

Comments were received on December 1, 2003 and reply comments were received on December 15, 2003. A public hearing was held on December 10, 2003.

The commission received written comments on the proposed rules and registration form from the Retail Electric Provider Coalition (REP Coalition); Reliant Resources, Inc. (RRI); Centrica Retail Electric Providers (Centrica); Green Mountain Energy Company (GMEC); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, Entergy Texas Distribution (Entergy), Oncor Electric Delivery Company, and Texas-New Mexico Power Company (Joint TDUs); Texas Energy Association for Marketers (TEAM); Fire Fly Electricity (Fire Fly); Direct Energy; Electric Reliability Council of Texas (ERCOT); AEP Texas Central Company and AEP Texas North Company (AEP); Texas Industrial Energy Customers (TIEC); Office of the Public Utility Counsel (OPUC); TXU Energy Retail Company LP (TXU Energy); Denton Municipal Electric (DME); Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy (Consumer Groups); Texas Department of Housing and Community Affairs (TDHCA); Texas Council on Family Violence (TCFV); Environmental Defense; and the Wind Coalition.

The commission initiated this project to review the customer protection rules that apply to the areas of Texas where retail competition has been introduced. Retail competition began in Texas in January 2002, and the commission believed it appropriate to revisit these rules in light of the actual experience of customers, retail electric providers (REPs), and the commission during the first years of competition.

One of the principal topics addressed in this project was whether or not all REPs should have the ability to request disconnection of service for those residential and small commercial customers who fail to timely pay for electric service. The rules existing prior to these amendments provided that only the REP affiliated with the transmission and distribution utility (TDU) in an area (affiliated REP), and the provider of last resort (POLR) in an area could request disconnection of residential and small commercial customers. Non-affiliated REPs could terminate service to a non-paying customer and transfer the service of the customer to the affiliated REP in the area. The affiliated REP could then disconnect the customer if the customer did not establish satisfactory credit with the affiliated REP. The prior rules also provided that the commission would make a determination on or before October 1, 2004 as to whether or not all REPs should be permitted to request disconnections of customers.

Nearly all of the REPs that filed comments in this proceeding requested that the commission grant disconnection authority to all REPs as soon as possible, in some cases as soon as March 15, 2004. Additionally, certain REPs suggested that the commission should not only permit REPs to request disconnection of non-paying customers, but should also require that customers cure any delinquency with their current REP before being permitted to enroll with another REP ("hard disconnections"). Several parties opposed these changes, generally arguing that the retail providers have adequate means at their disposal to manage credit issues with customers, and arguing that that the proposed changes represented a diminution in the quality of customer service that customers enjoyed prior to the introduction of competition.

The commission is adopting one of the changes advocated by REPs, namely, allowing all REPs to request disconnection of customers who fail to timely pay for their electric service. The commission finds that a June 1, 2004 date is an appropriate implementation date for this new policy, provided that REPs meet certain conditions. This arrangement will standardize the authority to request disconnection across all REPs in the marketplace, and will therefore reduce the customer confusion that has resulted from the current two-tier procedure (whereby only affiliated REPs could request disconnection). This new policy will also put the responsibility for managing credit and payment issues in the hands of the REP that is currently serving the customer, as opposed to the current process, where the affiliated REP is potentially injected into handling credit and payment issues that have arisen with another REP.

The commission is not adopting the modification related to “hard disconnections” at this time. The commission is concerned that the hard disconnection process may be onerous to customers and could engender a large number of highly-charged disputes. A number of persons that filed comments in the rulemaking proceeding also suggested that there were significant technical issues that would need to be resolved in connection with implementing hard disconnections. The commission concludes that these comments are correct, but because of the work that must be done by REPs and TDUs in order to implement the other policies adopted in these amendments does not believe that it is appropriate to initiate a process to resolve the technical issues at this time.

One other modification to the rules was proposed for dealing with non-payment issues by residential and small commercial customers: allowing larger deposits. Some of the REPs

indicated that the maximum deposit that could be required for the initiation of service should be increased from 1/6 of the expected annual billings to 1/5 of the expected annual billings. This change is predicated on the length of time that the REP may be exposed to charges for providing electric service to a customer on credit. The events that occur during this period in which the REP is extending credit to the customer are billing the customer, determining whether the customer has paid the bill on time, notifying the customer of the termination or disconnection of the service, and the actual termination or disconnection of the service. This process is longer than the process for disconnecting service where retail competition is not available. In connection with the introduction of retail competition, the bundled utilities have been required to separate their retail function from the metering and delivery function, and in order to terminate or disconnect service to a customer, the REP must notify the TDU and (in the case of a termination) the affiliated REP. These communications add time to the disconnection process. The commission concludes that the deposit requirement should be modified to match more closely the time that is required to terminate a customer's service and switch the customer to the affiliated REP or to request the disconnection of the service and have the disconnection carried out by the TDU.

In addition to the sections as proposed, the commission requested comments on the following questions:

1. Should the commission give all retail electric providers (REPs) the right to disconnect on June 1, 2004, instead of October 1, 2004 as proposed in the amendments to §25.483, Disconnection of Service. Once all REPs have the right to disconnect for non-payment, should §25.482, Termination of Service be repealed?

Staff report

The REP Coalition called for the elimination of the commission Staff report on whether REPs should have the right to disconnect small commercial and residential customers for non-payment. They argued that such a report is unnecessary because it is clear that the ability for all REPs to perform disconnects is an appropriate step to enhance this market.

Both OPUC and the Consumer Groups stated that the commission appears to presume these rights will be given to all REPs without investigating or seeking public comment on the effects on ratepayers. In reply comments, the REP Coalition noted that the commission has given the public the opportunity to comment on this issue as part of this rulemaking process. The REP Coalition stated that the commission could use information gathered informally during the rulemaking in place of the Staff study.

Further, the REP Coalition pointed out that Staff has been able to review reports filed pursuant to §25.43(q), has participated in the discussions at the Retail Market Subcommittee at ERCOT, and is aware of the status of retail systems. The REP Coalition argued that the commission should make a determination that the market is ready and that it is in the public interest to move forward with disconnection rights without requiring the Staff to write another report.

The commission notes that the policy of permitting all REPs to disconnect for non-payment was not raised for the first time in this proceeding, Instead, this policy was most recently envisioned at the time of Project Number 25360, *Rulemaking Proceeding to Amend Requirements for Provider of Last Resort Service*, which established a preliminary date of October 2004 for implementation, after the issuance of a Staff report in June 2004. The

commission proposed in this project to accelerate those dates to June, and April, respectively, and specifically asked a question concerning the advisability of this policy. This rulemaking is being conducted pursuant to the Administrative Procedures Act, and therefore parties have been given the opportunity to comment and provide information which can be used in the place of the study. The commission therefore disagrees with OPUC and Consumer Groups that the commission is presuming these rights will be given to all REPs without investigating or seeking public comment.

This rulemaking project was initially opened over one year ago, and has afforded all of interested parties ample opportunity to provide input on the disconnection issues. Because of the extensive time and effort put into this rulemaking, the commission finds that it would be an inappropriate use of the commission's and other parties' resources to address the same issues in the context of a Staff report. As such, the commission finds it appropriate to eliminate the requirement that the commission Staff prepare such a report.

The commission has amended §25.483(b)(2) to remove the requirement for the Staff report.

General comments on the ability of all REPs to request disconnection

OPUC and the Consumer Groups opposed allowing all REPs to disconnect customers for non-payment. Consumer Groups argued that a competitive REP with disconnection rights should be required to abide by all provisions of customer protection rules that currently apply to only affiliated REPs and POLRs. Consumer Groups asserted that if REPs were required to take on these responsibilities to obtain the right to disconnect, then some REPs would forgo disconnection rights. OPUC and Consumer Groups also asserted that no other state has allowed

competitive retail electric companies to disconnect customers for non-payment, and that PURA does not envision any entity except a POLR having the right to disconnect for non-payment.

The REP Coalition and GMEC disagreed with the Consumer Group's argument that no other states have allowed competitive REPs to disconnect for competitive energy charges. The REP Coalition and GMEC acknowledged that, in general, the retailers in other states cannot disconnect for competitive energy charges. However, they pointed out, in these states, it is usually the TDUs that are responsible for billing retail customers. Under those retail models, the TDUs purchase the receivables for REPs. Therefore, the REP Coalition argued, the entity that contends with the bad debt does have the right to disconnect. The REP Coalition provided a chart showing the differences in disconnection policies in other states. They argued that the commission should not take a single policy in a state, separate from its related policies, to show that it is right for Texas.

OPUC argued that disconnection is a tool for entities in the regulated market and that disconnection is not needed or warranted in a competitive market. However, the REP Coalition disagreed, arguing that by requiring REPs to transfer non-paying customers to the affiliated REP prior to disconnection, the end result is that the customer has more debt because the customer cannot pay the affiliated REP, just as the customer could not pay the competitive REP, and this larger debt is much harder for the customer to pay off.

Consumer Groups noted that the commission decided to not allow all REPs the right to disconnect for nonpayment during the development of the initial customer protection rules established for retail competition. They asserted that the commission's reasoning in Project

Number 22255, *PUC Rulemaking Proceeding for Customer Protection Rules for Electric Restructuring Implementing Senate Bill 7 and Senate Bill 86*, still holds true. The REP Coalition disagreed, pointing out that the commission has already changed its view when it granted affiliated REPs the right to disconnect for non-payment in October 2002. The REP Coalition, therefore found that the next step is to allow all REPs to disconnect and that consumers will continue to be protected by the rules governing disconnection. They also noted that disconnection for non-payment was discussed in Project Number 25360, *Rulemaking Proceeding to Amend Requirements for Provider of Last Resort Service*, and that the commission's conclusion was that the question is not whether or not disconnection for non-payment will be allowed, but when.

Consumer Groups argued that if the commission does allow all REPs to disconnect customers for non-payment, then the right should be neither automatic nor continuing. Consumer Groups stated that the commission should require REPs to apply for the right to disconnect for non-payment, and the commission should evaluate and score those applications on an annual basis.

The REP Coalition disagreed with the argument that this will cause more customers to be disconnected. Therefore, the REP Coalition disagreed that TDUs will not be able to keep up with the requests, because they found that the number of requests should be approximately the same, and therefore the only problem may be dealing with the increased number of REPs. The REP Coalition also noted that regardless of how many customers are disconnected, there are adequate provisions that address the health and safety of customers.

The commission finds that all REPs should be given the right to disconnect for non-payment. The appropriate end state with respect to termination of service is that all REPs have the right to request that a customer be disconnected for non-payment, as discussed in Project Number 25360. This arrangement standardizes disconnection policy across all REPs, is easier than the current procedures for customers to understand, and it puts the responsibility for managing credit and payment issues in the hands of the REP that is serving the customer.

While it may be true that most other states with retail competition do not explicitly permit competitive providers to disconnect for non-payment, no other state has required the corporate unbundling that Texas has, and no other state requires that the REP provide a consolidated bill for both competitive and delivery charges. In most other states, the incumbent utility still provides bundled service, and has a default or POLR-type obligation. In Texas, all REPs are essentially competitive suppliers, with the exception of the limited rate regulation and obligation to serve that exists with respect to the affiliated REPs (until 2007) and POLRs. Also, as stated by GMEC, other states require the local utility to purchase the receivables from competitive suppliers, and the local utility can ultimately disconnect customers for non-payment of regulated delivery charges. In other words, the entity that issues the bill and is responsible for collection of receivables in other states has disconnection rights. The commission finds that this should also be the case in Texas, and that all REPs should therefore have the ability to request disconnections in the event of non-payment by customers.

The commission also finds that the information which is currently publicly available also supports such a finding for the following reasons.

(1) As of September 2003, the vast majority of customers, over 85% of residential customers and 80% of small non-residential customers were being served by the affiliated REP in their service area. As a result, the vast majority of customers in the areas of Texas open to competition are already subject to disconnection for non-pay by five different affiliated REPs. Broadening the right to disconnect to all REPs will therefore have a limited impact on most customers.

(2) Both TXU Energy and RRI have publicly reported that the right to disconnect customers for non-payment in their capacity as the affiliated REP has helped them significantly reduce their bad debt levels. (“TXU Income Up Despite Unpaid Bills”, Ft. Worth Star Telegram, Dan Pillar, October 28, 2003). One of the goals of competition is for the industry to offer better prices and innovative services for customers. Uncollectible revenues incurred by REPs will ultimately be borne by other customers, as retail prices are adjusted upward to recover these costs. Such rate impact is to the detriment of all customers and the development of the competitive market. Extending the ability to request disconnection by all REPs should therefore enable non-affiliated REP to compete more vigorously on price.

(3) The commission has a long-standing policy of standardizing market rules for all participants in order to ensure a level playing field for the competitive retail electric market, when possible. Generally speaking, it is inequitable, and ultimately unsustainable,

for one set of market participants to have rights (and responsibilities) not shared by all market players, unless there is a compelling rationale for such different treatment. As such, it is appropriate to permit all REPs to have the same rights and responsibilities as affiliated REPs with respect to disconnection, as all REPs have the same responsibilities with respect to providing consolidated bills for electric service to retail customers.

(4) Disparate rules for different providers also serve to confuse customers as to the consequences of failure to pay a properly issued electric bill. Postponing giving all REPs the right to disconnect for non-payment could increase confusion as customers switch back and forth between the affiliated REP and non-affiliated REPs. The current two-tiered process is confusing for customers, and customers may ultimately have greater difficulty in paying their bills and re-establishing good credit, as they may incur multiple outstanding debts with a number of REPs prior to an actual disconnection being performed. Providing all REPs the same rights as affiliated REPs have will standardize the market and eliminate this customer confusion.

(5) The competitive retail electric market has had two years in which all REPs have gained experience with transactions needed to facilitate the operation of the market. Given the improvement market-wide in processing transactions, as evidenced in the performance measures reports filed in Project Number 24462, *PUC Proceeding to Establish Performance Measures Relating to the Competitive Retail Electric Market*, it is appropriate at this time to extend disconnection rights to all REPs, provided they have adequately demonstrated their ability to properly process the needed transactions.

(6) Currently, non-affiliated REPs transfer residential and small commercial customers terminated for non-payment to the affiliated REP rather than disconnect electric service to those customers. The number of these customers provides a reasonable approximation of the number of customers who would have been disconnected for non-payment, had non-affiliated REPs had the ability to do so. Over the months of July 2003 through December 2003, on average, 12,971 customers have been transferred to the affiliated REP each month. The actual numbers are compared to the latest available customer data as follows:

Percentage of customers transferred to the affiliated REP compared to total customers					
2003	Total residential customers	Total small commercial customers	Total	Total Transferred to AREP	Percentage Transferred to AREP
July	4,989,302	768,491	5,757,793	10,364	0.18%
August	4,967,696	761,587	5,729,283	13,833	0.24%
September	4,977,359	762,454	5,739,813	11,498	0.20%

This data suggests that a relatively small percentage of customers currently being served by non-affiliated REPs would be affected by the decision to permit all REPs to disconnect for non-payment.

(7) All REPs will be required by ERCOT to test the disconnection for non-payment related transactions in one of the first two test flights of 2004. Therefore, by June 1, 2004, all non-affiliated REPs should have the technical ability to disconnect for non-payment, provided they successfully complete testing.

The commission agrees with the Consumer Groups and OPUC that certain other obligations, namely the obligation to offer deferred payment plans, should apply to non-affiliated REPs if they have the ability to disconnect for non-payment. Doing so will provide customers an option to make arrangement with their REP to pay past-due balances in lieu of a disconnection. The commission therefore has amended §25.478 of this title (relating to Credit Requirements and Deposits), to expand the existing deferred payment plan requirements so that all REPs will be required to comply with the deferred payment plan rules that currently apply only to affiliated REPs and POLRs.

Conditions precedent to REPs being permitted to disconnect for non-payment.

While the commission finds that it is appropriate to adopt rule revisions permitting all REPs to disconnect for non-payment, the commission takes very seriously the obligation of REPs and TDUs to fully comply with all commission rules and tariffs governing disconnections and that the business processes required to make disconnections and reconnections work effectively. As a result, the commission also adopts several conditions that must be met before all REPs may disconnect customers.

First, the commission agrees with the various commenters that discussed the necessity of requiring REPs to successfully complete testing on the transactions necessary to process disconnection requests. Second, the commission finds it appropriate to require REPs to file an affidavit from an officer of their company stating that the REP has successfully completed all relevant testing with ERCOT and the TDUs and fully understands and intends on complying with the commission's customer protection rules relating to

disconnection of customers and has fully implemented the deferred payment and balanced billing programs required by commission rules. Third, the commission finds it appropriate to require REPs to notify their customers of the change in disconnection policy prior to a REP initiating disconnection requests. The commission has amended §25.483(b)(2) to add these requirements.

The commission will very closely monitor REPs' and TDUs' performance under the commission rules and tariffs, and will take non-compliance with those rules very seriously, including the use of enforcement action where necessary to compel compliance.

The commission declines to adopt the proposal of Consumer Groups to have the commission certify REPs on an annual basis for the right to disconnect for non-payment. The process proposed by the Consumer Groups is unnecessarily burdensome on both the commission and those REPs who are abiding by commission rules. This suggestion is also unworkable in terms of the business practices that the REPs and TDUs must put into place to implement disconnection for non-payment and could lead to customer confusion concerning which REPs had retained the ability to request disconnection on a year-to-year basis.

Date of disconnection rights

The REP Coalition, TEAM, GMEC, and TXU Energy argued that all REPs should be given the right to disconnect as soon as March 15, 2004. GMEC and TEAM asserted that accelerating the date by which all REPs will have the right to disconnect customers for nonpayment will provide all REPs an additional tool to better manage credit risk and will ultimately benefit customers by

reducing confusion. GMEC stated that, based on its experience as a “charter member” of the ERCOT marketplace, the non-affiliated REPs’ inability to effectively control or mitigate bad debt due to non-payment by retail customers is a flaw that could ultimately threaten the success of the residential Texas retail market because of the significant increase in bad debt.

RRI, Centrica, and Joint TDUs advocated giving all REPs the right to disconnect for non-payment on June 1, 2004. However, RRI and Centrica stated that an earlier date of March 15, 2004 date would be achievable. Joint TDUs disagreed that all REPs should be given the right to disconnect for non-payment any earlier than June 1, 2004. Joint TDUs argued that an earlier start date would not allow sufficient time to resolve issues surrounding this process prior to implementation. They argued that a high level of coordination must take place between REPs and TDUs, including order prioritization for timely and non-discriminatory execution of large volumes of disconnection orders. Joint TDUs noted that they would immediately begin to address these issues through market meetings and encouraged commission Staff to participate.

Joint TDUs, RRI, and Centrica noted that the ERCOT Retail Market Subcommittee has approved two flights for REPs to test their full capabilities to disconnect and reconnect that support the June 2004 implementation of disconnection rights for all REPs.

Joint TDUs and the REP Coalition agreed that it is critical for REPs to fully test their capabilities prior to full implementation of disconnection rights. Further, Joint TDUs and the REP Coalition encouraged the commission to prohibit manual workarounds for these processes because of the numerous problems with processing data associated with safety-net move-in transactions.

OPUC and Consumer Groups argued that if all REPs are allowed to disconnect for non-payment, then they opposed the effort to move the decision from October 1, 2004 to June 1, 2004. OPUC said that it is more appropriate for the commission to consider the effects of allowing all REPs to disconnect for non-payment through workshops and public comment, and to leave the decision date at October 1, 2004, as contemplated in the current rule. Consumer Groups argued that if the commission is going to make a determination on whether REPs should be allowed to disconnect customers for non-payment, then implementation should begin no sooner than October 1, 2004 to allow sufficient time for public comment on the June 1, 2004 Staff report.

The commission declines to adopt the March 15, 2004 implementation date proposed by GMEC, the REP Coalition, TEAM, and others. The commission understands the desire of REPs to have disconnection rights as soon as possible. However, the commission believes that it is necessary to have an orderly, phased approach in order to ensure that all of the systems and procedures, both for REPs and TDUs, are in place so that disconnections are undertaken in accordance with commission rules, and with a minimal opportunity for errors. The commission believes that a date of March 15, 2004 would not provide adequate time to do so, especially given the fact that many REPs will not test the necessary transactions until May 2004.

The commission also disagrees with the Consumer Groups and OPUC that it is more appropriate to retain an October 2004 implementation date. For the reasons discussed above, this rulemaking has provided the public input and discourse that was originally intended to be done through the Staff study, and requiring the study would prove

duplicative of arguments and discourse that has occurred in this rulemaking and an inefficient use of Staff and interested parties' resources.

A June 1, 2004 implementation date will best achieve the goal of standardizing the market rules with respect to disconnection for all REPs as well as provide the other benefits of standardized disconnection rights that are discussed above, while also ensuring that the marketplace has adequately tested the transactions and other processes necessary to ensure that disconnections are processed in accordance with commission rules.

The commission adopts a June 1, 2004 implementation date, subject to the other conditions discussed above.

Transition period and elimination of §25.482

RRI, Centrica, TXU Energy, and GMEC urged the commission to adopt a transition period from the current process of transferring non-paying customers to the affiliated REP to the new process of allowing all REPs the right to disconnect those customers. Commenters offered various transition dates and differed on how long the transition should last. RRI, Centrica, and TXU Energy advocated allowing all REPs to begin disconnecting for non-payment on March 15, 2004, but also allow REPs to continue to transfer non-paying customers to the affiliated REP until June 1, 2004. Under their proposal, REPs would no longer transfer customers to the affiliated REPs for nonpayment beginning June 15, 2004. TXU Energy argued that such a transition period is necessary to ensure adequate testing has been completed prior to discontinuing the process of transferring non-paying customers to the affiliated REP. TXU Energy also suggested the rule clarify that REPs shall no longer transfer such customers to the

affiliated REP after June 15, 2004. RRI argued that this transition period should be as short as possible to reduce customer confusion.

TEAM advocated extending the transition period until December 31, 2004. They argued that allowing REPs to continue to transfer non-paying customers to the affiliated REP for this time period will ensure that all REPs have had the opportunity to test, implement and gain experience with the disconnection for non-payment transaction. TEAM noted that there will only be three opportunities to complete the point to point testing in 2004—first, prior to the adoption of this rule, second, in May and third, in October. TEAM stated that REPs should not be required to rush the development of this implementation because it could delay the scheduled implementation of move-in/move-out functionality.

GMEC initially recommended that the commission give all REPs the right to disconnect for non-payment beginning March 15, 2004, then allow REPs to block disconnected customers from switching beginning June 1, 2004. Under their proposal, REPs would still have the option of transferring non-paying customers to the affiliated REP until September 15, 2004. GMEC asserted that this six-month transition period would provide sufficient time for REPs that are not familiar with the disconnection process.

GMEC noted the importance that TDUs be able to fully support the disconnection process for all REPs by June 1, 2004. They said that any difficulty that TDUs experience in doing so will hinder the REP's ability to limit their exposure to additional costs. GMEC suggested that if TDUs falter on their performance of carrying out REPs' disconnection requests, then the transition period should be extended until the TDU demonstrates that REP disconnection orders

will be processed timely. Joint TDUs and RRI disagreed with GMEC's suggestion, arguing that this could create duplicate and conflicting transactions, create synchronization problems, require manual investigative and corrective action by multiple market participants, and could have a negative impact on Texas Standard Electronic Transactions (TX SET) version 2.0 for the TDUs and possibly ERCOT. Joint TDUs and RRI recommended that the commission require each REP to elect whether to disconnect for non-payment, or transfer customers to affiliated REP for non-payment, but not to have the option of both.

TEAM and RRI argued that §25.482 should not be repealed in its entirety. Specifically, they stated that §25.482(b)(2) regarding termination for reasons other than non-payment should be retained. Additionally, RRI and Centrica argued that §25.482(e) of this title (relating to Termination due to abandonment by the REP), and paragraphs §25.482(k)(2) and (3) of this title (relating to a Customer's right to terminate a contract without penalty), should be retained.

TEAM noted that in instances such as contract expiration, and other similar situations, REPs would still transfer the customer to the POLR. However, RRI and Centrica argued that there is no reason to have two different policies to deal with customers with no contract. RRI and Centrica REPs stated that when the transition period ends, REPs should be prohibited from transferring non-paying customers or customers with no service agreement to the affiliated REP. RRI and Centrica argued that all "no-contract" situations should be dealt with consistently, and recommended that the commission amend §25.488 of this title (relating to Procedures for a Premise with No Service Agreement), to allow REPs to disconnect customers rather than requiring non-affiliated REPs to transfer those customers to the affiliated REP. RRI and Centrica REPs also noted that the commission should amend §25.43 of this title (relating to

Provider of Last Resort (POLR)), to strike the reference to transfers to affiliated REP and associated reporting. Additionally, they stated that the TX SET 814-10 and 814-14 should be remapped as transfer to POLR transactions, as they were originally designed.

Consumer Groups stated that “*if and when*” disconnection rights are given to all REPs, §25.482 should be retained. They argued that REPs should continue to have the option of transferring non-paying customers to the affiliated REP.

The commission agrees with the comments of TEAM and GMEC and others that a transition period should exist where both disconnection for non-payment and transfer of non-paying customers to the affiliated REP are available for those REPs that have not previously had disconnection rights. While the commission believes that all REPs and TDUs should be able to meet a June 1, 2004 implementation date, such a transition period will enable REPs to ensure that they have adequate systems in place prior to exercising their disconnection rights, and will not necessitate all REPs rushing to implement such processes and procedures by June 1, 2004. A transition period whereby non-paying customers may be transferred to the affiliated REP in lieu of requesting disconnection will also permit REPs who encounter difficulties processing disconnections and reconnections to cease requesting disconnections and instead transfer non-paying customers to the affiliated REPs. Likewise, if a particular TDU has difficulty in performing disconnections from multiple REPs, a system will still be in place to permit transfers of non-paying customers to the affiliated REPs while systems issues are resolved. The commission does agree, however, that a REP should only be permitted to use one process or the other at a

time, and will require REPs to notify the TDU and affiliated REP of which process the REP will be using.

The commission agrees with Joint TDUs and RRI with respect to requiring REPs to elect whether they choose to request disconnections of customers for non-payment, or transfer customers to the affiliated REP in the event of non-payment. The commission agrees that REPs should not use both processes at the same time, as it would increase the potential for conflicting or duplicative transactions.

For these reasons, the commission finds that it is prudent to retain §25.482 until such time that the market as a whole has demonstrated its ability to adequately and reliably perform under the new commission rules. The commission modifies §25.482(a) to prohibit REPs from transferring customers to the affiliated REP for non-payment if they are requesting disconnections and to require REPs to inform the relevant TDU and affiliated REP as to whether or not the REP is requesting disconnections for non-payment.

The commission disagrees with RRI that §25.482(b)(2) will no longer be necessary and declines to establish a hard date for elimination of this subsection. Instead, the commission anticipates that it will open a project after June 1, 2004 to evaluate whether or not the rule should be eliminated, based upon the performance of the marketplace.

TDU incentives

GMEC suggested that the commission consider incentives for TDUs if performance indicators suggest that TDUs are having difficulties managing the disconnection process. GMEC recommended that the commission require TDUs to report a percentage of disconnection

requests that are not performed and the percentage of disconnection requests that are cancelled by the TDU. GMEC said that if these indicators show that a TDU's performance level falls below 98% during the transition period, then REPs providing service in that service area should continue to have the option to transfer non-paying customers to the affiliated REP until the TDU's performance level reaches 98% for a three month period. GMEC also suggested that the commission consider tying the ability of each TDU to continue disconnecting on move-outs under §25.490 of this title (relating to Moratorium on Disconnection on Move-Out), to the achievement of the 98% success level on disconnections for non-payment from June through August, 2004, as an incentive to meet these demands.

In reply comments, Joint TDUs argued that that GMEC's suggestion to tie the TDU's performance in completing disconnection requests with the ability of the TDU to disconnect premises on move-outs is inappropriate because the two procedures are unrelated. Joint TDUs also pointed out that §25.490 already establishes performance measures for TDUs regarding disconnecting a premise when a REP requests a move-out for a premise.

RRI agreed with GMEC that incentives should be set for successful and timely disconnects, but did not agree with GMEC that its suggested measure for success rate would achieve this incentive. RRI agreed with the TDUs that performance measures for completing disconnections is not related to completing move-out requests in accordance with §25.490 because TDUs incur financial costs if they do not perform a disconnection on move-out, but not on a disconnection for non-payment. Therefore, RRI argued, GMEC's proposed incentive structure should not be adopted because it would be ineffective.

Instead, RRI suggested that a more effective incentive would be one that links the levels of TDU field service recovery, where TDUs could only receive a fraction of the fees when their response levels were lower. RRI suggested that if TDUs were working disconnections for non-payment at an 80% response level within a specified number of days, then the TDU would receive a fraction of the fees. However, under RRI's proposal, if the TDU achieved a 95% success rate, it would recover 100% of its fees. RRI acknowledged that this type of incentive could not be addressed in this proceeding since it would affect specific TDU tariffs.

RRI suggested that only affiliated REPs should be required to report to the commission on March 15, 2004 the TDU performance in completing disconnections for non-payment. RRI stated that on April 15, 2004 the commission should evaluate all of the TDUs' success rates in completing disconnections for non-payment in a timely manner. If a TDU's success rate is below 95%, then the transition period should be extended from June 15 to July 15, 2004. RRI argued that once the threshold is met, the commission should eliminate the process for transferring non-paying customers to the affiliated REP.

The commission declines to adopt at this time specific performance measures for TDUs as proposed by GMEC and RRI for the reasons stated by the Joint TDUs. The commission also believes that retention of §25.482 of this title (relating to Termination of Service), will address some of GMEC's concern, as REPs will be able to continue to transfer non-paying customers to the affiliated REPs should a TDU have difficulty in adequately processing disconnection and reconnection requests. However, the commission notes that TDUs have

specific requirements in these rules as they relate to disconnections and reconnections, and expects the TDUs to fully comply with these requirements. To the extent that certain TDUs do not perform adequately with respect to disconnections and reconnections, the commission may consider incentives, performance measures, or enforcement actions in the future.

Bad debt issues

Consumer Groups asserted that this preamble question suggests that the commission believes that customer protection is not as important as the financial health of the competitive REPs. Consumer Groups questioned the validity of the REPs' contention that their level of bad debt is unacceptable and is a result of not having the right to disconnect customers for non-payment. Consumer Groups asserted that the commission is already convinced that disconnection and "steep" deposit requirements are the only tools that will allow REPs to effectively manage their debt. Consumer Groups argued that REPs have provided no evidence to suggest that this concept can be consistent with the concept of protecting customers. Consumer Groups requested that the commission investigate the issue of REPs' bad debt in an open and public process, including how the debt was incurred.

The REP Coalition and GMEC acknowledged that Consumer Groups stated fairly that REPs have not provided evidence of their claims that bad debt is unmanageable in Texas, and noted that this is competitively sensitive information which they are not in a position to make public. GMEC stated that it has, however, filed this information confidentially to show GMEC's bad debt experience in Texas. GMEC also stated that regardless of whether the customer pays, the

REP is responsible for the charges for wires and energy, and that electricity cannot be reclaimed once it is used. GMEC noted that when customers do not pay timely, competitive REPs that do not have the cash flows available are required to borrow to meet obligation, which increases the negative net impact of slow and non-pay customers.

While the commission has only received limited information from REPs concerning the precise level of bad debt incurred by REPs, the commission is concerned with assertions made by REPs as to the level of uncollectible revenues that REPs are experiencing in the marketplace. It is logical conclusion 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. As is discussed below, under the rules in effect prior to these amendments, REPs were permitted to request a deposit that did not adequately reflect the amount of service provided to customers on credit, and non-affiliated REPs could not request that a customer who failed to pay their bill be disconnected, thereby limiting the consequences of such non-payment. These prior rules did not permit REPs to adequately protect themselves, and their other customers, from non-paying customers if the REP so chose. For these reasons, and the other reasons stated above, the commission believes that the information made available in this proceeding is sufficiently compelling that disconnection rights should be granted to all REPs.

2. Should the commission allow all REPs to request "hard disconnections" of non-paying customers. Under a hard disconnection policy, a customer that has been disconnected for non-payment could not receive service from another provider unless the customer provides evidence

that its debt to the disconnecting REP has been paid in full. If the commission were to adopt such a policy, would there need to be other changes to the customer protection rules (such as requiring all REPs to offer a deferred payment plan prior to disconnecting service).

TXU Energy, TEAM, and GMEC strongly supported allowing all REPs to request hard disconnects for non-paying customers. GMEC recommended that the commission implement a hard disconnection policy no later than June 1, 2004.

TXU Energy and TEAM argued that such a policy would enhance the commission's efforts to address bad debt experienced by REPs in the market and discourage customers from switching REPs simply to evade paying their electric bill. GMEC strongly argued that a competitive residential REP business model is unsustainable with high levels of bad debt. GMEC asserted that one provider has stopped soliciting new customers, and another has instituted a stringent credit policy. They argued that these are indicators that the current system will not support the development of a healthy competitive residential market. GMEC argued that a universal hard disconnection process would prevent customers from switching from REP to REP, and that these customers would have more cost-effective alternatives than POLR or other high-priced offers issued by REPs seeking to serve customers with bad credit. GMEC argued that allowing hard disconnects would ensure that customers have access to competitive offers for electricity, and would allow for more lenient collection practices.

TEAM commented that allowing REPs to request hard disconnects would provide REPs with the best tool to use in conjunction with other debt management tools to most effectively manage credit risk and thereby reduce the level of bad debt expense REPs are currently experiencing in

the market. TXU Energy and GMEC argued that a growing number of non-paying customers are leaving REPs with bad debt by exercising the right to choose a new REP, and that if this continues, costs will rise for all REPs because of the relatively high credit risk associated with participation in the Texas market. TXU Energy and GMEC argued that because competitive REPs will pass on the higher costs of doing business, creditworthy customers will begin to bear the higher costs. TXU Energy stated that if the commission were to take the necessary steps to ensure that market processes are established to provide REPs this credit management tool, then the commission would continue to support the evolution and maturation of a robust competitive market in Texas.

TXU Energy acknowledged that this policy would need to be implemented through a deliberative process in a time frame that allows for market adjustments. TXU Energy also noted that the market does not currently have a transaction or process in place for a REP to object to a switch of a non-paying customer, and suggested that this should be addressed by stakeholders at ERCOT. TEAM supported a process to develop and implement a system that would allow REPs to register their objections to a switch and to have the objection timely removed once the customer had resolved the outstanding bill. GMEC suggested that the commission's rule direct ERCOT to create a stakeholder taskforce to develop a process and timeline that supports a June 1, 2004 implementation date. GMEC argued that this timeline would give the market an opportunity to develop a process that will not have unexpected consequences for either customers or REPs. TXU Energy recommended that the commission direct ERCOT to establish a task force or working group to develop the necessary protocols to allow REPs the *option* of objecting to a switch as soon as practicable after issuance of the report but no later than

September 30, 2005. TEAM suggested that the commission direct ERCOT to create a stakeholder task force by October 2004 to develop a process and timeline so that market transactions for objections to a switch can be operational by June 1, 2005. In reply comments, Centrica REPs supported TXU Energy's and TEAM's recommendations to initiate a process to implement hard disconnects, by directing ERCOT to initiate a market wide stakeholder task force. Centrica REPs agreed with TXU Energy that this taskforce should be convened as soon as possible and should issue an implementation and test plan no later than September 3, 2004. Centrica REPs supported TEAM's position that the objection to switch market transactions and processes should be tested and operational by June 1, 2005.

GMEC argued that prior to competition, every utility had the ability to use hard disconnects, and that the paradigm has been maintained in every state that has transitioned to a competitive residential market, except for Texas. Fire Fly responded that this argument does not make sense if considered in its entire context. Fire Fly noted that in the past, utilities used a number of tools to help customers having trouble paying electric bills. Fire Fly pointed out that most of these programs were mandatory and had funding to provide significant help for customers in addition to the voluntary customer-funded bill payment assistance programs. In reply comments, GMEC disputed Fire Fly's assertion that there is not as much customer assistance in the competitive market, and argued that this is not a sufficient reason for not allowing hard disconnects. GMEC noted that the low-income discount was intended to replace assistance programs that would decline after competition.

GMEC noted that 19% of the customers who called them in November 2003 to request service had received a disconnection notice from the customer's current REP, and were attempting to

switch to avoid payment. GMEC argued that the number of customers seeking to switch to avoid disconnection would only increase as customers become more familiar with market rules, and that the increase in deposits will not protect REPs from significant losses in these situations. Additionally, GMEC argued that the credit data exchanges that would be allowed under these proposed rules would not provide protection for REPs in these circumstances because such data exchanges are strictly voluntary and because the only existing credit data exchange does not currently report information for a delinquent customer until the customer has been disconnected from the current provider for at least 30 days. In reply comments, Centrica REPs agreed that market experience has proved that customers will attempt to switch to avoid paying their current provider, or the affiliated REP once they have been disconnected. Centrica REPs argued that the market would be best served by adoption of this policy which would send appropriate payment signals to customers and help reduce exposure to bad debt.

Consumer Groups, OPUC, Fire Fly, and RRI opposed allowing REPs “hard disconnection” rights, whereby the REP blocks a customer who has been disconnected for non-payment from switching to another REP.

Fire Fly argued that allowing hard disconnects would introduce a host of policy, practical and legal problems, as well as lead to customer dissatisfaction with the deregulated electric retail market.

Consumer Groups, OPUC, and Fire Fly argued that giving REPs hard disconnection rights is bad public policy and would be anti-competitive. Fire Fly noted that such a policy is contradictory to a customer’s right to dispute a bill and choose another provider in a free market. Fire Fly argued

that this would grant monopoly power to an individual REP because the REP would have the power to prohibit the customer from selecting another electric provider. Consumer Groups and OPUC argued that there is little financial risk to a company that can review a customer's credit and request a deposit to hedge its risk of non-payment. Consumer Groups noted that when the customer rules were originally adopted in 2000, former PUC Chairman Pat Wood supported the ability of REPs to collect late fees to offset possible increases in bad debt allowances. Consumer Groups argued that a competitive market requires providers to make voluntary decisions to make offers and accept new customers based on nondiscriminatory criteria, and there is no place for hard disconnects in a competitive market. Fire Fly stated that, by definition, credit risk management is a company specific process, and it should not be prescribed by a regulatory agency. Fire Fly argued REPs already have many tools to manage risk. In reply comments, GMEC disagreed with OPUC, Consumer Groups and Fire Fly with regard to the appropriateness of hard disconnects in a competitive market, and argued that customers who do not pay their bills present a credit risk that cannot be managed with existing credit policies, or with soft disconnects because customers can switch to avoid payment. GMEC also disagreed with Fire Fly's assertions that REPs have or will have adequate tools to manage bad debt under rules, as currently proposed.

Fire Fly and Consumer Groups argued that if the commission allows hard disconnects, this would most likely be interpreted as the commission favoring business over the public, which is contrary to the direction of PURA and removes the ultimate customer protection against an unjustified loss of service. Further, Fire Fly asserted that a hard disconnection policy would punish those with insufficient income.

In reply comments, TEAM disagreed with OPUC and Consumer Groups that customers would be harmed because they could not switch or obtain service from another provider due to failure to pay a disputed portion of their bill. TEAM asserted that the PUC does not allow a REP to take action with regard to a customer debt if the balance is in dispute.

In reply comments, RRI disagreed with TXU Energy, GMEC and TEAM that hard disconnects will provide the best possible tool to address the issue of uncollectible debt. RRI argued that there is no other comparable competitive service industry that allows a provider to prevent a customer from changing providers, even when they have outstanding debt.

Additionally, Fire Fly, RRI, and Joint TDUs argued there are numerous operational concerns surrounding the issue of hard disconnects. Joint TDUs recommended that the commission not adopt a hard disconnection policy until the market has evaluated the potential operational issues and can recommend business rules and processes to the commission which will mitigate the potential issues. RRI pointed out that there have been no public workshops to define exactly what is meant by hard disconnect, including how the process would work, what transactions would need to be implemented, what the effects on the customer would be and what the policy and operational ramifications would be. Specifically, Fire Fly noted that there is not a system currently in place for a REP to verify who has served the customer and who has been fully paid by the customer. However, in reply comments, GMEC disagreed with RRI and Fire Fly, noting that the transactions required to support this functionality are the 650s, which are already generally supported by the market.

RRI commented that market participants are currently focusing resources on the TX SET 2.0 implementation and argued that it would be ill-advised to try to add hard disconnects on top of these efforts. Joint TDUs agreed that hard disconnects would impact the stacking logic for switches, move-ins, and disconnection transactions, and that this would be a significant change to existing market practices which could cause operational problems and consumer dissatisfaction. Additionally, RRI argued the commission and market participants would need to address issues regarding locking down an Electric Service Identifier (ESI-ID), including the consequences if the lock-down is not removed when the customer pays and the consequences for a REP locking down all customers, etc. RRI argued that if the commission were to allow a hard disconnection policy at this time, it would be doing so with inadequate information. In reply comments, TEAM agreed that the technical issues must be resolved and argued that that is exactly the reason they proposed the creation of a stakeholder task force to develop a process and timeline for implementation.

RRI argued that a hard disconnection policy may affect the POLR policy and customer behavior to avoid POLR. RRI commented that PURA §39.101(b)(4) and 39.106(c) made it clear the POLR service should be available to any requesting customer, and under a hard disconnection policy, a customer would still have this right. Therefore, RRI questioned whether the REP requesting a hard disconnection would really benefit if the customer disconnected for non-payment could still go to POLR and whether the commission would want endorse a measure that would drive customers to higher priced POLR services. Further, they argued, companies holding POLR contracts did not bid with the expectation that customers would be driven to POLR, and there may be contractual issues with changing policies that fundamentally change the nature of

POLR in the middle of contract periods. GMEC replied that RRI misconstrued the POLR's obligation to serve because their reasoning suggests that the POLR would have to offer service to a customer, even if the customer had left a POLR bill unpaid or refused to pay a deposit to the POLR. GMEC commented that PURA requires the POLR to offer service once the customer has met its obligations to its prior provider, if any, and that once the prerequisite has been met, that the POLR would be obligated to serve. GMEC argued that even if a customer could bypass a hard disconnection policy in favor of POLR service, it did not agree with the consequences suggested by RRI, and suggested that hard disconnects would at least give the POLR a reasonable opportunity to collect payment for services rendered.

RRI also argued this could drive customers to find more creative ways to avoid payment. RRI suggested that when customers learn that their switch will get blocked once they have received a disconnection notice, they will likely increase attempts to switch to avoid payment, which would mitigate the intent of this policy. In reply comments GMEC agreed that RRI is rightly concerned that customers will be encouraged to switch to avoid disconnection, and acknowledged that customer behavior will likely not change, whether the disconnection is hard or soft, because many customers will continue to switch to avoid payment. However, GMEC argued that its proposal to allow REPs to object to a switch at the time the disconnection notice is issued will lessen the customers' behavior because the customer will have to switch in anticipation of the receipt of a disconnection notice.

RRI argued that an optional hard disconnect, as suggested by TXU Energy, would require the same implementation as a hard disconnect, and would create customer confusion. RRI noted that

it is readily apparent to customers when they have been disconnected, but it would not be readily apparent that they were being blocked from contracting with another REP.

Retail Market Subcommittee (RMS) Study

Joint TDUs recommended that the commission direct parties to provide recommendations to the commission regarding business processes, rules and an implementation timeline through RMS after this issue has been fully explored by Staff. In reply comments, TEAM agreed in concept with Joint TDUs' argument that hard disconnects not be instituted until operational issues and procedures have been addressed. In reply comments, GMEC and Consumer Groups disagreed with Joint TDUs that the issue of hard disconnects should be addressed in a separate rulemaking, but agreed that market collaboration is necessary.

Higher customer protections

TEAM, RRI, and Fire Fly commented that the preamble question implied that stricter rules regarding deferred payment plans and other rule changes would accompany hard disconnection rights. RRI argued that if these changes were made, a hard disconnection policy would limit REPs' ability to make economic business decisions about credit policies and managing credit risk. GMEC argued that some of the credit management tools proposed in the rule, such as the increase in the maximum deposit, may not be necessary for REPs that exercise the option to block a disconnected customer from switching to another REP.

RRI argued that "soft" disconnection rights, combined with the tools currently allowed in the consumer protection rules regarding credit and deposit policies, along with REPs' ability to utilize consumer reporting agencies, should provide sufficient protection for REPs.

GMEC did not support any additional requirements on REPs such as an obligation to serve or a requirement to offer deferred payment options as a trade off for the ability to object to a switch. They argued that, in general, such changes would eliminate distinction between REPs and limit the benefits REPs can offer for switching. However, GMEC agreed that it would be reasonable to require REPs that object to a switch for a customer disconnected for non-payment to offer a deferred payment plan, provided that the objection to the switch remains until the customer has met the obligations. GMEC asserted that REPs should be allowed to choose their target market, and should not be required to serve anyone requesting service.

The 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 believes that the amendments to these rules will address many of the concerns related to the uncollectible revenues issues voiced by REPs, and finds it most appropriate for the market to implement the ability of all REPs to request “soft disconnections” and the other changes adopted in this order instead of expending resources on developing procedures to implement “hard” disconnections. The commission agrees with RRI that there are numerous tools allowable under the customer protection rules which should provide sufficient protection for the REPs. REPs may require that a customer with bad credit or poor payment history 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). The commission finds that, at this time, these are the appropriate next steps in this market for addressing this issue. Should these tools prove to be

inadequate to the market as whole, the commission may entertain other proposals in the future. However, the current revisions adopted in this rulemaking should be given an opportunity to work.

The commission also concurs with the parties who raised concerns that implementation would be difficult, and likely take longer than the June 1, 2004 date established in this rulemaking for all REPs to obtain at least “soft” disconnection rights. No such system for hard disconnections is currently in place. The commission agrees with RRI that there have been no public workshops to define exactly what is meant by hard disconnect, including how the process would work, what transactions would need to be implemented, what the effects on the customer would be and what the policy and operational ramifications would be. The commission also agrees with Fire Fly that there is not a system in place for a REP to verify who has served the customer and who has been fully paid by the customer. The commission notes the concern of Joint TDUs that this would be a significant change to existing market practices which could potentially cause operational problems and consumer dissatisfaction. The commission finds that at this stage of the market, these operational issues appear to be fairly significant for the market and would risk the integrity of properly implementing the other needed transactional improvements into the operation of the market.

The commission also shares concerns raised by Consumer Groups that hard disconnections may have unintended anti-competitive implications that have not been fully addressed in this proceeding. As more than 80% of residential customers are still being served by the affiliated REPs, this proposal may unintentionally retard the growth of the competitive

market. The commission agrees that customers should continue to have the right to freely exercise their right to choose in a competitive market. The commission agrees with RRI that there may be providers willing to take on the risk of customers who had previously demonstrated an inability or unwillingness to pay their electric bill, and thereby distinguish themselves in the marketplace. The commission instead believes it appropriate to permit the market to continue to develop and allow REPs to develop innovate tools and products to mitigate risk associated with late or delinquent payments.

The commission also shares concerns voiced by RRI that the statute governing POLR service and customer behavior regarding POLR service may negate that benefits that REPs expect to receive under a hard disconnection policy. Specifically, PURA §39.101(b)(4) and §39.106(c) require that POLR service be available to any requesting customer. Customers' statutory entitlement to POLR service may mean that customers would still be entitled to get service from the POLR if disconnected, eliminating the benefit to REPs that has been the rationale for hard disconnects. Implementing a hard disconnection policy may therefore also have the effect of driving customers with payment problems to the POLR, since that would be the only REP that could switch a customer that is blocked for non-payment.

For the reasons discussed above, the commission finds that it is not appropriate at this time to implement a hard disconnection policy. In response to comments requesting that the commission direct the RMS to begin a process to resolve the business process and transactional issues involved with a hard disconnection system, the commission declines to adopt that recommendation, and believes it instead appropriate at this time to encourage

the market to dedicate resources to fully and properly implementing the expansion of the current disconnection policy to all REPs, as well as the other amendments to these rules.

3. The commission is proposing that REPs enrolling customers through door-to-door marketing using both a letter of authorization (LOA) and telephonic verification of the applicant's decision to enroll. Instead, should door-to-door enrollments be authorized by telephonic authorization consistent with proposed §25.474(h)(6)-(7)?

Direct Energy, GMEC, TEAM, and Entergy argued that REPs should be required to use only an audio recording to verify authorization requirements for door-to-door enrollments instead of both a written LOA and telephonic verification. These REPs stated that it should be a REP's decision whether to use the written LOA in conjunction with the telephonic verification.

Direct Energy, GMEC, TEAM, and Entergy argued that the proposed telephonic enrollment process for door-to-door sales will actually provide customers with greater protections than either today's current door-to-door written process using the LOA or the commission's proposed rules that would require REPs to use a combination of the written LOA and a telephonic verification call.

In addition, these REP commenters asserted that requiring only telephonic verification of authorization would reduce enrollment errors, improve enrollment timelines, and provide greater customer protection against unauthorized switches. OPUC disagreed with Direct Energy, GMEC, and TEAM that telephone verification alone would reduce enrollment errors and would provide greater customer protection. OPUC argued that door-to-door enrollment commonly leads to customer misunderstanding and confusion because of the very nature of salesmanship,

and customers should be able to review a written document to better understand what they are committing themselves to.

Further, Energy, GMEC, and TEAM argued that requiring both telephonic and written authorization and verification is unnecessary and increases operational costs without providing any meaningful increase in customer protection. However, OPUC stated that the incidence of future problems would be reduced by using the LOA in conjunction with telephonic verification, leading to lower costs and increased customer satisfaction.

RRI and Fire Fly supported the commission's proposal to require REPs to obtain a written LOA and telephonic verification of the applicant's decision to enroll. RRI did not oppose allowing REPs to use solely telephonic authorization and verification as long as REPs also have the option to use the LOA in conjunction with a telephonic verification as an additional method. However, Fire Fly argued that for prepaid service, an LOA should be sufficient because a new customer must then pre-pay for service before the REP completes enrollment. They asserted that this prepayment is the ultimate verification step since a customer would not pay for a service that that person did not want.

TXU Energy, Consumer Groups, and OPUC opposed requiring REPs to enroll customers through door-to-door sales using only telephonic authorization and verification. Accordingly, these commenters supported requiring REPs to use both a written LOA and third-party telephonic verification for door-to-door sales.

TXU Energy and OPUC argued that written LOAs are failsafe mechanisms that the commission should not yet abandon. They asserted that requiring a LOA and telephone verification will

reduce error and slamming complaints, as well as reduce the incidence of other deceptive or abusive marketing practices. However, Direct Energy, GMEC, and TEAM argued that a customer's voice recording is the best evidence of that customer's intentions, and this evidence should be sufficient for the commission's purposes.

OPUC stated that the LOA is important because specific information regarding the REP and the electric service plan are detailed in the document. The Consumer Groups argued that this approach is reasonable given the history of abuse and complaints against door-to-door marketers of electric service. Direct Energy, GMEC, and TEAM responded that OPUC's assertion is unfounded because the REP is required to disclose all of the specific product's terms and price details to the applicant and provide the terms of service and the Electricity Facts Label (EFL) before obtaining the applicant's authorization on the LOA. They pointed out that, under the proposed alternative that would allow REPs to telephonically obtain the applicant's authorization and verification, the REP would still be required to provide such information and give the applicant the opportunity to review the disclosure documents before obtaining the audio recording of the applicant's decision to enroll with the REP.

In reply comments, Direct Energy, GMEC, and TEAM stated that they would support REPs having the option of either: 1) using the written LOA in conjunction with a third-party telephonic verification call that is currently proposed in the rules; or 2) in lieu of the written LOA, using a third-party verification that provides an audio recording of the applicant's affirmation and agreement to enroll (including all 16 proposed telephonic authorization requirements in §25.474(h)(1)-(7)) and the verification of that authorization. These REPs asserted that REPs should retain the right to obtain a written LOA in conjunction with a telephonic verification call

as proposed by the commission; however, they argued, requiring both a written LOA and telephonic verification for door-to-door sales unnecessarily increases operational costs without providing any meaningful increase in customer protection.

Also in reply comments, the Consumer Groups and OPUC stated that they agree with Direct Energy, GMEC, and TEAM to require the REP to telephonically record the entire authorization and verification of an applicant's door-to-door enrollment only if the entire conversation, including the sales presentation, is recorded and followed up by either telephonic verification or an LOA.

The commission agrees with Direct Energy, GMEC, and TEAM that it is reasonable and in the public interest to allow REPs to enroll customers via door-to-door sales using either the written LOA in conjunction with a third-party telephonic verification call or using a third-party telephonic authorization and verification. REPs choosing to use the second option would essentially be initiating the enrollment through door-to-door sales, but then would comply with the telephonic authorization and verification requirements. The commission notes that customers would still have an opportunity to review the terms of service at the door, prior to authorization of enrollment.

The new requirements adopted by the commission will enhance customer protection by requiring a telephonic verification call to be completed for all door-to-door enrollments. At the same time, these requirements provide REPs the flexibility to use either an LOA or obtain telephonic authorization from the new customer. Section 25.474(f)(1)(F) has been deleted in order to remove the requirement that REPs notify customers that they will

receive a telephone call 48 hours after the authorization. Section 25.474(f)(2) has been added to permit REPs or aggregators to comply with either the authorization disclosure requirements for written enrollments or the authorization disclosure requirements for telephonic enrollments.

The commission declines to adopt the other proposals by Consumer Groups and others because they would result in less flexibility for REPs with respect to how authorization and verification are performed.

The commission agrees with Fire Fly that a prepayment can qualify as a verification of a customer's authorization in lieu of a telephonic verification, because actual prepayment will sufficiently indicate a customers' desire to enroll with a REP, but only in the event that the door-to-door sales agent does not take the prepayment at the time of the solicitation.

The commission has added new §25.474(f)(3)(G) indicating that, for door-to-door sales involving prepaid service, an actual pre-payment by a customer may substitute for the telephonic verification, provided that payment is not taken at the time of the solicitation, and the REP has obtained an authorization via a written LOA.

4. The EFL discloses the environmental impact of a REP's electricity product as an indexed comparison to the state average. Is there a more appropriate way to provide such information in an easy-to-read format? In the alternative, should REPs be allowed to show a generic environmental impact if the product does not make a claim regarding environmental impact?

The REP Coalition argued that the EFL should continue to disclose the environmental impact of a REP's electricity product as an indexed comparison to the state average. They noted that using

such an indexed comparison to a regional average is precisely what the Regulatory Assistance Project recommended in model disclosure format. The REP Coalition asserted that this approach is preferable to comparing a REP's product to the highest and lowest emissions rate among all other REPs because it is the best context for the emissions data, is not constitutionally suspect, and conforms to the fundamental purpose of the label—displaying information about that specific product.

Consumer Groups argued that comparing an electricity product's environmental impact to the statewide average is misleading and presents shortcomings. Consumer Groups stated that the statewide average is not associated with any strategy or technology and it provides no vision for lower emissions levels that could be realistically achieved given the application of known and measurable strategies for reducing emissions.

Further, Consumer Groups argued, statewide average emissions are artificially inflated by the emissions of a few high emitters. The use of the averaging process, these commenters said, dilutes the difference between high and low emissions sources of electricity, which results in not fairly contrasting the emissions difference between different companies. They asserted that the data shown on two REP's EFLs does not compare to the Environmental Protection Agency's (EPA) E-grid emissions data for the generation companies operated by the same companies. In contrast, the REP Coalition, argued that this difference is both logical and expected because the EFL shows emissions data for a particular retail electricity product, while the E-grid data shows emissions from generators owned by the REP. They assert that it is highly likely that the electricity sold by a particular REP for any particular retail product will not match the average emissions for all generation owned by that REP for various reasons. The REP Coalition argued

that the Consumer Groups erroneously assume that the REP will buy at wholesale from no one other than that REP's generators and that this erroneous assumption does not provide any valid basis for attacking the existing format.

Consumer Groups advocated a comparison of the product to either the highest or lowest emission rate in the state. They stated that this would provide a "vision for lower emissions levels that could be realistically achieved." However, the REP Coalition argued that it is misleading to assert that the lowest emissions rate could be realistically achievable for most electricity products and such an assertion would likely mislead customers into believing that these products are available.

RRI, Consumer Groups, Environmental Defense, and the Wind Coalition stated that REPs should not be allowed to show a generic environmental impact if the product does not make a claim regarding environmental impact. RRI argued that a generic scorecard would not provide a meaningful comparison between REPs, while Consumer Groups said that this approach would be deceptive and misleading. Environmental Defense asserted that undermines the environmental disclosure provision contained in Senate Bill 7 and runs counter to the general practice of disclosure in effect in the United States.

The commission agrees with the REP Coalition that the purpose of the EFL is to disclose data regarding the characteristics of electricity sold under a particular retail product, not to provide information for comparing wholesale generators. The commission concludes that the current format, in which a particular product is compared to the statewide average, should be retained.

Further, the commission agrees with RRI, Consumer Groups, Environmental Defense, and the Wind Coalition that REPs should not be allowed to show a generic environmental impact if the product does not make a claim regarding environmental impact. The commission believes that it is important to ensure that Texans have sufficient information to evaluate the environmental impact of their choice of a REP, even if that REP is not making a specific environmental claim.

5. Should the commission amend §25.485 of this title (relating to Customer Access and Complaint Handling), to address situations where it is unclear as to what market participant may be at fault (such as disputes as to the accuracy of a meter read, etc.)?

The REP Coalition, Fire Fly, and OPUC supported amending §25.485 to clarify that customers have the right to lodge complaints at the commission against TDUs as well as the REPs. Both the REP Coalition and Fire Fly pointed out that PURA §39.101(b)(7) identifies TDUs along with REPs as the entities with which a customer is entitled to have an impartial and prompt resolution of a dispute. They argued that since the TDU is integral in getting power to a customer's premise, the customer should have the opportunity to address complaints directly with the source. By defining a process in the rule for the customer to go directly to the source of a complaint, they asserted that commission would be allowing for a more efficient resolution of complaints that would ultimately lead to greater customer satisfaction, which in turn will lead to higher satisfaction with the competitive market in general. The REP Coalition indicated that the types of issues that should be directed to the TDU include but are not limited to: power quality, unexpected or frequent outages, inability to reach the TDU's call center during an outage, metering issues, and actions or behavior of TDU employees. Examples of those issues that

should be directed to the REP include: enrollment issues, billing issues, disconnection and service refusal issues, customer service, deposits, and credit requirements. OPUC commented that the commission should amend the rule to incorporate TDUs by setting specific rules and guidelines for TDU complaint handling and procedures. OPUC suggested that where it is unclear who is at fault, the rules should specify that the customer should send a metering complaint to the REP, who must investigate the complaint in conjunction with the TDU, and if the customer is not satisfied, the customer may then lodge a complaint directly with the TDU and the commission. Both the REP Coalition and Fire Fly noted that currently the TDU has no incentive, in either commission rules or in its own tariffs, to promptly respond back to the REP in these types of situations, and yet the REP is the one who gets penalized if it misses the 21-day deadline that is imposed by the rule for resolving the issue.

Additionally, the REP Coalition suggested that the commission establish a “procedural guide” that would include the types of complaints to be sent to the REP and the types to be sent to the TDU. Such a guide would also be a description of processes required by the rule. Fire Fly argued that, at a minimum, the rule should describe what happens when the cause of a complaint is a market participant other than a REP, delineate each market participant’s responsibilities for complaint resolution, and specify timelines for action.

The Consumer Groups and Joint TDUs opposed amending §25.485 to include TDUs as an additional entity to which the customer must complain arguing that this would be confusing for the residential consumer. The Consumer Groups argued that it was inappropriate for “market participants” to be allowed to bog down the commission’s Customer Protection Division with complaints against each other. They argued that customer protection rules are for “customer”

protection, and the REPs and TDUs should be able to work out disputes among themselves. Additionally, they noted, §25.30 already authorizes *customer* complaints against other *regulated* entities so, they argued, amending §25.485 is not necessary. The Joint TDUs argued that a core principle of the retail competitive market design is that REPs act as the interface with customers in the market and TDU contact with the customer should be limited. They argued that there is currently a process in place at the commission's Customer Protection Division to categorize and route complaints to the appropriate parties. To the extent it is "unclear as to what market participant may be at fault" the Joint TDUs argued that the commission Staff is in the best position to determine which market participant(s) should be involved in gathering information and resolving the complaint, and the commission rules already provide sufficient authority to allow its own staff to forward complaints to these entities. Both the Consumer Groups and Joint TDUs commented that commission Staff can also ensure that the complaint is ultimately charged against the proper party. Consumer Groups argued that introducing the TDU into the complaint process is designed to confuse the customer by making it more complex in the hope that the customer will simply give up.

The Joint TDUs stated that this commission Staff process, however, should not be dictated in the customer protection rules. They argued that the commission process should remain an internally developed commission function and should not be addressed in a rule, particularly a rule that otherwise addresses the REP/retail customer relationship. The REP Coalition replied that the commission process should be appropriately reflected in the rules and must clearly delineate the substantive obligations on entities in responding to customer complaints as well as clearly identifying responsibilities and timelines for complaint resolution.

The Joint TDUs also recommended against making §25.485 applicable to all “market participants.” They argued that the term “market participant” is overly broad and could result in consumers lodging complaints against entities with whom they have no relationship and who have no call center or other mechanism for interface with consumers. Such a process could also result in consumers filing complaints against multiple market participants, all based on the same incident (e.g., bill complaint), when the issue would be better resolved under existing complaint processes. The Joint TDUs pointed out that this volume of complaints lodged with the commission could falsely inflate statistics used as benchmarks for assessing the progress of the market, increase paperwork, and make it more difficult for those charged with processing such complaints. Such a process would not likely assist in making an ultimate determination of the party at fault, or improve the efficient resolution of the consumer’s complaint.

The commission agrees with the Consumer Groups and Joint TDUs that a process is already in place at the commission to address the appropriate party against whom a complaint has been made. As part of this process, the commission pulls out complaints against REPs that more appropriately belong with the TDU and keeps track of them. Additionally, the commission believes that the potential for customer confusion, if the TDU were introduced as a party against whom a complaint were to made directly, is too high and unwarranted. The commission declines to amend this rule by including TDUs into the complaint process directly. The commission also agrees with the Joint TDUs that the term “market participants” is overly broad and declines to adopt this amendment.

The commission also agrees with Joint TDUs that it is inappropriate to codify internal commission policies and procedures in a rule through requiring the commission to adopt a

procedural guide as part of this rule. The commission does agree that it is important for market participants and customers to understand the process used by commission Staff to resolve informal complaints, and will soon publish a procedural guide to ensure a transparent process for handling customer complaints.

6. What, if any, rules governing TDUs roles and responsibilities should be addressed in the standard Tariff for Retail Electric Delivery Service and which should be addressed in the commission's substantive customer protection rules?

The Joint TDUs recommended that the distinction between the customer protection rules and the standard Tariff for Retail Electric Delivery Service be maintained; that is, provisions related to the roles and responsibilities of the TDU should be in the tariff, while provisions related to the relationship between the REP and retail customer should be in the customer protection rules.

In particular, the Joint TDUs stressed that the backbilling restrictions on TDUs should not be included in the customer protection rules because this issue is already addressed in the tariff. The Joint TDUs explained that rules applicable to TDU service are part of a TDU's rates and that a change in the rules may affect a utility's charges. If the commission desires to change the tariff provisions, the Joint TDUs recommended doing so directly, rather adopting customer protection rules that are contrary to the tariff. The Joint TDUs proposed that all aspects of the underbilling issue be addressed in a separate proceeding with notice of all potentially affected rules. Specifically, they recommended harmonizing the underbilling provisions in the customer protection rules with the ERCOT settlement process time schedules, collection of transition charges mandated by financing orders, and quarterly and annual REP billings.

As discussed further below, TIEC, Consumer Groups, OPUC, Fire Fly, and the REP Coalition all disagreed that TDU roles and responsibilities should be referenced only within the standard Tariff for Retail Electric Delivery Service.

TIEC supported the provisions in §25.480(e) of this title (relating to Underbilling), by a TDU. TIEC recommended that these provisions also be included in the standard Tariff for Retail Electric Delivery Service to avoid incongruity and to clarify that these provisions apply to all customers. TIEC also pointed out that if the underbilling requirements are not included in the tariff, a TDU might argue under the filed rate doctrine that the tariff controls and not the customer protection rules.

Consumer Groups and the REP Coalition argued that any roles or responsibilities of TDUs towards the REP that affects the end-use customer (e.g., meter reading, disconnection, and reconnection) should be addressed in both the tariffs and customer protection rules, where appropriate. The REP Coalition acknowledged that the tariffs primarily house the terms and conditions governing the relationship between the TDU and the REP, but pointed out that the tariffs do not fully capture all of a TDU's roles and responsibilities that affect the retail customer. The REP Coalition stressed that these roles and responsibilities should be housed in the customer protection rules. Furthermore, the REP Coalition presented an initial list of issues related to the TDUs' tariffs as a starting point of issues to be addressed in a near-term rulemaking. The list included, but was not limited to, a proposal to standardize tariff language related to discretionary services, disconnection and reconnection procedures, and application of power factors. In addition, the list included, among other things, revisions to the underbilling provisions to comport with any rule changes in this proceeding.

Fire Fly recommended that, at a minimum, implementation timelines for connections, reconnections, and disconnections by TDUs should be specified in the customer protection rules. In addition, Fire Fly suggested that, as specified in PURA §39.107(b)(7), timely resolution of complaints against TDUs should be addressed in these rules. Fire Fly also proposed that timely and accurate transfer of customer data be included.

Consumer Groups added that it is not appropriate to have rules governing the behavior of TDUs that exist only in the tariffs. Consumer Groups suggested that delegating customer protection provisions to a legal status of anything less than a rule fully enforceable by the commission is inappropriate.

In reply to the Consumer Groups, the Joint TDUs asserted that §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities) “includes” and “adopts” the standard tariff and requires a TDU to use sections 1, 3, 4, and 5 of the tariff “exactly as written.” Thus, the Joint TDUs pointed out, the standard tariff is as enforceable as any other commission rule. In addition, they noted that TDUs are required to operate pursuant to the provisions of their filed tariffs, including not only the rates, but also the terms of service contained therein. Moreover, the Joint TDUs argued that placing all such rules in the TDU tariffs, which has a discrete section devoted to the relationship between the TDU and the retail customer, results in the least confusing and most uniform approach for consumers.

While the standard Tariff for Retail Electric Delivery Service should continue to govern the relationship between the TDU and the REP in the majority of circumstances, the

commission agrees with the REP Coalition, Consumer Groups, and others that there are instances in which it is appropriate for the customer protection rules to specify TDU roles and responsibilities towards the REP (i.e., when the end-use customer is ultimately affected, or where coordination between the REP and TDU are critical to fulfilling the requirements of commission rules, such as in the case of reconnections). The commission finds that it is appropriate to define TDU roles and responsibilities with respect to disconnection and reconnection of service in §25.474, meter test records in §25.479, unauthorized change of REP in §25.495, and critical care in §25.497. The commission finds that it is important to clarify the TDU's roles in these rules to ensure that processes involving the TDU, REP, and the customer, and, in some instances, the registration agent are comprehensive and coherent.

With respect to the underbilling provisions, the commission agrees with the Joint TDUs that the backbilling restrictions on TDUs are best addressed in a limited rulemaking on the standard tariff to address this issue and make the corresponding changes in the tariff. Therefore, the commission will consider this issue in a future rulemaking proceeding. The commission appreciates the REP Coalition's effort to identify other issues to be addressed in an additional future rulemaking to revise the standard tariff, but declines to decide here what specific issues should be addressed.

The commission has removed the backbilling restrictions placed on TDUs in §25.480(e) in response to these comments.

Additionally, OPUC commented that the substantive rules regarding metering and submetering in Chapter 25, Subchapter F and Subchapter G of this title include standards that are inconsistent with the customer protection rules, including those related to discontinuance of service and billing. OPUC recommended that the customer protection rules apply for submetering by TDUs either by incorporating new submetering rules in the customer protection rules or by amending Subchapter G.

With respect to OPUC’s comments regarding the metering and submetering rules, the commission recognizes that the standards for discontinuance of service and billing for submetered tenants under Subchapter G are different than the standards for end-use customers served by REPs under Subchapter R. The submetering rules in Subchapters G pre-date Senate Bill 7. These rules largely govern the relationship between the building owner and the tenant but there are references to the electric utility that may be more appropriately applied to the REP (e.g., issues related to billing period) in areas with competition. While the commission recognizes that there may be policy reasons to have consistent standards and to update the submetering rules, it does not find it appropriate to address these issues at this late stage of the rulemaking. The commission will examine these issues in a future rulemaking if the need arises.

§25.5, Definitions

The REP Coalition commented that the definition of “EFL” should be revised to limit its scope to a description of the contents of the label and exclude details concerning the intended use of it.

The commission agrees that this change is appropriate and has amended §25.5 to delete the phrases “made available to customers” and “to help a customer choose an electricity product.”

§25.471, General Provisions of Customer Protection Rules

Consumer Groups urged the commission to amend the customer protection rules to assure that all REPs in Texas meet the standards expected of affiliated REPs. Consumer Groups supported the development of a single set of customer protection rules that would result in the standards for affiliated REPs being applied to all other REPs. With such a standardization of terms of service and customer protection rules, customers would be able to focus on price, service quality and the environmental impact of power supplies and be better able to make informed decisions. According to Consumer Groups, different layers of customer protection have been and will continue to be a hindrance to competition ever developing in the residential market.

In reply comments, the REP Coalition argued that requiring all REPs to follow the affiliated REP standards will not benefit customers or the competitive market. Such a requirement may force new entrants to serve market segments that their business models were not designed to serve, or worse yet, may expose their operations to unexpected risk.

While the commission generally agrees with the goal of standardizing rules governing competitive REPs and affiliated REPs, the commission declines, at this time, to standardize all provisions. The commission does agree that it is appropriate to standardize provisions regarding termination and disconnection and obligations related to deferred payment

plans among all REPs for the reasons stated in response to the comments submitted in response to question one.

However, the commission finds that, at this time, provisions governing credit requirements and deposits should not be standardized because affiliated REPs and POLR are *required* to serve certain customers—price-to-beat customers and all requesting customers, respectively. Because of this obligation to serve certain customers, the commission believes that it is appropriate to require more detailed credit requirements and deposit standards for affiliated REPs and POLRs, in order to ensure that affiliated REPs and POLRs not implement policies that have the end effect of effectively negating that obligation to serve. Conversely, competitive REPs do not have these same obligations; therefore, competitive REPs should continue to be permitted to set their own non-discriminatory credit requirement and deposit standards. The commission finds that such variations in the rules are necessary to continue to foster competition in the market, while at the same time ensuring that all customers have access to electricity services.

Requirements relating to disconnection, reconnection, and deferred payment plans in §25.483 and §25.480 have been extended to all REPs in response to the comments received in response to question one and these comments. No other specific changes have been made in response to these comments alone.

Consumer Groups supported proposed §25.471(a)(1), which provides that the customer protection rules apply to TDUs where specifically stated. However, the Consumer Groups stated that they would oppose the application of the customer protection rules to the TDUs, if such

application would complicate the complaint process for residential customers. Consumer Groups asserted that REPs should take action against TDUs on behalf of retail customers, and under no circumstances would Consumer Groups support a rule amendment that would require residential customers to file a complaint with the REP only to be told that the customer's complaint was really with the TDU.

Currently, when an informal complaint is filed with the commission, the complaint is reviewed to determine if the issues relate to service by a REP or TDU. The complaint is then routed to the appropriate market participant. Because the commission is already working with consumers to ensure that informal complaints are addressed by the correct market participant, the commission declines to adopt language relating to the statement by the Consumer Groups regarding a requirement for REPs to take specific action against TDUs on behalf of customers.

Consumer Groups asserted that the language in §25.471(a)(4) is unclear and requested a specific statement that the rules prevail over inconsistencies with the customer's terms of service agreement or other document. Consumer Groups also proposed broadening the language of §25.471(a)(4) to apply to ERCOT protocols.

In reply comments, the REP Coalition argued that it would only lead to confusion if the rules were amended to provide that the rules prevailed over inconsistencies in the terms of service agreement or other document. The REP Coalition stated that using the term "prevail" instead of the term "control" could lead to confusion because "prevail" suggests that other relevant rules do not apply, whereas "control" indicates that the two rules, if in conflict, should work together.

The REP Coalition agreed with the Consumer Groups' suggestion to add the ERCOT protocols to the list of affected documents.

The commission declines to make the change proposed by Consumer Groups in that it finds no ambiguity in §25.471(a)(4). Additionally, the commission declines to make the provision applicable to the ERCOT protocols because the customer protection rules are not the appropriate place to address the modification or application of the ERCOT protocols.

Consumer Groups supported the proposed clarification that the customer protection rules apply to municipally owned utilities and electric cooperatives; however, Consumer Groups proposed deleting the words "and energy" from §25.471(a)(5) to make it clear that the rules apply only to municipally owned utilities and electric cooperatives who sell retail electricity outside of their service area.

The commission agrees with Consumer Groups that the rules are only intended to apply to those municipalities and electric cooperatives who sell *retail* electricity outside their service territory. The commission changes the term "electric power and energy" to "electricity service" in order to clarify this provision.

Consumer Groups supported the rule amendments taking effect on June 1, 2004, to the extent that the effective date does not change the end-use customer's rights and remedies for contracts and terms of service entered into before June 1, 2004. Consumer Groups asked that the commission clarify that the changes to the rules only affect contracts and terms of service issued after June 1, 2004.

In response, the REP Coalition argued that if the new rule provisions were implemented in accordance with the Consumer Groups comments, then every REP's terms of service would have to be renewed sometime after June 1, 2004, to implement the new rule provisions. According to the REP Coalition, requiring every REP to renew its terms of service agreements after June 1, 2004, would result in different REPs being subject to the rules at different times, depending on when the terms of service agreements were renewed. The REP Coalition provided that such an outcome would be administratively unmanageable for the commission and would confuse customers as to which rules apply to the service they are receiving from their REP. Therefore, they urged the commission to reject the Consumer Groups' comments regarding the effective dates of the rules. The REP Coalition also clarified that its proposed effective dates for each subsection were based upon the commission accepting the REP Coalition's proposed changes for each rule section. The REP Coalition suggested that if the commission adopts changes to the rules that differ from those recommended by the REP Coalition, then the effective dates for those changes may need to be extended. The REP Coalition stated that it would be happy to work with the commission once the final rule requirements are determined to develop an appropriate implementation timeline.

The Joint TDUs supported a uniform effective date for the rule amendments in that a uniform effective date is much more rational and easily understood.

The commission agrees with the REP Coalition and the Joint TDUs that different effective dates for different provisions of the rules could lead to customer confusion. The commission declines the Consumer Groups' suggestion to have different effective dates for the various rule amendments based on when the parties entered into the contract and

whether the rule amendment affects the end-use customer's rights and responsibilities. Such an implementation would be impractical for REPs with respect to the provision of service to customers, and to the commission with respect to enforcement. The commission therefore finds that the effective date should be standardized for all of these rules, as proposed by the commission. Accordingly, the commission determines that it is most appropriate to retain the June 1, 2004 effective date originally proposed by the commission, with the exception of new §25.474 (relating to Selection of Retail Electric Provider), which shall take effect August 1, 2004, because of the extensive changes to the requirements relating to authorization and verification. Notwithstanding these effective dates, REPs may send notices regarding the implementation of these revisions at any time after the rules are adopted by the commission. A subsection has been added at the end of each rule to specify the effective date of the rule.

DME stated that the purpose of the customer protection rules, as stated in §25.471(b)(4), is to prohibit fraudulent, unfair, misleading, deceptive, or anti-competitive acts and practices by aggregators and REPs in the marketing, solicitation, and sale of electric service and in the administration of any terms of service for electric service. Therefore, DME suggested that the rule include language requiring REPs to take the necessary measures to ensure that their marketing or solicitations are not inadvertently or purposely directed at customers of non-opt-in entities or risk suffering administrative penalties.

In response, the REP Coalition disagreed with DME's suggestion that REPs be subject to administrative penalties for marketing to customers of non-opt-in entities. The REP Coalition argued that the non-opt-in areas are not tied to zip codes, counties, municipalities, or other

geographic criteria where eligible addresses could be isolated and identified. Therefore, expecting REPs to determine which service addresses are within non-opt-in areas, so that such areas can be excluded from the REPs marketing efforts is an impossible expectation. However, the REP Coalition agreed with DME that it would be desirable to limit REP marketing to areas that have opted into customer choice. The REP Coalition stated that REPs have a strong financial incentive to limit their marketing materials to eligible customers, and the REP Coalition stated that it was sympathetic to DME and other non-opt-in entities that have to answer calls from confused non-opt-in entity customers on the issue. Therefore, the REP Coalition suggested that the commission require DME and other non-opt-in entities to provide customer information regarding those customers in the non-opt-in areas who are ineligible for customer choice, so that the REPs can then market to customers who are not listed in the non-opt-in areas.

The commission declines to adopt DME's suggestion to prohibit REPs from marketing or soliciting to customers in singly certificated areas in which customer choice has not been adopted by a municipally owned utility or electric cooperative. PURA §39.105(b) states that a REP may not "provide, furnish, or make available electric service at retail within the certificated service area of an electric cooperative... or a municipally owned utility that has not adopted customer choice." The commission finds that mass marketing to an urban area such as the Dallas/Ft. Worth Metroplex area is not, in and of itself, providing, furnishing, or making available electric service to customers who may be served by a non opt-in entity within that urban area. Further, the commission finds that DME's suggestion that REPs take extraordinary measures to prevent inadvertent marketing from reaching those customers is impractical, especially as it relates to mass-marketing to large number of

residential and small commercial customers. The commission also declines to adopt the REP Coalition’s suggestion to require non opt-in entities to provide customer information to REPs. It is clear from the comments that both DME and the REPs agree that in an ideal world, REPs would not expend energy marketing to customers who are not eligible for retail choice, and urges REPs to work with cooperatives and municipally owned utilities to minimize written and telephonic solicitations to customers who do not have choice. No changes to the rules have been made.

The REP Coalition supported the addition of the term “applicant” to the list of definitions and distinguishing “applicant” from “customer” as the terms were defined prior to electric restructuring. However, the REP Coalition provided that the definition of “applicant” should not include a reference to aggregators because customers do not obtain electric service from aggregators.

The commission declines to remove aggregators from the definition of “applicant.” The term “applicant” is used consistently throughout the customer protection rules, and the rules are to provide protection not only to applicants for REP services but also to applicants for aggregation services. Therefore, “applicant” should include those applying for aggregation services, and the commission adopts language clarifying that an “applicant” can be a person who applies for retail electric service from a REP or a person who applies for aggregation service from an aggregator.

Additionally, the REP Coalition recommended changing the definition of “customer” by removing the term “REP of record” in order to prevent confusion about a REP’s relationship with a customer versus a REP’s association with a particular premise.

The commission agrees with the REP Coalition and modifies the definition of “customer” in §25.471 to refer to a “REP”.

OPUC and Consumer Groups argued that the definition of “electric service” should not be amended to include metering services provided by a competitive metering provider. OPUC argued that competitive metering is more appropriately an “energy service” as defined in §25.223 than an “electric service.”

In reply comments, the REP Coalition supported the inclusion of competitive metering as an “electric service.” The REP Coalition argued that it would be a significant barrier to competition if different criteria were applied to metering services depending on whether the service is provided by the TDU or a competitive metering provider. Additionally, the REP Coalition argued that metering is an essential function in the delivery of electricity such that it should be included in the definition of “electric service.”

The commission agrees with the REP Coalition that it would be an impediment to competition if customer protection provisions were applicable to the metering practices of TDUs but not to those of competitive metering providers. Therefore, the commission has declined to make the change suggested by OPUC and Consumer Groups in §25.471(d)(4).

The Joint TDUs proposed re-defining the term “move-in” to recognize that a move-in can encompass a situation where the customer of record is being established for the first time at a new premise.

The commission agrees with Joint TDUs that there are situations where a new premise does not have a customer of record and the establishment of service to such a premise would constitute a move-in. Therefore, the commission modifies the definition of “move-in” in §25.471(d)(8) to include a request for service to a new premise where a customer of record is initially established.

The REP Coalition suggested that the definition of “small commercial customer” be modified to provide that a non-residential customer with a peak demand of less than 50 kilowatts (kW) during any 12-month period is not a small commercial customer if that customer’s load is part of an aggregation whose peak demand is in excess of 50 kW during the same 12-month period.

Conversely, OPUC and Consumer Groups argued that the definition of “small commercial customer” should be changed to provide that a small commercial customer is one who has a peak demand of 1,000 kW or less during any 12-month period. Consumer Groups added that using aggregated commercial load is not a fair basis for deciding whether or not a small business should be covered by the commission’s customer protection rules.

In reply, the REP Coalition argued that the recommendation to raise the threshold for consideration as a small commercial customer from 50 kW to 1,000 kW is based on the statutory maximum threshold for price-to-beat service, but the price-to-beat threshold has no direct bearing on the level of customer protection required by larger commercial customers. The REP

Coalition argued that the current delineation between small and large commercial customers has allowed the larger commercial customers the flexibility to negotiate a better price on electricity in exchange for forgoing certain customer protections. If a large commercial customer, however, chooses not to waive any customer protections, then the customer can be assured that the REP will provide service in accordance with the commission's minimum customer protection requirements. The REP Coalition argued that to its knowledge, large commercial customers have not complained about the option to waive certain protection provisions; therefore, the definition of small commercial customer should not be amended based on the maximum threshold for price-to-beat service. The REP Coalition offered, however, that it would support lowering the level of small commercial customer down to 10 kW, which correlates with the rate classes in the standard TDU tariff.

The commission disagrees with the REP Coalition that the definition of small commercial customer should be lowered to 10 kW, as the commission believes that customers below 50 kW should continued to be guaranteed the minimum protections established by these rules. The commission also declines to adopt Consumer Groups' recommendation to raise the threshold for small commercial customers from 50 kW to 1,000 kW. The commission concurs with the comments of the REP coalition with respect to larger price-to-beat customers who appear to have been successful in obtaining both the prices and contract terms that those customers desire. The commission continues to believe that it is appropriate to allow customers with a peak demand of 50 kW and above the flexibility to agree to a higher or lower level of customer protections.

However, the commission agrees with the REP Coalition that the definition of “small commercial customer” should be consistent throughout §25.471 and amends the definition in §25.471(d)(10) to provide that a customer is not to be considered a small commercial customer if that customer’s load is part of an aggregation whose peak demand is in excess of 50 kW during the same 12-month period. The commission recognizes that in many cases, aggregation groups will consist of customers both below and above 50 kW, leading to confusion in some instances as to which customers in the aggregation group have the ability to agree to different standards that provided for by commission rule. This commission believes that this change will facilitate aggregation in the Texas retail electricity market, and is therefore in the public interest. The commission has amended §25.471(d)(10) accordingly.

Further, the commission believes that some customer protection provisions are so essential that they should not be able to be waived. The commission amends §25.471(a)(3) to clarify that customer protections regarding slamming, unauthorized charges and complaint handling may not be waived for any customer.

Consumer Groups argued that cancellation of a contract by a customer should not be considered “termination;” therefore, the term “customer” should be removed from the definition of “termination.” Alternatively, if the definition of “termination” is going to be modified to include cancellation of a contract by a customer, then another term needs to be created to consistently describe a situation where the REP terminates service to abandon customers.

Conversely, the REP Coalition argued that a customer should have the right to terminate a contract under certain conditions, and that deleting the term “customer” from the definition of “termination” might call that customer right into question.

The commission agrees with the REP Coalition that the customer has the right to terminate a contract or service agreement. Therefore, the commission declines to remove the term “customer” from the definition of “termination.” Additionally, the termination provisions in §25.482 specifically address termination by abandonment; thus, an additional definition for termination by abandonment in §25.471 is unnecessary.

The REP Coalition also proposed a new definition for the term “enrollment” because throughout the rules the terms “move-in,” “switch,” and “enrollment” are used interchangeably and there is currently no definition for “enrollment.”

While the commission disagrees with the REP Coalition that the terms “enrollment,” “switch,” and “move-in” are used interchangeably throughout the rule the commission does adopt a definition of “enrollment” to encompass the process of authorization and verification as well as submission of the customer’s request of a move-in or switch in order to eliminate any confusion.

The REP Coalition also suggested two other changes to which no other party objected. First, the REP Coalition argued that §25.471(a) be amended to explicitly state that this subchapter applies to the registration agent and power generation companies in certain places. The REP Coalition also recommended that §25.471(a)(1) specify that the affiliated REP customer protection rules

only apply while an affiliated REP is obligated to offer the price to beat in its particular affiliated TDU's service area.

The commission agrees that these clarifications are reasonable and has amended §25.471(a) accordingly.

§25.472, Privacy of Customer Information

The REP Coalition recommended language to clarify that the advance notice and opt-out opportunity that REPs must give customers under §25.472(b)(1)(B) prior to the release of customer information to third parties is a one-time requirement for each customer relationship.

Consumer Groups responded that customers should be offered the opportunity to opt out of third-party marketing at the time of registration, but that opportunity should not be a one time event. Additionally, they argued, once a customer receives the opt-out notice, the REP should be required to provide customers with additional notices of future information releases to new affiliates and vendors. Customers have no way of knowing what third-party relationships REPs might enter into in the future and whether or not the customer would want their private information released to that party.

OPUC recommended that the “opt-in” procedure, as currently exists in the rules, be maintained. According to OPUC, an opt-out notice would give marketers a right to blitz customers with unlimited sales and promotional materials unless the customer takes a specific action to opt-out.

The commission finds the REP Coalition’s suggested clarification is useful and amends the rule language accordingly. The commission believes that it is unnecessary to require a

REP to repeatedly send the opt-out notice prior to providing information to a new partner or affiliate, if the REP provided the customer an opportunity at the time of enrollment to specify whether or not the customer wanted to receive future offers from the REP or its marketing partners.

The commission disagrees that the opt-out procedure would allow marketers to blitz customers with unlimited sales and promotional materials. The prohibition on publicly disclosing or disseminating customer information, except in accordance with §25.472(b)(1), and the prohibition on selling customer information under any circumstances are expressly clear in §25.472(b)(2).

The REP Coalition also suggested language to outline the methods that a REP may use to provide the required customer opt-out notice. The REP Coalition suggested that REPs be allowed to provide the opt-out notice to customers in a privacy statement in the Terms of Service document, in the authorization and verification process in §25.474, or in a notice sent to customers.

In response, Consumer Groups stated that it supported including a privacy statement and opt-out notice in the terms of service or the “Your Rights as a Customer” document (YRAC), but that inclusion in the terms of service or YRAC should be in addition to a separate opt-out notice. The Consumer Groups argued that the opt-out notice should not be a low profile document given the current attitude towards unsolicited marketing efforts (i.e., the national and state do not call lists).

The commission agrees with the REP coalition that the option of receiving future marketing of products and services can be provided during the authorization and

verification process or through a separate mailing. However, the commission does not agree that a statement in the terms of service is sufficient notice by itself to customers, for the reasons stated by Consumer Groups. While the inclusion of a privacy policy in the YRAC or terms of service is helpful, it should not be the only place that customers see the opt-out notice. The opt-out notice is an important tool to help customers control the release of their information; therefore, customers should receive the notice in a format separate and apart from the terms of service.

The REP Coalition also recommended deletion of the term “vendor” from the customer notice requirement and recommended language which clarifies that the opt-out notice is required only if the third party uses the customer information to market the third party’s products or services. The REP Coalition suggested this language because third parties often provide billing and other back office services for REPs, and a third party providing such services on behalf of a REP should not be included in the opt-out notice.

Consumer Groups responded that the term “vendor” did not need to be removed from the customer notice requirement because §25.472(b)(1) already provides an exception for third parties performing back office functions on behalf of a REP or aggregator.

The commission agrees with the REP Coalition that the intent of the opt-out notice is to protect customers from having their information shared with third-party vendors with whom the customer has no existing business relationship and with whom the REP does not contract for back office services. Accordingly, the commission has modified the language to clarify that the opt-out notice only applies to the release of information to a partner or

affiliate for the purposes of marketing the products or services of any partner or affiliate or the products or services offered pursuant to joint agreements between the REP or aggregator and a third party, a REP or aggregator.

TIEC and the REP Coalition argued that §25.472(b)(1)(G) should clarify that OPUC can only request and receive proprietary customer information for those specific customer classes that OPUC serves, namely residential and small commercial customers.

In response, OPUC argued that the terms of §25.472(b)(1)(G) expressly state that OPUC can only request and receive such information pursuant to its statutory authority under PURA §39.101(d). OPUC stated that, while it agrees that it would not be able to seek information on individual industrial customers, it could conceivably need to seek information on some aspect of retail sales in a more general sense. They argued that adding language that specifies “residential and small commercial customers” may actually prevent OPUC from receiving information that affects said customers because the REPs may construe such language to mean that total or more general information could not be given. OPUC did, however, state that it would support amending the language of §25.472(b)(1)(G) to clarify that its ability to request and receive reports is pursuant to PURA.

The commission agrees with OPUC that §25.472(b)(1)(G) should not be amended to add the terms “residential and small commercial customers.” However, the commission does not agree that this subparagraph should be broadened to state that OPUC may request reports pursuant to PURA instead of specifying the statute under which OPUC may

receive specific information. Therefore, the commission declines to amend §25.472(b)(1)(G).

The intent of the provision in §25.472(b)(1)(G) is not to either expand or limit any rights given to OPUC by PURA §39.101(d), and is not intended to specify which, if any, documents PURA §39.101(d) may permit OPUC to request from REPs. Instead, the sole and limited purpose of this provision is to indicate that the provision of information by REPs to OPUC, to the extent PURA §39.101(d) authorizes OPUC to request that information, is not a violation of §25.472. The commission believes that this response addresses the concerns raised by TIEC and the REP Coalition.

The commission also notes that it is the commission that has the responsibility to oversee the competitive electric market through the adoption of rules and the enforcement of those rules. As such, it is critical for the commission and its Staff to have adequate ability to obtain the information necessary to monitor compliance with commission rules and effectively conduct enforcement activities when necessary pursuant to the authority given to the commission by PURA , including §14.002, §15.023, and §17.001(b). OPUC does not share those same responsibilities or authority.

The REP Coalition also suggested deleting §25.472(b)(2) in its entirety because they argued that the provision is contradictory to provisions in §25.472(b)(1), which allows the sharing of certain information. As an alternative to deleting §25.472(b)(2), the REP Coalition suggested modifying the language in §25.472(b)(2) to provide an exception for the sharing of information as

authorized in §25.472(b)(1) and to provide that a REP may not share “proprietary customer information” instead of “customer-specific information.”

Consumer Groups responded that when §§25.472(b)(1) and (b)(2) are read in conjunction with each other, §25.472(b)(2) clearly prohibits the sale, public disclosure, or dissemination of customer-specific information unless the information is proprietary information and its release is pursuant to certain circumstances (i.e., information needed to complete a required market transaction). They asserted that proprietary customer information is a subset of customer-specific information, and if §25.472(b)(2) were only to apply to proprietary information, then customer-specific information could be disseminated or sold. Therefore, Consumer Groups urged the commission to retain the prohibition on the sale or dissemination of customer-specific information to the extent that such information is not considered proprietary.

The commission agrees with the commenters that §25.472(b)(1) and (b)(2) are confusing and potentially contradictory. The commission has amended §25.472(b)(1) to reorganize the section and enumerate the exceptions to the prohibitions on release of customer information in subparagraphs (A) through (J). The commission has also amended §25.474(b)(2) to eliminate all provisions except the blanket prohibition relating to the sale of all customer specific information, including customer proprietary information. The commission believes that these changes address the concerns of the REP Coalition, while still retaining the protections sought by the Consumer Groups.

The REP Coalition also argued that the language of §25.472(b)(3) erroneously suggests that a REP would potentially request information from the TDU on behalf of another REP. The REP

Coalition recommended amending the language to remove any reference that a REP might request data on behalf of another REP.

The commission agrees that a REP should not request information from the TDU on behalf of another REP, and amends the rule language in §25.474(b)(3) accordingly.

The REP Coalition voiced concerns with the proposed language in §25.472(b)(3) that provides that “the TDU or REP shall not release any information of a prior occupant of the premise,” because the REP Coalition argued the language is unnecessary. The REP Coalition argued that other provisions in §25.472 and §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), already thoroughly address the release of proprietary customer information. Additionally, the REP Coalition asserted that §25.472(b)(3) would likely have the unintended consequence of prohibiting the legitimate release of historical usage of a residential premise. The REP Coalition commented that the prohibition on the release of customer information is intended to prohibit the release of proprietary customer information, but the language in §25.472(b)(3) makes it ambiguous as to whether there is a prohibition on releasing historical usage of a residential premise regardless of whether the prior occupants continue to fit the definition of a “customer.” Therefore, the REP Coalition recommended deleting the provision in §25.472(b)(3) that prohibits a REP or TDU from releasing any information of a prior occupant of the premise.

Consumer Groups echoed the REP Coalition’s concern regarding any prohibition on the release of historical usage data. Consumer Groups stated that the provisions prohibiting the release of customer information are sufficient to protect customer privacy and that prohibiting the release

of information regarding a prior occupant gives no additional protection to customers and creates confusion regarding the release of historical usage data for the premise.

In reply comments, the Joint TDUs argued that they risked liability if they released customer usage data without authority granted by the commission to do so. The Joint TDUs stated that if the commission requires TDUs to give such data to a third party, then the commission should expressly protect the TDU from liability for doing so.

The commission agrees with the REP Coalition and Consumer Groups that the prohibition on releasing historical usage data for residential premises is unnecessary. While the commission acknowledges that historical usage is useful to REPs in developing pricing offers to customers, the commission remains concerned that historical usage information may be extremely competitively sensitive information for commercial and industrial customers, and that a clear prohibition on the release of that information is appropriate if a former occupant has designated the information competitively sensitive. The commission amends subsection (b)(3) to only specifically prohibit the release of information of prior occupants in the case of commercial and industrial customers if the former occupant has designated the information competitively sensitive. The rules provide for the TDU to release information to the REP, only after the REP has obtained authorization for release of the information in a manner consistent with §25.474.

The REP Coalition also asserted that the process in §25.472(b)(3) for obtaining customer authorization for the release of historic usage is unreasonably cumbersome. The process in §25.472(b)(3) provides that customer authorization is to be obtained using the methods identified

in §25.474, but the REP Coalition proposed using a written request or proof of other authorization instead of the methods in §25.474.

The commission finds that it is important that a REP provide documentation that a customer has authorized the release of proprietary information from the TDU to the REP; however, the commission agrees that requiring a REP to obtain authorization by one of the methods in §25.474 is unreasonably cumbersome. The commission understands that the Retail Market Subcommittee at ERCOT is currently developing a process that would require TDUs to provide historical usage upon receiving a standardized written request from a REP. The commission finds that this process should be sufficient to address the concerns voiced by the REP Coalition. The commission will also re-examine the issue of the format authorization of historical usage requests at the time that it considers broader amendments to the standard Tariff for Retail Electric Delivery Service, if necessary. Section 25.472(b)(3) has been amended to remove the specific requirement that a REP obtain authorization by one of the methods in §25.474.

§25.473, Non-English Language Requirements

The REP Coalition and Consumer Groups requested that the rule clearly recognize that the non-English language requirements apply to both applicants and existing customers.

The commission agrees with the proposed change and modifies §25.473(b) accordingly.

§25.473(b) and (c) designated language documents

Consumer Groups opposed the change in proposed §25.473(b) to eliminate the requirement that all documents required by this subchapter be provided in either English or Spanish, and, if applicable, the language in which a REP marketed its services to the customer. This change would require only specific documents to be provided in a single language unless the REP markets in a language other than English or Spanish. Consumer Groups noted that the non-English language requirements of §25.473 are one of the customer protections required in PURA Chapter 17. Customer Groups asserted that it is manifestly self-evident that in order for a customer to be protected in a competitive market, the customer must have access to important information (i.e., key rates and terms and disclosures) in a language that the customer understands. Consumer Groups stressed that if information is deemed so critical that the commission requires it to be provided to customers, then it needs to be disseminated in such a way that customers have the opportunity to understand the information. For non-English speakers, the ability to understand the information means that it must be provided with the information in whatever language they speak.

The REP Coalition supported the amendment in §25.472(b) and (c) to eliminate the requirement that all documents required by this subchapter be provided in either English or Spanish and another language if a REP has marketed its services in another language. REP Coalition argued that it understands the importance of providing information in a language that the customer can understand, but that some of the required information disclosures are overly broad and fall outside the dictates of PURA. The REP Coalition argued that the commission does not have the authority to dictate to the REPs which languages or markets new services and promotions will be offered to customers; and they argued that such requirements are an impermissible infringement

on a REP's constitutional right to commercial free speech. The REP Coalition stated that its goal is to better define when information should be provided in languages other than English, to clarify which types of information must be provided in languages other than English, and to conform the dual-language requirements to those of PURA §39.101(a)(7).

The REP Coalition suggested that the amendments do not go far enough. They suggested that the YRAC document, terms of service document, EFL, bills, and bill notices be provided in only a single language: English, Spanish, or the language used to market the REP's electric service. Also, they proposed eliminating from this list information on the availability of new electric services, discount programs, promotions, and access to customer service.

The commission declines to adopt the Consumer Groups' suggestion to retain the mandate that all documents required under the subchapter be reported in English or Spanish and a language other than English, if applicable, because it is overly burdensome to REPs, and does not provide meaningful benefits to customers, as customers would retain the ability to designate the language in which they desire to receive documents. Providing customers with documents in other language will, in many cases, not provide meaningful information to customers. Nonetheless, the commission does continue to believe that certain documents such as the enrollment notification notice and disconnection/termination notices, should be provided in dual languages, because of the need for customers to potentially act quickly in response to those documents. The commission also believes that the YRAC should be provided in dual languages to ensure that all customers are aware of their basic rights.

The commission does not agree with the REP Coalition that the commission does not have the authority to require information on the availability of new electric services, discount programs, and promotions be provided in specific languages. PURA §39.101(a)(8) authorizes the commission to require information concerning low-income assistance programs and deferred payment plans to be marketed in English and Spanish and any other language as necessary. Additionally, PURA §39.101(a)(9) authorizes the commission to ensure that a customer receives information as necessary to ensure high-quality service to customers. Consistent with that authority, the commission believes that it is appropriate to require information on the availability of new electric services, discount programs, and promotions to be made available in English, Spanish or any other language in which the REP chooses to market its services or products. The commission disagrees that it is dictating the languages or markets in which new services and promotions will be offered. Rather, the commission is merely requiring a REP who markets in a particular language to make certain information available in that same language.

This commission has modified §25.473(b) to clarify that REPs are only required to provide the documents listed in this subsection in the language designated by the customer. The commission has also made corresponding changes to §25.474(c) with respect to information provided by aggregators.

Additionally, the commission has deleted the YRAC document from subsection (b)(1) because subsection (d) requires that the document be provided in English and Spanish or English and the language in which the electric service was marketed.

Consumer Groups argued that the removal of “termination and disconnection notices” from §25.473(b)(1) means that non-English speakers who do not speak Spanish will not have access to termination and disconnection notices in a language that they speak. At a minimum, Consumer Groups argued that REPs should be required to provide certain documents in languages other than English or Spanish whenever they market to a customer in another language.

The commission agrees with the Consumer Groups that termination and disconnection notices should be provided in either both English or Spanish or English and a language other than English or Spanish if the customer is receiving information in that other language. Section 25.474(d) has been amended to provide that both the YRAC document and a disconnection/termination notice be provided in dual languages.

The REP Coalition also recommended adding a cross reference to §25.474 in §§25.473(b)(1) and (c) to make it clear that disclosure requirements such as the YRAC document and the EFL are required only for residential and small commercial customers.

The commission declines to include a cross reference. The commission does not believe that §25.473(b)(1) suggests that that the YRAC or EFL is required for customers other than residential or small commercial customers who agree to different customer protections as part of their terms of service.

The REP Coalition argued that the requirement to provide any documents in a dual language is burdensome and provides no benefit to the customer. The REP Coalition contended that their proposed changes still require key documents to be available to a customer in a language that the

customer understands, while ensuring that REPs do not have to produce every document required under the subchapter in a language other than English.

Consumer Groups responded that the dual language requirement is necessary because many households have persons with limited proficiency in English, even if the person with whom the REP has contracted is proficient in English. Consumer Groups argued that it is imperative for household members to have access to information regarding the electric service; therefore, such information should be provided in both English and Spanish and any other language in which the REP markets its products or services.

In response, the REP Coalition stressed that the business relationship is between the REP and the customer; not the REP and every person that resides in the customer's household. The REP Coalition provided that it imposes an unreasonable burden on the REP to make the REP responsible for ensuring that disclosures are provided in multiple languages so that every members of the household has access to information regarding the electric service.

The commission agrees that it is important to provide key documents to customers in dual languages, either English and Spanish, or English and the language in which the service was marketed. Therefore, the commission amends §25.473(d) to require that the YRAC document and the termination or disconnection notice be provided in dual languages. However, consistent with the commission's findings in response to comments to §25.474(l), this subsection only requires that the enrollment notification provided by the registration agent be provided in English and Spanish and not in any other language, as it is potentially

extremely costly and may be impractical to require the registration agent to send out notices in a large number of languages.

The REP Coalition argued that the YRAC document should be removed from the list of documents that must be provided in both English and Spanish under §25.474(d) because the YRAC is provided to customers in their preferred language. Also, the REP Coalition argued that the YRAC is distinct from the other documents listed in §25.473(d) because the YRAC is more of a lengthy reference document with a long shelf life, while the other documents that must be provided in both English and Spanish are more succinct and are a call to immediate action.

In response, the Consumer Groups argued that even though the YRAC is lengthy, it is precisely the document to which a customer, or a member of the customer's family, will need to review when a termination or disconnection notice is received. Therefore, they argued, the YRAC should be provided in both English and Spanish.

The REP Coalition responded that eliminating the dual language requirement for the YRAC would substantially decrease the REP's production and mailing costs without any impact to the customer who would continue to receive the document in their preferred language.

While the YRAC may be a lengthy document with a longer shelf life than some other documents provided to customers, the YRAC contains crucial information to which customers should have access in a language that is useful to the customer. The commission does not find that providing the YRAC in dual languages imposes an unreasonable burden on REPs; therefore, the commission declines to remove the YRAC from §25.473(d).

§25.474, Selection of Retail Electric Provider

In general, the REP Coalition, Fire Fly, and Consumer Groups supported the commission's proposed revisions to this section. The REP Coalition stated that identifying the specific requirements for each method of enrollment provides clarity for REPs. The Consumer Groups said that the proposed rule made significant progress in better explaining and documenting the switching process and provides a higher standard that should serve consumers better than the existing rule.

In addition, Consumer Groups supported amendments that put the burden of proof on the REP to show that a disputed switch is in fact authorized. This approach, they argued, will relieve customers of having to show any kind of intent in order to be made whole when an unauthorized switch occurs. This, the Consumer Groups stated, is in keeping with the intent of PURA §§17.102(4)-(5), under which the commission is obligated to have rules requiring that "unauthorized charges be remedied at no cost to the customer" and that "require refunds or credits to the customer in the event of an unauthorized change."

The REP Coalition suggested several clarifying changes to this section to ensure that certain terms are used consistently throughout this section. Specifically, they stated in some instances, the terms "applicant" and "customer" had been misapplied. In addition, the REP Coalition argued that there is a distinct difference between "cancellation" and "rescission" and suggested several changes to indicate that rescission refers to the applicant's right to void the terms of service by contacting the REP within three federal business days after receiving the terms of service and that cancellation refers to an applicant's right to attempt to cancel the switch transaction by contacting the registration agent. Finally, the REP Coalition stated that the word "contract" should be replaced with "terms of service."

The commission agrees that the terms “cancellation” and “rescission” should be differentiated in the rules, as discussed further in response to comments in §25.474(j). The commission also makes the suggested clarifications proposed by the REP Coalition regarding use of the terms “applicant” and “customer,” and replaces the word “contract” with “terms of service” throughout the rule.

§25.474(d)

The REP Coalition noted that §25.474(d) suggests that a REP shall obtain authorization and verification of the switch request only, as opposed to obtaining the information for both a switch request and a move-in request.

The commission agrees with the REP Coalition that all provisions related to enrollment should clearly require authorization and verification for both move-in and switch requests, and makes the clarifying change to §25.474(d).

The REP Coalition argued that §25.474(d) should acknowledge that REPs have no way to ascertain whether certain information provided by applicants during enrollment is, in fact, accurate. The Consumer Groups disagreed, stating that a REP should be responsible for assuring that the information it processes is accurate. They argued that the language suggested by the REP Coalition would provide an easy out any time a customer is slammed because of a faulty address or a switch is lost in the customer registration system because the ESI-ID was incorrect. They suggested that if address problems are common, then the REP should confirm such information by requesting that the applicant fax a driver’s license, electric bill, or lease to the REP.

The commission agrees that in many cases a REP has no way to verify that the information an applicant provides is accurate, and agrees that practically speaking, REPs will have to rely on the information provided by customers. However, the commission emphasizes that a REP has the ultimate responsibility to make every effort to ensure that certain data is accurate so that unauthorized switches are not made, and if they are, take certain action under new §25.495 (relating to Unauthorized Change of Retail Electric Provider) with respect to remedying an unauthorized switch. Diligence by REPs, such as cross referencing an applicant's service address with the given ESI-ID to ensure a match, will reduce the number of inadvertent switches in the market, thus reducing cost to market participants and reducing inconvenience to customers. In addition, the commission does agree with Consumer Groups that it may be helpful for REPs to request copies of information to verify such data, and encourages REPs to do so when appropriate.

The commission declines to amend §25.474(d) as requested by the REP Coalition because the language requested by the REP Coalition is overly broad, and potentially makes the enforcement of commission rules more difficult. The commission will instead, as permitted and required by PURA §15.023, take into account what information a REP has received from customers in determining whether or not to initiate enforcement actions, and in determining the amount of any administrative penalty.

The REP Coalition suggested amending §25.474(d)(5)(C) to clarify that a REP is not required to obtain a voice recording of an applicant's language preference when enrolling via the Internet. They suggested language that would still mandate the REP to keep a record of the language preference.

The commission agrees that this language could be misinterpreted as requiring a voice recording. Therefore, the commission amends §25.474(d)(5)(C) to require a REP to “document” the applicant’s language preference instead of “obtaining and recording” the preference.

The REP Coalition suggested amending §25.474(d)(5)(G), which requires a REP to disclose any requirement to pay a deposit and the estimated amount of the deposit, to allow a REP to only disclose the method used to calculate the deposit, consistent with the commission’s revision to §25.475(d)(5)(E).

The commission agrees with the REP coalition and modifies §25.474(d)(5)(G) accordingly.

The REP Coalition also noted that §25.474(d)(5)(J) suggests that an applicant will have the right to rescind from the time the terms of service is received until the actual switch is completed. They suggested revising this subsection to avoid the implication that the right of rescission extends beyond the three federal business days as allowed in the rule.

The commission agrees with the REP Coalition and deletes the phrase “before the applicant’s electric service is switched to the REP” at the end of §24.474(d)(5)(J).

OPUC and Consumer Groups commented that §25.474(d)(7) should be amended so that a REP that is enrolling a customer via the Internet should provide the new customer an option to have a written copy of the terms of service document sent by regular U.S. mail. They noted that customers who enroll via the Internet but who do not own their own computer may not be able to print or save the terms of service document. The REP Coalition opposed this, arguing that it is likely that any customer choosing to enroll via the Internet is doing so to avoid receiving

countless, unwanted paper documents through the mail. Furthermore, the REP Coalition believed that it is a safe assumption that customers enrolling through the Internet will have access to a computer, will be able to save a copy of the terms of service, and will be able to print the terms of service with little to no cost and effort.

The commission agrees that most customers who enroll electronically are likely to have access to a computer where they can save or print a copy of the terms of service. The commission also agrees that customers who enroll electronically may be doing so to avoid receiving paper documents through the mail. However, the commission understands the concerns voiced by the Consumer Groups and OPUC concerning customers who may enroll using a public computer and who may want to receive a copy of the terms of service through the mail. Therefore, the commission finds that it is reasonable to amend §25.474(d)(7) to require REPs to inform customers that they should contact the REP if they desire to receive a written copy of the terms of service through the mail.

Currently §25.474(d)(10)(E) requires the REP to obtain account holder verification data, from the applicant prior to confirming enrollment. Because REPs use this data to verify the identity of the account holder on subsequent customer service calls, the REP Coalition recommended amending this subsection to refer to “account access verification data.” In addition, the REP Coalition argued that the language should be changed from requiring REPs to “obtain” the information to requiring REPs to “request or confirm” the information to account for cases when an applicant refuses to provide such verification data. Also, the REP Coalition requested that REPs be allowed to request a driver’s license or government issued identification number as

verification data. Finally, the REP Coalition recommended that REPs be allowed to request or confirm a non-residential applicant's federal tax identification number as verification data.

The commission agrees with the REP Coalition, and has revised the language in §25.474(d)(10) to indicate that the REP shall “obtain or confirm” the applicants information during the verification process and to permit the use of a federal tax identification number for non-residential customers. The commission also adopts the REP Coalition’s recommendation to use the term “account access verification data.” The commission also makes corresponding changes to §25.474(e) and (h) to provide consistency across the varying enrollment options.

§25.474(e)

Consistent with their comments on §25.474(d), the REP Coalition stated that this subsection should acknowledge that REPs have no way to ascertain whether certain information provided by applicants during enrollment is, in fact, accurate. The Consumer Groups stated that a REP should be responsible for assuring that the information it processes is accurate. They argued that the language suggested by the REP Coalition would provide an easy out any time a customer is slammed because of a faulty address or a switch is lost in the customer registration system because the ESI-ID was incorrect. They suggested that if address problems are common, then the REP should confirm such information by requesting that the applicant fax a driver's license, electric bill, or lease be faxed to the REP.

The commission declines to adopt the REP Coalition’s suggestion for the reasons stated in response to comments on §25.474(d).

The REP Coalition suggested that §25.474(e)(3) be amended to clarify that a description of an inducement may be included on an LOA, but the actual inducement may not be included on the LOA.

The commission agrees that this suggested revision clarifies the commission's intent and amends §25.474(e)(3) accordingly.

Fire Fly argued that a REP offering prepaid service, which is capped at the rate charged by the POLR, should not be required to disclose the actual price of the product on the LOA, as required by §25.474(e)(5)(D). Instead, Fire Fly proposed that in that situation, a REP should be allowed to disclose an estimated rate along with how the actual rate will be calculated. If the actual rate must then be changed, Fire Fly proposed that the REP notify the customer as soon as that information becomes available.

The commission believes that the language in §25.474 and §25.475 is sufficiently broad to permit REPs offering pre-paid service or other electricity products where the price is variable sufficient latitude to disclose estimated rates and adjustment mechanisms to customers in lieu of a single cents per kWh rate. However, the commission believes it appropriate to require all REPs to adequately disclose the price of their product to customers and declines to amend the rule.

Consumer Groups stated that §25.474(e)(5) should be amended to require disclosure of a customer's right to post a letter of guarantee in lieu of a deposit, or to have their deposit waived or paid in installments. The REP Coalition opposed this, arguing that most often, customers are aware of their right to post a letter of guarantee without being informed. Regardless, the REP

Coalition, added, customers are informed of such rights in the terms of service and YRAC document. The REP Coalition asserted that explaining these requirements during the authorization process would result in unnecessary customer confusion and prolong the already lengthy enrollment process.

The commission agrees with Consumer Groups that if a REP notifies a customer during the enrollment process that a deposit is required as a condition of enrollment, then the REP should also notify the applicant of the right to post a letter of guarantee, in the case of the affiliated REP and the POLR. However, the commission agrees with the REP Coalition that requiring REPs to list the entire list of items that can establish satisfactory credit will in most cases unnecessarily prolong the enrollment process. The commission does note that §25.478 provides for certain provisions relating to how a customer can demonstrate satisfactory credit with affiliated REPs and POLRs, and expects REPs to honor those provisions. The commission further notes that §25.478(f)(3) already requires REPs to provide notice to customers of the opportunity for customers eligible for the rate reduction program to pay deposits in two installments as part of any written notice requesting a deposit.

The commission has amended §25.474(e)(5)(G) to require affiliated REPs and POLRs to notify applicants of the right to post a letter of guarantee in lieu of a deposit. The commission also makes similar changes to §25.474(d)(5)(G) and §25.474(h)(4)(F) to provide consistency across the varying methods of enrollment.

§25.474 (f)

The REP Coalition argued that §25.474(f)(1)(F) and §25.474(f)(2) should not prohibit a REP enrolling a customer through door-to-door marketing from making an outbound call to a third-party agent to obtain the necessary authorization and verification information. They declared that it is not necessary for the commission to regulate whether the call verifying the applicant's enrollment is an inbound or outbound call. Additionally, the REP Coalition stated that the requirement that a REP obtain verification of enrollment within 48 hours is overly restrictive. They argued that it should not matter when the verification is obtained, as long as it is obtained prior to the switch being processed.

Fire Fly objected to the proposed requirement that a REP enrolling a customer through door-to-door sales obtain a recorded telephonic verification of the customer's authorization within 48 hours. In addition, they argued that providing the new customer with a number to call to verify enrollment is an inherently unreliable method and may seem burdensome to the customer. Fire Fly argued that for customers enrolling with a REP for prepaid electric service, the initial prepayment should qualify as verification of the customer's authorization.

The commission agrees with Fire Fly that an initial prepayment for electric service can qualify as verification of the customer's authorization for the reasons stated in response to the comments submitted in response to question three.

The commission does agree with parties' comments that it is not necessary to specify in the rule whether the verification call is inbound or outbound or whether it is completed within 48 hours after authorization. Subparagraph 25.474(f)(1)(F) has been deleted in response to

this and the comments provided in response to question three. Paragraph 25.474(f)(2) has been amended to remove the prescriptive requirements relating to the nature and timing of the verification call.

§25.474(g)

The REP Coalition asserted that the requirements of §25.474(g) should be limited to personal solicitations of residential customers only at places other than their residences, because the current rule language suggests that when calling on a sophisticated business customer, the sales representative would be required to display the name of the REP on her outer clothing or display an identification badge with the name of the REP.

Consumer Groups argued that all in-person solicitations give rise to the same concerns that the verification requirements are meant to remedy. Therefore, they maintained that REPs should be required to obtain a recorded telephonic verification from customers enrolled through all personal solicitations. The REP Coalition agreed that residential door-to-door enrollments should require additional protections because of the increased likelihood of abuses associated with these sales. However, they disagreed with this proposal, stating that there is no evidence to suggest that enrollments at public locations have experienced the same types of abuses. Further, they asserted that such abuses are not likely to occur at a public location where the REP's behavior is subject to public scrutiny and the prospective customer who initiated the encounter can simply walk away. Therefore, the REP Coalition argued, it is not appropriate or necessary to impose enhanced requirements for residential premise enrollments on enrollments conducted in public places.

The commission agrees that the identification requirements are not necessary for solicitation of business customers at their business location. Instead of limiting the §25.474(g) to residential customers, the commission instead will limit the identification requirements in §25.474(g)(1) to residential customers. The commission believes that the other requirements in §25.474(g) should be retained for solicitations of all customers. The commission also adds language to §25.474(g) to clarify that this subsection applies to solicitations in locations other than a customer's residence.

The commission agrees with the REP Coalition that it is not necessary for a REP to obtain telephonic third-party verification for in-person solicitations in public places. The commission has determined that enhanced verification requirements are necessary for door-to-door sales conducted at an applicant's home due to concerns about prior activities of door-to-door sales agents who have allegedly conducted deceptive marketing. The commission agrees with the REP coalition that the nature of solicitations in other public venues suggest that it is unlikely that similar abuses will occur, and notes that it does not appear that, to date, enrollments conducted at public venues have experienced the same problems. The commission therefore declines to make the change suggested by the Consumer Groups.

§25.474(h)

The REP Coalition argued that allowing an applicant the option to exit an automated verification system to talk to a live person defeats the purpose of the automated system and is inconsistent with the policies set forth in this section of the rule. Instead, the REP Coalition suggested

amending §25.474(h)(4) to allow the applicant to completely exit the automated enrollment at any time, thus nullifying the enrollment.

In addition, the REP Coalition argued that the sales agent should not be required to drop off the call when a third-party connection is established to verify the applicant's enrollment. Although the REP Coalition agreed that the sales agent should not participate in the call during the verification process, they argued that requiring the sales agent to completely drop off the call prevents the agent from answering possible questions and properly closing the call once the verification is completed.

The commission agrees that REPs should have the option of allowing a customer to completely exit an automated verification system or to exit the automated system in order to talk to a live person. The commission therefore amends §25.474(h)(4) (now (h)(1)) to provide this flexibility to REPs. The commission has also reorganized this section and moved this provision to §25.474(h)(1).

In addition, the commission agrees that it is reasonable to delete the requirement that a sales agent completely drop off a verification call. However, the commission emphasizes that the sales agent shall not participate in the verification call. Paragraph 25.474(h)(5) has been deleted accordingly.

The REP Coalition suggested that §25.474(h)(6) be revised so that a REP is not required to record the portion of the enrollment in which the REP discloses to the applicant the information listed in subparagraphs (A)-(I). They stated that only the verification of the authorization should be documented. The Consumer Groups opposed this suggestion, stating that REPs must be held

accountable for their actions and a voice recording of the authorization provides unambiguous evidence of the key terms of the agreement and the customer's assent to enroll. Consumer Groups contended that the REP or aggregator should be required to record the entire sales call and maintain the recording for six months. The REP Coalition opposed this suggestion, stating that it is unduly burdensome to require REPs or their agents to audio record the entirety of the sales conversation. They argued that this would lead to significant increases in costs for customer acquisition and would stifle competition.

The commission disagrees that it is necessary or useful to require REPs to record the entire sales call. The commission also disagrees with the REP Coalition with respect to only requiring the recording of the verification portion of the sales call. The commission believes that REPs should be required to record both the authorization disclosures in §25.474(h)(4) (formerly §25.474(h)(6)) as well as the verification of that customer's authorization, as required by §25.474(h)(5) (formerly §25.474(h)(7)). Such a recording will capture the REP's disclosure of the key terms as well as the customer's clear assent to enrolling with the REP. Recording only the verification is insufficient because it is the authorization portion of the enrollment that shows evidence that the REP has properly informed the applicant of key terms and disclosed the applicant's right of rescission. Documentation of this information is imperative because the commission must have sufficient tools to enforce this and all customer protection rules. The commission believes that this strikes a fair balance and establishes a necessary safeguard for both customers and companies.

Consumer Groups argued that §25.474(h) does not go far enough to protect customers from unfair, fraudulent and misleading sales pitches from telemarketers. They suggested that

commission require an independent party using a commission-approved script should perform all verifications. The REP Coalition, Direct Energy, GMEC, and TEAM responded that commission-approved scripts are not appropriate in a competitive market and are unnecessary when market rules are clear and provide adequate safeguards and customer protections.

The commission agrees with the REP Coalition that it is not necessary to require every REP to use an independent party using a commission-approved script. The commission believes that these amended rules provide clear requirements for REPs to follow with respect to the enrolling customers, including in some cases, specific language that must be used. As long as the requirements of the commission's rules are followed, the precise scripting of verification is not important, unless required by rule.

Fire Fly argued that a REP enrolling customers for prepaid electric service should not be required to obtain a recording of the customer's verification of authorization. Instead, they suggested that an initial prepayment should be acceptable as verification. Fire Fly asserted that if a customer authorizes a switch via the telephone, the makes a pre-payment for new electric service, then there should be no need to record the initial enrollment call or to verify it.

The commission agrees with Fire Fly for the reasons stated in response to question three with respect to the use of an actual prepayment as verification of the customer's authorization. The commission believes that the authorization portion of the sales call should be recorded for all enrollments to ensure that the appropriate disclosures are made. However, for pre-paid services, production of an actual pre-payment may be substituted for a recording of the verification.

Also, Consumer Groups stated that §25.474(h)(6) should be amended to require disclosure of a customer's right to post a letter of guarantee in lieu of a deposit.

OPUC suggested that §25.474(h)(7)(C) be amended to clarify that any independent third party that verifies enrollments with a REP shall electronically record the entirety on audio tape, wave sound file, or other recording device. This would ensure that telephonic verifications for door-to-door sales are recorded also.

Consumer Groups noted that the proposed rule eliminates the requirement that the third-party verifier be separate from an aggregator. They stated that if the goal is to have all customer enrollments verified by a third party independent of the party who solicited and enrolled the customer, then this provision should apply to aggregators as well as REPs.

The REP Coalition argued that it is inappropriate for the commission to mandate payment structures for third-party verification companies. Therefore, they argued, §25.474(h)(7)(C)(ii), which prohibits a third-party verification vendor from having a financial incentive to confirm change orders, should be eliminated.

The REP Coalition requested that §25.474(h)(7)(B)(iii) be clarified to note that a third-party verification vendor may provide information about a REP or its services as necessary to authorize an applicant's enrollment or verify an applicant's authorization.

The commission agrees with OPUC that the verifications required by this subsection must be recorded. However, because of the prescriptive requirements related to the content of the verification call, and the requirement to record the verification call, the commission declines to require the use of an independent third party, as the use of a third party does

not provide any additional benefits to customers or the commission, as the verification will be recorded anyway. Because the commission is not requiring the use of third parties, the commission agrees with the REP coalition that it is inappropriate to mandate payment or other structures. The commission notes however, that no matter what party is conducting the verification, the requirements of this subsection must be met.

The commission amends §25.474(h) to remove the requirements related to third-party verification vendors.

The REP Coalition recommended deleting §25.474(h)(7)(A)(ii), which requires a REP to obtain an applicant's ESI-ID if the applicant is enrolling over the telephone. They argued that there is substantial room for error when trying to capture this information over the telephone. However, the Joint TDUs urged the commission to require that customers being enrolled telephonically affirmatively provide their ESI-ID to the REP rather than "confirming" their ESI-ID. They argued that this will help avoid inadvertent switches and the resulting inconvenience and expense to all market participants and customers. In reply comments, the REP Coalition opposed this suggestion because, they said, many customers do not have this information readily available when enrolling. The REP Coalition pointed out that once a REP verifies the customer's service address, it can obtain the ESI-ID from the ERCOT portal.

The commission agrees with the REP Coalition that requiring an applicant to affirmatively provide a lengthy ESI-ID is likely to lead to errors and that in many cases, the customer may not readily have access to the ESI-ID. Therefore, the commission finds that a REP

should attempt to verify the customer's ESI-ID, but only if it is available, as proposed. No change has been made.

The REP Coalition proposed amendments to §25.474(h)(7)(A)(iii) to clarify the verification process for a move-in compared to a switch.

The commission agrees that this clarification is necessary and adds new provisions to §25.474(h)(5)(B) (formerly §25.474(h)(7)(A)) to specify the required verification questions for move-in requests.

§25.474(i)

The REP Coalition urged the commission to retain the current language in §25.474(i)(1), wherein the REP must provide information or records to the customer or commission Staff upon request. The REP Coalition asserted that OPUC is charged with the very narrow and important responsibility of advocating the interests of residential and small commercial customers in utility-related proceedings. They argued that this subsection, as proposed, is too broad and may be beyond the statutory authority afforded by PURA §39.101(d).

In contrast, the Consumer Groups urged the commission to allow OPUC access to such records. Not doing so, they argued, would thwart OPUC from carrying out duly authorized actions in representing consumers under PURA. They stated that PURA Chapter 13 gives OPUC authority to represent the interest of certain classes of customers in a variety of ways, specifically to assess the effect of regulatory actions on residential customers in the state, advocate positions that are advantageous to residential customers, intervene or participate on behalf of customers, and represent individual customers in disputed complaints. OPUC asserted that the authority of

OPUC to have access to customer information is necessarily implied from their duty to legally represent residential and small commercial customers. Without customer information, OPUC argued, it would be impossible for them to carry out those functions and represent residential customers. Further, they said that to interpret the commission's rules as prohibiting the duly authorized legal representative, OPUC, from access to customer information would severely diminish and alter OPUC's ability to advocate and protect consumer interests, and thus violate the commission's own substantive rules.

The commission agrees with the REP Coalition that §25.474(i) should remain the same as it currently exists in the rules, wherein a REP must provide such records to the customer or the commission Staff upon request. This provision is intended to ensure that the commission and commission Staff have an adequate ability to obtain the information necessary to monitor compliance with commission rules and effectively conduct enforcement activities when necessary pursuant to the authority given to the commission by PURA, including §14.002, §15.023, and §17.001(b). While OPUC is not responsible for enforcing commission rules, PURA §39.101(d) does require REPs to provide to OPUC annually and upon request certain information relevant to the customer safeguards of PURA §39.101. To the extent that PURA §39.101(d) includes a customer's authorization and verification, OPUC can request that information directly from REPs.

The commission disagrees with Consumer Groups that OPUC necessarily needs, as part of the adoption of these rules, an ability to request authorization and verification documents to exercise OPUC's statutory powers granted to the office under PURA §13.003. The commission notes that §25.474(i)(3) requires REPs to provide proof of authorizations or

verifications to a customer upon that customer's dispute of an enrollment or switch. To the extent OPUC represents that customer before the commission pursuant to PURA §13.003(a)(7), OPUC would be able to obtain the authorization and verification information from the customer. Additionally, to the extent authorization and verification documents are an issue in a contested proceeding before the commission, OPUC would, if OPUC were a party to the proceeding, be able to request those documents in discovery pursuant to PURA §13.003(a)(7). The commission also notes that PURA §13.003 entitles OPUC to the same access as any other party, except commission Staff, to records gathered by the commission under PURA §14.204, which relates to records of public utilities, not REPs. As such, additional provisions in these rules are not required.

§25.474(j)

The REP Coalition argued that the rules should clearly distinguish the difference between the terms "rescission" and "cancellation." They stated that the right to rescind has the effect of voiding the terms of service; whereas the right to cancel is specific to the switch transaction. The REP Coalition asserted that using the same term for two different rights would be confusing for customers. However, OPUC and Consumer Groups argued that §25.474(j) should be titled right of "cancellation," not "rescission" because the terms are interchangeable, but that the term "cancellation" is more customer friendly. Further, OPUC asserted that "rescission" is a legal term, and its meaning may not be clearly understood by many customers. Alternatively, OPUC suggested that the rules state "rescission or cancellation" and include a definition of rescission. In addition, OPUC suggested that a REP should define the term in the document in which the term is used.

Further, OPUC commented that any REP that receives a late notice of cancellation from the customer shall contact the registration agent and cancel the pending switch as soon as possible.

The REP Coalition asserted that the right to cancel a switch is not absolute, and that in the event that the cancellation fails, the rights and obligations of the parties under the terms of service should apply until another provider is selected. Accordingly, they suggested that this subsection be revised to indicate that cancellation refers to a customer's right to attempt to cancel the switch transaction by contacting the registration agent. The REP Coalition also suggested that §25.474(j) clearly state that the right of rescission does not apply in the case of a move-in.

The commission agrees that the terms “rescission” and “cancellation” are not interchangeable. A customer has the right to *rescind* his or her authorization to enroll with a REP within three federal business days of receiving the terms of service. Separately, a customer may cancel a switch in response to receiving the registration agent's notification. Further, these terms are not REP-specific, but refer to rights given to all residential and small commercial customers. The commission, therefore, makes clarifying changes to this section accordingly in order to clarify where the right of rescission applies, and where a customer may exercise the ability to cancel a switch.

§25.474(k)

The REP Coalition argued that it is not reasonable to expect a REP to anticipate and identify any delays that may prevent an applicant's move in or switch from taking effect on the approximate scheduled date. Therefore, the REP Coalition recommended that §25.474(k) be amended to

delete the requirement that a REP inform an applicant of any delays in meeting the scheduled date.

The commission agrees with the REP Coalition that a REP may not know in all cases that a delay will occur, however, to the extent a REP is aware of delays in processing switches or move-ins, the REP should so inform customers. The commission amends §25.474(k) to only require a REP to inform a customer of delays to the extent the REP knows of any delays.

OPUC commented that a REP should be required to advise the registration agent of any special needs customers and renew such notification to the registration agent annually. This provision is contained in the current §25.474(k) of this rule and OPUC argued that it should be retained. However, the REP Coalition asserted that there is no reason for the registration agent to possess such information because the process of identifying such customers includes the TDU and REP only.

The commission agrees with the REP Coalition that it is not appropriate for the REP to advise the registration agent that a customer is a special needs customer as disconnection requests are not processed through the registration agent. Instead, it is more appropriate for REPs to inform the TDU. Proposed new §25.497 (relating to Critical Care Customers) establishes a standard process to identify such customers. No change to the rule has been made.

Consumer Groups suggested that the commission amend the TDU tariffs to standardize the switch process. The REP Coalition disagreed, arguing that a switch request is an electronic

process established by the registration agent, and the responsibilities and actions assigned to market participants under the associated switch request does not belong in the TDU tariffs or the customer protection rules.

The commission agrees with the REP Coalition that the standard process for switches belongs in the protocols established by the registration agent. The well-established protocol revision process at the registration agent is the proper venue for suggesting any changes to that process. No changes have been made to the rule.

§25.474(l)

OPUC stated that §25.474(l)(1)(A) should be amended to require the registration agent to send the switch notification notice in English and another language consistent with §25.473(d) of this title. OPUC suggested that the REP be required to provide the registration agent with a template switch notification notice in each language in which the REP markets its services. The REP Coalition argued that the commission should reject this suggestion, stating that the electronic transaction processes at the registration agent will not support manual substitutions of the notification template to address multiple language preferences.

The commission agrees with the REP Coalition that requiring the registration agent to accommodate multiple language templates may not be technically feasible. The commission therefore declines to adopt OPUC's suggestion at this time. As noted in §25.473(d), the notification will be provided in both English and Spanish.

AEP commented that §25.474(l) should state that a REP "shall not" submit a move-in request in lieu of a switch request for a customer that already has service established at a premise. AEP

stated that it is concerned that this practice has been used to improperly advance or complete reconnection, especially in the event of a customer that has been disconnected for not paying a bill.

The commission declines to make the change suggested by AEP at this time as move-ins and backdated move-ins are currently being used to facilitate a variety of market transactions, and may be needed in the event of improper disconnections. While the commission generally agrees that REPs should not use move-in transactions to effectuate switches, the commission is concerned that a blanket prohibition will prevent REPs from using move-ins when needed to facilitate the return of a customer who has been inadvertently switched, or to remedy an improper disconnection. The commission encourages market participants to work to develop processes to correct inadvertent switches, inadvertent disconnections, and other errors that do not rely on the incorrect use of defined market transactions.

§25.474(n)

The REP Coalition suggested that §25.474(n) be modified to clarify that a REP may charge fees such as account initiation fees or connection fees.

The commission finds that the current language is appropriate in that it ensures that a customer is not subject to miscellaneous fees simply for enrolling with a REP. The commission does find it appropriate to clarify that a REP may pass through charges assessed by the transmission and distribution company for connections, cancellation of service orders, and other fees associated with switching service or establishing new service.

New §25.474(o)

The REP Coalition proposed new §25.474(o) to establish an immediate effective date for this section, but would state that the commission will not take enforcement action against any REP for violations of this rule prior to August 1, 2004. The Consumer Groups strongly opposed any provision that would prevent the commission from enforcing its rules.

The commission agrees with Consumer Groups that it is not good policy to adopt new, stronger standards to prevent slamming, but not enforce those rules for more than a year after the effective date. Thus, the commission declines to adopt this suggestion. Instead, the commission establishes an effective date of August 1, 2004 in order to permit REPs adequate time to modify their enrollment processes and procedures.

*§25.475, Information Disclosures to Residential and Small Commercial Customers**§25.475(a)*

The Consumer Groups commented that the rules should apply to all REPs and aggregators without exception, so the words “when specifically stated” should be deleted to avoid confusion. The REP Coalition replied that this change is inappropriate given that some provisions of §25.475, such as subsection (d) relating to the terms of service document, are not applicable to aggregators.

The commission disagrees with Consumer Groups that the words “when specifically stated” should be deleted because, as noted by the REP Coalition, not all provisions are

relevant to aggregators. The words are intended to delineate exactly when the rules apply to aggregators and when they apply to REPs and should be maintained.

§25.475(b)

The Consumer Groups commented that consumers should have as much information as possible about the companies selling electricity. The Consumer Groups argued that this rule should provide objective, easily comparable information to consumers about the retail REPs seeking their business. The Consumer Groups urged the commission to publish a REP report card for consumers that would include number of complaints, number of violations, financial integrity, and average number of hours to solve customer problems. Such a report would enable customers to choose based on quality, not just on price, and it would also build consumer confidence in the market by serving as a tool for tracking performance of a company. The REP Coalition replied that such a report card would not be objective because the evaluation criteria are not objective or meaningful, and such a report could erode customer confidence in the market by publishing this potentially confusing and meaningless information to them. The REP Coalition pointed out that reporting the relative number of complaints against a REP is meaningless because not all complaints are legitimate and they can fluctuate widely. Additionally, it is a misleading indicator of quality of service and discloses sensitive information about the number of customers served. Also, the REP Coalition added that revealing the number of violations issued against a REP puts the onus on the commission to ensure the REP a reasonable opportunity to appeal a finding of fault before publishing such numbers. Disclosing financial integrity is too subjective and also not necessary, argued the REP Coalition, because the commission already has rules in place to ensure that customer deposits are protected and customers will be taken care of if their

REP goes under. The REP Coalition also replied that the average response time to a complaint is not meaningful because responses to complaints depend so much on obtaining additional information like a meter read. They argued that the commission's rules already specify how much time a REP can take responding to a complaint.

The commission declines to adopt rule language requiring the commission to produce a “report card” for consumers, because it is generally inappropriate to codify internal commission policies in a rule. The commission agrees that it is critical for consumers to have the information that they need in order to make an informed choice. The commission routinely evaluates the information that the commission publicizes in order to ensure that customers have adequate, relevant information. However, the commission notes that the Customer Protection Division is currently developing such a report card. In addition, the commission already keeps data on the numbers of complaints, and that information is available to any consumer who requests it for purposes of comparison and in decision making.

No changes to the rule have been made in response to these comments.

§25.475(c)

The Consumer Groups commented that the terms “product” and “plan” are not defined as they relate to electric service and to show the similarities and differences between the two. The Consumer Groups added the following definition taken in part from the definition at §25.471(d)(4): Product or plan--the combination of generation, transmission and distribution, and competitive metering marketed to or provided to an end-use customer by a REP disclosed by

an EFL and made available under a standard terms of service agreement. The REP Coalition replied that the term “electricity product” is already defined in §25.5, and that “electric plan” has essentially the same meaning as “electricity product” so it does not need to be defined; it could simply be deleted from the rule.

The commission agrees with the REP Coalition that it is more appropriate to delete the term “plan” and use the term “electricity product” which is already defined. Corresponding changes have been made as needed in §25.475.

The Consumer Groups opposed the amendment in §25.475(c)(1) that requires REPs to include the EFL *only* if the REP makes *specific* claims regarding price or environmental quality. They argued that this would likely mean that a residential customer would not see the EFL until after enrollment is completed. The Consumer Groups argued that this prevents the customer from being able to make a meaningful comparison *before* they actually sign up. Additionally, eliminating “cost competitiveness” from the list of factors that triggers inclusion of the EFL creates a loophole for the REP to make a claim of “cheaper alternative” with no real proof of that claim. The Consumer Groups went on and said that the information contained in the EFL should be provided to consumers at every available opportunity and should be displayed on every REP’s printed advertisement. The REP Coalition disagreed stating that such a requirement would put an end to print ads because of the number of EFLs that some REPs have; it is just not feasible to display the EFL in every print ad.

The REP Coalition pointed out that federal law already requires a provider to substantiate each and every marketing claim it makes. The REP Coalition argued that REPs should not be

required to devote costly advertising space to statements regarding the availability of the EFL unless the ad makes a comparative claim about price or environmental quality. In the instance of such a claim, it is then appropriate for the REP to be required to provide information on the availability of the EFL because the EFL is intended to compare and contrast these specific types of claims (i.e., price and environmental quality). Further, the REP Coalition noted that the language in §25.475(c)(2) does not require a disclaimer in television and radio ads that promote general claims about savings or environmental quality. The REP Coalition commented that this same distinction should be made in §25.475(c)(1) relating to print ads, and identical language found in §25.475(c)(2) should also be used in paragraph (c)(1) to indicate that the disclaimer is not required for general statements about savings or environmental quality.

Environmental Defense, et al., replied that allowing a REP or aggregator to avoid providing the EFL with marketing materials unless there is a specific claim for an electricity product of the REP with respect to a product offered by another REP runs counter to the general practice of disclosures in effect in the U.S. Environmental Defense, et al., argued that disclosure practices for other types of products such as appliances, automobiles, loans, and food nutrition require disclosure of information to allow the customer to make an informed choice among products without conditioning the disclosure on a specific claim about the product with respect to an alternative choice from another supplier. In the case of electricity, it is even more important that the EFL be included in all marketing materials because there is no object (car, can of food, appliance, etc.) to stick the label on; a consumer buys the electricity based on the printed marketing materials, and if it does not have the EFL on it, then there is no disclosure. Environmental Defense, et al., also argued that the legislative history of the disclosure provision

in SB7 included a rejection of an amendment to SB7 that would limit environmental disclosure to specific claims.

The commission agrees with Consumer Groups and Environmental Defense with respect to requiring the EFL or disclosure on all print advertisements, and deletes the term “specific” from §25.474(c)(1) but disagrees with the suggestion that the actual EFL should be required on every print advertisement. Such a requirement is impractical, and, as stated by the REP Coalition, would likely lead to the end of print ads. There are numerous opportunities for the consumer to gain access to the EFL in various mediums before signing up with a particular REP, and the disclosure will ensure that the customer is aware of that opportunity. The commission disagrees with the REP Coalition that the distinction found in §25.475(c)(2) relating to television ads should also be used in paragraph (c)(1) to indicate that the disclaimer is not required for general statements about savings or environmental quality. The commission does not believe that the inclusion of a one-sentence disclaimer is overly burdensome on REPs with respect to print advertisement, unlike radio and television advertisements where there is limited time available for a REP to convey information or outdoor signage or internet ads where there is more likely to be limited space.

The commission therefore amends §25.475(c)(1) to delete the term “specific”, but declines to make other changes.

§25.475(c)(2)

Consumer Groups commented that, as with print ads, the radio and television ads should contain the statement about obtaining further information even if there is no claim of price or savings or environmental quality. Additionally, they argued, REPs should be required to provide the average monthly cost of a customer using 1000 kWh per month, the time period over which the price is valid, and the estimated savings for customers who switch. The REP Coalition pointed out that many of the TV and radio ads are specific to one quality, like environmental quality, or it may simple be a general ad to build name recognition so ads like this should not be required to use valuable advertising resources to disclose such information as savings or pricing terms. Additionally, the REP Coalition argued that the REP is already required to disclose price and terms of service under §25.474 so the customer is already protected.

The commission disagrees with the Consumer Groups concerning the inclusion of the EFL in television and radio ads even if no specific claim is made. If a REP is not making specific claims about price or environmental quality, then the REP should be permitted to utilize the limited time available during a radio or television ad as they best see fit. The commission agrees with the REP Coalition that the consumer is already provided specific pricing information as part of the enrollment process outlined in §25.474, and adding this information in these types of advertisements is unnecessary.

§25.475(c)(3)

Consumer Groups supported the requirement that REPs provide EFLs on their websites and make them directly accessible; however, they argued that it should be made available on the *homepage* of each REP website. The REP Coalition replied in general that the proposed

amendments to §25.475(c) balance the need for information against practicalities of certain advertising modes and disagreed that the EFL needed to be on every REP homepage. The REP Coalition argued that this was not feasible due to the many different EFLs that some REPs have.

OPUC commented that the EFLs should be provided in electronic format to the commission so that the commission may make the EFLs available on a commission-sponsored website. The REP Coalition replied that providing the EFL in electronic format for publishing on a commission website is not necessary because the commission's contractor already maintains current residential pricing information on the "power to choose" website.

The commission believes that the requirement that the EFL be prominently displayed on a REP's website without having to enter personal information accomplishes the goal of making it easily and readily available to the consumer. It is not necessary, nor is it practical, to require every EFL to be put on the homepages of REPs. Additionally, the commission already currently displays EFLs on its powertochoose.org website and believes that this furthers the stated goal of making it readily available. The commission believes, however, that it is inappropriate to place internal commission procedures and policies into a rule.

The REP Coalition commented that if the phone number of the REP is included on an outdoor sign ad in a clear and readable manner, the REP should not have to include the phone number again in the disclaimer statement.

The commission agrees that it is not necessary to repeat the phone number in the disclaimer statement on an outdoor sign as long as the phone number is included on the ad itself and amends this subsection accordingly.

§25.475(d)

Consumer Groups commented that the terms of service should be submitted to the commission and the OPUC for review and approval by the commission. Consumer Groups added that the commission should audit and review the EFLs prepared by REPs for accuracy and truthfulness. OPUC commented that REPs should be required to submit their terms of service documents, if requested, to assist OPUC in carrying out its legislatively authorized duties and functions. The REP Coalition replied that the information to which OPUC is entitled is identified in PURA §39.101(d), and the terms of service document is outside the scope of PURA's directive. Furthermore, the REP Coalition argued that OPUC is not a regulatory entity so providing OPUC material for regulatory purposes is not appropriate given its specialized role in the market and the limited scope of information disclosures specified in PURA §39.101(d).

The commission disagrees that the terms of service should be submitted to the commission or OPUC for approval. The commission or commission Staff may request a copy of a REP's terms of service as needed to monitor compliance with the commission's rules pursuant to the authority given to the commission by PURA §14.002, §15.023, and §17.001(b). While OPUC is not responsible for enforcing commission rules, PURA §39.101(d) does require REPs to provide to OPUC annually and upon request certain information relevant to the customer safeguards of PURA §39.101. To the extent that

PURA §39.101(d) includes a REP's terms of service, OPUC can request that information directly from REPs. Additionally, to the extent terms of service documents are an issue in a contested proceeding before the commission, OPUC would, if OPUC were a party to the proceeding, be able to request those documents in discovery. As such, additional provisions in these rules are not required.

Consumer Groups commented that the phrase "makes widely available" in §25.475(d)(2) is subject to dispute and misinterpretation and should be eliminated, thus making the requirement of an identification number on each terms of service applicable to any product or service offered by a REP for such customers and not just those that are "made widely available." The REP Coalition replied that in situations where only a few customers are enrolled in a plan, the REP should not be burdened with having to track the terms of service document with a specific identifier.

The commission disagrees with Consumer Groups that the phrase is subject to dispute. The commission believes that the purpose of the identification number is to be able for the REPs and commission to adequately track product offerings made to a large number of customers. Terms of service for product offerings that are only made to one or a small number of customers (such as products with individually negotiated rates) do not require the same tracking. No change to the rule has been made.

Consumer Groups commented that §25.475(d)(3) should be amended to require that the terms of service be provided to *anyone* who requests it and they should be entitled to an additional copy of the terms of service, too. Additionally, they argued that full disclosure of the terms of service

for residential products or plans should be required so that consumers who may be shopping for a new REP or who may just want information about their existing terms or other terms with the same company may compare the various terms. The REP Coalition replied that REPs are already required to provide the terms of service document for any product that is offered on a mass basis to residential or small commercial customers, and REPs should not have to provide terms of service documents for products that are not available to every customer.

The commission agrees with the REP Coalition that it is not reasonable, and in fact confusing to customers, to require REPs to provide customers with terms of service for which the customer is not eligible. Requiring REPs to provide the terms of service of currently available products is sufficient to assist customers in comparing providers. The commission declines to adopt the Consumer Groups' proposal.

Consumer Groups opposed the amendment in §25.475(d)(5)(B) to allow REPs to either provide the EFL as a separate document or as part of the terms of service document. Also, they argued that the REPs should be required to submit their EFLs to the commission for approval and should be made available through the Power to Choose program. The REP Coalition replied that the terms of service document and the EFL are intended to serve different purposes and are typically revised at different times for various reasons; thus, they argued, it is more efficient for a REP to print these two documents separately. The REP Coalition argued that as long as the customer gets the EFL in a timely manner, the REPs should be allowed the option to either include it in the terms of service or not.

The REP Coalition commented that if the commission's intention is to allow REPs the option of either printing the terms of service with the EFL included or providing the EFL with the terms of service as a separate document, then the paragraph should be reworded to clarify that notwithstanding any contrary provision of this section, the EFL may either be contained in or provided with the terms of service.

The commission disagrees that REP should be required to submit EFLs for commission approval. The commission believes the requirements with respect to the content of EFLs are clear in the rules, and will enforce those requirements as necessary. The commission also declines to require the commission to post EFLs on the powertochoose.org website, as it is inappropriate to codify internal commission policies in a rule. The commission notes that powertochoose.org currently contains EFLs and terms of service documents for providers that are actively marketing, and the commission anticipates that this will continue as long as the commission has adequate resources to maintain the website.

The commission agrees that the EFL may either be attached to the terms of service or contained within the terms of service. This is for the practical reasons stated by the REP Coalition with respect to the frequency of modification of the documents. The commission also agrees that the critical issue is that the customer receives the EFL, not whether or not it is subsumed within another document. The commission amends §25.475(d)(5)(B) to indicate that the EFL must be included in the terms of service, unless it is provided as a separate document at the same time the rest of the terms of service document is provided.

Consumer Groups argued that §25.475(d)(5)(E) should require a REP to disclose the exact amount of any deposit and not just the *maximum* amount or the manner in which the deposit will be determined. Consumer Groups added that a customer should receive an explanation of: the conditions under which a deposit is required to be waived; the customer's right to post a letter of guarantee in lieu of a deposit; and the right of a customer who qualifies for the rate reduction program to pay a deposit over \$50 in two equal installments. The REP Coalition replied that in some instances, sufficient information is not available at the time of enrollment to calculate the precise amount of a deposit, and as long as the customer knows how the deposit amount is calculated, the customer should be protected.

The commission agrees with the REP Coalition that a REP will not always have sufficient information to disclose the exact amount of a required deposit from a new customer in what will in many cases be a generic terms of service document. The commission finds that it is reasonable to allow REPs to disclose the maximum amount of any required deposit or the manner in which the deposit amount will be determined. Therefore the commission declines to adopt the Consumer Groups recommendation to require REPs to disclose the exact amount of a required deposit in the terms of service document. The commission agrees with Consumer Groups that REPs should provide in the terms of service an explanation of: the conditions under which a customer can demonstrate satisfactory credit (generally in the case of the affiliated REP and POLR), the customer's right to post a letter of guarantee in lieu of a deposit (in the case of the affiliated REP and the POLR), and the right of a customer who qualifies for the rate reduction program to pay a deposit over \$50

in two equal installments. Subparagraph 25.475(d)(5)(E) has been amended to add new clauses (iv) – (vi) to add these requirements.

Consumer Groups commented that §25.475(d)(5)(F) should be amended to require REPs to disclose the *exact* amount of any charges resulting from a move-in or switch that must be paid by the customer should be included in the terms of service, not just a description of the charges. Also, Consumer Groups argued that by listing these charges, it appears that the commission has approved such potential charges. This opens the door to the probability that a REP will disclose the price in cents per kWh, but then include a number of additional charges on the customer's bill for things that are integral to the provision of electricity but not disclosed in the price. Consumer Groups argued that customers should not be charged for a "credit application fee" or a "move-in or switch fee," and any connection or reconnection fee should reflect the actual costs charged by the TDU. The REP Coalition replied that credit application fees are not uncommon or illegal so the REPs should be able to charge them. Additionally, the REP Coalition noted that REPs do not charge fees for a switch or move-in, but a TDU may, and if so, the REP should be able to pass that charge on to the customer. The REP Coalition argued that this subsection was intended to address TDU pass-through charges so REPs should be required to provide a general description of these charges, but not itemize them because these charges and the amounts are diverse and are not controlled by the REP.

The commission agrees with the REP Coalition that where the exact amount of a charge cannot be known, only a description of the charge is necessary. The commission also finds that it is reasonable for the REP to pass charges related to a switch or move-in if that charge is made by the TDU. The commission agrees with the REP Coalition that it not

appropriate for the commission to prohibit REPs from assessing application fees, or other types of one time fees, as long as the fees are adequately disclosed and are not otherwise prohibited by commission rules. The commission modifies §25.475(d)(5)(F) to clarify that this subparagraph is limited to the disclosure of charges assessed by the TDU that may be passed through to customers by removing the term “credit application fees.” The commission also modifies §25.475(d)(5)(H) to clarify that this subparagraph requires the disclosure of charges and fees that may be charged by REPs, and includes application fees in the list of examples.

The REP Coalition commented that §25.475(d)(5)(H) should be amended to remove “collection of outstanding balance” from the required list of itemized charges in the terms of service. They argued that collection costs vary widely based on the degree to which the customer resists payment and based on charges assessed by collection agents so this item should be removed from the list. The REP Coalition commented that this subsection was intended to address charges within the control of the REP. The REP Coalition suggested new subsection §25.475(d)(5)(N) to require REPs to include a description of charges that cannot be quantified, such as collection charges. Consumer Groups replied that the customer should be made aware of all the risks of nonpayment, and, since the cost of collecting outstanding balances can be quite high, REPs should be required to itemize the charges and fees associated with collecting an outstanding debt. Consumer Groups pointed out that, otherwise, there is no guarantee that a REP would not spend more than the outstanding balance to collect it and then pass through those collection costs as an additional charge to the customer.

The commission agrees that all charges that may be assessed by a REP ought to be either itemized or, when itemization is impractical, described to customers. The commission agrees with the REP Coalition that collection costs may not be easily quantified in a standard manner, for the reasons stated by the REP Coalition. The commission adopts the REP Coalition’s suggestion to add a new paragraph, but modifies the recommended language of the REP Coalition such that the new subparagraph applies only to collection charges as no party suggested what other types of charges would also be unquantifiable. The commission also makes a conforming changes to paragraph (H) by deleting the term “collection of outstanding balance”.

Consumer Groups commented that §25.475(d)(5)(K) should be amended to replace the word “rescind” and its forms with “cancel” and its forms. They argued that “cancel” is much more readily understood than “rescind,” but mean the same thing—severing the business relationship with the REP.

The commission disagrees that the words “cancel” and “rescind” mean the same thing, and finds that “rescind” refers to a consumer’s right by law to rescind a contract within three days of signing it, whereas “cancel” refers to the customer’s ability to cancel or end service at any time. No change to the rule has been made.

The REP Coalition commented that §25.475(d)(5)(M) is duplicative of language required to be included in the YRAC pursuant to §25.475(g)(4)(L) and argued that this paragraph should be deleted.

The commission agrees that this is duplicative and deletes proposed §25.475(d)(5)(M).

Consumer Groups commented that §25.475(e)(1) should be amended to require that the written disclosure about the change in the terms of service should be accompanied by a disclosure on the customer's bill that highlights or alerts the customer to the more detailed notice document, and the disclosure on the bill should inform the customer of the nature of the change, (e.g., "increase in price"). They argued that this would prevent bland and uninformative disclosures on the bill that tend to cause the customer to ignore the fine print in the actual terms of service document. The REP Coalition disagreed, stating that compounding this notice with an additional notice on the bill is not likely to increase the customer's awareness and may cause the REP's significant operational problems adding new verbiage to the bill.

The commission agrees with the REP Coalition that an additional notice of changes on the electric bill is not necessary given the requirements of §25.475(e)(1), could even be confusing to the customer, and will likely cause operational problems for some REPs. No change to the rule has been made.

The REP Coalition commented that the right to disconnect should not be a material change to the terms of service document provided that the REP includes in any disconnection notice the language recommended by the REP Coalition in its comments concerning §25.483(m).

As discussed in the response to the comments provided in response to question two, the commission believes that is it appropriate, prior to REPs requesting disconnections for non-payment, for REPs to sent a notice to customers informing their customers of the change in rules.

OPUC recommended that §25.475(f)(1)(A)(ii) be amended to require REPs that bill on seasonal or time-of-day rates be required to include the following disclosure, “The calculated average prices are based on an average customer usage pattern or load profile. If the customer’s actual usage differs from the one used in calculating the average prices, the actual price(s) paid by the customer may differ significantly from the average prices shown.” OPUC argued that because many customers may not exhibit electric usage patterns in conformity with the load profiles selected by the commission for use in determining average price, the average prices calculated in the EFL may not be representative of the average prices actually paid by the customer. The REP Coalition disagreed, arguing that the electricity portion of the EFL already requires the REP to explain why the average price on the EFL may deviate from the customer’s actual experience, and there is probably not enough room on the EFL anyway for such additional language that, if included, would increase density of text causing the EFL overall to be less effective.

The commission agrees with the REP Coalition that the customer is already informed of any potential deviations from the average price calculations required on the EFL, and that it is not necessary to include the additional language suggested by OPUC.

The REP Coalition commented that the term “criteria” in §25.475(f)(1)(F) should be clarified. Since it is intended to refer to the pricing elements described in subparagraphs (f)(1)(A) through (E), the REP Coalition recommended substituting “pricing elements” for “criteria.”

The commission believes that “criteria” is appropriate and well-understood, and it is therefore unnecessary to change the wording.

Consumer Groups commented that §25.475(f)(4) should be amended to require that the bar chart depicting the amounts of pollutants include the common names used to describe the impact of emissions; (e.g., carbon dioxide (global warming), nitrogen oxide (smog), etc.). The REP Coalition disagreed, arguing that adding such imprecise terms would simply clutter the already-busy EFL and would cause customer confusion.

The commission declines to adopt language relating to the impact of the various emissions because there is both overlap and imprecision in the impacts of the various individual pollutants, and adding the proposed language could cause consumer confusion.

The REP Coalition and Fire Fly opposed the requirement that the EFL disclose spent nuclear fuel in the “Emissions” section of the EFL. They argued that it adds complication to the calculation, reporting, and EFL production process without adding any useful information for customers to compare products and therefore should be eliminated. The REP Coalition argued that it is well-known that nuclear power plants generate spent nuclear fuel, thus if the customer desires to avoid nuclear waste, then the customer need only look at the fuel source to determine if the power is coming from a nuclear plant. They contended that the minimal value of providing spent nuclear fuel information on the EFL is outweighed by the complexity of calculating and reporting spent nuclear fuel waste rates. Environmental Defense, et al., disagreed that nuclear waste should be eliminated from the disclosure form and argued that the Utilities Code specifically refers to the disclosure of information concerning the environmental impact of certain production facilities. Environmental Defense, et al., commented that the REP has made assumptions about the degree to which a consumer understands the relationship between nuclear power and nuclear waste. However, they emphasized, the legislation for this issue made no such assumption; the

legislation instead simply said to provide information on environmental impact. Environmental Defense, et al., also commented that it would consider a measure to simplify the nuclear waste calculation, but not the wholesale elimination of nuclear waste from the list of environmental impacts. Consumer Groups responded that the statute refers to environmental impact, and it is undisputable that nuclear waste has an environmental impact so they argued that it must remain on the EFL. They argued that publishing an EFL that reports nuclear power in the fuel mix without showing its environmental impact is misleading and deceptive.

The commission declines to remove spent nuclear fuel from the list. The commission believes that listing nuclear waste is consistent with other forms of fuel and their wastes and helps to promote the precise understanding of how various fuels contribute to pollution.

Fire Fly commented that requiring the emissions and nuclear waste disclosures to be based on data for the most recent calendar year may be impossible for some REPs to do because data such as these usually take a long time to compile and make public. If a REP revises the EFL in the first six months of a calendar year, the data from the preceding year would most likely not be available; therefore, the emissions and waste disclosures should be based on data for the most recent *available* calendar year.

The commission agrees that, in the event the most recent calendar year is not available, that the most recent available year's data should be used. The commission believes that the revisions made to these rules will make the provision of the information needed to develop the emissions and waste disclosures available on a timelier basis.

Consumer Groups commented that §25.475(f)(4)(A) should be amended to display emission rates in such a way as to allow a comparison of the product to the highest and lowest emission rates of all REPs within the state. The REP Coalition disagreed, arguing that there is no rationale to justify abandoning the existing approach, which serves the two fundamental goals of focusing on the particular product's characteristics while also providing a realistic basis for comparative evaluation of that product.

The commission believes that the current method of using the statewide average to obtain an index is valid and appropriate for comparison purposes and declines to change the current comparison method.

Consumer Groups commented that §25.475(f)(4)(C) should be amended to replace the term "statewide system average" with "default and baseline system average." The REP Coalition disagreed, stating that there is no reason to change the existing approach that focuses on the particular product's characteristics while providing a realistic basis for comparative evaluation of that product.

The commission believes that the current method of using the statewide average to obtain an index is valid and appropriate for comparison purposes and declines to change the current comparison method.

ERCOT opposed the requirement that the registration agent calculate the statewide system average, arguing that it would involve significant new tasks for data collection as well as the calculations. ERCOT estimated that at least one full-time employee would be needed to handle these calculations and data management. ERCOT commented that it has no budget in 2004 to

implement these new functions and requested a delay in the implementation of amended portions affecting ERCOT as the registration agent until ERCOT has made the necessary budget changes to accommodate these new functions. The REP Coalition disagreed with ERCOT's suggestion to delay implementation of changes to this subsection arguing that ERCOT is sophisticated enough and has the requisite project management skills necessary to implement the proposed changes without delay.

The commission recognizes that these new functions represent an increase in ERCOT's workload, but believes that it is important that the calculations should be able to be absorbed into an existing position without delaying implementation of the new rule. The commission discusses this issue further in its response to comments in §25.476. This issue is addressed further in the commission response to comments received on §25.476.

Consumer Groups commented that §25.475(f)(5), regarding renewable energy claims, should be deleted. The REP Coalition disagreed, stating that this paragraph allows for verification of renewable energy sales by retirement of renewable energy credits (REC), and achieves the Legislature's goal for renewable energy. Additionally, it ensures the accuracy of the EFL data regarding a REP's renewable energy sales.

The commission agrees with the REP Coalition and declines to delete §25.475(f)(5).

The REP Coalition commented that §25.475(f)(7) should be amended because they argued that a REP should not be required to distribute its EFL to a customer pursuant to this paragraph if it has provided a new EFL to that customer in the past six months. They asserted that a REP need not

have sent a new EFL to *all* of its customers in the past six months in order to qualify for the exemption to the distribution of the EFL.

The commission agrees and has made the requested change to §25.474(f)(7).

Consumer Groups commented that §25.475(g)(3) should be amended to require REPs to submit the REP's YRAC document for commission review and approval. The REP Coalition disagreed, stating that most REPs use the commission's template for the YRAC and should have the flexibility to make changes to it. Additionally, the REP Coalition argued that the burden on the commission to approve each of these documents is enormous and impractical, and the commission already has access to these customer disclosures upon request so that if a concern comes up, the commission can review the documents. The REP Coalition argued that other retail businesses are not required to provide this type of information up front for agency review.

The commission agrees with the REP Coalition that it is not necessary for the commission to approve the YRAC as the commission can request and review them as necessary in order to ensure compliance with the commission's rules and to conduct enforcement proceedings, as necessary.

The REP Coalition commented that there are conflicting interpretations of the Customer Protection rules, §25.124 of this title (relating to Meter Testing), and the TDU tariff concerning meter testing. The various interpretations are leading the TDUs to require that a customer complete and sign a form and fax the form directly to the TDU in order to receive the free meter test. This imposes an enormous burden on the customer and hinders the customer's right to the free test. Additionally, it penalizes the customer as the customer is currently being charged a

meter test fee when the request is coming electronically through the REP. The REP Coalition requested that §25.475(g)(4)(B) be modified to give the REP the authority to order a meter test on behalf of the customer that allows the customer to receive a free meter test as allowed by law. The REP Coalition also recommended that the commission modify the meter test request process within the TDU Tariff for Retail Electric Delivery Service for consistency. The Joint TDUs replied that the REP Coalition's proposal regarding requests for meter tests via standard electronic market transactions is inconsistent with at least one TDU's tariff, (i.e., AEP's Tariffs for Retail Delivery Service section 6.2.3.3.4 on Meter Accuracy and Testing).

The commission agrees that it is overly burdensome to require a customer to sign a form and fax the form directly to the TDU in order to receive the free meter test to which the customer is entitled, in accordance with §25.124. The commission further agrees that a customer should not be denied the free meter test just because the meter test request is initiated electronically to the TDU by that customer's REP. AEP's tariff requires "written request of a Retail Customer." The commission does not agree that this provision necessarily is in conflict with the REP's proposed language. The commission believes that allowing the customer's REP to make that request on behalf of a requesting customer using the established electronic service order transaction provides the most expeditious and efficient method. Therefore the commission adopts the REP Coalition's suggested amendments to §25.475(g)(4)(B).

§25.476, Labeling of Electricity with Respect to Fuel Mix and Environmental Impact

The REP Coalition supported the rule and stated that the proposal would streamline the process and enhance efficiency by placing the data collection obligations directly on generators and REPs, instead of making commission Staff search for and verify the data. Additionally, they argued, using ERCOT's ability to receive and process complicated data and make relevant calculations will also enhance efficiency.

ERCOT commented that the proposed changes will require ERCOT to perform significant new tasks involving the data collection and calculations necessary to provide the generation fuel mix and environmental impact information. They stated that ERCOT has no budget in 2004 to implement the new functionality or staffing required by the proposed changes. Therefore, ERCOT requested a delay in the implementation of amended portions of this rule affecting ERCOT until necessary changes can be made to its budget, systems, and staffing.

Consumer Groups supported the proposal to require ERCOT to collect the data and perform the calculations necessary for REPs to disclose the fuel mix and environmental impact of their electricity products. Further, they opposed ERCOT's request to delay implementation of this requirement for budgetary reasons. Consumer Groups noted that ERCOT already collects and manages data necessary to perform the emissions calculations. For example, ERCOT already monitors the amount of energy each REP purchases from each generator and from the spot market for wholesale settlement purposes. Even if the proposed additional tasks require a full time equivalent employee, the Consumer Groups argued, ERCOT already has sufficient resources to complete the tasks within its existing budget. They commented that the need for one additional employee at an organization that has already planned to add more than 500 employees over the next year with a budget of almost \$140 million should not be problematic.

The commission declines to delay the implementation of this rule as requested by ERCOT. The amendments to this rule will streamline the data collection and calculations required to provide the generation fuel mix and environmental impact information for REP's EFLs. Data collection (reporting) will be placed on generators and REPs instead of requiring that ERCOT search for and verify data, as commission Staff currently must do under the existing rule. Further, the commission believes that the rule would require minimal effort and staff time from ERCOT to calculate the data once per year.

§25.476(b)

Consumer Groups suggested that the rule require an independent third-party auditor to review the data, report its findings to the commission, and comply with any confidentiality provisions imposed by the commission. The REP Coalition responded that this is unnecessary because the proposed rule already provides for independent third-party review in that the independent organization (ERCOT) will collect the data reported by generation companies and REPs, and will process the data and post the information that REPs will need to perform the calculations that will be reflected on their EFLs.

The commission agrees that requiring a third-party auditor to verify information submitted by generators and REPs is unnecessary and declines to adopt this recommendation.

§25.476(e)

The REP Coalition stated that the phrase "emission rate threshold values as described in this paragraph" in §25.476(e)(5) should be clarified because it does not appear that any provision in

the proposed rule addresses any such threshold values that ERCOT would need to calculate. If that phrase is intended to mean the statewide system average emissions rates for each type of emission, then the language should be amended to clarify that intent.

The commission agrees that this clarification is necessary and makes the recommended change to §25.476(e)(5).

§25.476(f)

The REP Coalition argued that displaying the environmental impact of spent nuclear fuel does not provide any meaningful benefits that would outweigh the burden of calculating and displaying that information. However, the Consumer Groups opposed this suggestion. They argued that PURA refers to environmental impact and that nuclear waste clearly has an environmental impact. In addition, they stated, it would be misleading and deceptive to issue an EFL that disclosed nuclear power in the fuel mix without showing the corresponding environmental impact.

The commission declines to remove spent nuclear fuel from the list. The commission believes that listing nuclear waste is consistent with other forms of fuel and their wastes and helps to promote the precise understanding of how various fuels contribute to pollution.

The REP Coalition recommended that the commission add language in §25.476(f)(5) to clarify that actual energy generation produced by certified REP offset generators can be used to verify the renewable attributes of a REP's electricity product.

The commission agrees that this clarification is necessary and amends this paragraph accordingly. The commission also makes a corresponding change to §25.476(f)(6) with respect to the calculation of emissions rates in order to provide consistency between the two provisions.

New §25.476(g)

The Consumer Groups suggested adding new §25.476(g) to require REPs to compare the environmental impact of a REP's product to the highest and lowest emissions rates in the state. For reasons already stated in response to the comments received regarding question four, the REP Coalition opposed this suggestion.

The commission believes that the current method of using the statewide average to obtain an index is valid and appropriate for comparison purposes and declines to change the current comparison method.

Consumer Groups suggested that the commission post on its Power to Choose website each product-specific emissions rates submitted by REPs.

The commission declines to adopt this recommendation, as it is inappropriate to codify internal commission practices in a substantive rule. Furthermore, the commission's powertochoose.org website already posts copies of each REP's EFL for easy comparison, and the commission expects to continue this practice as long as the commission has the resources to do so.

The REP Coalition recommended that this section take effect 20 days after the date the amendments are filed with the Secretary of State. To avoid interruption of the process for collecting the most recent generation data, they argued that the amendments to subsection (f) should take effect on March 15, 2004. In addition, they noted that the information due on March 1, under the proposed rule, should be obtained through a request for information from commission Staff.

The commission finds that the effective date of this section should continue to be June 1, 2004, as provided for in §25.471. The commission acknowledges that this effective date will require that the fuel mix and emissions calculations for 2004 to be conducted under the existing rule. The commission Staff will work with parties in a collaborative fashion to calculate and provide the required data as promptly as possible for 2004 and to implement the provisions of this rule.

§25.477, Refusal of Electric Service

The REP Coalition generally agreed with the proposed section, but requested the consistent application of the terms “applicant” and “customer” throughout the rule.

The commission has changed the words “applicant” and “customer” throughout §25.477 where appropriate.

§25.477(a)

The Consumer Groups commented that §25.477(a)(4) should be amended to clarify that “offering the customer the opportunity to pay an outstanding debt” to include the offer of a

deferred payment plan. OPUC agreed that all REPs should be required to offer a deferred payment plan to customers with an outstanding balance, and stated that under §25.480, affiliated REPs and POLRs are required to offer deferred payment plans, so competitive REPs should be required to do so too. Consumer Groups argued that if customers are willing to pay their outstanding debt, they should not be penalized if they cannot pay the balance all at once. Furthermore, Consumer Groups asserted that requiring such a plan will ultimately assist REPs in managing their bad debt so this is a “win” for REPs and customers. Consumer Groups pointed out Entergy’s Reconnect Package program as a good example of a program where customers are allowed to re-establish credit with the company and may pay off their prior debts over a twelve month period or longer if necessary. The REP Coalition argued against requiring all REPs to offer deferred payment plans. They stated that the fact that the customer has an unpaid balance is evidence that the customer may have already been granted a deferred payment plan, and offering such a plan again would reward such a customer by providing yet another chance with no proof that the customer will pay, thus leading to even further bad debt exposure. Furthermore, the REP Coalition offered that most REPs could attest that deferred payment plans do not assist REPs in managing their bad debt.

The commission declines to adopt the Consumer Groups suggested language as the obligation of REPs to offer a deferred payment plan only extends to customers who have not been issued more than two disconnection or reconnection notices in the previous 12 months. Further, the commission declines to require all REPs to offer the customers an opportunity to pay outstanding balances. As discussed previously, the affiliated REP and POLR have an obligation to provide service to most customers if requested, whereas other

REPs do not. The commission notes that §25.480(j) has been amended to require all REPs to offer a deferred payment plan to a customer that expresses an inability to pay a current balance due, as long as that customer meets certain criteria as required by §25.480(j)(3). As discussed in the commission's response in §25.480(j), customers should be encouraged to contact the REP before disconnection to make payment arrangements. Although the commission declines to adopt a requirement that REPs offer an applicant a deferred payment plan to initiate service, REPs are certainly encouraged to offer such an option as they see fit.

Consumer Groups commented that §25.477(a)(7) is a catchall provision under which nonaffiliated REPs can refuse service and gives too much discretion to providers and invites abuse; therefore, they argued, it should be stricken from the rule. If there are other specific nondiscriminatory reasons for refusing service, Consumer Groups argued that those reasons should be enumerated here and not left to the discretion of individual REPs. Consumer Groups argued that allowing REPs this kind of leeway to refuse service while simultaneously granting the power to disconnect will result in customers being terminated who will be faced with paying an outstanding debt to a REP (that probably will not take them back) just so the customer can qualify for service from the higher priced POLR. The REP Coalition recommended that this subsection remain unchanged, stating that not allowing a competitive REP the ability to refuse service based on non-discriminatory criteria is unreasonable and anti-competitive as it prevents the REP from being able to distinguish itself and gain a competitive edge.

The commission believes that §25.471 reasonably protects the consumer from the kinds of abuses for which Consumer Groups has voiced concern. The commission also believes that

it is reasonable to allow competitive REPs other than the affiliated REP and POLR non-discriminatory reasons for refusal of service in a competitive market.

§25.477(c)

Consumer Groups commented that the reference to 15 U.S.C. §1691 in §25.477(c)(1) is for the Equal Credit Opportunity Act (ECOA), not the Fair Credit Reporting Act (FCRA), and should be corrected. Additionally, they pointed out that this paragraph should also reference 15 U.S.C. §1691(d) of the FCRA. A REP who refuses service on the basis of credit is also obligated to inform consumers of their right to obtain a free copy of their credit report under the FCRA, 15 U.S.C. §1681(m). Consumer Groups asked that the commission require both disclosures. Also, the implementing regulations of the ECOA are codified at 12 C.F.R. §202 and should also be noted in this subsection. Consumer Groups also commented that the verbal explanation of specific reasons for service refusal should be accompanied by an offer to provide written confirmation of the specific reasons for refusal so that the onus is not entirely on the customer to know to request the written notification when they may not even be aware of their right to request it. Requiring the REP to inform customers of this right is a middle ground that avoids the burden of requiring the REP to automatically provide written confirmation while keeping the customers informed of their rights. Consumer Groups commented also that the verbal notification should occur at the time of application or verification (when this occurs by telephone) or within five business days, and then the written confirmation should be provided within twenty days of the customer's request. Requiring a deadline like this gives incentive to the REP to provide customers with the specific reasons for refusing service in a timely manner and will act as a barrier to customers seeking to file a complaint with the commission against a

REP that refuses service, as this is information that would be needed for the commission's investigation of the complaint. The REP Coalition disagreed, stating that the FCRA establishes criteria and timelines that must be adhered to when notifying customers that they have been refused service based on credit, and this is sufficient to ensure that customers receive proper and timely notification. Furthermore, the REP Coalition argued that it is not necessary to inform the customer of their right to receive a written response because it is redundant and an administrative burden.

OPUC commented that the notification process as proposed is too lengthy and will harm consumer's attempt to establish electric service. The FCRA referenced allows a company up to 30 days to accept or reject a credit application and then gives the creditor another 30 days to reply to a written request by the customer for the reasons regarding the credit refusal. They argued that this would result in delays for the provision of electric service to customers who have less than sterling credit histories. OPUC recommended that notification of refusal of service be within five days, and then if the customer requests a written response, the REP should provide a written response "stating in detail the reasons for refusal" in 30 days. OPUC argued that a detailed response is necessary to enable the customer to better understand the reasons service was denied so that the customer can correct or amend any credit deficiencies. OPUC also supported the provision of specific reasons within five business days and believes that it will result in a lower number of written requests for detailed reasons than would normally occur without the provision. The REP Coalition disagreed with the requirement that written notice be provided "in detail" stating that it is overly broad and unwarranted, and there is no indication that the current method of informing customers is inadequate.

The commission amends §25.477(c) in response to the comments of OPUC and Consumer Groups in order to require REPs to notify customers of the reasons for a refusal of service, but permits REPs to combine that disclosure with other disclosures required by law. The commission also corrects the reference to the Equal Credit Opportunity Act and, in response to the comments of OPUC and Consumer Groups, also adds a correct reference to the FCRA, in order to ensure that all REPs understand their obligation to follow both statutes. The commission declines to further amend this rule to reference the more specific portions of these laws as requested by Consumer Groups because it is unnecessary.

The REP Coalition asked the commission to amend §25.477(c)(3) to clarify that when a REP provides notice to a customer for refusal of service, the information in §25.477(c)(3)(A)-(E) be included in the *written* notice only. Consumer Groups disagreed and argued that insofar as the written notice is not mandatory, this amendment would obliterate the disclosure requirements applicable when REPs refuse service because a customer would only have to be given the information in §25.477(c)(3)(A)-(E) *if* the customer requests to be notified in writing. Consumer Groups pointed out that customers will not have to be told that they can file a complaint with the commission regarding the REP's refusal or that other competitive REPs may be available to serve them. Additionally, Consumer Groups argued that these disclosures should be both verbal and in writing because a customer who is refused service should not have to wait to receive a written notice to find out that they can file a complaint or that there may be other service options for them.

The commission agrees with the Consumer Groups that the information in §25.477(c)(3)(A)-(E) should be provided to the applicant or customer in both the oral and written notification. No change to the rule has been made.

§25.478, Credit Requirements and Deposits

§25.478(a), Credit requirements for residential customers

Consumer Groups opined that §25.478(a), which permits a REP to require that a customer establish and maintain satisfactory credit as a condition of providing service, seems to allow competitive REPs the ability to terminate customers who always timely pay their electric bills if the customer's overall credit (e.g., credit card) becomes unsatisfactory. Consumer Groups indicated that once a customer has established credit with a REP, the REP should not be able to terminate service because of a customer's inability to maintain a spotless record with other creditors. Consumer Groups suggested that the ability of a competitive REP to require that a customer "maintain" satisfactory credit should be limited to the customer's electric service account.

The REP Coalition commented that it was not aware of any REP that continually reevaluates the credit rating of a residential or small commercial customer and then imposes a deposit requirement when that credit rating deteriorates. According to the REP Coalition, in virtually all cases, the REP evaluates the customer's payment behavior as a basis for deciding whether to assess an additional deposit. Nonetheless, the REP Coalition argued that a REP should be allowed to require an additional deposit because of deteriorating credit and that the commission

has an obligation to ensure that the REP has reasonable tools to protect itself against the risk of non-payment.

The commission declines to adopt the recommendation of the Consumer Groups for the reasons stated by the REP Coalition. A competitive REP should be permitted to request a deposit from a customer based on the customer's credit so long as the criteria used is not discriminatory pursuant to §25.471(c). The commission believes that this is an appropriate policy to ensure that REPs have tools to enable REPs to adequately protect themselves against non-payment by customers. The commission has added new paragraph §25.478(c)(4) in order to provide this clarification.

The commission notes that §25.482(c)(2) prohibits a REP from terminating a customer's contract for failure to pay for any charge that is not related to electric service, and believes that this provision partially addresses the concerns voiced by Consumer Groups.

OPUC and Consumer Groups suggested that the residential credit requirements for competitive REPs be the same as those for affiliated REPs and POLRs in §25.478(a)(3). Consumer Groups argued that all customers should be able to demonstrate satisfactory credit to any REP using these criteria and that there is no rational basis for refusing service to a customer that meets these criteria. In addition, Consumer Groups asserted that the need for deposit and credit standards that are more protective for all customers is even more acute given the commission's desire to grant all REPs the right to disconnect customers by mid-2004. OPUC pointed out that having uniform credit standards would provide assurance that residential customers are being treated fairly and consistently and would make it easier for residential customers who have established

credit with the affiliated REP to switch their service to a competitor. In addition, OPUC recommended adding language in subsection (a)(3) to specify that competitive REPs may use credit standards more favorable to the customer. TCFV argued that all REPs should be required to waive a deposit requirement for victims of family violence. They stated that a similar requirement was recently adopted by the Railroad Commission for natural gas utilities. TCFV stated that greater numbers of victims would benefit from the deposit waiver by expanding this provision to all competitive REPs and encouraging municipally owned utilities and electric cooperatives to voluntarily adopt this provision.

The REP Coalition disagreed that there should be one set of credit standards for all REPs. The REP Coalition argued that allowing REPs to have different standards is consistent with PURA §39.001(d), which directs the commission to authorize competitive rather than regulatory means to achieve the goals of competition, and to adopt and issue rules and orders that are both practical and limited so as to impose the least impact on competition. According to the REP Coalition, requiring all REPs to adhere to a single set of standards is not consistent with these PURA requirements and would strip REPs of the tools needed to manage their individual credit risks. In addition, the REP Coalition asserted that it would significantly impede the ability of REPs to compete against others based on credit requirements.

The commission declines to adopt Consumer Groups and OPUC's recommendation with respect to credit requirement standards. In general, the commission agrees that in most instances it is appropriate to have uniform standards for all REPs to reduce confusion among customers and market participants and to streamline the rules. However, provisions governing credit requirements should not be standardized at this time because

affiliated REPs and POLR are *required* to serve certain customers: price-to-beat customers and all requesting customers, respectively. Because of this obligation to serve certain customers, the commission believes that it is appropriate to require more detailed credit requirement standards for affiliated REPs and POLRs in order to ensure that affiliated REPs and POLRs do not implement policies that have the end effect of effectively negating that obligation to serve. Conversely, competitive REPs do not have these same obligations. Consequently, competitive REPs should continue to be permitted to set their own non-discriminatory credit requirement standards. The commission finds that these variations in the rules are reflective of the differing nature of service provided by affiliated REPs and POLRs, and are necessary to continue to foster competition in the market while at the same time ensuring that all customers have access to electricity services. Moreover, no evidence has been presented to show that the existing credit requirements are impeding customers' abilities to switch providers. Therefore, the commission retains the current policy of allowing competitive REPs to use other criteria for demonstrating satisfactory credit so long as such criteria are not discriminatory.

The commission declines to adopt OPUC's recommendation to add language in subsection (a)(3) to specify that competitive REPs may use credit standards more favorable to the customer. Section 25.471(a)(3) already provides that the rules in Subchapter R are minimum requirements.

Consumer Groups proposed adding a definition for "satisfactory credit rating" as that term is used in §25.478(a)(3)(B) or, at a minimum, require REPs to disclose the meaning in the terms of service.

The REP Coalition opposed the Consumer Groups' recommendation. The coalition noted that credit rating criteria are closely scrutinized by REPs based on collection experience and may change frequently. Therefore, the REP Coalition argued, requiring REPs to update their terms of service every time credit criteria change would impose a significant burden on REPs. In addition, the REP Coalition asserted that such a requirement would put the electric industry out of step with every other industry. According to the REP Coalition, the disclosure of credit scoring criteria would actually be counter-productive, causing customer confusion rather than enlightenment.

The commission disagrees with the Consumer Groups that the term “satisfactory credit rating” should be defined in the rule or the terms of service. It is not appropriate to impose a uniform, regulatory-based definition for this term or to require REPs to reveal the criteria used for determining whether a customer has satisfactory credit. Such criteria may change frequently based on the market, customer payment behavior, and other factors, and REPs should have the ability to make such changes without having to modify its terms of service. It is also important to point out that §25.477(c)(1) requires a REP that refuses service to a customer on the basis of credit to comply with the FCRA and ECOA in providing notice to customers.

The REP Coalition recommended retaining the current rule language in §25.478(a)(3)(C), which requires a customer over the age of 65 to not have a delinquent balance within the last 12 months in order to demonstrate satisfactory credit. The REP Coalition asserted that it is not aware of any data that suggest that this group of customers poses a lesser credit risk than others. In addition, the REP Coalition was concerned that the proposed language could be read to require the return

of any deposit made by a customer over the age of 65 immediately upon adoption of the rule if the customer does not have an outstanding balance. They argued that it would be practically impossible for REPs to comply with such a requirement both from an operational standpoint and because the age of the customer will be unknown in many cases.

In response, OPUC pointed out that the purpose of this provision was to give senior citizens an opportunity to establish satisfactory credit using less rigorous criteria. OPUC stated that the amendment better effectuates this purpose and clarifies the rule language.

The commission agrees with OPUC that the purpose of this provision was to provide senior citizens an opportunity to establish satisfactory credit with the affiliated REP or POLR using less rigorous criteria. As a result, the commission amends §25.478(a)(3)(C) in order to clarify that an applicant or customer over 65 years of age may be deemed as having established satisfactory credit as long as the customer is not currently delinquent in any electric service account.

Consumer Groups recommended amending §25.478(a)(3)(F) to refer to price-to-beat rates that are charged by the affiliated REP acting as the POLR for residential customers. Consumer Groups pointed out that this would prevent a REP that requires prepayment for metered residential service from charging more than the price-to-beat rate that is in effect for residential customers served by the affiliated REP.

The REP Coalition strongly opposed the Consumer Group's suggestion that rates for pre-paying customers be capped at the price to beat. The coalition noted that PURA §39.107(g) requires

that prices for pre-paying customers be capped at the POLR prices, which is statutorily different from the price to beat.

The commission disagrees with the Consumer Groups that §25.478(a)(3)(F) should reference price-to-beat rates. As pointed out by the REP Coalition, PURA §39.107(g) caps prices for pre-paying customers at the POLR rate, not the price to beat. The commission also notes that under §25.43 of this title (relating to Provider of Last Resort), an affiliated REP is eligible, but is not required, to serve as POLR at the price to beat. Therefore, the commission declines to make the proposed change. Sections 25.478(a)(3)(F) and (a)(3)(G) have been renumbered 25.478(a)(4) and (a)(5) respectively, because these provisions are not limited to the affiliated REP and POLR.

The REP Coalition proposed retaining the language in §25.478(a)(4), which provides that a residential customer of the affiliated REP or POLR may be required to pay a deposit pursuant to subsections (c) and (d) if satisfactory credit cannot be demonstrated by the customer using the criteria set forth in subsection (a)(3). The REP Coalition noted that it sees no apparent reason why this provision was deleted in the proposed rule.

The commission agrees with the REP Coalition that any REP may request a deposit if the customer or applicant fails to demonstrate adequate credit. The commission amends §25.478(c)(1) to provide that any REP may request a deposit if the customer cannot demonstrate satisfactory credit. This provision provides affiliated REPs and POLRs with the ability to require deposits if a customer or applicant cannot demonstrate satisfactory credit through the provisions in §25.478(a).

§25.478(c) and (d)

The REP Coalition recommended revising the provision in §25.478(c)(3) concerning payment of a deposit by a customer who has received a disconnection or termination notice. The REP Coalition suggested that a REP be allowed to require a deposit if a termination or disconnection notice had been sent within the last 24 months of service (instead of 12 months, as proposed). The coalition noted that a 24-month period is more reasonable and is consistent with the requirement in subsection (a)(3)(G) that a REP maintain a customer's payment history for 24 months.

OPUC disagreed with the REP Coalition's proposal, noting that it is unreasonable and imposes impossible standards for customers. OPUC stressed that a 12-month history of no disconnections or terminations combined with one or no late payments should be sufficient to establish satisfactory credit.

The commission disagrees with the REP Coalition that a REP should be allowed to require a deposit if a termination or disconnection notice had been sent within the last 24 months of service. The commission finds that a 12-month history with no disconnections or terminations and no more than one late payment is a reasonable standard. Therefore, the commission declines to make the proposed change.

Consumer Groups opposed eliminating the provision in §25.478(c)(3) and (d)(3) that would allow a current customer to avoid paying a deposit if the total amount due on the bill is paid by the due date, provided the customer has not exercised this option within the previous 12 months. They pointed out that allowing customers to have one termination or disconnection notice every

12 months without penalty (provided the customer pays the amount due in full) is reasonable and consistent with the credit requirements in subsection (a)(3).

The REP Coalition argued, however, that the rules should encourage responsible payment behavior, and not give customers the opportunity to avoid a deposit by paying their current bill by the due date, as suggested by the Consumer Groups. The REP Coalition supported the proposed language in subsections (c) and (d) that allows the affiliated REP or POLR to require an initial or additional deposit from a customer who has been late once in the last 12 months or has been terminated or disconnected for non-payment. The REP Coalition stressed that these rules represent minimum standards and that REPs may choose to not impose an additional deposit on a long-term customer.

The commission agrees with the REP Coalition that permitting customers to avoid paying a deposit by paying the current bill in full does not adequately address the outstanding delinquent balance owed to the REP, because of the ability of customers to switch to other providers. The commission agrees with the REP Coalition that the affiliated REP and POLR should be permitted to require an initial or additional deposit from a customer who has been late in payment during the last 12 months or has been terminated or disconnected for non-payment.

OPUC asserted that all REPs should comply with the initial and additional deposit requirements in subsections (c) and (d). The REP Coalition disagreed with OPUC for the same reasons that the coalition objected to the imposition of uniform credit requirements for all REPs.

The commission agrees with OPUC that a customer who has made timely payments should not be subject to a deposit requirement. The commission has modified §25.478(c)(3) and §25.478(d) accordingly.

Fire Fly opposed the restrictions on collecting an initial or additional deposit from an existing customer. They argued that these provisions limit the ability of a REP in making rational business decisions based on the credit-worthiness of its customers. Not requesting a deposit when a customer initially enrolls should not prohibit a REP from requesting one at a later time.

The commission believes that the changes made to §25.478(d)(1) address the concerns voiced by Fire Fly, as this provision permits non-affiliated REPs to request a deposit from an existing customer if the REP determines that the customer no longer meets its credit requirements.

§25.478(e), Amount of deposit

Consumer Groups and OPUC opposed the increase in the maximum deposit amount in §25.478(e) from one-sixth to one-fifth of the customer's annual billing. Consumer Groups stated that the bad-debt risk that REPs are exposed to from serving residential customers under the current deposit limits is manageable and challenged industry to prove otherwise. They added that customers should have the same level of protections that existed before competition and that the deposit should not be increased as a means of stimulating the competitive market. Consumer Groups further argued that the deposit requirements are a significant barrier to service for many working class and low-income customers. OPUC agreed that the proposed deposit is onerous and suggested that it not exceed the lesser of the sum of the estimated billings for the next two

months or one-sixth of the estimated annual billings. At a minimum, OPUC recommended retaining the existing rules' initial deposit requirements.

The REP Coalition, however, supported the increase in the maximum deposit to 1/5 of a customer's estimated annual billing. The REP Coalition pointed out that the current deposit limit is insufficient to properly protect a REP from additional bad debt exposure that would be incurred pending the ultimate disconnection of service. The coalition noted that a REP cannot expect to disconnect a customer for non-payment in fewer than 80 days (i.e., 30-day billing cycle, plus 10 days to obtain usage and issue bill, 16 days for customer to be considered late in payment, five days to issue notice, ten-day notice period, and ten days to prepare and process disconnection). In response to the Consumer Groups and OPUC, the REP Coalition pointed out that protection is afforded to customer while the REP holds the deposit because customers earns interest on the deposit at a rate of 6.0% per year. The REP Coalition also asserted that the Consumer Groups' comments regarding the use of the rules to stimulate the market are misplaced. In addition, the REP Coalition argued that Consumer Groups misquoted PURA §39.101(f), which, they contended, provides that customers shall be afforded the same level of protection against potential *abuses*. According to the REP Coalition, PURA does not require that the commission's customer protection rules be exactly the same as the pre-competition rules. While the REP Coalition supported the proposed change in the maximum deposit amount, the coalition recommended retaining the existing rule language that allows the deposit to be based on the greater of the upcoming billing periods or the annual average.

In reply comments, OPUC opposed the REP Coalition's proposal because it unreasonably increases the deposit burden on customers. OPUC argued that that it is not the function of the customer protection rules to eliminate normal business risk for REPs.

The REP Coalition pointed out, however, that even a deposit covering 80 days will not shield a REP from 100% of the risk of the defaulting customer. They noted that the bad debt cost will be socialized.

The commission agrees with the REP Coalition that allowing a maximum deposit of the greater of 1/5 of a customer's estimated annual billing or the estimated billings for the next two months is reasonable. It is reasonable to permit REPs who want to fully protect themselves from a customer who is determined to be a credit risk to do so. Otherwise, uncollectible revenues will continue to put upward pressure on retail prices, and the number of REPs willing to serve this segment of the market is likely to be small.

The proposed allowance of 1/5 estimated annual billings is neither arbitrary nor is it unreasonable. Commission rule requirements and normal processing times with respect to billing, disconnection, and meter read processing indicate that the 80-day timeline to disconnect a customer is not an unreasonable estimate, especially if REPs attempt informal efforts short of disconnection to obtain payment. The commission notes that no party challenged the REP's assertion of an 80-day disconnection timeline. The commission disagrees with OPUC that this time period represents normal business risk. This time period is created by the reality that electricity service is provided on credit of the REP for 30 days until a meter reading can be performed and transmitted to the REP, and by other

regulatory requirements of commission rules relating to bill payment timelines and notice provisions. Inclusion of the option for REPs to size a deposit based on the next two months estimated billings is also reasonable in order to permit REPs to account for seasonal difference in usage, and represents no change from the current rule.

The commission does not expect that all REPs will require a deposit of the maximum permitted size. Normal competitive forces (such as increased transaction costs for customers and the interest obligation noted by the REP Coalition) should discipline REPs to only use a deposit of the maximum permitted size if there is no other way to mitigate non-payment risk. The commission notes that there are REPs in the market today that do not require any deposit, and there is no reason to expect that certain market participants will continue to distinguish themselves on this basis.

While deposits are an important tool for REPs to manage credit risk, they are not the only tool. REPs should exercise due diligence when evaluating an applicant's credit risk. In addition, REPs are encouraged to report customers with past-due accounts to the appropriate collection and credit reporting agencies in an effort to recover bad debt expense. This practice would also assist other REPs because information on customers with a poor payment history would be available and could be used as a basis for collecting a deposit or requiring a customer to produce other acceptable credit.

If the commission rejects OPUC's proposal to limit the deposit to the lesser of the sum of the estimated billings for the next two months or one-sixth of the estimated annual billings, OPUC

suggested that REPs be required to accept the deposit in two equal payments at least one month apart.

The REP Coalition strongly disagreed with OPUC's alternative proposal to require REPs to accept the deposit in two payments. According to the REP Coalition, this would put the REP in an unacceptable position from a risk management standpoint because as soon as the REP begins serving a customer, the REP becomes responsible for at least 80 days worth of service.

The commission declines to adopt OPUC's alternative proposal to require REPs to accept the deposit in two payments. Such a proposal would negate the protection against non-payment that a deposit provides for a REP. The commission notes that customers who qualify for the rate reduction program are eligible to pay any deposit that exceeds \$50 in two equal installments. The commission finds that this provides the protection that OPUC is seeking for customers who need it the most and that expanding this to all customers is not necessary.

OPUC opposed the provision in §25.479(e)(1) that would allow a REP to base the deposit amount on a reasonable estimate of average usage for the customer class. OPUC pointed out that the residential class is large and varied and that an average would not result in a reasonable estimate. If the average is used, OPUC recommended that it require the average to be appropriate and reasonable relative to the premise.

The REP Coalition strongly disagreed with OPUC's suggestion and noted that in a mass-market situation, REPs cannot reasonably be expected to tailor individual customer's deposits to premise-specific standards.

While the commission recognizes that there is variation in customer usage within the residential class, the commission maintains that it is appropriate to base a customer's deposit on a reasonable estimate of average usage for this customer class for new customers because a REP is not likely to have historical usage information available. Such an average is a reasonable, practical, and low-cost method for determining an applicant's deposit requirement in the competitive market. However, the commission agrees that if a REP requests additional or initial deposits from existing customers, the REP should base the estimated annual billing on the customer's actual usage, to the extent it is available. The commission also finds it reasonable to permit a customer to request that a REP recalculate the required deposit based on actual usage after 12 months of service with a REP. Subsection 25.478(f) has been amended accordingly.

§25.478(j), Refunding deposits and voiding letters of guarantee

OPUC indicated that §25.478(j), as proposed by the commission, requires a REP to refund a deposit when a customer has paid bills for 12 consecutive billings (or 24 for non-residential) without having service disconnected for non-payment and without having more than two occasions in which a bill was delinquent. OPUC recommended revising §25.478(j) to require REPs to refund a deposit if there is no more than one late payment during the relevant time period. OPUC pointed out that there are occasions when a bill is late though no fault of the customer's (e.g., payment gets lost or delayed in the mail due to holidays or other reasons). Consumer Groups also pointed out that the requirement in the proposed rules is too strict and eliminates the historical protection that allowed two occasions when the bill was paid, but delinquent.

The REP Coalition replied that OPUC misstated the current provisions of subsection (j). According to the REP Coalition, the current rule requires the POLR to return the deposit if certain conditions are met; it does not require all REPs to return the deposit. The REP Coalition did not fundamentally object to a requirement that the deposit be returned. However, the coalition suggested that it is more reasonable to require REPs to return the deposit after the residential customer paid for service without any late payments for 24 months rather than 12 months, as proposed by the commission. The REP Coalition indicated that 12 months is not a sufficient amount of time for a customer to demonstrate good payment behavior. In addition, the REP Coalition pointed out that it will take time for REPs to develop the ability to track a customer's payment history and, therefore, recommended that the counter for measuring whether a customer has met the standard begin with the effective date of these rules. The REP Coalition also proposed that the deposit be refunded only upon request by the customer.

In reply comments, OPUC argued that the REP Coalition's proposal for a two-year retention period for deposits is too long--twice the length of time required to establish satisfactory credit in lieu of an initial deposit. OPUC also opposed the REP Coalition's proposal to require that a customer proactively request the refund.

Fire Fly opposed the provision that requires all REPs to refund a deposit after a customer has paid a bill timely for 12 consecutive months. They argued that such a requirement does not allow a REP to mitigate the risk profile of its customers over time. Further, they argued, that because a REP must currently pay interest on deposits, these additional restrictions on timing of deposits further increases the REP's risk to serve customers.

For the reasons previously stated, the commission declines to adopt Fire Fly's recommendation. The commission believes that 12 months of timely payment by a customer is a sufficient amount of time for a customer to demonstrate adequate credit.

The commission finds that the §25.478(j), as proposed, strikes the appropriate balance on this issue. The proposed rule ensures that a customer's deposit will be refunded if the customer pays bills on time for 12 consecutive months (or 24 months for non-residential service). The commission finds that 12 months is a sufficient amount of time for a residential customer to demonstrate good payment behavior. Moreover, if the customer does not sustain such timely payment behavior, a REP will have the ability to request a new deposit.

The commission recognizes that the implementation of this new requirement may pose problems for certain REPs, at least initially. The commission disagrees, however, that customers with no late payments in the past year should have to wait a full year (or two years for non-residential) after these rules go into effect before the deposit is refunded. The commission finds that is more appropriate to provide REPs a 90-day grace period after the effective date of these rules to return any deposits. Section 25.474(j) has been amended in order to provide for this grace period.

The commission declines to adopt the REP Coalition's proposal to return the deposit only upon customer request. Customers with responsible payment records should have the deposit be refunded automatically after the conditions set forth in the rule are met.

The REP Coalition proposed revisions to §25.478(j), which requires a guarantee agreement to be voided and returned to the guarantor when the REP ceases to serve a customer whose account was guaranteed. The REP Coalition pointed out that the proposed rule makes no provision for the possibility that the customer will no longer be served by the REP, yet still have a balance due. In addition, the REP Coalition commented that a guarantor should not be able to escape the obligation to pay for the guarantee amount if the customer defaults simply because the guarantor's service is terminated or the guarantor or customer move. The REP Coalition stressed that a guarantor's responsibility should continue until the guarantee is replaced by a deposit or another guarantee.

The commission agrees with the REP Coalition and amends §25.478(j) accordingly.

§25.478(k), Re-establishment of credit

Consistent with its recommendation regarding §25.480(j), OPUC recommended deleting the words "if offered" in reference to the deferred payment plan.

The REP Coalition opposed OPUC's proposal to make deferred payment plans mandatory.

The commission declines to adopt OPUC's recommended change as a deferred payment plan is not required to be offered to a customer if certain conditions exist pursuant to §25.480(j)(3).

§25.479, Issuance and Format of Bills

§25.479(b), Frequency and delivery of bills

Consumer Groups supported a specific time limit for REPs to issue bills. They noted that the 30-day limit as set forth in §25.479(b)(2) is reasonable and will bring some certainty if adhered to by REPs and enforced by the commission.

The REP Coalition asserted, however, that REPs should not be bound by specific timelines when interacting with customers and proposed that a REP be allowed to issue bills “as promptly as practical” after the REP receives the meter read data from the TDU. The coalition noted that a change to the existing rules is not necessary because billing success has improved significantly since market opening. The coalition pointed out that as of March 2003, only 1.0% of customers had late bills according to commission Staff’s report on performance measures for the first quarter of 2003. The coalition added that the percentage of late bills drops in half when bills that were later for less than 30 days were removed.

In reply, OPUC asserted that, regardless of REP billing performance, there is a definite need for specific, predictable timelines for customers to receive and pay bills. OPUC noted that under the REP Coalition’s proposal, customers may be burdened and confused by arbitrary and chaotic billing procedures.

The REP Coalition indicated that a REP should have the ability to bill a customer more than 30 days after it receives usage from the TDU. According the coalition, the harm to the customer from the delayed billing, if any, is mitigated by the additional time that customers have to pay backbilled amounts.

While the commission recognizes that billing performance has improved dramatically since the start of competition, the commission agrees with OPUC and others that there is still a

need for specific, predictable timelines for customers to receive and pay bills. This will prevent problems associated with customers receiving large electric bills for multiple months of service. However, the commission acknowledges that there may be circumstance in which a REP may notice an abnormal meter reading, or other abnormality that may require the REP to validate and investigate and invoice from the TDU. Therefore, the commission maintains the 30-day requirement for REPs to issue bills as set forth in §25.479(b)(2), but provides an exception for cases in which a REP finds it necessary to perform validation or otherwise investigate usage or invoices received by the TDU.

The REP Coalition noted that the requirement in §25.479(b)(4) that an “affiliated REP shall not charge a customer a fee for issuing a standard bill” may be a typographical error because it should apply to all REPs equally. In addition, the REP Coalition recommended adding language to subsection (b)(4) to clarify that if a REP and customer agree to a non-standard bill, the REP does not also have to provide a standard bill.

The commission agrees with the changes proposed by the REP Coalition.

§25.479(c), Bill content

Consumer Groups supported the commission’s decision to retain the average unit price of electricity on the bill. They indicated that while this information is not fully accurate for comparison purposes, it provides price information that is useful for consumers.

The REP Coalition, however, proposed deleting this requirement because it leads to customer confusion and complaints any time the number does not match or closely match the average

price on the EFL. The REP Coalition pointed out that low usage months, seasonal prices, and average payment plans could have a significant impact on the average price calculation.

The commission acknowledges that the average unit price of electricity may not match the average price presented on the EFL. Nonetheless, the commission maintains that the actual average unit price of electricity is an important piece of information to include on electric bills. To address possible concerns about customer confusion, the commission encourages REPs to present information explaining this calculation and how it relates to the EFL on the REP’s website, bill inserts, and other informational materials.

The REP Coalition proposed modifications to §25.479(c)(1)(L) to recognize that a REP may not receive all of the information from the TDU related to meter readings, the kind and number of units measured, any conversions from meter reading units to billing units, etc. Therefore, the REP Coalition recommended adding language that would require the REP to provide the required information on a bill “if available to the REP on a single, standard electronic transaction.”

Joint TDUs indicated that the intent of the REP Coalition’s proposal was unclear. If the change is proposed to suggest that a REP will only provide such information if it receives meter data in the same electronic transaction as the electronic TDU invoice, Joint TDUs pointed out that the commission should be aware that the stakeholders have previously decided not to combine these transactions. Joint TDUs asserted that any requirement that TDUs include meter data in electronic invoices would require significant system modifications and complete market redesign. Joint TDUs suggested that the deletion of the word “single” from the REP Coalition’s

proposed change to §25.479(c)(1)(L) would eliminate any implication that TDUs should be required to include meter data in electronic TDU invoices.

The commission agrees that the language proposed by the REP Coalition, as modified by the Joint TDUs, would improve the clarity of §25.479(c)(1)(L) and amends the rule accordingly.

The REP Coalition urged the commission to clarify in §25.479(c)(3) that any request by a customer served by an affiliated REP for an itemization of his/her bill should include a breakdown that consists of the base price and fuel rate. The REP Coalition pointed out that the unbundled elements listed in subsection (c)(2) have no real correlation to the price to beat and only serve to confuse such customers.

The commission acknowledges that the price-to-beat rate structure and the structure of non-bypassable charges do not directly correspond to each other. However the commission believes that it is important for customers to receive an itemization of non-bypassable charges, if requested in order to customer be able to readily compare the price to beat to a rate offer that is structured as a generation price plus a pass-through of non-bypassable charges. Affiliated REPs may indicate that the remainder of the bill, after subtracting the itemization of non-bypassable charges, is generation related instead of specifically itemizing “generation service.” The commission amends §25.479(c)(3) accordingly.

§25.479(e), estimated bills

The REP Coalition proposed specifying in §25.479(e) that a REP that provides an estimated bill should provide the reason for the estimation only upon customer request. The REP Coalition

pointed out that not all reasons are electronically communicated or able to be listed on a bill. According to the coalition, if a customer has a question, it is necessary for the customer to call because specific work order may be needed to investigate.

Consumer Groups opposed the REP Coalition's proposal to eliminate the requirement in subsection (e) that a REP include on the bill the reason for the estimated bill. They asserted that the REP Coalition's proposal will simply lead to customer confusion.

The commission disagrees that a REP should provide the reason for an estimated bill only upon customer request. REPs are allowed to issue estimated bills only in the event that a meter reading or an invoice for non-bypassable charges are not transmitted to the REP on a timely basis. The commission is not aware of any reason why the REP could not specify one or both of these reasons on the bill. Therefore, the commission declines to amend the proposed rule.

Consumer Groups argued that REPs should be required to issue estimated bills when meter read data are not available to alleviate payment problems that arise when a customer does not receive a bill for a month or more. They noted that estimated bills help consumers manage their electric bills and reduce the need for payment arrangements. Consumer Groups suggested that the 30-day time limit for REPs to issue an estimated bill should apply.

The REP Coalition strongly opposed the Consumer Groups' proposal and asserted that estimated bills should be allowed but they should be optional because the REP may not have enough information to provide a reasonable estimate. In addition, the REP Coalition indicated that most REP billing systems are not set up to support estimated billings or billing corrections when

actual data is received by the TDU. The REP Coalition commented that changes to support such a requirement would be expensive and time-consuming.

The commission agrees with the REP Coalition that estimated bills should be optional for a REP. The decision to issue an estimated bill necessarily depends on the REP's business needs and its customers' preferences. Therefore, the commission declines to amend the rule as proposed by the Consumer Groups.

The Joint TDUs recommended amending §25.479(e) to require REPs to report to TDUs and ERCOT a list of ESI-IDs that were billed on a REP's estimate of usage or charges. According to the Joint TDUs, this would assist market participants in addressing the cause of missing transactions and facilitate the proper reconciliation of the wholesale settlement market.

The REP Coalition strongly disagreed that this type of report is needed to facilitate reconciliation of the wholesale market. The REP Coalition was puzzled why the Joint TDUs chose this forum to make this recommendation and emphasized that it would be unnecessary and costly.

While the commission recognizes that the reporting proposed by the Joint TDUs could be useful in certain circumstances, the commission disagrees that the rule should mandate such a reporting requirement. This issue should be addressed, if at all, by the ERCOT stakeholders. Therefore, the commission declines to amend the proposed rule.

§25.479(f), Non-recurring charges

The REP Coalition supported the addition of §25.479(f) and noted that it is important for the rules to specify that TDUs are responsible for keeping records of meter tests that have been

performed at a customer's premise. The coalition explained that there is often disagreement between REPs and TDUs regarding which entity should maintain the records of meter tests, and subsection (f) resolves this matter.

In response, the Joint TDUs indicated that TDUs have historically, and will continue to, maintain meter testing data for each meter tested based on a meter identification number, not by customer or by REP of record. The Joint TDUs noted that regardless of who requests a meter test, if that meter has been tested within the four-year period and the test proves to be within tolerances, the TDU will charge the entity requesting the test pursuant to the TDU tariff.

The commission notes that proposed §25.479(f) requires TDUs to maintain a record of all meter tests performed. If the need arises, the commission will consider specifying the level of detail of the records in a future rulemaking.

§25.479(h), Transfer of delinquent balances or credits

The REP Coalition proposed deleting the requirement in §25.479(h) that a REP list "the specific account or address" on the bill when a delinquent balance is transferred to a current account. The coalition asserted that this process could result in many REPs having to re-program billing systems to list on the bill the specific account number or address from a previous account. According to the REP Coalition, it should suffice for REPs to simply list on the bill the amount that has been transferred.

OPUC and the Consumer Groups disagreed with the REP Coalition's proposal. They both indicated REP billing systems should already be programmed to handle this requirement because it is already in the existing customer protection rules. OPUC also contended that if a billing

system can track a previous account balance, then it must also track at least the previous account number, if not the address. Otherwise, OPUC noted, there would be no way to properly credit and close the overdue account. Consumer Groups added that it is unreasonable to expect customers to be able to identify whether a transferred delinquent balance is actually attributable to them without the account and service address. OPUC also argued that customers have the right to this information and that this requirement does not pose an undue or new burden on REPs.

The commission agrees with the Consumer Groups and OPUC that this requirement should be maintained. The appropriate account and address information should be provided to customers when a delinquent balance is transferred. The commission disagrees with the REP Coalition that the amount transferred is sufficient and, therefore, declines to change the proposed rule.

§25.480, Bill Payment and Adjustments

§25.480(c)

The REP Coalition argued that §25.480(c) should be retained in its current form and not be altered. The REP Coalition argued that the Texas Government Code, Chapter 2251, clearly identifies the manner in which bills issued to state agencies are to be handled, and absent any indication that the existing rule is vague or problematic, the rules should not be changed.

The commission agrees that Texas Government Code, Chapter 2251 speaks for itself with respect to the due dates for bills sent to governmental agencies. The commission deletes the term “no earlier than the 31st day after the agency receives an invoice.”

The REP Coalition stated that §25.480(d) should be modified to delete the provision that requires a REP to pay interest on an overbilled amount from the date the bill was issued regardless of when the customer paid the bill.

The commission agrees with the REP Coalition that, in order to be made whole, the customer should properly receive interest from the date of payment, not from the date of the issuance of the bill. Section 25.480(d)(3)(A) has been amended accordingly.

The REP Coalition argued that the provision in §25.480(d)(4), which requires REPs to identify billing adjustments for a prior billing period by billing date or service period should be deleted. The REP Coalition stated that, at this time, the REP's billing systems do not have the functionality to comply with the proposed amendment and that bringing systems into compliance would impose a significant expense and operational burden. The REP Coalition argued that the provision seems unnecessary considering that, to the REP Coalition's knowledge, customers have not complained about the manner in which re-billed statements are presented. Therefore, the REP Coalition recommended that the provision be deleted, or, at the very least, amended to reflect only that the adjustments shall be identified on the bill.

In reply, OPUC argued that allowing a customer to know what they are paying for and giving the customer the ability to check the information against the customer's own records is a fundamental customer safeguard. OPUC stated that it did not believe that providing the information pursuant to §§25.480(d)(4) and (e)(6) imposed an undue burden on REPs, given the existence and initialization of automatic billing systems.

The commission agrees with OPUC that it is a fundamental customer safeguard to inform customers about what they are paying for and check the REP's information against the customer's own records. Therefore, the commission retains the provision that a REP must identify billing adjustments for a prior billing period by either billing date or service period.

Consumer Groups stated that REPs should only be permitted to adjust a customer's bill for a company's mistake when the customer is paid restitution for the error. Therefore, Consumer Groups asked that REPs be required to provide customers a minimum \$10 credit on any bills that are incorrect in order to compensate the customer for inconvenience.

The REP Coalition disagreed with the Consumer Groups' proposal to require REPs to pay a \$10 credit to customers that are billed incorrectly. The REP Coalition noted that the Consumer Groups' proposal is based on the false premise that it is always the REP that is responsible for the billing error. In reality, the TDU or ERCOT could also be the cause of a billing error. Furthermore, the REPs have taken significant action to assure that customers receive accurate bills in a timely manner, but there are and will continue to be situations beyond the REP's control that result in billing errors, and REPs should not be penalized for such occurrences. The REP Coalition also argued that commission only has the authority to assess administrative penalties, and the commission cannot order, or require through rule, that REPs must pay customers \$10 when an overbilling occurs.

The commission agrees with the REP Coalition with respect to events outside a REP's control that may lead to billing errors. The commission recognizes that there are many

market participants involved in the billing process. Therefore, billing errors cannot always be attributed to the REP, and to require the REPs to incur the cost of all billing errors in inequitable. The commission declines to amend the rule.

§25.480(e)

The REP Coalition and Fire Fly supported the proposed amendment to §25.480(e). The REP Coalition argued that currently, TDUs have little incentive to submit usage information on a timely basis. REPs rely on the TDUs to send the usage information so that the REP can bill the customer, and the REP Coalition argued that if the commission does not impose a deadline on TDUs for submission of billing transactions, then the REPs bear a disproportional risk for loss of billing to that of TDUs. The REP Coalition asserted that it is only appropriate that TDUs and REPs equally share the six-month backbilling period in the current rule.

Fire Fly noted that §25.480(e) allows a TDU to correct bills for meter errors for up to six months consistent with §25.125. This exception could result in a REP receiving a bill from the TDU past the 180 (or even 190 day) window in which the REP is allowed to bill the customer. Therefore, Fire Fly suggested that the commission include an exception that allows the REP to bill the customer if the TDU submits a backbill based on a meter error past the 180- or 190-day window.

Consumer Groups argued that §25.480(e) is too lenient on market participants. Consumer Groups stated that billing is a continual problem and that the proposed rule amendments are a step towards greater protection of REP's interests and lesser protection of the consumer's interest. In initial and reply comments, Consumer Groups argued that §25.480(e) should limit

backbilling to sixty days; rather, than simply divide between the REP and the TDU the six-month backbilling period.

The REP Coalition responded that the Consumer Groups do not realize the complexities involved in the multi-party billing process. REPs have every desire and incentive to bill customers as quickly as possible, and the majority of bills are submitted to customers in a timely manner. The REP Coalition noted, however, that there are situations where usage data is not available, and the REP must wait to receive this information from the TDU. The REP Coalition argued that the current limitation on backbilling is far more generous to consumers than backbilling was before competition. Additionally, the customers are not harmed by backbilling because the customer is given the time equivalent to the backbilling period to pay the backbilled charges.

The commission agrees with the REP Coalition that, due to market complexities, 60 days is not a sufficient amount of time to allow for backbilling and declines to amend the rule. Additionally, the commission agrees with Fire Fly that REPs should also be allowed to bill for meter errors past the 180 limitation.

AEP and Joint TDUs stated that the proposed limitation on billing by a TDU for past usage that was initially underbilled, including underbilled charges, is contrary to the Texas Civil Practice and Remedies Code. Section 16.070 of the Texas Civil Practice and Remedies Code prohibits a contract or agreement from purporting to shorten to less than two years the limitation period to bring suit on a contract or agreement. AEP and Joint TDUs argued that the TDU's tariff is a contractual agreement between the TDU and the customer, and the proposed amendment to

§25.480(e) shortens the limitation period for which the TDU can seek to recover charges to 90 days for bills that were previously issued and 100 days from the end of the billing cycle for charges that were not previously issued in a bill. Such a shortening of the statute, according to Joint TDUs and AEP, is prohibited by Texas statute. Additionally, AEP argued that case law and commission precedent support the position that billings for utility service are subject to the statute of limitations embodied in the Texas Civil Practice and Remedies Code. According to AEP, the commission would exceed its authority by adopting the 90 day limitation on backbilling because a state agency has no authority to adopt a rule that is inconsistent with state law. Additionally, the commission has only those powers that are delegated to it by the legislature in clear and express statutory language, together with any implied power that may be necessary for the commission to perform a function or duty that the legislature has required of the agency in express terms. AEP stated that while the commission has a general grant of authority in PURA to adopt customer protections, PURA's general grant of authority over billing practices is not an express grant of authority to alter limitation periods that are expressed in the Texas Civil Practice and Remedies Code. In fact, the commission's grant of authority in PURA makes no mention of the Texas Civil Practice and Remedies Code. Additionally, AEP asserted that the commission cannot argue that the obligation to adopt customer protection provisions necessarily implies that the commission can adopt a rule that differs from existing law, nor can the commission argue that it is necessary to apply the rule in a manner that compels TDUs to provide free service when billing delays are beyond the TDU's control. AEP also offered that, depending on the amount of potential loss, requiring TDUs to provide free service when billing delays are beyond the TDU's control could present a confiscation issue. AEP stated that the principles of statutory construction support the conclusion that the commission cannot adopt the

proposed amendments in §25.480. The principles of statutory construction provide that a new statute should be interpreted in harmony with existing law, rather than override it. According to AEP, if the commission does have authority over billing such that the commission can limit backbilling, then the commission can harmonize such authority with existing law by adopting a rule that sets the limit for backbilling at something beyond two years, so that the rule does not conflict with the Texas Civil Practice and Remedies Code. Finally, AEP suggested that thirty days should be adequate time for a REP to pass on any corrections to its customers; therefore, at least 150 days should be permitted for TDUs to submit corrected bills, even if REPs must bill customers within 180 days of consumption.

Additionally, Joint TDUs provided that if the commission elects to alter the time period for TDU invoicing of underbillings, then such a change should be considered in a proceeding noticed as an amendment to the Tariff.

In response, the REP Coalition argued that changes to the TDU's backbilling limitation should be addressed in both the customer protection rules and in the TDU tariffs because the two provisions must work together.

The REP Coalition and OPUC disagreed with AEP and the Joint TDUs that the proposed language violated the Texas Civil Practice and Remedies Code. The REP Coalition argued that the Texas Civil Practice and Remedies Code limits the amount of time in which a suit to collect on a debt can be brought, and the commission is not limiting the amount of time in which a suit to collect can be brought. Rather, the REP Coalition argued that the commission is effectively specifying the time period within which the customer may be informed of the totality of its debt,

and that requiring the TDUs to inform a the customer of its debt within 90 days from the end of the billing cycle is a reasonable limitation. Likewise, OPUC argued that the Texas Civil Practice and Remedies Code §16.070 is not applicable to the backbilling of customers because backbilling is not a lawsuit and the Texas Civil Practice and Remedies Code only addresses when a suit may be brought for a contract, agreement, or stipulation.

The commission agrees with the REP Coalition that the Joint TDU's reference to the Texas Civil Practice and Remedies Code is misplaced and believes that the commission has ample authority under PURA to require timely bills be issued to both REPs and customers. The commission notes that limitations on the ability of utilities to correct underbillings precede retail competition. However, the commission does agree that issues relating to billing by TDUs are more appropriately addressed in revisions to the standard Tariff for Retail Electric Delivery Service, in order to minimize the potential for conflicting provisions in different commission rules.

The commission therefore deletes §25.480(e)(1) and all related restrictions on corrections of underbilling by TDUs. Instead, the commission intends to immediately open a limited rulemaking on the standard tariff to address *only* this issue, and proceed with a proposal for publication based upon comments made in this proceeding.

The Joint TDUs argued that the six-month period for adjustment of underbillings, with an unlimited time period for documented and justified corrections, was a long-standing component of the vertically-integrated electric industry. Therefore, prior to competition, customers received adjusted bills for underbilled charges exceeding six months when such usage was documented

and justified. Joint TDUs argued that today's market is far more complex with more participants involved in billing, and the complexity will only increase with the introduction of competitive metering. Yet, the commission is now proposing to limit the backbilling period even further, and the consequence will be that even though service has been provided, in many instances the provider will not be compensated. Joint TDUs also argued that the proposed rule amendment is not a rational means of promoting timely billing. The TDUs already have an interest in collecting revenues as quickly as possible, but when delayed billing or underbilling occurs it is usually beyond the TDU's control.

The commission notes that restrictions on corrections to underbillings by electric utilities predated retail competition. The commission also notes that TDUs are responsible for reading meters, utilizing that meter data to generate and invoice for non-bypassable charges, and transmitting both usage information and invoices to REPs. It is unclear how delays in that process are "usually beyond the TDU's control" as the TDUs, unlike REPs, are the entity responsible for reading the meter. As previously mentioned, the commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address this issue in a future limited rulemaking.

Joint TDUs also argued that even if the amendment promotes timeliness of billing, it does so to the detriment of billing accuracy despite the directives in PURA §17.004(a)(7) and §39.101(a)(7) that the commission provide for accurate bills. Joint TDUs also argued that the limitation on backbilling would mean the re-introduction of the uncollectible expense in the cost of service. The commission disallowed the uncollectible expense in the transition to competition because it

was assumed that there was little risk in collecting from the TDU. However, Joint TDUs stated that the limitation would erode that assumption and could make some amount of uncollectible expense necessary.

In response, the REP Coalition expressed concern at the Joint TDUs' assertion that the backbilling limitations will be detrimental to billing accuracy. The REP Coalition stated that it was not aware of any reason that the billing accuracy should necessarily decrease as a result of the proposed changes, and if accuracy does diminish as suggested by the Joint TDUs, then the REP Coalition urged the commission to take appropriate steps to create further incentives for billing accuracy.

The commission agrees with the concern voiced by the REP Coalition concerning the assertions made by the TDUs that the timely performance by a TDU of its duties under the Tariff for Retail Electric Delivery Service will necessarily result in TDUs submitting inaccurate bills. The commission disagrees with the premise that a TDU will necessarily need to be compensate through the inclusion of an uncollectible expense if the TDU fails to accurately and timely read meters and generate invoices. The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

The Joint TDUs supported the exceptions for meter error and theft of service and requested that theft of service in §25.480(e) be referred to as tampering or unauthorized use.

The commission agrees with the Joint TDUs that theft of service should be referred to as meter tampering and changes the rule accordingly.

The Joint TDUs proposed exceptions to the backbilling limitation and argued that if the commission does not include the Joint TDUs' proposed exceptions, then TDUs should be allowed to reject all market transactions that require backdating beyond the limitation period set forth in the rule.

In response, the REP Coalition expressed concerns regarding the suggestion by the Joint TDUs that if the commission adopted the backbilling limitation, then the TDUs might not participate in back-dated move-ins under the rules. The REP Coalition noted that the TDU tariff imposes the requirement that the TDUs must submit all data recorded in the customer's meter to the REP and the failure to do so would be non-compliant with the TDU Tariff. To address concerns that TDUs might not participate in backdated move-ins or might not provide all the usage data to the REPs, the REP Coalition proposed language for §25.480(e) to ensure that the TDUs comply with the tariff requirement to submit data to the REPs and to exempt backdated move-ins from the backbilling limitations.

To the extent back-dated transactions are needed to remedy unauthorized switches or improper disconnection, the commission expects TDUs to participate in back-dated move-ins as required. The commission declines to adopt the REP Coalition's proposed language regarding the provision of records to the REP. The transfer of records among market participants is an issue between the TDU and the REP; therefore, it is more appropriately addressed in the TDU tariff. Considering that the TDU tariff governs the provision of records to the REP, the commission concludes that the issue has already been adequately addressed.

Joint TDUs requested an exception for backbilling related to inadvertent switches and move-ins. According to Joint TDUs, the TDUs often have to manually backdate premise ownership to correct a REPs inadvertent switch or unauthorized billing. Such inadvertent switches are beyond the TDU's control and are typically unrelated to the delivery of electricity. In such cases, the manual adjustments to correct inadvertent switches often require backbilling beyond three, six, and even nine months. While the Joint TDUs supported the proposition that inadvertent switches should be resolved between REPs without the involvement of the TDU, the TDUs do often have to cancel and rebill for inadvertent switches, and the limitation in §25.480(e) could operate to prevent the TDUs from recovering associated charges beyond 90 days.

The REP Coalition agreed with the Joint TDUs that TDUs should be able to backbill beyond 90 days where a backdated move-in is processed to resolve an inadvertent switch. The REP Coalition noted that the backdated move-in should be exempted because under §25.495 the backdated move-in must be used to correct an unauthorized switch on a retroactive basis.

The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

Joint TDUs requested an exception for the safety-net move in. As a result of the safety-net move in, TDUs receive a hard-copy request for service, but they might not receive the electronic transaction for several months. Therefore, the TDU can provide service for months before they can submit a bill. If the electronic data is significantly delayed, then the TDUs will not be able to bill past 100 days. Additionally, if REPs can bill as far back as 180 days but only have to pay

the TDU for 90 or 100 days worth of charges, then the REPs have little incentive to transmit the required move-in transactions on a timely basis.

In response, the REP Coalition disagreed with the Joint TDUs' recommendation that the safety-net move in process be exempted because the newly adopted §25.487 requires the REP requesting the safety-net transaction to timely submit the electronic transaction to support the safety net. The requirement to timely submit the electronic transaction alleviates the Joint TDUs' concern that the electronic transaction could take months for which the TDU would be prohibited from backbilling.

The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

Joint TDUs also argued that there should be an exception for market synchronization. Due to the complexities of the market, an effort has been underway to “synch-up” the market data of ERCOT, TDUs, and REPs. Joint TDUs stated that because of the market synchronization process, a significant number of data corrections have been made, and will continue to be made, to historical transactions. If the proposed rule prohibits billing past 90 or 100 days, then TDUs would be unable to collect for those transactions in which data must be corrected as a result of market synchronization.

In reply, the REP Coalition suggested that the commission reject the Joint TDUs assertion that there needs to be an exception to allow for synchronization of market data. While the REP Coalition acknowledged that there are market synchronization issues, the REP Coalition argued

that the Joint TDUs failed to give any justifiable reason as to why TDUs should be able to backbill for market synch underbillings when the REP may not even be able to find the customer. The REP Coalition also asserted that the backbilling limitation will act as incentive for TDUs to improve their billing operations. The REP Coalition agreed with the Joint TDUs that there are some problems that will not be capable of detection and resolution before the 90-day limit, but the REP Coalition asserted that the REPs also experience problems that cannot be detected and resolved before the limitation imposed on the REPs. Despite the fact that some billing problems will persist for both TDUs and REPs, the REP Coalition argued that the limitations would prompt TDUs to issue timely and accurate bills.

The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

Joint TDUs also suggested that there should be an exception for mandated true-ups and market problems. There are instances where the commission or other market authority, such as ERCOT, takes actions that necessitate rebilling. An example is the adjustment by ERCOT to the 4CP data in Fall 2002, which resulted in the need for TDUs to rebill a significant number of market participants. Joint TDUs argued that if such adjustments were necessary, then the TDUs would be unable to collect the associated underbillings, even though under the proposed rule TDUs are liable for overbillings.

The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

Joint TDUs proposed that the commission create an exception for REP requested backbilling. On occasion, REPs ask TDUs to backdate market transactions to correct errors beyond the TDU's control. The request to backdate means that the TDU has to cancel and rebill for all the billing period associated with the correction. Under the proposed rule amendment, TDUs would not be able to collect for backbilled charges past 90 or 100 days, even though the request to cancel and rebill came from the REP.

The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

The Joint TDUs also stated that it is inequitable to allow REPs to backbill for 180 days from the date of the original bill (or 190 days from the end of the billing cycle), but TDUs can only backbill for 90 or 100 days. According to TDUs, the rule amendment would mean that REPs are authorized to backbill a customer for twice as much service as the TDU, and the result is that the customer must potentially pay for TDU corrected charges that are not, in turn, paid to the TDU.

The REP Coalition disagreed with the Joint TDUs' assertion that the backbilling limitations are inequitable. The REP Coalition asserted that the provision is not inequitable because under the current system the TDU is guaranteed payment regardless of the REP's ability to collect from its customer. In fact, in the case of underbilling, the REP may not even be able to find its customer

or collect underbilled charges from the customer because the customer may have moved away by the time the REP receives the usage data from the TDU. So, while the TDU is made whole because the REP must pay the TDU, the REP is out wires charges and revenue because the TDU issued a backbill for reasons beyond the REP's control. Additionally, the REP Coalition noted that backbilling by the TDU is inequitable to the REP because it impedes the REP's cash flow and often results in calls to the REP's call center. Additionally, if the customer attributes the underbilling to a mistake on the REP's part, then the underbilling can harm the REP's relationship with its customer. Therefore, the REP Coalition argued, the notion that the proposed rule creates inequities that advantage the REP are baseless.

The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

Joint TDUs also argued that there could be inequities if the REP contractually arranges with a customer who is allowed to waive the customer protection rules for the ability to backbill outside of §25.480(e). If the REP and a large commercial customer agree that the REP can backbill the customer, then the REP can recover for charges beyond 90 or 100 days, but the TDU is bound by the limitation period in the rule. To address this issue, the Joint TDUs offered that if the commission does adopt the backbilling limitations, then the limitations should only apply to residential and small commercial customers.

In reply comments, TIEC and the REP Coalition disagreed with the Joint TDUs assertion that inequities would result if the REP contractually agreed with a customer to waive the backbilling

limitations under §25.480(e). Both TIEC and the REP Coalition argued that the contract between the REP and customer has no bearing on the TDU's responsibility to submit timely wires charges to the REP. TIEC offered that all customers, large and small, need timely and accurate bills and the TDUs should be required to adhere to the same billing standards for all customers.

The commission agrees with the REP Coalition and TIEC that an agreement between the REP and the customer has no bearing on the TDU's responsibility to submit timely and accurate bills to the REP. The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

The Joint TDUs argued that the 90/180 limitation period in §25.480(e) is inappropriate because, pursuant to §25.479(b)(2), REPs only have 30 days to bill a customer after the REP receives the usage data and any related invoices for non-bypassable charges. Both Joint TDUs and AEP argued that if the REP has to bill the customer within 30 days, then it is unnecessary for the limitation provisions of §25.480(e) to give the REPs 180 or 190 days to bill the customer. Even if §25.479(b)(2) did not require REPs to send out a bill within one month, 30 days is ample time for the REP to bill the customer in the event of a rebill because all that is required is issuance of a new statement.

The REP Coalition argued that there is no credible basis for the Joint TDUs assertion the REP's backbilling period should be limited to 30 days as provided in §25.474. The REP Coalition

noted that the Joint TDUs failed to offer any compelling evidence that TDUs face any more operational difficulties in rendering a bill on some occasions than does a REP.

In reply comments, Fire Fly urged that regardless of what backbilling limitations the commission adopts, if any, the commission should be mindful that in addition to the TDU's backbilling timeline, the REPs need adequate time to issue a new bill and collect revised charges.

The commission has concluded that the changes to the limitations on TDU backbilling should not be addressed in this rulemaking, and the commission will address these issues in a future limited rulemaking.

The REP Coalition argued that under the current rules any time a REP offers any deferred payment plan to a customer, including voluntarily offering a deferred payment plan, the plan must meet the terms proscribed in the rules. The REP Coalition recommended modifying §25.480(e) to allow a REP to offer a deferred payment plan with terms that differ from those mandated by §§25.480(j)(3)(A) and (B), if the payment plan is offered to a customer who does not meet the circumstances specified in §25.480(j)(3)(A) and (B).

The commission amends §25.480(j)(5) to indicate that the specific provisions related to initial payment and number of installments only applies to situations where a customer has expressed an inability to pay and has received a disconnection notice, and not in events of underbilling, which is addressed in §25.480(e)(3). The commission has also amended the rule to require all REPs to offer deferred payment plans to customers who express an inability to pay, subject to the provisions of §25.480(j)(3), but believes it only appropriate to

require the prescriptive requirements in (j)(5) when the customer faces imminent disconnection.

The REP Coalition also argued that the initial payment under a deferred payment plan should not be limited to 10% of the balance that is due. A 10% down payment is not sufficiently high enough to compel a customer to complete the payment plan, they argued. Also, the rule contemplates a minimum of four payments under the plan; thus, it is reasonable that the initial payment be equal to one-fourth of the total balance due.

The commission agrees with the REP Coalition's proposal to permit up to a 25% initial payment to initiate a deferred payment plan, as the rule contemplates at least four payments. Allowing a 25% initial payment will result in each payment being equal (assuming a three-month period to pay the remaining amount) to the total outstanding balance.

The REP Coalition argued that it should not have to send a termination or disconnection notice to a customer, if the customer does not fulfill the obligations of the deferred payment plan. If the terms of the plan are presented to the customer and those terms include disconnection or termination if the payment obligations are not made, then the REP should not have send an additional notice to the customer. The REP Coalition argued that sending additional notice may actually put the REP at greater financial risk than if it had not offered a payment plan in the first place.

OPUC disagreed with the REP Coalition's proposal to allow disconnection or termination without additional notice for customers who fail to meet a deferred payment plan. OPUC noted

that a customer may be satisfying the plan for months and then fail to meet his or her obligation, and the termination or disconnection notice may not only serve to alert the customer that serious consequences are about to ensue but may alert some customers to the fact that their roommate, spouse, or other co-responsible party has not made the payment that should have been made. Therefore, providing notice after a deferred payment plan may, in fact, help keep termination and disconnection rates down. Finally, OPUC noted that the right to receive notice before electric service is disconnected or terminated is a right that is guaranteed in the existing rules—§25.480(j)(7)—and to take away that right for deferred payment plan customers violates the legislative intent of PURA § 39.101(f), which provides that customers are to be no worse off than they were before deregulation.

The commission agrees with OPUC that customers have a right to receive a termination/disconnection notice before being disconnected, and such a right extends to customers who have failed to meet the payment arrangements of a deferred payment plan. The commission recognizes a difference between a customer knowing that termination/disconnection is a possibility when the customer enters the deferred payment plan and the customer knowing that termination/disconnection is going to occur on a date certain due to the failure to meet the terms of the deferred payment plan. Additionally, the commission concludes that the importance of informing a customer that a termination/disconnection is imminent outweighs the possibility that REPs could incur greater financial risk by sending additional notice.

Although Fire Fly stated that it currently offers deferred payment plans in some cases, it argued that requiring a REP to offer such plans in all situations is not in the best interest of the

competitive market. Fire Fly proposed that REPs should not be required to offer deferred payment plans to customers receiving service under a prepaid service plan. They also suggested that all REPs should be allowed to offer prepaid service plans as an alternative to offering a deferred payment plan. They argued that requiring a REP to continue service when a customer, who as a condition of receiving service, was supposed to make an advanced payment, and then fails to make timely payments, establishes a market rule that will create a high risk for the REP. They contended that this would ultimately stifle innovation in the offering of new services to hard-to-serve customers.

The commission disagrees with Fire Fly that REPs should not be required to offer deferred payment plans to customers receiving service under a prepaid service plan for the reasons stated in response to the comments received in response to question one. The commission does agree that pre-paid service providers provide service in a different manner than other REPs and will reconsider this policy in the future if it becomes apparent that such a policy is inhibiting innovation in the market.

Consumer Groups argued that the bill payment and assistance provisions of §25.480(g)(2) fall far short of the program requirements that Consumer Groups would like to see in place across Texas. Consumer Groups argued that it is appropriate for the commission, pursuant to its authority under PURA §17.004(a)(11) and §39.903(g), to require service providers to make available voluntary contribution programs with the following parameters: (1) REP and POLR would inform new customers about the opportunity to contribute to a bill payment assistance program at enrollment and offer the customer the opportunity to donate a fixed amount each billing cycle; (2) All bills would have a check box or write-in space for period customer

donations; (3) All REPs would inform customers about the bill payment assistance program through quarterly bill inserts; (4) TDU would collect money from all REPs. Donated funds would then be distributed to customers in need through community organizations in the TDU's service territory. This would assure that funds would be protected from REP creditors as in the NewPower bankruptcy; (5) Ten percent of donations would be used to promote bill payment assistance programs on a statewide basis; (6) Encourage TDUs to match customer contributions with shareholder funds (Require TDUs that currently offer shareholder-matching fund to continue at 1999 levels). Consumer Groups argued that the current rule requiring a REP to disburse funds through an agency should be retained because allowing REPs to operate their own bill payment assistance programs will create a conflict of interest between the desire of donors to help the needy and the desire of the REPs to utilize these funds to pay off bad debt. Also, REPs would not be held accountable to the nondiscrimination requirements that apply to assistance agencies, and without the contributions going through an assistance agency, the donations are not tax deductible so fewer donations will be made.

In response, the Joint TDUs argued that the Consumer Groups' proposal is the same proposal that commission Staff rejected earlier in this proceeding. Absent legislative direction to set up a bill payment and assistance program as requested by Consumer Groups, the commission should reject Consumer Groups' proposal. According to the Joint TDUs, the program advocated by Consumer Groups would place a burden on the TDUs to administer and the commission would have to dedicate resources to oversee the program. Joint TDUs argued that the rule currently requires the REPs to administer a bill payment assistance program, and the current program is adequate; therefore, the Consumer Groups' proposal should be rejected.

The REP Coalition responded that in a competitive market, the commission should not mandate that REPs match contributions for bill payment assistance programs. The REP Coalition argued that many Texas REPs are small, developing companies that cannot survive under the strain of additional costly regulatory requirements. The REP Coalition noted that the matching of bill payment assistance plans by vertically integrated utilities before the advent of competition was not a commission requirement. The REP Coalition also argued that PURA §39.903(g) contemplated that low income programs offered by REPs would change once retail competition began because the provision only prohibits the lowering of programs offered to low-income customers, until customer choice is introduced. The REP Coalition also disagreed with the Consumer Groups' assertion that REPs operating payment assistance programs are a conflict of interest. The REP Coalition noted that the REPs must file annual reports that track the total amount of customer contributions and the amount of money disbursed by the REP; therefore, the REPs are liable for the payment assistance program contributions. Finally, the REP Coalition argued that the Consumer Groups' assertion that REPs would not be held to the non-discriminatory standards that apply to assistance agencies is incorrect because REPs are always held to the commission's non-discrimination provisions and there is no reason for the REPs to stray from those non-discrimination requirements when disbursing funds for bill payment assistance.

The commission agrees with the Joint TDUs and the REP Coalition that the bill payment assistance programs should continue to be operated through REPs. REPs are required to file annual reports detailing bill payment assistance activities, and this commission oversight helps to ensure that donated funds are used for bill payment assistance

programs. Additionally, the commission declines to require TDUs to continue to fund programs at the 1999 levels. Under PURA §39.903(g), the legislature only intended the freeze on reductions in bill payment assistance programs to last until customer choice was introduced. The commission agrees that in a competitive market, neither TDUs nor REPs should be forced to contribute to such programs. Finally, the commission agrees with the Joint TDUs that if the TDUs were to collect and disburse the funds to private agencies, then the commission would have to use resources to set up oversight of that activity. The use of such resources is unnecessary because under the current rule, bill payment and assistance programs can be adequately administered by the REPs. The commission also notes that the commission currently utilizes extensive resources to oversee the System Benefit Fund, a program that was explicitly required by the Legislature, is funded through a non-bypassable charge and that will provide approximately \$100 million in discounts to low-income customers during fiscal year 2004.

Consumer Groups argued that §25.480(h) should not be written to allow REPs to refuse customers with delinquent balances a level or average payment plan. Consumer Groups argued that customers who have delinquent balances are precisely the customers that need a level and average payment plan, and to refuse flexible payment provisions to a customer with payment problems is anti-consumer.

In reply, the REP Coalition argued that it should not have to offer a level and average billing plan to a customer with a delinquent balance. Level and average billing plans are costly to administer and they expose the REP to credit risk at certain times in the billing plan cycle. Therefore, the REPs should be allowed to set their own requirements for participation in a level

and average billing plan. Additionally, if a customer enters the program during high usage periods and is billed a lower average amount, the customer will find themselves in a severe financial bind if the customer misses just one or two payments. Therefore, it is reasonable that REPs should be allowed to limit participation in the programs to customers who are meeting their payment obligations.

The commission agrees with the REP Coalition that it is reasonable to allow the REPs to establish their own specific criteria for participation in level and average billing plans, provided they comply with the minimum requirements in §25.480(h). The commission disagrees with OPUC that a REP should be required to offer a customer that is delinquent a level billing plan, as such plans may subject a REP to further risk of non-payment during certain portions of the billing cycle for customers who are already delinquent.

OPUC supported the proposed rule provisions regarding the return of overcharges to customers who utilize level and average payment plans. OPUC noted, however, that the wording in the proposed §25.480(h) is too general and may result in unnecessary delays in refunding overcharge money. Therefore, OPUC also recommended that §25.480(h) specify that, upon termination of service to that customer, any overcharges are to be credited to the customer's final bill or mailed to the customer contemporaneously with issuance of the final bill.

The commission declines to require REP's to apply over-recovered amounts to a customer's final bill. Additionally, the commission declines to adopt any language requiring REPs to refund over-recovered amounts the mail contemporaneously with the final bill. While it is certainly appropriate to require REPs to return any over-recovered

amounts upon termination of service to the customer, it is unnecessary to specify the exact method in which the REP must meet this obligation. A REP may utilize bill credits or contemporaneous refunds if the REP believes it appropriate.

OPUC noted that §25.480(j)(1) should be brought into conformance with §25.480(h) by providing that REPs must offer deferred payment plans to all customers who have expressed an inability to pay their bill. Also, OPUC noted that §25.480(j)(3)(B) should be modified to reflect the provisions under §25.478(i) relating to guarantees of residential customer accounts.

The REP Coalition responded that it vehemently disagreed with OPUC's recommendation.

As previously discussed, the commission agrees that it is appropriate to require all REPs to offer deferred payment plans to customers who express an inability to pay. However, the commission clarifies §25.480(j)(7) to make clear that a REP is not required to offer an additional deferment in the event a customer fails to meet the obligations of the original deferred payment plan. The commission declines to amend §25.480(j)(3)(B) in order to reflect the provision regarding guaranties for residential customer accounts. Section 25.480(j)(3)(B) provides that a REP is not required to offer a deferred payment plan if the customer has received service for less than three months and the customer lacks satisfactory credit. As a guarantee is limited to the amount of deposit the REP would have otherwise required, the commission finds that it should not require REPs to effectively extend additional credit to such a short-term customer who has already demonstrated and inability or unwillingness to pay the customer's bill.

*§25.481, Unauthorized Charges**§25.481(a), Authorization of charges*

The REP Coalition generally supported the proposed changes to §25.481. The REP Coalition proposed, however, adding language to §25.281(a) that specifies that any claim of an erroneous billing for reasons other than the inclusion of a charge for an unauthorized product or service on a customer's bill shall not be considered a violation under §25.481. The REP Coalition noted that while it is appropriate for the commission to review any complaints associated with a customer being billed erroneously, the review should be undertaken within the context of §25.479 of this title (relating to Issuance and Format of Bills) and not as a potential "cramming" violation under §25.481.

The commission reaffirms that unauthorized charges on a customer's bill are undesirable and are to be avoided, regardless of cause. It is the REP's responsibility to ensure that a customer's bill is issued correctly; that is, that every charge appearing on it has been authorized in accordance with this rule.

The original statement in subsection (a) sets forth the proper general rule—that all charges appearing on a customer's bill must be authorized. The extent to which a charge that is the subject of a complaint is authorized, and therefore beyond the scope of this section, is a matter for the commission to decide on the merits of the claim. Accordingly, the commission finds that the rule is appropriate as written, and declines to modify it as suggested by the REP Coalition.

§25.481(b), Requirements for billing charges

The REP Coalition indicated that §25.481(b)(2), which requires a REP to record a customer's authorization to obtain a product or service before billing for such charges, could be misinterpreted as requiring a voice recording, which would only be the case for telephonic enrollment under the provisions of proposed §25.474(h). Therefore, the Coalition suggested that subsection (b)(2) be revised to state the REP shall document the authorization in accordance with §25.474 of this title to remove the implication that a voice recording is required.

The commission agrees with the REP coalition that the proposed rule could be interpreted in a manner as to require an audio recording of a customer's authorization to receive the offered product or service. Paragraph 25.481(b)(2) has been modified in accordance with the REP Coalition's proposal.

§25.481(c), Responsibilities for unauthorized charges

OPUC argued that the timelines in §25.481(c) for a REP to remedy an unauthorized charge on a customer's bill are unreasonably long and are too burdensome on customers. Specifically, OPUC disagreed that a REP should have 45 days to cease charging a customer for an unauthorized product or service and to remove the charge from the customer's bill, and to refund or credit the customer for the unauthorized charge within three billing cycles. OPUC recommended that the REP be required to discontinue providing the product or service no later than 15 days from the date the REP learns of the unauthorized charge. In addition, OPUC suggested that the REP be required to issue a credit or refund to the customer no later than 10 business days from the date the REP learns of the authorized charge. In the alternative, OPUC

suggested that the rule specify that interest must be paid on the unauthorized charge from the date of billing to the date the refund check is mailed or credited to the customer.

The REP Coalition opposed the time periods proposed by OPUC for a REP to identify and remedy an unauthorized charge. According to the REP Coalition, the current maximum of 45 days should be maintained. The REP Coalition pointed out that REPs may be able to complete the process sooner but if there is uncertainty concerning the charge, the REP must have sufficient time to confirm to investigate and complete the process. The REP Coalition also noted that the rule prohibits a REP from taking negative action—including termination, disconnection, and the filing of an unfavorable credit report—against a customer for failure to pay any disputed amount. Thus, the 45-day requirement, according to the REP Coalition, is fair and it offers adequate protection to the customer.

REP Coalition also opposed OPUC's proposal regarding interest. The coalition asserted that, as reflected in the current and proposed rule, application of any interest should be predicated upon a payment made by the customer that is not refunded within the required time period and not merely on the appearance of an unauthorized charge. The REP Coalition stressed that if the customer has not made a payment, interest should not be paid.

The commission notes that the 45-day period for a provider to remove an unauthorized charge is set forth in PURA §17.152. While the commission recognizes that many instances of unauthorized charges could be remedied by the REP in less than 45 days, the commission agrees with the REP Coalition that the 45-day period is fair and should be retained. Customers are adequately protected during this period because PURA §17.152(c)

and §25.481(c)(2) prohibit a REP from taking negative action (i.e., termination, disconnection, or the filing of an unfavorable credit report) against a customer for failure to pay any disputed amount.

Further, the commission agrees with the REP Coalition that OPUC's proposal regarding interest is unwarranted. The existing rule language is consistent with PURA §17.152(a)(3) and the commission finds no reason to change it. Therefore, the commission declines to amend the rule.

OPUC recommended adding language to §25.481(c)(2)(B) to require a REP to correct a customer's credit report without delay if an unfavorable credit report is filed erroneously for non-payment of unauthorized charges.

The REP Coalition agrees with this recommendation and noted that it is the duty of the REP to correct as soon as possible all aspects of any unauthorized billing.

The commission agrees with OPUC that a REP should correct a credit report without delay in this circumstance and adds new paragraph §25.481(c)(3) accordingly.

§25.481(d), Notice to customers

The REP Coalition pointed out that §25.481(d) is one of several places in the rules in which the customer is prompted to contact the commission to file a complaint and recommended revising this subsection to require the REP to provide such information only if the customer is not satisfied with the REP's response. Alternatively, the REP Coalition proposed clarifying the language because it assumes that the customer will first file a complaint with the REP, which in

fact may not be the case. The REP Coalition noted that the number of documents in which the customer is prompted to contact the commission has increased dramatically with retail competition, which is likely to have contributed at least in part to the significant increase in complaints. To illustrate this point, the REP Coalition explained that over a two-year period a customer who receives a disconnection notice once in a competitive market would be provided notification of the commission's complaint process 31 times, whereas the same customer under regulation would only be provided that information twice.

In reply comments, Consumer Groups and OPUC recommended rejecting the REP Coalition's proposal to not require REPs to include information in customer bills concerning the ability to file a complaint with the PUC. OPUC argued that the language in §25.481(d) is clear and encourages customers to seek resolution first with the REP before contacting the PUC. According to OPUC, this information should be included on the customer's bill, at least for residential and small commercial customers. Consumer Groups noted that there is a problem with unauthorized charges that did not exist in the regulated market, as evidenced by the 17,000% increase in the number of cramming complaints as compared to the 300% increase in overall complaints during the first year of competition. Consumer Groups asserted that an increase of this magnitude cannot be attributable solely to heightened customer awareness; rather, they suggested, it represents a real problem with REP performance.

The commission agrees with the REP Coalition that the REP should be the customer's primary contact to resolve billing disputes, unauthorized charges, and related matters, and notes that the statement required by §25.481(d) states that a customer should first contact the REP, and if not satisfied with the REP's response, contact the commission. The

commission is not, however, inclined to eliminate the commission's contact information on the bill. The commission has a duty to ensure that unauthorized charges are avoided to the maximum extent possible and are remedied in a manner that is consistent with PURA and the commission's rules. By providing customers the commission's contact information on the bill, the commission can be assured that customers are aware of its complaint process for resolving disputes with the REP.

The REP Coalition also recommended that subsection (d) be modified to limit its application to residential and small commercial customers. This is necessary, according to the REP Coalition, because of the proposal in §25.471 that prohibits REPs from requiring any customer to waive §25.481. The REP Coalition asserted that although all customers have the right to file a complaint at the commission, REPs should not have to modify their billing systems for larger customers requesting non-standard bills simply to convey this fact.

The commission agrees that the bill statement required by subsection (d) should only apply to residential and small commercial customers and amends this subsection accordingly.

§25.481(e), Compliance and enforcement

OPUC recommended that §25.481(e)(1) be modified to require REPs to provide OPUC records relating to customer verification and authorization upon request.

The REP Coalition, however, recommended deleting the requirement in subsection (e)(2) that a REP provide a copy of records to OPUC upon request. The REP Coalition stressed that OPUC's role in the market is to advocate the interests of residential and small commercial customers but not to act as a regulatory authority.

The commission declines to adopt OPUC’s recommended changes and adopts the REP Coalitions recommendation for the same reasons already discussed. The commission or commission Staff may request a copy of a REP’s records relating to unauthorized charges as needed to monitor compliance with the commission’s rules pursuant to the authority given to the commission by PURA §§14.002, 15.023, and 17.001(b). Since OPUC is not responsible for enforcing commission rules, the commission finds that it is inappropriate to require REPs to provide similar information to OPUC. To the extent OPUC represents that customer before the commission, OPUC would be able to obtain the information on unauthorized charges from the customer. Additionally, to the extent unauthorized charges are an issue in a contested proceeding before the commission, OPUC would, if OPUC were a party to the proceeding, be able to request those documents in discovery. As such, additional provisions in these rules are not required.

§25.482, Termination of Service

§25.482 (b)

The Consumer Groups argued that it is inappropriate to allow the REP to terminate service, and transfer service to the affiliated REP even if the customer has paid the REP for service and “cured” the non-payment, or made arrangements to pay the amount after the due date on the termination notice. TDHCA agreed with the Consumer Groups, arguing that this provision would allow a REP to move low income customers on the Low Income Home Energy Assistance Program (LIHEAP) who pay after the termination notice into high priced rate programs.

The Consumer Groups noted that commission records show that REPs have problems with accurate and timely billing, slamming and unlawful disconnections, and therefore, there needs to be a balance between REPs and customers in these rules. Consumer Groups contended that this rule gives more protections to REPs than customers and stated that the REP should be required to halt actions to terminate service if the customer's payment or satisfactory arrangement for payment occurs prior to the actual switch of the customer to the affiliated REP. Consumer Groups pointed out that the current rule allows the customer to retain service if payment was made prior to disconnection, and found that this is consistent with the way that termination orders are processed by ERCOT.

If that provision is not retained, the Consumer Groups argued that REPs should have to disclose in sales calls, third-party verification and terms of service, whether termination would be stopped upon payment. Consumer Groups also suggested that if the commission chooses to allow this, that it should publicly announced by the commission, and advertised by REPs. OPUC agreed with the Consumer Groups and recommended that §25.482(b)(1)(B) be modified to allow a customer to make a payment, after the final due date, up to two days prior to the scheduled termination date.

The REP Coalition supported the commission's proposed changes to §25.482(b) and disagreed with OPUC and Consumer Groups that a REP should reverse a transfer for non-payment if the customer pays after the termination date, but before the termination actually occurs. The REP Coalition argued that REPs should not be required wait beyond the final due date to request termination of a customer's service for non-payment. The REP Coalition argued that the

customers are given a specific deadline in the termination notice and that it is reasonable to expect them to understand and comply with that deadline.

The commission agrees with the REP Coalition that a REP should not be required to retrieve a request to transfer customers to the affiliated REP if the customer pays after the transaction has been sent. The commission finds that the rules require a sufficient amount of time for customers to pay a bill or make payment arrangements prior to the final due date. The commission finds that if the REP chooses to retain the customer, that they may do so, but that the REP should not have to make additional efforts for customers who have not fulfilled their agreement. The commission notes that the commission plans to eliminate the process of transferring nonpaying customers to the affiliated REP because all REPs will have the right to disconnect such customers.

§25.482 (e)

Consumer Groups also had similar objections to the proposed subsection (e) concerning termination of energy assistance clients and found that they would complicate the processing of LIHEAP energy assistance payments. Consumer Groups noted that this requires customers to rely on the energy assistance agency to contact the REP to make a pledge or oral commitment prior to the due date on the termination notice, which is not always possible when assistance agencies are backlogged, or the customer has not contacted the appropriate contact in the agency. They asserted that this would allow a REP to terminate a customer, even if the energy efficiency agency contacted the REP the day of or day after the due date on the termination notice. This, they contended would prevent LIHEAP from being able to help some families because the

purpose of LIHEAP is to continue utility service for at risk customer, not pay on the debt of former providers. TDHCA also opposed the requirement that an energy assistance agency must notify a REP of a pledge to pay by the final due date on the termination notice.

The commission disagrees with Consumer Groups and TDHCA that the proposed rule complicates the process for customers trying to receive energy assistance from LIHEAP. The commission finds that the proposed rule strikes an appropriate balance between the need to require a customer to take action or the energy assistance agency makes a pledge by the final due date. It is unreasonable to require a REP to somehow anticipate that an energy assistance agency may make a pledge after the final due date. If this change were made, the REP would have to either wait to terminate the customer or retrieve a termination transaction from the registration agent. Either option is unreasonable and the commission finds that a customer should be required to take some kind of action by the final due date on the termination notice, whether that action is making sufficient payment to continue service or having an energy assistance agency notify the REP that it will make a pledge on behalf of the customer. In the latter case, the commission notes that the energy assistance agency then has an additional 45 days to pay the REP; meanwhile the REP must continue to serve the customer.

The REP Coalition opposed the amendments to §25.482(e)(2), which requires a REP to extend the due date, day for day, until requested usage data is provided to the energy assistance agency. They argued that this would create an incentive for customers to wait until the last day prior to the final due date to begin working with an energy assistance agency and that this incentive is not in the long term interest of responsible customer behavior. Additionally, the REP Coalition

argued that it exposes the REPs to added credit risk, and may impose burdens association with tracking the extension. The REP Coalition requested that this language be removed.

In reply comments, Consumer Groups objected to the REP Coalition's to delete the language. The Consumer Groups noted that the intent of the language was to ensure that REPs provide billing histories in a reasonable time period. They pointed out that REPs are required to provide billing histories to energy assistance agencies by the end of the next business day, therefore, they argued, a REP's credit risk should be limited to one day.

The commission agrees with the Consumer Groups that §25.482(e)(2) should not be deleted as this provision is intended to ensure timely transmittal of usage histories to energy assistance providers.

§25.482 (g)

Consumer Groups opposed eliminating the requirement that prohibits a REP from terminating service to residential customers during "extreme weather" and the requirement that a REP offer customers a deferred payment plan for bills that come due during an extreme weather emergency. The Consumer Groups noted that language in PURA §39.101(h) has the objective of maintaining service to residential customers when weather is very hot or very cold, and that until the customer protection rules were adopted, that the distinction was not made between termination and disconnection. According to the Consumer Groups, those terms are often used interchangeably. Therefore, Consumer Groups argued, the statute is clear that residential customers' service should not be affected during an extreme weather emergency.

Consumer Groups argued that since the affiliated REP can threaten disconnection of service, if a non-affiliated REP is allowed to terminate service without offering a payment plan, the customer could be facing disconnection of service even when they are attempting to make payments. The Consumer Groups reiterated that residential customers should have the same rights and remedies, equivalent to those that existed before competition, and therefore the customers who are facing extreme weather should be provided the same right to avoid termination and enter into deferred payment plans from any provider in the market.

In reply comments, the REP Coalition disagreed with Consumer Groups that the prohibition on termination during extreme weather should be retained. They argued that this prohibition was meant to ensure customers are not without heating or air conditioning when conditions could result in injury or death, not to shield irresponsible payment behavior. The REP Coalition noted that extreme weather does not prevent the payment of the bill, or the ability of the customer to request a deferred payment plan, and that termination is not the same as disconnection.

The commission notes that §25.480(j) has been amended to require all REPs to offer customers a deferred payment plan at when a customer expresses an inability to pay (subject to the conditions in that rule). Further, the commission agrees with the REP Coalition that termination and disconnection do not mean the same thing. Most importantly, termination does not result in a customer's service being physically disconnected, whereas disconnection does. Should the customer also refuse or be unable to pay the affiliated REP, the affiliated REP will not be allowed to disconnect during extreme weather. Therefore, the commission finds that eliminating the prohibition on terminating customers during a weather emergency does not violate PURA §39.101(h).

The REP Coalition recommended that §25.482(g)(5) be amended to delete references which prompt the customer to contact the commission to file a complaint. Consumer Groups disagreed with the REP Coalition that the language informing the customer of their right to file a complaint be deleted.

The commission agrees with OPUC and the Consumer Groups, and declines to adopt the REP Coalitions suggestion to amend §25.482(g)(5). Subsection 25.482(g)(5) requires a notice that customers can contact the commission if they are dissatisfied with the REP's response to a complaint made to the REP.

The REP Coalition also recommended that §25.482(g)(6) be deleted because they argued that requiring a termination notice to contain language about other REPs is inappropriate and should therefore be removed from the rule. OPUC and Consumer Groups disagreed with the recommendation of the REP Coalition that §25.482(g)(6) be deleted.

The commission agrees with the REP Coalition that §25.482(g)(6) should be deleted because it is inappropriate to indicate to customers that they should attempt to avoid payment or a termination for non-payment by switching to another REP.

§25.482 (i)

Consumer Groups recommended that a material change in subsection (i) include any change in the price of electricity for a fixed price contract. Consumer Groups argued that the provision, as currently written, is difficult to enforce because of the potential challenges to what is meant by “material.” Additionally, they recommended that the word “terminate” be changed to “cancel.”

The commission declines to adopt the changes suggested by Consumer Groups, as it finds that “material” change need not be specified further as §25.475(e) already provides guidance on what constitutes a material change such that notice is required. The commission also finds “terminate” is the correct terminology for this rule.

The REP Coalition argued that §25.482(i) should be amended to allow a customer to avoid a termination penalty only if they move and their current service package is not available in that area. They argued that if the customer moves and the current service package is still available, yet they choose to leave their obligations, then they should be subject to a termination penalty. Consumer Groups disagreed with the REP Coalition’s suggestion because, they contended, when customers move, the needs at the new location, are not always the same as their previous location, and therefore customers should be allowed to look for other options.

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

§25.483, Disconnection of Service

Consistent with their comments in response to Preamble question one, Consumer Groups opposed any change to the current rule, and strongly urged the commission to delay its decision on this matter until at least October 1, 2004, as currently contemplated in the rule, and until the commission has thoroughly studied this issue and its impact on consumers. In contrast, the REP Coalition supported the commission's proposal to give all REPs the right to disconnect prior to October 1, 2004.

As discussed in response to comments to Preamble question one, the commission amends §25.483 to allow all REPs the right to disconnect customers for nonpayment beginning June 1, 2004, provided that certain conditions are met.

§25.483 (a)

Fire Fly suggested that §25.483 be amended to require TDUs to complete disconnections within a specified time limit. They noted that while a REP may request disconnection, there is no time limit specified, or protocols governing the responsibility. Fire Fly argued that while there is a timeline for reconnection, it is reasonable for the rule to provide for a similar timeline for completed disconnections.

In reply comments, the REP Coalition generally agreed with Fire Fly's comments regarding a standard, market wide time frame for TDUs to perform disconnects in order to provide predictability and shorten the time for losses from non-paying customers. The REP Coalition stated that this is not adequately addressed in tariffs, and therefore suggested that the consumer

protection rules prescribe that disconnections be completed in a minimum of three business days from receipt of the request.

The commission declines to mandate the time frame in which disconnections must occur as suggested by Fire Fly and the REP Coalition at this time. The commission generally agrees with the concept of goal of processing disconnections within three business days, however, the commission declines to set specific timelines in these rules at this time, because the time frame in which disconnections will occur is better suited for coordination between the REPs and TDUs. If the need arises, the commission will specify specific timelines in future revisions to the Tariff for Retail Electric Delivery Service.

§25.483 (b)

OPUC recommended the addition of a provision in §25.483 that requires the commission to initiate a rulemaking project, allowing for workshops and public comment on this subject prior to the commission making any determination on disconnection rights for all REPs. Consistent with their comments on Preamble question one, the REP Coalition recommended that §25.483(b) be amended to eliminate the Staff study on whether to grant disconnection rights to all REPs.

In reply comments, Joint TDUs argued that the REP Coalition's statement regarding §25.483(b) that the drop to affiliated REP process has increased their workload, overstated the effect of the drop to affiliated REP process on TDUs. Joint TDUs found that this was an example of why disconnection processes should be considered and addressed by the market, rather than being mandated by rules.

The commission agrees with the REP Coalition that the study is not needed, as addressed in the discussion of Preamble question one. The commission agrees with Joint TDUs that the specifics of the transactions and business processes related to disconnections should be addressed by the market. If the market fails to do so, the commission will specify procedures and processes in future revisions to the Tariff for Retail Electric Delivery Service.

§25.483 (e)

OPUC argued that §25.483(e) should be amended to include provisions for situations in which the customer can show the disconnection service technician proof of payment. OPUC acknowledged that the service technician does not know how much a customer owes a REP; however, they suggested that if the receipt is for the full amount of the unpaid balance, that the service technician should be required to leave the service on. OPUC asserted that this could be verified by comparing the amount paid on the receipt with the balance that was owed as shown on the receipt or disconnection notice. In addition, they suggested that the service technician should be required to call the REP prior to disconnecting a customer if the customer shows a payment receipt, so that they can verify with the REP whether the payment amount is sufficient to cancel the disconnection. These additional provisions would assist customers in avoiding disconnection, OPUC contended, and would assist REPs and TDUs by avoiding additional trips out to a customer's premises for reconnection. Consumer Groups supported OPUC's comments and recommended that the rules provide assurance that customers who make payments prior to being physically disconnected maintain uninterrupted service.

Joint TDUs noted that there would be a number of issues which would need be explored in connection with the merits of OPUC's comments including: (a) what "tangible proof of payment" is; (b) the fact that the field service technician may not know who the REP is; (c) the problems associated with the service technician not knowing the amount of the outstanding balance, or whether or not the payment center receipt is actually for electric service; (d) not all TDU field service technicians are equipped with mobile phones; and (e) whether or not all REPs would be able to consistently dedicate call center personnel for disconnect-support purposes. Additionally, Joint TDUs noted that market participants are currently exploring various operational considerations and field service practices of TDUs and that the operational details of the disconnection process would be more properly addressed through ERCOT subcommittee processes, which would allow for changing systems and conditions.

The commission agrees that it is unreasonable to require a TDU's disconnection service technician to verify the payments with the REPs. However, the commission notes that a TDU may choose to coordinate with REPs to verify payments for customers who are scheduled for disconnection, and encourages the market participants to do so to the extent possible. The commission also notes that the customer has been given adequate time to pay the bill and sufficient notice that disconnection will occur if payment is not received. The commission finds that this is matter that should be carefully coordinated between the REPs and TDUs, not mandated in a rule, at this time.

Consumer Groups urged the commission to amend §25.483(f)(1) so that a reconnection request submitted by a REP on a weekend pursuant to a customer's cure of a disconnection that occurs on a weekend should not be considered a priority reconnect request under subsection (n). OPUC recommended language in §25.483(f)(1), which would prohibit disconnection on or near a holiday, but would allow for disconnection on weekends only if that REP's personnel is available for assistance and that the TDU's personnel are available to reconnect service. OPUC argued that REPs should not be allowed to order a disconnection on or immediately before holidays because the customer may not be able to obtain funds. In reply comments, the REP Coalition noted that OPUC's concerns regarding holiday disconnects are already addressed in §25.483(f)(1). The REP Coalition opposed the language suggested by Consumer Groups for §25.483(f)(1) because it would make standard TDU weekend or holiday connection charges uncollectible from the customer.

The commission agrees with the REP Coalition with respect to both issues. The commission finds that the current rule provides sufficient protection for customers surrounding holidays and weekends. The commission finds that charges sent to a REP by a TDU with regards to reconnection fees may appropriately be passed on to the customer.

§25.483 (h)

The REP Coalition and Fire Fly supported §25.483(h)(3), which allows a TDU to have discretion in disconnecting a premise for an ill or disabled person, but suggested amendments to better formalize the communication loop. Joint TDUs disagreed with the REP Coalition's proposed changes to §25.483(h) because, they argued, the provision as currently proposed balances the

TDUs' responsibility for timely execution for a disconnection and the potential for the TDU personnel to delay disconnection due to information obtained while completing the order. Additionally, Joint TDUs stated that the final sentence should not be deleted, as recommended by the REP Coalition, because it already makes the subsection clear that it is not putting a burden on TDUs, but applies when the limited circumstances arise.

The commission agrees with Joint TDUs that the current rule balances the expectations of the TDU's disconnection ability and their service technician's ability to act when circumstances arise and declines to adopt the REP Coalition's amendment.

§25.483 (i)

The REP Coalition supported the proposed change to §25.483(i), which clarifies the responsibilities of the REP, the customer and energy assistance agencies with regard to disconnection of energy assistance clients. Additionally, the REP Coalition found it helpful that the proposed rules make clear the customer's responsibilities regarding the arrangements for co-pay on an outstanding bill.

The REP Coalition opposed the requirement in §25.483(i)(2), which requires the REP to extend the disconnection date for a customer until the REP provides historical usage data to an energy assistance provider provides incentive for the customer to wait until the last day before disconnection to begin working with an energy assistance agency. The REP Coalition argued that this will not encourage responsible behavior and exposes the REP to added credit risk, and therefore recommended that the provision be stricken. In reply comments, OPUC urged the commission to reject the REP Coalition's suggestion to delete §25.483(i)(2).

For the same reasons as discussed with respect to the commission's determinations in §25.482(e)(2), the commission agrees with the Consumer Groups that §25.483(i)(2) not be deleted. In accordance with the proposed rules, an energy assistance agency must make a pledge by the final due date on the termination notice. If the agency must obtain a customer's usage history prior to making the pledge, then the commission finds that it would be necessary to do that before the deadline to make the pledge.

§25.483 (j)

The REP Coalition stated that REPs with disconnection authority should work with customers to provide payment arrangements and deferred payment plans prior to disconnection. The REP Coalition requested, however, that the language in §25.483(j) be changed to so that in times of extreme weather, it is the customer's responsibility to contact the REP to request payment assistance.

The commission agrees that it is the customer's responsibility to request payment arrangements or a deferred payment plan. The commission amends §25.483(j) to clarify that a REP must provide the payment plans upon a customer's request.

Consumer Groups and the REP Coalition supported the requirement in §25.483(j)(2) to require TDUs to notify the commission of any extreme weather emergency within its service territory. The REP Coalition contended that the TDUs were in the best position to monitor the National Weather Service and should provide notice to the commission and REPs of counties in which disconnections will not be performed do to an extreme weather emergency. However, Joint TDUs opposed the requirement because they argued that it is unnecessary because the Southern

Region Headquarters for the National Oceanic and Atmospheric Administration publishes extreme weather conditions for each county in Texas on its website (www.srh.noaa.gov). Joint TDUs, therefore, argued that the information desired by the commission is readily available without the burden of reporting requirements on the utilities.

The commission agrees with the Consumer Groups and the REP Coalition that it should be the TDU's responsibility to monitor and notify the commission of extreme weather conditions in their service territories, and therefore declines to delete the requirement. Although the commission believes that it would be beneficial for TDUs to provide such information to REPs, such communication would be an added responsibility that was not contemplated in the proposed rule and should not be added to the rule at this time. The commission encourages TDUs to provide REPs notice of extreme weather conditions as part of the stakeholder process to resolve any technical or business process issues surrounding disconnections.

§25.483 (k)

The REP Coalition urged the commission to delete §25.483(k), which requires REPs to provide notice of pending disconnection to the tenants of a master metered apartment complex. The argued that this subsection is unnecessary because the REP is already required by the rules to give proper notice of a pending disconnection of the “customer,” which is the owner of the apartment complex. The REP Coalition was concerned that this requirement unfairly subjects REPs to potential business risks and civil liabilities stemming from breach of customer confidentiality, trespass and other such issues. The REP Coalition also argued that this was in

conflict with §25.472 regarding customer information confidentiality, and that it is impractical because REPs do not have employees in every town and city that they serve.

In reply comments, OPUC argued that individual tenants are affected when a master metered apartment complex is disconnected for nonpayment. OPUC noted that the rule is already in place and that has been no evidence presented regarding instances where a trespass charge or allegation has been made for a company providing such notice to tenants.

The commission agrees with OPUC and declines to modify this subsection. The commission finds that even though the customer is the apartment owner, the owner may not pass this information onto the tenants, who could be harmed in the event of a power outage. The commission notes that this is an existing rule and is therefore adding no new requirements.

§25.483 (m)

The REP Coalition recommended that §25.483(m)(5) be amended to delete references which prompt the customer to contact the commission to file a complaint. Consumer Groups disagreed with the REP Coalition that the language informing the customer of their right to file a complaint be deleted.

The commission agrees with OPUC and the Consumer Groups, and declines to adopt the REP Coalition's suggestion to amend §25.483(m)(5). Subsection 25.483(m)(5) requires a notice that customers can contact the commission if they are dissatisfied with the REP's response to a complaint made first to the REP.

The REP Coalition also recommended that §25.483(m)(6) be deleted because they argued that requiring a disconnection notice to contain language about other REPs is inappropriate and should therefore be removed from the rule. OPUC and Consumer Groups disagreed with the recommendation of the REP Coalition that §25.483(m)(6) be deleted.

The commission agrees with the REP Coalition that §25.483(m)(6) should be deleted because it is inappropriate to indicate to customers that they should attempt to avoid a disconnection for non-payment by switching to another REP.

The REP Coalition recommended adding a new paragraph to require that the disconnection notice include a notice regarding the consequence of disconnection. The REP Coalition recommended that until the REP issues a new terms of service document to customer addressing the right to disconnect, that the disconnection notice should contain language to highlight the fact that the premise will be de-energized if payment is not received by the final due date.

The commission agrees with the REP Coalition that customers should be notified that the consequence for non-payment change will be actual disconnection of electric service and adopts this recommended language. As discussed in the commission's response to question one, the commission will require REPs to provide direct notice to all customers regarding all REPs gaining the right to disconnect customers for nonpayment instead of transferring them to the affiliated REP. The commission believes that this notice will provide customers with adequate explanation of the changes in commission rules, but notes that REPs are free to include additional language in their disconnection notices if they believe it will assist customers in understanding the consequences of disconnection.

OPUC recommended the removal of the phrase “if any” from §25.483(m)(8) for consistency with its comments regarding deferred payment plans.

The commission declines to make the change suggested by OPUC because REPs are not required to offer deferred payment plans under some conditions, as discussed previously.

§25.483 (n)

Consumer Groups supported the commission’s proposal to include specific deadlines for reconnecting service; however, they requested that §25.483(n) include deadlines by which the REP must submit the reconnection request so that the TDU has sufficient time to complete the reconnection. Joint TDUs agreed with OPUC that §25.483(n) should include the part of the process related to the TDU’s receipt of reconnection requests from the REP. Joint TDUs emphasized that this needs to be included in the rule because the end to end timeline depends on the REP sending the reconnection request with the specified time frames. Joint TDUs noted that the proposed rule states that the REP shall request reconnection by the TDU “in accordance with standards adopted by the registration agent” however reconnection standards were not made a part of the ERCOT protocols. TDUs recommended that the complete recommended process be included and adopted. In reply comments, the REP Coalition disagreed with comments from Joint TDUs, Consumer Groups and OPUC suggesting that specific timelines for REPs be included in the Rule language. The REP Coalition argued that the rule captures the end result of the reconnection matrix, while allowing flexibility to adjust the parameters as the commission deems necessary.

The commission deletes the term “in accordance with standards established by the registration agent” in response to the comments of the Joint TDUs. The commission believes that the responsibility for REPs to timely request reconnections of service is inseparable from the authority of REPs to request disconnections. As such, the commission agrees with Joint TDUs that the rule should include the reconnection timelines previously agreed to by the market and agrees that the field operational day is the most appropriate time frame with which to expect the disconnection to occur because of the variances in TDU work days. The commission finds that the more detailed reconnection timelines should adequately address the concerns of timely processing within the reasons of the TDU schedules.

OPUC and Consumer Groups generally commented that the reconnect times established in the rule under §25.483(n) are too long and unfairly burdensome to the consumer.

Both OPUC and Consumer Groups disagreed with the TDU deadline being defined as a “utility field operational day” because, they argued, this could cause a customer to wait more than 24 hours for a reconnect, depending on the end of a specific TDU’s operational day. Joint TDUs disagreed with the Consumer Groups and OPUC regarding the use of “field operational day” and with setting the TDU’s deadline for reconnection. The TDUs found that the “field operational day” accommodates variances in the work schedules, and the language represents a market consensus and should be retained in the rule.

Consumer Groups asserted that many customers can be reconnected within two hours of the time the TDU receives the reconnection request. Therefore, Consumer Groups contended, there is not

a need to set a lengthy deadline. They suggested that the rule require a TDU to reconnect service no later than 24 hours after receiving the reconnection request. In supplemental reply comments, Consumer Groups asserted that at the ERCOT Disconnect for Nonpayment Symposium, the panel of representatives from TNMP, AEP, Entergy, Oncor and CenterPoint concurred that reconnect orders received by 2:00 p.m. would be reconnected the same day. Consumer Groups also concluded from the discussion at the Disconnect for Nonpayment Symposium that every participant expressed the opinion that a 24-hour reconnection standard can be met. Consumer Groups argued that the industry is already meeting the 24-hour standard, and that this indicates that the standard is reasonable, and should therefore be adopted in the rules. Joint TDUs disagreed with the Consumer Groups' characterization of references regarding certain statements made during the December 16, 2003 Disconnect for Nonpayment Symposium. Joint TDUs argued that TDUs reported in the symposium that if electronic reconnection requests are received early enough in the day, the TDUs make every effort to complete orders that same day. However, depending on the number and type of service order requests received, TDU workloads vary, and therefore, it is important for REPs to coordinate with the TDUs with respect to the volume and timing of service order requests submitted. Additionally, the Joint TDUs noted that , with regard to a "24-hour reconnection standard," the market has already reached an agreement with respect to the structural guidelines for the performance of reconnections. ERCOT's Retail Market Subcommittee (RMS) has approved the Transaction Improvement Task Force's (TITF) detailed recommendations wherein TDUs must complete Texas Standard Electronic Transaction reconnection requests no later than the end of the next TDU field operational day following the receipt of the reconnection request. The Joint TDUs stated that it was their understanding that the Consumer Groups actively participated RMS and TITF discussions regarding this issue and

the that time frame with regard to the TDU's field operational day was adopted in lieu of a "24-hour standard."

The commission finds that the reconnection deadlines imposed by §25.483(n) are appropriate and declines to amend this subsection to require that TDUs complete reconnection requests within 24 hours. The commission notes that the requirements adopted by the commission with respect to reconnection will result in customers being reconnected in the majority of cases the same or next day after making payment. However, as an added protection, the commission amends §25.483(n) to indicate that in no event shall a REP take longer than 48 hours after customer cures the reason for the disconnection to request a reconnection and that in no event shall a TDU take longer than 48 hours to process a reconnection request from a REP in response to concerns voiced by the Consumer Groups concerning the TDU's field operational day definitions. The commission believes that this language addresses concerns that a customer may fail to be reconnected in a timely manner after payment due to a weekend, holiday, or any other reason. The commission also believes it critical to make absolutely clear that the other timelines in this rule will in most cases control over the absolute limit of 48 hours included as an absolute limit. The deadlines imposed by this rule are minimum standards that dictate the absolute latest a customer should be reconnected, and the commission believes that most customers will be timely reconnected after making payment. The commission encourages TDUs and REPs to work together to ensure that reconnections are completed as quickly as possible.

§25.485, Customer Access and Complaint Handling

§25.485(a)

Consistent with their comments in Preamble question two, the REP Coalition and Fire Fly recommended that §25.485 be amended to clarify that customers have the right to lodge complaints at the commission against TDUs as well as the REPs. Fire Fly argued that customer confusion would be avoided by including TDUs in the complaint process because the quality of service the REPs provide to their customers also depends on the TDUs and the information provided by the TDUs. OPUC generally agreed that specific rules, guidelines, and procedures for TDU complaint handling should be set, and that where it is unclear as to who is at fault, the rule should specify that the customer should send a metering complaint to the REP, who must investigate the complaint in conjunction with the TDU, and if the complaint is not resolved to the customer's satisfaction, the customer should be allowed to lodge a complaint directly with the TDU and the commission.

However, Consumer Groups and Joint TDUs opposed including TDUs as an additional entity to which the customer may complain, arguing that this would be confusing for the residential consumer. Consumer Groups commented that the commission should, however, add secondary fields to the complaint database so that TDUs could be held accountable for their actions in the market. The Joint TDUs also argued that issues regarding TDU services, including complaints, should be addressed in the TDU tariffs and not in the customer protection rules, which are designed and limited to address matters involving REPs and customers. The Joint TDUs further argued that the current market structure, with the REP as the primary customer interface, is consistent with the fact that the REP is in the best position to resolve the majority of consumer complaints, which are essentially high bill complaints.

Further, Consumer Groups and Joint TDUs said that it is inappropriate for “market participants” to be allowed to bog down the commission’s Customer Protection Division with complaints against each other. They argued that customer protection rules are for “customer” protection, and the REPs and TDUs should be able to work out disputes among themselves. Additionally, they pointed out, §25.30 already authorizes *customer* complaints against other *regulated* entities so amending §25.485 is not necessary to handle complaints fairly.

For the reasons stated in the commission’s answer to preamble question five, the commission declines to adopt the requested changes to this rule that would include TDUs or other “market participants” into the informal complaint process.

§25.485(new b) Complaint Procedural Guide

The REP Coalition recommended that a new §25.485(b) be added to require the commission to publish a procedural guide to provide for a transparent complaints process for all market participants as well as customers. They commented that a procedural guide would document the complaint handling process, formalize it, enhance the REP’s ability to efficiently respond to customers and ensure that the commission’s complaint records are accurate. Additionally, the REP Coalition recommended that one or more workshops be devoted to developing the guide following adoption of this rule. The workshops should include such issues as (non-exhaustive): classification of complaints, how to respond to complaints, how emergency and priority complaints differ from normal complaints, toll-free hotline procedures, which complaints go to which market participant (TDUs versus REPs), Staff RFI procedures, redirecting wrong complaints, reclassifying misclassified complaints, procedures for appealing Staff violation

findings, and procedures for violation findings that are later found to be non-violations. The Consumer Groups replied that such a procedural guide would be a useful tool as long as it is a rule so that the commission may use it for enforcement.

The commission declines to mandate a complaint procedural guide as part of the rule for reasons discussed in response to Preamble question five. However, the commission will soon publish a procedural guide to ensure a transparent process for handling customer complaints.

§25.485(c) Complaint Handling

The REP Coalition suggested that, since large customers are familiar with and prefer alternative dispute resolution as a means of resolving disputes, a sentence affirmatively stating that a large non-residential customer can enter into such agreements should be added to this section.

The commission considers it reasonable to add a sentence explicitly stating that large non-residential customers may enter into alternative dispute resolution agreements. However, this provision is not meant to indicate that a large non-residential customer should be required to waive their option to file an informal or formal complaint if they are dissatisfied with the alternative dispute resolution.

§25.485(d) Complaints to REPs or Aggregators

The REP Coalition asked that, when the activity complained about is within the control of a TDU, the REP have the right to limit its response to the customer to a statement that the

complaint is properly directed to the TDU. The Joint TDUs replied that this could result in customers with complaints merely being bounced to other entities, without proper analysis and counseling and such “ping-ponging” between parties will cause the customer to experience delay.

For the reasons stated in the commission’s answer to Preamble question five, the commission declines to adopt the requested changes to this rule that would include TDUs into the commission’s complaint process.

OPUC and Consumer Groups commented that the 21-day period for a response from the REP or Aggregator to a complaint by a customer is too long. OPUC suggested shortening this deadline to 14 days, while Consumer Groups suggested that the rule should allow five days for all complaints except those involving termination or disconnection of service that should be completed the same day the complaint is received. Consumer Groups recommended that, when more than five days is needed as when investigative information is required from a third party, the five days be implemented with a provision that additional time may be requested and approved. Additionally, the 10-day period for a decision communicated to the complainant should be shortened to five days, according to OPUC. They argued that these shortened response periods are more beneficial to consumers and will result in speedier resolutions to consumer problems and inquiries. Consumer Groups pointed out that in the airline industry, call center processing takes only a few minutes, not days.

The REP Coalition asked the commission to reject the suggestions that the complaint response timelines be reduced. The REP Coalition argued that most contacts from the customer are not

complaints but rather inquiries and can usually be resolved on the phone, but an actual complaint takes more investigative effort to complete especially if it goes to the commission or requires a specialized team to respond because it is so complex. The REP Coalition pointed out that there are numerous complaints where it takes several days just to contact the customer because the customer is not available, and then a few days additional if commission-related paperwork becomes necessary. Additionally, the REP Coalition argued that shortening the time frame for complaint response could increase the requests for extensions, and the commission has a more difficult time managing a process with extensions.

The commission declines to either shorten or lengthen the 21-day period for a response from a REP. The commission believes the current time period is adequate in obtaining a timely resolution of complaints.

Additionally, Consumer Groups commented that when a customer is dissatisfied with the REP's complaint process, the REP should be required to inform the complainant of the right to file a complaint under the supervisory review process if available AND with the commission and the Attorney General's Office, whether the supervisory review process is available or not.

The commission declines to change when a customer may file with the supervisory review process. The commission believes the current process is adequate for obtaining a timely resolution of complaints

§25.485(e) Complaints to the commission

Consumer Groups commented that §25.485(e)(1)(B)(v) should be amended to eliminate the phrase "the complainant's requested resolution" because they argued that it may inhibit some

customers from filing a complaint because some customers may not know how they want a problem resolved.

The commission declines to eliminate this provision and finds that while some complainants may not know how they want their complaint resolved, many certainly will know. Asking for a customer's requested resolution is a customer oriented attitude that ultimately leads to better customer satisfaction.

Consumer Groups suggested that the commission needs to effectively enforce its rules, and that the commission needs a streamlined enforcement process. Consumer Groups supported a customer-friendly form of enforcement that would compensate the consumer through billing credits or direct payments for the failures of companies to deliver services that meet the service standards set by the commission. Consumer Groups argued that under such a system consumers will be better equipped to resolve disputes on their own, and the companies will have an incentive to avoid the costs of customer compensation. Consumer Groups suggested that the commission determine in an administrative rulemaking the amount of compensation and the standards to be met. Further, when widespread abuses occur, they argued that the commission should consider all tools including fines and pulling the REP's certification. Consumer Groups argued that this would result in self-policing by the companies and then changes to improve their overall performance. The system would not require the customer to contact the commission because, under terms and conditions of service, the customer and the company would work out the problem. The commission would be brought into the process only if the customer wanted to further pursue a complaint against the company. This type of enforcement process is in effect in other states including: California, Oregon, Massachusetts, Colorado, Illinois, and Maine.

Consumer Groups also commented that the formal complaint and administrative penalties processes could be streamlined to relieve the burden on both the customer and the commission. They suggested that the commission establish a system for automatically assessing administrative penalties against companies that have a certain number of complaints filed against them that exceed the number filed under regulation. Fines would be such as to discourage repeat offenses and to discourage any company from paying any customer compensation and then continuing to fail to provide high quality service.

The REP Coalition responded to the Consumer Groups' suggestions by stating that this approach is not supported by the statute. They argued that the commission cannot order or require through rule that compensation be paid to customers when an error is made. Further, the REP Coalition argued that only courts have authority to require financial "damages" when there is a breach of the terms of service. On the issue of penalties, the REP Coalition argued that this would be unfair because the number of complaints filed against a REP does not mean that the REP has done anything wrong, so assessing a penalty based on number so complaints would be unfair as well as unworkable. The REP Coalition maintained that the commission should impose penalties only for actual violations using the administrative penalty provisions set forth in PURA §15.024, and any other process would be a violation of the statute. The Joint TDUs replied to the Consumer Groups' suggestions of streamlining the administrative penalty process and indicated that such automatic penalties raise significant due process concerns. The Joint TDUs opposed any automatic mechanism that would abridge due process.

The commission declines to adopt standard automatic penalties for rule violations. The commission believes that REPs are entitled to adequate due process in determining

whether or not a customer complaint is valid and is evidence of a rule violation. PURA Chapter 15, Subchapter B provides specific detail as to the commission enforcement authority and ability to assess administrative penalties against person who violate commission rules or orders. The commission notes that §15.024 outlines the administrative penalty procedure and provides the opportunity for a hearing for persons alleged to have violated commission rules.

The REP Coalition supported including additional information to support a complaint as it will assist companies in resolving complaints more efficiently, but commented that §25.485(e)(1)(B)(vi) should be clarified so that the document should be described as “terms of service” in place of “contract.”

The commission agrees and has made the appropriate change.

The REP Coalition commented that TDUs should be added to the list in §§25.485(e)(1)(C) and (D) to receive notification of customer complaints from the commission. Furthermore, they argued, the investigating party should be able to refer the complaining entity to the correct entity and just notify the commission without further investigation.

For the reasons stated in the commission’s answer to Preamble question five, the commission declines to adopt the requested changes to this rule that would include TDUs into the formal complaint process. Furthermore, and for the same reasons, the commission finds that the investigating party should not be allowed to refer the complainant and just notify the commission.

Consistent with their comments in §25.485(d), OPUC asked that the 21-day period for the REP or Aggregator to inform the complainant of the commission's informal process and to advise the commission in writing of the results of the investigation be shortened to 14 days. Consumer Groups agreed that this period should be shortened but the new period length should be five days.

The commission declines to shorten the 21-day for the reasons previously stated.

The REP Coalition suggested adding new §25.485(e)(1)(E) to allow for the 21-day period to be extended for good cause. They stated that good cause may include situations where, because multiple entities are involved, fieldwork cannot be completed before the end of the period. Consumer Groups argued that extending the timeline is a delay tactic designed to discourage consumers from pursuing resolution of their problems and should be rejected.

The commission declines to lengthen the 21-day period for a response from a REP for the reasons previously stated.

The REP Coalition supported the commission's proposal in §25.485(e)(4) to place a 2-year time limit on when a customer can file a formal complaint. The REP Coalition said that this limitation will be more consistent with the records retention requirement of two years set forth in §25.491.

§25.491, Record Retention and Reporting Requirements

Consumer Groups and the REP Coalition supported the proposed changes to the reporting requirements in §25.491(c). The REP Coalition indicated that having better-defined "buckets"

for categorizing informal complaints will be very helpful to both REPs and the commission. Consumer Groups added that REPs will be forced to provide complaint information that is more complete and accurate. According to Consumer Groups, this structure will also provide Staff and consumers with additional information and allow Staff to take corrective action, as necessary.

Consumer Groups recommended, however, that the annual report be considered an open record and be publicly available. In addition, Consumer Groups suggested clarifying in the rule that the report can serve as a basis for an investigation of any of the data provided. Consumer Groups added that the commission must not advocate for “market transparency” while authorizing the filing of secret documents.

The REP Coalition opposed the Consumer Groups’ suggestion that the annual reports be automatically deemed public information. The REP Coalition argued that it would violate REPs’ rights under Texas Government Code §555 to make a claim of confidentiality pursuant to open records law, and PURA §39.001(b)(4), which ensures that competitively sensitive information can remain confidential. According to the coalition, the commission cannot by rule declare whatever a company may file an open record; rather, REPs must be afforded to opportunity to make a claim of confidentiality and have the attorney general rule on that claim. Moreover, the REP Coalition noted that the commission, in its annual report instructions, has acknowledged that some information provided in the annual report is likely confidential. The REP Coalition suggested that the commission has taken the correct approach to date in allowing REPs to make claims pursuant to the Open Records Act and recommended that the commission retain its current policy.

The commission agrees with the REP Coalition that having better-defined “buckets” for categorizing informal complaints will be very helpful to both REPs and the commission. The commission agrees with the REP Coalition that the REPs should have the ability to make claims of confidentiality when filing the annual reports required under this subsection. This is in accordance with the current commission practice pertaining to confidential documents under the Texas Public Information Act (TPIA). If the commission receives a request pursuant to the TPIA for information designated as confidential, the commission will continue to refer the matter to the Office of the Attorney General (OAG) for resolution. Such an approach addresses Consumer Groups’ suggestion that the annual reports be available for review, while protecting any confidential or “competitively sensitive” information specified in PURA §39.001(b)(4) that might be contained within an individual report. Therefore, the commission declines to add language to the rule mandating public disclosure of the annual report.

The commission also amends §25.491(d) to remove the requirement that REPs submit information to OPUC if requested in order to investigate compliance with commission rules for the reasons previously stated. Additionally, this section already requires that REPs submit their annual report required to OPUC pursuant to PURA §39.101(d).

§25.493, Acquisition and Transfer of Customers from one Retail Electric Provider to Another

The REP Coalition was generally supportive of the proposed rule and recommended that it be adopted. However, they also recommended that the section be amended to clarify that it does not apply in the situation where customers are transferred to the POLR due to abandonment by a

REP. In such instances, the REP Coalition argued, the POLR rule should apply (§25.43, Provider of Last Resort (POLR)), and the notice provisions of §25.482(e) would need to be met by the abandoning REP.

The commission believes that the general process outlined in §25.493 should also apply to transfers of customers to the POLR. However, the commission amends §25.493(b) to clarify that the notice requirement for the acquiring REP does not apply in the case where customers are being transferred to the POLR. The commission also adds language clarifying that the abandoning REP must provide the notice required by §25.482(d) and the POLR must provide the information required by §25.43. For clarification, the commission also amends §25.482(d) require an abandoning REP to provide the information required by §25.493(c) in the notice to its customers.

§25.493 (a)

OPUC suggested that §25.493(a) be amended to delete “if practicable” so that notice would have to be sent to customers at least 30 days prior to a transfer in every case. They argued that the inclusion of “if practicable” gives the impression that this requirement is instead optional. Further, OPUC stated that the next sentences take care of the contingency of when it is not possible to give 30 days notice. The REP Coalition agreed that this suggestion was reasonable and urged the commission to adopt this change.

The commission agrees and deletes the language, as recommended.

§25.493(b)

OPUC recommended amending §25.493(b)(6) so that when the notice is sent to a customer, there will be a material change in the terms of service, the customer be provided not only a toll-free number, but also the identity of the party being called. They argued that the customer has a right to know whether he is talking to an employee or agent of the acquiring REP or to an employee or agent of the current REP. The REP Coalition agreed that this suggestion was reasonable and urged the commission to adopt this change.

The commission agrees with OPUC and makes the suggested change.

Consumer Groups suggested that the notice include the status of a customer's eligibility for the LITE-UP rate discount. They stated that the letter should explain whether or not the discount will transfer with the customer to the acquiring REP. They argued that continuing the discount during a transfer is material and must be provided for in the process and that, at a minimum, customers receiving the discount should be contacted so that they can be informed of what steps they must take to continue receiving the discount. The REP Coalition urged the commission to reject this proposal, stating that a customer's eligibility for LITE-UP is not a material change to terms of service. They pointed out that a customer's eligibility is not a matter to be decided by a REP, nor is it affected by a mass transfer from one REP to another. If the customer is eligible, then the low-income discount administrator (LIDA) will provide that information to the acquiring REP during the normal monthly processing, just as LIDA would do for any change in REP to another.

The commission declines to make this suggested change. The commission and LIDA have already established procedures to transfer a customer's LITE-UP discount when a customer's REP of record changes. That process also will apply to any mass transfer of a REP's customers. Further, the notice provisions of this section are intended to notify a customer of a change in the terms of service. It is important to note that when any customer receiving the discount changes REPs, that customer's eligibility is not affected. Further, such a customer is not required to take any steps to continue receiving the discount from the new REP.

New §25.493(e)

OPUC suggested adding a new §25.493(e) to require the REP providing notice of the transition to provide the commission and OPUC with a copy of the notice when it is sent to customers.

Although transfers under §25.493 do not require commission approval, the commission finds that it is reasonable to require a REP to provide a copy of such notice to the commission so that the commission and commission Staff can monitor compliance with the commission's rules, for the reasons previously stated. The commission declines to require REPs to notify OPUC for the reasons previously stated. Subsection 25.493(b) has been amended accordingly.

§25.495, Unauthorized Change of Retail Electric Provider

The REP Coalition supported the development of a standardized process for returning a customer to its previous REP in the event that the customer was switched without authorization. A

standardized process, they stated, should expedite the prompt return of the customer to its preferred REP and minimize the impact on operations of the affected REPs and TDU.

§25.495(a)

The REP Coalition argued that for this rule to be successfully implemented, it is necessary for the commission to be specific as to the process and the requirements applicable to ERCOT and market participants to avoid the ad hoc application of the backdated switch or move-in that currently exists in the market. They noted that the backdated move-in or switch is the recognized process in the market for remedying unauthorized switches and that ERCOT and market participants are familiar with the process. The REP Coalition stated that the default process outlined in §25.495(a)(4)(B) would cause an undue hardship for an original REP that was in the process of terminating a customer for non-payment when the unauthorized switch occurred. They argued that requiring the return of all usage that accrued after the switch date to the original REP would create a financial hardship for that REP because the customer's outstanding balance would simply be compounded. In addition, the REP Coalition suggested that the rule specify use of the process approved by the registration agent (FasTrak) for notifying affected parties of an unauthorized switch or move-in.

Fire Fly added that requiring the switching REP to refund charges so the original REP can backbill the customer for the time period of the unauthorized switch would pose a problem for providers that offer prepaid electric service. Fire Fly contended that as a prepaid service provider, they cannot backbill the customer and would then have to absorb such charges, and, in effect, be punished for the actions of a slamming REP. Instead, they advocated making the

switching REP responsible for all charges associated with the unauthorized transaction involving a residential customer, including energy charges. In cases where a commercial or industrial customer is switched without authorization, Fire Fly argued that the original REP would be in a much stronger position to work out the backbilling issue without undue customer hardship. In addition, they noted, a REP that may have inadvertently switched a commercial or industrial customer would not be liable for high charges that could significantly affect its business.

The Joint TDUs agreed that the rule should not require backdated transactions to return a customer to the original REP. They argued that backdating is inefficient and unfairly burdens parties not able to prevent or influence the occurrence of unauthorized switches and move-ins. The Joint TDUs proposed that the two REPs involved should resolve the billing issue. The Joint TDUs argued that this would preserve the incentive to deter the occurrence of such conduct in the future. The REP Coalition disagreed that the process of returning the customer to the original REP should not include the TDU. However, they acknowledged that this process is a nuisance for both the original REP and the TDU.

To alleviate this concern, the REP Coalition suggested that a customer be returned using a backdated transaction only if the original REP requests it. In the absence of such a specific request by the original REP, the customer would be returned prospectively. The REP Coalition recommended that the rules require only that the customer be returned to the original REP on a going forward basis, absent a choice by the original REP to accept the customer back retroactively for a period of time. They argued that this approach would limit the financial exposure and customer relations problems posed to the original REP and should also discourage REPs from using the unauthorized switch process to deal with a customer who has failed to pay

its authorized provider. In addition, the REP Coalition stated, the requirements that the customer be billed at the rate offered by their original REP and provided any gifts or inducements offered by the original REP will ensure that the customer is made whole.

In reply comments, Fire Fly supported the REP Coalition's proposal, and stated that it resolves the company's concerns with the language as originally proposed. They stressed that in resolving an unauthorized switch, the emphasis should be on imposing the least cost or difficulty on the customer. They argued that requiring backdated switches would likely expose the customer to being billed twice for the same billing period. Also, they stated, it is not good customer relations policy for the original REP to demand payment from a customer for service for which the customer has already paid. The REP Coalition's proposal would allow the original REP to maintain a positive relationship with the customer, according to Fire Fly.

The REP Coalition stressed that there are some situations where a backdated transaction is necessary. For example, if a large industrial customer is inadvertently switched, that customer would probably have to be returned on a retroactive basis because the original REP would have purchased power in advance to serve that customer, and will need to get credit for those power deliveries in the ERCOT settlement system. The REP Coalition asserted that suggesting that the REPs work out such a situation amongst themselves is unrealistic because of the settlement implications involved. They stated that their recommendation is the most reasonable method for remedying inadvertent switches. It also would ensure that the customer is not responsible for any costs associated with the return to the original REP and the customer would receive all of the benefits attendant to service from the original REP.

The Joint TDUs and OPUC opposed the REP Coalition proposal and urged the commission to reject it. The Joint TDUs argued that by doing this, the rule would contradict the commission's stated wish in the preamble to the proposal to only specify the end-result of resolving an unauthorized switch without dictating the procedures the parties should use to accomplish that result. Instead of adopting the REP Coalition's proposal, the Joint TDUs argued that the rule should not address the specific processes and allow market participants work together to find a less problematic process for resolving an unauthorized switch. OPUC argued that the rule, as originally proposed, provides good protection for a customer who is switched without authorization, while setting forth clear procedures for all parties involved to follow. They claimed that adopting the REP Coalition's proposal would muck up the works.

Finally, the REP Coalition urged the commission to include a general provision in this section that requires all parties to work in good faith to remedy the unauthorized switch or move-in where the requirements of this subsection cannot be effectuated. They argued that such a provision is necessary because it is not realistic for the commission's rules to contemplate every circumstance that may arise concerning an unauthorized switch. The Joint TDUs, however, stated that this suggested rule language is unnecessary because the rule already requires the affected REPs, registration agent, and TDU to take all actions necessary to return the customer to the original REP as quickly as possible.

The commission declines to specifically require the use of a backdated move-in to effectuate the requirements of this rule, but agrees that a backdated move-in or switch may, at times, be the most appropriate method to do so. The commission does amend §25.493(a)(4)(B) to permit the original REP to determine whether the original REP wants to bill the customer

from the time they are returned to the REP, or from a previous time to when they were returned (which may necessitate a back-dated switch or move-in). The commission believes that this should alleviate Fire Fly's concern regarding the complications that arise for prepaid electric providers and backdated transactions. The commission recognizes that the process of resolving unauthorized switches and move-ins is inconvenient for TDUs. However, it is more important that a customer's choice of REP be honored. In cases of an inadvertent switch or a slam, the customer has done nothing, yet is subjected to erroneous billings, late billings and possibly double billings. It is paramount that market participants be diligent in processing customer switches accurately to minimize errors in the switching process in the first place. When an unauthorized switch does occur, market participants, including the TDU must quickly and efficiently return that customer to the original REP with minimal inconvenience to the customer.

The Joint TDUs argued that the proposed 90-day backbilling limit in §25.480(e) could prevent a TDU from recovering its wires charges from the original REP in some cases. They stated that the proposed 90-day backbilling limit should specifically exclude billings issued pursuant to this section. In addition, the REP Coalition asserted, situations have occurred where a switching REP attempted to return a customer to the original REP after many months, and long after the six-month backbilling period has expired. They stated that they were concerned that §25.480(e) would prohibit the original REP from billing the customer for usage incurred while the customer was served by the switching REP even though that usage could be returned to the original REP pursuant to the provisions of subsection (a)(4)(B) of this section.

The commission declines to address this issue because §25.480(e) has been amended to remove references to backbilling by a TDU.

The REP Coalition further recommended that §25.495(a)(2) be amended so that the original REP is not required to re-enroll the customer under the requirements of §25.474.

The commission agrees with this recommendation and has amended this paragraph accordingly.

Consumer Groups commented that §25.495(a)(4)(B)(i) does not address the issue of what happens when the customer is returned to the original REP and that REP bills the customer for the unauthorized period before the switching REP has refunded all charges the customer had paid during the unauthorized period. They pointed out that the customer would then be in the position of having to pay the original REP before receiving a refund from the switching REP. The Consumer Groups argued that this subsection should be amended to clarify that the customer is not obliged to pay the original REP for the time period of the unauthorized switch until such time as the REP who effectuated the unauthorized switch refunds all charges the customer had paid.

The REP Coalition responded that this problem would largely disappear under their proposal to return a customer on a prospective basis, unless the original REP requests a backdated transaction. Under their suggested default process, a customer would not be rebilled by the original REP for services for which the switching REP has already been paid.

OPUC was concerned that if a customer is returned on a prospective basis, that customer may have paid the switching REP at a higher rate than if they had been billed by the original REP. The REP Coalition noted, though, that the switching REP would be required to issue a refund to

the customer to the extent that its charges for electric service exceed those that would have been charged by the original REP. Further, the REP Coalition argued, in situations where a backdated transaction is used, the rule requires the switching REP to refund to the customer any sums already paid within five days of returning the customer to the original REP. They stated that it is highly unlikely that the original REP will even issue a bill to the customer for backdated charges in that time, so the customer should have the refund before payment to the original REP is due.

The commission amends §25.495(a)(4)(B)(i) to clarify that when a customer is returned on a prospective basis, then the switching REP would be required to refund any charges that are higher than those the original REP would have billed for the same period. The commission also agrees with the REP Coalition, that because the REP that service the customer without proper authorization is required to refund any charges paid by the customer within five days of returning the customer to their proper REP, it is virtually certain that they customer will receive their refund prior to receiving a bill from the proper REP.

Consumer Groups recommended that language be added to require the commission to coordinate its enforcement of any violation of the rule that involves fraudulent, misleading, deceptive, and anticompetitive business practices with the OAG. They also recommended that a requirement be added for the commission to enter into a memorandum of understanding with the OAG that would provide the public with specific information on how combined enforcement activities would be coordinated. The REP Coalition argued that this is unnecessary. They stated that the commission and the OAG have the ability to enter into such an agreement already and that there is no benefit in mandating such an agreement by rule. Further, the REP Coalition asserted that

there is no reason to include enforcement language in this section because enforcement language is included in virtually no other customer protection rule. Still, they acknowledged, switching a customer without proper authorization is a violation of commission rules and subject to enforcement, which may include penalties.

The commission agrees with the REP Coalition that it is not necessary to place specific enforcement language in §25.495. The commission notes that §25.492 of this title (relating to Non-Compliance with Rules or Orders; Enforcement by the Commission), which was not amended in this proceeding specifies the potential consequences to REPs and aggregators of non-compliance with commission rules. Additionally, the commission already coordinates enforcement activities with the OAG as necessary, and believes it is inappropriate to specify the particulars of arrangements with the OAG in a substantive rule.

§25.497, Critical Care Customers.

Consumer Groups opposed the disconnection of any critical care customer's electricity, and urged the commission to amend the proposed rule accordingly. The Consumer Groups requested the removal of the disclaimer on the form that this qualification of critical care status does not guarantee uninterrupted power supply. Consumer Groups argued that this makes the market participant's responsibility to the customer unclear.

In reply comments, the REP Coalition disagreed with Consumer Groups that critical care customer should not be subject to disconnection because it does not relieve customers of their

payment obligations. The REP Coalition agreed that these customers do require care and diligence, but that a policy prohibiting disconnection, even with notice, provides opportunity for fraud and abuse. The REP Coalition found that this should not be necessary with the protections that are given under §25.483(h) for critical care customers, and members of their household.

The commission agrees with the REP Coalition that critical care customer status does not remove the customer's payment obligations and that the protections given under §25.483(h) can be exercised when a pending disconnection will cause serious harm. The critical care designation is important so that the TDU can adequately fulfill its responsibilities under its tariff to not disconnect a premise where such disconnection will cause a dangerous or life-threatening condition without adequate prior notice such that the customer can make other arrangements. The commission disagrees with Consumer Groups that the language at the end of the form, stating that qualification does not guarantee an uninterrupted power supply, be removed. The commission finds that situations such as area of electrical power outages, and a customer's unwillingness or inability to pay, are things that are out of the TDU's complete control, and which cause electricity to not be guaranteed. The commission finds that the substantive rules make the market participants' responsibilities to critical care customers clear. The commission finds that it is necessary for critical care customers to understand that they do need a back-up plan in the case that uncontrollable situations cause their power to be interrupted. The commission agrees with the REP Coalition that this rule should be silent on its effective date.

§25.497 (a)

TIEC argued that the language in §25.497(a)(2) provides the TDU with too much discretion to decide whether an industrial customer is a “critical care industrial customer.” TIEC stated that there are no objective standards for a TDU to make such a determination, as the proposed process allows little input from the customer because it involves only the TDU and the REP. TIEC noted that an incorrect determination could create potential liability. Further, TIEC asserted that an industrial customer should be permitted to file a sworn affidavit with the TDU, stating that the interruption or suspension of electric service would create a dangerous or life-threatening condition on the customer’s premises. TIEC said that this should be sufficient, and would be simple for the TDU to administer, thereby reducing burden on the TDU.

In reply comments, Joint TDUs recommended that TIEC’s proposed changes to §25.497(a)(2) not be adopted because, they argued, the rule reflects the previous decision that the process should be worked out collaboratively, instead of being specified in the rule. Joint TDUs disagreed that the customer is excluded from the determination process because they found that it was incumbent on the customer that thinks it would be relevant. Joint TDUs also noted that industrial customers who qualify, should have back up power, or other arrangements for dealing with a dangerous condition. Joint TDUs argued that this status does not suggest uninterrupted electric service, make the TDU responsible for the consequences of an interruption or guarantee priority restoration.

Joint TDUs contended that §25.497 makes the TDU responsible for qualifying residential and industrial customers, but does not clearly authorize the TDU to apply meaningful standards to do this. The Joint TDUs recommended language, and noted that the commission should at least

acknowledge that the information provided by the customer on the form may be used by the TDU in determining who qualifies.

Joint TDUs found that the emergency operations (EOP) rule §25.52(c)(1) requires that critical load status for residential customer be for those customers with “special in-house life-sustaining equipment,” however, subsection (a)(3), could be interpreted to override the EOP rule. The Joint TDUs found that this could have the effect of extending critical load status to any customer with a “dangerous or life-threatening condition” regardless of their reliance on life-sustaining equipment. The Joint TDUs recommended that the critical care definition for residential customer reference life-sustaining electrical equipment, and that the critical care definition for industrial customer reference special equipment. Joint TDUs also recommended that the critical care form filed as Attachment B on the proposed rule should be adopted along with this rule.

In reply comments, TIEC did not agree that the language proposed by Joint TDUs provides the standard intended, or is consistent with the pro forma Tariff for Retail Electric Delivery Service. TIEC also found that this the proposal by the Joint TDUs created an obligation on customers to get potentially costly and uneconomic equipment exceeding existing safety standards, simply to get advanced warning of an interruption. TIEC also found that these limitations on types of customers eligible for advanced notifications are not contained in the TDU’s tariffs. TIEC suggested a simpler approach would be to simply require a sworn affidavit that an interruption or suspension of electric service would create a dangerous or life threatening condition.

The commission agrees with TIEC that the Joint TDUs suggested language should not be adopted. The commission declines, however, to specify the specific format to be used by the

customer to inform their REP (and the TDU) of the dangerous condition. However, the commission believes that it is appropriate to include an industrial customer in the collaborative process, and amends the rule accordingly. The commission makes a similar amendment with respect to public safety customers, for the same reason. The commission finds that the language of this rule does not conflict with §25.52(c)(1) because that paragraph says that a critical load customer includes, but is not limited to customers with in-house life sustaining equipment. The commission finds that this allows room for a more broad definition of critical care customers as deemed necessary in this rule.

§25.497 (b)

Consumer Groups recommended that a REP be required to ask a customer during sign up if the status is needed, and for forwarding the application to the customer. Additionally, they recommended that a REP be required to send a form to a customer who they believe may have critical care needs. The Consumer Groups recommended language in (b)(1) and (b)(2) corresponding to their comments.

In reply comments, the REP Coalition argued that asking applicants during the enrollment process whether the status is needed opens the door to abuse and fraud and goes beyond the REP's existing duty. The REP Coalition stated that it is the customer's responsibility to request the form and the REP's responsibility to provide it if requested, but said that the REP is not in a position to determine if the customer may or may not need the status.

The commission declines to require a REP to ask customers during sign-up if the critical care status is needed as information on the critical care status is located in terms of service,

and that this requiring a REP to inquire of every customer as to whether or not critical care status is needed would be an additional, unnecessary burden on the enrollment process. The commission declines to require REPs to send form to customers that they believe may require a critical care status, because the customer is generally in best position to determine whether or not they believe they need the protections provided by a critical care designation.

In general, the REP Coalition supported the efforts to formalize and standardize the critical care qualification process. The REP Coalition suggested that §25.497(b)(1) be moved to subsection §25.475(g)(4) of this title as new subparagraph (R). The REP Coalition said that because the critical care designation is a right of residential customers subject to qualification by the TDU, it is more appropriately reflected as an YRAC disclosure, than in the REP's terms of service document. OPUC opposed this suggestion, arguing that the critical care information should be included in both the terms of service documents and the YRAC.

The commission declines to adopt the REP Coalition's suggestion to move the contents of §25.475(b)(1) as it finds the contents' current location appropriate.

The REP Coalition said that the word "mail" in §25.497(b)(2) should be changed to "provide" to allow for other forms of distribution such as email, facsimile, or availability on the REP's website.

The commission adopts the REP Coalition's suggestion to modify "mail" to "provide" to allow for other methods of transmittal. The commission also modifies the language so that

the REP must provide the form in a method agreed to by the customer to ensure that the manner in which the information provided is appropriate for the customer.

The REP Coalition suggested that §25.497(b)(5) and (6) be combined because they address actions by the TDU following the receipt of the form from the customer. The REP Coalition recommended that (b)(8) be modified so that the REP is notified of the qualification determination, before the customer, to ensure that the designation can be changed by the REP as soon as possible. The REP Coalition also suggested clarifying the language in subsection (b) to differentiate the REP and TDU responsibilities. The REP Coalition recommended that the commission adopt only one version of the form, suggested in their comments, to be used by all REPs and TDUs. The REP Coalition suggested the commission consider adding the agency's logo or another designation with indicated that REPs and TDUs are using a standard, commission approved form.

The commission agrees with the REP Coalition that (b)(5) and (b)(6) can be combined. The commission agrees with the REP Coalition, that in parts of this rule, the REP should be notified before the customer, to ensure that are actions are taken consistent with the customer's expectations. The commission agrees that only one form be approved and that the agency's seal should be present on the form, to show the standardization of the form.

Consumer Groups recommended that §25.497(b)(9) be amended to reflect that TDUs inform customers that they can appeal to the commission a TDU's determination of their critical care status. They contended that this would be consistent with §25.30, which provides that a customer may file a complaint against a utility for any reason related to their electrical service.

The commission agrees with the Consumer Groups recommendation to inform the customer that they can appeal the determination of their critical care status to the commission, and amends §25.497(b)(9) accordingly.

The amendments, new sections and repeal are adopted pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2004) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this rule pursuant to PURA §39.101, which grants the commission authority to establish various, specific protections for retail customers; PURA §39.102, which provides retail customer choice; and PURA Chapter 17, Subchapters A, C, and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.102, and Chapter 17, Subchapters A, C, and D.

§25.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) – (36) (No change.)
- (37) **Electricity Facts Label** — Information in a standardized format, as described in §25.475(f) of this title (relating to Information Disclosures to Residential and Small Commercial Customers), that summarizes the price, contract terms, fuel sources, and environmental impact associated with an electricity product.
- (38) **Electricity product** — A specific type of retail electricity service developed and identified by a REP, the specific terms and conditions of which are summarized in an Electricity Facts Label that is specific to that electricity product.
- (39) – (144) (No change.)

§25.471. General Provisions of Customer Protection Rules.

(a) **Application.** This subchapter applies to aggregators and retail electric providers (REPs). In addition, where specifically stated, these rules shall apply to transmission and distribution utilities (TDUs), the registration agent and power generation companies. These rules specify when certain provisions are applicable only to some, but not all, of these providers.

- (1) Affiliated REP customer protection rules, to the extent the rules differ from those applicable to all REPs or those that apply to the provider of last resort (POLR), do not apply to the affiliated REP when serving customers outside the geographic area served by its affiliated transmission and distribution utility. The affiliated REP customer protection rules apply until the price-to-beat obligation ends in the affiliated REPs' affiliated TDU service territory.
- (2) Requirements applicable to a POLR apply to a REP only in its provision of service as a POLR.
- (3) The rules in this subchapter are minimum, mandatory requirements that shall be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), and §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), a customer other than a residential or small commercial class customer, or a non-residential customer whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms of service that reflect either a higher or

lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules shall be reduced to writing and provided to the customer. Additionally, copies of such agreements shall be provided to the commission upon request.

- (4) The rules of this subchapter control over any inconsistent provisions, terms, or conditions of a REP's terms of service or other documents describing service offerings for customers in Texas.
- (5) For purposes of this subchapter, a municipally owned utility or electric cooperative is subject to the same provisions as a REP where the municipally owned utility or electric cooperative sells retail electricity service outside its certificated service area.

(b) **Purpose.** The purposes of this subchapter are to:

- (1) provide minimum standards for customer protection. An aggregator or REP may adopt higher standards for customer protection, provided that the prohibition on discrimination set forth in subsection (c) of this section is not violated;
- (2) provide customer protections and disclosures established by other state and federal laws and rules including but not limited to the Fair Credit Reporting Act (15 U.S.C. §1681, *et seq.*) and the Truth in Lending Act (15 U.S.C. §1601, *et seq.*) Such protections are applicable where appropriate, whether or not it is explicitly stated in these rules;

- (3) provide customers with sufficient information to make informed decisions about electric service in a competitive market; and
 - (4) prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators and REPs in the marketing, solicitation and sale of electric service and in the administration of any terms of service for electric service.
- (c) **Prohibition against discrimination.** This subchapter prohibits REPs from unduly refusing to provide electric service or otherwise unduly discriminating in the marketing and provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.
- (d) **Definitions.** For the purposes of this subchapter the following words and terms have the following meaning, unless the context clearly indicates otherwise:
- (1) **Applicant** — A person who applies for electric service via a move-in or switch with a REP that is not currently the person's REP of record or applies for aggregation services with an aggregator from whom the person is not currently receiving aggregation services.
 - (2) **Competitive energy services** — As defined in §25.341 of this title (relating to Definitions).

- (3) **Customer** — A person who is currently receiving retail electric service from a REP in the person's own name or the name of the person's spouse, or the name of an authorized representative of a partnership, corporation, or other legal entity, including a person who is changing premises but is not changing their REP.
- (4) **Electric service** — Combination of the transmission and distribution service provided by a transmission and distribution utility, municipally owned utility, or electric cooperative, metering service provided by a TDU or a competitive metering provider, and the generation service provided to an end-use customer by a REP. This term does not include optional competitive energy services, as defined in §25.341 of this title, that are not required for the customer to obtain service from a REP.
- (5) **Energy service** — As defined in §25.223 of this title (relating to Unbundling of Energy Service).
- (6) **Enrollment** — The process of obtaining authorization and verification for a request for service that is a move-in or switch in accordance with this subchapter.
- (7) **In writing** — Written words memorialized on paper or sent electronically.
- (8) **Move-in** — A request for service to a new premise where a customer of record is initially established or to an existing premise where the customer of record changes.
- (9) **Retail electric provider (REP)** — Any entity as defined in §25.5 of this title (relating to Definitions). For purposes of this rule, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory. An agent of the REP may

perform all or part of the REP's responsibilities pursuant to this subchapter. For purposes of this subchapter, the REP shall be responsible for the actions of the agent.

- (10) **Small commercial customer** — A non-residential customer that has a peak demand of less than 50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12-month period.
- (11) **Switch** — The process by which a person changes REPs without changing premises.
- (12) **Termination of service** — The cancellation or expiration of a service agreement or contract by a REP or customer.

§25.472. Privacy of Customer Information.

(a) **Mass customer lists.** Prior to the commencement of retail competition, an electric utility shall release a mass customer list to certificated retail electric providers (REPs) and registered aggregators.

(1) A mass customer list shall consist of the name, billing address, rate classification, monthly kilowatt-hour usage for the most recent 12-month period, meter type, and account number or electric service identifier (ESI-ID). All customers eligible for the price to beat pursuant to the Public Utility Regulatory Act (PURA) §39.202 shall be included on the mass customer list, except a customer who opts not to be included on the list pursuant to paragraph (2) of this subsection.

(2) Prior to the release of a mass customer list, an electric utility shall mail a notice to all customers who may be included on the list. The notice shall:

- (A) explain the issuance of the mass customer list;
- (B) provide the customer with the option of not being included on the list and allow the customer at least 30 days to exercise that option;
- (C) inform the customer of the availability of the no call lists pursuant to §25.484 of this title (relating to Texas Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List), and provide the customer with information on how to request placement on the list;
- (D) provide a toll free telephone number and an Internet website address to notify the electric utility of the customer's desire to be excluded from the mass customer list.

- (3) The commission will require the electric utility to release a mass customer list no later than 120 days before the commencement of customer choice.
- (4) The mass customer list shall be issued, at no charge, to all REPs certified by, and aggregators registered with, the commission that will be providing retail electric or aggregation services to residential or small commercial customers.
- (5) A REP shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of a REP prior to submission of the customer's enrollment to the registration agent.

(b) **Individual customer and premise information.**

- (1) A REP or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer's or applicant's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider). This prohibition shall not apply to the release of such information by a REP or aggregator to:
 - (A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving REPs or aggregators;
 - (B) an agent, vendor, partner, or affiliate of the REP or aggregator engaged to perform any services for or functions on behalf of the REP or aggregator, including marketing of the REP's or aggregator's own products or services,

or products or services offered pursuant to joint agreements between the REP or aggregator and a third party;

- (i) All such agents, vendors, partners, or affiliates of the REP or aggregator shall be required to sign a confidentiality agreement with the REP or aggregator and agree to be held to the same confidentiality standards as the REP or aggregator pursuant to this section; and
- (ii) In the event that a REP shares proprietary customer information with a third party for the purpose of marketing such party's products or services to the REP's customer, prior to the release of information to any such agent, partner or affiliate, a REP or aggregator shall provide the customer an opportunity to opt-out of the release of their information for such marketing purposes by either of the following methods:
 - (I) send a notice to customers explaining the issuance of the each information release and the reason for the information release and provide the customer with the option of not being included in the information release and allow the customer at least 30 days to exercise that option; or
 - (II) include an opportunity for the customer to make a choice as to whether or not the customer wants to be included in all future marketing of other products and services by the REP or its agent, partner, or affiliate. Such opportunity may be

provided during the authorization and verification process detailed in §25.474 or via a separate notice and mailing to customers.

- (C) a consumer reporting agency as defined by the Federal Trade Commission;
- (D) an energy assistance agency to allow a customer or an applicant to qualify for and obtain other financial assistance provided by the agency. A REP may rely on the representations of an entity claiming to provide energy assistance;
- (E) local, state, and federal law enforcement agencies;
- (F) the transmission and distribution utility (TDU) within whose geographic service territory the customer or applicant is located, pursuant to the provisions of the TDU's commission-approved Tariff for Retail Electric Delivery Service;
- (G) the Office of the Public Utility Counsel, upon request pursuant to PURA §39.101(d);
- (H) conduct activities required by subsection (a) of this section;
- (I) the registration agent, another REP, a provider of last resort (POLR), or TDU as necessary to complete a required market transaction, under terms approved by the commission; or
- (J) the registration agent or a TDU in order to effectuate a customer's move-in, transfer, or switch.

- (2) Under no circumstances shall a REP or aggregator sell, make available for sale, or authorize the sale of any customer-specific information or data obtained.
 - (3) Upon receiving authorization from a customer or applicant, a REP shall request from the TDU the monthly usage of the customer's or applicant's premise for the previous 12 months. The TDU, upon receipt of a written request or other proof of authorization, shall provide the requested information to the requesting REP or to the customer or applicant no later than three business days after the request or proof of authorization is submitted. For industrial and commercial customers, the TDU or REP shall not release any information of a prior occupant of the premise, if a prior occupant has designated the information as competitively sensitive.
 - (4) A REP shall, upon the request of an energy assistance agency, provide a 12-month billing history free of charge that includes both usage data and the dollar amount of each monthly billing. If 12 months of billing data are not available from the REP, the REP shall estimate the amount billed using the REP's residential rate. The history shall also clearly designate estimated amounts. A residential billing history requested by an energy assistance agency shall be provided by the end of the next business day after the request is made. A residential billing history requested by a customer shall be provided within five business days of the customer request.
 - (5) Upon the request of a customer, a REP shall notify a third person chosen by the customer of any pending disconnection or termination of electric service with respect to the customer's account.
- (c) This section is effective June 1, 2004.

§25.473. Non-English Language Requirements.

- (a) **Applicability.** This section applies to retail electric providers (REPs), aggregators, and the registration agent.
- (b) **Retail electric providers (REPs).** A REP shall provide the following information to an applicant or customer in English, Spanish, or the language used in the marketing of service, as designated by the applicant or customer.
- (1) Terms of service documents, Electricity Facts Label, customer bills, and customer bill notices;
 - (2) information on the availability of new electric services, discount programs, and promotions; and
 - (3) access to customer service, including the restoration of electric service and response to billing inquiries.
- (c) **Aggregators.** An aggregator shall provide the following information to a customer in English, Spanish, or the language used to market the aggregator's products and services, as designated by the customer or the applicant. :
- (1) terms of service documents required by this subchapter;
 - (2) the availability of electric discount programs; and
 - (3) access to customer service.

- (d) **Dual language requirement.** The following documents shall be provided to all customers in both English and Spanish, unless a customer has designated a language other than English or Spanish as the language in which they will receive the information described in subsection (b) of this section, in which case the documents described in paragraphs (1) and (3) of this subsection shall be provided in English and the other language designated by the customer.
- (1) Your Rights as a Customer disclosure;
 - (2) the enrollment notification notice provided by the registration agent pursuant to §25.474(1) of this title (relating to Selection of Retail Electric Provider); and
 - (3) a disconnection or termination notice.
- (e) **Prohibition on mixed language.** Unless otherwise noted in this subchapter, if any portion of a printed advertisement, electronic advertising over the Internet, direct marketing material, billing statement, terms of service document, or Your Rights as a Customer disclosure is translated into another language, then all portions shall be translated into that language. A single informational statement advising how to obtain the same printed advertisements, electronic advertising over the Internet, direct marketing material, billing statement, terms of service documents, or Your Rights as a Customer disclosure in a different language is permitted.
- (f) This section is effective June 1, 2004.

§25.474. Selection of Retail Electric Provider.

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

- (C) a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and
 - (D) information on how a customer may designate whether the customer would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.
- (2) Any affiliated REP assigned to serve a customer that is entitled to receive the price-to-beat rate, pursuant to the Public Utility Regulatory Act (PURA) §39.202(a), shall issue to a customer, either as a bill insert or through a separate mailing, no later than 30 days after the commencement of customer choice:
 - (A) A terms of service document that includes an explanation of the price-to-beat rate;
 - (B) Your Rights as a Customer disclosure; and
 - (C) An Electricity Facts Label for the price to beat, which may, at the discretion of the REP, be in a separate document or contained in the terms of service document.
- (3) An electric utility whose successor affiliated REP will continue to serve customers not eligible for the price-to-beat rate, pursuant to PURA §39.102(b), shall issue to the customer a terms of service document on a date prescribed by the commission. Such a document shall contain an explanation of the price the customer will be charged by the affiliated REP.

- (d) **Enrollment via the Internet.** For enrollments of applicants via the Internet, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.
- (1) The website (or websites) shall clearly and conspicuously identify the legal name of the aggregator and its registration number to provide aggregation services or REP and its certification number to sell retail electric service, its address, and telephone number;
 - (2) The website shall include a means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the applicant or customer and the REP or aggregator that is an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;
 - (3) The website shall include an explanation that a move-in or a switch can only be made by the electric service applicant or the applicant's authorized agent;
 - (4) The entire enrollment process shall be in plain, easily understood language. The entire enrollment shall be the same language. Nothing in this section is meant to prohibit REPs or aggregators from utilizing multiple enrollment procedures or websites to conduct enrollments in multiple languages.
 - (5) **Required authorization disclosures.** Prior to requesting confirmation of the move-in or switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:
 - (A) the name of the new REP;

- (B) the name of the specific electric service package or plan for which the applicant's assent is attained;
 - (C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP or aggregator shall provide a means of documenting a customer's language preference;
 - (D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
 - (E) term or length of the term of service;
 - (F) the presence or absence of early termination fees or penalties, and applicable amounts;
 - (G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or provider of last resort (POLR) shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title (relating to Credit Requirements and Deposits);
 - (H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;
 - (I) in the case of a switch request, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty;
- and

- (J) a statement that the applicant will receive a copy of the terms of service document via email or, upon request, via regular US mail, that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable.
- (6) The applicant shall be required to check a box affirming that the applicant has read and understands the disclosures and terms of service required by paragraph (5) of this subsection.
- (7) The REP or aggregator shall provide access to the complete terms of service document that is being agreed to by the applicant on the website such that the applicant may review the terms of service prior to enrollment. A prompt shall also be provided for the applicant to print or save the terms of service document to which the applicant assents, and shall inform the application of the option to request that a written copy of the terms of service document be sent by regular U.S. mail by contacting the REP.
- (8) The REP or aggregator shall also provide a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the applicant's or customer's agreement. The REP or aggregator shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.
- (9) Applicant authorizations shall adhere to any state and federal guidelines governing the use of electronic signatures.

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

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

(B) the terms of service and Your Rights as a Customer documents. These may be documents attached to the confirmation email, or the REP or aggregator may include a link to an Internet webpage containing the documents.

(e) **Written enrollment.** For enrollments of customers via a written letter of authorization (LOA), a REP or aggregator shall obtain authorization and verification of the switch or move-in request from the applicant in accordance with this subsection.

- (1) All LOAs for move-in or switch orders shall be in plain, easily understood language. The entire enrollment shall be in the same language.
- (2) The LOA shall be a separate or easily separable document containing the requirements prescribed by this subsection for the sole purpose of authorizing the REP to initiate a switch request. The LOA is not valid unless it is signed and dated by the customer requesting the move-in or switch.
- (3) The LOA may contain a description of inducements associated with enrolling with the REP; however, the actual inducement itself shall not be either included on or as part of the LOA, or constitute the LOA by itself;
- (4) The LOA shall be legible and shall contain clear and unambiguous language;

- (5) **Required authorization disclosures.** The LOA shall disclose the following information:
- (A) the name of the new REP;
 - (B) the name of the specific electric service package or plan for which the applicant's assent is attained;
 - (C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP shall provide a means of documenting an applicant's language preference;
 - (D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
 - (E) term or length of the term of service;
 - (F) the presence or absence of early termination fees or penalties, and applicable amounts;
 - (G) any requirement to pay a deposit and the estimated amount of that deposit, or the method in which the deposit will be calculated. An affiliated REP or POLR shall also notify the applicant of the right to post a letter of guarantee in lieu of a deposit in accordance with §25.478(i) of this title;
 - (H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;
 - (I) in the case of a switch, the applicant's right, pursuant to subsection (j) of this section, to review and rescind the terms of service within three federal business days, after receiving the terms of service, without penalty; and

- (J) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable.
- (6) **Verification of authorization of written enrollment.** A REP or aggregator shall, as part of the LOA:
- (A) obtain or confirm the applicant's billing name, billing address, and service address;
 - (B) obtain or confirm the applicant's ESI-ID, if available;
 - (C) affirmatively inquire whether the applicant has decided to establish new service or change from their current REP to the new REP;
 - (D) affirmatively inquire whether the applicant designates the new REP to perform the necessary tasks to complete a switch or move in for the applicant's service with the new REP; and
 - (E) obtain one of the following account access verification data: last four digits of the social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license or government issued identification number. For non-residential applicants, the REP may obtain the applicant's federal tax identification number.
- (7) The following LOA form meets the requirements of this subsection if modified as appropriate for the requirements of paragraph (5)(G) of this subsection. Other versions may be used, but shall contain all the information and disclosures required by this subsection.

LETTER OF AUTHORIZATION

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

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

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

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

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

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

Signed: _____ Date: _____

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

- (8) Before obtaining a signature from a customer, a REP shall:
- (A) provide to the applicant a reasonable opportunity to read the terms of service, Electricity Facts Label, and any written materials accompanying the terms of service document; and
 - (B) answer any questions posed by any applicant about information contained in the documents.
- (9) Upon obtaining the applicant's signature, a REP or aggregator shall immediately provide the applicant a legible copy of the signed LOA, and shall distribute or mail the terms of service document, Electricity Facts Label, and Your Rights as a Customer disclosure. If a written solicitation by a REP contains the terms of service document, any tear-off portion that is submitted by the applicant to the REP to obtain electric service shall allow the applicant to retain the terms of service document.
- (10) The applicant's signature on the LOA shall constitute an authorization of the move-in or switch request if the LOA complies with the provisions of this section and the terms of service comply with the requirements of §25.475(d) of this title (relating to Information Disclosures to Residential and Small Commercial Customers).
- (f) **Enrollment via door-to-door sales.** A REP or aggregator that engages in door-to-door marketing at a customer's residence shall comply with the following requirements:

- (1) **Solicitation requirements.** A REP or aggregator that engages in door-to-door marketing at an applicant's residence shall comply with the following requirements:
- (A) The REP or aggregator shall provide the disclosures required by this section and the three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. §429).
 - (B) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. In addition, the individual shall wear an identification badge that includes the individual's name and photograph, the REP or aggregator's certification or registration number, and a toll-free telephone number maintained by the REP or aggregator that the applicant may call to verify the door-to-door representative's identity during specified business hours. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.
 - (C) The REP or aggregator shall affirmatively state that it is not a representative of the applicant's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable

person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.

- (D) The REP or aggregator shall not represent that an applicant or customer is required to switch service in order to continue to receive power.
 - (E) Door-to-door representatives shall adhere to all local city/subdivision guidelines concerning door-to-door solicitation.
- (2) **Required authorization disclosures.** Prior to requesting verification of the applicant's authorization to enroll, a REP or aggregator shall comply with all of the authorization disclosure requirements in either subsections (e)(5) or (h)(1) through (h)(4) of this section.
- (3) **Verification of authorization for door-to-door enrollment.** A REP, or an independent third party retained by the REP, shall telephonically obtain and record all required verification information from the applicant to verify the applicant's decision to enroll with the REP in accordance with this paragraph.
- (A) Electronically record on audiotape, a wave sound file, or other recording device the entirety of an applicant's verification. The verification call shall comply with the requirements in subsection (h)(5) of this subsection.
 - (B) Inform the applicant that the verification of authorization call is being recorded.
 - (C) Verification shall be conducted in the same language as that used in the sales transaction and authorization.
 - (D) Automated systems shall provide the applicant with the option of exiting the system and nullifying the enrollment at any time during the call.

- (E) A REP or its sales representative initiating a three-way call or a call through an automated verification system shall not participate in the verification process.
 - (F) The REP shall not submit a move-in or switch request until it has obtained a recorded telephonic verification of the enrollment.
 - (G) If a REP has solicited service for prepaid service, an actual pre-payment by a customer may be substituted for a telephonic verification, provided that the pre-payment is not taken at the time of the solicitation by the sales representative that has obtained the authorization from the customer, and the REP has obtained a written LOA from the customer and can produce documentation of the pre-payment. The REP shall not submit a move-in or switch request until it has received the prepayment from the customer.
- (g) **Personal solicitations other than door-to-door marketing.** A REP or aggregator that engages in personal solicitation at a location other than a customer's residence (such as malls, fairs, or places of business) shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this section. In addition, the REP or aggregator shall comply with the following additional requirements:
- (1) For solicitations of residential customers, the individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the

commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession of the individual.

- (2) The individual who represents the REP or aggregator shall not state or imply that it is a representative of the customer's transmission and distribution utility or any other REP or aggregator. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the applicant's transmission and distribution utility or any other REP or aggregator.
- (3) The REP or aggregator shall not represent that an applicant is required to switch service in order to continue to receive power.

(h) **Telephonic enrollment.** For enrollments of applicants via telephone solicitation, a REP or aggregator shall obtain authorization and verification of the move-in or switch request from the applicant in accordance with this subsection.

- (1) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's authorization and verification. Automated systems shall provide the customers with either the option of speaking to a live person at any time during the call, or the option to exit the call and cancel the enrollment.
- (2) The REP or aggregator shall inform the customer that the authorization and verification portions of the call are being recorded.
- (3) Authorizations and verifications shall be conducted in the same language as that used in the sales transaction.

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

- (I) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable..
- (5) **Verification of authorization of telephonic enrollment.**
 - (A) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of an applicant's verification of the authorization. The REP or aggregator shall inform the applicant that the verification call is being recorded.
 - (B) Prior to final confirmation by the applicant that they wish to enroll with the REP, the REP shall, at a minimum:
 - (i) obtain or confirm the applicant's billing name, billing address, and service address;
 - (ii) obtain or confirm the applicant's ESI-ID, if available;
 - (iii) for a move-in request, ask the applicant, "do you agree to become a customer with (REP) and allow (REP) to complete the tasks required to start your electric service ?" and the applicant must answer affirmatively; or
 - (iv) for a switch request, ask the applicant, "do you agree to become a (REP) customer and allow us to complete the tasks required to switch your electric service from your current REP to (REP)?" and the applicant must answer affirmatively; and
 - (v) ask the applicant, "do you want to receive information in English, Spanish (or the language used in the marketing of service to the

applicant)?" The REP shall provide a means of documenting the applicant's language preference; and

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

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

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

(i) **Record retention.**

- (1) A REP or aggregator shall maintain non-public records of each applicant's authorization and verification of enrollment for 24 months from the date of the

REP's initial enrollment of the applicant and shall provide such records to the applicant, customer, or commission staff, upon request.

- (2) A REP or an aggregator shall submit copies of its sales script, terms of service document, and any other materials used to obtain a customer's authorization or verification to the commission staff upon request. In the event commission staff request documents under this subsection, the requested records must be delivered to the commission staff within 15 days of the written request, unless otherwise agreed to by commission staff.
 - (3) In the event an applicant or customer disputes an enrollment or switch, the REP shall provide to the applicant or customer proof of the applicant's or customer's authorization within five business days of the request.
- (j) **Right of rescission.** A REP shall promptly provide the applicant with the terms of service document after the applicant has authorized the REP to provide service to the applicant and the authorization has been verified. For switch requests, the REP shall offer the applicant a right to rescind the terms of service without penalty or fee of any kind for a period of three federal business days after the applicant receipt of the terms of service document. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the applicant within three federal business days. Any REP receiving an untimely notice of rescission from the applicant shall inform the applicant that the applicant has a right to select another REP and may do so by contacting that REP. The REP shall also inform the applicant that the applicant will be responsible for charges from the REP for service

provided until the applicant switches to another REP. The right of rescission is not applicable to an applicant requesting a move-in.

- (k) **Submission of an applicant's switch or move-in request to the registration agent.** A REP may submit an applicant's switch request to the registration agent prior to the expiration of the rescission period prescribed by subsection (j) of this section. Additionally, the REP shall submit the move-in or switch request to the registration agent so that the move-in or switch will be processed on the approximate scheduled date agreed to by the applicant and as allowed by the tariff of the transmission and distribution utility, municipally owned utility, or electric cooperative. The applicant shall be informed of the approximate scheduled date that the applicant will begin receiving electric service from the REP, and of any delays in meeting that date, if known by the REP.
- (l) **Duty of the registration agent.** When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with the protocols.
- (1) **Switches.** The registration agent shall send a switch notification notice that shall:
- (A) be sent in English and Spanish consistent with §25.473(d) of this title (relating to Non-English Language Requirements);
 - (B) identify the REP that initiated the switch request;
 - (C) inform the applicant that the applicant's REP will be switched unless the applicant requests the registration agent to cancel the switch by the date stated in the notice;

- (D) provide a cancellation date by which the applicant may request a switch to be cancelled, no less than seven calendar days after the applicant receives the notice; and
 - (E) provide instructions for the applicant to request that the switch be cancelled. These instructions shall include a telephone number, facsimile machine number, and e-mail address to reach the registration agent. The registration agent shall take appropriate actions to process an applicant's timely request for cancellation.
- (2) The registration agent shall direct the transmission and distribution utility to implement any switch, move-in or transfer to the affiliated REP or the POLR in accordance with the protocols established by the registration agent, unless the applicant makes a timely request to cancel the transaction.
- (m) **Exemptions for certain transfers.** The provisions of this section relating to authorization and right of rescission are not applicable when the applicant's or customer's electric service is:
- (1) transferred to the affiliated REP by a REP for non-payment pursuant to §25.482 of this title (relating to Termination of Service);
 - (2) transferred to the POLR pursuant to §25.43 of this title (relating to Provider of Last Resort (POLR)) when the customer's REP of record defaults or otherwise ceases to provide service. Nothing in this subsection implies that the customer is accepting a contract with the POLR for a specific term;

- (3) transferred to the competitive affiliate of the POLR pursuant to §25.43(o) of this title;
- (4) transferred to another REP in accordance with section §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another); or
- (5) transferred from one premise to another premise without a change in REP and without a material change in the terms of service.

(n) **Fees.** A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless the applicant requests a switch that does not conform with the normal meter reading and billing cycle. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. To the extent that the transmission and distribution utility assesses a REP a properly tariffed charge for connection of service, out of cycle switch requests, service order cancellations or changes associated with the switching of service or the establishment of new service, any such fee may be passed on to the applicant or customer by the REP.

(o) This section is effective August 1, 2004.

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

- (a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) and aggregators, when specifically stated, providing service to residential and small commercial customers.
- (b) **General disclosure requirements.** All printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures distributed by REPs and aggregators:
- (1) shall be provided in a readable format, written in clear, plain, easily understood language;
 - (2) shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law; and
 - (3) upon receipt of a license or certificate from the commission, shall include the REP's certified name or the aggregator's registered name, and the number of the license or registration.
- (c) **Advertising and marketing materials.** If a REP or aggregator advertises or markets the specific benefits of a particular electric product to a customer, then the REP or aggregator shall provide the name of the electric product offered in the advertising or marketing materials.

- (1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price or environmental quality for an electricity product of the REP with respect to a product offered by another REP shall include the Electricity Facts Label. In lieu of including an Electricity Facts Label, the following statement shall be provided: "You may obtain important standardized information that will allow you to compare this product with other offers. Call (name, telephone number, and website (if available) of the REP)." A REP shall provide an Electricity Facts Label (and terms of service document if requested by the customer), relating to a service or product being advertised to each person who requests it.
- (2) **Television and radio advertisements.** A REP shall include the following statement in any television or radio advertisement that makes a specific claim about price or environmental quality for an electricity product of the REP with respect to a product offered by another REP: "You can obtain important standardized information that will allow you to compare this product with other offers. Call (name, telephone number and website (if available) of the REP)." This statement is not required for general statements regarding savings or environmental quality, but shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. A REP shall provide an Electricity Facts Label (and terms of service if requested by the customer), to each person who requests it.

- (3) **Internet advertisements.** Advertisements on the internet shall comply with the provisions of paragraph (2) of this subsection. Each REP shall prominently display the Electricity Facts Label for any products offered by the REP for enrollment on the website without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The Electricity Facts Label shall be printable in a one-page format.
- (4) **Outdoor advertisements.** Advertisements on outdoor signs such as billboards shall comply with the provisions of paragraph (2) of this subsection. If the REP's phone number is included on the advertisement, the phone number shall not be required in the disclaimer statement.

(d) Terms of service document.

- (1) For each electric service or electric product that it offers to residential or small commercial customers, a REP shall create a terms of service document. Each terms of service document shall be subject to review by the commission and shall be furnished to the commission or its staff upon request.
- (2) For services and products that a REP makes widely available to residential and small commercial customers, a REP shall assign an identification number to each version of its terms of service document, and shall publish the number on the terms of service document.
- (3) The terms of service document shall be provided to new customers and, if the service or product is being made widely available to residential and small commercial customers, to any eligible customer that requests the terms of service.

An updated terms of service document shall also be provided to current customers at any time that the REP materially changes the terms and conditions of service with its customers. Upon request, a customer may receive an additional copy of the terms of service document under which it is receiving service.

- (4) A REP shall retain a copy of each version of the terms of service during the time that the plan is offered and for two years after that version of the terms of service is no longer offered and no customer is being served under that version of the terms of service.
- (5) The following information shall be conspicuously contained in the terms of service document:
 - (A) The REP's certified name, mailing address, Internet website address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference);
 - (B) The Electricity Facts Label as specified in subsection (f) of this section, unless the Electricity Facts Label is provided as a separate document at the same time as the terms of service document is provided;
 - (C) A statement as to whether there is a minimum term of service, any automatic renewal provisions, how service can be cancelled, and any fees associated with cancellation of service;
 - (D) A statement as to whether there are penalties to terminate service before the end of the minimum term of service, and the amount of those penalties, and whether there are any conditions under which those penalties will not apply;

- (E) If the REP requires deposits from its customers:
 - (i) a description of the conditions that will trigger a request for a deposit;
 - (ii) the maximum amount of the deposit or the manner in which the deposit amount will be determined;
 - (iii) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;
 - (iv) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478(a) of this title (relating to Credit Requirements and Deposits);
 - (v) the right of a customer who qualifies for the rate reduction program to pay a required deposit that exceeds \$50 in two equal installments pursuant to §25.478(e)(3) of this title; and
 - (vi) for an affiliate REP or Provider of Last Resort (POLR), the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.
- (F) The description of any charges resulting from a move-in or switch that may be passed through by the transmission and distribution utility (TDU) and paid by the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;
- (G) The itemization of any services that are included in the customer's terms of service, including:

- (i) the specific methods and prices by which the customer will be charged for electric service and
 - (ii) the price for each service or product other than electric service. If a REP has bundled the charges for these other services together, the total price for services other than electric service;
- (H) The itemization of any quantifiable charges and fees that may be imposed on the customer by the REP, such as an application fee, charges and fees for default, late payment, returned checks, cancellation of service, and termination of service;
- (I) A description of payment arrangements and bill payment assistance programs offered by the REP;
- (J) All other material terms and conditions, including, without limitation, exclusions, reservations, limitations, and conditions of the terms of services offered by the REP;
- (K) In a conspicuous and separate paragraph or box:
 - (i) A description of the right of a new customer to rescind service without fee or penalty of any kind within three federal business days after receiving the terms of service document pursuant to §25.474(j) of this title (relating to Selection of Retail Electric Provider); and
 - (ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile machine number or email address that the customer may use to rescind service.

- (L) A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services; and
- (M) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the terms of service document.

(e) **Notice of changes in terms and conditions of service.**

- (1) A REP shall provide written notice to its customers at least 45 days in advance of any material change in the terms of service document. The notice shall identify the material change and clearly specify what actions the customer needs to take to terminate the terms of service agreement without a penalty, the deadline by which such action must be taken, and the ramifications if such actions are not taken within the specified deadline. This notice may be provided in or with the customer's bill or in a separate document, but shall be clearly and conspicuously labeled with the following statement: "Important notice regarding changes to your terms of service." The notice shall clearly state that the customer may decline any material change in the terms of service and terminate the terms of service agreement without a penalty. Notice of the change is not required for material changes that benefit the customer or for changes that are mandated by a

regulatory agency. Notice is not required for changes in rates if the terms of service clearly specify the manner in which rates may be adjusted (i.e., variable rate products).

- (2) A REP may utilize an automatic renewal clause. Any service renewed through the activation of an automatic renewal clause shall be in effect for a maximum of 31 days and such clause may be repeatedly activated unless cancelled by the customer or unless the REP materially changes the terms of service.

(f) **Electricity Facts Label.**

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

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

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

(I) For residential customers, 500, 1,000, and 1,500 kilowatt hours per month; and

(II) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month;

- (ii) If the billing is based on prices that vary by season or time of day, the average price for electric service, reflecting all recurring

charges and based on the applicable load profile approved by the commission, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

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

prices — your average price for electric service will vary according to your usage and (insert description of the basis for and the frequency of price changes during the service period)."

- (D) If the price of electric service will not vary, the phrase "fixed price" and the length of time for which the price will be fixed;
- (E) If the price of electric service will vary, the phrase "variable price" and a description of how the prices will change and when; and
- (F) The criteria used to calculate the average pricing disclosures for residential customers.

(2) **Service terms disclosures.** Specific service terms that shall be disclosed on the Electricity Facts Label are:

- (A) The minimum service term, if any; and
- (B) Early termination penalties, if any.

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

- (A) The percentage used shall be rounded to the nearest whole number.

Values less than 0.5% and greater than zero may be shown as "<0.5%".

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

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

Electricity Facts																				
[Name of REP], [Name of Product] [Service area <i>(if applicable)</i>] [Date]																				
<i>Electricity price</i>	Average monthly use:	500kWh 1,000kWh 1,500 kWh																		
	Average price per kilowatt-hour:	[x.x]¢ [x.x]¢ [x.x]¢																		
<p>This price disclosure is an example based on [criteria used to construct the example] – your average price for electric service will vary according to [relevant variation].</p> <p>[If applicable] Price fixed for [xx] months.</p> <p>[If applicable] On-peak [season or time]:[xxx]</p> <p>[If applicable] Average on-peak price per kilowatt-hour: [x.x]¢</p> <p>[If applicable] Average off-peak price per kilowatt-hour: [x.x]¢</p>																				
<i>Contract</i>	<p>Minimum term:[xx] months. Penalty for early cancellation:\$[xx]</p> <p><i>See Terms of Service statement for a full listing of fees, deposit policy, and other terms.</i></p>																			
<i>Sources of power generation</i>	<i>This product</i>	<i>Texas (for comparison)</i>																		
	Coal and lignite	[xx]%																		
	Natural gas	[xx]%																		
	Nuclear	[xx]%																		
	Renewable energy	[xx]%																		
	Other	[xx]%																		
	Total	100%																		
<i>Emissions and waste per 1,000 kWh generated</i>	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Category</th> <th>Indexed Value</th> <th>Comparison</th> </tr> </thead> <tbody> <tr> <td>Carbon dioxide</td> <td>89</td> <td>Worse than Texas average</td> </tr> <tr> <td>Nitrogen oxides</td> <td>112</td> <td>Worse than Texas average</td> </tr> <tr> <td>Particulates</td> <td>56</td> <td>Better than Texas average</td> </tr> <tr> <td>Sulfur dioxide</td> <td>23</td> <td>Better than Texas average</td> </tr> <tr> <td>Nuclear waste</td> <td>10</td> <td>Better than Texas average</td> </tr> </tbody> </table> <p style="text-align: center;">(Indexed values; 100=Texas average)</p>		Category	Indexed Value	Comparison	Carbon dioxide	89	Worse than Texas average	Nitrogen oxides	112	Worse than Texas average	Particulates	56	Better than Texas average	Sulfur dioxide	23	Better than Texas average	Nuclear waste	10	Better than Texas average
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Nuclear waste	10	Better than Texas average																		

Type used in this format

Title: 14 point

Headings: 12 point boldface

Body: 10 point

- (7) **Distribution of Electricity Facts Label.** A REP shall distribute its Electricity Facts Label to its customers no less than once in a 12-month period and to the commission upon request. A REP is not required to distribute its Electricity Facts Label to a customer pursuant to this paragraph if it has provided a new Electricity Facts Label to that customer in the past six months.
- (g) **Your Rights as a Customer disclosure.** In addition to the terms of service document required by this section, a REP shall develop a separate disclosure statement for residential customers and small commercial customers entitled "Your Rights as a Customer" that summarizes the standard customer protections provided by the rules in this subchapter.
- (1) This disclosure shall initially be distributed at the same time as the REP's terms of service document and shall accurately reflect the REP's terms of service.
- (2) The REP shall distribute an update of this disclosure no less than once in a 12-month period to its customers.
- (3) Each REP's Your Rights as a Customer disclosure is subject to review and approval by the commission, upon request.
- (4) The disclosure shall inform the customer of the following:
- (A) The REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling);
- (B) The customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a

transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer via the standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable;

- (C) Disclosures concerning the customer's ability to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);
- (D) Notice of any special services such as readers or notices in Braille or TTY services for hearing impaired customers;
- (E) Special actions or programs available to those residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems;
- (F) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);
- (G) Cancellation of terms of service with or without penalty;
- (H) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
- (I) Protections relating to termination of service protections pursuant to §25.482 of this title (relating to Termination of Service) and disconnection of service pursuant to §25.483 of this title (relating to Disconnection of Service);

- (J) Availability of financial and energy assistance programs for residential customers;
 - (K) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List) and §26.37 (relating to Texas No-Call List);
 - (L) Availability of discounts for qualified low-income residential customers;
 - (M) Payment arrangements and deferred payments pursuant to §25.480 of this title (relating to Bill Payment and Adjustments);
 - (N) Procedures for reporting outages;
 - (O) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information);
 - (P) Availability of POLR service and how to contact the POLR; and
 - (Q) The steps necessary to have service restored or reconnected after involuntary suspension or disconnection.
- (h) This section is effective June 1, 2004.

§25.476. Labeling of Electricity with Respect to Fuel Mix and Environmental Impact.

- (a) **Purpose.** The purpose of this section is to establish the procedures by which retail electric providers (REPs) calculate and disclose fuel mix and environmental impact information on the Electricity Facts Label pursuant to §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers).
- (b) **Application.**
- (1) This section applies to all REPs. Additionally, some of the reporting requirements established in this section apply to the registration agent and to all owners of generation assets as defined in subsection (c) of this section.
 - (2) Nothing in this section shall be construed as protecting a REP against prosecution under deceptive trade practices statutes.
 - (3) In accordance with the Public Utility Regulatory Act (PURA) §39.001(b)(4), the commission and the registration agent will protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information, including without limitation information reported to the commission or the registration agent pursuant to subsections (e)(3)-(4) and (f)(1) of this section.
- (c) **Definitions.** The definitions set forth in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) apply to this section. In addition, the following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise:

- (1) **Authenticated generation** — Generated electricity with quantity, fuel mix, and environmental attributes accounted for by a retired renewable energy credit (REC), or supply contract between a REP and an owner of generation assets, to be used in calculating the retailer's Electricity Facts Label disclosures.
- (2) **Default scorecard** — The estimated fuel mix and environmental impact of all electricity in Texas that is not authenticated as defined in paragraph (1) of this subsection.
- (3) **Environmental impact** — The information that is to be reported on the Electricity Facts Label under the heading "Emissions and waste per 1,000 kWh generated," comprising indicators for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear reactor fuel. For the purposes of this section, environmental impact refers specifically to emissions and waste from generating facilities located in Texas, except as provided in subsection (f)(3) of this section.
- (4) **Fuel mix** — The information that is to be reported on the Electricity Facts Label under the heading "Sources of power generation." The fuel mix shall be the percentage of total MWh obtained from each of the following fuel categories: coal and lignite, natural gas, nuclear, renewable energy, and "other" sources, calculated as specified in this section. Renewable energy shall include power defined as renewable by PURA §39.904(d).
- (5) **Generator scorecard** — The aggregated fuel mix and environmental impact of all generating facilities located in Texas that are owned by the same owner of generation assets.

- (6) **New product** — An electricity product during the first year it is marketed to customers.
 - (7) **Other generation sources** — A competitive retailer's or affiliated REP's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.
 - (8) **Owner of generation assets** — A power generation company, river authority, municipally owned utility, electric cooperative, or any other entity that owns electric generating facilities in the state of Texas.
 - (9) **Renewable energy credit offset (REC offset)** — A non-tradable allowance as defined by §25.173(c)(10) of this title (relating to Goal for Renewable Energy) and created by §25.173(i) of this title. For the purposes of this section, a REC offset authenticates the renewable attributes, but not the quantity, of generation produced by its associated facility.
- (d) **Marketing standards for "green" and "renewable" electricity products.**
- (1) A REP may market an electricity product as "green" only in the following instances:
 - (A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d), Texas natural gas as specified in PURA §39.904(d)(2), or a combination thereof, and
 - (B) All statements representing the product as "green," if not containing 100% renewable energy, as defined in PURA §39.904(d), shall include a footnote, parenthetical note, or other obvious disclaimer that "A 'green'

product may include Texas natural gas and renewable energy. See the Electricity Facts Label for this product's exact mix of renewable energy and Texas natural gas."

- (2) A REP may market an electricity product as "renewable" only in the following instances:
 - (A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d); or
 - (B) All statements representing the product as "renewable" use the format "x% renewable," where "x" is the product's renewable energy fuel mix percentage.
- (3) If a REP makes marketing claims about a product's "green" content on the basis of its use of natural gas as a fuel, the REP must include with the report required under subsection (f)(1) of this section proof that the natural gas used to generate the electricity was produced in Texas.

(e) **Compilation of scorecard data.**

- (1) The registration agent shall create and maintain a database of generator scorecards reflecting each owner of generation assets' company-wide fuel mix and environmental impact data based on generating facilities located in Texas. These scorecards shall be used by REPs in determining the fuel and environmental attributes of electricity sold to retail customers.

- (2) Each generator's fuel mix and environmental impact data for the preceding calendar year shall be published on the registration agent's Internet web site by April 1 of each year and shall state:
 - (A) percentage of MWh generated from each of the following fuel sources: coal and lignite, natural gas, nuclear, renewable energy, and other sources; and
 - (B) MWh-weighted average annual emissions rates in pounds per 1,000 kWh for the aggregate generation sources of the owner of generation assets for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced (with spent nuclear fuel annualized using standard industry conversion factors).
- (3) Not later than March 1 of each year, each owner of generation assets shall report to the registration agent the following data for the preceding calendar year: net generation in MWh from each of its generating units in Texas; the type of fuel used by each of its generating units in Texas; and the MWh-weighted average annual emissions rate, on an aggregate basis for all of its generating units in Texas (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste. For purposes of calculating its average emissions rates, each owner of generation assets shall rely upon emissions data that it submits to the United States Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), or the best available data if the owner of generation assets does not submit pertinent data to the EPA or TCEQ. An owner of generation assets shall not be required to submit information

to the registration agent regarding the net generation of its generating units located within the Electric Reliability Council of Texas (ERCOT) region if, upon request, the registration agent advises the owner of generation assets that it already has such information available from its polled settlement meter data.

- (4) Not later than March 15 of each year, each REP shall report to the registration agent the total MWh of electricity it purchased during the preceding calendar year, specifying the quantity purchased from each owner of generation assets or from other generation sources during that calendar year.
 - (5) Not later than April 1 of each year, the registration agent shall calculate and publish on its Internet website a state average fuel mix, statewide system average emission rates for each type of emission, and a default scorecard to account for all electric generation in the state that is not authenticated as defined in subsection (c)(1) of this section.
 - (A) The default fuel mix shall be the percentage of total MWh of generation not authenticated that has been obtained from each fuel type.
 - (B) Default emission rates for each type of emission shall be calculated by dividing total pounds of emissions or waste by total MWh, using data only for generation not authenticated.
- (f) **Calculating fuel mix and environmental impact disclosures.**
- (1) Not later than March 15 of each year, each REP shall report to the registration agent the following information:

- (A) MWh sold under each electricity product offered by the REP during the previous calendar year; and
 - (B) attestations from power generators that the natural gas used to generate electricity supplied to the REP was produced in Texas, if during the preceding calendar year and the current calendar year the REP markets "green" electricity on the basis of that power.
- (2) Not later than May 1 of each year, each REP shall calculate and report to the registration agent its fuel mix and environmental impact for the preceding calendar year for each of its electricity products. The calculation methodology shall be as described in paragraphs (5) and (6) of this subsection.
- (3) For power purchased from sources outside of Texas, a supply contract between a REP and the owner of a generating facility may be used to authenticate fuel mix and environmental impact for electricity generated at that facility and sold at retail in Texas.
- (A) The contract must identify a specific generating facility from which the REP has obtained electricity that it sold to retail customers in Texas during the preceding calendar year.
 - (B) A REP that intends to rely upon a supply contract with an out-of-state generator to authenticate fuel mix or environmental impact data shall submit a report to the registration agent for the specified generating facility no later than March 1 of each year that reports the facility's annual fuel mix and emissions rates (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste.

- (4) For the purposes of disclosures on the Electricity Facts Label, the retirement of RECs shall be the only method of authenticating generation for which a REC has been issued in accordance with §25.173 of this title. The retirement of a REC shall be equivalent to one megawatt-hour of generation from renewable resources. The use of RECs to authenticate the use of renewable fuels on the Electricity Facts Label must be consistent with REC account information maintained by the Renewable Energy Credits Trading Program Administrator. A REC offset may be used to authenticate the renewable attributes of the current MWh output from its associated supply contract.
- (5) The fuel mix for a REP's electricity product shall be the MWh-weighted average of the fuel mixes reported for the sources of generation from which electricity was purchased for that product. In calculating the fuel mix, the REP shall rely upon the following sources of information to obtain the fuel mix of its sources of generation: the generator scorecard data published by the registration agent under subsection (e)(2)(A) of this section; the default scorecard published by the registration agent under subsection (e)(5)(A) of this section; any reports filed under paragraph (3)(B) of this subsection; retired RECs; and actual energy production during the calendar year from resources that are awarded REC offsets by the system administrator. MWh from generation sources not authenticated in accordance with this section shall be represented by the fuel mix of the default scorecard.
- (6) The emission rates for a REP's electricity product shall be the MWh-weighted average of the emission rates reported for the sources of generation from which

electricity was purchased for that product. In calculating the emissions data, the REP shall rely upon the following sources of information to obtain the emissions data of its sources of generation: the generator scorecard data published by the registration agent under subsection (e)(2)(B) of this section; the default scorecard published by the registration agent under subsection (e)(5)(B) of this section; and any reports filed under paragraph (3)(B) of this subsection; retired RECs; and actual energy production during the calendar year from resources that are awarded REC offsets by the system administrator. Emissions from generation sources not authenticated in accordance with this section shall be represented by the default scorecard. The weighted average of each category of environmental impact shall then be indexed by dividing it by the corresponding state average emission rate and multiplying the result by 100.

- (7) If a REP offers multiple electricity products that differ with regard to the fuel mix and environmental impact disclosures presented on the Electricity Facts Label, the REP:
- (A) may apply any supply contract to the calculation of any product label as long as the sum of MWh applied does not exceed the MWh acquired under the contract; and
 - (B) may apply any number of RECs to the calculation of any product label as long as:
 - (i) the number of RECs applied to all product labels is consistent with the number of RECs the retailer has retired with the REC Trading Program Administrator, and

- (ii) the number of RECs applied to each product label results in a renewable energy content for each product that is equal to or greater than a benchmark to be calculated from data maintained by the REC Trading Program Administrator. The benchmark shall be defined on an annual basis as:

SRR / TS ,

where

$SRR =$ the statewide REC requirement, in MWh, as calculated by the REC Trading Program Administrator for the compliance period coinciding with the Electricity Facts Label disclosure, and

$TS =$ total MWh sales for all REPs to Texas customers during the compliance period coinciding with the Electricity Facts Label disclosure.

- (8) An affiliated REP shall use only one fuel mix and environmental impact disclosure for all price-to-beat products sold to residential and small commercial customers of its affiliated transmission and distribution utility, except that if the

predecessor bundled utility had an approved renewable energy tariff in accordance with §25.251 of this title (relating to Renewable Energy Tariff) on file with the commission during the freeze on existing retail base rate tariffs established by PURA §39.052, the affiliated REP may sell a renewable price-to-beat product.

- (9) Any REP may anticipate the fuel mix and environmental impact of a new product.
 - (A) On the fuel mix disclosure of a new product's Electricity Facts Label, the heading "Sources of power generation" shall be replaced with "Projected sources of power generation."
 - (B) On the environmental impact disclosure of a new product's Electricity Facts Label, the heading "Emissions and waste per 1,000 kWh generated" shall be replaced with "Projected emissions and waste per 1,000 kWh generated."
 - (C) A projected fuel mix may be used only for new products.

- (g) **Annual update of Electricity Facts Label.** Each REP shall update its Electricity Facts Label for each of its products no later than July 1 of each year, so that the Electricity Facts Label displays the fuel mix and emissions data calculated pursuant to this section and reported to the registration agent for that product under subsection (f)(2) of this section for generation purchased during the preceding calendar year. The commission shall make available on the "power to choose" Internet website the fuel mix and emissions data published by each REP on its Electricity Facts Labels for each product marketed to residential customers.

(h) **Compliance and enforcement.**

- (1) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission may take remedial action consistent with PURA §§39.101(e), 39.356, or 39.357, and the REP may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council.
- (2) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP, thereby denying the REP the right to provide service in this state.
- (3) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General, Consumer Protection Division in order to ensure consistent treatment of specific alleged violations.
- (4) The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each REP to the extent necessary to verify the accuracy of the REP's Electricity Facts Label.
- (5) The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each owner of generation assets to the

extent necessary to verify the accuracy of the owner of generation assets' fuel mix and emissions data reported under subsection (e)(3) of this section.

- (6) In exercising any enforcement authority, inspection, audit, or other action under this section, the commission will ensure the confidentiality of competitively sensitive information.

- (i) This section is effective June 1, 2004.

§25.477. Refusal of Electric Service.

- (a) **Acceptable reasons to refuse electric service.** A retail electric provider (REP) may refuse to provide electric service to an applicant or customer for one or more of the reasons specified in this subsection:
- (1) **Customer's or applicant's inadequate facilities.** The customer's or applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given, or the customer's or applicant's facilities do not comply with all applicable state and municipal regulations.
 - (2) **Use of prohibited equipment or attachments.** The customer or applicant fails to comply with the transmission and distribution utility's, municipally owned utility's, or electric cooperative's tariff pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.
 - (3) **Intent to deceive.** The applicant applies for service at a location where another customer received, or continues to receive, service and the REP can reasonably demonstrate that the change of account holder and billing name is made to avoid or evade payment of a bill owed to the REP.
 - (4) **For indebtedness.** The applicant or customer owes a bona fide debt to the REP for electric service. An affiliated REP or provider of last resort (POLR) shall offer the applicant or customer an opportunity to pay the outstanding debt to receive service. In the event the applicant's or customer's indebtedness is in dispute, the applicant or customer shall be provided service upon paying the

undisputed debt amount and a deposit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits).

- (5) **Failure to pay guarantee.** An applicant or customer has acted as a guarantor for another applicant or customer and failed to pay the guaranteed amount, where such guarantee was made in writing and was a condition of service.
 - (6) **Failure to comply with credit requirements.** The applicant or customer fails to comply with the credit and deposit requirements set forth in §25.478 of this title.
 - (7) **Other acceptable reasons to refuse electric service.** In addition to the reasons specified in paragraphs (1) – (6) of this subsection, a REP other than the affiliated REP or POLR may refuse to provide electric service to an applicant or customer for any other reason that is not otherwise discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).
- (b) **Insufficient grounds for refusal to serve.** The following reasons are not sufficient cause for refusal of service to an applicant or customer by a REP:
- (1) delinquency in payment for electric service by a previous occupant of the premises to be served;
 - (2) failure to pay for any charge that is not related to electric service, including a competitive energy service, merchandise, or other services that are optional and are not included in electric service;
 - (3) failure to pay a bill that includes more than the allowed six months of underbilling, unless the underbilling is the result of theft of service; and

- (4) failure to pay the unpaid bill of another customer for usage incurred at the same address, except where the REP has reasonable and specific grounds to believe that the applicant or customer that currently receives service has applied for service to avoid or evade payment of a bill issued to a current occupant of the same address.
- (c) **Disclosure upon refusal of service.**
- (1) A REP that denies electric service to an applicant or customer shall inform the applicant or customer of the reason for the denial. Upon the applicant's or customer's request, this disclosure shall be furnished in writing to the applicant or customer. This disclosure may be combined with any disclosures required by applicable federal or state law, such as the Equal Credit Opportunity Act (15 U.S.C. §1691(d), et seq.) or the Fair Credit Reporting Act (15 U.S.C. §1681(m), et seq.).
 - (2) A written disclosure is not required when the REP notifies the applicant or customer verbally that the applicant's or customer's premise is not located in a geographic area served by REP, does not have the type of usage characteristics served by the REP, or is not part of a customer class served by the REP.
 - (3) Specifically, the REP shall inform the applicant or customer:
 - (A) of the specific reasons for the refusal of service;
 - (B) that the applicant or customer may be eligible for service if the applicant or customer remedies the reasons for refusal and complies with the REP's terms and conditions of service;

- (C) that the REP cannot refuse service based on the prohibited grounds set forth in §25.471(c) of this title;
- (D) that an applicant or customer who is dissatisfied may submit a complaint with the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling); and
- (E) of the possible availability or existence of other providers and the toll-free telephone number designated by the commission to allow the applicant or customer to contact the available REPs.

- (d) This section is effective June 1, 2004.

§25.478. Credit Requirements and Deposits.

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

(1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.

(2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph. A REP other than an affiliated REP or POLR may establish other criteria by which a customer or applicant can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:

(i) has been a customer of any REP or an electric utility within the two years prior to the request for electric service;

(ii) is not delinquent in payment of any such electric service account;

and

- (iii) during the last 12 consecutive months of service was not late in paying a bill more than once.
- (B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer reporting agency, as defined by the Federal Trade Commission.
- (C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
- (D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center or by treating medical personnel. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.
- (E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration

that the following criteria are met. Such demonstration must be made annually:

- (i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and
 - (ii) the customer or applicant or the spouse of the customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*
- (4) Pursuant to the Public Utility Regulatory Act (PURA) §39.107(g), a REP that requires pre-payment for metered residential electric service may not charge an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.
 - (5) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as

defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.

- (b) **Credit requirements for non-residential customers.** A REP may establish nondiscriminatory criteria pursuant to §25.471(c) of this title to evaluate the credit requirements for a non-residential customer or applicant and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional deposit. No such deposit shall be required if the customer or applicant is a governmental entity.
- (c) **Initial deposits for applicants and existing customers.**
- (1) If satisfactory credit cannot be demonstrated by a residential applicant, a REP may require the applicant to pay a deposit prior to receiving service.
 - (2) An affiliated REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (i) of this section, instead of paying a cash deposit.

- (3) A REP shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with the request for deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title (relating to Disconnection of Service).

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

- (1) A REP may request an additional deposit from an existing customer if:
 - (A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and
 - (B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.
- (2) A REP may require the customer to pay an additional deposit within ten days after the REP has requested the additional deposit.
- (3) A REP may terminate or disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with the written request for the additional deposit. The

disconnection notice shall comply with the requirements in §25.483(m) of this title.

(e) **Amount of deposit.**

- (1) The total of all deposits, initial and additional, required by a REP from any residential customer or applicant
 - (A) shall not exceed an amount equivalent to the greater of
 - (i) one-fifth of the customer's estimated annual billing or;
 - (ii) the sum of the estimated billings for the next two months.
 - (B) A REP may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. If a REP requests additional or initial deposits from existing customers, the REP shall base the estimated annual billing on the customer's actual historical usage, to the extent that the historical usage is available. After 12 months of service with a REP, a customer may request that a REP recalculate the required deposit based on actual historical usage of the customer.
- (2) For the purpose of determining the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant
- (3) If a customer or applicant qualifies for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds \$50 in two equal installments.

Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting a deposit. The customer shall have the obligation of providing sufficient information to the REP to demonstrate that the customer is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.

- (f) **Interest on deposits.** A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission in December of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.
- (1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.
 - (2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.
- (g) **Notification to customers.** When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit if applicable, how a customer

may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(h) **Records of deposits.**

- (1) A REP that collects a deposit shall keep records to show:
 - (A) the name and address of each depositor;
 - (B) the amount and date of the deposit; and
 - (C) each transaction concerning the deposit.
- (2) A REP that collects a deposit shall issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP shall provide means for a depositor to establish a claim if the receipt is lost.
- (3) A REP shall maintain a record of each unclaimed deposit for at least four years.
- (4) A REP shall make a reasonable effort to return unclaimed deposits.

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

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

guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.

- (2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (j) of this section.
- (3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.
- (4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a cash deposit from the residential customer as a condition of continuing service.
- (5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.
 - (A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.
 - (B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).
- (6) The REP may initiate termination of the guarantor's service (or disconnection of service for the POLR, or any REP having disconnect authority) for nonpayment

of the guaranteed amount only if the termination of service (or, where applicable, the disconnection of service) was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Service) or §25.483 of this title.

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

- (1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. A REP may refund the deposit to a customer via a bill credit. REPs shall comply with this provision as soon as practicable, but no later than August 31, 2004.
- (2) Once the REP is no longer the REP of record for a customer or if service is not established with the REP, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be cancelled to the extent that it is not needed to satisfy any outstanding balance owed by the customer. Alternatively, the REP may provide the guarantor with written documentation that the contract has been cancelled to the extent that the guarantee is not needed to satisfy any outstanding balance owed by the customer.
- (3) If a customer's or applicant's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters

of guarantee on the account or provide written documentation that the guarantee agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

- (4) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.
- (k) **Re-establishment of credit.** A customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit.
- (l) **Upon sale or transfer of company.** Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records.

(m) This section is effective June 1, 2004.

§25.479. Issuance and Format of Bills.

- (a) **Application.** This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.
- (b) **Frequency and delivery of bills.**
- (1) A REP shall issue a bill monthly to each customer, unless service is provided for a period of less than one month. A REP may issue a bill less frequently than monthly if both the customer and the REP agree to such an arrangement.
 - (2) Bills shall be issued no later than 30 days after the REP receives the usage data and any related invoices for non-bypassable charges, unless validation of the usage data and invoice received from a transmission and distribution utility by the REP or other efforts to determine the accuracy of usage data or invoices delay billing by a REP past 30 days. The number of days to issue a bill shall be extended beyond 30 days to the extent necessary to support agreements between REPs and customers for less frequent billing, as provided in paragraph (1) of this subsection or for consolidated billing.
 - (3) A REP shall issue bills to residential customers in writing and delivered via the United States Postal Service. REPs may provide bills to a customer electronically

in lieu of written mailings if both the customer and the REP agree to such an arrangement. An affiliated REP or a provider of last resort shall not require a customer to agree to such an arrangement as a condition of receiving electric service.

- (4) A REP shall not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document.

(c) **Bill content.**

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

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

to the bill payment assistance program, pursuant to §25.480(g)(2) of this title (relating to Bill Payment and Adjustments);

- (L) If available to the REP on a standard electronic transaction, the current beginning and ending meter readings of non-interval demand recorder meters, if the bill is based on actual kilowatt-hour (kWh) usage, including kWh, actual kilowatts (kW) or kilovolt ampere (kVa), and billed kW or kVa, the kind and number of units measured, whether the bill was issued based on estimated usage, and any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;
- (M) Any amount owed under a written guarantee agreement, provided the guarantor was previously notified in writing by the REP of an obligation on a guarantee or as required by §25.478 of this title (relating to Credit Requirements and Deposits);
- (N) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;
- (O) Notification of any changes in the customer's prices or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document; and
- (P) The notice required by §25.481(d) of this title (relating to Unauthorized Charges).

- (2) If the REP has presented its electric service charges in an unbundled fashion, it shall use the following terms as defined by the commission: "transmission and distribution service," "generation service," "System Benefit Fund," and, where applicable, "transition charge," "nuclear decommissioning fee," and "municipal franchise fee."
 - (3) A REP shall provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request. In lieu of providing a specific quantification of "generation service," an affiliated REP may indicate to customers that the remainder of the bill is related to generation services, after the itemization of non-bypassable charges is deducted from the total bill.
 - (4) A customer's electric bill shall not contain charges for electric service from a service provider other than the customer's designated REP.
- (d) **Public service notices.** A REP shall, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP shall provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission.
- (e) **Estimated bills.** If a REP is unable to issue a bill based on actual meter reading due to the failure of the transmission and distribution utility (TDU), the registration agent, municipally owned utility or electric cooperative to obtain or transmit a meter reading or an invoice for non-bypassable charges to the REP on a timely basis, the REP may issue a

bill based on the customer's estimated usage and inform the customer of the reason for the issuance of the estimated bill.

- (f) **Non-recurring charges.** A REP may pass through to its customers all applicable non-recurring charges billed to the REP by a TDU, municipally owned utility, or electric cooperative as a result of establishing, switching, disconnecting, reconnecting, or maintaining service to an applicant or customer. In the event of a meter test, the TDU, municipally owned utility, electric cooperative, and REP shall comply with the requirements of §25.124 of this title (relating to Meter Testing) or with the requirements of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable. The TDU, municipally owned utility, or electric cooperative shall maintain a record of all meter tests performed at the request of a REP or a REP's customers.
- (g) **Record retention.** A REP shall maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing records may be obtained by that customer on request, and may be obtained once per 12-month period, at no charge.
- (h) **Transfer of delinquent balances or credits.** If the customer has an outstanding balance or credit owed to the customer's current REP that is due from a previous account in the same customer class, then the customer's current REP may transfer that balance to the customer's current account. The delinquent balance and specific account or address shall

be identified as such on the bill. There shall be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) of this title.

- (i) This section is effective June 1, 2004.

§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.**
- (1) 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.

- (2) A bill issued to a state agency, as defined in Texas Government Code, Chapter 2251, shall be due as provided in Chapter 2251.
- (d) **Overbilling.** If charges are found to be higher than authorized in the REP's terms and conditions for service 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.

- (5) A bill issued to a state agency shall bear interest if overdue as provided in Texas Government Code Chapter 2251.
- (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 §25.125 of this title (relating to Adjustments Due to Meter Errors).
- (2) The REP may terminate service pursuant to §25.482 of this title (relating to Termination of Service) or disconnect service pursuant to §25.483 of this title (relating to Disconnection of Service) if the customer fails to pay the additional charges within a reasonable time.
- (3) If the underbilling is \$50 or more, the REP shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A

deferred payment plan need not be offered to a customer when the underpayment is due to theft of service.

- (4) The REP shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer. Interest on underbilled amounts shall be compounded monthly at the annual rate, as set by the commission. Interest shall accrue from the day the customer is found to have first stolen the service.
 - (5) If the REP adjusts the bills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.
- (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) Each REP shall provide an annual report on June 1 of each year to the commission summarizing:
- (i) the total amount of customer donations;
 - (ii) the amount of money set aside for bill payment assistance;
 - (iii) the assistance agency or agencies selected to disburse funds to residential customers; and
 - (iv) the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers.
- (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 offer a level or average payment plan to its customers who are not currently delinquent in payment to the REP. Consistent with the REP's terms of service, the REP may bill or credit any overbilling or underbilling, as appropriate, at least once every twelve months. A REP may collect under-recovered costs from a customer annually, or upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers annually, or upon termination of service to the customer. A REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan. All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document.
- (i) **Payment arrangements.** A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issues a termination or disconnection notice before a payment arrangement was made, that termination or disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be terminated or disconnected after the later of the due date for the payment arrangement or the termination or disconnection date indicated in the notice, without issuing an additional disconnection notice.
- (j) **Deferred payment plans.** A deferred payment plan is an agreement between the REP and a customer that allows a customer to pay an outstanding bill in installments that

extend beyond the due date of the current bill. A deferred payment plan may be established in person or by telephone, but all deferred payment plans shall be confirmed in writing by the REP.

- (1) A REP 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.
- (2) A REP shall offer a deferred payment plan to a customer who has been underbilled, as described in subsection (e) of this section.
- (3) For customers who have expressed an inability to pay, a REP shall offer a deferred payment plan unless the customer:
 - (A) has been issued more than two termination or disconnection notices during the preceding 12 months; or
 - (B) has received service from the REP for less than three months, and the customer lacks:
 - (i) sufficient credit; or
 - (ii) a satisfactory history of payment for electric service from a previous REP (or its predecessor electric utility).
- (4) Any deferred payment plans offered by a REP shall not refuse a customer participation in such a program on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).
- (5) A deferred payment plan offered by a REP for customers who have expressed an inability to pay and have received a disconnection notice shall provide that the delinquent amount be paid in equal installments over at least three billing cycles,

unless the customer requests a lesser number of installments. A REP may require an initial payment not to exceed 25% of the delinquent amount of the outstanding balance to initiate the agreement, with the remainder to be paid in equal installments over at least the next three billing cycles.

- (6) 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 of REP)." In addition, where the customer and the REP's representative or agent meets in person, the representative shall read the preceding statement to the customer;
 - (B) may include a penalty not to exceed 5.0% for late payment but shall not include a finance charge;
 - (C) shall state the length of time covered by the plan;
 - (D) shall state the total amount to be paid under the plan;
 - (E) shall state the specific amount of each installment;
 - (F) shall allow for the termination or disconnection of service (as appropriate) if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection or termination of service; and
 - (G) shall allow either the customer or the REP to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.

- (7) A REP may pursue termination or disconnection of service if a customer does not meet the terms of a deferred payment plan. However, service shall not be terminated or disconnected until appropriate notice has been issued, pursuant to §25.483 of this title or §25.482 of this title, notifying the customer that the customer has not met the terms of the plan. The requirements of subsection (j)(3) of this section shall not apply with respect to a customer who has received notice of a termination or disconnection due to failure to meet the terms of a deferred payment plan.
- (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 terminated or disconnected for non-payment of non-electric services.
- (l) This section is effective June 1, 2004.

§25.481. Unauthorized Charges.

- (a) **Authorization of charges.** Any services offered by the retail electric provider (REP) that will be billed on the customer's electric bill shall be authorized by the customer consistent with this section.
- (b) **Requirements for billing charges.** A REP shall meet all of the following requirements before including any charges on the customer's electric bill:
- (1) The REP shall inform the customer of the product or service being offered, including all associated charges, and explicitly inform the customer that the associated charges for the product or service will appear on the customer's electric bill.
 - (2) The customer must clearly and explicitly consent to obtaining the product or service offered and to having the associated charges appear on the customer's electric bill. The REP shall document the authorization in accordance with §25.474 of this title (relating to Selection of Retail Electric Provider). The documentation of the authorization shall be maintained by the REP for at least 24 months.
 - (3) The REP shall provide the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute and to answer questions.
- (c) **Responsibilities for unauthorized charges.**

- (1) If a REP charges a customer's electric bill for any product or service without proper customer authorization, the REP shall promptly, but not later than 45 days thereafter:
 - (A) discontinue providing the product or service to the customer and cease charging the customer for the unauthorized product or service;
 - (B) remove the unauthorized charge from the customer's bill;
 - (C) refund or credit to the customer the money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three billing cycles, pay interest at an annual rate established by the commission pursuant to §25.478(f) of this title (relating to Credit Requirements and Deposits) on the amount of any unauthorized charge until it is refunded or credited; and
 - (D) upon the customer's request, provide the customer, free of charge, with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal of the charge from the customer's electric bill.

- (2) A REP shall not:
 - (A) seek to terminate or disconnect electric service to any customer for nonpayment of an unauthorized charge;
 - (B) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the

customer. The customer remains obligated to pay any charges that are not in dispute; or

- (C) re-bill the customer for any unauthorized charge.
- (3) In the event that a REP erroneously files an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized, the REP must correct the credit report without delay.
- (4) A REP shall maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's electric bill and has notified the REP of the unauthorized charge. The record shall contain for each unauthorized charge:
- (A) the date the customer requested that the REP remove the unauthorized charge from the customer's electric bill;
 - (B) the date the unauthorized charge was removed from the customer's electric bill; and
 - (C) the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.
- (d) **Notice to customers.** Any bill sent to a residential and small commercial customer from a REP shall include a statement, prominently located on the bill, that if the customer believes the bill includes unauthorized charges, the customer should contact the REP to dispute such charges and, if not satisfied with the REP's review may file a complaint with the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326,

(512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

(e) **Compliance and enforcement.**

- (1) A REP shall provide proof of the customer's authorization and verification to the customer and/or the commission upon request.
- (2) A REP shall provide a copy of records maintained under the requirements of subsection (c)(4) of this section to the commission or commission staff upon request.

- (f) This section is effective June 1, 2004.

§25.482. Termination of Service.

- (a) **Applicability.** This section applies to retail electric providers (REPs) that did not have disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service) on May 31, 2004. In addition, this section shall apply to a transmission and distribution utility (TDU) where specifically stated. This section applies only with respect to customers who were subject to termination, but not disconnection, by their REP pursuant to §25.483 of this title on May 31, 2004. Beginning June 1, 2004, a REP shall not transfer any customers in accordance with subsection (b)(1) of this section if the REP is requesting disconnection for non-payment in accordance with §25.483 of this title. A REP shall inform the relevant TDU and affiliated REP as to whether or not the REP is requesting disconnections for non-payment.
- (b) **Termination policy.** A REP choosing to terminate its contract with a customer shall comply with the minimum standards in this section, or may have provisions in its terms of service that are more favorable to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require a REP to terminate its contract with a customer.
- (1) **Termination for non-payment.** A REP that was not authorized to disconnect for nonpayment pursuant to the provisions of §25.483(b) of this title on May 31, 2004 may terminate its contract with a customer for nonpayment of electric service charges and transfer the customer to the affiliated REP.

- (A) Prior to terminating service to a customer for non-payment, a REP shall issue notice of termination to the customer in accordance with subsection (f) of this section.
 - (B) If a customer makes payment or satisfactory payment arrangements prior to the final due date, specified in the termination notice to the customer, the REP shall continue serving the customer under the existing terms and conditions that were in effect prior to the issuance of a termination notice. Payment of the delinquent bill at the REP's authorized payment agency, if any, is considered payment to the REP.
 - (C) If a customer does not make a payment or satisfactory payment arrangements until after the final due date specified in the termination notice, the REP is not required to continue to serve the customer under the prior terms of service.
- (2) **Termination for reasons other than non-payment.** If a REP terminates service with a customer for reasons other than nonpayment (i.e., contract expiration), the REP shall transfer the customer to the provider of last resort (POLR), unless otherwise authorized by the commission.
- (c) **Termination prohibited.** A REP may not terminate its contract with a customer for any of the following reasons:
- (1) delinquency in payment for electric service by a previous occupant of the premises if the occupant is not of the same household;
 - (2) failure to pay for any charge that is not related to electric service;

- (3) failure to pay for a different type or class of electric service unless charges for such service were included on that account's bill at the time service was initiated;
 - (4) failure to pay charges arising from an underbilling, except for charges related to theft of service, in accordance with §25.480(e) of this title (relating to Bill Payment and Adjustments);
 - (5) failure to pay disputed charges until a determination as to the accuracy of the charges has been made by the REP;
 - (6) failure to pay disputed charges while an informal complaint filed under §25.485 of this title (relating to Customer Access and Complaint Handling) is pending or a complaint that has been formally docketed in accordance with §22.242 of this title (relating to Complaints) is pending;
 - (7) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or
 - (8) 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.
- (d) **Termination due to abandonment by the REP.** A REP shall not abandon a customer or a service area without advance written notice to its customers and the commission and approval from the commission. The notice shall contain the contents required by §25.493(c), relating to Acquisition and Transfer of Customers from one Retail Electric Provider to Another, with the exception of the information required by paragraph (c)(5)

of that section. In the event a REP terminates a customer's service due to abandonment, that REP shall not collect or attempt to collect penalties from that customer.

(e) **Termination of energy assistance clients.**

- (1) A REP shall not terminate service to a delinquent residential customer for a billing period in which the provider receives a pledge, letter of intent, purchase order, or other notification that an energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the termination notice, and the customer, by the due date in the termination 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 historical 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 termination 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 termination request.
- (4) A REP may terminate service to a customer if the energy assistance agency's payment is not received by the date agreed upon by the REP and the energy assistance provider or if the customer fails to pay any portion of the bill not covered by the pledge.

(f) **Termination notices.** Any termination notice issued by a REP shall:

- (1) not be issued before the first day after the bill is due.
- (2) be a separate mailing or hand delivered document with a stated date of termination with the words "termination notice" or similar language prominently displayed. The termination notice may be sent concurrently with a request for deposit, and a REP may send an additional notice by email or facsimile.
- (3) have a final due date in the termination notice that is not a holiday, weekend day, or any other day that the REP's personnel is not available to take payments, and that is not less than ten days after the notice is issued.

(g) **Contents of termination notice.** Any termination notice shall include the following information:

- (1) The reasons for the termination of service;
- (2) The actions, if any, that the customer may take to avoid the termination of service;
- (3) If the customer is in default, the amount of all fees or charges which will be assessed, if any, against the customer as a result of the default under the contract, as set forth in the REP's terms of service document provided to the customer;
- (4) The amount overdue, if applicable;
- (5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of termination or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility

Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. 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, if any, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs.
 - (8) A description of the activities that the REP will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.
- (h) **Notification of the registration agent.** After the expiration of the notice period in subsection (f) of this section, a REP shall notify the registration agent of a transfer request in a manner established by the registration agent so that the customer will receive service from the affiliated REP or the POLR.

- (i) **Customer's right to terminate service without penalty.** A customer may terminate service without penalty in the event:
- (1) The customer moves to another premises;
 - (2) Market conditions change and the terms of service document allows the REP to terminate service without penalty in response to changing market conditions; or
 - (3) A REP notifies the customer of a material change in the terms and conditions of the service agreement.
- (j) This section is effective June 1, 2004.

§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 large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)), unless the customer is receiving service under a contract entered into prior to September 24, 2002, the original term of which has not expired and the contract makes no provision for waiver of the customer's right to be transferred to the POLR for non-payment.

(2) Until June 1, 2004, and except as provided in subsection (d) of this section, only the affiliated REP or the POLR may authorize disconnection of residential and small non-residential customers, as those terms are defined in §25.43 of this title.

All REPs shall have such authority as of June 1, 2004, provided that prior to authorizing disconnections for non-payment in accordance with this subchapter, a REP shall:

- (A) test all necessary electronic transactions related to disconnections and reconnections of service;
- (B) except for the affiliated REP and POLR, send a notice to each retail customer stating the following: “As of June 1, 2004, the Public Utility Commission of Texas (commission) will allow (REP) to request disconnection of your service if you do not pay your electric bill by the final due date. If you have any questions about this change in policy, please call (REP’s toll-free phone number);” and
- (C) 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, has adequately tested the transactions described in subparagraph (A) of this paragraph, and sent the notice required in subparagraph (B) 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 title (relating to Meter Tampering); or
 - (7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the 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 due to abandonment by the POLR.** A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission, in accordance with §25.43 of this title.
- (h) **Disconnection of ill and disabled.** 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 establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.
- (1) Each time a customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:
- (A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the REP by the stated date of disconnection;
 - (B) Have the person's attending physician submit a written statement to the REP; and
 - (C) Enter into a deferred payment plan.
- (2) The prohibition against service disconnection provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer or physician.

- (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, or to provide prior notice of the disconnection, when not otherwise required.
- (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 (l) 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. 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;
 - (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) This section is effective June 1, 2004.

§25.485. Customer Access and Complaint Handling.

- (a) The purpose of this section is to ensure that retail electric customers have the opportunity for impartial and prompt resolution of disputes with REPs or aggregators.
- (b) **Customer access.**
- (1) Each retail electric provider (REP) or aggregator shall ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer's bills, terminate competitive service, and transact any other pertinent business.
 - (2) Telephone access shall be toll-free and shall afford customers a prompt answer during normal business hours.
 - (3) Each REP shall provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.
 - (4) Each REP and aggregator shall employ 24-hour capability for accepting a customer's rescission of the terms of service by telephone, pursuant to rights of cancellation in §25.474(j) of this title (relating to Selection of Retail Electric Provider).
- (c) **Complaint handling.** A residential or small commercial customer has the right to make a formal or informal complaint to the commission, and a terms of service agreement cannot impair this right. A REP or aggregator shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by

third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the commission if dissatisfied with the results of the alternative dispute resolution.

- (d) **Complaints to REPs or aggregators.** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to a REP or aggregator. The REP or aggregator shall promptly investigate and advise the complainant of the results within 21 days. A customer who is dissatisfied with the REP's or aggregator's review shall be informed of the right to file a complaint with the REP's or aggregator's supervisory review process, if available, and, if not available, with the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP or aggregator shall result in a decision communicated to the complainant within ten business days of the request. If the REP or aggregator does not respond to the customer's complaint in writing, the REP or aggregator shall orally inform the customer of the ability to obtain the REP's or aggregator's response in writing upon request.
- (e) **Complaints to the commission.**
- (1) **Informal complaints.**

- (A) If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator shall advise the complainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, Internet website address: www.puc.state.tx.us, TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.
- (B) Complainants should include sufficient information in a complaint to identify the complainant and the company for which the complaint is made and describe the issue specifically. The following information should be included in the complaint:
- (i) The account holder's name, billing and service addresses, and telephone number;
 - (ii) The name of the REP or aggregator;
 - (iii) The customer account number or electric service identifier (ESI-ID);
 - (iv) An explanation of the facts relevant to the complaint;
 - (v) The complainant's requested resolution; and
 - (vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

- (C) All REPs and aggregators shall provide the commission an email address to receive notification of customer complaints from the commission.
 - (D) The REP or aggregator shall investigate all informal complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP or aggregator.
 - (E) The commission shall review the complaint information and the REP or aggregator's response and notify the complainant of the results of the commission's investigation.
- (2) While an informal complaint process is pending:
- (A) The REP or aggregator shall not initiate collection activities, including termination or disconnection of service (as appropriate) or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.
 - (B) A customer shall be obligated to pay any undisputed portion of the bill and the REP may pursue termination or disconnection of service (as appropriate) for nonpayment of the undisputed portion after appropriate notice.
- (3) The REP or aggregator shall keep a record for two years after closure by the commission of all informal complaints forwarded to it by the commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or rates and charges that are not regulated by the commission, but

which are disclosed to the customer in the terms of service disclosures, need not be recorded.

- (4) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).
- (f) This section is effective June 1, 2004.

§25.491. Record Retention and Reporting Requirements.

- (a) **Application.** This section does not apply to a municipally owned utility where it offers retail electric power or energy outside its certificated service territory or to a retail electric provider (REP) that is an electric cooperative.
- (b) **Record retention.**
- (1) Each REP and aggregator shall establish and maintain records and data that are sufficient to:
 - (A) Verify its compliance with the requirements of any applicable commission rules; and
 - (B) Support any investigation of customer complaints.
 - (2) All records required by this subchapter shall be retained for no less than two years, unless otherwise specified.
 - (3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter shall be provided to the commission within 15 calendar days of its request.
- (c) **Annual reports.** On June 1 of each year, a REP shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)) to the commission and the Office of Public Utility Counsel (OPUC) and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:

- (1) The number of residential customers served, by nine-digit zip code and census tract, by month;
- (2) The number of written denial of service notices issued by the REP, by month, by customer class, by nine-digit zip code and census tract;
- (3) The number and total aggregated dollar amount of deposits held by the REP, by month, by customer class, by nine-digit zip code and census tract;
- (4) Information relating to the REP's bill payment assistance program for residential electric customers required by §25.480(g)(2)(B) of this title (relating to Bill Payment and Adjustments);
- (5) The number of complaints received by the REP from residential customers for the following categories by month, by nine-digit zip code and census tract:
 - (A) Refusal of electric service, which shall include all complaints pertaining to the implementation of §25.477 of this title (relating to Refusal of Electric Service);
 - (B) Marketing and quality of customer service, which shall include complaints relating to the interfaces between the customer and the REP, such as, but not limited to, call center hold time, responsiveness of customer service representatives, and implementation of §25.472 of this title (relating to Privacy of Customer Information), §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers), §25.473 of this title (relating to Non-English Language Requirements), §25.476 of this title (relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact), and §25.484 of this

- title (relating to Texas Electric No-Call List), and which shall not include issues for which the REP is not responsible, such as, but not limited to, power quality, outages, or technical failures of the registration agent;
- (C) Unauthorized charges, which shall encompass all complaints pertaining to §25.481 of this title (relating to Unauthorized Charges);
 - (D) Enrollment, which shall encompass all complaints pertaining to the implementation of §25.474 of this title (relating to the Selection of Retail Electric Provider), §25.478 of this title (relating to Credit Requirements and Deposits), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
 - (E) Accuracy of billing services, which shall encompass all complaints pertaining to the implementation of §25.479 of this title (relating to Issuance and Format of Bills); and
 - (F) Collection and service termination, and disconnection, which shall encompass all complaints pertaining to the implementation of §25.480 of this title, §25.482 of this title (relating to Termination of Service), and §25.483 of this title (relating to Disconnection of Service).
- (6) In reporting the number of informal complaints received pursuant to paragraph (4) of this subsection, a REP may identify the number of complaints in which it has disputed categorization or assignment pursuant to the provisions set forth in §25.485 of this title (relating to Customer Access and Complaint Handling).

- (d) **Additional information.** Upon written request by the commission, a REP or aggregator shall provide within 15 days any information, including but not limited to marketing information, necessary for the commission to investigate an alleged discriminatory practice prohibited by §25.471(c) of this title (relating to General Provisions of the Customer Protection Rules).
- (e) This section is effective June 1, 2004.

§25.493. Acquisition and Transfer of Customers from one Retail Electric Provider to Another.

- (a) **Application.** This section applies when a retail electric provider (REP) acquires customers from another REP due to acquisition, merger, bankruptcy, or other similar reason.
- (b) **Notice requirement.** Any REP other than a provider of last resort (POLR) that will acquire customers from another REP due to acquisition, merger, bankruptcy, or any other similar reason, shall provide notice the notice required by subsection (c) or (d) of this section to every affected customer. The notice may be in a billing insert or separate mailing, at least 30 days prior to the transfer. If legal or regulatory constraints prevent the sending of advance notice, the notice shall be sent promptly after all legal and regulatory impediments have been removed. The POLR shall comply with the requirements of §25.43 of this title (relating to Provider of Last Resort (POLR)). Transferring customers from one REP to another does not require advance commission approval, unless the transfer is due to abandonment of a REP pursuant to §25.482(d) of this title (relating to Termination of Service). The acquiring REP shall also inform the commission or commission staff of the acquisition of customers.
- (c) **Contents of notice for adverse changes in terms of service.** If the transfer of a customer will materially change the terms of service for the affected customer in an adverse manner, the notice shall:

- (1) identify the current and acquiring REP;
 - (2) explain the reasons for the transfer of the customer's account to the new REP;
 - (3) explain that the customer may select another REP without penalty due to the adverse change in the terms of service, and if the customer desires to do so, that they should contact another REP;
 - (4) identify the date that customers will be or were transferred to the acquiring REP;
 - (5) provide the new terms of service, including the Electricity Facts Label of the acquiring REP; and
 - (6) provide a toll-free number for a customer to call for additional information and the identity of the party being called.
- (d) **Contents of notice for transfers with no adverse change in terms of service.** If a transfer of a customer will not result in a material adverse change to the terms of service for the affected customer, the notice is not required to contain the information required by subsection (c)(3) of this section.
- (e) **Process to transfer customers.** The registration agent shall develop procedures to facilitate the expeditious transfer of large numbers of customers from one REP to another.
- (f) This section is effective June 1, 2004.

§25.495. Unauthorized Change of Retail Electric Provider.

- (a) **Process for resolving unauthorized change of retail electric provider (REP).** If a REP is serving a customer without proper authorization pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) shall follow the procedures set forth in this subsection.
- (1) Either the original REP or switching REP shall notify the registration agent of the unauthorized change of REP as promptly as possible, using the process approved by the registration agent.
 - (2) As promptly as possible following receipt of notice by the REP, the registration agent shall facilitate the prompt return of the customer to the original REP, or REP of choice in the case of a move-in.
 - (3) The affected REPs, the registration agent, and the TDU shall take all actions necessary to return the customer to the customer's original REP, or REP of choice in the case of a move-in, as quickly as possible. The original REP does not need to obtain an additional authorization from the customer pursuant to §25.474 of this title in order to effectuate the provision of this section.
 - (4) The affected REPs, the registration agent, and the TDU shall take all actions necessary to bill correctly all charges, so that the end result is that:
 - (A) the REP that served the customer without proper authorization shall pay all transmission and distribution charges associated with returning the customer to its original REP, or REP of choice in the case of a move-in;

- (B) the original REP has the right to bill the customer pursuant to §25.480 of this title (relating to Bill Payment and Adjustment) at the price disclosed in its terms of service from either:
 - (i) the date the customer is returned to the original REP; or
 - (ii) any prior date chosen by the original REP for which the original REP had the authorization to serve the customer.
 - (C) the REP that served the customer without proper authorization shall refund all charges paid by the customer for the time period for which the original REP ultimately bills the customer within five business days after the customer is returned to the original REP, or REP of choice in the case of a move-in;
 - (D) the customer shall pay no more than the price at which the customer would have been billed had the unauthorized switch or move-in not occurred;
 - (E) the TDU has the right to seek collection of non-bypassable charges from the REP that ultimately bills the customer under subparagraph (B) of this paragraph; and
 - (F) the REP that ultimately bills the customer under subparagraph (B) of this paragraph is responsible for non-bypassable charges and wholesale consumption for the customer.
- (5) The original REP shall provide the customer all benefits or gifts associated with the service that would have been awarded had the unauthorized switch or move-in

not occurred, upon receiving payment for service provided during the unauthorized change;

- (6) The affected REPs shall communicate with the customer as appropriate throughout the process of returning the customer to the original REP or REP of choice and resolving any associated billing issues.
- (7) In a circumstance where paragraph (4) of this subsection is not applicable or its requirements cannot be effectuated, the market participants involved shall work together in good faith to rectify the unauthorized switch or move-in in a manner that affords the customer and market participants involved a level of protection comparable to that required in this subsection.

(b) Customer complaints, record retention and enforcement.

- (1) Customers may file a complaint with the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for an alleged failure to comply with the provisions of this section.
- (2) Upon receipt of a customer complaint, each REP shall:
 - (A) respond to the commission within 21 calendar days after receiving the complaint and in the response to the complaint provide to the commission all documentation relied upon by the REP and related to the:
 - (i) authorization and verification to switch the customer's service; and
 - (ii) corrective actions taken to date, if any.
 - (B) cease any collection activity related to the alleged unauthorized switch or move-in until the complaint has been resolved by the commission.

(c) This section is effective June 1, 2004.

§25.497. Critical Care Customers.

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

(1) **Critical load public safety customer** — A customer for whom electric service is considered crucial for the protection or maintenance of public safety, as defined in §25.52 of this title (relating to Reliability and Continuity of Service) is a "critical load public safety customer." Such customer shall qualify as a "critical load" under §25.52(c)(1) of this title and qualify for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the transmission and distribution utility's (TDU) tariff for retail electric delivery service. In order to be eligible for this status, the customer must have a determination of eligibility pending with or approved by the TDU. The customer shall notify the retail electric provider (REP) that the customer may qualify. The REP shall convey any such notice to the TDU. Pursuant to a process determined collaboratively between the TDU and REP, eligibility will be determined through a collaborative process between the customer, REP and TDU.

(2) **Critical care industrial customer** — An industrial customer, for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition on the retail customer's premises, is a "critical care industrial customer." Such customer shall qualify for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the TDU's tariff for retail electric delivery service. In order to be eligible for this

status, the customer must have a determination of eligibility pending with or approved by the TDU. The customer shall notify the REP that the customer may qualify. The REP shall convey any such notice to the TDU. Eligibility will be determined through a collaborative process between the customer, REP, and TDU.

- (3) **Critical care residential customer** — A residential customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition is a "critical care residential customer." Such customer shall qualify as a "critical load" under §25.52(c)(1) of this title and for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the TDU's tariff for retail electric delivery service. In order to be eligible for this status, the customer must have the commission standardized Critical Care Eligibility Determination Form pending with or approved by the TDU. The customer shall notify the REP that the customer may qualify. The REP shall convey any such notice to the TDU. Eligibility will be determined by the TDU, pursuant to the procedures described in subsection (b) of this section.

(b) Procedure for qualifying critical care residential customers.

- (1) A REP shall advise customers of their rights relating to critical care designation in the terms of service documents.
- (2) Upon a customer's request, the REP shall provide to the customer the commission's standardized Critical Care Eligibility Determination Form via the method of transmittal agreed to by the customer.

- (3) The customer shall then return the completed form to the REP.
- (4) After the REP receives the form, it shall evaluate the form for completeness, and if the form is complete, the REP shall then forward the form to the appropriate TDU. If the form is incomplete, the REP shall notify the customer and return the form to the customer, informing the customer of what information is needed to complete the form.
- (5) A customer shall be considered "qualified" when the TDU receives the completed Critical Care Eligibility Determination Form, but the TDU shall remove the "qualified" designation should the customer ultimately not qualify after evaluation of the information by the TDU.
- (6) If the TDU needs additional information from the customer, the TDU shall notify the REP before contacting the customer to request such information.
- (7) The evaluation and qualification process shall not take longer than one month from the date the TDU receives the Critical Care Eligibility Determination Form.
- (8) The TDU shall first notify the customer's REP and then the customer of its ultimate qualification determination.
- (9) A customer may appeal the eligibility determination directly to the TDU. The TDU may set guidelines for the appeals process. A TDU shall first notify the customer's REP and then the customer of any change in qualification based on the appeal. A TDU shall inform a customer of the customer's option to file a complaint with the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) if the customer is dissatisfied with the results of the appeal.

- (10) Qualification is valid for one year from date qualification was granted. If a TDU renews all customers once a year, regardless of qualification date, a renewal shall not be required for customers qualified less than one year.
 - (11) The TDU is responsible for notifying the customer's current REP of record 60 days prior to the annual expiration date of the qualification, so the REP can begin the renewal process.
 - (12) To commence renewal, the REP shall provide the customer with the commission standardized Critical Care Eligibility Determination Form and shall inform the customer that, unless renewed by the date specified by the TDU, the customer's critical care designation will expire. The renewal process shall be the same as the initial qualification process.
- (c) **Effect of critical care status on payment obligations.** Qualification under this section does not relieve the customer of the obligation to pay the REP or the TDU for services rendered. However, a critical care residential customer may qualify for deferral of disconnection by following the procedures set forth in §25.483(h) of this title (relating to Disconnection of Service) or Section 5.3.7.4(3) of the TDU's tariff for retail electric delivery service or may contact the REP regarding other forms of payment assistance.
- (d) This section is effective June 1, 2004.

CRITICAL CARE ELIGIBILITY DETERMINATION FORM

Completion by Retailer

ESI ID: _____

Customer Name associated with ESI ID: _____

Service Address: _____

Mailing Address (if different than Service Address): _____

Date Form Sent to Customer: _____

Completion by Customer

Patient Name (please print): _____

Telephone Number: Home _____ Work _____

Secondary Contact Name: _____

Relationship: _____

Phone Number for Secondary Contact _____

Patient's Signature: _____ Date: _____

Completion by Patient's Physician

Physician Name: _____

Physician Address: _____

Physician Phone Number: _____

Medical Equipment Information

Type of Electric, Life Sustaining Equipment Used: _____

Medical Diagnosis: _____

Does customer require on-site back-up capabilities or other alternatives for loss of normal electrical service? *(please mark one)* Yes No

If Yes, please describe: _____

How long can patient sustain without electrical service? *(number of hours)* _____

Is condition life threatening without electrical service? *(please mark one)* Yes No

Physician's Signature: _____ Date: _____

This qualification requires renewal one year from the date you are qualified. The information on this form may be subject to verification and additional information may be required from you or your physician.

Qualification pursuant to this form does not guarantee an uninterrupted power supply, and if electricity is a necessity, you may need to make other arrangements.

This agency hereby certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.5, Definitions, §25.471, General Provisions of Customer Protection Rules; §25.472, Privacy of Customer Information; §25.473, Non-English Language Requirements; §25.474, Selection of Retail Electric Provider; §25.475, Information Disclosures to Residential and Small Commercial Customers; §25.476, Labeling of Electricity with Respect to Fuel Mix and Environmental Impact; §25.477, Refusal of Electric Service; §25.478, Credit Requirements and Deposits; §25.479, Issuance and Format of Bills; §25.480, Bill Payment and Adjustments; §25.481, Unauthorized Charges; §25.482, Termination of Service; §25.483, Disconnection of Service; §25.485, Customer Access and Complaint Handling; §25.491, Record Retention and Reporting Requirements; §25.493, Acquisition and Transfer of Customers from one Retail Electric Provider to Another, §25.495, Unauthorized Change of Retail Electric Provider; and §25.497, Critical Care Customers, are hereby adopted with changes to the text as proposed. The commission also adopts a new standardized Critical Care Eligibility Determination Form to accompany §25.497.

ISSUED IN AUSTIN, TEXAS ON THE 29th DAY OF APRIL 2004.

PUBLIC UTILITY COMMISSION OF TEXAS

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, CHAIRMAN