

PROJECT NO. 41613

**RULEMAKING TO IMPLEMENT SB § PUBLIC UTILITY COMMISSION
981, 83RD LEGISLATIVE REGULAR §
SESSION § OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §25.21, §25.28, §25.471 AND §25.480,
AS APPROVED AT THE DECEMBER 19, 2013 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.21 relating to General Provisions of Customer Service and Protection Rules, §25.28 relating to Bill Payment and Adjustments, and §25.471 relating to General Provisions of Customer Protection Rules, without changes to the proposed text as published in the September 27, 2013 issue of the *Texas Register* (38 TexReg 6457). The commission adopts an amendment to §25.480 relating to Bill Payment and Adjustments with changes to the proposed text as published in the September 27, 2013 issue of the *Texas Register* (38 TexReg 6456). The amendments will establish a voluntary electric utility bill payment assistance program for burned veterans, delete dated language, and make minor grammatical changes. These amendments constitute competition rules subject to judicial review as specified in PURA §39.001(e). Project Number 41613 is assigned to this proceeding.

The commission received comments on the proposed amendments from Southwestern Electric Power Company (SWEPCO), El Paso Electric Company (EPE), and the Retail Electric Provider Coalition (REP Coalition). The REP Coalition was composed of Alliance for Retail Markets (ARM); Reliant Energy Retail Services, LLC; the Texas Energy Association of Marketers (TEAM); and TXU Energy Retail Company LLC. The participating members of ARM were:

Direct Energy, LP and Green Mountain Energy Company. The participating members of TEAM were: Accent Energy d/b/a IGS Energy, Cirro Energy, Just Energy, Spark Energy, StarTex Power, Stream Energy, TriEagle Energy, and TruSmart Energy. The commission did not receive a request for a public hearing.

General Position of Commenters

SWEPCO had no comments but reserved the right to make reply comments. El Paso Electric stated that it generally supports this rulemaking and did not recommend any changes in response to the proposed amendments. The REP Coalition submitted comments to clarify rule language and emphasized the voluntary nature of the payment assistance program.

Section 25.480

REP Coalition Comments

Subsection (d)(2)

While proposed §25.471(d)(2) defines the term "burned veteran" consistent with SB 981, the REP Coalition noted that this term is not used anywhere in the proposed changes to §25.480. Rather, "veterans severely burned in combat" is the term used throughout the proposed amendments to §25.480. For clarity, the REP Coalition recommended that the phrase "veterans severely burned in combat" be replaced with the defined term.

Commission Response

The commission agrees with REP Coalition's comments and will substitute "burned veteran" for "veterans severely burned in combat" to avoid confusion.

Subsection (g)(1)

The REP Coalition recommended the deletion of information about "bill payment assistance for veterans severely burned in combat" from the list of applicable payment options and payment assistance programs offered by or available from the retail electric provider (REP) provided in response to a customer inquiry. The REP Coalition asserted that because of the small number of burned veterans, providing this information would cause potential confusion to customers. The REP Coalition also stated that a REP initiating a voluntary bill assistance program specific to burned veterans, or including such customers in an existing program, would likely take proactive measures to locate and target eligible customers, rather than wait to inform these customers of the program's existence in a communication initiated by the customer. Additionally, the REP Coalition stated that the commission website will provide burned veterans a listing of those retailers offering an assistance program.

Commission Response

The commission agrees with the REP Coalition that given the small number of customers that would meet the requirement relating to bill assistance for burned veterans, this requirement should be removed. Therefore, the commission agrees to modify the language in this subsection to remove this requirement.

Subsection (g)(3)

The REP Coalition proposed certain modifications to the reporting requirements that require a REP to include in its annual report the number of electric service identifiers (ESI ID) served under a voluntary bill assistance program for burned veterans. The REP Coalition argued that

this proposed requirement is not mandated by SB 981. The REP Coalition asserted that the reporting requirements currently proposed in subsection (g)(3)(A) could act as a disincentive for REPs to offer voluntary billing assistance programs. The REP Coalition stated that the relevant information to report would be whether a REP voluntarily offers a burned veterans bill payment assistance program, not the number of burned veterans who ultimately take advantage of the program. The REP Coalition further stated that it has concerns that burned veterans receiving assistance would not necessarily desire to have that fact reported to the commission or possibly published on the commission's website. Additionally, the REP Coalition asked for the inclusion of language that stated the voluntary bill payment assistance program may also include customers who are not burned veterans.

Commission Response

The commission agrees with the REP Coalition regarding the requirement to include the number of ESI IDs served under a voluntary bill assistance program for burned veterans is not mandated by SB 981. Therefore the commission agrees to delete the requirement. The commission disagrees that additional language stating voluntary bill payment assistance programs may include customers who are not burned veterans is necessary and, therefore, declines to adopt the proposed modification.

Other Minor Amendments

The REP Coalition proposed other minor amendments, including the insertion of the word "voluntary" to describe a REP's bill assistance program for burned veterans, consistent with the intent of SB 981. The REP Coalition also suggested the commission establish a project for the

receipt of contact information to be reported on the commission website regarding a REP's voluntary bill payment assistance program for burned veterans. Finally, the REP Coalition proposed a minor amendment to allow REPs the option to provide a toll free telephone number or website address, or both, to the commission in the information provided about its voluntary bill payment assistance program for burned veterans.

Commission Response

The commission agrees with the REP Coalition and will include the term voluntary to describe the bill payment assistance program for burned veterans. Additionally, the commission agrees to establish a project for the receipt of contact information, including the REP certification number, a toll free telephone number, and a website address, to be reported on the commission website relating to the REP's burned veterans bill payment assistance program. The commission declines to adopt the REP Coalition's proposed modification to require a toll free telephone number *and/or* website address where customers can obtain additional information. The commission believes that it is important that information be available by both methods.

All comments, including any not specifically referenced herein, were fully considered by the commission.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, PURA §39.101, which requires the commission to ensure that retail

customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity, and other protections.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 36.061, 39.101, 39.359, 182.201, and 182.202.

§25.21. General Provisions of Customer Service and Protection Rules.

- (a) **Application.** Unless the context clearly indicates otherwise, in this subchapter the term "electric utility" applies to all electric utilities that provide retail electric utility service in Texas. It does not apply to municipal utilities.
- (b) **Purpose.** The purpose of the rules in this subchapter is to establish minimum customer service standards that electric utilities must follow in providing electric service to the public. Nothing in these rules should be interpreted as preventing an electric utility from adopting less restrictive policies for all customers or for differing groups of customers, as long as those policies do not discriminate based on race, color, sex, nationality, religion, or marital status.
- (c) **Definitions.** The following words and terms when used in this subchapter shall have the following meanings, unless the context indicates otherwise.
- (1) **Applicant--**A person who applies for service for the first time or reapplies after disconnection of service.
 - (2) **Burned Veteran--**A customer who is a military veteran who a medical doctor certifies has a significantly decreased ability to regulate the body temperature because of severe burns received in combat.
 - (3) **Customer--**A person who is currently receiving service from an electric utility in the person's own name or the name of the person's spouse.
 - (4) **Days--**Unless the context clearly indicates otherwise, in this subchapter the term "days" shall refer to calendar days.

§25.28. Bill Payment and Adjustments.

- (a) **Bill due date.** The bill provided to the customer shall include the payment due date which shall not be less than 16 days after issuance. The issuance date is the postmark date on the envelope or the issuance date on the bill if there is no postmark on the envelope. A payment for electric utility service is delinquent if not received at the electric utility or at the electric utility's authorized payment agency by the close of business on the due date. If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.
- (b) **Penalty on delinquent bills for retail service.** A one-time penalty not to exceed 5.0% may be charged on a delinquent commercial or industrial bill. The 5.0% penalty on delinquent bills may not be applied to any balance to which the penalty has already been applied. An electric utility providing any service to the state of Texas shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.
- (c) **Overbilling.** If charges are found to be higher than authorized in the utility's tariffs, then the customer's bill shall be corrected.
- (1) The correction shall be made for the entire period of the overbilling.
 - (2) If the utility corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.
 - (3) If the utility 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 each year.

- (A) The interest rate shall be based on an average of prime commercial paper rates for the previous 12 months.
 - (B) Interest on overcharges that are not adjusted by the electric utility within three billing cycles of the bill in error shall accrue from the date of payment or from the date of the bill in error.
 - (C) All interest shall be compounded monthly based on the annual rate.
 - (D) Interest shall not apply to leveling plans or estimated billings.
- (d) **Underbilling.** If charges are found to be lower than authorized by the utility's tariffs, or if the electric utility failed to bill the customer for service, then the customer's bill may be corrected.
- (1) The electric utility may backbill the customer for the amount that was underbilled. The backbilling shall not collect charges that extend more than six months from the date the error was discovered unless the underbilling is a result of theft of service by the customer.
 - (2) The electric utility may disconnect service if the customer fails to pay underbilled charges.
 - (3) If the underbilling is \$50 or more, the electric utility 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 whose underpayment is due to theft of service.
 - (4) The utility 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, as defined 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). Interest on underbilled amounts shall be compounded monthly at the annual rate and shall accrue from the day the customer is found to have first stolen (tampered, bypassed or diverted) the service.

(e) **Disputed bills.**

- (1) If there is a dispute between a customer and an electric utility about a bill for service, the electric utility shall investigate and report the results to the customer. If the dispute is not resolved, the electric utility shall inform the customer of the complaint procedures of the commission pursuant to §25.30 of this title (relating to Complaints).
- (2) A customer's service shall not be disconnected for nonpayment of the disputed portion of the bill until the dispute is completely resolved by the electric utility.
- (3) If the customer files a complaint with the commission, a customer's service shall not be disconnected for nonpayment of the disputed portion of the bill before the commission completes its informal complaint resolution process and informs the customer of its determination.
- (4) The customer is obligated to pay any billings not disputed.

- (f) **Notice of alternate payment programs or payment assistance.** When a customer contacts an electric utility and indicates inability to pay a bill or a need for assistance with the bill payment, the electric utility shall inform the customer of all alternative payment and payment assistance programs available from the electric utility, such as deferred

payment plans, disconnection moratoriums for the ill, payment assistance program for veterans severely burned in combat, or energy assistance programs, as applicable, and of the eligibility requirements and procedure for applying for each.

(g) **Level and average payment plans.** Electric utilities with seasonal usage patterns or seasonal demands are encouraged to offer a level or average payment plan.

(1) The payment plan may use one of the following methods:

(A) A level payment plan allowing residential customers to pay one-twelfth of that customer's estimated annual consumption at the appropriate customer class rates each month, with provisions for annual adjustments as may be determined based on actual electric use.

(B) An average payment plan allowing residential customers to pay one-twelfth of the sum of that customer's current month's consumption plus the previous 11 months consumption (or an estimate, for a new customer) at the appropriate customer class rates each month, plus a portion of any unbilled balance.

(2) If a customer for electric utility service does not fulfill the terms and obligations of a level payment agreement or an average payment plan, the electric utility shall have the right to disconnect service to that customer pursuant to §25.29 of this title (relating to Disconnection of Service).

(3) The electric utility may require a customer deposit from all customers entering into level payment plans or average payment plans pursuant to the requirements §25.24 of this title (relating to Credit Requirements and Deposits). The electric

utility shall pay interest on the deposit and may retain the deposit for the duration of the level or average payment plan.

- (h) **Payment arrangements.** A payment arrangement is any agreement between the electric utility 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 utility issued a disconnection notice before the 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 arrangements, the electric utility may disconnect service after the later of the due date for the payment arrangement or the disconnection date indicated in the disconnection notice, pursuant to §25.29 of this title without issuing an additional disconnection notice.
- (i) **Deferred payment plans.** A deferred payment plan is any written arrangement between the electric utility and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill. A deferred payment plan may be established in person or by telephone, and all deferred payment plans shall be put in writing.
- (1) The electric utility shall offer a deferred payment plan to any residential customer, including a guarantor of any residential customer, who has expressed an inability to pay all of the bill, if that customer has not been issued more than two disconnection notices during the preceding 12 months.
 - (2) Every deferred payment plan shall provide that the delinquent amount may be paid in equal installments lasting at least three billing cycles.

- (3) When a customer has received service from its current electric utility for less than three months, the electric utility is not required to offer a deferred payment plan if the customer lacks:
- (A) sufficient credit; or
 - (B) a satisfactory history of payment for service from a previous utility.
- (4) Every deferred payment plan offered by an electric utility:
- (A) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following:
"If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the electric utility immediately and do not sign this contract. If you do not contact the electric utility, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the electric utility's failure or refusal to comply with the terms of this agreement." In addition, where the customer and the electric utility representative or agent meet in person, the electric utility representative shall read the preceding statement to the customer. The electric utility shall provide information to the customer in English and Spanish as necessary to make the preceding boldface language understandable to the customer;
 - (B) may include a 5.0% penalty for late payment but shall not include a finance charge;

- (C) shall state the length of time covered by the plan;
 - (D) shall state the total amount to be paid under the plan;
 - (E) shall state the specific amount of each installment;
 - (F) shall allow the electric utility to disconnect service if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection;
 - (G) shall not refuse a customer participation in such a program on the basis of race, color, sex, nationality, religion, or marital status;
 - (H) shall be signed by the customer and a copy of the signed plan must be provided to the customer. If the agreement is made over the telephone, then the electric utility shall send a copy of the plan to the customer for signature; and
 - (I) shall allow either the customer or the electric utility to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.
- (5) An electric utility may disconnect a customer who does not meet the terms of a deferred payment plan. However, the electric utility may not disconnect service until a disconnection notice has been issued to the customer indicating that the customer has not met the terms of the plan. The notice and disconnection shall conform with the disconnection rules in §25.29 of this title. The electric utility may renegotiate the deferred payment plan agreement prior to disconnection. If the customer did not sign the deferred payment plan, and is not otherwise

fulfilling the terms of the plan, and the customer was previously provided a disconnection notice for the outstanding amount, no additional disconnection notice shall be required.

(j) **Recovery of costs associated with burned veteran payment assistance program.**

(1) An electric utility shall be allowed to recover a cost or expense of the bill payment assistance program established for military veterans when a medical doctor has certified that the veteran has significantly decreased ability to regulate the body temperature because of severe burns received in combat.

(2) The electric utility is entitled to:

(A) Fully recover all costs and expenses related to the bill payment assistance program;

(B) Defer each cost or expense related to the bill payment assistance program not explicitly included in base rates; and

(C) Apply carrying charges at the utility's weighted average cost of capital to the extent related to the bill payment assistance program. Carrying charges shall be calculated by multiplying the balance of deferred costs and expenses of the bill payment assistance program by the utility's weighted-average cost of capital (WACC) as established for the utility in a final commission order in a base rate case, provided that the order was filed within three years prior to the initiation of the bill payment assistance program. Otherwise, a proxy WACC shall be used, with a cost of equity of 10%; and the capital structure and cost of debt as reported in the utility's most recent Earnings Monitoring Report filed pursuant to §25.73

of this title (relating to Financial and Operating Reports), adjusted for known and measurable changes.

§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 shall apply to transmission and distribution utilities (TDUs), the registration agent 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 shall 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), and §25.485(a)-(b) of this title (relating to Customer Access and Complaint

Handling), 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 shall be reduced to writing and provided to the customer. Additionally, copies of such agreements shall 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 and REPs in the marketing, solicitation and sale of electric service and in the administration of any terms of service for electric service.
- (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.
- (d) **Definitions.** For the purposes of this subchapter the following words and terms have the following meaning, unless the context clearly 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 shall 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.

§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), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). 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.
 - (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) In its annual report filed pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)), each REP shall summarize:
- (i) the total amount of customer donations;
- (ii) the amount of money set aside for bill payment assistance;

- (iii) the assistance agency or agencies selected to disburse funds to residential customers;
 - (iv) the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers; and
 - (v) the number of customers who had a switch-hold applied during the year.
 - (C) 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 the low-income discount program 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 residential customer receiving a rate reduction pursuant to §25.454 of this title (relating to Rate Reduction Program), even if the customer is delinquent in payment to the REP.
- (2) 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.
- (3) 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 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.

- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.”

- (8) 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.
- (9) 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. 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 receiving the LITE-UP discount pursuant to §25.454 of this title;
- (ii) 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
- (iii) 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).
- (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 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. 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.

(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) **Effective date.** The effective date of this section is June 1, 2011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that the amendments to §25.21 relating to General Provisions of Customer Service and Protection Rules, §25.28 relating to Bill Payment and Adjustments, §25.471 relating to General Provisions of Customer Protection Rules are hereby adopted without changes to the text as proposed, and §25.480 relating to Bill Payment and Adjustments is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS THE 20th day of DECEMBER 2013.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER