

PROJECT NO. 41277

**RULEMAKING TO AMEND
PUC SUBST. R. 25.43**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §25.43
AS APPROVED AT THE JANUARY 23, 2014 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.43, relating to Provider of Last Resort (POLR) with changes to the proposed text as published in the August 23, 2013 issue of the *Texas Register* (38 TexReg 5390).

The amendments are for the limited purposes of allowing a Large Service Provider (LSP) to request the commission designate another REP that is affiliated with the LSP and meets certain criteria to provide POLR service on behalf of the LSP, delete dated language, and make minor grammatical changes. The amendments are competition rules subject to judicial review as specified in the Public Utility Regulatory Act (PURA) §39.001(e). The amendments are adopted under Project No. 41277.

The commission received comments on the proposed amendments from the Steering Committee of Cities Served by Oncor (Cities) and the Retail Electric Provider Coalition (REP Coalition). The commission also received reply comments from the 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: Champion Energy Services, LLC; Constellation NewEnergy Inc; Direct Energy, LP; Green Mountain Energy Company and Noble Americas

Energy Solutions LLC. 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

Cities supported the commission's efforts to ensure POLR service is available to retail customers but expressed concerns that the proposed amendments lack sufficient provisions to protect retail customers. Cities offered language on specific subsections as discussed below.

The REP Coalition supported adoption of the proposed amendments with some changes as discussed below. In its reply comments, the REP Coalition responded to the proposals offered by Cities.

Summary of Comments

Subsection (e)

Cities expressed concern that an LSP might attempt to avoid association of its brand and reputation with an inferior quality of service or excessive pricing that may result from a designated affiliate providing POLR service. Cities recommended that the commission adopt language that would require the designated LSP affiliate to include conspicuous notice that the LSP is affiliated with the LSP on all communications with its POLR customers or potential customers.

The REP Coalition opposed Cities' proposal and noted that the commission's rules allow REPs to use up to five assumed names at any one time. Requiring the LSP affiliate to continually reference the original LSP would not further educate the customer as advocated by Cities and would only serve to confuse the customer about who is providing their service.

Commission Response

The commission understands Cities' concerns about the potential of an LSP affiliate providing an inferior quality of service or service at an excessive price. However, all REPs and POLRs are required to meet the same service standards. Under the adopted rule, the LSP retains full responsibility for the provision of POLR service by the designated affiliate and remains liable for any violations. The commission believes that the LSP should also retain responsibility for all financial obligations of the LSP affiliate associated with the provisioning of POLR service and amends this subsection accordingly.

The commission agrees with the REP Coalition that requiring the LSP affiliate to include notice that it is affiliated with the LSP will only lead to customer confusion as to who the service provider is. Therefore, the commission does not make this change recommended by Cities.

Subsection (h)

The REP Coalition agreed with the proposed deletion of language adopted by the commission in May 2009 in Project No. 35769 that applied to POLR providers during the 2009-2010 transition period since the term has expired. However, the REP Coalition pointed out that the commission

proposal failed to delete the entirety of the transitional language and recommended that the last sentence of this subsection also be deleted.

Commission Response

The commission agrees with the REP Coalition and modifies §25.43(h) by deleting the last sentence in this subsection.

Subsection (k)(1)

Cities stated that requests from an LSP to designate an affiliate to provide POLR service on its behalf should be given a project number and that notice should be published in the Texas Register to allow a minimum of 30 days for public comment on the potential market or customer impact of transferring POLR duties to an LSP affiliate. In addition, commission staff should review the affiliate's financial and technical qualification to perform POLR duties.

The REP Coalition recommended that the commission reject Cities' proposal to allow public comment on an LSP's request for an LSP affiliate to provide POLR service on behalf of the LSP. The existing rule does not allow for public comment on selection of the LSP and it is unnecessary to allow expanded comment if the LSP subsequently seeks to have one of its affiliates provide POLR service on its behalf since the LSP is the one that remains liable for the provision of POLR service. Additionally, the proposed rule contains adequate safeguards through commission staff review to ensure that an LSP affiliate is eligible and qualified to provide POLR service on behalf of the LSP. The proposed rule also provides a process by which the LSP affiliate designation may be challenged by ERCOT or a TDU.

The REP Coalition recommended that §25.43(k)(1) include a requirement that the LSP affiliate be certificated to provide retail electric service to be consistent with the intent of §25.43(k)(2).

Commission Response

The commission does not agree with the Cities' argument that requests from an LSP to designate an affiliate to provide POLR service on its behalf should be given a project number and that notice should be published in the Texas Register to allow a minimum of 30 days for public comment on the potential market or customer impact of transferring POLR duties to an LSP affiliate. The commission believes that requiring LSPs to file its request to have an LSP affiliate provide POLR service on its behalf at least 30 days prior to the LSP providing POLR service will give commission staff adequate time to review the LSP affiliate's technical and financial ability to perform POLR duties. As noted by the REP Coalition, the LSP remains liable for the provision of POLR service and the LSP affiliate designation may be challenged by ERCOT or a TDU. The commission does not make any change to this subsection based on Cities' proposal.

The commission agrees with the REP Coalition that this subsection should be clarified to include the requirement that the LSP affiliate be certificated to provide retail electric service and amends this subsection accordingly.

Subsection (k)(2)

Cities expressed concern that the smaller size of a designated LSP affiliate may adversely affect POLR customers and recommended that the commission adopt language to require the LSP affiliate to commit to maintaining no less than the level of customer service and access that the LSP currently provides to POLR customers in the service territory. Cities opined that LSP service may exceed the minimum qualifications as a REP pursuant to §25.107 and the commission should develop a form to elicit information about how the LSP intends to comply with its POLR commitment. Staff should then use the information to determine the affiliate's eligibility to serve as the LSP POLR on behalf of the LSP. Cities also proposed additional language to require the LSP to make a commitment to shield the affiliate from any bankruptcy proceeding involving the LSP or other affiliates of the LSP. Staff's review may include an evaluation of the LSP's ability to protect the affiliate from a bankruptcy proceeding.

The REP Coalition disagreed with Cities that any additional language was needed in §25.43(k)(2) concerning the level of customer service from the LSP affiliate since all REPs must meet the customer service standards in the commission's rules and the rules apply to both REPs and POLR service providers. Since proposed §25.43(e)(3) provides that the LSP retains full responsibility for the provision of POLR service by the designated affiliate and remains liable for any violations, the LSP has a vested interest in ensuring that its LSP affiliate is qualified to provide POLR service on its behalf in compliance with all relevant commission requirements.

The REP Coalition believed that the commission should reject Cities' proposal to require the LSP to make a commitment to shield the affiliate from any bankruptcy proceeding involving the

LSP or other affiliates of the LSP. Involvement of a REP in a bankruptcy reorganization does not mean the REP will default in the market or be unable to fulfill its POLR responsibilities. The rule includes mechanisms to address situations in which the LSP cannot fulfill its POLR duties. If the LSP cannot fulfill its responsibility, the rule allows the commission to relieve the LSP from its POLR obligations if the LSP shows that it cannot maintain its financial integrity if additional customers are transferred to it. The commission may also revoke a REP's designation as an LSP if the REP fails to provide POLR service consistent with the commission's rules or fails to maintain appropriate financial qualifications. The rule provides that the commission may then designate the next eligible REP as an LSP.

The REP Coalition proposed that §25.43(k)(2) be clarified that the affiliation to be shown should be between the LSP and the affiliate LSP and two additional grammatical edits.

Commission Response

The commission does not agree with the Cities that language be added to require the LSP affiliate to commit to maintaining no less than the level of customer service and access that the LSP currently provides to POLR customers in the service territory. The commission recognizes that each REP may provide different levels of service; however, the commission is requiring all REPs to meet the same customer protection rules and customer service standards. As the REP Coalition pointed out, the LSP retains full responsibility for the provision of POLR service by the LSP affiliate and remains liable for any violations. The commission believes that this responsibility and liability will help ensure that the LSP

affiliate does not provide substandard service. The commission does not make the level of service change recommended by Cities.

The commission agrees with the REP Coalition that involvement of a REP in a bankruptcy proceeding does not mean that the REP will default in the market or fail to fulfill its POLR responsibilities. As stated above, the LSP retains full responsibility for the provision of POLR service in the event that the LSP affiliate fails to provide POLR service in accordance with the commission's rules. The commission does not make the bankruptcy shield requirement proposed by Cities. However, the commission is concerned that bankruptcy of a designated LSP affiliate could result in some operational liability and financial exposure to ERCOT and other market participants and amends this subsection to require the LSP to provide an affidavit from an officer of the LSP stating that the LSP will be responsible for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP.

The commission agrees with the grammatical edits proposed by the REP Coalition and amends this subsection accordingly. Additionally, the commission agrees with the REP Coalition that the language in this subsection be clarified to show that the affiliation should be between the LSP and the affiliate LSP.

Subsection (k)(3)

Cities noted that this subsection provides an opportunity for the LSP or proposed affiliate to appeal the denial of an application through a contested case. Cities believed that this subsection should be clarified to indicate whether the contested case appeal must be heard by the commissioners or referred to the State of Office of Administrative Hearings. Cities also expressed concern about calling the contested case an appeal since the rule does not require staff to issue findings of fact, which would normally frame an appeal. Cities offered language to address its concerns.

The REP Coalition did not believe it necessary to adopt Cities' recommendation to clarify the appeal process in §25.43(k)(3) but did not oppose inclusion of the clarification.

Commission Response

The commission does not agree with the concerns raised by Cities concerning the need to clarify the process by which an LSP or an LSP affiliate may seek further review of a commission staff decision concerning the denial of an application to designate an LSP affiliate. The commission's proposed language conforms with the existing language in §25.43 concerning the process that a REP or VREP may "appeal" a commission staff decision concerning POLR eligibility to the commission. The commission therefore, declines to make any change to this subsection.

Subsection (k)(4)

The REP Coalition recommended a limited number of changes to proposed subsection §25.43(k)(4) to provide clarity. Additionally, the REP Coalition suggested that this subsection be changed to delete and amend language concerning the customers who have been individually transferred to POLR service consistent with the commission's stated intent in its Final Order adopting revisions to §25.43 in Project No. 31416 that REPs are not to terminate customers to POLR service for any reason except pursuant to a mass transition.

Commission Response

The commission agrees with the comments of the REP Coalition and modifies §25.43(k)(4) to state that REPs are not to terminate customers to POLR service for any reason except pursuant to a mass transition.

Subsection (k)(6)

Cities proposed that the commission adopt language requiring the designated affiliate to provide the LSP copies of and any information concerning all complaints and disputes received from the LSP affiliate customers so that the LSP could not claim that they were unaware of any customer problems.

The REP Coalition stated that the rule should not mandate specific process requirements between the LSP and its affiliate. The proposed §25.43(e)(3) clearly states that the LSP is liable for violations of applicable laws by the LSP affiliate. To comply with the rule, the LSP may require its affiliates to provide copies of complaints and disputes or the LSP may require the affiliate to

provide it with other information to ensure compliance with the commission's rules but the rule should not mandate or micro-manage the relationship between the LSP and its affiliate. The REP Coalition recommended that the commission deny Cities' proposed changes to §25.43(k)(6).

Commission Response

The commission does not agree with the Cities that it is necessary to require by rule that the designated affiliate provide copies of information to the LSP. The commission believes that it is important for the LSP to understand that it retains full responsibility for the provision of POLR service by the LSP affiliate and remains liable for any violations. That is why the commission is adopting §25.43(e)(3). The commission therefore declines to make any changes to this subsection.

Subsection (k)(8)

The REP Coalition opined that the reversion of the obligation to provide POLR service in this subsection is inconsistent with proposed subsection (e)(3) and proposed language. Since (e)(3) states that the responsibility for the provision of POLR service remains with the LSP, the LSP would automatically be required to provide POLR service to ESI IDs in the event that the LSP affiliate fails to do so. The REP Coalition also proposed to define the POLR service requirements as those found in applicable laws and commission rules.

Commission Response

The commission agrees with the REP Coalition that this subsection could be interpreted to be inconsistent with subsection (e)(3) and that the POLR service requirements should be clarified to be those that are in applicable laws and commission rules. The commission modifies this subsection to clarify that the POLR service requirements are those that are in applicable laws and commission rules.

Subsection (o)

Consistent with its recommendation on §25.43(k)(4), the REP Coalition proposed changes to §25.43(o) to delete and amend language concerning the customers who have been individually transferred to POLR service consistent with the commission's stated intent in its Final Order adopting revisions to §25.43 in Project No. 31416 that REPs are not to terminate customers to POLR service for any reason except pursuant to a mass transition.

Commission Response

The commission agrees with the comments of the REP Coalition and modifies §25.43(o) to show that REPs may not terminate customers to POLR service for any reason except pursuant to a mass transition.

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. 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; and §39.106, which requires that the commission designate providers of last resort.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, and 39.106.

§25.43. Provider of Last Resort (POLR).

- (a) **Purpose.** The purpose of this section is to establish the requirements for Provider of Last Resort (POLR) service and ensure that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.
- (b) **Application.** The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (r) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:

- (1) **Affiliate** -- As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).
- (2) **Basic firm service** -- Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase “interruption for economic reasons” does not mean disconnection for non-payment.
- (3) **Billing cycle** -- A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.
- (4) **Billing month** -- Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer’s consumption is recorded through the customer’s meter.
- (5) **Business day** -- As defined by the ERCOT Protocols.
- (6) **Large non-residential customer** -- A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).
- (7) **Large service provider (LSP)** -- A REP that is designated to provide POLR service pursuant to subsection (j) of this section.
- (8) **Market-based product** -- For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.
- (9) **Mass transition** -- The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the

independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

- (10) **Medium non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.
 - (11) **POLR area** -- The service area of a TDU in an area where customer choice is in effect.
 - (12) **POLR provider** -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.
 - (13) **Residential customer** -- A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.
 - (14) **Transitioned customer** -- A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.
 - (15) **Small non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.
 - (16) **Voluntary retail electric provider (VREP)** -- A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.
- (d) **POLR service.**
- (1) There are two types of POLR providers: VREPs and LSPs.
 - (2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.

- (3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.
- (4) A POLR provider shall offer a basic, standard retail service package to customers it is designated to serve, which shall be limited to:
 - (A) Basic firm service;
 - (B) Call center facilities available for customer inquiries; and
 - (C) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund.
- (5) A POLR provider shall, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.
- (6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) of this section shall contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice shall also include contact information for the LSP, and the Power to Choose website, and shall include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) **Standards of service.**

- (1) An LSP designated to serve a class in a given POLR area shall serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (m)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.
- (2) A POLR provider shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section shall apply. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).
- (3) An LSP that has received commission approval to designate one of its affiliates to provide POLR service on behalf of the LSP pursuant to subsection (k) of this

section shall retain responsibility for the provision of POLR service by the LSP affiliate and remains liable for violations of applicable laws and commission rules and all financial obligations of the LSP affiliate associated with the provisioning of POLR service on its behalf by the LSP affiliate.

(f) **Customer information.**

(1) The Standard Terms of Service prescribed in subparagraphs (A)-(D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (m)(2) of this section.

(A) Standard Terms of Service, POLR Provider Residential Service:

Figure: 16 TAC §25.43(f)(1)(A)

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(B)

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(C)

(D) Standard Terms of Service, POLR Provider Large Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(D)

(2) An LSP providing service under a rate prescribed by subsection (m)(2) of this section shall provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service shall be updated as required under

§25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) **General description of POLR service provider selection process.**

- (1) All REPs shall provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative shall designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission shall not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (r) of this section.
- (2) POLR providers shall serve two-year terms. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule shall be set at the time POLR providers are initially selected in such areas.

(h) **REP eligibility to serve as a POLR provider.** In each even-numbered year, the commission shall determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year.

- (1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as a POLR provider for the next term. REPs shall file, by July 10th, of each even-numbered year, by service area, information on the classes of customers they provide service to, and for each customer class, the number of ESI

IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. As part of that filing, a REP may request that the commission designate one of its affiliates to provide POLR service on its behalf pursuant to subsection (k) of this section in the event that the REP is designated as an LSP. The independent organization shall provide to the commission the total number of ESI ID and total MWh data for each class. All REPs shall also provide information on their technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section shall not be considered confidential information.

- (2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for a particular customer class in a POLR area, unless:
 - (A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs));
 - (B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, is less than 1.0;

- (C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the term;
 - (D) On the date of the commencement of the term, the REP or its predecessor will not have served customers in Texas for at least 18 months;
 - (E) The REP does not serve the applicable customer class, or does not have an executed delivery service agreement with the service area TDU;
 - (F) The REP is certificated as an Option 2 REP under §25.107 of this title;
 - (G) The REP's customers are limited to its own affiliates;
 - (H) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts out of eligibility for either, or both of the small or medium non-residential customer classes; or
 - (I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.
- (3) For each term, the commission shall publish the names of all of the REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and shall provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a

specific explanation that clearly illustrate and prove the REP's assertion. Commission staff shall verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff shall notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of POLR providers.

- (4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.
- (5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff shall review the filing, and shall request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs shall be assigned to a POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.

- (i) **VREP list.** Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission shall post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later than July 31, of each even-numbered year. This filing shall include a description of the REP's capabilities to serve additional customers as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, shall not be considered confidential information.
- (1) A VREP shall provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each POLR area, and the number of ESI IDs the REP is willing to serve by customer class and POLR area in each transition event.
- (2) A REP that has met the eligibility requirements of subsection (h) of this section and provided the additional information set out in this subsection is eligible for designation as a VREP.
- (3) Commission staff shall make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff shall reassess the REP's

eligibility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.

- (4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it shall provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff shall make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of ESI IDs, the request shall be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP shall continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff shall be communicated to ERCOT and shall be implemented for the current allocation if possible.
- (5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT has reason to believe that a REP is no longer capable of performing VREP responsibilities,

ERCOT shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff shall review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it shall request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VREP service. No ESI IDs shall be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.

- (j) **LSPs.** This subsection governs the selection and service of REPs as LSPs.
- (1) The REPs eligible to serve as LSPs shall be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.
 - (2) In each POLR area, for each customer class, the commission shall designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area shall be designated as LSPs. Commission staff shall designate the LSPs by October 15th of each even-

numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as an LSP.

- (3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL shall be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) shall be supplied to commission staff electronically for placement on the commission webpage by January 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL shall note that such information is REP-specific.
- (4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) of this section shall move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.
 - (A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (t)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is

included with the notice required by subsection (t)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product shall be provided at a later time, but no later than 14 days before their effective date.

- (B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP shall move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP shall inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.
- (5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP shall continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee shall, with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) **Designation of an LSP affiliate to provide POLR service on behalf of an LSP.**

- (1) An LSP may request the commission designate an LSP affiliate to provide POLR service on behalf of the LSP either with the LSP's filing under subsection (h) of this section or as a separate filing in the current term project. The filing shall be made at least 30 days prior to the date when the LSP affiliate is to begin providing POLR service on behalf of the LSP. To be eligible to provide POLR service on behalf of an LSP, the LSP affiliate must be certificated to provide retail electric service; have an executed delivery service agreement with the service area TDU; and meet the requirements of subsection (h)(2) of this section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this section as related to serving customers in the applicable customer class.
- (2) The request shall include the name and certificate number of the LSP affiliate, information demonstrating the affiliation between the LSP and the LSP affiliate, and a certified agreement from an officer of the LSP affiliate stating that the LSP affiliate agrees to provide POLR service on behalf of the LSP. The request shall also include an affidavit from an officer of the LSP stating that the LSP will be responsible and indemnify any affected parties for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP in the event that the LSP affiliate defaults or otherwise does not fulfill such financial obligations.
- (3) Commission staff shall make an initial determination of the eligibility of the LSP affiliate to provide POLR service on behalf of an LSP and publish their names.

The LSP or LSP affiliate may challenge commission staff's eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to provide POLR service on behalf of the LSP. Commission staff shall reassess the LSP affiliate's eligibility and notify the LSP and LSP affiliate of any change in eligibility status within 10 business days of the receipt of the additional documentation. If the LSP or LSP affiliate does not agree with staff's determination of eligibility, either or both may then appeal the determination to the commission through a contested case. The LSP shall provide POLR service during the pendency of the contested case.

- (4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the LSP and the LSP affiliate that are the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff shall review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it shall request that the LSP affiliate demonstrate that it has the capability. The commission staff shall review the LSP affiliate's filing and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing

POLR service. The LSP affiliate may continue providing POLR service to ESI IDs currently receiving the service during the pendency of the proceeding; however, the LSP shall immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to POLR service through a mass transition, during the pendency of the proceeding.

- (5) Designation of an affiliate to provide POLR service on behalf of an LSP shall not change the number of ESI IDs served or the retail sales in megawatt-hours for the LSP for the reporting period nor does such designation relieve the LSP of its POLR service obligations in the event that the LSP affiliate fails to provide POLR service in accordance with the commission rules.
- (6) The designated LSP affiliate shall provide POLR service and all reports as required by the commission's rules on behalf of the LSP.
- (7) The methodology used by a designated LSP affiliate to calculate POLR rates shall be consistent with the methodology used to calculate LSP POLR rates in subsection (m) of this section.
- (8) If an LSP affiliate designated to provide POLR service on behalf of an LSP cannot meet or fails to meet the POLR service requirements in applicable laws and Commission rules, the LSP shall provide POLR service to any ESI IDs currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.
- (9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.

(1) **Mass transition of customers to POLR providers.** The transfer of customers to POLR providers shall be consistent with this subsection.

(1) ERCOT shall first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT shall use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP shall not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT shall:

- (A) Sort ESI IDs by POLR area;
- (B) Sort ESI IDs by customer class;
- (C) Sort ESI IDs numerically;
- (D) Sort VREPs numerically by randomly generated number; and
- (E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP shall be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each VREP indicated it was willing to serve by the total that all VREPs indicated they were willing to serve, multiplying the result by

the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number.

- (2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT shall assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area shall be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT shall:
- (A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;
 - (B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;
 - (C) Sort ESI IDs in excess of the allocation to VREPs, numerically;
 - (D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;
 - (E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;
 - (F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and

- (G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.
- (3) Each mass transition shall be treated as a separate event.

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

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

(A) **Residential customers.** The LSP rate for the residential customer class 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) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory and other charges including ERCOT administrative charges, nodal

fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

- (ii) LSP customer charge shall be \$0.06 per kWh.
- (iii) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone that is multiplied by the number of kWhs the customer used during that hour and that is further multiplied by 120%.
- (iv) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.
- (v) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly

in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

- (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:

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

Where:

- (i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal

fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) LSP energy charge shall be the sum over the billing period of the actual hourly RTSPPs, for the customer's load zone that is multiplied by number of kWhs the customer used during that hour and that is further multiplied by 125%.
- (v) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.
- (vi) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.
- (vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of

kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period 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) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory,

and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

- (ii) LSP customer charge shall be \$2,897.00 per month.
 - (iii) LSP demand charge shall be \$6.00 per kW, per month.
 - (iv) LSP energy charge shall be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge shall have a floor of \$7.25 per MWh.
- (3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP shall issue refunds to the specific customers who were overcharged.
- (4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate shall be applicable to all LSPs charging the rate prescribed by

paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

- (5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection shall be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.
- (n) **Challenges to customer assignments.** A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider shall use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU shall make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer shall then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.
- (o) **Limitation on liability.** The POLR providers shall make reasonable provisions to provide service under this section to any ESI IDs currently receiving the service and to ESI IDs obtained in a future mass transition or served upon customer request; however, liabilities not excused by reason of force majeure or otherwise shall be limited to direct, actual damages.

- (1) Neither the customer nor the POLR provider shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.
 - (2) In no event shall ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.
- (p) **REP obligations in a transition of customers to POLR service.**
- (1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.
 - (2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.
 - (3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to

serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.

- (4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.
- (5) A defaulting REP whose customers are subject to a mass transition event shall return the customers' deposits within seven calendar days of the initiation of the transition.
- (6) ERCOT shall create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, shall be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT shall be tested on a periodic basis. All REPs shall submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission shall establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT shall notify the commission if any REP fails to comply with the reporting requirements in this subsection.
- (7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance

with this section shall be treated as confidential and shall only be used for mass transition related purposes.

- (8) Information from the TDU and ERCOT to the POLR providers shall be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section shall not constitute a violation of the customer protection rules that address confidentiality.
- (9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider shall begin providing service to the customer even if the service initiation date is before it receives the deposit – if any deposit is required. A POLR provider shall not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a

deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it shall determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider shall not request a deposit from the residential customer.

- (A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director shall distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. These funds shall first be used to provide deposit payment assistance for transitioned customers enrolled in the rate reduction program pursuant to §25.454 of this title (relating to Rate Reduction Program). The Executive Director or staff designee shall, at the time of a transition event, determine the reasonable deposit amount up to \$400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above \$400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, shall satisfy in full the customers' initial deposit obligation to the VREP or LSP.
- (B) The Executive Director or the staff designee shall distribute available proceeds pursuant to §25.107(f)(6) of this title to VREPs proportionate to the number of customers they received in the mass transition, who at the

time of the transition are enrolled in the rate reduction program pursuant to §25.454 of this title, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds shall be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

- (C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference shall be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits) that allows an eligible customer to pay its deposit in two equal installments provided that:
- (i) The amount distributed shall be considered part of the first installment and the VREP or LSP shall not request an additional first deposit installment amount if the amount distributed is at least 50% of the reasonable deposit amount; and
 - (ii) A VREP or LSP may not request payment of any remaining difference between the reasonable deposit amount and the distributed deposit amount sooner than 40 days after the transition date.

- (D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.
- (10) On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to POLR providers, of all of the customers served by a REP:
- (A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;
 - (B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;
 - (C) Issuance of a commission order de-certifying a REP;
 - (D) Issuance of a commission order requiring a mass transition to POLR providers;
 - (E) Issuance of a judicial order requiring a mass transition to POLR providers; and
 - (F) At the request of a REP, for the mass transition of all of that REP's customers.
- (11) A REP shall not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.

- (12) ERCOT may provide procedures for the mass transition process, consistent with this section.
- (13) A mass transition under this section shall not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch shall be made on the next available switch date.
- (14) Customers who are mass transitioned shall be identified for a period of 60 calendar days. The identification shall terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions shall be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.
- (15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.
- (16) In a mass transition event, the ERCOT initiated transactions shall request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after

the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider shall not be considered a break in a series of consecutive months of estimates, but shall not be considered a month in a series of consecutive estimates performed by the TDU. A TDU shall create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU shall not bill as a discretionary charge, the costs included in this regulatory asset, which shall consist of the following:

- (A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and
 - (B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.
- (17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU shall perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU shall calculate the actual average kWh usage per day for the time period

from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU shall promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(q) **Termination of POLR service provider status.**

- (1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:
 - (A) If the POLR provider fails to maintain REP certification;
 - (B) If the POLR provider fails to provide service in a manner consistent with this section;
 - (C) The POLR provider fails to maintain appropriate financial qualifications;
or
 - (D) For other good cause.
- (2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee shall, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.
- (3) At the end of the POLR service term, the outgoing LSP shall continue to serve customers who have not selected another REP.

(r) **Electric cooperative delegation of authority.** An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission shall, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions shall apply:

- (1) The board of directors shall provide the commission with a copy of a board resolution authorizing such delegation of authority;
- (2) The delegation of authority shall be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;
- (3) The delegation of authority shall be for a minimum period corresponding to the period for which the solicitation shall be made;
- (4) The electric cooperative wishing to delegate its authority to designate an continuous provider shall also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and
- (5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission shall automatically reject the delegation of authority.

(s) **Reporting requirements.** Each LSP that serves customers under a rate prescribed by subsection (m)(2) of this section shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the

commission for the receipt of such information. Each quarterly report shall be filed within 30 calendar days of the end of the quarter.

- (1) For each month of the reporting quarter, each LSP shall report the total number of new customers acquired by the LSP under this section and the following information regarding these customers:
 - (A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;
 - (B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;
 - (C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;
 - (D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and
 - (E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.
- (2) For each month of the reporting quarter each LSP shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:
 - (A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

- (B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;
 - (C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;
 - (D) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and
 - (E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.
- (3) For the entirety of the reporting quarter, each LSP shall report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.
- (t) **Notice of transition to POLR service to customers.** When a customer is moved to POLR service, the customer shall be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice shall be provided within two days of the time ERCOT and the transitioning REP know that the customer shall be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it shall provide notice as soon as practicable. The POLR provider shall provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and shall provide the notice to transitioning customers as soon as practicable. The POLR

provider shall email the notice to the commission staff members designated for receipt of the notice.

- (1) ERCOT notice methods shall include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT shall notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) of this section. ERCOT shall study the effectiveness of the notice methods used and report the results to the commission.
- (2) Notice by the REP from which the customer is transferred shall include:
 - (A) The reason for the transition;
 - (B) A contact number for the REP;
 - (C) A statement that the customer shall receive a separate notice from the POLR provider that shall disclose the date the POLR provider shall begin serving the customer;
 - (D) Either the customer's deposit plus accrued interest, or a statement that the deposit shall be returned within seven days of the transition;
 - (E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

- (F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header “An Important Message from the Public Utility Commission Regarding Your Electric Service” addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);
 - (G) If applicable, a description of the activities that the REP shall use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and
 - (H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.
- (3) Notice by the POLR provider shall include:
- (A) The date the POLR provider began or shall begin serving the customer and a contact number for the POLR provider;
 - (B) A description of the POLR provider’s rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) of this section, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate

for each billing period shall not be determined until the time the bill is prepared;

- (C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;
- (D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: “If you would like to choose a different retail electric provider, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;”
- (E) The applicable Terms of Service and Electricity Facts Label (EFL); and
- (F) For residential customers that are served by an LSP under a rate prescribed by subsection (m)(2) of this section, a notice to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

- (u) **Market notice of transition to POLR service.** ERCOT shall notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has

taken place. The notification shall include the exiting REP's name, total number of ESI IDs, and estimated load.

- (v) **Disconnection by a POLR provider.** The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section shall begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.
- (w) **Deposit payment assistance.** Customers enrolled in the rate reduction program pursuant to §25.454 of this title shall receive POLR deposit payment assistance when proceeds are available in accordance with §25.107(f)(6) of this title.
- (1) Using the most recent Low-Income Discount Administrator (LIDA) enrolled customer list, the Executive Director or staff designee shall work with ERCOT to determine the number of customer ESI IDs enrolled on the rate reduction program that shall be assigned to each VREP, and if necessary, each LSP.
 - (2) The commission staff designee shall distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

- (3) The Executive Director or staff designee shall use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:
 - (A) a list of the ESI IDs enrolled on the rate reduction program that have been or shall be transitioned to the applicable POLR; and
 - (B) the amount of deposit payment assistance that shall be provided on behalf of a POLR customer enrolled on the rate reduction program.
- (4) Amounts credited as deposit payment assistance pursuant to this section shall be refunded to the customer in accordance with §25.478(j) of this title.

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 §25.43, relating to Provider of Last Resort (POLR) are hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS the _____ day of _____
2014.**

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER