

PROJECT NO. 39969

RULEMAKING TO AMEND SUBST. R.	§	PUBLIC UTILITY COMMISSION
25.43, RELATING TO PROVIDER OF	§	
LAST RESORT (POLR), 25.478,	§	OF TEXAS
RELATING TO CREDIT	§	
REQUIREMENTS AND DEPOSITS,	§	
AND 25.498, RELATING TO PREPAID	§	
SERVICE		

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.43, §25.478 AND §25.498
AS APPROVED AT THE MARCH 22, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.43, relating to Provider of Last Resort (POLR); §25.478, relating to Credit Requirements and Deposits; and §25.498, relating to Prepaid Service. Public Utility Regulatory Act (PURA) §39.107(g) prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR. The amendments to §25.478 and §25.498 will be for the limited purpose of specifying criteria for determining if prepaid service sold to residential customers is less than the price charged by the POLR as required by PURA §39.107(g). The amendments to §25.43 will change rule language regarding POLR pricing to reflect current practices and changes in terminology resulting from the shift from an Electric Reliability Council of Texas (ERCOT) zonal market to an ERCOT nodal market. These amendments constitute competition rules subject to judicial review as specified in PURA § 39.001(e). Project Number 39969 is assigned to this proceeding.

Cliff Crouch, Retail Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal

implications for state or local government as a result of enforcing or administering the amendments.

Mr. Crouch has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be the specification of criteria for determining the POLR rate in order to ensure that a prepaid rate is not priced above the POLR rate as required by PURA, and clarity of the terminology used in the current nodal market regarding POLR pricing. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendments. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Mr. Crouch has also determined that for each year of the first five years the proposed amendments are in effect, there should be no effect on local economy, and therefore no local employment impact statement is required under the 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 APA, Texas Government Code §2001.029, in the Commissioners' Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, May 15, 2012, at 9:30 a.m. The request for a public hearing must be received by Wednesday, May 9, 2012.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, May 7, 2012. Reply comments may be submitted by Monday, May 21, 2012. Sixteen copies of comments and reply comments on the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Comments and reply comments should be organized in a manner consistent with the organization of the amendments. All comments should refer to Project Number 39969.

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101, which requires the Commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; §39.106, which requires that the Commission designate providers of last resort; and §39.107(g), which prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR.

Cross Reference to Statutes: PURA §§14.002, 39.101, 39.106, and 39.107(g).

§25.43. Provider of Last Resort (POLR).

(a) – (k) (No change).

(l) Rates applicable to POLR service.

(1) (No change).

(2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) **Residential customers.** The LSP rate for the residential customer class shall be determined by the following formula:

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

Where:

(i) – (ii) (No change.)

(iii) LSP energy charge shall be the sum over the billing period of the actual hourly ~~Real-Time Settlement Point Prices (RTSPPs) MCPEs~~ for the ~~customer's load zone~~ ~~customer~~ multiplied by the level of kWh used multiplied by 120%.

(iv) “Actual hourly ~~RTSPP MCPE~~” is an hourly rate based on a simple average of the actual interval ~~RTSPPs MCPE prices~~ over the hour.

(v) “Level of kWh used” is based either on interval data or on an allocation of the customer’s total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage

data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.

- (vi) For each billing period, if the sum over the billing period of the actual hourly ~~RTSPPMCPES~~ for a customer multiplied by the level of kWh used falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average pricezonalMCPE—prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple averagezonal—MCPE—prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

- (B) Small and medium non-residential customers. The LSP rate for the small and medium non-residential customer classes shall be determined by the following formula:

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

Where:

- (i) – (iii) (No change.)
- (iv) LSP energy charge shall be the sum over the billing period of the actual hourly RTSPPsMCPEs, for the customer's load zone customer multiplied by the level of kWh used, multiplied by 125%.
- (v) “Actual hourly RTSPPMCPE” is an hourly rate based on a simple average of the actual interval RTSPPsMCPE-prices over the hour.
- (vi) “Level of kWh used” is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.
- (vii) For each billing period, if the sum over the billing period of the actual hourly RTSPPMCPEs for a customer multiplied by the level of kWh used falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple averagezonal-MCPE prices—over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the LSP energy charge shall be the

simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average pricezonal-MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

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

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

Where:

- (i) – (iii) (No change.)
- (iv) LSP energy charge shall be the appropriate RTSPPMCPE, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge shall have a floor of \$7.25 per MWh.

(3) – (5) (No change.)

(m) – (v) (No change).

§25.478. Credit Requirements and Deposits.

- (a) **Credit requirements for residential customers.** A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) – (4) (No change.)

~~(5) Pursuant to the Public Utility Regulatory Act (PURA) §39.107(g), a REP that requires pre payment for metered residential electric service may not charge an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.~~

~~(5)~~(6) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.

(b) – (l) (No change.)

§25.498. Prepaid Service.

(a) - (b) (No change.)

(c) **Requirements for prepaid service.**

(1) – (14) (No change.)

(15) A REP that provides prepaid service to a residential customer shall not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The price for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A)-(E) of this title shall be equal to or lower than at least one of the tests described in subparagraphs (A) - (C) of this paragraph:

(A) The minimum POLR rate for the residential customer class at the 500 kilowatt-hour (kWh), 1,000 kWh, and 2,000 kWh usage levels as shown on the POLR EFL posted on the commission's website for the applicable TDU service territory. When an updated POLR EFL is posted on the commission's website, the REP, at the REP's option, may continue to reference the prior POLR EFL to ensure compliance with this paragraph for prepaid service prices charged during the first 30 days, beginning the date that the updated POLR EFL is posted.

(B) The maximum POLR rate for the residential customer class calculated pursuant to §25.43(l) of this title (relating to Provider of Last Resort (POLR)).

(C) The average POLR rate for the residential customer class at the 500 kWh, 1,000 kWh, and 2,000 kWh usage levels using the formula described in §25.43(l) of this title for the applicable TDU service territory, with the LSP energy charge calculated as the simple average of the RTSPPs over the prior month for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price. For prepaid service prices charged by a REP on one of the first ten business days of a month, the test may be met by using the average POLR rate calculation for the month preceding the prior month.

(d) - (j)(No change.)

(k) Service to Critical Care Residential Customers and Chronic Condition Residential Customers. A REP shall not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP shall not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.

(1) (No change.)

(2) If the customer is unresponsive, the REP shall transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(l)(2)(A) of this title ~~(relating to Provider of Last Resort (POLR))~~. The REP shall provide the customer notice that the

customer has been transferred to a new product and shall provide the customer the new product's Terms of Service and Electricity Facts Label.

(l)-(m) (No change.)

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 22nd DAY OF MARCH 2012 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**