PROJECT NO. 36131

RULEMAKING RELATING TO DISCONNECTION OF ELECTRIC SERVICE AND DEFERRED PAYMENT PLANS	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENTS TO §§25.454, 25.480, AND 25.483 AS APPROVED AT THE SEPTEMBER 15, 2010 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §25.454 relating to Rate Reduction Program, §25.480 relating to Bill Payment and Adjustments, and §25.483 relating to Disconnection of Service, with changes to the proposed text as published in the April 16, 2010 issue of the *Texas Register* (35 TexReg 2910). The amendments expand eligibility for deferred payment, level or average payment plans, and protections for low-income customers and customers with medical conditions. To the extent a customer enters into an agreement with its retail electric provider (REP) and takes advantage of the deferred payment plans or level or average payment plans under the amended §25.480, the rule allows a REP, under limited circumstances, to prevent the customer from changing retail providers until the deferred balance is paid.

REPs will now be required to make deferred payment plans available to all customers during extreme weather emergencies; during declared states of disaster as directed by the commission; when a customer has been underbilled, and during the months of July, August, and September, and during periods of extended cold weather in January and February, for certain eligible customers.

Among other things, the amendments will help certain eligible customers, who may not meet the existing deferred payment plan or level or average payment plan eligibility requirements, to avoid disconnection as a result of high bills that result from hot or cold weather. The commission believes that targeted provisions of these amendments will protect a larger number of vulnerable customers at a time when customers are most likely to need assistance to pay high bills. At the same time, a switch-hold is being adopted to reduce the non-payment issues that would arise in connection with the broader customer eligibility for deferred payment plans and level or average payment plans.

The amendments are competition rules subject to judicial review as specified in the Public Utility Regulatory Act (PURA) §39.001(e). The amendments are adopted under Project No. 36131.

A public hearing on the amendments was held at the commission offices on May 17, 2010 at 1:00 pm. In attendance at the public hearing were representatives from American Association of Retired Persons (AARP); American Electric Power (AEP); Bounce Energy, Direct Energy; CenterPoint Energy Houston Electric LLC (CenterPoint); the Electric Reliability Council of Texas (ERCOT); National Multiple Sclerosis Society: Lonestar (MS Society); Office of Public Utility Counsel (OPC); Oncor Electric Delivery Company LLC (Oncor); One Voice Texas; Public Citizen; Reliant Energy, Inc. (Reliant); Retail Electric Provider Coalition (REP Coalition); Smart UR Citizens; State Representative Sylvester Turner's staff; State Representative Lon Burnam and his staff; Steering Committee of Cities Served by Oncor (Cities); Texas Energy Association for Marketers (TEAM); Texas Industrial Energy Consumers (TIEC); Texas Legal Services Center (TLSC); Texas-New Mexico Power Company (TNMP);

Texas Organizing Project (TOP); Texas Ratepayers' Organization to Save Energy (TX ROSE); and TXU Energy Retail Company LLC (TXU). Oral comments at the hearing were provided by representatives from AARP, MS Society, One Voice Texas, Public Citizen, Smart UR Citizens, State Representative Lon Burnam and his staff, TLSC, and TOP. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received filed comments on the proposed amendments from AARP; AEP Texas Central Company, AEP Texas North Company, CenterPoint, Oncor, and TNMP (collectively Joint TDUs); Alliance for Retail Markets, CPL Retail Energy LP, Direct Energy LP, TEAM, TXU, and WTU Retail Energy LP (collectively, REP Group); Cities; City of Houston, Texas (Houston); ERCOT; MS Society; Public Citizen; Reliant; Texas Public Policy Foundation (Public Policy); TLSC, TX ROSE, State Representative Sylvester Turner, State Representative Rafael Anchía, State Representative Lon Burnam, One Voice, The Senior Source, TOP, Gray Panthers Texas, Smart UR Citizens, and Mr. Bert Walsh (collectively, Consumers); TOP; State Representatives Armando Walle, Paula Pierson, Sylvester Turner; and Tammylee Willoz. State Representatives Burnam and Anchía filed a letter in support of the comments submitted by AARP and asked that their names be added to the list of those supporting AARP's position.

Summary of Comments

Question 1. Are the provisions relating to unauthorized switch-holds appropriate? Please suggest any modifications.

AARP, MS Society, OPC, Public Citizen, State Representatives, TOP, and Reliant urged the commission to reject the switch-hold process, which prevents a customer from switching to another REP, and opined that it is a bad, anti-competitive policy that will make disconnections worse by extending the time a customer may be without service. These commenters stated that the switch-hold process would conflict with PURA §§17.004(a)(2), 17.004(e), 39.001(d), 39.001(b), 39.101(a)(1), 39.101(b)(2), 39.102(a), and 39.106. AARP added that the commission's general power to regulate and adopt rules under PURA §14.001 and §14.002 applies to only the businesses of public utilities and "not the ability to regulate customers." AARP opined that the switch-hold is an attempt to regulate a customer's fundamental right under deregulation to switch to lower cost providers and would place a greater priority on protecting REPs from bad debt than protecting consumers. TOP filed letters from 26 citizens stating that the switch-hold would discriminate against low-income consumers who have no alternatives to obtain reasonable credit terms and conditions and asked that the commission not adopt the switch-hold for deferred, level or average payment plans.

OPC and the MS Society stated that, while they oppose switch-holds, it is imperative that the commission maintain oversight and control with respect to a REP's use of the switch-hold and that the commission should include protections related to unauthorized switch-holds. OPC proposed language that would subject the REP to penalties for failing to follow the correct procedures for removing the switch-hold, in addition to the proposed penalty for the unauthorized placement of a switch-hold.

Consumers pointed out that the proposed rule in Project No. 37685 (Rulemaking Regarding Certification of Retail Electric Providers, §25.107) recognizes the gravity of switch-holds by proposing that a REP certification may be revoked for erroneous use of a switch-hold, but the proposed rule fails to provide any customer protection against the improper or negligent use of a switch-hold. Consumers offered that the proposed rule being considered in Project No. 36131 should be modified to spell out consequences for intentional conduct with increased consequences for seriousness of the violation.

Cities opined that the provisions relating to unauthorized switch-holds is not enough and noted that an unauthorized switch-hold would bar a customer from realizing any savings that might be realized by switching REPs. Cities and Consumers argued that, ideally, the REP that placed the unauthorized switch-hold should be required to make the customer whole for any monetary losses and missed opportunities. However, Cities opined that the commission lacks the authority to award monetary damages to customers and, instead, proposed that unauthorized switch-holds be considered and treated as a new sub-category of Class A violation due to the seriousness and difficulty in quantifying the harm incurred by a victim. OPC concurred with Cities' recommendation that a switch-hold be considered a sub-category of a Class A violation rather than a Class B violation. Cities stated that if an unauthorized switch-hold occurs, the REP should be required to inform customers within 15 days of lifting the switch-hold that the customer has the right to file a complaint with the commission. Consumers agreed that the REP should be required to provide notice to a customer informing them about any violation and the customer's rights to civil recourse. Consumers also recommended that the commission

automatically refer any intentional wrongdoings by REPs regarding the switch-hold to the Attorney General for investigation and enforcement.

The REP Group commented that the provisions related to unauthorized switch-holds strike the right balance, appropriately detailing requirements for placing and removing a switch-hold and establishing the potentially significant administrative penalties for REPs that do not follow the process. The penalty for a Class B violation, as proposed in the published rule, may be up to $5,000 per violation per day. The REP Group disagreed with commenters that contended that the proposed rule will prevent any customer from switching to a provider of choice. Instead, the REP Group argued, the proposed rule would require customers to pay back a no-interest loan before making the switch. The REP Group also disagreed with comments that the commission lacks statutory authority to implement the switch-hold process. The REP Group argued that certain provisions of PURA plainly authorize the commission to adopt and enforce rules relating to the extension of credit, level or average billing programs, and termination of service, including PURA §17.004(b) and §39.101(e), among others.

Additional comments concerning the commission's authority to allow a switch-hold and the impact of the switch-hold are discussed in the Authority and Policy Concerns section regarding §25.480(l) below.

Commission Response

The commission disagrees with the position of AARP, MS Society, OPC, Public Citizen, State Representatives, TOP, and Reliant that the switch-hold is a bad, anti-competitive

policy that would conflict with PURA, as discussed in the Authority and Policy Concerns section of the preamble below regarding §25.480(l).

The commission agrees with OPC's proposed language to clarify that a REP will be subject to penalties for placing a customer on an unauthorized switch-hold as well as for not following the outlined procedures for removing the switch-hold and modifies §25.480(m)(3) accordingly.

The commission is not adopting the suggestion of Cities, OPC, and Consumers to specify that erroneous switch-holds and violations of the switch-hold process are a Class A violation. Consumers also recommended that the commission automatically refer any intentional wrongdoings by REPs regarding the switch-hold to the Attorney General for investigation and enforcement. While the commission may under PURA §15.021 request assistance from the Attorney General's Office, the commission does not agree that the rule should be modified to provide for an automatic referral to the AG's office for any intentional wrongdoings by REPs regarding the switch-hold. Under PURA §15.023, the commission has the ability to levy penalties against parties that violate commission rules. The rule being adopted states that a REP who erroneously places a switch-hold flag on an ESI ID that prevents a legitimate switch or does not remove the switch-hold within the time frame required by the rule will be considered to have committed a Class B violation. §25.8 states that a Class B violation may result in penalties up to $5,000 per day per violation. The commission believes that the Class B violation penalty provision in the rule is sufficient inducement for the REPs to abide by the rule and addresses the concerns about any

potential misuse of the switch-hold by a REP. Additionally, the commission has established Project No. 37685 which proposes to amend §25.107(j) to classify erroneous switch-holds as a significant violation that may lead to suspension or revocation of a REP's certificate. OPC, while remaining opposed to switch-holds, filed reply comments in Project No. 37685 supporting the proposed amendment.

Question 2. If the disconnection of customers designated as critical care is allowed, what additional protections and procedures should be in place to ensure that the loss of electricity will not result in the loss of life?

AARP, Houston, MS Society, OPC, Public Citizen, TOP, and Consumers opposed disconnection of any customer whose life will be at risk without electricity and proposed that that those customers dependant on electric life support equipment not be subject to disconnection. Houston agreed with these commenters that the only way to avoid potential loss of life of critical care customers is to not disconnect; and consequently, Houston opposed any changes to the existing critical care rules. AARP, MS Society, OPC, and Consumers stated that disconnection of critical care customers would violate PURA §39.101(a) that entitles a customer to "safe, reliable, and reasonably priced electricity, including protection against service disconnections in an extreme weather emergency" as provided by subsection (h) or in cases of medical emergency. Consumers opined that a medical emergency will result if a critical care customer's electricity service is disconnected.

AARP, OPC, and Public Citizen proposed that if the commission proceeds with explicitly providing for the disconnection of chronic condition and critical care customers, the TDU should, at a minimum, be required to obtain the commission's approval before disconnection. They noted that in Rhode Island, utilities must obtain written approval from the Division of Public Utilities and Carriers before disconnecting households where all residents are aged 62 or older or any resident is handicapped. Further protections should be extended to chronic condition and critical care customers to ensure that they have the most flexible payment plans available without adding new restrictions such as placing of switch-holds, restricting availability of plans to only certain months, or increasing the initial down payment to begin a plan.

The MS Society proposed a multi-step disconnection notification process with distinct roles for REPs and TDUs to help ensure chronic condition customers are not disconnected without advanced notice. Under the MS Society proposal, REPs would be required to notify the customer and secondary contact with a written notice of its intent to disconnect not later than 21 days prior to the date of disconnection. This written notice would be sent by mail and would request that the customer contact the REP. If the customer or secondary contact does not respond to the letter prior to the disconnection date, the REP would not issue a disconnect order but instead would notify the customer and secondary contact by an auto-dialer phone message of the pending disconnection and request that the customer contact the REP. If the customer or secondary contact did not respond to the automated call or letter prior to the disconnection date, the REP would be required to have a staff person make a direct phone call to both the customer and the secondary contact notifying them of the pending disconnection. If there were no response and the 21-day period had passed, the REP would be allowed to issue a disconnect

order. The TDU would be required to contact the chronic condition residential customer and the secondary contact before disconnecting. If the TDU did not reach the customer and secondary contact by phone, the TDU would be required to visit the premise, and, if there were no response, would be required to leave a door hanger containing the pending disconnection information and information on how to contact the REP and TDU.

Cities took no position on whether disconnection of critical care customers should be allowed but urged the commission to adopt rules that would recognize that seriously-ill critical care customers face serious disabilities and urged the commission to do everything in its power to ensure that no lives are lost due to disconnection of electric service. The Joint TDUs expressed concern regarding disconnection and opined that they are unaware of any protections or mechanism that will ensure that the loss of electricity may not potentially result in the loss of life. Cities and Reliant commented that the enhanced notice and the 21-day advanced notice in the proposed rule would provide critical care customers sufficient time to leave the premises in order to prevent loss of life or serious degradation of health due to the disconnection of electric service.

The REP Group and Reliant expressed general support for the proposed safeguards and noted that the notice to be sent to the customer and secondary contact 21 days in advance of disconnection should provide sufficient time for chronic condition and critical care customers to relocate or make other arrangements to help avoid loss of life or degradation of health. In the event that phone contact is not made, the REP Group noted that the proposed rule requires the TDU to visit the premises of a critical care customer and leave a door hanger containing the

disconnection information. The REP Group believed that a social services solution for critical care customers who do not pay their electric bills should be developed but that such a solution would probably require legislative action.

The REP Group pointed out that the existing TDU standard tariff states a TDU shall not disconnect a customer if the disconnection will cause a dangerous or life-threatening condition "without prior notice of reasonable length such that Retail Customer can ameliorate the condition." The REP Group opined that the commission did not intend to provide TDUs with new or different authority related to disconnection of critical care customers, other than the process that is described in the tariff. They proposed to delete the phrase "if the TDU refuses to disconnect" in proposed §25.483(g). The REP Group supported the portion of proposed §25.483(g)(4) that requires a TDU to cease charging transmission and distribution charges when the disconnection is delayed but suggested modifications to proposed §25.483(g)(4) that would commence cessation of charges when the disconnection is delayed beyond the completion timelines in the TDU's Discretionary Charges tariff.

OPC disagreed with the REP Group proposal to delete the phrase "if the TDU refuses to disconnect" from subsection (g)(4) because the TDU may have reason to delay or refuse disconnection. In fact, OPC noted that proposed §25.483(g)(2) instructs the TDU to delay disconnection if the TDU reasonably believes that the REP does not know that the customer is critical care. OPC stated that the REP Group asserted that subsection (g)(4) could be interpreted to mean that TDUs have authority related to disconnection of critical care customers that is new or different than the process described in the existing tariff. However, OPC opined that the

portion of the tariff cited by the REP Group will need to be modified once this rule is adopted because the tariff refers to the ill and disabled process, which will no longer be applicable under the proposed rule.

Commission Response

The commission shares the concerns raised by commenters about the importance that electricity has for certain customers. In addition to the protections in the proposed rule that expand eligibility for payment plans, the commission amends §25.483(g) of the adopted rule to enable a Critical Care Residential Customer to request a delay in disconnection for up to 63 days from issuance of the bill when the customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill. To ensure that the most vulnerable persons have sufficient protection from disconnection, the commission modifies the proposed rule to distinguish the process of disconnection for Critical Care Residential customers from the process of disconnection for Chronic Condition Residential customers.

The commission agrees with Cities, Reliant, and the REP Group that the notice required in the rule will provide Critical Care Residential customers with sufficient time to leave the premises in order to prevent loss of life or serious degradation of health due to the disconnection of electric service. The notice is to be sent to the customer and secondary contact not later than 21 days prior to the date that service would be disconnected.

The commission agrees with the MS Society that door hangers should include information on how the customer may contact the REP and the TDU and modifies the rule accordingly.

The commission notes that the REP Group opined that a social services solution for critical care customers that do not pay their bill would probably require legislative action. While the commission agrees with the REP Group that legislative action would probably be required for the commission to require REPs to provide electricity to any customer for free, the commission would point out that there are social services and agencies that provide assistance to customers that do not pay their electric bill and that the rule adopted in this project contains customer protections that expand eligibility for payment plans and allows critical care customers time to seek payment assistance. Additionally, PURA §39.903 provides a system benefit fund to, among other things, provide one-time bill payment assistance to electric customers with a seriously ill or disabled low-income customer who has been threatened with disconnection for nonpayment. The commission has not, however, had money appropriated to it for this purpose.

Question 3. Does the switch-hold provision in §25.480(l) contain sufficient protections to ensure that a customer's ESI ID is not subject to a switch-hold for a relatively small debt to the REP?

a. Should the rule include a minimum amount owed in order for a customer's ESI ID to be eligible for a switch-hold? If so, is $500 the appropriate threshold?

AARP, Consumers, OPC, Public Citizen, and Reliant believed that the switch-hold provision in §25.480(l) does not contain sufficient protections for small debts. Consumers cited the example of average or level payment plans in which the customer may have low debt or even a credit yet

the switch-hold could be placed on the customer's account and be removed only if the customer stopped using this type of payment program and showed that there was no money owed. AARP and Public Citizen presented an example in which a customer could enter into a deferred payment plan in August and have $30 left to pay in December. AARP and Public Citizen argued that blocking the choice of a customer that is current with all payments and yet still has $30 deferred from five months ago is unreasonable. Consumers added that the proposed rule would allow REPs to place a switch-hold on customers who enter into a level or average payment plan even though the customer may have no debt and could even have a credit. Yet, the only way a customer could get the switch-hold removed would be to stop using the level or average payment plan. Consumers opined that this seems extremely inequitable and could drive moderate income customers away from using a level or average payment plan because of its consequences. Consumers recommended that the commission not allow a switch-hold on customer accounts that are not delinquent.

AARP and Public Citizen stated that the commission should reject switch-holds but if it proceeds with switch-holds, it should adopt a threshold that is $500 above the dollar amount of security deposit the REP is retaining for that account. Consumers agreed that $500 was an appropriate amount.

OPC stated that there should be some minimum amount owed before the REP could place a switch-hold on the account. OPC wasn't sure what the amount should be but argued that, at a minimum, it should be an amount greater than the customer's deposit held by the REP. Additionally, OPC stated that the costs to the REPs and TDUs for implementing the switch-hold

should also be considered when determining a threshold minimum because at some point it is not economically justifiable to apply a switch-hold to customers that owe less than a certain amount of money.

Reliant pointed out that theoretically the rule would allow a switch-hold to be placed on an account when a customer owes one dollar to the REP. Clearly such a scenario is unreasonable and the cost associated with applying the switch-hold could cost more than the potential bad debt the REP would have for that customer. While Reliant stated that it would support a threshold of $500, it argued that if the policy goal is to ensure that customers who leave REPs after engaging in a deferred payment plan are held responsible for the electricity they used, then a threshold approximately equal to the average security deposit is reasonable. Reliant calculated that amount at approximately $450. Reliant stated that during the workshops for this project, some expressed concern that the threshold could lead to gaming by customers; for example, a customer could switch away when owing a dollar less than the threshold. Reliant stated that the threshold for removal of a switch-hold need not be the same as the initiating threshold and that limiting the number of customers with a switch-hold significantly reduces the administrative burden on the retail market.

The REP Group opposed the recommendation of AARP, OPC, and Consumers to set a threshold delinquent amount before a switch-hold could be applied. The REP Group believed that a threshold is not appropriate in the context of payment plans that extend credit beyond the normal post-pay model that generally exists in the competitive electric model. The REP Group contended that adopting a $500 threshold would render a switch-hold process virtually

meaningless as for the most part it would generally equate to two delinquent invoices plus a current invoice and REPs should not allow customers to go that far past due.

The REP Group believed that a minimum threshold would be inappropriate in the context of deferred, level and average payment plans. They opposed the threshold because it could make the switch-hold process much more complicated and require significant resources to monitor and track balances. The REP Group likened the situation to that of administration of conventional loans, where security is established at the beginning of the loan and is not released until the terms of the loan are satisfied. They concluded that the process adopted in this rule should follow this well-established principle, and that no threshold should be established for switch-holds related to payment plans as switch-holds are intended to help ensure that customers adhere to the terms of the payment plan and to reduce bad debt that otherwise would be socialized among customers who pay their bills on time.

Commission Response

AARP, Consumers, and Reliant recommended that the commission adopt a $500 threshold delinquent amount before a REP could apply a switch-hold. While OPC agreed that there should be a minimum amount owed before the REP could place a switch-hold, they were less certain as to what the minimum amount should be but that, at a minimum, the amount should be greater than the customer's deposit held by the REP. OPC and Reliant pointed out that at some point the cost for the REP to apply the switch-hold may exceed the amount the customer owes making application of the switch-hold uneconomically justified. The REP Group opposed establishing a minimum amount and argued that it would make the

switch-hold process more complicated and require significant resources to monitor and track balances to determine if the REP has a deposit and if so, at what point the delinquent amount exceeds the deposit. The commission agrees with the REP Group that it would be inappropriate to set a minimum threshold amount owed before a REP is allowed to place a switch-hold. The commission believes that the rule requires REPs to extend credit to customers and that the additional risk is beyond that which REPs would generally be subject to in the post-pay competitive market. This additional risk should be balanced with a tool such as the switch-hold process that will help ensure that REPs have the ability to collect the debt it is owed from the customer that has incurred the debt.

The commission agrees with AARP, OPC, and Consumers that it would be inappropriate to allow a switch-hold for customers that are not delinquent in paying their bill when they enter into a level or average payment plan. The commission is adopting §25.480(h) to prohibit REPs from applying a switch-hold to accounts when a customer that is not delinquent in payment enters into a level or average payment plan, unless that payment plan is entered into by an eligible customer during July through September or during a period of extended cold weather in January or February, where the customer selects a level or average payment plan instead of paying the balance due.

Question 3.b. If a threshold is not adopted, what are the ramifications to the competitive market if a significant portion of the ESI IDs in the market are subject to a switch-hold at any given time?

AARP and Public Citizen stated that if significant portions of the ESI IDs happen to be subject to a switch-hold at any given time, this circumstance would be a clear signal that the market in Texas has utterly failed and that immediate action is necessary to restore affordable service.

The REP Group stated that it is doubtful that the policy would result in a significant portion of ESI IDs being subject to a switch-hold. They added that even if significant portions of the ESI IDs were subject to a switch-hold, the customers would be treated no differently than they were when the electricity market was fully regulated. In the fully regulated market, customers were required to pay amounts owed to the electricity provider to maintain service. The REP Group stated that the proposed rule changes would essentially extend a no-interest loan that extends due dates beyond the normal post-pay model and sets a reasonable policy that customers are expected to pay balances prior to switching to another provider. New occupants will have to prove that they are a new occupant (by providing a lease, affidavit of landlord, closing documents, certificate of occupancy or utility bill dated in the past two months).

Reliant expressed concern about the effect the switch-hold will have on the market as a whole, in addition to the cost imposed on individual market participants. Reliant argued that the commission and many stakeholders have spent more than eleven years crafting and refining the intricacies of the competitive market in Texas, with great success. Reliant stated that imposing a switch-hold will impede the liquidity of the competitive market by limiting customers' right to choose. Reliant was concerned about the mechanics of the process as well as the potential for headlines leading to public backlash.

OPC opined that as frequently as the commission has touted the ability of customers to switch providers, especially during the summer months, a switch-hold is likely to cause confusion if customers are prevented from switching. OPC expressed concern that a significant portion of customers that will be subject to a switch-hold are going to be lower income customers, because the switch-hold will apply to only those on a deferred payment plan and those LITE-UP customers on level plans which could potentially create a significant divide that would lock only lower income customers into a REP.

Consumers stated that a switch-hold is nothing more than the commission's authorization to REPs to provide electric service through the tying of a monopoly product (transmission and distribution service) with a competitive one. This raises anticompetitive concerns as the more REPs can use the switch-hold process to activate this tying arrangement, the greater the implication in the marketplace for antitrust and anticompetitive results. The REP Group rejected this argument and stated that PURA §39.001(a) states that the sale of electricity is not a monopoly service and implementation of a switch-hold process does not and cannot modify that finding. The REP Group added that customers will continue to have the right to choose a REP in the competitive market, conditioned upon satisfaction of commitments and agreements under a payment plan entered into with the current REP.

Commission Response

The commission does not entirely agree with Reliant's position that the switch-hold would limit the customer's choice. The rule that is being adopted will limit a customer's ability to switch REPs only in the narrow circumstances in which the REP has extended additional

credit to the customer though a deferred payment plan or a level or average payment plan and the customer fails to pay the amounts due. The commission agrees with the REP group that there will not likely be a significant number of customers that will be subject to a switch-hold. The commission oversees the retail market and is in regular contact with REPs and customer advocates. If the commission's expectations about the number of customers who are placed on switch-hold do not prove to be correct, it has the latitude to re-evaluate the impact of the rule on the effectiveness of the competitive retail electric market. Therefore, the commission has included REP reporting requirements in §25.480(g)(2) so that the commission can track the number of customers who have a switch-hold applied during the year. An important component of a competitive market is that customers pay their electric bills. As pointed out by the REP Group, customers were required to pay their bill to maintain electric service prior to competition in the fully regulated market. Customers in non-competitive areas remain subject to such requirements. Just as REPs are required under commission rules to extend credit to customers who seek electric service, customers are required to make payment on their purchases of electricity. A customer's freedom of choice is not limited by a switch-hold so long as that customer keeps payments current or timely pays off any credit that has been extended to that customer. As stated by the REP Group, customers will continue to have the right to choose a REP in the competitive market, conditioned upon satisfaction of commitments and agreements under a payment plan entered into with the current REP.

The commission disagrees with Consumers' argument that a switch-hold is nothing more than the commission's authorization to REPs to provide electric service through the tying

of a monopoly product (transmission and distribution service) with a competitive one. For the reasons set out in the preceding paragraph, the switch-hold represents a limited impairment of a customer's ability to switch providers that is related to the need to ensure repayments of extensions of credit from a REP to the customers. This mechanism is not a fundamental change in the competitive retail market, in which most customers, most of the time, will have the ability to select the retail provider of their choice.

The commission appreciates OPC's concern about the switch-hold being applied to only LITE-UP customers when they enter into a level or average payment plan. The commission modifies the proposed rule to allow REPs to place a switch-hold only on customer accounts that are delinquent at the time they enter the level or average payment plan, or when the payment plan is entered into by an eligible customer during July through September or during a period of extended cold weather in January or February, where the customer selects a level or average payment plan instead of paying the balance due.

Question 3.c. In §25.480(j)(1), the proposed rules require a REP to offer a deferred payment plan for bills that become due during an extreme weather emergency, and to customers in an area covered by a Governor's declaration of disaster. Should the rule also exempt such customers from the switch-hold? Should any other groups of customers--e.g., critical care, low-income, elderly--be exempt from the switch-hold?

The REP Group stated that the proposed switch-hold policy would appropriately make customers accountable when they take advantage of payment plans that extend credit beyond the normal

disconnect cycle. The REP Group argued that the rule should not exempt certain categories of customers from the switch-hold policy because of their customer characteristics or because the customer agreed to a payment plan during a specific type of event.

Reliant stated that certain situations such as extreme weather and disasters call for leniency when granting payment plans. Certainly customers who are disadvantaged by these circumstances should be exempt from the switch-hold. Reliant opined that other groups recognized as being eligible for separate consideration in the application of the commission such as critical care, low-income and elderly should be exempt from the switch-hold as well. Public Citizen, AARP, and Consumers believed that exemptions from switch-holds should be provided for all people during weather emergencies, in areas declared disaster areas, all critical care, all low-income and all elderly customers.

OPC believed that there should be as many exemptions from the switch-hold as possible; however, OPC's priority for exemptions would be the customers whose lives may be placed in danger due to a lack of electricity. OPC stated that for health and safety reasons critical care customers and the elderly are especially in need of electricity and should be exempt from the switch-hold. These customers may have mobility or transportation availability challenges that make it difficult for them to leave their home.

Commission Response

The commission agrees with Reliant that REPs should exercise leniency when granting payment plans during extreme weather, disasters, and similar conditions. These rules do

not require a REP to implement a switch-hold but the switch-hold is a mechanism by which REPs may balance the expansion of credit extension requirements under this rule with the REPs' resulting increased risk of, and exposure to, bad debt. The commission is not persuaded by the arguments of AARP, OPC, Public Citizen and Consumers that exemptions from switch-holds should be granted. Given the protections for vulnerable customers under this rule and the proposed rule in Project No. 37622, the commission does not believe that the placement of a switch-hold on a customer's account will impair the health and safety of customers. Nothing in the rule prohibits REPs from exercising discretion in granting additional leniency, but the commission does not believe it appropriate to require additional exemptions from the switch-hold through rule. Decisions concerning exemptions are best left to individual REPs.

Question 4. What are the costs and benefits of implementing the switch-hold as described in §25.480(l)? Are there alternative means for a REP to mitigate the business risk of a customer default, aside from imposing a switch-hold on the customer's ESI ID?

Reliant believed that the costs of implementing a switch-hold would far outweigh the benefits and would result in all ERCOT market participants incurring additional costs with only marginal benefits. A switch-hold process would need to be populated and updated at least daily to ensure that customers who have fulfilled payment plans are free to switch. This complexity introduces additional opportunity for error, potential disputes, and increased costs. Reliant believed that the imposition of a switch-hold process and its associated costs on all customers is not an effective way to address REP bad debt.

Reliant urged the commission to ensure that REPs have availed themselves of all the existing available tools to manage and mitigate bad debt rather than imposing additional regulatory "solutions" to competitive issues. According to Reliant, REPs have numerous commercially available tools that would enable them to manage and mitigate bad debt as an alternative to the switch-hold. The commission's rules provide a REP with the flexibility to determine satisfactory credit ratings based on its own competitive expertise and risk tolerance. A REP should periodically examine whether its internal definition of satisfactory credit is appropriate or needs modification. REPs are authorized to collect a security deposit or a letter of guarantee to minimize risk. These security deposits are not required to be refunded until the customer has made 12 consecutive on-time payments. Some REPs prematurely surrender the account security deposits by systematically refunding deposits after 12 calendar months, without regard to timeliness of payment. Additionally, §25.478(e) allows REPs to request, under certain conditions, an additional deposit based on the customer's historical usage to more appropriately secure the account against default; §25.477(a)(3) allows a REP to refuse service to a customer who is intending to deceive the REP by changing the name of the account-holder to evade payment of charges; and §25.477(a)(4) allows a REP to refuse service to a customer for indebtedness. Market participants are investing time and effort to develop a set of procedures to prevent a customer from evading a switch-hold arising from tampering. Reliant opined that REPs should be performing similar validations with each new enrollment to ensure that credit is not being extended to a customer who has previously "walked" on the REP. If the initial evaluation to determine indebtedness does not reveal a prior past due balance and the REP later discovers such indebtedness, §25.479(h) allows an outstanding balance to be transferred to the

customer's current account with the REP. Reliant argued that REPs can take these measures as well as their own proprietary measures to secure accounts to reduce the impact from defaulted customer accounts.

Reliant observed that if the commission believes that a switch-hold is a necessary remedy, the commission should strengthen its rules relating to obtaining and validating customer identification prior to enrollment to ensure consistency. Current rules do not require a REP to verify the identity of an applicant and there is no standard among REPs regarding what constitutes acceptable identification. As a result, a customer could enroll with multiple REPs using a different type of identification with each or use slight variations of the customer's name to side-step a switch-hold process. Reliant stated the commission should consider strengthening its current rules that facilitate competition rather than implementing a switch-hold. For example, the commission could set a minimum standard of acceptable identification that would target gaming and identity theft without interfering with a customer's choice in the competitive market. Reliant stated that, regardless of the number of switch-holds in effect, the switch-hold process would require additional time-consuming steps for every enrollment transaction in the ERCOT market (approximately 800,000 switches and 2.2 million move-ins during 2009). In other words, the market will incur additional costs associated with processing and validating 3,000,000 customer transactions associated with switch-holds each year when those customers who are truly gaming the system can continue to do so. Reliant recommended that the commission focus on making gaming, rather than switching, more difficult.

AARP and Public Citizen urged the commission to reject the switch-hold process, close this rulemaking, and open two new rulemakings. One rule would be to develop strong, meaningful new disconnection protections for vulnerable Texans facing dangerous electricity disconnections and the other rule would be to explore the so-called bad debt issue of REPs. AARP urged the commission to explore the business practices suggested by Reliant to enable REPs to better manage bad debt and not to adopt the switch-hold process, as it would further endanger more Texans by keeping them disconnected for a longer period of time. AARP concluded by opining that the fundamental purpose of this rulemaking was and is to help Texans avoid dangerous disconnections.

OPC stated that it sees no benefit in implementing a switch-hold and noted that there are alternative means for a REP to mitigate the business risk of a customer default. OPC agreed with Reliant that PURA §17.008(d) allows a REP to use an applicant's electric bill payment history to deny service. The REP Group agreed with OPC and Reliant that a REP may refuse service based on a customer's electric bill payment history but added that there is no practical way for the REPs to implement an electric bill payment database to track customer payment records since the commission has determined that it cannot require a REP to fund the database. OPC noted that the proposed rule contains several other provisions that will mitigate the REP's business risks as the result of any customer default: increase in the initial payment from 25% to 50% for a deferred payment plan, limitations on the customers that would be eligible for a payment plan, and limitations on the time of the year that a REP is required to offer the deferred payment plans. OPC offered that if customers were required to take service from a REP for six months instead of the current three months prior to being eligible for a deferred payment plan, the incidence of

customers leaving a REP with a deferred balance would decrease because of the demonstrated loyalty.

Additionally, OPC stated that the rule should contain some performance standards or metrics that should be met to ensure that the switch-hold process is not more costly than any rate savings that should accompany a reduction in REP debt. OPC expressed surprise that the rule does not include any meaningful reporting on this issue, as a decrease in costs was a stated objective of Commissioner Nelson in moving forward with the switch-hold at the November 20, 2009 workshop. OPC added that without a performance standard or metric there would be no way to validate or reject the REP Group's argument that switch-holds would help ensure customer adherence to terms of a payment plan and would reduce bad debt that otherwise would be socialized among customers who pay their bills on time. OPC stated that it does not expect lower electric rates by implementing the switch-hold process but does expect that there will be an increase in customer confusion, customer complaints, and billing costs.

OPC agreed with Reliant that the switch-hold process will require additional time-consuming steps for enrollment transaction, that the switch-hold list will need to be updated daily, and that the updating will provide the opportunity for error, disputes, and increased costs. OPC opined that these are valid, serious concerns that should be addressed in a meaningful way, rather than leaving it to be worked out at the ERCOT stakeholder process. OPC asserted that REPs that choose not to run their businesses in a profitable, risk-minimizing manner will inevitably fail, which is how a competitive market is intended to work.

OPC and Consumers reiterated Reliant's point that the commission has given the REPs adequate tools to mitigate risk such as late penalty fees, deposits for people with bad credit or poor payment histories and a switch-hold is unnecessary. OPC urged the commission to encourage other REPs to use these existing tools. Consumers maintained that a switch-hold is not within the commission's authority to establish and punishes customers who pay their deferred payment plans timely by restricting the customer's access to the market for up to a business day after they make the final payment on the plan. Since prices change daily, this can be a real cost to the customer.

Consumers offered comments related to the cost of the switch-hold to consumers by comparing it to the old company town days, where workers could only shop at the company store and prices kept rising and workers could never pay off the debt. Like the company store scenario, Consumers noted that the proposed rule does not set any pricing safeguards. Consumers expressed concern that REPs are assessing extra fees on bills that have not been authorized by the commission like a disconnect recovery charge that is applied in addition to the 5% late fee. Consumers urged the commission to structure the rules to prevent any additional fees from being charged and to establish cost-based pricing for customers placed on a switch-hold. Additionally, Consumers noted that the proposed rule provides no protection against price gouging when a consumer is on a month-to-month contract because the customer's fixed contract expired during the deferred payment plan period. Consumers reviewed copies of bills where the monthly rate rose from 14.84 cents per kWh in May 2008 to 19.87 cents per kWh in October 2008, a 33.89% increase. Consumers raised concern that the switch-hold process would lock a customer out of

the competitive marketplace and force the customer to pay non-competitive prices resulting in captive ratepayers without price and fee or surcharge protection.

Consumers opined that the switch-hold process could result in additional costs in related retail markets such as the rental housing market. Consumers presented a scenario where a customer is disconnected and placed on a switch-hold. In this scenario, Consumers observed that one option for the tenant would be to abandon tenancy, resulting in an economic loss for the landlord. Consumers urged the commission to explore these significant costs to ensure that commission interference into the competitive electric retail market will not negatively impact other market sectors.

Consumers raised an additional concern that the switch-hold is a two-sided coin in that customers are denied access to REPs, but other REPs are also denied access to these consumers. The commission has recognized in Project No. 22255 (Customer Protection Rules for Electric Restructuring Implementing SB 7 and SB 86) that niche sellers will arise in a competitive market to serve customers that are low spenders with credit history problems. Consumers opined that these niche providers could be negatively impacted and possibly driven out of the market if REPs are allowed to place a switch-hold on a customer's account. Consumers asked that the commission explore this cost impact before it denies these niche sellers access to the customers by allowing a REP to place a switch-hold on the customer's account.

Consumers stated that the issue of switch-hold raises a serious question of whether competition is a workable model for the delivery of reliable electricity at affordable rates. Consumers

provided a comparison of electric rate increases for the period from January 2002 to January 2010 and concluded that regulated prices increased at a lower rate than the national average while competitive retail prices for First Choice Power in the Oncor service territory increased at a significantly higher rate.

Consumers commented that, in addition to the higher price increases, customers in the de-regulated market are faced with additional costs and fees above the TDU charges such as REP disconnect and reconnect charges and there are no assurances that rate decreases from TDU rate cases will flow 100% to consumers. Consumers cited a study requested and funded by Entergy (Entergy Report) and a Center for Public Priorities publication attached to their initial comments and concluded that 35% of the Texas population has incomes inadequate to cover their basic essentials and noted that these studies underscore that greater customer protections should be in place to enable low and moderate income customers to have a realistic ability to pay their electric bills and maintain service. The proposed switch-hold would increase risks to financially fragile customers. Consumers denounced the REP Group's characterization of customers who do not pay electric bills as being bad actors and stated that these are simply people who cannot afford the repayment schedule requested by the REPs. The Entergy Report found that the inability to pay utilities is second only to the inability to pay rent, as a reason for homelessness. Consumers opined that low and moderate income consumers would be better off in a regulated monopoly that would provide more stable pricing, no additional REP fees and charges, and would provide rate reductions when ordered by a regulatory agency. Consumers recommended that the commission increase the payment due date from the current 16 days to 25 days from issuance and, alternatively, that it allow customers to choose the due date for their billing.

The REP Group argued that the benefit of implementing a switch-hold is that cost causers will be required to pay their own debts instead of leaving their unpaid bills to become bad debt that is socialized among paying customers. Since the switch-hold process has already been developed in the context of meter tampering, the REP Group opined that the added costs to expand the switch-hold process in this rule should be minimal. The REP Group also noted that the proposed rule provides additional benefits to customers by increasing the number of customers who will be eligible for payment plans.

The REP Group agreed with Reliant and Consumers that REPs should use good debt-management tools. The REP Group also agreed with AARP, OPC, and Reliant that REPs can require security deposits but noted that security deposits are intended to address the fact that REPs sell electricity on credit as customers generally use electricity before a bill for the service is generated and that a REP may provide 65 to 80 days of service before it is allowed to disconnect service for non-payment. However, the REP Group maintained that the current security deposit amount allowed by the customer protection rules is insufficient to offset the additional costs and risks posed by the expanded payment plans proposed in this project.

The REP Group encouraged the commission to reject the suggestions of Consumers to increase the payment due date from the current 16 days to 25 days from issuance and the alternate proposal to allow customers to choose the due date for their billing. The REP Group stated that these proposals are similar to the ones made by consumer groups in the initial customer protection rulemaking and rejected by the commission in 2000 (Project No. 22255). The REP

Group noted that increasing the due date from 16 to 25 days would result in customers in competitive areas having approximately 50% more days to remit payment than customers in areas of the state not open to competition. Competitive REPs should not be required to provide a customer more time to pay electric bills than is required in the regulated environment. The REP Group reiterated its position that REPs generally sell electricity on credit and provide 65 to 80 days of service before being allowed to disconnect a customer for non-payment. The Consumers' proposal, if adopted, would impose significantly higher risks on REPs and, at the very least, customer deposits would need to increase to offset the potential impact from additional bad debt. The REP Group noted that the existing deposit cap was set by the commission with a 16-day due date as the basis of the formula and allows the REP to collect up to one-fifth of the customer's estimated annual billing, or the sum of the estimated billing for the next two months. If the due date were expanded by the proposed nine days, then the increased risk to the REP would need to be reflected in the deposit cap. The REP Group also opposed Consumers' reasoning to change the due date from 16 days to 25 days to match the new federal standards for consumer payments on credit cards because of significant differences between credit card companies and electric service industries. Banks and credit card companies can choose to deny an extension of credit to a customer. In addition, credit card companies may: (1) increase the interest charges for existing balances and new transactions at any time if payment is not received within a certain number of days after the due date; (2) increase interest charges for new transactions; and (3) offer no grace period for repayment of the balance for purchases if the previous balance was not paid in full by the due date. In opposing Consumers' suggestion that REPs be required to let customers choose their own bill due date, the REP Group pointed out that home loan companies can charge consumers interest on the extension if a customer chooses to

have his house payment due on a date that requires the lender to defer receipt of the payment but REPs do not have this option. The REP Group noted that some REPs do provide customers with the option of choosing their bill due date, but these types of payment arrangements should continue to be left to the competitive market and not be mandated by commission rule. The REP Group concluded by stating customers should not be required to absorb the increased costs that would result from the proposals to extend payment due dates.

Commission Response

The commission agrees with AARP, OPC, Public Citizen, Reliant, and Consumers that REPs should maximize their use of the tools found in the commission's existing rules and in the competitive market to manage bad debt. The commission believes that some REPs face challenges with the high level of bad debt they are experiencing, and that the expanded eligibility for deferred payment plans and average or level payment plans would exacerbate the bad debt experience. The commission believes that the switch-hold is a necessary, additional risk management tool, to allow REPs to prevent increased bad debt and the increase in rates that is likely to be associated with higher levels of uncollectible debt. The commission believes that the cost does not outweigh the benefit of the switch-hold, and that the extended credit contained in this rule should be balanced with a tool that will help ensure that REPs have the ability to collect the debt they are owed.

The REP Group is correct in noting that the commission has previously determined in Project No. 36860 (Rulemaking Relating to Customer Database of Bill Payment Information) that it cannot require a REP to fund a database of customer payment history.

However, the commission believes that REPs may voluntarily implement an electric bill payment history database to track payment history and encourages REPs to explore ways to implement this database.

The commission appreciates Consumers' comment that the proposed switch-hold may increase risks to financially fragile customers by exposing them to increasing electric prices and fees without the protection of being allowed to switch to a cheaper or more reliable alternative REP. However, the commission does not agree with Consumers that the proposed rule prohibits the customer from switching providers. The rule merely requires the customer to pay for consumed electric service prior to switching. The expanded eligibility for payment plans is intended to provide additional protections for these customers.

In response to the comments of Consumers and OPC concerning customer rates when the customer's contract expires while on a switch-hold, the commission modifies subsection §25.480(l) to require REPs to offer competitive rates on contract termination during the time that a switch-hold is applied and prohibit REPs from discriminating against any customer that is on a switch-hold in the provision of services or pricing of products. Customers on a switch-hold shall be eligible for all services and products that are generally available to the REP's other customers.

AARP and Public Citizen suggested that the commission close this rulemaking and open two new separate rulemakings to address disconnection protections for vulnerable Texans

facing disconnection and bad debt issue of REPs. The commission believes that this rulemaking addresses both of these issues and that there is no need to establish the separate rulemakings at this time.

OPC opined that if customers were required to take service from a REP for six months instead of the current three months, the incidence of customers leaving a REP with a deferred balance would decrease because of the demonstrated loyalty. Expanding the eligibility for payment plans was one of the key protections to customer who are having difficulty paying their bills, and the three month minimum service history is an important part of this expansion. The commission believes that requiring customers to take service from a REP for six months rather than the current three months before being eligible for a deferred payment plan would leave some vulnerable customers without a payment plan option for an additional three months. The commission makes no change based on OPC's suggestion.

Reliant and OPC raised a concern about the costs associated with the switch-hold process. Reliant contended that additional costs will be incurred to process and validate 3,000,000 transactions each year, but customers who are truly gaming the system can continue to do so. While the commission is concerned about gaming the system and will continue monitoring the market, this rule is intended to balance the need for additional customer protections for vulnerable customers when they most need it with the concern that the additional protections would increase bad debt that would increase rates for all customers. The commission agrees with the REP Group that the incremental costs associated with the

switch-hold process in this rule should be minimal since the switch-hold process is already being developed to address issues associated with meter tampering. The commission expects that protection benefits of expanding the payment plans available to vulnerable customers in this proceeding will outweigh the minimal incremental costs associated with the switch-hold in this proceeding.

Question 5. Section 25.480(j) specifies the minimum down payment and number of installments for a deferred payment plan made available to eligible customers during the months of July, August, and September (as well as during January and February, subject to certain weather conditions). Should the rule specify the minimum down payment and number of installments for deferred payment plans to be made available during the remaining months of the year?

AARP and Public Citizen believed that the proposed rule would weaken existing customer protections by allowing REPs to require the customer to make an initial payment up to 50% of the outstanding balance prior to being allowed to enter into a deferred payment plan instead of the 25% under the existing rule provided that customers meet the basic requirements under the existing §25.480(j)(3). The proposed rule would also restrict what months the payment plans must be available from 12 months to three months (or to five months in extreme weather years). AARP and Public Citizen urged the commission to reject this weakening of existing customer protections. Reliant also expressed concern about removing existing customer protections and encouraged the commission to specify the minimum down payment and number of installments for deferred payment plans during the other months of the year. Consumers stated that the rule

should specify the minimum terms and conditions the customer must meet in order to be eligible for any deferred payment plan. Without the parameters for the amount of the initial payment and the amount and number of subsequent payments in payment plans, customers could be pressured into accepting terms and conditions that are unrealistic and not in the best interests of themselves or their REPs. Consumers argued that the proposed rule should include standards for voluntary deferred payment plans and noted that it is essential that a customer taking a deferred payment plan have terms and conditions that can be met because of the possibility of having their electric service disconnected. Consumers noted that the minimum standards would not preclude the REP from providing more liberal payment plans.

The REP Group opposed expanding the rule to specify the down payments and number of installments for months outside the summer and winter months specified in the proposed rule. To be financially viable, REPs must conduct their business to earn a profit and must collect outstanding account balances to earn that profit. This provides REPs with a strong incentive to work with customers who attempt to settle their debts. REPs should continue to have flexibility to work with their customers to craft deferred payment plans specific to their mutual needs.

Commission Response

The commission is persuaded by the comments of the REP Group that the competitive market will perform more appropriately without placing specific regulatory requirements on terms and conditions of deferred payment plans in months other than those specified in the proposed rule. The commission is confident that REPs will distinguish themselves

through their flexibility in developing payment plans and innovative methods to work with customers to meet their payment obligations.

Question 6. If the switch-hold is invalidated by legislative or judicial action, should the rest of the rule remain in effect?

Cities opined that this question is premature as the commission and interested parties may find intertwined features of the rule that need to be changed in tandem to reflect any specific court or legislative action taken.

AARP and Public Citizen argued that if the switch-hold is invalidated by legislative or judicial action, the rest of the rule should remain in effect if the customer protections in the final rule are amended to be stronger than the status quo. OPC pointed out that other proposed changes in the rule will mitigate some of the REP's bad debt issues; therefore, OPC would not oppose leaving the rest of the rule in effect in the event that the switch-hold is invalidated through some legislative or judicial action. Consumers commented that the rule should remain in effect if the switch-hold is invalidated by legislative or judicial action and added that the proposed changes to the deferred payment plan requirements will mitigate bad debt which is a desirable outcome. Consumers reminded the commission of its earlier commitment to adopt a rule that would eliminate the filing of emergency rule making petitions every summer and noted that without the expanded deferred payment plan there will be no workable resolution for the problems consumers encounter in managing high bills during the summer. Consumers expressed its

position that the switch-hold is anti-competitive and is the least effective measure provided in the proposed rule for ensuring that consumers can pay their electric bills.

Public Policy opposed extension of the deferred payment plans beyond what is currently required under statute and opposed the switch-hold process. However, Public Policy stated that should the switch-hold be invalidated through legislative or judicial action, then the rest of the rule should be invalidated as well. Reliant disagreed and argued that the rest of the rule should remain in effect. Reliant opined that in this instance, the function of PURA would not be impaired if the switch-hold is declared unlawful and that the draft rule can stand on its own without the switch-hold. Reliant added that other isolated provisions of commission rules have been declared unlawful in the past without invalidating the remaining provisions.

The REP Group believed that the proposed rule should not remain in effect if the switch-hold process is invalidated by legislative or judicial action. The REP Group opined that the proposed rule establishes the switch-hold process for payment plans in conjunction with expanding customer eligibility for payment plans beyond what is already required in the existing rule.

Commission Response

The commission is persuaded by Cities' argument that the question is premature.

Discussion of REP Bad Debt

The REP Group encouraged the commission to take steps to close the loophole in the current market design where bad debt is serious and has grown substantially since market open. The

REP Group opined that the switch-hold process is an important component of a workable comprehensive solution to expand protections for vulnerable customers who have difficulty paying electric bills, especially in the summer and winter months, while limiting further bad debt costs that would ultimately increase prices to customers who timely pay their bills.

To demonstrate that bad debt is serious and has grown substantially, the REP Group stated that the integrated utilities (Entergy, El Paso, TXU, and Reliant) reported uncollectible amounts between 0.124% and 0.675% of revenues prior to the opening of the competitive market. The REP Group referred to Joint Responders Comments to Staff Questions filed in this proceeding on October 26, 2009 that show for a 19-month period ending July 2009 that the uncollectible amounts for some of the Joint Responder REPs (representing 22% of the ERCOT market) exceeded $200 million, or approximately 4% of revenues; that 52% of customers accepting a deferred payment plan defaulted on payments, but the default rate for LITE-UP customers was 45%; and that 38% of the customers who changed providers left an unpaid balance that REPs were unable to recover. The REP Group contrasted the 4% uncollectibles experienced by the Joint Responders with Austin Energy's 2006 Annual Report that stated the "bad debt ratio," which is bad debt expense divided by revenues, was 0.49% in 2006 -- down from 1.58% in 2000.

The REP Group provided information to show that the 2009 bad debt for TXU Energy, First Choice Power, and Reliant ranged from 1.46% to 7.7% of revenues as contrasted to the uncollectible amounts that ranged from 0.124% to 0.675% of total revenues of their respective IOUs prior to the opening of the competitive market. The REP Group stated that based on recent data of one unidentified REP, approximately 40% of unpaid final accounts were from customers

in the collections path who received a disconnection notice and changed their REP before being disconnected. That REP's data also showed that another 29% of unpaid final bills were from customers who were disconnected and never reconnected by the disconnecting REP.

The REP Group concluded that the statistics regarding bad debt prior to opening of the competitive market, bad debt from three major REPs in 2009, and Austin Energy's current statistics, indicate that there is a problem with bad debt in the Texas competitive market that needs to be addressed. The REP Group opined that the commission's proposed rule is a step in the right direction although it does not adequately address the other unpaid final bills that contribute significantly to the bad debt problem (namely customers who leave final bills unpaid that are not on a deferred, average or level payment plan).

Consumers challenged the bad debt data provided by the REP Group. Consumers argued that the data were not subject to validation nor did they have the ability to compare them to other financial records available. Consumers did not agree that choosing Austin Energy for a single comparison point was appropriate, as it could have had the lowest bad debt. Consumers also raised questions about the REPs' overall process for extending credit and managing debt and the REPs' revenues attributable to charges for late payments or non-payments. Consumers concluded that the data provided by the REPs does not provide the commission with a credible basis for adopting a switch-hold. Determining whether the bad debt level was a result of poor business practices or an intentional decision to become a niche market participant is important in determining whether prudent REPs do not have the ability to avoid excessive bad debt levels.

Cities agreed with Consumers that the REP Group failed to demonstrate that their bad debt problem justifies such an extreme measure as the implementation of a switch-hold process.

Consumers stated that the REP Group's argument that members are experiencing increasing levels of bad debt from some of their customers who do not pay their bills resulting in their other customers having to pay increasingly higher rates, is not supported by sound analysis. Consumers inferred that the wide-range of bad debt levels reported by the REP Group (from 0.67% to 8.23% in 2008 and 1.46% to 7.75% in 2009) shows that some REPs are more prudent in their underwriting practices and debt collection practices. Consumers included transcripts of a PNM quarterly stakeholder call discussing its underlying REP and the fact that its risk wasn't well managed. Consumers pointed out that this REP attributed its write-offs to the economic climate and added that better debt management processes have resulted in an improvement in recent collection rates.

Additionally, Consumers stated that bad debt levels occurring in 2008 and 2009 should be viewed in relation to the economy. For example, Capital One's charge-offs jumped to 10.41%, Texas Hospital Debt charges were 19.5%, Target reported 13.9% annualized bad debt on its credit card segment. Compared to other bad debt levels, Consumers concluded, REP bad debt was relatively low. Consumers noted that these other companies and sectors did not prevent their bad debt customers from going elsewhere in the retail market place because they couldn't.

Consumers opined that abolishment of bad debt is an appealing goal but that it is not a reasonable one in the competitive electric market or any other market. Consumers proposed five

steps for the commission to take to encourage REPs to mitigate bad debt short of blocking consumers from switching service providers:

1. The commission should acknowledge that REPs have a responsibility for being prudent in their underwriting and debt collection practices. Consumers also urged the commission to adopt a process consistent with PURA that would ensure timely provision of bill payment histories before adopting a switch-hold provision.
2. Consumers asked that the commission investigate the level of revenues that REPs receive in fees related to payment defaults, compared to the corresponding costs incurred by REPs for late or nonpayment of electric service by consumers. Consumers claimed that the REPs have failed to explain or show that the fees and surcharges they issue to consumers do not adequately limit bad debt risk to a reasonable level.
3. The commission should consider increasing the payment deadline from the current 16 days after the bill is mailed to 25 days to match the new federal standards for consumer payments on credit cards or allow customers to choose the date on which their payments are due.
4. Consumers indicated that it supported the commission's proposed amendments in §25.480 that will improve the ability of consumers to repay an outstanding balance under a deferred payment plan, because it allows a larger down payment which would decrease the amount to be recovered in the future and it increases the number of installment payments which further decreases the additional monthly amount the customer must repay in addition to their bill.

5. Consumers encouraged the commission to take a more active role in the energy efficiency programs provided by TDUs and require greater resources to be committed to weatherization programs for low and moderate income customers. The reduced consumption resulting from these programs would lower bills and mitigate the risk of bad debt.

Reliant expressed no surprise that business risks are higher in a competitive market than in a monopoly setting but pointed to the wide range of bad debt among the competitors (ranging from 1.46% to 7.75% for TXU, Reliant, and First Choice Power) as being evidence that REPs use the existing tools differently, with varying degrees of success.

Commission Response

The commission notes the concerns about existing bad debt levels raised by the REP Group and appreciates the concerns raised by Cities, Reliant and Consumers about the appropriateness of the comparisons presented by the REP Group. However, as noted in the preamble to the published rule, the primary benefits of the rule amendments will be the increased ability for certain customers to qualify for payment plans. The commission believes that the information provided by the REP Group comparing bad debt for REPs in the competitive market to bad debt prior to market open and to bad debt in the non-competitive markets demonstrates that there are legitimate reasons to be concerned about bad debt, whatever its causes. While some commenters challenged the REP Group's claim concerning the level of existing bad debt, no commenter opined that the increased risk associated with the expanding payment plans for vulnerable groups will not increase the

level of existing bad debt. The commission believes that it is appropriate to balance the need for additional customer protections for vulnerable customers when they most need it with the concern that the additional protections would increase bad debt that would increase rates for all customers. Therefore, the commission adopts the switch-hold as a measure to reduce a potential increase in the bad debt problem that may be made by the extension of additional credit to customers under this rule. The commission declines to make any changes to the proposed rule based on comments concerning existing bad debt.

Consumers stated that TLSC requested the commission to provide information on late fees used to mitigate bad debt under the Public Information Act but none was provided. TLSC did not ask about late payment fees being used to mitigate bad debt as stated in Consumers' comments. TLSC did submit several questions on May 7, 2010 concerning bad debt and one question asking for "any studies, reports, and/or correspondence prepared by or for the commission or provided to the commission that provide the total amounts of revenue Texas Retail Electric providers have received in late payment fees." The requests were limited to the timeframe from April 5, 2010 through May 7, 2010. During that timeframe, the commission had not received any information that matched the request for information on the receipt of late payment fees by REPs. On the remaining questions, the commission referred TLSC to filings in this project.

§25.454. Rate Reduction Program

Subsection (g)(3)(E)--notify customers three times a year

The REP Group and Reliant argued that the number of required notices to residential customers about critical care protections and the availability of the LITE-UP discount should be limited to two, consistent with the current rule. Reliant observed that over the last several years the PUC staff has typically required a specific text to be displayed as a bill message or bill insert in the months of February and September. Reliant questioned the need for the September notice, because it does not prompt the customer to take any action and only reminds customers about the end of the summer discount season. While this might possibly deflect customer questions about the absence of the discount from the October bill, the REP should be free to publish such notice voluntarily but not be required to do so.

The REP Group and Reliant pointed out that customers learn about LITE-UP through the commission's public service radio announcements and that customers are informed of LITE-UP and critical care protections through their REP's Terms of Service and Your Rights as a Customer documents. Reliant argued that the vast majority of LITE-UP eligible customers are automatically enrolled through the low-income discount administrator's (LIDA's) monthly matching process and that only a small number of customers who would qualify would benefit from requiring a third notice. Reliant opined that it is not good public policy to require broadcast of information to all customers repeatedly throughout the year when it only applies to a small number of customers. If this proposed rule were adopted along with the proposed §25.497 notice related to critical care protections, REPs would be required to display nine mandated messages on customer bills during the five months of June through October. Reliant pointed out that space

is limited on customer bills and within the billing envelope to display messages and provide bill inserts. Reliant cited *Pacific Gas and Electric Company vs. PUC,* 475 U.S. 1 (1986) as support for its argument that the billing envelopes are the property of the provider sending the bill. The requirement of three notices per year is more than necessary to provide customer education.

Commission Response

The commission recognizes the concerns of the REP Group and Reliant concerning the limitation of space on customer's bills and in the REP's envelopes but believes that the public interest is best served by more information rather than less. The commission believes that consumers will benefit by increasing the number of notices from two to three so that customers can be advised about the availability of the rate reduction program twice and reminded through the third notice that the rate reduction is about to end so that customers can plan their budgets accordingly. The commission has authority under PURA §17.004(9) and §39.101, and other provisions of PURA described in this document, to require REPs to provide notices to customers and the commission believes that the education of customers about resources available to low-income customers is always good public policy.

Reliant was concerned that the additional notification to customers about the availability of the LITE-UP in §25.454(g)(3)(E) is an unreasonable burden for REPs. Reliant argued that each additional message required by the commission reduces the available space for REPs to communicate to their customers and that this therefore restricts REPs' commercial speech rights within the REP's bill. As Reliant correctly acknowledged in its comments,

the state can regulate commercial speech if such regulation directly advances a governmental interest and the regulation is not more extensive than necessary to serve that interest. The commission does have an interest in ensuring that customers are aware of the availability of the LITE-UP program. The commission concludes that requiring REPs to provide notice three times per year, rather than two times per year as is currently required, is reasonable and is not more extensive than necessary to advance this interest. Accordingly, the commission declines to amend the rule as requested by Reliant.

§25.480. Bill Payment and Adjustments.

Subsection (h)--level and average payment plans

(1) and (2)

Consumers and OPC opined that this paragraph appears to unreasonably discriminate against customers based on income by allowing the placement of a switch-hold on any customer who is eligible to receive a rate reduction under §25.454. Consumers suggested that if the intent of the rule is to require REPs to offer a level or average payment plan to a sub-category of these low-income consumers who are delinquent, then the language should be amended to reflect that intent. OPC suggested striking the language that would prevent a LITE-UP customer from being on a level or average payment plan without being subject to a switch-hold. OPC believed that the solution to the discriminatory requirement in the proposed rule is to prohibit a switch-hold for all customers on a level or average payment plan. Public Citizen believed that the proposed rule is a retreat from current levels of customer protections and that allowing a switch-hold would make the level and average payment plans less desirable or harmful to LITE-UP eligible customers.

OPC reiterated its position as being adamantly opposed to the switch-hold and opposed the REP Group's attempts to expand the switch-hold to all customers on a level or average payment plan. OPC added that there will be times when a customer on a level or average payment plan has a positive balance with the REP and they should not be prevented from switching. OPC recommended striking the language "and the customer removed from the level or average payment plan" as a condition of being allowed to change service to another provider.

Reliant recommended that the requirements related to placement of a switch-hold be stricken, because it is inappropriate to place a switch-hold on an ESI ID when the customer has entered into a level or average payment plan. Reliant reiterated its opposition to a switch-hold for any reason other than meter tampering and noted that if the commission were to adopt the switch-hold process in this proceeding, the switch-hold should not apply to level or average payment plans. Reliant commented that it would be counterproductive to attach a switch-hold disincentive to level or average payment plans that are put in place to assist customers in avoiding unmanageable balances. Reliant opined, even if the commission determines that a switch-hold is appropriate for customers who owe an outstanding amount on a deferred payment plan, that conclusion cannot be reasonably extended to a level or average payment plan, because a customer would only be in arrears for six months of the year. Reliant stated that the proposed rule would allow the switch-hold to remain in place as long as the customer is on a level or average payment plan and that the customer would have to request to be removed from the plan before a switch to another provider would be processed. Reliant argued that this additional hurdle for a customer to switch is contrary to the principles of a free market and a customer's

right to choose. Reliant questioned how an "(h)(1)" level/average payment plan will be distinguished from a standardized level payment plan to which a switch-hold is not allowed in the REP's day-to-day operations or in commission enforcement activities.

The REP Group agreed with Commissioner Anderson's April 1, 2010 memo that the switch-hold process as it applies to level or average payment plans needs clarification. The REP Group argued that the language in paragraph (1) related to switch-holds for customers eligible to receive a rate reduction pursuant to §25.454 should be deleted and the concepts moved to a separate paragraph to clarify that the switch-hold process should apply to all customers in the same manner. The REP Group posited that Commissioner Anderson correctly stated that switch-holds should not apply only to low-income customers.

Commission Response

Commissioner Anderson's memo of April 1, 2010 noted his concern that the proposed language in subsection (h) might be interpreted to impose switch-holds on low-income customers as a condition for obtaining a payment plan. The commission agrees that the language in the proposed rule is unclear regarding the application of the switch-hold to low-income customers who are on a level or average payment plan. It is important for the commission to ensure that rules are developed and applied equally and fairly to retail customers. As such, the commission believes that it is appropriate to adopt the REP Group proposal to allow a switch-hold to be placed on accounts if a level or average payment plan is established when the customer is delinquent in payment. The commission declines to adopt the REP Group proposal that would allow a switch-hold to be placed on an account

under a level or average payment plan if the account becomes delinquent. Instead, the commission modifies the proposed rule to allow the REP to place a switch-hold on a customer's account if the customer chooses to enter into a level or average payment plan under subsection (j)(2)(B)(ii) of this section rather than paying the REP the balance due. Whether the customer is receiving or is eligible to receive the low-income discount under §25.454 will not be a factor that a REP may consider when deciding to request a switch-hold. The REP is to request removal of any switch-hold from an account on a level or average payment plan once the account has either a zero or positive balance. The commission's revised language is intended to address the concerns raised by Reliant, OPC, and Consumers about having a switch-hold placed on a level or average payment plan when the account has either a zero or positive balance.

The commission also believes that it is important that the customer be provided with information about a switch-hold that may be applied as the result of entering into a level or average payment plan before a switch-hold can be applied. During meetings after publication of the rule, stakeholders reached consensus that the rule should include a "script" that a REP would provide a customer before applying a switch-hold as the result of a customer entering into a payment plan. The commission agrees with providing this information to the customer and amends the proposed rule accordingly.

(3)

The REP Group suggested changes and clarification to this paragraph to ensure that a plan in which the minimum payment is recalculated monthly is a type of average payment plan, rather

than an "alternative" plan. The REP Group also proposed that the terms over- and under-"recovered costs" be changed to over- and under-"payments" to be reflective of the competitive market. The REP Group noted that the over or under amounts are not always "billed or credited" but may be included in the re-calculation of the new payment amount. Therefore, the REP Group recommended that the word "reconcile" be used rather than the phrase "bill or credit" to better describe how the payment plans work. The REP Group strongly recommended that the commission maintain the existing rule language that requires REPs to reconcile payment plans at least every 12 months rather than every six months. To support its position, the REP Group provided an example to demonstrate that a customer would experience more volatility under a 6-month reconciliation than under the 12-month reconciliation contained in the current rule. The REP Group also recommended that the commission maintain the existing rule modifier of "at least" with respect to frequency with which REPs are required to reconcile level and average payment plans. The REP Group suggested that the commission should continue to allow REPs flexibility in how they design level and average payment plans. Additionally, the REP Group urged the commission to restore the phrase "consistent with the REP's terms of service" to ensure that REPs provide the terms related to level and average payment plans in their terms of service document.

Consumers noted that the proposed rule requires REPs to offer deferred payment plans to LITE-UP customers, critical care customers, and chronic condition customers for bills that become due in July, August, and September and during January and February if the weather is exceptionally cold. The proposed rule also allows a customer to choose to take a level or average payment

plan as an option to the deferred payment plan and requires the REP to reconcile accounts with level or average payment plans at least every six months.

In response to Consumers' recognition of the six month true-up, the REP Group reiterated its initial comments that using 12 month true-up would be better for customers. The chart in the REP Group's initial comments was intended to demonstrate how the monthly over or under balances and payment amounts would be more volatile using a six-month reconciliation as compared to a twelve-month reconciliation.

Reliant recommended that proposed subsection (h)(3) be modified to clarify that the 6-month true-up and the monthly average of the payment amount are not mutually exclusive concepts.

Commission Response

The commission notes that the rule allows a REP to make deferred payment plans available at any time of the year. The commission believes that the effect of requiring REPs to offer deferred payment plans only during certain times of the year is mitigated by the expansion of customer eligibility for payment plans.

The commission concurs with the REP Group's recommendation to use a 12-month reconciliation for any over- or under-payments to minimize volatility for the customer. The commission also agrees with the REP Group recommendation to use the term reconcile rather than the terms bill or credit to be consistent with how level and average payment plans are implemented by REPs. Additionally, the commission agrees with the

REP Group's recommendations to restore the phrases "consistent with the REP's terms of service" and "at least" to provide REPs flexibility in the provisioning of level and average payment plans. The commission amends the rule accordingly.

During post-comment meetings, Consumers did not oppose the REP Group recommendation to require reconciliation of level or average payment plans at least every 12 months rather than every 6 months as in the proposed rule, as long as language was added to require the REP to describe the reconciliation process for a level payment plan and that REPs be required to collect any under-payments over a period no less than the reconciliation period. The commission agrees with the REP Group that the twelve month reconciliation would result in less payment volatility for the customer and the rule being adopted includes the requirement that level or average payment plans be reconciled at least every twelve months. The commission also agrees with Consumers that REPs should be required to describe the reconciliation process to customers at the time the level payment plan is established. The commission modifies the proposed rule accordingly.

New Paragraph (4)

The REP Group proposed an additional paragraph that would allow REPs to require customers enrolling in a level or average payment plan to pay no greater than 50% of any delinquent amount to initiate the plan. The REP Group argued that this would establish more reasonable parity between the level or average payment plan option and the deferred payment plan option. The REP Group stated that its proposed language would allow REPs to assist low-income customers by combining deferred payment and level or average payment plans. The REP Group

added that Commissioner Anderson's April 1, 2010 memo indicated that this combination of plans might be a good option for some customers.

Commission Response

The commission does not agree with the REP Group that Commissioner Anderson's April 1, 2010 memo indicated that a combination of plans might be a good option for some customers. Rather, Commissioner Anderson's memo sought clarification of whether this was the intent of the proposal and suggested that the language be clarified before adoption. The commission appreciates the comments of the REP Group concerning the need for clarification and amends the rule accordingly.

New Paragraph (5)

The REP Group strongly supported a policy that allows switch-holds to apply to level or average payment plans in certain circumstances. The REP Group proposed removing the switch-hold policy provisions from paragraph (1) and moving them to this new paragraph and expanding the application of switch-holds so that REPs would be allowed to request a switch-hold when any customer who is delinquent agrees to a level or average payment plan. The REP Group rationalized that level and average payment plans result in REPs extending credit beyond the normal post-pay environment at least in some months; therefore, switch-holds should be allowed if a customer is delinquent when the level or average payment plan is established.

Cities urged the commission to reject the REP Group's proposed language that would allow a REP to implement switch-holds for a greater proportion of customers under a level or average

payment plan than under the proposed rule, which limits switch-holds only to customers eligible for a rate reduction program under §25.454.

Commission Response

The commission agrees with the REP Group recommendation to allow switch-holds to customers entering into a level or average payment plan when the customer is delinquent in payment at that time. The commission must be equitable in the application of its standards. So, if anyone, regardless of income-level, enters into a level or average payment plan while delinquent in payment, the switch-hold may be used by the REP. The commission would like to emphasize to REPs the importance of implementing the switch-hold measure in a non-discriminatory fashion. These switch-hold provisions are intended to provide a buffer against the extension of customer protections contributing to any further bad debt. The commission modifies the rule consistent with this recommendation.

New Paragraph (6)

The REP Group noted that under the existing rules when a customer on a level or average payment plan becomes delinquent, a REP's option for managing bad debt is to remove the customer from the plan. The customer then may be faced with a very high bill as a result of the full account balance being added to the bill. The REP Group proposed adding this new paragraph that would prohibit REPs from placing a switch-hold on customer accounts that are not delinquent when the level or average payment plan is established. The language would allow REPs to place a switch-hold on accounts that enter into a level or average payment plan if the customers incurs two late payments or is disconnected for non-payment during the first 12

months of the plan for residential customers and during the first 24 months of the plan for non-residential customers.

Commission Response

The commission declines to adopt the REP Group recommendation to allow a REP to place a switch-hold on a customer's account if the customer incurs two late payments or is disconnected for non-payment during the first 12 months of a level or average payment plan for residential customers and during the first 24 months of the plan for non-residential customers. Instead, based on discussions that occurred during meetings following the comment period, the commission allows a switch-hold to be placed when the customer chooses to enter into a level or average payment plan under subsection (j)(2)(B)(ii) of this section. This is a reasonable application of the switch-hold because the customer chooses a level or average payment plan instead of paying the balance due. The commission believes that it is important that a switch-hold that is applied pursuant to this paragraph be removed upon satisfactory payment. As discussed in the commission response to comments received in Question 1, REPs shall be considered to have committed a Class B violation, which could result in a penalty up to $5,000 per day per violation if a REP erroneously places a switch-hold flag on an ESI ID that prevents a legitimate switch or fails to remove the switch-hold within the timelines specified in the rule. Additionally, the commission has established Project No. 37685 which proposes to amend §25.107(j) to classify erroneous switch-holds as a significant violation that may lead to suspension or revocation of a REP's certificate. The commission amends the rule accordingly.

New Paragraph (7)

The REP Group suggested that the required customer notices related to switch-holds be moved from the proposed §25.480(h)(1) to this new section. The REP Group proposal slightly modified the customer notice to acknowledge that retailers may choose not to apply a switch-hold.

Commission Response

The commission expects that the switch-hold will be used as a last measure to protect a REP from a probable default by a customer, not as a first response to a customer's late payment. The commission believes that the use of the switch-hold will be another means by which REPs will distinguish themselves in the market. The commission agrees with the REP Group's recommendation to put customer notices of the possibility of a switch-hold in this new paragraph and modify the customer notice to reflect that retailers may choose not to apply a switch-hold. The commission is also adopting, as part of the required notice, a specified "script" for notification of customers. During meetings held after the comment period, stakeholders reached consensus that the rule should include a "script" that a REP would provide a customer before applying a switch-hold as the result of a customer entering into a payment plan. The commission amends the rule accordingly.

New Paragraph (8)

The REP Group proposed moving the requirement for requesting removal of a switch-hold from subsection (l) to subsection (h). The REP Group also recommended including in subsection (h) the requirements for a REP to request removal of a switch-hold placed on an ESI ID pursuant to subsection (l). The REP Group proposal would require REPs to remove the switch-hold when

the customer either pays the deferred balance owed or, if the customer entered into a level or average plan as part of the deferral plan, when the customer satisfies the terms of any deferred payment plan described in subsection (h)(4) and the customer has paid bills for 12 consecutive residential billings or for 24 consecutive non-residential billings without having been disconnected and without having more than one late payment.

Cities urged the commission to reject the REP Group proposal to add requirements that customers must meet prior to removal of a switch-hold. Cities believed that as soon as a customer completes payment on any deferred amount, a switch-hold should be removed immediately. Cities opined that the REP Group justification for the expanded requirement to be consistent with the requirements for refund of security deposits is without merit as switch-holds are an extraordinary remedy and customers should be removed from a switch-hold as soon as a customer meets the terms of the level or average payment plan.

The REP Group stated that the modifications that it has proposed for this section are important to provide a clearer overall picture of the switch-hold process as it relates to level and average payment plans and to be consistent with the requirements provisions addressing the refund of customer security deposits under §25.478.

Commission Response

The commission agrees with the REP Group that it is appropriate to move the requirement to request the removal of a switch-hold to subsection (h) because it believes that it will provide a clearer picture of the switch-hold process as it relates to level or average payment

plans. The commission does not agree, however, with the REP Group that it would be appropriate to require the customer to pay a certain number of bills without being disconnected or receiving more than one late payment during a specified time before having the switch-hold removed. The switch-hold is only intended to protect a REP against default on payments that a customer may not be able to pay. It is not a measure to protect a REP from all possible bad debt. This request goes beyond the intention of these switch-hold provisions to provide a buffer against any further bad debt. The commission agrees with Cities that a switch-hold should be removed as soon as a customer satisfies the deferred balance of the level or average payment plan and any deferred delinquent amount from a plan entered into under paragraph (4) of this subsection. The commission amends the rule to add a paragraph consistent with this discussion.

Subsection (j)--deferred payment plans and other alternate payment arrangements

Subsection (j)(1)

Reliant noted that the commission has not proposed amending this subsection but recommended that the rule be clarified by changing the word "bill" to "balance" and add the word "online" so that REPs would have an additional option to enroll customers in deferred payment plans. Consumers agreed with Reliant to change "bill" to "balance" but did not opine on the proposal to add the word "online."

Commission Response

The commission agrees with Reliant and amends the rule to change the word "bill" to "balance" and adds the word "online."

Subsection (j)(2)

Public Citizen opined that the proposed rule would be a retreat from current customer protections. Public Citizen noted that the proposed rule would allow a REP to require 50% of the deferred amount as opposed to the current rule that limits the amount to 25% of the deferred amount. Public Citizen acknowledged that the proposed rule would ensure that LITE-UP and critical care customers would be eligible for a deferred payment plan during the months from July to August and in winters for January and February but opined that the proposed rule would restrict these customers and all other customers who express an inability to pay during the other seven to nine months of the year. Public Citizen suggested that the standard for eligibility should be expanded to include periods where winter temperatures are below 32 degrees wind chill which was the standard for winter disconnections recommended by the medical profession in 1983 when the rules were established.

OPC suggested moving several sentences from subsection (j)(2)(B)(ii) to subsection (j)(2)(B) so that customers entering into a deferred payment plan would receive the same information provided to customers entering into a level or average payment plan concerning application of the switch-hold and any balance remaining that must be paid before the customer will be allowed to change service to another provider.

Consumers supported the proposed rule to allow customers who have not been disconnected in the past twelve months to be eligible for a deferred payment plan and disagreed with the recommendation of the REP Group and Reliant to retain the existing two disconnection notices

in the past twelve months eligibility requirement. Consumers stated that often times a low-income consumer cannot obtain assistance from social services agencies until they have received a disconnection notice and that people frequently receive disconnection notices without ultimately being disconnected. Consumers stated that many customers ineligible for energy assistance may have situations where they pay after receiving a disconnection notice and it would be unfair to deny a deferred payment plan because the customer is late in paying their bill. Consumers noted that the technical feasibility of basing eligibility on actual disconnection rather than disconnection notice has been discussed and is workable in that REPs are able to identify disconnections through standard ERCOT transactions. Consumers opined that the proposed rule will financially benefit many low-and moderate-income families and referred to the most recent disconnection report filed by the PUC staff in Project No. 29760 (Item No. 2349). The report indicates that from January 2006 to September 2008 that REPs issued 909,347 disconnection notices; 140,000 disconnection orders; and that TDUs completed 100,000 disconnections. Consumers concluded that 800,000 people per month could be denied a deferred payment plan under the current rule but could qualify during the summer under the proposed rule. Consumers added that the actual disconnection is preferable because a consumer may not be aware of a disconnection order but would be aware of an actual disconnection.

Consumers opined that the discussion about consumers already on a level payment plan in the proposed §25.480(j)(2)(B)(ii) is a little confusing. Consumers suggested that if the intent is to exempt consumers already on a level or average payment plan, then the sentence should be amended to read, "A customer already on a level or average payment plan is not subject to the provisions of subsection (j)." If the intent is to include consumers already on a level or average

payment plan as customers that a REP would be allowed to apply a switch-hold, then the intent should be clarified. Consumers supported the customer categories that would be subject to a mandatory REP offering of a deferred payment plan as these categories recognize these consumer groupings are in need of payment assistance. However, Consumers expressed concern that reducing the times of the year that consumers are assured of payment assistance would increase the risk of bad debt for REPs. Consumers stated that one-third of the state's population lives with no disposable income and that a financial emergency can have a domino effect throughout a family's monthly budget. Consumers added that hot summers in portions of Texas continue through September and that consumers could face high electric bills in October. Consumers suggested that it would be appropriate to require bill payment assistance for these instances. Consumers commented that the qualifier in subsection (j)(2) with respect to peak demand does not seem to have a nexus to the purpose of the rule, especially since energy efficiency program goals are to reduce peak demand. Consumers urged the commission to adopt the increased categories of consumers eligible for mandatory payment assistance but asked that the time constraints in the proposed rule be removed.

Public Policy stated that one reason driving the proposed amendments has been the health and safety of consumers who may suffer from the extreme weather temperatures experienced during hot Texas summers. While Public Policy agreed that this is a very important concern, it opined that this is already addressed by payment plans currently required under §25.29(g) and PURA §39.101(h) which prohibits disconnection of a delinquent customer when significant health issues are at stake or when the weather is expected to be too hot or too cold. Public Policy argued that the proposed rule would shift the basis for the payment plans from public health and

weather to income assistance and would do little to enhance the protection of consumers' health and safety. According to Public Policy, the proposed amendments would create significant inefficiencies in the competitive retail electricity market, place a heavy debt burden on a few private companies, weaken the individual responsibility, and abridge the contractual rights of parties. Public Policy argued that concerns over the variation in REP payment plans are without merit as the variations are a sign of innovation in the competitive market. Public Policy opined that there are two legal concerns with the commission's proposed amendment:

1. PURA calls for deferred payment plans to be offered only to those customers whose bills are due during an extreme weather emergency; whereas, the proposed rule would require deferred payment plans to customers who meet a certain income or profess an inability to pay. The legislative intent is to address health and safety concerns, not income.
2. PURA requires companies to offer deferred payment plans only during extreme weather emergencies; yet, the proposed rule would require deferred payment plans during certain months. While there may be a connection to weather in the commission's proposal, Public Policy argued that the proposal goes beyond the requirements of PURA.

In addition to legal concerns, Public Policy argued that the proposal will cause harm to market participants as the result of a delinquent customer not being able to pay their debt accrued via a mandated deferred payment plan. Public Policy concluded that the best outcome for all customers would be for the commission to not adopt a rule that would require or forbid a REP to extend a deferred payment plan to any customer above what is currently required under statute.

Reliant recommended that customers who express an inability to pay and request a deferred payment plan have a minimum of six month's payment history with the REP, rather than the proposed three months, and no more than two disconnect notices during the preceding 12 months to be eligible, consistent with the existing rule. Reliant agreed with the REP Group's recommendation for subsection (j)(2) to change the trigger for winter payments from ERCOT peak demand to the occurrence of five consecutive extreme weather days during the prior month. Reliant agreed with the REP Group's proposed deletion of the word "deferred" in subsection (j)(2)(A) and the proposed deletion of subsection (j)(2)(C) as being superfluous because entry into a deferred payment plan is not one of the specific reasons for which a REP may request an additional deposit pursuant to §25.478(d)(1).

The REP Group agreed with Consumers that the proposed rule greatly expands the eligibility plans to low-income customers, critical care customers, chronic condition customers, and most customers who have not been disconnected in the prior 12 months during summer and winter months. The REP Group noted that the proposed rule also provides year-round availability of level or average payment plans to all low-income customers, even if the customer is currently delinquent in payment at the time the level or average payment plan is established. The REP Group also pointed out that the proposed rule provides year-round access to payment plans for all customers affected by an extreme weather event and for all customers affected by a Governor's declaration of disaster. The REP Group stated that all of these expanded protections are part of a comprehensive solution that the commission and stakeholders have been working to achieve. The REP Group opined that a comprehensive solution must balance the protection of at-risk customers, especially in summer and winter months, while limiting the increases in bad

debt costs that would be ultimately borne by customers who timely pay their electric bills. The REP Group strongly disagreed with the assertion by Consumers that the commission should mandate minimum payment standards for deferred payment plans voluntarily offered by REPs at any time during the year. REPs should continue to have the flexibility to work with customers to arrange deferred payment plans specific to their mutual needs and the rule should not be expanded to mandate the down payment and number of installments for deferred payment plans outside those required by the rule for summer and winter months.

The REP Group agreed with Reliant that the existing criteria for determining eligibility for deferred payment plans based on whether the customer has had no more than two disconnection notices in the previous 12 months works well and should be retained. The REP Group also agreed with Reliant that two disconnection notices in three months is a strong indicator of a poor payment pattern and that the minimum three-month requirement for a customer to have received electric service to be eligible for a deferred payment plan should be increased to six months. The REP Group opposed the other commenters' suggestion that credit worthiness should be based on a physical disconnection rather than receipt of disconnection notices. The REP Group cautioned that the statistics provided by Consumers to support its position should not be interpreted to mean that 800,000 of the 900,000 customers who received disconnection notices ultimately paid their bill before a physical disconnection was worked. The REP Group pointed to its initial comments that provided the experience of one REP where approximately 40% of its unpaid final bills were from customers in the collections path who received a disconnection notice and changed their REP before being disconnected.

The REP Group opined that REPs should not be required to proactively identify customers and offer plans to the identified customers and therefore, recommended adding the phrase "upon request" to subsection (j)(2) to be consistent with use of the phrase in subsections (j)(1)(A) and (B). The REP Group noted that proposed subsection (j)(2) and subsection (j)(2)(A)(i) and (j)(2)(B)(i) ensure that multiple payment plans are not required to be available to a customer at the same time and proposed that the rule should capture all of these requirements in one place. Accordingly, the REP Group recommended deleting the provisions in proposed subsections (j)(j)(2)(A)(i) and (ii) and slightly modifying the proposed subsection (j)(2) to state that a REP is not required to offer a payment plan to a customer if the customer is on an existing deferred, level, or average payment plan. The REP Group recommended deleting the term "deferred" in proposed subsection (j)(2)(A) because subsection (j)(2)(B) deals with three payment types: deferred, level and average.

The REP Group urged the commission to reinstate the existing criteria of "more than two termination or disconnection notices" as the disqualification standard for a payment plan and noted that one REP's data indicated that about 55% of all residential customers who are not eligible today because of receiving at least three disconnection notices would be eligible using the proposed standard of actual disconnection in the prior 12 months.

The REP Group and Reliant opined that using the ERCOT peak demand trigger to invoke the obligation to make available special payment plans in January and February is not appropriate and recommended amending subsection (j)(2) so that invoking the payment plan obligation for January and/or February is triggered if there are at least five consecutive extreme weather days

during the prior month. For organization, the REP Group recommended deleting the notice requirements in the proposed subsection (j)(2)(B)(ii) and instead including a cross-reference to the same notice requirements in subsection (h). The REP Group and Reliant recommended deletion of subsection (j)(2)(C) which states that a REP "shall not seek an additional deposit as a result of a customer's entering into a deferred payment plan under this paragraph." The REP Group and Reliant stated that the provision is superfluous since §25.478(d)(1) states the specific conditions under which a REP may request an additional deposit and does not include entering into a deferred payment plan as one of the permissible reasons for requesting an additional deposit.

Commission Response

Public Citizen opined that the proposed rule would be a retreat from current customer protections. The commission believes that the proposed rule expands customer protection rules and does so significantly for some vulnerable groups. The proposed rule provides greater protection for Critical Care Residential customers and establishes another protected category for Chronic Condition Residential customers. The rule also greatly enhances the debt management options available to low-income customers.

Public Policy also stated that PURA calls for deferred payment plans only during an extreme weather emergency not based on income level or during specific months of the year and that the legislative intent is to address health and safety concerns, not income. The commission disagrees with Public Policy's characterization of PURA's provisions and the intent behind them. Section 17.004(a)(4) states that the commission must protect

buyers from discrimination based on income level and goes on to state that customers are entitled to programs that offer low-income customers energy efficiency programs, an affordable rate package, and bill payment assistance programs designed to reduce uncollectible accounts. Similarly, §39.101(c) reflects concerns about protecting the more vulnerable portions of our population when it states that REPs shall not refuse to provide service to a customer because the customer is located in an economically distressed area or qualifies for low-income assistance. PURA language reflects an explicit concern for the treatment of low-income customers. The commission believes that PURA does not limit the use of deferred payment plans to extreme weather emergencies. Deferred payment plans have been available upon request since the market has opened and, to the commission's knowledge, has not been challenged as a violation of PURA because the language of PURA clearly reflects the intent to protect low-income customers. It is for these very reasons that the commission has endeavored to expand the customer protections provisions of this rule for these specific types of customers.

The commission disagrees with Public Policy that requiring a 50% upfront amount is a retreat from customer protections. Initial discussions on the modifications to this rule entailed concerns about customers accumulating excessive amounts of debt. This was of particular concern in terms of the expansion of the minimum payment period from three to five months. The commission believes payment by customers of 50% of the deferred amount upfront will help ensure that a customer is not put in a position of deferring a larger amount which will still have to be paid in addition to the customer's regular monthly bill. Customers may choose to enter into a level or average payment plan as an option to a

deferred payment plan. The commission has also addressed this comment in its response to Question 5.

Public Policy argued that the rule requiring REPs to offer deferred payment plans beyond what is currently required under statute will cause harm to market participants as the result of delinquent customers not being able to pay their debt accrued under the payment plan. The commission agrees with Public Policy that expanding eligibility for deferred payment plans does bring certain risks. The commission notes that customers remain responsible for paying for electricity consumed and that the REPs maintain disconnect authority when the customer does not pay. The commission believes that the switch-hold is an appropriate balance to the increased risks and will encourage customers to pay the REP for electricity consumed.

The commission agrees with OPC that customers who may have a switch-hold applied to their account as the result of entering into a deferred payment plan should be provided notice similar to that provided to customers entering into a level or average plan and amends the rule accordingly.

The commission agrees with Consumers' position that the eligibility for a deferred payment plan should be based on actual disconnections rather than disconnection notices and maintains that provision of the proposed rule.

The commission disagrees with Reliant and the REP Group that to be eligible for a deferred payment plan a customer should be required to have been with the REP for six months instead of three. The intent of these modifications is to expand eligibility for deferred payment plans and such a limitation would greatly reduce the customers that would qualify for the program. The commission does not think such a limitation is necessary given the REP's option to utilize a switch-hold if it believes that a customer will not pay their debt. The commission disagrees with the comments of Reliant and the REP Group on this point and therefore has not made changes to the rule as proposed.

The commission does not agree with Consumers that REPs should be required to provide deferred payment plans during months other than those in the proposed rule. The commission does not believe that it is necessary to expand the availability of deferred payment plans to any time of year. This rule provides low-income customers with year-round access to level or average payment plans even if the customer is delinquent in payment at the time the plan is established. The proposed rule also provides year-round access to payment plans for all customers affected by an extreme weather event and a Governor's declaration of disaster, as directed by the commission. The commission does not believe that it is necessary to expand the availability of the deferred payment plan because there are sufficient mechanisms available to customers to deal with a variety of difficult situations, regardless of the time of year. The provision of deferred payment plans are not limited to the months specified in the rule. REPs may provide deferred payment plans at any time during the year if that is a mechanism that they wish to make available to their customers year round. The commission also disagrees with Public Policy's proposal

that the best outcome for all customers would be for the commission to not adopt this rule, because low-income and medically vulnerable customers are adequately protected under the current rules, particularly during the summer months. The commission declines to change the rule as proposed based on these comments.

The commission agrees with the REP Group that REPs should not be required to seek out and identify eligible customers and offer plans to the identified customers. The commission understands that REPs are not in the best position to identify which customers may need or are eligible for a deferred payment plan. Customers are in the best position to know their particular circumstances and should be the ones to request and establish their eligibility for a payment plan. However, the commission expects that REPs will offer payment plans to customers upon request without requiring the customers to use "magic words." Section 25.480(g)(1), which is not being modified by the proposed rule, already requires a REP to inform customers of all applicable payment options and payment assistance programs that are available from the REP, including deferred payment plans, together with the program's eligibility requirements and the procedures for applying for each. The commission also agrees with the REP Group request to delete the word "deferred" in subsection (j)(2)(A). The commission modifies the rule accordingly.

The commission agrees with the REP Group's recommendation to amend subsection (j)(2) so that the obligation to offer the payment plan in January and February is triggered when there are at least five consecutive extreme weather days during the prior month and amends the rule accordingly.

The commission acknowledges the REP Group position that subsection (j)(2)(C) which prohibits a REP from seeking an additional deposit when a customer enters into a deferred payment plan is duplicative of §25.478(d)(1) which states the specific conditions under which a REP may request an additional deposit. However, the commission believes that it is appropriate to retain the provision in this rule for clarity and therefore declines to adopt the REP Group's suggestion on this point.

Subsection (j)(4)

Reliant and the REP Group recommended deletion of "and have received a disconnection notice" so that REPs are not precluded from voluntarily offering deferred payment plans to customers who call before a disconnection notice is sent.

Consumers agreed with Reliant and the REP Group that the proposed rule should be modified to allow REPs to make deferred payment plans available to anyone expressing an inability to pay without limiting deferred payment plans to only those who have received a disconnection notice. Consumers suggested that, in fact, REPs should be required to provide deferred payment plans for all consumers that need them throughout the year, not just on a voluntary basis.

Commission Response

The commission agrees with Reliant, the REP Group, and Consumers that REPs should not be precluded from voluntarily offering deferred payment plans to customers who call before a disconnection notice is sent. The commission amends the rule accordingly.

The commission does not agree with Consumers that REPs should be required to provide deferred payment plans for all consumers that need them throughout the year. The commission believes that its proposal to tailor deferred payment plans to vulnerable customers during the time when the deferred payment plan is most needed is reasonable and should not be changed. Expanding deferred payment plans further would unnecessarily increase bad debt that would result in increased rates for all customers that pay on a timely basis.

Subsection (j)(5)

The REP Group recommended deletion of subsection (j)(5)(G) that proposed allowing either the customer or the REP to renegotiate a deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan. The REP Group stated that the payment plans in the proposed rules do not leave much room for renegotiation and advised against mandated renegotiation. They argued that REPs should have the flexibility to work with customers individually to determine if additional extension of credit is warranted beyond what is required by the proposed rules.

Consumers disagreed with the REP Group recommendation to delete the requirement for REPs to renegotiate deferred payment plans if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan. Renegotiation would promote the goal that REPs get compensated and the minimum standard would not prevent REPs from entering into more than one renegotiation.

Commission Response

The commission agrees with Consumers that renegotiation of deferred payment plans would promote the goal that REPs be compensated but is persuaded by the REP Group's argument that such renegotiation should not be mandated and that REPs should have flexibility to work with customers individually to determine whether an additional extension of credit is warranted and what mechanisms could be used to better address the customers' needs. In a competitive market, the commission believes that such flexibility allows REPs to distinguish themselves in their own way and to respond to their customers in a way that is appropriate to the individual customer, the REP and the relationship between the two. The commission amends the rule to delete subsection (j)(5)(G).

Subsection (j)(6)

Reliant and the REP Group recommended removal of the requirement for additional notice prior to disconnection when terms of a deferred payment plan are not met consistent with the policy established in subsection (i), which states "if the customer does not fulfill the terms of the payment arrangement, service may be disconnected after the later of the due date for the payment arrangement or the disconnection date indicated in the notice, without issuing an additional disconnection notice."

The REP Group recommended modifying this paragraph to allow REPs to include notice on or with the customer's bill that failure to pay an installment payment by the due date may result in disconnection without further notice. The REP Group argued that the existing and the proposed rule would require the REP to send the customer a new notice after the customer defaults under

the terms of the deferred payment plan and would cause the REP to incur the costs of providing another 11 to 15 days of electricity while the notice is provided. The REP Group stated that its proposal would allow REPs to include on or with the customer's bill a notice that the REP may pursue disconnection without additional notice if the customer fails to pay an installment payment by the installment due date similar to the disconnection process allowed by §25.478(c)(3) for initial deposits from existing customers.

Consumers and Cities strongly opposed the REP Group's recommendation to allow REPs to disconnect customers without further notice if the REP includes a statement with or on the customer's bill that failure to pay an installment payment by the due date may result in disconnection without further notice. Consumers reiterated its position that many low-income consumers cannot obtain financial assistance for their electric bill unless a disconnection notice is issued. The goal of providing people with the ability to compensate the REP for electric services provided would be frustrated without provision of the disconnect notice. Cities concluded that the REP Group failed to demonstrate that their bad debt problem justifies another extreme measure.

Commission Response

The commission agrees with Consumers that REPs should be required to provide a disconnect notice pursuant to §25.483 of this title before disconnecting the customer's electric service. The purpose of this rule is to provide low-income and other vulnerable customers with better bill payment assistance. As Consumers noted, many low-income consumers cannot obtain financial assistance for their electric bill unless a disconnection

notice is issued. An important part of that is making sure that the rule provides the mechanisms necessary to obtain the assistance that customers require. Accordingly, the commission declines to adopt the suggestions of Reliant and the REP Group on this issue.

New Subsections (j)(7) and (j)(8)

The REP Group noted that the proposed rule includes the requirements for adding and removing switch-holds elsewhere in the rule. However, the REP Group offered that it would provide a clearer overall picture of the switch-hold process as it relates to deferred payment plans if the requirements were included in this subsection. The REP Group proposed modified language to allow a REP to apply a switch-hold while the customer is on a deferred payment plan and require the REP to submit a request to remove a switch-hold when the terms of the deferred payment plan are satisfied.

Commission Response

The commission concurs with the REP Group that it would provide a clearer picture of the switch-hold process to state that a REP may apply a switch-hold while the customer is on a deferred payment plan and that the REP is responsible to submit a request to remove a switch-hold when the terms of the deferred payment plan are satisfied. The commission amends the rule accordingly.

Subsection (l)--Switch-hold

Authority and Policy Concerns

Public Citizen opposed the originally published rule and understood that this rulemaking was to explore new customer protections to protect vulnerable electricity customers from dangerous disconnections. Public Citizen opined that the adoption of this dangerous new policy which allows REPs to prevent customers from choosing new providers would raise the question of whether the PUC's mission is to protect customers or to protect competition. The proposal seems to reflect a stronger desire to protect the interests of electric companies over the interests of electricity customers in need of help. Public Citizen urged the commission not to adopt the proposal for publication and suggested opening two new rulemakings: one to adopt rules which provide robust protections for vulnerable Texans facing dangerous electricity disconnections, and a second to address the so-called "bad debt" issue. Public Citizen agreed with others that the commission lacks authority to establish a rule that blocks a customer from choosing a new provider. A switch-hold would prevent a customer from choosing a new provider with a lower price and would block that customer from realizing savings that could be used to pay back the initial REP. Additionally, Public Citizen stated that a switch-hold would be anti-competitive because it would restrict REPs' access to potential customers and would be dangerous for customers because customers could be disconnected for longer periods of time. Public Citizen noted that, on average, approximately 100,000 premises are disconnected each month. Some of these premises have households with older people, sick people, or children under the age of four. Public Citizen added that, according to the Center for Disease Control, these categories and others are at a higher risk of heat related illness during hot weather.

OPC strongly opposed subsection (l) in its entirety relating to switch-holds. If the commission were to approve the switch-hold process, OPC expressed its belief that REPs should have the discretion to remove a switch-hold for any reason that it deems appropriate and not be limited to removing a switch-hold only if the customer has satisfied the deferred payment plan or has been removed from the level or average payment plan after paying any balance owed.

Public Policy argued that the competitive retail electric market is quite different from the regulated monopoly markets in which a customer does not get reconnected until the bill is paid. The competitive retail electric market is similar to the general marketplace where companies employ various tactics to recover bad debt but the companies cannot stop their customers from making purchases elsewhere. The commission should not be concerned about the fact that the level of bad debt has increased because of competition. Bad debt resulting from legally mandated deferred payment plans should be addressed but not by a switch-hold. Public Policy concluded that imposition of the switch-hold and the extension of deferred payment plans is beyond the commission's statutory authority and will cause harm to the competitive retail electric market in at least four ways: 1) increase the cost structure of REPs by requiring extension of credit in contravention to fundamental credit practices, 2) introduce substantial administrative inefficiencies in the electric market, 3) jeopardize the investment of capital into the Texas market which will ultimately reduce competition and raise prices, and 4) disrupt customer choice. However, Public Policy opined that if the commission were to expand the deferred payment plans, it should not do so without the switch-hold--even though this would harm competition and increase consumer prices.

State Representatives Pierson, Turner, and Walle expressed concern about the switch-hold process and opposition to the direction being taken by the commission in this project. Representative Turner noted that this project was opened by the commission to seek a permanent solution to the summer disconnect moratoriums filed every year, not to bail REPs out of their bad debt. Representative Turner and OPC reiterated their position that the commission does not have the legal authority to impose any type of switch-block as discussed in their comments filed in Project No. 37291 on January 22, 2010 (Item No. 35). Besides being contrary to PURA, Representative Turner opined that the switch-hold process is a dangerous policy because it would likely result in Texans being disconnected for longer periods of time than they would be when compared to disconnects under current rules. While Representative Turner stated his belief that current PUC rules are woefully deficient when it comes to protecting people from dangerous disconnections, he stated that the proposed switch-hold process is even worse. He noted that his office, along with many consumer organizations, brought concessions to the table to try and address REP concerns about bad debt, but that REPs were unwilling to look at other options and held a steadfast position that switch-holds were the only solution. Representative Turner characterized the REP position as being disingenuous and a non-starter for his office and others.

Representative Walle stated that a switch-hold would disproportionately harm lower-income customers who struggle to make ends meet and would prevent a family from changing electric providers even though a better deal is available elsewhere.

State Representative Pierson disagreed specifically with the way that three points are being approached in this project:

1. The proposed rule would leave those who need electricity the most without service during hot Texas summers.
2. The commission seems to be making a decision based on the abundant amount of bad debt for REPs without releasing any specific support for the bad debt numbers. Representative Pierson suggested that the commission conduct a study or release statistics that would support the need for switch-holds based on the specific customers who will be most affected. State Representative Turner agreed with State Representative Pierson that there is a lack of information concerning how much bad debt there is and how it may affect the market. He added that the bad-debt issue does not seem to be market wide and that a large portion of the market deals with defaults of payment as part of their business model.
3. By removing the customer's ability to choose with the institution of a switch-hold, the commission will remove the whole concept and reason for deregulation. State Representative Pierson opined that the switch-hold contradicts the idea of shopping around in order to find the lower price. State Representative Turner agreed and noted that it would be hard to heed the advice of the commission to shop the market for lower prices while the commission is simultaneously attempting to tie the hands of customers and force them to stay with their provider.

State Representative Pierson concluded that the commission should leave the issue of switch-holds for legislators to decide based on what is best for their constituents after there has been an opportunity to discuss and debate the issue on the House floor.

Consumers adamantly opposed the use of the switch-hold process as a means of reducing bad debt in the competitive electricity market and argued that the commission lacks statutory authority to implement the process. Consumers stated that there is no study and no evidence presented that the switch-hold process will be effective in mitigating bad debt or that this level of commission interference into the competitive market is the only alternative for controlling bad debt. Consumers stated that the commission has not done a study concerning REP debt collection and underwriting practices, and therefore the commission does not have any knowledge of why current market mechanisms cause some REPs to have significant amounts of bad debt and others significantly less. Consumers stated that several questions should be answered prior to implementing the switch-hold process in answer to a bad debt problem. They opined that the answers could reveal that current bill payment plans contribute to large levels of REP debt or could reveal that REPs are taking huge risks and would be rewarded by a provision such as the one proposed here. Consumers characterized bad debt as being a cost of doing business in a competitive market and that a switch-hold process should not be adopted that would compromise access to the retail competitive market.

In addition, Consumers opined that there is no provision in PURA that provides the commission authority to restrict consumer and REP access to the retail electric market through the anti-competitive practice of tying a competitive retail electric service with a monopoly service. While Consumers acknowledged that there may be some implied authority in PURA, any implied authority must be consistent with PURA's legislative intent as defined by the plain language of the Act. PURA's plain language speaks of bill payment plans as part of a REP's

services to be offered consumers and requires the commission to implement a retail market that provides for full and fair competition among all providers of electricity and ensures that consumers will have access to a provider of last resort. Consumers stated that the Legislature directed the commission to ensure consumers have the power to choose in several sections of PURA (PURA §§17.004(a)(2), 39.001(b)(1), and 39.101(b(2)) and implied within the consumer's power to choose is the power to quit. The Legislature also directed the commission to ensure that all buyers and sellers of electricity have access to the transmission and distribution systems. Consumers stated that a switch-hold provision would restrict consumers and sellers access to the transmission and distribution systems contrary to PURA §39.151. Consumers argued that allowing a REP to place a switch-hold on a consumer's access to the competitive retail market would be like "placing a regulatory thumb upon the scales of the competitive market." The proposed switch-hold process would allow REPs to exploit the consumer by charging fees and prices that are anti-competitive because the consumer would be placed in a monopoly position without the benefit of price protection. This would allow REPs to set any rate it wishes without fear of competing with other REP price offers and allow REPs to exploit the most vulnerable customers because they are financially fragile and hampered in their abilities to pay off a debt for which they needed a deferred payment plan. Consumers argued that a switch-hold is not a regulatory tool the commission was provided by the Legislature, is contrary to PURA, is not an enumerated duty or power of the commission, and goes beyond the commission's authority. The switch-hold is contrary to PURA §39.106 and §25.43 which require the provider of last resort (POLR) to provide electric service "to any requesting customer in the territory for which it is the provider of last resort." The commission cannot over ride that category by blocking consumer access to POLR.

Consumers found it ironic that the REP Group stated that "[c]losing the switching loophole would restore balance to the market using the model that existed before market opening" because the model that existed before marketing opening was a monopoly one. In a monopoly market, the consumers are held captive but the company's services are regulated to ensure that the captive customers are protected against poor service and excessive rates. Consumers opined that the proposed rule would create a captive customer without provisions to protect consumers against excessive rates. Consumers stated that the REP Group has succinctly described what a switch-hold provision is -- a component of a monopoly market and as such is antithetical to the competitive model intended by the legislature in de-regulating the Texas electric market.

Consumers noted that the commission authorized REPs to use late penalty fees to address REP collection costs in Project No. 22255 in 2001 and that the commission added the tool of disconnection to the REPs' tools to address the costs in Project No. 27084 (Rulemaking to Revise Customer Protection Rules, §§25.486 - 24.490) in 2004. Consumers recalled that in the preamble to the order promulgating the amendments to the customer protection rules in Project No. 27084 that the commission stated, "[t]he Commission declines to adopt a policy allowing all REPs the right to prevent a customer from switching to another REP until the customer pays all outstanding balances. The commission agrees with RRI (Reliant Resources, Inc.) that there are numerous tools allowable under the customer protection rule which would provide sufficient protection for the REPs. REPs may require that a customer with bad credit or poor payment history to pay a deposit. In addition, REPs may assess late fees and disconnect customers who fail to make timely payments and develop other billing strategies that will minimize their risk

(for example, direct debit from credit cards or bank accounts)." Consumers commented that since the conclusion of these two projects, the REPs added disconnection and reconnection fees, insufficient check fund charges, and the filing of bad credit reports with credit reporting agencies as additional tools to address bad debt. Consumers agreed with Reliant that these tools are effective in mitigating bad debt and the commission should investigate if REPs are using these existing tools effectively. REPs should be required to work with the customer and the secondary contact to arrange workable payment arrangements and assist in providing information on available bill payment assistance resources rather than being allowed to place a switch-hold on the customer's account.

Consumers added that the proposed switch-hold process would extend the consumer's deferred payment plan with their existing REP by one business day until the switch-hold could be removed. This delay of a business day would cause consumers, who paid deferred payment plans in a timely manner, to not gain access to the market for twenty-four hours which can cause them to miss a price offering that may be materially less than the prices posted the next day.

Reliant stated that subsection (l) is unnecessary and should be stricken. They reiterated their position that the costs to the market far outweigh the benefits of implementing a switch-hold process, especially for REPs that responsibly employ the measures allowed by current commission rules and use other commercially viable tools to manage and mitigate exposure to bad debt. Reliant added that the proposed §25.480(j)(2)(B)(i) strengthens these available measures by allowing a REP to require a 50% initial payment in order for a customer to enter into a deferred payment plan. The proposed rule also allows REPs to consider insufficient fund

payment in determining whether to extend credit via a deferred payment plan. Reliant not only opposed the switch-hold as proposed in this rule but it also opposed any expansion of the switch-hold as proposed by the REP Group.

The REP Group disagreed with other stakeholder positions that stated the commission lacks authority to implement the proposed switch-hold process and noted that PURA clearly authorizes the commission to adopt and enforce rules relating to the extension of credit, level billing programs, and termination of service (*e.g.*, PURA §17.004(b) and §39.101(e)). For additional support, the REP Group added that the commission recently rejected identical and similar arguments concerning lack of authority in Project No. 37291 (Meter Tampering Rule, §25.126). The REP Group noted that the switch-hold language approved in Project No. 37291 requires placement of a switch-hold once meter tampering has been determined; whereas, the switch-hold language in this proceeding allows a REP to place a switch-hold. The REP Group noted that in adopting the switch-hold process in Project No. 37291, the commission reasoned that the interest of a small segment of customers who do not pay their bills are outweighed by the interest of all customers in the competitive market to receive reasonably priced electricity, a customer protection entitlement cited in PURA §39.101(a)(1). The REP Group concluded that the same reasoning to justify implementation of a switch-hold equally applies in this project and added that the bad debt that accumulates when customers fail to fulfill their financial obligations would increase the price of retail electric service to the detriment of the universal customer interest. The REP Group suggested that the switch-hold process is a first step that will assist REPs in closing a problematic loophole of bad debt but that it will not address the problem completely as customers who are not on a payment plan can still switch providers without paying outstanding

balances and final bills. The REP Group stated that the TDU tariff changes adopted in Project No. 36536 (Rulemaking to Expedite Customer Switch Timelines, §25.214 and §25.474), which allow customers to switch to a new provider in seven business days, will exacerbate the bad debt problem by making it even easier for some customers to switch away from unpaid accounts. Specifically, when the seven day switching process is combined with the existing ten days disconnect notice, a customer can switch before a disconnection can be effectuated. The REP Group opined that REPs are constrained in addressing bad debt issues by PURA §17.008(d) that prohibits REPs from denying service to an applicant based on the applicant's credit history, credit score, or utility payment data. The REP Group recognized that PURA §17.008(d) allows REPs to deny service based on the applicant's electric bill payment but stated that previous efforts to investigate the possibility of creating a customer payment database for use by REPs in the competitive retail market have failed to progress to any meaningful stage. The REP Group added that REPs are also constrained from addressing the bad debt issue by certain customer protection requirements imposed by various commission rules. The REP Group rejected the comparisons made by Consumers between bad debt in the competitive electric service industry and other competitive service industries because the competitive industries are not subject to the same type of credit extension and customer deposit requirements as the competitive electric service industry. The REP Group stated that provisions in PURA §17.004(b) and §39.101(c) limit a REP's discretion to address credit and customer deposit issues to limit or mitigate bad debt exposure. The REP Group added that many of the industries cited by Consumers for comparison (*e.g,*. mobile phone, cable TV, and Internet) bill in advance, not in arrears as is the common practice in the electric industry. The REP Group pointed out that while PURA §39.001(d) directs the commission to use competitive rather than regulatory methods to achieve

the goals of PURA and to adopt practical rules that impose the least impact on competition, §25.480 provides only limited avenues for competitive solutions to resolve bad debt. The REP Group argued that the right of a customer to choose a REP, embodied in PURA §§17.004(a)(2), 39.101(b)(2), and 39.102, is not absolute, contrary to argument of other stakeholders opposing the switch-hold process in Project No. 37291 and in this proceeding. The REP Group opined that the right to choose a REP is not the same as the right to switch retail electric service without condition and that PURA §39.101(b)(2) expressly conditions the exercise right of customer choice on consistency with Chapter 39 of the statute. According to the REP Group, the switch-hold provisions proposed in this proceeding are specifically within the commission's authority to adopt and enforce rules relating to the extension of credit, level billing programs, and termination of service under PURA §17.004(b) and §39.101(e). The REP Group stated that PURA §§17.004(a)(1), 39.101(b)(6), and 39.101(e) authorize the commission to adopt and enforce rules to protect retail electric customers from fraudulent, unfair, misleading, deceptive, and competitive practices. As noted in Project No. 37291, such practices are not limited to REP actions but may also encompass the actions of retail electric customers. The REP Group added that §25.27(f)(1)(E) requires customers in areas where customers have the option to switch outside of ERCOT to pay a switchover fee and any other outstanding charges prior to initiating service with another provider. The REP Group opined that the objective underlying this requirement is no different from the objective underlying the switch-hold process in this project which is to ensure that the departing customer has satisfied its payment obligations to its current service provider prior to receiving electric service from another provider. The REP Group opposed the suggestion of AARP, Public Citizen, State Representative Pierson, and Consumers

that the commission should conduct additional studies of the bad debt issue and noted that the commission has already examined these issues as early as the year 2003 in Project No. 27084.

The REP Group rejected Consumers' assertion that the switch-hold mechanism would allow REPs to exploit the consumer by charging fees and prices that are anti-competitive. The REP Group noted that the switch-hold does not in any way abrogate the commission's customer protection rules. The REP of record is required to provide non-discriminatory service and abide by all other customer protection rules while a customer's ESI ID is on a switch-hold. The REP Group noted that the commission considered whether a switch-hold would disadvantage a customer with respect to price in the meter tampering rule. The commission determined that a REP should have the discretion to place a customer whose fixed price contract expires while on a switch-hold on a default month-to-month product and that that the terms of the default product are mandated by §25.475(e)(1). The REP Group also added that the commission's complaint process would be available to any customer who believes that the REP has taken inappropriate actions.

Commission Response

The commission disagrees with commenters that the commission lacks authority to implement a switch-hold. PURA §17.004(b) and §39.101(e) grant the commission the authority to adopt and enforce rules necessary or appropriate to establish standards for REPs relating to extension of credit and termination of service. PURA §17.004(a)(11) also entitles low-income customers to an affordable rate package and bill payment assistance programs designed to reduce uncollectible debts. PURA §39.101(a)(1) requires the

commission to ensure that retail customer protections are established that entitle a customer to reasonably priced electricity. The rule is an expansion of the REP's responsibility to undertake significant risks of non-payment by customers by extending additional credit to customers that under the current rules would not qualify. Allowing REPs to employ switch-holds in conjunction with the increased costs of extending credit to customers is consistent with this requirement as it helps protect customers from higher prices that may result from the increased risk of non-payment associated with the extension of additional credit. A REP's ability to mitigate the risk of bad debt is limited by law. PURA §17.008(d) provides that a REP may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history, credit score, or utility payment data. Although this provision allows a REP to use an applicant's electric bill payment history, this information is usually not readily available. As previously discussed, the commission lacks the ability to require REPs to pay for the type of database that would allow REPs to use customer electric bill payment history in a meaningful way. The commission does not have the authority to set rates for electricity in competitive areas nor does it have the authority to require REPs to provide electricity at no cost to their customers.

The commission disagrees with the Public Citizen's statement that the proposed rule reflects a stronger desire to protect the interests of electric companies over the interests of electricity customers. The role of the commission is to protect the overall public interest, which includes consumers, utilities and retail electric providers. The goal of the commission is to balance the interest of all the stakeholders in a way that protects their

respective interests without compromising the integrity of the state's electric system or the market. As evidenced by the many summer moratorium requests over the last ten years, some stakeholders have expressed concern that the commission's existing rules may not have adequately protected some of the most vulnerable. This rulemaking project has been undertaken to address that concern. The commission believes that this rule balances the needs of low-income and other vulnerable customers with the need to ensure that customer defaults on deferred payment plans do not result in bad debt that would be reflected in higher overall rates for customers. Public Citizen also suggested opening a rulemaking to adopt rules which provide robust protections for vulnerable Texans and another to address the so-called electric company "bad debt" issues. This rule accomplishes the goal of the first suggested rulemaking by expanding debt management options for low-income and other vulnerable customers and addresses the second suggested rulemaking to address bad debt issues by limiting REPs' credit exposure.

Public Citizen and others believe that the commission lacks authority to establish a rule that blocks a customer from choosing a new provider. The commission agrees with the comments of the REP Group that the commission does have the authority to adopt a switch-hold process in this rule. As correctly noted by the REP Group, the commission rejected identical and similar arguments regarding lack of authority in Project No. 37291 (Meter Tampering Rule, §25.126). The commission agrees with the REP Group which noted that the switch-hold language approved in Project No. 37291 requires placement of a switch-hold once meter tampering has been determined; whereas, the switch-hold language being adopted in this rule merely allows, but does not require, a REP to place a switch-

hold. The REP Group noted that in adopting the switch-hold process in Project No. 37291, the commission reasoned that the interest of a small segment of customers who do not pay their bills are outweighed by the interest of all customers in the competitive market to receive reasonably priced electricity, a customer protection entitlement cited in PURA §39.101(a)(1). The commission agrees with the REP Group that the same reasoning to justify implementation of a switch-hold applies equally in this project in that the bad debt that accumulates when customers fail to fulfill their financial obligations would increase the price of retail electric service to the detriment of all electric customers. As the REP Group also noted, the switch-hold process is not a universal solution to the bad debt problem as customers who are not on a payment plan can still switch providers without paying outstanding balances and final bills. The REP Group further noted that there are other limitations on the REPs' ability to address the bad debt problem and that this rule is an important step in assisting REPs with this issue. The commission agrees and believes that this rule provides an appropriate balance between the interests of customers and REPs.

The commission agrees with the comments of the REP Group that the comparisons made by other commenters between bad debt in the competitive electric service industry and other competitive service industries are not valid because other competitive industries are not subject to the same type of credit extension and customer deposit requirements as the competitive electric service industry. PURA §39.101(c) limits a REP's ability to refuse to serve a customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, location in an economically distressed

geographic area or qualification for low-income affordability or energy efficiency services. PURA §17.008(d) limits a REPs ability to deny an applicant's request for service on the basis of the applicants credit history, credit score or utility payment data. These limitations are not present in many of the industries cited for comparison by some of the commenters representing the public interest groups. The commission believes that these limitations reduce the ability of REPs to address their bad debt problems.

The commission also agrees with the REP Group that the right of a customer to choose a REP, as reflected in PURA §§17.004(a)(2), 39.101(b)(2), and 39.102, is not absolute, contrary to arguments made by commenters opposing the switch-hold process in this rule as well as the switch-hold process adopted in Project No. 37291.

The commission concludes that the right to choose a REP is not the same as the right to switch retail electric service without condition and that PURA §39.101(b)(2) expressly conditions the exercise right of customer choice on consistency with Chapter 39 of the statute. The switch-hold provisions adopted in this rule are within the commission's authority to adopt and enforce rules relating to the extension of credit, level billing programs, and termination of service under PURA §17.004(b) and §39.101(e). Moreover, PURA §§17.004(a)(1), 39.101(b)(6), and 39.101(e) authorize the commission to adopt and enforce rules to protect retail electric customers from fraudulent, unfair, misleading, deceptive, and competitive practices. As noted by the commission in Project No. 37291, such practices are not limited to REP actions but may also encompass the actions of retail electric customers. As the commission also noted in Project No. 37291, §25.27(f)(1)(E)

requires customers in areas where customers have the option to switch outside of ERCOT to pay a switchover fee and any other outstanding charges prior to initiating service with another provider. The commission believes that the objective underlying this requirement is no different from the objective underlying the switch-hold process adopted in this rule which is to ensure that the departing customer has satisfied its payment obligations to its current service provider prior to receiving electric service from another provider.

The commission disagrees with the suggestion of AARP, Public Citizen, State Representative Pierson, and Consumers that the commission should conduct additional studies of the bad debt issue as the commission has already examined these issues as early as the year 2003 in Project No. 27084 (Rulemaking to Revise Customer Protection Rules, §§25.486 - 24.490). In Project No. 27084, the commission noted that one of the goals of competition is for the industry to offer better prices and that retail prices for other customers are adjusted upward to recover costs associated with uncollectibles from customers that do not pay their bills. The commission concluded that a market structure that provides little or no consequence for the small subset of customers who do not timely pay their REP for service rendered will increase the costs of providing service to all customers, and ultimately result in higher rates for all customers. The commission considered the REP request for "hard disconnect" authority but ultimately concluded that there was no mechanism in place to handle "hard disconnections" and that the customer protection rules adopted in that project would be adequate to address REP concerns about uncollectible debt. The commission also decided that if the tools proved to be inadequate

the commission might entertain proposals for a "hard disconnect" or "switch-hold" in the future.

The commission also disagrees with the assertions by Consumers that the switch-hold mechanism will allow REPs to exploit the consumer by charging fees and prices that are anti-competitive. The switch-hold process adopted in this rule in no way abrogates the commission's customer protection rules. The REP of record remains obligated to provide non-discriminatory service and abide by all other customer protection rules while a customer's ESI ID is on a switch-hold. Additionally, the commission's complaint process (both informal and formal) will be available to any customer who believes that the REP has taken inappropriate actions under this rule.

Public Citizen also raised concerns that a switch-hold would prevent a customer from switching to another REP and using the realized savings to pay back the initial REP and that the switch-hold would restrict REPs' access to potential customers. The commission appreciates the concerns but believes that a customer will always have the option to switch so long as they pay off their debts to their current provider. The commission believes that the institution of the switch-hold is a fair trade off for the increase in debt management options that this rule will provide to vulnerable customers.

Consumers argued that the switch-hold is contrary to PURA §39.106 which requires the provider of last resort (POLR) to provide electric service "to any requesting customer in the territory for which it is the provider of last resort" and to §25.43 which requires

POLRs to "ensure that its service is available to any requesting retail customer." The commission reads these requirements as a directive to POLRs that their service should be made available to any requesting retail customer. The switch-hold process does not impinge upon that directive as POLRs are still required to ensure availability of their service. The switch-hold does require the customer to pay for credit extended by the existing REP for electric service consumed prior to switching to any other provider, including a POLR. If the REP exercises its rights to disconnect service pursuant to §25.483, the switch-hold shall continue to remain in place and the customer will not be able to choose another provider until the customer's obligation to the REP related to the switch-hold is satisfied. It is essential for continued success of the competitive market that customers pay REPs for electric service and any deferred amounts. The customer's freedom of choice is not limited by the switch-hold so long as that customer pays off the credit extended by the REP. As discussed in detail in the Authority and Policy Concerns section of the preamble regarding §25.480(l) below, the customer's right to choose a REP in the competitive market is not an unconditional right.

OPC made a point that REPs should have the discretion to remove a switch-hold for any reason. This suggestion is in keeping with maintenance of a competitive market and the commission believes that the rule would not prevent a REP from doing so. The commission believes that this is another opportunity for REPs to distinguish themselves in the market from other REPs by limiting their use of the switch-hold.

Public Policy argued monopoly markets are different than competitive retail electric markets: there is no price protection for customers and companies must employ various tactics to recover their bad debt, and companies cannot stop their customers from making purchases elsewhere. Public Policy stated that the commission should not be concerned about REP bad debt because the level of bad debt has increased from the levels before the market opened. The commission accepts that bad debt is part of the market and must be dealt with as each REP sees fit for itself. The switch-hold is not an attempt to solve the bad debt problem. The commission understands that the modification of these rules increases REP risk by expanding the eligibility of low-income customers for deferred payment plans and level or average payment plans. Therefore, the commission is adopting the switch-hold process in an effort to minimize or reduce the contribution of these regulations to the growth of the bad debt problem. Public Policy agrees that bad debt resulting from legally mandated deferred payment plans should be addressed but not by use of a switch-hold. It also stated that if the commission expanded deferred payment plans, it should not do so without the switch-hold. The commission disagrees with Public Policy that the proposed rule will harm the competitive retail electric market. The competitive market is strengthened when the competitive companies have the tools to incent the customer to pay for electricity consumed. REPs should not be required to provide free electricity.

Representative Turner and Public Citizen noted that the switch-hold process is a dangerous policy because it would likely result in Texans being disconnected for longer periods of time than they would be when compared to disconnects under current rules. The commission appreciates Representative Turner and Public Citizen's concerns;

however, the commission cannot predict whether customers will be disconnected for longer periods of time than they would be when compared to current rules. The commission has instituted reporting requirements to monitor the processes set forth in this rulemaking.

Representative Walle stated that a switch-hold would disproportionately harm lower-income customers and would prevent a family from changing electric providers even though a better deal is available elsewhere. The commission is not persuaded that low-income customers would be disproportionately harmed by this rule. On the contrary, the REP Group's stated that LITE-UP customers that accepted a deferred payment plan defaulted 45% of the time as compared to other customers that defaulted 52% of the time. Since a customer who pays bills on time will not be subject to a switch-hold and will not be prevented from changing providers, these customers should not be significantly impacted by the amendments adopted in this rulemaking.

Representative Pierson disagreed with the commission's approach because the proposed rule would leave those who need electricity the most without service during summers. Representative Pierson also raised concerns about the commission making a decision on the switch-hold based on information that has not been released. Representative Pierson suggested that the commission conduct a study or release the statistics that would support the need for switch-holds based on the specific customers who will be most affected. Specific statistics and examples have been provided in comments which indicate that there is a problem with bad debt, whatever its causes. The commission has summarized these statistics and examples and responded to similar comments in the Discussion of REP Bad

Debt section of the preamble above. For the above-stated reasons the commission does not believe that it is necessary to conduct a study.

Some commenters stated that the switch-hold process will remove the whole concept and reason for deregulation which they opined was to provide customers with the ability to choose an electric service provider. Representative Pierson noted that the switch-hold would contradict the idea of shopping around in order to find the lower price. Representative Turner agreed and noted that it would be hard to heed the advice of the commission to shop the market for lower prices while the commission is simultaneously instituting the switch-hold provisions. The commission disagrees and believes that the competitive market was established on the concept that customers could choose providers and pay for the service. In cases where customers do not pay for service consumed, then the competitive market is put at risk. It is not unique to the electric market that a person consuming a good or service is responsible for paying for the good or service. The commission believes that the rules, as adopted, strike an appropriate and reasonable balance between the interests of REPs and consumers.

Technical Issues with Switch-Hold

ERCOT estimated that with the adoption of this rule that there could be an additional 24,000 MarkeTrak issues each month. ERCOT noted that it has implemented short-term solutions to reduce MarkeTrak degradation and is in the process of identifying a long-term solution to prevent MarkeTrak degradation in the future. ERCOT stated that it believes that MarkeTrak will be able to handle manual switch-holds until the market develops the automated TX Set

transactions beginning on June 1, 2011 as proposed in §25.480(l)(3). Without taking a position, ERCOT noted that the REP Group proposed that the switch-hold process should become effective on December 1, 2010 and ERCOT stated it could handle the switch-hold transactions on that date. ERCOT noted that the changes would be bundled with additional TX SET changes resulting from other approved rule changes and market improvements. ERCOT pointed out that TX SET changes require at least a 14-month implementation timeline and that the proposed changes under this rule would be ready in the first half of 2012.

ERCOT requested that the proposed rule be modified to remove the last sentence of §25.480(l)(3)(B) that would require ERCOT to list ESI IDs with switch-holds on a secure area of the ERCOT website. ERCOT does not have access to customer billing information. The REP Group agreed that the last sentence of §25.480(l)(3)(B) should be deleted because the level of specificity could limit the options for delivery of information when the stakeholders develop the process to implement the rule. For consistency, ERCOT urged the commission to adopt the Joint TDUs' suggested language for §25.497(g) in Project No. 37622 for proposed subsection (l)(3)(A)-(C) in this project to provide ERCOT and stakeholders with more flexibility to develop the automated TX SET transaction. Consistent with its recommendation to adopt the Joint TDU suggested language in Project No. 37622, ERCOT proposed deleting subsection (l)(3)(A) thru (C) in this project and replacing the language in subsection (l)(3) with the following: "In the TX SET release after the effective date of this rule, market transactions shall be developed to address the requirements of this rule."

To help avoid customer confusion and decrease the possibility of errors, the Joint TDUs urged the commission to ensure that any switch-hold process adopted in this rule does not conflict with the process adopted in Project No. 37291 and that the terms used in the proposed rule in this project be the same as the defined terms from the proposed §25.497 in Project 37622. ERCOT agreed with the Joint TDUs that any switch-hold process adopted in this proceeding should not conflict with the process adopted in Project No. 37291 (meter tampering rule). The switch-hold process, especially as it relates to the treatment of move-in, move-out, and switch transactions, needs to be consistent between the two rules to help ensure successful implementation and reduce problems or confusion for customers.

The REP Group agreed with ERCOT that the timeline for a TDU to remove a switch-hold in subsection (l)(3)(C) should be the same timeline as the one in the new meter tampering rule and offered that ERCOT's concern is addressed in subsection (l)(1)(E) that refers directly to the meter tampering rule. The REP Group disagreed with ERCOT's recommendation to modify subsection (l)(3)(C) because it is intended to ensure that in the next TX SET release, when a switch-hold is in place on an ESI ID and there is a move-in transaction, the move-in transaction can be held in the system, rather than being initially rejected. The REP Group recommended that the language "sent by ERCOT" should be stricken from proposed subsection (l)(3)(F) to be consistent with the staff's proposal in Project No. 37291.

The REP Group proposed removing the requirements for adding and requesting removal of switch-holds in subsection (l) and instead suggested including appropriate references to other subsections consistent with their proposal in subsections (h) and (j) that included these

requirements in those subsections. The REP Group also proposed deletion of the June 1, 2011 effective date consistent with their discussion in response to preamble question 6 that proposed switch-holds be allowed on the same effective date as the overall rule. The REP Group opined that the switch-hold process is an important component to a workable comprehensive solution to expand protections for vulnerable customers who have difficulty paying electric bills, especially in the summer and winter months, while limiting further bad debt costs that would ultimately increase prices to customer who timely pay their bills. The REP Group argued that the proposed switch-hold process would not prevent customers from switching to a provider of choice but would require customers to pay back a no-interest loan before switching.

Commission Response

The commission agrees with the recommendation of ERCOT and the REP Group to delete the last sentence of §25.480(l)(3)(B) and modifies the rule accordingly. The commission also agrees with ERCOT and the Joint TDUs that the switch-hold process in this proposed rule should not conflict with the switch-hold process adopted in Project No. 37291 (Meter Tampering) and modifies the rule to require development of market transactions in the first TX SET release after January 1, 2011.

Subsection (l)(2)--effective date December 1, 2010

The REP Group argued that it is very important that the switch-hold process become effective at the same time the REPs are required to expand customer eligibility to help mitigate the potential increased bad debt that may result from greatly expanding the application of payment plans to those customers who are unable to pay. Accordingly, the REP Group proposed deleting the

June 1, 2011 effective date in §25.480(l)(2) and modifying §25.480(n) so that the December 1, 2010 effective date applies to the entire section.

Cities urged the commission to reject the REP Group's recommendation to implement the switch-hold provision of the rule beginning in December 2010 and to maintain the proposed effective date of June 1, 2011. Cities stated that a switch-hold process represents a major change in how REPs interact with their customers and that the additional time is needed for consumers to carefully evaluate the new risks and benefits of deferred payment plans under the new rule. Cities added that the additional time will help ensure the accuracy and reliability of the REPs' systems and reduce the risk that unauthorized switch-holds will occur.

Commission response

In post-comment period meetings with the commission, the stakeholders reached consensus that it would be appropriate to make the effective dates the same and that the effective date in this subsection should be deleted and the effective date in subsection (n) should be changed to June 1, 2011 so that the switch-hold process will be effective on the same date that REPs are required to expand customer eligibility. The commission concurs that the switch-hold process should go into effect at the same time that the additional customer protections go into effect and modifies the rule accordingly.

Subsection (m)--Unauthorized Placement or Continuation of a Switch-hold

Reliant stated that subsection (m) is unnecessary and should be stricken. Reliant noted that this subsection is labeled "Unauthorized placement or continuation of a switch-hold", but only

paragraph (3) addresses "erroneous" placement of a switch-hold flag. Reliant opined that the subsection does not address continuation of a switch-hold. If the commission should adopt a switch-hold process, then this subsection should be clarified. Reliant commented that the first paragraph is superfluous and should be deleted as it does not authorize a switch-hold. Reliant suggested that the timeline for the REPs responsibility to request removal of the switch-hold in paragraph (2) be relocated to §25.480(l) since it applies to switch-holds generally, not to unauthorized switch-holds exclusively.

The REP Group noted that subsection (m)(2) would allow the REP only four hours to assimilate all the payments received in a day from thousands of payments and submit a file to the TDU requesting that switch-holds be removed. They contrasted this with the proposal that would provide TDUs twenty hours to remove the switch-holds based on files received from less than 100 REPs. The REP Group stated that it is essential to change the timelines so that if the customer's obligation to the REP is satisfied by 10:00 p.m. on a business day, the REP shall send a request to the TDU to remove the switch-hold by Noon the next business day and recommended that the TDU should be required to remove the switch-hold by 8:00 p.m. of the same business day that it receives the request from the REP.

Cities urged the commission to reject the REP Group's request for additional time to remove switch-holds. Due to the extremely severe nature of the switch-hold, REPs should be as expeditious as possible in removing switch-holds.

OPC appreciated the inclusion of subsection (m) and offered minor edits to strengthen the rule and provide clear guidance for the REPs. OPC proposed replacing "erroneously places a switch-hold flag on an ESI ID" with "places a switch-hold flag without meeting the requirements of subsection (l) of this title." OPC also proposed adding language that a REP will be considered to have committed a Class B violation if the REP does not remove a switch-hold within the timeline described in subsection (m)(2).

Commission Response

The commission disagrees with Reliant that this subsection is unnecessary and should be stricken. Reliant suggested that the timeline for the REPs' responsibility to request removal of the switch-hold in paragraph (2) be relocated to §25.480(l) since it applies to switch-holds generally, not to unauthorized switch-holds exclusively. The commission has retitled subsection (m) to relate generally to the placement and removal of switch-holds so movement of the language is not necessary.

The REP Group raised concerns about the timeline within which a REP must remove a switch-hold. The REP Group stated that it is essential to change the timelines so that it is in keeping with the realities of business practices in the industry. Cities urged the commission to reject the request for additional time to remove switch-holds. The commission appreciates Cities' concerns about expeditious removal of any switch-holds but believes that the timeline offered by the REPs is not unduly burdensome on customers and is a reasonable timeline for the competitive market. Therefore, the commission has modified the timeline to reflect the REP Group's comments and to further specify that a

TDU must remove the switch-hold by 8:00 p.m. on the same business day that it receives the request if the REP notifies the TDU by 1:00 p.m. If the TDU receives the request to remove a switch-hold after 1:00 p.m., then the TDU must remove the switch-hold by 8:00 p.m. of the next business day.

OPC suggested that the commission replace language concerning a REP "erroneously" placing a switch-hold with language that would make it a violation if the REP places a "switch-hold flag without meeting the requirements of subsection (l) of this title." OPC also proposed expanding the rule to state that REPs failing to remove a switch-hold within the prescribed timeline shall be considered to have committed a Class B violation. The commission believes that "erroneously" is sufficient and perhaps more encompassing than referring to subsection (l). The commission agrees with OPC's suggestion to include failure to remove a switch-hold as part of the consideration of a Class B violation and modifies the proposed rule accordingly.

§25.483. Disconnection of Service.

Subsection (g)--disconnection of critical care or chronic condition residential customer

Authority to Disconnect Critical Care or Chronic Condition Residential Customers

AARP, OPC, and Consumers opposed disconnecting critical care residential customers under any circumstances and opined that it would conflict with PURA §39.l01(a) that contains a mandatory requirement to ensure that medically vulnerable consumers remain in-service and do not lose electric service. AARP and Consumers disagreed with OPC's proposed language that

would ensure that only chronic condition residential customers are eligible for disconnection for non-payment, rather than both critical care and chronic condition residential customers. AARP and Consumers argued that PURA §39.101(a) would also prohibit disconnection of chronic condition customers that have been found to need electricity to prevent the impairment of a major life function or sustain life. Consumers opined that disconnection of electricity service for a person on life support or a person incapable of tolerating temperature changes and maintaining life functions is a case of medical emergency and cannot be condoned under PURA.

Consumers stated that the Low Income Energy Assistance Program (LIHEAP) Clearing House reports that critical care customers are never disconnected in New York, Ohio, and Massachusetts. According to Consumers, the Maine commission must approve the disconnection of service for any residential customer. Consumers noted that other states are not so generous: Oklahoma allows a critical care disconnection to be delayed for sixty days, Wyoming allows a thirty day delay; and Alaska allows a fifteen day delay. Instead of being an example for other states to follow for customer protections, Consumers stated that adoption of the proposed rule would place Texas among the states with the weakest protections for critical care customers and there will be even more states that are doing a better job of protecting critical care customers.

The REP Group opposed Consumers' claim that this rule put Texas among those states with the weakest protections for critical care customers and noted that Consumers' citation to six states is not sufficient support for Consumers' conclusion. The REP Group submitted that limited comparisons should not be used to diminish the significance of the protections offered by the

proposed rule. The REP Group noted that PURA and the commission's rules prohibit disconnection in cases of extreme weather and that the proposed rule would add additional protection to help customers avoid disconnection during the summer and winter months; include year-round protections in the case of a declared disaster; and would provide year-round availability of level or average payment plans to all low-income customers. The REP Group shared the sentiment of Consumers that all customers should pay for the electricity they use but stated it is not always possible and agreed that efforts should be made to protect critical care customers from disconnection while making as much assistance available as possible.

Consumers believed that a rule that clearly allows for the disconnection of a medically vulnerable customer is cruel and inhumane; not in the public interest; does not comport with practices in other jurisdictions; and that the deregulated electric industry must face responsibility for protecting people that are incapable of protecting themselves. Consumers pointed out that the REP Group's initial comments raised concerns that if this rule is adopted as proposed, disconnection will become the REPs' number one collection tool. Consumers opined that the commission should be required to review and approve any disconnection of a critical care or chronic condition customer.

The REP Group disagreed with commenters that implied that PURA §39.101(a)(1) completely prohibits disconnection of critical care customers. The REP Group stated that the commission has already correctly interpreted its authority under PURA §39.101 to allow for the disconnection of critical care customers, so long as such disconnections are performed with proper precautions. The REP Group stated that the commission's current disconnection rules

allow for the disconnection of critical care customers subject to certain guidelines. The REP Group opined if PURA were interpreted as the commenters suggest, then it would lead to the erroneous conclusion that critical care customers do not have any obligations with respect to electric service because, regardless of their actions, they could not be disconnected. The REP Group noted that this interpretation has already been specifically rejected by the commission in adopting the current version of §25.497(c) that states that critical care customers are still obligated to pay their REPs for service received and "may qualify for deferral of disconnection." The REP Group added that deferral of disconnection is very different from the complete exclusion from the competitive market's disconnection process.

Commission Response

AARP, OPC, and Consumers argued that PURA §39.l01(a) contains requirements to ensure that medically vulnerable consumers not lose electric service. Consumers argued that a person on life support or a person incapable of maintaining major life functions without electricity is a case of medical emergency. The commission disagrees with this characterization. The commission agrees that PURA protects anyone from disconnection during a medical emergency. The commission does not agree, however, that it is a guarantee against any disconnection for anyone who is medically vulnerable, particularly for those with a chronic condition that does not require electricity for a device to sustain life. While the commission believes that it has the authority to establish standards to protect vulnerable customers, it does not agree that the legislature intended to allow anyone to use electricity without paying for it. Nor does the commission believe that it has the authority to require REPs to discount or offer electric services for free, even if it is for

critical care or chronic condition customers. PURA §14.005 specifically permits the commission to "establish criteria and guidelines with the utility industry relating to industry procedures used in terminating services to the elderly and disabled." The commission has provided for significant notice to these vulnerable customers and allowed for the customer to provide a secondary contact to be notified prior to the REP authorizing disconnection of service.

The commission believes that it is evident in PURA that the legislature intended for the commission to address low-income and other vulnerable customers with a higher standard of care. PURA includes specific provisions to protect vulnerable customers. Section 17.004(a)(4) states that the commission must protect buyers from discrimination based on income level and goes on to state that customers are entitled to programs that offer low-income customers energy efficiency programs, an affordable rate package, and bill payment assistance programs designed to reduce uncollectible accounts. Similarly, PURA §39.101(c) reflects concerns about protecting the more vulnerable portions of our population when it states that REPs shall not refuse to provide service to a customer based on disability, because the customer is located in an economically distressed area or qualifies for low-income assistance. PURA also specifies that the commission shall require a provider to comply with these limitations. Further, in PURA §17.004(b) and §39.101(e) the commission is given the authority to adopt and enforce rules for minimum service standards relating to the extension of credit, levelized billing programs, and termination of service. The language in PURA clearly reflects an explicit concern for the treatment of low-income and disabled customers and grants the commission the necessary powers to

implement rules to protect those vulnerable customers. Section 39.903 provides a system benefit fund to, among other things, provide one-time bill payment assistance to electric customers with a seriously ill or disabled low-income customer who has been threatened with disconnection for nonpayment. The commission has not, however, received an appropriation of funds for this purpose.

Consumers stated that the proposed rule is not equal to the standards for critical care customers in other states and believed that allowing the disconnection of a medically vulnerable customer is cruel and inhumane; not in the public interest; and does not comport with practices in other jurisdictions. Consumers also believed that the deregulated electric industry must face responsibility for protecting vulnerable customers. Consumers opined that the proposed rule provides for possible disconnection of critical care customers but does not specify any special measures that must be taken to protect a critical care customer. The commission disagrees with this and notes that the proposed rule provides a mechanism for avoiding disconnection of critical and chronic condition customers and also clearly establishes what measures must be taken if a REP seeks a disconnection. Specifically, the provisions in this rule preserve the protective measures of the current rule that allow a critical care customer to seek a 63 day delay from disconnection of service, longer than several of the examples from other states provided by Consumers. The market in Texas is very different than markets elsewhere. Texas has gone even further than some other states to create a second protected class by expanding the protective measures for the disconnection of service to chronic condition customers.

While the commission appreciates Consumers' concerns that disconnection will become the REPs' number one collection tool, the commission does not believe that disconnections or threats of disconnections will necessarily increase as a result of this rule. The commission is confident that the protective measures included in this rule will greatly limit the ability of REPs to abuse the disconnect provisions. First, the rule provides that critical care customers can receive a 63 day extension from being disconnected by establishing that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill. Second, the rule provides for special notice requirements prior to a REP requesting disconnection of a critical care or chronic condition customer. These notice requirements require a REP to contact the customer and the secondary contact prior to disconnection. The rule also requires that the disconnection notice be sent by the REP at least 21 days before disconnection. The commission also believes that in a competitive market REPs will judiciously disconnect customers, as excessive use of disconnections may lead customers to choose other REPs. Ultimately, the commission is more concerned about the vagueness of the current rules which address the critical care customers and believes that the modification of the rules is necessary to clearly establish standards for protecting critical care and chronic condition customers. The commission believes that these rules strike an appropriate and reasonable balance between the interests of vulnerable customers and REPs.

Consumers opined that the commission should be required to review and approve any disconnection of a critical care or chronic condition customer. The commission believes that such a process would be unworkable and lead to greater confusion by requiring the

customer and REP to prepare and present information to the commission for a decision. The commission has included customer protections in the rule that require REPs to provide additional notice and allows critical care customers to receive up to a 63 day extension before disconnection by establishing that a person at the residence will become ill or more seriously ill if service is disconnected. Additionally, customers have the right to file a complaint under §25.485.

Public Interest

Consumers believe that all consumers should be responsible for paying for the electricity used but noted that this is not always possible and that efforts should be made to protect these vulnerable customers while making as much assistance available as possible. Consumers noted that utilities in California have special lower rates for critical care customers. The REPs and the TDUs can take similar steps in Texas to lower costs for critical care customers and thereby reduce their uncollectible amounts. In addition to establishment of reduced rate programs for critical care customers, Consumers stated that weatherization service and billing assistance programs should be made available to help these customers better manage their bills.

Houston noted that at the November 2009 workshop TDUs indicated that once customers are on the critical care list, their systems automatically reject disconnect notices for nonpayment. While REPs have the opportunity to pursue disconnection, they rarely do. Houston urged that the current process for disconnection should continue and that the commission should not adopt the new rule as the proposed process would be too complex and confusing. The increased complexity would increase the potential that electric service would be disconnected for an at-risk

customer resulting in a life threatening situation because necessary medical equipment cannot be operated. Houston argued that the proposed rule lacks safeguards and accountability to protect critical care customers from disconnection. Houston stated that Chairman Smitherman clarified at the joint public hearing held in these projects on May 17, 2010 that the intent of the rulemaking was to establish critical care qualification standards. Based on that clarification, Houston opined that the commission did not intend to change the level of protection for critical care customers or how critical care customers are handled in this proposed rule. Houston raised its concern that elimination of the "ill and disabled" definition in existing §25.483(g) that allows customers to avoid disconnection for up to 63 days will significantly lower current protections for medically indigent customers temporarily unable to pay their bills.

The REP Group disagreed with Houston's belief that the proposed rule would lower protections for critical care customers and argued that the proposed rule would actually provide stronger protections for critical care customers by providing the following: (1) the use of two designations (critical care and chronic condition) would increase the number of customers eligible for protection; (2) critical care designation would last for two years rather than one; (3) critical care customers would receive an extended disconnection notice period of 21 days; (4) all critical care and chronic condition residential customers would be eligible for extended deferred payment plans and level or average payment plans; and (5) secondary emergency contacts would be contacted prior to disconnection to ensure that proper accommodations are made for the affected customer. The REP Group also noted that the City of Houston did not come forward with government assistance to address the societal issue and provide bill payment assistance to financially-challenged critical care customers in its municipal area.

The REP Group referred to existing commission rules and tariff provisions that protect these critical care customers and noted that those provisions are not changing in this proposed rule. §25.480(g) requires REPs to inform customers who express an inability to pay about all payment options and payment assistance programs. Critical care customers may be eligible for such assistance and §25.483(h) prohibits REPs from authorizing disconnection when a pledge is received from an energy assistance agency and requires REPs to give the agency 45 days to honor the pledge. The REP Group pointed out that the standard retail delivery tariff applicable to all TDUs also provides additional stopgap protections to medically vulnerable customers. Section 4.3.9.1 requires the TDUs and REPs to ensure that a customer's critical care designation is properly identified in the competitive market's systems. Section 5.3.7.4 prohibits TDUs from disconnecting electric service when such disconnection will cause a dangerous or life-threatening condition, without prior notice of reasonable length so that the customer can ameliorate the condition. In the event service is disconnected, Section 5.3.7.3 requires that these customers have their service restored as soon as possible following the alleviation of the cause of disconnection. The REP Group anticipated that these tariff sections will need to be revised once the new rules are adopted.

The REP Group shared the sentiment of Consumers that all customers should be responsible for paying for electricity they use but that is not always possible and that efforts should be made to protect critical care customers from disconnection while making as much assistance available as possible. The REP Group noted that Consumers proposed that billing assistance programs be targeted toward critical care customers. The REP Group added that Consumers' statements

highlight the important task of addressing service to critical care customers. The REP Group maintained that a long-term solution for service to this vulnerable group can only be achieved through market-wide efforts, coupled with a legislatively-approved assistance program. The REP Group noted that REPs and consumer groups have tirelessly advocated in every Legislative session that the System Benefit fund be used for what it was intended. Absent a legislative solution, the REP Group opined that the commission has appropriately taken responsibility for addressing the needs of vulnerable customers within the context of a comprehensive solution that balances the need for protections with the financial exposure to REPs.

Commission Response

The commission appreciates Consumers' comments regarding reduced rates for critical care customers and the implementation of weatherization services and bill assistance programs. Many of these programs are currently available. LITE-UP provides rate reductions for low-income customers, including critical care customers, and several utilities have weatherization programs that are available for customers to reduce their electric bills. Of course, the commission expects that the expansion of billing assistance opportunities under these rules will provide additional options for low-income or critical care customers to manage their bills. The commission disagrees with Houston that the rule will provide lower protections for critical care customers. Rather, as correctly noted by the REP Group, the commission believes that the rule as adopted will provide stronger protections for these customers. The commission also agrees with the REP Group that there are existing commission rules and tariff provisions that protect critical care customers that are not changing in this rule.

Notice of Intent to Disconnect

Consumers supported including a secondary contact that could monitor the account of critical care or chronic condition customers but never intended to include the secondary contact to justify a disconnection process for critical care customers.

The MS Society opposed including any procedures in the rules to disconnect critical care customers and opined that they should not be disconnected. OPC supported the MS Society's tiered notification system to provide disconnect notice to chronic condition customers and the secondary contact with written intent to disconnect followed by an auto-dialer call to the customer and the secondary contact, if they are not responsive to the written notice. If the customer or secondary contact does not respond to the auto-dialer, then the MS Society stated that the REP should have a person call both. If there is still no response, then the REP could issue a disconnect order. After the REP has issued the disconnect order, the MS Society proposed that the TDU contact the customer and the secondary contact. If contact is not made by phone, then the TDU should be required to visit the premise, and if there is no response, the TDU should leave a door hanger containing the pending disconnection information and information on how to contact the REP and TDU. OPC opined that it is appropriate to require the REP to make that customer contact, since the REP has the established customer relationship and is the party requesting the customer disconnection.

Consumers noted that the preamble concluded that this rule will provide benefits to the public and will have no fiscal impact on state or local government and asked what the benefit to the

public would be of disconnecting critical care customers. Consumers stated that in order to ensure the customer's safety, a critical care customer who is disconnected would likely be moved from home to a public facility and, whether on a temporary or permanent basis, and this would represent a cost to either state or local governments. The proposed rule should recognize the costs on other entities and the public-at-large that will be caused by REP actions to minimize their bad debt. Consumers stated that a cost benefit analysis of this disconnection alternative should be undertaken to justify the determination of net benefits from the proposed rule. The costs of the alternative accommodations and REP actions should be compared to the cost of the individual's utility bills.

The Joint TDUs suggested that subsections (g)(1) and (g)(3) be modified to waive the secondary contact notice requirement for customers who are grandfathered into a Critical Care Residential Customer status during the first year, as the secondary contact information will not be available for these customers until they reapply. The Joint TDUs disagreed with the recommendation of OPC and the MS Society that the notice requirements applicable to disconnection of chronic condition residential customers should increase. The Joint TDUs stated that the 21 day advance written notice to the chronic condition residential customer and secondary contact is sufficient notice if there is a need to make arrangements to deal with the pending disconnection. The Joint TDUs added that if increased notification is required, then the MS Society suggestion that the REP take primary responsibility for the process is appropriate.

The REP Group and Reliant noted an inconsistency in that subsection (g)(1) requires disconnection notices be sent by mail but subsection (k)(2) allows the customer to agree to

receive a disconnection notice by email. The REP Group and Reliant proposed deleting the requirement in subsection (g)(1) that would require disconnection notices be sent by mail. The REP Group also suggested modifying subsection (k)(2) to allow secondary contacts to agree to receive notices by email.

Commission Response

The commission appreciates Consumers' support for a secondary contact for critical care and chronic condition customers. The commission included the requirement for a secondary contact in this rule to place an additional check on the disconnection of a critical care customer that is not in the current rules.

MS Society and OPC suggested providing chronic condition customers with written notice as well as an automated phone call to the customer and the secondary contact. If the customer or secondary contact does not respond to the auto dialer then the REP would have a staff person call the customer and secondary contact. The Joint TDUs opposed expanding notice requirements. While the commission appreciates the MS Society and OPUC's concerns about notice regarding disconnect to chronic condition customers, the commission believes that the proposed rules are sufficiently protective. The purpose of these rules is to provide a high level of protection to critical care customers who have properly established that disconnection is a threat to their lives. The rules being adopted provide chronic condition customers with a level of protection that is higher than it is for other customers. The commission does not believe, however, that the level of threat to a chronic condition customer rises to the level of notice that must be given to a critical care

customer, because the level of disability is likely not as severe and the result of disconnection of service will not be as severe. The commission concludes that a 21-day advance written notice to a chronic condition residential customer and secondary contact is reasonable and sufficient notice to allow a chronic condition customer to make arrangements to deal with a pending disconnection.

The Joint TDUs suggested modifying the notice requirements for critical care and chronic condition customers to waive the requirement that notice be provided to secondary contacts during the first year, as the secondary contact information will not be available for these customers until they reapply. The commission appreciates the Joint TDU concerns and agrees that notice cannot be provided to secondary contacts if the information is not available. However, the commission does not believe that the rule needs to be modified to specifically waive notice. If secondary contact information is available, then notice should be provided to the secondary contact.

The commission agrees with the REP Group and Reliant that subsection (g)(1) requiring that disconnection notices be sent by mail is inconsistent with subsection (k)(2) that allows the customer to agree to receive disconnection notices by email. As discussed further in the commission's response in subsection (k)(2) below, the commission believes that the wishes of the customer and secondary contact that elect to receive communications by email should be honored and the commission modifies the rule accordingly. However, to protect critical care and chronic condition customers, the commission modifies subsection (g)(2)(A) and subsection (h) of this section to allow email as an additional form of notice for these

customers and their secondary contacts, but does not allow email as the only form of contact.

TDU Charges

The Joint TDUs recommended deletion of subsection (g)(4) which requires the TDU to stop billing the REP for TDU charges if the TDU refuses to disconnect a Critical Care Residential Customer. To support its position, the Joint TDUs pointed to PURA §39.107(d) that states the TDU "shall bill a customer's retail electric provider for non-bypassable delivery charges" and that the REP "must pay these charges." The Joint TDU's stated that non-bypassable delivery charges include transition charges and tariffed utility charges under PURA §39.201(b). The Joint TDUs noted that Financing Orders adopted by the commission for CenterPoint Energy, Oncor, and AEP require the REP to pay the transition charges whether or not it has collected the charges from the customer. In addition, the Joint TDUs contended that the right to bill and collect transition charges is considered a property right that is transferred to the bonding company. If the TDU fails to serve as the agent to bill and collect for these charges, another billing agent may be selected to do so. The Joint TDU's urged the commission not to adopt any rule that is inconsistent with those Financing Orders and contrary to the non-bypassable nature of transition charges. The Joint TDUs opined that requiring TDUs to stop billing the REP for TDU charges if the TDU refuses to disconnect a critical care residential customer, does not address the larger issue of the costs of carrying these customers.

The Joint TDUs questioned the financial impact of the TDU charges on REPs and pointed out that the market was designed for REPs to bear these costs. REPs are free to adjust the price of

their offerings to recover costs and, as detailed by Reliant, REPs have many tools for preventing and dealing with bad debt. The Joint TDUs added that the Financing Orders contain a holdback and reimbursement provision that provides relief to REPs who do not collect transition charges from their customers, so not paying the TDU would not provide any additional benefit to REPs.

The Joint TDUs, Consumers and OPC were concerned that subsection (g)(4) would create a perverse incentive for REPs to order disconnections of critically ill customers as quickly as possible rather than working with the customer on a payment plan, knowing that the TDU will resist actually performing the disconnection. These commenters contended that the proposed rule would drive the REP to consider solely its financial interests, rather than the needs of the customer, and it would punish the TDU for considering the need of the customer first. OPC was also concerned that limiting TDU recovery of their charges would prompt TDUs to disconnect critical care customers in a less thoughtful way. OPC stated that it is important that the entity disconnecting the customer has no financial incentive to either disconnect or leave a line energized. Consumers raised concerns that the rule could force a TDU worker to decide between mistreating a sick person and job security. Consumers urged the commission to direct the industry to never disconnect critical care customers and to handle the debt incurred as they do any other cost of doing business.

The Joint TDUs stated that if subsection (g)(4) is adopted, the TDU should be provided a mechanism to recover its costs without waiting for a base rate case. Accordingly, the Joint TDUs recommended that language similar to that adopted in the Expedited Switch rule be added to subsection (g)(4) that would allow TDUs to create a regulatory asset for recovery of these

costs. Additionally, the Joint TDUs requested that the language be clear that the TDU charges would be suppressed only in the very limited situation of a disconnection request for a critical care residential customer and would not have the wider applicability to chronic condition customers. The Joint TDUs opposed the recommendation that the TDU charges stop if the disconnection of the critical care customer does not occur on a normal timeline--that is, within three days after the REP issues the disconnection order. The Joint TDUs stated that the disconnection process for a critical care customer has nothing to do with the normal disconnection timeline. For critical care customers, the initial transaction will automatically be rejected and a process of consultation with the REP and customer will begin. The rules require the TDU to take extraordinary steps to notify critical care customers and even make a trip to the home before performing the disconnection and additional time is required for the customer to respond after receiving notice. The Joint TDUs concluded that this process will take more than three days and opined that the REP Group's recommendation is simply meant to reduce the financial exposure of the REP, with little to no consideration for the customer or the process which the rule requires the TDUs to follow before disconnection.

The Joint TDUs noted that it is in no one's interest to disconnect service to a customer if it would jeopardize the life of the customer, but it would not be appropriate to penalize the TDU for refusing do so. The Joint TDUs stated their understanding that this is a difficult societal issue and suggested that the commission bring this matter before the 2011 Legislature and request relief for such customers. The Joint TDUs noted that this issue was considered by the Sunset Advisory Commission in 2004 and that the Sunset Commission recommended that the System Benefit Fund be used to assist the payment of electricity bills for needy patients on life support

or with serious health problems when threatened with disconnection for nonpayment, but the Legislature did not act on the recommendation. The Joint TDUs suggested that the commission bring this issue before the 2011 Legislature and request relief for these customers.

The REP Group agreed with the Joint TDUs that the continuous provision of electric service to critical care customers is a difficult societal issue that should be considered by the Texas Legislature and that it is in no one's interest to disconnect service to a customer if doing so may jeopardize the customer's life but maintained that in the meantime, TDUs and REPs should share financial responsibility for these vulnerable customers when disconnections cannot be performed. The REP Group disagreed with TDUs and Consumers that penalizing TDUs for refusing to disconnect a critical care customer would provide a wrong or perverse incentive for TDUs and noted that subsection (g)(4) is about sharing responsibility for serving vulnerable customers.

The REP Group reiterated its initial comments that proposed subsection (g)(4) should reference timelines set forth in the Delivery Services Tariff to determine when cessation of charges should commence, rather than referring to a TDU's refusal to disconnect. The REP Group noted that the tariff includes language instructing TDU's not to disconnect a customer, if the disconnection will cause a dangerous or life-threatening condition on the customer's premises, without reasonable prior notice so that a customer has time to ameliorate the condition,

Commission Response

The commission appreciates the concerns raised by OPC and Consumers that disallowing TDUs from recovering their charges where the TDU does not disconnect service at the premises of a Critical Care Residential Customer may prompt the TDUs to disconnect the service in a less thoughtful way. The commission's intent in this rule is to provide more protections for a particularly vulnerable class of customers, not to encourage REPs and TDUs to disconnect critical care customers. Nevertheless, the commission concludes that it is not appropriate to permit the TDUs to continue collecting delivery charges from a REP, if the customer fails to pay the REP for the service and the TDU fails to disconnect the customer after having received a disconnection order from the REP.

The Joint TDU's urged the commission not to adopt any rule that is inconsistent with Financing Orders and the status of transition charges under those orders. The commission agrees with the TDU's position and modifies the rule accordingly.

Subsection (k)(2)--disconnection notices

Cities opined that disconnection notices are serious in nature and proposed that the commission require REPs to send disconnection notices both by 1) mail or hand deliver notice and 2) through a separate email, if the customer has agreed to receive communications from the REP by email. Cities pointed out that email may not be a feasible means of notifying customers, as customers having difficulty paying their electric bills may also have problems paying for internet service and, as a result, may have either cancelled their internet service or may have had their internet service disconnected.

Reliant and the REP Group urged the commission to modify this paragraph to allow disconnect notices to be sent to the secondary contact by email if the secondary contact has elected to receive communications by email. The REP Group disagreed with Cities' assertion that customers should receive disconnection notices by both email and a separate mailing or hand delivered letter. The REP Group argued that many customers elect to receive communications by email do so with the explicit understanding and desire not to receive paper copies of notices or bills. By telling the REP that they want communications by email, the customer is telling the REP that email is the best method to make contact about important matters such as billing notices and disconnection notices. The REP Group opined that Cities' arguments about email accessibility are overstated since there are a myriad of ways to check one's email: at work, at the library, at an apartment's business center, at a friend's house, and even on one's cell phone.

Commission Response

The commission believes that the wishes of the customer and secondary contact that elect to receive communications by email should be honored. Should a customer or secondary contact desire or require information in a different format, they can request the REP to provide communications in a different format. As technology grows, so have customers' dependence on it. Many customers select REPs that utilize the same technologies that the customer uses because it is convenient for the customer. If the customer or secondary contact specifies that the REP communicate by email, the commission does not believe that communicating in another method will be effective in notifying the customer of a pending disconnect. Therefore, the commission modifies the disconnect notice to allow a REP to

provide disconnection notice via email if the customer and the secondary contact have so agreed. However, to provide further protection for critical care and chronic condition customers, the commission modifies subsection (g)(2)(A) and subsection (h) to allow email as an additional form of notice for these customers and their secondary contacts, but does not allow email as the only form of contact.

Subsection (n)--effective date

The Joint TDUs argued that it is premature to require implementation of this rule on December 1, 2010 and suggested striking the effective date from this subsection. According to the TDUs, market participants cannot fully evaluate what will be required to implement procedures to carry out the rules until the rules are final. The Joint TDUs added that ERCOT has made it clear that new transactions will not be ready on December 1, 2010 and the TDUs believed that a substitute temporary process would have to be developed and put in place. The Joint TDUs stated that the market should be provided assurance of ERCOT's ability to effectively implement the rule before requiring implementation due to the potential important impacts on customers.

Commission Response

As the result of post-comment period meetings with stakeholders, consensus was reached that the effective date of the disconnection rule should be the same as the proposed rule in Project No. 37622 which is January 1, 2011. Therefore, the commission has changed the effective date of this rule to January 1, 2011.

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

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §17.004 and §39.101, which authorize the commission to adopt and enforce rules that ensure various retail electric customer protections.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004 and 39.101.

§25.454. Rate Reduction Program.

(a) **Purpose.** The purpose of this section is to define the low-income electric rate reduction program, establish the rate reduction calculation, and specify enrollment options and processes.

(b) **Application.** This section applies to retail electric providers (REPs) that provide electric service in an area that has been opened to customer choice, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).

(c) **Funding.** The rate reduction requirements set forth by this subchapter are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers, the following shall apply:

(1) The requirements of subsections (e), (f) and (g) of this section are suspended until sufficient funding and spending authority are available.

(2) The requirements of the following sections of this title, insofar as they relate to the rate reduction benefit, are suspended when sufficient funding and spending authority are not available:

(A) §25.451(j) of this title (relating to Administration of the System Benefit Fund);

(B) §25.457(i)-(j) of this title;

(C) §25.475(g)(4)(L) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers); and

(D) §25.43(d)(3)(D), (q)(1)(A)-(B), (q)(2)(A), and (q)(3)(A) of this title (relating to Provider of Last Resort).

(3) The requirements of §25.480(c)(1) of this title (relating to Bill Payments and Adjustments), insofar as they relate to the rate reduction benefit, are suspended if an eligibility list is not available as provided in subsection (i) of this section.

(d) **Definitions.** The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Discount factor** — The amount of discount an eligible low-income customer must be provided by any REP, or MOU or Coop, when applicable, in the customer's area, expressed as cents per kilowatt-hour (kWh).

(2) **Discount percentage** — The percentage of discount established by the commission and applied to the lower of the price to beat (PTB) or minimum provider of last resort (POLR) rate in a particular service territory.

(3) **Low-Income Discount Administrator (LIDA)** — A third-party vendor with whom the commission has a contract to administer the rate reduction program.

(4) **Rate reduction** — The total discount to be deducted from a customer's electric bill. This reduction is derived from the discount factor and total consumption in accordance with subsection (e)(3) of this section.

(5) **REP** — For the purposes of this section, a retail electric provider and an MOU or Coop that provides retail electric service in an area that has been opened to customer choice.

(6) **Minimum POLR rate** — For the purposes of this section, the minimum POLR rate shall be the POLR rate posted on the commission's website on the Electricity Facts Label for each service territory for 1,000 kWh of usage.

(e) **Rate reduction program.** In each month for which funds are available for the low-income discount, all eligible low-income customers as defined in §25.5 of this title (relating to Definitions) are to receive a rate reduction, as determined by the commission pursuant to this section, on their electric bills from their REP.

(1) Discount factors shall be determined in accordance with this paragraph, as the lower of the PTB or minimum POLR rate for each service territory multiplied by the approved discount percentage.

(A) The commission shall periodically establish the discount percentage. The discount percentage may be set at a level no greater than 20%.

(B) The commission staff shall calculate a discount factor for each service territory and post the discount factors on the commission website (www.puc.state.tx.us).

(C) Each discount factor based on the minimum POLR rate shall be in effect from May through October or November through April, subject to revision pursuant to subsection (e)(2) of this section.

(D) Each discount factor based on the PTB shall be recalculated when the PTB rate changes or the commission revises the discount percentage. The discount factor based on the PTB shall reflect any seasonal variation in the PTB.

(2) The commission may revise the discount factors set pursuant to subsection (e)(1) of this section through a change to the discount percentage because of one of the following occurrences:

(A) The commission staff determines that there are sufficient remaining appropriations for the fiscal year to support an increase in the discount percentage without exceeding available appropriations for the fiscal year. This determination may be triggered by the routine review by commission staff of disbursements and remaining appropriations, or by a fluctuation of five percent or more of the minimum POLR rate.

(B) The commission staff determines that there are insufficient remaining appropriations for the fiscal year, and a decrease to the discount percentage is necessary to ensure that funds spent do not exceed appropriations for the fiscal year.

(C) The commission determines that a change in the discount percentage is consistent with the objectives of this section and the public interest.

(3) All REPs shall provide the rate reduction to eligible low-income customers.

(A) The discount factors posted on the commission's website shall be used to calculate the rate reduction for each eligible low-income customer's bill. If the discount factor changes for any area, REPs shall implement the resulting change in the discount factor in their billings to customers within 30 calendar days of the date the commission posts the revised discount factor to its website, or on the effective date of the discount factor, whichever is later.

(B) The rate reduction shall be calculated by multiplying the customer's total consumption (kWh) for the billing period by the discount factor (in cents/kWh) in effect during the billing cycle in which the bill is rendered. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied.

(C) The customer's discount amount shall be clearly identified as a line item on the electric portion of the customer's bill, including the description "LITE-UP Discount." If a monthly bill is not issued as provided by §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System), the customer's receipt or confirmation of payment, or detailed information accessed by confirmation code, as described by §25.498 of this title, shall indicate that the discount was

applied to the customer's charges with the words "LITE-UP" or "LITE-UP Discount."

(D) REPs are entitled to reimbursement under §25.451(j) of this title for rate reductions they provide to eligible low-income customers.

(f) **Customer enrollment.** Eligible customers may be enrolled in the rate reduction program through automatic enrollment or self-enrollment.

(1) Automatic enrollment is an electronic process to identify customers eligible for the rate reduction by matching client data from the Texas Health and Human Services Commission (HHSC) with customer-specific data from REPs.

(A) HHSC shall provide client information to LIDA in accordance with subsection (g)(1) of this section.

(B) REPs shall provide customer information to LIDA in accordance with subsection (g)(3) of this section.

(C) LIDA shall compare the customer information from HHSC and REPs, create files of matching customers, enroll these customers in the rate reduction program, and notify the REPs of their eligible customers.

(2) Self-enrollment is an alternate enrollment process available to eligible electric customers who are not automatically enrolled and whose combined household income does not exceed 125% of federal poverty guidelines or who receive food stamps or medical assistance from HHSC. The self-enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:

(A) Distributing and processing self-enrollment applications, as developed by the commission, for the purposes of initial self-enrollment, and for re-enrollment of self-enrolled and automatically enrolled customers;

(B) Maintaining customer records for all applicants;

(C) Providing information to customers regarding the process of enrolling in the low-income discount program;

(D) Determining customers' eligibility by reviewing information submitted through self-enrollment forms and determining whether the applicant meets the program qualifications; and

(E) Matching customer information submitted through self-enrollment forms with customer data provided by REPs, creating files of matching customers, enrolling matching customers in the rate reduction programs, and notifying the REPs of their eligible customers.

(3) In determining customers' eligibility in the self-enrollment process, LIDA shall require that customers submit with a self-enrollment form proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information and shall audit statistically valid samples for accuracy. If a person who self-enrolls claims to be eligible because of participation in a qualifying program, LIDA shall require the customer to submit a copy of proof of enrollment or eligibility letter that indicates enrollment of the applicant in the qualifying program.

(4) The following procedures govern a customer's re-enrollment.

(A) A self-enrolled customer may re-enroll by submitting a completed self-enrollment form.

(B) A customer who was formerly, but is no longer, automatically enrolled may re-enroll through self-enrollment.

(C) LIDA shall send a customer who is eligible to re-enroll a self-enrollment form which specifies a date for submitting the completed form that is not more than 30 days after the date the form is mailed. If the customer submits a completed form before the date specified on the form and LIDA determines that the customer is eligible for re-enrollment, the customer shall receive the rate reduction without interruption.

(D) If a customer does not return a properly completed form before the time specified by LIDA, the customer's rate reduction may be interrupted until LIDA determines that the customer is eligible.

(5) The eligibility period of each customer will be determined by the customer's method of enrollment.

(A) The eligibility period for self-enrolled customers is seven months from the date of enrollment.

(B) Automatically enrolled customers will continue to be eligible as long as the customers receive HHSC benefits. Once a customer no longer receives HHSC benefits, the customer will continue to receive the rate reduction benefit for a period of no more than 60 days, during which the customer may self-enroll.

(6) A customer who believes that a self-enrollment application has been erroneously denied may request that LIDA review the application, and the customer may submit additional proof of eligibility.

(A) A customer who is dissatisfied with LIDA's action following a request for review under this paragraph may request an informal hearing to determine eligibility by the commission staff.

(B) A customer who is dissatisfied with the determination after an informal hearing under subparagraph (A) of this paragraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(g) **Responsibilities**. In addition to the requirements established in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; program responsibilities for tasks undertaken by HHSC may be established in the memorandum of understanding between the commission and HHSC.

(1) **HHSC shall:**

(A) assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving HHSC benefits as detailed in the memorandum of understanding between HHSC and the commission; and

(B) assist in the distribution of promotional and informational material as detailed in the memorandum of understanding.

(2) **LIDA shall:**

(A) receive customer lists from REPs on a monthly basis through data transfer;

(B) retrieve the database of clients from HHSC on a monthly basis;

(C) conduct the self-enrollment, automatic enrollment, and re-enrollment processes;

(D) establish a list of eligible customers, by comparing customer lists from the REPs with HHSC databases and identifying customer records that reasonably match;

(E) make available to each REP, on a date prescribed by the commission on a monthly basis, a list of low-income customers eligible to receive the rate reduction;

(F) notify customers that have applied for the rate reduction through the self-enrollment process of their eligibility determination and notify automatically enrolled and self-enrolled customers of their expiration of eligibility, and opportunities for re-enrollment in the rate reduction program;

(G) answer customer inquiries regarding the rate reduction program, and provide information to customers regarding enrollment for the rate reduction program and eligibility requirements;

(H) resolve customer enrollment problems, including issues concerning customer eligibility, the failure to provide discounts to customers who believe they are eligible, and the provision of discounts to customers who do not meet eligibility criteria; and

(I) protect the confidentiality of the customer information provided by the REPs and the client information provided by HHSC.

(3) **A REP shall:**

(A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, Electric Service Identifier (ESI ID), service provider account number, and premise code;

(B) retrieve from LIDA the list of customers who are eligible to receive the rate reduction;

(C) upon commission request, monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3000 kWh in a month shall be considered a high-usage customer;

(D) apply a rate reduction to the electric bills of the eligible customers identified by LIDA within the first billing cycle in which it is notified of a customer's eligibility, if notification is received no later than seven days before the end of the billing cycle, or, if not, apply the rate reduction within 30 calendar days after notification is received from LIDA;

(E) notify customers three times a year about the availability of the rate reduction program, and provide self-enrollment forms to customers upon request;

(F) assist LIDA in working to resolve issues concerning customer eligibility, including the failure to provide discounts to customers who believe they are eligible and the provision of discounts to customers who may not meet the eligibility criteria; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general LITE-UP processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and

(G) provide to the commission copies of materials regarding the rate reduction program given to customers during the previous 12 months upon commission request.

(h) **Confidentiality of information.**

(1) The data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement.

(2) All data transfers from REPs to LIDA pursuant to this section shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information.

(3) LIDA may use information obtained pursuant to this section only for purposes prescribed by commission rule, including use in determining eligibility for assistance under §25.455 of this title (relating to One-Time Bill Payment Assistance Program).

(i) **Eligibility List for Continuation of Late Penalty Waiver Benefits.**

(1) In the event that funding and authorization to expend funds are not sufficient to provide rate reductions for low-income customers that can be reimbursed from the system benefit fund, the commission may, in its discretion, require LIDA to maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsection (f)(1) of this section if funds were available. The procedures set forth in subsection (f)(1) of this section will be used to the extent practicable. In addition to the requirements in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks undertaken by HHSC may be established in a memorandum of understanding between the commission and HHSC. To assist the commission in implementing this provision, REPs shall upon request:

(A) provide residential customer information to LIDA through data transfer on a date prescribed by the commission on a monthly basis. The customer information shall include, to the greatest extent possible, each full name of the primary and secondary customer on each account, billing and service addresses, primary and secondary social security numbers, primary and secondary telephone numbers, ESI ID, service provider account number, and premise code;

(B) retrieve from LIDA the list of customers who would be eligible for automatic enrollment in the rate reduction program if funds were available;

(C) monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. A customer with usage greater than 3,000 kWh in a month shall be considered a high-usage customer;

(D) assist LIDA in working to resolve issues concerning customer eligibility; this obligation requires the REP to employ best efforts to avoid and resolve issues, including training call center personnel on general processes and information, and assigning problem resolution staff to work with LIDA on problems for which LIDA does not have sufficient information to resolve; and

(E) provide other information and assistance, upon request of the commission, to assist in implementation of this section.

(2) If funding is available to include self-enrollees in the list of eligible customers, the commission may, in its discretion, require LIDA to include self-enrollees in the list of eligible customers consistent with subsection (f)(2) of this section or set forth processes for determining eligibility in a procedural guide. The processes, to the extent feasible, will be consistent with subsections (f) and (g) of this section.

(3) If pursuant to subsection (i) of this section, the commission, through the LIDA or other means, provides the REPs with a list of eligible customers §25.480(c)(1) of this title, which requires that a customer receiving a low-income discount pursuant to the Public Utility Regulatory Act §39.903(h) may not be assessed a

late penalty, shall be continued based on the customer's eligibility for the discount, rather than the customer's receipt of the discount.

(j) **Deposit Installment Benefits.**

(1) If LIDA is maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, then a customer or applicant who qualifies for the rate reduction program is eligible to pay deposits over $50 in two installments, pursuant to §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(A) A REP who requires a customer or applicant to provide sufficient information to the REP to demonstrate that the customer or applicant qualifies for the rate reduction program may request the following information:

(i) a letter from the customer's or applicant's current or prior REP stating that the applicant is on the list of customers who would be eligible for the rate reduction if funds were available;

(ii) a bill from the current or prior REP that demonstrates that the customer or applicant is enrolled in the rate reduction program; or

(iii) other documentation that the REP determines to be appropriate and requests on a non-discriminatory basis.

(B) Upon the request of a customer, a REP shall provide a letter stating that the customer is on the list of customers who would be eligible for the rate

reduction if funds were available. This letter may be combined with a letter issued to a customer regarding bill payment history.

(2) If LIDA is not maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, a REP shall extend the option to pay deposits over $50 in two installments to any residential customers or applicants who qualify for the rate reduction program. The REP may, on a non-discriminatory basis, require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate. The REP shall provide notice of this option in any written notice requesting a deposit from a customer. This paragraph supersedes the provisions of §25.478(c)(3) and (d)(3) of this title that require payment of the entire amount of a deposit within ten days.

(k) **Voluntary Programs.** Nothing in this section is intended to impair a REP's ability to voluntarily provide a low-income discount or other benefits to low-income customers.

(1) The list of low-income customers who would be eligible for the rate reduction if funds were available, or other non-discriminatory criteria, may be utilized by a REP as evidence of a customer's eligibility for the REP's voluntary low-income program, if offered.

(2) In the event a REP chooses to voluntarily offer a discount or other benefits to low-income customers, the REP shall treat any information obtained regarding the customer's financial status or enrollment in a government program as confidential information and shall not disclose the information to any other party or use the

information for any purpose other than enrollment in a voluntary low-income program.

(l) **Effective date.** The effective date of this section is December 1, 2010.

§25.480. Bill Payment and Adjustments.

(a) **Application.** This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. In addition, this section applies to a transmission and distribution utility (TDU) where specifically stated. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

(b) **Bill due date.** A REP shall state a payment due date on the bill which shall not be less than 16 days after issuance. A bill is considered to be issued on the issuance date stated on the bill or the postmark date on the envelope, whichever is later. A payment for electric service is delinquent if not received by the REP or at the REP's authorized payment agency by the close of business on the due date. If the 16th day falls on a holiday or weekend, then the due date shall be the next business day after the 16th day.

(c) **Penalty on delinquent bills for electric service.**

A REP may charge a one-time penalty not to exceed 5.0% on a delinquent bill for electric service. No such penalty shall apply to residential or small commercial customers served by the provider of last resort (POLR), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). The one-time penalty,

not to exceed 5.0%, may not be applied to any balance to which the penalty has already been applied.

(d) **Overbilling.** If charges are found to be higher than authorized in the REP's terms and conditions for service or other applicable commission rules, then the customer's bill shall be corrected.

(1) The correction shall be made for the entire period of the overbilling.

(2) If the REP corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.

(3) If the REP does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission.

(A) Interest on overcharges that are not adjusted by the REP within three billing cycles of the bill in error shall accrue from the date of payment by the customer.

(B) All interest shall be compounded monthly at the approved annual rate set by the commission.

(C) Interest shall not apply to leveling plans or estimated billings.

(4) If the REP rebills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.

(e) **Underbilling by a REP.** If charges are found to be lower than authorized by the REP's terms and conditions of service, or if the REP fails to bill the customer for service, then the customer's bill may be corrected.

(1) The customer shall not be responsible for corrected charges billed by the REP unless such charges are billed by the REP within 180 days from the date of issuance of the bill in which the underbilling occurred The REP may backbill a customer for the amount that was underbilled beyond the timelines provided in this paragraph if:

(A) the underbilling is found to be the result of meter tampering by the customer; or

(B) the TDU bills the REP for an underbilling as a result of meter error as provided in §25.126 of this tile (relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced).

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

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

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

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

(A) All REPs shall implement a bill payment assistance program for residential electric customers. At a minimum, such a program shall solicit voluntary donations from customers through the retail electric bills.

(B) In its annual report filed pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)), each REP shall summarize :

(i) the total amount of customer donations;

(ii) the amount of money set aside for bill payment assistance;

(iii) the assistance agency or agencies selected to disburse funds to residential customers;

(iv) the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers; and

(v) the number of customers who had a switch-hold applied during the year.

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

(h) **Level and average payment plans.** A REP shall make a level or average payment plan available to its customers consistent with this subsection. A customer receiving service from a provider of last resort (POLR) may be required to select a competitive product offered by the POLR REP to receive the level or average payment plan.

(1) A REP shall make a level or average payment plan available to a residential customer receiving a rate reduction pursuant to §25.454 of this title (relating to Rate Reduction Program), even if the customer is delinquent in payment to the REP.

(2) A REP shall make a level or average payment plan available to a customer who is not currently delinquent in payment to the REP. A customer is delinquent in payment in the following circumstances:

(A) A customer whose normal billing arrangement provides for payment after the rendition of service is delinquent if the date specified for payment of a bill has passed and the customer has not paid the full amount due.

(B) A customer whose normal billing arrangement provides for payment before the rendition of service is delinquent if the customer has a negative balance on the account for electric service.

(3) A REP shall reconcile any over- or under-payment consistent with the applicable terms of service, which shall provide for reconciliation at least every twelve months. For a customer with an average payment plan, a REP may recalculate the average consumption or average bill and adjust the customer's required minimum payment as frequently as every billing period. A REP may collect under-payments associated with a level payment plan from a customer over a period no less than the reconciliation period or upon termination of service to the customer. A REP shall credit or refund any over-payments associated with a level payment plan to the customer at each reconciliation and upon termination of service to the customer. A REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a level or average payment plan. All details concerning a level or average payment program shall be disclosed in the customer's terms of service document.

(4) If the customer is delinquent in payment when the level or average payment plan is established, the REP may require the customer to pay no greater than 50% of the delinquent amount due. The REP may require the remaining delinquent amount to be paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments or may include the remaining delinquent amount in the calculation of the level or average payment amount. If the REP requires installment payments, the REP shall provide the

customer a copy of the deferred payment plan in writing as described in subsection (j)(5) of this section.

(5) If the amount of the deferred balance does not appear on each bill the customer receives, the REP shall inform the customer that the customer may call the REP at any time to determine the amount that must be paid to be removed from the level or average payment plan.

(6) If the customer is delinquent in payment when the level or average payment plan is established, the REP may apply a switch-hold at that time.

(7) Before the REP applies a switch-hold to a customer on a level or average payment plan, the REP shall provide orally or in writing a clear explanation of the switch-hold process to the customer, prior to the customer's agreement to the plan. The explanation shall inform the customer as follows: "If you enter into this plan concerning your past due amount, we will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay the total deferred balance. If we put a switch-hold on your account, it will be removed after your deferred balance is paid and processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(8) If the customer is not delinquent in payment when the level or average payment plan is established, a switch-hold shall not be applied unless the plan is established pursuant to subsection (j)(2)(B)(ii) of this section.

(9) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to subsection (m) of this section, when the customer satisfies either subparagraph (A) or (B) of this paragraph, whichever occurs earlier. On the date the REP submits the request to remove the switch-hold, the REP shall notify or send notice to the customer that the customer has satisfied the obligation to pay any deferred balance owed and the removal of the switch-hold is being processed.

(A) The customer's deferred balance, including any deferred delinquent amount described in paragraph (4) of this subsection, is either zero or in an over-payment status.

(B) The customer satisfies the terms of any deferred delinquent amount described in paragraph (4) of this subsection and has paid bills for 12 consecutive billings without having been disconnected and without having more than one late payment.

(i) **Payment arrangements.** A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issues a disconnection notice before a payment arrangement was made, that disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be disconnected after the later of the due date for the payment arrangement or the disconnection date indicated in the notice, without issuing an additional disconnection notice.

(j) **Deferred payment plans and other alternate payment arrangements.**

(1) A deferred payment plan is an agreement between the REP and a customer that allows a customer to pay an outstanding balance in installments that extend beyond the due date of the current bill. A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans shall be confirmed in writing by the REP in accordance with subsection (j)(5) of this section. Before the REP applies a switch-hold to a customer on a deferred payment plan, the REP shall provide a clear explanation of the switch-hold process to the customer. The explanation shall inform the customer as follows: "If you enter into this plan concerning your past due amount, we will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay the total deferred balance. If we put a switch-hold on your account, it will be removed after your deferred balance is paid and processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(A) A REP shall offer a deferred payment plan to customers, upon request, for bills that become due during an extreme weather emergency, pursuant to §25.483(j) of this title (relating to Disconnection of Service).

(B) As directed by the commission, during a state of disaster declared by the governor pursuant to Texas Government Code §418.014, a REP shall offer

a deferred payment plan to customers, upon request, in the area covered by the declaration.

(C) A REP shall offer a deferred payment plan to a customer who has been underbilled, pursuant to subsection (e) of this section.

(2) A REP shall make a payment plan available, upon request, to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in July, August, or September. A REP shall make a payment plan available, upon request, to a residential customer that meets the requirements of subparagraph (A) of this paragraph for a bill that becomes due in January or February if in the prior month a TDU notified the commission pursuant to §25.483(j) of this title of an extreme weather emergency for the residential customer's county in the TDU service area for at least five consecutive days during the month. A REP is not required to offer a payment plan to a customer pursuant to this paragraph if the customer is on an existing deferred, level, or average payment plan.

(A) The following residential customers are eligible for a payment plan under this paragraph:

(i) customers receiving the LITE-UP discount pursuant to §25.454 of this title;

(ii) customers designated as Critical Care Residential Customers or Chronic Condition Residential Customers under §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load

Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers); or

(iii) customers who have expressed an inability to pay unless the customer:

(I) has been disconnected during the preceding 12 months;

(II) has submitted more than two payments during the preceding 12 months that were found to have insufficient funds available; or

(III) has received service from the REP for less than three months, and the customer lacks:

(-a-) sufficient credit; or

(-b-) a satisfactory history of payment for electric service from a previous REP or utility.

(B) The REP shall make available, at the customer's option, the plans described in clauses (i) and (ii) of this subparagraph.

(i) A deferred payment plan with the initial payment amount no greater than 50% of the amount due. The deferred amount shall be paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments.

(ii) A level or average payment plan instead of requiring the balance due to be paid. The level or average payment plan shall be offered subject to the requirements of subsection (h) of this section.

(C) The REP shall not seek an additional deposit as a result of a customer's entering into a deferred payment plan under this paragraph.

(3) A REP shall not refuse customer participation in a deferred payment plan on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(4) A REP may voluntarily offer a deferred payment plan to customers who have expressed an inability to pay.

(5) A copy of the deferred payment plan shall be provided to the customer and:

(A) shall include a statement, in a clear and conspicuous type, that states "If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact (insert name and contact number of REP).";

(B) if a switch-hold will apply, shall include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on.";

(C) where the customer and the REP's representative or agent meets in person, the representative shall read the statements in subsections (j)(5)(A) and, if applicable, (j)(5)(B) of this section to the customer;

(D) may include the one-time penalty in accordance with subsection (c) of this section but shall not include a finance charge;

(E) shall state the length of time covered by the plan;

(F) shall state the total amount to be paid under the plan;

(G) shall state the specific amount of each installment;

(H) shall state whether the amount of the deferred balance will appear on each bill the customer receives and that the customer may call the REP at any time to determine the amount that must be paid to satisfy the terms of the deferred payment plan; and

(I) shall state whether there may be a disconnection of service if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection.

(6) A REP may pursue disconnection of service if a customer does not meet the terms of a deferred payment plan. However, service shall not be disconnected until appropriate notice has been issued, pursuant to §25.483 of this title, notifying the customer that the customer has not met the terms of the plan. The requirements of subsection (j)(2) of this section shall not apply with respect to a customer who has defaulted on a deferred payment plan.

(7) A REP may apply a switch-hold while the customer is on a deferred payment plan.

(8) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to subsection (m) of this section, after the customer's payment of the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP shall notify or send notice to the customer that the customer has satisfied the obligation to pay any deferred balance owed and the removal of the switch-hold is being processed.

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

(l) **Switch-hold.**

(1) subsection (j)A REP may request that the TDU place a switch-hold on an ESI ID to the extent allowed by subsection (h) or (j) of this section, which shall prevent a switch transaction from being completed for the ESI ID and shall prevent a move-in transaction from being completed pending documentation that the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed. If the REP exercises its right to disconnect service for non-payment pursuant to §25.483 of this title, the switch-hold shall continue to remain in place. The TDU shall create and maintain a secure list of ESI IDs with switch-holds that REPs may access. The list shall not include any customer

information other than the ESI ID and date the switch-hold was placed. The list shall be updated daily, and made available through a secure means by the TDU. The TDU may provide this list in a secure format through the web portal developed as part of its AMS deployment.

(A) The REP via a standard market process may request a switch-hold.

(B) The REP shall submit a request to remove the switch-hold as required by subsections (h)(9) and (j)(8) of this section.

(C) When the REP of record issues a move-out request for the flagged ESI ID, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.

(D) At the time of a mass transition, the TDU shall remove the switch-hold flag for any ESI ID that is transitioned to a provider of last resort (POLR) provider.

(E) When the applicant for electric service is shown to be a new occupant not associated with the customer for which the switch-hold was imposed using the switch-hold process described in §25.126 of this title (relating to Adjustments Due to Meter Errors, Meter Tampering or Theft in Areas in Which Customer Choice is Available), the switch-hold flag shall be removed.

(F) For a move-in transaction indicating that the ESI ID is subject to a continuous service agreement, the TDU shall remove any switch-hold on that ESI ID and complete the move-in.

(2) In the first TX SET release after January 1, 2011, market transactions shall be developed that support the following requirements.

(A) REPs may request a switch-hold as allowed by subsection (h) or (j) of this section.

(B) TDUs shall provide indication of which ESI IDs have switch-holds so that during a move-in enrollment a REP can identify whether a switch-hold applies and that specific documentation must be submitted to have the switch-hold removed.

(C) A move-in subject to a switch-hold can be submitted for processing when the customer initially requests the move-in and such transaction will be held in the system for final processing depending on the approval or rejection of the move-in documentation. The TDU shall notify the submitting REP that there is a switch-hold on the ESI ID.

(3) The requirements of §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) shall continue to apply while a customer is subject to a switch-hold. The notice required by §25.475(e) of this title shall include a statement reminding the customer that if a switch-hold is in effect, the balance deferred must be paid in full before the customer will be able to change to a new provider.

(4) A customer who is subject to a switch-hold shall not be charged any separate fees for a switch-hold or any customer service or administrative fees related to the switch-hold.

(5) A REP shall not discriminate against any customer that is on a switch-hold in the provision of services or pricing of products. A customer on a switch-hold shall be eligible for all services and products generally available to the REP's other customers.

(6) If a REP applies a switch-hold to a customer account and the customer's contract expires while under the switch-hold, the REP shall provide notice of the contract expiration as required by §25.475 of this title. Unless a customer affirmatively chooses a different product with the REP, a customer whose term product expires while the customer is subject to a switch-hold shall be moved to the lowest priced month-to-month product currently offered by the REP to new applicants, or, if the REP does not offer month-to-month products to new applicants, shall be served on a month-to-month basis at the price equivalent to the lowest price of the shortest term fixed product currently offered by the REP to new applicants. Otherwise, the REP shall request the removal of the switch-hold in compliance with subsection (m) of this section. The offers shall include those made on www.powertochoose.com. If the customer does not affirmatively choose a product, the customer shall not be required by the REP to enter into another contract term so long as the switch-hold remains on the customer account and no early termination fees shall be applied to the customer's account.

(m) **Placement and Removal of Switch-Holds.**

(1) A REP may request a switch-hold only as allowed under this section.

(2) A REP shall be responsible for requesting that the TDU remove a switch-hold after the customer's obligation to the REP related to the switch-hold is satisfied. If a customer's obligation to the REP is satisfied by 10:00 p.m. on a business day, the REP shall send a request to the TDU to remove the switch-hold by Noon (12:00 p.m.) of the next business day. If the TDU receives the request by 1:00 PM on a business day, the TDU shall remove the switch-hold by 8:00 PM of the same business day in which it receives the request to remove the switch-hold from the REP.

(3) The REP shall submit a request to remove a switch-hold pursuant to subsection (l)(6) of this section to the TDU, such that the TDU will remove the switch-hold on or before the customer's contract expiration date.

(4) If a REP erroneously places a switch-hold flag on an ESI ID, thus preventing a legitimate switch, or does not remove the switch-hold within the timeline described in paragraph (2) of this subsection, the REP shall be considered to have committed a Class B Violation (as defined in §25.8(b) of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers)) for purposes of any administrative penalties imposed by the commission.

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

§25.483. Disconnection of Service.

(a) **Disconnection and reconnection policy**. Only a transmission and distribution utility (TDU), 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 TDU, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the protocols established by the registration agent, and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall comply with the requirements in this section. Nothing in this section requires a REP to request that a customer's service be disconnected.

(b) **Disconnection authority.**

(1) Any REP may authorize the disconnection of a medium non-residential or large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)).

(2) Except as provided in subsection (d) of this section, all REPs shall have the authority to authorize the disconnection of residential and small non-residential customers pursuant to commission rules. Prior to authorizing disconnections for non-payment in accordance with this paragraph, a REP shall:

(A) test all necessary electronic transactions related to disconnections and reconnections of service; and

(B) file an affidavit from an officer of the company, in a project established by the commission for this purpose, affirming that the REP understands and has trained its personnel on the commission's rule requirements related to disconnection and reconnection, and has adequately tested the transactions described in subparagraph (A) of this paragraph.

(c) **Disconnection with notice**. A REP having disconnection authority under the provisions of subsection (b) of this section, including the POLR, may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the disconnection date in the notice for any of the following reasons:

(1) failure to pay any outstanding bona fide debt for electric service owed to the REP or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP;

(2) failure to comply with the terms of a deferred payment agreement made with the REP;

(3) violation of the REP'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 REP has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

(d) **Disconnection without prior notice**. Any REP or TDU may, at any time, 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.

(e) **Disconnection prohibited**. A REP having disconnection authority under the provisions of subsection (b) of this section 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 optional services;

(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 resulting 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 not under dispute, 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 tile (relating to Adjustments Due to Non-Compliant Meters and Meter Tampering in Areas Where Customer Choice Has Been Introduced); or

(7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the bill is based on an estimated meter read by the TDU.

(f) **Disconnection on holidays or weekends**

(1) A REP having disconnection authority under the provisions of subsection (b) of this section 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 REP's personnel are available on those days to take payments, make payment arrangements with the customer, and request reconnection of service.

(2) Unless a dangerous condition exists or the customer requests disconnection, a TDU shall not disconnect a customer's electric service on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the personnel of the TDU are available to reconnect service on all of those days.

(g) **Disconnection of Critical Care Residential Customers**. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent Critical Care Residential Customer when that customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill.

(1) Each time a Critical Care Residential 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 "physician" shall mean any public health official, including medical

doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar medical professional) contact the REP to confirm that the customer is a Critical Care Residential Customer;

(B) Have the person's attending physician submit a written statement to the REP confirming that the customer is a Critical Care Residential Customer; and

(C) Enter into a deferred payment plan.

(2) The prohibition against service disconnection of a Critical Care Residential Customer 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, secondary contact, or attending physician. If the Critical Care Residential Customer does not accomplish the requirements of (g)(1):

(A) The REP shall provide written notice to the Critical Care Residential Customer and the secondary contact listed on the commission-approved application form of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice shall be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or secondary contact to receive disconnection notices from the REP by email, a separate email with the words "disconnection notice" or similar language in the subject line shall be sent in addition to the separate mailing or hand delivered notice. Except as

provided in this subsection, the notice shall comply with the requirements of subsections (l) and (m) of this section; and,

(B) Prior to disconnecting a Critical Care Residential Customer, a TDU shall contact the customer and the secondary contact listed on the commission-approved application form. If the TDU does not reach the customer and secondary contact by phone, the TDU shall visit the premises, and, if there is no response, shall leave a door hanger containing the pending disconnection information and information on how to contact the REP and TDU.

(3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection when not otherwise required.

(4) If a TDU refuses to disconnect a Critical Care Residential Customer pursuant to this subsection, it shall cease charging all transmission and distribution charges and surcharges, except securitization-related charges, for that premises to the REP.

(h) **Disconnection of Chronic Condition Residential Customers.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a Chronic Condition Residential Customer pursuant to §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers), except as provided in this subsection.

The REP shall notify the Chronic Condition Residential Customer and the secondary contact listed on the commission-approved application form with a written notice of its intention to disconnect service not later than 21 days prior to the date that service would be disconnected. Such notice shall be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. If the REP has offered and the customer has agreed for the customer and/or secondary contact to receive disconnection notices from the REP by email, a separate email with the words "disconnection notice" or similar language in the subject line shall be also be sent in addition to the separate mailing or hand delivered notice. Except as provided in this subsection, the notice shall comply with the requirements of subsections (l) and (m) of this section.

(i) **Disconnection of energy assistance clients**.

(1) A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

(2) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided.

(3) A REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.

(4) A REP may request disconnection of service to a customer if payment from the energy assistance provider's pledge is not received within the time frame agreed to by the REP and the energy assistance provider, or if the customer fails to pay any portion of the outstanding balance not covered by the pledge.

(j) **Disconnection during extreme weather**. A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan upon request by the customer 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.

(1) The term "extreme weather emergency" shall mean a day when:

(A) 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

(B) 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.

(2) A TDU shall notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in its service area. The initial notice shall include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.

(k) **Disconnection of master-metered apartments**. When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The REP having disconnection authority under the provisions of subsection (b) of this section shall send a notice to the customer as required by subsection (k) of this section. At the time such notice is issued, the REP, 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 REP shall post a minimum of five notices in English and Spanish 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)."

(l) **Disconnection notices**. A disconnection notice for nonpayment shall:

(1) not be issued before the first day after the bill is due;

(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 or, if the REP has offered and the customer has agreed to receive disconnection notices from the REP by email, be a separate email with the words "disconnection notice" or similar language in the subject line. The REP may send the disconnection notice concurrently with the request for a deposit;

(3) have a disconnection date that is not a holiday, weekend day, or day that the REP's personnel are not available to take payments, and is not less than ten days after the notice is issued; and

(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 a deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.

(m) **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 REP to discuss the notice of disconnection 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. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm;"

(6) 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 and with the consent of both REPs;

(7) The availability of deferred payment or other billing arrangements, 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; and

(8) A description of the activities that the REP will use to collect payment, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

(n) **Reconnection of service.** Upon a customer's satisfactory correction of the reasons for disconnection, the REP shall request the TDU, municipally owned utility, or electric cooperative to reconnect the customer's electric service as quickly as possible. The REP shall inform the customer of the approximate reconnection time in accordance with this subsection. If a REP submits a reconnection order with no priority or same day reconnect request and the TDU completes the reconnect the same day, the TDU shall not assess a priority reconnect fee. A TDU may assess a priority reconnect fee only when the customer expressly requests it. A customer's service shall be reconnected no later than the timelines set forth below:

(1) For payments made between 8:00 a.m. and 12:00 p.m. on a business day, a REP shall send a reconnection request to the TDU no later than 2:00 p.m. on the same day. The TDU shall reconnect service to that customer that day if possible, but no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(2) For payments made after 12:00 p.m., but before 5:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 7:00 p.m. on the same day. The TDU shall reconnect service to that customer the next day if possible, but no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(3) For payments made after 5:00 p.m., but before 7:00 p.m. on a business day, a REP shall send a reconnection request to the TDU by 9:00 p.m. The TDU shall reconnect service to that customer as soon as possible, but no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(4) For payments made after 7:00 p.m., but before 8:00 a.m. on the next business day, a REP shall send a reconnection request to the TDU by 2:00 p.m. on the next business day. The TDU shall reconnect service to that customer no later than the end of the next utility field operational day after the reconnection request was received by the TDU.

(5) For payments made on a weekend day or a holiday, a REP shall send a reconnection request to the TDU by 2:00 p.m. on the first business day after the payment was made. The TDU shall reconnect service to that customer no later

than the end of the next utility field operational day after the reconnection request was received by the TDU.

(6) In no event shall a REP fail to send a reconnection notice within 48 hours after the customer's satisfactory correction of the reasons for disconnection as specified in the disconnection notice.

(7) In no event shall a TDU fail to reconnect service within 48 hours after a reconnection request is received.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that the amendments to §25.454 relating to *Rate Reduction Program*, §25.480 relating to *Bill Payment and Adjustments*, and §25.483 relating to *Disconnection of Service* are hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS this the 27th day of SEPTEMBER 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

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BARRY T. SMITHERMAN, CHAIRMAN

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DONNA L. NELSON, COMMISSIONER

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KENNETH W. ANDERSON, JR., COMMISSIONER

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