

The Public Utility Commission of Texas (commission) adopts new §§25.471 – 25.475, 25.477 – 25.485, 25.491 – 25.492, Customer Protection Rules for Retail Electric Service, governing the relationship between a retail customer and a retail electric provider, with changes to the proposed text as published in the September 1, 2000 *Texas Register* (25 TexReg 8544). The new sections are necessary to implement the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.101, Customer Safeguards; §39.1025, Limitations on Telephone Solicitation; and chapter 17, subchapters A, C and D, Customer Protection. The new sections seek to foster competition, while balancing customer protection and establish minimum customer service rules by which retail electric providers (REPs) must abide in providing electric service to residential and small commercial customers. The focus of the implementation includes: delineation of standards for the provider of last resort (POLR) and affiliate REPs, disclosure requirements, and the prohibition of fraudulent, unfair, misleading, deceptive, and anti-competitive practices. These new sections were adopted under Project Number 22255.

A public hearing on the proposed sections was held at commission offices on October 16, 2000 at 9:00 a.m. Representatives from American Association of Retired Persons (AARP), American Electric Power Company, Inc. (AEP TDUs), American Electric Power Energy Services (AEP Energy Services), Consumers Union Southwest Regional Office (Consumers Union), Office of Public Utility Counsel (OPC), Reliant Energy, Inc. (Reliant), Retail Electric Provider Coalition (REP Coalition),

Texas Legal Services Center (TLSC), Texas Ratepayers' Organization to Save Energy (Texas ROSE), and TXU Electric-Retail Company (TXU Retail) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new sections from AEP TDUs; AEP Energy Services; Center for Energy & Economic Development (CEED); East Texas Electric Cooperative (ETEC); Enron Corporation, (Enron); Entergy Gulf States, Inc. (Entergy Texas REP and Entergy TDU); Environmental Defense Fund (EDF); Green Mountain Energy Company (Green Mountain), New Energy, Inc., and Enron Energy Services (collectively, Independent Retailers); The New Power Company (New Power); Reliant; REP Coalition; San Antonio City Public Service, the Cities of Austin, Garland, and Denton (collectively, MOU Commenters); Shell Energy Services Co. (Shell); Southwestern Public Service Company (SPS); the State of Texas; Texas Electric Cooperatives (TEC); Texas Industrial Energy Consumers (TIEC); TLSC, Texas ROSE, OPC, AARP, Consumers Union, Public Citizen Texas, Texas Association of Community Action Agencies (collectively, Consumer Commenters); Texas-New Mexico Power Company (TNMP); TXU Electric Company (TXU TDU), and TXU Retail.

Within the proposed rules, the term "electric service provider" was used to refer to affiliated and non-affiliated retail electric providers (REPs) and the provider of last resort (POLR). The comments received by the commission from various parties also used the term electric service provider, often

abbreviated as ESP. There was some confusion among the commenters with respect to the applicability of the electric service provider term to municipally owned utilities and electric cooperatives. Additionally, the commission notes that ESP is a term of art in other jurisdictions, and its definition in those jurisdictions may be significantly different from that used in these proposed rules. For these reasons, the commission has determined that the most appropriate term to refer to these entities is retail electric provider (REP), as defined in PURA §31.002(17) and §25.5(67) of this title (relating to Definitions), with the clarification that the term REP does not, in these rules, refer to a municipally owned utility or electric cooperative when it sells retail electric power and energy within its certificated service territory. The commission has amended the proposed rules to reflect this change in terminology. Furthermore, for purposes of consistency and clarity in this preamble, commenters' references to "ESPs" have been summarized as references to "REPs."

In the preamble to the proposed rule, the commission posed the following questions:

*Question 1: Are the proposed rules consistent with the standards proposed by the Coalition for Uniform Business Rules (CUBR)?*

The commission notes that the CUBR proposal, issued in September 1999, represents the competitive providers only and is not the same as the Uniform Business Practices (UBP) project. The CUBR report was compiled primarily by prospective competitive suppliers and does not necessarily represent the perspectives of other market participants. In contrast, the UBP project is a consensus effort that

included, to varying degrees, transmission and distribution utilities (TDUs), competitive providers, and consumer groups. The UBP project produced a final report published on August 1, 2000. All commenters answered this preamble question by referring to the CUBR report and did not make reference to the UBP report. The UBP report defers to state regulators on most policy issues, and the commission exercises its discretion on the policy raised in response to this question.

REP Coalition, SPS, and TNMP all noted provisions of the proposed rules that are materially inconsistent with the CUBR rules. First, all noted that CUBR's provision for seven calendar days contrasted with the proposed provision, in §25.474(j)(2)(A)(iii), which included seven business days from the date the enrollment notice is sent to the last date a customer may respond to the enrollment notice. REP Coalition and SPS asserted that CUBR's calendar day standard was more reasonable and recommended that the proposed rule be changed to reflect calendar days, as provided in CUBR.

The commission appreciates the need to adopt consistent, nationwide standards, when appropriate. The commission believes that customers should be provided with sufficient time to respond to an enrollment notice, particularly if such notice contains an incorrect switch. The commission expects that the registration agent will have the capability of receiving customer cancellation requests 24 hours a day, seven days a week. Therefore, the commission agrees to the proposed change and modifies §25.474(j)(2)(A)(iii), accordingly.

REP Coalition and SPS noted that CUBR rules provide for the customer to notify the registration agent that the enrollment is "incorrect." They suggested that the proposed rule allows the customer to "cancel" the switch request and asserted that the provision implies that the customer may cancel its service with the REP for any reason. These parties asserted that CUBR's enrollment notice is solely a slamming protection and does not grant the customer the right to cancel the switch unless the REP is not the same as the REP the customer has selected to provide service. REP Coalition recommended that the proposed rule be revised to be consistent with CUBR.

The commission agrees that the purpose of the notice provided to customers by the registration agent is to allow the customer to confirm that the selected REP is the "correct" REP. The commission changes §25.474 to reflect this understanding. However, the commission notes that the registration agent cannot engage in substantive distinctions between customers who allege slamming and those who have merely changed their mind. The customer's contact must be interpreted broadly and the switch cancelled by the registration agent for any customer-directed reason.

REP Coalition and SPS noted that CUBR's standards allow a REP's bill format to be determined at the REP's discretion. REP Coalition and SPS added that the CUBR rules further provide that the maximum required content for electric service does not include the following information included in the proposed rules: (1) a separate calculation of the average unit price of the current charge for electric service, (2) the customer's usage for the prior 12 billing periods, and (3) conspicuous notice of any services or products being provided to the customer that have been added since the previous bill. REP Coalition

recommended the proposed rules be changed to delete the average price requirement and to permit the customer and the REP to agree to other format and content provisions consistent with the CUBR rules and with the commission's proceedings regarding billing for other services.

The commission notes that PURA §39.101(a)(4) requires that bills be presented in a clear format. Further, §39.101(a)(7) requires information concerning rates be presented in a standard format that will permit comparisons between prices. The commission maintains that both a standardized Electricity Facts label and a standardized actual cost disclosure on a customer's bill are required for customers to make valid comparisons among REPs and to verify that the price that was disclosed by a REP resembles the price actually being charged to the customer. The commission declines to modify §25.479 to remove the requirement to calculate the average unit price. The commission agrees that the requirement to provide a 12-month usage history on a customer's monthly bill may be unduly burdensome and eliminates this requirement from §25.479. However, the terms of service document provided to the customer by the REP shall contain a notice about how the customer can obtain a 12-month usage history. PURA §17.102(3) requires clear and easy identification of the REP's name, services or products, and charges being billed to the customer. The commission's experience in the telecommunications industry has shown that customers benefit from clear disclosures of changes to the products or services for which they are being billed. As a result, the commission declines to remove the requirement found in §25.479 to provide a conspicuous notice of any products or services that were added since the customer's previous bill.

REP Coalition, SPS, and TNMP noted that CUBR's standards for telephonic enrollment provide for the REP to either audio record or third party verify a customer's authorization of a REP, while the proposed rules allow only for third party verification. REP Coalition recommended revision of the proposed rules to allow both options, consistent with CUBR rules.

The commission agrees that an audio recording is a satisfactory method for capturing a customer's authorization and verification. The commission modifies §25.474(f)(2) to allow audio recordings. Independent third party verification remains as another acceptable method of verifying a customer's authorization.

REP Coalition recommended proposed §25.491(a)(3) be revised to permit five business days for consistency with CUBR rules, asserting that the information likely to be requested by the commission is information related to verification of a customer's authorization.

The commission modifies the requirements of the rule, now found in §25.491(b)(3), to lengthen the time REPs have to provide information from five to 15 calendar days.

TNMP noted that CUBR standards provide customers with protection from "illegal discriminatory behavior in (a REP's) selection and/or service of customers," and pointed out that, while the proposed rules include a similar provision, they also include the "marketing" of electric service. TNMP contends the addition of "marketing" to the activities that are subject to the discrimination provisions of Senate Bill

7 (SB7), 76th Legislative Session, is inconsistent with CUBR and recommended that the proposed rule be changed to reflect consistency with CUBR.

The commission addresses this concern in its response to Question 2, below.

*Question 2: Does the rule language regarding market practices and reporting requirements at proposed §25.471(c) and proposed §25.491(b)(1) provide enough specificity for the commission to determine if a marketing practice is discriminatory?*

The State of Texas stated that the language in these sections would assist the commission in determining instances where further investigation of discriminatory marketing practices is warranted, but did not believe a self-reporting mechanism would identify all instances of discriminatory marketing practices. The State of Texas commented that there would have to be some reliance on complaints from affected parties and specific investigation by the commission.

Shell and TXU Retail stated the rule does not provide sufficient specificity to determine what constitutes a discriminatory marketing practice, leaving REPs vulnerable to frivolous complaints. Shell and TXU Retail recommended the commission either clearly define proscribed marketing practices, or delete the word marketing in §25.471(c). Shell noted that deleting marketing in §25.471(c) would be consistent with PURA §39.101(c), which prohibits discrimination in the provision of electric service, but does not mention marketing.



AEP Energy Services, Entergy Texas REP, SPS, and REP Coalition stated prohibitions on marketing of electric services should be limited to safeguards against fraudulent, unfair, misleading, deceptive, or anti-competitive business practices. These parties were concerned that certain provisions in §25.471(c) and the reporting requirement of proposed §25.491(b)(1) exceeded PURA's intent for the monitoring and regulation of marketing practices for electric services.

Consumer Commenters stated a "thou shalt not discriminate" approach will not prevent discrimination by REPs and puts the burden on customers to prove that they have been discriminated against. Consumer Commenters recommended §25.471(c) be expanded to require REPs and other marketers to develop written policies for informing personnel of the commission's anti-discrimination requirements and of internal company procedures designed to assure compliance.

AEP Energy Services stated the measures proposed by Consumer Commenters might be appropriate after discrimination has been shown to exist; however, they appear to be excessive requirements for REPs who adhere to the discrimination prohibitions. AEP Energy Services noted the ability of the commission to consider sanctions for violating discrimination prohibitions should be an adequate deterrent and that §25.107(h) of this title, (relating to Certification of Retail Electric Providers), clearly provides that a REP cannot discriminate if it wishes to maintain its certification.

TXU Retail opposed Consumer Commenters' change and stated the additional reporting and policy requirements would add unreasonable cost and micro-management to the process. TXU Retail asserted that proposed §25.485 already provides a means for a customer to complain if he feels he has been subjected to discrimination and that the commission's Market Oversight Division will have the ability to access any information to determine whether a further investigation is warranted. TXU Retail further noted that ERCOT is creating an extensive system to support this process.

AEP Energy Services, Entergy Texas REP, TNMP, and REP Coalition stated that proposed §25.471(c) and proposed §25.491(b)(1) could also be broadly interpreted to preclude a REP from limiting its marketing of electric service to certain utility service territories or areas within certain utility service territories. These parties noted that any type of statewide marketing obligation is unsupported by PURA or §25.107, and the imposition of such a requirement would impose an impenetrable barrier to entry for REPs wishing to conduct business in Texas. The parties urged the commission to appreciate the distinction between prohibited discrimination and permissible and appropriate strategic marketing activities.

AEP Energy Services, Entergy Texas REP, Independent Retailers, Reliant, TNMP, TXU Retail and REP Coalition recommended that the term marketing be deleted from §25.471(c).

The commission appreciates the concerns expressed by parties over the inclusion of the term "marketing and" in §25.471(c). The commission modifies subsection (c) to reflect that REPs should not "unduly"

discriminate in the marketing or provisioning of electric service. PURA §17.001 clearly delineates the commission's authority to adopt and enforce rules that protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive business practices. The commission finds that marketing is a business practice. Additionally, PURA §39.352(c) and §39.353(c), require REPs and aggregators, respectively, to comply with all customer protection provisions, all disclosure requirements, and all marketing guidelines established by the commission. Additionally, in response to arguments that the commission is mandating that REPs or aggregators implement a statewide marketing campaign, the commission notes that PURA §17.004(a)(4) specifically states that customers should be protected from "unreasonable discrimination on the basis of geographic location." The commission fully expects that REPs and aggregators will target their marketing efforts to the specific geographic areas in which they will be providing service. Consequently, the commission does not expect that such targeted marketing efforts, in and of themselves, would result in undue or unreasonable discrimination. The commission also believes that the requirements it adopts in §25.491 preclude the need for the additional standards proposed by Consumer Commenters in §25.471(c).

Consumer Commenters supported the requirements in proposed §25.491(b)(1), because reporting by zip code is simple and does not reveal confidential consumer information. However, Consumer Commenters recommended this section be amended to satisfy PURA §39.101(d), which requires that REPs report annually as to the extent of coverage and services provided by zip code and census tract. Independent Retailers opposed any proposed enlargements to proposed §25.491(b).

TXU Retail disagreed with Consumer Commenters' changes, because a census tract requirement raises a problematic issue. TXU Retail acknowledged that PURA §39.101(d)(2) provides for the commission to receive reports from certificated entities by zip code and census tract, but noted census tracts have confusing boundaries that do not follow or replicate zip code, area code, city limit, or county limit boundaries. TXU Retail further noted that the ERCOT registration database is not currently being designed to capture this data. TXU Retail stated that the ERCOT database could be converted and interpreted, but the cost of such a project must be considered. TXU Retail recommended the commission investigate this issue to determine whether the data are available at a reasonable cost before adopting this provision.

SPS asserted that the requirement for data regarding direct mail solicitation is not necessary to monitor discriminatory practices and such a reporting requirement would pose a significant administrative burden.

AEP Energy Services, Entergy Texas REP, and REP Coalition agreed with SPS and stated it appeared that the reporting requirement contained in proposed §25.491(b)(1) was intended to ensure that REPs would utilize direct mail marketing to reach all customers in a utility's service territory. These parties commented it would be inaccurate and highly inappropriate to assume that a REP was not marketing to a broad customer base solely because there were no direct mail solicitations sent to a certain zip code. These parties noted experience in other states indicates that REPs will use a variety of marketing techniques to reach customers. The parties also noted marketing data for electric products and services

is highly proprietary information that should not be subject to commission review as this may prevent REPs from entering the market. These parties asserted the commission will know where each REP's customers are located, because of the annual report required by PURA §39.101(d)(2) and proposed §25.491(b)(2), and no additional benefit will be derived by providing annual reports of proprietary marketing information. AEP Energy Services, Entergy Texas REP, REP Coalition, and TNMP urged the commission to consider the practical problems associated with trying to identify discriminatory marketing practices for electric service and to afford all REPs as much flexibility as possible with regard to marketing their electric products and services. For the reasons discussed above AEP Energy Services, Entergy Texas REP, Independent Retailers, Reliant, TNMP, TXU Retail, and REP Coalition recommended proposed §25.491(b)(1) be deleted.

Consumer Commenters replied that the industry described marketing strategies as discriminatory by nature, but rational business decisions. Consumer Commenters disagreed and asserted that such a "marketing free-for-all" will inevitably lead to redlining. Consumer Commenters asserted their proposal takes the extra step to assure that complaint data and disconnect data are similarly provided to the commission, so the commission may readily perform an annual desk review to determine whether there is a need for a more formal inquiry. Furthermore, Consumer Commenters asserted that knowing that the data is being examined, the industry will take steps internally to assure that discriminatory practices are not occurring.

The commission adds subsection (a) to clarify application of this section, resulting in citation changes to the remaining subsections. The commission agrees with the arguments presented by parties that the requirement to report the number of direct mail solicitations annually distributed to prospective customers by zip code would be unduly burdensome, and would not prevent redlining. As such, the commission removes this requirement. However, the commission modifies §25.491(b)(1)(A) to clarify that REPs should maintain records and data necessary to demonstrate compliance with anti-discrimination requirements in addition to all other applicable commission rules. The commission also agrees with Consumer Commenters that information in §25.491(c) should be reported by census tract, as well as by zip code and modifies §25.491(c) accordingly. The commission understands that census tract software is readily available that can easily convert the address and zip code information that will already be available to REPs. The commission also adopts subsection (d), which requires REPs to provide the commission and the Office of Public Utility Counsel with any information necessary to investigate an alleged discriminatory practice.

*Question 3: Should the commission adopt a prepayment plan, as set forth in §25.478(a)(3)(D)-(E), as a means for bona fide low-income applicants and certified victims of family violence to avoid the necessity of paying a deposit that might otherwise be required in order to receive service? If so, what additional requirements, if any, should apply to such prepayment plans?*

The State of Texas supported the adoption of a prepayment plan; it did not believe any additional requirements were necessary.

TNMP, REP Coalition, and SPS stated that prepayment plans should be offered at the discretion of the REP and, if offered, should be made available to all customers in accordance with that REP's terms of service. They further stated that because PURA prohibits discrimination based on income and family status, payment options should not be designed to single out a specific class of customers based on the statutory criteria.

Shell stated that it is not required to offer a prepayment plan under §25.478(a)(3)(D), because it is not an affiliate REP. Shell, REP Coalition, and SPS stated that if such a plan were required of all REPs, there should be readily available and easily verifiable means for REPs to identify bona fide low-income applicants and certified victims of family violence eligible for the program. Shell proposed that the commission could facilitate implementation of such a program by making a list of qualified applicants available to REPs in a manner that would maintain the confidentiality of such information. REP Coalition stated that the commission would have to provide guidance regarding how to administer the prepayment option. REP Coalition also stated that there were additional issues on whether special metering would be required and how the prepayment would be calculated.

Consumer Commenters proposed alternate language that would define the prepayment plan as a levelized payment based on an estimate of the customer's annual electric usage. They further proposed an annual adjustment in the levelized payment based on the customer's actual use and that the prepayment plan could not limit the amount of electricity the customer uses.

The commission acknowledges that a deposit can represent a significant barrier to a customer who has limited financial resources and may limit a customer's ability to obtain electric service. Allowing a customer to pay a required deposit over a set period of time would aid in eliminating this barrier, while still providing security for the affiliate REP or POLR. However, the commission does not find it is necessary to create an additional protection for low-income customers beyond those already established in PURA §39.903. Accordingly, the commission modifies the proposed language at §25.478(a)(3)(D) to restrict the waiver of a required deposit for certified family violence victims only. The commission agrees with Shell that there should be an easily verifiable means for REPs to identify certified victims of family violence and includes such provisions.

*Question 4: With respect to proposed §25.479(b)(17), relating to issuance and format of bills, what labels should be required to be used by REPs that elect to present their electric bills in an unbundled format? Please provide the standard label and a definition of what types of charges or services that label should include.*

REP Coalition said that the proposed list contained in proposed §25.479(b)(17) is sufficient and acceptable for providers offering unbundled service and a corresponding bill. However, AEP TDU and TXU TDU said that if the listing of unbundled service terms is intended to be all-inclusive, the terms "gross receipts assessment" and "nuclear decommissioning fee" should be added.



The commission agrees that the nuclear decommissioning fee, designated as a nonbypassable charge in PURA §39.205, should be among the unbundled terms listed on the bill. However, the commission declines to add the gross receipts assessment to the list of unbundled charges because the gross receipts assessment is charged against the "gross receipts from rates charged to the ultimate consumer" (see PURA §16.001(b)) and does not constitute a nonbypassable charge. The commission notes that the definitions of the labels, now §25.479(c)(1)(P), will be established in a separate implementation project or working group.

Consumer Commenters opposed allowing providers to issue bills under a single bundled rate, saying that customers need a breakdown so they can check the accuracy of their bills and accurately compare the prices offered by different providers. According to Consumer Commenters, allowing the transmission and distribution rate, system benefit fee, transition charge and other fixed charges to be rolled into a single per-kWh charge for billing purposes would allow a REP to overcharge for these regulated services as part of a market rate. They added that if competition transition charges (CTCs) are not shown on the bill, neither residential customers nor the commission can ensure that illegal cross subsidies or commercial discounts are not allowing certain customer classes to avoid paying their fair share of stranded costs.

New Power, Green Mountain, Reliant, and TXU Retail disagreed with Consumer Commenters. Reliant said that any charge above the regulated non-bypassable fees are, by definition, not a charge for regulated services. REP Coalition, SPS, AEP Energy Services, Entergy Texas REP, and TXU Retail

said a provider should be able to offer either bundled or unbundled products or services to its customers and should be allowed to present its bill with standard labels for charges or notices in accordance with its terms of service. TXU Retail noted that the terms and conditions a customer accepts prior to service will determine the way services will be priced and will be the standard against which a customer will judge whether an overcharge has occurred.

TNMP, Shell, and REP Coalition commented that it should be left to the individual REP to propose a format for disclosure of non-electric products and services, because each product would have unique pricing and unique labeling needs. Shell noted further that requiring a massive amount of information to be included on the bill would add to customer confusion and burden the market with unnecessary costs without providing any meaningful customer protection. Shell said that customers who want detailed billing information are certainly entitled to it, but those who simply want to know "how much do I owe" should not have to hunt through other information on the bill.

PURA §39.202 requires an affiliate REP to make available to its residential and small commercial customers rates that, on a bundled basis, are 6.0% less than the affiliated electric utility's corresponding average residential and small commercial rates in effect on January 1, 1999. These bundled rates will be known as the "price to beat" for residential and small commercial customers and shall include all costs formerly billed to customers, including those associated with generation, transmission and distribution, and customer service. The Electricity Facts label, proposed in §25.475(e)(1)(A)(i), also

requires all REPs to disclose the "bundled" price. Further, PURA §17.004(a)(8) and §39.101(a)(3) require bills be presented in a clear, readable format and in easy-to-understand language. The commission anticipates that the objective of a clear, easily understood bill would be aided by the provision of charges in bundled format, consistent with the manner in which such charges are currently disclosed, and will be disclosed in the future in the Electricity Facts label. The commission strongly favors a bundled bill format. The commission also agrees with Consumer Commenters that customers need to have access to itemized billing information if they wish to check the accuracy of their bills. However, this objective can be accomplished by requiring a REP that offers a bundled bill format to provide a notice in the terms and conditions document advising the customer that unbundled information can be obtained by contacting the REP, and allowing the customer to call the provider and ask for a detailed breakdown of the bundled charges. Regarding products that combine electric and non-electric service, the commission holds that any bundled bill must prominently include a subtotal for electric-only charges. The provider may choose whether or not to further unbundle the non-electric charges, as long as the billing method does not conflict with any other provision of this subchapter.

*Question 5: Should a REP other than the POLR be permitted to charge a late fee for overdue payments?*

SPS, Entergy Texas REP, and REP Coalition stated that the ability of REPs to charge a late fee for overdue payments sends appropriate pricing signals to customers. They determined that late fees are

designed to encourage customers to pay their bills on time by giving them incentive to prioritize payments. The parties contend that the ability to charge late fees is simply an additional tool that REPs may use for non-payment to reduce the costs of collection and the level of write-offs. REP Coalition concluded that if late fees are not allowed, there would be a negative impact on the competitive market. Entergy Texas REP commented that late fees will have the effect in the competitive market of fewer disconnect notices, thus lowering the costs of credit and collection, while reinforcing positive payment behaviors of the consumer. REP Coalition and SPS recognized that both late payment fees and the right to authorize a disconnect are incentives for residential customers to pay their bills. They stated that if REPs were given the right to disconnect for non-payment of a customer's bill, the REPs would be willing to forego the right to charge a late fee for residential customers and would be willing to comply with other provisions regarding credit requirements, deposit, deferred payment plans, and billing arrangements. SPS also agreed to forgo small commercial late charges in exchange for the right to authorize a disconnection for non-payment. In its reply comments, Reliant agreed that any REP that does not have the right to disconnect customers for non-payment of electric service bills should be allowed to charge late fees limited to 5.0% of the customer's past due bill. REP Coalition, in its reply comments, stated that late payment fees provide the second best incentive behind the threat of disconnection for customers to pay bills on time.

In support of the proposed rule, Consumer Commenters maintained that the existing prohibition of late fees on residential customer bills is important, and should continue until evidence shows that late fees for residential customers are both necessary in a competitive market and in the best interest of consumers.

Consumer Commenters pointed out that late fee proposals have been rejected for residential customers in the past. They cited Project Number 19513, *Transfer of Existing Electric Utility Customer Service Rules to New Chapter 25 of Subst. R. and Associated Changes*, a proposed rule that would have permitted utilities to charge a 5.0% late fee to residential customers. They stated that data submitted by Texas Utilities (now known as TXU Electric) and Reliant Energy HL&P indicated that late fees would have resulted in both companies collecting large sums of money on accounts that were paid within 60 days. Consumer Commenters stated that there is no evidence that a REP would need to charge late fees to recover the costs of collection. Consumer Commenters also commented that rising fuel costs are already making electric bills more difficult for the average household to pay, and that residential late fees compound the problem. TXU Retail and Entergy Texas REP disagreed with Consumer Commenters.

Consumer Commenters also commented that the cost to a REP of collecting late payments is already accounted for in the utility's cost of service. They stated that after competition begins, the allowance will be rolled into a REP's competitive rates. REPs, they concluded, will recover the cost of uncollectible accounts in market-based rates the way other businesses do. TXU Retail stated that Consumer Commenters' arguments that REPs would profit from late fees are wrong and unsupported. TXU replied that in the historical regulated market, the commission established rates that were intended to recover collection costs from all residential customers, and this will not be possible in a competitive market. Entergy Texas REP commented that Consumer Commenters failed to realize that we are entering a competitive market and REPs have the responsibility of paying all non-bypassable charges

plus costs associated with the purchase of generation, regardless of when customers remit payment to the REP. Entergy Texas REP stated that timely payment by all parties is good for consumers, good for the market, and supports customer choice by encouraging REP entry.

At the very least, Consumer Commenters contended that REPs should not be allowed to charge penalties on a deferred payment plan where the Comprehensive Energy Assistance Program (CEAP), Low-income Home Energy Assistance Program (LIHEAP), or other publicly funded program makes contributions so as to avoid forcing agencies to pay late fees and penalties with public funds. TXU replied that this did not make sense because if a publicly funded program is designed to help customers pay their bills and late payment fees are part of the bill, then the late payment fees should be paid. Entergy Texas REP also noted that not charging late fees to customers receiving payment assistance would create a need for special record systems and would create additional cost over and above the cost of carrying the late payment.

TEC and MOU Commenters stated that the municipally owned utilities and electric cooperatives can set their own rates, and a late fee is included in rates.

The commission agrees with REP Coalition and SPS that a late fee is an appropriate incentive to ensure timely payments. Since the ability to disconnect electric service for non-payment is a right reserved for the POLR, the commission determines that all REPs, except the POLR, may assess a one time late fee of 5.0% to the electric service portion of a residential customer's bill, and has amended the proposed

rule accordingly. However, the commission finds that customers receiving assistance from the system benefit fund should not be required to pay late fees. The commission also agrees with TEC and MOU Commenters and determines that municipally owned utilities and electric cooperatives can set their own rates and late fees when operating in their own service territories. However, when operating outside their service territory the commission's customer protection rules, including the application of late fees, shall apply.

*Question 6: Should REPs be required to make available a voluntary customer donation program to benefit low-income customers?*

REP Coalition and SPS stated that, while voluntary customer donation programs may be beneficial, they should not be required; a better way to provide assistance to low-income customers is the system benefit fund, which has already been established. TNMP did not oppose such programs, but stated they should not be mandatory. Shell pointed to the mandatory system benefit fund and noted the need for additional programs is not clear.

The State of Texas stated that the system benefit fund should be used for customer assistance and that any other program may be too costly. Reliant agreed and noted that if a REP wants to institute a donation program, it should be at the REP's discretion.

Entergy Texas REP made a distinction between emergency or temporary assistance and the system benefit fund, believing that resources from the system benefit fund will not be sufficient or timely to provide help for all who need it. While mandating a checkoff may not be the best way, Entergy Texas REP expressed willingness to work with others to find a way to maintain the existing safety net programs.

Consumer Commenters emphasized that PURA requires REPs to offer assistance programs to low-income customers; therefore, the commission should make such programs mandatory, including customer donations. Consumer Commenters recommended programs that would have REPs and POLRs informing customers, through quarterly billing inserts, about the opportunity to contribute a fixed amount each billing cycle to an assistance program, mandate all bills to have a check-off box, and require TDUs to collect money from the REPs and POLRs for distribution to needy customers. Additionally, 10% of the funds would go towards promotion of such programs statewide and TDUs would be encouraged to match customer money with shareholder funds. Finally, those TDUs that currently match funds would be required to continue to do so at 1999 levels.

Consumer Commenters were also concerned that not mandating voluntary customer donation programs will eliminate billing assistance programs altogether since the system benefit fund does not provide temporary help to customers. Consumer Commenters asserted that omitting such a mandate in the rule is contrary to PURA §17.004(a)(11), which requires all REPs to offer bill payment assistance



programs. Consumer Commenters' proposal would allow customers to make contributions to maintain current crisis assistance levels.

Entergy TDU noted that while mandating assistance programs would be seen as burdensome by REPs and TDUs, Entergy has operated a program similar to the one proposed by Consumer Commenters for the past 18 years and is a strong proponent of preserving fuel programs. However, Entergy TDU noted the main question is how to transition existing programs to the competitive market and pointed out that in the competitive market, the local community organizations will not have the resources to deal with a multitude of providers.

Entergy Texas REP agreed with Consumer Commenters that bill payment assistance programs are important to end-use customers and stated that the system benefit fund does not address the same types of customers or needs that are met by the existing bill payment assistance programs, which are not synonymous with low-income programs. Entergy Texas REP commented that several issues addressed by Consumer Commenters deserved more attention. Entergy concluded that the commission did not have the authority to mandate TDUs currently providing shareholder-matching funds to continue to match these funds at current levels. Secondly, Entergy Texas REP suggested that funds collected by REPs in bills from contributors could be passed directly to the bill payment assistance administrator in each TDU's area. Entergy Texas REP suggested that language proposed by Consumer Commenters could be revised to provide that the TDUs would primarily coordinate the interaction between community organizations and the program administrator. Finally, Entergy Texas REP concluded that if

the commission found that it has the authority to address bill payment assistance issues, then it would seem appropriate to reimburse REPs for the costs of such programs out of the collected bill payment assistance programs. Entergy Texas REP commented that there is time to develop a workable program that would maintain the voluntary character of such programs and continue their good work.

The commission agrees with parties regarding the importance of the bill payment assistance programs and notes their beneficial nature. PURA §17.004(11) requires REPs to offer low-income customers a bill payment assistance program, in addition to energy efficiency and affordable rates. The commission agrees that the system benefit fund provides low-income customers with rate reductions that meet the "affordable rate" requirement. However, the system benefit fund does not contemplate a bill payment assistance program for low-income customers. Consequently, in §25.480(g)(2) the commission requires all REPs to establish a bill payment assistance program, which shall include a box on customers' bills that allows customers to make voluntary donations to such a program. However, the commission declines to delineate how a REP should operate its program and instead adopts annual reporting requirements that require a REP to summarize the amount of money set aside for bill payment assistance, the assistance agencies selected to disburse funds to customers, and the amounts provided to each assistance agency for that purpose. The commission believes that such a reporting requirements will provide oversight, without micromanaging the specifics of each program. However, the commission reserves the right to more clearly define appropriate bill payment assistance programs should the need arise.

*Question 7: What provisions and processes within these rules should apply to the customers of individual cooperatives and municipally owned utilities as they open their home markets to electric competition?*

All parties agreed that the proposed rules should apply to retail customers served by cooperatives and municipally owned utilities outside of their certificated service area. There was, however, disagreement among parties over the applicability of the commission's rules within the service areas of municipally owned utilities and cooperatives that opt into competition.

REP Coalition, Consumer Commenters, TEC, and MOU Commenters, noted that for customers served by cooperatives and municipally owned utilities within their service area, PURA provides cooperatives and municipally owned utilities the authority to promulgate their own rules designed to achieve the statutory customer protection objectives. MOU Commenters added that none of the provisions and processes in the proposed rules apply to customers of a municipally owned utility or cooperative within its service area. MOU Commenters also stated that the billing standards contained in the draft Terms and Conditions of Transmission and Distribution Utilities' Retail Distribution Service (commission Project Number 22187, *Rulemaking to Establish Terms and Conditions of Transmission and Distribution Utilities' Retail Distribution Service*) should control in consolidated billing situations.

The State of Texas argued that most, if not all, provisions of these proposed rules should apply to cooperatives and municipally owned utilities that opt into competition, because customers deserve the

same basic protections regardless of what entity is providing service. TNMP and SPS also commented that all provisions and processes in the commission's rules should apply to individual electric cooperatives and municipally owned utilities that opt into competition. Without the same customer protections, TNMP claimed that there would be a non-level playing field among market participants. Consumer Commenters asserted that the proposed commission rules are the minimum standard every REP must meet and are not optional.

REP Coalition and Consumer Commenters emphasized that the rules adopted by municipally owned utilities and cooperatives within their service areas shall have the same effect of accomplishing the customer protection objectives of PURA. According to REP Coalition, all customers should expect to have the same customer protections regardless of the service area in which they reside. TEC replied that the customer protection rules adopted by municipally owned utilities and cooperatives are not required to be identical to the commission's rules, even though they must have the effect of accomplishing the same customer protection objectives specified in PURA. According to TEC, the customer protection rules enacted by cooperatives and municipally owned utilities could be significantly different from the commission's rules, especially if the commission enacts customer protections beyond those mandated by PURA §17.004(a) and (b) and §17.102.

Specific concerns were raised by both MOU Commenters and TEC with respect to the applicability of certain rule provisions, irrespective of whether the customer was in its existing service area. Specifically, TEC and MOU Commenters raised concerns over the various reporting requirements imposed by many

of these rules, arguing that such requirements were not consistent with PURA §40.004(7) and §41.004(5), respectively. TEC and MOU Commenters also raised concerns regarding the applicability of enforcement actions against electric cooperatives and municipally owned utilities. The parties argued that the administrative penalty statute refers to a "person" and that by PURA definition neither a municipally owned utility nor an electric cooperative is considered a "person."

In its reply comments, TIEC noted that although some of the parties would like to see the commission's rules made applicable to all retail electric customers, that is contrary to what is mandated by PURA.

The commission agrees that these customer protection rules apply to customers served by an electric cooperative or municipally owned utility operating outside of its certificated service area. In addition, these rules apply to all customers served by a REP irrespective of the service area (*i.e.*, both inside and outside of the certificated area of a competitive municipally owned utility or electric cooperative). The commission also determines that PURA §17.005 and §17.006 give an electric cooperative or municipally owned utility the authority to adopt and enforce its own customer protection rules for customers inside its certificated service area, which must meet the customer protection objectives of PURA. The commission's rules should serve as a model for the minimum customer protections that all customers can expect in a competitive market.

The commission agrees with TEC and MOU Commenters and modifies all sections of these rules to eliminate the relevant reporting requirements. The commission also agrees that administrative penalties

cannot be applied to municipally owned utilities or electric cooperatives and modifies the applicable sections of these rules accordingly. However, the commission will issue a report to the appropriate governing body of a municipally owned utility or an electric cooperative regarding potential violations.

*Question 8: Is the minimum contract term established in §25.477(a)(8) the appropriate mechanism to discourage customers from gaming the affiliate REP's price to beat rate?*

TNMP commented that the minimum requirement in proposed §25.477(a)(8) is an appropriate mechanism for discouraging customers from gaming the affiliate REP's price to beat rate.

Consumer Commenters, the State of Texas, and Shell disagreed, arguing that customers have a right to seek out the best prices in the market and should not be penalized for exercising their right to return to the "safe harbor" of the price to beat rate. The parties also commented that the proposal might force price to beat customers to make 12-month commitments against their will because if a provider leaves the market, the returning customer has no choice but to sign a 12-month contract with the affiliate REP, default to the POLR, or go without electricity. The proposal would result in: (1) less participation in the competitive market; (2) more difficulty for new providers to win customers as customers would be intimidated from switching to new providers; and (3) damage new providers' ability to compete with affiliates since customers will be locked into contracts with the affiliate. Shell also argued that PURA §39.202(a) does not give the commission the authority to allow affiliate REPs to put conditions on the availability of the price to beat rate or mandate minimum terms.

Consumer Commenters also commented that customers will not be able to game the price to beat rate for two reasons: (1) the language in the actual proposed subsection does not refer to the price to beat and could be read to allow the affiliate REP to refuse service to any returning customer who refuses to take a 12-month contract on any rate plan offered; and (2) residential customers will most likely remain on volumetric meters, paying fixed rates. Consumer Commenters stated that other states with a competitive retail electric market have not experienced the problem of residential customers gaming the system, but that residential customers have been victimized because REPs that cannot cover wholesale market costs are "dumping" them on the POLR.

The State of Texas said that forcing customers who choose the affiliate REP to remain for one year would lead to artificially high prices for retail electricity.

REP Coalition, Shell, and SPS suggested deleting the minimum one-year service contract term from this rule and addressing the gaming issue in the rulemaking in Project Number 21409, *Price to Beat*. Shell and AEP Energy Services said the gaming issue should be addressed by ensuring that the price to beat accurately tracks changes in the market price for power. They noted that PURA §39.202(l) permits the commission to adjust the fuel factor underlying the price to beat to reflect "significant changes in the market price of natural gas and purchased energy." The parties concluded that gaming would not occur if there was a level playing field in which the market price of energy is reflected in the prices charged by competitors, and the price to beat charged by affiliate REPs.

The commission agrees that customers returning to the affiliated provider and the price to beat should not be penalized and subject to a long-term contract. Ensuring that the price to beat accurately reflects market prices of electricity will more effectively prevent customers from "gaming" the system and will be addressed in Project Number 21409.

*Question 9: In light of the emergency rule adopted by the commission on August 10, 2000 in Project Number 22869, should the commission adopt a new standard for terminations and disconnects during prolonged heat events, that would preclude the future need for such emergency rule? If so, please provide specific rule language that would be appropriate.*

SPS commented that proposed §25.483(i) protects customers from being disconnected during extreme weather and that there is no need to adopt a different standard.

TNMP commented that a new extreme weather standard is necessary. TNMP and SPS argued that extreme weather provisions should be limited to affected counties, rather than the REP's entire service territory, because it would be unfair to the REP to follow this requirement if it were certified for the entire state and only one county was under an advisory. TNMP also argued that the extreme weather provision should prevent terminations as well as disconnections to avoid imposing an excessive burden on the POLR from terminations that transfer the customer to POLR service. However, TNMP suggested that should a future commission determine the need for emergency action, the commission



should include in the customer protection rules the guidelines for what such a rule would provide. TNMP commented that an emergency rule should require REPs to insert in their termination and disconnect notices an offer for a deferred payment plan, regardless of the customer's payment history, and if the customer does not contact the REP before the end of the ten-day notice period, termination or disconnection could take place. TNMP commented that the TDU will be prohibited under the proposed terms and conditions in Project Number 22187 from disconnecting if there is a heat advisory issued in their service territory. TNMP stated that if the customer does contact the REP, the REP would be required to make alternative payment arrangements with the customer at least once during the emergency period and that this is consistent with this year's emergency rule and would not require extensive programming changes to achieve compliance.

REP Coalition commented that a new standard is needed and that heat as extreme as that experienced during the summer of 2000 demonstrates the need for additional customer protections and recommended the commission adopt a new rule for disconnects during prolonged heat events that would preclude the future need for emergency rules. REP Coalition noted it did not address the application of the new rule to terminations since terminations will not result in an interruption of electric service to the customer. REP Coalition argued that the customer must be required to enter into a payment plan and submit a minimum level of payment during the period in which disconnections are prohibited and that the rule should encourage customers to adhere to the payment plans to avoid being transferred to the higher priced POLR. REP Coalition further argued that once an extreme weather emergency has been declared, REPs should be required to insert in their disconnect notices an offer for

a deferred payment plan and that if the customer does not contact the REP before the end of the ten-day notice period and enter into a deferred payment plan, the disconnect could take place. REP Coalition also proposed the minimum payment be automatically set as the 12-month average for the location, and any amounts over the 12-month average be deferred until the extreme conditions expire. REP Coalition further proposed a deferred payment plan to provide that the delinquent amount be paid in equal installments over a period of at least six billing cycles, unless the residential customer agrees to a shorter period, and the deferred payment plan should not include a late payment penalty (as long as the installments are paid on time), interest, or a deposit. Shell agreed that the commission should adopt standards for terminations and disconnections during prolonged heat events, but it had no specific suggestions regarding appropriate language.

Consumer Commenters stated that the commission should maintain the current weather standards triggering a prohibition on disconnection during extremely hot and extremely cold weather and that a rule similar to the emergency rule, offering a deferred payment plan to all customers to pay off high bills caused by extreme weather, should be incorporated into this customer protection rule. Consumer Commenters suggested the rule require utilities to monitor weather conditions and have a system for reporting the presence of a weather emergency to employees, energy assistance agencies, and the commission. Consumer Commenters stated they wanted the same standard applied to the cold weather emergency language. They further noted that the standards for defining weather extremes are inadequate to fully protect consumers and that health risks are posed by both heat and cold under temperatures not as extreme as those required under the commission's rules. Consumer Commenters

preferred that the commission either lower the summer threshold and raise the winter threshold or institute a seasonal ban on disconnection of residential service.

As an alternative, they suggested implementing a deferred payment plan that would allow a customer to maintain service upon payment of a predetermined minimum amount. Consumer Commenters noted that equal monthly payments are convenient for consumers on a fixed budget, but that the commission's rules do not require an electric utility to offer level and average payment plans. Furthermore, they noted that the electric utility may require a deposit from a customer participating in a level-billing plan and that the deposit may take level-billing plans out of reach for consumers unable to afford the deposit. Consumer Commenters stated that they were seeking a solution for customers likely to be disconnected, and for customers who may need extra time to pay off high bills caused by a weather emergency. Therefore, Consumer Commenters proposed that all REPs be required to make deferred payment plans available to all customers in any month during which a weather emergency occurs and that the emergency rule adopted under Project Number 22869, *Petition of Texas Ratepayers' Organization to Save Energy and Texas Legal Services Center to Adopt and Emergency Rule to Suspend Disconnection of Electricity Because of Extreme and Persistent Heat*, provides a workable model that can be readily modified for inclusion in the adopted rule. Consumer Commenters proposed that the deferred payment plan establish a minimum payment schedule to assure continuation of service and that the rule be drafted to assure that: (1) during high usage months, a customer can only be terminated or disconnected for failing to make a minimum payment under a deferred payment plan; (2) the minimum payment should be an amount equivalent to an average monthly bill based on annual

usage; (3) any customer must automatically be offered six months to pay off delinquent bills and at the customer's request must be given up to 12 months to pay; and (4) utilities cannot charge a late payment or penalty if the installments are paid on time or require a security deposit.

Consumer Commenters also recommended the rule specifically state that REPs and utilities must track weather conditions and report all emergency weather days to the commission, on a daily basis if necessary, and be required to educate the commission and the energy service providers assisting its customers on how to access up to date information on the weather in its service area. Additionally, Consumer Commenters recommended that the rule specifically require the REPs and utilities to convey any weather emergency and disconnection ban status to all employees.

The commission acknowledges that prior emergency rules establishing a moratorium on the disconnection of electric service have had the adverse impact of increasing an electric utility's uncollectibles and resulted in significantly higher rates of disconnections upon expiration of the moratorium period. The commission also acknowledges that customers experience large increases in their summer electric bills due to both seasonal rate structures and the need to use more electricity to maintain a reasonable temperature inside one's home. The commission further acknowledges that many customers on low, or otherwise fixed, incomes cannot effectively manage such dramatic increases to their monthly expenses, and risk having their electric service either terminated or disconnected. The commission finds that the health and safety of Texas customers should not be threatened by overly aggressive collection activities of REPs, but that REPs should have systems in place to help mitigate the

effect of high summer electric bills. The commission adopts several requirements to provide better opportunities for customers to remain current in their bills, make payments of a more stable and predictable nature, provide protections from "extreme weather emergencies" as specified in PURA §39.101(h), and limit risk exposure to the REP. Specifically, the commission mandates in §25.480(h) that all REPs offer all customers the option of entering into a levelized payment program. Additionally, §25.480(g) requires all REPs to implement bill payment assistance programs to aid customers who express an inability to pay all or part of their bill. Further §25.482(f) requires REPs to offer deferred payment plans to all customers for bills that become due during the extreme weather emergency, and prohibits terminating or disconnecting a customer for non-payment during an extreme weather emergency. The commission also adopts a new deposit standard in §25.478(k)(1) that allows a REP to keep a deposit for the entire period that the REP serves a customer. The commission expects that when viewed as a whole, these provisions will eliminate the need, in future years, to adopt an emergency rule. In reference to the proposal by Consumer Commenters that REPs and utilities be required to track and report weather conditions to the commission, the commission will form an implementation working group to develop appropriate reporting procedures.

*§25.471, General Provisions of Customer Protection Rules.*

The State of Texas asserted that the basic levels of customer protection provided for in these rules should be applied to all customers and that any large commercial or industrial customer who agrees to

lesser customer protection should do so under an express waiver that includes a statement that the customer is expressly waiving one or more specific customer protections.

Consumer Commenters oppose the "double standard" being set for customers of affiliate REPs and POLRs versus a lesser set of customer protections for nonaffiliate REPs and affiliate REPs operating outside their current service territory. Consumer Commenters stated consumers could focus on price and make informed, confident decisions if there was only one set of customer protection standards.

In reply, TEC noted that there is no statutory authority to support comments that the customer protection rules, or at least a majority of them, should be applicable to all retail electric customers in Texas. TEC cited PURA §§17.005, 17.006, and 39.101(g), which specifically contemplate various versions of the customer protection rules be enacted, including those that would be adopted by municipally owned utilities and electric cooperatives that opt-in to competition. Additionally, TEC noted that the customer protection rules enacted by electric cooperatives and municipally owned utilities do not apply to all customers located within the certificated areas of the electric cooperatives and municipally owned utilities, but only to those customers who continue to be served by an electric cooperative or municipally owned utility within its certificated service area; in all other instances, it noted, the commission's customer protection rules apply.

MOU Commenters proposed changing the first sentence of §25.471(a)(4) to clarify the correct applicability of the rules to customers of municipally owned utilities and electric cooperatives within their

service areas. MOU Commenters also proposed moving and renumbering §25.471(a)(5) as §25.471(a)(6) and adding a new §25.471(a)(5) to clarify the differing coverage of these customer protection rules with regard to municipally owned utilities and electric cooperatives when serving either within or outside their certificated service areas.

The protections set forth in these rules are primarily intended for residential and small commercial customers. The commission expects that large commercial and industrial customers will find it in their interest to have the resources necessary to negotiate contracts that will provide terms that are most important to them. The commission notes that the purpose of this subchapter is to provide minimum standards for customer protection and that nothing herein dilutes or abridges any other applicable consumer protections. The commission believes the adopted rules provide strong protections for all customers, while allowing flexibility to new market entrants and encouraging increased competition. Customers continue to have the full protections they have had under a traditional monopoly through the affiliate REP and POLR and may or may not choose an unaffiliate REP. The commission believes that imposing fewer burdens on new market entrants will provide greater opportunity for meaningful competition. Nevertheless, the commission will continue to monitor the market and will make appropriate changes to these rules in the future in response to behavior by REPs. Finally, with regard to the application of these customer protection rules to electric cooperatives and municipally owned utilities, the commission refers to the discussion in its response to Question 7.

AEP Energy Services commented that the fact that the application of these customer protection rules to an affiliate REP extends until January 1, 2007, has potentially unfair and anti-competitive consequences for affiliate REPs. They proposed changing §25.471(a)(1) to provide that the customer protection rules for the affiliate REP apply until January 1, 2007 only for those customers receiving price to beat service.

Reliant recommended that the affiliate REP customer protection rules apply until the period for the price to beat expires.

The commission believes that the affiliate REP and the offering of the price to beat serves as a safe harbor until competition fully exists. PURA §39.202 clearly states that the price to beat must be made available until January 1, 2007; consequently, the commission also determines that the safe harbor customer protections of the affiliate REP must also be available until January 1, 2007.

AEP Energy Services, AEP TDUs, TXU TDU, and Entergy TDU noted that the effective date of January 1, 2001, in proposed §25.471(a)(3) may cause confusion when both the existing customer service and protection rules and the REP customer service and protection rules apply. Parties recommended the preamble clearly state that after January 1, 2001, the rules do not apply to electric utilities, and that prior to unbundling, electric utilities will continue to be governed by the existing customer service and protection rules.



The commission clarifies that these rules apply to REPs. Customers not participating in the pilot program will continue to be served by the electric utility until January 1, 2002, and governed by current customer service and protection rules in Chapter 25, Subchapter B, applicable to electric utilities.

TXU TDU proposed that §25.471(a)(5) be clarified to indicate that this subchapter is the controlling authority over documents issued to residential and small commercial customers by a REP. Reliant recommended that §25.471(a)(5) clarify that the rules of this subchapter govern for residential and small commercial customers. AEP TDUs and Entergy TDU stated that these proposed rules govern the relationship between the REP and the retail customer and should not purport to control over rules governing other relationships.

The State of Texas recommended that language be added to this section to ensure that all consumer protections otherwise applicable will continue in effect and will not be impinged upon by these rules.

The commission clarifies that this subchapter governs the interactions between a REP and a retail customer. The commission further notes that it has structured the market and these rules are structured based upon the premise that the REP is the customer's primary point of contact and interaction. The commission also modifies §25.471(b) to clarify that the purpose of this subchapter is to provide minimum standards for customer protection and that nothing herein dilutes or abridges any other applicable consumer protections provided by state or federal statute.

Comments and discussions regarding §25.471(c) are addressed in Question 2.

TEC recommended adding a definition for "Consumer-Owned Competitive Retailer" in §25.471(d) to address electric cooperatives and municipally owned utilities that are essentially equivalent to a REP. MOU Commenters and TEC proposed changing the definition of "electric service provider" to include electric cooperatives and municipally owned utilities operating outside their certificated territory.

As discussed previously, the commission has eliminated the term "electric service provider" from the rules. Additionally, the commission has incorporated the term "competitive retailer," as used in Project Number 22187, that addresses electric cooperatives and municipally owned utilities operating outside of their certificated areas.

AEP Energy Services argued that relying upon the current definition of "applicant" in §25.471(d)(1) could create confusion and produce uncertainty for an individual seeking service from one REP even though he or she may be the customer of another REP.

The commission agrees that the distinction between the terms "applicant" and "customer" may be somewhat confusing. Therefore, the commission has eliminated the term "applicant" from the rules, and has adapted the definition of "customer" to include both existing and potential customers.

TEC recommended that §25.471(d)(5) and the definition of "disconnection of service," be changed to include the disconnection of service performed by an electric cooperative or municipally owned utility.

The commission agrees with TEC and has revised §25.471(d)(5) accordingly.

Reliant, TXU Retail, and TEC recommended the definition of "electric service" be clarified to indicate that transmission and distribution service and generation service provided to an end-use customer by a REP are discrete types of electric service that will not necessarily be provided by a single entity after competition begins.

The commission agrees with parties and modifies the definition of electric service in §25.471(d)(7) to indicate that transmission and distribution services and generation services are discrete.

MOU Commenters and TEC proposed changing the definition of "POLR" to include a municipally owned utility or an electric cooperative that has been designated as a POLR.

The commission declines to amend any parameters for selecting a POLR that were determined by §25.43 (relating to Provider of Last Resort) and therefore makes no modifications to the definition of POLR.

AEP Energy Services proposed changing the definition "REP" to avoid confusion and make it consistent with PURA §31.002(17) and §25.5 of this title (relating to Definitions).

TEC suggested proposed §25.471(d)(8) not include a municipally owned utility or an electric cooperative selling electric energy at retail inside its certificated area or the service area of any division of subsidiary. TXU TDU opposed this proposal and believed that for the purposes of the customer protection rules a municipally owned utility's or an electric cooperative's service area should conform to current certificated service areas.

As discussed previously, the commission has added to the §25.5 definition a single clarifying sentence regarding the status of municipally owned utilities and electric cooperatives, and believes no further modifications are necessary.

AEP Energy Services commented that it is not clear whether the term "service provider," is meant to apply to a power generation company, power marketer, TDU, other providers of goods or services to the REP, or a provider of goods or services unrelated to the service provided by the REP but nonetheless included in the bill issued by the REP. TXU TDU commented that a second sentence should be added to this definition to avoid possible confusion and to clarify that this definition does not include transmission and distribution utilities. TEC recommend that this definition be changed to clarify that it pertains only to the provision of "electric" products and services rather than just any service or product. Reliant recommended that this definition be deleted because a review of the proposed rules

indicates that all are intended to apply solely to REPs and not to the broader category of "service providers."

Due to amendments to §25.481, the commission finds the definition of service provider is no longer necessary and deletes the definition.

TNMP recommended changing the definition of "small commercial customer," to limit the demand not to exceed 50 kilowatts during any 12-month period." The REP Coalition recommended that the demand not exceed 50 kilowatts at a single customer's premises during any 12-month period.

The commission does not believe that any of these suggested changes improve the text as written and, therefore, declines to adopt these changes.

TEC recommended the definition of "termination of service" be changed to include expiration of the agreement or contract related to energy sales. TXU Retail opposed TEC's proposed use of the word "energy" in the definition, because it could encompass natural gas as well as electricity and recommended the word "electric" be used instead, thus referring to cancellation or expiration of an electric sales agreement. Reliant recommended that this definition be changed to require notification to the customer and the registration agent when terminating service.

The expiration of an agreement does not automatically result in a termination of service as evidenced by §25.475, relating to Information Disclosures to Residential and Small Commercial Customers. Therefore, the commission declines to adopt TEC's proposed changes. However, the commission agrees with Reliant and modifies §25.471(d)(15) to require notification to the customer and registration agent when termination occurs.

*§25.472, Privacy of Customer Information.*

TNMP, REP Coalition, Enron, and SPS all agreed that the initial release of customer information was essential to a vibrant competitive market.

TXU TDU questioned the propriety of the release of utility account numbers before January 1, 2002, noting that such information is not necessary for marketing purposes and may present security concerns, because possession of a valid account number could enable the holder to make changes to a customer's account and provide access to a customer's confidential credit and payment histories. Consumer Commenters strongly urged that all of §25.472(a) be stricken, because they opposed giving REPs access to a mass customer list with customer name, address, telephone number, historical usage information, and account number (electric service identifier, ESI) prior to actually enrolling a particular customer. Consumer Commenters argued that a mass release of customer information will lead to redlining, and will be used to facilitate price discrimination. They further argued that the proposed rule is contrary to PURA §39.101(a)(2) and §39.157(d)(4) provisions on privacy, and to the current code of

conduct rule which classifies usage information as protected, proprietary information, for which verifiable prior consent must be obtained.

In response to Consumer Commenters, Shell noted that nothing in PURA prohibits the release of information as contemplated by §25.472(a). Shell argued that PURA §39.157(d)(4) is clear that the commission has the authority to determine what constitutes "verifiable authorization" and that similar opt-out or negative check-off procedures have been adopted by CUBR and expressly approved for use in Georgia and Pennsylvania in the face of statutes guaranteeing privacy of customer information. Shell further argued that the Consumer Commenters ignored §25.272(g)(1)(C), of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), which expressly allows the release of proprietary customer information to affiliate REPs and the POLR "without authorization of those customers" in order to "facilitate transition to customer choice." Shell further noted that the information disclosed is limited to customer name, address, rate classification, usage data, meter type, and account number. Finally, Shell noted that Consumer Commenters' concern about the misuse of the information for redlining and other discriminatory purposes is exaggerated and misplaced. Shell stated it knew of no correlation between a customer's meter type or monthly usage and his race, creed, color, sex, national origin, source of income, etc. Shell stated that the more customers a REP has, the greater its economy of scale or ability to spread its costs among a larger customer base, regardless of the consumption level of any individual customer.

The State of Texas and Consumer Commenters preferred an "opt-in" provision, because customers should not be burdened with the responsibility of having to respond to a mass mailing to prevent the release of their private customer information. The State of Texas asserted that those interested in being marketed to will quickly respond and let potential REPs know of their interest in receiving marketing information. Consumer Commenters argued that the "opt-out" provision is not verifiable prior consent because it could not be verified that a customer actually chose not to return the "opt-out" postcard. Consumer Commenters noted that throughout the rulemaking process in Project Number 20936, *Code of Conduct of Electric Utilities Pursuant to PURA Section 39.157(d)*, all customer classes were united in support of prior authorization before customer information, including usage, was released to a REP.

AEP Energy Services opposed the Consumer Commenters' view regarding the negative check-off option and stated that it does not violate a customer's reasonable expectation about the privacy of utility account information if the customer has an option.

The commission finds that the affirmative "opt-out" provision for purposes of not being included on the mass customer list is not a violation of PURA §39.101(a)(2) and §39.157(d)(4), or the current code of conduct rules. The commission agrees with Shell's comments that PURA §39.157(d)(4) is clear that the commission has the authority to determine what constitutes "verifiable authorization." The commission finds that the affirmative opt-out provision constitutes verifiable prior consent pursuant to PURA. The commission believes that it has applied the safeguards of PURA §39.101(a)(2) and



§39.157(d)(4) in §25.472(b) to apply after the initial release of the mass customer list and that the release of such a list will help develop a robust, competitive market. The commission disagrees with TXU TDU's suggestion that a customer's utility account number not be included as part of the information included on each customer in the mass customer list.

REP Coalition, Enron, and SPS stated that §25.472(a)(1) should authorize the electric utility or the TDU, but not the registration agent, to release mass customer lists to REPs and aggregators. They asserted that the registration agent should not be required to perform this function because its database would not have the necessary information that REPs need for marketing efforts. Shell noted that the burden of supplying this information will be minimal because utilities are retaining their meter reading role and will, therefore, collect usage information for residential and small commercial customers in the ordinary course of business. AEP TDUs suggested that this function be performed by entities that possess the information necessary to conduct the mailing and to establish the "Do Not Call List" — either the commission call center or the ERCOT registration agent. AEP TDUs, however, suggested that the registration agent should be responsible for the development and maintenance of the "Do Not Call List."

TXU TDU noted it is not sure that TDUs will be a viable source of the information required on an ongoing basis by §25.472. TXU TDU referenced Project Number 22187, where investor-owned utilities (IOUs) have suggested that the TDUs receive retail customer information of the nature contemplated by this provision from REPs on a regular basis to assist with outage service restoration but

the independent retailers have vigorously objected to the IOUs' suggestion. TXU TDU and AEP TDUs stated that after January 1, 2002, the TDUs will simply not have the information enumerated in §25.472(a)(1) for annual mass release and that REPs will be the primary point of contact with retail customers, and thus the primary source of information about those customers. TXU TDU and AEP TDUs further commented that the costs to those required to prepare and distribute these mass customer lists should be paid through the system benefit fund because it falls within the scope of customer education.

Entergy TDU stated that it is willing to accept the commission's mandate to be the designated party to produce the initial mass customer lists, including 12 month history, as recommended by the REP Coalition and is also willing to continue the process on an annual basis. It further stated that the commission should direct REPs to assist the TDUs and electric utilities in ongoing maintenance of accurate mass customer lists for the respective wires service area. AEP TDUs suggested that the initial mass mailing list be accomplished through bill inserts.

The commission finds that electric utilities are in the best position to provide the initial mass customer list, because they will possess the necessary information. The commission disagrees that an electric utility may charge for the list and may not recover these costs from the system benefit fund.

TNMP, REP Coalition, and SPS noted the date for release should be changed to September 1, 2001, to better coordinate with the commission's customer education program and to provide the most current

information available. Shell stated it saw no reason to delay release of this admittedly "essential" information beyond February 15, 2001, the date residential class sign-up starts for the pilot projects; pilot project participants should be given a meaningful opportunity to evaluate mass customer information in designing products and services to be offered in the competitive market. AEP TDUs stated that if the TDU is required to prepare and disseminate the mass customer list, this should occur only once, and that should be in 2001 because after December 31, 2001, the TDU will not have access to the requisite customer information.

The commission agrees with the REP Coalition that for such a list to be effective, it should be released by September 1, 2001. While the commission appreciates Shell's desire to have such a list for use with the pilot project, the commission does not believe such a list is necessary to reach the required 5.0% participation goal.

TNMP, REP Coalition, and SPS asserted that such information should be restricted to a one time release by the TDU. TXU Retail recommended deleting the annual release of a mass customer list because it doubts whether a negative check-off option for the release of confidential information satisfies the requirements of PURA, and because it believes there will be no single entity with all the necessary information to make the list. If thought necessary by the commission, however, TXU Retail stated that it would support a one-time affirmative authorization by customers for release of their confidential information to REPs. Enron disagreed and stated that REPs should have information for large customers well in advance of the pilot program and on an ongoing basis, and that customer information

for all classes of customers should be available no later than March 2001 and annually thereafter. Shell recommended that the mass customer information be made available during the five years of the price to beat period after which the commission could decide whether there remains a continued market need for the data.

The commission determines that the mass customer list shall be released annually and modifies the rule accordingly.

AEP TDUs stated that should TDUs be chosen to conduct the mass customer mailing, the most cost-effective manner to accomplish this would be via a bill insert in the July 2001 billings under the following conditions: the materials included in the insert should be developed and provided by the commission's designated customer education agent; and the mass-mailing post card should provide notice of the release of customer information in the mass customer list and provide the customer with an opportunity to be excluded from that list. Regarding the separate Do Not Call List, the customer should be provided with the option of being contacted by the registration agent or the commission's call center on how to be included in the Do Not Call List, rather than being placed on the Do Not Call List. The registration agent would know that the customer desires information on the Do Not Call List by receiving the customer's post card.

The commission believes that for the initial list, an insert in the electric utility's bill is the best method informing the customer about the development of the mass customer list and the customer's choice not

to be included on that list, as well as the customer's option to be included on the Do Not Call List. The commission will develop an acceptable format for this list. With regard to the separate Do Not Call List, the commission agrees that the registration agent should be responsible for the development and maintenance of the Do Not Call List and that because of the associated costs of being placed on the Do Not Call List, the customer should not be placed on the list directly from his response to the mass mailing. The commission will convene an implementation working group to resolve issues surrounding the production and distribution of subsequent lists.

TEC recommended the references to "certified by" and "registered with the commission" in §25.472(a)(3) be deleted because the term "electric service provider" is defined to include a "certified" REP and municipally owned utilities and electric cooperatives which are not required to be certified by the commission. TEC also argued that aggregators must be registered with the commission but electric cooperatives and municipally owned utilities may be aggregators in certain circumstances but are not required to register.

As noted previously, the term electric service provider is no longer used in these rules; therefore, the commission does not believe the suggested change clarifies the rule.

With regard to §25.472(b) regarding individual customer information, TIEC stated that protection of confidential and proprietary information is not simply an issue of privacy but is an issue of economic harm, which is threatened by the improper release of competitively sensitive information. Therefore,

TIEC stated, it continues to question why §25.472(b) applies only to "proprietary" customer information and not also to "confidential" customer information. It noted that to the extent that these two categories of information are distinguishable, both need to be specified and protected. TIEC further noted that the proposed exceptions for release of protected information are far too broad.

TXU Retail recommended the addition of a new second sentence to confirm that the proposed rule does not override the provisions of §25.272.

The commission's interest is in protecting customers from the abuses attendant in the improper release of "proprietary customer information" as defined in §25.272(c)(5). The commission is not in a position to determine what other information possessed by a REP or aggregator may be considered "confidential" by the customer. The commission declines to adopt TXU Retail's suggested language.

TXU TDU stated that §25.472(b)(1) would have the unintended consequence of prohibiting a REP in the case of an outage, from giving the TDU the affected customer's name, address and other information required by the TDU to investigate the outage, without the REP obtaining the customer's verifiable authorization for the disclosure of such information. It noted that Project Number 22187 addresses the subject of outage reporting and that proposed tariff section 4.11.1, concerning notifications of interruptions, irregularities, and service repair requests, requires the REP (defined as a competitive retailer in the tariff) to communicate detailed retail customer information, as specified in the tariff to the TDU either at the time the outage report is made or in advance for particular retail customers,

depending upon the outage reporting option selected by the REP. It also noted that the treatment of such information by the TDU will be subject to the code of conduct information safeguards of §25.272. It further noted that there are other circumstances under the tariff for retail delivery service in which retail customer information will need to be communicated by the REP to the TDU, such as for discretionary services (other than construction services) which require name, ESI, address, and contact telephone number. As a result, TXU TDU proposed the addition of a new exception to the release of proprietary customer information concerning these and similar situations. In reply, Entergy TDU stated that it shares TXU TDU's concern and that future TDUs need to receive and maintain accurate retail customer information on a regular basis to assist in outage restoration. It further stated that a commission mandate for the TDUs and electric utilities to provide this information will allow the independent REPs to gain the customer information they need. In reply, Reliant also stated that it supports TXU Retail's recommendation that the rules should allow sharing of customer information with third party contractors that a REP hires for contract services, limited to the information necessary to perform the contracted functions.

The commission agrees with TXU TDU and Entergy TDU and modifies the language in §25.472(b)(1).

With regard to the exceptions stated in §25.472(b)(1), Entergy Texas REP requested that an additional exception be added to permit the release of information to a service company affiliate or third party contractor that provides billing and call center operations to the REP. It noted that §25.272(g)(1)

contains a similar exception that allows "utilities" to release customer information to an affiliate providing corporate support services without obtaining prior customer authorization.

With regard to §25.472(b)(1)(B), AEP Energy Services, with TXU Retail proposing very similar language, recommended that this provision be changed to allow the REP to outsource its duties.

The commission does not agree a change is necessary. While the commission agrees that some duties may be outsourced, the commission will still hold the same standards for in-house or outsourced duties.

TIEC stated that debt collection and credit-reporting agencies listed in subsection (b)(1)(C) have no legitimate reason to have access to trade secrets and competitive information. Further, TIEC recommended limiting the provision that allows the REP to release proprietary customer information to the commission because only relevant information should be released, and only upon proof that the information is absolutely necessary to the commission's pursuit. Additionally, TIEC recommended that the provision should mandate that the information be subject to a protective order in order to protect this data from disclosure beyond what is absolutely necessary for the commission to carry out its responsibilities.

In reply, AEP Energy Services, with Entergy Texas REP in substantial agreement, opposed the Consumer Commenters' proposed wording that individual customer information be released to credit reporting agencies only if "required" by state or federal law. It stated that such wording would remove



another potential collection tool from REPs and that a customer may be less inclined to pay on time or at all once he became aware that his payment practices could not hurt his credit.

The commission does not believe the suggested changes improve the rule and declines to adopt either change.

Reliant proposed adding a new second sentence to §25.472(b)(2) to ensure that REPs will not be limited in their use of commercially available information that may be duplicative of the information provided by the registration agent, TDU, or the customer.

The commission does not amend §25.472(b)(2), because this general principle is already in place and does not need to be addressed in this rulemaking.

AEP Energy Services proposed modifying §25.472(b)(3) to allow a customer's authorized agent to also be entitled to request this information free of charge once every 12 months.

Reliant proposed language to recognize that this information is already available to REPs from either the TDU or registration agent upon submittal of a customer's ESI for each of the customer's premises. Reliant stated that REPs should not be forced to provide this duplicative information to other REPs because doing so would require unnecessary trading partner agreements and testing of standard electronic transactions among all REPs.

The commission agrees with AEP Energy Services and modifies §25.472(b)(3) to allow a customer's agent to receive this information at least once annually free of charge. The commission declines to make the changes recommended by Reliant and disagrees with Reliant's argument that standard transactions must occur as a result of the provisions of §25.472(b)(3). This section is primarily intended to address transmittal of information between a customer's authorized agent and a REP. This section does not impede nor prohibit any standard information sharing practices among REPs.

TXU Retail recommended adding the settlement agent to §25.472(b)(6).

The commission declines to make this change as the settlement agent is associated with the registration agent.

REP Coalition recommended adding a new subsection §25.472(b)(7) so that REPs would not have to meet the requirements of this section when trying to establish whether or not a customer can demonstrate satisfactory credit under §25.478(a)(3)(A).

The commission declines to make this change because credit and payment information is customer-specific and specifically subject to the requirements of this section.

MOU Commenters recommended adding a new §25.472(b)(7) to specifically exempt electric cooperative and municipally owned utilities from these provisions.

The commission disagrees that there is sufficient justification to exempt electric cooperative and municipally owned utilities from meeting the requirements of this rule, and declines to make the suggested change.

*§25.473, Non-English Language Requirements.*

AEP Energy Services proposed revisions in subsections (a) and (b) to ensure that information would be provided to a customer in a different language based on that customer's request. The company also proposed adding "customer" in §25.473(a)(1) and (2) to clarify that the rule referred to customer information. In subsections (a)(2) and (b)(2), they proposed adding "electric" to the words "services" and "discounts."

The commission agrees with the change proposed by AEP Energy Services and amends the rule accordingly.

Consumer Commenters in subsection (a) and (b) deleted the reference to "customer's designation," effectively changing the subsections to mean that all REPs and aggregators would have to provide information in English and Spanish to all customers. In subsection (a)(1), they added disconnection

notices and enrollment notification notices to the list of documents to be provided to all customers in both languages.

TXU REP, AEP Energy Services, and Entergy Texas REP opposed the proposal by Consumer Commenters to make information mandatory in both English and Spanish. All three companies stated that giving customers options on what language to use would satisfy PURA §39.101(a)(8). A REP marketing to Hispanics, for example, could market only in Spanish under the current rule language. AEP Energy Services and Entergy Texas REP pointed out that such a requirement would increase printing and postage costs with little benefit and, therefore, the current language should be maintained.

The commission concludes that both REPs and the aggregators should provide customers with materials in English or Spanish at each customer's designation; therefore, the commission declines to make the changes specified by Consumer Commenters. The commission clarifies, however, that a REP, including an affiliate REP, must solicit from the customer the customer's language preference at the time the information required by §25.474(b)(2) is provided to the customer, and must provide the following information and documents in both English and Spanish: customer rights; termination notices; access to customer service, including restoration of electric service; and billing inquiries. A new subsection (c) has been added to reflect this requirement.

*§25.474, Selection or Change of Retail Electric Provider.*

Reliant proposed deleting the word "express" from subsection (a), arguing that it created an inappropriate impression that this type of authorization was different from a regular "authorization." Consumer Commenters proposed the deletion of the reference to "subsection (c) of" to ensure that all change orders are authorized and verified according to all the provisions of this section.

The commission agrees with the changes offered by Reliant and Consumer Commenters and revises the rule accordingly.

TNMP, REP Coalition, SPS and TEC all suggested changing the nature of the document provided to customers in subsection (b)(1) from a selection form to an information and interest identification form. These parties argued that, as proposed, the rule contemplated that checking the box next to the name of a particular REP designated that particular REP as the customer's REP of choice. Additionally, the parties asserted that checking the box on the form would not have created a contract between the REP and the customer, since the customer had not chosen any one of that REP's market products. These parties stated that almost certainly, the customer would not have had the sort of detailed information about those options that would permit the customer to make a reasoned selection. Further, parties stated that it would be doubtful that the mere act of selecting a REP on the initial ballot would satisfy the detailed authorization and verification requirements of §25.474(c) and the REP's terms of service requirements that, in other circumstances, are a prerequisite for agreement and subsequent enrollment. These parties modified §25.474(b)(1) to clarify that checking a box would not be a firm commitment on the part of the customer to take electric service from the selected supplier or on the part of the REP to

serve that customer. These parties also proposed deleting §25.474(b)(1)(B) for that same reason. Parties proposed language to make it clear that customers would be able to request that they be contacted and/or provided with additional information concerning product offerings of a single REP, selected REPs or all REPs. New Power and Green Mountain both supported REP Coalition's initial comments and believe REP Coalition's proposed changes addressed both the concerns of the new market entrants and the consumer representatives. AEP Energy Services and TEC proposed modifying the language to make it clear that such information should only be provided to customers who will have choice, not to all customers.

Shell argued that the document should allow customers to select REPs and encourage the exercise of customer choice. Additionally, Shell argued that a selection mechanism would reduce the affiliate REP's competitive advantage. Shell further stated that the rule should use "shall" in subsection (b)(1) to assure a pro-competitive selection process. The Consumer Commenters observed that the selection process was a new and innovative idea; but they had concerns regarding several aspects of the proposed process. Specifically, their concerns were that the process would be in conflict with the pilot project rule, that customers would switch with incomplete information from a REP, and that the process may confuse the purpose of the commission's call center. Enron endorsed the idea of a selection form and process as proposed by Shell. Additionally, Enron proposes that additional information be provided on the ballot that explains to customers what will happen if they "choose not to choose," particularly non-price to beat customers. Additionally, the Independent Retailers argued that all customers ineligible for the price to beat should be advised, no later than May 21, 2001, of the terms, conditions, and rates that

will apply should the customer decide to default to the affiliate REP. The Independent Retailers further argued that under current schedules, the May 21, 2001 disclosure date should allow the affiliate REP to review interim orders in the unbundled cost of service cases (those being conducted pursuant to PURA §39.201), and additionally allow customers to review terms before commencement of the pilot project. REP Coalition stated that the informational materials should be distributed to customers "not later than September 1, 2001." Additionally, Shell proposed new subsection (b)(4) and (b)(5) that specified how customers would be advised of the specific terms of service requirements that would be applicable and allow the designated provider to refuse service to any customer not meeting those requirements. Shell also proposed the addition of new subsection (b)(6) that would grant a REP the right to elect not to have its name included on the list of REPs that customers could select as the provider of choice. AEP Energy Services did not support the changes proposed by Shell, arguing it would exempt the chosen REPs from the requirements for customer authorization and verification for the initial selection process. Consumer Commenters proposed new subsection (b)(1)(B) that would require the informational materials to list a toll-free number for each REP and contain a table of comparative price offerings for each REP. AEP Energy Services opposed the change to (b)(1)(B) suggested by Consumer Commenters, stating it would be impractical and would encourage customers to focus solely on prices when other aspects of service may be just as important.

The State of Texas commented that proposed subsection (b)(1)(D) seems to suggest that a fee will be charged for placement on the Do Not Call List and that the amount of such fee is not disclosed

elsewhere in the proposed rules. The State of Texas argued that no such fee should be charged for placement on the Do Not Call List as it would potentially reduce customer subscribership.

TNMP and REP Coalition proposed modifying subsection (b)(1)(E). TNMP proposed that the postage-paid information/interest card should be addressed to the commission. REP Coalition proposed leaving the card addressed to the registration agent, but added a requirement that the registration agent electronically provide the name, address and telephone number of customers who selected the REP within five days of receiving the post card. Shell proposed new subsection (b)(3) that contains essentially the same requirements as those proposed by REP Coalition's change to (b)(1)(E). TEC proposed deleting subsection (b)(1)(E). Consumer Commenters argued that the proposed §25.474(b)(2) would cause customer confusion by giving the appearance that the customer has been intentionally reassigned to another provider when the customer's account is maintained by the recently separated affiliate REP. Consumer Commenters argued that it would be more simple and straightforward to require the integrated utility to inform the customer of its change to the affiliate REP and how such change may affect the customer's service (phone numbers to call to report problems, etc.). Further Consumer Commenters stated that instead of a terms of service agreement, the affiliate REP should be required to send the customer an explanation of the price to beat the customer will begin to pay, an electricity facts label for the price to beat, information about the customer's right to switch, and the availability of the price to beat in the competitive market. Consumer Commenters saw no rationale for sending the customer a terms of service agreement or to change the terms and conditions of the customer's service. Entergy Texas REP argued that Consumer Commenters' proposed changes



were not necessary since the affiliate REP's terms of service document and Electricity Facts label would naturally include information on the price to beat during the freeze period. AEP Energy Services supported Consumer Commenters' proposed change to (b)(2), but would include a provision that would allow providing the required information to non-switching customers at the time the affiliate REP mails the first bill after competition has commenced. Reliant proposed additional language to subsection (b)(2)(C) that would clarify that an Electricity Facts label must be provided in a separate document unless the label was contained in the terms of service statement. Since the provision of the terms of service statement is required by subsection (b)(2)(A), the proposed language sought to reduce duplicative information from being provided to the customer. MOU Commenters argued that the provisions of subsection (b) were not required by Senate Bill 7, were not consistent with the objectives of the statute, and therefore contained no basis for regulatory solicitation of customers to choose an electric supplier. MOU Commenters argued that subsection (b) and its related subsequent provisions should be deleted from the rule.

The commission agrees that the initial REP selection process should be revised to eliminate the ability of customers to make a binding selection of a REP on the information form. The commission agrees that the information should only be provided to customers who will have the ability to exercise choice on January 1, 2002 and revises language in subsection (b)(1) accordingly. The commission further agrees that the adopted process should be mandatory and agrees that it would be most beneficial to customers if such information was required to be provided no later than September 1, 2001. However, because the commission expects to provide this information as part of its customer education campaign, the

language is modified to reflect that the distribution timeline will be determined as part of that campaign. The information form can serve as a mechanism for a customer to express interest in a particular REP, but such a selection cannot be binding on either the customer or the REP until the REP has fully complied with the verification requirements of §25.474. The commission adds new subsection (b)(1)(A) to clarify that the information and selection form should contain an explanation of retail electric competition.

The commission clarifies that §25.474(b)(1)(B) is intended to allow a specific REP to provide a customer with information in response to the customer's designation of that REP on the selection form. However, the commission declines to incorporate Shell's proposed new subsection (b)(4)-(6) to accomplish this purpose. While the commission agrees with Consumer Commenters that any information provided to consumers to help educate them on the choices available to them is desirable, the commission declines to adopt new subsection (b)(1)(B). The commission prefers, instead, to consider such requirements in conjunction with the development of the customer education campaign. The commission acknowledges the concerns expressed by the State of Texas with respect to the fee for being placed on the Do Not Call List. It is not the intent this rule to specify the amount of such fee, merely to require that if such a fee is to be assessed, that it be disclosed in this information card. As a result, no change is made to the subsection, now (b)(1)(E); §25.484, which covers the Do Not Call List, discusses the assessment of such a fee. The commission modifies the relevant subsection, now (b)(1)(F), to reflect that the information card will direct the customer to return the form to the commission for processing by the contractor selected by the commission to perform customer education

fulfillment functions. Therefore, the commission declines to adopt REP Coalition's suggested language for subsection (b)(1)(F). The commission also declines to delete subsection (b)(1)(F), because the provision of unbiased information to customers concerning the selection process and specific REPs is critical to the development of a fully functioning competitive market.

The commission holds that PURA does not prohibit the commission from adopting mechanisms that allow customers to indicate their interest in receiving information from the REPs of their choice in advance of retail competition. Further, the commission believes that such a process empowers customers, which is integral to the customer education campaign. As a result, it declines to delete subsection (b). The commission agrees with Consumer Commenters that the proposed rule language in subsection (b)(2) may lead to customer confusion regarding the role of the affiliate REP. Therefore, the commission amends subsection (b)(2) to require the affiliate REP to inform the customer of its change from the integrated utility to the affiliate REP and how this change may affect the customer. The commission also agrees with AEP Energy Services that information for price to beat customers required by subsection (b)(2) may be provided with the first bill sent by the affiliate REP. The commission finds that subsection (b)(2)(C) would benefit from the changes recommended by Reliant and adopts Reliant's suggested language. Additionally, the commission agrees with the arguments presented by the Independent Retailers and adopts new subsection (b)(3) that addresses the disclosures required for non-price to beat customers that will be served by the affiliate REP.

TNMP and REP Coalition stated that subsection (c) should be amended to clarify that the authorization and verification requirements should only apply to REPs, not all service providers, and only to electric services offered by the REP, not all other unrelated products or services. These parties argued that this section only addressed the selection and switching of a customer's REP, and as such, the only entities that perform such functions are the REPs. Additionally, the parties argued that the commission has no authority to regulate services that are not related to electricity. The parties went on to state that REPs in the market may choose to offer products and services that are unrelated to electric service and over which the commission has no jurisdiction. TXU Retail also stated that subsection (c)(2) should be amended to allow REPs to verify only a random sample of authorizations that are received by means of telephone conversations. TXU Retail argued that requiring either independent third party or audio self-recorded verification of every telephone authorization would be extremely expensive, especially if change orders are not excluded from this requirement, as recommended by REP Coalition. TXU Retail further argued that the more expensive the authorization and verification process becomes, the more difficult it will be for new entrants to survive and compete in the marketplace. Consumer Commenters proposed new subsection (c)(4) that specified requirements of a marketing agent employed by a REP. Specifically, the proposed new subsection would have required the marketer to clearly inform the customer of the marketer's name, affiliation with the REP, and any payments the marketer receives from the REP for obtaining the customer's authorization. Entergy Texas REP and AEP Energy Services opposed the language presented by Consumer Commenters, stating it would not provide any practical information to the customer. AEP Energy Services proposed modifying subsection (c)(4) so as to not unnecessarily restrict who can change a REP. AEP Energy Services argued that the proposed rule

would prevent a spouse whose name is not on the bill from authorizing a change in provider. MOU Commenters, TEC, and Consumer Commenters all proposed changes to subsection (c)(5). MOU Commenters and TEC argued that subsection (c)(5) should be modified to reflect that this provision is not applicable to municipalities or cooperatives. Specifically, MOU Commenters argued that the reporting requirements of this subsection are not authorized as to municipally owned utilities, whether or not they opt-in, because of PURA §40.004(7), which limits the authority of the commission to require reports from municipally owned utilities to specific areas not explicitly addressed in the statute. TEC made similar arguments regarding electric cooperatives, citing PURA §41.004(5). Consumer Commenters proposed changing the frequency of reporting requirements from "upon request" to "annually." Consumer Commenters argued that this change would enhance the commission's ability to respond to customer questions and complaints.

The commission clarifies that the purpose of this section is to establish procedures for the orderly switching of a customer's REP and to have a customer's selection of such chosen REP honored. Accordingly, the commission agrees with REP Coalition and TNMP that subsection (c) applies only to REPs and amends this subsection to reflect that understanding. However, the commission disagrees with REP Coalition and TXU Retail that such rules apply only to the provision of electric service to the exclusion of other services offered by the REP and included on the REP's bill to the customer. PURA §17.151 clearly delineates the commission's authority to establish requirements for the submission of charges that will appear on a customer's electric bill. Specifically, PURA §17.151(a) states that such charges may only be submitted if the service provider offering the product or service has thoroughly

informed the customer of the product or service being offered, including all associated charges, and has explicitly informed the customer that the associated charges will appear on the customer's electric bill and the customer has clearly and explicitly consented to obtain the product or service offered and to have the charges appear on the customer's electric bill. PURA further specifies the acceptable methods for such verification. However, many of these provisions relate to services offered to an existing customer and therefore belong more appropriately in proposed §25.481, which deals with protections for unauthorized charges. Accordingly, the commission amends subsection (c) to reflect this distinction, while §25.481 is amended to properly reflect the authorization and verifications that all REPs must follow when submitting charges to a customer via the customer's electric bill. With the changes to both this section and §25.481, the commission declines to adopt TXU Retail's proposal that only a random sample of orders affecting the customer's electric bill be authorized and verified. The commission recognizes that requiring every transaction to be authorized and verified consistent with the provisions of this section and §25.481 may increase costs to the REPs. However, the commission's experience in the telecommunications industry indicates that it is crucial to foster consumer confidence in the newly competitive electric market by ensuring that every customer's electric bill contains only charges authorized by that customer. The commission appreciates Consumer Commenters proposal to add new subsection (c)(4). However, any entity performing functions for the REP must do so in compliance with any rules applicable to a REP performing those same functions. Further, the commission believes it is the responsibility of the REP to ensure that such entities are, in fact, complying with all rules that would otherwise apply to the REP, since the commission will ultimately hold the REP responsible for compliance. Thus, no addition is made. The commission agrees with AEP Energy Services'

recommendation to broaden the language in subsection (c)(4). Specifically, the commission clarifies that other individuals may be authorized to make changes on or to the electric service account if such person has been designated as, or would be legally presumed to be, an authorized person by the customer of record. The commission agrees with the arguments presented by MOU Commenters and TEC and modifies subsection (c)(5) so that it does not apply to municipally owned utilities or electric cooperatives. The commission declines to adopt Consumer Commenters' proposal to modify the reporting frequency specified by subsection (c)(5). The commission's experience in the telecommunications industry has proven that this information is easily obtained upon request by the commission.

Reliant and Entergy Texas REP proposed revisions to subsection (d)(3). Reliant suggested giving the REPs the flexibility to state the pricing disclosures as a dollars and cents per time period (month, year, etc.) as an alternative to the proposed cents per kilowatt-hour. Reliant argued that this change was needed to preserve the REP's ability to offer flexible pricing options. They suggested that the pricing terms need to permit disclosures as a price per kWh, a single monthly fee (\$ per month), fee for peak demand (\$ per kW) or a price combination of any of these three. Similar to this, Entergy Texas REP proposed modifying this section to allow other price disclosures in addition to the required price per kWh. In addition to stating whether the potential customer would be required to pay a deposit and informing them of the amount of such deposit, Consumer Commenters proposed a revision to subsection (d)(6) that would require the REP to provide an explanation of the commission's standard deposit requirements. AEP Energy Services did not support this change, arguing that these disclosures

are not part of the key rates and terms that should be specifically authorized and verified. Consumer Commenters also proposed a revision to subsection (d)(8) to clarify the specific information that would be provided to customers regarding their right of rescission. Consumer Commenters also proposed a new subsection (d)(9) requiring REPs to advise potential customers of the policy regarding hold times for customer service calls. TXU Retail, Entergy Texas REP, and AEP Energy Services all disagreed with the necessity to develop and disclose a policy related to customer hold times.

The commission agrees with Entergy Texas REP and Reliant that other price disclosures, in addition to the required total cents per kilowatt-hour, may be helpful to consumers and revises subsection (d)(3) accordingly. The commission disagrees with Consumer Commenters' proposed revision to subsection (d)(6) and declines to incorporate such language. The purpose of this subsection is for the REP to clearly disclose its specific offer to the customer, including any deposits it is requiring the customer to pay. However, the commission does agree with the suggested revision to subsection (d)(8) and has incorporated those changes. The commission appreciates the intention behind Consumer Commenters' proposed addition of subsection (d)(9), but does not believe that such a policy disclosure would give consumers useful information at the time such disclosure is provided. However, pursuant to PURA §39.101(e), the commission is authorized to develop minimum quality of service standards and reserves the right to do so should the need arise.

Consumer Commenters argued that the written authorization and verification in subsection (f)(1) should be consistent with those in §26.130 of this title (relating to Selection of Telecommunications Utilities),



particularly those provisions relating to the "letter of agency." As a result, Consumer Commenters proposed new language to incorporate specific letter of agency requirements and recommended deleting the proposed subsection (f)(1). Entergy Texas REP and TXU Retail disagreed with the proposal to add more specific letter of agency language. These parties argued that such detailed information on a check is unnecessary to accomplish the goal of this rule, which is to ensure that a customer understands that the decision to accept the check payment functions as an election to change providers. Additionally, Consumer Commenters proposed adopting a definition of "in writing" to mean "written words memorialized on paper or sent electronically." The State of Texas disagreed with provisions of subsection (f)(1)(A) that allow the use of a check as a means of authorization or verification. The State of Texas argued that the use of a check for such purposes too easily leads to misunderstanding of the check's purpose in authorizing the provision of electric service. Reliant argued that subsection (f)(1)(B) should be amended to clarify the effect of a customer's signature on the contract or terms of service document. TNMP and REP Coalition suggested amending subsection (f)(2) and (f)(2)(A) to eliminate the requirement for independent third party verification of telephonic enrollments. Parties also proposed revising the remaining language so that only the authorization portion of the telephone call is audio recorded. Parties argued that requiring that all authorizations, including those for initial enrollment and for subsequent service change orders, be taped and verified by an independent third party would add substantial costs to a market already anticipated to have very low margins. Parties recommended that this section be modified to be consistent with CUBR such that REPs "must either audio record or third party verify (via either a live operator or interactive voice response (IVR))." Parties further argued that REPs should have an option to decide the most efficient means to document a customer's authorization

and verification of telephonic enrollments for electric service. Additionally they argued that verification should not be required for service changes that are requested after a customer is enrolled with a REP. Consumer Commenters replied that the industry proposals would water down controls that would prevent unscrupulous REPs from slamming and cramming. TXU Retail proposed changing (f)(2)(A) to eliminate the need to verify change orders after the customer initially enrolls. Consumer Commenters proposed modifying subsection (f)(3) to clarify that REPs that enroll customers via the Internet should comply with subsection (c) regarding general standards for authorizations and verifications and subsection (e) regarding verification requirements. TNMP and REP Coalition proposed a revision to subsection (f)(3)(A) that clarifies how the commission is provided with the address of the REP's Internet website. Their proposed language also removed the requirement that the REP maintain the website address provided to the commission. AEP TDUs proposed a revision to subsection (f)(3)(E). As proposed, this section would have required the REP to provide a customer with a toll-free telephone number, Internet website address, and email address for contacting the REP throughout the duration of the customer's agreement. AEP TDUs argued that in Project Number 22187, REPs are given the option of requiring their customers to contact the TDU directly to report and inquire about outages. AEP TDUs suggested that this section be modified to require the REP choosing that option to provide the customer with the TDU's toll-free telephone number for reporting and inquiring about outages. Consumer Commenters proposed a revision to subsection (f)(4)(A), requiring door-to-door sales to comply with the authorization and verification standards in subsections (c), (d), and (e), as well as the letter of agency requirements proposed by Consumer Commenters as new subsection (f)(1). TNMP, REP Coalition, and Entergy Texas REP all proposed revisions to subsection (f)(4)(D). TNMP

proposed deleting language that regulated the clothing and sales presentation of the REP. REP Coalition suggested deleting the affiliate REP from the list of entities (i.e., TDU, affiliate REP, and POLR) that the REPs should not be able to represent themselves as. Similarly, Entergy Texas REP recommended that the POLR also be excluded from this list, arguing that it makes no sense if the REP is either the affiliate REP or the POLR. AEP Energy Services proposed amending subsection (f)(5)(A) to include the words "and verification" so that it is clear that electronic enrollment must comply with both authorization and verification standards. Consumer Commenters suggested requiring a customer call be made from the telephone at the service address, arguing that only this telephone number would provide the automatic number identification which verifies that the call is made from the expected residence, which is the one where the switch would be made. Consumer Commenters argued that if the telephone call is not required to be placed from the switching location, the automatic number identification is useless and slamming will ensue.

The commission adds clarifying language to subsection (f) to reflect that authorization and verifications can be obtained by using any one of the methods listed in subsection (f). The commission agrees that subsection (f)(1) should include specific provisions from §26.130 (relating to Selection of Telecommunications Utilities) and that all written authorizations should include letter of agency language. The commission also agrees that the definition of "in writing" should be included in §25.471 to prevent any confusion. The commission agrees with the State of Texas that the use of checks as a letter of agency instrument has confused customers in the telecommunications industry and resulted in many switches of service providers that were not intended by consumers. The commission therefore

eliminates the use of a check as a valid letter of agency instrument for the purpose of switching a consumer's REP and revises subsection (f)(1) accordingly. The commission agrees with and incorporates Reliant's proposed change to proposed subsection (f)(1)(B), now subsection (f)(1)(E). The commission understands parties' concerns about the cost of using independent third parties to verify telephone enrollment orders, both initial and change. The commission agrees to allow the use of an audio recording to capture a customer's authorization and verification as an alternative to independent third party verification and modifies subsection (f)(2) accordingly.

The commission amends subsection (f)(3) as suggested by Consumer Commenters. The commission's existing REP certification form does not ask for the address for the REP's Internet website, so the commission modifies subsection (f)(3) to require REPs to file such information with the commission in a manner prescribed by the commission. The commission maintains the requirement that the REP must maintain the Internet website at the address that is disclosed to the commission. Customers who enroll and do business electronically with REPs via the Internet must be assured that the REP will be locatable at the Internet address provided to the customer at enrollment. The commission agrees with AEP TDUs proposed revision to (f)(3)(E) and Reliant's revision to (f)(3)(F) and revises the language in each subparagraph. The commission also agrees with Consumer Commenters' revisions to (f)(4)(A) that would require door-to-door enrollments to comply with general authorization and verification requirements, as well as those for written authorizations and revises the rule to reflect this change.

The commission agrees with REP Coalition and disagrees with the other parties' proposed changes to (f)(4)(D). The commission's intent is to discourage any REP from representing itself in a manner that is meant to mislead or confuse customers into believing it is one of the listed entities. Both the TDU and the POLR have specific obligations in the competitive market and consumers should not be misled by a REP trying to misrepresent itself as one of these entities. The commission revises (f)(4)(D) accordingly. The commission deletes proposed (f)(5), thereby removing electronic authorizations as an acceptable method of customer enrollment and authorization. The commission believes such a mechanism was more appropriate in the telecommunications industry when a customer was calling from the telephone number that was affected by the switch order.

Reliant suggested additional language to clarify the date from when a record of authorization and verification must be kept. Consumer Commenters suggested changing the language to require REPs to provide the authorization and verification to the customer or the commission upon request, rather than only when the customer challenges the switch.

The commission agrees with both changes and revises subsection (g) as appropriate.

Reliant, AEP TDUs and Consumer Commenters all proposed changes to subsection (h). Reliant suggested clarifying the number of days a customer has to exercise the right of rescission from "three business days" to "three federal business days, as defined in 16 C.F.R. §429.0(f)," to make the right of rescission time periods the same under both federal and state law. Additionally, Reliant and AEP TDUs

suggested changing from four business days to three calendar days the number of days a REP may assume it takes a customer to receive a terms of service document after it has been placed in the U.S. mail. Reliant argued that the "three day" standard is recognized by the Texas Rules of Civil Procedure for filings by U.S. mail delivery. AEP TDUs argued that this change would make it consistent with the timeframes being considered in Project Number 22187. Consumer Commenters proposed additional language that would allow customers to assume that any cancellation document is presumed to be received timely by the REP if it is deposited in first class U.S. mail within three business days after the customer's receipt of the terms of service document. TXU Retail and AEP Energy Services disagreed with Consumer Commenters' proposed change, because it would seem to require an additional timeframe to elapse prior to submitting a switch order.

The commission agrees with many of the proposed revisions to subsection (h) and modifies the language accordingly. While the commission appreciates Reliant and AEP TDU's efforts to ensure consistency with other standards, the customer's right of rescission should not be unnecessarily shortened due to the fact that the U.S. mail is not delivered on Sundays or holidays. However, the commission agrees with Reliant that the cancellation period does last for three federal business days. With respect to Consumer Commenters' proposal, the commission anticipates that if a customer mails a cancellation notice back to a REP, the postmark on such notice could be used to judge the timeliness of such response by the consumer. The commission also modifies this section to clarify that REPs receiving late notices of cancellation should contact the registration agent and cancel the pending switch.

TNMP and REP Coalition both proposed changes to subsection (i) to incorporate the concept of "federal business days," as mentioned in the comments for subsection (h). Additionally, both parties suggested linking the start of the right of cancellation period to the customer's receipt of the terms of service document, instead of establishing a fixed number of days based on the terms of service being delivered via U.S. mail. REP Coalition also proposed new subsection (i)(2), which established an expedited switch or reconnect process, as part of its argument for allowing all REPs the right to disconnect customers for non-payment of delinquent accounts. The proposed section established specific terms that must be agreed to by both the REP and the customer in order for the expedited request to be processed by the registration agent. TXU TDU and Entergy TDU both objected to REP Coalition's proposed new (i)(2)(F) concerning the payment of associated TDU discretionary service charges for expedited switches or reconnects. REP Coalition suggested that, if an expedited switch or reconnect occurred within two business days of disconnect for non-payment, "then the discretionary service fee for the switch or reconnect of service shall be the lowest fee for such service, as applicable." TXU TDU and Entergy TDU argued that this language should not be accepted, because it would have a TDU charge for a service in a manner that is contrary to the TDU's commission-approved rate schedules. If a TDU had an approved discretionary service charge for a switch and a different approved discretionary service charge for a reconnect, then it can only lawfully bill for the service it actually provides – either the switch or the reconnect. It cannot provide one service, but bill for it under a different rate schedule as if it had provided some other service.

The commission incorporates the "federal" business days standard in subsection (h) as suggested by TNMP and REP Coalition. The commission also clarifies that the right of cancellation time period begins when the customer receives the terms of service document and that the customer has three federal business days from the date the terms of service is received to cancel the contract without penalty. The commission clarifies that the purpose of this section is to specify the number of days the customer has to cancel a contract, if the customer wishes to do so without incurring any penalties. These clarifications are reflected in the commission's changes to subsection (h). Since the physical disconnection of electric service for non-payment is an option available only to the POLR, the commission does not believe it is necessary to adopt an expedited switch or reconnect process. However, the commission modifies the rule to clarify that REPs may submit a customer's enrollment or switch request to the registration agent, prior to the expiration of the customer's right of cancellation. The commission expects that REPs can develop appropriate business practices that will mitigate risk, while providing service on a more expedited basis to customers requesting such expedited service. In addition, the commission requests that the REPs and TDUs review the switching process and related timelines and attempt to work out a system for use of estimations between meter readings to shorten customer account transfer times and reduce customer confusion caused by receipt of multiple bills. The commission requests a report on this process by March 15, 2001 as part of the electric restructuring transition implementation project. Given this change, the commission disagrees there is a need for an expedited process at this time, but reserves the right to open a rulemaking in the future should such a need become apparent. As discussed in Project Number 22187, the commission determines that REPs have the obligation for identifying whether they are serving "special needs" customers and advising the



registration agent of the presence of such customers, so that this information is ultimately available to the appropriate TDU.

Consumer Commenters proposed additional language to subsection (j) that would require the registration agent to provide the notice to customers anytime a customer's REP is changed. TNMP and REP Coalition both proposed changes to subsection (j)(2) to clarify the purpose of the notice sent by the registration agent to the customer in response to a switch request from a REP. The parties suggested changing the intent of the notice from "a second chance to cancel" to "correcting an incorrect change order." Consumer Commenters amended proposed (j)(2)(E) to require the notice to contain the "slamming advisory" in English and Spanish and to streamline information about how customers shall be advised to report instances of slamming. AEP Energy Services, Entergy Texas REP, and TXU Retail disagreed with the need for a slamming advisory, and TXU Retail specifically disagreed that this advisory should offer promises of compensation, since this may encourage customers to fake slamming reports. Consumer Commenters proposed deleting subsection (j)(2)(F), which required the notice to contain a toll-free number and statement in Spanish advising customers that the information in the notice could be obtained in Spanish by calling the advertised telephone number. Alternatively, Consumer Commenters argued that if the proposed change to subsection (j)(2)(E) is accepted, this subsection is not needed. Entergy Texas REP argued that Consumer Commenters' suggested changes to proposed (j)(2)(E) and (F) are unnecessary and should be rejected. They argued that providing statements in both English and Spanish would add needless costs and impose additional burdens on REPs.

TNMP, REP Coalition, TXU TDU, Reliant, and Consumer Commenters all proposed revisions to subsection (j)(3). REP Coalition proposed language that clarified that the TDU should have one day to act on the switch request, that the customer and the REP could agree to a specific switch date, and that the switch request is valid unless the customer informs the registration agent that the switch is incorrect. REP Coalition also added language consistent with its proposed new subsection (j)(2) on expedited requests. TXU TDU proposed language that ensures consistency with the Tariff for Retail Delivery Service being developed in Project Number 22187. TXU TDU also acknowledged that switch requests could happen at times other than the normal meter read cycle. Reliant proposed amending subsection (j)(3) to make it clear that the registration agent should "direct the TDU" to implement the switch to avoid any confusion about the entity that actually performs the switch. Similar to the idea presented by REP Coalition and TXU TDU, Consumer Commenters suggested amending (j)(3) to reflect that the customer could request a special meter reading to effectuate a switch on a specific date.

The commission amends subsection (j) to require the registration agent to provide the notification of switch to a customer anytime that customer's REP is switched and adopts new paragraphs (2)(A) and (2)(B) to distinguish between standard switch requests and requests to switch a customer to the POLR. The commission also agrees with the proposed changes recommended by TNMP and REP Coalition and amends subsection (j)(2) accordingly. The commission disagrees with Consumer Commenters' proposed revision to subsection (j)(2)(E) and the deletion of subsection (j)(2)(F). The commission does not believe the "slamming advisory" is necessary on this notice, since the customer will receive this notice prior to a slam actually occurring and deletes proposed (j)(2)(E). Additionally, the commission

acknowledges the concerns raised by other parties, this notification may be the only information the customer receives if the switch is unauthorized. Given its critical importance, it is imperative that both English and Spanish speaking customers have the maximum amount of time to cancel such unauthorized switch orders. The commission agrees with REP Coalition's proposal for subsection (j)(3) to allow the TDU one day to act on the switch request provided by the registration agent. The commission also agrees with all parties that the language in subsection (j)(3) should allow a switch to happen on a specific date, not just at the next meter read, and that such language should ensure consistency with the Tariff for Retail Delivery Service. The commission also incorporates Reliant's suggestion to make it clear that the registration agent directs the TDU to perform the switch. The commission disagrees that there is a need for an expedited process at this time, but reserves the right to open a rulemaking in the future should such a need become more obvious.

The State of Texas proposed additional language to subsection (k) to clarify that although the switch is made without authorization, no long-term commitment to service from the POLR is intended or implied. Consumer Commenters proposed language to clarify that the authorization, verification, and rights of cancellation do apply if the change to the POLR is initiated by the customer or the POLR.

The commission agrees with both suggested revisions and incorporates such language into subsection (k).

TNMP proposed deleting language in subsection (l) that would have capped the fee that could have been charged to a customer for an off-cycle meter read and prevented the registration agent from charging a switching fee to the customer. REP Coalition proposed modifying subsection (l) to allow the REP to pass through disconnect, reconnect, and off-cycle meter read charges imposed by the TDU without markup. MOU Commenters and TEC argued that subsection (l) should not apply to municipally owned utilities or electric cooperatives since they have the authority to establish rates or determine what fees they will charge.

The commission agrees with the arguments presented by MOU Commenters and TEC and revises this subsection accordingly. However, the commission declines to make any other changes to this subsection. The commission believes that the language as originally proposed fairly balances the right of the customer to switch service at an established, fixed date in exchange for the flexibility to request a more suitable date upon payment of a fair price.

Consumer Commenters proposed increasing the notice timeframe from 30 days to 45 days in subsection (m)(1) and mandating that the notice be a separate mailing and not a bill insert. TXU Retail did not agree with Consumer Commenters' proposal to increase the timeframe to 45 days and instead supports REP Coalition's proposal. AEP Energy Services also did not support Consumer Commenters' proposals to increase the timeframe for sending the notice and to require such notice to be a separate mailing. AEP Energy Services argued that a separate mailing would impose a potentially costly restriction on the notification process and that customers do not have the expectation that everything

sent with the bill is unrelated or unimportant to his service. TNMP and REP Coalition proposed deleting the requirement in subsection (m)(1) that such notice be provided in advance to affected customers, arguing that in many cases the information may not be available 30 days in advance, and such advance information may negatively impact the merger or acquisition. Additionally, TNMP and REP Coalition proposed deleting subsections (m)(1)(B),(C), and (E) and significantly revised (m)(1)(D). These parties argued that the mere fact that the REP has been acquired should not automatically give rise to a customer right to switch unless the change will result in a modification of the terms and conditions under which the customer is receiving service. Further, in some cases the customer and the original REP may have had a long-term contract. In such cases, the parties argued, both the new REP and the customer should be bound to continue service under the existing terms and conditions. Reliant proposed modifying (m)(1)(F) to make it clear that the notice may be sent to customers after the effective date of the transfer of customers, particularly if customers are transferred to the POLR. Consumer Commenters proposed modifying (m)(1)(G) to require the acquiring REP to provide the terms of service in addition to the Electricity Facts label.

The commission agrees with TNMP and REP Coalition that it may not always be feasible to provide adequate notice to customers in advance, and adopts language similar to that in §26.130 that allows the notice to be sent promptly after all legal and regulatory conditions are met. The commission disagrees with Consumer Commenters' proposal to increase the notice time from 30 days to 45 days, but agrees to the requirement that such notice be a separate mailing. The commission disagrees that any further changes should be made to subsection (m)(1) as proposed by TNMP and REP Coalition. The

commission, however, does agree that if there is no material change to the terms of service offered to the customer by the new REP, then the customer does not have the right to cancel the contract without penalty. The commission adopts new subsection (m)(3) to reflect this understanding. The commission also modifies subsection (m)(1)(F) as proposed by Reliant. The commission also makes the modification suggested by Consumer Commenters to subsection (m)(1)(G).

TNMP and REP Coalition proposed deleting subsection (n)(1)(A) and (B). They argued that REPs should not be considered guilty of slamming before they are allowed to investigate and respond to a filed slamming complaint. TNMP and REP Coalition also proposed revisions to subsection (n)(2) that would make the commission's investigation more formal, by allowing an opportunity for notice and hearing prior to the commission making a finding with respect to the complaint. Additionally, parties suggested that corrective actions be taken after such finding was made by the commission. Consumer Commenters also proposed a revision to (n)(2) that would require the commission to notify the complainant of his or her right to appeal the commission's finding. TNMP and REP Coalition proposed several revisions to subsection (n)(3) to incorporate the changes they recommended to subsections (n)(1)(A) and (B). They proposed new subsections (n)(3)(A) and (B) to require the unauthorized REP to take all actions within its control to return the customer to the original provider and cease collections activities related to the switch only after the commission has made a finding that the switch was an "intentional, unauthorized switch." Similarly, both parties recommended revising subsection (n)(4) to reflect that the responsibilities of the original REP are only triggered after a finding of intentional slamming by the commission. They also proposed deleting subsection (n)(4)(C), which required the

original REP to maintain a record of customers that experienced an unauthorized switch. Consumer Commenters proposed modifying (n)(4)(A) so that the customer would also be informed of the amount they would have been billed by the original REP had the unauthorized switch not occurred. TNMP and REP Coalition also suggested modifying (n)(4)(D) to reflect that while the original REP will not bill the customer for any charges, it may collect from the authorized REP any charges incurred during the period the customer was served by the unauthorized REP.

The commission disagrees with all the proposed changes to subsection (n) submitted by TNMP and REP Coalition. Based on experience in the telecommunications industry, the commission believes the rules as proposed appropriately respond to allegations of slamming while allowing both the customer and the affected REPs the opportunity to present information and supporting documentation to the commission for review and consideration. The commission rejects the proposal to turn the informal complaint resolution process into a more formal, evidentiary process as that would only delay resolution for the affected customer. Similarly, the commission declines to adopt Consumer Commenters' proposed change to subsection (n)(2). Proposed §25.485 and §22.242 (relating to Complaints) adequately document the commission's obligation to inform the customer of his right to appeal a commission resolution of an informal complaint. The commission's experience has demonstrated that customers who allege an unauthorized switch, first and foremost wish to be returned to their original service provider. If subsequent investigation by the commission determines that the allegedly unauthorized REP did in fact have appropriate authorization, it does not change the fact that, for some reason, the customer no longer wishes to receive service from that REP. Additionally, nothing in the

proposed rules prevents a REP that is not found "at fault" of an unauthorized switch from subsequently re-billing the customer for any and all appropriate charges, including any early termination/cancellation penalties that may have applied, pursuant to the customer's terms of service document. Additionally, the commission rejects that an unauthorized switch must also be found "intentional" for the customer to receive appropriate corrective actions. The commission defines an unauthorized change as a change in a customer's REP that is made without having authorization and verification from the customer, in compliance with the commission's rules, prior to switching the customer. As such, an unauthorized switch is viewed from the perspective of the customer, not the REP. Similarly, the commission also rejects the deletion of subsection (n)(4)(C). The commission receives only a small fraction of customer complaints. Typically, customers only complain to the commission after complaints to the appropriate companies have not resulted in any satisfactory response from those companies. As such, the commission encourages companies to respond to and resolve customer allegations of slamming among themselves, without forcing every customer to file a complaint with the commission to get appropriate resolution. REPs may find it beneficial to adopt a standard 30-day cancellation clause that allows a customer to switch back to the original provider for any reason within the first 30 days, as long as the customer pays for the electric service received. The commission also declines to adopt the modification proposed by Consumer Commenters. The commission believes subsection (n)(4)(D) provides correct notification to the customer of any charges he or she may be required to pay to the original REP.

MOU Commenters and TEC both commented that the records of customer verifications and authorizations required by subsection (o)(1) should not apply to municipally owned utilities or electric



cooperatives. These parties argued that reporting requirements imposed on electric cooperatives and municipally owned utilities are limited to those instances contained in PURA §40.004(7) and §41.004(5). Similarly, both parties argued that subsection (o)(2) does not apply to either since the proposed rule references PURA §15.023 and §15.024, which address the imposition of administrative penalties by the commission against "persons" in violation of provisions of the statute. Parties argued that neither a municipally owned utility nor an electric cooperative is a "person" as defined by PURA §11.003(14). TNMP and REP Coalition also proposed modifying subsections (o)(2) and (o)(3) to incorporate the idea that corrective actions may only be required by the commission "after notice and hearing." Consumer Commenters proposed modifying (o)(3) by removing the phrase "and recklessly" from the finding made by the commission in order to initiate the certificate revocation. TEC argued that subsection (o)(3) should also be modified to reflect that electric cooperatives and municipally owned utilities are not required to be certificated and therefore, they are not subject to this provision.

The commission agrees with the arguments presented by MOU Commenters and TEC and amends this subsection, as appropriate, to reflect their concerns. The commission rejects the changes proposed by TNMP and REP Coalition for the reasons cited in subsection (n). The commission notes that §22.246 of this title (relating to Administrative Penalties) adequately addresses the concerns raised by these parties with respect to due process upon the finding that they are in violation of commission rules. The commission agrees to modify subsection (o)(3) to more closely reflect the standards outlined in PURA §39.356.

*§25.475, Information Disclosures to Residential and Small Commercial Customers.*

REP Coalition suggested a general clarification that the disclosure provisions refer to "electric services" and "electric service products" rather than services and products.

Reliant and the State of Texas noted that the term "plan name" in §25.475(a) was not defined. Reliant said the term should be deleted if it meant the same thing as "name of product offered." The State of Texas said "plan name" should be defined in §25.471 if there is a requirement to disclose it.

With regard to advertising claims made about an electric product's price, cost competitiveness, or environmental quality, AEP Energy Services suggested eliminating the specific statement required by the rule and allowing REPs to use words of their own choosing that indicated the phone number and/or Internet site where consumers could obtain more details. AEP Energy Services agreed, however, that persons contacting a REP for more information should be provided with information in a form that allowed easy comparison with other products.

With regard to §25.475(c)(3), terms of service document, MOU Commenters and TEC said the commission has no authority to require municipally owned utilities or cooperatives to furnish it with their terms of service documents, because PURA specifically limits the commission's authority in this regard.

TXU Retail said the disclosures required in the terms of service document should not restrict the customer's ability to purchase a package of electric and non-electric services at a "package" price. The company said that experience in other competitive markets has shown that REPs will probably be offering a variety of services, some of which would not fall under the commission's jurisdiction. At the public hearing for this project on October 16, 2000, TXU Retail clarified that a provider should be exempt from having to provide the information specified in §25.475(c)(5)(G) if electric service were sold as a package that included services not regulated by the commission and should not have to itemize component costs for the package on the customer's bill. In its reply comments, Shell disagreed with TXU Retail's position. Shell said if a provider can understate the true cost of electricity by bundling it with dog-walking or other services, then the possible misrepresentation of the price for electric service makes a mockery of the Electricity Facts label.

The commission applauds efforts by TXU Retail or any other REP to offer creatively designed products to meet customer demand. However, REPs are required to provide an Electricity Facts label that reflects the "bundled" cost of electric service, *i.e.* the price to beat rate for affiliate REPs. To the extent other non-electric services are packaged with electric service, competitive retailers must follow the standards outlined in §25.475(c)(5)(G) and 25.475(e)(1)(A)(iii) in disclosing the price to customers. The commission notes that this subsection is not intended to allow affiliate REPs to offer bundled products, consisting of both electric service and non-electric service, that have the effect of discounting the price to beat rate.

AEP TDUs said the terms of service document should also include a list of discretionary fees contained within the TDU's tariff, because the TDU will be permitted to bill the REP for discretionary service fees incurred by a retail customer.

AEP Energy Services said items specified in §25.475(c)(5)(L)-(N) should be included in the "Your Rights as a Customer" disclosure rather than in the terms of service document. These items relate to nondiscrimination and the availability of assistance programs for qualified low-income persons.

Consumer Commenters said the terms of service should contain no minimum contract term and no penalty for a customer to terminate a contract after 30 days notice. They also recommended: itemizing costs related to switching (specifically special meter reading fees, deposit requirements and charges associated with non-electric services, as applicable); clarifying that the billing methods set forth under §25.475(c)(5)(G) are the same as those used to produce the Electricity Facts label for that product; deleting switching fees from §25.475(c)(5)(H) and limiting late payment and collection costs to nonresidential accounts; requiring a description of the provider's own anti-discrimination policy; informing all customers about bill payment assistance; and describing the company's customer complaint procedures. Consumer Commenters said limiting late payment and collection costs to nonresidential customers would make this provision consistent with §25.480(b).

Consumer Commenters supported 45-day advance notice for changes in terms and conditions, contract, or terms of service. Additionally, Consumer Commenters said any material change should

automatically cause the contract to revert to a month-to-month term so that customers who missed the 45-day window would still have an opportunity to change providers. Consumer Commenters support requiring that notice be given in a separate mailing, not as an insert to the bill, and support automatic renewal clauses to be in effect for a maximum of 30 days.

The commission agrees with Consumer Commenters that 45 days advance notice of material changes is appropriate and changes the rule accordingly. The commission also agrees with Consumer Commenters that a material change in the terms of the contract should give customers an opportunity to change providers. Accordingly, the commission adds a requirement that the notice shall give the customer the option to decline any material change in the terms of service and cancel the contract without penalty. The commission also clarifies that such a provision would not be required if the change would be beneficial to the customer, such as a price decrease, or if the change is mandated by a regulatory authority. The commission disagrees that such notice must be provided in a separate mailing, but instead requires such notice to be conspicuously labeled.

AEP Energy Services supported the general format specified for the Electricity Facts label, but wanted to allow REPs some flexibility in the appearance. TXU Retail said the rule should provide flexibility for REPs to provide their Electricity Facts labels electronically, and should permit the adjustment of font sizes so that a label can fit onto a standard sheet of paper. EDF sought a clarification to specify that an Electricity Facts label must be provided for each product offered by a REP. EDF also said the label should be distributed monthly or quarterly, and should coincide with a customer's ability to shop. TXU

Retail replied that updates and distribution more frequent than those currently required under §25.475(e)(7) could create customer confusion and lead to increased compliance costs that would be passed on to customers.

The commission holds that a standard format will make it easier for customers to compare product offerings, and declines to make the changes suggested by AEP Energy Services and TXU Retail. Increasing the length or the width of the label is acceptable. Furthermore, the current wording of the rule does not preclude offering an electronic version of the label in the prescribed format, as long as a printed version is also available. The language of subsections (c)(1), (c)(5)(B), (e)(3) and (e)(4) taken together establish the intent of the commission that an Electricity Facts label must be specific to the electricity product being offered to customers, and a separate label should be prepared for each product. The commission finds no compelling reason to require monthly or quarterly distribution of the label as a billing insert as long as the label is available to the customer upon request, as currently provided in the rule.

Shell said separate price disclosures for consumption levels of 500, 1000 and 1500 kWh per month will be misleading to customers and lead to inaccurate pricing comparisons among REPs. Shell suggested a single price based on the actual average consumption of each class of customer in a TDU territory, as determined by the commission. Shell said different utilities can have different rate structures, which can skew the results of rate comparisons. The company also commented that "most consumers are unlikely to know their monthly consumption, much less the intricacies of utility rate design."

The commission disagrees with Shell's assessment of customer awareness. Some customers – especially those who can modify their electric consumption – may want a product that offers tangible savings for conservation, and the Electricity Facts label should make it easy for customers to compare various products on such criteria. The commission declines to make the change suggested by Shell.

Consumer Commenters suggested changing the heading "energy charge" to "comparison price." Consumer Commenters also said that for products priced according to time-of-day rates, price disclosures should include the peak rate, the off-peak rate, and the number of peak/off-peak hours used in load profile assumption. Consistent with its comments with regard to standard month-to-month contract terms, Consumer Commenters also said items concerning minimum term and penalty for early contract termination should not have to be addressed. In addition, Consumer Commenters suggested adding an item to the label disclosing the REP's average wait time for calls into the company's customer service center. AEP Energy Services, in reply, said issues regarding wait time were better addressed in REP certification rather than the Electricity Facts label. AEP Energy Services said it may be more important to a customer to have a question resolved quickly.

The commission agrees with Consumer Commenters that adding off-peak rates would add to a customer's ability to compare products that vary seasonally or according to time-of-day use, and revises the content of this portion of the label accordingly. In addition, the heading of this section is changed to

"electricity price." The commission makes no change with regard to the "contract" section, as there is no compelling reason to limit a provider's ability to offer a long-term contract product.

EDF strongly supported the type of fuel and emissions disclosures contemplated in the rule, noting that it followed the precedent set by §25.251 relating to Renewable Energy Tariff. Enron suggested adding a column in the fuel mix table to depict the statewide system mix, saying that the comparison would be meaningful to customers. Green Mountain advocated eliminating mandated renewables from the fuel mix table, a proposal TXU Retail said was illogical and self-serving. TXU Retail said mandated renewable generation purchases should be included in a REP's fuel mix disclosure. Green Mountain and Enron recommend adding a footnote to the fuel mix table clarifying that state law mandates a provider to buy a certain amount of renewable energy. Both said the practice would be consistent with environmental marketing guidelines published by the National Association of Attorneys General (NAAG), adding that under the NAAG guidelines, marketing a renewable product solely on the basis of mandated purchase requirements was misleading to customers. In its reply comments, however, Reliant said it found no such statement in the NAAG guidelines. Reliant said that even if there were such a statement, it would not apply, as there is no requirement to purchase renewable energy because a provider may choose to incur a statutory penalty instead. Reliant said providers should be allowed to place a footnote in the label that states they are in compliance with purchase requirements either through actual purchases or penalty payments.



The commission agrees with Enron that a column depicting the statewide fuel mix would help customers evaluate different electricity products, and changes the "sources of power generation" section of the Electricity Facts label accordingly. The commission agrees in part with various comments made by Green Mountain, Enron and Reliant regarding the renewable energy mandate. The commission holds that a product's use of renewable resources can be compared side-by-side with the state average, and that this comparison will be sufficient for customers to judge the extent to which the provider is in compliance with the renewable mandate. Unless it offers a renewable-only product at the price to beat rate, an affiliate REP must include its renewable power in the Electricity Facts label for its standard price to beat product. Further issues regarding how mandated renewable energy purchases are disclosed shall be addressed in Project Number 22816, *Standards for the Labeling of Electricity with Respect to Fuel Mix and Air Emissions*.

CEED said carbon dioxide should be deleted from the disclosures on the Electricity Facts label because it implied a threat to consumer's health and/or safety that was inappropriate. CEED asserts that there is no clear scientific consensus regarding the correlation of carbon dioxide emissions and global warming. CEED also suggested that the bar chart should use national averages rather than state averages as a benchmark, and should carry a statement that industrial air emissions in Texas, as regulated by the Texas Natural Resources Conservation Commission, are required to comply with standards established under the U.S. Clean Air Act. EDF, on the other hand, supported using a state average as a benchmark for comparison, because the state is the relevant market within which Texas consumers will purchase power. In reply comments, Reliant joined CEED.

The commission declines to pass judgment on the quality of scientific research on global warming. The commission does, however, have a statutory mandate to ensure that Texans have sufficient information to make such a judgment themselves if it affects their choice of a REP. The commission therefore declines to make the deletion recommended by CEED. The commission agrees with EDF and finds that using national emissions benchmarks would not contribute to a Texas electric customer's ability to compare Texas electric providers.

EDF suggested changing the heading on the bottom section to "emissions disclosures," noting that nuclear wastes are not air emissions. Consumer Commenters found the emissions graph confusing and suggested developing another format that replaces the label "100%" with the term "statewide average" and includes a line or shading to indicate where bars are above or below the statewide average. A similar suggestion was made by EDF. AEP Energy Services and TXU Retail wanted to delete references to low-level nuclear waste, as previously decided by the commission.

The commission agrees with the comments of EDF and Consumer Commenters regarding the presentation of emissions disclosures. The commission finds that a meaningful comparison of environmental impacts would show customers how various products compare to a single benchmark, and that the most meaningful benchmark is the Texas average for each environmental criterion. The commission therefore revises the emissions graph to reflect indexed values, with the value 100 representing the Texas average for each criterion. The area between zero and 100 is labeled "better

than Texas average," and the area above 100 is labeled "worse than Texas average." The graph heading is changed to "emissions and waste per kWh generated." References to low-level nuclear waste are deleted.

Some of the comments regarding the Electricity Facts label also pertained to issues being considered in Project Number 22816. Green Mountain recommended that all issues relating to the presentation and calculation of fuel mix and environmental impact on the Electricity Facts label be consolidated under Project Number 22816. Similarly, Enron said specific fuel sources and emission types should be determined in that project.

Consumer Commenters wanted labels to be ready June 1, 2001, so that they could be distributed with products marketed during the pilot project. Enron, however, wanted to change the annual distribution date of the label to April so that it would coincide with the settlement schedule for the Renewable Energy Credit (REC) Program in §25.173, relating to Goal for Renewable Energy. Both Enron and Green Mountain advocated an annual calculation of historical emissions and fuels, concurrent with settlement in the REC program, to authenticate claims made on the Electricity Facts label. The companies also favored prospective disclosures by which a REP would project the year's anticipated amount of renewable energy, with authentication done at the end of the year.

Green Mountain and Enron recommended deleting the category "unknown resources" from the fuel mix table. Both said including both categories is confusing, redundant, and unnecessary. In its reply

comments, Reliant concurred. Consumer Commenters recommended renaming "unknown" as "spot market" to reflect the fact that electricity purchased on the spot market probably will not be traceable to specific generators. Consumer Commenters questioned the necessity of the category "other" if spot market purchases were categorized separately.

TXU Retail wanted to add to the rule requirement for fuel mix disclosures, "To the extent the information is available to the REP from the REP's supplier." Green Mountain emphasized that REPs should not have the option of avoiding environmental disclosure by claiming that a large portion of their power came from unknown generation sources. Green Mountain advocated assigning statewide system average values to such generation and factoring it in with a REP's generation from known sources. Enron and Green Mountain said statewide system averages should be recalculated annually to reflect changes in the renewable energy market. EDF, in its reply comments, emphasized its support for company-specific disclosures that would enable customers to compare REPs and their electricity products.

Consumer Commenters supported reporting of emissions by all REPs (not just those who claim to offer "green" energy) based on the estimated emissions of the company's individual wholesale electricity purchases, and opposed using statewide averages. New Power, in its reply, argued the opposite and said REPs would not be able to determine the generation sources for such wholesale electricity purchases. Green Mountain stated its preference for a system of tradable tags that would permit identification of the emissions profile for particular wholesale sales of electricity. Green Mountain said

REPs should have the flexibility to be as accurate as possible with their emissions disclosures, and that regional average emissions values would not be sufficient for accurate disclosure.

Issues relating to how fuel mix and environmental disclosures are calculated are being addressed in Project Number 22816. The commission therefore deletes from (e)(4) references to the Texas Natural Resource Conservation Commission's Point Source Air Emissions Inventory. Of the specific issues raised by the parties in these comments, the commission shall defer the following to Project Number 22816: when disclosure data shall be calculated; whether disclosures should be historical or prospective; the use of statewide, regional or ISO averages; and accounting for power purchased on the spot market. The fuel mix table shall retain the categories "coal and lignite," "natural gas," "nuclear," "renewable energy," and "other."

Further, the commission makes no change to §25.475 with regard to the distribution of the label. Subsection (b) as written makes clear that when a provider begins marketing an electricity product, the label for that product must be ready for dissemination to prospective customers. The commission notes that the date July 1, 2002, specified in subsection (e)(7) pertains strictly to distribution of the label as a billing insert and does not prevent providers from creating Electricity Facts labels for use in marketing, advertising, and customer enrollment for both the pilot project and full retail competition.

REP Coalition said that a common statement for "Your Rights as a Customer" would help avoid customer confusion. Consistent with its comments regarding disconnection, REP Coalition wanted the

"Your Rights" document to include a statement describing disconnection of service protections by the REPs.

MOU Commenters noted that PURA maintains the authority of municipally owned utilities and cooperatives over metering in their service areas. Rule provisions for the "Your Rights as a Customer" disclosure with regard to meter reading – §25.474(f)(4)(B) – therefore should be amended to reflect this.

AEP TDUs specified that the "Your Rights as a Customer" disclosure should clarify that the TDU physically disconnects a customer.

Consumer Commenters suggested making the "Your Rights" document focus more on general customer rights, with company-specific provisions moved to the terms of service document. Consumer Commenters' specific changes included: stating a customer's right to switch providers after 30 days notice; describing the information that must appear in the terms of service document, with emphasis on information likely to vary among providers (Electricity Facts label, cost of electricity, amount of security deposit, special meter reading fee, cost of services other than electricity, company anti-discrimination policies, and procedures for handling complaints); moving company complaint resolution procedures to the terms of service document and explaining in the "Your Rights" document the commission's complaint process; clarifying payment arrangements regarding weather emergencies and high bills; and moving procedures for reporting outages to the terms of service document. Generally citing Senate Bill 86 (SB

86), 76th Legislative Session, Consumer Commenters also recommended requiring providers to offer levelized payment options and to include a description of this option in the "Your Rights" document.

The commission agrees with Reliant that the "Your Rights" document should be provided free of charge to the customer. The commission agrees with Consumer Commenters that the "Your Rights As a Customer" document should be more general and contain standard rights for customers that do not vary between companies. Additionally, the terms of service document is expected to be more company specific and should contain policies that are specific to the company. The commission agrees with Consumer Commenters that the "Your Rights" document should include a statement that the company offers levelized payment plans. The commission also agrees with AEP TDUs that the TDU performs the actual disconnection and this information would be of value to the customer and should also be contained in the "Your Rights" document. The commission makes changes to the rule to reflect these findings. The commission will develop a pro-forma "Your Rights as a Customer" that complies with these provisions and which REPs may reproduce for distribution to their customers.

*§25.476, Request for Service.*

REP Coalition suggested changes to proposed subsections (a) and (b) to make the connection process the same for all types of REPs. REP Coalition further recommended that the REP initiate the connection process within one day after the three-day cancellation lapses. In its clarifying statements filed after the October 16, 2000 workshop, REP Coalition indicated that the rule should instead require

the REP to submit the switch from the registration agent at the proper time so that the switch is processed on the date agreed to by the customer and as allowed by the TDU's tariff. Moreover, REP Coalition requested replacing "switch" with "connection" to indicate that this section refers to requests for new service, not switches of providers.

Consumer Commenters recommended replacing "within three days" with "after the rescission period is over" to clarify that the three-day cooling off period applies to all requests for service.

The commission agrees with the clarification offered by the REP Coalition after the October 16th public hearing and modifies the rule as suggested. The commission declines to use the term "connection" instead of "switch" because this section applies to all requests for service, not just new requests. The commission also finds that requirements contained in this section would be more appropriately contained in §25.474(i). Therefore, the commission transfers the amended language to §25.474(i), and withdraws §25.476 as published from consideration for adoption.

REP Coalition recommended replacing "actual" with "scheduled" date that the customer will be receiving service from the new provider. REP Coalition further recommended that the TDU inform the REP and registration agent if the scheduled date varies by more than two business days.

In reply, TXU TDU opposed this process, because it is intended to address interactions between the TDU and REP and should not be included in the customer protection rules. TXU TDU added that this



type of requirement should be addressed, if at all, in the tariff for delivery service (commission Project Number 22187, *Terms and Conditions of Transmission and Distribution Utilities' Retail Distribution Service*).

The commission agrees that customers should be informed by their selected REP of the scheduled switch date and of any subsequent changes to that date and modifies the rule accordingly.

MOU Commenters suggested prefacing proposed subsection (a) with the phrase "other than in service areas of municipally owned utilities or electric cooperatives," to account for the fact that service is initiated by the customer – not by a REP – in municipally owned utility or cooperative service area, consistent with the terms and conditions of access applicable to those areas.

TEC stated that proposed §25.476 fails to recognize that a municipally owned utility and electric cooperative may be providing energy service, in addition to a REP, affiliate REP, and a POLR. Therefore, TEC recommended adding "consumer-owned competitive retailer" to the entities that may provide functions in subsections (a) and (b). TEC further commented this section does not account for the differences between the terms and conditions tariffs being developed under commission Project Number 22187 for municipally owned utilities and electric cooperatives. Specifically, TEC suggested adding the language in proposed subsection (b) to reflect that a cooperative or municipally owned utility may initiate access to the delivery system under their tariff terms and conditions.

The commission agrees with TEC, and has amended the rule to apply to all REPs. However, the commission declines to use the term consumer-owned competitive retailer, and will separate municipally owned utilities and electric cooperatives from REPs as necessary.

REP Coalition recommended a separate process for expedited connection, at the customer's request. The expedited connection process would require the new customer to agree to pay for all electric service received if the customer exercises the right to cancel service within the rescission period, as well as waive receipt of an enrollment notice from the registration agent. Such a waiver would not, however, prevent the customer from filing a complaint against the REP for slamming, cramming, or on some other basis. The proposed language would allow the REP to request the registration agent and the TDU to complete the connection at the time agreed to by the customer, or as soon thereafter as the TDU can accomplish in accordance with its tariff.

In reply, TXU TDU expressed concern with REP Coalition's recommendation for the same reasons outlined under §25.474 pertaining to expedited switch or reconnect service.

As mentioned in the commission's response in §25.474(h), the commission disagrees that an expedited connection process is needed, and instead allows REPs to submit enrollment or switch orders to the registration agent prior to the expiration of the customer's right of cancellation period.

TEC suggested adding the word "energy" before service throughout this section to clarify the type of service being provided. In its reply comments, TXU Retail recommended "electric" instead of "energy" to avoid confusion with other types of energy service (*e.g.*, gas).

The commission agrees with TXU Retail, and has amended the rule accordingly.

*§25.477, Refusal of Service.*

In proposed subsection (a)(2), TEC recommended modifying the provision regarding prohibited equipment to include not only the tariffs of TDUs, but also the tariffs of cooperatives and municipally owned utilities.

The commission agrees with the proposed change, and has revised the rule accordingly.

In proposed subsection (a)(3), Reliant and TXU Retail commented that the term "prove" is used improperly here, and will be difficult to apply and enforce. TXU Retail suggested replacing it with "reasonably demonstrate."

The commission concurs with Reliant and TXU Retail, and has amended the rule accordingly.

REP Coalition and TNMP recommended changes to proposed subsection (a)(3) and (4) to require all REPs, not just the affiliate REP or POLR, to offer the customer an opportunity to pay outstanding debt to receive service. This corresponds to REP Coalition's recommendation concerning the ability of a REP to disconnect.

The commission disagrees with the proposed change, on the basis that a REP has the discretion to offer the customer an opportunity to pay outstanding debt. Only the affiliate REP and POLR should be required to do so. However, the commission has eliminated proposed subsection (a)(5), which allowed any REP to refuse service to a customer if the customer owed a debt to the POLR. The commission finds that there would be no appropriate mechanism that would clearly distinguish the debt owed to a POLR versus a debt owed to another REP that shares the same company name as the POLR.

Consumer Commenters recommended amending subsections (a)(4) and (5) to require all REPs to offer a deferred payment plan if the customer expresses an inability to pay the outstanding (undisputed) debt.

TXU Retail, Entergy Texas REP, and AEP Energy Services replied that the commission should reject Consumer Commenters' proposal regarding deferred payment plans.

The commission disagrees with Consumer Commenters that all REPs should be required to offer a deferred payment plan. While the commission encourages REPs to offer alternative payment

arrangements, the commission finds that mandating such a requirement is inconsistent with the competitive market.

The State of Texas noted that a deposit should not be required under proposed subsection (a)(4) due to indebtedness, if the dispute is over indebtedness of the customer.

In reply, AEP Energy Services disputed the State's recommendation, on the basis that a deposit should be required if a customer has had service legitimately terminated and there is still unpaid indebtedness. AEP Energy Services added that the fact that a customer raises a dispute over the amount previously owed when the customer seeks to re-establish service, should not permit the customer to avoid the deposit.

The commission recognizes the State of Texas' concern that requiring a deposit for indebtedness when the indebtedness is in dispute implies that the customer is at fault. However, the rule does not require the REP to collect a deposit. Instead, it states that the REP must provide service if the customer's indebtedness is in dispute and the customer pays a deposit. This provides protection for both the new provider as well as the customer. Therefore, the commission declines to strike this provision.

REP Coalition recommended changes to proposed subsection (a)(8) to allow all REPs to refuse service if the customer is unwilling to accept its terms of service. The purpose for this change, according to REP Coalition, is to enable competition.

The commission declines to adopt such a provision in this section. The commission finds that if a customer does not choose to accept a REP's terms of service, as provided to the customer pursuant to §25.474 and §25.475, the customer may decline to receive service from that REP or exercise the right to cancel the contract.

Consumer Commenters, Shell, and the State of Texas opposed the one-year minimum term for customers returning to an affiliate REP. The parties asserted this provision is a barrier to competition and contrary to the notion of customer choice. The State of Texas added that the proposed rules should not in any way restrict a customer's ability to switch providers to obtain a better price and/or service.

In reply, AEP Energy Services and TXU Retail expressed support for the minimum term to avoid having customers return to the price to beat for short periods when it is lower than the competitive market price. Both AEP Energy Services and TXU Retail recommended the commission address this issue in the price to beat rulemaking.

The commission disagrees with REP Coalition and finds that an affiliate REP cannot require a minimum service term, for reasons specified in the discussion of Question 8. The commission has amended the rule accordingly.

The State of Texas and Consumer Commenters recommended striking subsection (a)(9), which allows a REP (that is not an affiliate REP or POLR) to refuse service for any reason that is non-discriminatory. Consumer Commenters argued that this provision provides too much discretion and would invite abuse.

TXU Retail claimed that an affiliate REP should be treated like all other REPs, except the POLR, for the purposes of this subsection.

In reply, AEP Energy Services and TXU Retail opposed striking this subsection. TXU Retail asserted that the rules should allow competitive REPs to choose which customers to serve, so long as their choices are not made on illegally discriminatory criteria. AEP Energy Services added that this subsection provides a legally appropriate and non-discriminatory policy that may contribute to lower costs and benefit a competitive market.

The commission agrees with TXU Retail, and declines to strike subsection (a)(9).

The State of Texas recommended adding a category to proposed subsection (b), so that a REP is not permitted to refuse service for failure to pay an outstanding bill to another REP. The State argued that REPs should not be in the business of collecting debt for their competitors.

In reply, TXU Retail stated that a REP must be able refuse to serve a potential customer if they know the customer left its previous provider with an unpaid bill.

The commission agrees with the principle embedded in the proposal by the State of Texas. However, such a provision is inconsistent with the credit and deposit standards adopted under §25.478(a) for competitive retailers. Additionally, all REPs are encouraged to make use of readily available credit reports from accredited reporting agencies. To the extent REPs report past due accounts to such agencies, that information would be available for review by other REPs and such REPs may use that information as the basis for collecting a deposit or requiring a customer to produce other acceptable credit.

AEP TDUs stated that proposed subsection (b)(2) should be clarified to allow a REP to refuse service to a customer who fails to pay charges for the discretionary services contained in a TDU's tariff. AEP TDUs claimed this is necessary because these charges are related to the provision of electric service.

The commission agrees with AEP TDUs, but declines to make any changes to the rule. As defined in §25.341(7) of this title (relating to Definitions), discretionary services are related to the transmission and distribution of electricity. Therefore, failure to pay these discretionary charges is grounds for the REP to refuse service.

AEP TDUs also commented that proposed subsection (b)(3) is inconsistent with the recovering period in cases of theft that are allowed under commission Project Number 22187, *Terms and Conditions of Transmission and Distribution Utilities' Retail Distribution Service*. Proposed subsection (b)(3)



allows a REP to back-bill a customer for services provided over a period of more than six months in cases involving theft of service, whereas the standard terms and conditions developed under Project Number 22187 allow a maximum six-month period.

The commission declines to make any changes to this rule, because there is no longer an inconsistency between the recovery period in cases of theft. The terms and conditions of a TDU's retail distribution service tariff does not place a restriction on amount of time a TDU can back bill in cases of unauthorized use of the delivery system.

Consumer Commenters recommended amending proposed subsection (c) to require a REP to explain in detail the specific reason for the refusal of service. Without such information, according to Consumer Commenters, a customer might not be able to determine whether service has been refused for a prohibited reason.

TXU Retail replied that Consumer Commenters' recommendation is too subjective and should not be adopted.

The commission agrees with TXU Retail that the term "in detail" in this context is extremely vague. Thus, the commission declines to make the change proposed by the Consumer Commenters. However, REPs should provide a sufficient explanation so the customer understands the reason for such refusal.

Reliant claimed that proposed subsection (c)(1) should not require written refusal of service notices in every case. Instead, Reliant suggested language in proposed subsection (c)(1) for the notice to be provided in writing or by other means at the customer's request.

Reliant and TXU Retail claimed that this subsection should also allow for electronic disclosure to a customer attempting to enroll via Internet (*i.e.*, in cases where the customer resides in an area not served by the REP).

The commission agrees with Reliant's and TXU Retail's proposed changes and modifies the rule accordingly.

REP Coalition and TNMP suggested adding an exception to written notices in proposed subsection (c)(2) for customers that do not otherwise qualify for the product or service offered by the REP under applicable terms of service. Similarly, Reliant claimed that proposed subsection (c)(2) should recognize the TDU's right to refuse service under its tariff.

The commission disagrees with REP Coalition and TNMP and declines to include such an exception in subsection (c)(2), since it could be easily abused. The commission also declines to make Reliant's proposed change to subsection (c)(2), on the basis that this rule does not govern the relationship between the TDU and the customer.

*§25.478, Credit Requirements and Deposits.*

REP Coalition made a general argument, with respect to all of the proposed rules, that all REPs, and not just the POLR, should have the ability to disconnect customers for non-payment of their electric bills.

REP Coalition identified a number instances in §25.478 where conformity changes would need to be made if its policy recommendation on disconnection is adopted by the commission. Reliant and TNMP filed redline editions of the proposed rules with the same proposed changes. Reliant's redline edition also spelled out "REP" instead of just "provider" in subsection (h) and (j) in this regard.

The commission declines to adopt a policy allowing all REPs the right to seek disconnection of a customer's electric service for non-payment, including the related right to prevent a customer from switching to another REP until the customer pays all outstanding balances. The commission believes that such a policy is an inappropriate collection mechanism in a competitive market. However, the commission agrees other requirements that more properly reflect competitive credit and collection practices should be considered. Specifically, the commission amends subsection (f) to reflect that the amount of deposits may be the greater of either the next two months' estimated usage or one-sixth of the estimated annual billing. The commission believes that allowing for an increased deposit during anticipated peak summer months appropriately allows the REP to mitigate the potential risk that a customer may not be able to pay a bill and that the deposit could then be applied to any unpaid balance. For similar reasons, the commission modifies subsection (k) to allow a REP to maintain a customer's deposit for the entire time a customer receives service from the REP, and to allow the customer to

designate whether a refunded deposit is paid to the customer or transferred to the new REP, should the customer switch REPs.

Concerning subsection (a), Entergy Texas REP said that it would potentially allow a residential customer to establish credit on the basis of one month's history with a REP and proposed that the wording of paragraph (3)(A)(i) should instead be changed to reference a customer who has been a customer "for" two years prior rather than "within" two years prior. Without explanation, REP Coalition offered language to paragraph (3)(A)(v) to change "a letter of credit history" to "credit history information detailing (A)(i)-(iv) above" and clarifying that "provider" could mean either REP or TDU.

The commission declines to adopt Entergy Texas REP's proposal to limit the applicability of subparagraph (A) to only those residential customers who have been customers of REPs or TDUs for a minimum of two years. The other clauses within subparagraph (A) offer sufficient balance to the potentially small time period allowed in clause (i), where the term "within two years" appears.

The commission agrees that the phrase "a letter of credit history" is confusing and modifies the language to clarify that a REP obtains a satisfactory payment history from the customer's previous REP or from an accredited credit reporting agency. The commission declines to adopt the suggested detail concerning type of provider, because the language in the published rule is inclusive of both types.

REP Coalition proposed that the following language be added to the end of subsection (a)(3)(C): "and previous REPs and transmission and distribution utility furnish such information, if available, to the REP after a request." In response to staff requests for clarification, members of REP Coalition said that the intent of the wording was to acknowledge that the referenced credit history might not be available from prior providers and to let the new provider "off the hook" if the credit record was not available. Two members of the Consumers Commenters argued against REP Coalition's proposal, saying that it takes away the ability of the customer to establish credit under the provision when credit records are not available, warning that providers could conveniently lose such records and, once lost, the customer would be out of luck with alternative providers as well. Consumers suggested that either providers should be specifically required to keep such information, or, in the alternative, that a new provider should have to allow the customer to qualify under the provision when a negative credit cannot be established (due to unavailability of records or otherwise). REP Coalition affirmed that it did not intend to extend the credit history requirement beyond the stated two years, or to put onus on either the customer or previous providers to produce the records.

The commission agrees with Consumer Commenters that a residential customer who is 65 years of age or older, and who otherwise meets the requirements of subparagraph (C), should not be denied this avenue of establishing credit due to unavailability of records. The commission amends subparagraph (C) to allow otherwise eligible customers to qualify if no negative record can be established.

Regarding subsection (b), relating to credit requirements for non-residential customers, the State of Texas argues that no deposit should be required from governmental entities because their creditworthiness is not an issue and because most governmental entities are not subject to the types of late fees and charges which would be deducted from a deposit. Entergy Texas REP said that this provision should be modified to explicitly allow a REP to require a deposit from non-residential customers if satisfactory credit cannot be demonstrated, proposing the addition of the sentence, "If satisfactory credit cannot be established by non-residential customer using the criteria established by the REP, the customer may be required to pay a deposit."

The commission agrees with the State of Texas that the provisions of subsection (b) should not apply to customers that are governmental entities, and amends the provision accordingly. The commission also agrees with Entergy's revision and adds the proposed language.

For clarity purposes, AEP Energy Services proposes that subsection (c), relating to initial deposits, be divided into two lettered subsections addressing guarantors and initial deposits.

The commission finds that the separate paragraphs function to separate the issues referenced by AEP Energy Services and declines to make the change.

REP Coalition also proposed language to subsection (j)(6), relating to guarantees of residential customer accounts, that "terms of service document" be changed to "letter of guarantee."

The commission disagrees with REP Coalition and declines to adopt the proposed language. The commission believes that a customer's terms of service document should clearly identify that failure of a customer acting as a guarantor to pay the guaranteed amount may lead to the termination of the guarantor's contract. The commission also encourages REPs to reiterate this provision in the letters of guarantee actually signed by the customer.

Regarding subsection (l), relating to re-establishment of credit, REP Coalition proposed that "by that customer" be inserted to the "disconnected for...theft of service" reference. TXU Retail proposed that the requirement that a REP prove the amount of electric service received but not paid for and the reasonableness of any charges, be reduced to an obligation to "explain" the amounts and only "upon request."

The commission agrees with REP Coalition and adds "by that customer" in reference to theft of service. The commission finds that the burden of proof for the amounts unpaid and the reasonableness of charges is appropriately assigned to the REP. However, the commission agrees that the exercise of proof need not occur except upon request and amends the rule accordingly.

Regarding subsection (m), relating to upon sale or transfer of company, TXU-Retail argued that "customer deposits" should be added to the provision so that customer deposits would follow customers when a new POLR is designated or when a REP sells or transfers its business. TXU-Retail proposed

that the amount to be transferred should be the net deposit, the amount remaining after the full deposit is applied to any final unpaid bill prior to the sale or transfer of a REP's business.

The commission declines to adopt any changes to subsection (m), because it presumes that deposits held by the selling company are transferred to the acquiring company, provided the acquiring company accepts the transfer of such deposits. Additionally, the changes made to subsection (k) already specify that any amount still owed to the REP may be subtracted from the amount of the deposit refunded or transferred. As a result, the commission declines to re-iterate such provisions in this subsection.

*§25.479, Issuance and Format of Bills.*

Reliant, TNMP and REP Coalition proposed clarifying that §25.479 and §25.480 pertain to a customer's bill from a REP for electric service.

The commission agrees that §25.479 and §25.480 apply to electric bills issued by REPs. However, the commission disagrees that it does not have the jurisdiction to regulate other products and services as they relate to the electric bill. Specifically, PURA §17.151 clearly establishes the commission's authority over other, non-electric, products and services that appear on the customer's electric bill. The commission clarifies these rules to reflect this understanding.



REP Coalition, TNMP, and Reliant suggested that the requirement for a monthly bill be negotiable between the customer and the REP, and proposed changes in subsection (a) to reflect that. Reliant commented that some parties may prefer, and some REPs may elect to offer, a quarterly, semi-annual, or annual bill for electric service instead of the monthly bill required by this section. In reply comments, the Independent Retailers and REP Coalition proposed that through mutual agreement between the REP and the customer a less frequent or more frequent billing could be established. The Independent Retailers suggested that customers who agree to receive bills on a different cycle should be able to do so, particularly if they are protected by the ability to obtain detailed billing information on request.

The commission agrees in principle with REP Coalition, TNMP, Reliant, and the Independent Retailers that a more or less frequent billing should be negotiable between the customer and the competitive retailer. However, the commission notes with concern that the Georgia natural gas program, for example, experienced massive billing failures involving both delayed bills and inaccurate bills from marketers. The commission believes it is fundamental to an emerging competitive market that customers be provided timely and accurate bills so they can make informed choices regarding their selection of REPs. Such concerns notwithstanding, the commission does agree that, in an established competitive market, billing frequency is an appropriate service upon which a competitor can distinguish itself. Therefore, the commission determines that a requirement to issue bills monthly is appropriate for the first two years of the competitive market.

REP Coalition, TNMP, Entergy, Reliant, and the Independent Retailers also suggested that Internet billing be available to customers regardless of whether they enroll via telephone, the Internet, or in writing, when the customer has specifically agreed to the issuance of an electronic bill or statement. Consumer Commenters propose that subsection (a) be amended to require that the customer's consent to receive an electronic bill or statement be in accordance with the Electronic Signatures in Global and National Commerce Act (Esign).

The commission agrees with REP Coalition, TNMP, Reliant, and the Independent Retailers that all REPs should be able to offer Internet billing to customers who desire to receive their bills via that method of delivery and amends the rule accordingly. However, the commission also adopts requirements to prevent an affiliate REP or POLR from conditioning the receipt of electric service on the customer's acceptance to receive a bill electronically. Additionally, the commission prohibits any REP from charging a customer a fee for receiving a bill. The commission also determines that the bill must be in agreement with the commission-established billing procedures and with Esign, and makes changes to the rule accordingly.

AEP TDUs disagreed with subsection (a). AEP TDUs stated that meter usage would be provided by the TDU to the REP. AEP TDUs pointed out that the Standard Terms and Conditions contained in the TDU tariff in Project Number 22187 provide that "billing determinants" will be provided by the TDU to the REP (REP is referred to as "Competitive Retailer" in that project). AEP TDUs commented that since it is possible that billing determinants could be based on a measure other than metered usage, this

section should be modified by striking "meter usage" and replacing that term with "billing determinants."

In reply comments, TXU TDU agreed.

The commission agrees with AEP TDUs and TXU TDU that billing determinants may include measures other than metered usage. However, the commission also recognizes the importance of the reporting of meter usage to the customer and wants to insure that meter usage will be reported. The commission alters the proposed rule to incorporate other billing determinants as well as to specify that metered usage will be included.

MOU Commenters commented that none of these provisions should be applied to billing by a municipally owned utility for retail customers within its traditional service area. MOU Commenters determined that where a customer is receiving a consolidated single bill from the municipally owned utility, the municipal utility's customer protection rules should control, not a dual set of rules. Likewise, they continued, that billing standards under the proposal should not apply to billing situations within the service areas of a municipally owned utility that has adopted customer choice where the municipal utility has exercised an option to have consolidated billing done by a third party competitive retail entity. In that instance, they conclude, applicable billing requirements will either be provided for in the rules relating to Terms and Conditions of Access by Competitive Retailers to Municipal and Co-op Delivery Systems, or will be a matter of contractual agreement between the consumer-owned electric system and the third-party competitive retailer. TEC pointed out that a customer located within the certificated service area of an electric cooperative might be receiving two bills, one from the REP for electric service

and one from the electric cooperative for distribution services. TEC suggested making it clear in the rule that this section applies only to a REP that is actually issuing bills to retail customers, unless the REP is issuing a consolidated bill on behalf of an electric cooperative or municipally owned utility.

The commission agrees with MOU Commenters that none of these provisions should be applied to billing by a municipally owned utility. The commission also agrees with TEC that a customer within the certificated service area of an electric cooperative might be receiving two bills, one from the REP and one from the electric cooperative for distribution services. The commission determines that billing done by the municipally owned utility or electric cooperative in its service territory does not need to adhere specifically to §25.479 or §25.480. To reflect this understanding, the commission adopts a new subsection (a) concerning the application of this section, and renumbers all remaining subsections accordingly.

Reliant and REP Coalition proposed language in subsection (a) stating that "through mutual agreement with the REP, a customer may request and receive a bill with more or less detailed information than otherwise would be required by the provisions of this section if the REP will also provide the customer with detailed information on request." MOU Commenters determined that only these items should appear on the bill and that the provisions of this section shall not be applicable to billing by a municipally owned utility or an electric cooperative providing a single bill to a retail customer within the municipally owned utility's or electric cooperative's certificated area: the name and address of the REP and the number of the license if any; a toll-free number that the customer can call 24 hours a day, seven days a

week to report power outages and concerns about the safety of the electric system; the service address, ESI, and account number of the customer; the service period for which the bill is rendered; the payment and due date of the bill (and if different the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action); and total current charges for electric service.

The commission agrees with MOU Commenters that the items listed by the MOU Commenters are vital elements of the bill. However, the commission determines that there are other vital elements that MOU Commenters omitted. As discussed previously, the commission encourages REPs to provide clear, easily understood bills that present charges in a bundled format. The terms of service document shall contain other notices, such as how the customer can contact the REP to obtain more detailed, unbundled charges. Regarding products that combine electric and non-electric service, the commission holds that any bundled bill must prominently include a subtotal containing all electric-only charges. The provider may choose whether or not to further unbundle the non-electric charges, as long as the billing method does not conflict with the terms of service agreement or any other provision of this subchapter.

Consumer Commenters suggested changing subsection (b)(2) to require that the bill contain the provider's policy for the maximum amount of time a customer will spend on hold or in a cue before speaking with a live customer service representative. At the public hearing Consumer Commenters stated that they did not intend to put this in the bill section but in the terms of service section. In reply

comments, AEP Energy Services agreed that many customers have encountered frustrating experiences contacting service representatives and that the answer is not to increase the complexity of every customer's bill by adding potentially lengthy statements of call answering policy. This may add to customer frustration AEP Energy Services maintained. Entergy Texas REP requested that the commission reject Consumer Commenters proposed changes requiring that hold times be reported.

The commission agrees with AEP Energy Services and Entergy Texas REP that the bill is not the proper place for the statement of an electric service representative's call policies, and declines to make changes to this section of the rule.

TEC and MOU Commenters suggested that the billing and format section in general appears to require more than is provided for under the customer protections specified in PURA. TEC proposed to amend subsection (b)(3) to exclude the toll-free requirements from the numbers the customer can call to make complaints about the bill, and the number that the customer may call to report outages and concerns about the power system. TEC also proposed to eliminate the requirement that the outage number be available 24 hours a day, seven days a week. TEC proposed to eliminate the requirement for a REP to place the numbers on the bill if a municipality or co-op was billing for T&D services. TXU-Retail, in reply comments, stated that it wants to ensure that the REP has the ability to list the number on its billing statement should a customer choose dual billing.

The commission strongly disagrees with TEC's proposal to eliminate the toll-free 24-hour a day, seven day a week outage number. The toll-free 24-hour number is vital to the public safety and is clearly in the public interest. Therefore the commission declines to make changes to the rule based on TEC's suggestion. If a municipally owned utility or electric cooperative is providing bills in its service territory for non-retail electric service, the commission determines that it does not have the authority to require the municipally owned utility or electric cooperative to place the toll-free phone number on the bill. The municipally owned utility or electric cooperative is required to develop rules similar to the commission's customer protection rules for the protection of customers served by it within its service territory. However, in the case of a competitive retailer billing for retail services, the commission does have jurisdiction, and the REP will be required to place the 24 hour a day seven day a week toll-free phone number for outages on the bill. The commission declines to adopt TEC's suggestion and makes no changes to the rule to accommodate this suggestion.

Reliant, TNMP, MOU Commenters, the Independent Retailers, and REP Coalition recommended removal of the requirement to place on the bill a separate calculation contained in subsection (b)(8) for the average unit price for the current billing period. Reliant, TNMP, and REP Coalition contended that for customers on levelized payment plans or fixed monthly amounts, the required information would be confusing or misleading. For example, they commented, for a customer paying a fixed monthly amount, the required information would show a high average price in low usage months and a low average price in high usage months. Neither price, however, would provide the customer any meaningful information as to whether its contract for service was a high or low priced one, they contended. REP Coalition

suggested that far more meaningful information about average rates will be available in the Electricity Facts label of the REP's terms of service, which will already be in the customer's possession.

The commission disagrees with Reliant, TNMP, MOU Commenters, Independent Retailers, and REP Coalition that the bill should not contain the calculation of the average unit price for the current billing period. As discussed in its response to Question 1, the commission determines that this calculation is vital for customers to compare rates between providers, and declines to delete the requirement from the rule.

TXU Retail proposed to eliminate the requirement in subsection (b)(9) to identify and itemize recurring charges on the bill for electric service, other than those charges for electric service. TXU Retail argued the commission does not have the authority to prescribe billing requirements for charges other than electric service. TXU Retail commented that if a customer wants to purchase electric service, gas service, home security service, and a dog-walking service in a package and believes the total price offered for the package is acceptable, the REP offering that package should be under no obligation to itemize component costs for the package on the customer's bill. In reply comments, Shell disagreed with TXU Retail stating that while Shell does not care what TXU charges for its dog-walking service it is vitally interested in what TXU Retail charges for electric service, especially if this rate is disclosed in the company's Electricity Facts label used to attract other customers. Shell stated that it is possible for TXU Retail to understate its true cost of electricity by bundling dog walking and other services. In that case, Shell claimed, it makes a mockery of the Electricity Facts label. Shell also stated that a supplier



that bundles Internet service and electricity into a single product and then makes up a price for the electricity component misrepresents the price of electric service. Shell contended that no one should be able to claim that electricity is free, for example, by charging \$200 per month for Internet service. AEP TDUs suggested that the TDU's discretionary service charges should be listed in the REP's terms of service document, because the REP can pass these charges along to the customer.

The commission disagrees with TXU Retail that it does not have jurisdiction over the items placed on the electricity bill. The commission determines that PURA indeed gives the commission certain authority and does address the REP's responsibilities for other services appearing on the bill. The commission determines that it is vital that the electric portion of the bill be separated from the other services so that late fees may be properly assessed and that the average unit price for electricity can be determined. However, as mentioned previously, REPs are required to provide an Electricity Facts label that reflects the bundled cost of electric service, *i.e.* the price to beat rate for affiliate REPs. To the extent that other non-electric services are bundled with electric service, competitive retailers must follow the standards outlined in §25.475(c)(5)(G) and §25.475(e)(1)(A)(iii) in disclosing the price to customers. The commission notes that this subsection is intended to prevent an affiliate REP from offering bundled products, comprised of both electric service and non-electric service, that have the effect of discounting the price to beat rate. Additionally, the commission clarifies that the customer's electric bill should identify services and costs as identified and disclosed in the customer's terms of service document, both with respect to electric and non-electric services and products.

AEP Energy Services suggested that subsection (b)(14) be altered to eliminate the requirement for stating that the customer can obtain 12-month usage. AEP Energy Services suggested that this requirement is redundant, because it is contained in the customer's terms of service statement.

As discussed in the response to Question 1, the commission agrees that the 12-month usage history need not be provided on a customer's monthly bill. Instead, the commission requires that the terms of service document contain a notice that this information is available by contacting the REP.

Consumer Commenters proposed a change in subsection (b)(15). This change would require that the bill contain a notice of those services that have been added since the last bill and be accompanied by a brief, clear, non-misleading description (written in the same type size as the rest of the bill) of the services being rendered. In reply comments, Entergy Texas REP proposed that the commission reject the overly prescriptive disclosures regarding the addition of new services proposed by consumers in §25.479(b)(15). Entergy stated that customers will be better served by calling the REP's customer service number and discussing any billing questions regarding new services since the last bill with the REPs customer service staff. AEP Energy Services suggested that subsection (b)(16) be deleted, because the requirement is redundant with the customer's terms of service document.

As discussed in response to Question 1, the commission agrees with Consumer Commenters that a listing of charges appearing since the last bill should appear on the bill. This will help detect cramming from the first bill it occurs.

Consumer Commenters offered suggestions on subsection (b)(17) that require the unbundling of charges. Consumer Commenters stated that the charges should be unbundled into generation, transmission, distribution, competition transition charges (CTCs), system benefit fee, discretionary services, rate discount, etc. If CTCs are not shown on the bill, Consumer Commenters contended, neither residential customers nor the commission can assure that illegal cross subsidies, or commercial discounts are resulting in certain customer classes not paying their required obligations for stranded costs. In reply comments, Entergy Texas REP stated that this proposal is akin to requiring hotel operators to unbundle their room charges showing charges for guest registration, concierge, laundry, maid service, etc. Entergy Texas REP suggested that REPs that decide to present their charges in an unbundled fashion should have the option to display transmission charges and distribution charges as separate line items. Finally, Entergy stated that non-ERCOT REPs may be billed separately for transmission and distribution charges. Independent Retailers disagreed with Consumer Commenters' proposal as well and request that subsection (b)(17) remain unchanged. Independent Retailers stated that given the high degree of regulatory oversight contemplated by PURA and the proposed rule, this fear is not well grounded. TXU Retail stated that an efficient and robust market will prevent REPs from overcharging for services. Since there will no longer be a monopoly provider, TXU Retail contended, customers will be able to move to another REP if they are not satisfied. Retail electric providers who overcharge "will simply not get away with it," TXU retail stated. Consumer Commenters summarized in reply comments, when faced with complicated terms and conditions, a lot of fine print, the risk of paying

more than is fair, and losing the security provided by the regulated system, consumers will do what is in their best interests and stick with what they know.

For reasons outlined in response to Question 4, the commission encourages the REP to provide a bundled bill for electric service. It should be noted that, with the Texas market's price to beat structure, the meaningful comparison for the customer is the monthly bill against the bundled rate negotiated with the REP and the bundled price to beat of the affiliate REP. This is the manner in which prices will be included on the relevant Electricity Facts label. It is unlikely that REPs in Texas will market to customers based on multiple, disaggregated charges; therefore, the need to review unbundled information is expected to be quite low. Nevertheless, a REP should include in its terms of service document, the notice that a customer may receive a breakdown of the bundled rate upon request. To ensure that unbundled products can be adequately compared among REPs, the commission requires that standard terms approved by the commission be used for unbundled electric services.

Reliant suggested that acronyms be allowed to be placed on the bill in proposed subsection (b)(17). They suggested "TDSP" for transmission and distribution service, "Gen. Service" for generation service, "SBF" for system benefit fund, "TC" for transition charge and "CTC" for competition transition charge. AEP proposed that the terms "gross receipts assessment" and "nuclear decommissioning fee" should be added. In the reply comments, TXU recommended that the terms "gross receipts assessment" and "nuclear decommissioning fee" should be added to subsection (b)(17) to the listing of unbundled terms in

this section. Consumer Commenters also requested that explanations be provided for any non-obvious abbreviations, symbols or acronyms.

The commission acknowledges that acronyms and abbreviations are used frequently in the industry. However, such terms and acronyms may be unfamiliar to customers. Accordingly, the commission adopts the following standardized terms for recurring monthly electric charges presented in an unbundled format on a customer's electric bill: "transmission and distribution service," "generation service," "transition charge," and "system benefit fund." The definitions, which include what types of charges are covered by these terms, have been added to §25.471. The commission does not believe it is in the public interest that these terms be presented as acronyms or abbreviations.

Reliant proposed to change subsection (d) to make clear that an estimated bill should only be used for an estimated meter read. The State of Texas suggested that this section should also require the use of a true-up provision or some future adjustment. TEC recommended adding the municipally owned utility or electric cooperative's failure to obtain or transmit a meter reading on a timely basis to the list of reasons a REP might be unable to issue an actual bill.

The commission agrees with Reliant that an estimated bill should only be issued for an estimated meter read and determines the proposed rule language reflects that understanding. The commission agrees with the State of Texas that there should be a true-up process. The commission determines that the true-up process will occur when the customer receives a bill based on an actual meter read. The

commission also agrees with TEC that the failure of the municipally owned utility or electric cooperative to provide the billing determinants to the REP might also be the cause of an estimated bill. The commission makes changes to the rule to reflect these findings.

Reliant proposed changes to proposed subsection (e) to clarify that copies of a customer's billing records may be obtained by that customer on request at least once annually at no cost.

The commission agrees with Reliant that a customer could receive billing records once annually at no cost, but may receive detailed billing information that is not included on the bill at any time at no additional charge. The commission has made changes to the rule to reflect this.

Reliant proposed a change in subsection (f) to recognize that the customer may have a credit balance (such as a level billing plan balance), not just a delinquent balance, with a REP, which the customer would want transferred.

The commission agrees with Reliant that a customer may have a credit balance. It is also possible that that customer would want that credit transferred to another account in the same customer class with the same REP. The commission changes the rule to reflect that. In Reliant's parenthetical comments, however, it suggests that the balance (credit) could be transferred to a new REP. The commission notes that this section is only intended for balance transfers from one account to another account in the same customer class with the same REP. The commission specifically did not allow for transfers

between REPs. The commission adjusts the rule to specifically disallow balance transfers between REPs, since this places a collections obligation on the new REP. The commission notes, however, that this prohibition on balance transfers does not apply to the transfer of a deposit from one REP to another, should the customer opt to do so.

TEC suggested that section (g) be deleted, because the allocation of partial payments is already addressed in Project Number 22187. REP Coalition asserted that the allocation order for partial payments remain as proposed unless another agreement is reached with the customer. Reliant proposed that the allocation order be changed to the first oldest past due amount for electric service, then to past due balance for non-electric services, then to the current balance due for electric services, unless another agreement had been reached with the customer.

The commission disagrees with TEC's comments that suggest that the Terms and Conditions rules determine where a customer's partial payments go. That rule governs the relationship between the REP and the TDU. Section 25.479 addresses the relationship primarily between the customer and the REP; therefore, this rule will determine how the REP must apply the customer's partial payment to the customer's account. The commission declines to adopt TEC's proposed changes. The commission disagrees with Reliant's proposed allocation order change and REP Coalition's suggestion that the order should remain the same, unless another agreement is reached between the REP and the customer. The commission determines that allocation of a partial payment has important consequences to the customer, as the customer's service contract may be terminated for non-payment of electric service. The customer

might not realize the implications of how the partial payment is applied, if it is buried in a contract, therefore the commission declines to make the changes suggested by Reliant or REP Coalition. The commission clarifies the rule to clearly explain how the partial payment is applied.

Additionally, the commission recognizes that this section is more appropriately placed in §25.480 and will therefore become §25.480(j).

*§25.480, Bill Payments and Adjustments.*

MOU Commenters suggested that this section should not be applicable to billing by a municipally owned utility or an electric cooperative providing, itself or through an agent, a single consolidated bill to a retail customer within the municipally owned utility's or electric cooperative's certificated service area. They also suggested that any REP should be allowed to establish its own policies for credit requirements, deposits, estimated bills, record retention, transfer of delinquent balances allocations of partial payments, bill due dates, penalties for delinquent bills for electric service, adjustments for overbilling or underbilling, a process for investigation and resolution of disputed bills, any alternate payment programs or payment assistance, average and level payment plans, and any payment arrangements or deferred payment plans.

The commission agrees that municipally owned utilities and electric cooperatives can set their own billing standards and makes adjustments to §25.480 that exclude a municipally owned utility and electric



cooperative from the requirements of this billing section if it is providing service to customers in its own service territory. If a municipally owned utility or electric cooperative is providing a consolidated bill and has contracted billing to a third party competitive retail entity, then the municipally owned utility's or electric cooperative's customer protection rules apply. If a REP is issuing a bill for electric retail service (except when it is issuing a consolidated bill on behalf of a municipally owned utility or electric cooperative), the bill must conform to the standards set forth in §25.480. The commission makes other changes to the bill issue date to be consistent with other commission rules.

Consumer Commenters commented that the current billing system is not designed for timely payment. Consumer Commenters proposed to amend §25.480(a) by extending the due date from 16 days to 25 days from the date of issuance, or allowing the customer to choose the day of the month the payment is due. Consumer Commenters stated that many households are paid only once or twice per month. Consumer Commenters claimed that cash flow is an obstacle to timely payment for many Texans, and difficulties are created when short due dates are combined with such a payroll schedule. They stated that currently some utilities resolve these difficulties by voluntarily allowing customers the opportunity to choose their own due date.

In reply comments, Entergy Texas REP and AEP Energy Services disagreed with Consumer Commenters' proposal, and stated that the market should take care of the problem. They alleged that Consumer Commenters' plan would increase the financing requirements for REPs. AEP Energy Services stated that according to Consumer Commenters' plan a customer would have 50% more time

to pay its bill than now permitted in the regulated market. AEP Energy Services furthered that a customer who chooses his payment date carefully in relationship to when his meter is normally read could ensure that nearly another month is added to the time by which the customer must pay. Entergy Texas REP and AEP Energy Services stated that this would impose additional costs on all customers.

The commission agrees with Consumer Commenters that cash flow is a problem for many customers. The commission also recognizes that many customers are constrained by limited resources when paying the bill. As mentioned previously, the commission requires all REPs to implement a bill payment assistance program to address these concerns. REPs are also required to offer all customers a levelized bill payment program. Additionally, the commission strongly encourages REPs to develop programs that allow customers to designate a specific payment due date each month. As such, the commission declines to adopt a longer bill payment period.

Reliant and REP Coalition suggested changes to subsection (b) to reflect that a one-time, 5.0% penalty should apply only for electric service, and should not apply to non-electric services that are contained on the same bill, provided they are separately stated on the bill.

TNMP and TXU Retail proposed to amend the language of subsection (b) to allow a 5.0% late penalty to be charged to residential customers for electric service. In reply comments, Reliant and REP Coalition agreed, and stated that residential customers should also incur a one-time late penalty not to exceed 5.0% for electric service, provided the REPs do not have the privilege of disconnecting

customers for non-payment. TEC stated that municipally owned utilities and electric cooperatives are given the exclusive jurisdiction to set all rates, including any customer fees. TEC suggested that this rule should clearly state that subsection (b) is not applicable to a REP that is an electric cooperative or municipally owned utility.

As discussed in the commission's response to Question 5, the commission agrees that REPs should be allowed to assess a late fee of not more than 5.0% of delinquent electric service charges that appear on a customer's bill. The commission notes that to appropriately assess the late fee, REPs must clearly identify the total amount due for electric service on the customer's bill. The commission agrees with TEC, and amends the rule accordingly.

Reliant, TNMP and REP Coalition suggested that the overbilling provision in subsection (c) be limited only to charges for electric service and that the interest should be compounded monthly based on the annual rate set by the commission.

The commission agrees with Reliant, TNMP, and REP Coalition and makes the suggested changes to subsection (c).

REP Coalition, TNMP, Entergy Texas REP, and SPS commented that there should be consistency between overbilling and underbilling requirements in the rule. SPS stated that the requirements of subsection (d) should be modified to better balance the underbilling collection rights of REPs with the

rights of customers. Specifically, SPS, Reliant, and REP Coalition recommended the addition of language in subsection (d) to allow REPs to collect all underbillings for which they can produce records identifying and justifying the underbilling. To balance this right, SPS recommended that additional language requiring REPs to offer deferred payment plans for the underbilling. SPS and REP Coalition recommended language that would prohibit a REP from disconnecting a customer who failed to pay the underbilled amounts before the date the REP notified the customer of the underbilling. Reliant maintained that the REP should be allowed to disconnect or terminate service if the customer fails to pay the underbilled charges within a reasonable time. In reply, AEP TDUs suggested that TDUs should also have the ability to backbill for longer than six months. Reliant proposed changes to subsection (f) that the POLR may not disconnect service if the customer fails to pay charges arising from an underbilling more than six months prior to the date the POLR initially notified the customer of the amount of the undercharge.

The commission finds that it is the responsibility of the REP to provide accurate bills to customers. The customers should not be penalized if the REP fails to bill appropriately. Therefore, the commission declines to amend the rule. The commission also notes that TDU-Competitive Retailer rules, adopted under Project Number 22187, contain provisions that address the TDU's ability to back bill a REP for a term longer than six months.

The State of Texas commented that subsection (e) should contain an additional provision that states that there shall be no disconnection or disruption of service while the bill is in dispute. Reliant, TNMP and

REP Coalition proposed to change "provider" to "REP." This proposed change would limit the REP's responsibility for dealing with disputes to those only for electric service.

The commission agrees with the State of Texas that service should not be terminated or disconnected while a bill is in dispute. The commission also determines that it is very important for a customer to receive timely responses to billing concerns and disputes and that any disputes are handled in accordance with this section and PURA §§17.152, 17.153, and 17.155. The commission strongly disagrees with REP Coalition, TNMP, and Reliant that billing dispute provisions should be limited only to electric service. PURA §17.151 is clear about which charges are allowed on the electric bill. Therefore, the commission determines that the REP *is* ultimately responsible for the content of the bill, and should handle disputes in accordance with this section as well as PURA. The commission finds that this section is not restricted to disputes for electric service, and declines to make the suggested changes to this section. The commission clarifies the dispute process in this rule and makes it consistent with other commission rules.

Consumer Commenters proposed to remove the words "as applicable" from subsection (f). They proposed that each REP be required to offer alternative payment assistance plans. Entergy Texas REP filed reply comments that stated that "as applicable" should remain in (f) and that all REPs should not be required to offer those programs. AEP Energy Services proposed deleting the phrase "in addition a REP shall inform the customer of the availability of POLR service and how to obtain this service." AEP

Energy Services asserts this information should not be given to a customer who calls to see how to meet payment obligations.

As discussed in response to Questions 6 and 9, the commission agrees that all REPs are required to offer a bill payment assistance program. Therefore, the commission disagrees with Entergy Texas REP that the phrase "as applicable" should remain in the rule, and that non-affiliate REPs should not be required to offer a payment plan or program unless otherwise required by this section. The commission agrees that the customer needs to be well informed. Therefore, the commission determines that the bill payment assistance programs offered by REPs shall be disclosed to the customer when the customer expresses an inability to pay. The commission agrees with AEP Energy Services that the REP should not be required to inform the customer of the POLR service at this time as it might not be appropriate if a payment plan is being offered to the customer. The commission declines to make changes to the rule as suggested by Consumer Commenters and adopts the changes suggested by AEP Energy Services.

REP Coalition, TNMP, and Reliant (in connection with their disconnection proposal) and Consumer Commenters proposed changes in subsection (g) that would require a REP to offer one or more average or level payment plans. Consumer Commenters stated that level and average payment plans are invaluable to many customers who must manage their cash flow, not just low-income customers. Consumer Commenters pointed out that PURA §39.101(e) gives the commission the authority to require all REPs to provide customers with levelized payment plans, not just the affiliate REPs and POLRs. Consumer Commenters agreed that customers should be responsible for paying in full any

amounts owed when switching providers. They suggest that subsection (g) should clarify that customers who switch providers are responsible for paying all actual usage up to the date of the switch. In reply comments, Entergy Texas REP stated that REPs should not be required to offer alternate payment programs or payment assistance programs. Entergy Texas REP emphasized that termination of electric service to customers must be unencumbered by mandatory payment plans in order to afford REPs the opportunity to minimize losses from high-risk customers.

As discussed in the response to Question 9, the commission agrees with Consumer Commenters that level and average payment plans are very important to some customers. The commission finds that electric utilities have been required to offer these payment plans and this is a basic protection for some customers. To guarantee that customers do not lose that protection, the commission requires all REPs to offer all customers the option of enrolling in a level payment plan. The commission disagrees with Entergy Texas REP that competitive retailers should have the option of offering these plans but should not be *required* to offer these plans. The POLR shall also be required to offer average or level payment plans. The commission modifies the rule to incorporate this understanding.

REP Coalition, TNMP, and Reliant proposed replacing the term "termination notice" with "disconnection notice." This would allow a disconnection (as opposed to a termination) to be suspended if a payment arrangement is made. According to their proposal, if the customer does not fulfil the terms of the payment arrangement, the customer may be disconnected without the REP providing an additional disconnection notice.

The commission disagrees with REP Coalition, TNMP, and Reliant that REPs should be granted the privilege of disconnecting customers for non-payment, and declines to alter the proposed rule.

TXU Retail proposed changes to this section to eliminate the requirement of a written deferred payment plan proposed in subsection (i). TXU Retail stated that this change would benefit customers who make deferred payment arrangements over the telephone. TXU Retail claimed that if a written confirmation is required, the REP does not have an "agreement" with the customer at the time of the telephone conversation. Therefore, customers whose bills are delinquent remain in jeopardy of termination or disconnection until they receive and return a signed deferred payment agreement. TXU Retail pointed out that current practice, which allows a customer to make a deferred payment plan over the phone has not resulted in complaints from customers that were lured into unfair deferred payment arrangements that they later want to rescind.

REP Coalition, TNMP, and Reliant proposed requiring all REPs to offer a deferred payment plan to a customer who has expressed an inability to pay. They proposed this in exchange for the ability to disconnect customers for non-payment. According to their proposal, the REP should not be required to offer a deferred payment plan if a customer has received service from the provider less than three months and lacks sufficient credit or satisfactory history of payment from a previous REP (provided the information is furnished to the REP by the previous REP). In reply comments, these parties clarified that only the POLR should offer a deferred payment plan if REPs were not granted the privilege of



disconnecting customers for non-payment. In reply comments, Entergy Texas REP stated that REPs should not be *required* to offer deferred payment plans but should be *encouraged* to offer such plans. Entergy elaborated that it is important to remember that we are entering a deregulated competitive market and continued attempts to restrict the REPs' ability to conduct business in a prudent manner will only hamper competition and limit customer choice.

Consumer Commenters proposed changes to subsection (i)(1) to require all REPs to offer a deferred payment plan. The plan proposed by Consumer Commenters allows the REP to include a 5.0% late penalty for payment, but does not include a finance charge. According to Consumer Commenters' proposal, a deferred payment plan required because of a weather emergency as defined in §25.483(i) must allow a customer at least six months, and up to twelve months, to pay amounts incurred during a billing cycle in which a weather emergency occurred, and the amount that the customer must pay to avoid disconnection shall be no more than an amount equivalent to an average monthly bill based on annual usage.

In reply comments, Reliant suggested that any deferred payment plans offered by the POLR to a residential customer should be required to be in equal installments and spread out into at least three billing cycles.

TEC stated that this rule should make it clear that subsection (i)(5)(B) is not applicable to a REP that is a municipally owned utility or electric cooperative.

The commission determines that as of January 1, 2002, price to beat customers should not encounter a drastic change in service. The affiliate REP should offer the same services it has been offering before the onset of competition to ensure that all customers have the option of the same service and quality of service that existed before the start of competition. The affiliate REP should offer deferred payment plans and adhere to more specific credit and deposit requirements regardless of whether it has been granted the privilege of disconnecting customers for non-payment. Customers who switch to competitive retailers are not guaranteed the same terms and conditions the affiliate REP will be providing under the price to beat. Competitive retailers are encouraged, but not required, to offer these programs, and they should be offered in accordance with these rules. The commission agrees with Reliant that the current rules require the deferred payment plan to be spread out over three billing cycles and to be in equal installments. The commission reflects this change in the rule, and notes that these payment plans will be required of both the POLR and affiliate REP, not just POLR as Reliant suggested. The commission also agrees with TXU Retail that payment plans should go into effect when the customer calls, however, a copy of the agreement must be mailed to the customer. The commission has amended the rule accordingly. Additionally, as mentioned in the response to Question 9, the commission requires that all REPs offer customers who express an inability to pay a bill that becomes due during an extreme weather emergency the option to enter into a deferred payment plan, pursuant to this subsection.

Consumer Commenters proposed a new subsection (j), entitled Bill payment assistance program, to establish a program for the purpose of soliciting voluntary donations from customers, employees and shareholders to provide financial assistance to residential customers who need bill payment assistance. The proposed program would require a REP or POLR, at the time of enrollment or change of service, to inform all customers about the program and to offer customers an opportunity to donate a fixed amount on a monthly basis. The amount selected would be billed to the customer's account. According to the proposed plan, the REP and POLR would also be required to provide information regarding the bill payment assistance program to all customers through quarterly bill inserts. Under the conditions proposed by Consumer Commenters, the REP or POLR would be required to keep the money in a separate account in trust and forward the donations to the TDU that serves that customer.

Under the proposed program, the TDU would collect the donations from the REP and POLR. Funds received by the TDU would be deposited in federally insured accounts and held in trust for the bill payment assistance program. Any interest on the funds would accrue to the bill payment fund. The TDU, according to Consumer Commenters' proposal, would distribute bill payment assistance funds to customers in need of assistance through community organizations that are approved by the TDU and that are within the TDU's service territory. On April 1 each year, the TDU would file an annual report with the commission detailing total donations received from customers, employees, and shareholders. Under the proposed plan, 10% of donations received by the TDU would be required to be remitted to a nonprofit organization approved by the commission that would promote the bill payment assistance program on a statewide basis. Furthermore, each TDU, under the proposed plan would be encouraged

to match the donations it receives with shareholder funds on a dollar-for-dollar basis. Under the proposed plan, those TDUs that currently provide shareholder-matching funds for bill payment assistance would be required to continue to provide shareholder-matching funds at 1999 levels.

Entergy TDU, in reply comments, noted that it has operated a program similar to the one proposed by Consumer Commenters for the past 18 years. Entergy TDU agreed that bill payment assistance programs are important to end-use customers, to the local agencies that channel needy people toward bill payment assistance opportunities, and to communities in its service area. Entergy TDU stated that the system benefit fund (for low-income customer rate discounts and weatherization services) does not address the same types of customers or needs that are met by existing bill payment assistance programs. Entergy TDU stated that the bill payment assistance is not synonymous with low-income programs. Entergy TDU stated that most recipients of assistance are elderly and experiencing a true emergency or temporary payment crisis and may not be in need of or be candidates for longer-term rate discounts or weatherization services. Therefore, Entergy TDU is a strong proponent of preserving fuel programs. Entergy TDU stated that the question is how to transition the program to a competitive market.

Entergy TDU pointed out that several issues addressed by Consumer Commenters deserved more attention. For example, is it appropriate (or within the commission's authority) to mandate that each TDU that currently provides shareholder-matching funds for bill-payment assistance to "continue to provide matching at 1999 levels?" Entergy concluded that it is not appropriate at least for the reason that "mandate" and "voluntary" would qualify as oxymorons. Secondly, if as under current practices,

actual dollars never flow from contributors directly to recipients, and the customers will belong to the REP, not the TDU, why would the TDU have money-handling responsibility at all? Entergy suggested that funds collected by REPs in bills from contributors could simply be passed directly by the REPs to the bill payment assistance administrator in each TDU area (perhaps the Red Cross or a non-profit organization established for that purpose). Entergy TDU suggested the language proposed by Consumer Commenters could be revised to provide that the TDU would primarily coordinate the interaction between intake agencies and the program administrator and act as an active participant on the board of the non-profit bill payment assistance to ensure that the administrator properly carries out the money-handling responsibilities. Finally, Entergy TDU concluded that if the commission should find that it has the authority to address bill payment assistance issues, including the request for the establishment of a 10% set aside for a third-party statewide entity to promote contributions, then it would seem appropriate to provide funds for the REPs for out-of-pocket costs incurred in handling these market mechanics.

As discussed in response to Question 6, the commission adopts new §25.480(g) that requires all REPs to implement a bill payment assistance program.

*§25.481, Unauthorized Charges.*

AEP TDUs commented that the terms of service document in subsection (a) should include all discretionary service fees in the TDU's tariff in order for the REP to pass on those fees to the retail customer.

The commission disagrees with AEP TDUs, because this rule does not govern the relationship between the TDU and the REP.

Consumer Commenters offered additional language for inclusion in subsection (a), indicating that a REP must comply with Texas Property Code §53.254 "if a product or service would result in a lien against a consumer's homestead" and with Texas Property Code §53.255 if a product or service involves residential construction.

The commission believes that §25.471(b)(2) adequately addresses the concerns raised by Consumer Commenters.

AEP TDUs stated that proposed subsection (d) should be modified to exclude discretionary services provided by the TDU pursuant to its tariff from the definition of charges "not related to the provisioning of electric service." AEP Energy Services suggested that an option should exist to provide the annual notice required by this subsection in the Your Rights as a Customer document.

The commission disagrees with AEP TDUs that the rule needs to be modified. As explained in the discussion of §25.477, discretionary services provided by the TDU pursuant to its tariff are by definition related to the provision of electric service. Nonetheless, the commission agrees with AEP Energy Services that the annual notice can be included in the Your Rights as a Customer document, and has amended the rule accordingly.

The commission further incorporates changes referenced in §25.474 to clarify the authorizations and verifications necessary to add charges to a customer's electric bill after the customer's initial selection of a REP. Further the commission clarifies that the submission of charges to a customer's electric bill is limited to the REP selected by the customer to provide the customer's electric service. As such, all references to other "service providers" is eliminated.

*§25.482, Termination of Contract.*

Consumer Commenters did not support the concept of allowing providers to offer long-term contracts and charge customers a cancellation fee for terminating contracts early. They argued that in a competitive market, customers should be allowed to switch without penalties with a 30-day notice to their provider. REP Coalition and AEP Energy Services supported the proposed rules and disagreed with Consumer Commenters suggestion. They said that providers have the right to offer both long-term contracts and month-to-month contracts. REP Coalition suggested adding language that would require a REP to abide by the terms of the contract in addition to the procedures in this section.

The commission agrees with REP Coalition and AEP Energy Services that, in a competitive market, REPs have the right to offer long-term or month-to-month contracts. In month-to-month contracts, both parties have the right to cancel the contract without penalty. In long-term contracts, the REP may require that a customer who terminates the contract early pay a penalty. Additionally, with long-term contracts, should the REP materially change the contract, the customer has the right to cancel the contract without penalty. The affiliate REP, however, is prohibited from requiring long term contracts until after 2007, when the price to beat period expires. Further, the commission declines to cap the early termination fee a provider may charge.

Consumer Commenters suggested that when a customer is terminated by a REP and sent to POLR, the POLR should be required to send a notice to the customer stating that the former REP has terminated service due to either nonpayment or abandonment. TXU Retail said this was unnecessary because subsection §25.482(c)(8) requires the REP, in its termination notice, to include such notification to the customer.

The commission agrees with TXU Retail and declines to adopt Consumer Commenters' suggested changes.

Consumer Commenters said that REPs should be allowed to terminate a customer's contract for nonpayment of electric service only and should not be extended as a collection function for amounts



owed for products and services other than electricity. They suggested that the rules explicitly say that nonpayment will be the primary reason providers would terminate a customer's contract. In reply comments, TXU Retail agreed with Consumer Commenters' suggestion. REP Coalition suggested that this section apply only to those termination notices issued because of nonpayment of electric service. In reply comments, Entergy Texas REP said that REPs should be allowed to terminate a customer's electric service for failure to pay non-electric charges on the same bill. They argued that REPs should have the flexibility to terminate customers that fail to pay their entire bill under the terms of the contract.

REP Coalition and Reliant further suggested that, in the case of nonpayment for electric service, a provider should be required to send a disconnect notice and offer the customer the opportunity to pay the amount due before a termination notice is issued. Consumer Commenters disagreed, because it would allow a REP to terminate a customer who has paid a bill in full after receiving a disconnect notice. In reply comments, Reliant said that their suggestion would reduce the number of customers who might be dropped to a higher priced POLR.

The commission determines that only the POLR will have the right to issue a disconnection notice to customers. All other REPs have the right to issue a termination notice for nonpayment of electric service only, in accordance with this section. The commission agrees with Consumer Commenters and TXU Retail and determines that REPs may terminate a customer's electric service for nonpayment of electric charges only, not for non-electric charges included on an electric bill. The proposed rules clearly state that a REP shall not terminate a customer's contract if that customer pays in full before the termination

date. The commission also notes that all REPs are now allowed to charge late fees and may seek deposits that more appropriately mitigate risk.

Consumer Commenters said that the prohibitions on disconnection in proposed §25.483(d) should also apply to termination notices. They proposed a new section to incorporate the changes. They said these prohibitions are in place to prevent a REP from disconnecting a customer's service for charges that are not the customer's responsibility and they argue that it is fair and appropriate to prohibit terminations in the same situations. In reply comments, TXU Retail opposed this suggestion because "a REP would not be permitted to send a customer to the POLR if the prohibitions on disconnection during extreme weather period are applied." Entergy Texas REP opposed Consumer Commenters' suggestion to prohibit terminations for delinquency in payment for electric service by a previous occupant of the premises. They said that it should be clarified by adding, "if that occupant is not of the same household."

The commission adopts Consumer Commenters' recommendations to prohibit terminations of contracts for the situations described in §25.483(d) of this title. The commission also adopts Entergy's clarification for delinquency by a previous occupant.

Consumer Commenters requested that the commission institute specific penalties for providers who violate the termination procedures. They said such penalties should include restitution for customers who are terminated by mistake or sent a termination notice when such notice is prohibited. TXU Retail opposed this suggestion. They said that while it is inevitable that some mistakes will be made and some

termination notices will be sent to the wrong customers, REPs will want to keep customers in a competitive environment, and will take the steps necessary to correct wrongs that occur. Further, they said, the commission has the authority to investigate a REP for violation of commission rules.

The commission agrees with TXU Retail and declines to adopt changes suggested by Consumer Commenters.

Consumer Commenters said that providers should be required to send terminations notices on paper and prohibit termination notices via e-mail or facsimile. TXU Retail opposed this suggestion, saying that a customer should have the right to choose to receive all communications from his or her chosen provider via facsimile or email.

The commission determines that REPs are required to send paper termination notices by mail. The commission also adopts language allowing REPs to send an additional notice by email or facsimile.

REP Coalition, Reliant, TXU Retail, and TNMP suggested changing the requirement that the termination notice be a separate mailing and changed the termination date from ten days to five days after the notice is issued. They argued that as a result of the proposed ten-day timeline, a provider is likely to be required to serve a non-paying customer for an additional two months before the customer's contract is terminated and the customer's account is sent to the POLR. They said that allowing a provider to terminate a customer's contract five days after issuing a notice would allow providers to avoid the

adverse financial impact such unrecoverable bad debts have on market participants. TXU Retail added that after a REP issues a termination notice, the REP should contact the customer by telephone to explain payment steps the customer could take to avoid termination.

The commission declines to accept REP Coalition suggestions concerning termination notices. Termination notices must be a separate mailing with a termination date ten days after the notice is mailed to a customer. The commission also notes that many customers may seek bill payment assistance upon receiving a termination notice. However, the commission determines that in a competitive market, competitive retailers should not be required to offer payment arrangements or deferred payment to delinquent customers. However, the commission finds that all REPs have the flexibility to do so and encourages such communication between REPs and customers.

REP Coalition, Reliant, TNMP, and TXU TDU proposed several changes to clarify the rule's intent and make it consistent with their proposed policy changes on disconnects and "drops." They said the term "automatically" used in subsections (b)(6) and (8) could be incorrectly interpreted to mean "instantaneously" and should be clarified. They also suggested that subsection (b)(8) be deleted because it contains the same requirement as subsection section (b)(6).

The commission adopts suggested changes from REP Coalition, Reliant, TNMP, and TXU TDU in subsection (b)(6) to replace the word "automatically" to acknowledge the transfer process in accordance with the applicable registration agent protocols and TDU Tariff for Retail Delivery Service.

The commission also agrees with REP Coalition, Reliant, TNMP, and TXU TDU that subsection (b)(8) is redundant and deletes it.

REP Coalition and Reliant made clarifying changes in subsection (d) and added that providers should be allowed to terminate a contract effective on a date other than the next meter read date.

The commission agrees with REP Coalition and Reliant, and adopts their suggested changes.

Consumer Commenters said that in the event a provider terminates customer contracts due to abandonment, that provider should not be allowed to collect or attempt to collect penalties from a customer. In reply comments, TXU Retail agreed with this suggestion. REP Coalition said this section should be deleted because abandonment is not a defined term and could apply to any number of actions. They argued that this restriction made sense when it was applied to utilities operating in a regulated market, and might still apply to TDUs, but these rules have no place in a competitive market where the new rules apply only to REPs.

The commission declines to delete subsection (d). The commission agrees with Consumer Commenters and TXU Retail that providers who abandon customers should not be allowed to collect or attempt to collect penalties from those customers, and adopts their recommended changes.

Consumer Commenters supported the prohibition on termination during extreme weather conditions unless the customer refuses to enter into a deferred payment plan. REP Coalition and TXU Retail said this section should be deleted. They proposed changes so that a customer would have two choices for continued electric service if the REP terminates the contract: (1) the customer can choose to take advantage of a proposed expedited switch to a new electric provider, or (2) the customer would be transferred to the POLR. TXU Retail noted that if a customer's contract expires during a weather emergency, a provider should not be required to extend the expired term beyond the date agreed to by the customer in the contract. They argued that termination does not expose the terminated customer to health dangers, because the customer does not lose service. Further, they said, the obligation to serve is imposed only on the POLR.

The commission disagrees with REP Coalition and TXU Retail, and declines to delete this subsection. The commission determines that all providers should be prohibited from terminating a customer's contract during an extreme weather emergency due to a customer's non-payment of a delinquent bill. This is consistent with the commission rule prohibiting the POLR from disconnecting a customer during an extreme weather emergency. However, nothing in this section prohibits a REP from terminating a contract during an extreme weather event, for any other reason disclosed in a customer's terms of service contract, including termination due to contract expiration.

Consumer Commenters said that termination should be prohibited where the customer is ill or disabled and has met the procedures outlined in proposed §25.483(g). TXU Retail opposed this suggestion,

claiming that only the POLR has the obligation to serve, and other REPs should not be required to provide service in every instance that applies to the POLR.

The commission agrees with TXU Retail and declines to accept Consumer Commenters' suggestion. However, the commission also notes that the implementation of a mandatory bill payment assistance program should address many of the instances previously triggered by this provision.

Consumer Commenters suggested a new subsection to prohibit a REP from issuing a termination notice when an energy assistance provider makes a commitment to forward payment sufficient to continue the customer's service. Further, they argued, the rule should require providers to continue serving the customer under the existing terms and conditions when payment is made; that a customer should not be subject to termination when the account is paid. In reply comments, TXU Retail said this was unnecessary, because termination will be stopped as long as payment is received within five days of the termination notice.

The commission adopts changes suggested by Consumer Commenters prohibiting REPs from terminating a contract when an energy assistance provider agrees to make a payment on behalf of a customer. The provider shall continue serving the customer under the existing terms and conditions.

Consumer Commenters said that a customer should be free to terminate a contract, without penalty, whenever that customer moves to a new location. Further, they suggested adding the following

situations in which a customer could terminate a contract without penalty: (1) the customer becomes permanently disabled or dies during the term of the contract; (2) the REP fails to meet its terms of service; (3) the customer files a complaint at the commission against the provider; (4) the customer is called for active military duty; and (5) force majeure. Reliant recommended clarifying this section to say that a customer may cancel a contract without penalty *only* in the events listed in this section. AEP Energy Services said that permanent disability or death does not normally trigger an automatic right for a REP to terminate non-electric customer transactions, and therefore, this proposal is unnecessary. AEP Energy Services also opposed the suggestion to allow a customer to terminate a contract when the customer files a complaint with the commission, saying that this is too broad.

The commission agrees with Consumer Commenters that a customer should be allowed to terminate a contract, without penalty, whenever that customer moves to a new location, even if it is in the same service territory. If a customer moves from an apartment to a house, the load profile and energy usage will change, and the customer should be free to choose a new plan based on the energy needs of the new location. Likewise, REPs should not have to continue serving a customer that moves to a new location based on that customer's energy profile and usage at the old location. However, nothing in this section prevents a customer and REP from agreeing to maintain an existing contract at a new location.

The commission agrees with Consumer Commenters that customers have the right to terminate a contract, without penalty, when a provider notifies a customer of a material change in the terms and conditions of their service agreement. The commission's determination regarding a customer moving to a new location covers situations such as moving to an assisted living facility, employment transfers, or



being called for active military duty. The commission declines to allow customers to terminate a contract without penalty when that customer files a complaint with the commission or "force majeure." The commission declines to adopt Reliant's suggestion that a customer be allowed to terminate a contract, without penalty, *only* in the events listed in this section. This would limit a REP's flexibility to offer terms more generous than listed here; this section is intended to provide minimum protections for all customers.

Consumer Commenters and AEP Energy Services said that proposed §25.482(g)(2) was unclear. Consumer Commenters opposed any rule that would permit a business to breach a contract for profit, regardless of the reason. AEP Energy Services stated that it appeared the language intended that a contract which allows the REP to terminate the contract in response to market conditions should also allow the customer the same option, *i.e.*, to cancel the contract without penalty. Reliant proposed language that would limit the right of cancellation without penalty to those events specifically listed. Additionally, Reliant added a third event in which a customer could cancel a contract without penalty: when the provider's terms of service grant the customer such a right, as in month-to-month contracts.

The commission adopts AEP Energy Services' changes to clarify a contract that allows the provider to terminate the contract in response to changing market conditions should also allow the customer the same option. The commission also revises this subsection to state that such reasons for termination must be disclosed in a customer's terms of service document.

*§25.483, Disconnection of Service.*

Consumer Commenters supported the disconnection procedures that permit only the POLR to disconnect a customer. They pointed out that in other competitive electric markets, only the POLR has the right to disconnect service for nonpayment. They argued that the POLR should have the right to disconnect, because it has the obligation to serve customers. They said that if all REPs are allowed the right to disconnect, it would be "used as a hammer to receive customer payments" rather than using other devices to evaluate creditworthiness and risk. REP Coalition, Reliant, TXU Retail, Enron, AEP Energy Services, TNMP, SPS, Shell, and Entergy Texas REP argued that all REPs should have the right to disconnect a customer for non-payment of electric service for any of the reasons allowed for the POLR, as published in the proposed rules. REP Coalition, SPS, and TNMP said the proposed rules would increase providers' risks and costs of serving customers, increase the price of electric service for customers who make timely payments, lead to increased credit requirements for all customers, and have a generally adverse affect on competition. The increased costs and risks, they argue, would serve as a barrier to entry for smaller electric providers, which may be unable or unwilling to bear the higher risk of non-payment. Allowing all electric providers to disconnect would keep costs low, reduce the need for deposits, maintain "headroom," increase the ability of providers to compete for customers, and decrease customer confusion by reducing the likelihood that customers would be dropped to the POLR. They said that it is the threat of disconnection, not physical shut off of electricity, that improves collection of delinquent accounts. They predicted that their proposal would not cause a significant number of disconnects, but did expect it would "materially reduce" electric providers' uncollectible charges and

reduce the number of customers dropped to the POLR. REP Coalition submitted a paper, *An Economic Assessment of the Proposed Consumer Protection Rule Relating to Disconnect*, by Bernard L. Weinstein, Ph.D. and Terry L. Clower, Ph.D. from the Institute of Applied Economics, University of North Texas to support their arguments.

REP Coalition and TNMP further argued that Senate Bill 7 contemplated that all REPs would have the right to disconnect service to their customers. PURA §39.101 (a) and (h) set limitations on when and in what circumstances a provider may disconnect service to residential customers. Specifically, the statute prohibits providers from disconnecting electric service during a period of extreme weather emergency, in cases of medical emergency, or for unrelated service.

The commission agrees with Consumer Commenters that only the POLR should have the right to disconnect in a competitive market. The commission identifies five reasons which support this policy determination: (1) the number of customers who would actually be disconnected would grow, increasing the risk to health and safety; (2) the TDU would not be able to keep up with the multiple disconnection and reconnection requests from all of the REPs; (3) no other state has allowed competitive REPs to disconnect for competitive energy charges; (4) the commission would not be able to investigate disconnection disputes or enforce customer protections for wrongful disconnections; and (5) the right to disconnect is a mechanism for a regulated utility market.

First, in the current regulated market, every electric utility exercises discretion in the decision to actually disconnect service to its customers, but competitive REPs will not have the base of customers over which to spread the luxury of discretion. While utilities may issue disconnect notices automatically based on certain nonpayment criteria (amount overdue and length of time since last payment), regulated utilities do not automatically disconnect customers on the final due date. In part, this discretion is due to workload constraints because each disconnection requires utility employees, who may not be available on any given day or in any particular operating area, to visit the premise. Also, the utility is unlikely to suffer severe economic harm if disconnection does not occur because its regulated rates include reasonable collection costs and unpaid debt expense. If REPs are allowed to disconnect for nonpayment, these inhibitions are not present. No REP will be assured that nonpayment or overdue bills will be reflected in their prices, because the competitive market makes no such assurance. Indeed, the very arguments used by REP Coalition, which rely on the economic harm that they would suffer if disconnection is not allowed, lead the commission to agree with Consumer Commenters that REPs would view disconnection as a tool to reduce potential losses in a profit making environment. This would lead to REPs using less discretion, thereby increasing the volume of disconnections in a competitive market. While a regulated, monopoly electric utility may be able to justify leniency or more time in the payment of overdue electric bills for some percentage of its customers, competitive REPs will likely act more quickly to disconnect service compared to electric utilities in the past. This could potentially result in disconnections that expose customers to health and safety risks.

Second, the TDUs would not be able to keep up with the multiple requests from REPs to disconnect and reconnect customers. The process of disconnection and reconnection of service requires TDU employees to visit a premise for each disconnection, and the REP is dependent on the TDU to accomplish these tasks. The TDU would have to process every REP request for disconnections in a nondiscriminatory manner, but it is unlikely that any TDU could handle the volume of potential requests from a unknown number of REPs in a timely manner. Multiple REPs would be individually sending service orders to the TDU requesting disconnection and reconnection of service without coordinating their workload or service requests with each other or with the TDU. This situation may cause great confusion and delayed reconnections of service for customers. This could harm the health and safety of children, elderly, disabled, and others with special needs.

Third, no other state has allowed competitive REPs to disconnect electric service for nonpayment of competitive energy charges. This is true even in Nevada where the Single Retailer Model will be used by competitive electric providers. In every case, the state legislature or commission has restricted the right to disconnection to the default service provider or POLR (which in almost every state is the incumbent electric utility) or the TDU if it bills the customer directly for its regulated transmission and distribution charges under the dual billing option. The Georgia Public Service Commission (PSC) has authorized competitive natural gas suppliers (operating under a Single Retailer Model similar to that contemplated in Texas) to disconnect service for nonpayment of the gas service bill (including the pass through of the distribution charges) for the Atlanta Gas Light (AGL) competition program. However, the Georgia natural gas program has also documented massive billing failures by marketers (delayed

bills, inaccurate bills) and extensive publicity concerning slamming complaints which have resulted in fines and penalties for some marketers. Furthermore, the AGL program requires a Universal Service Fund (USF) that allows marketers to be reimbursed for uncollectible expenses. The USF rules require a marketer to use credit reporting (credit scoring), deposits, late fees, and collection notices to reduce its uncollectible costs prior to reimbursement from the USF. Pennsylvania, which arguably has the most successful retail electric program in the nation, has consistently prohibited disconnection of service as a collection tool for its competitive electric and natural gas providers. If the TDU bills customers for a REP's competitive energy services, the REP's charges are not included in a disconnection notice issued by the TDU. If the REP issues the bill directly to the customer, the REP cannot issue a disconnection notice for its competitive charges and has the option of sending the customer back to POLR service (terminating the contract) if the customer does not pay for electric service. However, the POLR can continue to deliver, bill, and collect its regulated POLR services with current consumer protection rules, including the right to disconnect. Therefore, competitive providers are limited to competitive debt collection techniques. Under this approach, as of October 1, 2000, 33% of Duquesne Light's residential customers in Pittsburgh have switched to alternative providers. About 15.0% of PECO Energy's residential customers have switched in Philadelphia (These statistics are compiled by the Pennsylvania Office of Consumer Advocate and published quarterly on its website: [http://www.state.pa.us/PA\\_Exec/Attorney\\_General/Consumer\\_Advocate/index.htm](http://www.state.pa.us/PA_Exec/Attorney_General/Consumer_Advocate/index.htm)). Clearly, there are many electricity providers who are willing and able to participate in a competitive market without the use of disconnection as a debt collection tool. The lower levels of customer participation in electric competition in the other utility service territories in Pennsylvania suggests that the key ingredient for the

success of retail competition is not the power to disconnect service, but the "headroom" between the default provider's prices and those available in the competitive market.

Fourth, it would be difficult for the commission to track the incidence of disconnection or investigate disputed disconnections (or failures of reconnection) without contacting the ordering REP, the TDU, and (potentially) the serving REP (if different from the ordering REP). The volume of disconnections and reconnections could be reported by the TDU, but the reasons, amount overdue, frequency of notice, and other aspects of the disconnection process will be in the hands of multiple REPs.

Finally, REPs cannot have both the benefit of unregulated prices and competitive market and the right to use debt collection rules devised for a monopoly and regulated price environment. Competition carries risks, including nonpayment. The "economic analysis" submitted by REP Coalition from Professors Weinstein and Clower does not contain any analysis of the economics of selling electricity in a competitive market, and does not reference any information or facts about the sale of electricity without the right of disconnection in every other state. Because utilities have relied upon disconnection notices to inform customers that the bill must be paid to avoid penalties, customers have "learned" to respond to these notices. The new REPs will have to "teach" their customers that failure to pay the REP will lead to termination of contract, potential transfer to POLR service, and the use of traditional debt collection devices.

The commission disagrees with REP Coalition that prohibiting REPs from disconnecting customers for non-payment will result in providers expediting the process of dropping customers to POLR. Section 25.482 provides for the same timeline for termination of contracts as §25.483 provides for POLR to disconnect. In other words, an affiliated or non-affiliate REP can drop a delinquent customer in the same timeline as POLR can disconnect that customer. The commission's rules on termination and disconnection do not require REPs to terminate or disconnect customers, but permits them to do so and allows for policies that are more generous to the customer.

However, to mitigate the potential negative impact to a REP's uncollectibles, the commission adopts a more generous credit and deposit policy for the affiliate REPs. Additionally, the commission believes that the requirements for a bill payment assistance program and levelized bill plans may help customers make timely payments and avoid termination. The commission declines to modify the rules for the amount of the deposit collected by the POLR and when such deposits must be refunded to customers, since the POLR maintains the right to disconnect service for non-payment of electric charges.

REP Coalition, Reliant, and TNMP recommended changes throughout this section to clarify that providers can authorize a disconnection, but only TDUs can physically cut off service. TEC likewise suggested changes to recognize that a physical disconnection may also be made by a municipally owned utility or electric cooperative.



The commission adopts REP Coalition's, Reliant's, TNMP's and TEC's recommended changes to clarify that only a TDU, municipally owned utility, or electric cooperative may physically disconnect and reconnect a customer's electric service.

AEP Energy Services and Reliant said that because a POLR service also provides other REP services, a customer's status could change even though the customer remains with the same provider, and argued that this could produce a potentially confusing or seeming illogical application of the rules. For example, if a provider terminates a customer's contract because of nonpayment, as allowed by the proposed rules, the customer may be transferred to POLR service. As a result, they said, a provider that also provides POLR service may terminate a customer for nonpayment only to find that it must continue to serve the customer as the POLR provider, despite the fact that service has been terminated and the bill remains unpaid. If the customer is subsequently disconnected under POLR service, the proposed rules require the provider of POLR service to reconnect the customer, even though the provider is owed additional money for the original delinquent electric service. AEP Energy Services proposed that the commission confirm that the proposed rules will require a separation of the POLR and non-POLR REP functions in order that all REPs providing competitive services are treated in the same manner when they interface with the POLR. They did not advocate specific language in the rule, but suggested that a general policy statement be included in the preamble.

The commission agrees with AEP Energy Services that POLR must interact with all REPs in the same manner, without preference or bias for customers served by the provider affiliated with the POLR.

In reply comments, REP Coalition proposed that all providers should be subject to the same requirements as POLR for evaluating a customer's credit worthiness and charging deposits, and for offering payment plans to balance the right of all REPs to disconnect a customer. REP Coalition said if the commission does not grant all providers the right to disconnect, then several other rules would have to be changed to minimize REPs' bad debt exposure. These included the right to charge residential customers a late fee (see discussion on §25.480(b)), the right to apply a customer's deposit to a final bill (see discussion on §25.478(k) and (h)), allowing providers to develop their own non-discriminatory credit requirements (see discussion on §25.478(a)), and increasing the maximum deposit to the two highest months of estimated billing rather than one-sixth of the estimated annual billing (see discussion on §25.478(f)). In reply comments, Reliant also said that variations to the original REP Coalition proposal for giving all REPs the right to disconnect would require changes to the above sections. The variations included allowing a REP to reconnect their customer who was disconnected by that customer's previous REP for nonpayment of a final bill, or limiting a REP's right to disconnect to only its current customers and not for final bills when the customer has already switched.

The commission makes specific determinations in each of the sections listed above. The commission declines to adopt Reliant's suggested variations on the disconnect policy.

In reply comments, Reliant proposed that if the commission does not implement REP Coalition's original proposal to allow all REPs the right to disconnect, then, at a minimum, the commission should allow

affiliate REPs to disconnect the residential and small commercial price to beat customers they receive by default after competition begins. They also suggested that affiliate REPs should be allowed to disconnect customers for final bills from either the affiliate REP or the former integrated utility, to disconnect customers who switch to another REP, and to prevent reconnection until the customer pays the affiliate REP or agrees to payment arrangements. Reliant argued that if this proposal is not adopted, the additional credit and deposit restrictions placed on the affiliate REP but not other REPs should be reduced. Since the price to beat is based on the integrated utility rates in effect on January 1, 1999, which inherently incorporates the bad debt risk associated with the ability to disconnect, Reliant said affiliate REPs should have the same disconnect rights. This risk is low because the ability to disconnect dramatically reduces the number of customers who ultimately fail to pay or make payment arrangements.

Under Reliant's proposal, new providers, affiliate REPs operating outside the service territory of its affiliated TDU, and affiliate REPs serving returning price to beat customers inside the service territory of its affiliated TDU would not be allowed to disconnect non-paying customers, but could use credit screening and deposit tools to manage risk of non-payment. Reliant pointed out that the commissioners decided in the June 14, 2000 open meeting that affiliate REPs would be obligated to serve initial price to beat customers "under the current terms and conditions, including the current customer protection policies, applicable to the former electric utility at the onset of competition...." They said that "the restructuring models of all other states regulate the default provider and allow such recovery in that entity's rates and/or provide for system benefit fund recovery." Without the ability to disconnect, Reliant

argued that Texas would be the only state with an unproven disincentive for non-payment and no mechanism for the default provider to recover unavoidable bad debt costs. This situation would be compounded by the procedures and requirement leading up to the introduction of choice. Affiliate REPs will be required to serve all residential and "small commercial" customers who do not select another REP. Affiliate REPs will have no opportunity to pre-screen these customers for credit risk, nor will they be allowed to deny service to any of them. Since other REPs will have these rights, they will likely focus on and market to the customers with acceptable credit scores, leaving the affiliate REPs with the remaining higher credit risk customers. Thus, Reliant argued, affiliate REPs would lose many of the customers that would otherwise help limit the financial impact of higher risk customers.

Reliant also argued that affiliate REPs should be allowed to disconnect customers for non-pay because, otherwise, it would have no choice but to drop customers to the POLR after the customer misses one payment. The POLR would then "refuse to provide service" and require the customer to pay a deposit. If the affiliate REP is also the POLR, this will likely confuse customers, said Reliant. Thus, Reliant said its proposal would result in more customers being served by the affiliate REP at the price to beat as opposed to being served by the POLR at the higher rate.

PURA §39.102(a) states that the affiliate REP of the electric utility serving a retail customer on December 31, 2001, *may* continue to serve that customer until the customer chooses service from a different REP. Additionally, PURA §39.106 specifically establishes a POLR who is obligated to offer any requesting customer a standard retail service package at a fixed, non-discountable rate approved by

the commission. As such the POLR is the default provider for retail customers, and as a result is allowed to disconnect non-paying customers because it must offer service to all customers requesting service. In contrast, the price to beat was established to promote competitiveness of the retail electric market. It is not based on an affiliate REPs exposure to risk; instead it is designed to be a fixed rate to provide headroom for other providers to beat. The commission therefore determines that affiliate REPs do not have the same obligation to serve as the POLR, and should, therefore not be allowed to disconnect customers. This prohibition on disconnection also applies to final bills, hereby defined as the last billing cycle in calendar year 2001, issued to customers by the electric utility. It is expected that customers will have transitioned to either the affiliate REP or a competitive retailer during the first billing cycle of 2002, and as such, a customer should not be subject to disconnection by an entity other than their current REP. To the extent final bill amounts are transferred from the electric utility to its affiliate REP, the customer would still only be subject to termination by the affiliate REP, should the customer fail to pay these transferred charges.

Allowing the affiliate REP to disconnect when none of its competitors has this right does not promote a level playing field. The commission disagrees with Reliant's argument that the price to beat would be lower if affiliate REPs are allowed to disconnect because it reduces the number of customers who ultimately fail to pay or make payment arrangements. This is an inherently anti-competitive argument, because new providers would have to try to undercut the price to beat rate, but would not have the "benefit" of disconnecting customers. In other words, new providers would have higher costs associated with risk of nonpayment that the affiliate REP would not have, lowering headroom, and

stifling new providers' ability to entice customers with lower electric rates. Even further, the commission finds that Reliant's argument to allow only the affiliate REP to disconnect customers who switch to another REP and fail to pay their final bill to the affiliate REP, and the right to prevent reconnection until the customer pays the affiliate REP is even more anti-competitive. Affiliate REPs start out with the overwhelming advantage of automatically getting almost all of the customers when competition begins. This proposal would give affiliate REPs the sole power to prevent customers from switching and exercising their right to choose a new competitor. The commission finds that all REPs will have the same debt collection methods available to them and which are available to every other kind of company in a competitive market.

PURA outlines several requirements to mitigate this market power. One of these is the requirement that the affiliate REP must offer the price to beat to residential and small business customers in its home service area for the first five years of competition. Further, the affiliate REP may not offer those customers any other price until the earlier of 36 months after competition begins or when 40% of the residential or small commercial load is served by non-affiliate REPs. Allowing affiliate REPs, but not other providers, to disconnect customers directly contradicts the purpose of the price to beat period. As demonstrated by the successful Pennsylvania electric competition program, the key ingredient for the success of retail competition is not the power to disconnect service, but the headroom between the default provider's prices and those available in the competitive market.

The commission disagrees with Reliant's argument that the affiliate REP will be left with high-risk customers because it cannot pre-screen customers automatically transferred from the former integrated utility. The affiliate REP, like all other providers, can "drop" non-paying customers to the POLR; the rules do not require the affiliate REP to bear any kind of additional burden of serving non-paying customers.

Finally, Reliant said that the affiliate REP would "have no alternative" but to drop customers to the POLR after the customer misses one payment to minimize its bad debt risk. As discussed above, this is precisely the reason the commission has determined that allowing providers to disconnect will increase the number of actual disconnections. After the first three years, the affiliate REP will be offering competitive prices, in addition to the price to beat, to customers in its home service area. The competitive nature of the market means that in order to minimize risk, REPs will be more likely to not use discretion in actually ordering physical disconnection. Also, if the affiliate REP is also the POLR, then POLR service will be the price to beat rate. Therefore, customers dropped from the affiliate provider to the POLR will not pay a different rate for electric service.

Texas is unique in that the affiliate REP and the POLR provide two distinct functions; they are not interchangeable as "default service." In other states, the affiliated provider was automatically the POLR. Taking that into account, the commission's position that only the POLR should be allowed to disconnect customers and is required to offer service at a regulated rate that takes its obligation to serve all customers into account is consistent with every other state's rules for the POLR. PURA requires that

the POLR provide service to all customers, creating an inherent risk of bad debt. The commission expressed concern in the preamble to §25.43, relating to Provider of Last Resort, that if an affiliate REP is designated to provide POLR service at the price to beat rate, it would not be able to recover its cost of service. Therefore, the commission precluded affiliate REPs from bidding to provide POLR service in their affiliated TDU service area for the first five years after competition begins. Further, the commission decided to not appoint an affiliate REP to provide POLR service in its affiliated TDU service area unless no other REP submits a bid or unless no other bidders qualify to serve as POLR. The affiliate REP is intended to be more like other competitive providers, not like the POLR. Any certified REP may be designated to provide standard POLR service at a regulated rate.

The commission also finds that allowing the affiliate REP to disconnect only the initial price to beat customers, which is only applicable for the first five years at the most, is not a sound long-term policy if the commission's goal is to establish a robust competitive market. Instead, it would create confusion for customers and make it nearly impossible for the commission to investigate customer complaints regarding wrongful disconnection.

Consumer Commenters suggested that when a customer is sent to POLR service, POLR should be required to send that customer a notice that says the customer's former provider disconnected service due to nonpayment or abandonment. The notice should also inform the customer of the right to choose another provider and file a complaint with the commission if the disconnection notice was issued improperly.



The commission determines that requiring POLR to send out a notice to its new customers is unnecessary and declines to make this change because proposed §25.482(c) already requires a REP that terminates a contract to provide such information in its termination notice.

REP Coalition, Reliant, TXU Retail, Enron, AEP Energy Services, TNMP, SPS, and Entergy Texas REP said that the rules should clarify that, in addition to disconnection, only TDUs have the right to perform "reconnections." TEC suggested changes to recognize that a physical disconnection may also be made by a municipally owned utility or electric cooperative. Further, TXU TDU and TXU Retail suggested changes to the second sentence to clarify that disconnections will be performed under the utility's Tariff for Retail Delivery Service.

The commission agrees with TEC, TXU TDU, and TXU Retail and adopts changes to clarify that only a TDU, municipally owned utility, or electric cooperative may physically disconnect and reconnect a customer's electric service. The commission also adopts TXU TDU's and TXU Retail's recommended changes regarding the standard Tariff for Retail Delivery Service.

REP Coalition, Reliant, SPS, TNMP, AEP Energy Services, and Entergy Texas REP proposed changes to allow all electric providers to authorize the disconnection of a customer's electric service, even if that customer has already switched to a new provider—what they refer to as a "final bill disconnect." AEP Energy Services and AEP TDUs said that this provision is especially important for

affiliate REPs because, in the initial days after competition begins, customers will be switching from their affiliate REP to a new provider. AEP TDUs suggested in reply comments that this issue should be taken up in an expedited project to deal with transition billing issues. Enron and Shell agreed with REP Coalition that all REPs should be allowed to disconnect for electric service, but opposed language that would allow a provider to disconnect for a final bill. Consumer Commenters also opposed the proposal for the final bill disconnect.

Enron said this provision would grant a REP the right to disconnect another provider's customer and argued that this provision provides opportunities for abuse, is anti-competitive, and would cause customer confusion and panic. Enron and Consumer Commenters said that this provision would disempower customers and would be essentially the same as blocking a switch. Consumer Commenters said that there will be disputes between customers and providers. They argued that customers should be free to leave a provider when dissatisfied. If another provider is willing to offer service, even at a higher price, the customer should have the option of purchasing electricity from that new provider.

Enron and Consumer Commenters said that providers have existing alternatives to collect a final bill or at least limit their risk for customers defaulting on final bills. Enron cited PURA §39.101(f) in arguing that allowing providers to disconnect for a final bill is in direct conflict with the intent of SB 7 and would erode the customer protection rights applicable to customers today. Under the proposed rules, providers have the ability to review a customer's creditworthiness and to charge a customer a security

deposit if credit standards are not met. Further, they said, REPs can pursue all available legal remedies against a non-paying customer for their final bill, such as using debt collection agencies or pursuing their rights in small claims court.

REP Coalition, Reliant, SPS, TNMP, and Entergy Texas REP also proposed that all electric providers be required to provide customers an opportunity to avoid disconnection by agreeing to alternative payment plans of the type the POLR is required to offer.

The commission agrees with Enron and Consumer Commenters that allowing REPs to order the TDU to disconnect a customer even if that customer has already chosen another provider is anti-competitive and should not be adopted. Allowing providers to disconnect another provider's customer has a more harmful effect than an earlier proposal to block a switch of a customer who has not paid his or her current provider. Customers have the right to freely exercise their right to choose in a competitive market. Those customers who do not pay a provider for service risk bad credit and higher rates in the future, but they should not be prevented from receiving service from another provider that is willing to serve them.

It is a fundamental error of public policy to allow a competitive entity to block service provided by other competitors as a condition of payment for service. No competitive entity has this power in other unregulated businesses. K-Mart cannot prevent a customer from seeking a credit card from Sears prior to paying an overdue amount owed to K-Mart. The proliferation of niche marketers of credit card

services is ample proof that customers of various credit profiles can obtain access to credit services without the ability of any one creditor to prevent the customer from entering the competitive market. Credit card suppliers must carefully weigh the amount of bad debt they can accumulate and build into the cost of doing business. Some creditors aim at "big spenders" and others aim toward low volume spenders with credit history problems. The same will probably be true of competitive energy providers. Whether this development is welcome or not, the power of competition does not typically carry with it the power to cut the customer off from all other competitors as a means of debt collection to deny access to a service.

In the proposal, there is no time limit for a REP to order the disconnection of a customer for a final bill. A customer who is current on his electric bill with the current REP could be physically disconnected for nonpayment of an old bill owed to a former REP. Again, the inherent discretion used by electric utilities today will be exercised in a totally different manner in a competitive market with multiple providers compared to the public duty and obligations inherent in the operations of a public utility. A REP that disconnects a customer for a final bill will have absolutely no interest in getting the customer reconnected to another REP and so will have no interest in negotiating with the customer to obtain partial payment or deferred payment plans.

Reliant noted that they believe the authorization to disconnect will be at least ten days prior to actual disconnect.































commission. The commission also finds that five days is not adequate for the REP to investigate the complaint through the supervisory review process. It is not necessary to require REPs to submit all responses in writing.

Consumer Commenters suggested streamlining the commission's complaint process as outlined in proposed subsection (d). They favor substituting telephone hearings, as used by the Texas Workforce Commission, in place of the commission's informal complaint procedure. This alternative would allow an administrative law judge to ask questions of the complainant and company and to make a formal ruling. Consumer Commenters pointed out that after a customer has complied with the company's procedures and waited for over a month for a decision, the commission's informal complaint process should be by-passed. According to these organizations, the informal complaint process provides an additional 21 days for the company to inform the commission of its decision, based on the same information received previously. Therefore, Consumer Commenters argued that the informal complaint process adds additional time and effort without reaching a final conclusion.

The commission disagrees with Consumer Commenters' recommendation to substitute its informal complaint process with telephone hearings. The informal complaint process provides an opportunity for the commission to independently investigate both the customer's and REP's positions. Moreover, experience has shown that some customers avoid the utility's complaint process, and make complaints directly to the commission. Therefore, the commission finds that the informal complaint process is a necessary step to be continued in a competitive marketplace.

In proposed subsection (d)(1)(A), Consumer Commenters suggested deleting the words "upon request" to require the REP to advise the complainant of the commission's contact information.

The commission agrees with Consumer Commenters suggestion, and has amended the rule accordingly.

*§25.491, Record Retention and Reporting Requirements.*

TEC and MOU Commenters proposed excluding electric cooperatives and municipally owned utilities from the record retention and reporting requirements contained in §25.491. They contend that the commission does not have jurisdiction to impose these requirements on electric cooperatives and municipally owned utilities, pursuant to PURA §40.004(7) and §41.004(5).

As discussed in response to Question 7, the commission agrees that it cannot require electric cooperatives and municipally owned utilities to submit reports for reasons other than those specified in PURA §40.004(7) and §41.004(5). The commission amends this section accordingly.

In proposed subsection (a)(3), TXU Retail suggested changing the timeline for record submittal from five to 20 days, the standard for responding to discovery requests in commission proceedings. Also in subsection (a)(3), REP Coalition recommended substituting "calendar" for "business" days.

As discussed in response to Question 1, the commission agrees with TXU Retail that the timeline should be extended. However, it has amended the rule to allow 15 calendar days, because it is consistent with timelines for submitting other records to the commission.

REP Coalition and TNMP suggested deletion of the reporting requirement regarding direct mail solicitations in proposed subsection (b)(1). REP Coalition believes that data regarding direct mail solicitations is not necessary to monitor discriminatory practices. According to REP Coalition, direct mail solicitation is just one method of advertising and is not itself an indicator of discriminatory practices. SPS and REP Coalition also indicated that this requirement would pose a significant administrative burden.

In their reply comments, Reliant, Green Mountain, and New Power supported eliminating the direct mail reporting requirement on the basis that such marketing data is highly proprietary and should not be subject to commission review. New Power and Green Mountain further stated that this reporting requirement exceeds PURA's intent with regard to the monitoring and regulation of certain REP marketing practices.

In lieu of the reporting requirement for direct mail solicitations, REP Coalition proposed a new subsection (c) that would provide the commission authority to receive "additional information" from a REP within 15 days to investigate an alleged discriminatory practice. The proposed language also provides the REP with the ability to designate confidential information, and have such information

treated in accordance with the standard protective order issued by the commission applicable to generating capacity reports. In their reply comments, New Power and Green Mountain supported REP Coalition's new "additional information" provision in subsection (c), claiming it provides a far superior method for the commission to obtain information to investigate an allegation of discrimination, while reducing the burden imposed upon REPs.

The commission adopts REP Coalition's proposed new language as subsection (d), with modification, in lieu of the reporting requirement for direct mail marketing information. The modification requires a REP to provide any information requested by the commission or the Office of Public Utility Counsel to investigate an alleged discriminatory practice, including but not limited to, marketing information. The commission declines to adopt the proposed language for designating confidential information, because it is duplicative of other commission rules and procedures. The commission has amended the rule accordingly.

TNMP further proposed changes to the reporting requirements, including: (1) reporting the number of customers, but not by zip code; (2) eliminating the reporting of written denial of service notices and the number and total aggregated dollar amount of deposits held by the REP; and (3) reporting the number of complaints by category, but not by month. Also, Reliant recommended that the REP report the number of written denial of service notices only for residential and commercial customers.

The commission disagrees with TNMP and Reliant and declines to make the suggested changes. The reporting requirements are consistent with the mandate in PURA §39.101(d) to ensure REPs comply with the rules.

Consumer Commenters proposed reporting information concerning direct mail solicitations, denials of service, deposits, and complaints by nine-digit zip code plus four and by census tract. Consumer Commenters argued this is necessary to comply with PURA §39.101(d), which states that reports submitted by REPs must include information regarding the service provided, compiled by zip code and census tract. Consumer Commenters also recommended eliminating an exception to reporting by zip code if the registration agent does not have zip code information. According to Consumer Commenters, reporting by zip code and census tract will allow the commission to examine discriminatory practices and other problems within a provider's service territory. Consumer Commenters contend that the commission, in order to carry out its enforcement duty, must know who is being served and denied service, as well as the quality of service provided. In addition, Consumer Commenters suggested revising proposed subsection (b)(5) to require reporting of the total number of complaints from residential customers and the number of complaints resolved by the REP.

In reply comments, TXU Retail, New Power and Green Mountain opposed Consumer Commenters' proposed expanded reporting requirements. TXU Retail argued that Consumer Commenters' proposed changes are unreasonable and would add significant costs to all REPs.

With regard to Consumer Commenters proposals to add zip code and census tract reporting requirements, TXU Retail replied that the commission should investigate this issue and determine whether the data are available at a reasonable cost before adopting this provision of the rule.

The commission agrees in part with Consumer Commenters' recommendation, and has changed the rule to require reporting of residential customers, denials of service, deposits, and complaints by zip code, and where available, by census tract. This is consistent with PURA §39.101(d), which requires reporting by zip code and census tract. The commission has also eliminated language in subsection (b) that could imply that such zip code information would be obtained from the registration agent.

In proposed subsection (b)(5), Consumer Commenters recommended including customer service hold time as an additional category of complaints to be reported.

The commission disagrees with Consumer Commenters and declines to make the suggested changes. In a competitive market, consumers that are not satisfied with their current provider's quality of service, such as hold time, should have the ability to switch to another provider.

*§25.492, Non-Compliance with Rules or Orders; Enforcement by the commission.*

TEC and MOU Commenters suggested that proposed §25.492(a) should be revised to exclude electric cooperatives and municipally owned utilities, because the enforcement provisions contained in PURA §15.023 and §15.028 do not apply to them.

The commission agrees that the enforcement provisions do not apply to an electric cooperative or municipally owned utility, and has revised the rule accordingly.

Reliant recommended adding "notice and" before opportunity in proposed subsection (a).

In subsection (b), the State of Texas recommended the following changes to the last sentence to be more consistent with the requirements of SB 86: "The commission shall coordinate this investigation with any investigation which may be or has been undertaken by the Office of the Attorney General."

The commission agrees with these proposed changes, and has amended the rule accordingly.

Consumer Commenters recommended changes to proposed subsection (c) to make it mandatory that the commission initiate suspension or revocation proceedings under certain circumstances, including: (1) an above average number of customer complaints; (2) repetitive slamming and cramming; (3) inappropriate use of private customer information; (4) failure to comply with the commission rules regarding termination of service; (5) termination of a customer's service due to abandonment of a customer contract; (6) distributing inaccurate or misleading Electricity Facts label or being otherwise



engaged in unfair or fraudulent marketing practices; and (7) failure to comply with the terms and conditions of a customer's service.

In its reply comments, AEP Energy Services stated that Consumer Commenters' proposed changes to subsection (c) should be rejected, because the opportunity to seek certificate suspension or revocation by the commission or by an affected person is addressed in §25.107(j) of this title.

The commission finds that it should maintain discretion when initiating a proceeding to consider suspension or revocation of an aggregator's or REP's certification. However, the commission agrees with the suggestion to convey the types of situations that may prompt such an investigation. Therefore, it has amended the rule to reference the circumstances outlined under §25.107(j) and §25.111(j) of this title regarding suspension and revocation of REP certification and aggregator registration.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2000) (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. The commission also adopts these rules pursuant to PURA §39.101, which grants the

commission authority to establish various, specific protections for retail customers; §39.102, which provides retail customer choice; §39.1025, which prohibits telephone solicitation to an electricity customer regarding the customer's choice of retail electric provider where the customer has given notice to the commission that it does not want to receive such solicitations, and which directs the commission to establish and provide for the operation of a database of customers giving such notice to the commission; §39.104, which grants the commission authority to use customer choice pilot projects; §39.106, which mandates the designation of providers of last resort by the commission; §39.107, which provides for metering services on introduction of customer choice; §39.202, which provides that an affiliated REP shall offer the "price to beat" to residential and small commercial customers of its affiliated transmission and distribution utility; and PURA chapter 17, subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: PURA §§14.002, 39.101, 39.102, 39.1025, 39.104, 39.106, 39.107, 39.202; and PURA chapter 17, subchapters A, C and D.

**§25.471. General Provisions of Customer Protection Rules.**

(a) **Application.** This subchapter applies to aggregators and retail electric providers (REPs). These rules specify when certain provisions are applicable only to some, but not all, of these providers.

- (1) Affiliate REP customer protection rules, to the extent the rules differ from those applicable to all REPs or those that apply to the provider of last resort (POLR), shall not apply to the affiliate REP when serving customers outside the geographic area served by its affiliated transmission and distribution utility. The affiliate REP customer protection rules shall apply until January 1, 2007.
- (2) Requirements applicable to a POLR apply to a REP only in its provision of service as a POLR.
- (3) The rules in this subchapter shall take effect on January 15, 2001.
- (4) The rules in this subchapter are minimum, mandatory requirements that shall be offered to or complied with for all customers unless otherwise specified. A customer other than a residential or small commercial class customer may agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules shall be reduced to writing and provided to the customer. Additionally, copies of such agreements shall be provided to the commission upon request.

- (5) The rules of this subchapter control over any inconsistent provisions, terms, or conditions of a REP's contracts or other documents describing service offerings for residential and small commercial customers or customers in Texas.
- (b) **Purpose.** The purpose of this subchapter is to:
- (1) provide minimum standards for customer protection. An aggregator or REP may adopt higher standards for customer protection, provided that the prohibition on discrimination set forth in subsection (c) of this section is not violated;
  - (2) provide customer protections and disclosures established by other state and federal laws and rules including but not limited to the Fair Credit Reporting Act (15 U.S.C. §1681, *et seq.*) and the Truth in Lending Act (15 U.S.C. §1601, *et seq.*) Such protections are applicable where appropriate, whether or not it is explicitly stated in these rules;
  - (3) provide customers with sufficient information to make informed decisions about electric service in a competitive market; and
  - (4) prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators and REPs in the marketing, solicitation and sale of electric service and in the administration of any terms of service for electric service.
- (c) **Prohibition against discrimination.** This subchapter prohibits REPs from unduly refusing to provide electric service or otherwise unduly discriminating in the marketing and provision of

electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

(d) **Definitions.** For the purposes of this subchapter the following words and terms have the following meaning, unless the context clearly indicates otherwise:

- (1) **Affiliate retail electric provider** — A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area and who provides retail electric service to customers inside the geographic area served by its affiliated transmission and distribution utility.
- (2) **Competitive energy services** — As defined in §25.341 of this title (relating to Definitions).
- (3) **Competitive retailer** — A REP, municipally owned utility, or electric cooperative that offers customer choice in the restructured competitive electric power market or any other entity authorized to provide electric power and energy in Texas. For purposes of this rule, a municipally owned utility or electric cooperative is only considered a competitive retailer where it sells retail electric power and energy outside its certificated service territory. Similarly, an affiliate REP is only considered a competitive retailer where it sells retail electric power and energy outside the geographic area served by its

affiliated transmission and distribution utility. In no event does this term apply to a REP providing service as the provider of last resort.

- (4) **Customer** — A person who is currently receiving retail electric service from a REP in the person's own name or the name of the person's spouse, or the name of an authorized representative of a partnership, corporation, or other legal entity; or a person who applies for such service for the first time or reapplies after discontinuance or termination of service.
- (5) **Disconnection of service** — Interruption of a customer's supply of electric service at the customer's point of delivery by a transmission and distribution utility, a municipally owned utility or an electric cooperative.
- (6) **Economically distressed geographic area** — Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.
- (7) **Electric service** — Combination of the transmission and distribution service provided by a transmission and distribution utility, municipally owned utility, or electric cooperative, and the generation service provided to an end-use customer by a REP. This term does not include optional competitive energy services that are not required for the customer to obtain service from a REP.
- (8) **Energy service** — As defined in §25.223 of this title (relating to Unbundling of Energy Service).
- (9) **In writing** — Written words memorialized on paper or sent electronically.

- (10) **Provider of last resort (POLR)** — As defined in §25.43 of this title (relating to Provider of Last Resort).
- (11) **Registration agent** — Entity designated by the commission to administer premise information and related processes concerning a customer's choice of a REP in the competitive electric market in Texas.
- (12) **Retail electric provider (REP)** — Any entity as defined in §25.5 of this title (relating to Definitions). For purposes of this rule, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory.
- (13) **Small commercial customer** — A nonresidential customer that has a peak demand of less than 50 kilowatts during any 12-month period.
- (14) **Standard meter** — As defined in §25.341 of this title.
- (15) **Termination of service** — The cancellation or expiration of a sales agreement or contract by a REP by notification to the customer and the registration agent.

**§25.472. Privacy of Customer Information.**

(a) **Mass customer lists.**

- (1) **Contents of mass customer list.** A mass customer list shall consist of the name, billing address, rate classification, monthly usage for the most recent 12-month period,

meter type, and account number or electric service identifier (ESI). All customers eligible for the price to beat pursuant to the Public Utility Regulatory Act §39.202 shall be included on the mass customer list, except a customer who opts not to be included on the list pursuant to paragraph (2) of this subsection.

- (2) Prior to the release of a mass customer list, the entity required to release the mass customer list shall issue a mailing to all customers who may be included on the list, but that have not previously received such a mailing from that entity. The mailing shall:
  - (A) explain the issuance of the mass customer list;
  - (B) provide the customer with the option of not being included on the list and allow the customer at least 15 days to exercise that option;
  - (C) inform the customer of the availability of the statewide Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List) and provide the customer with information on how to request placement on the list;
  - (D) provide a postage-paid postcard, a toll free telephone number, and an Internet website address to notify the entity required to release the list of the customer's desire to be excluded from the mass customer list.
- (3) **Release dates.** The commission will require the electric utility to release a mass customer list on or before September 1, 2001. Each retail electric provider (REP) shall release a mass customer list on December 31 of each year from 2002 to 2006. A customer that elects, at any time, not to be included on the mass customer list shall have that option honored through December 31, 2006.



- (4) The mass customer list shall be issued, at no charge, to all REPs certified by, and aggregators registered with, the commission that will be providing retail electric or aggregation services to residential or small commercial customers.
- (5) A REP shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of a REP prior to submission of the customer's enrollment to the registration agent.

(b) **Individual customer information.**

- (1) Except as specified in subsection (a) of this section, a REP or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection or Change of Retail Electric Provider). This prohibition shall not apply to the release of such information by a REP or aggregator to:
  - (A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving REPs or aggregators;
  - (B) an agent of the REP or aggregator engaged to collect an overdue or unpaid amount or to perform any of the duties of the REP or aggregator if such duties are outsourced;
  - (C) credit reporting agencies pursuant to state and federal law;

- (D) an energy assistance agency to allow a customer to qualify for and obtain other financial assistance provided by the agency;
  - (E) local, state, and federal law enforcement agencies pursuant to lawful process; or
  - (F) the transmission and distribution utility within whose geographic service territory the customer is located, pursuant to the provisions of the transmission and distribution utility's commission-approved Tariff for Retail Delivery Service.
- (2) A REP or aggregator shall not publicly disclose or make available for sale any customer-specific information about its customers including that obtained from the registration agent, the customer's transmission and distribution utility, or the customer. A REP or aggregator shall not disseminate, sell, deliver or authorize the dissemination, sale, or delivery of any customer-specific information or data obtained.
- (3) A REP shall, upon the request of the customer or another REP that has received authorization from the customer, submit to the requesting REP or to the customer directly, the monthly usage of the customer for the previous 12 months, or for as long as the REP has provided service to the customer, whichever is shorter. The methods of authorization of release of customer specific information shall be those methods described in §25.474 of this title. A customer shall be entitled to request this information free of charge at least once every 12 months.
- (4) Upon the request of a customer, a REP shall notify a third person chosen by the customer of any pending disconnection of service or termination of contract for electric service with respect to the customer's account.











- (d) **Required authorization disclosures.** All authorizations shall clearly and conspicuously disclose the following information contained in the REP's contract or terms of service document for each product offered to the customer:
- (1) the name of the new REP;
  - (2) the ability of a customer to select to receive information in English, Spanish, or the language used in the marketing of service to the customer. The REP shall provide a means of obtaining and recording a customer' language preference;
  - (3) price, including the total price stated in cents per kilowatt-hour, for electric service;
  - (4) term or length of the contract or term of service;
  - (5) the presence or absence of early termination fees or penalties, and applicable amounts;
  - (6) any requirement to pay a deposit and the amount of that deposit;
  - (7) any fees to the customer for switching to the REP pursuant to subsection (l) of this section; and
  - (8) the customer's right to review and cancel the contract within three federal business days without penalty and a statement that the customer 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 cancellation before the customer's electric service is switched to the REP.
- (e) **Verification requirements.** A verification shall clearly:



- (1) confirm the customer's billing name, address, and electric service identifier (ESI) or account number to be used by the selected REP in making an enrollment or switch request to the registration agent;
  - (2) confirm appropriate verification data, such as the customer's date of birth, the customer's mother's maiden name, or other voluntarily submitted information;
  - (3) confirm the decision to change from the current REP to the new REP; and
  - (4) confirm that the customer designates the new REP to act as the customer's agent for the switch of REP.
- (f) **Methods of obtaining customer authorization and verification.** Customer authorizations and verifications shall be obtained by using one of the methods listed in this subsection.
- (1) **Written authorization and verification.** A written authorization from a customer for a selection or switch of a REP shall use a letter of agency (LOA) as specified in this subsection.
    - (A) The LOA shall be a separate or easily separable document containing the requirements prescribed in subparagraph (D) of this paragraph for the sole purpose of authorizing the REP to initiate a REP switch request. The LOA shall be signed and dated by the customer requesting the REP switch.
    - (B) The LOA shall not be combined with inducements of any kind on the same document.

(C) At a minimum, the LOA shall be printed in a size and type that is clearly legible, and shall contain clear and unambiguous language that confirms:

- (i) the customer's billing name, address, and ESI or account number to be used by the REP in making a switch request;
- (ii) the decision to switch from the current REP to the new REP; and
- (iii) that the customer designates (name of the new REP) to act as the customer's agent for switching the REP.

(D) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all the requirements of this subsection.

Customer billing name: \_\_\_\_\_

Customer billing address: \_\_\_\_\_

Customer service address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

ESI ID or Account #: \_\_\_\_\_

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

\_\_\_\_\_

Relationship to customer: \_\_\_\_\_

Telephone number of individual authorized to act for customer: \_\_\_\_\_

By initialing here and signing below, I am authorizing (name of new REP) to become my new retail electric provider in place of my current retail electric provider. I authorize (name of new REP) to act as my agent to make this change happen, and direct my current retail electric provider to work with the new provider to make this change.

**I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change retail electric providers for the address listed above.**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

- (E) The customer's signature on the letter of agency, contract or other document which contains the materials terms and conditions of the service shall constitute an authorization and verification if the letter of agency, contract or documents comply with the provisions of this section.
- (F) Before obtaining a signature from a customer, a REP shall provide the customer a reasonable opportunity to read any written materials accompanying the contract or terms of service document and shall answer any and all questions posed by any customer about information contained in the documents.
- (G) Upon obtaining the customer's signature, a REP or aggregator shall immediately provide the customer a legible copy of the signed contract, the required terms of service document, and Your Rights as a Customer disclosure. If written

solicitations by a REP contain the terms of service document or contract, any tear-off portion that is submitted by the customer to the REP to obtain electric service shall allow the customer to retain the terms of service document.

- (2) **Telephonic authorization and verification.** A REP or aggregator that obtains a customer's authorization by means of a telephone conversation shall audio record the entirety of such authorization, or obtain independent third party verification of, the customer's authorization prior to submitting an enrollment or switch order. In addition to the requirements of this paragraph, both the authorization and audio recording or third party verification shall adhere to the requirements of subsections (d) and (e) of this section.

- (A) **Additional authorization and verification requirements.** Telephonic enrollment or switch orders shall:

- (i) clearly inform the customer at the beginning of a call that the call is being recorded. The entire authorization and verification conversation with the customer shall be recorded so that evidence of a customer's consent can be reviewed and investigated if a subsequent complaint is filed;
- (ii) read any script and respond to any questions in the language used to make the underlying sales transaction and proceed at a normal conversational speed using plain, easily, understood language;
- (iii) at a normal conversational speed, state the name of the REP to which the customer is being switched in its entirety; and

- (iv) for both the authorization and the verification, agents shall clearly state that the customer will have a right of cancellation without penalty and that the customer 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 cancellation before the customer's electric service is switched by the REP.
- (B) **Independent third party.** An independent third party shall operate in a location physically separate from the REP or aggregator or the REP's or aggregator's marketing agent and shall not:
  - (i) be owned, managed, or directly controlled by the REP or aggregator or the REP's or aggregator's marketing agent; or
  - (ii) have financial incentive to confirm enrollment or switch orders.
- (3) **Internet enrollment.** A REP or aggregator that offers Internet enrollment to customers shall comply with the authorization and verification requirements in subsections (c) and (d) of this section and with the following minimum requirements:
  - (A) The aggregator or REP shall maintain an Internet website at the website address provided to the commission. The website shall identify the legal name of the aggregator or REP, its address, telephone number, and Texas license number to provide aggregation services or sell retail electric service.
  - (B) The means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the customer and the REP or aggregator

shall be by an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;

- (C) The REP or aggregator shall identify the terms of service document by a version number to ensure the ability to verify the particular agreement to which the customer assents. The REP or aggregator shall make available a copy of the terms of service document, as required by §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers), that is agreed to by a customer, on the REP's or aggregator's Internet website. The terms of service document shall be accessible by the customer for the duration of the contract term offered to the customer.
- (D) The Internet enrollment procedure shall prompt the customer to print or save the terms of service document to which the customer assents and provide an option to have a written terms of service document sent by regular mail.
- (E) The REP or aggregator shall provide to the customer a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the 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.
- (F) The REP or aggregator shall obtain a verification that meets the standards of subsection (e) of this section, provide a statement with a box that must be checked by the customer to indicate that the customer has read and agrees to

select the REP to supply electric service, and the time and date of the customer's enrollment. The customer's enrollment shall be followed by a confirmation of the change of the customer's REP by e-mail, which shall include a conspicuous notice of the applicable right of cancellation and offer the customer the option of exercising this right by toll-free telephone number, e-mail, Internet website, facsimile transmission, or regular mail.

(G) Customer authorizations and verifications shall adhere to any state and federal guidelines governing the use of electronic signatures.

(4) **Door-to-door sales.** A REP or aggregator that engages in door-to-door marketing at a customer's residence, or personal solicitation at a public location (such as malls, fairs, or places of retail commercial activity) shall be subject to the following:

(A) The REP or aggregator shall comply with the standards set forth in subsections (c)-(e) of this section and paragraph (1) of this subsection.

(B) The REP or aggregator shall provide the disclosures and right of rescission required by this section and the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. §29).

(C) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification on the front of the individual's outer clothing that prominently displays the name of the REP or aggregator. The 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.

(D) The REP or aggregator shall affirmatively state that it is not a representative of the customer's transmission and distribution utility. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable customer that the individual represents the customer's transmission and distribution utility or the provider of last resort (POLR).

(g) **Record retention.** A REP shall maintain non-public records of a customer authorization or verification for a change in REP for 24 months from the date of the REP's initial service to the customer and shall provide such records to the customer and the commission upon request.

(h) **Right of cancellation.** A REP shall promptly provide the customer with the terms of service document after the customer has provided authorization to select the REP pursuant to one of the methods set forth in this section. The REP shall offer the customer a right to cancel the contract without penalty or fee of any kind for a period of three federal business days after the customer's receipt of the terms of service document and acceptance of the REP's offer. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service (U.S. mail) will be received by the customer within three federal business days. The cancellation period shall not start until the customer receives the terms of service document in the manner prescribed by this subchapter, based on the customer's



method of enrollment. Any REP receiving a late notice of cancellation from the customer shall contact the registration agent and cancel the pending switch as soon as possible after such late notice is received.

- (i) **Submission of customer's selection to the registration agent.** A REP may submit a customer's selection of the REP to the registration agent prior to the expiration of the cancellation period prescribed by subsection (h) of this section. Additionally, the REP shall submit the switch request to the registration agent at the proper time so that the switch will be processed on the date agreed to by the customer and as allowed by the tariff of the transmission and distribution utility, municipally owned utility, or electric cooperative. The customer shall be informed of the scheduled date that the customer will begin receiving electric service from the REP, and of any delays in meeting that date. Additionally, the REP must advise the registration agent of any "special needs" customers and renew such notification to the registration agent annually.
- (j) **Duty of the registration agent.** When the registration agent receives an enrollment or switch request from a REP, the registration agent shall:
- (1) process that request promptly; and
  - (2) send the customer an enrollment or switch notification notice in English and Spanish pursuant to either subparagraph (A) or (B) of this paragraph, as appropriate.

(A) **Standard enrollment and switches.** The notice provided by the registration agent to the customer shall comply with the provisions of this subparagraph, unless the switch is considered a "switch to POLR" as described in subparagraph (B) of this paragraph. The notice shall:

- (i) identify the REP that initiated the enrollment or switch request;
- (ii) inform the customer that the customer's REP will be switched unless the customer requests the registration agent to cancel the switch by the date stated in the notice;
- (iii) provide a cancellation date by which the customer may request a switch to be cancelled, no less than seven calendar days after the customer receives the notice; and
- (iv) provide instructions for the customer to request that the switch be cancelled. These instructions which shall include a telephone number, facsimile machine number, and e-mail address to reach the registration agent.

(B) **Switch to POLR.** If the customer is being switched to the POLR at the request of the REP currently serving the customer, the notice provided to the customer by the registration agent shall include only the following:

- (i) the name of the REP that initiated the request;
- (ii) the name of the POLR that will begin providing electric service to the customer; and

- (iii) the date such switch will be effective.
  - (3) unless the customer makes a timely request to cancel the switch, direct the transmission and distribution utility to implement the switch effective with the customer's next meter reading provided that such meter reading is at least one business day after the transmission and distribution utility receives notice of the switch request or such other time and date as requested by the customer or the REP.
- (k) **Customer's switch to POLR.** The methods of customer authorization, customer verification, and rights of cancellation are not applicable when the customer's electric service is "dropped" to the POLR by a REP for non-payment pursuant to §25.482 of this title (relating to Termination of Contract). Nothing in this subsection shall be read to imply that the customer is accepting a contract with the POLR for a specific term.
- (l) **Fees.** A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to a customer to select, switch or enroll with the REP unless the customer requests a switch or enrollment that does not conform with the normal meter reading and billing cycle. Such fee shall not exceed the rate charged by the transmission and distribution utility for this off-cycle meter reading. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent.
- (m) **Transferring customers from one REP to another.**

- (1) Any REP that will acquire customers from another REP due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. If the transfer of customers will materially change the terms of service for the affected customers, the notice shall:
  - (A) identify the current and acquiring REP;
  - (B) explain why the customer will not be able to remain with the current REP;
  - (C) explain that the customer has a choice of selecting a REP and may select the acquiring REP or any other REP;
  - (D) explain that if the customer wants another REP, the customer should contact that other REP;
  - (E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;
  - (F) identify the date that customers will be or were transferred to the acquiring REP;
  - (G) provide the Electricity Facts label and terms of service document of the acquiring REP; and
  - (H) provide a toll-free telephone number for a customer to call for additional information.

- (2) The acquiring REP shall provide the commission with a copy of the notice when it is sent to customers.
  - (3) If the transfer of customers will not result in a material change to the terms of service for the affected customers, the notice shall contain only the information in paragraph (1)(A), (B), and (F)-(H) of this subsection.
- (n) **Complaints alleging unauthorized change of REP (Slamming).** A customer may file a complaint with the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for any reasons related to the provisions of this section.
- (1) **REP's response to complaint.** After review of a customer's complaint, the commission shall forward the complaint to the REP that the customer believes made an unauthorized switch. The REP is responsible for performing the following upon receiving a complaint:
    - (A) take all actions within its control to facilitate the customer's prompt return to the original REP within three days;
    - (B) cease any collections activities related to the switch until the complaint has been resolved by the commission; and
    - (C) respond to the commission within 21 calendar days after receiving the complaint. The REP's response shall include the following:
      - (i) all documentation related to the authorization and verification used to switch the customer's service; and

- (ii) all corrective actions taken as required by paragraph (3) of this subsection, if the switch in service was not verified in accordance with subsections (c)-(e) of this section.
- (2) **Commission investigation.** The commission shall review all of the information related to the complaint, including the REP's response, and make a determination of whether the REP complied with the requirements of this section. The commission shall inform the complainant and the REP of the results of the investigation and identify any additional corrective actions that may be required of the REP or the customer's obligation to pay any charges related to the authorized switch.
- (3) **Responsibilities of the REP that initiated the change.** If a customer's REP is changed without authorization consistent with this section, the REP that initiated the unauthorized change shall:
  - (A) within five business days of the customer's request, pay all charges associated with returning the customer to the original REP;
  - (B) within ten business days of the customer's request, provide all billing records and usage history information to the original REP related to the unauthorized change of services;
  - (C) within 30 days of the original REP's request for payment, pay the original REP the amount it would have received from the customer if the unauthorized change had not occurred;

- (D) within 30 days of the customer's request, refund any amounts paid by the customer as required by paragraph (4) of this subsection; and
  - (E) cancel all unpaid charges.
- (4) **Responsibilities of the original REP.** The original REP shall:
- (A) inform the REP that initiated the unauthorized switch of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (3)(B) of this subsection;
  - (B) provide to the customer all benefits or gifts associated with the service, such as frequent flyer miles, that would have been awarded had the unauthorized change not occurred, upon receiving payment for service provided during the unauthorized change;
  - (C) maintain a record of customers that experienced an unauthorized change in REP that contains:
    - (i) the name of the REP that initiated the unauthorized change;
    - (ii) the account number affected by the unauthorized change;
    - (iii) the date the customer asked the unauthorized REP to return the customer to the original REP; and
    - (iv) the date the customer was returned to the original REP; and
  - (D) not bill the customer for any charges the customer incurred during the first 30 days after the unauthorized change in providers, but may bill the customer for

charges that were incurred after the first 30 days based on what the original REP would have charged if the unauthorized change had not occurred.

(o) **Compliance and enforcement.**

- (1) **Records of customer verifications and unauthorized changes.** A REP, other than a municipally owned utility or an electric cooperative, shall provide a copy of records maintained under subsections (c) - (f) and (n) of this section to the commission upon request.
- (2) **Administrative penalties.** If the commission finds that a REP or aggregator, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission shall order the REP or aggregator to take corrective action as necessary. Additionally, the REP or aggregator may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council.
- (3) **Certificate revocation.** If the commission finds that a REP or aggregator, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP or



aggregator, thereby denying the REP or aggregator the right to provide service in this state.

- (4) **Coordination with the office of the attorney general.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

**§25.475. Information Disclosures to Residential and Small Commercial Customers.**

- (a) **General disclosure requirements.** All printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures distributed by retail electric providers (REPs) and aggregators:
- (1) shall be provided in a readable format, written in clear, plain, easily understood language;
  - (2) shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law; and
  - (3) upon receipt of a license or certificate from the commission, shall include the REPs certified name or the aggregators registered name, the number of the license, plan name, and name of the product offered.

(b) **Advertising and marketing materials.**

- (1) Except as otherwise provided by this section, advertisements and marketing materials, other than television or radio, that make any claims regarding price, cost competitiveness, or environmental quality shall include the Electricity Facts label. In lieu of including an Electricity Facts label, the following statement may be provided: "For a copy of important standardized information and contract terms regarding this product, call (name, telephone number, and website (if available) of the REP)." A REP shall provide a terms of service document, which includes an Electricity Facts label, relating to the service or product being advertised to each person who contacts the REP in response to this statement.
- (2) A REP shall include the following statement in any television or radio advertisement that makes a claim about price, cost competitiveness, or environmental quality for an electricity product of the REP: "You can obtain information that will allow you to compare the price and terms of this product with other offers. Call (name, telephone number and website (if available) of the REP)." A REP shall provide a terms of service document, which includes an Electricity Facts label, to each person who contacts the REP in response to this statement.

(c) **Terms of service document.**

- (1) For each service or product that it offers to residential or small commercial customers, a REP shall create a terms of service document. A REP shall assign a number to each version of its terms of service document.
- (2) The terms of service document shall be provided to new customers. It shall also be provided to current customers at any time that the REP materially changes the terms and conditions of service with its customers. Upon request, customers are entitled to receive an additional copy of the terms of service document.
- (3) A REP, other than a municipally owned utility or an electric cooperative, shall furnish its terms of service documents to the commission upon the commission's request.
- (4) A REP shall maintain a copy of each customer's terms of service document for two years after the terms of service expire.
- (5) The following information shall be conspicuously presented in the terms of service document:
  - (A) The REP's certified name, mailing address, Internet website address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference);
  - (B) The Electricity Facts label as specified in subsection (e) of this section;
  - (C) A statement as to whether there is a minimum contract term;
  - (D) A statement as to whether there are penalties to cancel service before the end of the minimum term of the contract and the amount of those penalties;

- (E) If the REP requires deposits from its customers, a description of the conditions that will trigger a request for a deposit, the maximum amount of the deposit, a statement that interest will be paid on the deposit including the amount of the interest that will be paid, and the conditions under which the customer may obtain a refund of a deposit;
- (F) The itemization of any charges that must be paid by the customer before service is initiated or switched;
- (G) The itemization of any services that are included in the customer's contract, including:
  - (i) the specific methods and rates by which the customer will be charged for electric service and how such charges will appear on the customer's electric bill; and
  - (ii) the cost for each service or product other than electric service and how such charges will appear on the customer's electric bill. If a competitive retailer has bundled the charges for these other services together, the total cost of all charges for services other than electric service and how such charge will appear on the customer's electric bill;
- (H) The itemization of any charges that may be imposed on the customer during the period of the contract for default, late payment, switching fees, late fees, fees that may be charged to the customer for returned checks, fees charged for early

termination of the contract, collection costs imposed on the customer if the customer defaults, and any other non-recurring fees and charges;

- (I) The policies of the REP regarding payment arrangements, late payments, payments in dispute and defaults by the customer;
- (J) All other material terms and conditions, including, without limitation, exclusions, reservations, limitations and conditions of the contract for services offered by the REP;
- (K) In a conspicuous and separate paragraph or box:
  - (i) A description of the right of a new customer to cancel a contract without fee or penalty of any kind within three federal business days after receiving the terms of service document sent to the customer after the REP has obtained the customer's authorization to provide service to the customer;
  - (ii) Detailed instructions for canceling a contract, including the telephone number, facsimile machine number and e-mail address that the customer may use to cancel the contract; and
  - (iii) Any information on automatic contract renewal that applies;
- (L) A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically

distressed geographic area, or qualification for low income or energy efficiency services;

- (M) A statement that bill payment assistance for customers is offered by the REP and that additional information may be obtained by contacting the REP; and
- (N) A statement that rate reductions for qualified low income customers are offered by the REP.

(d) **Minimum notice of changes in terms and conditions, contract, and terms of service.**

- (1) **Change in terms and conditions.** A REP shall provide written notice to its customers 45 days in advance of any material change in the terms of service document. The notice shall clearly specify what actions the customer needs to take to terminate the contract, the deadline by which such action must be taken, and the ramifications if such actions are not taken within the specified deadline. This notice may be provided in or with the customer's bill or in a separate document, but shall be clearly and conspicuously labeled with the following statement: "Important notice regarding changes to your electric service contract." The notice shall clearly state that the customer may decline any material change in the terms of service and cancel the contract without penalty. Notice of the customer's option to decline is not necessary for material changes that favor the customer or for changes that are mandated by a regulatory agency.
- (2) **Automatic renewal clauses.** A REP may utilize an automatic renewal clause. Any contract renewed through the activation of an automatic renewal clause shall be in effect

for a maximum of 30 days and such clause may be repeatedly activated unless cancelled by the customer or the REP materially changes the terms of service.

(e) **Electricity Facts label.**

(1) **Pricing disclosures.** Pricing information disclosed by a REP in an Electricity Facts label shall include:

(A) For the total cost of electric services, exclusive of applicable taxes:

(i) If the billing is based on rates that will not vary by season or time of day, the total average price for electric service reflecting all recurring charges, including generation, transmission and distribution, and other flat rate charges expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

(I) The average price for residential customers shall be shown for 500, 1,000 and 1,500 kilowatt hours per month; and

(II) The average price for small commercial customers shall be shown for 1,500, 2,500 and 3,500 kilowatt hours per month;

(ii) If the billing is based on rates that vary by season or time of day, the average price for electric service, reflecting all recurring charges and based on the applicable load profile approved by the commission, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

- (I) The average price for residential customers shall be shown for 500, 1,000 and 1,500 kilowatt hours per month; and
- (II) The average price for small commercial customers shall be shown for 1,500, 2,500 and 3,500 kilowatt hours per month;
- (iii) If a competitive retailer combines the charges for electric service with charges for any other product, the competitive retailer shall:
  - (I) If the electric services are sold separately from the other products, disclose the total price for electric service separately from other products; and
  - (II) If the competitive retailer does not permit a customer to purchase the electric service without purchasing the other products, state the total charges for all products as the price of the total electric service.
- (B) If the pricing plan envisions prices that will vary according to the season or time of day, the statement: "This price disclosure is an example based on average usage patterns — your average price for electric service will vary according to when you use electricity. See the terms of service document for actual prices."
- (C) If the pricing plan envisions prices that will vary during the term of the contract because of factors other than season and time of day, the statement: "This price disclosure is an example based on average contract prices — your average price for electric service will vary according to your usage and (insert



description of the basis for and the frequency of price changes during the contract period). See the terms of service document for actual prices."

(D) If the price of electric service will not vary, the phrase "fixed price" and the length of time for which the price will be fixed; and

(E) If the price of electric service is based on the season or time of day, the on-peak seasons or times and the associated rates.

(2) **Contract terms disclosures.** Specific contract terms that shall be disclosed on the Electricity Facts label are:

(A) The minimum contract term, if any; and

(B) Early termination penalties, if any.

(3) **Fuel mix disclosures.** The Electricity Facts label shall contain a table depicting, on a percentage basis, the fuel mix of the electricity product supplied by the REP in Texas. The table shall also contain a column depicting the statewide average fuel mix. The break-down for both columns shall provide percentages of net system power generated by the following categories of fuels: coal and lignite; natural gas; nuclear; renewable energy (comprising biomass power, hydro power, solar power and wind power); and other sources. Fuel mix information shall be based on generation data for the most recent calendar year.

(A) The percentage used shall be rounded to the nearest whole number. Values less than 0.5% and greater than zero may be shown as "<0.5%".

- (B) Any source of electricity that is not used shall be listed in the table and depicted as "0.0%".
- (4) **Air emissions and waste disclosures.** The Electricity Facts label shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide and particulate emissions and nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (3) of this subsection.
  - (A) Emission rates for carbon dioxide, nitrogen oxide, sulfur dioxide and particulates shall be calculated in pounds per 1,000 kilowatt-hours (lbs/1,000 kWh), divided by the corresponding statewide system average emission rates, and multiplied by 100 to obtain indexed values.
  - (B) Rates for nuclear waste shall be calculated in pounds of spent fuel per 1,000 kilowatt-hours, divided by the corresponding statewide system average rate, and multiplied by 100 to obtain indexed values.
  - (C) The commission shall calculate the statewide system average rates to be used in accordance with this subsection.
- (5) **Renewable energy claims.** A REP may verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title (relating to Goal for Renewable Energy) retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.

- (6) **Format of Electricity Facts label.** Each Electricity Fact label shall be printed in type no smaller than ten points in size and shall be formatted as shown below:

<b>Electricity Facts</b>				
[Name of REP], [Name of Product] [Service area <i>(if applicable)</i> ] [Date]				
<b>Electricity price</b>	Average monthly use:	500kWh	1,000kWh	1,500 kWh
	<b>Average price per kilowatt-hour:</b>	[x.x]¢	[x.x]¢	[x.x]¢
This price disclosure is an example based on [criteria used to construct the example] – your average price for electric service will vary according to [relevant variation]. See the Terms of Service document for actual prices. [If applicable] Price fixed for [xx] months. [If applicable] On-peak [season or time]:[xxx] [If applicable] Average on-peak price per kilowatt-hour: [x.x]¢ [If applicable] Average off-peak price per kilowatt-hour: [x.x]¢				
<b>Contract</b>	Minimum term: [xx] months.		Penalty for early cancellation: \$[xx]	
<i>See Terms of Service statement for a full listing of fees, deposit policy, and other terms.</i>				
<b>Sources of power generation</b>		<b>This product</b>	<b>Texas (for comparison)</b>	
	Coal and lignite	[xx]%	[xx]%	
	Natural gas	[xx]%	[xx]%	
	Nuclear	[xx]%	[xx]%	
	Renewable energy	[xx]%	[xx]%	
	Other	[xx]%	[xx]%	
	<b>Total</b>	<b>100%</b>	<b>100%</b>	
<b>Emissions and waste per kWh generated</b>	Carbon dioxide			
	Nitrogen oxides			
	Particulates			
	Sulfur dioxide			
	Nuclear waste			
		<b>Better than Texas average</b>	<b>Worse than Texas average</b>	
(Indexed values; 100=Texas average)				

Type used in this format

Title: 14 point

Headings: 12 point boldface

Body: 10 point



- (7) **Distribution of Electricity Facts label.** Beginning July 1, 2002, a REP shall distribute its Electricity Facts label to its customers with its January and July billings (or as a separate mailing). Additionally, a REP shall provide the commission with an electronic version of each Electricity Facts label the REP distributes to customers. The commission shall make each label available to the public in a non-preferential manner over the Internet.
- (f) **Your Rights as a Customer disclosure.** In addition to the terms of service document required by this section, a REP shall develop a separate disclosure statement for residential customers and small commercial customers entitled "Your Rights as a Customer" that summarizes the standard customer protections provided by the rules in this subchapter.
- (1) This disclosure shall initially be distributed at the same time as the REP's terms of service document and shall accurately reflect the REP's terms of service.
- (2) The REP shall distribute an update of this disclosure once annually to its customers.
- (3) Each REP's Your Rights as a Customer disclosure shall be subject to review and approval by the commission.
- (4) The disclosure shall inform the customer of the following :
- (A) The REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling);
- (B) The customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a municipally

owned utility or an electric cooperative, as applicable, and the customer's right to be instructed by the REP how to read the meter, if applicable;

- (C) Disclosures concerning the customer's ability to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);
- (D) Notice of any special services such as readers or notices in Braille or TTY services for hearing impaired customers;
- (E) Special actions or programs available to those customers with physical disabilities, including customers who have a critical need for electric service to maintain life support systems;
- (F) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);
- (G) Cancellation of terms of service without penalty;
- (H) Slamming protections applicable under §25.474(n) of this title (relating to Selection or Change of Retail Electric Provider);
- (I) Termination of service protections pursuant to §25.482 of this title (relating to Termination of Contract) and disconnection of service by the provider of last resort (POLR) pursuant to §25.483 of this title (relating to Disconnection of Service);
- (J) Availability of financial and energy assistance programs;

- (K) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List);
- (L) Availability of discounts for qualified low income customers;
- (M) Payment arrangements and deferred payments pursuant to §25.480 of this title (relating to Bill Payment and Adjustments);
- (N) Procedures for reporting outages;
- (O) Privacy rights regarding customer specific information as defined by §25.472 of this title (relating to Privacy of Customer Information);
- (P) Availability of POLR service and how to contact the POLR, including the POLR's toll-free telephone number; and
- (Q) the steps necessary to have service restored or reconnected after involuntary suspension or disconnection.

**§25.477. Refusal of Electric Service.**

- (a) **Acceptable reasons to refuse electric service.** A retail electric provider (REP) may refuse to provide electric service to a customer for one or more of the reasons specified in this subsection:



- (1) **Customer's facilities inadequate.** The customer's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given, or the customer's facilities do not comply with all applicable state and municipal regulations.
- (2) **Use of prohibited equipment or attachments.** The customer fails to comply with the transmission and distribution utility's, municipally owned utility's, or electric cooperative's tariff pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.
- (3) **Intent to deceive.** The customer applies for service at a location where another customer received, or continues to receive, service and the other customer's bill from the REP is unpaid at that location, and the REP can reasonably demonstrate the change of account holder and billing name is made to avoid or evade payment of an outstanding bill owed to the REP.
- (4) **For indebtedness.** The customer owes a bona fide debt to the REP for the same kind of service as that being requested. An affiliate REP or provider of last resort (POLR) shall offer the customer an opportunity to pay the outstanding debt to receive service. In the event a customer's indebtedness is in dispute, the customer shall be provided service upon paying a deposit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits).
- (5) **Failure to pay guarantee.** A customer has acted as a guarantor for another customer and failed to pay the guaranteed amount, where such guarantee was made in writing and was a condition of service.

- (6) **Refusal to comply with credit requirements.** The customer refuses to comply with the credit and deposit requirements set forth in §25.478 of this title.
  - (7) **Other acceptable reasons to refuse electric service.** A competitive retailer may refuse to provide electric service to a customer for one or more of the reasons specified in paragraph (1) - (6) of this subsection or for any other reason that is not otherwise discriminatory pursuant to §25.471 of this title (relating to General Provisions of Customer Protection Rules).
- (b) **Insufficient grounds for refusal to serve.** The following are not sufficient cause for refusal of service to a customer by a REP:
- (1) delinquency in payment for electric service by a previous occupant of the premises to be served;
  - (2) failure to pay for any charge that is not related to the provision of electric service, including a competitive energy service, merchandise, or other services that are optional and are not included in the electric service provided;
  - (3) failure to pay a bill that includes more than the allowed six months of underbilling, unless the underbilling is the result of theft of service;
  - (4) failure to pay the unpaid bill of another customer for usage incurred at the same address, except where the REP has reasonable and specific grounds to believe that the customer has applied for service to avoid or evade payment of a bill issued to a current occupant of the same address.

(c) **Disclosure upon refusal of service.**

- (1) A REP that denies electric service to a customer shall inform the customer of the reason for the denial. Upon the customer's request, this disclosure shall be furnished in writing to the customer. This disclosure may be combined with any disclosures required by applicable federal or state law.
- (2) This disclosure is not required when the REP notifies the customer orally that the customer is not located in a geographic area served by REP, does not have the type of usage characteristics that is served by the REP, or is not part of a customer class served by the REP.
- (3) Specifically, the REP shall inform the customer:
  - (A) of the reasons for the refusal of service;
  - (B) that the customer may be eligible for service if the customer remedies the reason(s) for refusal and complies with the REP's terms and conditions of service;
  - (C) that the REP cannot refuse service based on the prohibited grounds set forth in §25.471(c) of this title;
  - (D) that a customer who is dissatisfied may file a complaint with the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling); and

- (E) of the availability and existence of POLR service and the toll-free telephone number to contact the POLR.

**§25.478. Credit Requirements and Deposits.**

- (a) **Credit requirements for permanent residential customers.** A retail electric provider (REP) may require residential customers to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.
  - (1) Establishment of credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.
  - (2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.
  - (3) A residential customer of an affiliate REP or provider of last resort (POLR) can demonstrate satisfactory credit using any one of the criteria listed in subparagraphs (A) through (D) of this paragraph. A competitive retailer may establish other criteria by which a customer can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

- (A) A residential customer may be deemed as having established satisfactory credit if the customer:
- (i) has been a customer of any REP or the electric utility (prior to 2002) within the two years prior to the customer's request for electric service;
  - (ii) is not delinquent in payment of any such electric service account;
  - (iii) during the last 12 consecutive months of service was not late in paying a bill more than once; and
  - (iv) did not have service disconnected for nonpayment.
- (B) A residential customer may be deemed as having established satisfactory credit if the customer possesses a satisfactory credit rating obtained through an accredited credit reporting agency.
- (C) A residential customer may be deemed as having established satisfactory credit if the customer is 65 years of age or older and the customer's account with the electric utility (prior to 2002) or any other REP has not had a delinquent balance incurred within the last two years for the same type of service applied for.
- (D) A residential customer may be deemed as having established satisfactory credit if the customer has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center or by treating medical personnel. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The

certification letter may be submitted directly by use of a toll-free fax number to the affiliate REP or POLR.

(E) Pursuant to PURA §39.107(g), a REP who requires pre-payment by a metered residential customer as a condition of initiating service may not charge the customer an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

(F) The REP may obtain payment history information from the customer's previous REP or from an accredited credit reporting agency. The REP shall obtain the customer's authorization pursuant to §25.474 of this title (relating to Selection or Change of Retail Electric Provider), prior to obtaining such information from the customer's prior REP. A REP shall maintain payment history information for two years after electric service has been terminated to a customer in order to be able to provide credit history information at the request of the former customer. Additionally, a REP may utilize credit reporting agencies to document customers with poor credit/payment histories.

(4) If satisfactory credit cannot be demonstrated by the residential customer of an affiliate REP or POLR using these criteria, the customer may be required to pay a deposit pursuant to subsections (c) and (d) of this section.

(b) **Credit requirements for non-residential customers.** A REP may establish nondiscriminatory criteria to evaluate the credit requirements for non-residential customers and

apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer using the criteria established by the REP, the customer may be required to pay a deposit. No such deposit shall be required if the customer is a governmental entity.

(c) **Initial deposits.**

- (1) An affiliate REP or POLR shall offer a residential customer who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (j) of this section, instead of paying a cash deposit. The letter of guarantee may be conditioned on the agreement of the guarantor to become or remain a customer of the provider affiliate REP or POLR for the term during which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the affiliate REP or POLR, the provider affiliate REP or POLR may require the customer who was obligated to pay the initial deposit to pay such deposit as a condition of continuing the contract for service.
- (2) An affiliate REP or POLR shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment. The customer may be required to pay this initial deposit within ten days after issuance of a written termination notice (or, in the case of the POLR, a notice of disconnection of service) that requests such deposit. Instead of an initial deposit, the customer may pay the total

amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

- (3) A competitive retailer that collects deposits from customers shall do so pursuant to subsections (f)-(i), (k), and (m) of this section.

(d) **Additional deposits by existing customers.**

- (1) During the first 12 months of a residential customer's service, an affiliate REP or POLR may request an additional deposit if:
  - (A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original estimated annual billings; and
  - (B) a termination notice has been issued (or, in the case of the POLR, a notice of disconnection of service) for the account within the previous 12 months.
- (2) A customer shall pay an additional deposit within ten days after the affiliate REP has issued a termination of service notice (or, in the case of the POLR, a notice of disconnection of service) and requested the additional deposit.
- (3) Instead of an additional deposit, a residential customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.
- (4) An affiliate REP may terminate service (or in the case of the POLR, disconnect service) if the additional deposit is not paid within ten days of the request, provided a written termination or disconnection notice has been issued to the customer. A termination or



disconnection notice may be issued concurrently with either the written request for the additional deposit or current usage payment. An affiliate REP may initiate a "drop" request to the registration agent if the customer does not pay the additional deposit demanded by the affiliate REP as a condition of continuing service. However, the affiliate REP is not required to request an additional deposit as a condition of continuing service unless such a requirement is contained within the REP's terms of service document.

(e) **Deposits for temporary or seasonal service and for weekend residences.** A REP may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service or weekend residences, as long as the policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (k) of this section.

(f) **Amount of deposit.**

(1) The total of all deposits, initial and additional, required by a REP, other than the POLR, from any residential customer shall not exceed an amount equivalent to the greater of either:

- (A) the sum of the estimated billings for the next two months; or
- (B) one-sixth of the estimated annual billing.

- (2) For the purpose of calculating the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer.
  - (3) The POLR shall not collect a total deposit that exceeds an amount equivalent to one-sixth of the estimated annual billing.
- (g) **Interest on deposits.** A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.
- (1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.
  - (2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.
- (h) **Notification to customers.** When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall

be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(i) **Records of deposits.**

(1) A REP that collects a deposit shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) The REP that collects a deposit shall, upon the request of the customer, issue a receipt of deposit to each customer paying a deposit and shall provide means for a depositor to establish a claim if the receipt is lost.

(3) The REP shall maintain a record of each unclaimed deposit for at least four years.

(4) The REP shall make a reasonable effort to return unclaimed deposits.

(j) **Guarantees of residential customer accounts.** A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to these minimum requirements:

(1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (f) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the

continuation of the guarantee agreement, that the guarantor remain a customer of the REP during the term of the guarantee agreement.

- (2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (k) of this section.
- (3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.
- (4) If the guarantor ceases to be a customer of the REP, the provider may treat the guarantee agreement as in default and demand the amount of the cash deposit from the residential customer as a condition of continuing service.
- (5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.
  - (A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.
  - (B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).
- (6) The REP may initiate termination of service (or disconnection of service for the POLR) to the guarantor for nonpayment of the guaranteed amount only if the termination or

service (or, where applicable, the disconnection of service) was disclosed in the terms of service document, and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Contract) or §25.483 of this title (relating to Disconnection of Service).

(k) **Refunding deposits and voiding letters of guarantee.**

(1) **Retention period for deposits and letters of guarantee.**

- (A) A deposit held by a POLR shall be refunded when the customer has paid POLR bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment of a bill and without having more than two occasions in which a bill was delinquent.
- (B) A REP, other than the POLR, may keep a deposit for the entire time a customer receives electric service from the REP.
- (C) Upon termination of a customer's electric service, a REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, at the customer's direction. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be voided and returned to the guarantor. Alternatively, the REP may provide the guarantor with written documentation that the contract has been voided. If the

customer does not meet these refund criteria, the deposit and interest or the letter of guarantee may be retained.

- (2) If a customer's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the contract has been voided, or refund the customer's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.
  
- (l) **Re-establishment of credit.** Every customer who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit. Upon request, the REP shall reasonably demonstrate the amount of electric service received, but not paid for, and the reasonableness of any charges for the unpaid service, and any other charges required to be paid as a condition of electric service restoration to such premise.

- (m) **Upon sale or transfer of company.** Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records, provided that the deposits were not returned to the customers and the legal successor accepts transfer of such deposits.

**§25.479. Issuance and Format of Bills.**

- (a) **Application.** This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.
- (b) **Frequency and delivery of bills.**
- (1) Until January 1, 2004, a REP shall issue a bill monthly to each customer, unless service is provided for a period of less than one month. Beginning January 1, 2004, a REP may issue a bill less frequently than monthly if both the customer and the REP agree to such an arrangement.

- (2) Bills shall be issued as promptly as practicable after reading meters or obtaining the meter usage and other billing determinants from the transmission and distribution utility, the municipally owned utility or the electric cooperative.
- (3) Bills shall be issued to residential customers in writing and delivered via the United States Postal Service (U.S. mail). REPs may provide bills to a customer electronically if both the customer and the REP agree to such an arrangement. An affiliate REP or a provider of last resort shall not require a customer to agree to such an arrangement as a condition of receiving electric service.
- (4) In no event shall a REP charge a customer a fee for receiving a bill.

(c) **Bill content.**

- (1) Each customer's bill shall include the following information:
  - (A) The certified name and address of the REP and the number of the license issued to the REP by the commission;
  - (B) A toll-free telephone number, in bold-face type, that the customer can call during specified hours for inquiries and to make complaints about the bill;
  - (C) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system;
  - (D) The service address, electric service identifier (ESI), and account number of the customer;



- (E) The service period for which the bill is rendered;
- (F) The date on which the bill was issued;
- (G) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action;
- (H) The current charges for electric service as disclosed in the customer's terms of service document, exclusive of applicable taxes, and a separate calculation of the average unit price of the current charge for electric service for the current billing period, labeled, "The average price you paid for electric service this month." This calculation shall reflect all fixed and variable recurring charges, but not include any nonrecurring charges or credits, which is expressed as a cents per kilowatt-hour rounded to the nearest one-tenth of one cent. If the customer is on a level or average payment plan, the level or average payment should be clearly shown in addition to the usage-based rate;
- (I) The identification and itemization of recurring charges other than for electric service as disclosed in the customer's terms of service document;
- (J) The itemization and amount included in the amount due for any other non-recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the REP's terms of service document provided to the customer;

- (K) The total current charges, balances from the preceding bill, payments made by the customer since the preceding bill, the total amount due and a checkbox for the customer to voluntarily donate money to the bill payment assistance program;
- (L) The beginning and ending meter readings; the kind and number of units measured, whether the bill was issued based on estimated usage, and any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;
- (M) Any amount owed under a written guarantee contract provided the guarantor was previously notified in writing by the REP as required by §25.478 of this title (relating to Credit Requirements and Deposits);
- (N) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;
- (O) Notification of any changes in the customer's rates or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document;
- (P) The notice required by §25.481(d) of this title (relating to Unauthorized Charges); and
- (Q) If the REP has presented its electric service charges in an unbundled fashion, it shall use the following terms as defined by the commission: "transmission and

distribution service"; "generation service"; "System Benefit Fund"; and, where applicable, "transition charge," and "nuclear decommissioning fee."

- (2) If the REP bundles its electric service charges, the REP shall provide an itemization to the customer upon the customer's request.
  - (3) In no event may a customer's electric bill contain charges from a service provider other than the customer's designated REP.
- (d) **Public service notices.** A REP shall, as required by the commission, provide brief public service notices to its customers. The REP shall provide these public service notices to its customers on its billing statements, as an insert in its billing statement, or by electronic communication, as required by the commission.
- (e) **Estimated bills.** If a REP is unable to issue a bill based on actual meter reading due to the failure of the transmission and distribution utility, municipally owned utility or electric cooperative to obtain or transmit a meter reading to the REP on a timely basis, the REP may issue a bill based on an estimated reading and inform the customer of the reason for the issuance of the estimated bill.
- (f) **Record retention.** A REP shall maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing

records may be obtained by that customer on request, and may be obtained once per year, at no charge.

- (g) **Transfer of delinquent balances or credits.** If the customer has an outstanding balance or credit owed to the customer's current REP that is due from a previous account in the same customer class, then the customer's current REP may transfer that balance to the customer's current account. The delinquent balance and specific account or address shall be identified as such on the bill. There shall be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(k)(1)(C) of this title.

**§25.480. Bill Payment and Adjustments.**

- (a) **Application.** This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.
- (b) **Bill due date.** A REP shall state a payment due date on the bill which shall not be less than 16 days after issuance. The issuance date is the issuance date on the bill or, if there is no issuance

date on the bill, the postmark date on the envelope. A payment for electric service is delinquent if not received by the REP or at the REP's authorized payment agency by the close of business on the due date. If the sixteenth day falls on a holiday or weekend, then the due date shall be the next business day after the sixteenth day.

- (c) **Penalty on delinquent bills for electric service.** A one-time penalty not to exceed 5.0% may be charged on a delinquent bill for electric service. No such penalty shall apply to residential or small commercial customers served by the provider of last resort (POLR), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). The 5.0% penalty on delinquent bills may not be applied to any balance to which the penalty has already been applied. A bill issued to a state agency, as defined in the Government Code, Chapter 2251, shall be due and bear interest if overdue as provided in Chapter 2251.
- (d) **Overbilling.** If charges are found to be higher than authorized in the REP's terms and conditions for service, then the customer's bill shall be corrected.
- (1) The correction shall be made for the entire period of the overbilling.
  - (2) If the REP corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.
  - (3) If the REP does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission.

- (A) Interest on overcharges that are not adjusted by the REP within three billing cycles of the bill in error shall accrue from the date of payment or from the issuance date of the erroneous bill.
  - (B) All interest shall be compounded monthly based on the approved annual rate.
  - (C) Interest shall not apply to leveling plans or estimated billings.
- (e) **Underbilling.** If charges are found to be lower than authorized by the REP's terms and conditions of service, or if the REP fails to bill the customer for service, then the customer's bill may be corrected.
- (1) The REP may backbill the customer for the amount that was underbilled. The backbilling shall not include charges that extend more than six months from the date the error was discovered unless the underbilling is a result of theft of service by the customer.
  - (2) The REP may terminate service, or the POLR may disconnect service, if the customer fails to pay the additional charges within a reasonable time.
  - (3) If the underbilling is \$50 or more, the REP shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.
  - (4) The REP shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer, as defined in §25.126 of this title (relating to Meter Tampering). Interest on

underbilled amounts shall be compounded monthly at the annual rate. Interest shall accrue from the day the customer is found to have first stolen the service.

(f) **Disputed bills.** If there is a dispute between a customer and a provider about the REP's bill for any service billed on the retail electric bill, the REP shall promptly investigate and report the results to the customer. The provider shall inform the customer of the complaint procedures of the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling).

(g) **Alternate payment programs or payment assistance.**

(1) **Notice required.** When a customer contacts a REP and indicates inability to pay a bill or a need for assistance with the bill payment, the REP shall inform the customer of all alternative payment and payment assistance programs that are offered by or available from the REP, such as bill payment assistance, deferred payment plans, disconnection moratoriums for the ill, or low-income energy assistance programs, as applicable, and of the eligibility requirements and procedure for applying for each.

(2) **Bill payment assistance programs.**

(A) Each REP shall implement a bill payment assistance program for residential customers. At a minimum, such a program shall solicit voluntary donations from customers by a check-off box on the retail electric bill.

(B) Each REP shall provide an annual report to the commission summarizing:

- (i) the total amount of customer donations;
- (ii) the amount of money set aside for bill payment assistance;
- (iii) the assistance agency or agencies selected to disburse funds to customers; and
- (iv) the amount of money provided to each assistance agency to disburse funds to customers.

(C) An assistance agency selected by a REP to disburse bill payment assistance funds shall not discriminate in the distribution of such funds to customers based on the customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

(h) **Level and average payment plans.** A REP shall offer a level or average payment plan to its customers. A REP shall not limit participation to only credit-worthy customers. A REP may collect under-recovered costs from a customer annually, or upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers annually, or upon termination of service to the customer. Additionally, a REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan. All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document.



- (i) **Payment arrangements.** A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issued a termination notice (or in the case of the POLR, a disconnection notice) before the payment arrangement was made, that termination or disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be terminated (or disconnected in the case of the POLR) after the later of the due date for the payment arrangement or the termination or disconnection date indicated in the notice, without issuing an additional disconnection notice. A REP may switch terminated customers to the POLR by notifying the registration agent.
- (j) **Deferred payment plans.** A deferred payment plan is an arrangement between the REP and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill. A deferred payment plan may be established in person or by telephone, but all deferred payment plans shall be confirmed in writing by the REP.
- (1) A REP may offer a deferred payment plan to any residential customer who has expressed an inability to pay his or her bill.
  - (2) A REP shall offer a deferred payment plan to a customer who has been underbilled, as described subsection (e) of this section, or to customers who qualify for such plans

pursuant to §25.482(f) of this title (relating to Termination of Contract) or §25.483(i) of this title (relating to Disconnection of Service).

- (3) An affiliate REP or POLR shall offer such plans unless the customer:
  - (A) has been issued more than two termination or disconnection notices during the preceding 12 months; or
  - (B) has received service from the affiliate REP or POLR for less than three months, and the customer lacks:
    - (i) sufficient credit; or
    - (ii) a satisfactory history of payment for electric service from a previous REP (or its predecessor electric utility).
- (4) Any deferred payment plans offered by a REP shall be implemented in a non-discriminatory manner, according to the provisions of this subsection.
- (5) Every deferred payment plan offered by a REP shall provide that the delinquent amount be paid in equal installments over at least three billing cycles.
- (6) A copy of the deferred payment plan shall be provided to the customer and:
  - (A) shall include a statement, in type no smaller than 14 point size, that states **"If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact your retail electric provider."** In addition, where the customer and the REP's representative or agent meet in person, the representative shall read the preceding statement to the customer. The REP

- shall provide information to the customer in English or Spanish as necessary to make the preceding required statement understandable to the customer;
- (B) may include a 5.0% penalty for late payment but shall not include a finance charge;
  - (C) shall state the length of time covered by the plan;
  - (D) shall state the total amount to be paid under the plan;
  - (E) shall state the specific amount of each installment;
  - (F) shall allow for the termination or disconnection of service (as appropriate) if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection or termination of service;
  - (G) shall not refuse a customer participation in such a program on any basis set forth in §25.471(b)(5) of this title (relating to General Provisions of Customer Protection Rules); and
  - (H) shall allow either the customer or the REP to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.
- (7) A REP may pursue termination of service (or disconnection of service in the case of the POLR) when a customer does not meet the terms of a deferred payment plan. However, service shall not be terminated or disconnected until appropriate notice has been issued pursuant to §25.483 of this title for the POLR or §25.482 of this title for other REPs to the customer indicating that the customer has not met the terms of the

plan. The REP may renegotiate the deferred payment plan agreement prior to disconnection. If the customer does not fulfill the terms of the plan, and the customer was previously provided a disconnection notice or termination notice for the outstanding amount, no additional disconnection or termination notice shall be required.

- (k) **Allocation of partial payments.** A REP shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the current amount due for electric service. When there is no longer a balance for electric service, payment may be applied to other non-electric services billed by the REP. A contract for electric service cannot be terminated for non-payment of non-electric services.

**§25.481. Unauthorized Charges.**

- (a) After a customer has enrolled or switched to a retail electric provider (REP), pursuant to §25.474 of this title (relating to Selection or Change of Retail Electric Provider), any subsequent services offered by the REP that will be billed on the customer's electric bill shall be authorized by the customer consistent with this section. A REP may obtain authorization for an additional product or service to appear on the bill for existing customers by using any of the methods set forth in §25.474 of this title.

(b) **Requirements for billing charges.** A REP shall meet all of the following requirements before including any charges on the customer's electric bill:

(1) **Inform the customer.** The REP has thoroughly informed the customer of the product or service being offered, including all associated charges, and has explicitly informed the customer that the associated charges for the product or service will appear on the customer's electric bill.

(2) **Obtain customer consent.** The customer has clearly and explicitly consented to obtaining the product or service offered and to have the associated charges appear on the customer's electric bill. The consent shall be authorized and verified by the REP in accordance with §25.474(f) of this title. A record of the consent, including verification, shall be maintained by the REP for at least 24 months, beginning immediately after the consent and verification are obtained.

(3) **Provide contact information.** The REP has provided the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute and to answer questions.

(c) **Responsibilities for unauthorized charges.**

(1) If a customer's electric bill is charged for any product or service without proper customer consent and verification of authorization in compliance with this section, the REP that billed the customer, when it learns or is notified that any charge that has not been authorized, shall promptly, but not later than 45 days thereafter:

- (A) cease charging the customer for the unauthorized product or service;
  - (B) remove the unauthorized charge from the customer's bill;
  - (C) refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three billing cycles, pay interest at an annual rate established by the commission pursuant to §25.478(g) of this title (relating to Credit Requirements and Deposits) on the amount of any unauthorized charge until it is refunded or credited; and
  - (D) on the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal from the customer's electric bill.
- (2) A REP shall not:
- (A) seek to terminate or disconnect electric service to any customer for nonpayment of an unauthorized charge;
  - (B) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer shall remain obligated to pay any charges that are not in dispute, and this paragraph does not apply to those undisputed charges; or
  - (C) re-bill the customer for any unauthorized charge.

- (3) A REP, other than a municipally owned utility or an electric cooperative, shall maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's electric bill and has notified the REP of the unauthorized charge. The record shall contain for each unauthorized charge:
- (A) the date each customer requested that the REP remove the unauthorized charge from the customer's electric bill;
  - (B) the date the unauthorized charge was removed from the customer's electric bill;  
and
  - (C) the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.
- (d) **Notice to customers.** Any bill sent to a customer from a REP shall include a statement, prominently located on the bill, that if the customer believes the bill includes unauthorized charges, the customer may contact the REP to dispute such charges and may file a complaint with the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.
- (e) **Compliance and enforcement.**

- (1) **Records of customer authorizations.** A REP shall provide proof of the customer's authorization and verification to the customer and/or the commission upon request.
- (2) **Records of unauthorized charges.** A REP shall provide a copy of records maintained under the requirements of subsection (c)(3) of this section to the commission upon request.

**§25.482. Termination of Contract.**

- (a) **Termination policy.** A retail electric provider (REP) may terminate its contract with a customer for nonpayment of electric service charges and, if no other REP extends service to that customer, service shall be offered by the provider of last resort (POLR). If a customer makes payment or satisfactory payment arrangements prior to the termination date, a REP shall continue serving the customer under the existing terms and conditions that were in effect prior to the issuance of a termination notice. If a REP chooses to terminate its contract with a customer, it shall follow the procedures in this section, or modify them in ways that are more generous to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require a REP to terminate its contract with a customer.



(b) **Termination prohibited.** A REP may not terminate its contract with a customer for any of the following reasons:

- (1) delinquency in payment for electric service by a previous occupant of the premises if that occupant is not of the same household;
- (2) failure to pay for any charge that is not related to electric service;
- (3) failure to pay for a different type or class of electric utility service unless charges for such service were included on that account's bill at the time service was initiated;
- (4) failure to pay charges arising from an underbilling, except theft of service, more than six months prior to the current billing;
- (5) failure to pay disputed charges until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;
- (6) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or
- (7) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the transmission and distribution utility is unable to read the meter due to circumstances beyond its control.

(c) **Termination on holidays or weekends.** Unless requested by the customer, a REP shall not terminate a contract for electric service on holidays or weekends.

- (d) **Termination due to abandonment by the REP.** A REP shall not abandon a customer or a service area without advance written notice to its customers and the commission and approval from the commission. In the event a provider terminates a customer's contract due to abandonment, that provider shall not collect or attempt to collect penalties from that customer.
- (e) **Termination of energy assistance clients.** A REP shall not terminate a contract for service to a delinquent residential customer for a billing period in which the provider receives a pledge, letter of intent, purchase order, or other notification that an energy assistance provider is forwarding sufficient payment to continue service.
- (f) **Extreme weather.** A REP shall not seek to terminate a residential customer's contract for electric service due to non-payment during an extreme weather emergency. A REP and shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" means the weather conditions described in §25.483 of this title (relating to Disconnection of Service).
- (g) **Termination notices.** Except as provided in §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers) a REP may issue a notice of termination of contract. Any termination notice shall:

- (1) not be issued before the first day after the bill is due, to enable the REP to determine whether the payment was received by the due date. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP.
  - (2) be a separate mailing or hand delivered with a stated date of termination with the words "termination notice" or similar language prominently displayed. A REP may send an additional notice by email or facsimile.
  - (3) have a termination date that is not a holiday or weekend day and that is not less than ten days after the notice is issued.
- (h) **Contents of termination notice.** Any termination notice shall include the following information:
- (1) The reason for the termination of the contract;
  - (2) The actions, if any, that the customer may take to avoid the termination of the contract;
  - (3) If the customer is in default, the amount of all fees or charges which will be assessed against the customer as a result of the default under the contract, if any, as set forth in the REP's terms of service document provided to the customer;
  - (4) The amount overdue, if applicable;
  - (5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of termination or to file a complaint with the REP, and the following statement:  
"If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box

13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

- (6) A statement that informs the customer of the right to obtain services from another licensed REP or a POLR, and that information about other REPs or the POLR can be obtained from the commission and the POLR. Customers that do not exercise their right to choose another REP shall have their electric service transferred to the POLR, in accordance with the applicable rules or protocols, and may be required to pay a deposit, or prepay, to receive ongoing electric service. The REP shall not state or imply that nonpayment by the customer will result in physical disconnection of electricity or affect the customer's ability to obtain electric service from another REP or the POLR.
- (7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation.
- (8) The availability of deferred payment or other billing arrangements, if any, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs.
- (9) A description of the activities that the REP will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

- (i) **Notification of the registration agent.** After the expiration of the notice period in subsection (g) of this section, a REP shall notify the registration agent of a switch request in a manner established by the registration agent so that the customer will receive service from the POLR, unless the customer selects another REP prior to the effective date of the switch.
  
- (j) **Customer's right to terminate a contract without penalty.** As disclosed in the customer's terms of service document, a customer may terminate a contract without penalty in the event:
  - (1) The customer moves to another premises;
  - (2) Market conditions change and the contract allows the REP to terminate the contract without penalty in response to changing market conditions; or
  - (3) A REP notifies the customer of a material change in the terms and conditions of their service agreement.

**§25.483. Disconnection of Service.**

- (a) **Disconnection and Reconnection policy.** Only a transmission and distribution utility, municipally owned utility, or electric cooperative shall perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate transmission and distribution utility, municipally

owned utility, or electric cooperative in accordance with that entity's relevant tariffs and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall follow the procedures in this section or procedures that are more generous to the customer in terms of the cause for disconnection, the timing of the disconnection notice, and the period between notice and disconnection. Nothing in this section shall be interpreted to require a REP to disconnect a customer.

- (b) **Disconnection with notice.** A provider of last resort (POLR) may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the termination date in the notice for any of the following reasons:
- (1) failure to pay a bill owed to the POLR or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice;
  - (2) failure to comply with the terms of a deferred payment agreement made with the POLR;
  - (3) violation of the POLR's terms and conditions on using service in a manner that interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;
  - (4) failure to pay a deposit as required by §25.478 of this title (relating to Credit Requirements and Deposits); or

- (5) failure of the guarantor to pay the amount guaranteed, when the POLR has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.
- (c) **Disconnection without prior notice.** A REP, including a POLR, REP or affiliate REP, may authorize disconnection of a customer's electric service without prior notice for any of the following reasons:
- (1) Where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the REP, or its agent, shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;
  - (2) Where service is connected without authority by a person who has not made application for service;
  - (3) Where service is reconnected without authority after disconnection for nonpayment;
  - (4) Where there has been tampering with the equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative; or
  - (5) Where there is evidence of theft of service.
- (d) **Disconnection prohibited.** A POLR shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:

- (1) Delinquency in payment for electric service by a previous occupant of the premises;
  - (2) Failure to pay for any charge that is not for electric service regulated by the commission, including competitive energy service, merchandise, or other services that are optional and are not included in regulated POLR service;
  - (3) Failure to pay for a different type or class of electric service unless charges for such service were included on that account's bill at the time service was initiated;
  - (4) Failure to pay charges arising from an underbilling, except theft of service, more than six months prior to the current billing;
  - (5) Failure to pay disputed charges, except for the amount under dispute, until a determination as to the accuracy of the charges has been made by the POLR or the commission, and the customer has been notified of this determination;
  - (6) Failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or
  - (7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the POLR is unable to obtain the meter reading due to circumstances beyond its control.
- (e) **Disconnection on holidays or weekends.** Unless a dangerous condition exists or the customer requests disconnection, a POLR shall not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a



holiday or weekend, unless the POLR's personnel are available on those days to take payments and request reconnection of service and personnel of the transmission and distribution utility, municipally owned utility, or electric cooperative are available to reconnect service.

(f) **Disconnection due to abandonment by the POLR.** A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission, in accordance with §25.43 of this title (relating to Provider of Last Resort).

(g) **Disconnection of ill and disabled.** A POLR shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.

(1) Each time a customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:

- (A) Have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the REP by the stated date of disconnection;
  - (B) Have the person's attending physician submit a written statement to the REP;
- and

- (C) Enter into a deferred payment plan.
- (2) The prohibition against service disconnection provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer or physician.
- (h) **Disconnection of energy assistance clients.** A POLR shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the POLR receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service.
- (i) **Disconnection during extreme weather.** A POLR shall not authorize a disconnect for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A POLR shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" shall mean a day when:
  - (1) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or
  - (2) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

(j) **Disconnection of master-metered apartments.** When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The POLR shall send a notice to the customer as required by subsection (k) of this section. At the time such notice is issued, the POLR, or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the provider shall post a minimum of five notices in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

(k) **Disconnection notices.** A disconnection notice for nonpayment issued by a POLR shall:

(1) not be issued before the first day after the bill is due, to enable the POLR to determine whether the payment was received by the due date. Payment of the delinquent bill at the POLR's authorized payment agency is considered payment to the POLR;

(2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed;

- (3) have a disconnection date that is not a holiday or weekend day, and is not less than ten days after the notice is issued;
  - (4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.
- (l) **Contents of disconnection notice.** Any disconnection notice shall include the following information:
- (1) The reason for disconnection;
  - (2) The actions, if any, that the customer may take to avoid disconnection of service;
  - (3) The amount of all fees or charges which will be assessed against the customer as a result of the default;
  - (4) The amount overdue;
  - (5) A toll-free telephone number that the customer can use to contact the POLR to discuss the notice of disconnection or to file a complaint with the POLR, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in

Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136;"

- (6) A statement that informs the customer of the right to obtain services from another licensed REP, and that information about other REPs can be obtained from the commission;
  - (7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation;
  - (8) The availability of deferred payment or other billing arrangements, if any, from the POLR, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs; and
  - (9) A description of the activities that the POLR will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the POLR.
- (m) **Reconnection of service.** Upon a customer's satisfactory correction of reasons for disconnection, the REP shall notify the transmission and distribution utility, municipally owned utility, or electric cooperative, within one day, to reconnect the customer's electric service and shall reinstate the service.

**§25.484. Do Not Call List.**

- (a) The commission or its designated agent will maintain or cause to be maintained a "Do Not Call List" of customers who do not want to receive telemarketing calls from retail electric providers (REPs). The commission will provide customers with a variety of methods to be included on the list, including orally, in writing, and commercially acceptable electronic communication such as fax and e-mail. A customer shall remain on the "Do Not Call List" for five years or until the customer affirmatively requests to be removed from the list, whichever occurs sooner.
- (b) **Prohibition.** A REP is prohibited from telemarketing to customers whose names are on the "Do Not Call List." A REP shall be in compliance with this provision if the REP obtains the most recent version of the list on at least a quarterly basis and removes the names of customers who are on the "Do Not Call List" from its telemarketing lists within five calendar days.
- (c) **Notice.** A REP shall include notice of the existence of the "Do Not Call List" in the Your Rights as a Customer disclosure or terms of service document. The notice shall explain what the "Do Not Call List" is, the fee for placement on the list, and how a customer can request that he or she be added to or removed from that list by contacting the commission or the commission's agent for the implementation of the list.

**§25.485. Customer Access and Complaint Handling.**

**(a) Customer access.**

- (1) Each retail electric provider (REP) or aggregator shall ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customers bills, terminate competitive service, and transact any other pertinent business.
- (2) Telephone access shall be toll-free and shall afford customers a prompt answer during normal business hours.
- (3) Each REP shall provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.
- (4) Each REP and aggregator shall employ 24-hour capability for accepting customer contract cancellation by telephone, pursuant to rights of cancellation in §25.474(h) of this title (relating to Selection or Change of Retail Electric Provider).

- (b) Complaint handling.** No REP or aggregator shall limit a residential or small commercial customer's right to make a formal or informal complaint to the commission. A REP or aggregator shall not require a residential or small commercial customer to make a formal or informal complaint to the commission. A REP or aggregator shall not require a residential or

small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

- (c) **Complaints to REPs or aggregators.** A customer for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone with the REP or aggregator. The REP or aggregator shall promptly investigate and advise the complainant of the results within 21 days. A customer who is dissatisfied with the REP's or aggregator's review shall be informed of the right to file a complaint with the REP's or aggregator's supervisory review process, if available, and, if not available, the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP or aggregator shall result in a decision communicated to the complainant within ten business days of the request. If the REP or aggregator does not respond to the customer's complaint in writing, the REP or aggregator shall orally inform the customer of the ability to obtain the REP's or aggregator's response in writing upon request.

- (d) **Complaints to the commission.**

- (1) **Informal complaints.**

- (A) If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator shall advise the complainant of the commission's informal complaint resolution



process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: [customer@puc.state.tx.us](mailto:customer@puc.state.tx.us), Internet website address: [www.puc.state.tx.us](http://www.puc.state.tx.us), TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.

- (B) Customers are encouraged to include the following in their complaint:
  - (i) The customer's name, address, and telephone number;
  - (ii) The name of the REP or aggregator;
  - (iii) The customer account number or electric service identifier (ESI);
  - (iv) An explanation of the facts relevant to the complaints; and
  - (v) Any other documentation that supports the complaint, including copies of bills or contract documents.
- (C) The REP or aggregator shall investigate all informal complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP.
- (D) The commission shall review the complaint information and notify the complainant of the result of the commission's investigation.
- (E) While an informal complaint process is pending:
  - (i) The REP shall not initiate collection activities, including termination or disconnection of service (as appropriate) or report the customer's

delinquency to a credit reporting agency with respect to the disputed portion of the bill.

(ii) A customer shall be obligated to pay any undisputed portion of the bill and the REP may pursue termination or disconnection of service (as appropriate) for nonpayment of the undisputed portion after appropriate notice.

(F) The REP or aggregator shall keep a record for two years after determination by the commission of all informal complaints forwarded to it by the commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or rates and charges that are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.

(2) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

**§25.491. Record Retention and Reporting Requirements.**

- (a) **Application.** This section does not apply to a REP that is a municipally owned utility or electric cooperative.
  
- (b) **Record retention.**
  - (1) Each REP and aggregator shall establish and maintain records and data that are sufficient to:
    - (A) Verify its compliance with the requirements of any applicable commission rules;  
and
    - (B) Support any investigation of customer complaints.
  - (2) All records required by this subchapter shall be retained for no less than two years, unless otherwise specified.
  - (3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter shall be provided to the commission within 15 calendar days of its request.
  
- (c) **Annual reports.** On June 1 of each year, a REP shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers) and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:
  - (1) The number of residential customers served, by nine-digit zip code and census tract, by month, to the extent that such zip code and census tract information is available;

- (2) The number of written denial of service notices issued by the REP, by month, by customer class, by nine-digit zip code and census tract;
  - (3) The number and total aggregated dollar amount of deposits held by the REP, by month, by customer class, by nine-digit zip code and census tract; and
  - (4) The number of complaints received by the REP from residential customers for the following categories by month, by nine-digit zip code and census tract:
    - (A) Denial of service;
    - (B) Quality of service;
    - (C) Unauthorized billing (cramming);
    - (D) Unauthorized change of a REP (slamming);
    - (E) Accuracy of billing services; and
    - (F) Collection and contract termination.
- (d) **Additional information.** Upon written request by the commission or the Office of Public Utility Counsel (OPC), a REP or aggregator shall provide within 15 days any information, including but not limited to marketing information, necessary for the commission or OPC to investigate an alleged discriminatory practice prohibited by §25.471(c) of this title (relating to General Provisions of the Customer Protection Rules).

**§25.492. Non-Compliance with Rules or Orders; Enforcement by the Commission.**

- (a) **Noncompliance.** An aggregator or retail electric provider (REP) that fails to comply with the Public Utility Regulatory Act (PURA) or commission order may, after notice and opportunity for hearing, be subject to any and all of the following available under the law, including, but not limited to:
- (1) assessment of civil and administrative penalties under PURA §15.023;
  - (2) civil penalties under PURA §15.028;
  - (3) suspension or revocation of the applicable certification or registration or denial of a request for renewal or change in the terms associated with a certification; and
  - (4) such other relief directed to affected customers as allowed by law.
- (b) **Commission investigation.** The commission may initiate a compliance or other enforcement proceeding upon its own initiative, after an incident has occurred, or a complaint has been filed, or a staff notice of probable noncompliance has been served. The commission shall coordinate this investigation with any investigation that may be or has been undertaken by the Office of the Attorney General.
- (c) **Suspension and revocation of certification.** The commission may initiate a proceeding to seek either suspension or revocation of a REP's certification consistent with §25.107(j) of this title (relating to Certification of Retail Electric Providers), or an aggregators registration consistent with §25.111(j) of this title (relating to the Registration of Aggregators).



This agency hereby certifies that the rules, as adopted, have 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 rules §§25.471-25.475, 25.477-25.485, and 25.491-25.492, Customer Protection Rules for Retail Electric Service, are hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 7th DAY OF DECEMBER 2000.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Chairman Pat Wood, III**

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**Commissioner Judy Walsh**

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**Commissioner Brett A. Perlman**