a significant number of the protections under competition are exactly the same as those that existed before competition and that continue to exist for regulated monopoly utilities in Texas. The customer protection rules that govern the competitive market in Texas are found in the PUCT's substantive rules §§25.471-25.498. These rules have been extensively amended and expanded since the market opened in 2002. These changes resulted from a dynamic and responsive process that includes all stakeholders. This on-going process has increased consumer protections and can be expected to continue as the market evolves and matures.

EXECUTIVE SUMMARY

What comprises “adequate” customer protection?

I believe adequate customer protections are derived from three key elements:

- Rules that govern important market functions;
- Enforcement of those rules; and
- Ability to adopt new rules as needs arise.

The competitive retail electricity market and retail electric providers have always been, and are today, very heavily regulated. A significant portion of this regulation is in the form of extensive customer protection rules. These rules provide substantial protections to Texans. They cover a broad range of market activities and consumer needs. Further, voluntary programs offered by REPs and the customer’s ability to choose a new provider compliment and strengthen the protections available to Texans through rules. Finally, the customer protection rules for the competitive market, as a whole, offer more and better protection than the rules applicable to regulated, monopoly utilities.

Texans are well protected in the competitive retail electricity market through existing rules and the development of new rules, as necessary.

The PUCT actively enforces its rules and continually updates them to improve the protections available to Texans. Existing state law gives the PUCT adequate authority to adopt new customer protection rules as necessary to further protect Texans.

DEBUNKING THE MYTHS

Many misconceptions, or myths, continue to exist about the competitive retail electric market. These misconceptions are fueled by inaccurate and incomplete commentaries on how the market works and the benefits it provides. It is important to correct these common misconceptions so that evaluations of the competitive market are based on accurate analysis.

Myth 1: Retail Electric Providers face little or no regulation.

Perception:

“Well they could start by regulating. It was de-regulating that got us into this mess to begin with. De-regulating means letting the corporations rule over the consumer in Texas.”

Radar56, 6/24/2008 10:00:35 AM, Response to Houston Chronicle Story¹

Reality:

REPs must comply with many regulations that govern the manner in which they provide service to customers. While the rates they charge are not set by the PUCT and result from competition, most other aspects of their retail business are quite regulated. In fact, the consumer protection rules discussed in this report are only part of the state’s quite extensive regulation of REPs.

Myth 2: The competitive retail electricity market has created a big mess for consumers

Perception:

Corporate greed will not allow true competition to work. Look at any industry that has been deregulated and you will see nothing but a big mess. (i.e. Texas electricity and the airlines)

Srcitizen, 6/24/2008 3:17 PM CDT, Response to Houston Chronicle Story²

Reality

True competition means that some businesses will succeed and others will fail. True competition means that customers will have meaningful choices among different providers. Today about 25 retail electric providers are offering around 90 different products and services in each of the five TDSP service territories open to competition and consumer choice. Deployment of advanced meters by TDSPs (the companies that operate the poles and wires) should allow retailers to offer even more money-saving, innovative services. Further, retail prices have been very responsive to natural gas and wholesale power prices and dropped significantly in the second half of 2008 and in early 2009. Certainly we have seen that not all REPs have succeeded. In early summer, 2008, five small REPs left the retail market. These departures may have created some headaches for the approximately 40,000 customers served by the failed REPs. However these customers represent less than one percent of the customers in the competitive markets, none of them lost electric service during their transition to providers of last of resort (POLRs) or new retail electric providers, and many were served at POLR rates below those required by PUCT rules.

¹ Electric rates spark effort to aid consumers, Houston Chronicle, June 23, 2008

² Ibid

Myth 3: The competitive retail electricity market has worsened service quality

Perception:

Since I'm the one who pays the bill (residential) I would like for Reliant/Center Point - (whatever) to concentrate on (a) maintaining their equipment and their power lines (b) keeping their customers happy with timely repair service, and (c) keeping my power on.... and not so much on analysts and shareholder dividends.

Miemaw at October 1, 2008 04:21 PM. Response to Houston Chronicle Story³

Sounds like you are on the same page that I am. The only way for it to happen is to re-regulate our Texas power industry. Where ever you have profits you have lots of money spent on chest beating advertising and of course constantly trying to figure out other ways, not always pretty ways when exposed to the light of day either, to increase those profits. That of course leaves less room/funds available to do the job of actually providing electricity.

Craig at October 2, 2008 01:12 PM, Response to Houston Chronicle Story⁴

Reality

Transmission and Distribution Service Providers (TDSPs) remain regulated monopolies as part of the restructured market. However, it is clear that despite education efforts on the part of the Public Utility Commission of Texas, consumers still do not fully understand how the market works and how different market participants are regulated. Specifically, TDSP's are required to adhere to measures of system reliability, most notably the System Average Interruption Frequency Index (SAIFI) and the System Average Interruption Duration Index (SAIDI).

SAIFI is the average number of times that a customer's service is interrupted. SAIFI is calculated by summing the number of customers interrupted for each event and dividing by the total number of customers on the system being indexed. A lower SAIFI value represents a higher level of service reliability. Each TDSP is required to maintain and operate its electric distribution system so that the SAIFI value for the 2001 reporting year and each year thereafter does not exceed that utility's system-wide SAIFI standard by more than 5%.

SAIDI is the average amount of time a customer's service is interrupted during the reporting period. SAIDI is calculated by summing the restoration time for each interruption event times the number of customers interrupted for each event, and dividing by the total number of customers. SAIDI is expressed in minutes or hours. A lower SAIDI value represents a higher level of service reliability. Each TDSP is required to maintain and operate its electric distribution system so that the SAIDI value for the 2001 reporting year and each year thereafter does not exceed that utility's system-wide SAIDI standard by more than 5%.

³ Reliant: The stadium name stays, Houston Chronicle Energy Blog, October 01, 2008,

⁴ Ibid

ADEQUACY OF EXISTING CUSTOMER PROTECTIONS

Regulatory Compliance Services (RCS) evaluated 15 categories of “customer protections” that exist in the retail electricity market in Texas. These 15 categories are shown below. The 24 customer protection rules that generally govern the competitive retail market in Texas are found in the Commission’s substantive rules §§25.471-25.498. Five other rules were also reviewed: §25.43 related to the Provider of Last Resort; and §§25.451-25.455 related to the System Benefit Fund and the use of its proceeds.

- Marketing and Advertising
- Customer Service
- Initiating Service
- Foreign Language Requirements
- Deposits
- Contracts
- Low Income Discounts
- Bills
- Meters
- Bill Payment Assistance Programs
- Disconnecting Service
- Complaints
- Critical Care Customers
- Provider Exits Market
- Service Quality

Each specific customer protection, as expressed in these 29 rules, was evaluated under the rules applicable to regulated monopolies and those applicable to the competitive market. Each customer protection was given equal weight, as Texans themselves must ultimately evaluate whether some protections are more (or less) important to them than others.

Based on this evaluation, RCS has concluded that consumers are well protected in today’s competitive retail electricity market and that the consumer protections available in the competitive retail electricity market afford Texans better protections than those that existed (and still exist) in the regulated monopoly electric market in Texas.

Please read the following section entitled “Analysis of the Current State of Customer Protections” for more information.

This report also presents some new regulations that have been or soon will be put into place to address some of the issues that recently have arisen in the competitive market. Additionally, some retail electric providers have voluntarily adopted several other notable protections. Their actions show that regulatory intervention is not the only approach to consumer protection. These voluntary protections offer significant competitive advantage to the retail electric providers that offer them. This advantage provides incentives for further voluntary action by retailers.

ANALYSIS OF THE CURRENT STATE OF CUSTOMER PROTECTIONS

The current “customer protection” rules (loosely considered to be those rules found in Subchapter R of Chapter 25 of the Commission’s substantive rules) were first adopted in December 2000, some seven months before the initiation of the 2001 market pilot and more than a year before the full market opened.⁵ These “customer protection” rules were revised in April, 2004.⁶ Apart from those two comprehensive rulemakings, specific, individual rules have been revised to address particular issues as they arose. Today, Subchapter R contains 24 customer protection rules, totaling 72 printed pages.

Marketing and Advertising

The primary reason a company uses marketing and advertising is to win customers. Marketing and advertising also helps consumers by giving them the information they need to choose providers and select products and services. However, consumers should be protected against any misleading or inaccurate marketing claims that may be made.

Fraudulent Marketing

Regulated World

Clearly marketing and advertising is not a huge issue in the regulated monopoly markets as Texans in these markets have no choice in their electricity provider. As a result, regulated monopolies do not need to spend a lot of time or money marketing to a captive audience. Regulated utilities have only recently begun to offer “green-choice” plans to residential consumers.

About the only thing Texans in regulated markets need to know is who to call for service. They don’t have a chance to decide who should provide their electricity or what kind of plan to sign up on. Since customers in these markets do not have any choices and do not make any decisions, they really cannot be misled about their purchases. Lack of choice is the significant price paid by customers in regulated monopoly markets for not being exposed to marketing and advertising claims.

Competitive World

Marketing and advertising are critical to a REPs ability to attract and retain customers. As a result, Texans in competitive retail electric markets have read, heard, and watched numerous advertisements from a variety of REPs. The Public Utility Commission’s rules prohibit REPs from engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive behaviors, §25.475(b)(2). The PUCT has actively enforced these rules against REPs (See “PUCT Enforcement in the Competitive Retail Electric Market”, page 41). In addition, consumers may bring complaints against REPs for violating this rule. Although effective remedies exist, customers still need to read carefully the terms offered by REPs.

⁵ Docket 22255, PUC Rulemaking Proceeding for Customer Protection Rules for Electric Restructuring Implementing SB7 and SB 86

⁶ Docket 27084, PUC Rulemaking to Revise Customer Protection Rules

Customer Service

A primary function of any business is the ability to serve its customers. In the electricity business, customer service involves many facets: responding to inquiries and disputes related to service options, billing issues, and payments. As electricity is a necessary commodity for everyday life, the ability of Texans to reach their providers and discuss such issues is of primary importance.

Office Location

Regulated World

Utilities traditionally maintain a local presence in many of the communities they serve. In the regulated world, where profits are regulated at a fixed margin above the cost of service, there is little incentive to reduce the cost of service. PURA §14.152(a) requires that the utilities maintain books, accounts, records, and memoranda required by the Commission at an office located within the state of Texas.

Competitive World

Substantive rule 25.107(e) requires that “a REP shall continuously maintain an office located within Texas for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of PURA Chapter 39, Subchapter H, and applicable commission rules. The office satisfying this requirement for a REP shall have a physical address that is not a post office box and shall be a location where the above three functions can occur. To evaluate compliance with requirements in this paragraph, the commission's authorized representative may visit the office of a certificated REP at any time during normal business hours on the same basis available to an electric customer.”

Access to Customer Service Personnel

Regulated World

There are no specific requirements or standards for staffing and/or customer service standards such as call answer times.

Competitive World

Pursuant to substantive rule 25.107(g) (6), REPs are required to maintain adequate staffing and employee training to meet all service level commitments. Further, substantive rule 25.485(b) mandates that REPs ensure that customers have “reasonable access” to service representatives and that at a minimum telephonic access must be toll-free and shall afford customers a “prompt answer” during normal business hours. Further, competitive market pressures provide an additional level of protection as customers will not stay with providers who do not provide adequate service.

Initiating Service

At some point, all Texans need to initiate electric service. Even though the process may be relatively simple, customers still have many questions that need answers. Who is their provider? Do they have a choice? What will the rate be? Are there different plans to choose from? What

will I be told about the plan I select? Will I need to pay a deposit? How long will it take to get new service established?

Choice of Providers

Regulated World

There is no choice of providers. Each service territory has exactly one provider who has the right to serve all Texans living in that service territory.

Competitive World

Texans in competitive retail electric markets have the right to choose their Retail Electric Provider. By exercising their right to choose a REP, Texans can make choices based on cost, service levels, environmental impacts, or other factors they consider important. The infrastructure used to deliver the electricity to homes and businesses is still regulated, ensuring quality service. This right to choose a REP is perhaps the strongest consumer protection available in the competitive market. Dissatisfied consumers are not stuck arguing with a monopoly provider about service quality; they can easily and quickly switch to another REP. This vulnerability to loss of customers creates a powerful incentive to provide the highest possible service quality.

Honoring Customer's Choice of Providers

Regulated World

Since Texans who receive service from regulated, monopoly utilities have no choice of provider, they do not have to worry that their choice is not being honored. Technically speaking, then, slamming is not a concern in the regulated world.

Competitive World

Texans who live in areas open to competition have the right to choose their Retail Electric Provider. In the vast majority of cases, consumer choices are honored promptly and accurately. In a relatively small number of cases, consumers are inadvertently or intentionally switched to a REP they did not choose. The inadvertent switches are corrected through a process involving the affected REPs, ERCOT and the TDSP. The intentional switches (“slamming”) are illegal. Slamming harms all market participants as it undermines a basic tenet of competition – the customer’s right to choose. The PUCT has the authority to bring enforcement actions against REPs that engage in slamming, and consumers have the right to bring complaints against such REPs.

Product Offerings

Regulated World

In a world governed by tariffs, little attention is paid to mass-market product offerings as rates are determined by the PUCT. Sometimes, consumers are offered a “green-choice” product. Fixed price, fixed term offers are non-existent in the regulated world. All agreements are by nature month-to-month as customers do not have the ability to change providers. Tariffed rates also include a fuel factor, and in some cases a power cost recovery factor charge, which allow the regulated monopoly utility to pass through increases in fuel costs, such as natural gas. Regulated monopoly utilities also have the ability to seek rate increases at any time.

Competitive World

The competitive marketplace has seen a variety of product offerings, ranging from fully variable products where the price is subject to change each month, to products where the price is based on an index, to products whose price is fixed for the term of the contract. Through fixed price contracts, customers can create more price certainty than exists with regulated monopoly utilities. In addition, there are many environmentally friendly options being offered, as well as plans that include energy efficiency services as well. During November 2008, there were approximately 25 REPs active in each of the five IOU service territories in the competitive areas of Texas. There were about 90 different products and services being offered by REPs in each of these service territories.

Product Innovation

Regulated World

Within the past year, several municipal utilities have announced smart grid and advanced meter deployment plans.⁷ Advanced meters will allow these entities to realize operating savings and provide customers with more transparent pricing signals (like time of use rates and prepay options). Since they remain vertically integrated, these utilities can easily factor their deployment costs into existing rate structures.

Competitive World

In response to actions taken by the Texas legislature and the PUCT, within the past year CenterPoint and Oncor have announced advanced meter deployment plans. Once deployed, advanced meters will allow these utilities to realize operating savings and will provide REPs with the opportunity to offer customers with more transparent pricing signals and more product offerings (like time of use rates and prepay options).

Even without the deployment of advanced meters, and in an effort to attract and retain customers, REPs have introduced a wide range of new products and services. As mentioned above, about 90 different products and services now are available in each of the five IOU service territories in the competitive areas of Texas. These include fixed and variable rates, month-to-month and fixed term contracts, renewable energy products and energy efficiency services. The deployment of advanced meters by the TDSPs will allow REPs to increase this number of offerings. As expected when Senate Bill 7 was passed in 1999, robust competition among a large number of competitors is producing many and varied offerings for consumers to choose.

Pricing Disclosures

Regulated World

Pursuant to §25.31, regulated utilities must inform an applicant of the electric utility's lowest-priced alternatives available at the applicant's location, beginning with the lowest-priced alternative. The utility must also provide the applicant with alternate rate schedules and options, including time of use rates and renewable energy tariffs, if available.

Competitive World

⁷ City of San Marcos, Press Release dated May 15, 2008; Austin Energy, Austin City News dated May, 2008; City Public Service of San Antonio, Press Release dated Jan. 20, 2009

Pursuant to §25.474, REPs must disclose specific information during the enrollment process. Required disclosures include the name of the plan on which the applicant is being enrolled, the price and term of the contract, the presence or absence of early termination fees, and any requirement to pay a deposit as a condition of receiving service.

Accessibility of Price/Rate Information

Regulated World

Tariffs for regulated utilities are notoriously hard to read. Additionally, while tariffs may be available on the internet, locating them is not always easy. Most applicants and customers must contact the utility for specific rate information.

Competitive World

In addition to the ability to contact specific REPs via the telephone and in many cases their website, the PUCT runs the PowerToChoose Website, www.PowerToChoose.org, and a Spanish-language counterpart, www.PoderDeEsogar.org. These provide standardized information on offers from participating REPs, information on REP financial condition and complaint records, and other useful data. As reported in the PUCT's recently-filed Scope of Competition Report, during the 2007 – 2008 biennium, the PowerToChoose Website had 1.5 million unique visitors, 3.8 million visits and over 500,000 downloads. The PowerToChoose Website is an important part of the PUCT's on-going Texas Electric Choice campaign to educate Texans about the competitive retail electric market. Other parts of this campaign include customer outreach and public service announcements, an internet search engine marketing program during summer 2007, a toll-free bilingual answer center, and distribution of brochures, fact sheets and other educational material.

As competitive businesses, REPs have an incentive to make their offers readily available and easy to understand. Further, §25.475 requires REPs to provide specific contract information to a customer when they enroll and subsequently upon that customer's request.

Credit Standards

Regulated World

Pursuant to §25.24, applicants and customers must comply with the utility's credit standards or they may be required to pay a deposit. The PUCT sets the minimum credit standards with which utilities must comply. These standards, as currently drafted, allow the use of credit scores in determining an applicant's credit worthiness. House bill 412, adopted during the 2005 legislative session, does not apply to regulated monopoly utilities, as a result, regulated monopolies may use a credit score to deny service.

Competitive World

Pursuant to §25.478, applicants and customers may be required to comply with a REP's credit standards or they may be required to pay a deposit. Further, legislation adopted in 2005 (HB 412) prohibits REPs from using credit scores as a basis for denying electric service. However, credit scores may be used to determine whether a deposit is required.

Past Due Balances

Regulated World

Pursuant to §25.24, an electric utility is allowed to refuse service to an applicant if the applicant owes a debt to any electric utility for the same kind of service as that being requested. As a result, in order to obtain electric service, an applicant may be forced to pay off an outstanding debt to a prior utility company. This authority to deny service until past bills are paid is known as "hard disconnect" authority.

Competitive World

House Bill 412 of the 2005 Texas Legislative Session allows a REP to deny electric service to a residential applicant based on the applicant's electric bill payment history, but not the applicant's credit score. However, the relevant substantive rule §25.477 does not explicitly permit a REP to deny service if the applicant or customer has an outstanding balance with another REP as evidenced on an electric bill payment history. Thus, REPs do not have the "hard disconnect" authority available to regulated monopoly utilities. Further, little progress has been made in establishing a comprehensive electric bill payment history database which REPs could use to better screen applicants. As a result, screening typically relies on the use of credit scores and the collecting of deposits. Service is then only refused if an applicant cannot pay a required deposit. Since REPs do not have "hard disconnect" authority, refusal cannot be based on whether the applicant has paid-off an outstanding obligation owed to another REP. Some customers take advantage of this gap in the rules by switching to a new REP without paying what they owe to their old REP. The cost of this behavior shows up in increased bad debt expense for REPs and then higher rates for all customers, including those who pay their bills.

Timeline for New Service Initiation

Regulated World

When applicants or customers request new service from a regulated utility, such service is typically initiated within a day or two, although existing PUCT substantive rule §25.22 allows utilities up to 7 working days to fulfill such a request.

Competitive World

When customers choose their REP, they are in effect requesting that REP to provide retail electric service. Depending on the status of the applicant or customer, they are requesting either new service (via a move-in request) or a change in service providers (a switch).

For move-in requests, the REP must place a request with the relevant TDSP. The TDSP will dispatch personnel to perform a meter read and physically connect service. The PUCT-approved standard tariff specifies that new service requests be completed by the TDSP within two business days of receipt of the request, or on the requested service date (if later).

For switches, the REP submits the request to ERCOT. Unless the customer has requested an expedited switch (through the use of an out-of-cycle meter read), the switch will effectuate on the customer's next regularly scheduled TDSP meter read date. Switches occurring on the normal timeline can take up to approximately 45 days from the date the customer requested the switch.

The Commission is currently exploring options to shorten the normal switch timeline so that switches can normally occur within 7 days from the date of the customer request.⁸

Foreign Language Requirements

Texas has a significant population of customers who are Spanish language dominant. As electricity is a necessary commodity, language should not be a barrier in obtaining service.

Availability of Information to Spanish Speaking/Reading Customers

Regulated World

Pursuant to substantive rule §25.26, each regulated utility must have a commission-approved written plan that describes how a Spanish-speaking person is provided, or will be provided, reasonable access to the utility's programs and services. At a minimum, this plan must include a clear and concise statement as to how the electric utility is doing or will:

- inform Spanish-speaking applicants how they can get information contained in the utility's plan in the Spanish language;
- inform Spanish-speaking applicants and customers of their rights contained in this subchapter;
- inform Spanish-speaking applicants and customers of new services, discount programs, and promotions;
- allow Spanish-speaking persons to request repair service;
- ballot Spanish-speaking customers for services requiring a vote by ballot;
- allow access by Spanish-speaking customers to services specified in subchapter F of chapter 25 (relating to Metering);
- inform its service and repair representatives of the requirements of the plan.

Competitive World

Pursuant to §25.473, all REPs must be able to support Spanish speaking applicants and customers. Support includes providing Spanish language versions of regulatory documents, bills and bill notices, customer service and information on new products. Such a mandate is much clearer and reliable means of ensuring consistent treatment for Texans whose primary language is Spanish.

Availability of Information in Other Languages

Regulated World

Rules in the regulated world do not address the needs of customers who may not be fluent in either English or Spanish. While these language needs may not be widespread, they do exist in pockets in many major urban areas. As electricity is a vital commodity, customers may rely on

⁸ Docket 35768, items 102 and 103, Memoranda of Chm. Smitherman and Com. Nelson; Docket 36536

children to translate utility information. Unfortunately, sometimes this leaves customers inadequately informed of the basics of their service agreement.

Competitive World

Substantive rule §25.473 also requires a REP to support other languages, if those other languages were used to market or sell to customers. As a permissive requirement, it allows REPs to target these communities in their marketing and outreach while ensuring these customers will receive adequate support from the REP once they become a customer.

Deposits

Texans who do not possess satisfactory credit will typically be asked to provide a deposit to their provider in order to obtain electric service. Deposits serve to provide some protection to the provider from the risk of non-payment. As this money is expected to be refunded to the customer when sufficient payment patterns are demonstrated, they have typically been regulated to ensure reasonable treatment of the funds.

Limit on Maximum Amount of Deposit

Regulated World

Pursuant to substantive rule §25.24, regulated utilities may take deposits up to a cap of one-sixth the estimated annual billing for that customer.

Competitive World

Pursuant to substantive rule §25.478, REPs may only take deposits up to a cap of one-fifth the estimated annual billing for that customer. This standard was increased (from one-sixth the estimated annual billing) by the PUCT in 2004 to help mitigate high bad debt expense incurred by REPs.

Deposit Waiver for Medically Indigent

Regulated World

There is no requirement for regulated utilities to waive deposits that would otherwise be required just because a person demonstrates they are medically indigent.

Competitive World

Pursuant to substantive rule §25.478, an affiliate REP or a Provider of Last Resort (POLR) must waive a deposit that would otherwise be required if a residential customer or applicant is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make an annual demonstration that specific criteria established in the rule are met.

Deposit Installments Required for Low Income Customers

Regulated World

There is no requirement for regulated utilities to allow low income customers to pay required deposits in installments.

Competitive World

Pursuant to substantive rule §25.478(e) (3), REPs must allow qualified low-income customers the option of paying any required deposit that exceeds \$50 in two equal installments. As a result of this requirement, some REPs have chosen to lower the deposit requirement for eligible low-income customers to \$50 to avoid taking installment payments. This protection allows low-income customers who may face cash shortages the ability to switch providers without having to produce the full amount of a deposit up front.

Deposit Waiver for Victims of Family Violence

Regulated World

There is no requirement for regulated utilities to waive deposits that would otherwise be required just because an applicant or customer demonstrates they are a victim of family violence.

Competitive World

Pursuant to substantive rule §25.478, REPs must waive a deposit that would otherwise be required if a residential customer or applicant is a victim of family violence. In order for a customer or applicant to be considered a victim of family violence, the customer or applicant must produce documentation that demonstrates that specific criteria established in the rule have been met. This protection was added in 2000 when the initial customer protection rules for the competitive market were adopted to facilitate the ability of victims to secure electric service quickly without the need to conduct a credit check which would present a safety issue to victims.

Deposit Waiver for Persons 65 Years of Age or Older

Regulated World

Pursuant to §25.24, regulated utilities may not require a residential applicant to pay a deposit if that person is 65 years of age or older and does not have an outstanding account balance incurred within the last two years with the electric utility or another electric utility for the same type of utility service.

Competitive World

Pursuant to §25.478, REPs may not require a residential applicant to pay a deposit if that person is 65 years of age or older and is not currently delinquent in payment of any electric service account. While similar to the provision in the regulated world, this standard is more generous as it only requires the applicant or customer to not be “currently delinquent.”

Payment of Interest on Deposits

Regulated World

Substantive rule §25.24 requires regulated utilities to pay interest annually on all deposits held at a rate set by the PUCT.

Competitive World

Substantive rule §25.478 requires REPs to pay interest annually on deposits held at a rate set by the PUCT.

Refund of Deposits

Regulated World

Substantive rule §25.24 requires regulated utilities to promptly refund customer deposits when the customer either leaves the utility's service or when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment of a bill and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of the current bills.

Competitive World

Substantive rule §25.478 requires REPs to promptly refund customer deposits according to similar criteria as exists for regulated utilities.

Records of Deposits

Regulated World

Substantive rule §25.24 requires regulated utilities to maintain records of customer deposits. These records must include at a minimum the name and address of each depositor; the amount and date of the deposit; and each transaction concerning the deposit.

Competitive World

Substantive rule §25.478 requires REPs to maintain customer deposit records that contain the name and address of each depositor; the amount and date of the deposit; and each transaction concerning the deposit.

Contracts

Most Texans do not think they are receiving electric service pursuant to a contract. They are wrong. Even in the regulated world, service is delivered pursuant to a tariff, a legal document setting forth the terms and conditions under which service will be provided. With the advent of competition, many are learning that contracts, and the terms they contain, are extremely important. As a result, it is necessary to understand the protections that exist with respect to these important documents.

Customer Access to Contract Terms/Details

Regulated World

The contract in the regulated world is the tariff. Regulated utilities are required to have a current tariff on file with the PUCT. They are also required to make this document available to requesting customers at their utility offices. Many regulated utilities make their tariffs available on their websites, although they are not necessarily easy to find. The tariffs themselves are long documents written in multiple sections and are very difficult to read and understand.

Competitive World

The PUCT adopted substantive rule §25.475 to address contract documents. This rule requires REPs to provide customers with contract documents (Terms of Service and Electricity Facts Label) as part of the enrollment process. These contract documents must be in a readable format and written in clear, plain and easily understood language. Many REPs make these documents easily available on their websites so customers can review them as they shop. Further, REPs are

required to provide an additional copy of the contract to the customer, upon request. The PUCT recently adopted changes to substantive rule §25.475 that will improve customer protections regarding pricing and other terms and conditions of service. (See “New Customer Protection Rules”, page 35.)

Knowledge of Customer Rights

Regulated World

Substantive rule §25.31 requires regulated utilities to provide the “Your Rights as a Customer” information to customers as part of the enrollment process, and additionally at least every other year. The rule further identifies the information that must be contained in “Your Rights as a Customer” and mandates that it be written in plain, non-technical language.

Competitive World

Considered part of a welcome packet by many REPs, the “Your Rights as a Customer” disclosure is required to be provided to new customers during the enrollment process. Further, it must also be distributed no less than once in a 12-month period to all customers. Substantive rule §25.475(g) identifies all information that must be included in the “Your Rights as a Customer” disclosure. In response to REP requests, the PUCT also developed a standardized “Your Rights as a Customer” disclosure for use by REPs.

Specific Contract Terms: Late Fees, Early Termination Fees, Switching Fees

Regulated World

Since the regulated world operates on a month-to-month premise, early termination fees are not relevant and have not been used. Further, as switching is not an option, switching fees are non-existent. All other types of non-recurring charges such as returned check fees are specified in each regulated utility’s tariff and approved by the PUCT. Substantive rule §25.28 prohibits the charging of late fees on any accounts except those of industrial customers.

Competitive World

Part of competition is allowing Texans to choose their preferred types of specific contract terms and thus determine which terms will succeed or fail in the market. While REPs are free to create products with contract terms and characteristics of their choosing, if customers don’t buy these products, they will fail in the market. Thus the need to be competitive and offer attractive products and services limits REPs’ ability to add recurring fees to their monthly charges. PUCT rules also limit REPs’ ability to add these fees. Substantive rule §25.480 limits the late fees REPs can charge to no more than 5%, on all customer classes (except for state agencies). Further, early termination fees must be disclosed during enrollment (§25.474) and must be displayed on the Electricity Facts Label for all products (§25.475). REP switching fees (for normal on-cycle switches) are also prohibited by Commission rule (§25.474).

Notification of Material Changes

Regulated World

Pursuant to §25.31, regulated utilities are required to inform customers affected by a change in rates or schedule of classifications. The rules do not specify how or when such notification is to be made.

Competitive World

Substantive rule 25.475 requires REPs to notify customers 45 days in advance of any material change to a customer's contract. Customers may decline material changes to their contract by canceling service without penalty. While we have seen some potential for misleading marketing and the use of these material change clauses, they certainly provide customers with better notification in the event of changes.

Low-Income Discounts

Some Texans have a real need for assistance in paying their electricity bills. The question that arises is from where do the assistance funds come?

Availability of Low-Income Assistance

Regulated World

Low income assistance for regulated monopoly utilities is typically provided for in rate cases. As a result, these expenses are typically recouped from all ratepayers of that utility. Assistance programs can be further targeted to the specific needs that exist in that utility's service territory.

Competitive World

Low income assistance is provided through the collection of the System Benefit Fund (SBF) charge. The SBF charge is a specific price per kWh assessed by TDSPs to each Retail Electric Provider for their load. As expected, the SBF fee commonly is passed through to retail customers as part of their retail rate. To the extent a REP bundles its rate, the end-use customer may be unaware they are paying this fee.

Amount of Low-Income Assistance

Regulated World

As any assistance is determined in a utility-specific rate case, it is difficult to compare the amount of utility assistance available to low income customers. For example, Entergy Texas waives the fixed, monthly customer charge for eligible low income customers.

Competitive World

Eligible low-income customers receiving service in competitive areas of the state can receive a set discount off of REP bills issued from May – August/September each year. By statute, the discount is a minimum of 10%, although if funds permit, the percentage can be increased. During 2008, the PUCT set the low-income discount at 20%. Since the discount is a percentage off a customer's bill and the assistance is typically provided during times of the year when bills are the highest, the impact of this low-income assistance to customers is enormous and far superior to the programs typically offered by regulated utilities.

Bills

Consumers need accurate, complete, understandable and timely electric bills. The Public Utility Commission receives more complaints about bills than any other single topic. Billing complaints typically amount to more than 40% of the monthly complaints related to electric service, whether provided by regulated monopolies or REPs. As a result, protections related to bills are extremely important. These protections include identifying what information must be presented on the bill, how billing mistakes and errors are to be handled, how long customers have to pay bills, and assistance that must be provided to customers if they cannot pay the bill on time.

Bill Format

Regulated World

The Public Utility Commission has strict rules regulating bill format, bill content, and bill delivery. Bills in the regulated world typically present bills in an unbundled fashion showing charges for fuel costs, customer charges, and delivery charges.

Competitive World

The PUCT also has strict rules for REPs that regulate bill format, bill content, and bill delivery. REPs choose whether to present bills to customers in a bundled or an unbundled manner.

Estimated Meter Reads

Regulated World

PUCT rules allow integrated utilities to estimate readings for up to 3 months. Actual meter readings are required every third month.

Competitive World

Commission rules allow the Transmission and Distribution Service Provider, which is still regulated, to estimate readings for up to 3 months. As in the regulated world, actual readings are required every third month.

Billing Mistakes and Errors

Regulated World

Billing errors and mistakes happen. Tariffs don't get updated correctly. Taxes are applied incorrectly. Meters can be physically crossed with neighboring properties. Commission rules prescribe corrective actions that must be taken by regulated monopoly utilities should they overbill or underbill customers. These rules require refunds or bill credits in the event of overbillings, and require these utilities to offer deferred payment plans if underbillings exceed more than \$50.

Competitive World

Nothing precludes the same types of billing errors and mistakes that occur in the regulated world from occurring in the competitive world. As a result, retail electric providers must comply with overbilling and underbilling rules that are the same as those that are in place in the regulated world.

Payment Due Dates

Regulated World

Commission rules require that regulated utilities establish bill payment due dates that are at least 16 calendar days from the date of bill issuance. Further, a disconnection date must be at least 10 calendar days from the date a disconnect notice is issued.

Competitive World

As in the regulated world, PUCT rules require that REPs establish bill payment due dates that are at least 16 calendar days from the date of bill issuance. Further, a disconnection date must be at least 10 calendar days from the date a disconnect notice is issued.

Billing Disputes

Regulated World

The Public Utility Commission sets rules on how customer complaints are to be addressed by regulated monopoly utilities. These utilities are prohibited from disconnecting electric service during the pendency of a billing dispute, if the customer has paid any amounts owed that are not in dispute. Regulated monopoly utilities must respond to customer complaints within 21 calendar days. As an integrated utility, complaints on a variety of issues can be addressed by the utility.

Competitive World

The Commission also sets rules on how customer complaints are to be addressed by retail electric providers. Like regulated monopoly utilities, retail electric providers must respond to customer complaints within 21 days. In addition, customers can file either an informal or a formal complaint with the Commission. In the competitive world a customer complaint can involve different entities: the Transmission and Distribution Service Provider and/or the retail electric provider. Retail electric providers serve as the primary point of contact between customers and the TDUs. Nevertheless, TDSPs are subject to the same customer complaint rules described above for other regulated utilities.

Level and Average Payment Plans

These plans allow customers to pay equal amounts each month in an effort to smooth out the normal high and low bills that can be experienced over the course of a year. Payment amounts are set based on the customer's previous usage history, with true-ups typically occurring at the end of each year.

Regulated World

Commission rules do not require regulated utilities to offer what are commonly referred to as "budget billing" plans.

Competitive World

Retail electric providers are required to make level and average payment plans available to eligible customers. Customers are eligible to enroll on these plans with their REP if they are not currently delinquent in bill payment. This provision enables many fixed-income customers to take advantage of this plan helping ensure uninterrupted electric service throughout the year.

Payment Arrangements

Payment arrangements (or extensions) allow customers to extend the current payment due date until the next payment due date, effectively a one-month extension. These arrangements typically require that full payment of any outstanding balance be made by the end of the extension.

Regulated World

Although offered by many regulated utilities, Commission rules do not require regulated utilities to offer payment arrangements to customers.

Competitive World

Although payment arrangements are offered by many REPs, Commission rules do not require REPs to offer such arrangements to customers.

Deferred Payment Plans

Deferred payment plans are arrangements that allow a customer to extend the payment due date of an existing bill more than one month.

Regulated World

Commission rules prescribe that regulated utilities offer deferred payment plans in certain, specific situations to eligible customers. Further, Commission rules prescribe minimum terms for deferred payment plans.

Competitive World

As with regulated utilities, Commission rules prescribe that REPs offer deferred payment plans in certain, specific situations to eligible customers. Further, Commission rules prescribe minimum terms for deferred payment plans. The rules for REPs are the same as those for regulated utilities.

Meters

Meter accuracy and meter reading are factors in many billing complaints received by the Public Utility Commission. As with billing, protections related to meters are also extremely important. These protections include specifying meter reading schedules and standards for meter testing. These protections are delineated in Subchapter F of Chapter 25, which includes §§25.121-25.131.

Meter Reading Timeliness

Regulated World

Regulated utilities have established meter read schedules which ensure that each premise is read every 30 days on average. Should an actual reading not be possible, utilities have the ability to generate estimated meter reads. For a discussion on protections related to estimated meter reads, see the billing section, above.

Competitive World

Transmission and distribution service providers, which are still regulated monopolies operating in the competitive world, have established meter read schedules which ensure that each premise

is read every 30 days on average. These meter reading schedules are published so REPs know when a specific premise is scheduled for a read. Should an actual reading not be possible, TDUs have the ability to generate estimated meter reads for use by the REP in generating a customer bill. For a discussion on protections related to estimated meter reads, see the billing section, above.

Meter Testing

Regulated World

Commission rules provide that a regulated utility must test a meter upon customer request. If a meter has been tested within 4 years and the meter test reveals a properly functioning meter, the customer may be required to pay a charge set by the regulated utility. Regulated utilities are to arrange meter tests so as to accommodate the customer's desire to be present for such test, if possible. Commission rules dictate the standards by which meters must operate as well as the tolerance standards for meter accuracy.

Competitive World

In the competitive world, customers must request a meter test through their chosen retail electric provider. The REP is responsible for relaying such request to the TDSP. The TDSP must follow the same meter rules that apply to regulated utilities.

Bill Payment Assistance Programs

Not all retail customers, particularly residential customers, can afford to pay for the electricity service they receive. As electricity is viewed by many as a necessity to life, the availability of bill payment assistance funds is critical to truly needy customers if they are to maintain service.

Availability of Bill Payment Assistance Funds

Regulated World

In the regulated world, bill payment assistance funds are typically provided for during utility-specific rate cases. The contested case process ensures that the needs of residential customers, including their need for payment assistance, are represented by the Office of Public Utility Counsel. As a result, the need for assistance funds can be appropriately balanced in the context of overall rates that customers will pay.

Competitive World

In the competitive world, REPs are not subject to rate cases where bill payment assistance funds can be set. Commission rules require that REPs solicit voluntary donations to their bill payment assistance funds from their customers. The Commission also requires REPs to report information on the amount of such funds collected, the amount disbursed, and the agencies to which funds were disbursed. Commission rules also do not prescribe any standards related to the timing or frequency of assistance distribution.

Senate Bill 408 was passed during the 79th Regular Legislative Session, which provided for a one-time bill payment assistance to electric customers who are or who have in their households one or more seriously ill or disabled low-income persons and who have been threatened with disconnection for nonpayment. Money for this fund was to be allocated from the System Benefit

Fund. However, to date, funds have not been appropriated by the Texas Legislature for this particular purpose.

Disconnecting Service

There are many circumstances that can result in a customer losing their electric service. These range from safety issues related to the manner in which service is connected to customer non-payment. There are many customer protections that specify the conditions under which electricity service may be disconnected.

Disconnects on Holidays and Weekends

Regulated World

Commission rules prohibit regulated monopoly utilities from disconnecting electric service for non-payment on a holiday or a weekend or the day immediately preceding a holiday or weekend, unless utility personnel are available on those days to take payments and reconnect service. This ensures that customers who have had their service disconnected do not have to wait for the utility to be open to have service reconnected.

Competitive World

In the competitive world, REPs are also prohibited by Commission rules from requesting disconnections for non-payment on a holiday or a weekend or the day immediately preceding a holiday or weekend, unless REP personnel are available on those days to take payments, make payment arrangements with the customer and request reconnection of service. Further, TDUs are also prohibited from executing disconnect orders on a holiday or a weekend day, or the day immediately preceding a holiday or weekend, unless the personnel of the TDSP are available to reconnect service on all of those days.

Disconnects of Ill & Disabled Customers

Regulated World

Commission rules prohibit regulated monopoly utilities from disconnecting electric service for non-payment if a customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill. This protection covers not only the customer of record, but any person residing with the customer of record as well. The Commission's rules also provide a procedure for customers to follow should they need this protection. Once customers have documented their eligibility for this protection to the utility, the customer's service cannot be disconnected for non-payment for 63 days from the date the bill was issued and for which they are seeking deferment. This protection is meant to be a short-term protection that can be repeatedly activated, if necessary, to assist customers in maintaining electric service.

Competitive World

The Commission has adopted ill & disabled protections in the competitive world that are identical to the protections available to customers in the regulated world.

Disconnects of Customers Receiving Energy Assistance

Regulated World

As many needy customers rely on energy assistance to maintain electric service, the Commission adopted rules to ensure that these customers were protected as well. PUCT rules prohibit regulated monopoly utilities from disconnecting electric service to a delinquent residential customer for a billing period in which the regulated utility receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service.

Competitive World

Customers receiving electric service in the competitive world who are in need of energy assistance are protected by the same protections that are available to customers in the regulated world. In addition, Commission rules in the competitive world, allow energy assistance providers up to 45 days to honor a pledge they have made on behalf of a customer.

Disconnects During Extreme Weather

Regulated World

It is no surprise that weather in Texas can be extreme, both in the summer and in the winter. To address the concern that loss of electric service during periods of extreme weather can endanger lives, the Commission adopted rules limiting the ability of regulated monopoly utilities to disconnect electric service to non-paying customers. These rules prohibit a regulated utility from disconnecting service to a customer anywhere in its service territory on extreme weather days.

The rule also defines extreme weather, which can be either when the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; or the NWS issues a heat advisory for any county in the electric utility's service territory, or when such advisory has been issued on any one of the preceding two calendar days.

Competitive World

In no less need of protection during period of extreme weathers, the Commission has adopted the same rules for the competitive world as those that exist in the regulated world.

Disconnect Notice Provisions

Regulated World

Disconnecting electric service can have enormous implications for customers. As a result, customers are entitled to receive advance notice of disconnections, when practical. The Commission has established rules that provide guidance as to both the contents and timing of such disconnect notices. Generally these rules require at least 10 days notice be provided by regulated monopoly utilities to customers before service is disconnected.

Competitive World

REPs are equally obligated under Commission rules to provide advance notice of disconnection, when practical. Commission rules also regulate the timing and content of disconnect notices in the competitive world, also establishing a minimum 10 day notification period.

Customer Complaints

Despite the best intentions of electric service providers, there are occasions where customers are unhappy with the electric service they have been provided. It is fundamentally important that customers have a fair opportunity to have their concerns addressed.

Responding to Customer Complaints

Regulated World

Commission rules require regulated utilities to investigate and respond to customer complaints within 21 calendar days. Further, to the extent the regulated utility is unable to satisfactorily resolve the customer's complaint; the utility is required to inform the customer of the Commission's complaint resolution process. The Commission also requires utilities to investigate and respond to Commission complaints within 21 calendar days. Should customers be unhappy with the informal resolution afforded by the Commission, the customer also has the right to proceed with a formal complaint at the Commission.

Competitive World

Customers receiving electric service from competitive providers also have the right to bring complaints against their providers. The Commission's complaint response rules mandate that REPs respond to complaints, both those filed directly by customer, or those sent to them by the Commission, within 21 calendar days. Competitive world customers also have the right to proceed with a formal complaint if they are unhappy with the informal resolution at the Commission.

Critical Care Customers

There are some customers for whom unexpected loss of electric service would create a threat to either their own health or safety, or that of the public at large. For such customers it is vitally important that their electric service be dependable, and that interruptions to such service be adequately anticipated so alternative actions can be taken if necessary. Critical care status affords customers with two primary protections: advance notice of planned outages (such as those necessary for maintenance activities) and prioritized restoration of service after unplanned outages.

Procedures for Protecting Critical Care Customers

Regulated World

In the regulated world, utilities are responsible for maintaining their own internal procedures for identifying, qualifying and communicating to eligible critical care customers. The Commission does not have any rules offering these customers specific protections.

Competitive World

In the competitive world, the Commission has adopted rules that require REPs to inform customers of the availability of critical care status and the process of applying for such status. Commission rules provide for the following classes of critical care customers: public safety customers; industrial customers, and residential customers. The rules require TDSPs to review and approve or deny applications from those who are seeking critical care status. If deemed a critical care customer by the TDSP, such status is in effect for one year, and may be renewed.

Commission rules also specify that critical care status does not relieve the customer of the obligation to pay the REP for services rendered, but that the customer may be eligible for other disconnect protections (such as the ill & disabled protection).

Provider Exits Market

The stability of electricity providers is critical to the continuous provision of electric service. As a result, the financial health of these providers is important.

Uninterrupted Service to Affected Customers

Regulated World

It seems unlikely that a regulated monopoly utility would fail and not be able to serve its customers. However, the on-going global recession has taught us all to expect the unexpected. There are no back up electric service providers for regulated utilities similar to the role of the Provider of Last Resort in the competitive world. One could expect the Commission to be involved if a regulated monopoly utility is in financial difficulty and in jeopardy of failing. But it is unclear what the Commission's role would be and how it might be able to stabilize a financially distressed regulated utility. The cost of such a failure would be borne for many years to come by all rate payers in the regulated utility's service territory.

Competitive World

In the competitive world, providers can, and have, failed. The Provider of Last Resort was established to ensure that electric service would not be interrupted in such events. The POLR mechanism was used several times during the summer of 2008, and it worked as designed. None of the affected customers experienced an interruption in their electric service. Many of the POLRs offered service at rates lower than permitted by Commission rules.

While the POLR provides short term service, the unexpected exit of REPs might require customers to pay deposits, and/or higher rates than those they were contracted to receive from the REP that failed. Further, advance notice of a REP's failure might be short, requiring customers to select a new REP quickly.

Service Quality

Power fluctuations, frequent flickers and unexpected outages can not only frustrate customers but potentially damage sensitive electronics. As a result, the customer's ability to obtain service quality information is necessary. All distribution utilities (both the regulated monopoly utilities and the TDSPs in the competitive world) are required to comply with a Commission rule §25.52 related to the Reliability and Continuity of Service. This rule outlines reporting requirements that must be followed under different outage scenarios and also establishes reporting standards so the Commission can monitor ongoing system reliability.

Outage Response and Customer Communications

Regulated World

In the regulated world, customers have one point of contact, the regulated monopoly utility. These utilities have contact with customers through a variety of means, including the telephone and local media, when necessary.

Competitive World

In the competitive world, a REP determines whether they will handle outage response and customer communications, or if they will defer such contacts to the TDSP. As a result, each REP may have a different process for outage communications. REPs are required to advise customers whom they should contact in the event of an outage. Many REPs have chosen to have the TDSP directly handle outage calls, but there are a few that perform this function themselves. Either option provides the customer with a point of contact and access to the service quality information they need.

REGULATORY RESPONSIVENESS TO EXTRA-ORDINARY EVENTS

The rules that have been adopted are generally meant for normal circumstances. When extra-ordinary events occur, it is necessary and desirable to evaluate these rules to ensure that the rules do not create or exaggerate problems caused by the event, itself. Since the original adoption of the customer protection rules in late 2000, the Commission has adopted several “emergency” rules and waived the applicability of others in response to such extra-ordinary events. These actions are summarized below.

Extreme Weather Disconnect Moratoria

Prior to the opening of the competitive retail electric market, the PUCT initiated the first extreme weather disconnect moratorium in the summer of 1998.⁹ At the time, the moratorium applied to the regulated, monopoly utilities. This same action was again taken in the summer of 2000, again affected only regulated, monopoly utilities.¹⁰ In the summer of 2006, the Commission enacted a disconnect moratorium, emergency rule §25.50, this time including competitive retail electric providers.¹¹

Deposit Waivers and Disconnect Prohibitions

In September, 2005, the Commission ordered a waiver on deposits for connecting electric service throughout Texas to Hurricane Katrina victims.¹² The action was a direct response to the needs of hurricane victims who are moving into homes and apartments.

The deposit waiver was the key element in an order that removed potential impediments to establishing electric service in Texas. Some Texas retail electric providers had already voluntarily waived deposit requirements and eliminated installation fees.

The order was originally effective through the end of September, 2005, but was subsequently extended through January 29, 2006.

This same action was taken again in 2008, in response to Hurricane Ike. However, the Hurricane Ike order also prohibited electric service disconnections and prohibited higher fees for non-business day, same-day service reconnections and priority move-in requests.¹³ The prohibitions and waiver were effective until Oct. 10, 2008.

Clearly, the PUCT has the necessary statutory authority to respond to extra-ordinary events as they arise and has acted quickly and effectively when they do.

⁹ Docket 19697

¹⁰ Docket 22869

¹¹ Docket 32874

¹² Docket 31611

¹³ Docket 36150

NEW CUSTOMER PROTECTION RULES

Competitive markets are dynamic and ever-changing. As the Texas retail electric market has evolved the Public Utility Commission has kept a ready eye on the state of its existing regulations. In recent months, this has resulted in the opening of several rulemakings to improve the customer protections available in the competitive market.

Fixed and Variable Rate Contracts and Disclosures

Since the market opened to full competition in 2002, customers have been presented with more and varied contract options. At market open, the most prominent offers were a fixed-price contract for a specified term or a variable price product typically based on the Price to Beat. These products have been replaced by a plethora of variable rate offers which base their prices on a wide range of factors. As the cost of natural gas rose in 2008, so did the wholesale cost of securing electricity needed to honor customer contracts. In the late spring of 2008, some REPs found they could no longer honor the fixed rate deals they had entered into with customers. Others found the need to more frequently adjust their variable prices than had previously been their practice.

Project 35768 - Rulemaking Relating to Retail Electric Provider Disclosures to Customers

The PUCT opened this rulemaking in June, 2008 to improve REP disclosures regarding pricing and other terms and conditions of service. The new rule will add regulations defining both the types of products that can be offered by REPs and how those product features are disclosed to customers. Below is a brief summary of the key provisions included in the final rule which was approved at the Commission's February 20, 2009 Open Meeting.

- Allows three types of products (all include recurring TDSP charges):
 - Fixed-price product – term cannot change, price can change based on TDSP charges, ERCOT Admin or TRE fee, and law or rule change; minimum 3 month term;
 - Variable – A retail product for which price may vary according to a method determined by the REP; limited to a month to month term with no cancellation fee for residential customers; and
 - Indexed – must have a pre-defined pricing formula that is based on publicly available indices or elements; may be month to month or longer term.
- Requires advanced notice for certain contract changes
- Requires disclosure of additional clarifying information in consumer-friendly question and answer format on the Electricity Facts Label (EFL) to provide a clearer understanding of key contract terms.
- Requires only the renewable energy percentage to be disclosed on the EFL.
- Requires delivery of contract expiration notices and mandates the content of such notices.

Retailer Certification Standards

Also during the spring of 2008, as wholesale prices rose, several retailers found themselves unable to meet increased credit requirements being demanded. After five REPs failed, the question arose whether the bar had been set too low in allowing REPs into the market that didn't possess sufficient financial resources.

Project 35767 - Rulemaking Relating to the Certification of Retail Electric Providers

The PUCT opened this rulemaking in June, 2008 to address REP certification standards. Final adoption of this rule is anticipated for March, 2009. It is expected that this rule will:

- increase the financial qualification standards;
- ensure access to customer deposits and other advance payments collected by a REP should the REP fail; and
- establish a baseline standard for required, relevant technical/managerial experience.

Provider of Last Resort

After five REPs failed in the spring of 2008, about 40,000 customers were transitioned to the Provider of Last Resort until they could arrange for electric service with other competitive providers. These customers represented less than one percent of the total number of customers in the competitive areas of ERCOT. None of them lost service, and many paid POLR rates lower than required by PUCT rules. It is important to remember that the vast majority of REPs remained viable and continued to serve their customers during a period of very volatile and difficult wholesale market conditions.

The POLR mechanism served its intended function during these REP failures, namely providing continuity of service for customers. However issues arose related to the lack of advance customer notice prior to a customer being transferred to the POLR, the length of time a customer received POLR service, and the POLR rate itself.

Project 35769 - Rulemaking Relating to the Electric Providers of Last Resort

This rulemaking was opened in June, 2008 to explore ways to improve the transition of customers to POLR service. Final adoption of this rule is expected in March, 2009. Among the changes being considered are:

- revamping the customer notification provisions to allow for delivery of a notice from the Public Utility Commission in advance of any communication from the POLR;
- streamlining the time it takes a customer to select a new REP and move off of POLR service;
- eliminating deposit requirements for POLR service; and
- reformulating the POLR rate

As the POLR service is used when REPs fail, this rulemaking is linked to the certification rule as both would address issues that contribute to the customer experience.

Expedited Switches

Project 36536 – Rulemaking to Expedite Customer Switch Timelines

Commission staff opened this rulemaking project on December, 2008. The goal of this rulemaking is to facilitate more rapid switches from one retail electric provider (REP) to another if a customer decides to switch retail providers. Expedited switching is seen as another protection that could address issues that arise when customers are mass-transitioned to a POLR. Among the ideas being considered in this rulemaking are:

- eliminating the switch notification document currently being provided by ERCOT to the customer;
- requiring the transmission and distribution utilities to process meter reads for customers who are switching retail electric providers within six days of receiving the request for the meter read; and
- requiring REPs to request switches on a timeline consistent with the customer's request.

The newly adopted disclosure rule (see discussion on page 35), requires REPs to notify customers of the termination of a term contract for electric service at least 14 days before the termination date. The changes adopted in the new disclosure rule will require ERCOT, TDUs and REPs to implement a shorter switching timeline and allow customers to be served by their chosen provider more quickly.

Extreme Weather Disconnect Moratorium

Each summer, the Public Utility Commission typically receives a petition seeking an emergency rule to prohibit the disconnection of electric service due to extreme heat. The summer of 2008 was no different.

Project 35973 - Petition of State Senator Juan J. Hinojosa to Adopt an Emergency Rule to Suspend Disconnection of Retail Electric Provider and Utility Services Due To Extreme and Persistent Heat

The Public Utility Commission declined to adopt the emergency petition this year finding that there was no imminent peril to the public health, safety, or welfare that warrants the consideration and adoption of a rule on an emergency basis. Further, the Commission found that its existing rules address many, if not all, of the customer safety, and health and welfare issues raised by the petition. Chief among these are the protections available to ill and disabled customers, critical care customers, low-income customers, and the existing extreme weather rule. Additionally, on July 3, 2008, the Commission approved an increase to the low-income discount (docket 28073). In denying the petition, the Commission noted actions taken by retailers to voluntarily suspend disconnections through September 30, 2008. Those REPs serve over 85% of the low-income residential customers in the competitive retail areas of ERCOT.

The Commission does believe, however, that it should consider a new rule to address the suspension of disconnections during periods of extreme heat conditions and that such rulemaking be on a normal schedule and not on an emergency basis. That rulemaking project was opened on September 9, 2008 as project number 36131.

MARKET SOLUTIONS

One of the benefits of a competitive market is that the market participants take action to address customer issues, not because a regulation tells them to do so, but rather because it's good business. Retail electric providers are in the business of buying electricity from generators and selling that power to Texans. Along the way to making a profit, they also have to pay the TDSPs to deliver the power and maintain the electric infrastructure, and they have to pay all the expenses required to operate their businesses and serve their customers. If they want to keep customers, and therefore have any chance of making a profit, they also have to be able to perform the retail functions (enrollment, customer service, and billing) appropriately and efficiently. As many REPs have learned, it's one thing to be able to sign up customers; it's another to deliver the service they sold.

Many REPs have seized on the notion that there is an ocean of opportunity to differentiate themselves from their competitors by providing not only innovative products, but also better customer service and/or assistance to needy customers.

While it may be popular to suggest that Texans should not have to “shop” for customer service or financial assistance, isn't shopping at the heart of the free market? Would it really make sense to mandate minimums in some of these areas when customers have the ability to choose another provider? Presented below are some of the programs and services that have been offered by REPs in the market.

Corporate Donations to Bill Payment Assistance Funds

Not all REPs have the financial resources to donate their own funds to provide bill payment assistance. Commission rules already require that all REPs set up bill payment assistance funds, and at a minimum, solicit voluntary customer donations to these funds. However, those rules do not require that the REPs make any contribution (matching or otherwise) to their fund. Retailers who have chosen to do this, not only reap the reward of assisting their fellow Texans, but they also reduce their own bad debt expense and generate enormous publicity for their company. Retailers that contributed corporate dollars in calendar year 2007 to their bill payment assistance funds include: TXU Energy, Reliant Energy, the Direct Energy family of companies, Green Mountain Energy, First Choice Power, and Stream Energy.

Voluntary Low Income Assistance and Extreme Weather Protections

As discussed previously, the Commission declined to adopt an emergency rulemaking to impose a disconnect moratorium, in part because of the voluntary programs already established by market participants. TXU Energy, Reliant Energy, the Direct Energy family of Companies, Stream Energy, First Choice Power, and Green Mountain Energy voluntarily adopted programs to restrict disconnects for eligible customers until September 30, 2008. In addition, these customers were also eligible for deferred payment plans to assist them in paying their bills.

PUCT ENFORCEMENT OF THE COMPETITIVE RETAIL ELECTRIC MARKET

Effective enforcement of rules is essential to the protection of Texans. Since the initiation of the competitive market, the PUCT has been steadfast in its pursuit of compliance with customer protection rules. This compliance takes the form of two unique activities: responding to customer complaints and initiating formal enforcement actions against retailers.

Informal Complaint Resolution

The PUCT Informal Complaint Process

Complaints arrive at the PUCT's Customer Protection Division via the phone, fax, email and regular mail. Complaints that are received via the phone or email are entered directly into the complaints database. With phoned-in complaints that require investigation, the Customer Protection staff will assign a complaint category (slamming, billing, customer service, etc.). Complaints received via the other channels are read and assigned a complaint category as well.

This coding process lasts only about a minute for each complaint. Once coded, complaints not received through the call center or email will be entered in the database and the correspondence will be scanned into the system. It is at this point that a complaint number is assigned to each complaint. Staff members will review each complaint file, and determine the appropriate course of action for each. For complaints that do not contain enough information from the complainant, the complaint will be closed and a letter explaining what information is needed will be sent to the complainant. Companies do not receive these complaints from the PUCT, although they are recorded in the complaints database and are included in any complaint statistics summarizing "received complaints."

Complaints that contain enough information will be sent to the company via email. The company is given 21 days to provide its investigative results to the PUCT. All complaints sent to companies for response are considered "investigated complaints."

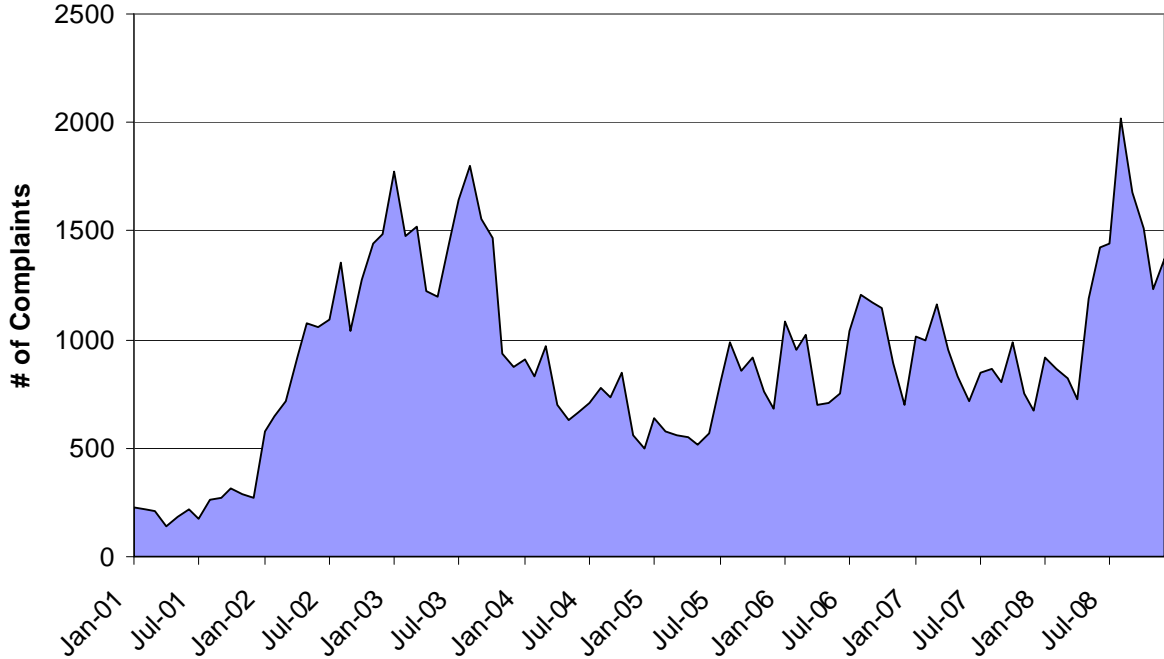
The staff will review the company's response, review the customer's original complaint and determine whether the response was sufficient and demonstrates compliance with commission rules. The PUCT staff will issue a close letter to the customer and send a copy of this letter to the company. The close letter typically states whether the staff believes the company violated any commission rules and if the company is required to take any further actions. While the staff may conclude that a REP violated a commission rule as part of their informal complaint investigation, that action does not immediately result in the imposition of administrative penalties. To assess administrative penalties the commission must initiate a formal, docketed proceeding.

Complaint Trends

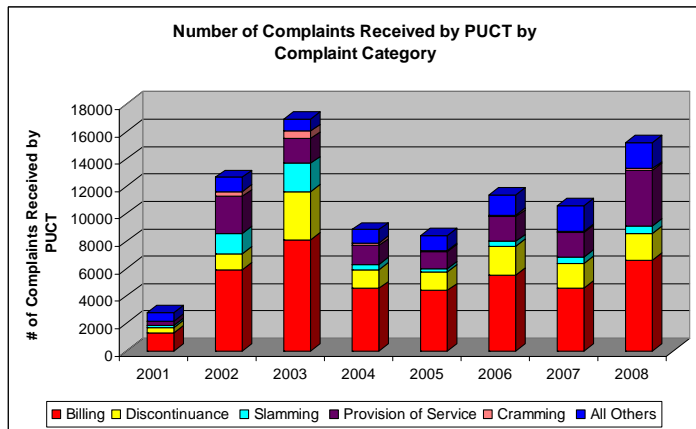
The chart below presents a trend of informal complaints received by the PUCT since January 1, 2001, a full year before the market opened. As was expected, complaints to the Commission increased from the volumes experienced with regulation. However, as the market has evolved it

is also clear that complaint volumes did subside, only to increase again in 2008, largely as a result of the rise in prices and the unexpected departure of several REPs.

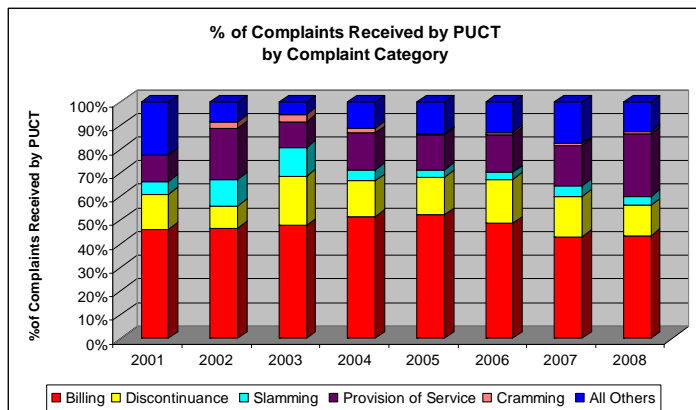
Volume of Electric Complaints Received by the PUCT



Customer complaints fall into several categories. Billing complaints on average have represented just under half of all complaints filed. As can be seen from the two charts to the right, in any given year, the volume of complaints on a specific topic can, and does, change. For example, in 2008, over one-quarter of all complaints were about the provision of service, and the vast majority of provision of service complaints dealt with customer service.



While the volume of customer complaints can provide some insights into the health of a competitive market, it would be inappropriate to suggest that every complaint meant that a retailer was operating in violation of PUCT rules.



Therefore, it is important to know the violation rate, that is, the percent of investigated complaints that result in findings of rule non-compliance by the Commission staff. The PUCT “investigates” on average approximately 85% of the complaints it receives. Below is a table which provides the violation rates for investigated complaints for the last four years.

Calendar Year	Violation Rate
2005	6.10%
2006	9.17%
2007	11.00%
2008	16.50%

Summary of Formal Enforcement Actions

As mentioned previously, enforcement actions must be conducted pursuant to docketed proceedings. Summarized in the table below are the calendar year enforcement highlights relevant to the competitive retail market.

Calendar Year	Topics Addressed	Number of Formal Actions	Dollars Assessed or Other Action Taken
2002	Complaint Responsiveness	12	\$52,510
2003	Slamming/Low Income Discounts	2	\$766,000
2004	Marketing/Slamming/Billing/Low Income Discounts/Disconnections	7	\$829,000
2005	No Formal Retail Actions Initiated		
2006	Marketing/RECs/Service Quality	14	\$596,830
2007	Contract Renewals/RECs/Disconnects/Service Quality	6	\$5,763,326
2008	Contract Renewals/REP Defaults	5	\$500,000 and 4 REP Certificate Revocations

Below is a summary of relevant retail market enforcement actions undertaken in each of the preceding calendar years.

Calendar Year 2002

In December, 2002 the PUCT’s Legal and Enforcement Division issued 26 separate Notices of Violation (NOV’s) against 12 different parent companies (see Table below). The NOV’s were triggered by late-filed responses to informal complaints served on the companies by the PUCT’s Customer Protection Division. Commission rules require companies to complete their investigations and communicate their results to the PUCT within 21 days after receiving the complaint from the PUCT.

Parent Company	Penalty Recommended by PUCT	Docket Number/Date	Penalties Paid
ACN	\$3,500		No Action Taken
CPLWUTU	\$115,250	27082; 6/10/2004	Withdrawn
Cirro Group	\$950	27082; 6/10/2004	Withdrawn
Entergy	\$7,450	27082; 6/8/2004	Withdrawn
First Choice Power*	\$43,950	29876; 9/2/2004	\$15,360
Gexa	\$7,600	27082; 6/10/2004	Withdrawn
Green Mtn.**	\$25,050	30645; 2/10/2005	\$11,500
Reliant	\$70,250	27082; 6/10/2004	Withdrawn
Direct Energy	\$41,200	28369, 28371; 3/29/2007	\$25,650
TXU	\$31,650	27082; 6/10/2004	Withdrawn
SPS	\$1,550		No Action Taken
Utility Choice	\$3,650		No Action Taken
Total Penalties	\$352,050		\$52,510

Calendar Year 2003

PUCT staff initiated two formal enforcement efforts in calendar year 2003, ultimately resulting in the assessment of penalties totaling \$766,000.

Docket No. 28306, Notice Of Violation Of Republic Power, dba Energy America For Violation Of PUC Subst. R. §25.474(C)(3)F And PUC Subst. R. §25.475(C)(5)(B) And §25.475(F)(1) (Relating To Selection Or Changes Of REP And Information Disclosures To Residential And Small Commercial Customers)

This enforcement action was filed on August 8, 2003 against Republic Power, dba Energy America (a Centrica subsidiary). The NOV, as issued, recommended the assessment of an administrative penalty in the amount of \$376,475 against Republic Power. The NOV cited Republic Power for several violations including the failure to obtain proper customer authorization and verification prior to submitting an enrollment request. These are typically categorized by the PUCT as slamming violations. While the original notice, and the recommended penalty, was limited to violations related to Republic's internet enrollment practices, the final order, as approved by the Commission at its open meeting on January 29, 2004, incorporated violations related to other sales channels, as well, including telemarketing, door-to-door sales, and other advertising. The settlement between the Commission and Republic Power ultimately resulted in the assessment of an administrative penalty totaling \$750,000 in January, 2004.

Docket No. 28604, Notice of Violation by Andeler Corporation, REP Certificate No. 10049 for Violation of P.U.C. Subst. R. §25.454(d), And P.U.C. Subst. R. 25.451(j) (Relating To Rate Program, And Reimbursement for the Rate Reduction Discount) Low-Income Discount Rate Enforcement

This enforcement action was filed on September 23, 2003 against Andeler Corporation. The Notice of Violation, as issued, recommended the assessment of an administrative penalty in the amount of \$34,700 against Andeler. The NOV cited Andeler for several violations including the failure to submit monthly low-income discount activity reports to the commission, and for failing to provide the low-income rate discount to eligible customers. As stated in the NOV, Andeler began serving eligible low-income customers in January 2003. As of the date of the notice, and despite numerous and repeated notifications and efforts by commission staff to obtain

compliance, Andeler had not provided the rate discount to 654 eligible low-income customers and had failed to file eight required monthly reports.

In calculating its penalty recommendation, staff assessed a fine of \$50 for each of the 654 customers who failed to receive the discount, and an additional penalty of \$250 for each of the 8 monthly reports than Andeler failed to file. A settlement between Andeler and the Commission ultimately resulted in the assessment of an administrative penalty totaling \$16,000 in August, 2004.

Calendar Year 2004

PUCT staff continued its formal enforcement efforts in calendar year 2004 by resolving six notices of violation resulting in the assessment of \$829,000 in administrative penalties.

Docket No. 29661, Agreed Notice of Violation and Settlement Agreement Relating to TXU Energy Retail Company LP's Violation of PUC Subst. R. 25.41 and PURA §39.202(e)

The Settlement and Agreed Notice of Violation filed by Commission Staff and TXU Energy in May, 2004 resolved potential violations by TXU Energy of the price to beat pricing restrictions contained in PURA Section 39.202 and PUC Subst. R. 25.41. Commission Staff alleged that TXU Energy violated the prohibition on affiliated REPs of offering prices other than the price to beat until January 1, 2005 by enticing customers to switch back to TXU in exchange for a gift certificate. As part of the settlement, TXU Energy agreed to pay an administrative penalty of \$220,000.

Docket No. 29645, Agreed Notice of Violation and Settlement Agreement Relating to Oncor Electric Delivery Company's Violation of PUC Subst. R. 25.214; and

Docket No. 29647, Agreed Notice of Violation and Settlement Agreement Relating to TXU Energy Retail Company LP's Violation of PUC Subst. R. 25.474

The settlements filed in these dockets in April, 2004, resulted from the improper disconnection of a traffic signal light in the City of Irving caused by TXU Energy's unauthorized switching of the account. TXU Energy agreed to pay an administrative penalty of \$4,000 for the unauthorized switch of the account, and Oncor Electric Delivery Company agreed to pay an administrative penalty of \$4,000 for the improper disconnection of the traffic light.

Docket No. 29646, Agreed Notice of Violation and Settlement Agreement Relating to TXU Energy Retail Company LP's Violation of PUC Subst. R. 25.474

The settlement filed in this proceeding, in April, 2004, resolved the improper enrollment of 48 customers through forged letters of authorization by two agents of TXU Energy. TXU Energy discovered the forgeries and halted or reversed suspect enrollments from its agents, and self-reported the violation to the Commission. As a result, the Commission approved an administrative penalty substantially below the standard penalty of \$5,000 per violation. TXU Energy agreed to pay an administrative penalty of \$29,000 for the 58 violations.

Docket No. 30198, Agreed Notice of Violation and Settlement Agreement Regarding TXU Energy Retail Company LP's Alleged Violation of PURA §39.101(b)(6)

The settlement filed in this proceeding, in September, 2004, resolved allegations raised by the Commission Staff concerning deceptive marketing by TXU Energy due to factual inaccuracies

discovered in a TXU Energy radio advertisement, as well as concerns about advertisements suggesting that TXU Energy could provide a greater level of reliability compared to other REPs. TXU Energy agreed to pay an administrative penalty of \$530,000 and agreed to certain restrictions on future advertisements to address the Staff's concern. The Commission approved this settlement on December 16, 2004.

Docket No. 30064, Investigation into Mutual Energy SWEPCO's Implementation of its Proposed Fuel Factor in Docket No. 27873

The settlement filed in this docket in August, 2004, resolved the imposition of a fuel factor changed prior to approval of the change and the issuance of an order by the Commission approving the change. SWEPCO agreed to pay an administrative penalty of \$26,000 in addition to agreeing to a disallowance in a future fuel reconciliation proceeding.

Docket No. 30158, Notice of Violation by Hino Electric Power Company for Violation of PUC Subst. R. 25.454(f)(3)(A) and Project No. 30199, Notice of Probable Non-Compliance by Hino Electric Power Company with PUC Subst. R. 25.483(b)(2)

The NOV issued in this docket in September, 2004, resulted from Hino Electric's failure to comply with PUC Subst. R. 25.454, relating to Rate Reduction Program, which requires REP serving residential customers to submit their customer list to the Low-Income Discount Administrator (LIDA) in order to ensure that all eligible customers receive the low-income discount required by PURA §39.903. While a violation of this type would not normally result in a formal NOV, Hino had received previous warnings from the Commission Staff concerning this requirement. Hino's continued non-compliance caused increased costs to the Commission and the LIDA, delayed the monthly process that results in REPs being informed of which of their customers should receive the discount, and may have prevented some customers from properly receiving the discount. The recommended administrative penalty for this violation is \$500. In October, 2005, the PUCT ordered Hino to pay an administrative penalty of \$20,000 to settle violations alleged in docket 30158 as well as concerns raised in Docket 30199.

Project No. 29795, PUC Staff Investigation into Compliance with Code of Conduct Requirements for TXU Affiliates

This project was opened by Commission Staff in May, 2004, in response to concerns that certain interactions between TXU Electric Delivery and its affiliated REP, TXU Energy, violated certain restrictions contained in the Commission's rules and PURA with respect to interaction between transmission and distribution utilities and their competitive affiliates. This investigation was never officially closed and no formal action has been taken to date.

Calendar Year 2005

PUCT staff did not initiate any formal enforcement actions related to the competitive retail electric market in calendar year 2005.

Calendar Year 2006

PUCT staff continued its formal enforcement efforts in calendar year 2006 by initiating 13 notices of violation which ultimately resulted in the assessment of \$373,830 in administrative penalties.

Docket 31053, Notice of Violation by USave Energy Services, Inc. Of PURA §17.004(A) (1), Relating To Customer Protection Standards, And P.U.C. Subst. R. 25.475(B), Relating To Information Disclosures to Residential and Small Commercial Customers

PUCT staff issued a Notice of Violation to USave Energy Services in April, 2005. In the NOV, the PUCT alleged that USave violated substantive rule 25.275(b) by distributing a facsimile advertisement to approximately 4 customers. The PUCT claimed that although they did create a Texas Electric Choice Program (www.powertochoose.com) to inform consumers of opportunities available to them to switch to a REP other than their current provider, they do not encourage consumers to switch to any particular REP or plan, and only provide them with the necessary information to make this decision. The PUCT further argued that the wording of the fax could have led electric customers to believe that the PUC has advocated USave's 10% savings rate plan, and further encouraged customers to switch to USave. In a settlement agreement filed June 20, 2005, USave and the staff agreed to the payment of an administrative penalty in the amount of \$800 to settle the allegations without admission that any violation occurred. USave subsequently exited the retail market.

Notice of Violation of PURA §39.904, Relating to Goal for Renewable Energy, and P.U.C. Subst. R. §25.173, Relating to Renewable Energy Resources

PURA §39.904 requires that “[any retail electric provider, municipally owned utility, or electric cooperative that does not satisfy [legislatively mandated renewable energy goals] by directly owning or purchasing capacity using renewable energy technologies shall purchase sufficient renewable energy credits to satisfy the requirements by holding renewable energy credits in lieu of capacity from renewable energy technologies.” This provision also directs the Commission to establish a renewable energy credits (RECs) trading program. The purposes of Substantive Rule §25.173 include ensuring that the legislatively mandated renewable energy goals are met and establishing the RECs trading program.

On October 14, 2005, the Legal Division of the PUCT issued several Notices of Violation. In each Notice, the PUCT claims that pursuant to the formula outlined in §25.173(h) each REP was required to purchase and retire a specific number of RECs in compliance year 2003. For that year, a provision was in place under §25.173(m) (2) that allowed a 10% deferment of that year's mandatory REC retirements. Under this deferment, the PUCT calculated that a certain number of RECs should have been retired in 2003, and the remainder deferred to 2004. The companies investigated and their final resolution is shown below.

- Docket 31887 - Liberty Power seeking penalties of \$1,100 for failing to retire 22 RECs; order approving penalty of \$1,100 was approved 2/13/2006
- Docket 31888 - TriEagle Energy seeking penalties totaling \$14,700 for failing to retire 294 RECs; NOV was subsequently withdrawn
- Docket 31889 - Certain Energy (First Choice) seeking penalties totaling \$5,800 for failing to retire 116 RECs; order approving penalty of \$2,900 was approved 1/27/2006

Docket No. 32493 - Notice of Violation by Affordable Power Plan, L.P. of PURA §17.004, Relating to Consumer Protection Policies; P.U.C. SUBST. R. §25.483, Relating to Disconnection of Service; and P.U.C. SUBST. R. §25.491(b), Relating to Record Retention and Reporting Requirements.

In October, 2006, the PUCT approved this settlement of an enforcement action and ordered Affordable Power to pay a penalty in the amount of \$223,000. In the Notice of Violation originally issued in March, 2006, the PUCT staff stated that between August 1, 2005, and October 31, 2005, Affordable Power Plan (APP) authorized the disconnection of a number of customers prior to meeting the requirements of the Disconnection Rule that would give APP the authority to request disconnection of customers. Additionally, staff stated that APP failed to give customers the disconnection notice required by the Disconnection Rule. Finally, staff stated that APP failed to timely and completely respond to Staff inquiries regarding this matter, as required by Substantive Rule §25.491(b)(3). Commission Staff recommended assessing administrative penalties against APP in the amount of \$446,000.

Project 32032 - PUC Investigation into Marketing by Retail Electric Providers and Transmission and Distribution Utilities Concerning Reliability Claims

On November 15, 2005 the PUCT initiated this investigation of affiliate REP/TDSP marketing efforts. In letters to each affected company, the staff requested specific information from each party. The staff also urged each company to immediately review their advertising and marketing materials to ensure compliance with PUC rules.

The exact text of the staff request is shown below.

We hereby request that you respond to the following inquiry within 15 days of receipt of this letter by submitting an affidavit with necessary attachments, certified by one of your company officers:

Please provide all advertisements, press releases, public service announcements and marketing materials that your company produced or disseminated from September 1 to November 15, 2005, including but not limited to: print, radio, television and internet advertisements, customer newsletters, handouts at public events, and company press releases.

All companies appear to have complied with this information request and their responses and materials are available for review under docket 32032. No further formal action has been taken by the Commission.

TDSP Enforcement Activity

In 2006, the PUCT initiated enforcement proceedings against nine TDSPs for failure to comply with the electric service quality and reliability standards provided by PURA §38.005.

Notice of Violation of PURA §38.005, Relating To Electric Service Reliability Measures; And PUC Subst. R. §25.52, Relating To Reliability and Continuity of Service

In 2006 the PUCT issued NOV's to nine TDSPs. In each NOV, the staff stated that PURA §38.005 charges the Commission with bringing an enforcement action “against a utility if any feeder with 10 or more customers appears on the utility’s list of worst 10 percent performing feeders for any two consecutive years or has had a SAIDI or SAIFI average that is more than 300 percent greater than the system average of all feeders during any two-year period, beginning in the year 2000.” Substantive Rule §25.52(f)(2)(A) provides that “each utility shall maintain and operate its distribution system so that no distribution feeder with more than ten customers sustains a SAIDI or SAIFI value for a reporting year that is among the highest (worst) 10% of that utility’s feeders for any two consecutive reporting years.” Substantive Rule §25.52(f)(2)(B) states that “each utility shall maintain and operate its distribution system so that no distribution feeder with more than ten customers sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.”

The PUCT staff alleged that each TDSP has violated PURA and the Substantive Rules by having feeders with ten or more customers that are among the 10 percent worst-performing feeders for two consecutive years and having

feeders that have a SAIDI or SAIFI average that is more than 300 percent greater than the system average of all feeders in consecutive years.

NOV's Issued by PUCT	Docket #	Penalty Recommended	Penalty Assessed
TXU Electric Delivery	32018	\$335,000	\$100,000 *
AEP SWEPCO	32304	\$21,000	\$11,110
TNMP	32305	\$28,000	\$28,000
Entergy	32306	\$38,000	\$19,000
El Paso Electric	32307	\$39,000	\$27,000
Centerpoint	32309	\$115,000	\$58,000
AEP Central	32320	\$105,000	\$54,540
AEP North	32321	\$68,000	\$35,380
Southwestern Public Service	32729	\$36,000	\$36,000
Totals		\$785,000	\$369,030
Table Notes:			
* Includes \$125,00 in energy efficiency improvements for customers			

The table above summarizes the docket numbers as well as the recommended and final administrative penalty amounts.

Calendar Year 2007

PUCT staff continued its formal enforcement efforts in calendar year 2007 by initiating 6 actions that ultimately resulted in the assessment of over five million dollars in fines or payments for special purposes.

Retail Enforcement Activity

Docket 34357: Application of Commission Staff and TXU Energy Retail Company LP for Approval of Settlement Agreement

On July 23, 2007, the Commission adopted an order approving the Settlement Agreement and Report to Commission between the Public Utility Commission of Texas Staff and TXU Energy Retail Company LP regarding the Commission Staff's investigation of TXU Energy for alleged violation of P.U.C. SUBST. R. 25.475(e) (2), relating to automatic renewal of service.

Commission Staff recommended an administrative penalty of \$5,000,000. TXU Energy agreed to pay the recommended administrative penalty.

Docket 32846: Notice of Violation by ACN Energy, Inc. Of PURA §39.904, Relating To Goal for Renewable Energy, And PUC Subst. R. §25.173, Relating To Renewable Energy Resources (Redacted Version)

On July 31, 2007, the Commission adopted an order approving the Settlement Agreement and Report to Commission between the Public Utility Commission of Texas Staff and ACN Energy, Inc. regarding a Notice of Violation that was issued June 20, 2006. The NOV concerned Commission Staffs investigation into ACN's violation of §39.904 of PURA, relating to Goal for Renewable Energy, and P.U.C. SUBST. R. 25.173, relating to Renewable Energy Resources. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement is unopposed and provides for a reasonable resolution to all of the issues in this proceeding. Commission Staff recommended an administrative penalty of \$7,344.72. ACN agreed to pay the recommended administrative penalty.

Docket 32824: Notice Of Violation by Utility Choice, L.L.C. dba Utility Choice Electric of PURA §36.904, Relating To Goal for Renewable Energy, And PUC Subst. R. §25.173, Relating To Renewable Energy Resources, Redacted Version

On October 25, 2007, the Commission adopted an order approving the Settlement Agreement and Report to Commission between the Public Utility Commission of Texas Staff and Utility Choice, LLC. d/b/a Utility Choice Electric regarding Notice of Violation that was issued June. The NOV concerned Commission Staff's investigation into UCE's violation of §39.904 of PURA, relating to Goal for Renewable Energy, and P.U.C. SUBST. R. 25.173, relating to Renewable Energy Resources. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement is unopposed and provides for a reasonable resolution of all of the issues in this proceeding. Commission Staff recommended an administrative penalty of \$20,931. UCE agreed to pay the recommended administrative penalty.

Docket 34671: Application of Commission Staff and Direct Energy LP for Approval of Settlement Agreement

On December 14, 2007, the Commission adopted an order approving the Settlement Agreement and Report to Commission between Commission Staff and Direct Energy LP filed November 29, 2007, regarding Commission Staff's investigation of Direct Energy for alleged violation of P.U.C. SUBST. R. 25.475(e)(2), relating to automatic renewal of service. The revised agreement resolves all of the issues in this docket, is unopposed, and provides for a reasonable resolution of the issues in this docket. Pursuant to the revised agreement, Direct Energy will expend \$695,000.00 to fund the development and presentation of an education program regarding the retail electric market in the Electric Reliability Council of Texas targeted to small commercial

customers.

Docket 33138: Notice Of Violation By Freedom Group, LLC dba Freedom Power of PURA §39.101(H) and §39.151; And PUC Subst. R. §25.483 and §25.485

On December 20, 2007 the Commission approved an order which addressed the notice of violation filed by Commission Staff against Freedom Group, LLC, dba Freedom Power, regarding Freedom's failure to comply with: 1) PURA § 39.101(h) and P.U.C. SUBST. R. 25.483, relating to disconnection of service during an extreme weather emergency; 2) P.U.C. SUBST. R..485, relating to customer access and complaint handling; 3) ERCOT Protocol § 19, relating to "Standard Electronic Transactions;" and 4) ERCOT Retail Market Guide § 7.6, relating to the disconnect reconnect process. The order approved the proposal for decision which recommended that Freedom pay the administrative penalties originally contained in the Notice of Violation, which amounted of \$21,050.

TDSP Enforcement Activity

Docket 32306: Notice of Violation by Entergy Gulf States, Inc. Of PURA 38.005, Relating To Electric Service Reliability Measures; PUC Subst.R.25.52, Relating To Reliability and Continuity of Service

On March 2, 2007, the Commission adopted an order approving the Settlement Agreement and Report to Commission between the Public Utility Commission of Texas Staff and Entergy Gulf States, Inc. regarding the Notice of Violation issued on January 19, 2006. The NOV concerned Commission Staff's investigation into EGSI's violations of § 38.005 of PURA, relating to Electric Service Reliability Measures, and P.U.C. SUBST. R. 25.52, relating to Reliability and Continuity of Service, and recommended penalty of \$38,000. The Parties reached an Agreement which provides for an administrative penalty of \$19,000.

Calendar Year 2008

Staff initiated several enforcement actions in 2008 largely in response to the REP defaults in May.

Docket No. 35947, Application of Commission Staff and First Choice Power Special Purpose, LP for Approval of Settlement Agreement

On August 1, 2008, the Commission adopted an order approving the Settlement Agreement and Report to Commission between Commission Staff and First Choice Power. The Agreement resolved and concluded an investigation of First Choice related to the Commission's substantive rules relating to automatic renewal of service. Pursuant to the agreement, First Choice will pay an administrative penalty in the amount of \$500,000.

Revocation of REP Certificates

On August 14, 2008, the Commission revoked the certificates of four REPs as the Commission continues to investigate the activities of these companies. The following four REPs defaulted on their financial obligations to buy electricity from the wholesale electricity market in the ERCOT market:

- Pre-Buy Electric, LLC defaulted on May 16, 2008 with 8,430 customers switched to other providers.
- National Power Company, Inc. defaulted on May 28, 2008 with 15,163 customers switched to other providers.

- Sure Electric, LLC dba Riverway Power Company defaulted on June 2, 2008 with 6,202 customers switched to other providers.
- Hwy 3 MHP, LLC dba eTricity defaulted on June 3, 2008 with 12, 222 customers switched to other providers.

These former providers are no longer allowed to sell electricity in Texas and are required to refund any unused customer deposits.

APPENDIX 1

Acronyms Used in this Report

dba:	Doing Business As
EFL:	Electricity Facts Label
ERCOT:	Electric Reliability Council of Texas
ESI:	Electric Service Identifier (a unique number assigned to each service location)
FUMDA:	Fraudulent, Unfair, Misleading, Deceptive, or Anti-Competitive
IOU:	Investor Owned Utility
LIDA:	Low Income Discount Administrator
NOV:	Notice of Violation
NWS:	National Weather Service
PGC:	Power Generating Company
POLR	Provider of Last Resort
PUCT:	Public Utility Commission of Texas
REC:	Renewable Energy Credit
REP:	Retail Electric Provider
SAIDI:	System Average Interruption Duration Index
SAIFI:	System Average Interruption Frequency Index
Subst. R.:	Substantive Rule
TDSP:	Transmission and Distribution Service Provider (also referred to as TDU by others)
TDU:	Transmission and Distribution Utility (same as a TDSP)
TOS:	Terms of Service document
TRE:	Texas Regional Entity

The logo for Regulatory Compliance Services features the text "Regulatory Compliance Services" in a dark blue, serif font, centered within a white rectangular box. The box is flanked by two dark blue rectangular shapes, one on the left and one on the right, with thin, curved lines connecting them to the text area.

Regulatory Compliance Services

About Regulatory Compliance Services

Regulatory Compliance Services was founded by Patricia Dolese in 2002. The mission of Regulatory Compliance Services is to help our clients navigate the complex world of retail utility regulation. With specific expertise in Customer Protection regulation, strategic planning, data management and reporting, and government/regulatory affairs, **Regulatory Compliance Services** is well positioned to provide expert advice to its clients.

About the Author

Ms. Dolese brings years of compliance expertise to her retail telecommunications and electric clients. Ms. Dolese obtained most of this expertise during her nine-year tenure at the Public Utility Commission of Texas (PUCT). Ms. Dolese's expertise was used on a variety of projects ranging from management audits of regulated utilities to customer protection rulemakings and customer protection policy formulation. She also served in various senior management positions in the Customer Protection Division, most recently serving as the Director of Enforcement Investigations.

Ms. Dolese helped form the PUCT's Office of Customer Protection in 1997 and facilitated the implementation of the state's first slamming law. Ms. Dolese went on to manage most of the functional areas within the Customer Protection Division, including the call center, complaint resolution, and enforcement investigation functions. Ms. Dolese's vast knowledge of customer protection issues was also instrumental in the agency's initial implementation of the Texas Electric Choice Customer Education Campaign.

Ms. Dolese was responsible for the implementation of the both telecommunications and electric customer protection rules stemming from both Senate Bill 86 (Customer Protection) and Senate Bill 7 (Electric Restructuring) both passed by the 77th session of the Texas Legislature in 1999.

Since leaving the PUCT, Ms. Dolese has worked with a wide variety of Retail Electric Providers operating in Texas.

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