

PROJECT NO. 45625

RULEMAKING RELATING TO THE	§	PUBLIC UTILITY COMMISSION
USE OF PORTABLE ELECTRONIC	§	
DEVICES FOR RETAIL ELECTRIC	§	OF TEXAS
CUSTOMER ENROLLMENT	§	

**ORDER ADOPTING AMENDMENTS TO §25.474
AS APPROVED AT THE FEBRUARY 9, 2017 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.474, relating to the selection of retail electric provider, for the limited purpose of allowing a Retail Electric Provider (REP) or aggregator to use a portable electronic device (PED) during customer enrollments via door-to-door sales, with changes to the proposed text as published in the November 11, 2016 issue of the *Texas Register* (41 TexReg 8886). The amendments will provide customer protections while allowing the option of using new technology for enrollments via door-to-door sales. These amendments are adopted under Project Number 45625.

The commission did not receive a request for a public hearing, therefore none was held.

The commission received written comments on the proposed amendments from the Office of Public Utility Counsel (OPUC); Texas Ratepayers Organization to Save Energy and Texas Legal Services Center (Texas ROSE/TLSC); TXU Energy Retail Company LLC (TXU); Constellation NewEnergy, Inc. (Constellation); and the Retail Electric Provider Coalition (REP Coalition).

The REP Coalition was composed of the Alliance for Retail Markets (ARM), Ambit Energy, NRG Retail Companies, Texas Energy Association for Marketers (TEAM), and TXU Energy. As noted

above, TXU also provided separate specific comments on certain individual subsections of the proposed rule. The participating members of TEAM were: Amigo Energy, AP Gas & Electric, Discount Power, Entrust Energy, IGS Energy, Infinite Energy, Just Energy, Power Express, Source Power & Gas, Spark Energy, StarTex Power, Stream Energy, Tara Energy, and Veteran Energy.

General Comments

Texas ROSE/TLSC disagreed with the commission's description of the proposed rule and stated that the *Texas Register* indicated there is a need to adopt a rule that would allow REPs and aggregators to enroll customers using a PED. Texas ROSE/TLSC opined that it would be more accurate to state that the rule is needed because REPs who use PEDs for door-to-door solicitations have asked the commission to eliminate the third-party verification and as such the proposed rule lacks adequate customer protection provisions.

The REP Coalition disagreed with Texas ROSE/TLSC and stated that the proposed rule does not deviate from the principles of informed and verified customer choice and merely provides REPs with an option for enrollment based on customer preference.

Commission Response

The commission appreciates the comments of Texas ROSE/TLSC and recognizes that the commission has the responsibility under the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.101 (West 2016) (PURA) to ensure that proper retail customer protections are in place. The rule requires the REP or aggregator to obtain confirmed consent from the customer or applicant prior to providing disclosures using a PED and again

for the enrollment verification. Additionally, the customer will have a three-day right of rescission period to rescind their decision to switch without penalty. The commission disagrees with Texas ROSE/TLSC that the description of the rule is not accurate. The commission agrees with the REP Coalition that the rule is consistent with the principles of informed and verified customer choice. Therefore, the commission makes no change to the rule.

Subsection (f)

The REP Coalition recommended that this subsection be amended to include an applicant in the description of marketing activities for door-to-door sales so that the enrollment procedures in the adopted rule would apply to both applicants and customers. The REP Coalition suggested that “an applicant’s” be inserted before “or customer’s residence” in the description of marketing activities for door-to-door sales. No commenters opposed this recommendation.

Commission Response

The commission agrees with the REP Coalition changes to include “applicant” and modifies the rule to accept the REP Coalition’s proposed language.

Subsection (f)(2)

The REP Coalition recommended that this subsection be amended to insert the phrase “or customer’s” between the word “applicant’s” and “residence” in the first sentence so that the enrollment procedures in the adopted rule would apply to both applicants and customers. The REP Coalition pointed out that the proposed rule uses the term “PED” to refer to devices governed by

the rule, except in the final sentence of this subsection and suggested that the term “The devices” be changed to “Examples of PEDs.” Also, the REP Coalition stated that the rule should avoid specifying brand names when possible and that the term “iPad” should be deleted from examples of PEDs. The REP Coalition also pointed out that the word “tablets” should be changed to “tablet computers.” No commenters opposed these recommendations.

Commission Response

The commission agrees with the REP Coalition on the points it identified to provide more clarity to the rule. Therefore, the commission modifies the rule to accept the REP Coalition’s proposed language with the exception that the commission adds “tablet computers” in addition to the word “tablets.”

Subsection (f)(2)(B)

The REP Coalition concluded that the intent of this subsection is to prohibit use of a PED owned by an individual employee or representative. The REP Coalition recommended that the rule be amended to allow the PED to be leased by the REP, aggregator, or third-party vendor rather than requiring the entities to own the PED. Also, the REP Coalition suggested that the subsection be clarified to prohibit an “individual” employee from owning the PED. No commenters opposed these recommendations. The REP Coalition suggested that the phrase “or leased” be added after the phrase “shall be owned” in the first sentence and that the word “individual” be inserted before

the word “employee” in second sentence to allow for the PED to be leased by the REP or aggregator in lieu of actually owning the PED.

Commission Response

The commission agrees with the REP Coalition that PEDs used for customer enrollments via door-to-door sales are to be owned or leased by the REP, aggregator, or third-party vendor but not owned or leased by an individual. Therefore, the commission modifies the rule to accept the REP Coalition’s proposed language. In addition, the commission adds the word “rented” before the phrase “or leased.”

Subsection (f)(2)(D)

The REP Coalition recommended that this subsection be amended to insert the phrase “or customer” after the phrase “the applicant” so that the enrollment procedures in the adopted rule would apply to both applicants and customers. Also, the REP Coalition pointed out that the proposed rule would require all information on a PED to be “conspicuously disclosed.” The REP Coalition opined that for information or text to be conspicuous, it would need to be clearly distinguishable from the surrounding information or text. The REP Coalition concluded that it would be impossible for all information to be conspicuous and suggested that the term “conspicuously” be changed to “clearly.” No commenters opposed these recommendations.

Commission Response

The commission agrees with the REP Coalition on the points it identified to provide more clarity to the rule. Therefore, the commission modifies the rule to accept the REP Coalition’s proposed language.

Subsection (f)(2)(E)(ii)

The REP Coalition suggested that this subsection be amended to insert the phrase “any applicant and” between the phrase “means to protect” and the phrase “customer data” so that the enrollment procedures in the adopted rule would apply to both applicants and customers. The REP Coalition also recommended that the language in this subsection be amended to replace the phrase “remote data wipe capabilities that allow the REP or aggregator to remove all data” with the phrase “the means to protect any applicant and customer data” and to insert the phrase “such as for example, remote data wipe capabilities” at the end of the clause. The REP Coalition opined that using remote data wipe capabilities as an example rather than the only method to protect customer data would avoid the possibility of excluding any future technology that would provide greater protection of the information. No commenters opposed these recommendations.

Commission Response

The commission agrees with the REP Coalition on the points it identified to provide more clarity to the rule. Therefore, the commission modifies the rule to accept the REP Coalition’s proposed language.

Subsection (f)(2)(E)(iii)

The REP Coalition supported the proposed rule requirement that the PED have the capability to track the time and location of each enrollment. However, the REP Coalition recommended that this subsection be amended to add the phrase “subject to availability of industry standard communication signals at the specific time of enrollment, such as cellular or Wi-Fi” at the end of the subsection to allow for communication or GPS signal interruptions that could occasionally interfere with the recording of the GPS information. No commenters opposed this recommendation.

Commission Response

The commission agrees with the REP Coalition that there may be instances when industry standard communications signals are not available that could occasionally interfere with the recording of the time and location of the enrollment and modifies the rule to add the phrase “subject to the availability of industry standard communications signals such as cellular or Wi-Fi at the specific time of enrollment” at the end of the subsection.

Subsection (f)(2)(F)

The REP Coalition recommended that the proposed rule be modified to recognize that there are possible scenarios where there is no customer data housed on the PED and that the requirement to remove data from the PED should only apply when customer specific information is retained on the PED. The REP Coalition recommended that the sentence “once the transfer of data has been verified, the applicant or customer information on the PED shall be removed.” be changed to “once

the transfer of data has been verified, any such applicant or customer specific information retained on the PED shall be removed.” No commenters opposed this recommendation.

OPUC stated that the term “expeditiously,” referring to the requirement for customer information to be transferred from a PED to the REP or aggregator’s system, is vague. OPUC recommended that the commission set a specific timeframe, such as within 24 hours or within one business day, to ensure that the requirement is clear, easy to comply with and enforceable. The REP Coalition agreed and supported a one business day limit.

Commission Response

The commission agrees with the REP Coalition’s recommendation that addresses scenarios where there is no customer data housed on the PED and modifies the rule to accept the REP Coalition’s proposed language. Additionally, the commission agrees with OPUC that the term “expeditiously” is vague and modifies the rule to state that any applicant or customer specific information enter into the PED shall be transferred “within one business day.”

Subsection (f)(3) and (f)(3)(A)

The REP Coalition opined that the reference in this subsection and subparagraph should be to subsection (e)(5) only to be consistent with the same reference in the current rule under subsection (f)(2). The REP Coalition asserted that (e)(1)–(4) addresses the understandability and legibility requirements of a letter of authorization which is not part of the enrollment process via a PED. The REP Coalition noted that the proposed rule addresses the understandability and legibility requirements in subparagraphs (f)(2)(B)-(C). The REP Coalition recommended that the phrase

“subsections (e)(1)–(5)” be changed to “subsections (e)(5)” in subsection (f)(3) and that the phrase “subsection (e)(1)–(5)” be changed to “subsection (e)(5)” in two places in subparagraph (f)(3)(A).

No commenters opposed this recommendation.

Texas ROSE/TLSC noted that subsection (f)(3)(A) requires REPs and aggregators to provide written paper copies of disclosures if the applicant expresses an inability to read or understand the disclosure information on the PED. Texas ROSE/TLSC recommended that written paper copies of all disclosures be provided to all customers for ease of reference. Texas ROSE/TLSC noted that when an enrollment is completed using a tablet computer with an electronic signature, the Pennsylvania Public Utility Commission requires that the customer be emailed a copy of the electronically executed documents and that a paper copy is typically mailed within 24 hours of the enrollment.

The REP Coalition opposed Texas ROSE/TLSC’s recommendation to amend this subsection to require written paper copies of all disclosures be provided to all customers noting that subsection (f)(5)(D) of the proposed rule already requires that the documents be sent.

Commission Response

The commission agrees with the REP Coalition that the reference in this subsection and subparagraph should be only to subsection (e)(5) and modifies the rule to accept the REP Coalition’s proposed language.

The commission disagrees with Texas ROSE/TLSC's recommendation to modify subsection (f)(3)(A) to require REPs or aggregators to provide written paper copies of all disclosures to all customers. The commission agrees with the REP Coalition that subsection (f)(5)(D) already requires copies of the documents to be sent to the customer and does not adopt Texas ROSE/TLSC's recommendation. Therefore, the commission makes no change to the rule.

Subsection (f)(3)(B)(iii)

The REP Coalition recommended that this subsection be deleted from the rule. The REP Coalition noted that no other form of enrollment requires a REP to inform a customer that a termination fee may apply. The REP Coalition argued that a REP is not in a position to advise the applicant as to what the terms of service of another REP might require. The REP Coalition stated that customers have the right to rescind the enrollment with the new REP if their existing REP notifies the customer that an early termination fee would apply should they transfer to the new REP. The REP Coalition argued that adding the new disclosure requirement is wholly unrelated to the integration of PED technology and inappropriate in this proceeding.

OPUC appreciated the requirement that a REP or aggregator be required to advise the applicant that early termination fees may apply if the applicant is currently under contract with another REP. OPUC recommended that this requirement apply to all door-to-door solicitations, not just those involving a PED and that the commission consider including this requirement for personal solicitations other than door-to-door marketing. OPUC agreed with the REP Coalition that a REP offering enrollment is not in a position to know the terms contained in another REP's terms of service; however, OPUC noted that the proposed rule does not require the REP to provide specific

information related to the customer's current plan but simply requires the REP to inform the customer that they could be charged an early termination fee. OPUC also recommended that the commission reject the REP Coalition's request to delete this subsection.

Texas ROSE/TLSC agreed with OPUC that the requirement for the REP or aggregator to advise the applicant that early termination fees may apply should be required for all door-to-door solicitations and not limited to those using a PED. Texas ROSE/TLSC asserted that the rule should require the REP or aggregator to time the switch to avoid having the customer pay a termination fee or require the REP or aggregator to guarantee the customer a set amount of overall savings from making the switch after the termination fees are taken into account. Texas ROSE/TLSC also suggested that the rule should require the REP or aggregator to provide the customer with the specific date when the customer can change from their existing plan or product to a new one without paying a termination fee.

The REP Coalition opposed the Texas ROSE/TLSC recommendations that the REP should be required to time the switch by providing an exact date for a future switch that would avoid an early termination fee and to provide the customer with a specific date when the customer can change to a new product without paying a termination fee. The REP Coalition argued that the exact expiration date of the new contract is not known prior to the completion of the enrollment and therefore an exact date cannot be provided during the initial enrollment process. The REP Coalition also added that the commission has fully addressed the disclosure of timing of contract expiration and early termination fees in adopting §25.474.

Commission Response

The commission disagrees with the REP Coalition that the rule would require REPs or aggregators to advise an applicant about the terms of service of another REP. The commission agrees with OPUC that the rule does not require a REP to provide specific information related to the customer's current plan but simply requires a REP to inform the customer that they could be charged an early termination fee. The commission determines that the unique nature of using a PED for door-to-door sales without requiring third-party verification should have this additional customer protection. Therefore, the commission declines to adopt the REP Coalition's recommendation to delete this subsection.

OPUC and Texas ROSE/TLSC recommended that the REP or aggregator be required to advise the applicant that a termination fee may apply for all door-to-door enrollments. The purpose of this rulemaking project is for the limited purpose of allowing a REP or aggregator to use a PED during customer enrollments via door-to-door sales and is not intended to change all substantive rule language. Therefore, the revision suggested by OPUC and Texas ROSE/TLSC is outside the scope of this rulemaking.

Texas ROSE/TLSC suggested the rule be amended to require the REP or aggregator to time the switch to avoid early termination fees or provide a specific date for the switch to avoid early termination fees. This would require the REP or aggregator to interpret the terms of another REP's offer. The commission finds that interpreting the terms of service for a customer's current REP is a part of the ongoing relationship between the customer and the

current REP. Because the acquiring REP is not included in that relationship and would not have knowledge of such terms and conditions, the commission declines to modify the rule.

Subsection (f)(3)(B)(iv)

Texas ROSE/TLSC stated that requiring the applicant to provide only one single signature that would cover all the disclosures is unacceptable and that this clause should specifically state that a customer must affirm they have read and understood each individual disclosure.

The REP Coalition opposed the Texas ROSE/TLSC recommendation and pointed out that the proposed rule already requires a minimum of two customer signatures and that adding multiple signature lines for each disclosure item would not be helpful to the customer in the enrollment process and would serve as an annoyance to the customer.

TXU concluded that the proposed rule requirement to obtain an applicant's signature at both the disclosure and verification stage of the enrollment process would help ensure that a customer who begins the enrollment process on a PED is in fact the same person who completes the enrollment. TXU pointed out that there are ways other than electronic signatures by which door-to-door sales representatives could document the applicant's authorization and verification. For instance, customers could enter one of the account access verification data options or even utilize the PEDs' technology to confirm the applicant's presence via biometrics. TXU recommended that the proposed rule be amended to allow the REP or aggregator to require unassisted direct entry of a uniquely identifiable input from the applicant in lieu of the electronic signature. TXU recommended that the phrase "or, alternatively, require unassisted direct entry of a uniquely

identifiable input from the applicant” be inserted after the phrase “adheres to Texas and federal guidelines.” This uniquely identifiable input would be required during the verification stage of the enrollment process. No commenters opposed TXU’s recommendation.

Commission Response

The commission disagrees with Texas ROSE/TLSC’s recommendation that a signature line be added to affirm that the customer has read and understands each individual disclosure. The commission agrees with the REP Coalition that the proposed rule requires a minimum of two customer signatures and that adding more may frustrate the customer. Therefore, the commission makes no modifications to the rule.

The commission agrees with TXU that there are alternatives to electronic signatures that could be used by a door-to-door sales representative to document an applicant’s authorization and verification. The commission modifies the rule to accept TXU’s proposed language.

Subsection (f)(4)

The REP Coalition opined that the rule should make it clear that when a PED is used to conduct an enrollment that the REP and the customer have the option of verifying the enrollment via a telephone confirmation as per the current rule or by using a PED. The REP Coalition recommended that the phrase “not using a PED” be removed from the title of this paragraph and recommended that the phrase “unless verification is obtained using a PED as specified in subsection (f)(5) of this section in which case the REP or aggregator has the option to complete

the verification of authorization requirement utilizing the process defined in (f)(5)” be added to the end of the subsection.

TXU supported the REP Coalition’s position that the existing door-to-door solicitation and enrollment process including telephonic verification should continue to be an option for REPs who choose to utilize a PED for door-to-door solicitations.

Commission Response

The commission agrees with the REP Coalition that the rule be modified to show that the REP and the customer have the option of verifying enrollment via a telephone confirmation or by using a PED. The commission accepts the REP Coalition’s suggestion to remove the phrase “not using a PED”. The commission also agrees with the REP Coalition recommendation to clarify that this verification process is to be used unless verification is obtained using a PED. The commission modifies the subsection to add the following language at the end of the subsection: “unless verification is obtained using a PED as specified in paragraph (5) of this subsection. If verification is obtained using a PED as specified in paragraph (5) of this subsection, the REP or aggregator has the option, with applicant consent, to complete the verification of authorization requirement utilizing the process defined in paragraph (5) of this subsection.”

Subsection (f)(5)

The REP Coalition recommended that the title of subsection (f)(5) be modified to insert the phrase “door-to-door” before the word “enrollments” in the paragraph title to clarify that the verification

of enrollment using a PED only applies to door-to-door enrollments. No commenters opposed this recommendation.

Texas ROSE/TLSC opined that all door-to-door solicitations should have the same customer protections and opposed any decision by the commission to eliminate third-party verification of door-to-door sales. Further, they stated that the proposed rule has provisions that fail to adequately protect the consumer. Texas ROSE/TLSC argued that a door-to-door salesperson can be misleading and deceptive and could slam a customer's account by electronically processing an unauthorized switch. They stated that at the very least, the third-party verification should be retained and required for customers with a non-English language preference and low-income customers who are the likely targets of unscrupulous sales tactics. Texas ROSE/TLSC pointed out that the proposed rule also does not provide constraints to prevent the sales representative from being present when the customer answers the self-verification email. Texas ROSE/TLSC recommended that the rule either needs constraints to prevent the sales representative from being present when the customer receives the self-certification email or the customer should have to separately consent to the presence of the sale representative during the verification process.

Constellation urged the commission to require telephonic verification for all door-to-door enrollments, preferably by a third party outside the presence of the sales representative. Constellation posited that complaints of customers who believe they have been slammed would often be resolved when the customer hears their own voice confirming the details of a door-to-door enrollment.

TXU supported retaining telephonic verification as an option for confirmation and verification of enrollments through a PED. TXU suggested that requiring customers to enter some type of unique identifier or a biometric trait that could only be tied to the customer as part of the disclosure portion of the solicitation and again at the verification portion of the solicitation would offer an equivalent level of customer protection. TXU also addressed Constellation's recommendation concerning third party verification outside the presence of a sales representative. TXU noted that that the commission's rules already prohibit the sales representative's participation in telephonic verification. TXU opined that having the sales representative in proximity to the applicant to answer any questions or provide any post-verification documentation in a timely manner can be more operationally efficient and provide a more pleasant customer experience.

The REP Coalition asserted that Texas ROSE/TLSC's recommendation to limit the manner of enrollment for certain demographic segments would not be workable and would be discriminatory. The REP Coalition stated that the low-income designation is typically not known to the REP at the time of enrollment and limiting customers from a form of enrollment may deprive the customer with access to potential savings from competitive service offerings. Also, the current rule requirement to match the customer's language preference would continue and be extended to PED enrollments as well.

Commission Response

The commission agrees with the REP Coalition to change the title of this subsection to clarify that verification for enrollments using a PED only applies to door-to-door enrollments and modifies the rule to accept the REP Coalition's proposed language.

The commission declines to amend the rule to implement the suggestions presented by Constellation and Texas ROSE/TLSC regarding third-party verification of door-to-door sales. The commission understands that there are certain individuals that would prefer to complete the enrollment process using a PED and not have to go through a third-party verification. The rule requires the customer or applicant to provide confirmed consent at both the disclosure and verification phases of the enrollment process to ensure that the customer or the applicant has the opportunity to refuse enrollment being conducted using a PED. This two-step confirmation process provides customer protection that the customer agrees to use of the PED and confirms customer verification. The commission agrees with the REP Coalition that limiting the manner of enrollment for certain demographics would be unworkable and possibly discriminatory. As noted by the REP Coalition, the commission's rule already precludes the sales agent from participating in telephonic verification, and having the sales representative present during the verification does not diminish the customer's verification via telephonic verification. Therefore, the commission makes no changes to the rule.

Subsection (f)(5)(A)

The REP Coalition recommended that this subsection be deleted stating that the proposed rule would require the REP or aggregator to confirm at the outset of a door-to-door sales solicitation whether the applicant or customer has the authority to complete an enrollment. The REP Coalition argued that the REP or aggregator must rely on the representation of the applicant or customer that the authority to complete an enrollment exists, and there is no way for the sale representative to

make that determination. Moreover, the REP Coalition was not clear how the REP would be required to capture and retain evidence of a customer's lack of refusal to consent to enrollment verification via a PED. The REP Coalition opined that the proposed rule language is not necessary since the proposed authorization and verification processes would serve as proof of the customer's agreement to use of the PED for verifying authorization.

Texas ROSE/TLSC stated that subsection (f)(5)(A) of the proposed rule should be amended to require the REP or aggregator to provide documentation of the customer's consent to PED verification.

Commission Response

The commission disagrees with the REP Coalition's position that the rule would require the REP or aggregator to confirm whether the applicant or customer has the authority to complete an enrollment. Rather, the rule requires the applicant to provide the REP or aggregator with the confirmation that the applicant has the authority to complete an enrollment, but does not require the sales representative to make the determination or confirm the applicant's authority.

The commission does not find that is necessary to amend this subsection as recommended by Texas ROSE/TLSC because the enrollment verification serves as the customer's consent and §25.474(b) states that a contested switch in providers shall be presumed to be unauthorized unless the REP provides proof of the applicant's or customer's authorization and verification.

Subsection (f)(5)(B)

The REP Coalition recommended that this subsection be modified to state that affirmative consent from the applicant to complete verification via a PED is unnecessary given the customer's self-evident consent in completion of the enrollment.

Texas ROSE/TLSC disagreed with the REP Coalition and argued that the customer's confirmation of authorization and consent to the enrollment being verified is very important. Texas ROSE/TLSC cited to a Pennsylvania Public Utility Commission order that emphasized the importance of separating the sales and verification process and that the proposed rule serves the purpose of separating the two processes.

Commission Response

The commission disagrees with the REP Coalition that affirmative consent from the applicant to complete verification via a PED is unnecessary. The commission agrees with Texas ROSE/TLSC that it is important that the REP or aggregator obtain the applicant's consent to the enrollment being verified using a PED. This is one of the customer safeguards that helps to ensure that the customer knowingly is agreeing to PED verification. The reference to customer consent in this subsection is a lead-in to what the REP or aggregator must do once the applicant consents to this verification. Therefore, the commission makes no changes to the rule.

Subsection (f)(5)(B)(iv)

The REP Coalition pointed out that the signature requirement in this clause is partially duplicative of the signature requirement in subsection (f)(3)(B)(iv) and should be amended to limit the acknowledgment that states the customer is authorized to select or change REPs for the address and authorizes the new REP to perform necessary tasks to complete a switch or move-in. The REP Coalition recommended deletion of the phrase “the applicant has read and understands the disclosures, terms of service, EFL, PDS, if applicable, and all written or electronic materials disclosed and that.” The REP Coalition also recommended that the phrase “customer or” be inserted before the word “applicant” and that the phrase “customer’s or” be inserted before the phrase “applicant’s service” so that the enrollment procedures in the adopted rule would apply to both applicants and customers. No commenters opposed the REP Coalition’s recommendations.

TXU supported the proposed rule’s inclusion of a requirement that the applicant affirm their consent to enrollment at two distinct points in time as proposed in subsections (f)(3) and (f)(5) to ensure that the customers are present for the entire process: first during the authorization disclosure process and second during the verification of authorization process. TXU argued that the rule should be expanded to include alternatives to using the customer’s electronic signature as a means of acknowledgment and affirmation such as requiring the customer to enter one of the account access verification data options, or even utilizing a PED’s technology to confirm the customer’s presence via biometrics. TXU recommended that the phrase “or, alternatively, require unassisted direct entry of a uniquely identifiable input by the applicant matching the input obtained pursuant to subsection (f)(3)(B)(iv) of this section” after the phrase “that adheres to Texas and federal guidelines.” No commenters opposed TXU’s recommendation.

Commission Response

The commission agrees with the REP Coalition that the signature requirement in this subsection is duplicative and should be amended to limit the acknowledgement that the customer is authorized to select or change REPs. Therefore the commission modifies the rule to accept the REP Coalition's proposed language.

The commission agrees with TXU that the rule should be expanded to include alternatives to using the customer's electronic signature as a means of acknowledgement and affirmation. Therefore, the commission modifies the rule to accept TXU's proposed language with modification to correctly show references.

Subsection (f)(5)(C)

Texas ROSE/TLSC stated that this subsection should be expanded and clarified by adding language stating that noncompliance by a REP will be processed under §25.495, relating to Unauthorized Change of Retail Electric Provider, and that an enrollment made by a REP receiving verification after the move-in or switch request has been submitted would be considered an unauthorized change of REP. Texas ROSE/TLSC recommended that the commission establish a non-negotiable minimum fee or fine of \$1,000 for each violation.

The REP Coalition disagreed with Texas ROSE/TLSC and stated that the cross reference to §25.495 is unnecessary because that section already states that the rule applies in instances where "a REP is serving a customer without proper authorization pursuant to §25.474." The REP

Coalition argued that an automatic penalty would be wholly inappropriate in certain circumstances such as when an unauthorized change is inadvertent or the result of applicant fraud. The REP Coalition stated that the commission has an existing process to fully and fairly enforce its rules and opposed the Texas ROSE/TLSC recommendation to amend the proposed rule to specify a mandatory fee or fine for a violation. If it were proper to apply a non-negotiable fee for a violation, then §25.8 which specifies penalty classifications for rule violations would be the appropriate rule to specify the fee.

Commission Response

The commission agrees with the REP Coalition that the clarification proposed by Texas ROSE/TLSC is unnecessary because §25.495 already states that the provisions of that section applies in instances where a REP is serving a customer without proper authorization pursuant to §25.474. The commission also agrees with the REP Coalition that its existing process for addressing violations is more appropriate than specifying non-negotiable fee as proposed by Texas ROSE/TLSC. Therefore, the commission makes no changes to the rule.

Subsection (f)(5)(D)

The REP Coalition recommended deletion of the requirement for the applicant to confirm receipt of the enrollment documents sent by any means other than first class mail prior to beginning the three-day right of rescission. The REP Coalition opined that this would be confusing to the customer and viewed as an added third step to an enrollment that has already been authorized and verified by the customer. The REP Coalition recommended deletion of the second sentence which reads: “If the confirmation is sent by any means other than first class mail, the confirmation must

allow for the applicant to confirm receipt and the three-day right of rescission period shall not begin until the REP receives the applicant's confirmation.”

Additionally, the REP Coalition recommended that subsections (f)(5)(D)(i) and (ii) be clarified to specify that the requirement for the notice to be accessible without the need to open an attachment or link would apply only to notices that are provided electronically. The REP Coalition recommended that the last sentence of subsection (f)(5)(D)(i) be modified to change the phrase “the notice shall be accessible to the applicant” to “if conveyed electronically, the notices shall be accessible to the applicant.” The REP Coalition recommended that the phrase “or links thereto” be added to the end of subsection (f)(5)(D)(ii). No commenters opposed the REP Coalition's recommendation.

Commission Response

The commission agrees with the REP Coalition to delete the second sentence of subsection (f)(5)(D). The commission also agrees with the REP Coalition's recommended changes to subsections (f)(5)(D)(i) and (ii) and modifies the rule to accept the REP Coalition's proposed language.

Subsection (g)

The REP Coalition urged the commission to reject amending subsection (g) to require the same level of customer protection when PEDs are utilized for enrollment at public places other than the customer's residence. The commission pointed out that subsection (f) of the current rule was adopted by the commission in Project No. 27084 and that the commission determined in its

April 29, 2004 order that enhanced verification requirements are necessary for door-to-door sales conducted at an applicant's home due to sales representatives who allegedly conducted deceptive marketing. The commission specifically rejected suggestions from commenters that the commission should adopt the same verification process for all in-person solicitations alleging that in-person solicitations give rise to the same concerns that the enhanced verification requirements are meant to remedy. In rejecting the expansion of verification requirements, the commission stated that the nature of solicitation in other public venues suggests that it is unlikely that similar abuses will occur and noted that it does not appear that enrollments at public venues have experienced the same problems. Absent any new evidence to the contrary, the REP Coalition argued that no policy reason exists to limit enrollments utilizing a PED outside of a customer door-to-door setting to exclude the use of written enrollment as is the current policy. Instead, the REP Coalition recommended that the commission add a new subsection (f)(6) to clarify that nothing in subsection (f) is intended to limit the use of PEDs in the context of other forms of enrollment. The REP Coalition recommended the following language for the new subsection (f)(6): "Nothing in this subsection is intended to limit the use of PEDs in the context of other forms of enrollment to the extent those enrollments otherwise comply with the applicable rule requirements." No commenters opposed the REP Coalition recommendations.

Commission Response

The commission agrees with the REP Coalition's recommendation to reject all proposed changes to subsection (g) and add a new subsection (f)(6). Therefore, the commission modifies the rule to accept the REP Coalition's proposed language.

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

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016) (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.

Cross Reference to Statutes: PURA §14.002 and §39.101.

§25.474. Selection of Retail Electric Provider.

- (a) **Applicability.** This section applies to retail electric providers (REPs) and aggregators seeking to enroll applicants or customers for retail electric service. In addition, where specifically stated, this section applies to transmission and distribution utilities (TDUs) and the registration agent.
- (b) **Purpose.** The provisions of this section establish procedures for enrollment of applicants or customers by a REP and ensure that all applicants and customers in this state are protected from an unauthorized switch from the applicant's or customer's REP of choice or an unauthorized move-in. A contested switch in providers shall be presumed to be unauthorized unless the REP provides proof, in accordance with the requirements of this section, of the applicant's or customer's authorization and verification.
- (c) **Initial REP selection process.**
- (1) In conjunction with the commission's customer education campaign, the commission may issue to customers for whom customer choice will be available an explanation of the REP selection process. The customer education information issued by the commission may include, but is not limited to:
- (A) an explanation of retail electric competition;
 - (B) a list of all REPs certified to provide electric service to the customer;
 - (C) a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and

- (D) information on how a customer may designate whether the customer would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.
- (2) Any affiliated REP assigned to serve a customer that is entitled to receive the price-to-beat rate, pursuant to the Public Utility Regulatory Act (PURA) §39.202(a), shall issue to a customer, either as a bill insert or through a separate mailing, no later than 30 days after the commencement of customer choice:
 - (A) A terms of service document that includes an explanation of the price-to-beat rate;
 - (B) Your Rights as a Customer disclosure; and
 - (C) An Electricity Facts Label for the price to beat, which may, at the discretion of the REP, be in a separate document or contained in the terms of service document.
- (3) An electric utility whose successor affiliated REP will continue to serve customers not eligible for the price-to-beat rate, pursuant to PURA §39.102(b), shall issue to the customer a terms of service document on a date prescribed by the commission. Such a document shall contain an explanation of the price the customer will be charged by the affiliated REP.
- (d) **Enrollment via the Internet.** For enrollments of applicants via the Internet, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.
 - (1) The website (or websites) shall clearly and conspicuously identify the legal name of the aggregator and its registration number to provide aggregation services or

REP and its certification number to sell retail electric service, its address, and telephone number.

- (2) The website shall include a means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the applicant or customer and the REP or aggregator that is an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information.
- (3) The website shall include an explanation that a move-in or a switch can only be made by the electric service applicant or the applicant's authorized agent.
- (4) The entire enrollment process shall be in plain, easily understood language. The entire enrollment shall be the same language. Nothing in this section is meant to prohibit REPs or aggregators from utilizing multiple enrollment procedures or websites to conduct enrollments in multiple languages.
- (5) **Required authorization disclosures.** Prior to requesting confirmation of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:
 - (A) the name of the new REP;
 - (B) the name of the specific electric service package or plan for which the applicant's assent is attained;
 - (C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant.The REP or aggregator shall provide a means of documenting a customer's language preference;

- (D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
- (E) term or length of the term of service;
- (F) the presence or absence of early termination fees or penalties, and applicable amounts;
- (G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or provider of last resort (POLR) shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title (relating to Credit Requirements and Deposits);
- (H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;
- (I) in the case of a switch request, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;
- (J) a statement that the applicant will receive a copy of the terms of service document via email or, upon request, via regular US mail, that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable; and
- (K) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title (relating to Prepaid Service), that the customer will not receive a bill and may request a summary of usage and payment.

- (6) The applicant shall be required to check a box affirming that the applicant has read and understands the disclosures and terms of service required by paragraph (5) of this subsection.
- (7) The REP or aggregator shall provide access to the complete terms of service document that is being agreed to by the applicant on the website such that the applicant may review the terms of service prior to enrollment. A prompt shall also be provided for the applicant to print or save the terms of service document to which the applicant assents, and shall inform the application of the option to request that a written copy of the terms of service document be sent by regular U.S. mail by contacting the REP.
- (8) The REP or aggregator shall also provide a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the applicant's or customer's agreement. The REP or aggregator shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.
- (9) Applicant authorizations shall adhere to any state and federal guidelines governing the use of electronic signatures.
- (10) **Verification of authorization for Internet enrollment.** Prior to final verification by the applicant of enrollment with the REP or aggregator, the REP or aggregator shall:
 - (A) obtain or confirm the applicant's email address, billing name, billing address, service address, and name of any authorized representative;

- (B) obtain or confirm the applicant's electric service identifier (ESI-ID), if available;
 - (C) affirmatively inquire whether the applicant has decided to establish new service or change from the current REP to the new REP;
 - (D) affirmatively inquire whether the applicant designates the new REP to perform the necessary tasks to complete a switch or move in for the applicant's service with the new REP; and
 - (E) obtain or confirm one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number.
- (11) After enrollment, the REP or aggregator shall send a confirmation, by email, of the applicant's request to select the REP. The confirmation email shall include:
- (A) in the case of a switch, a clear and conspicuous notice of the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service without penalty and offer the applicant the option of exercising this right by toll-free number, email, Internet website, facsimile transmission or regular mail. This notice shall be accessible to the applicant without need to open an attachment or link to any other document; and

- (B) the terms of service and Your Rights as a Customer documents. These may be documents attached to the confirmation email, or the REP or aggregator may include a link to an Internet webpage containing the documents.
- (e) **Written enrollment.** For enrollments of customers via a written letter of authorization (LOA), a REP or aggregator shall obtain authorization and verification of the switch or move-in request from the applicant in accordance with this subsection.
- (1) All LOAs for move-in or switch orders shall be in plain, easily understood language. The entire enrollment shall be in the same language.
 - (2) The LOA shall be a separate or easily separable document containing the requirements prescribed by this subsection for the sole purpose of authorizing the REP to initiate a switch request. The LOA is not valid unless it is signed and dated by the customer requesting the move-in or switch.
 - (3) The LOA may contain a description of inducements associated with enrolling with the REP; however, the actual inducement itself shall not be either included on or as part of the LOA, or constitute the LOA by itself.
 - (4) The LOA shall be legible and shall contain clear and unambiguous language.
 - (5) **Required authorization disclosures.** The LOA shall disclose the following information:
 - (A) the name of the new REP;
 - (B) the name of the specific electric service package or plan for which the applicant's assent is attained;

- (C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP shall provide a means of documenting an applicant's language preference;
- (D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
- (E) term or length of the term of service;
- (F) the presence or absence of early termination fees or penalties, and applicable amounts;
- (G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or POLR shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title;
- (H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;
- (I) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;
- (J) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable; and

- (K) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title, that the customer will not receive a bill and may request a summary of usage and payment.
- (6) **Verification of authorization of written enrollment.** A REP or aggregator shall, as part of the LOA:
- (A) obtain or confirm the applicant's billing name, billing address, and service address;
 - (B) obtain or confirm the applicant's ESI-ID, if available;
 - (C) affirmatively inquire whether the applicant has decided to establish new service or change from their current REP to the new REP;
 - (D) affirmatively inquire whether the applicant designates the new REP to perform the necessary tasks to complete a switch or move in for the applicant's service with the new REP; and
 - (E) obtain one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number.
- (7) The following LOA form meets the requirements of this subsection if modified as appropriate for the requirements of paragraph (5)(G) of this subsection. Other versions may be used, but shall contain all the information and disclosures required by this subsection.

LETTER OF AUTHORIZATION

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

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

Telephone number of individual authorized to act for applicant: _____

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

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

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

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

Signed: _____ Date: _____

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

- (8) Before obtaining a signature from a customer, a REP shall:
 - (A) provide to the applicant a reasonable opportunity to read the terms of service, Electricity Facts Label, Prepaid Disclosure Statement (PDS), if applicable, and any written materials accompanying the terms of service document; and
 - (B) answer any questions posed by any applicant about information contained in the documents.

- (9) Upon obtaining the applicant's signature, a REP or aggregator shall immediately provide the applicant a legible copy of the signed LOA, and shall distribute or mail the terms of service document, Electricity Facts Label, PDS, if applicable, and Your Rights as a Customer disclosure. If a written solicitation by a REP contains the terms of service document, any tear-off portion that is submitted by the applicant to the REP to obtain electric service shall allow the applicant to retain the terms of service document.
- (10) The applicant's signature on the LOA shall constitute an authorization of the move-in or switch request if the LOA complies with the provisions of this section and the terms of service comply with the requirements of §25.475(d) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).
- (f) **Enrollment via door-to-door sales.** A REP or aggregator that engages in door-to-door marketing at an applicant's or customer's residence shall comply with the following requirements:
- (1) **Solicitation requirements.** A REP or aggregator that engages in door-to-door marketing at an applicant's residence shall comply with the following requirements:
- (A) The REP or aggregator shall provide the disclosures required by this section and the three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling Off Period for Sales Made at Homes or at Certain Other Locations (16 C.F.R. Part 429).

- (B) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. In addition, the individual shall wear an identification badge that includes the individual's name and photograph, the REP or aggregator's certification or registration number, and a toll-free telephone number maintained by the REP or aggregator that the applicant may call to verify the door-to-door representative's identity during specified business hours. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.
- (C) The REP or aggregator shall affirmatively state that it is not a representative of the applicant's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.
- (D) The REP or aggregator shall not represent that an applicant or customer is required to switch service in order to continue to receive power.
- (E) Door-to-door representatives shall adhere to all local city/subdivision guidelines concerning door-to-door solicitation.

- (2) **Use of a portable electronic device (PED) in door-to-door sales.** A REP or aggregator may use a PED to conduct door-to-door sales at an applicant's or customer's residence. For the purpose of this section, a PED is defined as a nonstationary light-weight, electrically-powered device that is capable of communications, data storage and processing, and accessing, directly or indirectly, the REP or aggregator network. Examples of PEDs include, but are not limited to: laptop computers, tablets, tablet computers, personal digital assistants, and smart phones.
- (A) The REP or aggregator is responsible for ensuring that the PED complies with the requirements of this section.
 - (B) The PED shall be owned, rented, or leased by the REP, aggregator, or third-party vendor retained by the REP or aggregator. The PED shall not be owned by an individual employee of the REP, aggregator, or vendor that has been retained by the REP or aggregator.
 - (C) The entire enrollment process shall be in plain, easily understood language, and be consistent with the requirements of §25.473 of this title (relating to Non-English Language Requirements.) The entire solicitation and enrollment process shall be conducted in the same language. The REP or aggregator shall provide a means of documenting the applicant's language preference.
 - (D) All information disclosed to the applicant or customer on the PED must be easily readable and clearly disclosed.
 - (E) The PED shall:

- (i) be secure from unauthorized access;
 - (ii) have the means to protect any applicant and customer data should the device be lost or stolen, such as for example, remote data wipe capabilities; and
 - (iii) have enabled mobile locating and tracking capabilities that allows the REP or aggregator to track the time and location of each customer enrollment, subject to the availability of industry standard communications signals such as cellular or Wi-Fi at the specific time of enrollment.
- (F) Any applicant or customer specific information entered into the PED shall be transferred within one business day to the REP or aggregator's systems using Secure Socket Layer or similar encryption standard to ensure privacy of applicant or customer information. Once the transfer of data has been verified, any such applicant or customer specific information retained on the PED shall be removed.
- (G) The REP or aggregator is responsible for the protection of all applicant or customer information.
- (3) **Required authorization disclosures.** Prior to requesting verification of the applicant's authorization to enroll, a REP or aggregator shall comply with all of the authorization disclosure requirements in either subsections (e)(5) or (h)(1) - (4) of this section.
- (A) A REP or aggregator may provide the disclosures required by subsection (e)(5) of this section using a PED; however, if an applicant expresses an

inability to read or understand the disclosure information on the PED, the REP or aggregator shall either provide the required disclosures pursuant to subsection (e)(5) of this section in paper format, provide the disclosures pursuant to subsection (h)(1) – (4) of this section, or advise the applicant that they will not be able to complete enrollment.

- (B) If a REP or aggregator provides the disclosures using a PED, the REP or aggregator shall:
- (i) provide the applicant a reasonable opportunity to read the terms of service, Electricity Facts Label (EFL), Prepaid Disclosure statements (PDS), if applicable, and any written or electronic materials disclosed;
 - (ii) accurately and truthfully answer any questions posed by the applicant about information contained in the documents;
 - (iii) advise the applicant that if the applicant is under contract with another REP, termination fees for that contract may apply; and
 - (iv) obtain an electronic signature from the applicant that adheres to Texas and federal guidelines or, alternatively, require unassisted direct entry of a uniquely identifiable input by the applicant affirming that the applicant has read and understands the disclosures, terms of service, EFL, PDS, if applicable, and all written or electronic materials disclosed prior to verification of authorization.

- (4) **Verification of authorization for door-to-door enrollment.** A REP, or an independent third party retained by the REP, shall telephonically obtain and record all required verification information from the applicant to verify the applicant's decision to enroll with the REP in accordance with this paragraph, unless verification is obtained using a PED as specified in paragraph (5) of this subsection. If verification is obtained using a PED as specified in paragraph (5) of this subsection, the REP or aggregator has the option, with applicant consent, to complete the verification of authorization requirement utilizing the process defined in paragraph (5) of this subsection.
- (A) Electronically record on audiotape, a wave sound file, or other recording device the entirety of an applicant's verification. The verification call shall comply with the requirements in subsection (h)(5) of this section.
 - (B) Inform the applicant that the verification of authorization call is being recorded.
 - (C) Verification shall be conducted in the same language as that used in the sales transaction and authorization.
 - (D) Automated systems shall provide the applicant with the option of exiting the system and nullifying the enrollment at any time during the call.
 - (E) A REP or its sales representative initiating a three-way call or a call through an automated verification system shall not participate in the verification process.
 - (F) The REP shall not submit a move-in or switch request until it has obtained a recorded telephonic verification of the enrollment.

(5) **Verification of authorization for door-to-door enrollments using a PED.**

- (A) The REP or aggregator shall obtain affirmation from the applicant that the applicant is authorized to perform the enrollment and consents to the enrollment being verified using a PED. If the applicant does not consent to the enrollment being verified using a PED or expresses an inability to read or understand the verification of authorization information on the PED at any time, the representative shall verify authorization of enrollment pursuant to paragraph (4) of this subsection or advise the applicant that they will not be able to complete enrollment.
- (B) If the applicant consents to verification being conducted using a PED, the REP or aggregator shall:
- (i) obtain or confirm the applicant's email address or other agreed upon means of communication, billing name, billing address, service address, and name of any authorized representative;
 - (ii) obtain or confirm the applicant's electric service identifier (ESI-ID), if available;
 - (iii) obtain or confirm at least one of the following account access verification data for the applicant: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license number or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number; and

- (iv) obtain applicant's electronic signature that adheres to Texas and federal guidelines or, alternatively, require unassisted direct entry of a uniquely identifiable input by the applicant matching the input obtained pursuant to paragraph (3) of this subsection affirming that the customer or applicant is authorized to select or change REPs for the service address and authorizes the new REP to perform necessary tasks to complete a switch or move-in for the customer's or applicant's service with the new REP.
- (C) The REP shall not submit a move-in or switch request until it has obtained the applicant's verification of the enrollment.
- (D) After enrollment, the REP or aggregator shall send a confirmation by first class mail, email, or other agreed upon means of communication to the applicant of the applicant's request to select the REP. The REP or aggregator may assume that any delivery of the confirmation deposited first class within the United States Postal service will be received within three federal business days. The confirmation shall include:
 - (i) a clear and conspicuous notice in the body of the confirmation of the customer's three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling Off Period for Sales Made at Homes or Certain Other Locations (16 C.F.R. Part 429). The notice shall state that the customer may exercise their right to rescission within three federal business days after receiving the terms of service without penalty and offer the

customer the option of exercising this right by toll-free number, email, Internet website, facsimile transmission, or regular mail. If conveyed electronically, the notice shall be accessible to the applicant without need to open an attachment or link to any other document; and

- (ii) the terms of service document, EFL, PDS, if applicable, and Your Rights as a Customer disclosure, or links thereto.
- (6) Nothing in this subsection is intended to limit the use of PEDs in the context of other forms of enrollment to the extent those enrollments otherwise comply with the applicable rule requirements.
- (g) **Personal solicitations other than door-to-door marketing.** A REP or aggregator that engages in personal solicitation at a location other than a customer's residence (such as malls, fairs, or places of business) shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this section. In addition, the REP or aggregator shall comply with the following additional requirements:
 - (1) For transactions occurring at a place other than the REP or aggregator's place of business, the REP or aggregator shall provide the three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (16 C.F.R. Part 429).
 - (2) For solicitations of residential customers, the individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification

badge worn by the individual. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.

- (3) The individual who represents the REP or aggregator shall not state or imply that it is a representative of the customer's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.
 - (4) The REP or aggregator shall not represent that an applicant is required to switch service in order to continue to receive power.
- (h) **Telephonic enrollment.** For enrollments of applicants via telephone solicitation, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.
- (1) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's authorization and verification. Automated systems shall provide the customers with either the option of speaking to a live person at any time during the call, or the option to exit the call and cancel the enrollment.
 - (2) The REP or aggregator shall inform the customer that the authorization and verification portions of the call are being recorded.

- (3) Authorizations and verifications shall be conducted in the same language as that used in the sales transaction.
- (4) **Required authorization disclosures.** Prior to requesting verification of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:
 - (A) the name of the new REP;
 - (B) the name of the specific electric service package or plan for which the applicant's assent is attained;
 - (C) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
 - (D) term or length of the term of service;
 - (E) the presence or absence of early termination fees or penalties, and applicable amounts;
 - (F) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated or the method in which the deposit will be calculated. An affiliated REP or POLR shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title;
 - (G) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;
 - (H) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;

- (I) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable; and
 - (J) if the customer is being enrolled for prepaid service as defined by §25.498(b)(7) of this title, that the customer will not receive a bill and may request a summary of usage and payment.
- (5) **Verification of authorization of telephonic enrollment.**
- (A) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's verification of the authorization. The REP or aggregator shall inform the applicant that the verification call is being recorded.
 - (B) Prior to final confirmation by the applicant that they wish to enroll with the REP, the REP shall, at a minimum:
 - (i) obtain or confirm the applicant's billing name, billing address, and service address;
 - (ii) obtain or confirm the applicant's ESI-ID, if available;
 - (iii) for a move-in request, ask the applicant, "do you agree to become a customer with (REP) and allow (REP) to complete the tasks required to start your electric service?" and the applicant must answer affirmatively; or
 - (iv) for a switch request, ask the applicant, "do you agree to become a (REP) customer and allow us to complete the tasks required to

switch your electric service from your current REP to (REP)?" and the applicant must answer affirmatively;

(v) ask the applicant, "do you want to receive information in English, Spanish (or the language used in the marketing of service to the applicant)?" The REP shall provide a means of documenting the applicant's language preference; and

(vi) obtain or confirm one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth, driver's license or government issued identification number. For non-residential applicants, a REP may obtain the applicant's federal tax identification number.

(C) In the event the applicant does not consent to or does not provide any of the information listed in subparagraph (B) of this paragraph, the enrollment shall be deemed invalid and the REP shall not submit a switch or move-in request for the applicant's service.

(D) If a REP has solicited service for prepaid service, an actual pre-payment by a customer may be substituted for a telephonic verification, provided that the pre-payment is not taken at the time of the solicitation by the sales representative that has obtained the authorization from the customer, and the REP has obtained a written LOA from the customer and can produce documentation of the pre-payment. The REP shall not submit a move-in or switch request until it has received the prepayment from the customer.

(i) **Record retention.**

(1) A REP or aggregator shall maintain non-public records of each applicant's authorization and verification of enrollment for 24 months from the date of the REP's initial enrollment of the applicant and shall provide such records to the applicant, customer, or commission staff, upon request.

(2) A REP or an aggregator shall submit copies of its sales script, terms of service document, and any other materials used to obtain a customer's authorization or verification to the commission staff upon request. In the event commission staff request documents under this subsection, the requested records must be delivered to the commission staff within 15 days of the written request, unless otherwise agreed to by commission staff.

(3) In the event an applicant or customer disputes an enrollment or switch, the REP shall provide to the applicant or customer proof of the applicant's or customer's authorization within five business days of the request.

(j) **Right of rescission.** A REP shall promptly provide the applicant with the terms of service document after the applicant has authorized the REP to provide service to the applicant and the authorization has been verified. For switch requests, the REP shall offer the applicant a right to rescind the terms of service without penalty or fee of any kind for a period of three federal business days after the applicant's receipt of the terms of service document. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the applicant within three federal business days. Any REP receiving an untimely notice of rescission from the applicant shall inform the applicant that the applicant has a right to

select another REP and may do so by contacting that REP. The REP shall also inform the applicant that the applicant will be responsible for charges from the REP for service provided until the applicant switches to another REP. The right of rescission is not applicable to an applicant requesting a move-in.

- (k) **Submission of an applicant's switch or move-in request to the registration agent.** A REP shall submit a move-in or switch request to the registration agent so that the move-in or switch will be processed on the approximate scheduled date agreed to by the applicant and as allowed by the tariff of the TDU, municipally owned utility, or electric cooperative. A REP shall submit an applicant's switch request to the registration agent as a standard switch. In the alternative, the REP shall submit an applicant's switch request as a self-selected switch if the applicant requests a specific date for a switch, consistent with the applicable transmission and distribution tariff. A REP may submit an applicant's switch request to the registration agent prior to the expiration of the rescission period prescribed by subsection (j) of this section, provided that if the customer makes a timely request to cancel service the REP shall take action to ensure that the switch is canceled or the customer is promptly returned to its chosen REP without inconvenience or additional cost to the customer. The applicant shall be informed of the approximate scheduled date that the applicant will begin receiving electric service from the REP, and of any delays in meeting that date, if known by the REP.

- (l) **Duty of the registration agent.**

(1) When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with this section and its

protocols, to the extent that the protocols are consistent with this section. The registration agent shall send a switch notification notice to the applicant that shall:

- (A) be worded in English and Spanish consistent with §25.473(d) of this title (relating to Non-English Language Requirements);
- (B) identify the REP that initiated the switch request; and
- (C) provide the names and telephone numbers for the gaining and losing REP.

(2) The registration agent shall direct the TDU to implement any switch, move-in, or transfer to the REP or the POLR in accordance with this section and its protocols.

(m) **Exemptions for certain transfers.** The provisions of this section relating to authorization and right of rescission are not applicable when the applicant's or customer's electric service is:

- (1) transferred to the POLR pursuant to §25.43 of this title (relating to Provider of Last Resort (POLR)) when the customer's REP of record defaults or otherwise ceases to provide service. Nothing in this subsection implies that the customer is accepting a contract with the POLR for a specific term;
- (2) transferred to the competitive affiliate of the POLR pursuant to §25.43(o) of this title;
- (3) transferred to another REP in accordance with section §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another); or
- (4) transferred from one premise to another premise without a change in REP and without a material change in the terms of service.

- (n) **Fees.** A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless an applicant without a Provisioned Advanced Meter requests an out-of-cycle meter read for the purpose of a self-selected switch. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. The TDU shall not charge a fee for a review or adjustment described in subsection (p)(2) of this section. To the extent that the TDU assesses a REP a properly tariffed charge for connection of service, out-of-cycle meter read for self-selected switch requests, service order cancellations, or changes associated with the switching of service or the establishment of new service, any such fee may be passed on to the applicant or customer by the REP. A TDU shall not assess to a REP or an applicant any costs associated with a switch cancellation, including inadvertent gain fees, that results from the applicant's exercise of the three-day right of rescission. The TDU shall include such costs in the cost recovery mechanism described in subsection (o) of this section.
- (o) **TDU cost recovery.** The TDU may recover the reasonable costs associated with performing meter reads for purposes of a standard switch through one of the following two options at the TDU's discretion:
- (1) TDU costs associated with performing standard meter reads for the purpose of switches, to the extent not reflected in base rates, shall be considered costs incurred in deploying advanced metering functionality and are to be considered in setting a surcharge established under PURA §39.107 (h) and §25.130 of this title (relating to Advanced Metering). The costs shall be included in the annual reports filed pursuant to §25.130(k)(5) of this title as actual costs spent to date in the

deployment of Advanced Metering Systems (AMS) and shall be considered in setting, reconciling and or updating the AMS surcharge pursuant to §25.130(k) of this title; or,

- (2) a TDU shall create a regulatory asset for the expenses associated with performing standard meter reads for the purpose of switches pursuant to this subsection.

Upon review of reasonableness and necessity, a reasonable level of amortization of such a regulatory asset, including carrying charges, shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.

(p) **Meter reads for the purpose of a standard switch.**

- (1) Beginning December 1, 2009, a TDU shall perform actual, as opposed to estimated, meter reads for at least 80% of meter reads for the purpose of a standard switch in any given month, and at least 95% of meter reads for the purpose of a standard switch in any calendar year, exclusive of remote meter reads using advanced meters. Until December 1, 2009, a TDU may perform estimated meter reads for standard switch requests only for residential customers, exclusive of customers with meters that have remote read capability. A TDU shall use best efforts to perform as many actual reads as possible for standard switches.
- (2) Notwithstanding §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), an estimated meter read for the purpose of a standard switch is not

subject to adjustment, except as provided in subparagraph (A) or (B) of this paragraph. A customer is obligated to pay a bill based upon an estimated meter read for the purpose of a switch, including any adjustment made pursuant to subparagraph (A) or (B) of this paragraph.

- (A) The TDU shall adjust the estimated meter read if the losing REP's billed usage is greater than the total kilowatt-hours used by the customer in the TDU monthly meter read cycle during which the estimate was made.
- (B) Only upon the receipt of a customer dispute of the estimated usage to either the gaining or losing REP, either REP may request the TDU to review the estimate. In reviewing the estimate, the TDU shall promptly calculate the average actual kWh usage per day for the time period from the actual meter reading occurring prior to the estimated reading to the actual meter reading occurring after the estimated reading. The TDU shall determine whether the usage per day for the estimated period prior to the switch is at least 25% greater than, or 25% less than, the average actual kWh usage per day. If so, the TDU shall promptly adjust the estimated meter read. The TDU may adjust an estimate that does not meet this 25% threshold, on a non-discriminatory basis.
- (C) The TDU shall apply a reasonable methodology in making adjustments pursuant to subparagraphs (A) and (B) of this paragraph and shall make the methodology available to REPs. Consistent with any meter read adjustments, the TDU shall adjust its invoices to the affected REP or REPs.

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

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. It is therefore ordered by the Public Utility Commission of Texas that the amendments to §25.474, relating to *Selection of Retail Electric Provider*, are hereby adopted with changes to the text as published.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF FEBRUARY 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER