



**PUBLIC UTILITY COMMISSION OF TEXAS**

**SELECT ELECTRIC SUBSTANTIVE RULES  
SUBCHAPTERS A, B, E, F, & R**

**CUSTOMER PROTECTION RULES**

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**01/06/2022**  
**with Revisions Effective 01/06/2022**



**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

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**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### SUBCHAPTER A GENERAL PROVISIONS

#### §25.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) **Above-market purchased power costs** -- Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.
- (2) **Affected person** -- means:
  - (A) a public utility or electric cooperative affected by an action of a regulatory authority;
  - (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
  - (C) a person who:
    - (i) is a competitor of a public utility with respect to a service performed by the utility; or
    - (ii) wants to enter into competition with a public utility.
- (3) **Affiliate** -- means:
  - (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
  - (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
  - (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
  - (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
    - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
    - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
  - (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
  - (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.
- (4) **Affiliated electric utility** -- The electric utility from which an affiliated retail electric provider was unbundled in accordance with Public Utility Regulatory Act §39.051.
- (5) **Affiliated power generation company (APGC)** -- A power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.
- (6) **Affiliated retail electric provider (AREP)** -- A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.
- (7) **Aggregation** -- Includes the following:
  - (A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load; or
  - (B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load.
- (8) **Aggregator** -- A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.
- (9) **Ancillary service** -- A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services the commission may determine by rule.

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- (10) **Base rate** -- Generally, a rate designed to recover the cost of service other than certain costs separately identified and recovered through a rider, rate schedule, or other schedule. For bundled utilities, these separately identified costs may include items such as a fuel factor, power cost recovery factor, and surcharge. Distribution service providers may have separately identified costs such as transition costs, the excess mitigation charge, transmission cost recovery factors, and the competition transition charge.
- (11) **Bundled Municipally Owned Utilities/Electric Cooperatives (MOU/COOP)** -- A municipally owned utility/electric cooperative that is conducting both transmission and distribution activities and competitive energy-related activities on a bundled basis without structural or functional separation of transmission and distribution functions from competitive energy-related activities and that makes a written declaration of its status as a bundled municipally owned utility/electric cooperative pursuant to §25.275(o)(3)(A) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities).
- (12) **Calendar year** -- January 1 through December 31.
- (13) **Commission** -- The Public Utility Commission of Texas.
- (14) **Competition transition charge (CTC)** -- Any non-bypassable charge that recovers the positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263. Competition transition charges also include the transition charges established pursuant to PURA §39.302(7) unless the context indicates otherwise.
- (15) **Competitive affiliate** -- An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.
- (16) **Competitive energy efficiency services** -- Energy efficiency services that are defined as competitive energy services pursuant to §25.341 of this title (relating to Definitions).
- (17) **Competitive retailer** -- A retail electric provider; or a municipally owned utility or electric cooperative, that has the right to offer electric energy and related services at unregulated prices directly to retail customers who have customer choice, without regard to geographic location.
- (18) **Congestion zone** -- An area of the transmission network that is bounded by commercially significant transmission constraints or otherwise identified as a zone that is subject to transmission constraints, as defined by an independent organization.
- (19) **Control area** -- An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:
- (A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);
  - (B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;
  - (C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and
  - (D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.
- (20) **Corporation** -- A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by the Public Utility Regulatory Act.

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- (21) **Critical loads** -- Loads for which electric service is considered crucial for the protection or maintenance of public health and safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.
- (22) **Customer choice** -- The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.
- (23) **Customer class** -- A group of customers with similar electric service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, Title 10, Chapter 2303 may be considered to be a separate customer class of electric utilities.
- (24) **Day-ahead** -- The day preceding the operating day.
- (25) **Deemed savings** -- A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy and peak demand savings determined through measurement and verification activities.
- (26) **Demand** -- The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- (27) **Demand savings** -- A quantifiable reduction in the rate at which energy is delivered to or by a system at a given instance, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- (28) **Demand-side management (DSM)** -- Activities that affect the magnitude or timing of customer electrical usage, or both.
- (29) **Demand-side resource or demand-side management** -- Equipment, materials, and activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.
- (30) **Disconnection of service** -- Interruption of a customer's supply of electric service at the customer's point of delivery by an electric utility, a transmission and distribution utility, a municipally owned utility or an electric cooperative.
- (31) **Distribution line** -- A power line operated below 60,000 volts, when measured phase-to-phase, that is owned by an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative.
- (32) **Distributed resource** -- A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (below 60,000 volts), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.
- (33) **Distribution service provider (DSP)** -- An electric utility, municipally-owned utility, or electric cooperative that owns or operates for compensation in this state equipment or facilities that are used for the distribution of electricity to retail customers, as defined in this section, including retail customers served at transmission voltage levels.
- (34) **Economically distressed geographic area** -- Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.
- (35) **Electric cooperative** --
- (A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;
  - (B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or
  - (C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

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- (36) **Electric generating facility** -- A facility that generates electric energy for compensation and that is owned or operated by a person in this state, including a municipal corporation, electric cooperative, or river authority.
- (39) **Electric Reliability Council of Texas (ERCOT)** -- Refers to the independent organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.
- (40) **Electric service identifier (ESI ID)** -- The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by the Electric Reliability Council of Texas (ERCOT) or another independent organization.
- (41) **Electric utility** -- Except as otherwise provided in this Chapter, an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:
- (A) a municipal corporation;
  - (B) a qualifying facility;
  - (C) a power generation company;
  - (D) an exempt wholesale generator;
  - (E) a power marketer;
  - (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
  - (G) an electric cooperative;
  - (H) a retail electric provider;
  - (I) the state of Texas or an agency of the state; or
  - (J) a person not otherwise an electric utility who:
    - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
    - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
    - (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Subchapter C, Chapter 184.
- (42) **Energy efficiency** -- Programs that are aimed at reducing the rate at which electric energy is used by equipment and/or processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adoption of technologies and processes that reduce heat or other energy losses; or reorganization of processes to make use of waste heat. Efficient use of energy by customer-owned end-use devices implies that existing comfort levels, convenience, and productivity are maintained or improved at a lower customer cost.
- (43) **Energy efficiency measures** -- Equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kW, or both.
- (44) **Energy efficiency project** -- An energy efficiency measure or combination of measures installed under a standard offer contract or a market transformation contract that results in both a reduction in customers' electric energy consumption and peak demand, and energy costs.
- (45) **Energy efficiency service provider (EESP)** -- A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a

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- retail electric provider or large commercial customer, if the person has executed a standard offer contract.
- (46) **Energy savings** -- A quantifiable reduction in a customer's consumption of energy.
- (47) **ERCOT protocols** -- Body of procedures developed by ERCOT to maintain the reliability of the regional electric network and account for the production and delivery of electricity among resources and market participants. The procedures, initially approved by the commission, include a revisions process that may be appealed to the commission, and are subject to the oversight and review of the commission.
- (48) **ERCOT region** -- The geographic area under the jurisdiction of the commission that is served by transmission service providers that are not synchronously interconnected with transmission service providers outside of the state of Texas.
- (49) **Exempt wholesale generator** -- A person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale, and who is in compliance with the registration requirements of §25.109 of this title (Registration of Power Generation Companies and Self-Generators).
- (50) **Existing purchased power contract** -- A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.
- (51) **Facilities** -- All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.
- (52) **Financing order** -- An order of the commission adopted under the Public Utility Regulatory Act §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.
- (53) **Freeze period** -- The period beginning on January 1, 1999, and ending on December 31, 2001.
- (54) **Generation assets** -- All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.
- (55) **Generation service** -- The production and purchase of electricity for retail customers and the production, purchase and sale of electricity in the wholesale power market.
- (56) **Good utility practice** -- Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.
- (57) **Hearing** -- Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.
- (58) **Independent organization** -- An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller.
- (59) **Independent system operator** -- An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.
- (60) **Installed generation capacity** -- All potentially marketable electric generation capacity, including the capacity of:
- (A) generating facilities that are connected with a transmission or distribution system;

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- (B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and
  - (C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.
- (61) **Interconnection agreement** -- The standard form of agreement, which has been approved by the commission. The interconnection agreement sets forth the contractual conditions under which a company and a customer agree that one or more facilities may be interconnected with the company's utility system.
- (62) **License** -- The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.
- (63) **Licensing** -- The commission process for granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.
- (64) **Load factor** -- The ratio of average load to peak load during a specific period of time, expressed as a percent. The load factor indicates to what degree energy has been consumed compared to maximum demand or utilization of units relative to total system capability.
- (65) **Low-income customer** -- An electric customer who receives Supplemental Nutrition Assistance Program (SNAP) from Texas Health and Human Services Commission (HHSC) or medical assistance from a state agency administering a part of the medical assistance program.
- (66) **Low-Income List Administrator (LILA)** -- A third-party administrator contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007.
- (67) **Market power mitigation plan** -- A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act §39.154.
- (68) **Market value** -- For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under the Public Utility Regulatory Act (PURA) §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.
- (69) **Master meter** -- A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.
- (70) **Municipality** -- A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.
- (71) **Municipally-owned utility (MOU)** -- Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.
- (72) **Nameplate rating** -- The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.
- (73) **Native load customer** -- A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.
- (74) **Natural gas energy credit (NGEC)** -- A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by the Public Utility Regulatory Act §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).
- (75) **Net book value** -- The original cost of an asset less accumulated depreciation.
- (76) **Net dependable capability** -- The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.
- (77) **New on-site generation** -- Electric generation capacity greater than ten megawatts capable of being lawfully delivered to the site without use of utility distribution or transmission facilities, which was not, on or before December 31, 1999, either:
- (A) A fully operational facility, or

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- (B) A project supported by substantially complete filings for all necessary site-specific environmental permits under the rules of the Texas Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.
- (78) **Off-grid renewable generation** -- The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.
- (79) **Other generation sources** -- A competitive retailer's or affiliated retail electric provider's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.
- (80) **Person** -- Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative.
- (81) **Power cost recovery factor (PCRF)** -- A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.
- (82) **Power generation company (PGC)** -- A person that:
- (A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which the Public Utility Regulatory Act, Chapter 35, Subchapter E applies;
  - (B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and
  - (C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.
- (83) **Power marketer** -- A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers).
- (84) **Power region** -- A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.
- (85) **Pre-interconnection study** -- A study or studies that may be undertaken by a utility in response to its receipt of a completed application for interconnection and parallel operation with the utility system at distribution voltage. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies and utility system impact studies.
- (86) **Premises** -- A tract of land or real estate or related commonly used tracts including buildings and other appurtenances thereon.
- (87) **Price to beat (PTB)** -- A price for electricity, as determined pursuant to the Public Utility Regulatory Act §39.202, charged by an affiliated retail electric provider to eligible residential and small commercial customers in its service area.
- (88) **Proceeding** -- A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.
- (89) **Proprietary customer information** -- Any information compiled by a retail electric provider, an electric utility, a transmission and distribution business unit as defined in §25.275(c)(16) of this title (relating to Code of Conduct for Municipally Owned Utilities and Electric Cooperatives Engaged in Competitive Activities) on a customer in the course of providing electric service or by an aggregator on a customer in the course of aggregating electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

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- (90) **Provider of last resort (POLR)** -- A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).
- (91) **Public retail customer** -- A retail customer that is an agency of this state, a state institution of higher education, a public school district, or a political subdivision of this state.
- (92) **Public utility or utility** -- An electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in the Public Utility Regulatory Act §51.002.
- (93) **Public Utility Regulatory Act (PURA)** -- The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 *et. seq.*
- (94) **Purchased power market value** -- The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.
- (95) **Qualified scheduling entity** -- A market participant that is qualified by the Electric Reliability Council of Texas (ERCOT) in accordance with Section 16, Registration and Qualification of Market Participants of ERCOT's Protocols, to submit balanced schedules and ancillary services bids and settle payments with ERCOT.
- (96) **Qualifying cogenerator** -- The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.
- (97) **Qualifying facility** -- A qualifying cogenerator or qualifying small power producer.
- (98) **Qualifying small power producer** -- The meaning as assigned this term by 16 U.S.C. §796(17)(D).
- (99) **Rate** -- A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.
- (100) **Rate class** -- A group of customers taking electric service under the same rate schedule.
- (101) **Rate year** -- The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.
- (102) **Ratemaking proceeding** -- A proceeding in which a rate may be changed.
- (103) **Registration agent** -- Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.
- (104) **Regulatory authority** -- In accordance with the context where it is found, either the commission or the governing body of a municipality.
- (105) **Renewable demand side management (DSM) technologies** -- Equipment that uses a renewable energy resource (renewable resource) as defined in this section, that, when installed at a customer site, reduces the customer's net purchases of energy (kWh), electrical demand (kW), or both.
- (106) **Renewable energy** -- Energy derived from renewable energy technologies.
- (107) **Renewable energy credit (REC)** -- A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by the Public Utility Regulatory Act §39.904 and implemented under §25.173(e) of this title (relating to Goal for Renewable Energy).
- (108) **Renewable energy credit account (REC account)** -- An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by a program participant.
- (109) **Renewable energy resource (renewable resource)** -- A resource that produces energy derived from renewable energy technologies.
- (110) **Renewable energy technology** -- Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun

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or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

- (111) **Repowering** -- Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.
- (112) **Residential customer** -- Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity.
- (113) **Retail customer** -- The separately metered end-use customer who purchases and ultimately consumes electricity.
- (114) **Retail electric provider (REP)** -- A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.
- (115) **Retail stranded costs** -- That part of net stranded cost associated with the provision of retail service.
- (116) **Retrofit** -- The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.
- (117) **River authority** -- A conservation and reclamation district created pursuant to the Texas Constitution, Article 16, Section 59, including any nonprofit corporation created by such a district pursuant to the Texas Water Code, Chapter 152, that is an electric utility.
- (118) **Rule** -- A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.
- (119) **Separately metered** -- Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.
- (120) **Service** -- Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.
- (121) **Spanish-speaking person** -- A person who speaks any dialect of the Spanish language exclusively or as their primary language.
- (122) **Standard meter** -- The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.
- (123) **Stranded cost** -- The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act (PURA), Chapter 39. For purposes of PURA §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under PURA §39.262(h), whichever is earlier, and shall include stranded costs incurred under PURA §39.263.
- (124) **Submetering** -- Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

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- (125) **Summer net dependable capability** -- The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.
- (126) **Supply-side resource** -- A resource, including a storage device, that provides electricity from fuels or renewable resources.
- (127) **System emergency** -- A condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.
- (128) **Tariff** -- The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.
- (129) **Termination of service** -- The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.
- (130) **Tenant** -- A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.
- (131) **Test year** -- The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.
- (132) **Texas jurisdictional installed generation capacity** -- The amount of an affiliated power generation company's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.
- (133) **Transition bonds** -- Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.
- (134) **Transition charges** -- Non-bypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.
- (135) **Transmission and distribution business unit (TDBU)** -- The business unit of a municipally owned utility/electric cooperative, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of electric utility in a qualifying power region certified under the Public Utility Regulatory Act §39.152. Transmission and distribution business unit does not include a municipally owned utility/electric cooperative that owns, controls, or is an affiliate of the transmission and distribution business unit if the transmission and distribution business unit is organized as a separate corporation or other legally distinct entity. Except as specifically authorized by statute, a transmission and distribution business unit shall not provide competitive energy-related activities.
- (136) **Transmission and distribution utility (TDU)** -- A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility", in a qualifying power region certified under the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative. The TDU may be a single utility or may be separate transmission and distribution utilities.
- (137) **Transmission line** -- A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.

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- (138) **Transmission service** -- Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the Electric Reliability Council of Texas (ERCOT) region, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not “transmission service”.
- (139) **Transmission service customer** -- A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A retail customer, as defined in this section, may not be a transmission service customer.
- (140) **Transmission service provider (TSP)** -- An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.
- (141) **Transmission system** -- The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

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#### §25.8. Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.

- (a) **Purpose.** The purpose of this rule is to establish a classification system for violations of the Public Utility Regulatory Act (PURA) and related commission rules and orders, and to establish a range of penalties that may be assessed for each class of violations.
- (b) **Classification system.**
- (1) **Class C violations.**
    - (A) Penalties for Class C violations may not exceed \$1,000 per violation per day.
    - (B) The following violations are Class C violations:
      - (i) failure to file a report or provide information required to be submitted to the commission under this chapter within the timeline required;
      - (ii) failure by an electric utility, retail electric provider, or aggregator to investigate a customer complaint and appropriately report the results within the timeline required;
      - (iii) failure to update information relating to a registration or certificate by the commission within the timeline required; and
      - (iv) a violation of the Electric no-call list.
  - (2) **Class B violations.**
    - (A) Penalties for Class B violations may not exceed \$5,000 per violation per day.
    - (B) All violations not specifically enumerated as a Class C or Class A violation shall be considered Class B violations.
  - (3) **Class A violations.**
    - (A) Penalties for Class A violations may not exceed \$25,000 per violation per day.
    - (B) The following types of violations are Class A violations if they create economic harm in excess of \$5,000 to a person or persons, property, or the environment, or create an economic benefit to the violator in excess of \$5,000; create a hazard or potential hazard to the health or safety of the public; or cause a risk to the reliability of a transmission or distribution system or a portion thereof.
      - (i) A violation related to the wholesale electric market, including protocols and other requirements established by an independent organization;
      - (ii) A violation related to electric service quality standards or reliability standards established by the commission or an independent organization;
      - (iii) A violation related to the code of conduct between electric utilities and their competitive affiliates;
      - (iv) A violation related to prohibited discrimination in the provision of electric service;
      - (v) A violation related to improper disconnection of electric service;
      - (vi) A violation related to fraudulent, unfair, misleading, deceptive, or anticompetitive business practices;
      - (vii) Conducting business subject to the jurisdiction of the commission without proper commission authorization, registration, licensing, or certification;
      - (viii) A violation committed by ERCOT;
      - (ix) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that creates a hazard or potential hazard to the health or safety of the public;
      - (x) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that creates economic harm to a person or persons, property, or the environment in excess of \$5,000, or creates an economic benefit to the violator in excess of \$5,000; and
      - (xi) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that causes a risk to the reliability of a transmission or distribution system or a portion thereof.

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- (c) **Application of enforcement provisions of other rules.** To the extent that PURA or other rules in this chapter establish a range of administrative penalties that are inconsistent with the penalty ranges provided for in subsection (b) of this section, the other provisions control with respect to violations of those rules.
- (d) **Assessment of administrative penalties.** In addition to the requirements of §22.246 of this title (relating to Administrative Penalties), a notice of violation recommending administrative penalties shall indicate the class of violation.

**§25.43. Provider of Last Resort (POLR).**

- (a) **Purpose.** This section establishes the requirements for Provider of Last Resort (POLR) service and ensures that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.
- (b) **Application.** The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (r) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, must be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).
- (c) **Definitions.** The following terms when used in this section have the following meanings, unless the context indicates otherwise:
- (1) **Affiliate** -- As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).
  - (2) **Basic firm service** -- Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.
  - (3) **Billing cycle** -- A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.
  - (4) **Billing month** -- Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through the customer's meter.
  - (5) **Business day** -- As defined by the ERCOT Protocols.
  - (6) **Large non-residential customer** -- A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).
  - (7) **Large service provider (LSP)** -- A REP that is designated to provide POLR service pursuant to subsection (j) of this section.
  - (8) **Market-based product** -- A month-to-month product that is either offered to or matches the rate of a product offered to non-POLR customers of the REP for the same TDU territory and customer class. A month-to-month contract may not contain a termination fee or penalty. For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.
  - (9) **Mass transition** -- The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.
  - (10) **Medium non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.
  - (11) **POLR area** -- The service area of a TDU in an area where customer choice is in effect.
  - (12) **POLR provider** -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.
  - (13) **Residential customer** -- A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.
  - (14) **Transitioned customer** -- A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.

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- (15) **Small non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.
- (16) **Voluntary retail electric provider (VREP)** -- A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.
- (d) **POLR service.**
- (1) There are two types of POLR providers: VREPs and LSPs.
- (2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.
- (3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.
- (4) A POLR provider must offer a basic, standard retail service package to customers it is designated to serve, which is limited to:
- (A) Basic firm service; and
- (B) Call center facilities available for customer inquiries.
- (5) A POLR provider must, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.
- (6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) of this section must contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice must also include contact information for the LSP, and the Power to Choose website, and must include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).
- (e) **Standards of service.**
- (1) An LSP designated to serve a class in a given POLR area must serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (m)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.
- (2) A POLR provider must abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section apply. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).
- (3) An LSP that has received commission approval to designate one of its affiliates to provide POLR service on behalf of the LSP pursuant to subsection (k) of this section must retain responsibility for the provision of POLR service by the LSP affiliate and remains liable for violations of applicable laws and commission rules and all financial obligations of the LSP affiliate associated with the provisioning of POLR service on its behalf by the LSP affiliate.
- (f) **Customer information.**

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- (1) The Standard Terms of Service prescribed in subparagraphs (A)-(D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (m)(2) of this section.
    - (A) Standard Terms of Service, POLR Provider Residential Service: Figure: 16 TAC §25.43(f)(1)(A)
    - (B) Standard Terms of Service, POLR Provider Small Non-Residential Service: Figure: 16 TAC §25.43(f)(1)(B)
    - (C) Standard Terms of Service, POLR Provider Medium Non-Residential Service: Figure: 16 TAC §25.43(f)(1)(C)
    - (D) Standard Terms of Service, POLR Provider Large Non-Residential Service: Figure: 16 TAC §25.43(f)(1)(D)
  - (2) An LSP providing service under a rate prescribed by subsection (m)(2) of this section must provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service must be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).
- (g) **General description of POLR service provider selection process.**
- (1) Each REP must provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative will designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission will not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (r) of this section.
  - (2) POLR providers must serve two-year terms. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule must be set at the time POLR providers are initially selected in such areas.
- (h) **REP eligibility to serve as a POLR provider.** In each even-numbered year, the commission will determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year.
- (1) Each REP must provide information to the commission necessary to establish its eligibility to serve as a POLR provider for the next term. A REP must file, by July 10th of each even-numbered year, by service area, information on the classes of customers it provides service to, and for each customer class, the number of ESI IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. As part of that filing, a REP may request that the commission designate one of its affiliates to provide POLR service on its behalf pursuant to subsection (k) of this section in the event that the REP is designated as an LSP. The independent organization must provide to the commission the total number of ESI ID and total MWh data for each class. Each REP must also provide information on its technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section will not be considered confidential information.
  - (2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for a particular customer class in a POLR area, unless:
    - (A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs));
    - (B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, is less than 1.0;
    - (C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the term;

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- (D) On the date of the commencement of the term, the REP or its predecessor will not have served customers in Texas for at least 18 months;
  - (E) The REP does not serve the applicable customer class, or does not have an executed delivery service agreement with the service area TDU;
  - (F) The REP is certificated as an Option 2 REP under §25.107 of this title;
  - (G) The REP's customers are limited to its own affiliates;
  - (H) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts out of eligibility for either, or both of the small or medium non-residential customer classes; or
  - (I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.
- (3) For each term, the commission will publish the names of all REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and will provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove the REP's assertion. Commission staff will verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff will notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of POLR providers.
- (4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.
- (5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff will review the filing, and will request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs will be assigned to a POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.
- (i) **VREP list.** Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission will post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later than July 31, of each even-numbered year unless otherwise determined by the executive director. This filing must include a description of the REP's capabilities to serve additional customers as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, will not be considered confidential information.
- (1) A VREP must provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each POLR area, and the number of ESI IDs the REP is willing to serve by customer class and POLR area in each transition event.
  - (2) A REP that has met the eligibility requirements of subsection (h) of this section and provided the additional information set out in this subsection is eligible for designation as a VREP.

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- (3) Commission staff will make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff will reassess the REP's eligibility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.
  - (4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it must provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff will make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of ESI IDs, the request must be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP must continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff will be communicated to ERCOT and must be implemented for the current allocation if possible.
  - (5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it will request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VREP service. No ESI IDs will be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.
- (j) **LSPs.** This subsection governs the selection and service of REPs as LSPs.
- (1) The REPs eligible to serve as LSPs must be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.
  - (2) In each POLR area, for each customer class, the commission will designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area must be designated as LSPs. Commission staff will designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as an LSP.
  - (3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL must be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) must be supplied to commission staff electronically for placement on the commission webpage by January 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL must note that such information is REP-specific.
  - (4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) of this section must move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service

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by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

- (A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (t)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (t)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product will be provided at a later time, but no later than 14 days before their effective date.
- (B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP must move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP must inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.
- (5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP must continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee will, with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.
- (k) **Designation of an LSP affiliate to provide POLR service on behalf of an LSP.**
- (1) An LSP may request the commission designate an LSP affiliate to provide POLR service on behalf of the LSP either with the LSP's filing under subsection (h) of this section or as a separate filing in the current term project. The filing must be made at least 30 days prior to the date when the LSP affiliate is to begin providing POLR service on behalf of the LSP. To be eligible to provide POLR service on behalf of an LSP, the LSP affiliate must be certificated to provide retail electric service; have an executed delivery service agreement with the service area TDU; and meet the requirements of subsection (h)(2) of this section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this section as related to serving customers in the applicable customer class.
- (2) The request must include the name and certificate number of the LSP affiliate, information demonstrating the affiliation between the LSP and the LSP affiliate, and a certified agreement from an officer of the LSP affiliate stating that the LSP affiliate agrees to provide POLR service on behalf of the LSP. The request must also include an affidavit from an officer of the LSP stating that the LSP will be responsible and indemnify any affected parties for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP in the event that the LSP affiliate defaults or otherwise does not fulfill such financial obligations.
- (3) Commission staff will make an initial determination of the eligibility of the LSP affiliate to provide POLR service on behalf of an LSP and publish their names. The LSP or LSP affiliate may challenge commission staff's eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to provide POLR service on behalf of the LSP. Commission staff will reassess the LSP affiliate's eligibility and notify the LSP and LSP affiliate of any change in eligibility status within 10 business days of the receipt of the additional documentation. If the LSP or LSP affiliate does not agree with staff's determination of eligibility, either or both may then appeal the determination to the commission through a contested case. The LSP must provide POLR service during the pendency of the contested case.
- (4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU must make a filing with

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the commission detailing the basis for its concerns and must provide a copy of the filing to the LSP and the LSP affiliate that are the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it will request that the LSP affiliate demonstrate that it has the capability. The commission staff will review the LSP affiliate's filing and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing POLR service. The LSP affiliate may continue providing POLR service to ESI IDs currently receiving the service during the pendency of the proceeding; however, the LSP must immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to POLR service through a mass transition, during the pendency of the proceeding.

- (5) Designation of an affiliate to provide POLR service on behalf of an LSP must not change the number of ESI IDs served or the retail sales in megawatt-hours for the LSP for the reporting period nor does such designation relieve the LSP of its POLR service obligations in the event that the LSP affiliate fails to provide POLR service in accordance with the commission rules.
  - (6) The designated LSP affiliate must provide POLR service and all reports as required by the commission's rules on behalf of the LSP.
  - (7) The methodology used by a designated LSP affiliate to calculate POLR rates must be consistent with the methodology used to calculate LSP POLR rates in subsection (m) of this section.
  - (8) If an LSP affiliate designated to provide POLR service on behalf of an LSP cannot meet or fails to meet the POLR service requirements in applicable laws and Commission rules, the LSP must provide POLR service to any ESI IDs currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.
  - (9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.
- (l) **Mass transition of customers to POLR providers.** The transfer of customers to POLR providers must be consistent with this subsection.
- (1) ERCOT must first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT must use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP must not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT must:
    - (A) Sort ESI IDs by POLR area;
    - (B) Sort ESI IDs by customer class;
    - (C) Sort ESI IDs numerically;
    - (D) Sort VREPs numerically by randomly generated number; and
    - (E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP must be assigned an equal number of ESI IDs, up to the number that each VREP indicated it was willing to serve for a given class and POLR area.
  - (2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT must assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area must be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT must:

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- (A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;
  - (B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;
  - (C) Sort ESI IDs in excess of the allocation to VREPs, numerically;
  - (D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;
  - (E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;
  - (F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and
  - (G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.
- (3) Each mass transition must be treated as a separate event.

(m) **Rates applicable to POLR service.**

- (1) A VREP must provide service to customers using a market-based, month-to-month product. The VREP must use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.
- (2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.
  - (A) **Residential customers.** The LSP rate for the residential customer class must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
  - (ii) LSP customer charge must be \$0.06 per kWh.
  - (iii) LSP energy charge must be the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the applicable load zone for the previous 12-month period ending September 1 of the preceding year (the historical average RTSPP) multiplied by the number of kWhs the customer used during that billing period and further multiplied by 120%. In no instance may the LSP energy charge exceed 120% of the previous year’s LSP energy charge. The applicable load zone will be the load zone located partially or wholly in the customer’s TDU service territory with the highest average under the historical average RTSPP calculation.
  - (iv) “Number of kWhs the customer used” is based on usage data provided to the POLR by the TDU.
- (B) **Small and medium non-residential customers.** The LSP rate for the small and medium non-residential customer classes must be determined by the following formula:

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LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge must be \$0.025 per kWh.
- (iii) LSP demand charge must be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) LSP energy charge must be the average of the actual RTSPPs for the applicable load zone for the previous 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. In no instance may the LSP energy charge exceed 125% of the previous year's LSP energy charge. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.
- (v) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

- (C) **Large non-residential customers.** The LSP rate for the large non-residential customer class must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
  - (ii) LSP customer charge must be \$2,897.00 per month.
  - (iii) LSP demand charge must be \$6.00 per kW, per month.
  - (iv) LSP energy charge must be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge must have a floor of \$7.25 per MWh.
- (3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP must issue refunds to the specific customers who were overcharged.
  - (4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate must

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- be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.
- (5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection must be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.
- (n) **Challenges to customer assignments.** A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider must use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU must make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer must then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.
- (o) **Limitation on liability.** A POLR provider must make reasonable provisions to provide service under this section to any ESI IDs currently receiving the service and to ESI IDs obtained in a future mass transition or served upon customer request; however, liabilities not excused by reason of force majeure or otherwise must be limited to direct, actual damages.
- (1) Neither the customer nor the POLR provider must be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.
- (2) In no event will ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.
- (p) **REP obligations in a transition of customers to POLR service.**
- (1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.
- (2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.
- (3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.
- (4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.
- (5) A defaulting REP whose customers are subject to a mass transition event must return the customers' deposits within seven calendar days of the initiation of the transition.
- (6) ERCOT must create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, must be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT must be tested on a periodic basis. Each REP must submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission will establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT must notify the commission if any REP fails to comply with the reporting requirements in this subsection.
- (7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone

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number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section must be treated as confidential and must only be used for mass transition related purposes.

- (8) Information from the TDU and ERCOT to the POLR providers must be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section must not constitute a violation of the customer protection rules that address confidentiality.
- (9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider must begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider must not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it must determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider must not request a deposit from the residential customer.
  - (A) At the time of a mass transition, the executive director or staff designated by the executive director will distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. For a REP that has obtained a current list from the Low Income List Administrator (LILA) that identifies low-income customers, these funds must first be used to provide deposit payment assistance for that REP's transitioned low-income customers. The Executive Director or staff designee will, at the time of a transition event, determine the reasonable deposit amount up to \$400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above \$400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, must satisfy in full the customers' initial deposit obligation to the VREP or LSP.
  - (B) For a REP that has obtained a current list from the LILA that identifies low-income customers, the Executive Director or the staff designee will distribute available proceeds pursuant to §25.107(f)(6) of this title to the VREPs proportionate to the number of customers they received in the mass transition, who at the time of the mass transition were identified as low-income customers by the current LILA list, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds must be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers as identified in the LILA list that are allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.
  - (C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference must be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).
  - (D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what

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- the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.
- (10) On the occurrence of one or more of the following events, ERCOT must initiate a mass transition to POLR providers, of all of the customers served by a REP:
    - (A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;
    - (B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;
    - (C) Issuance of a commission order de-certifying a REP;
    - (D) Issuance of a commission order requiring a mass transition to POLR providers;
    - (E) Issuance of a judicial order requiring a mass transition to POLR providers; and
    - (F) At the request of a REP, for the mass transition of all of that REP's customers.
  - (11) A REP must not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.
  - (12) ERCOT may provide procedures for the mass transition process, consistent with this section.
  - (13) A mass transition under this section must not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch must be made on the next available switch date.
  - (14) ERCOT must identify customers who are mass transitioned for a period of 60 calendar days. The identification must terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions must be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection.
  - (15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.
  - (16) In a mass transition event, the ERCOT initiated transactions must request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider must not be considered a break in a series of consecutive months of estimates, but must not be considered a month in a series of consecutive estimates performed by the TDU. A TDU must create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset must be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU must not bill as a discretionary charge, the costs included in this regulatory asset, which must consist of the following:
    - (A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and
    - (B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.
  - (17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU must perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU must calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the

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TDU must promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

- (q) **Termination of POLR service provider status.**
- (1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:
    - (A) If the POLR provider fails to maintain REP certification;
    - (B) If the POLR provider fails to provide service in a manner consistent with this section;
    - (C) The POLR provider fails to maintain appropriate financial qualifications; or
    - (D) For other good cause.
  - (2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee will, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.
  - (3) At the end of the POLR service term, the outgoing LSP must continue to serve customers who have not selected another REP.
- (r) **Electric cooperative delegation of authority.** An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission will, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions apply:
- (1) The board of directors must provide the commission with a copy of a board resolution authorizing such delegation of authority;
  - (2) The delegation of authority must be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;
  - (3) The delegation of authority must be for a minimum period corresponding to the period for which the solicitation must be made;
  - (4) The electric cooperative wishing to delegate its authority to designate a continuous provider must also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and
  - (5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission must automatically reject the delegation of authority.
- (s) **Reporting requirements.** Each LSP that serves customers under a rate prescribed by subsection (m)(2) of this section must file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report must be filed within 30 calendar days of the end of the quarter.
- (1) For each month of the reporting quarter, each LSP must report the total number of new customers acquired by the LSP under this section and the following information regarding these customers:
    - (A) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;
    - (B) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;
    - (C) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and
    - (D) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (B) or (C) of this paragraph.
  - (2) For each month of the reporting quarter each LSP must report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:
    - (A) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;

## Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION

- (B) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;
  - (C) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and
  - (D) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (A) or (B) of this paragraph.
- (3) For the entirety of the reporting quarter, each LSP must report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.
- (t) **Notice of transition to POLR service to customers.** When a customer is moved to POLR service, the customer must be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice must be provided within two days of the time ERCOT and the transitioning REP know that the customer must be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it must provide notice as soon as practicable. The POLR provider must provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and must provide the notice to transitioning customers as soon as practicable. The POLR provider must email the notice to the commission staff members designated for receipt of the notice.
- (1) ERCOT notice methods must include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT must notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) of this section. ERCOT must study the effectiveness of the notice methods used and report the results to the commission.
  - (2) Notice by the REP from which the customer is transferred must include:
    - (A) The reason for the transition;
    - (B) A contact number for the REP;
    - (C) A statement that the customer will receive a separate notice from the POLR provider that must disclose the date the POLR provider must begin serving the customer;
    - (D) Either the customer's deposit plus accrued interest, or a statement that the deposit must be returned within seven days of the transition;
    - (E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"
    - (F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);
    - (G) If applicable, a description of the activities that the REP will use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and
    - (H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.
  - (3) Notice by the POLR provider must include:
    - (A) The date the POLR provider began or will begin serving the customer and a contact number for the POLR provider;

## Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION

- (B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) of this section, a statement that the price is generally higher than available competitive prices;
  - (C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;
  - (D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"
  - (E) The applicable Terms of Service and Electricity Facts Label (EFL); and
  - (F) For residential customers that are served by an LSP under a rate prescribed by subsection (m)(2) of this section, a notice to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.
- (u) **Market notice of transition to POLR service.** ERCOT must notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The notification must include the exiting REP's name, total number of ESI IDs, and estimated load.
- (v) **Disconnection by a POLR provider.** The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section must begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.
- (w) **Deposit payment assistance.**
- (1) The commission staff designee will distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.
  - (2) The executive director or staff designee will use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:
    - (A) a list of the ESI IDs identified by the LILA that have been or will be transitioned to the applicable POLR (if available); and
    - (B) the amount of deposit payment assistance that will be provided on behalf of a POLR customer identified by the LILA (if available).
  - (3) Amounts credited as deposit payment assistance pursuant to this section must be refunded to the customer in accordance with §25.478(j) of this title.



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## SUBCHAPTER A GENERAL PROVISIONS

Figure: 16 TAC §25.43(f)(1)(A)

**Standard Terms of Service**  
**[Insert LSP Name] (Certificate No. \_\_\_\_)**  
**Provider of Last Resort (POLR) Residential Service**

This Standard Terms of Service applies to residential customers receiving Provider of Last Resort (POLR) service from [insert LSP name] under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

**SPANISH LANGUAGE (IDIOMA ESPANOL) Si usted quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [insert toll-free number].**

### 1. PRICE FOR BASIC FIRM SERVICE

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The LSP rate for your electric service will be based on the formula detailed below.

Your rate for POLR service will be derived from the following formula:

$$\text{LSP rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP customer charge} + \text{LSP energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, Reliability Unit Commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.06 per kWh.
- (iii) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone that is multiplied by the number of kWhs the customer used during that hour and that is further multiplied by 120%.
- (iv) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.
- (v) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

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#### **2. SECURITY**

LSP shall not require a cash deposit if you are able to provide the LSP with a Credit Reference Letter that includes the following representations: 1) you have been a customer of any retail electric provider within the two years prior to your request for electric service or prior to your transfer to POLR service; 2) you are not delinquent in payment of any such electric service account; and 3) you were not late in paying a bill more than once during the last 12 consecutive months.

A residential customer shall also be deemed as having established satisfactory credit and shall not be required to pay a cash deposit if the customer possesses a satisfactory credit rating obtained through an accredited credit reporting agency.

A residential customer of a REP that has obtained a current list from the Low-Income List Administrator (LILA) may be eligible for additional deposit assistance.

If these conditions do not apply, LSP may require a cash deposit unless you can demonstrate to the LSP any of the following prior to the due date of the cash deposit: 1) you are 65 years of age or older and you are not currently delinquent in payment of any electric service account; 2) you are a victim of family violence as defined by the Texas Family Code § 71.004, and as determined by a family violence center, or by treating medical personnel;\* or 3) you are medically indigent.\*\*

\*This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of the toll-free fax number listed below to LSP.

[Insert toll-free FAX Number]

\*\* To be considered medically indigent, the customer must demonstrate that the following criteria are met: the customer's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider, and either of the following must apply: (i) the customer or the customer's spouse has been certified by that person's physician (for the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social worker, state-licensed physical and occupational therapist, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 et seq, as being unable to perform three or more activities of daily living, as defined in Title 22, Texas Administrative Code, Section 218.2, or (ii) the customer's monthly out-of-pocket medical expenses exceed 20% of the household's gross income.

#### **CASH DEPOSIT**

- 1) Your cash deposit, if required, may not exceed one fifth (1/5) of your estimated annual billing. You may also be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and your billings are more than twice the amount estimated to determine your cash deposit. Instead of an additional cash deposit, you may pay the total amount due by the due date of the bill, provided you have not exercised this option in the previous 12 months.
- 2) LSP may require a deposit to be provided after 15 calendar days of service if you receive 10 days' notice that a deposit is required.
- 3) A written letter of guarantee may be used in lieu of paying a cash deposit. The guarantor must become or remain a customer of the LSP for the term in which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the LSP, the LSP may require the customer to pay the initial or additional cash deposit as a condition of continuing the contract for service.
- 4) Upon default by a residential customer, the guarantor of the customer's account shall be responsible for the unpaid balance of the account only up to the agreed amount in the letter of guarantee. The LSP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed. The guarantor will have 16 calendar days from the date the notice is issued to pay the amount owed on the defaulted account. If the 16<sup>th</sup> day falls on a holiday or weekend, the due date shall be the next business day. The LSP may transfer the amount owed on the defaulted

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- account to the guarantor’s own electric service bill provided the guaranteed amount owed is identified separately on the bill.
- 5) The LSP may initiate disconnection of service to the guarantor for nonpayment of the guaranteed amount within ten calendar days of issuance of a notice of disconnection.
  - 6) Your service may be disconnected for failure to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.
  - 7) A disconnection notice may be issued concurrently with either the written request for the cash deposit or current monthly bill for electric service. Disconnection means a physical interruption of electric service.
  - 8) You will accrue interest on your cash deposit(s) with LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
  - 9) Your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with LSP.
  - 10) Your cash deposit and accrued interest will be refunded if you pay your bills for 12 consecutive months without having any late payments. A REP may refund the deposit to you through a bill credit.
  - 11) The guarantee agreement will be terminated if you pay your bills for 12 consecutive months without your service being disconnected for nonpayment and without having more than two delinquent payments within the last 12 months.

**3. BILLING**

- 1) You will be billed for the amount of electricity that you consume.
- 2) Billing statements will reflect the total charges for POLR services provided by LSP.
- 3) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16<sup>th</sup> day after issuance of the bill.
- 4) The LSP or a REP affiliated with the LSP shall offer a level or average payment plan if you are not currently delinquent. You may be required to select a competitive product offered by the LSP or a REP affiliated with the LSP to receive the level or average payment plan. LSP offers deferred and level payment (also known as budget) plans. Please contact LSP at the 24-hour customer service number below for information about these options.
- 5) [Insert toll-free phone Number]

**4. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC SERVICE** in section 1:

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must pay all applicable taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP’s fees must be the same as those fees routinely applied to other residential customers }

<b>Service Charges and Fees</b>	<b>Amount</b>
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12-month history is requested more than once within a 12-month period. The first two premise usage histories provided on your behalf to an agency providing bill payment assistance shall not be counted in determining whether you are subject to an account history charge	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Disconnection charge</b> for disconnection of service pursuant to TDU’s tariffs.	[Insert pass through charge]

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<b>Service Charges and Fees</b>	<b>Amount</b>
	from TDU ]
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment (in addition to any applicable disconnect or reconnect charges).	No charge
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
<b>Reconnection charge</b> for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
<b>Late fees</b> will be assessed on delinquent deferred payment arrangements. Deferred payment arrangements are delinquent if not paid by the date specified by the deferred payment plan.	5% assessed on the late deferred payment amount
<b>Return check charge</b> for each check returned for insufficient funds.	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDU]
<b>Disconnection Reminder Notification charge</b> for notifying customer that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
LSP reserves the right to charge for court costs, legal fees, and other costs associated with collection of delinquent amounts.	
LSP reserves the right to charge for services requested by you that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDU.	

**5. DISCONNECTION OF SERVICE**

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- a) Your account will be considered delinquent if your monthly bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected by the LSP until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC SERVICE**, section 3 **BILLING** and section 4 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected.
- f) A disconnection notice may be issued concurrently with the written requests for the cash deposit.
- g) A disconnection notice may be issued concurrently with your bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

**6. CUSTOMER INFORMATION**

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You will be required to provide your social security number, a valid driver's license number, or other verifiable means of personal identification.

The TDU, any previous retail electric provider, or the Independent Organization may provide LSP information about your electric service, including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), driver's license, etc.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

#### **7. LENGTH OF AGREEMENT**

##### **NOTICE: LSP CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP or unless you enter a level payment plan or deferred payment plan. If you decide to be placed on LSP's Level or Deferred Payment Plans, you will not be charged a penalty for canceling your service before the end of the term but you will be responsible for all outstanding amounts due, including Level and Deferred Payment Plan reconciliation amounts. If you decide to be placed on LSP's Deferred Payment Plan, your term of service shall be a minimum of three months or the length agreed to for making deferred payments, whichever is longer. The term shall start on the date you enter the Deferred Payment Plan.

#### **8. CONTACT INFORMATION**

Name of Provider:

Physical Address:

Customer Service: (toll free)

24-Hour Power Outages: Contact your local electricity delivery company [provide number]

Internet web-site:

Fax: (toll free)

You may contact LSP if you have a dispute concerning your bill or your service from LSP. You must provide, in writing, within ten business days of the invoice date, your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the LSP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the LSP shall, for a period of 30 calendar days following LSP's receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days.

Complaints regarding your service may also be directed to the Public Utility Commission of Texas, 1-888-782-8477 (toll free).

#### **9. LOW INCOME PAYMENT ASSISTANCE INFORMATION**

Assistance programs may be available for qualified low-income customers. For more information, contact LSP Customer Service or either of the following state agencies:

Texas Department of Housing and Consumer Affairs:

Public Utility Commission of Texas:

1-512-475-3800

1-888-782-8477 (toll free)

#### **10. BILL PAYMENT METHODS**

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You may pay for your electric service by personal or cashier's check, money order, debit or credit card, electronic funds transfer, [*Insert if offered by LSP (optional): in cash through an agent authorized by the LSP*], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact the LSP's Customer Service number to begin those options for bill payment at no cost.

If you have had two or more personal checks unpaid by your financial institution within the last 12 months, LSP may require all further payments for electric service to be by cash, cashier's check, money order or debit/credit card. If you pay by debit/credit card and your payment has been declined, rejected or charged back two or more times within the last 12 months, LSP will require all further payments to be by cash, cashier's check or money order.

#### **11. FORCE MAJEURE**

LSP shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDU.

#### **12. LIMITATION OF LIABILITY**

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER, OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

#### **13. REPRESENTATIONS AND WARRANTIES**

LSP WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

LSP MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

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**14. DISCRIMINATION**

LSP will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

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### SUBCHAPTER A GENERAL PROVISIONS

#### §25.45. Low-Income List Administrator.

- (a) **Purpose.** The purpose of this section is to define the responsibilities of the Low-Income List Administrator (LILA) to establish and maintain a list of eligible low-income customers and to specify the process for a retail electric provider (REP) who voluntarily seeks to obtain the low-income customer identification service from the LILA pursuant to Public Utility Regulatory Act (PURA) §17.007.
- (b) **Application.** This section applies to the LILA, which has been contracted by the commission to administer aspects of the low-income customer identification process established under PURA §17.007 in cooperation with the Texas Health and Human Services Commission (HHSC). This section also applies to REPs that provide retail electric service in an area that has been opened to customer choice and that voluntarily seek to obtain the low-income customer identification service from the LILA.
- (c) **Customer identification process.** The LILA must identify eligible low-income customers through a monthly automatic identification process in cooperation with the HHSC.
  - (1) Automatic identification is an electronic process to identify customers eligible for the low-income list by matching client data from the HHSC with residential customer-specific data from participating REPs.
    - (A) The HHSC must provide client information to the LILA in accordance with subsection (d)(1) of this section.
    - (B) REPs must provide customer information to the LILA in accordance with subsection (d)(3) of this section.
    - (C) The LILA shall compare the customer information from the HHSC and REPs, create files of matching customers and notify the REPs of their eligible customers.
  - (2) Automatically identified customers shall continue to be included on the LILA's list of eligible low-income customers as long as the customers receive qualifying HHSC benefits. Once a customer no longer receives qualifying HHSC benefits, the customer will no longer be identified by the LILA's process as an eligible low-income customer that is sent to the customer's REP.
- (d) **Responsibilities.** In addition to the requirements established in this section, program responsibilities for the LILA may be established in the commission's contract with the LILA; program responsibilities for tasks undertaken by the HHSC may be established in the memorandum of understanding between the commission and the HHSC.
  - (1) **HHSC's responsibilities.** The HHSC must assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving qualifying HHSC benefits as detailed in the memorandum of understanding between the HHSC and the commission.
  - (2) The LILA's responsibilities. The LILA must:
    - (A) receive customer lists from participating REPs on at least a monthly basis through data transfer;
    - (B) retrieve the database of clients from the HHSC on at least a monthly basis;
    - (C) establish a list of eligible customers, by comparing customer lists from the REPs with HHSC databases and identifying customer records that reasonably match;
    - (D) make available to each participating REP, on a date prescribed by the commission on at least a monthly basis, a list of eligible low-income customers; and
    - (E) protect the confidentiality of the customer information provided by the REPs and the client information provided by the HHSC.
  - (3) **A participating REP's responsibilities.** A REP that voluntarily seeks to obtain a list of eligible low-income customers must:
    - (A) provide residential customer information to the LILA through data transfer on a date prescribed by the commission on at least a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social

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### SUBCHAPTER B CUSTOMER SERVICE AND PROTECTION

- security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;
- (B) retrieve from the LILA the list of eligible low-income customers; and
- (C) assist the LILA in working to resolve issues concerning customer eligibility.
- (e) **Confidentiality of information.**
- (1) The data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement.
  - (2) All data transfers from REPs to the LILA pursuant to this section shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REPs' competitively sensitive information.
  - (3) The LILA may use information obtained pursuant to this section only for purposes prescribed by commission rule.
- (f) **Delegation of authority.** The commission may delegate to the executive director the authority to contract with a third-party vendor to administer aspects of the low-income customer identification process established under PURA §17.007 in cooperation with HHSC, and to negotiate the LILA's annual fee for the provision of the low-income customer identification service.
- (g) **REP annual election process.** REPs may elect to obtain the low-income customer identification service from the LILA on an annual basis.
- (1) Not later than May 1 of each year, commission staff must open a project in which a REP may request the low-income customer identification service for the upcoming fiscal year beginning September 1. Commission staff must file notice in the project of the total annual cost of the service at the time the project is opened or as soon as practicable.
  - (2) Not later than July 31 of each year, a REP must file its request for the low-income customer identification service in the project opened for that purpose. The filing must include the REP's certificate number. In its filing, the REP must state that it agrees to reimburse the commission for its allocated share of the total cost of providing the service.
  - (3) Not later than August 31 of each year, if the commission has received a request from one or more REPs under paragraph (2) of this subsection, the commission will enter an order listing the name of each REP that filed a request, and establishing the amount that each REP will pay as determined under paragraph (4) of this subsection.
  - (4) The total cost of the low-income customer identification service will be allocated equally among the REPs that have filed a request under paragraph (2) of this subsection unless otherwise provided by the commission based on the agreement of REPs requesting the low-income customer identification service.
  - (5) Provided that at least one REP requests the low-income customer identification service in a program year in accordance with paragraph (2) of this subsection, a REP that is newly certificated after July 31 may obtain the low-income customer identification service at no cost to the REP until the next program year, when the REP has the opportunity to submit a timely request under paragraph (2) of this subsection. To obtain the low-income customer identification service, the newly-certificated REP must file a request in the project opened under paragraph (1) of this subsection.

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### SUBCHAPTER C INFRASTRUCTURE AND RELIABILITY

#### §25.54. Cease And Desist Orders.

- (a) **Application.** This section is applicable to electric utilities, transmission and distribution utilities, power generation companies, retail electric providers, municipally owned utilities, electric cooperatives, the independent system operator, and any other person regulated under the Public Utility Regulatory Act (PURA) Subtitle B, collectively referred to as “market participants,” and shall refer to the definitions provided in PURA §11.003 and §31.002.
- (b) **Authority to issue order.** The commission or the executive director, who has been authorized pursuant to subsection (c) of this section, may issue a cease and desist order if the commission or executive director determines that the alleged conduct of a market participant meets one or more of the following conditions:
- (1) The conduct poses a threat to continuous and adequate electric service;
  - (2) The conduct is hazardous;
  - (3) The conduct creates an immediate danger to the public safety; or
  - (4) The conduct is causing or can be reasonably expected to cause an immediate injury to a customer of electric services and that the injury is incapable of being repaired or rectified by monetary compensation.
- (c) **Delegation of authority.** The commission may delegate the authority to issue a cease and desist order to the executive director. The authority to issue a cease and desist order shall be delegated at an open meeting and may remain in effect for up to two years.
- (d) **Procedure.** The commission must provide notice and opportunity for a hearing before issuing a cease and desist order if such notice is practicable. If such notice is not practicable, the commission may issue a cease and desist order without providing notice and opportunity for a hearing.
- (1) **If notice and opportunity for a hearing is practicable.** If notice and opportunity for a hearing is practicable, the commission shall follow these procedures:
    - (A) **Notice and Opportunity for Hearing.** The commission shall provide notice and opportunity for hearing pursuant to Chapter 2001, Texas Government Code. The notice shall include a description of the violation(s) of PURA or this chapter that the market participant’s conduct is alleged to violate and specific facts that support each allegation as reasonably believed by commission staff and a proposed order that contains a statement of the charges. Notice of a proposed order shall be given not later than the 10<sup>th</sup> day before the date set for a hearing.
    - (B) **Hearing.** A hearing on a cease and desist order is a contested case under Chapter 2001, Texas Government Code. The commission may hold a hearing on a cease and desist order or may refer the case to be heard by the State Office of Administrative Hearings.
    - (C) **Service of Cease and Desist Order.** If, after notice and opportunity for a hearing, the commission issues a cease and desist order, then the commission shall serve the cease and desist order by registered or certified mail, return receipt requested, to the market participant’s last known address. A cease and desist order is effective upon the earlier of receipt of actual notice or three days after the order is mailed.
    - (D) **Content of Cease and Desist Order.** A cease and desist order shall be served upon the market participant affected by that order and shall:
      - (i) Contain a statement of the charges and a description of the alleged violation(s) of PURA or this chapter that the market participant’s conduct has been found to have violated and specific facts that support each violation; and
      - (ii) Require the market participant immediately to cease and desist from the acts, methods, or practices stated in the order.
  - (2) **Notice and opportunity for a hearing not practicable.** If notice and opportunity for a hearing is not practicable, the commission shall follow these procedures:
    - (A) **Contents of order.** A cease and desist order shall be served upon the market participant affected by that order and shall:

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- (i) Contain a statement of the charges and a description of the alleged violation(s) of PURA or this chapter that the market participant's conduct has been found to have violated and specific facts that support each violation as reasonably believed by commission staff;
  - (ii) Require the market participant immediately to cease and desist from the acts, methods, or practices stated in the order;
  - (iii) Notify the market participant that a request for a hearing to affirm, modify, or set aside the order must be submitted not later than the 30<sup>th</sup> day after the date the market participant receives the order; and
  - (iv) Contain a statement indicating that notice and an opportunity for a hearing was not practicable and state the specific reasons why notice and an opportunity for a hearing was not practicable.
- (B) **Service.** Chapter 2001, Texas Government Code, does not apply to the issuance of a cease and desist order issued by the commission when notice and an opportunity for a hearing is not practicable.
- (i) The commission shall serve the cease and desist order by registered or certified mail, return receipt requested, to the market participant's last known address.
  - (ii) A cease and desist order is effective upon the earlier of receipt of actual notice or three days after the order is mailed.
- (C) **Hearing Requested.** The market participant affected by the cease and desist order may request a hearing to affirm, modify, or set aside the order. A request must be submitted not later than the 30<sup>th</sup> day after the date the market participant receives the order.
- (i) If the market participant affected by a cease and desist order requests a hearing, the commission shall set the hearing date not later than the 10<sup>th</sup> day after the date the commission receives a request for a hearing or agreed to by the market participant and the commission.
    - (I) A hearing conducted after the issuance of a cease and desist order is a contested case under Chapter 2001, Texas Government Code. The commission may hold a hearing on a cease and desist order or may refer the case to be heard by the State Office of Administrative Hearings.
    - (II) Pending a hearing on a cease and desist order, the cease and desist order continues in effect unless stayed by the commission.
    - (III) At or following the hearing, the commission shall wholly or partly affirm, modify, or set aside the cease and desist order.
  - (ii) If the market participant affected by a cease and desist order does not request a hearing and the commission does not hold a hearing on the order, the order is affirmed without further action by the commission.

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### Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

#### §25.107. Certification of Retail Electric Providers (REPs).

- (a) **Applicability.** This section applies to all persons who provide or seek to provide electric service to retail customers in an area in which customer choice is in effect and to retail customers participating in a customer choice pilot project authorized by the commission. This section does not apply to the state, political subdivisions of the state, electric cooperatives or municipal corporations, or to electric utilities providing service in an area where customer choice is not in effect. An electric cooperative or municipally owned utility participating in customer choice may offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without obtaining certification as a REP.
- (1) A person must obtain a certificate pursuant to this subsection before purchasing, taking title to, or reselling electricity in order to provide retail electric service.
  - (2) A person who does not purchase, take title to, or resell electricity in order to provide electric service to a retail customer is not a REP and may perform a service for a REP without obtaining a certificate pursuant to this section.
  - (3) A REP that outsources retail electric functions remains responsible under commission rules for those functions and remains accountable to applicable laws and commission rules for all activities conducted on its behalf by any subcontractor, agent, or any other entity.
  - (4) All filings made with the commission pursuant to this section, including a filing subject to a claim of confidentiality, shall be filed with the commission's filing clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).
- (b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:
- (1) Affiliate -- An affiliate of, or a person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under the common control with, the person specified.
  - (2) Continuous and reliable electric service -- Retail electric service provided by a REP that is consistent with the customer's terms and conditions of service and uninterrupted by unlawful or unjustified action or inaction of the REP.
  - (3) Control -- The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise.
  - (4) Customer -- Any entity who has applied for, has been accepted for, or is receiving retail electric service from a REP on an end-use basis.
  - (5) Default -- As defined in a transmission and distribution utility (TDU) tariff for retail delivery service, Electric Reliability Council of Texas (ERCOT) qualified scheduling entity (QSE) agreement, or ERCOT load serving entity (LSE) agreement.
  - (6) Executive officer -- When used with reference to a person means its president or chief executive officer, a vice president serving as its chief financial officer, or a vice president serving as its chief accounting officer, a vice president in charge of a principal business unit, division or function, any other officer of the person who performs a policy making function for the person, or any other person who performs similar policy making functions for the person. Executive officers or subsidiaries may be deemed executive officers of the person if they perform policy making functions for the person.
  - (7) Guarantor -- A person providing a guaranty agreement, business financial commitment, or a credit support agreement providing financial support to a REP or applicant for REP certification pursuant to this section.
  - (8) Investment-grade credit rating -- A long-term unsecured credit rating of at least "Baa3" from Moody's Investors' Service, or "BBB-" from Standard & Poor's or Fitch, or "BBB" from A.M. Best.

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- (9) Permanent employee -- An individual that is fully integrated into a REP's business organization. A consultant is not a permanent employee.
  - (10) Person -- Includes an individual and any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative or a municipal corporation.
  - (11) Principal -- An executive officer; partner; owner; director; shareholder of a privately held company; shareholder of a publicly traded company who owns more than 10 % of a class of equity securities; or a person that controls the person in question.
  - (12) Retail electric provider -- A person that sells electric energy to retail customers in this state. As provided in Public Utility Regulatory Act (PURA) §39.353(b), a REP is not an aggregator.
  - (13) Shareholder -- The term shareholder means the legal or beneficial owner of any of the equity of any business entity, including without limitation and as the context and applicable business entity requires, stockholders of corporations, members of limited liability companies and partners of partnerships.
  - (14) Tangible net worth -- Total shareholders' equity, determined in accordance with generally accepted accounting principles, less intangible assets other than goodwill.
  - (15) Working day -- A day on which the commission is open for the conduct of business.
- (c) **Application for REP certification.**
- (1) A person applying for certification as a REP must demonstrate its capability of complying with this section. A person who operates as a REP or who receives a certificate under this section shall maintain compliance with this section.
  - (2) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.
  - (3) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether an application is deficient or complete within 20 working days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice to the applicant's right to reapply.
  - (4) While an application for a certificate is pending, an applicant shall inform the commission of any material change in the information provided in the application within ten working days of any such change.
  - (5) Except where good cause exists to extend the time for review, the commission shall enter an order approving, rejecting, or approving with modifications, an application within 90 days of the filing of the application.
- (d) **REP certification requirements.** A person seeking certification under this section may apply to provide services under paragraph (1) or (2) of this subsection, and shall designate its election in the application.
- (1) **Option 1.** This option is for a REP whose service offerings will be defined by geographic service area.
    - (A) An applicant must designate one of the following categories as its geographic service area:
      - (i) The geographic area of the entire state of Texas;
      - (ii) A specific geographic area (indicating the zip codes applicable to that area);
      - (iii) The service area of specific TDUs or specific municipal utilities or electric cooperatives in which competition is offered; or
      - (iv) The geographic area of ERCOT or other independent organization to the extent it is within Texas.
    - (B) A REP with a geographic service area is subject to all subsections of this section, including those pertaining to basic, financial, technical and managerial, customer protection, and reporting and changing certification requirements.

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- (C) The commission shall grant a certificate to an applicant proposing to provide retail electric service to a geographic service area in Texas if it demonstrates that it meets the requirements of this section.
  - (D) The commission shall deny an application if the configuration of the proposed geographic area would 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; because the customer is located in an economically distressed geographic area or qualifies for low income affordability or energy efficiency services; or because of any other reason prohibited by law.
- (2) **Option 2.** This option is for a REP whose service offerings will be limited to specifically identified customers, each of whom contracts for one megawatt or more of capacity. The applicant shall be certified as a REP only for purposes of serving the specified customers. The commission shall grant a certificate under this paragraph if the applicant demonstrates that it meets the requirements of this paragraph.
- (A) A person seeking certification under this paragraph must file with the commission a signed, notarized affidavit from each customer, with whom it has contracted to provide one megawatt or more of capacity. The affidavit must state that the customer is satisfied that the REP meets the standards prescribed by PURA §39.352 (b)(1)-(3) and (c).
  - (B) The following subsections apply to REPs certified pursuant to this paragraph:
    - (i) Subsection (e) of this section (relating to Basic Requirements);
    - (ii) Subsection (f)(5) of this section (relating to Billing and Collection of Transition Charges); and
    - (iii) Subsection (i) of this section (relating to Requirements for Reporting and Changing Certification).
- (3) **Option 3.** This option is for a REP that sells electricity exclusively to a retail customer other than a small commercial and residential customer from a distributed generation facility located on a site controlled by that customer. The following subsections do not apply to REPs certified pursuant to this paragraph: subsections (f), (g), (h), and (i)(4)-(5) of this section, except that a person seeking certification under this paragraph shall file an application with the commission that identifies a power generation company that owns the distributed generation facilities and provides the information required in subsection (g)(2)(A) of this section. A person seeking certification under this paragraph shall ensure that the distributed generation facility from which it buys electricity is owned by a power generating company (PGC) that has registered in accordance with §25.109 of this title (relating to Registration of Power Generation Companies and Self Generators), and
- (A) Conforms to the requirements of §25.211 of this title (relating to Interconnection of On-Site Distributed Generation (DG)) and §25.212 of this title (relating to Technical Requirements for Interconnection and Parallel Operation of On-Site Distributed Generation);
  - (B) Is installed by a Licensed Electrician, consistent with the requirements of the Texas Department of Licensing and Regulation; and
  - (C) Is installed in accordance with the National Electric Code as adopted by the Texas Department of Licensing and Regulation and in compliance with all applicable local and regional building codes.
- (e) **Basic requirements.**
- (1) **Names on certificates.** All retail electric service shall be provided under names set forth in the granted certificate. If the applicant is a corporation, the commission shall issue the certificate in the corporate name of the applicant.
    - (A) No more than five assumed names may be authorized for use by any one REP at one time.
    - (B) Business names shall not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by a REP certificate holder.

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- (C) If the commission determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name shall not be used by the REP. An application shall be dismissed if an applicant does not provide at least one suitable name.
- (2) **Office requirements.** 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 REP's compliance with PURA and the commission's 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 staff may visit the office of a REP at any time during normal business hours. An applicant shall demonstrate that it has made arrangements for an office located in Texas.
- (f) Financial requirements.
- (1) **Access to capital.** A REP must meet the requirements of subparagraphs (A) or (B) of this paragraph.
  - (A) A REP or its guarantor electing to meet the requirements of this subparagraph must demonstrate and maintain:
    - (i) an investment-grade credit rating; or
    - (ii) tangible net worth greater than or equal to \$100 million, a minimum current ratio (current assets divided by current liabilities) of 1.0, and a debt to total capitalization ratio not greater than 0.60, where all calculations exclude unrealized gains and losses resulting from valuing to market the power contracts and financial instruments used as supply hedges to serve load, and such calculations are supported by an affidavit from an executive officer of the REP attesting to the accuracy of the calculation.
  - (B) A REP electing to meet the requirements of this subparagraph must demonstrate shareholders' equity, determined in accordance with generally accepted accounting principles, of not less than one million dollars for the purpose of obtaining certification, and the REP or its guarantor must provide and maintain an irrevocable stand-by letter of credit payable to the commission with a face value of \$500,000 for the purpose of maintaining certification.
    - (i) The required shareholders' equity of one million dollars shall be determined net of assets used for collateral pledged to secure the irrevocable stand-by letter of credit of \$500,000.
    - (ii) For the period beginning on the date of certification and ending two years after the REP begins serving load, a REP shall not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the REP's shareholders' equity is less than one million dollars, net of assets used for collateral pledged to secure the irrevocable stand-by letter of credit of \$500,000. The restriction on distributions or other payments contained in this subparagraph includes, but is not limited to, dividend distributions, redemptions and repurchases of equity securities, or loans to shareholders or affiliates.
    - (iii) A REP that began serving load on or before January 1, 2009 is not required to demonstrate the shareholders' equity required pursuant to subparagraph (B) of this paragraph, and is not subject to the restrictions on distributions or payments to shareholders or affiliates contained in subparagraph (B) of this paragraph.
- (2) **Protection of customer deposits and advance payments.**
  - (A) A REP certified pursuant to paragraph (1)(A) of this subsection shall keep customer deposits and residential advance payments in an escrow account or segregated cash account, or provide an irrevocable stand-by letter of credit payable to the commission in

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- an amount sufficient to cover 100% of the REPs outstanding customer deposits and residential advance payments held at the close of each month.
- (B) A REP certified pursuant to paragraph (1)(B) of this subsection shall keep customer deposits and residential advance payments in an escrow account or segregated cash account, or provide an irrevocable stand-by letter of credit payable to the commission in an amount sufficient to cover 100% of the REP's outstanding customer deposits and residential advance payments held at the close of each month. For purposes of this subparagraph only, to qualify as a segregated cash account, the account must be with a financial institution whose deposits, including the deposits in the segregated cash account, are insured by the Federal Deposit Insurance Corporation, the account is designated as containing only customer deposits, the account is subject to the control or management of a provider of pervasive and comprehensive credit to the REP that is not affiliated with the REP, and the terms for managing the account protect customer deposits.
  - (C) In lieu of the requirements of subparagraph (B) of this paragraph, a REP certified pursuant to paragraph (1)(B) of this subsection that is providing electric service under the provisions of §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System) shall be required to keep all deposits and an amount sufficient to cover the credit balance that exceeds \$50 for all customer accounts that have a credit balance exceeding \$50 at the close of each month in an escrow account, or to provide an irrevocable stand-by letter of credit payable to the commission in an amount equal to or greater than the amount required to be deposited in the escrow account.
  - (D) Each escrow account and segregated cash account shall be reconciled no less frequently than at the close of each month to ensure that it equals or exceeds deposits and residential advance payments held as of the end of the month, and shall maintain at least that amount in the account until the next monthly reconciliation.
  - (E) Any irrevocable stand-by letter of credit provided pursuant to this paragraph shall be in addition to the irrevocable stand-by letter of credit required by paragraph (1)(B) of this subsection, if applicable.
- (3) **Protection of TDU financial integrity.**
- (A) A TDU shall not require a deposit from a REP except to secure the payment of transition charges as provided in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding Billing and Collection of Transition Charges), or if the REP has defaulted on one or more payments to the TDU. A TDU may impose credit conditions on a REP that has defaulted to the extent specified in its statewide standardized tariff for retail delivery service and as allowed by commission rules.
  - (B) A TDU shall create a regulatory asset for bad debt expenses, net of collateral posted pursuant to subparagraph (A) of this paragraph and bad debt already included in its rates, resulting from a REP's default on its obligation to pay delivery charges to the TDU. Upon a review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.
- (4) **Financial documentation required to obtain a REP certificate.** The following shall be required to demonstrate compliance with the financial requirements to obtain a REP certificate.
- (A) Investment-grade credit ratings shall be documented by reports of a credit reporting agency.
  - (B) Tangible net worth shall be documented by the audited financial statements of the REP or its guarantor for the most recently completed calendar or fiscal year, and unaudited financial statements for the most recently completed quarter. Audited financial statements shall include the accompanying notes and the independent auditor's report. Unaudited financial statements shall include a sworn statement from an executive officer of the REP attesting to the accuracy, in all material respects, of the information provided in the unaudited financial statements. Three consecutive months of monthly statements

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may be submitted in lieu of quarterly statements if quarterly statements are not available. The requirement for financial statements may be satisfied by filing a copy of or by providing an electronic link to its most recent statement that contains unaudited financials filed with any agency of the federal government, including without limitation, the Securities and Exchange Commission.

- (C) Shareholders' equity shall be documented by the audited and unaudited financial statements of the REP for the most recent quarter. Audited financial statements shall include the accompanying notes and the independent auditor's report. Unaudited financial statements shall include a sworn statement from an executive officer of the REP attesting to the accuracy, in all material respects, of the information provided in the unaudited financial statements. Three consecutive months of monthly statements may be submitted in lieu of quarterly statements if quarterly statements are not available. The requirement for financial statements may be satisfied by filing a copy of or by providing an electronic link to its most recent statement that contains unaudited financials filed with any agency of the federal government, including without limitation, the Securities and Exchange Commission.
- (D) Segregated cash accounts shall be documented by an account statement that clearly identifies the financial institution where the account holder maintains the account, and that clearly identifies the account as an account that is designated as containing only customer deposits and residential advanced payments. Segregated cash accounts shall be maintained at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation.
- (E) Escrow accounts shall be documented by the current account statement and the escrow account agreement. The escrow account agreement shall provide that the account holds customer deposits and residential advance payments only, and that the deposits are held in trust by the escrow agent and are not the property of the REP or in the REP's control unless the customer deposits are applied to a final bill or applied to satisfy unpaid amounts if allowed by the REP's terms of service. The escrow agent shall deposit the customer deposits and residential advance payments in an account at a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation.
- (F) Irrevocable stand-by letters of credit provided pursuant to paragraphs (1) or (2) of this subsection must be issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of the Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation. The REP must use the standard form irrevocable stand-by letter of credit approved by the commission. The irrevocable stand-by letter of credit must be irrevocable for a period not less than twelve months, payable to the commission, and permit a draw to be made in part or in full. The irrevocable stand-by letter of credit must permit the commission's executive director or the designee to draw on the irrevocable stand-by letter of credit if:
  - (i) ERCOT performs a mass transition of the REP's customers; or
  - (ii) the commission issues an order revoking the REP's certificate.
- (G) A REP may satisfy the requirements of paragraph (1)(A) of this subsection by relying upon a guarantor that meets one of the capital requirements of paragraph (1)(A) of this subsection, provided that:
  - (i) The guarantor is an affiliate of the REP and has executed and maintains the standard form guaranty agreement approved by the commission, or

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- (ii) The guarantor is one or more persons that are affiliates of the REP and such affiliates have executed and maintain guaranty agreements, business financial commitments, or credit support agreements that demonstrate financial support for credit or collateral requirements associated with power purchase agreements and for security associated with participation at ERCOT, or
  - (iii) The guarantor is a financial institution that maintains an investment-grade credit rating and has executed and maintains guaranty agreements, business financial commitments, or credit support agreements that demonstrate financial support for credit or collateral requirements associated with power purchase agreements and for security associated with participation at ERCOT, or
  - (iv) The guarantor is a provider of wholesale power supply to the REP, or one of such power provider's affiliates, and such person has executed and maintains guaranty agreements, business financial commitments, or credit support agreements that demonstrate financial support for credit or collateral requirements associated with a power purchase agreement and for security associated with participation at ERCOT.
- (5) **Billing and collection of transition charges.** If a REP serves customers in the service area of a TDU that is subject to a financing order pursuant to PURA §39.310, the REP shall comply with §25.108 of this title.
- (6) **Proceeds from an irrevocable stand-by letter of credit.**
  - (A) Proceeds from an irrevocable stand-by letter of credit provided under this subsection may be used to satisfy the following obligations of the REP, in the following order of priority:
    - (i) first, if available, to assist in the payment of the deposits to retail electric providers that volunteer to provide service in a mass transition event under §25.43 of this title (relating to Provider of Last Resort (POLR)) of low-income customers as identified by the Low-Income List Administrator pursuant to §25.45 of this title;
    - (ii) second, if available, to assist in the payment of deposits to retail electric providers that are designated to provide service in a mass transition event under §25.43 of this title of low-income customers as identified by the Low-Income List Administrator pursuant to §25.45 of this title;
    - (iii) third, for customer deposits and residential advance payments of customers;
    - (iv) fourth, for services provided by the independent organization related to serving customer load;
    - (v) fifth, for services provided by a TDU; and
    - (vi) sixth, for administrative penalties assessed under Chapter 15 of PURA.
  - (B) Proceeds from an irrevocable stand-by letter of credit provided under this subsection shall, to the extent that the proceeds are not needed to satisfy an obligation set out in subparagraph (A) of this paragraph, be paid to the REP.
- (g) **Technical and managerial requirements.** A REP must have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with its customer contracts, PURA, commission rules, ERCOT protocols, and other applicable laws.
  - (1) Technical and managerial resource requirements include:
    - (A) Capability to comply with all applicable scheduling, operating, planning, reliability, customer registration, and settlement policies, protocols, guidelines, procedures, and other rules established by ERCOT or other applicable independent organization including any independent organization requirements for 24-hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, interruption plan implementation, and telephone number, fax number, e-mail address, and postal address where the REP's staff can be directly reached at all times.
    - (B) Capability to comply with the registration and certification requirements of ERCOT or other applicable independent organization and its system rules, or contracts for services

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- with entities registered with or certified by ERCOT or other applicable independent organization.
- (C) Compliance with all renewable energy portfolio standards in accordance with §25.173 of this title (relating to Goal for Renewable Energy).
  - (D) Principals or permanent employees in managerial positions whose combined experience in the competitive electric industry or competitive gas industry equals or exceeds 15 years. An individual that was a principal of a REP that experienced a mass transition of the REP's customers to POLR shall not be considered for purposes of satisfying this requirement, and shall not own more than 10% of a REP or directly or indirectly control a REP.
  - (E) At least one principal or permanent employee who has five years of experience in energy commodity risk management of a substantial energy portfolio. Alternatively, the REP may provide documentation demonstrating that the REP has entered into a contract for a term not less than two years with a provider of commodity risk management services that has been providing such services for a substantial energy portfolio for at least five years. A substantial energy portfolio means managing electricity or gas market risks with a minimum value of at least \$10,000,000.
  - (F) Adequate staffing and employee training to meet all service level commitments.
  - (G) The capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service in accordance with applicable commission rules, including procedures for relaying outage reports to the TDU on a 24-hour basis.
  - (H) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.
- (2) An applicant shall include the following in its initial application for REP certification:
- (A) Prior experience of one or more of the applicant's principals or permanent employees in the competitive retail electric industry or competitive gas industry;
  - (B) Any complaint history, disciplinary record and compliance record during the ten years immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;
    - (i) The complaint history, disciplinary record, and compliance record shall include information from any federal agency including the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission; any self-regulatory organization relating to the sales of securities, financial instruments, physical or financial transactions in commodities, or other financial transactions; state public utility commissions, state attorney general offices, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information shall include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.
    - (ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record.
    - (iii) The commission may also consider any complaint information on file at the commission.

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- (C) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;
  - (D) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations;
  - (E) Disclosure of whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state;
  - (F) An affidavit stating that the applicant will register with or be certified by ERCOT or other applicable independent organization and will comply with the technical and managerial requirements of this subsection; or that entities with whom the applicant has a contractual relationship are registered with or certified by the independent organization and will comply with all system rules established by the independent organization;
  - (G) An affidavit identifying all principals, executive management, and employees, or contract employees of the applicant that exercised influence or control over a REP that experienced a mass transition of the REP's customers to POLR. If such a relationship existed, the applicant shall include in the affidavit the name of the REP that experienced a mass transition of the REP's customers to POLR and provide factual statements as to whether and, if so, how the REP that experienced a mass transition of the REP's customers to POLR settled all outstanding obligations including the return of any owed customer deposits; and
  - (H) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements of this subsection.
- (h) **Customer protection requirements.** A REP shall comply with all applicable customer protection requirements, including disclosure requirements, marketing guidelines and anti-discrimination requirements, and the requirements of this section.
- (i) **Requirements for reporting and changing certification.** To maintain a REP certificate, a REP must keep its certification information up to date, pursuant to the following requirements:
- (1) A REP shall notify the commission within five working days of any change in its business address, telephone numbers, authorized contacts, or other contact information.
  - (2) A REP that demonstrates compliance with certification requirements of this section by submitting an affidavit shall supply information to the commission to show actual compliance with this section.
  - (3) A REP shall apply to amend its certification within ten working days of a material change to the information provided as the basis for the commission's approval of the certification application. A REP may seek prior approval of a material change, including a change in control, by filing the amendment application before the occurrence of the material change. The transfer of a REP certificate is a material change.
  - (4) For an Option 1 REP, the REP shall notify the commission within three working days of its non-compliance with subsection (f)(1)(A) or (B) of this section. The notification shall set out a plan of recourse to correct the non-compliance with subsection (f)(1)(A) or (B) of this section within 10 working days after the non-compliance has been brought to the attention of the commission. The commission staff may initiate a proceeding to address the non-compliance.
  - (5) For an Option 1 REP, the REP shall file a report due on March 5, or 65 days after the end of the REP or guarantor's fiscal year (annual report), and August 15, or 225 days after the end of the REP or guarantor's fiscal year (semi-annual report), of each year.
    - (A) The annual report shall include:
      - (i) Any changes in addresses, telephone numbers, authorized contacts, and other information necessary for contacting the certificate holder.

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- (ii) Identification of areas where the REP is providing retail electric service to customers in Texas compiled by zip code.
  - (iii) A list of aggregators with whom the REP has conducted business in the reporting period, and the commission registration number for each aggregator.
  - (iv) A sworn affidavit that the certificate holder is not in material violation of any of the requirements of its certificate.
  - (v) Any changes in ownership.
  - (vi) Any changes in management, experience, and personnel relied on for certification in each semi-annual report before the REP begins serving customers and in the first semi-annual report after the REP serves customers.
  - (vii) Documentation to demonstrate ongoing compliance with the financial requirements of subsection (f) of this section, including, but not limited to, calculations showing tangible net worth, financial ratios or shareholders' equity, as applicable, and the amount of customer deposits and the balance of an account in which customer deposits are held, supported by a sworn statement from an executive officer of the REP attesting to the accuracy, in all material respects, of the information provided. Any certified calculations provided as part of the annual report to demonstrate such compliance shall be as of the end of the most recent fiscal quarter. A REP may submit any relevant documentation of the type required by subsection (f)(4) of this section to demonstrate its ongoing compliance with the financial requirements of subsection (f) of this section.
- (B) The semi-annual report shall include:
- (i) Documentation to demonstrate ongoing compliance with the financial requirements of subsection (f) of this section, including, but not limited to, calculations showing tangible net worth, financial ratios or shareholders' equity, as applicable, and the amount of customer deposits and the balance of an account in which customer deposits are held, and shall be supported by a sworn statement from an executive officer of the REP attesting to the accuracy of the information provided. Any certified calculations provided as part of the semi-annual report to demonstrate such compliance shall be as of the end of the most recent fiscal year and most recent fiscal quarter. A REP may submit any relevant documentation of the type required by subsection (f)(4) of this section to demonstrate its ongoing compliance with the financial requirements of subsection (f) of this section.
  - (ii) The audited financial statements of the REP or its guarantor for the most recent completed calendar or fiscal year with accompanying footnotes and the independent auditor's report, if not previously filed.
  - (iii) The unaudited financial statements for the most recent six-month financial period that immediately follows the end of its most recent fiscal year. Unaudited financial statements shall include a sworn statement from an executive officer of the REP attesting to the accuracy, in all material respects, of the information provided in the unaudited financial statements. In lieu of six-month unaudited financial statements, six consecutive months of monthly financial statements may be submitted.
- (C) The requirement for financial statements may be satisfied by filing a copy of or by providing an electronic link to its most recent statement that contains unaudited financials filed with any agency of the federal government, including without limitation, the Securities and Exchange Commission. A REP that is part of a structure that is consolidated for financial reporting purposes and files financial reports with a federal agency on a consolidated company basis may provide financial statements for the consolidated company to meet this requirement.

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- (D) REPs or guarantors with an investment-grade credit rating are not required to provide financial statements pursuant to this section.
  - (6) A REP shall not cease operations as a REP without prior notice of at least 45 days to the commission, to each of the REP's customers to whom the REP is providing service on the planned date of cessation of operations, and to other affected persons, including the applicable independent organization, TDUs, electric cooperatives, municipally owned utilities, generation suppliers, and providers of last resort. The REP shall file with the commission proof of refund of any monies owed to customers. Upon the effective cessation date, a REP's certificate will be suspended. A REP must demonstrate full compliance with the requirements of this section, including but not limited to, the requirement to demonstrate shareholders' equity of not less than one million dollars and its associated restrictions pursuant to subsection (f)(1)(B) of this section, in order for the commission to reinstate the certificate. The commission may revoke a suspended certificate if it determines that the REP does not meet certification requirements.
  - (7) If a REP files a petition in bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, it shall notify the commission within three working days of this event and shall provide the commission a summary of the nature of the matter. The commission shall have the right to proceed against any financial resources that the REP relied on in obtaining its certificate, to satisfy unpaid obligations to customers or administrative penalties.
  - (8) A REP shall respond within three working days to any commission staff request for additional information to confirm continued compliance with this section.
- (j) **Suspension and revocation.** A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for a significant violation of PURA, commission rules, or rules adopted by an independent organization. A suspension of a REP certificate requires the cessation of all REP activities associated with obtaining new customers in the state of Texas. A revocation of a REP certificate requires the cessation of all REP activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for a significant violation of PURA, commission rules, or rules adopted by an independent organization. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a REP's certificate. Significant violations include the following:
- (1) Providing false or misleading information to the commission, including a failure to disclose any information required by this section;
  - (2) Engaging in fraudulent, unfair, misleading, deceptive, or anticompetitive practices, or unlawful discrimination;
  - (3) Switching, or causing to be switched, the retail electric provider for a customer without first obtaining the customer's permission;
  - (4) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's retail electric service bill;
  - (5) Failure to maintain continuous and reliable electric service to customers pursuant to this section;
  - (6) Failure to maintain financial resources in accordance with subsection (f) of this section;
  - (7) Bankruptcy, insolvency, or the inability to meet financial obligations on a reasonable and timely basis;
  - (8) Failure to timely remit payment for invoiced charges to an independent organization;
  - (9) Failure to observe any applicable scheduling, operating, planning, reliability, and settlement policies, protocols, guidelines, procedures, and other rules established by the independent organization;
  - (10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;
  - (11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
  - (12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving fraud, theft, or deceit related to the certificate holder's service;

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- (13) Not providing retail electric service to customers within 24 months of the certificate being granted by the commission;
- (14) Failure to serve as a POLR if required to do so by the commission;
- (15) Providing retail electric service in an area in which customer choice is in effect without obtaining a certificate under this section;
- (16) Failure to timely remit payment for invoiced charges to a transmission and distribution utility pursuant to the terms of the statewide standardized tariff adopted by the commission;
- (17) Erroneously imposing switch-holds or failing to remove switch-holds within the timeline described in §25.480 of this title (relating to Bill Payment and Adjustments);
- (18) Failure to comply with §25.272 of this title; and
- (19) Other significant violations, including the failure or a pattern of failures to meet the requirements of this section or other commission rules or orders.

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**Subchapter F. METERING**

**§25.126. Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced.**

- (a) **Applicability.** This section applies to a transmission and distribution utility (TDU) and a retail electric provider (REP) in an area in which customer choice is available. The implementation of this section shall take effect on July 1, 2010. This section does not limit a TDU's or REP's right to seek redress for meter tampering through civil and criminal proceedings.
- (b) **Back-billing and meter tampering charges.**
- (1) If any meter is found to be non-compliant with the accuracy standards required by §25.121(e) of this title (relating to Meter Requirements), or if the TDU has provided incorrect consumption or billing data to the REP, then consumption or billing data shall be corrected, and adjusted bills shall be rendered. The TDU shall not back-bill for any period in which the current customer was not the customer of record, or the current REP was not the REP of record. The TDU shall not assess any meter tampering fees, meter repair charges, or restoration charges due to meter tampering, if the current customer was not the customer of record when the meter tampering began, or if the current REP was not the REP of record when the meter tampering began.
  - (2) Back-billing under this subsection shall not exceed a period of:
    - (A) three months, if the TDU discovers a non-compliant meter or other equipment that has not been affected by meter tampering and the back-billing would result in additional electricity charges to the customer; or
    - (B) six months, if the TDU discovers a non-compliant meter that has been affected by meter tampering and the back-billing would result in additional charges or fees to the customer.
  - (3) The back-billing shall not be limited if the TDU discovers a non-compliant meter that has not been affected by meter tampering or has provided incorrect meter readings that are unrelated to meter tampering and the back-billing would result in a credit to the customer.
  - (4) In instances where the TDU finds it appropriate, the TDU may assess charges for services received by the customer prior to the six months back-billed to the REP, and the charges assessed beyond six months shall be sent to the end-use customer directly by the TDU. Charges assessed by the TDU pursuant to this paragraph may extend to periods in which the current REP of record was not the REP of record. Energy charges shall be determined using the ERCOT-wide bus average hub price as calculated by the independent system operator for the applicable time periods. The utility shall notify the current REP of record of the charges assessed to the customer beyond six months. The TDU shall pay the current REP of record 50% of the energy charges collected for the period of time in which that REP was the REP of record. The TDU shall provide the energy charges to the REP pursuant to a method agreed to by the REP and the TDU.
- (c) **Calculation of charges.** The charge for any period in which the meter was not in compliance with the accuracy standard shall be based on an estimate using the standards for calculation as stated in the Tariff for Retail Delivery Service, Section 4.8.1.4, adopted pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).
- (d) **TDU responsibilities concerning metering accuracy.** A TDU shall undertake all reasonable efforts to minimize losses associated with inaccurate meters and meter tampering, including the prompt detection and investigation of circumstances in which a meter is not accurately recording and reporting consumption. The TDU shall also take the steps necessary to deter meter tampering and to mitigate the adverse impacts of inaccurate meters on the metering and billing of electricity consumption.
- (1) Once meter tampering is determined to have taken place, the TDU shall restore normal meter registration and reading within three business days. If the tampering involves a bypass of the meter, and the TDU cannot eliminate the bypass, the TDU shall, within this period, disconnect service to the premises.

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- (2) Following disconnection, the TDU shall provide written notice of disconnection to the customer of record and notice to the REP using a standard market process.
  - (3) The TDU shall, concurrent with the back-billing, supply the REP with the revised estimated meter read resulting from consumption at the premises that the TDU has determined was not previously billed as a result of the meter tampering. The electronic transaction transmitting the estimated meter read to the REP shall clearly denote that the meter read is an estimate and shall state the reason for the estimation.
  - (4) All applicable meter repair and restoration charges shall be sent in a single transaction by the TDU and shall not be spread over several months. The TDU shall send corresponding back-billing transactions concurrently with the transaction for meter repair and restoration charges.
  - (5) The TDU shall investigate, and remedy if necessary, all instances of meter tampering reported under this section within ten business days from the date the tampering was reported to the TDU.
  - (6) The TDU may not invoice the current REP for any back-billed TDU charges related to meter tampering or for any meter repair and restoration charges, until the TDU has placed a switch-hold on the affected ESI pursuant to subsection (g) of this section and collected and prepared the following information in support of a determination of meter tampering. The TDU shall make the information specified in this paragraph electronically and readily available to the REP of record through a secure method, without requiring the REP of record to first request the information. The TDU shall also provide the affected customer this information within five business days of the customer's request. The TDU shall provide reasonable and timely access to the physical items specified in subparagraph (D) of this paragraph to any requesting REP of record or customer.
    - (A) Photographs of the premises including a general photograph of the residence/business (showing address number if available), a wide shot photograph of the meter against the wall or where attached to the premises, and close-ups of the meter and/or diversion evidence (prior to removing the meter cover if the tampering is obvious and after removing the meter cover if the damage is inside the meter), and any other relevant evidence that can be photographed;
    - (B) A detailed description of the detection and investigation methodology employed by the TDU;
    - (C) Documentation of the methodology or rationale used by the TDU to determine the date or approximate date upon which the meter ceased accurately registering consumption at the premises and the detailed calculation and methodology for estimating consumption subject to back-billing, and the methodology used to calculate the back-billing;
    - (D) The affected meter and other metering equipment that the TDU may need to remove from the premises because the tampering involved an unauthorized alteration, manipulation, change or modification of that equipment, and any available object used for meter tampering;
    - (E) Any other reliable and credible information that supports its conclusion that the meter was tampered with, while maintaining confidentiality of anonymous tips provided to the TDU; and
    - (F) A sworn affidavit from an employee or other representative of the TDU attesting to the veracity of the information.
  - (7) The information specified in paragraph (6) of this subsection shall be retained by the TDU for 24 months from the date the TDU invoices the REP pursuant to paragraph (6) of this subsection and, if a legal proceeding is initiated during those 24 months, the information shall be retained by the TDU until the final resolution of that proceeding, or 24 months, whichever is later.
- (e) **Notification of meter tampering.** The TDU shall notify the REP within one business day, upon a determination that meter tampering has occurred through a standard market process. The TDU shall also notify the customer within two business days of the determination of meter tampering.
- (1) The notice to the customer shall be either provided to the customer in the form of a door hanger, or mailed to the premises address assigned to the ESI ID or an address provided by the REP if there is no valid postal premises address assigned to the ESI ID.

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- (2) The notice shall include the following information in the same format as follows:

[TDU Letterhead]

Date: \_\_\_\_\_

Address: \_\_\_\_\_

ESI-ID: \_\_\_\_\_

**NOTICE OF METER TAMPERING**

We have identified electric meter tampering, or theft of electric service at this location.

You may be billed for any applicable fees relating to repairing or replacing the electric meter and other facilities, and for electricity usage not previously billed as a result of the tampering or theft. A bill for these charges will be issued by your retail electric provider (REP). If the meter tampering occurred prior to the time you became the customer of record at this location, you may be billed for any of your electricity usage that was previously unbilled. If the meter tampering began after you became customer of record at this location and your current REP was providing your electric service at that time, you may also be billed meter repair and restoration charges. Your REP may also authorize disconnection of service for nonpayment. You will not be able to switch your service to another REP until you have satisfied your obligation to pay these charges.

- (f) **Burden of Proof.** If a retail customer challenges the TDU's determination of meter tampering, or the imposition of charges based on any such determination, in a contested case proceeding before the commission, the TDU shall bear the burden of proof that meter tampering occurred.
- (g) **Switch-hold and disconnection of service.** Upon determination by the TDU that tampering has occurred at a premises, the TDU shall on the same day place a switch-hold on the ESI ID, which shall prevent a switch or move-in transaction from being completed for the ESI ID. If the REP exercises its right to disconnect service for non-payment pursuant to §25.483 of this title (relating to Disconnection of Service), the switch-hold shall continue to remain in place. The switch-hold shall remain in effect until the REP of record notifies the TDU to remove the switch-hold because the customer has satisfied its payment obligations for back-billings and meter repair charges due to tampering, or until such time as removal of the switch-hold is otherwise authorized by this section. The TDU shall create and maintain a secure list of ESI IDs with switch-holds that REPs may access. The list shall not include any customer information other than the ESI ID and date the switch-hold was placed. The list shall be updated daily, and made available through a secure means by the TDU. The TDU may provide this list in a secure format through the web portal developed as part of its AMS deployment.
- (1) The REP via a standard market process shall submit a request to remove the switch-hold once satisfactory payment is received from the retail customer for the back-billings and meter repair and restoration charges.
- (2) For a customer receiving service under §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System), a TDU shall disconnect service within one day of its receipt of the REP's request for disconnection if the TDU has determined that tampering with the customer's meter has occurred.
- (3) At the time of a mass transition, the TDU shall remove the switch-hold for any ESI ID that is transitioned to a provider of last resort (POLR). No later than the business day following the completion of the last mass transition switch, the TDU shall provide all POLR providers a list of ESI IDs previously subject to a switch-hold.

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- (4) When the REP of record issues a move-out request for an ESI ID under a switch-hold, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.
- (h) **Move-ins with a valid switch-hold.**
- (1) If a retail applicant for electric service selects a REP and the selected REP submits a move-in transaction for an ESI ID that has an existing switch-hold as defined in subsection (g) of this section due to meter tampering, the TDU shall notify the selected REP that the move-in transaction is rejected via a standard market process. If the selected REP determines the applicant's premise has an existing switch-hold, the selected REP may request removal of the switch-hold prior to submitting a move-in transaction.
  - (2) The selected REP shall use best efforts to promptly determine whether the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed and, if so, obtain adequate documentation that the move-in request is legitimate. Adequate documentation shall include a copy of a signed lease, an affidavit of a landlord, closing documents, a certificate of occupancy, a utility bill dated within the past two months from a different premise, or other comparable documentation in the name of the retail applicant for electric service, and shall include a signed statement from the applicant stating that the applicant is a new occupant of the premises and is not associated with the preceding occupant.
  - (3) Upon receipt of such information from the applicant, the selected REP shall ensure that the applicant's financial information, driver's license number, and social security number and federal tax ID number are protected from improper release. Another REP or a TDU that receives such information from the selected REP shall also protect such information from release.
  - (4) The selected REP shall initiate the use of ERCOT's MarkeTrak issue process to request removal of the switch-hold and provide the supporting documentation to the TDU. This request and supporting documentation shall be subsequently provided to the current REP of record through the MarkeTrak process.
  - (5) The current REP of record may submit other information in response to the supporting documentation submitted by the selected REP, using the MarkeTrak process. This additional information shall be made available to the TDU and the selected REP through the MarkeTrak process. Within four business hours of receiving the request to remove the switch-hold and supporting documentation, the TDU shall determine whether the switch-hold should be removed by confirming the documentation provided under subsection (h)(2) of this section is adequate. In making this decision, the TDU shall take into consideration any additional information submitted by the current REP of record. If the TDU determines the documentation is inadequate, the selected REP and the current REP of record shall be immediately notified through the MarkeTrak process that the request to remove the switch-hold is rejected, and the switch-hold shall remain in effect pursuant to subsection (g) of this section. If the TDU concludes that the documentation is adequate, it shall immediately grant the request to remove the switch-hold and both the selected REP and current REP record shall be immediately notified of the removal through the MarkeTrak process. After being notified of the removal of the switch-hold, the selected REP shall resubmit the move-in transaction to initiate the move-in request.
  - (6) A TX SET transaction or process developed specifically for the purpose of addressing the treatment of switch-holds in the context of move-in transactions shall be used as a substitute for the equivalent process described in this subsection once that TX SET transaction becomes available. The Electric Reliability Council of Texas (ERCOT) shall develop this TX SET transaction process as soon as possible.
  - (7) For a move-in transaction indicating that the ESI ID is subject to a continuous service agreement, the TDU shall remove any switch-hold on that ESI ID and complete the move-in.
- (i) **Additional requirements.**
- (1) By April 1 of each calendar year, each TDU shall file with the commission a report detailing the following for the previous calendar year concerning meter tampering:
    - (A) Total number of customers for which meter tampering was determined by the TDU;

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- (B) The number of customers back-billed and the average of the following charges per customer:
    - (i) utility delivery charges; and
    - (ii) meter repair, and restoration charges.
  - (C) Total number of cases referred to law enforcement for prosecution that included photographs, a descriptive incident report, affidavit, and notification to law enforcement of the availability of physical evidence in the case;
  - (D) Total number of cases prosecuted;
  - (E) Switch-hold statistics, including the number of ESI IDs for which a switch-hold was placed, the number of ESI IDs placed under a switch hold for three months, six months, one year, or longer; and
  - (F) The number of premises for which a TDU assessed charges directly to the customer pursuant to subsection (b)(4) of this section.
- (2) The utility shall maintain adequate staff responsible for monitoring suspicious activity related to meter tampering in its service territory. The utility shall establish a process for REPs and customers to report meter tampering. The TDU shall also include a customer hotline telephone number or email address on its website, prominently displayed on its front page for electric service.
  - (3) The utility shall maintain a record of meter tampering investigations. The record shall include a timeline by ESI ID, starting with the date information is reported by a REP, landlord, TDU employee or other individual on meter tampering, the date the TDU completed the investigation, and the date the TDU issued the back-billing to the REP. The utility shall make this information available to the commission upon request.
  - (4) The utility shall engage in a customer information campaign to educate customers on the safety hazards associated with electricity theft, diversion, and meter tampering.
- (j) **Proprietary Customer Information.** The prohibition against the release of proprietary customer information in §25.472 of this title (relating to Privacy of Customer Information) does not prohibit the release of customer proprietary information to the registration agent, a REP, a POLR provider, or a TDU when the information is necessary to complete a market transaction described in this section. Customer proprietary information provided in accordance with this section shall be treated as confidential, shall be securely destroyed by the current REP of record after 24 months, and shall be used only for the purposes of evaluating whether to lift a switch-hold and cannot be used for any other purpose, including but not limited to marketing or sales efforts by the current REP.

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### Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

#### §25.471. General Provisions of Customer Protection Rules.

- (a) **Application.** This subchapter applies to aggregators and retail electric providers (REPs). In addition, where specifically stated, these rules apply to transmission and distribution utilities (TDUs), the registration agent, brokers and power generation companies. These rules specify when certain provisions are applicable only to some, but not all, of these providers.
- (1) Affiliated REP customer protection rules, to the extent the rules differ from those applicable to all REPs or those that apply to the provider of last resort (POLR), do not apply to the affiliated REP when serving customers outside the geographic area served by its affiliated transmission and distribution utility. The affiliated REP customer protection rules apply until the price-to-beat obligation ends in the affiliated REPs' affiliated TDU service territory.
  - (2) Requirements applicable to a POLR apply to a REP only in its provision of service as a POLR.
  - (3) The rules in this subchapter are minimum, mandatory requirements that must be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.499 (relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts), a customer other than a residential or small commercial class customer, or a non-residential customer whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules must be reduced to writing and provided to the customer. Additionally, copies of such agreements must be provided to the commission upon request.
  - (4) The rules of this subchapter control over any inconsistent provisions, terms, or conditions of a REP's terms of service or other documents describing service offerings for customers in Texas.
  - (5) For purposes of this subchapter, a municipally owned utility or electric cooperative is subject to the same provisions as a REP where the municipally owned utility or electric cooperative sells retail electricity service outside its certificated service area.
- (b) **Purpose.** The purposes of this subchapter are to:
- (1) provide minimum standards for customer protection. An aggregator or REP may adopt higher standards for customer protection, provided that the prohibition on discrimination set forth in subsection (c) of this section is not violated;
  - (2) provide customer protections and disclosures established by other state and federal laws and rules including but not limited to the Fair Credit Reporting Act (15 U.S.C. §1681, et seq.) and the Truth in Lending Act (15 U.S.C. §1601, et seq.). Such protections are applicable where appropriate, whether or not it is explicitly stated in these rules;
  - (3) provide customers with sufficient information to make informed decisions about electric service in a competitive market; and
  - (4) prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators, REPs, and brokers in the marketing, solicitation and sale of electric service, in the administration of any terms of service for electric service and in providing advice or procurement services to, or acting on behalf of, a retail electric customer regarding the selection of a retail electric provider, or a product or service offered by a retail electric provider.
- (c) **Prohibition against discrimination.** This subchapter prohibits REPs from unduly refusing to provide electric service or otherwise unduly discriminating in the marketing and provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

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- (d) **Definitions.** For the purposes of this subchapter the following words and terms have the following meaning, unless the context indicates otherwise:
- (1) **Applicant** -- A person who applies for electric service via a move-in or switch with a REP that is not currently the person's REP of record or applies for aggregation services with an aggregator from whom the person is not currently receiving aggregation services.
  - (2) **Burned Veteran** -- A customer who is a military veteran who a medical doctor certifies has a significantly decreased ability to regulate body temperature because of severe burns received in combat.
  - (3) **Competitive energy services** -- As defined in §25.341 of this title (relating to Definitions).
  - (4) **Customer** -- A person who is currently receiving retail electric service from a REP in the person's own name or the name of the person's spouse, or the name of an authorized representative of a partnership, corporation, or other legal entity, including a person who is changing premises but is not changing their REP.
  - (5) **Electric service** -- Combination of the transmission and distribution service provided by a transmission and distribution utility, municipally owned utility, or electric cooperative, metering service provided by a TDU or a competitive metering provider, and the generation service provided to an end-use customer by a REP. This term does not include optional competitive energy services, as defined in §25.341 of this title, that are not required for the customer to obtain service from a REP.
  - (6) **Energy service** -- As defined in §25.223 of this title (relating to Unbundling of Energy Service).
  - (7) **Enrollment** -- The process of obtaining authorization and verification for a request for service that is a move-in or switch in accordance with this subchapter.
  - (8) **In writing** -- Written words memorialized on paper or sent electronically.
  - (9) **Move-in** -- A request for service to a new premise where a customer of record is initially established or to an existing premise where the customer of record changes.
  - (10) **Retail electric provider (REP)** -- Any entity as defined in §25.5 of this title (relating to Definitions). For purposes of this rule, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory. An agent of the REP may perform all or part of the REP's responsibilities pursuant to this subchapter. For purposes of this subchapter, the REP will be responsible for the actions of the agent.
  - (11) **Small commercial customer** -- A non-residential customer that has a peak demand of less than 50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12- month period.
  - (12) **Switch** -- The process by which a person changes REPs without changing premises.
  - (13) **Termination of service** -- The cancellation or expiration of a service agreement or contract by a REP or customer.

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### Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

#### §25.472. Privacy of Customer Information.

- (a) **Mass customer lists.** Prior to the commencement of retail competition, an electric utility shall release a mass customer list to certificated retail electric providers (REPs) and registered aggregators.
- (1) A mass customer list shall consist of the name, billing address, rate classification, monthly kilowatt-hour usage for the most recent 12-month period, meter type, and account number or electric service identifier (ESI-ID). All customers eligible for the price to beat pursuant to the Public Utility Regulatory Act (PURA) §39.202 shall be included on the mass customer list, except a customer who opts not to be included on the list pursuant to paragraph (2) of this subsection.
  - (2) Prior to the release of a mass customer list, an electric utility shall mail a notice to all customers who may be included on the list. The notice shall:
    - (A) explain the issuance of the mass customer list;
    - (B) provide the customer with the option of not being included on the list and allow the customer at least 30 days to exercise that option;
    - (C) inform the customer of the availability of the no call lists pursuant to §25.484 of this title (relating to Texas Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List), and provide the customer with information on how to request placement on the list;
    - (D) provide a toll free telephone number and an Internet website address to notify the electric utility of the customer's desire to be excluded from the mass customer list.
  - (3) The commission will require the electric utility to release a mass customer list no later than 120 days before the commencement of customer choice.
  - (4) The mass customer list shall be issued, at no charge, to all REPs certified by, and aggregators registered with, the commission that will be providing retail electric or aggregation services to residential or small commercial customers.
  - (5) A REP shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of a REP prior to submission of the customer's enrollment to the registration agent.
- (b) **Individual customer and premise information.**
- (1) A REP or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer's or applicant's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider). This prohibition shall not apply to the release of such information by a REP or aggregator to:
    - (A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving REPs or aggregators;
    - (B) an agent, vendor, partner, or affiliate of the REP or aggregator engaged to perform any services for or functions on behalf of the REP or aggregator, including marketing of the REP's or aggregator's own products or services, or products or services offered pursuant to joint agreements between the REP or aggregator and a third party;
      - (i) All such agents, vendors, partners, or affiliates of the REP or aggregator shall be required to sign a confidentiality agreement with the REP or aggregator and agree to be held to the same confidentiality standards as the REP or aggregator pursuant to this section; and
      - (ii) In the event that a REP shares proprietary customer information with a third party for the purpose of marketing such party's products or services to the REP's customer, prior to the release of information to any such agent, partner or affiliate, a REP or aggregator shall provide the customer an opportunity to opt-out of the release of their information for such marketing purposes by either of the following methods:

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- (I) send a notice to customers explaining the issuance of the each information release and the reason for the information release and provide the customer with the option of not being included in the information release and allow the customer at least 30 days to exercise that option; or
  - (II) include an opportunity for the customer to make a choice as to whether or not the customer wants to be included in all future marketing of other products and services by the REP or its agent, partner, or affiliate. Such opportunity may be provided during the authorization and verification process detailed in §25.474 or via a separate notice and mailing to customers.
  - (C) a consumer reporting agency as defined by the Federal Trade Commission;
  - (D) an energy assistance agency to allow a customer or an applicant to qualify for and obtain other financial assistance provided by the agency. A REP may rely on the representations of an entity claiming to provide energy assistance;
  - (E) local, state, and federal law enforcement agencies;
  - (F) the transmission and distribution utility (TDU) within whose geographic service territory the customer or applicant is located, pursuant to the provisions of the TDU's commission-approved Tariff for Retail Electric Delivery Service;
  - (G) the Office of the Public Utility Counsel, upon request pursuant to PURA §39.101(d);
  - (H) conduct activities required by subsection (a) of this section;
  - (I) the registration agent, another REP, a provider of last resort (POLR), or TDU as necessary to complete a required market transaction, under terms approved by the commission; or
  - (J) the registration agent or a TDU in order to effectuate a customer's move-in, transfer, or switch.
- (2) Under no circumstances shall a REP or aggregator sell, make available for sale, or authorize the sale of any customer-specific information or data obtained.
  - (3) Upon receiving authorization from a customer or applicant, a REP shall request from the TDU the monthly usage of the customer's or applicant's premise for the previous 12 months. The TDU, upon receipt of a written request or other proof of authorization, shall provide the requested information to the requesting REP or to the customer or applicant no later than three business days after the request or proof of authorization is submitted.
  - (4) A REP shall, upon the request of an energy assistance agency, provide a 12-month billing history free of charge that includes both usage data and the dollar amount of each monthly billing. If 12 months of billing data are not available from the REP, the REP shall estimate the amount billed using the REP's residential rate. The history shall also clearly designate estimated amounts. A residential billing history requested by an energy assistance agency shall be provided by the end of the next business day after the request is made. A residential billing history requested by a customer shall be provided within five business days of the customer request.
  - (5) Upon the request of a customer, a REP shall notify a third person chosen by the customer of any pending disconnection of electric service with respect to the customer's account.

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**§25.473. Non-English Language Requirements.**

- (a) **Applicability.** This section applies to retail electric providers (REPs), aggregators, and the registration agent.
- (b) **Retail electric providers (REPs).** A REP shall provide the following information to an applicant or customer in English, Spanish, or the language used in the marketing of service, as designated by the applicant or customer.
  - (1) Terms of service documents, Electricity Facts Label, customer bills, and customer bill notices;
  - (2) information on the availability of new electric services, discount programs, and promotions; and
  - (3) access to customer service, including the restoration of electric service and response to billing inquiries.
- (c) **Aggregators.** An aggregator shall provide the following information to a customer in English, Spanish, or the language used to market the aggregator's products and services, as designated by the customer or the applicant:
  - (1) terms of service documents required by this subchapter;
  - (2) the availability of electric discount programs; and
  - (3) access to customer service.
- (d) **Dual language requirement.** The following documents shall be provided to all customers in both English and Spanish, unless a customer has designated a language other than English or Spanish as the language in which they will receive the information described in subsection (b) of this section, in which case the documents described in paragraphs (1) and (3) of this subsection shall be provided in English and the other language designated by the customer.
  - (1) Your Rights as a Customer disclosure;
  - (2) the enrollment notification notice provided by the registration agent pursuant to §25.474(1) of this title (relating to Selection of Retail Electric Provider); and
  - (3) a disconnection notice.
- (e) **Prohibition on mixed language.** Unless otherwise noted in this subchapter, if any portion of a printed advertisement, electronic advertising over the Internet, direct marketing material, billing statement, terms of service document, or Your Rights as a Customer disclosure is translated into another language, then all portions shall be translated into that language. A single informational statement advising how to obtain the same printed advertisements, electronic advertising over the Internet, direct marketing material, billing statement, terms of service documents, or Your Rights as a Customer disclosure in a different language is permitted.

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### Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

#### §25.474. Selection of Retail Electric Provider.

- (a) **Applicability.** This section applies to retail electric providers (REPs) and aggregators seeking to enroll applicants or customers for retail electric service. In addition, where specifically stated, this section applies to transmission and distribution utilities (TDUs) and the registration agent.
- (b) **Purpose.** The provisions of this section establish procedures for enrollment of applicants or customers by a REP and ensure that all applicants and customers in this state are protected from an unauthorized switch from the applicant's or customer's REP of choice or an unauthorized move-in. A contested switch in providers shall be presumed to be unauthorized unless the REP provides proof, in accordance with the requirements of this section, of the applicant's or customer's authorization and verification.
- (c) **Initial REP selection process.**
- (1) In conjunction with the commission's customer education campaign, the commission may issue to customers for whom customer choice will be available an explanation of the REP selection process. The customer education information issued by the commission may include, but is not limited to:
    - (A) an explanation of retail electric competition;
    - (B) a list of all REPs certified to provide electric service to the customer;
    - (C) a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and
    - (D) information on how a customer may designate whether the customer would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.
  - (2) Any affiliated REP assigned to serve a customer that is entitled to receive the price-to-beat rate, pursuant to the Public Utility Regulatory Act (PURA) §39.202(a), shall issue to a customer, either as a bill insert or through a separate mailing, no later than 30 days after the commencement of customer choice:
    - (A) A terms of service document that includes an explanation of the price-to-beat rate;
    - (B) Your Rights as a Customer disclosure; and
    - (C) An Electricity Facts Label for the price to beat, which may, at the discretion of the REP, be in a separate document or contained in the terms of service document.
  - (3) An electric utility whose successor affiliated REP will continue to serve customers not eligible for the price-to-beat rate, pursuant to PURA §39.102(b), shall issue to the customer a terms of service document on a date prescribed by the commission. Such a document shall contain an explanation of the price the customer will be charged by the affiliated REP.
- (d) **Enrollment via the Internet.** For enrollments of applicants via the Internet, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.
- (1) The website (or websites) shall clearly and conspicuously identify the legal name of the aggregator and its registration number to provide aggregation services or REP and its certification number to sell retail electric service, its address, and telephone number.
  - (2) The website shall include a means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the applicant or customer and the REP or aggregator that is an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information.
  - (3) The website shall include an explanation that a move-in or a switch can only be made by the electric service applicant or the applicant's authorized agent.
  - (4) The entire enrollment process shall be in plain, easily understood language. The entire enrollment shall be the same language. Nothing in this section is meant to prohibit REPs or aggregators from utilizing multiple enrollment procedures or websites to conduct enrollments in multiple languages.
  - (5) **Required authorization disclosures.** Prior to requesting confirmation of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:
    - (A) the name of the new REP;
    - (B) the name of the specific electric service package or plan for which the applicant's assent is attained;

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- (C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP or aggregator shall provide a means of documenting a customer's language preference;
  - (D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
  - (E) term or length of the term of service;
  - (F) the presence or absence of early termination fees or penalties, and applicable amounts;
  - (G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or provider of last resort (POLR) shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title (relating to Credit Requirements and Deposits);
  - (H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;
  - (I) in the case of a switch request, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;
  - (J) a statement that the applicant will receive a copy of the terms of service document via email or, upon request, via regular US mail, that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable; and
  - (K) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title (relating to Prepaid Service), that the customer will not receive a bill and may request a summary of usage and payment.
- (6) The applicant shall be required to check a box affirming that the applicant has read and understands the disclosures and terms of service required by paragraph (5) of this subsection.
- (7) The REP or aggregator shall provide access to the complete terms of service document that is being agreed to by the applicant on the website such that the applicant may review the terms of service prior to enrollment. A prompt shall also be provided for the applicant to print or save the terms of service document to which the applicant assents, and shall inform the application of the option to request that a written copy of the terms of service document be sent by regular U.S. mail by contacting the REP.
- (8) The REP or aggregator shall also provide a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the applicant's or customer's agreement. The REP or aggregator shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.
- (9) Applicant authorizations shall adhere to any state and federal guidelines governing the use of electronic signatures.
- (10) **Verification of authorization for Internet enrollment.** Prior to final verification by the applicant of enrollment with the REP or aggregator, the REP or aggregator shall:
- (A) obtain or confirm the applicant's email address, billing name, billing address, service address, and name of any authorized representative;
  - (B) obtain or confirm the applicant's electric service identifier (ESI-ID), if available;
  - (C) affirmatively inquire whether the applicant has decided to establish new service or change from the current REP to the new REP;
  - (D) affirmatively inquire whether the applicant designates the new REP to perform the necessary tasks to complete a switch or move in for the applicant's service with the new REP; and
  - (E) obtain or confirm one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number.
- (11) After enrollment, the REP or aggregator shall send a confirmation, by email, of the applicant's request to select the REP. The confirmation email shall include:

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- (A) in the case of a switch, a clear and conspicuous notice of the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service without penalty and offer the applicant the option of exercising this right by toll-free number, email, Internet website, facsimile transmission or regular mail. This notice shall be accessible to the applicant without need to open an attachment or link to any other document; and
  - (B) the terms of service and Your Rights as a Customer documents. These may be documents attached to the confirmation email, or the REP or aggregator may include a link to an Internet webpage containing the documents.
- (e) **Written enrollment.** For enrollments of customers via a written letter of authorization (LOA), a REP or aggregator shall obtain authorization and verification of the switch or move-in request from the applicant in accordance with this subsection.
- (1) All LOAs for move-in or switch orders shall be in plain, easily understood language. The entire enrollment shall be in the same language.
  - (2) The LOA shall be a separate or easily separable document containing the requirements prescribed by this subsection for the sole purpose of authorizing the REP to initiate a switch request. The LOA is not valid unless it is signed and dated by the customer requesting the move-in or switch.
  - (3) The LOA may contain a description of inducements associated with enrolling with the REP; however, the actual inducement itself shall not be either included on or as part of the LOA, or constitute the LOA by itself.
  - (4) The LOA shall be legible and shall contain clear and unambiguous language.
  - (5) **Required authorization disclosures.** The LOA shall disclose the following information:
    - (A) the name of the new REP;
    - (B) the name of the specific electric service package or plan for which the applicant's assent is attained;
    - (C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP shall provide a means of documenting an applicant's language preference;
    - (D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
    - (E) term or length of the term of service;
    - (F) the presence or absence of early termination fees or penalties, and applicable amounts;
    - (G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or POLR shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title;
    - (H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;
    - (I) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;
    - (J) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable; and
    - (K) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title, that the customer will not receive a bill and may request a summary of usage and payment.
  - (6) **Verification of authorization of written enrollment.** A REP or aggregator shall, as part of the LOA:
    - (A) obtain or confirm the applicant's billing name, billing address, and service address;
    - (B) obtain or confirm the applicant's ESI-ID, if available;
    - (C) affirmatively inquire whether the applicant has decided to establish new service or change from their current REP to the new REP;

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- (D) affirmatively inquire whether the applicant designates the new REP to perform the necessary tasks to complete a switch or move in for the applicant's service with the new REP; and
  - (E) obtain one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number.
- (7) The following LOA form meets the requirements of this subsection if modified as appropriate for the requirements of paragraph (5)(G) of this subsection. Other versions may be used, but shall contain all the information and disclosures required by this subsection.

**LETTER OF AUTHORIZATION**

REP name and license number: \_\_\_\_\_  
Applicant billing name: \_\_\_\_\_  
Applicant billing address: \_\_\_\_\_  
Applicant service address: \_\_\_\_\_  
City, state, zip code: \_\_\_\_\_  
ESI ID, if available: \_\_\_\_\_

If applicable, name of individual legally authorized to act for customer and relationship to applicant: \_\_\_\_\_  
Telephone number of individual authorized to act for applicant: \_\_\_\_\_

\_\_\_\_By initialing here, I acknowledge that I have read and understand the terms of service for the product for which I am enrolling.

\_\_\_\_By initialing here, I acknowledge that I understand that the price I am agreeing to is \_\_\_\_cents per kWh, the term of service that I am agreeing to is \_\_\_\_\_, that I will be required to pay a deposit in the amount of \$\_\_\_\_\_in order to enroll, that I prefer to receive information from my REP in English/Spanish (circle one), and that there is a penalty for early cancellation of \_\_\_\_\_as specified by the terms of service.

\_\_\_\_By initialing here and signing below, I am authorizing (name of new REP) to become my new retail electric provider and to act as my agent to perform the necessary tasks to establish my electric service account with (name of new REP). This authorization to establish or switch my provider of electric service extends to the following locations (list each service address):  
\_\_\_\_\_  
\_\_\_\_\_

**I have read and understand this Letter of Authorization and the terms of service that describe the service I will be receiving. I am at least eighteen years of age and legally authorized to select or change retail electric providers for the service address(s) listed above.**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**You have the right to review and, in the case of a switch request, rescind the terms of service within three federal business days, after receiving the terms of service, without penalty. You will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission before your electric service is switched to the REP.**

- (8) Before obtaining a signature from a customer, a REP shall:
  - (A) provide to the applicant a reasonable opportunity to read the terms of service, Electricity Facts Label, Prepaid Disclosure Statement (PDS), if applicable, and any written materials accompanying the terms of service document; and

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- (B) answer any questions posed by any applicant about information contained in the documents.
- (9) Upon obtaining the applicant's signature, a REP or aggregator shall immediately provide the applicant a legible copy of the signed LOA, and shall distribute or mail the terms of service document, Electricity Facts Label, PDS, if applicable, and Your Rights as a Customer disclosure. If a written solicitation by a REP contains the terms of service document, any tear-off portion that is submitted by the applicant to the REP to obtain electric service shall allow the applicant to retain the terms of service document.
- (10) The applicant's signature on the LOA shall constitute an authorization of the move-in or switch request if the LOA complies with the provisions of this section and the terms of service comply with the requirements of §25.475(d) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).
- (f) **Enrollment via door-to-door sales.** A REP or aggregator that engages in door-to-door marketing at an applicant's or customer's residence shall comply with the following requirements:
  - (1) **Solicitation requirements.** A REP or aggregator that engages in door-to-door marketing at an applicant's residence shall comply with the following requirements:
    - (A) The REP or aggregator shall provide the disclosures required by this section and the three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling Off Period for Sales Made at Homes or at Certain Other Locations (16 C.F.R. Part 429).
    - (B) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. In addition, the individual shall wear an identification badge that includes the individual's name and photograph, the REP or aggregator's certification or registration number, and a toll-free telephone number maintained by the REP or aggregator that the applicant may call to verify the door-to-door representative's identity during specified business hours. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.
    - (C) The REP or aggregator shall affirmatively state that it is not a representative of the applicant's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.
    - (D) The REP or aggregator shall not represent that an applicant or customer is required to switch service in order to continue to receive power.
    - (E) Door-to-door representatives shall adhere to all local city/subdivision guidelines concerning door-to-door solicitation.
  - (2) **Use of a portable electronic device (PED) in door-to-door sales.** A REP or aggregator may use a PED to conduct door-to-door sales at an applicant's or customer's residence. For the purpose of this section, a PED is defined as a nonstationary light-weight, electrically-powered device that is capable of communications, data storage and processing, and accessing, directly or indirectly, the REP or aggregator network. Examples of PEDs include, but are not limited to: laptop computers, tablets, tablet computers, personal digital assistants, and smart phones.
    - (A) The REP or aggregator is responsible for ensuring that the PED complies with the requirements of this section.
    - (B) The PED shall be owned, rented, or leased by the REP, aggregator, or third-party vendor retained by the REP or aggregator. The PED shall not be owned by an individual employee of the REP, aggregator, or vendor that has been retained by the REP or aggregator.
    - (C) The entire enrollment process shall be in plain, easily understood language, and be consistent with the requirements of §25.473 of this title (relating to Non-English

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- Language Requirements.) The entire solicitation and enrollment process shall be conducted in the same language. The REP or aggregator shall provide a means of documenting the applicant's language preference.
- (D) All information disclosed to the applicant or customer on the PED must be easily readable and clearly disclosed.
  - (E) The PED shall:
    - (i) be secure from unauthorized access;
    - (ii) have the means to protect any applicant and customer data should the device be lost or stolen, such as for example, remote data wipe capabilities; and
    - (iii) have enabled mobile locating and tracking capabilities that allows the REP or aggregator to track the time and location of each customer enrollment, subject to the availability of industry standard communications signals such as cellular or Wi-Fi at the specific time of enrollment.
  - (F) Any applicant or customer specific information entered into the PED shall be transferred within one business day to the REP or aggregator's systems using Secure Socket Layer or similar encryption standard to ensure privacy of applicant or customer information. Once the transfer of data has been verified, any such applicant or customer specific information retained on the PED shall be removed.
  - (G) The REP or aggregator is responsible for the protection of all applicant or customer information.
- (3) **Required authorization disclosures.** Prior to requesting verification of the applicant's authorization to enroll, a REP or aggregator shall comply with all of the authorization disclosure requirements in either subsections (e)(5) or (h)(1) - (4) of this section.
- (A) A REP or aggregator may provide the disclosures required by subsection (e)(5) of this section using a PED; however, if an applicant expresses an inability to read or understand the disclosure information on the PED, the REP or aggregator shall either provide the required disclosures pursuant to subsection (e)(5) of this section in paper format, provide the disclosures pursuant to subsection (h)(1) - (4) of this section, or advise the applicant that they will not be able to complete enrollment.
  - (B) If a REP or aggregator provides the disclosures using a PED, the REP or aggregator shall:
    - (i) provide the applicant a reasonable opportunity to read the terms of service, Electricity Facts Label (EFL), Prepaid Disclosure statements (PDS), if applicable, and any written or electronic materials disclosed;
    - (ii) accurately and truthfully answer any questions posed by the applicant about information contained in the documents;
    - (iii) advise the applicant that if the applicant is under contract with another REP, termination fees for that contract may apply; and
    - (iv) obtain an electronic signature from the applicant that adheres to Texas and federal guidelines or, alternatively, require unassisted direct entry of a uniquely identifiable input by the applicant affirming that the applicant has read and understands the disclosures, terms of service, EFL, PDS, if applicable, and all written or electronic materials disclosed prior to verification of authorization.
- (4) **Verification of authorization for door-to-door enrollment.** A REP, or an independent third party retained by the REP, shall telephonically obtain and record all required verification information from the applicant to verify the applicant's decision to enroll with the REP in accordance with this paragraph, unless verification is obtained using a PED as specified in paragraph (5) of this subsection. If verification is obtained using a PED as specified in paragraph (5) of this subsection, the REP or aggregator has the option, with applicant consent, to complete the verification of authorization requirement utilizing the process defined in paragraph (5) of this subsection.
- (A) Electronically record on audiotape, a wave sound file, or other recording device the entirety of an applicant's verification. The verification call shall comply with the requirements in subsection (h)(5) of this section.

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- (B) Inform the applicant that the verification of authorization call is being recorded.
  - (C) Verification shall be conducted in the same language as that used in the sales transaction and authorization.
  - (D) Automated systems shall provide the applicant with the option of exiting the system and nullifying the enrollment at any time during the call.
  - (E) A REP or its sales representative initiating a three-way call or a call through an automated verification system shall not participate in the verification process.
  - (F) The REP shall not submit a move-in or switch request until it has obtained a recorded telephonic verification of the enrollment.
- (5) **Verification of authorization for door-to-door enrollments using a PED.**
- (A) The REP or aggregator shall obtain affirmation from the applicant that the applicant is authorized to perform the enrollment and consents to the enrollment being verified using a PED. If the applicant does not consent to the enrollment being verified using a PED or expresses an inability to read or understand the verification of authorization information on the PED at any time, the representative shall verify authorization of enrollment pursuant to paragraph (4) of this subsection or advise the applicant that they will not be able to complete enrollment.
  - (B) If the applicant consents to verification being conducted using a PED, the REP or aggregator shall:
    - (i) obtain or confirm the applicant's email address or other agreed upon means of communication, billing name, billing address, service address, and name of any authorized representative;
    - (ii) obtain or confirm the applicant's electric service identifier (ESI-ID), if available;
    - (iii) obtain or confirm at least one of the following account access verification data for the applicant: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license number or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number; and
    - (iv) obtain applicant's electronic signature that adheres to Texas and federal guidelines or, alternatively, require unassisted direct entry of a uniquely identifiable input by the applicant matching the input obtained pursuant to paragraph (3) of this subsection affirming that the customer or applicant is authorized to select or change REPs for the service address and authorizes the new REP to perform necessary tasks to complete a switch or move-in for the customer's or applicant's service with the new REP.
  - (C) The REP shall not submit a move-in or switch request until it has obtained the applicant's verification of the enrollment.
  - (D) After enrollment, the REP or aggregator shall send a confirmation by first class mail, email, or other agreed upon means of communication to the applicant of the applicant's request to select the REP. The REP or aggregator may assume that any delivery of the confirmation deposited first class within the United States Postal service will be received within three federal business days. The confirmation shall include:
    - (i) a clear and conspicuous notice in the body of the confirmation of the customer's three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling Off Period for Sales Made at Homes or Certain Other Locations (16 C.F.R. Part 429). The notice shall state that the customer may exercise their right to rescission within three federal business days after receiving the terms of service without penalty and offer the customer the option of exercising this right by toll-free number, email, Internet website, facsimile transmission, or regular mail. If conveyed electronically, the notice shall be accessible to the applicant without need to open an attachment or link to any other document; and

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- (ii) the terms of service document, EFL, PDS, if applicable, and Your Rights as a Customer disclosure, or links thereto.
- (6) Nothing in this subsection is intended to limit the use of PEDs in the context of other forms of enrollment to the extent those enrollments otherwise comply with the applicable rule requirements.
- (g) **Personal solicitations other than door-to-door marketing.** A REP or aggregator that engages in personal solicitation at a location other than a customer's residence (such as malls, fairs, or places of business) shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this section. In addition, the REP or aggregator shall comply with the following additional requirements:
  - (1) For transactions occurring at a place other than the REP or aggregator's place of business, the REP or aggregator shall provide the three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (16 C.F.R. Part 429).
  - (2) For solicitations of residential customers, the individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.
  - (3) The individual who represents the REP or aggregator shall not state or imply that it is a representative of the customer's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.
  - (4) The REP or aggregator shall not represent that an applicant is required to switch service in order to continue to receive power.
- (h) **Telephonic enrollment.** For enrollments of applicants via telephone solicitation, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.
  - (1) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's authorization and verification. Automated systems shall provide the customers with either the option of speaking to a live person at any time during the call, or the option to exit the call and cancel the enrollment.
  - (2) The REP or aggregator shall inform the customer that the authorization and verification portions of the call are being recorded.
  - (3) Authorizations and verifications shall be conducted in the same language as that used in the sales transaction.
  - (4) **Required authorization disclosures.** Prior to requesting verification of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:
    - (A) the name of the new REP;
    - (B) the name of the specific electric service package or plan for which the applicant's assent is attained;
    - (C) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
    - (D) term or length of the term of service;
    - (E) the presence or absence of early termination fees or penalties, and applicable amounts;
    - (F) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated or the method in which the deposit will be calculated. An affiliated REP or POLR shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title;
    - (G) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

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- (H) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;
  - (I) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable; and
  - (J) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title, that the customer will not receive a bill and may request a summary of usage and payment.
- (5) **Verification of authorization of telephonic enrollment.**
- (A) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's verification of the authorization. The REP or aggregator shall inform the applicant that the verification call is being recorded.
  - (B) Prior to final confirmation by the applicant that they wish to enroll with the REP, the REP shall, at a minimum:
    - (i) obtain or confirm the applicant's billing name, billing address, and service address;
    - (ii) obtain or confirm the applicant's ESI-ID, if available;
    - (iii) for a move-in request, ask the applicant, "do you agree to become a customer with (REP) and allow (REP) to complete the tasks required to start your electric service?" and the applicant must answer affirmatively; or
    - (iv) for a switch request, ask the applicant, "do you agree to become a (REP) customer and allow us to complete the tasks required to switch your electric service from your current REP to (REP)?" and the applicant must answer affirmatively;
    - (v) ask the applicant, "do you want to receive information in English, Spanish (or the language used in the marketing of service to the applicant)?" The REP shall provide a means of documenting the applicant's language preference; and
    - (vi) obtain or confirm one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth, driver's license or government issued identification number. For non-residential applicants, a REP may obtain the applicant's federal tax identification number.
  - (C) In the event the applicant does not consent to or does not provide any of the information listed in subparagraph (B) of this paragraph, the enrollment shall be deemed invalid and the REP shall not submit a switch or move-in request for the applicant's service.
  - (D) If a REP has solicited service for prepaid service, an actual pre-payment by a customer may be substituted for a telephonic verification, provided that the pre-payment is not taken at the time of the solicitation by the sales representative that has obtained the authorization from the customer, and the REP has obtained a written LOA from the customer and can produce documentation of the pre-payment. The REP shall not submit a move-in or switch request until it has received the prepayment from the customer.
- (i) **Record retention.**
- (1) A REP or aggregator shall maintain non-public records of each applicant's authorization and verification of enrollment for 24 months from the date of the REP's initial enrollment of the applicant and shall provide such records to the applicant, customer, or commission staff, upon request.
  - (2) A REP or an aggregator shall submit copies of its sales script, terms of service document, and any other materials used to obtain a customer's authorization or verification to the commission staff upon request. In the event commission staff request documents under this subsection, the requested records must be delivered to the commission staff within 15 days of the written request, unless otherwise agreed to by commission staff.

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- (3) In the event an applicant or customer disputes an enrollment or switch, the REP shall provide to the applicant or customer proof of the applicant's or customer's authorization within five business days of the request.
- (j) **Right of rescission.** A REP shall promptly provide the applicant with the terms of service document after the applicant has authorized the REP to provide service to the applicant and the authorization has been verified. For switch requests, the REP shall offer the applicant a right to rescind the terms of service without penalty or fee of any kind for a period of three federal business days after the applicant's receipt of the terms of service document. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the applicant within three federal business days. Any REP receiving an untimely notice of rescission from the applicant shall inform the applicant that the applicant has a right to select another REP and may do so by contacting that REP. The REP shall also inform the applicant that the applicant will be responsible for charges from the REP for service provided until the applicant switches to another REP. The right of rescission is not applicable to an applicant requesting a move-in.
- (k) **Submission of an applicant's switch or move-in request to the registration agent.** A REP shall submit a move-in or switch request to the registration agent so that the move-in or switch will be processed on the approximate scheduled date agreed to by the applicant and as allowed by the tariff of the TDU, municipally owned utility, or electric cooperative. A REP shall submit an applicant's switch request to the registration agent as a standard switch. In the alternative, the REP shall submit an applicant's switch request as a self-selected switch if the applicant requests a specific date for a switch, consistent with the applicable transmission and distribution tariff. A REP may submit an applicant's switch request to the registration agent prior to the expiration of the rescission period prescribed by subsection (j) of this section, provided that if the customer makes a timely request to cancel service the REP shall take action to ensure that the switch is canceled or the customer is promptly returned to its chosen REP without inconvenience or additional cost to the customer. The applicant shall be informed of the approximate scheduled date that the applicant will begin receiving electric service from the REP, and of any delays in meeting that date, if known by the REP.
- (l) **Duty of the registration agent.**
- (1) When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with this section and its protocols, to the extent that the protocols are consistent with this section. The registration agent shall send a switch notification notice to the applicant that shall:
- (A) be worded in English and Spanish consistent with §25.473(d) of this title (relating to Non-English Language Requirements);
- (B) identify the REP that initiated the switch request; and
- (C) provide the names and telephone numbers for the gaining and losing REP.
- (2) The registration agent shall direct the TDU to implement any switch, move-in, or transfer to the REP or the POLR in accordance with this section and its protocols.
- (m) **Exemptions for certain transfers.** The provisions of this section relating to authorization and right of rescission are not applicable when the applicant's or customer's electric service is:
- (1) transferred to the POLR pursuant to §25.43 of this title (relating to Provider of Last Resort (POLR)) when the customer's REP of record defaults or otherwise ceases to provide service. Nothing in this subsection implies that the customer is accepting a contract with the POLR for a specific term;
- (2) transferred to the competitive affiliate of the POLR pursuant to §25.43(o) of this title;
- (3) transferred to another REP in accordance with section §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another); or
- (4) transferred from one premise to another premise without a change in REP and without a material change in the terms of service.
- (n) **Fees.** A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless an applicant without a Provisioned Advanced Meter requests an out-of-cycle meter read for the purpose of a self-selected switch. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the

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registration agent. The TDU shall not charge a fee for a review or adjustment described in subsection (p)(2) of this section. To the extent that the TDU assesses a REP a properly tariffed charge for connection of service, out-of-cycle meter read for self-selected switch requests, service order cancellations, or changes associated with the switching of service or the establishment of new service, any such fee may be passed on to the applicant or customer by the REP. A TDU shall not assess to a REP or an applicant any costs associated with a switch cancellation, including inadvertent gain fees, that results from the applicant's exercise of the three-day right of rescission. The TDU shall include such costs in the cost recovery mechanism described in subsection (o) of this section.

- (o) **TDU cost recovery.** The TDU may recover the reasonable costs associated with performing meter reads for purposes of a standard switch through one of the following two options at the TDU's discretion:
- (1) TDU costs associated with performing standard meter reads for the purpose of switches, to the extent not reflected in base rates, shall be considered costs incurred in deploying advanced metering functionality and are to be considered in setting a surcharge established under PURA §39.107 (h) and §25.130 of this title (relating to Advanced Metering). The costs shall be included in the annual reports filed pursuant to §25.130(k)(5) of this title as actual costs spent to date in the deployment of Advanced Metering Systems (AMS) and shall be considered in setting, reconciling and or updating the AMS surcharge pursuant to §25.130(k) of this title; or,
  - (2) a TDU shall create a regulatory asset for the expenses associated with performing standard meter reads for the purpose of switches pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such a regulatory asset, including carrying charges, shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.
- (p) **Meter reads for the purpose of a standard switch.**
- (1) Beginning December 1, 2009, a TDU shall perform actual, as opposed to estimated, meter reads for at least 80% of meter reads for the purpose of a standard switch in any given month, and at least 95% of meter reads for the purpose of a standard switch in any calendar year, exclusive of remote meter reads using advanced meters. Until December 1, 2009, a TDU may perform estimated meter reads for standard switch requests only for residential customers, exclusive of customers with meters that have remote read capability. A TDU shall use best efforts to perform as many actual reads as possible for standard switches.
  - (2) Notwithstanding §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), an estimated meter read for the purpose of a standard switch is not subject to adjustment, except as provided in subparagraph (A) or (B) of this paragraph. A customer is obligated to pay a bill based upon an estimated meter read for the purpose of a switch, including any adjustment made pursuant to subparagraph (A) or (B) of this paragraph.
    - (A) The TDU shall adjust the estimated meter read if the losing REP's billed usage is greater than the total kilowatt-hours used by the customer in the TDU monthly meter read cycle during which the estimate was made.
    - (B) Only upon the receipt of a customer dispute of the estimated usage to either the gaining or losing REP, either REP may request the TDU to review the estimate. In reviewing the estimate, the TDU shall promptly calculate the average actual kWh usage per day for the time period from the actual meter reading occurring prior to the estimated reading to the actual meter reading occurring after the estimated reading. The TDU shall determine whether the usage per day for the estimated period prior to the switch is at least 25% greater than, or 25% less than, the average actual kWh usage per day. If so, the TDU shall promptly adjust the estimated meter read. The TDU may adjust an estimate that does not meet this 25% threshold, on a non-discriminatory basis.
    - (C) The TDU shall apply a reasonable methodology in making adjustments pursuant to subparagraphs (A) and (B) of this paragraph and shall make the methodology available to REPs. Consistent with any meter read adjustments, the TDU shall adjust its invoices to the affected REP or REPs.

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- (3) A TDU shall file performance reports with the commission as part of the information filed under §25.88 of this title (relating to Retail Market Performance Measure Reporting). These reports shall show by month the number and percentages of actual and estimated meter reads for the purpose of switches, and whether that month's performance was in compliance with paragraph (1) of this subsection.
- (q) **Scheduled switch date.** Once a TDU notifies the REPs of a scheduled switch date, the TDU shall perform an actual or estimated read of the customer's meter for that date.

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#### §25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers.

- (a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) and aggregators, when specifically stated, in connection with the provision of service and marketing to residential and small commercial customers. This section is effective April 1, 2010. REPs are not required to modify contract documents related to contracts entered into before this date, but shall provide notice of expiration as required by subsection (e) of this section.
- (b) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context indicates otherwise.
- (1) **Contract** -- The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), and the documentation of enrollment pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider).
  - (2) **Contract documents** -- The TOS, EFL and YRAC.
  - (3) **Contract expiration** -- The time when the initial term contract is completed. A new contract is initiated when the customer begins receiving service pursuant to the new EFL.
  - (4) **Contract term** -- The time period the contract is in effect.
  - (5) **Fixed rate product** -- A retail electric product with a term of at least three months for which the price (including recurring charges) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in the Transmission and Distribution Utility (TDU) charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.
  - (6) **Indexed product** -- A retail electric product for which the price, including recurring charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer, and to reflect actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that are beyond the REPs control. An indexed product may be for a term of three months or more, or may be a month-to-month contract.
  - (7) **Month-to-month contract** -- A contract with a term of 31 days or less. A month-to-month contract may not contain a termination fee or penalty.
  - (8) **Price** -- The cost for a retail electric product that includes all recurring charges excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax.
  - (9) **Recurring charge** -- A charge for a retail electric product that is expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a twelve month period. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.
  - (10) **Term contract** -- A contract with a term in excess of 31 days.
  - (11) **Variable price product** -- A retail product for which price may vary according to a method determined by the REP, including a product for which the price, can increase no more than a defined percentage as indexed to the customer's previous billing month's price. For residential customers, a variable price product can be only a month-to-month contract.
- (c) **General Retail Electric Provider requirements.**
- (1) **General Disclosure Requirements.**
    - (A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs and YRACs distributed

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by a REP or aggregator shall be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:

- (i) Using the term or terms “fixed” to market a product that does not meet the definition of a fixed rate product.
  - (ii) Suggesting, implying, or otherwise leading someone to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.
  - (iii) Suggesting, implying or otherwise leading someone to believe that receiving retail electric service from a REP will provide a customer with better quality of service from the TDU.
  - (iv) Falsely suggesting, implying or otherwise leading someone to believe that a person is a representative of a TDU or any REP or aggregator.
  - (v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the initial contract term.
- (B) Written and electronic communications shall not refer to laws, including commission rules without providing a link or website address where the text of those rules are available. All printed advertisements, electronic advertising over the Internet, and websites, shall include the REP’s certified name or commission authorized business name, or the aggregator’s registered name, and the number of the certification or registration.
- (C) The TOS, EFL, and YRAC shall be provided to each customer upon enrollment. Each document shall be provided to the customer whenever a change is made to the specific document and upon a customer’s request, at any time free of charge.
- (D) A REP shall retain a copy of each version of the TOS, EFL, and YRAC during the time the plan is in effect for a customer and for four years after the contract ceases to be in effect for any customer. REPs shall provide such documents at the request of the commission or its staff.
- (2) **General contracting requirements.**
- (A) A TOS, EFL, and YRAC shall be complete, shall be written in language that is clear, plain and easily understood, and shall be printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents shall include a link or internet address to the full text of the law.
  - (B) All contract documents shall be available to the commission to post on its customer education website (if the REP chooses to post offers to the website).
  - (C) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. The REP may require a customer to provide evidence that it is moving. There shall be no early termination fee assessed to the customer as a result of the customer’s relocation if the customer provides a forwarding address and, if required, reasonable evidence that the customer no longer occupies the location specified in the contract.
  - (D) A TOS and EFL shall disclose the type of product being described, using one of the following terms: fixed rate product, indexed product or a variable price product.
  - (E) A REP shall not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less for an existing residential customer or in response to an applicant’s request to become a residential customer.
  - (F) In any dispute between a customer and a REP concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.

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- (G) For a variable price product, the REP shall disclose on the REP's website and through a toll-free number the current price and, for residential customers, one year price history, or history for the life of the product, if it has been offered less than one year. A REP shall not rename a product in order to avoid disclosure of price history. The EFL of a variable price product or indexed product shall include a notice of how the current price and, if applicable, historical price information may be obtained.
- (H) A REP shall comply with its contracts.
- (3) **Specific contract requirements.**
  - (A) The contract term shall be conspicuously disclosed.
  - (B) The start and end dates of the contract shall be available to the customer upon request. If the REP cannot determine the start date, the REP may estimate the start date. After the start date is known, the REP shall specify the end date of the contract by:
    - (i) specifying a calendar date; or
    - (ii) reference to the first meter read on or after a specific calendar date.
  - (C) If a REP specifies a calendar date as the end date, the REP may bill the term contract price through the first meter read on or after the end date of the contract.
- (4) **Website requirements.**
  - (A) Each REP that offers residential retail electric products for enrollment on its website shall prominently display the EFL for any products offered without a person having to enter any personal information other than zip code and information that allows determination of the type of offer the consumer wishes to review. Person-specific information shall not be required.
  - (B) The EFL for each product shall be printable in no more than a two page format. The EFL, TOS, and YRAC for any products offered for enrollment on the website shall be available for viewing or downloading.
- (d) **Changes in contract and price and notice of changes.** A REP may make changes to the terms and conditions of a contract or to the price of a product as provided for in this section. Changes in term (length) of a contract require the customer to enter into a new contract and may not be made by providing the notice described in paragraph (3) of this subsection.
  - (1) **Contract changes other than price.**
    - (A) A REP may not change the price (other than as allowed by paragraph (2) of this subsection) or contract term of a term contract for a retail electric product, during its term; but may change any other provision of the contract, with notice under paragraph (3) of this subsection.
    - (B) A REP may not change the terms and conditions of a month-to-month product, indexed or variable price products, unless it provides notice under paragraph (3) of this subsection.
  - (2) **Price changes.**
    - (A) A REP may only change the price of a fixed rate product, an indexed product, or a variable product consistent with the definitions in this section and according to the product's EFL. Such price changes do not require notice under paragraph (3) of this subsection.
    - (B) For a fixed rate product, each bill shall either show the price changes on one or more separate line items, or shall include a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions.
    - (C) Each residential bill for a variable price product shall include a statement informing the customer how to obtain information about the price that will apply on the next bill.
  - (3) **Notice of changes to terms and conditions.** A REP must provide written notice to its customers at least 14 days in advance of the date that the change in the contract will be applied

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to the customer's bill or take effect. Notice is not required for a change that benefits the customer.

- (4) **Contents of the notice to change terms and conditions.** The notice shall:
- (A) be provided in or with the customer's bill or in a separate document;
  - (B) include the following statement, "Important notice regarding changes to your contract" clearly and conspicuously in the notice;
  - (C) identify the change and the specific contract provisions that address the change;
  - (D) clearly specify what actions the customer needs to take if the customer does not accept the proposed changes to the contract;
  - (E) state in bold lettering that if the new terms are not acceptable to the customer, the customer may terminate the contract and no termination penalty shall apply for 14 days from the date that the notice is sent to the customer but may apply if action is taken after the 14 days have expired. No such statement is required if the customer would not be subject to a termination penalty under any circumstances; and
  - (F) state in bold lettering that establishing service with another REP may take up to seven business days.
- (e) **Contract expiration and renewal offers.** The REP shall send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP shall send the notice by mail to a residential customer or shall send the required notice to a customer's e-mail address if available to the REP and if the customer has requested to receive contract-related notices electronically. The REP shall send the notice to a small commercial customer by mail or may send the notice to the customer's e-mail address if available to the REP and, if the customer has requested to receive contract-related notices electronically. Nothing in this section shall preclude a REP from offering a new contract to the customer at any other time during the contract term.
- (1) **Contract Expiration.**
- (A) If a customer takes no action in response to a notice of contract expiration for the continued receipt of retail electric service upon the contract's expiration, the REP shall serve the customer pursuant to a default renewal product that is a month-to-month product.
  - (B) Written notice of contract expiration shall be provided in or with the customer's bill, or in a separate document.
    - (i) If notice is provided with a residential customer's bill, the notice shall be printed on a separate page. A statement shall be included on the outside of the envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."
    - (ii) If the notice is provided in or with a small commercial customer's bill, the REP must include a statement on the outside of the billing envelope or in the subject line of an electronic bill that states, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."; or
    - (iii) If notice is provided in a separate document, a statement shall be included on the outside of the envelope and in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice. See Enclosed." for residential customers or for small commercial customers, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."

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- (C) A written notice of contract expiration (whether with the bill or in a separate envelope) shall set out the following:
  - (i) The date as provided for in subsection (c)(3)(B) of this section that the existing contract will expire.
  - (ii) If the REP provided a calendar date as the end date for the contract, a statement in bold lettering no smaller than 12 point font that no termination penalty shall apply to residential and small commercial customers 14 days prior to the date stated as the expiration date in the notice. In addition, a description of any fees or charges associated with the early termination of a residential customer's fixed rate product that would apply before 14 days prior to the date stated as the expiration date in the notice must be provided. No such statements are required if the original contract did not contain a termination fee.
  - (iii) If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty shall apply to residential customers after receipt of the contract expiration notice, or that no termination penalty shall apply to small commercial customers for 14 days prior to the contract end date. No such statement is required if the original contract did not contain a termination fee.
  - (iv) A description of any renewal offers the REP chooses to make available to the customer and the location of the TOS and EFL for each of those products and a description of actions the customer needs to take to continue to receive service from the REP under the terms of any of the described renewal offers and the deadline by which actions must be taken.
  - (v) A copy of the EFL for the default renewal product if the customer takes no action, or if the EFL is not included with the contract expiration notice, the REP must provide the EFL to the customer at least 14 days before the expiration of the contract using the same delivery method as was used for the notice. The contract expiration notice must specify how and when the EFL will be made available to the customer.
  - (vi) A statement that if the customer takes no action, service to the customer will continue pursuant to the EFL for the default renewal product that shall be included as part of the notice of contract expiration. The TOS for the default renewal product shall be included as part of the notice, unless the TOS applicable to the customer's existing service also applies to the default renewal product.
  - (vii) A statement that the default service is month-to month and may be cancelled at any time with no fee.
- (2) **Affirmative consent.** A customer that is currently receiving service from a REP may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Affirmative consent is not required when a REP serves the customer under a default renewal product pursuant to paragraph (1) of this subsection. Each recording, electronic document, or written consent form must:
  - (A) Indicate the customer's name, billing address, service address (for small commercial customers, the ESI ID may be used rather than the service address);
  - (B) Indicate the identification number of the TOS and EFL under which the customer will be served;

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- (C) Indicate if the customer has received, or when the customer will receive copies of the TOS, EFL and YRAC;
  - (D) Indicate the price(s) which the customer is agreeing to pay;
  - (E) Indicate the date or estimated date of the re-enrollment, the contract term, and the estimated start and end dates of contract term;
  - (F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response; and
  - (G) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.
- (f) **Terms of service document.** The following information shall be conspicuously contained in the TOS:
- (1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).
  - (2) **Pricing and payment arrangements.**
    - (A) Description of the amount of any routine non-recurring charges resulting from a move-in or switch that may be charged to the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;
    - (B) For small commercial customers, a description of the demand charge and how it will be applied, if applicable;
    - (C) An itemization, including name and cost, of any non-recurring charges for services that may be imposed on the customer for the retail electric product, including an application fee, charges for default in payment or late payment, and returned checks charges;
    - (D) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the TOS; and
    - (E) A description of payment arrangements and bill payment assistance programs offered by the REP.
  - (3) **Deposits.** If the REP requires deposits from its customers:
    - (A) a description of the conditions that will trigger a request for a deposit;
    - (B) the maximum amount of the deposit or the manner in which the deposit amount will be determined;
    - (C) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;
    - (D) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits); and
    - (E) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.
  - (4) **Rescission, Termination and Disconnection.**
    - (A) In a conspicuous and separate paragraph or box:
      - (i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS, pursuant to §25.474 of this title; and
      - (ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile number or e-mail address that the customer may use to rescind service.
    - (B) A statement as to how service can be terminated and any penalties that may apply;
    - (C) A statement of customer's ability to terminate service without penalty if customer moves to another premises and provides evidence that it is moving, if required, and a forwarding address; and

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- (D) If the REP has disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.
  - (5) **Antidiscrimination.** A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services. For residential customers, a statement informing the customer that the REP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less.
  - (6) **Other terms.** Any other material terms and conditions, including exclusions, reservations, limitations of liability, or special equipment requirements, that are a part of the contract for the retail electric product.
  - (7) **Contract expiration notice.** For a term contract, the TOS shall contain a statement informing the customer that a contract expiration notice will be sent at least 14 days prior to the end of the initial contract term. The TOS shall also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which shall be a month-to-month product.
  - (8) A statement describing the conditions under which the contract can change and the notice that will be provided if there is a change.
  - (9) **Version number.** A REP shall assign an identification number to each version of its TOS, and shall publish the number on the terms of service document.
- (g) **Electricity Facts Label.** The EFL shall be unique for each product offered and shall include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.
- (1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).
  - (2) **Pricing disclosures.** Pricing information shall be disclosed by a REP in an EFL. The EFL shall state specifically whether the product is a fixed rate, variable price or indexed product.
    - (A) For a fixed rate product, the EFL shall provide the total average price for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer.
    - (B) For an indexed product, the EFL shall provide sample prices for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, resulting from a reasonable range of values for the inputs to the pre-defined pricing formula.
    - (C) For a variable price product, the EFL shall provide the total average price for electric service for the first billing cycle reflecting all recurring charges, including any TDU charges that may be passed through and excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer. Actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charge to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that were not implemented prior to the issuance of the EFL and were not included in the average price calculation may be directly passed through to customers beginning with the customer's first billing cycle.
    - (D) The total average price for electric service shall be expressed in cents per kilowatt hour, rounded to the nearest one-tenth of one cent for the following usage levels:

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- (i) For residential customers, 500, 1,000 and 2,000 kilowatt hours per month; and
  - (ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month. If demand charges apply assume a 30 percent load factor.
- (E) If a REP combines the charges for retail electric service with charges for any other product, the REP shall:
  - (i) If the electric product is sold separately from the other products, disclose the total price for electric service separately from other products; and
  - (ii) If the REP does not permit a customer to purchase the electric product without purchasing the other products or services, state the total charges for all products and services as the price of the total electric service. If the product has a one-time cost up front, for the purposes of the average price calculation, the cost of the product may be figured in over a 12-month period with 1/12 of the cost being attributed to a single month.
- (F) The following shall be included on the EFL for specific product types:
  - (i) For indexed products, the formula used to determine an indexed product, including a website and phone number customers may contact to determine the current price.
  - (ii) For a variable price product that increases no more than a defined percentage as indexed to the customer's previous billing month's price, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month." For residential customers, the following additional statement is required: "Please review the historical price of this product available at {insert specific website address and toll-free telephone number}." In the disclosure chart, the box describing whether the price can change during the contract period shall include the following statement: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control."
  - (iii) For all other variable price products, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}. In the disclosure chart, the box describing whether the price can change during the contract period shall include the following statement: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control." For residential customers, the following additional statement is required: "Please review the historical price of this product available at {insert specific website address and toll-free telephone number}."
- (3) **Fee Disclosures.**
  - (A) If customers may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL shall include a statement in the electricity price section that some customers will be subject to a

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special charge that is not included in the total average price for electric service and shall disclose how the customer can determine the price and applicability of the special charge.

- (B) A listing of all fees assessed by the REP that may be charged to the customer and whether the fee is included in the recurring charges.
- (4) **Term Disclosure.** EFL shall include disclosure of the length of term, minimum service term, if any, and early termination penalties, if any.
- (5) **Renewable Energy Disclosures.** The EFL shall include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix.
- (6) **Format of Electricity Facts Label.** REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting requirements as outlined above. Such subsections should be referred to for determination of the required reporting items on the EFL. Each EFL shall be printed in type no smaller than ten points in size, unless a different size is specified in this section, and shall be formatted as shown in this paragraph:

<b>Electricity Facts Label (EFL)</b>				
{Name of REP}, {Name of Product}, {Service area (if applicable)}, {Date}				
<i>Electricity price</i>	Average Monthly Use	500kWh	1,000kWh	2,000kWh
	Average price per kWh	{x.x}¢	{x.x}¢	{x.x}¢
	For POLR use: Minimum price per kilowatt-hour.	{x.x}¢	{x.x}¢	{x.x}¢
	<p>{If applicable} On-peak {season or time}:{xxx}</p> <p>{If applicable} Average on-peak price per kilowatt-hour: {x.x}¢</p> <p>{If applicable} Average off-peak price per kilowatt-hour: {x.x}¢</p> <p>{If applicable} Potential surcharges corresponding to the given electric service.</p> <p>{If variable that does not change within a defined percentage} <b>Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}. {If residential} Please review the historical price of this product available at {insert website address and toll-free number}.</b></p> <p>{If variable that changes within a defined percentage}</p> <p><b>Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month. {If residential} Please review the historical price of this product available at {insert website address and toll-free number}.</b></p>			

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<i>Other Key Terms and questions</i>	<i>See Terms of Service statement for a full listing of fees, deposit policy, and other terms.</i>	
<i>Disclosure Chart</i>	Type of Product	(fixed rate indexed or variable)
	Contract Term	(number of months)
	Do I have a termination fee or any fees associated with terminating service?	(yes/no) (if yes, how much)
	Can my price change during contract period?	(yes/no)
	If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change) In addition if the REP chooses to pass through regulatory changes the following shall be required: “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control.”
	What other fees may I be charged?	(List, or give direct location in TOS.)
	Is this a pre-pay or pay in advance product	(yes/no)
	Does the REP purchase excess distributed renewable generation?	(yes/no)
	Renewable Content	(This product is x% renewable)
	The statewide average for renewable content is	(% of statewide average for renewable content)
	<i>Contact info, certification number, version number Additional information may be added below.</i>	

*Type used in this format*

Title: 12 point

Headings: 12 point boldface

Body: 10 point

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- (7) **Version number.** A REP shall assign an identification number to each version of its EFL, and shall publish the number on the EFL.
- (h) **Your Rights as a Customer disclosure.** The information set out in this section shall be included in a REP's "Your Rights as a Customer" document, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.
- (1) A YRAC document shall be consistent with the TOS for the retail product.
- (2) The YRAC document shall inform the customer of the REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies pursuant to §25.480 of this title (relating to Bill Payment and Adjustments).
- (3) The YRAC document shall inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection.
- (4) The YRAC document shall inform the customer of the customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.
- (5) The YRAC document shall inform the customer of the availability of:
- (A) Financial and energy assistance programs for residential customers;
- (B) Any special services such as readers or notices in Braille or TTY;
- (C) Special policies or programs available to residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems; and
- (D) Any available discounts that may be offered by the REP for qualified low-income residential customers. A REP may comply with this requirement by providing the customer with instructions for how to inquire about such discounts.
- (6) The YRAC document shall inform the customer of the following customer rights and protections:
- (A) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
- (B) The customer's right to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);
- (C) Protections relating to disconnection of service pursuant to §25.483 of this title;
- (D) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);
- (E) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List); and
- (F) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information).
- (7) **Identity and contact information.** The REP's certified name and business name (dba), certification number, mailing address, e-mail and Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference) at which the customer may obtain information concerning the product.
- (i) **Advertising claims.** If a REP or aggregator advertises or markets the specific benefits of a particular electric product, the REP or aggregator shall provide the name of the electric product offered in the advertising or marketing materials to the commission or its staff, upon request. All advertisements and marketing materials distributed by or on behalf of a REP or aggregator shall comply with this section. REPs and aggregators are responsible for representations to customers and prospective customers by

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employees or other agents of the REP concerning retail electric service that are made through advertising, marketing or other means.

- (1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP shall include the EFL of the REP making the claim. In lieu of including an EFL, the following statement shall be provided: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP).” If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. Upon request, a REP shall provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.
- (2) **Television, radio, and internet advertisements.** A REP shall include the following statement in any television, Internet, or radio advertisement that makes a specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number and website (if available) of the REP).” If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. This statement is not required for general statements regarding savings or environmental quality, but shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. Upon request, a REP shall provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.
- (3) **Outdoor advertisements.** A REP shall include, in a font size and format that is legible to the intended audience, its certified name or commission authorized business name, certification number, telephone number and Internet address (if available).
- (4) **Renewable energy claims.** A REP shall authenticate its sales of renewable energy in accordance with §25.476 of this title (relating to Renewable and Green Energy Verification). If a REP relies on supply contracts to authenticate its sales of renewable energy, it shall file a report with the commission, not later than March 15 of each year demonstrating its compliance with this paragraph and §25.476 of this title.

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#### §25.476. Renewable and Green Energy Verification.

- (a) **Purpose.** The purpose of this section is to establish the procedures by which retail electric providers (REPs) calculate and compose their renewable content pursuant to §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) and to establish guidelines and verification for claims of “green” products.
- (b) **Application.**
- (1) This section applies to all REPs. Additionally, some of the reporting requirements established in this section apply to the registration agent and to all owners of generation assets as defined in subsection (c) of this section.
  - (2) Nothing in this section shall be construed as protecting a REP against prosecution under deceptive trade practices statutes.
  - (3) In accordance with the Public Utility Regulatory Act (PURA) §39.001(b)(4), the commission and the registration agent will ensure the confidentiality of competitively sensitive information, reported to the commission or the registration agent under this section.
- (c) **Definitions.** The definitions set forth in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) apply to this section. In addition, the following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise:
- (1) **Default scorecard** -- The estimated fuel mix and environmental impact of all electricity in Texas that is not authenticated by retiring renewable energy credits (RECs).
  - (2) **Generation owner** -- A power generation company, river authority, municipally owned utility, electric cooperative, or any other entity that owns electric generating facilities in the state of Texas.
  - (3) **Generator scorecard** -- The aggregated fuel mix and environmental impact of all generating facilities located in Texas that are owned by the same generation owner.
  - (4) **New product** -- An electricity product during the first year it is marketed to customers.
  - (5) **Renewable energy credit offset (REC offset)** -- A non-tradable allowance as defined and created by §25.173 of this title (relating to Goal for Renewable Energy). For the purposes of this section, a REC offset authenticates the renewable attributes, but not the quantity, of generation produced by its associated facility.
- (d) **Marketing standards for “green” and “renewable” electricity products.**
- (1) A REP may market an electricity product as “green” if:
    - (A) All of the product’s fuel mix is renewable energy as defined in PURA §39.904(d), Texas natural gas as specified in PURA §39.904(d)(2), or a combination thereof; and
    - (B) All statements representing the product as “green,” if not containing 100% renewable energy, as defined in PURA §39.904(d), include a footnote, parenthetical note, or other obvious disclaimer that “A ‘green’ product may include Texas natural gas and renewable energy.
  - (2) A REP may market an electricity product as “renewable” or label an electricity product on the EFL as “renewable” only if:
    - (A) All of the product’s fuel mix is renewable energy as defined in PURA §39.904(d); or
    - (B) All statements representing the product as “renewable” use the format “x% renewable,” where “x” is the product’s renewable energy fuel mix percentage.
  - (3) If a REP makes marketing claims about a product’s “green” content on the basis of its use of natural gas as a fuel, the REP must include with the report required under subsection (f)(1) of this section proof that the natural gas used to generate the electricity was produced in Texas.

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**(e) Compilation of scorecard data.**

- (1) The registration agent shall create and maintain a database of generator scorecards reflecting each generation owner's company-wide fuel mix and environmental impact data based on generating facilities located in Texas.
- (2) Each generation owner's fuel mix and environmental impact data for the preceding calendar year shall be published on the registration agent's Internet web site by April 1 of each year and shall state:
  - (A) the percentage of MWhs generated from each of the following fuel sources: coal and lignite, natural gas, nuclear, renewable energy, and other sources; and
  - (B) the MWh-weighted average annual emissions rates in pounds per 1,000 kWh for the aggregate generation sources of the generation owner for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced (with spent nuclear fuel annualized using standard industry conversion factors).
- (3) Not later than March 1 of each year, each generation owner shall report to the registration agent the following data for the preceding calendar year: net generation in MWh from each of its generating units in Texas; the type of fuel used by each of its generating units in Texas; and the MWh-weighted average annual emissions rate, on an aggregate basis for all of its generating units in Texas (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste. For purposes of calculating its average emissions rates, each generation owner shall rely upon emissions data that it submits to the United States Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), or the best available data if the generation owner does not submit pertinent data to the EPA or TCEQ. A generation owner shall not be required to submit information to the registration agent regarding the net generation of its generating units located within the Electric Reliability Council of Texas (ERCOT) region if, upon request, the registration agent advises the owner of generation assets that it already has such information available from its polled settlement meter data.
- (4) Not later than April 1 of each year, the registration agent shall calculate and publish on its Internet website a state average fuel mix, statewide system average emission rates for each type of emission, and a default scorecard to account for all electric generation in the state that is not authenticated as defined in subsection (c)(1) of this section.
  - (A) The default fuel mix shall be the percentage of total MWh of generation not authenticated that has been obtained from each fuel type.
  - (B) Default emission rates for each type of emission shall be calculated by dividing total pounds of emissions or waste by total MWh, using data only for generation not authenticated.

**(f) Calculating renewable generation and authenticating "green" claims.**

- (1) Not later than March 15 of each year, each REP shall report to the registration agent attestations from power generators that the natural gas used to generate electricity supplied to the REP was produced in Texas, if during the preceding calendar year and the current calendar year the REP markets "green" electricity on the basis of that power.
- (2) For power purchased from sources outside of Texas, a supply contract between a REP and the owner of a generating facility may be used to authenticate the fuel mix for electricity generated at that facility and sold at retail in Texas.
  - (A) The contract must identify a specific generating facility from which the REP has obtained electricity that it sold to retail customers in Texas during the preceding calendar year.
  - (B) A REP that intends to rely upon a supply contract with an out-of-state generator to authenticate fuel mix shall submit a report to the registration agent for the specified generating facility no later than March 1 of each year that reports the facility's annual fuel mix.
- (3) For the purposes of EFL disclosures, the retirement of RECs shall be the only method of authenticating generation for which a REC has been issued under §25.173 of this title. The retirement of a REC shall be equivalent to one megawatt-hour of generation from renewable

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resources. The use of RECs to authenticate the use of renewable fuels must be consistent with REC account information maintained by the Renewable Energy Credits Trading Program Administrator. A REC offset may be used to authenticate the renewable attributes of the current MWh output from its associated supply contract.

- (4) In determining the renewable content percentages to be disclosed on the EFL for a product pursuant to §25.475 of this title, the REP shall rely upon the following sources of information: the Texas State Average Fuel Mix published by the registration agent under subsection (e) of this section; retired RECs; and actual energy production during the calendar year from resources that are awarded REC offsets by the REC program administrator. The REP may also rely on power purchased from sources outside of Texas, if it has a supply contract with the owner of a generating facility and submits a report to the registration agent concerning the fuel mix of the facility, in accordance with this section.
- (5) If a REP offers multiple electricity products that differ with regard to renewable energy content the REP:
- (A) may apply any supply contract to the calculation of any product EFL as long as the sum of MWh applied does not exceed the MWh acquired under the contract; and
- (B) may apply any number of RECs to the calculation of any product EFL as long as:
- (i) the number of RECs applied to all product EFLs is consistent with the number of RECs the retailer has retired with the REC Trading Program Administrator; and
- (ii) the number of RECs applied to each product EFL results in a renewable energy content for each product that is equal to or greater than a benchmark to be calculated from data maintained by the REC Trading Program Administrator. The benchmark shall be defined on an annual basis as:
- SRR / TS,
- where
- SRR = the statewide REC requirement, in MWh, as calculated by the REC Trading Program Administrator for the compliance period coinciding with the EFL, and
- TS = total MWh sales for all REPs to Texas customers during the compliance period coinciding with the EFL.
- (6) Any REP may anticipate the renewable content of a new product. The EFL shall state that the renewable content is an estimate that will be verified.

#### (g) Fuel Mix for Renewable Energy.

- (1) The fuel mix percentage for renewable energy shall be disclosed on the EFL for the product pursuant to §25.475 of this title. The percentage used shall be rounded to the nearest whole number.
- (2) **Renewable energy claims.** A REP may authenticate its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.

(h) **Annual update.** Each REP shall update its EFL for each of its currently offered products or products offered during the preceding calendar year no later than July 1 of each year, so that the EFL displays the renewable energy percentages determined pursuant to this section and reported to the registration agent for that product for generation purchased during the preceding calendar year.

#### (i) Compliance and enforcement.

- (1) Upon request from the commission staff, a REP shall provide a detailed explanation or accounting of the means by which it has authenticated any renewable or “green” energy claims in an EFL or any information used for marketing a product.

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- (2) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General, Consumer Protection Division in order to ensure consistent treatment of specific alleged violations.

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#### §25.477. Refusal of Electric Service.

- (a) **Acceptable reasons to refuse electric service.** A retail electric provider (REP) may refuse to provide electric service to an applicant or customer for one or more of the reasons specified in this subsection:
- (1) **Customer's or applicant's inadequate facilities.** The customer's or applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given, or the customer's or applicant's facilities do not comply with all applicable state and municipal regulations.
  - (2) **Use of prohibited equipment or attachments.** The customer or applicant fails to comply with the transmission and distribution utility's, municipally owned utility's, or electric cooperative's tariff pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.
  - (3) **Intent to deceive.** The applicant applies for service at a location where another customer received, or continues to receive, service and the REP can reasonably demonstrate that the change of account holder and billing name is made to avoid or evade payment of a bill owed to the REP.
  - (4) **For indebtedness.** The applicant or customer owes a bona fide debt to the REP for electric service. An affiliated REP or provider of last resort (POLR) shall offer the applicant or customer an opportunity to pay the outstanding debt to receive service. In the event the applicant's or customer's indebtedness is in dispute, the applicant or customer shall be provided service upon paying the undisputed debt amount and a deposit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits).
  - (5) **Failure to pay guarantee.** An applicant or customer has acted as a guarantor for another applicant or customer and failed to pay the guaranteed amount, where such guarantee was made in writing and was a condition of service.
  - (6) **Failure to comply with credit requirements.** The applicant or customer fails to comply with the credit and deposit requirements set forth in §25.478 of this title.
  - (7) **Other acceptable reasons to refuse electric service.** In addition to the reasons specified in paragraphs (1) – (6) of this subsection, a REP other than the affiliated REP or POLR may refuse to provide electric service to an applicant or customer for any other reason that is not otherwise discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).
- (b) **Insufficient grounds for refusal to serve.** The following reasons are not sufficient cause for refusal of service to an applicant or customer by a REP:
- (1) delinquency in payment for electric service by a previous occupant of the premises to be served;
  - (2) failure to pay for any charge that is not related to electric service, including a competitive energy service, merchandise, or other services that are optional and are not included in electric service;
  - (3) failure to pay a bill that includes more than the allowed six months of underbilling, unless the underbilling is the result of theft of service; and
  - (4) failure to pay the unpaid bill of another customer for usage incurred at the same address, except where the REP has reasonable and specific grounds to believe that the applicant or customer that currently receives service has applied for service to avoid or evade payment of a bill issued to a current occupant of the same address.
- (c) **Disclosure upon refusal of service.**
- (1) A REP that denies electric service to an applicant or customer shall inform the applicant or customer of the reason for the denial. Upon the applicant's or customer's request, this disclosure shall be furnished in writing to the applicant or customer. This disclosure may be combined with any disclosures required by applicable federal or state law, such as the Equal Credit Opportunity Act (15 U.S.C. §1691(d), et seq.) or the Fair Credit Reporting Act (15 U.S.C. §1681(m), et seq.).
  - (2) A written disclosure is not required when the REP notifies the applicant or customer verbally that the applicant's or customer's premise is not located in a geographic area served by REP, does not

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have the type of usage characteristics served by the REP, or is not part of a customer class served by the REP.

- (3) Specifically, the REP shall inform the applicant or customer:
  - (A) of the specific reasons for the refusal of service;
  - (B) that the applicant or customer may be eligible for service if the applicant or customer remedies the reasons for refusal and complies with the REP's terms and conditions of service;
  - (C) that the REP cannot refuse service based on the prohibited grounds set forth in §25.471(c) of this title;
  - (D) that an applicant or customer who is dissatisfied may submit a complaint with the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling); and
  - (E) of the possible availability or existence of other providers and the toll-free telephone number designated by the commission to allow the applicant or customer to contact the available REPs.

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

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**§25.478. Credit Requirements and Deposits.**

- (a) **Credit requirements for residential customers.** A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.
- (1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.
  - (2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.
  - (3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph.
    - (A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:
      - (i) has been a customer of any REP or an electric utility within the two years prior to the request for electric service;
      - (ii) is not delinquent in payment of any such electric service account; and
      - (iii) during the last 12 consecutive months of service was not late in paying a bill more than once.
    - (B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer reporting agency, as defined by the Federal Trade Commission.
    - (C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
    - (D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.
    - (E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:
      - (i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and
      - (ii) the customer or applicant or the spouse of the customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*
  - (4) A residential customer or applicant seeking to establish service with a REP other than an affiliated REP or POLR can demonstrate satisfactory credit using one of the criteria listed in subparagraphs

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(A) through (B) of this paragraph. Notice of these options for customers or applicants shall be included in any written or oral notice to a customer or applicant when a deposit is requested. A REP other than an affiliated REP or POLR may establish additional methods by which a customer or applicant not meeting the criteria of subparagraphs (A) or (B) of this paragraph can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

- (A) The residential customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
  - (B) The customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the REP.
- (5) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.
- (b) **Credit requirements for non-residential customers.** A REP may establish nondiscriminatory criteria pursuant to §25.471(c) of this title to evaluate the credit requirements for a non-residential customer or applicant and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional deposit. No such deposit shall be required if the customer or applicant is a governmental entity.
- (c) **Initial deposits for applicants and existing customers.**
- (1) If satisfactory credit cannot be demonstrated by a residential applicant, a REP may require the applicant to pay a deposit prior to receiving service.
  - (2) An affiliated REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (i) of this section, instead of paying a cash deposit.
  - (3) A REP shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with the request for deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title (relating to Disconnection of Service).
- (d) **Additional deposits by existing customers.**
- (1) A REP may request an additional deposit from an existing customer if:
    - (A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and
    - (B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.
  - (2) A REP may require the customer to pay an additional deposit within ten days after the REP has requested the additional deposit.

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- (3) A REP may disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with the written request for the additional deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title.
- (e) **Amount of deposit.**
- (1) The total of all deposits, initial and additional, required by a REP from any residential customer or applicant:
- (A) shall not exceed an amount equivalent to the greater of:
- (i) one-fifth of the customer's estimated annual billing; or
- (ii) the sum of the estimated billings for the next two months.
- (B) A REP may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. If a REP requests additional or initial deposits from existing customers, the REP shall base the estimated annual billing on the customer's actual historical usage, to the extent that the historical usage is available. After 12 months of service with a REP, a customer may request that a REP recalculate the required deposit based on actual historical usage of the customer.
- (2) For the purpose of determining the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant.
- (f) **Interest on deposits.** A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission on or before December 1 of the preceding calendar year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.
- (1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.
- (2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.
- (g) **Notification to customers.** When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit if applicable, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.
- (h) **Records of deposits.**
- (1) A REP that collects a deposit shall keep records to show:
- (A) the name and address of each depositor;
- (B) the amount and date of the deposit; and
- (C) each transaction concerning the deposit.
- (2) A REP that collects a deposit shall issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP shall provide means for a depositor to establish a claim if the receipt is lost.
- (3) A REP shall maintain a record of each unclaimed deposit for at least four years.
- (4) A REP shall make a reasonable effort to return unclaimed deposits.
- (i) **Guarantees of residential customer accounts.** A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following requirements:
- (1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (e) of this section. The amount of the guarantee shall be clearly indicated in the signed

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agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.

- (2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (j) of this section.
- (3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.
- (4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a cash deposit from the residential customer as a condition of continuing service.
- (5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.
  - (A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.
  - (B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).
- (6) The REP may initiate disconnection for nonpayment of the guaranteed amount only if the disconnection of service was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection or §25.483 of this title.

#### (j) **Refunding deposits and voiding letters of guarantee.**

- (1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. A REP may refund the deposit to a customer via a bill credit. REPs shall comply with this provision as soon as practicable, but no later than August 31, 2004.
- (2) Once the REP is no longer the REP of record for a customer or if service is not established with the REP, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be cancelled to the extent that it is not needed to satisfy any outstanding balance owed by the customer. Alternatively, the REP may provide the guarantor with written documentation that the contract has been cancelled to the extent that the guarantee is not needed to satisfy any outstanding balance owed by the customer.
- (3) If a customer's or applicant's service is not connected, or is disconnected, or the service is terminated by the customer, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is disconnected, or the service is terminated by the customer, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.
- (4) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.

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- (k) **Re-establishment of credit.** A customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit.
  
- (l) **Upon sale or transfer of company.** Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records.

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#### §25.479. Issuance and Format of Bills.

- (a) **Application.** This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.
- (b) **Frequency and delivery of bills.**
- (1) A REP must issue a bill monthly to each customer unless service is provided for a period of less than one month. A REP may issue a bill less frequently than monthly if both the customer and the REP agree to such an arrangement.
  - (2) A bill must be issued no later than 30 days after the REP receives the usage data and any related invoices for non-bypassable charges, unless validation of the usage data and invoice received from a transmission and distribution utility by the REP or other efforts to determine the accuracy of usage data or invoices delay billing by a REP past 30 days. The number of days to issue a bill must be extended beyond 30 days to the extent necessary to support agreements between REPs and customers for less frequent billing, as provided in paragraph (1) of this subsection or for consolidated billing.
  - (3) A REP must issue bills to residential customers in writing and delivered via the United States Postal Service. REPs may provide bills to a customer electronically in lieu of written mailings if both the customer and the REP agree to such an arrangement. An affiliated REP or a provider of last resort must not require a customer to agree to such an arrangement as a condition of receiving electric service.
  - (4) A REP must not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document.
- (c) **Bill content.**
- (1) Each customer's bill must include the following information:
    - (A) The certified name and address of the REP and the number of the license issued to the REP by the commission;
    - (B) A toll-free telephone number, in bold-face type, which the customer can call during specified hours for inquiries and to make complaints to the REP about the bill;
    - (C) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system;
    - (D) The service address, electric service identifier (ESI), and account number of the customer;
    - (E) The service period for which the bill is rendered;
    - (F) The date on which the bill was issued;
    - (G) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action;
    - (H) The current charges for electric service as disclosed in the customer's terms of service document, including applicable taxes and fees labeled "current charges." If the customer is on a level or average payment plan, the level or average payment due must be clearly shown in addition to the current charges;
    - (I) A calculation of the average unit price for electric service for the current billing period, labeled, "The average price you paid for electric service this month." The calculation of the average price for electric service must reflect the total of all fixed and variable recurring charges, but not include state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and must be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

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- (J) The identification and itemization of charges other than for electric service as disclosed in the customer's terms of service document;
  - (K) The itemization and amount of any non-recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the REP's terms of service document provided to the customer;
  - (L) The balances from the preceding bill, payments made by the customer since the preceding bill, and the amount the customer is required to pay by the due date, labeled "amount due;"
  - (M) A notice that the customer has the opportunity to voluntarily donate money to the bill payment assistance program, pursuant to §25.480(g)(2) of this title ( relating to Bill Payment and Adjustments);
  - (N) If available to the REP on a standard electronic transaction, if the bill is based on kilowatt-hour (kWh) usage, the following information:
    - (i) the meter reading at the beginning of the period for which the customer is being billed, labeled "previous meter read," and the meter reading at the end of the period for which the customer is being billed, labeled "current meter read," and the dates of such readings;
    - (ii) the kind and number of units measured, including kWh, actual kilowatts (kW), or kilovolt ampere (kVa);
    - (iii) if applicable, billed kW or kVa;
    - (iv) whether the bill was issued based on estimated usage; and
    - (v) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;
  - (O) Any amount owed under a written guarantee agreement, provided the guarantor was previously notified in writing by the REP of an obligation on a guarantee as required by §25.478 of this title (relating to Credit Requirements and Deposits);
  - (P) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;
  - (Q) Notification of any changes in the customer's prices or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document;
  - (R) The notice required by §25.481(d) of this title (relating to Unauthorized Charges); and
  - (S) For residential customers, on the first page of the bill in at least 12-point font the phrase, "for more information about residential electric service please visit [www.powertochoose.com](http://www.powertochoose.com)."
- (2) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's bill, then the term in this paragraph must be used to identify that charge, and such term and its definition must be easily located on the REP's website and available to a customer free of charge upon request. Nothing in this paragraph precludes a REP from aggregating transmission and distribution utility (TDU) or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP must not exceed the amount of the TDU tariff charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, by adding the word "total" to a defined term, where appropriate, changing the use of lowercase or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's bill.
- (A) Advanced metering charge -- A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.

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- (B) Competition Transition Charge -- A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.
  - (C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.
  - (D) Late Payment Penalty -- A charge assessed for late payment in accordance with Public Utility Commission rules.
  - (E) Meter Charge -- A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.
  - (F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover he miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.
  - (G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.
  - (H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.
  - (I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.
  - (J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.
  - (K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.
  - (L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.
- (3) If the REP includes any of the following terms in its bills, the term must be applied in a manner consistent with the definitions, and such term and its definition must be easily located on the REP's website and available to a customer free of charge upon request:
- (A) Base Charge -- A charge assessed during each billing cycle without regard to the customer's demand or energy consumption.
  - (B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, during the billing cycle.
  - (C) Energy Charge -- A charge based on the electric energy (kWh) consumed.
- (4) A REP must provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request and, to the extent that the charges are consistent with the terms set out in paragraph (2), of this subsection, the terms must be used in the itemization.
- (5) A customer's electric bill must not contain charges for electric service from a service provider other than the customer's designated REP.
- (6) A REP must include on each residential and small commercial billing statement, in boldfaced and underlined type, the date, as provided for in §25.475(c)(3)(B) of this title (relating to General Retail Electric Provider Requirements and Information Disclosure to Residential and Small Commercial Customers) that a fixed rate product will expire.
- (7) To the extent that a REP uses the concepts identified in this paragraph in a customer's bill, it must use the term set out in this paragraph, and the definitions in this paragraph must be easily located on the REP's website. A REP may not use a different term for a concept that is defined in this paragraph.

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- (A) kW -- Kilowatt, the standard unit for measuring electricity demand, equal to 1,000 watts;
  - (B) kWh -- Kilowatt-hour, the standard unit for measuring electricity energy consumption, equal to 1,000 watt-hours; and
  - (8) Notice of contract expiration may be provided in a bill in accordance with §25.475 of this title.
- (d) **Public service notices.** A REP must, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission. Additionally, in April and October of each year, or as otherwise directed by the commission, the REP must provide information to each customer along with the customer's bill about:
- (1) The electric utility's procedures for implementing involuntary load shedding initiated by the independent organization certified for the ERCOT power region under PURA §39.151;
  - (2) The types of customers who may be considered critical care residential customers, critical load industrial customers, or critical load according to commission rules adopted under PURA §38.076;
  - (3) The procedure for a customer to apply to be considered a critical care customer, a critical load industrial customer, or critical load according to commission rules adopted under PURA §38.076; and
  - (4) Reducing electricity use at times when involuntary load shedding events may be implemented.
- (e) **Estimated bills.** If a REP is unable to issue a bill based on actual meter reading due to the failure of the TDU, the registration agent, municipally owned utility or electric cooperative to obtain or transmit a meter reading or an invoice for non-bypassable charges to the REP on a timely basis, the REP may issue a bill based on the customer's estimated usage and inform the customer of the reason for the issuance of the estimated bill.
- (f) **Non-recurring charges.** A REP may pass through to its customers all applicable non-recurring charges billed to the REP by a TDU, municipally owned utility, or electric cooperative as a result of establishing, switching, disconnecting, reconnecting, or maintaining service to an applicant or customer. In the event of a meter test, the TDU, municipally owned utility, electric cooperative, and REP must comply with the requirements of §25.124 of this title (relating to Meter Testing) or with the requirements of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable. The TDU, municipally owned utility, or electric cooperative must maintain a record of all meter tests performed at the request of a REP or a REP's customers.
- (g) **Record retention.** A REP must maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records must contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing records may be obtained by that customer on request, and may be obtained once per 12-month period, at no charge.
- (h) **Transfer of delinquent balances or credits.** If the customer has an outstanding balance or credit owed to the customer's current REP that is due from a previous account in the same customer class, then the customer's current REP may transfer that balance to the customer's current account. The delinquent balance and specific account or address must be identified as such on the bill. There must be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) of this title.

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#### §25.480. Bill Payment and Adjustments.

- (a) **Application.** This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. In addition, this section applies to a transmission and distribution utility (TDU) where specifically stated. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.
- (b) **Bill due date.** A REP shall state a payment due date on the bill which shall not be less than 16 days after issuance. A bill is considered to be issued on the issuance date stated on the bill or the postmark date on the envelope, whichever is later. A payment for electric service is delinquent if not received by the REP or at the REP's authorized payment agency by the close of business on the due date. If the 16th day falls on a holiday or weekend, then the due date shall be the next business day after the 16th day.
- (c) **Penalty on delinquent bills for electric service.**  
A REP may charge a one-time penalty not to exceed 5.0% on a delinquent bill for electric service. No such penalty shall apply to residential or small commercial customers served by the provider of last resort (POLR). The one-time penalty, not to exceed 5.0%, may not be applied to any balance to which the penalty has already been applied.
- (d) **Overbilling.** If charges are found to be higher than authorized in the REP's terms and conditions for service or other applicable commission rules, then the customer's bill shall be corrected.
- (1) The correction shall be made for the entire period of the overbilling.
  - (2) If the REP corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.
  - (3) If the REP does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission.
    - (A) Interest on overcharges that are not adjusted by the REP within three billing cycles of the bill in error shall accrue from the date of payment by the customer.
    - (B) All interest shall be compounded monthly at the approved annual rate set by the commission.
    - (C) Interest shall not apply to leveling plans or estimated billings.
  - (4) If the REP rebills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.
- (e) **Underbilling by a REP.** If charges are found to be lower than authorized by the REP's terms and conditions of service, or if the REP fails to bill the customer for service, then the customer's bill may be corrected.
- (1) The customer shall not be responsible for corrected charges billed by the REP unless such charges are billed by the REP within 180 days from the date of issuance of the bill in which the underbilling occurred. The REP may backbill a customer for the amount that was underbilled beyond the timelines provided in this paragraph if:
    - (A) the underbilling is found to be the result of meter tampering by the customer; or
    - (B) the TDU bills the REP for an underbilling as a result of meter error as provided in §25.126 of this title (relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced).
  - (2) The REP may disconnect service pursuant to §25.483 of this title (relating to Disconnection of Service) if the customer fails to pay the additional charges within a reasonable time.
  - (3) If the underbilling is \$50 or more, the REP shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer when the underpayment is due to theft of service.

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- (4) The REP shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer. Interest on underbilled amounts shall be compounded monthly at the annual rate, as set by the commission. Interest shall accrue from the day the customer is found to have first stolen the service.
  - (5) If the REP adjusts the bills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.
- (f) **Disputed bills.** If there is a dispute between a customer and a REP about the REP's bill for any service billed on the retail electric bill, the REP shall promptly investigate and report the results to the customer. The REP shall inform the customer of the complaint procedures of the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling).
- (g) **Alternate payment programs or payment assistance.**
- (1) **Notice required.** When a customer contacts a REP and indicates inability to pay a bill or a need for assistance with the bill payment, the REP shall inform the customer of all applicable payment options and payment assistance programs that are offered by or available from the REP, such as bill payment assistance, deferred payment plans, disconnection moratoriums for the ill, or low-income energy assistance programs, and of the eligibility requirements and procedure for applying for each.
  - (2) **Bill payment assistance programs.**
    - (A) All REPs shall implement a bill payment assistance program for residential electric customers. At a minimum, such a program shall solicit voluntary donations from customers through the retail electric bills.
    - (B) A REP shall obtain a commitment from an assistance agency selected to disburse bill payment assistance funds that the agency will not discriminate in the distribution of such funds to customers based on the customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income affordability or energy efficiency services.
  - (3) A REP shall provide, in a project established by the commission, information about its voluntary bill payment assistance program for burned veterans. This information shall include the REP's name, the REP's certification number, and a toll free telephone number and website address where customers can obtain additional information. The commission will publish such information on the commission website.
- (h) **Level and average payment plans.** A REP shall make a level or average payment plan available to its customers consistent with this subsection. A customer receiving service from a provider of last resort (POLR) may be required to select a competitive product offered by the POLR REP to receive the level or average payment plan.
- (1) A REP shall make a level or average payment plan available to a customer who is not currently delinquent in payment to the REP. A customer is delinquent in payment in the following circumstances:
    - (A) A customer whose normal billing arrangement provides for payment after the rendition of service is delinquent if the date specified for payment of a bill has passed and the customer has not paid the full amount due.
    - (B) A customer whose normal billing arrangement provides for payment before the rendition of service is delinquent if the customer has a negative balance on the account for electric service.
  - (2) A REP shall reconcile any over- or under-payment consistent with the applicable terms of service, which shall provide for reconciliation at least every twelve months. For a customer with an average payment plan, a REP may recalculate the average consumption or average bill and adjust the customer's required minimum payment as frequently as every billing period. A REP may collect under-payments associated with a level payment plan from a customer over a period no

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less than the reconciliation period or upon termination of service to the customer. A REP shall credit or refund any over-payments associated with a level payment plan to the customer at each reconciliation and upon termination of service to the customer. A REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a level or average payment plan. All details concerning a level or average payment program shall be disclosed in the customer's terms of service document.

- (3) If the customer is delinquent in payment when the level or average payment plan is established, the REP may require the customer to pay no greater than 50% of the delinquent amount due. The REP may require the remaining delinquent amount to be paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments or may include the remaining delinquent amount in the calculation of the level or average payment amount. If the REP requires installment payments, the REP shall provide the customer a copy of the deferred payment plan in writing as described in subsection (j)(5) of this section.
  - (4) If the amount of the deferred balance does not appear on each bill the customer receives, the REP shall inform the customer that the customer may call the REP at any time to determine the amount that must be paid to be removed from the level or average payment plan.
  - (5) If the customer is delinquent in payment when the level or average payment plan is established, the REP may apply a switch-hold at that time.
  - (6) Before the REP applies a switch-hold to a customer on a level or average payment plan, the REP shall provide orally or in writing a clear explanation of the switch-hold process to the customer, prior to the customer's agreement to the plan. The explanation shall inform the customer as follows: "If you enter into this plan concerning your past due amount, we will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay the total deferred balance. If we put a switch-hold on your account, it will be removed after your deferred balance is paid and processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."
  - (7) If the customer is not delinquent in payment when the level or average payment plan is established, a switch-hold shall not be applied unless the plan is established pursuant to subsection (j)(2)(B)(ii) of this section.
  - (8) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to subsection (m) of this section, when the customer satisfies either subparagraph (A) or (B) of this paragraph, whichever occurs earlier. On the date the REP submits the request to remove the switch-hold, the REP shall notify or send notice to the customer that the customer has satisfied the obligation to pay any deferred balance owed and the removal of the switch-hold is being processed.
    - (A) The customer's deferred balance, including any deferred delinquent amount described in paragraph (4) of this subsection, is either zero or in an over-payment status.
    - (B) The customer satisfies the terms of any deferred delinquent amount described in paragraph (4) of this subsection and has paid bills for 12 consecutive billings without having been disconnected and without having more than one late payment.
- (i) **Payment arrangements.** A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issues a disconnection notice before a payment arrangement was made, that disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be disconnected after the later of the due date for the payment arrangement or the disconnection date indicated in the notice, without issuing an additional disconnection notice.
- (j) **Deferred payment plans and other alternate payment arrangements.**
- (1) A deferred payment plan is an agreement between the REP and a customer that allows a customer to pay an outstanding balance in installments that extend beyond the due date of the current bill.

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A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans shall be confirmed in writing by the REP in accordance with paragraph (5) of this subsection. Before the REP applies a switch-hold to a customer on a deferred payment plan, the REP shall provide a clear explanation of the switch-hold process to the customer. The explanation shall inform the customer as follows: "If you enter into this plan concerning your past due amount, we will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay the total deferred balance. If we put a switch-hold on your account, it will be removed after your deferred balance is paid and processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

- (A) A REP shall offer a deferred payment plan to customers, upon request, for bills that become due during an extreme weather emergency, pursuant to §25.483(j) of this title.
  - (B) As directed by the commission, during a state of disaster declared by the governor pursuant to Texas Government Code §418.014, a REP shall offer a deferred payment plan to customers, upon request, in the area covered by the declaration.
  - (C) A REP shall offer a deferred payment plan to a customer who has been underbilled, pursuant to subsection (e) of this section.
- (2) A REP shall make a payment plan available, upon request, to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in July, August, or September. A REP shall make a payment plan available, upon request, to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in January or February if in the prior month a TDU notified the commission pursuant to §25.483(j) of this title of an extreme weather emergency for the residential customer's county in the TDU service area for at least five consecutive days during the month. A REP is not required to offer a payment plan to a customer pursuant to this paragraph if the customer is on an existing deferred, level, or average payment plan.
- (A) The following residential customers are eligible for a payment plan under this paragraph:
    - (i) customers designated as Critical Care Residential Customers or Chronic Condition Residential Customers under §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers); or
    - (ii) customers who have expressed an inability to pay unless the customer:
      - (I) has been disconnected during the preceding 12 months;
      - (II) has submitted more than two payments during the preceding 12 months that were found to have insufficient funds available; or
      - (III) has received service from the REP for less than three months, and the customer lacks:
        - (-a-) sufficient credit; or
        - (-b-) a satisfactory history of payment for electric service from a previous REP or utility.
  - (B) The REP shall make available, at the customer's option, the plans described in clauses (i) and (ii) of this subparagraph.
    - (i) A deferred payment plan with the initial payment amount no greater than 50% of the amount due. The deferred amount shall be paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments.
    - (ii) A level or average payment plan instead of requiring the balance due to be paid. The level or average payment plan shall be offered subject to the requirements of subsection (h) of this section.
  - (C) The REP shall not seek an additional deposit as a result of a customer's entering into a deferred payment plan under this paragraph.
- (3) A REP shall not refuse customer participation in a deferred payment plan on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

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- (4) A REP may voluntarily offer a deferred payment plan to customers who have expressed an inability to pay.
  - (5) A copy of the deferred payment plan shall be provided to the customer and:
    - (A) shall include a statement, in a clear and conspicuous type, that states “If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact (insert name and contact number of REP).”;
    - (B) if a switch-hold will apply, shall include a statement, in a clear and conspicuous type, that states “By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on.”;
    - (C) where the customer and the REP’s representative or agent meets in person, the representative shall read the statements in subparagraph (A) and, if applicable, subparagraph (B) of this paragraph to the customer;
    - (D) may include the one-time penalty in accordance with subsection (c) of this section but shall not include a finance charge;
    - (E) shall state the length of time covered by the plan;
    - (F) shall state the total amount to be paid under the plan;
    - (G) shall state the specific amount of each installment;
    - (H) shall state whether the amount of the deferred balance will appear on each bill the customer receives and that the customer may call the REP at any time to determine the amount that must be paid to satisfy the terms of the deferred payment plan; and
    - (I) shall state whether there may be a disconnection of service if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection.
  - (6) A REP may pursue disconnection of service if a customer does not meet the terms of a deferred payment plan. However, service shall not be disconnected until appropriate notice has been issued, pursuant to §25.483 of this title, notifying the customer that the customer has not met the terms of the plan. The requirements of paragraph (2) of this subsection shall not apply with respect to a customer who has defaulted on a deferred payment plan.
  - (7) A REP may apply a switch-hold while the customer is on a deferred payment plan.
  - (8) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to subsection (m) of this section, after the customer’s payment of the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP shall notify or send notice to the customer that the customer has satisfied the obligation to pay any deferred balance owed and the removal of the switch-hold is being processed.
- (k) **Allocation of partial payments.** A REP shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the current amount due for electric service. When there is no longer a balance for electric service, payment may be applied to non-electric services billed by the REP. Electric service shall not be disconnected for non-payment of non-electric services.
- (l) **Switch-hold.**
- (1) A REP may request that the TDU place a switch-hold on an ESI ID to the extent allowed by subsection (h) or (j) of this section, which shall prevent a switch transaction from being completed for the ESI ID and shall prevent a move-in transaction from being completed pending documentation that the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed. If the REP exercises its right to disconnect service for non-payment pursuant to §25.483 of this title, the switch-hold shall continue to remain in place. The TDU shall create and maintain a secure list of ESI IDs with switch-holds that REPs may access. The list shall not include any customer information other than the ESI ID and date

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the switch-hold was placed. The list shall be updated daily, and made available through a secure means by the TDU. The TDU may provide this list in a secure format through the web portal developed as part of its AMS deployment.

- (A) The REP via a standard market process may request a switch-hold.
  - (B) The REP shall submit a request to remove the switch-hold as required by subsections (h)(9) and (j)(8) of this section.
  - (C) When the REP of record issues a move-out request for the flagged ESI ID, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.
  - (D) At the time of a mass transition, the TDU shall remove the switch-hold flag for any ESI ID that is transitioned to a provider of last resort (POLR) provider.
  - (E) When the applicant for electric service is shown to be a new occupant not associated with the customer for which the switch-hold was imposed using the switch-hold process described in §25.126 of this title, the switch-hold flag shall be removed.
  - (F) For a move-in transaction indicating that the ESI ID is subject to a continuous service agreement, the TDU shall remove any switch-hold on that ESI ID and complete the move-in.
- (2) In the first TX SET release after January 1, 2011, market transactions shall be developed that support the following requirements.
- (A) REPs may request a switch-hold as allowed by subsection (h) or (j) of this section.
  - (B) TDUs shall provide indication of which ESI IDs have switch-holds so that during a move-in enrollment a REP can identify whether a switch-hold applies and that specific documentation must be submitted to have the switch-hold removed.
  - (C) A move-in subject to a switch-hold can be submitted for processing when the customer initially requests the move-in and such transaction will be held in the system for final processing depending on the approval or rejection of the move-in documentation. The TDU shall notify the submitting REP that there is a switch-hold on the ESI ID.
- (3) The requirements of §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) shall continue to apply while a customer is subject to a switch-hold. The notice required by §25.475(e) of this title shall include a statement reminding the customer that if a switch-hold is in effect, the balance deferred must be paid in full before the customer will be able to change to a new provider.
- (4) A customer who is subject to a switch-hold shall not be charged any separate fees for a switch-hold or any customer service or administrative fees related to the switch-hold.
- (5) A REP shall not discriminate against any customer that is on a switch-hold in the provision of services or pricing of products. A customer on a switch-hold shall be eligible for all services and products generally available to the REPs other customers.
- (6) If a REP applies a switch-hold to a customer account and the customer's contract expires while under the switch-hold, the REP shall provide notice of the contract expiration as required by §25.475 of this title. Unless a customer affirmatively chooses a different product with the REP, a customer whose term product expires while the customer is subject to a switch-hold shall be moved to the lowest priced month-to-month product currently offered by the REP to new applicants, or, if the REP does not offer month-to-month products to new applicants, shall be served on a month-to-month basis at the price equivalent to the lowest price of the shortest term fixed product currently offered by the REP to new applicants. Otherwise, the REP shall request the removal of the switch-hold in compliance with subsection (m) of this section. The offers shall include those made on [www.powertochoose.com](http://www.powertochoose.com). If the customer does not affirmatively choose a product, the customer shall not be required by the REP to enter into another contract term so long as the switch-hold remains on the customer account and no early termination fees shall be applied to the customer's account.

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**(m) Placement and Removal of Switch-Holds.**

- (1) A REP may request a switch-hold only as allowed under this section.
- (2) A REP shall be responsible for requesting that the TDU remove a switch-hold after the customer's obligation to the REP related to the switch-hold is satisfied. If a customer's obligation to the REP is satisfied by 10:00 p.m. on a business day, the REP shall send a request to the TDU to remove the switch-hold by Noon (12:00 p.m.) of the next business day. If the TDU receives the request by 1:00 p.m. on a business day, the TDU shall remove the switch-hold by 8:00 p.m. of the same business day in which it receives the request to remove the switch-hold from the REP.
- (3) The REP shall submit a request to remove a switch-hold pursuant to subsection (1)(6) of this section to the TDU, such that the TDU will remove the switch-hold on or before the customer's contract expiration date.
- (4) If a REP erroneously places a switch-hold flag on an ESI ID, thus preventing a legitimate switch, or does not remove the switch-hold within the timeline described in paragraph (2) of this subsection, the REP shall be considered to have committed a Class B Violation (as defined in §25.8(b) of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers)) for purposes of any administrative penalties imposed by the commission.

**(n) Annual reporting requirement.** In its annual report filed pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)) and §25.491 of this title (relating to Record Retention and Reporting Requirements), each REP shall include:

- (1) A statement summarizing any low-income payment options and low-income payment assistance programs that are offered by or available from the REP;
- (2) Information regarding a REP's bill payment assistance program created pursuant to subsection (g) of this section shall include:
  - (A) the total amount of customer donations;
  - (B) the amount of money set aside for bill payment assistance;
  - (C) the assistance agency or agencies selected to disburse funds to residential customers;
  - (D) the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers; and
  - (E) the number of customers who had a switch-hold applied during the year.
- (3) A statement confirming whether the REP, at the time of filing its annual report, has obtained the low-income customer identification service from the Low Income List Administrator (LILA) in accordance with §25.45 of this title, and whether the REP, at the time of filing its annual report, intends to obtain the low-income identification service from the LILA in the next fiscal year.

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**§25.481. Unauthorized Charges.**

- (a) **Authorization of charges.** Any services offered by the retail electric provider (REP) that will be billed on the customer's electric bill shall be authorized by the customer consistent with this section.
- (b) **Requirements for billing charges.** A REP shall meet all of the following requirements before including any charges on the customer's electric bill:
  - (1) The REP shall inform the customer of the product or service being offered, including all associated charges, and explicitly inform the customer that the associated charges for the product or service will appear on the customer's electric bill.
  - (2) The customer must clearly and explicitly consent to obtaining the product or service offered and to having the associated charges appear on the customer's electric bill. The REP shall document the authorization in accordance with §25.474 of this title (relating to Selection of Retail Electric Provider). The documentation of the authorization shall be maintained by the REP for at least 24 months.
  - (3) The REP shall provide the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute and to answer questions.
- (c) **Responsibilities for unauthorized charges.**
  - (1) If a REP charges a customer's electric bill for any product or service without proper customer authorization, the REP shall promptly, but not later than 45 days thereafter:
    - (A) discontinue providing the product or service to the customer and cease charging the customer for the unauthorized product or service;
    - (B) remove the unauthorized charge from the customer's bill;
    - (C) refund or credit to the customer the money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three billing cycles, pay interest at an annual rate established by the commission pursuant to §25.478(f) of this title (relating to Credit Requirements and Deposits) on the amount of any unauthorized charge until it is refunded or credited; and
    - (D) upon the customer's request, provide the customer, free of charge, with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal of the charge from the customer's electric bill.
  - (2) A REP shall not:
    - (A) seek to disconnect electric service to any customer for nonpayment of an unauthorized charge;
    - (B) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer remains obligated to pay any charges that are not in dispute; or
    - (C) re-bill the customer for any unauthorized charge.
  - (3) In the event that a REP erroneously files an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized, the REP must correct the credit report without delay.
  - (4) A REP shall maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's electric bill and has notified the REP of the unauthorized charge. The record shall contain for each unauthorized charge:
    - (A) the date the customer requested that the REP remove the unauthorized charge from the customer's electric bill;
    - (B) the date the unauthorized charge was removed from the customer's electric bill; and
    - (C) the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.

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- (d) **Notice to customers.** Any bill sent to a residential and small commercial customer from a REP shall include a statement, prominently located on the bill, that if the customer believes the bill includes unauthorized charges, the customer should contact the REP to dispute such charges and, if not satisfied with the REP's review may file a complaint with the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.
- (e) **Compliance and enforcement.**
  - (1) A REP shall provide proof of the customer's authorization and verification to the customer and/or the commission upon request.
  - (2) A REP shall provide a copy of records maintained under the requirements of subsection (c)(4) of this section to the commission or commission staff upon request.

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**§25.482. Prompt Payment Act.**

- (a) **Application.** This section applies to billing by an aggregator or a retail electric provider (REP) to a “governmental entity” as defined in Tex. Gov’t Code, Chapter 2251, the Prompt Payment Act (PPA). This section controls over other sections of this chapter to the extent that they conflict.
- (b) **Time for payment by a governmental entity.** A payment by a governmental entity subject to the PPA shall become overdue as provided in the PPA.
- (c) **Disputed bills.** If there is a billing dispute between a governmental entity and an aggregator or a REP about any bill for aggregator or REP service, the dispute shall be resolved as provided in the PPA.
- (d) **Interest on overdue payment.** Interest on an overdue governmental entity payment shall be calculated by the governmental entity pursuant to the terms of the PPA and remitted to the ESP with the overdue payment.
- (e) **Notice.** An aggregator or REP shall provide written notice to all of its non-residential customers of the applicability of the PPA to the aggregator’s or REP’s service to governmental entities. This notice shall be completed within six months of the effective date of this section for existing non-residential customers and, within three months of the effective date of this section, shall be provided to a new customer at or before the time that the terms of service are provided to the customer. An aggregator’s or REP’s failure to provide this notice does not give rise to any independent claim under the PPA, nor does this notice initiate or terminate any party’s rights or obligations under the PPA.
  - (1) The failure of an aggregator or REP to provide written notice in accordance with this subsection may be considered in a PPA billing complaint.
  - (2) The failure of a governmental entity to inform the aggregator or REP of its status as a governmental entity may be considered in a PPA billing complaint.

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**§25.483. Disconnection of Service.**

- (a) **Disconnection and reconnection policy.** Only a transmission and distribution utility (TDU), municipally owned utility, or electric cooperative shall perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate TDU, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the protocols established by the registration agent, and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall comply with the requirements in this section. Nothing in this section requires a REP to request that a customer's service be disconnected.
- (b) **Disconnection authority.**
- (1) Any REP may authorize the disconnection of a medium non-residential or large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)).
  - (2) Except as provided in subsection (d) of this section, all REPs shall have the authority to authorize the disconnection of residential and small non-residential customers pursuant to commission rules. Prior to authorizing disconnections for non-payment in accordance with this paragraph, a REP shall:
    - (A) test all necessary electronic transactions related to disconnections and reconnections of service; and
    - (B) file an affidavit from an officer of the company, in a project established by the commission for this purpose, affirming that the REP understands and has trained its personnel on the commission's rule requirements related to disconnection and reconnection, and has adequately tested the transactions described in subparagraph (A) of this paragraph.
- (c) **Disconnection with notice.** A REP having disconnection authority under the provisions of subsection (b) of this section, including the POLR, may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the disconnection date in the notice for any of the following reasons:
- (1) failure to pay any outstanding bona fide debt for electric service owed to the REP or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP;
  - (2) failure to comply with the terms of a deferred payment agreement made with the REP;
  - (3) violation of the REP's terms and conditions on using service in a manner that interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;
  - (4) failure to pay a deposit as required by §25.478 of this title (relating to Credit Requirements and Deposits); or
  - (5) failure of the guarantor to pay the amount guaranteed, when the REP has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.
- (d) **Disconnection without prior notice.** Any REP or TDU may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:
- (1) Where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the REP, or its agent, shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

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- (2) Where service is connected without authority by a person who has not made application for service;
  - (3) Where service is reconnected without authority after disconnection for nonpayment;
  - (4) Where there has been tampering with the equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative; or
  - (5) Where there is evidence of theft of service.
- (e) **Disconnection prohibited.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:
- (1) Delinquency in payment for electric service by a previous occupant of the premises;
  - (2) Failure to pay for any charge that is not for electric service regulated by the commission, including competitive energy service, merchandise, or optional services;
  - (3) Failure to pay for a different type or class of electric service unless charges for such service were included on that account's bill at the time service was initiated;
  - (4) Failure to pay charges resulting from an underbilling, except theft of service, more than six months prior to the current billing;
  - (5) Failure to pay disputed charges, except for the amount not under dispute, until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;
  - (6) Failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced); or
  - (7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the bill is based on an estimated meter read by the TDU.
- (f) **Disconnection on holidays or weekends**
- (1) A REP having disconnection authority under the provisions of subsection (b) of this section shall not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the REP's personnel are available on those days to take payments, make payment arrangements with the customer, and request reconnection of service.
  - (2) Unless a dangerous condition exists or the customer requests disconnection, a TDU shall not disconnect a customer's electric service on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the personnel of the TDU are available to reconnect service on all of those days.
- (g) **Disconnection of Critical Care Residential Customers.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent Critical Care Residential Customer when that customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill.
- (1) Each time a Critical Care Residential Customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:
    - (A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar medical professional) contact the REP to confirm that the customer is a Critical Care Residential Customer;
    - (B) Have the person's attending physician submit a written statement to the REP confirming that the customer is a Critical Care Residential Customer; and
    - (C) Enter into a deferred payment plan.

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- (2) The prohibition against service disconnection of a Critical Care Residential Customer provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer, emergency (secondary) contact listed on the commission-approved application form, or attending physician. If the Critical Care Residential Customer does not accomplish the requirements of (g)(1):
- (A) The REP shall provide written notice to the Critical Care Residential Customer and the emergency contact listed on the commission-approved application form of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice shall be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or emergency contact to receive disconnection notices from the REP by email, a separate email with the words "disconnection notice" or similar language in the subject line shall be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice shall comply with the requirements of subsections (l) and (m) of this section; and,
- (B) Prior to disconnecting a Critical Care Residential Customer, a TDU shall contact the customer and the emergency contact listed on the commission-approved application form. If the TDU does not reach the customer and emergency contact by phone, the TDU shall visit the premises, and, if there is no response, shall leave a door hanger containing the pending disconnection information and information on how to contact the REP and TDU.
- (3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection when not otherwise required.
- (4) If a TDU refuses to disconnect a Critical Care Residential Customer pursuant to this subsection, it shall cease charging all transmission and distribution charges and surcharges, except securitization-related charges, for that premises to the REP.
- (h) **Disconnection of Chronic Condition Residential Customers.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a Chronic Condition Residential Customer pursuant to §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers), except as provided in this subsection.

The REP shall notify the Chronic Condition Residential Customer and the emergency contact listed on the commission-approved application form with a written notice of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice shall be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or emergency contact to receive disconnection notices from the REP by email, a separate email with the words "disconnection notice" or similar language in the subject line shall be also be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice shall comply with the requirements of subsections (l) and (m) of this section.

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(i) **Disconnection of energy assistance clients.**

- (1) A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.
- (2) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided.
- (3) A REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.
- (4) A REP may request disconnection of service to a customer if payment from the energy assistance provider's pledge is not received within the time frame agreed to by the REP and the energy assistance provider, or if the customer fails to pay any portion of the outstanding balance not covered by the pledge.

(j) **Disconnection during extreme weather.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency.

- (1) The term "extreme weather emergency" shall mean a day when:
  - (A) 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 anywhere in the county, according to the nearest National Weather Service (NWS) reports; or
  - (B) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.
- (2) A TDU shall notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in its service area. The initial notice shall include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.

(k) **Disconnection of master-metered apartments.** When a bill for electric service is delinquent for a master-metered apartment complex:

- (1) The REP having disconnection authority under the provisions of subsection (b) of this section shall send a notice to the customer as required by subsection (k) of this section. At the time such notice is issued, the REP, or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.
- (2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP shall post a minimum of five notices in English and Spanish in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

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- (l) **Disconnection notices. A disconnection notice for nonpayment shall:**
- (1) not be issued before the first day after the bill is due;
  - (2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed or, if the REP has offered and the customer has agreed to receive disconnection notices from the REP by email, be a separate email with the words "disconnection notice" or similar language in the subject line. The REP may send the disconnection notice concurrently with the request for a deposit;
  - (3) have a disconnection date that is not a holiday, weekend day, or day that the REP's personnel are not available to take payments, and is not less than ten days after the notice is issued; and
  - (4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.
- (m) **Contents of disconnection notice.** Any disconnection notice shall include the following information:
- (1) The reason for disconnection;
  - (2) The actions, if any, that the customer may take to avoid disconnection of service;
  - (3) The amount of all fees or charges which will be assessed against the customer as a result of the default;
  - (4) The amount overdue;
  - (5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of disconnection or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at [www.puc.state.tx.us/ocp/complaints/complain.cfm](http://www.puc.state.tx.us/ocp/complaints/complain.cfm);"
  - (6) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation and with the consent of both REPs;
  - (7) The availability of deferred payment or other billing arrangements, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs; and
  - (8) A description of the activities that the REP will use to collect payment, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.
- (n) **Reconnection of service.** Upon a customer's satisfactory correction of the reasons for disconnection, the REP shall request the TDU, municipally owned utility, or electric cooperative to reconnect the customer's electric service as quickly as possible. The REP shall inform the customer when reconnection is expected to occur in accordance with the timelines set forth in this subsection and in §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities). For premises without a provisioned advanced meter with remote disconnect/reconnect capabilities, if a REP submits a standard reconnection request and the TDU completes the reconnect the same day, the TDU shall assess a standard reconnect fee. A TDU may assess a same-day reconnect fee only when the REP expressly requests a same-day reconnect and a REP may pass through a same-day reconnect fee to the customer only when the customer expressly requests a same-day reconnect.. A REP shall send a reconnection request no later than the timelines in this subsection. The TDU shall complete the reconnection in accordance with the timelines in §25.214 of this title.

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- (1) For payments made before 12:00 p.m. on a business day, a REP shall send a reconnection request to the TDU no later than 2:00 p.m. on the same day
  - (2) For payments made after 12:00 p.m., but before 5:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 7:00 p.m. on the same day.
  - (3) For payments made after 5:00 p.m., but before 7:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 9:00 p.m. on the same day.
  - (4) For payments made after 7:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 2:00 p.m. on the next business day.
  - (5) For payments made on a weekend day or a holiday, a REP shall send a reconnection request to the TDU by 2:00 p.m. on the first business day after the payment was made.
  - (6) In no event shall a REP fail to send a reconnection notice within 48 hours after the customer's satisfactory correction of the reasons for disconnection as specified in the disconnection notice.
- (o) **Electric service disconnection of a non-submetered master metered multifamily property.**
- (1) In this subsection, "non-submetered master metered multifamily property" means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive electric utility service that is master metered but not submetered.
  - (2) A REP shall send a written notice of service disconnection to a municipality before authorizing disconnection of service to a non-submetered master metered multifamily property for nonpayment if:
    - (A) the property is located in the municipality; and
    - (B) the municipality establishes an authorized representative to receive the notice as described by paragraph (3) of this subsection.
  - (3) No later than January 1st of every year, a municipality wishing to receive notice of disconnection of electric service to a non-submetered master metered multifamily property shall provide the commission with the contact information for the municipality's authorized representative referenced by paragraph (2) of this subsection by submitting that person's name, title, direct mailing address, telephone number, and email address in a P.U.C. Project Number to be established annually for that purpose. The email address provided by the municipality may be for a general mailbox accessible by the authorized representative established for the purpose of receiving such notices.
  - (4) After January 1st, but no later than January 15th of every year, the commission shall post on its public website the contact information received from every municipality pursuant to paragraph (3) of this subsection. The contact information posted by the commission shall remain in effect during the subsequent 12-month period of February 1 through January 31 for the purpose of the written notice of disconnection required by paragraph (2) of this subsection.
  - (5) The retail electric provider shall email the written notice required by this subsection to the municipality's authorized representative not later than the 10th day before the date electric service is scheduled for disconnection. Additional notice may be provided by third-party commercial carrier delivery or certified mail.
  - (6) The customer safeguards provided by this subchapter are in addition to safeguards provided by other law or agency rules.
  - (7) This subsection does not prohibit a municipality or the commission from adopting customer safeguards that exceed the safeguards provided by this chapter.

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#### §25.484. Electric No-Call List.

- (a) **Purpose.** This section implements the Public Utility Regulatory Act (PURA) §39.1025, relating to Limitations on Telephone Solicitation, and the Texas Business & Commerce Code Annotated (Bus. & Comm. Code) §44.103 relating to rules, customer information, and isolated violations of the Texas no-call list.
- (b) **Application.** This section applies to retail electric providers (REPs) as defined in §25.5 of this title (relating to Definitions). A REP acting as a telemarketer, as defined by §26.37 of this title (relating to Texas No-Call List), is also subject to the provisions of §26.37 of this title.
- (c) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Consumer good or service** — For purposes of this section, consumer good or service has the same meaning as Business & Commerce Code §44.002(3) relating to Definitions.
  - (2) **Electric no-call database** — Database administered by the commission or its designee that contains the names, addresses, telephone numbers and dates of registration for all electric no-call registrants. Lists or other information generated from the electric no-call database shall be deemed to be a part of the database for purposes of enforcing this section.
  - (3) **Electric no-call list** — List that is published and distributed as required by subsection (f)(2) of this section.
  - (4) **Electric no-call registrant** -- A person who is either:
    - (A) An electric customer who registered prior to May 27, 2005, by application and payment of accompanying fee, for the electric no-call list; or
    - (B) A nonresidential electric customer who registered on or after May 27, 2005, by application and payment of accompanying fee, for the electric no-call list.
  - (5) **Established business relationship** — A prior or existing relationship that has not been terminated by either party, and that was formed by voluntary two-way communication between a person and a consumer regardless of whether consideration was exchanged, regarding consumer goods or services offered by the person.
  - (6) **Telemarketing call** — An unsolicited telephone call made to:
    - (A) solicit a sale of a consumer good or service;
    - (B) solicit an extension of credit for a consumer good or service; or
    - (C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for sale.
  - (7) **Telephone call** — A call or other transmission that is made to or received at a telephone number within an exchange in the state of Texas, including but not limited to:
    - (A) a call made by an automatic dial announcing device (ADAD); or
    - (B) a transmission to a facsimile recording device.
  - (8) **Telemarketer** – A person who makes or causes to be made a telemarketing call that is made to a telephone number in an exchange in the state of Texas.
- (d) **Requirement of REPs.**
- (1) A REP shall not make or cause to be made a telemarketing call to a telephone number that has been published for more than 60 calendar days on the electric no-call list.
  - (2) A REP shall purchase each published version of the electric no-call list unless:
    - (A) the entirety of the REP's business is comprised of telemarketing calls that are exempt pursuant to subsection (e) of this section;
    - (B) a REP has a written contractual agreement with another telemarketer to make telemarketing calls on behalf of the REP and that telemarketer is contractually obligated to comply with all requirements of this section. In the absence of a written contract that requires the telemarketer to comply with all requirements of this section, the REP and the

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telemarketer making telemarketing calls on behalf of the REP are both liable for violations of this section.

- (e) **Exemptions.** This section shall not apply to a telemarketing call made:
- (1) By an electric no-call registrant that is the result of a solicitation by a REP or in response to general media advertising by direct mail solicitations that clearly, conspicuously, and truthfully make all disclosures required by federal or state law;
  - (2) In connection with:
    - (A) An established business relationship; or
    - (B) A business relationship that has been terminated, if the call is made before the later of:
      - (i) the date of publication of the first electric no-call list on which the electric no-call registrant's telephone number appears; or
      - (ii) one year after the date of termination; or
  - (3) To collect a debt.
- (f) **Electric no-call database.**
- (1) **Administrator.** The commission or its designee shall establish and provide for the operation of the electric no-call database.
  - (2) **Distribution of database.**
    - (A) **Timing.** Beginning on April 1, 2002, the administrator of the electric no-call database will update and publish the entire electric no-call list on January 1, April 1, July 1, and October 1 of each year;
    - (B) **Fees.** The electric no-call list shall be made available to subscribing REPs for a set fee not to exceed \$75 per list per quarter;
    - (C) **Format.** The commission or its designee will make the electric no-call list available to subscribing REPs by:
      - (i) electronic internet access in a downloadable format;
      - (ii) Compact Disk Read Only Memory (CD-ROM) format;
      - (iii) paper copy, if requested by the REP; and
      - (iv) any other format agreed upon by the current administrator of the no-call database and the subscribing REP.
  - (3) **Intended use of the electric no-call database and electric no-call list.**
    - (A) The electric no-call database shall be used only for the intended purposes of creating an electric no-call list and promoting and furthering statutory mandates in accordance with PURA §39.1025 and the Business & Commerce Code, Chapter 44 relating to Telemarketing. Neither the electric no-call database nor a published electric no-call list shall be transferred, exchanged or resold to a non-subscribing entity, group, or individual, regardless of whether compensation is exchanged.
    - (B) The no-call database is not open to public inspection or disclosure.
    - (C) The administrator shall take all necessary steps to protect the confidentiality of the no-call database and prevent access to the no-call database by unauthorized parties.
  - (4) **Penalties for misuse of information.** Improper use of the electric no-call database or a published electric no-call list by the administrator, REPs, or any other person, regardless of the method of attainment, shall be subject to administrative penalties and enforcement provisions contained in §22.246 of this title (relating to Administrative Penalties).
- (g) **Notice.** A REP shall provide notice of the electric no-call list to its customers as specified by this subsection. In addition to the required notice, the REP may engage in other forms of customer notification.
- (1) **Content of notice.** A REP shall provide notice in compliance with §25.473 of this title (relating to Non-English Language Requirements) that, at a minimum, clearly explains the following:
    - (A) Beginning January 1, 2002, customers may add their name, address and telephone number to a state-sponsored electric no-call list that is intended to limit the number of telemarketing calls received relating to the customer's choice of REPs;

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- (B) When a customer who registers for inclusion on the electric no-call list can expect to stop receiving telemarketing calls on behalf of a REP;
  - (C) A customer must pay a fee to register for the electric no-call list;
  - (D) Registration of a telephone number on the electric no-call list expires on the fifth anniversary of the date the number is first published on the list;
  - (E) Registration of a telephone number on the electric no-call list can be accomplished via the United States Postal Service, Internet, or telephonically;
  - (F) The customer registration fee, which cannot exceed five dollars per term, must be paid by credit card when registering online or by telephone. When registering by mail, the fee must be paid by credit card, check or money order;
  - (G) The toll-free telephone number, website address, and mailing address for registration; and
  - (H) A customer that registers for inclusion on the electric no-call list may continue to receive calls from telemarketers other than REPs, and a statement that the customer may instead or may also register for the Texas no-call list that is intended to limit telemarketing calls regarding consumer goods and services in general, including electric service.
- (2) **Publication of notice.** A REP shall include notice in its Terms of Service document or Your Rights as a Customer disclosure. The notice shall be easily legible, prominently displayed and comply with the requirements listed in paragraph (1) of this subsection.
  - (3) **Records of customer notification.** A REP shall provide a copy of records maintained under the requirements of this subsection as specified by §25.491 of this title (relating to Record Retention and Reporting Requirements).
- (h) **Violations.**
- (1) **Separate occurrence.** Each telemarketing call to a telephone number on the electric no-call list shall be deemed a separate occurrence.
  - (2) **Isolated occurrence.** A telemarketing call made to a number on the electric no-call list is not a violation of this section if the telemarketer complies with section (d)(2) and the telemarketing call is determined by the commission to be an isolated occurrence.
    - (A) An isolated occurrence is an event, action, or occurrence that arises unexpectedly and unintentionally, and is caused by something other than a failure to implement or follow reasonable procedures. An isolated occurrence may involve more than one separate occurrence, but it does not involve a pattern or practice.
    - (B) The burden to prove that the telemarketing call was made in error and was an isolated occurrence rests upon the REP who made (or caused to be made) the call. In order for a REP to assert as an affirmative defense that a potential violation of this section was an isolated occurrence, the REP must provide evidence of the following:
      - (i) The REP has purchased the most recently published update to the electric no-call list, unless the entirety of the REP's business is comprised of making or causing to be made telemarketing calls that are exempt pursuant to subsection (e) of this section and the REP can provide sufficient proof of such;
      - (ii) The REP has adopted and implemented written procedures to ensure compliance with this section and effectively prevent telemarketing calls that are in violation of this section, including taking corrective actions when appropriate;
      - (iii) The REP has trained its personnel in the established procedures; and
      - (iv) The telemarketing call that violated this section was made contrary to the policies and procedures established by the REP.
- (i) **Record retention; Provision of records; Presumptions.**
- (1) A REP shall maintain a record of all telephone numbers it has attempted to contact for telemarketing purposes, a record of all telephone numbers it has contacted for telemarketing purposes, and the date of each, for a period of not less than 24 months from the date the telemarketing call was attempted or completed.

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- (2) Upon request from the commission or commission staff, a REP shall provide, within 21 calendar days, all information in its possession and upon which it relies to demonstrate compliance with this section, relating to the commission's investigation of potential violations of the no-call list including, but not limited to, the call logs or phone records described in subsection (i)(1).
  - (3) Failure by a REP to respond, or to produce all information in its possession and upon which it relies to demonstrate compliance with this section, within the time specified in paragraph (2) of this subsection establishes a violation of this section.
  - (4) In response to a request from the commission pursuant to paragraph (2) of this subsection, a REP's failure to produce all telemarketing information in its possession and upon which it relies to demonstrate compliance with this section and, if applicable, to establish an affirmative defense pursuant to subsection (h)(2)(B) of this section, within the time specified in paragraph (2) of this subsection establishes a violation of this section.
- (j) **Evidence.** Evidence provided by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from the recipient of a telemarketing call is admissible to enforce the provisions of this section.
- (k) **Enforcement and penalties.** The commission has jurisdiction to investigate REP violations of this section, as specified in §25.492 of this title (relating to Non-Compliance with Rules or Orders; Enforcement by the Commission).

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#### §25.485. Customer Access and Complaint Handling.

- (a) The purpose of this section is to ensure that retail electric customers have the opportunity for impartial and prompt resolution of disputes with REPs or aggregators.
- (b) **Customer access.**
  - (1) Each retail electric provider (REP) or aggregator shall ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer's bills, terminate competitive service, and transact any other pertinent business.
  - (2) Telephone access shall be toll-free and shall afford customers a prompt answer during normal business hours.
  - (3) Each REP shall provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.
  - (4) Each REP and aggregator shall employ 24-hour capability for accepting a customer's rescission of the terms of service by telephone, pursuant to rights of cancellation in §25.474(j) of this title (relating to Selection of Retail Electric Provider).
- (c) **Complaint handling.** A residential or small commercial customer has the right to make a formal or informal complaint to the commission, and a terms of service agreement cannot impair this right. A REP or aggregator shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the commission if dissatisfied with the results of the alternative dispute resolution.
- (d) **Complaints to REPs or aggregators.** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to a REP or aggregator. The REP or aggregator shall promptly investigate and advise the complainant of the results within 21 days. A customer who is dissatisfied with the REP's or aggregator's review shall be informed of the right to file a complaint with the REP's or aggregator's supervisory review process, if available, and, if not available, with the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP or aggregator shall result in a decision communicated to the complainant within ten business days of the request. If the REP or aggregator does not respond to the customer's complaint in writing, the REP or aggregator shall orally inform the customer of the ability to obtain the REP's or aggregator's response in writing upon request.
- (e) **Complaints to the commission.**
  - (1) **Informal complaints.**
    - (A) If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator shall advise the complainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, Internet website address: www.puc.state.tx.us, TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.
    - (B) Complainants should include sufficient information in a complaint to identify the complainant and the company for which the complaint is made and describe the issue specifically. The following information should be included in the complaint:
      - (i) The account holder's name, billing and service addresses, and telephone number;

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- (ii) The name of the REP or aggregator;
  - (iii) The customer account number or electric service identifier (ESI-ID);
  - (iv) An explanation of the facts relevant to the complaint;
  - (v) The complainant's requested resolution; and
  - (vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.
- (C) All REPs and aggregators shall provide the commission an email address to receive notification of customer complaints from the commission.
- (D) The REP or aggregator shall investigate all informal complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP or aggregator.
- (E) The commission shall review the complaint information and the REP or aggregator's response and notify the complainant of the results of the commission's investigation.
- (2) While an informal complaint process is pending:
- (A) The REP or aggregator shall not initiate collection activities, including disconnection of service or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.
  - (B) A customer shall be obligated to pay any undisputed portion of the bill and the REP may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice.
- (3) The REP or aggregator shall keep a record for two years after closure by the commission of all informal complaints forwarded to it by the commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or rates and charges that are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.
- (4) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

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**§25.487. Obligations Related to Move-In Transactions.**

- (a) **Applicability.** This section applies to all retail electric providers (REPs).
- (b) **Definition.** For this section, the term "safety-net process" means a process developed and implemented by the market participants in the Texas retail electric market in 2002 to ensure that a customer who moves into a premise receives electric service in a timely manner. The safety-net process should be used for legitimate purposes and not to bypass standard rules and processes.
- (c) **Standard move-in request.** A REP shall submit a move-in transaction to the registration agent electronically, in accordance with applicable protocols and guidelines of the independent organization to establish service for a new customer.
- (d) **Safety-net move-in request.** In the event a REP does not receive a confirmation that the transmission and distribution utility (TDU) has received the appropriate move-in request transaction from the Electric Reliability Council of Texas (ERCOT), and does not receive a valid move-in rejection, the REP shall submit the move-in request using the safety-net process by noon on the business day prior to the customer's move-in date.
  - (1) In submitting a move-in request using the safety-net process, the REP establishes its right to serve the customer at the premise identified by the electric service identifier (ESI ID) from the date the TDU executes the move-in by connecting service to the premise. The date the TDU executes the move-in by connecting service to the premise is the effective date for all wires charges and fees associated with that ESI ID. This date will also be the effective date for the move-in when the applicable move-in electronic transactions are processed. The TDU may bill monthly wires charges and fees to the REP commencing with the effective date, but may not issue wires charges and fees or consumption records until the REP submits the electronic transaction.
  - (2) The REP shall ensure that the standard electronic move-in transaction is submitted to ERCOT in accordance with applicable protocols on or before the fifth business day after submitting the move-in through the safety net process, even if the physical move-in has already taken place as a result of being submitted through the safety net process. The REP, ERCOT, and the TDU shall work to ensure that the appropriate premise information and enrollment response transaction is sent to and received by the new REP and that the appropriate drop (due to switch request) transaction is sent to the losing REP of record as shown in ERCOT's systems.
- (e) **Sunset provision for review of safety-net process.** By March 1, 2004, the commission shall, after input provided by market participants, review the safety-net process and determine whether it should be continued.

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**§25.488. Procedures for a Premise with No Service Agreement.**

- (a) **Applicability.** This section applies to all retail electric providers (REPs).
- (b) **Service to premise with no service agreement.** If a REP finds that a current occupant at a premise for which the provider is shown as the REP of record in the ERCOT or TDU system is not the customer with whom the REP currently has a service agreement for retail electric service or the occupant is a customer whose prior service agreement has expired or is no longer in effect:
  - (1) the REP may establish service with the occupant. The REP shall obtain verification of the occupant's authorization to establish service with the REP consistent with the requirements of §25.474 of this title (relating to Selection or Change of Retail Electric Provider); or
  - (2) the REP with disconnection authority may issue a disconnection notice to the current occupant. The notice shall contain the following:
    - (A) The date the disconnection will occur, provided that the date shall not be sooner than ten days from the date the notice is issued;
    - (B) What actions the occupant must take if that occupant believes the notice is in error or desires to establish service with the REP; and
    - (C) A statement that informs the occupant of the right to obtain service from another licensed REP and that information about other REPs can be obtained from the commission.

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**§25.489. Treatment of Premises with No Retail Electric Provider of Record.**

- (a) **Applicability.** This section applies to all transmission and distribution utilities (TDUs) and retail electric providers (REPs) in areas open to retail customer choice.
- (b) **Definition.** For this section, the term "no REP of record" means a premise that is receiving electricity equal to or greater than 150 kilowatt-hours (kWh) in a single meter reading cycle, but for which no REP is designated as serving the premise in the TDU's system.
- (c) **Obligation of TDUs to identify premises with no REP of record.** Each TDU shall implement the following procedures to identify those premises that have no REP of record:
  - (1) Each TDU shall prepare a No REP of Record List on a monthly basis, identifying all premises with consumption equal to or greater than 150 kilowatt hours (kWh) in a single meter reading cycle, but no REP of record in the TDU's Customer Information System;
  - (2) Each TDU shall delete a premise from the list if there is evidence of erroneous meter reads for the premise;
  - (3) Each TDU shall cross reference the list with ERCOT's pending orders to identify any move-in transactions that indicate that a REP is initiating service at a premise on the list and remove such premises from the list;
  - (4) Each TDU shall review safety-net move-in requests to initiate service and remove such premises from the list; and
  - (5) Each TDU shall review its internal systems for pending transactions and any correspondence from REPs claiming that a premise should be assigned to the REP. Any corresponding matches of premises shall be removed from the list.
- (d) **Submission of No REP of Record List to REPs.**
  - (1) Each TDU shall send the No REP of Record List to all REPs offering service in its service area each month;
  - (2) Within five business days after the TDU sends the list, a REP shall inform the TDU in writing if it has a contract with a customer for a location on the list. The TDU shall delete all claimed premises from the list.
  - (3) Nothing in this section is meant to absolve a REP of its responsibilities under §25.474 of this title (relating to Selection or Change of Retail Electric Provider).
- (e) **Customer notification.** TDUs shall provide notice to all remaining premises in a standardized bilingual (English and Spanish) format consistent with subsection (g) of this section. TDUs may either provide notice by placing door hangers at each premise or by mailing notice to each premise.
- (f) **Wires charges billed to customer with no REP of record.** A premise with no REP of record shall not constitute unauthorized use of service under the TDU's tariff for retail delivery service approved pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).
- (g) **Format of notice.** The notice provided by the TDU to a customer on the final list of accounts with no REP of record shall have the identifying code #999 printed in bold letters to enable the REPs to identify customers contacting them as premises on the No REP of Record List and shall comply with the content requirements of this subsection.
  - (1) The notice shall include the following information and be formatted as follows:

Date: \_\_\_\_\_  
Address: \_\_\_\_\_  
ESI-ID: \_\_\_\_\_

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**DISCONNECT NOTICE**

**Code #999**

The State of Texas requires all customers to have a Retail Electric Provider (REP) before receiving electric service. Our records indicate that you do not have a REP and are not receiving bills for electric service. Thus, you have not been billed for the electricity used at these premises.

In order to avoid any disruption in your service, you must select and enroll with a REP no more than ten days from the date of this notice. **To ensure proper identification of your premise, please inform the REP you have a Code 999 order to process.** If you do not enroll with a REP within ten days, electricity to this address will be disconnected.

If you have already contacted a REP to set up an electric service account, we urge you to contact your REP to check the status of your request to avoid disconnection of service.

A list of REPs is listed on this notice. If you have selected a REP and believe this notice is in error, please contact your REP immediately. You may call the Public Utility Commission of Texas (PUC) toll-free at 1-888-782-8477 to address any questions that your REP cannot answer.

- (2) A comprehensive list of REPs serving residential customers in the TDU's territory, including each REP's toll-free number and website address (if available), shall be listed on the notice provided to residential premises. A comprehensive list of REPs serving commercial customers in the TDU's territory, including each company's toll-free number and website address (if available), shall be listed on the notice provided to commercial premises.
- (h) **REP obligation to submit move-in transaction.** A REP that enrolls a premise in response to the TDU notice shall submit a move-in transaction, not a switch transaction, to the registration agent in accordance with the requirements of §25.487 of this title (relating to Obligations Related to Move-In Transactions).
- (i) **Disconnection of premise with no REP of record.** Each TDU may disconnect a premise with no REP of record no earlier than ten days after the customer receives the TDU's notification required by this section. Prior to disconnecting the service for a premise with no REP of record, each TDU shall repeat the procedures listed in subsection (c) of this section (other than issuing notice) to prevent the disconnection of a customer who has initiated service with a REP. A TDU shall not disconnect any premise that has been claimed by a REP in accordance with this section.
- (j) **Expedited reconnection of premise.** If a TDU disconnects a premise in error, the TDU shall reconnect a premise on an expedited basis in accordance with its tariff and commission rules, whichever process is shorter.

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**§25.490. Moratorium on Disconnection on Move-Out.**

- (a) **Applicability.** This section applies to all transmission and distribution utilities (TDUs) with respect to residential customers.
- (b) **Moratorium on disconnection on move-out.** A TDU shall not disconnect a residential premise after receiving a move-out transaction unless the requirements of subsection (d) of this section have been met.
- (c) **Reporting requirement.**
  - (1) A TDU shall report monthly to the commission its success rate in processing standard electronic move-in requests for residential customers. The success rate shall be measured based on whether the meter read and energizing of the premise is accomplished on the scheduled date. The report shall omit backdated move-in requests.
  - (2) A TDU shall also report to the commission its success rate in processing requests for reconnection of electric service. The success rate shall be measured based on whether the re-energizing of the premise is accomplished on the scheduled date.
  - (3) The reports shall be filed with the commission on or before the 15th day of the month following the last day of the reporting month.
- (d) **Relaxation of moratorium on disconnection.** Upon approval from commission staff, a TDU may disconnect residential premises after receiving a move-out transaction, as defined in the ERCOT protocols. To achieve approval, the TDU must demonstrate through reports filed in accordance with subsection (c) of this section that it has for three consecutive months or more processed 95% or greater of all move-ins and requests for reconnection of electric service no later than the scheduled date. If a TDU's success rate falls below 95% for two consecutive months or below 90% in any one month, the TDU shall immediately notify commission staff in writing, and commission approval shall be automatically revoked.
- (e) **Elimination of reporting requirement.** Once a TDU demonstrates a 95% success rate in completing reconnections and move-ins on the scheduled date for 12 consecutive months, it shall no longer be required to submit monthly reports, as required by subsection (c) of this section. However, upon request by the commission, a TDU shall file a report on its current success rate.
- (f) **Notice of moratorium status.** The TDU shall notify each REP in its service territory each time it changes its status, pursuant to subsection (d) of this section, concerning the moratorium on move-out disconnections. The TDU shall not disconnect any residential premise prior to completion of this notice.

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#### §25.491. Record Retention and Reporting Requirements.

- (a) **Application.** This section does not apply to a municipally owned utility where it offers retail electric power or energy outside its certificated service territory or to a retail electric provider (REP) that is an electric cooperative.
- (b) **Record retention.**
- (1) Each REP and aggregator shall establish and maintain records and data that are sufficient to:
    - (A) Verify its compliance with the requirements of any applicable commission rules; and
    - (B) Support any investigation of customer complaints.
  - (2) All records required by this subchapter shall be retained for no less than two years, unless otherwise specified.
  - (3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter shall be provided to the commission within 15 calendar days of its request.
- (c) **Annual reports.** In its annual report, a REP shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)) to the commission and the Office of Public Utility Counsel (OPUC) and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:
- (1) The number of residential customers served, by nine-digit zip code and census tract, by month;
  - (2) The number of written denial of service notices issued by the REP, by month, by customer class, by nine-digit zip code and census tract;
  - (3) The number and total aggregated dollar amount of deposits held by the REP, by month, by customer class, by nine-digit zip code and census tract;
  - (4) Information relating to the REP's bill payment assistance program for residential electric customers required by §25.480(n)(1) of this title (relating to Bill Payment and Adjustments);
  - (5) The number of complaints received by the REP from residential customers for the following categories by month, by nine-digit zip code and census tract:
    - (A) Refusal of electric service, which shall include all complaints pertaining to the implementation of §25.477 of this title (relating to Refusal of Electric Service);
    - (B) Marketing and quality of customer service, which shall include complaints relating to the interfaces between the customer and the REP, such as, but not limited to, call center hold time, responsiveness of customer service representatives, and implementation of §25.472 of this title (relating to Privacy of Customer Information), §25.475 of this title (relating to General REP Requirements and Information Disclosures to Residential and Small Commercial Customers), §25.473 of this title (relating to Non-English Language Requirements), §25.476 of this title (relating to Renewable and Green Energy Verification ), and §25.484 of this title (relating to Texas Electric No-Call List), and which shall not include issues for which the REP is not responsible, such as, but not limited to, power quality, outages, or technical failures of the registration agent;
    - (C) Unauthorized charges, which shall encompass all complaints pertaining to §25.481 of this title (relating to Unauthorized Charges);
    - (D) Enrollment, which shall encompass all complaints pertaining to the implementation of §25.474 of this title (relating to the Selection of Retail Electric Provider), §25.478 of this title (relating to Credit Requirements and Deposits), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
    - (E) Accuracy of billing services, which shall encompass all complaints pertaining to the implementation of §25.479 of this title (relating to Issuance and Format of Bills); and
    - (F) Collection and service termination, and disconnection, which shall encompass all complaints pertaining to the implementation of §25.480 of this title, and §25.483 of this title (relating to Disconnection of Service).

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- (6) In reporting the number of informal complaints received pursuant to paragraph (4) of this subsection, a REP may identify the number of complaints in which it has disputed categorization or assignment pursuant to the provisions set forth in §25.485 of this title (relating to Customer Access and Complaint Handling).
- (d) **Information regarding payment options and payment assistance programs.** With its annual report, a REP shall include a statement containing the information described in §25.480(n) of this title to the extent such information is not included in the form approved by the commission pursuant to subsection (c) of this section.
- (e) **Additional information.** Upon written request by the commission, a REP or aggregator shall provide within 15 days any information, including but not limited to marketing information, necessary for the commission to investigate an alleged discriminatory practice prohibited by §25.471(c) of this title (relating to General Provisions of the Customer Protection Rules).

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**§25.492. Non-Compliance with Rules or Orders; Enforcement by the Commission.**

- (a) **Noncompliance.** An aggregator or retail electric provider (REP) that fails to comply with the Public Utility Regulatory Act (PURA) or commission order may, after notice and opportunity for hearing, be subject to any and all of the following available under the law, including, but not limited to:
  - (1) assessment of civil and administrative penalties under PURA §15.023;
  - (2) civil penalties under PURA §15.028;
  - (3) suspension or revocation of the applicable certification or registration or denial of a request for renewal or change in the terms associated with a certification; and
  - (4) such other relief directed to affected customers as allowed by law.
  
- (b) **Commission investigation.** The commission may initiate a compliance or other enforcement proceeding upon its own initiative, after an incident has occurred, or a complaint has been filed, or a staff notice of probable noncompliance has been served. The commission shall coordinate this investigation with any investigation that may be or has been undertaken by the Office of the Attorney General.
  
- (c) **Suspension and revocation of certification.** The commission may initiate a proceeding to seek either suspension or revocation of a REP's certification consistent with §25.107(j) of this title (relating to Certification of Retail Electric Providers), or an aggregators registration consistent with §25.111(j) of this title (relating to the Registration of Aggregators).

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**§25.493. Acquisition and Transfer of Customers from one Retail Electric Provider to Another.**

- (a) **Application.** This section applies when a retail electric provider (REP) acquires customers from another REP due to acquisition, merger, bankruptcy, or other similar reason.
- (b) **Notice requirement.** Any REP other than a provider of last resort (POLR) that will acquire customers from another REP due to acquisition, merger, bankruptcy, or any other similar reason, shall provide notice the notice required by subsection (c) or (d) of this section to every affected customer. The notice may be in a billing insert or separate mailing, at least 30 days prior to the transfer. If legal or regulatory constraints prevent the sending of advance notice, the notice shall be sent promptly after all legal and regulatory impediments have been removed. The POLR shall comply with the requirements of §25.43 of this title (relating to Provider of Last Resort (POLR)). Transferring customers from one REP to another does not require advance commission approval, unless the transfer is due to abandonment of a REP. The acquiring REP shall also inform the commission or commission staff of the acquisition of customers.
- (c) **Contents of notice for adverse changes in terms of service.** If the transfer of a customer will materially change the terms of service for the affected customer in an adverse manner, the notice shall:
  - (1) identify the current and acquiring REP;
  - (2) explain the reasons for the transfer of the customer's account to the new REP;
  - (3) explain that the customer may select another REP without penalty due to the adverse change in the terms of service, and if the customer desires to do so, that they should contact another REP;
  - (4) identify the date that customers will be or were transferred to the acquiring REP;
  - (5) provide the new terms of service, including the Electricity Facts Label of the acquiring REP; and
  - (6) provide a toll-free number for a customer to call for additional information and the identity of the party being called.
- (d) **Contents of notice for transfers with no adverse change in terms of service.** If a transfer of a customer will not result in a material adverse change to the terms of service for the affected customer, the notice is not required to contain the information required by subsection (c)(3) of this section.
- (e) **Process to transfer customers.** The registration agent shall develop procedures to facilitate the expeditious transfer of large numbers of customers from one REP to another.

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**§25.495. Unauthorized Change of Retail Electric Provider.**

- (a) Process for resolving unauthorized change of retail electric provider (REP). If a REP is serving a customer without proper authorization pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) shall follow the procedures set forth in this subsection.
- (1) Either the original REP or switching REP shall notify the registration agent of the unauthorized change of REP as promptly as possible, using the process approved by the registration agent.
  - (2) As promptly as possible following receipt of notice by the REP, the registration agent shall facilitate the prompt return of the customer to the original REP, or REP of choice in the case of a move-in.
  - (3) The affected REPs, the registration agent, and the TDU shall take all actions necessary to return the customer to the customer's original REP, or REP of choice in the case of a move-in, as quickly as possible. The original REP does not need to obtain an additional authorization from the customer pursuant to §25.474 of this title in order to effectuate the provision of this section.
  - (4) The affected REPs, the registration agent, and the TDU shall take all actions necessary to bill correctly all charges, so that the end result is that:
    - (A) the REP that served the customer without proper authorization shall pay all transmission and distribution charges associated with returning the customer to its original REP, or REP of choice in the case of a move-in;
    - (B) the original REP has the right to bill the customer pursuant to §25.480 of this title (relating to Bill Payment and Adjustment) at the price disclosed in its terms of service from either:
      - (i) the date the customer is returned to the original REP; or
      - (ii) any prior date chosen by the original REP for which the original REP had the authorization to serve the customer.
    - (C) the REP that served the customer without proper authorization shall refund all charges paid by the customer for the time period for which the original REP ultimately bills the customer within five business days after the customer is returned to the original REP, or REP of choice in the case of a move-in;
    - (D) the customer shall pay no more than the price at which the customer would have been billed had the unauthorized switch or move-in not occurred;
    - (E) the TDU has the right to seek collection of non-bypassable charges from the REP that ultimately bills the customer under subparagraph (B) of this paragraph; and
    - (F) the REP that ultimately bills the customer under subparagraph (B) of this paragraph is responsible for non-bypassable charges and wholesale consumption for the customer.
  - (5) The original REP shall provide the customer all benefits or gifts associated with the service that would have been awarded had the unauthorized switch or move-in not occurred, upon receiving payment for service provided during the unauthorized change;
  - (6) The affected REPs shall communicate with the customer as appropriate throughout the process of returning the customer to the original REP or REP of choice and resolving any associated billing issues.
  - (7) In a circumstance where paragraph (4) of this subsection is not applicable or its requirements cannot be effectuated, the market participants involved shall work together in good faith to rectify the unauthorized switch or move-in in a manner that affords the customer and market participants involved a level of protection comparable to that required in this subsection.
- (b) Customer complaints, record retention and enforcement.
- (1) Customers may file a complaint with the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for an alleged failure to comply with the provisions of this section.
  - (2) Upon receipt of a customer complaint, each REP shall:

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- (A) respond to the commission within 21 calendar days after receiving the complaint and in the response to the complaint provide to the commission all documentation relied upon by the REP and related to the:
  - (i) authorization and verification to switch the customer's service; and
  - (ii) corrective actions taken to date, if any.
- (B) cease any collection activity related to the alleged unauthorized switch or move-in until the complaint has been resolved by the commission.

- (c) This section is effective June 1, 2004.

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#### §25.497. Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers.

- (a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise.
- (1) **Critical Load Public Safety Customer** -- A customer for whom electric service is considered crucial for the protection or maintenance of public safety, including but not limited to hospitals, police stations, fire stations, and critical water and wastewater facilities.
  - (2) **Critical Load Industrial Customer** -- An industrial customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition on the retail customer's premises, is a "critical load industrial customer."
  - (3) **Chronic Condition Residential Customer** -- A residential customer who has a person permanently residing in his or her home who has been diagnosed by a physician as having a serious medical condition that requires an electric-powered medical device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the person's medical condition. If that serious medical condition is diagnosed or re-diagnosed by a physician as a life-long condition, the designation is effective under this section for the shorter of one year or until such time as the person with the medical condition no longer resides in the home. Otherwise, the designation or re-designation is effective for 90 days.
  - (4) **Critical Care Residential Customer** -- A residential customer who has a person permanently residing in his or her home who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life. The designation or redesignation is effective for two years under this section.
- (b) **Eligibility for protections.** In order to be considered for designation under this section, an application for designation must be submitted by or on behalf of the customer.
- (1) To be designated as a Critical Care Residential Customer or Chronic Condition Residential Customer, the commission-approved application form must be submitted to the TDU by a physician, in accordance with provisions of this section.
  - (2) To be designated as a Critical Load Public Safety Customer or a Critical Load Industrial Customer, the customer must notify the TDU. To be eligible for the protections provided under this section, the customer must have a determination of eligibility pending with or approved by the TDU. Eligibility shall be determined through a collaborative process among the customer, REP, and TDU, but in the event that the customer, REP and TDU are unable to agree on the designation, the TDU has the authority to make or decline to make the designation.
- (c) **Benefits for Critical Load Public Safety Customers, Critical Load Industrial Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers.**
- (1) A Critical Load Public Safety Customer or a Critical Load Industrial Customer qualifies for notifications of interruptions or suspensions of service as provided in Sections 4.2.5, 5.2.5, and 5.3.7.1 of the TDU's tariff for retail delivery service.
  - (2) A Critical Care Residential Customer or Chronic Condition Residential Customer qualifies for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.1, and for Critical Care Residential Customers protections against suspension or disconnection, as provided in Section 5.3.7.4(1)(D) and (E), of the TDU's tariff for retail delivery service.
  - (3) A Critical Care Residential Customer or Chronic Condition Residential Customer is also eligible for certain protections as described in §25.483 (relating to Disconnection of Service).
  - (4) Designation as a Critical Load Customer, Critical Care Residential Customer, or Chronic Condition Residential Customer does not guarantee the uninterrupted supply of electricity.

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- (d) **Notice to customers concerning Critical Care Residential Customer and Chronic Condition Residential Customer status.**
- (1) A REP shall notify each residential applicant for service of the right to apply for Critical Care Residential Customer or Chronic Condition Residential Customer designation. This notice to an applicant for residential service shall be included in the Your Rights as a Customer document.
  - (2) All REPs that serve residential customers shall provide information about Critical Care Residential Customer and Chronic Condition Residential Customer designations to each residential customer two times a year.
  - (3) Upon a customer's request, the REP shall provide to the customer the application form for Critical Care Residential Customer and Chronic Condition Residential Customer designation.
- (e) **Procedure for obtaining Critical Care Residential Customer or Chronic Condition Residential Customer designation.**
- (1) The commission-approved application form shall instruct the customer to have the physician submit the application form by facsimile or other electronic means to the TDU. If the physician submits the form to the REP, the REP shall forward it to the TDU electronically no later than two business days from receipt of the form. The application form shall include a telephone number for reaching a person at the TDU who is capable of responding to questions from a physician or customer about the form during regular business hours.
  - (2) After the TDU receives the form, it shall evaluate the form for completeness. If the form is incomplete, no later than two business days after receiving the form, the TDU shall mail the form to the customer and explain in writing what information is needed to complete the form.
  - (3) If the TDU has returned the form as incomplete or has not finished processing the form within two business days from receipt of the form, the customer shall be designated as a Critical Care Residential Customer or Chronic Condition Residential Customer on a temporary basis pending final designation by the TDU. The temporary designation shall be based on the designation selected by the physician on the form if such designation was included; otherwise, the temporary designation shall be as a Critical Care Residential Customer. The TDU shall notify the customer's REP of such temporary designation using a standard market transaction. If the form is returned to the customer as incomplete, the temporary designation shall remain in effect for 14 days, after which the temporary designation shall expire and the application process must start over.
  - (4) Reasons that a TDU shall consider a form incomplete for an application for Critical Care Residential Customer or Chronic Condition Residential Customer designation include the omission of the name of the person for whom the protection is sought, contact information, physician signature, the designation as a Critical Care Residential Customer or Chronic Condition Residential Customer, and medical board license number of the customer's physician. Any additional mandatory information required for completeness shall be clearly identified on the commission-approved application form. A customer may, but it is not required to, include an emergency (secondary) contact in the application.
  - (5) The TDU shall not challenge the physician's determination of the customer's status, but shall apply the physician's designation of the customer as a Critical Care Residential Customer or Chronic Condition Residential Customer consistent with the information provided on the form and the definitions in this section. The TDU may verify the physician's identity and signature and may deny an application for designation, if it determines that the identity or signature of the physician is not authentic.
  - (6) The TDU shall notify the customer's REP using a standard market transaction and the customer of the final status of the application process, including whether the customer has been designated for Critical Care Residential Customer or Chronic Condition Residential Customer status. The TDU shall also notify the customer of the date a designation, if any, will expire, and whether the customer will receive a renewal notice. The TDU shall provide the emergency contact information (if applicable) to the REP using a standard market transaction. If the customer

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switches to a different REP, the TDU shall provide the new REP with information on the customer's status and the emergency contact information (if applicable) using a standard market transaction.

- (7) At the same time the TDU notifies the customer the final status of the customer's application, the TDU shall inform the customer of the customer's right to file a complaint with the commission pursuant to §22.242 of this title (relating to Complaints).
  - (8) The TDU shall notify Critical Care Residential Customers and Chronic Condition Residential Customers of the expiration of their designation in accordance with this subsection. The TDU shall notify the customer's REP using a standard market transaction when a customer is no longer designated as a Critical Care Residential Customer or a Chronic Condition Residential Customer.
  - (9) The TDU shall mail a renewal notice to a Chronic Condition Residential Customer whose designation was for a period longer than 90 days or a Critical Care Residential Customer, at least 45 days prior to the expiration date of the customer's designation. The renewal notice shall also be mailed to the emergency contact included on the commission-approved application form (if applicable). The renewal notice shall include the application form and an explanation of how to reapply for Critical Care Residential Customer or Chronic Condition Residential Customer designation. The renewal notice shall inform the customer that the current designation will expire unless the application form is returned by the expiration date of the existing designation.
- (f) **Effect of Critical Care Residential Customer or Chronic Condition Residential Customer status on payment obligations.** A Critical Care Residential Customer or Chronic Condition Residential Customer designation pursuant to this section does not relieve a customer of the obligation to pay the REP for services provided, and a customer's service may be disconnected pursuant to §25.483 of this title.
- (g) **TX SET changes.** In the first TX SET release after the effective date of this section, market transactions shall be included to address the requirements of this section.
- (h) **Effective date.** The effective date of this section is January 1, 2011.
- (i) **TDU annual report.** A TDU shall report to the commission by March 1 of each year beginning in 2012, the number of customers for each type of customer defined in subsection (a) of this section as of December 31 of the previous calendar year. The TDU report shall also include for the previous calendar year, for each type of customer defined in subsection (a) of this section, the number of applications that were rejected as a result of incomplete forms, the number of requests from REPs for disconnection, and the number of disconnections and reconnections completed. An interim report shall be filed by the TDU on April 1, 2011 for the time period from January 1, 2011 through March 1, 2011.

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#### §25.498. Prepaid Service.

- (a) **Applicability.** This section applies to retail electric providers (REPs) that offer a payment option in which a customer pays for retail service prior to the delivery of service and to transmission and distribution utilities (TDUs) that have installed advanced meters and related systems. A REP may not offer prepaid service to residential or small commercial customers unless it complies with this section. The following provisions do not apply to prepaid service, unless otherwise expressly stated:
- (1) §25.479 of this title (relating to Issuance and Format of Bills);
  - (2) §25.480(b), (e)(3), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments); and
  - (3) §25.483 of this title (relating to Disconnection of Service), except for §25.483(b)(2)(A) and (B), (d), and (e)(1)-(6) of this title.
- (b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise.
- (1) **Connection balance** -- A current balance, not to exceed \$75 for a residential customer, required to establish prepaid service or reconnect prepaid service following disconnection.
  - (2) **Current balance** -- An account balance calculated consistent with subsection (c)(6) of this section.
  - (3) **Customer prepayment device or system (CPDS)** -- A device or system that includes metering and communications capabilities that meet the requirements of this section, including a device or system that accesses customer consumption information from a TDU's advanced metering system (AMS). The CPDS may be owned by the REP, and installed by the TDU consistent with subsection (c)(2)-(4) of this section.
  - (4) **Disconnection balance** -- An account balance, not to exceed \$10 for a residential customer, below which the REP may initiate disconnection of the customer's service.
  - (5) **Landlord** -- A landlord or property manager or other agent of a landlord.
  - (6) **Postpaid service** -- A payment option offered by a REP for which the customer normally makes a payment for electric service after the service has been rendered.
  - (7) **Prepaid service** -- A payment option offered by a REP for which the customer normally makes a payment for electric service before service is rendered.
  - (8) **Prepaid disclosure statement (PDS)** -- A document described by subsection (e) of this section.
  - (9) **Summary of usage and payment (SUP)** -- A document described by subsection (h) of this section.
- (c) **Requirements for prepaid service.**
- (1) A REP must file with the commission a notice of its intent to provide prepaid service prior to offering such service. The notice of intent must include a description of the type of CPDS the REP will use, and the initial Electricity Facts Label (EFL), terms of service, and PDS for the service. Except as provided in subsection (m) of this section, a REP-controlled CPDS or TDU settlement provisioned meter is required for any prepaid service.
  - (2) A CPDS that relies on metering equipment other than the TDU meter must conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).
  - (3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).
  - (4) A CPDS must not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS must be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU must protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).

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- (5) A REP may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, United States Postal Service, email, telephone, mobile phone, or other electronic communications. The means by which the REP will communicate required information to a customer must be described in the terms of service and the PDS.
- (A) A REP must communicate time-sensitive notifications required by paragraph (7)(B), (D), and (E) of this subsection by telephone, mobile phone, or electronic means.
- (B) A REP must, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must provide these public service notices to its customers by electronic communication, or by other acceptable mass communication methods, as approved by the commission.
- (6) A REP must calculate the customer's current balance by crediting the account for payments received and reducing the account balance by known charges and fees that have been incurred, including charges based on estimated usage as allowed in paragraph (11)(E) of this subsection.
- (A) The REP may also reduce the account balance by:
- (i) estimated applicable taxes; and
- (ii) estimated TDU charges that have been incurred in serving the customer and that, pursuant to the terms of service, will be passed through to the customer.
- (B) If the customer's balance reflects estimated charges and taxes authorized by subparagraph (A) of this paragraph, the REP must promptly reconcile the estimated charges and taxes with actual charges and taxes, and credit or debit the balance accordingly within 72 hours after actual consumption data or a statement of charges from the TDU is available.
- (C) A REP may reverse a payment for which there are insufficient funds available or that is otherwise rejected by a bank, credit card company, or other payor.
- (D) If usage sent by the TDU is estimated or the REP estimates consumption according to paragraph (11)(E) of this subsection, the REP must promptly reconcile the estimated consumption and associated charges with the actual consumption and associated charges within 72 hours after actual consumption data is available to the REP.
- (7) A REP must:
- (A) on the request of the customer, provide the customer's current balance calculated pursuant to paragraph (6) of this subsection, including the date and time the current balance was calculated and the estimated time or days of paid electricity remaining; and
- (B) make the current balance available to the customer either:
- (i) continuously, via the internet, phone, or an in-home device; or
- (ii) within two hours of the REP's receipt of a customer's balance request, by the means specified in the Terms of Service for making such a request.
- (C) communicate to the customer the current price for electric service calculated as required by §25.475(g)(2)(A)-(E) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers);
- (D) provide a warning to the customer at least one day and not more than seven days before the customer's current balance is estimated by the REP to drop to the disconnection balance;
- (E) provide a confirmation code when the customer makes a payment by credit card, debit card, or electronic check. A REP is not required to provide a confirmation code or receipt for payment sent by mail or electronic bill payment system. The REP must provide a receipt showing the amount paid for payment in person. At the customer's request, the REP must confirm all payments by providing to the customer the last four digits of the customer's account number or Electric Service Identifier (ESI ID), payment amount, and the date the payment was received;

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- (F) ensure that a CPDS controlled by the REP does not impair a customer's ability to choose a different REP or any electric service plans offered by the REP that do not require prepayment. When the REP receives notice that a customer has chosen a new REP, the REP must take any steps necessary to facilitate the switch on a schedule that is consistent with the effective date stated on the Electric Reliability Council of Texas (ERCOT) enrollment transaction and ERCOT's rules for processing such transactions; and
- (G) refund to the customer or an energy assistance agency, as applicable, any unexpended balance from the account within ten business days after the REP receives the final bill and final meter read from the TDU.
  - (i) In the case of unexpended funds provided by an energy assistance agency, the REP must refund the funds to the energy assistance agency and identify the applicable customer and the customer's address associated with each refund.
  - (ii) In the case of unexpended funds provided by the customer that are less than five dollars, the REP must communicate the unexpended balance to the customer and state that the customer may contact the REP to request a refund of the balance. Once the REP has received the request for refund from the customer, the REP must refund the balance within ten business days.
- (8) Nothing in this subsection limits a customer from obtaining a SUP.
- (9) The communications provided under paragraph (7)(A)-(D) of this subsection and any confirmation of payment as described in paragraph (7)(E) of this subsection, except a receipt provided when the payment is made in person at a third-party payment location, must be provided in English or Spanish, at the customer's election.
- (10) A REP must cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.
- (11) A REP must not:
  - (A) tie the duration of an electric service contract to the duration of a tenant's lease;
  - (B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;
  - (C) require a connection balance in excess of \$75 for a residential customer;
  - (D) require security deposits for electric service; or
  - (E) base charges on estimated usage, other than usage estimated by the TDU or estimated by the REP in a reasonable manner for a time period in which the TDU has not provided actual or estimated usage data on a web portal within the time prescribed by §25.130(g) of this title (relating to Advanced Metering) and in which the TDU-provided portal does not provide the REP the ability to obtain on-demand usage data.
- (12) A REP providing service must not charge a customer any fee for:
  - (A) transitioning from a prepaid service to a postpaid service, but notwithstanding §25.478(c)(3) of this title (relating to Credit Requirements and Deposits), a REP may require the customer to pay a deposit for postpaid service consistent with §25.478(b) or (c)(1) and (2) of this title and may:
    - (i) require the deposit to be paid within ten days after issuance of a written disconnection notice that requests a deposit; or
    - (ii) bill the deposit to the customer.
  - (B) the removal of equipment; or
  - (C) the switching of a customer to another REP, or otherwise cancelling or discontinuing taking prepaid service for reasons other than nonpayment, but may charge and collect early termination fees pursuant to §25.475 of this title.
- (13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account balance, the REP must notify the customer of the amount of the debt and that the customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.

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- (14) In addition to the connection balance, a REP may require payment of applicable TDU fees, if any, prior to establishing electric service or reconnecting electric service.
- (15) A REP that provides prepaid service to a residential customer must not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The price for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A)-(E) of this title must be equal to or lower than the maximum POLR rate for the residential customer class at the 500 kilowatt-hour (kWh), 1,000 kWh, and 2,000 kWh usage levels as shown on the POLR EFL posted on the commission's website for the applicable TDU service territory. When an updated POLR EFL is posted on the commission's website, the REP, at the REP's option, may continue to reference the prior POLR EFL to ensure compliance with this paragraph for prepaid service prices charged during the first 30 days, beginning the date that the updated POLR EFL is posted. For a fixed rate product, the REP must show that the prepaid service prices calculated under §25.475(g)(2)(A), (D)-(E) of this title are equal to or lower than the test described in this paragraph at the time the REP makes the offer and provided that the customer accepts the offer within 30 days.
- (d) **Customer acknowledgement.** As part of the enrollment process, a REP must obtain the applicant's or customer's acknowledgement of the following statement: "The continuation of electric service depends on your prepaying for service on a timely basis and if your balance falls below {insert dollar amount of disconnection balance}, your service may be disconnected with little notice. Some electric assistance agencies may not provide assistance to customers that use prepaid service." The REP must obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title (relating to Selection of Retail Electric Provider).
- (e) **Prepaid disclosure statement (PDS).** A REP must provide a PDS contemporaneously with the delivery of the contract documents to a customer pursuant to §25.474 of this title and as required by subsection (f) of this section. A REP must also provide a PDS-contemporaneously with any advertisement or other marketing materials not addressed in subsection (f) of this section that include a specific price or cost for prepaid service. The commission may adopt a form for a PDS. The PDS must be a separate document and must be at a minimum written in 12-point font, and must:
- (1) provide the following statement: "The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.";
  - (2) inform the customer of the following:
    - (A) the connection balance that is required to initiate or reconnect electric service;
    - (B) the acceptable forms of payment, the hours that payment can be made, instructions on how to make payments, any requirement to verify payment and any fees associated with making a payment;
    - (C) when service may be disconnected and the disconnection balance;
    - (D) that prepaid service is not available to critical care or chronic condition residential customers as these terms are defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers and Chronic Condition Residential Customers);
    - (E) the means by which the REP will communicate required information;
    - (F) the availability of deferred payment plans and, if a REP reserves the right to apply a switch-hold while the customer is subject to a deferred payment plan, that a switch-hold may apply until the customer satisfies the terms of the deferred payment plan, and that a switch-hold means the customer will not be able to buy electricity from other companies while the switch-hold is in place;
    - (G) the availability of energy bill payment assistance, including the disclosure that some electric assistance agencies may not provide assistance to customers that use prepaid service and the statement "If you qualify for low-income status or low-income assistance,

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- have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it.”; and
- (H) an itemization of any non-recurring REP fees and charges that the customer may be charged.
- (3) be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP.
- (f) **Marketing of prepaid services.**
- (1) This paragraph applies to advertisements conveyed through print, television, radio, outdoor advertising, prerecorded telephonic messages, bill inserts, bill messages, and electronic media other than Internet websites. If the advertisement includes a specific price or cost, the advertisement must include in a manner that is clear and conspicuous to the intended audience:
- (A) any non-recurring fees, and the total amount of those fees, that will be deducted from the connection balance to establish service;
- (B) the following statement, if applicable: “Utility fees may also apply and may increase the total amount that you pay.”;
- (C) the maximum fee per payment transaction that may be imposed by the REP; and
- (D) the following statement: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP).” If the REP’s phone number or website address is already included on the advertisement, the REP need not repeat the phone number or website as part of this required statement. The REP must provide the PDS and EFL to a person who requests standardized information for the product.
- (2) This paragraph applies to all advertisements and marketing that include a specific price or cost conveyed through Internet websites, direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. In addition to meeting the requirements of §25.474(d)(7) of this title, a REP must include the PDS and EFL on Internet websites and in direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. For electronic communications, the PDS and EFL may be provided through a hyperlink.
- (3) This paragraph applies to outbound telephonic solicitations initiated by the REP. A REP must disclose the following:
- (A) information required by paragraph (1)(A)-(C) of this subsection;
- (B) when service may be disconnected, the disconnection balance, and any non-TDU disconnection fees;
- (C) the means by which the REP will communicate required information; and
- (D) the following statement: “You have the right to review standardized documents before you sign up for this product.” The REP must provide the PDS and EFL to a person who requests standardized information for the product.
- (4) This paragraph applies to solicitations in person. In addition to meeting the requirements of §25.474(e)(8) of this title, before obtaining a signature from an applicant or customer who is being enrolled in prepaid service, a REP must provide the applicant or customer a reasonable opportunity to read the PDS.
- (g) **Landlord as customer of record.** A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.
- (1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP must provide to the TDU the name, service and mailing addresses, and ESI ID, and keep that information updated as required in the TDU’s Tariff for Retail Delivery Service.
- (2) The REP must treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this

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subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.

(h) **Summary of usage and payment (SUP).**

- (1) A REP must provide a SUP to each customer upon the customer's request within three business days of receipt of the request. The SUP must be delivered by an electronic means of communications that provides a downloadable and printable record of the SUP or, if the customer requests, by the United States Postal Service. If a customer requests a paper copy of the SUP, a REP may charge a fee for the SUP, which must be specified in the terms of service and PDS provided to the customer. For purposes of the SUP, a billing cycle must conform to a calendar month.
- (2) A SUP must include the following information:
  - (A) the certified name and address of the REP and the number of the license issued to the REP by the commission;
  - (B) a toll-free telephone number, in bold-face type, that the customer can call during specified hours for questions and complaints to the REP about the SUP;
  - (C) the name, meter number, account number, ESI ID of the customer, and the service address of the customer;
  - (D) the dates and amounts of payments made during the period covered by the summary;
  - (E) a statement of the customer's consumption and charges by calendar month during the period covered by the summary;
  - (F) an itemization of non-recurring charges, including returned check fees and reconnection fees; and
  - (G) the average price for electric service for each calendar month included in the SUP. The average price for electric service must reflect the total of all fixed and variable recurring charges, but not including state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and must be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.
- (3) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's SUP, then the term in this paragraph must be used to identify the charge, and such term and its definition must be easily located on the REP's website and available to a customer free of charge upon request. Nothing in the paragraph precludes a REP from aggregating TDU or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP must not exceed the amount of the TDU charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, adding the word "total" to a defined term, where appropriate, changing the use of lower-case or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's SUP.
  - (A) Advanced metering charge -- A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.
  - (B) Competition Transition Charge -- A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.
  - (C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.
  - (D) Late Payment Penalty -- A charge assessed for late payment in accordance with Public Utility Commission rules.

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- (E) Meter Charge -- A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.
  - (F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover the miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.
  - (G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.
  - (H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.
  - (I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.
  - (J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.
  - (K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.
  - (L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.
- (4) If the REP includes any of the following terms in its SUP, the term must be applied in a manner consistent with the definitions, and such term and its definition must be easily located on the REP's website and available to a customer free of charge upon request:
- (A) Base Charge -- A charge assessed during each billing cycle of service without regard to the customer's demand or energy consumption.
  - (B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period during the billing cycle.
  - (C) Energy Charge -- A charge based on the electric energy (kWh) consumed.
- (5) Unless a shorter time period is specifically requested by the customer, information provided must be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months.
- (6) In accordance with §25.472(b)(1)(D) of this title, a REP must provide a SUP to an energy assistance agency within one business day of receipt of the agency's request, and must not charge the agency for the SUP.
- (i) **Deferred payment plans.** A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a negative current balance over time. A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans must be confirmed in writing by the REP to the customer.
- (1) The REP must place a residential customer on a deferred payment plan, at the customer's request:
    - (A) when the customer's current balance reflects a negative balance of \$50 or more during an extreme weather emergency, as defined in §25.483(j)(1) of this title, if the customer makes the request within one business day after the weather emergency has ended; or
    - (B) during a state of disaster declared by the governor pursuant to Texas Government Code §418.014 if the customer is in an area covered by the declaration and the commission directs that deferred payment plans be offered.
  - (2) The REP must offer a deferred payment plan to a residential customer who has been underbilled by \$50 or more for reasons other than theft of service.
  - (3) The REP may offer a deferred payment plan to a customer who has expressed an inability to pay.

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.**

- (4) The deferred payment plan must include both the negative current balance and the connection balance.
- (5) The customer has the right to satisfy the deferred payment plan before the prescribed time.
- (6) The REP may require that:
  - (A) no more than 50% of each transaction amount be applied towards the deferred payment plan; or
  - (B) an initial payment of no greater than 50% of the amount due be made, with the remainder of the deferred amount paid in installments. The REP must inform the customer of the right to pay the remaining deferred balance by reducing the deferred balance by five equal monthly installments. However, the customer can agree to fewer or more frequent installments. The installments to repay the deferred balance must be applied to the customer's account on a specified day of each month.
- (7) The REP may initiate disconnection of service if the customer does not meet the terms of a deferred payment plan or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount. However, the REP must not initiate disconnection of service unless it has provided the customer at least one day's notice that the customer has not met the terms of the plan or, pursuant to subsection (c)(7)(D) of this section, a timely notice that the customer's current balance was estimated to fall below the disconnection balance, excluding the remaining deferred amount.
- (8) The REP may apply a switch-hold while the customer is on a deferred payment plan.
- (9) A copy of the deferred payment plan must be provided to the customer.
  - (A) The plan must include a statement, in clear and conspicuous type, that states, "If you have any questions regarding the terms of this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP)."
  - (B) If a switch-hold will apply, the plan must include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."
  - (C) If the customer and the REP's representative or agent meet in person, the representative must read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.
  - (D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but must not include a finance charge.
  - (E) The plan must include the terms for payment of deferred amounts, consistent with paragraph (6) of this subsection.
  - (F) The plan must state the total amount to be paid under the plan.
  - (G) The plan must state that a customer's electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan, or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount.
- (10) The REP must not charge the customer a fee for placing the customer on a deferred payment plan.
- (11) The REP, through a standard market process, must submit a request to remove the switch-hold, pursuant to §25.480(m)(2) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP must notify the customer that the customer has satisfied the deferred payment plan and that the switch-hold is being removed.

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**Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.**

- (j) **Disconnection of service.** As provided by subsection (a)(4) of this section, §25.483 (b)(2)(A) and (B), (d), (e)(1)-(6), and the definition of extreme weather in §25.483(j)(1) of this title apply to prepaid service. In addition to those provisions, this subsection applies to disconnection of a customer receiving prepaid service.
- (1) **Prohibition on disconnection.** A REP must not initiate disconnection for a customer's failure to maintain a current balance above the disconnection balance on a weekend day or during any period during which the mechanisms used for payments specified in the customer's PDS are unavailable; or during an extreme weather emergency, as this term is defined in §25.483 of this title, in the county in which the service is provided.
  - (2) **Initiation of disconnection.** A REP may initiate disconnection of service when the current balance falls below the disconnection balance, but only if the REP provided the customer a timely warning pursuant to subsection (c)(7)(D) of this section; or when a customer fails to comply with a deferred payment plan, but only if the REP provided the customer a timely warning pursuant to subsection (i)(7) of this section. A REP may initiate disconnection if the customer's current balance falls below the disconnection balance due to reversal of a payment found to have insufficient funds available or is otherwise rejected by a bank, credit card company, or other payor.
  - (3) **Pledge from electric assistance agencies.** If a REP receives a pledge, letter of intent, purchase order, or other commitment from an energy assistance agency to make a payment for a customer, the REP must immediately credit the customer's current balance with the amount of the pledge.
    - (A) The REP must not initiate disconnection of service if the pledge from the energy assistance agency (or energy assistance agencies) establishes a current balance above the customer's disconnection balance or, if the customer has been disconnected, must request reconnection of service if the pledge from the energy assistance agency establishes a current balance for the customer that is at or above the customer's connection balance required for reconnection.
    - (B) The REP may initiate disconnection of service if payment from the energy assistance agency is not received within 45 days of the REP's receipt of the commitment or if the payment is not sufficient to satisfy the customer's disconnection balance in the case of a currently energized customer, or the customer's connection balance if the customer has been disconnected for falling below the disconnection balance.
  - (4) **Reconnection of service.** Within one hour of a customer establishing a connection balance or any otherwise satisfactory correction of the reasons for disconnection, the REP must request that the TDU reconnect service or, if the REP disconnected service using its CPDS, reconnect service. The REP's payment mechanism may include a requirement that the customer verify the payment using a card, code, or other similar method in order to establish a connection balance or current balance above the disconnection balance when payment is made to a third-party processor acting as an agent of the REP.
- (k) **Service to Critical Care Residential Customers and Chronic Condition Residential Customers.** A REP must not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP must not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.
- (1) If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential customer, the REP must diligently work with the customer to promptly transition the customer to postpaid service or another REP in a manner that avoids a service disruption. The REP must not charge the customer a fee for the transition, including an early termination or disconnection fee.
  - (2) If the customer is unresponsive, the REP must transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(1)(2)(A) of this title. The REP must provide the customer notice that the customer has been

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

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transferred to a new product and must provide the customer the new product's Terms of Service and EFL.

- (l) **Compliance period.** No later than October 1, 2011, prepaid service offered by a REP pursuant to a new contract to a customer being served using a "settlement provisioned meter," as that term is defined in Chapter 1 of the TDU's tariff for retail delivery service, or using a REP-controlled collar or meter must comply with this section. Before October 1, 2011, prepaid service offered by a REP to a customer served using a settlement provisioned meter or REP-controlled collar or meter must comply with this section as it currently exists or as it existed in 2010, except as provided in subsection (m) of this section.
  
- (m) **Transition of Financial Prepaid Service Customers.** A REP may continue to provide a financial prepaid service (*i.e.*, one that does not use a settlement provisioned meter or REP-controlled collar or meter) only to its customer that was receiving financial prepaid service at a particular location on October 1, 2011. A customer who is served by a financial prepaid service must be transitioned to a service that complies with the other subsections of this section by the later of October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or a REP-controlled collar or meter. The customer must be notified by the REP that the customer's current prepaid service will no longer be offered as of a date specified by the REP by the later of either October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or REP-controlled collar or meter, as applicable. The REP must provide the notification no sooner than 60 days and not less than 30 days prior to the termination of the customer's current prepaid service. The customer must be notified that the customer will be moved to a new prepaid service, and the REP must transmit an EFL and PDS to the customer with the notification, if the customer does not choose another service or REP.

## **RESIDENTIAL CUSTOMER PDS**

**Format of Prepaid Disclosure Statement (PDS).** In compliance with §25.498, regarding Prepaid Service, REPs shall use the following format for the PDS for residential prepaid service customers, including the headings, ordering, print type (e.g., boldface, italicized, etc.), and required text shown. The REP may adjust any margin sizes, spacing and other minor formatting as needed. The REP shall fill-in the information required in the bracketed REP instructions. The REP may note any additional information in any section of the form under the required text for that section. The additional text shall be in an italicized, non-bold font no larger than the font of the required text.

The REP shall comply with the standardized PDS no later than February 8, 2012.

The REP shall also provide, at the customer's request, any applicable transmission and distribution utility fee information through a toll-free customer service number. This fee information shall include, but is not limited to, any applicable discretionary service fee charges for a standard move-in, priority move-in, standard switch and out-of-cycle meter read for the purpose of a self-selected switch.

The REP shall assign and place on each PDS an identification number to each version. Each PDS shall be printed in a type no smaller than 12 point size and shall be formatted as shown in this paragraph:

**EDITOR'S NOTE: Download word template at:**

[http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch\\_Results.asp?TXT\\_CNTR\\_NO=39357&TXT\\_ITEM\\_NO=17](http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNTR_NO=39357&TXT_ITEM_NO=17)

{For Residential Customers}

## Prepaid Disclosure Statement (PDS)

{Name of REP}, {Name of Product (optional)}, {Service area (if applicable)},  
 {Date}

### Important Notice

*Prepaid electric service means you purchase electricity before it is used. You will not receive a regular, monthly bill. The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.*

***Prepaid service is not available to customers who are officially designated as a Critical Care Residential Customer or Chronic Condition Residential Customer.***

***Some assistance agencies may not provide bill payment assistance programs to customers that use prepaid service. Additional information is provided below.***

**Connection Balance:**  
***How do I start prepaid service?***

To open your prepaid account, you must make a payment to establish a connection balance of \_\_. {the REP may fill in the blank with a dollar amount connection balance, or if the product has no REP fees deducted from the connection balance, the REP may choose to fill in the box with either the connection balance or the phrase, “an amount of your choice.”}

{If there are REP non-recurring charges, that will be deducted from the connection balance to establish service, include the following: “The payment amount includes the charges listed below:

[List any non-recurring REP fees, and the total amount of those fees, that will be deducted from the connection balance to establish service]

“After these fees are deducted, your initial account balance will have \$\_\_ available.”}

Utility fees may also apply.

The fees will be: {check one}

- paid in addition to the costs of enrolling in the service.
- subtracted from your account balance.

{If utility fees are paid in addition to the cost of enrolling in service: ***“Please contact {Name of REP} at {fill-in with a toll free customer service number} for more information about utility fees. {Name of REP} can help you fill-in the worksheet below to determine the total amount due when enrolling in prepaid service.***

<b>Connection Balance</b>	\$	
<b>+ Utility Fee</b>	\$	
<b>Total Due</b>	\$	

”};

{Or, if utility fees are subtracted from the account balance: ***“Please contact {Name of REP} at {fill-in with a toll free customer service number} for more information about utility fees. {Name of REP} can help you fill-in the worksheet below to determine your account balance after utility fees are subtracted.***

	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"><b>Initial Account Balance</b></td> <td style="width: 5%; text-align: center;">\$</td> <td style="width: 35%;"></td> </tr> <tr> <td><b>- Utility Fee</b></td> <td style="text-align: center;">\$</td> <td></td> </tr> <tr> <td style="border-top: 1px solid black;"><b>Account Balance</b></td> <td style="text-align: center; border-top: 1px solid black;">\$</td> <td style="border-top: 1px solid black;"></td> </tr> </table> <p>”}</p>	<b>Initial Account Balance</b>	\$		<b>- Utility Fee</b>	\$		<b>Account Balance</b>	\$	
<b>Initial Account Balance</b>	\$									
<b>- Utility Fee</b>	\$									
<b>Account Balance</b>	\$									
<p><b><i>Fees:</i></b>  <b><i>What other fees may I be charged?</i></b></p>	<p>{If applicable, “{Name of REP} has the following fees:”                  List any non-recurring fees, including any applicable early termination fee, that the customer may be charged, the amount of the fee and a description of the fee using the following format:                  [Name of fee] \$___ [Description of when fee is applied].                  “Fees charged are subtracted from your account balance.”}                  {if the product is not subject to any non-recurring REP fees, “This is a no fee product.”}</p>									
<p><b><i>Making a Payment:</i></b>  <b><i>How do I make a payment?</i></b></p>	<p>Making payments:                  {List the acceptable methods of payment, hours payment can be made [for the hours that are listed, the payment methods must be identified] instructions on how to make payments, and any fees associated with making a payment. <b>List any no fee payment method first.</b> }</p> <hr/> <p>Do I have to verify payments?                  [yes/no] {if yes, include the following information:                  Payment method(s) you must verify to establish a connection balance or a balance above your disconnection balance and description of method(s) required to verify payment. }</p>									
<p><b><i>Electricity Payment Assistance:</i></b>  <b><i>Will payment assistance be available to me?</i></b></p>	<p>If you qualify for low-income status or low-income assistance, have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it.</p> <hr/> <p>Energy or bill payment assistance may be available, please call {name of REP} for additional information.                  {A REP may optionally include any contact information for electricity assistance programs other than bill payment assistance, such as weatherization or the LITE-UP Texas Discount. The REP may also include the contact information for 211 information and referral services. If the REP chooses not to provide energy assistance information, they may omit “please call {name of REP} for additional information” from the required text. }</p>									
<p><b><i>Communications:</i></b>  <b><i>How will the company contact me for important notices?</i></b></p>	<p>We will contact you by {list communications method(s) as required by §25.498(c)(5)(A)} for important notifications including current balance requests, payment confirmation codes, and disconnection warnings.                  {If applicable, include additional information regarding additional communications methods, such as United States Postal Service. }</p>									

<p><b><i>Disconnection:</i></b>   <b><i>How can I avoid having my electricity disconnected?</i></b></p>	<p>It is important to maintain an account balance at or above \$___ or your service may be disconnected. This is called a “disconnection balance.”                  You will be notified ___ days before your account balance is <i>expected</i> to fall below \$___.                  If your account balance falls below \$___ more quickly than expected, service may be disconnected as little as one day after you receive the low balance notification.                  If applicable, “{Name of REP} may charge a \$___ disconnection fee.”</p>
<p><b><i>Reconnection:</i></b>   <b><i>How do I restart prepaid service if my electricity is disconnected?</i></b></p>	<p>If your service is disconnected, and your account has a negative balance, you must pay off that amount in addition to the amounts disclosed below.                  In order to restart prepaid electric service, you must make a payment to establish a balance of ___ {the REP may fill in the blank with a dollar amount connection balance, or if the product has no REP fees deducted from the connection balance, the REP may choose to fill in the box with either the connection balance or the phrase, “an amount of your choice.”}                  {If there are REP non-recurring charges, that will be deducted from the connection balance to reconnect service, include the following: “The payment amount includes the charges listed below:                  [List any non-recurring REP fees, and the total amount of those fees, that will be deducted from the connection balance to reconnect service]}                  “After these fees are deducted, your account will have \$ ___ available.”}</p> <hr/> <p>Utility fees may also apply.                  The fees will be: {check one}</p> <p><input type="checkbox"/> paid in addition to the costs of reconnecting service.  <input type="checkbox"/> subtracted from your account balance.</p>
<p><b><i>Deferred Payment Plans:</i></b>   <b><i>When is a deferred payment plan available?</i></b></p>	<p>Deferred payment plans are available upon request in the following situations:</p> <ul style="list-style-type: none"> <li>• If your account reaches a negative balance of \$50 or more during an extreme weather event.</li> <li>• If a state of disaster has been declared in your area by the Governor of Texas and the Public Utility Commission requires that deferred payment plans be offered.</li> <li>• If {Name of REP} has underbilled your account by \$50 or more for reasons other than theft of service.</li> </ul> <p>{If applicable, “Please contact {Name of REP} for any additional deferred payment plan options.”}</p> <hr/> <p>If you enter into a deferred payment plan, {Name of REP} may apply a switch-hold until your deferred payment plan is paid in full. A switch-hold means you will not be able to buy electricity from another company while the switch-hold is in place.                  For more information regarding switch-holds, contact {Name of REP}.</p>
<p>{Contact info, certification number, version number}                  {Additional information may be added below}</p>	

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 Title: 16 point boldface  
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 Body: 12 point

**SMALL COMMERCIAL CUSTOMER PDS**

**Format of Prepaid Disclosure Statement (PDS).** In compliance with §25.498, regarding Prepaid Service, REPs shall use the following format for the PDS for small commercial prepaid service customers, including the headings, ordering, print type (e.g, boldface , italicized, etc.), and required text shown. The REP may adjust any margin sizes, spacing and other minor formatting as needed. The REP shall fill-in the information required in the bracketed REP instructions. The REP may note any additional information in any section of the form under the required text for that section. The additional text shall be in an italicized, non-bold font no larger than the font of the required text.

The REP shall comply with the standardized PDS no later than February 8, 2012.

The REP shall assign and place on each PDS an identification number to each version. Each PDS shall be printed in a type no smaller than 12 point size and shall be formatted as shown in this paragraph:

**EDITOR'S NOTE: Download word template at:**

[http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch\\_Results.asp?TXT\\_CNTR\\_NO=39357&TXT\\_ITEM\\_NO=17](http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNTR_NO=39357&TXT_ITEM_NO=17)

{For Small Commercial Customers}

**Prepaid Disclosure Statement (PDS)**

{Name of REP}, {Name of Product (optional)}, {Service area (if applicable)},  
 {Date}

**Important Notice**

*Prepaid electric service means you purchase electricity before it is used. You will not receive a regular, monthly bill. The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.*

<p><b>Connection Balance:</b>   <i>How do I start prepaid service?</i></p>	<p>To open your prepaid account, you must make a payment to establish a connection balance of __. {the REP may fill in the blank with a dollar amount connection balance, or if the product has no REP fees deducted from the connection balance, the REP may choose to fill in the box with either the connection balance or the phrase, “an amount of your choice.”}</p> <p>{If there are REP non-recurring charges, that will be deducted from the connection balance to establish service, include the following: “The payment amount includes the charges listed below:</p> <p>[List any non-recurring REP fees, and the total amount of those fees, that will be deducted from the connection balance to establish service]</p> <p>“After these fees are deducted, your initial account balance will have \$__ available.”}</p> <hr/> <p>Utility fees may also apply.</p> <p>The fees will be: {check one}</p> <p><input type="checkbox"/> paid in addition to the costs of enrolling in the service.  <input type="checkbox"/> subtracted from your account balance.</p> <p>For more information about utility fees you may contact {Name of REP}.</p>
<p><b>Fees:</b>   <i>What other fees may I be charged?</i></p>	<p>{If applicable, “{Name of REP} has the following fees:”</p> <p>List any non-recurring fees, including any applicable early termination fee, that the customer may be charged, the amount of the fee and a description of the fee using the following format:          [Name of fee] \$__ [Description of when fee is applied].          “Fees charged are subtracted from your account balance.”}</p> <p>{if the product is not subject to any non-recurring REP fees, “This is a no fee product.”}</p>
<p><b>Making a Payment:</b>   <i>How do I make a payment?</i></p>	<p>Making payments:          {List the acceptable methods of payment, hours payment can be made [for the hours that are listed, the payment methods must be identified] instructions on how to make payments, and any fees associated with making a payment. <b>List any no fee payment method first.</b>}</p> <hr/> <p>Do I have to verify payments?          [yes/no] {if yes, include the following information:          Payment method(s) you must verify to establish a connection balance or a balance above your disconnection balance and description of method(s) required to verify payment.}</p>

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS**  
**Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.**

<p><b><i>Communications:</i></b> <b><i>How will the company contact me for important notices?</i></b></p>	<p>We will contact you by {list communications method(s) as required by §25.498(c)(5)(A)} for important notifications including current balance requests, payment confirmation codes, and disconnection warnings.          {If applicable, include additional information regarding additional communications methods, such as United States Postal Service.}</p>
<p><b><i>Disconnection:</i></b> <b><i>How can I avoid having my electricity disconnected?</i></b></p>	<p>It is important to maintain an account balance at or above \$___ or your service may be disconnected. This is called a “disconnection balance.”          You will be notified ___ days before your account balance is <i>expected</i> to fall below \$___.          If your account balance falls below \$___ more quickly than expected, service may be disconnected as little as one day after you receive the low balance notification.          If applicable, “{Name of REP} may charge a \$___ disconnection fee.”</p>
<p><b><i>Reconnection:</i></b> <b><i>How do I restart prepaid service if my electricity is disconnected?</i></b></p>	<p>If your service is disconnected, and your account has a negative balance, you must pay off that amount in addition to the amounts disclosed below.          In order to restart prepaid electric service, you must make a payment to establish a balance of __ {the REP may fill in the blank with a dollar amount connection balance, or if the product has no REP fees deducted from the connection balance, the REP may choose to fill in the box with either the connection balance or the phrase, “an amount of your choice.”}          {If there are REP non-recurring charges, that will be deducted from the connection balance to reconnect service, include the following: “The payment amount includes the charges listed below:          [List any non-recurring REP fees, and the total amount of those fees, that will be deducted from the connection balance to reconnect service]}          “After these fees are deducted, your account will have \$ ___ available.”}</p> <hr/> <p>Utility fees may also apply.          The fees will be: {check one}</p> <p><input type="checkbox"/> paid in addition to the costs of reconnecting service.  <input type="checkbox"/> subtracted from your account balance.</p>
<p>{Contact info, certification number, version number}          {Additional information may be added below}</p>	

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Headings: 12 point boldface

Body: 12 point



## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

### Subchapter R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE.

#### §25.499. Acknowledgement of Risk Requirements for Certain Commercial Contracts.

- (a) **Purpose.** This section establishes requirements for the offering of wholesale indexed products and products containing separate assessment of ancillary services costs to a customer other than a residential or small commercial customer.
- (b) **Application.** This section applies to all retail electric providers (REPs), aggregators and brokers. The Acknowledgement of Risk (AOR) for wholesale indexed products required by this section is effective for enrollments or re-enrollments entered into on or after September 1, 2021. The AOR required for other product types required under this section are effective for enrollments or re-enrollments entered into on or after April 1, 2021. REPs are not required to modify contract documents related to contracts or enrollments entered into before this date.
- (c) **Definitions.** The definitions set forth in §25.5 (relating to Definitions) and §25.471(d) (relating to General Provisions of Customer Protection Rules) of this title apply to this section. In addition, wholesale indexed product, when used in this section, means a retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power region.
- (d) **Acknowledgement of Risk (AOR).** Before a customer other than a residential or small commercial customer is enrolled in a wholesale indexed product, or a product that contains a separate assessment of ancillary service charges, an aggregator, broker, or REP must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.
- (1) For Wholesale Indexed Products, the AOR must include the following statement in clear, boldfaced text: “I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices.”
  - (2) For products that contain a separate assessment of ancillary service charges the AOR must include the following statement in clear, boldfaced text: “I understand that my energy bill may include a separate assessment of ancillary service charges, which may cause my energy bill to be multiple times higher in a month in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges.”
  - (3) An AOR may be included as an addendum to a contract.
  - (4) A REP, aggregator, or broker must retain a record of the AORs for each customer during the time the applicable plan is in effect and for four years after the contract ceases to be in effect for any customer. A REP must provide such documents at the request of the commission or its staff.

