

PROJECT NO. 37685

RULEMAKING TO AMEND SUBST.	§	PUBLIC UTILITY COMMISSION
R. §25.107 REGARDING	§	
CERTIFICATION OF RETAIL	§	OF TEXAS
ELECTRIC PROVIDERS (REPS)	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.107
AS APPROVED AT THE APRIL 30, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.107, relating to Certification of Retail Electric Providers (REPs). The amendment (1) provides requirements for a change in control of a REP, (2) strengthens the reporting and certification requirements related to managerial resources and ability, (3) limits the number of business names (d/b/a's) a REP may operate under, (4) provides requirements for certification as a distributed generation REP serving large commercial customers, (5) allows the commission to draw on a letter of credit upon the revocation of a REP certificate, (6) defines erroneous switch-holds related to deferred payments plans as a significant violation of the commission's rules, and (7) makes other clarifying changes. This rule, if adopted, would amend a competition rule and is therefore subject to judicial review as specified in Public Utility Regulatory Act, Texas Utilities Code Annotated §39.001(e) (Vernon 2007 & Supp. 2009) (PURA). Project Number 37685 is assigned to this proceeding.

When commenting on specific subsections of the proposed amended rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from

application of the same policies. The commission is interested in receiving only "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Neal Frederick, Financial Analyst, Rate Regulation Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Frederick has determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment will be (1) more certainty that REPs are owned and controlled by qualified persons whom the commission has had an opportunity to evaluate, (2) less confusion among customers regarding the names under which a REP operates, (3) financial protection for market participants following the revocation of a REP certificate, (4) deterrence of erroneous switch-holds, and (5) for large commercial customers, the ability to receive electric service from a provider of distributed generation. These benefits are expected to outweigh the costs, if any, on persons required to comply with the amendment. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. Therefore, no regulatory flexibility analysis is required.

Mr. Frederick has also determined that for each year of the first five years the amendment is in effect there should be no effect on a local economy, and therefore no local employment

impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, July 14, 2010. The request for a public hearing must be received within 30 days after publication.

Initial comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 37685.

Additionally, the commission solicits comments on the following questions:

1. Should an expedited process be established for approval of a change in control pursuant to §25.107(i)(3)(A) where the purpose of such transfer is to avoid a mass transition to POLR

of a REP's customers? If your response to the question is "yes," please provide suggested language.

2. Is it appropriate to require disclosure of a felony or misdemeanor charge where the charge has not resulted in a conviction, a guilty plea, or a plea of nolo contendere?
3. What types of misdemeanors described by subsection (g)(3)(C)(iii) would be relevant to certification as a REP?
4. Should subsection (i)(3)(A)(ii) define a change in control as a sale of a percentage of the REP's assets or as a sale of "all or substantially all" of the REP's assets? If a percentage should be used, what percentage is appropriate?
5. Should certain REPs, such as REPs certificated under subsection (f)(1)(A), be exempt from subsection (i)(3), which requires prior approval for a change in control of a REP?

This amendment is proposed under PURA §14.002, which requires the commission to adopt rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.352, which requires the commission to certify a person as a REP if the person demonstrates, among other things, the financial and technical resources to provide continuous and reliable electric service, the managerial and technical ability to supply electricity at retail in accordance with customer contracts, and the resources needed to meet customer protection requirements and which requires a person applying for certification as a REP to comply with all customer protection provisions, disclosure requirements, and marketing guidelines established by the commission and PURA; PURA §17.004, which authorizes the commission to adopt and enforce rules concerning REPs that protect customers against fraudulent, unfair, misleading, deceptive, or anticompetitive practices and

that impose minimum service standards relating to customer deposits and termination of service; PURA §§17.051-17.053, which authorize the commission to adopt rules for REPs concerning certification, changes in ownership and control, customer service and protection, and reports; and PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail customer protections that entitle a customer: to safe, reliable, and reasonably priced electricity, to have access to on-site distributed generation and to providers of energy generated by renewable energy resources, to other information or protections necessary to ensure high-quality service to customers including protections relating to customer deposits and quality of service, and to be protected from unfair, misleading, or deceptive practices, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

Cross Reference to Statutes: PURA §§14.002, 17.004, 17.051-17.053, 39.101, and 39.352.

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

(a) (No change.)

(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) (No change.)

(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, either directly or indirectly through one or more affiliates, 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) – (5) (No change.)

(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, or any other officer of the person who performs any of the foregoing functions for the person.

(7) Felony -- An offense defined as a felony, or for an offense that is not defined as either a felony or a misdemeanor, an offense punishable by a sentence of at least one year imprisonment or a fine of at least \$1,000. The term also includes a general court martial.

(8)(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.

(9)(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.

(10) Misdemeanor -- An offense defined as a misdemeanor or, for an offense that is not defined as either a felony or a misdemeanor, an offense punishable by a sentence of less than one year and a fine of less than \$1,000. The term also includes a special court martial.

(11)(9) Permanent employee -- An individual that is fully integrated into a REP's business organization. A consultant is not a permanent employee.

(12)(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.

(13)(11) Principal -- A person or a member of a group of persons that controls the person in question.

~~(14)~~(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.

~~(15)~~ Self-regulatory organization -- any national securities or commodities exchange or registered securities association, or registered clearing agency.

~~(16)~~(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.

~~(17)~~(14) Tangible net worth -- Total shareholders' equity, determined in accordance with generally accepted accounting principles, less intangible assets other than goodwill.

~~(18)~~(15) Working day -- A day on which the commission is open for the conduct of business.

(c) **Application for REP certification.**

(1) (No change.)

(2) An application for REP certification or certification amendment shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant. The commission may require that an applicant for REP certification or certification amendment

provide the commission the results of an independent background investigation from a firm chosen by the commission.

(3) (No change.)

(4) While an application for REP certification or certification amendment a certificate is pending, an applicant shall inform the commission of any material change in the information provided in the application within five ten working days of any such change.

(5) (No change.)

(6) While an application for REP certification or certification amendment is pending, an applicant shall respond to a request for information from commission staff within ten days after receipt of the request by the applicant.

(d) **REP certification requirements.** A person seeking certification under this section may apply to provide services under paragraph (1), ~~or (2)~~, or (3) of this subsection, and shall designate its election in the application.

(1) (No change.)

(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) (No change.)

(B) The following subsections do not apply to REPs certified pursuant to this paragraph: subsections (f)(1)-(2), (f)(4), (f)(6), (g), (h), (i)(3)(D)-(E), (i)(4)-(6) of this section.

~~(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), (i)(3)(D)-(E), 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 subsections (g)(3)(A), (B), (I), and (J) 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 Master Electrician licensed by 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) Prior to January 1, 2011, a REP may register and use no ~~No~~ more than five assumed names ~~may be authorized for use by any one REP~~ at one time. Beginning January 1, 2011, a REP may register and use no more than one assumed name at one time.

(B) – (C) (No change.)

- (2) (No change.)

(f) **Financial requirements.**

(1) **Access to capital.** A REP must meet the requirements of subparagraphs (A) or (B) of this paragraph.

(A) (No change.)

(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) – (iii) (No change.)

(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 an amount sufficient to cover 100% of the ~~REP's REPs~~ outstanding customer deposits and residential advance payments held at the close of each month.

(B) – (E) (No change.)

(3) (No change.)

(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) – (B) (No change.)

(C) Shareholders' equity shall be documented by the audited financial statements of the REP for its most recently completed calendar or fiscal year, and unaudited financial statements ~~of the REP~~ for the most recently completed 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) – (E) (No change.)

(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. and ~~must~~The irrevocable stand-by letter of credit must permit the commission's executive director or his designee to draw on the irrevocable stand-by letter of credit if:

- (i) ERCOT performs at such time that a mass transition of the REP's customers ~~is carried out by ERCOT~~ or
- (ii) the commission issues an order revoking the REP's certificate any time thereafter, and permit a draw to be made in part or in full.

(G) (No change.)

(5) (No change.)

(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, to pay 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 enrolled in the system benefit fund rate reduction program pursuant to §25.454(f) of this title (relating to Rate Reduction Program);

(ii) – (vi) (No change.)

(B) (No change.)

(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) To satisfy the technical ~~Technical~~ and managerial resource and ability requirements, a REP must establish and maintain the following include:

(A) – (D) (No change.)

(E) At least one principal or permanent employee who has at least five years of experience in energy commodity risk management of a substantial energy portfolio and who directly or indirectly manages the REP's electricity procurement. Alternatively, the REP ~~has~~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 at least one principal or permanent employee who has at least five years of experience in energy commodity risk management of a substantial energy portfolio and who directly or indirectly manages the REP's electricity

~~procurement 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) – (H) (No change.)

(2) In determining whether a REP has the necessary technical and managerial resources and ability, the commission may also consider the following:

(A) the information required to be disclosed by paragraph (3) of this subsection;

(B) any complaint information on file at the commission;

(C) other information discovered by staff during its review of an application;

(D) the results of an independent background investigation; and

(E) any other information found by the commission to be relevant.

(3)(2) An applicant shall ~~disclose include~~ the following information in ~~an its initial~~ application for REP certification or certification amendment. An applicant shall construe these categories of information broadly and shall err on the side of disclosure. An 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 whether the applicant meets the requirements for REP certification.:

(A) (No change.)

~~(B) — Any complaint history, disciplinary record and compliance record during the 60 months 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; any self-regulatory organization relating to the sales of securities, financial instruments, 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.~~

~~(B)(C)~~ A summary of any history of insolvency, bankruptcy, dissolution, merger, ~~or acquisition,~~ or cessation of operations as a retail electric provider in Texas of the applicant or any predecessors in interest or any entity for which the applicant's principals were principals that occurred during the 60 months immediately preceding the application;

~~(C)~~ A description of each instance in the last ten years in which a principal or affiliate of the applicant has:

~~(i) convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony;~~

~~(ii) charged with any felony;~~

~~(iii) convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any misdemeanor involving the provision of telecommunications, electric, gas, water, or cable service; fraud, false statements, or omissions; theft; larceny; deceit; securities laws; customer protection laws; or deceptive trade laws; or~~

~~(iv) charged with a misdemeanor specified in subparagraph (iii) of this paragraph;~~

~~(D)~~ A description of each instance in the last ten years in which the applicant or a principal or affiliate of the applicant has been subject to any domestic or foreign civil court proceeding in which:

(i) the court found that the applicant or a principal or affiliate of the applicant violated any laws or rules related to fraud, securities, customer protection, or deceptive trade practices;

(ii) a person filed a suit against the applicant or a principal or affiliate of the applicant alleging a violation of any laws or rules related to fraud, securities, customer protection, or deceptive trade practices;

(iii) the court entered a judgment for monetary damages or an injunction against the applicant or a principal or affiliate of the applicant in connection with the provision of telecommunications, electric, gas, water, or cable service; or

(iv) it was alleged that the court should enter a judgment for monetary damages or an injunction against the applicant or a principal or affiliate of the applicant in connection with the provision of telecommunications, electric, gas, water, or cable service.

(E) A description of each instance in the last five years in which the applicant or a principal or affiliate of the applicant has been subject to an administrative proceeding before any governmental regulatory body or any self-regulatory organization in which:

(i) the governmental regulatory body or self-regulatory organization found that the applicant or a principal or affiliate

of the applicant violated any laws or rules related to fraud, securities, customer protection, or deceptive trade practices;

(ii) it was alleged that the applicant or a principal or affiliate of the applicant violated any laws or rules related to fraud, securities, customer protection, or deceptive trade practices;

(iii) the governmental regulatory body or self-regulatory organization revoked or suspended a license, certification, or other approval of the applicant or a principal or affiliate of the applicant in connection with the provision of telecommunications, electric, gas, water, or cable service; or

(iv) a person requested that the governmental regulatory body or self-regulatory organization revoke or suspend a license, certification, or other approval of the applicant or a principal or affiliate of the applicant in connection with the provision of telecommunications, electric, gas, water, or cable service.

~~(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. Not later than 10 working days after a REP receives certification or registration from ERCOT, the REP shall file documentation establishing that fact in a project designated by commission staff.
- (G) Disclosure of all principals of the applicant;
- (H) Disclosure of all persons that directly or indirectly own at least 5% of the voting securities or other ownership interests of the applicant and their respective ownership percentages;
- (I) Disclosure of all executive officers and other senior managers of the applicant; and
- (J)(G) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements of this subsection.

(h) (No change.)

(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) (No change.)

~~(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.~~

~~(2)(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.~~

~~(3) A REP or the person seeking to effect a change in control of a REP shall obtain prior approval from the commission before any change in control of that REP occurs.~~

~~(A) A change in control of a REP includes, but is not limited to:~~

~~(i) A REP sells, assigns, or otherwise transfers its REP certificate to another person;~~

~~(ii) A REP, or a principal of a REP, sells 60% or more of the REP's tangible assets, including (without limitation) its REP certificate, to another person. The sale of 60% or more of the REP's tangible assets means the sale, lease, exchange, or other~~

disposition of 60% or more of the monetary value of the tangible assets, including, without limitation, the customer agreements, of the REP that is not made in the ordinary course of business and without regard to whether the disposition is made with the goodwill of the business;

(iii) A transaction or series of transactions, whether or not the transaction involves the acquisition of the voting securities of a REP or of a person who controls a REP, that results in the acquirer obtaining control of the REP; or

(iv) A REP is a party to a merger or consolidation.

(B) Before consummating a transaction that constitutes a change in control of a REP, the acquiring person, the surviving entity named in a plan of merger, or the person who will otherwise gain control of the REP certificate, shall apply for approval of the change in control on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant. The applicant must demonstrate its capability of complying with this section.

(i) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether the application is deficient or complete within 20 working days of filing.

(ii) 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 75 days of the filing of the application for approval of the change in control.

(C) In the application, the applicant shall demonstrate that, after giving effect to the change in control, the person having the REP certificate will continue to fulfill the requirements of subsection (e) of this section.

(D) The applicant must demonstrate that, after giving effect to the change in control, the REP will continue to meet the requirements of either subsection (f)(1)(A) or (B) of this section and will continue to comply with subsection (f)(2) of this section, relating to protection of customer deposits and advance payments, and the financial requirements pursuant to subsection (f)(4) of this section, relating to financial documentation.

(E) The applicant must demonstrate that, after giving effect to the change in control, it will continue to have the technical and managerial resources and ability to provide continuous and reliable retail electric service to customers, in accordance with customer contracts, PURA, commission rules, ERCOT protocols, and other applicable laws and will continue to meet the technical and managerial resource requirements in subsection (g)(1) of this section. The commission may consider the information described in subsections (g)(2) and (3) of this section in a proceeding pursuant to this subsection.

- (4) ~~A 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 ~~(f)(1)(B)~~ of this section. The notification shall set out a plan of recourse to correct the non-compliance with subsection (f)(1)(A) or ~~(f)(1)(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) ~~A 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) – (vii) (No change.)
- (viii) The information required by subsections (g)(3)(B) - (E) and (G) - (I) of this section, for the fiscal year.
- (B) – (D) (No change.)
- (6) A REP that is serving customers 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) – (8) (No change.)

- (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) – (15) (No change.)

(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; ~~and~~

(17) Other significant violations, including the failure or a pattern of failures to meet the requirements of this section or other commission rules or orders; ~~and~~

(18) Erroneous switch-holds.

~~(k)~~ **~~Phase-in provisions.~~**

~~(1) A REP that obtained certification pursuant to this section before the effective date of this section and does not meet all of the requirements of this section may continue to operate as a REP for not more than 12 months after the effective date of this section.~~

~~(2) A REP that cannot meet the requirements of this section shall meet the requirements of the this section as it was in effect on April 22, 2009 until it notifies the commission that it meets the requirements of this section and provides documentation to substantiate the notification.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 3rd DAY OF MAY 2010 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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