

PROJECT NO. 33025

RULEMAKING TO AMEND § PUBLIC UTILITY COMMISSION
COMMISSION SUBSTANTIVE RULES §
CONSISTENT WITH §25.43, PROVIDER § OF TEXAS
OF LAST RESORT (POLR) §

ORDER ADOPTING AMENDMENTS TO §§25.5, 25.472, 25.473, 25.474, 25.475, 25.478, 25.480, 25.481, 25.483, 25.485, 25.488, 25.491, AND 25.493, AND REPEAL OF §25.482 AS APPROVED AT THE FEBRUARY 9, 2007 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts the amendments to §25.5, relating to Definitions; §25.472, relating to Privacy of Customer Information; §25.473, relating to Non-English Language Requirements; §25.474, relating to Selection of Retail Electric Provider; §25.481, relating to Unauthorized Charges; §25.491, relating to Record Retention and Reporting Requirements; and §25.493, relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another with no changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9177); and repeals §25.482, relating to Termination of Service as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9183). The commission adopts §25.475, relating to Information Disclosures to Residential and Small Commercial Customers; §25.478, relating to Credit Requirements and Deposits; §25.480, relating to Bill Payment and Adjustments; §25.483, relating to Disconnection of Service; §25.485, relating to Customer Access and Complaint Handling; §25.488, relating to Procedures for a Premise with No Service Agreement with changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9177). The amendments and repeal, change or eliminate these sections to comport with §25.43, Provider of Last Resort (POLR), which detail when a customer may receive or be placed on POLR service. Recent amendments to §25.43 contemplated that all Retail Electric Providers (REPs) would request disconnection for customers who have not paid their bills, rather than continuing current

procedures that permit a REP to transfer a non-paying customer to the Affiliated REP. The amendments also make other changes to conform various customer protection rules to the new §25.43. These rules are competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 33025 is assigned to this proceeding.

The commission received comments from Alliance for Retail Markets, CPL Energy, LP, Direct Energy, LP, First Choice Power, LP, Gexa Energy, LP, Green Mountain Energy Company, Reliant Energy Retail Services, LLC, Stream Energy, Texas Energy Association for Marketers, TXU Energy Retail, LP, and WTU Retail Energy, LP (collectively “Retail Electric Provider (REP) Coalition”); and Texas Energy Association for Marketers, Liberty Power Texas, LLC, and Strategic Energy (collectively, “Competitive REPs”).

Responses to the preamble question:

In the preamble, the commission requested that interested parties provide comments on the following question:

Is there any other language in the Substantive Rules not identified herein that needs to be amended so that it comports with §25.43, POLR? If so, please suggest how the language should be amended.

The REP Coalition noted that §25.475(f), Electricity Facts Label (EFL), prescribes language that must be included in the EFL for a variable rate product. The REP Coalition stated that because

the POLR rate is variable, paragraph (1)(C) would seem to require disclosure of an average price for residential and small commercial (<50 kW peak demand) customers. The REP Coalition claimed that due to the nature of POLR service, a meaningful average price is not known and historic prices are by no means indicative of what a customer might be billed while on a POLR rate. The REP Coalition pointed out that pursuant to §25.43(k)(1)(A) and §25.43(k)(1)(B), the minimum price for POLR service for residential and small commercial customers is known, and recommended that the disclosure language be modified to allow for the POLR EFL to indicate that the rates shown are the “minimum” rates for POLR service. The REP Coalition recommended that in the alternative, the rule should be amended so that no total cents per kWh price disclosure is required on any POLR EFL.

Commission response

The commission agrees with the REP Coalition’s recommendation to modify the disclosure language to allow for the POLR EFL to indicate that the rates shown are the “minimum” rates for POLR service, and has made the recommended changes. As modified, this requirement still only applies to residential and small commercial POLR customer classes, and the change only applies to POLR service and not plans linked to POLR pricing.

The REP Coalition recommended a corresponding change to §25.475(f)(6), which details the format of the EFL. The REP Coalition recommended that for POLR customers, the language should be “Minimum price per kilowatt-hour” instead of “Average price per kilowatt-hour.”

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

The REP Coalition included an additional issue in their response to the commission's question posed in the preamble, regarding the generic "Your Rights as a Customer" document provided on the PUC website. The REP Coalition suggested that once §25.482 is repealed upon conclusion of this project, the commission should consider removing the references to terminating service as it is allowed under this section.

Commission response

The commission agrees that such changes will need to be made upon conclusion of this project.

§25.475, Terms of service document

The REP Coalition proposed to delete §25.475(d)(5)(N)(ii). They argued that this no longer applies since a REP can no longer terminate service to a particular customer and transfer the customer to POLR based on changing market conditions.

Commission response

The commission disagrees with this proposed change. This language was originally located in §25.482 to protect customers from one sided contracting on the part of the REP. The commission previously determined that if the REP has the ability to terminate the service agreement if market conditions change, the customer should also have that ability and sees no need to eliminate that ability now. While it is true that the customer can no longer be

transferred to the POLR in these circumstances, the customer should retain the right to be released from its service agreement if market conditions change and the REP has the ability to cancel the contract if market conditions change. Additionally, it needs to be clarified that §25.475(d)(5)(N) gives the customer the ability to terminate service “without penalty.” This language currently appears in §25.482(i) but was inadvertently deleted when the subsection was moved from the current §25.482 to the proposed §25.475. The commission has re-inserted the “without penalty” language as the clarification is essential to the original intent of subparagraph (N).

§25.478, Credit Requirements and Deposits

The REP Coalition recommended that the word “terminate” not be deleted in §25.478(j)(3), as proposed. The REP Coalition explained that although the commission’s rules under this instant project will no longer contemplate that a REP can terminate a customer and drop them to POLR, a customer could nonetheless terminate its own service. The REP Coalition proffered the example that any time a customer switches to another REP or cancels its service, service with the previous REP is terminated, and the REP should no longer be permitted to hold a deposit or letter of guarantee for amounts in excess of any unpaid bills for service.

Commission response

The commission agrees with the REP Coalition and has made the recommended changes with a minor modification to their proposed language. The commission alters the REP Coalition’s recommended language from “or terminate by the customer” to “or the service is terminated by the customer,” for clarity.

§25.480, Bill Payment and Adjustments

The REP Coalition suggested deleting the “as appropriate” language from §25.480(j)(6)(F). The REP Coalition stated that the parenthetical “as appropriate” was included in the existing rules to indicate that either “disconnection” or “termination” applied, depending on the REP’s status with respect to disconnection rights. The REP Coalition commented that with the instant rule amendments, only disconnection applies and the parenthetical is no longer necessary.

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

§25.483, Disconnection of Service

The REP Coalition recommended deleting §25.483(b)(1). The REP Coalition claimed that as amended, subsection (b)(2) makes subsection (b)(1) superfluous, as all REPs will have the authority to authorize disconnection of all customers pursuant to commission rules. The REP Coalition stated that there is no longer a reason to bifurcate the authority to disconnect by customer classes. The REP Coalition further stated that §25.43 does not allow a REP to transfer its customer to the POLR for non-payment. The REP Coalition concluded that the provision in §25.483(b)(1), which allows medium and large non-residential customers still receiving service under a contract entered into prior to September 24, 2002, to be transferred to the POLR for non-payment, is no longer valid.

Commission response

The commission disagrees with the REP Coalition that §25.483(b)(1) should be deleted in its entirety. The authority to disconnect medium non-residential and large non-residential customers is differentiated from the authority to disconnect residential and small non-residential customers by the fact that the latter is contingent upon the satisfaction of the requirements given in subsections (b)(2)(A) through (b)(2)(C). If the commission were to delete subsection (b)(1) in its entirety, REPs seeking to disconnect medium non-residential and large non-residential customers would be committed to requirements that have not been in place up to this time. The commission sees no reason to impose such requirements at this time. The commission does note, however, that its Proposal for Publication of October 27, 2006, inadvertently proposed amendment of §25.483(b)(2) that would eliminate the fact that the requirements of subsections (b)(2)(A) through (b)(2)(C) only apply to disconnection authority related to residential and small non-residential customers. The commission has modified the proposed rule to address this inconsistency.

As for the REP Coalition's comment regarding the exception for customers receiving service under a contract entered into prior to September 24, 2002, the commission agrees that such an exception is no longer warranted. This exception was created pursuant to a previous version of §25.43, but was not included in the current POLR rule that became effective on July 31, 2006. If the exception in §25.483(b)(1) were retained, REPs would have no recourse against customers with such contracts who fail to pay. The REP could neither disconnect the customer nor terminate the customer to POLR, as POLRs are no longer required to serve customers for any reason other than the request of the customer

or a mass transition. The rule language has been modified accordingly to reflect the REP Coalition's comment.

The REP Coalition suggested relocating and revising proposed §25.483(b)(2)(B), by creating a new §25.475(d)(5)(O). The REP Coalition stated that placing the notice requirement next to other requirements in the terms of service improves the organization of those requirements and will lessen the chance that a REP may inadvertently omit this notice when creating the terms of service document. The REP Coalition stated that the revised language recommended is designed to help this section comport with the continuation of §25.475(d)(5).

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

§25.485, Customer Access and Complaint Handling

The REP Coalition suggested deleting the “as appropriate” language from §25.485(e)(2)(A) and §25.485(e)(2)(B). The REP Coalition stated that the parenthetical “as appropriate” was included in the existing rules to indicate that either “disconnection” or “termination” applied, depending on the REP's status with respect to disconnection rights. The REP Coalition commented that with the instant rule amendments, only disconnection applies and the parenthetical is no longer necessary.

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

§25.488, Procedures for a Premise with No Service Agreement

The REP Coalition noted that the amended language in subsection (b)(2)(B) imposes the same requirement as subsection (b)(2)(A), and recommended that subsection (b)(2)(B) be deleted. The REP Coalition explained that since disconnection by a REP is the only option available under the instant rule amendments, all requirements are contained in subparagraph (A).

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

The REP Coalition suggested that the commission use the word “occupant” instead of “customer” when referring to a premise with no service agreement. The REP Coalition pointed out that a “customer” has a service agreement with the REP, whereas an occupant does not have a service agreement. The REP Coalition claimed that using the term “occupant” in §25.488, would reduce confusion and consistently apply the same term through the rule language.

Commission response

The commission agrees with the REP Coalition and has made the recommended changes.

The Competitive REPs recommended that the proposed rules be amended to recognize the ability of the REPs to disconnect a customer after the expiration of their contract, with proper notice. The Competitive REPs stated that such a modification would address the repeal of §25.482(b)(2), and ensure that this rulemaking does not mandate that a REP serve a customer

after contract expiration or force a REP to renew a contract – thereby imposing an obligation to serve on all competitive REPs. The Competitive REPs suggested that given the structure of the rules as amended in this project, this issue would be best addressed by amending §25.488(b) to include the following language: “...or the occupant is a customer whose prior service agreement has expired or is no longer in effect.”

Commission response

The commission agrees with the Competitive REPs and has made the recommended changes.

These amendments and repeal are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, in particular, §17.004 and §39.101, which direct the commission to implement customer protections for electric customers, and §39.106, which directs the commission to designate providers of last resort.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.101 and 39.106.

§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) – (89) (No change.)

(90) **Provider of last resort (POLR)** — A retail electric provider (REP) certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with §25.43 of this title (relating to Provider of Last Resort (POLR)).

(91) – (144) (No change.)

§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.
- (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 of electric service with respect to the customer's account.

§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 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.

§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's receipt of the terms of service document. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the applicant within three federal business days. Any REP receiving an untimely notice of rescission from the applicant shall inform the applicant that the applicant has a right to select another REP and may do so by contacting that REP. The REP shall also inform the applicant that the applicant will be responsible for charges from the REP for service

provided until the applicant switches to another REP. The right of rescission is not applicable to an applicant requesting a move-in.

- (k) **Submission of an applicant's switch or move-in request to the registration agent.** A REP 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 POLR pursuant to §25.43 of this title (relating to Provider of Last Resort (POLR)) when the customer's REP of record defaults or otherwise ceases to provide service. Nothing in this subsection implies that the customer is accepting a contract with the POLR for a specific term;
 - (2) transferred to the competitive affiliate of the POLR pursuant to §25.43(o) of this title;

- (3) transferred to another REP in accordance with section §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another); or
 - (4) transferred from one premise to another premise without a change in REP and without a material change in the terms of service.
- (n) **Fees.** A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless 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.

§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 or applicant 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;

(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;

(N) A statement of customer's ability to terminate service without penalty in the event:

(i) The customer moves to another premises;

(ii) Market conditions change and the terms of service document allows the REP to terminate service without penalty in response to changing market conditions; or

(iii) A REP notifies the customer of a material change in the terms and conditions of the service agreement; and

(O) A statement informing the customer of the REP's authority to order disconnection of the customers for non-payment.

(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).” Notwithstanding the forgoing, for POLR service the disclosure shall state the following: “This price disclosure is an example based on minimum service prices – your average price for electric service will vary according to your usage and (insert description of the basis for and 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 (if applicable)]																					
[Date]																					
	Average monthly use:	500kWh	1,000kWh																		
	Average price per kilowatt-hour:	[x.x]¢	[x.x]¢																		
	[For POLR use: Minimum price per kilowatt-hour:	[x.x]¢	[x.x]¢																		
Electricity price	<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>																				
Contract	<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>																				
Sources of power generation		<i>This product</i>	<i>Texas (for comparison)</i>																		
	Coal and lignite	[xx]%	[xx]%																		
	Natural gas	[xx]%	[xx]%																		
	Nuclear	[xx]%	[xx]%																		
	Renewable energy	[xx]%	[xx]%																		
	Other	[xx]%	[xx]%																		
	Total	100%	100%																		
Emissions and waste per 1,000 kWh generated	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Carbon dioxide</td> <td style="width: 40%; text-align: center;">89</td> <td style="width: 30%;"></td> </tr> <tr> <td>Nitrogen oxides</td> <td style="text-align: center;">112</td> <td></td> </tr> <tr> <td>Particulates</td> <td style="text-align: center;">56</td> <td></td> </tr> <tr> <td>Sulfur dioxide</td> <td style="text-align: center;">23</td> <td></td> </tr> <tr> <td>Nuclear waste</td> <td style="text-align: center;">10</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;"><i>Better than Texas average</i></td> <td style="text-align: center;"><i>Worse than Texas average</i></td> </tr> </table> <p style="text-align: center;">(Indexed values; 100=Texas average)</p>			Carbon dioxide	89		Nitrogen oxides	112		Particulates	56		Sulfur dioxide	23		Nuclear waste	10			<i>Better than Texas average</i>	<i>Worse than Texas average</i>
Carbon dioxide	89																				
Nitrogen oxides	112																				
Particulates	56																				
Sulfur dioxide	23																				
Nuclear waste	10																				
	<i>Better than Texas average</i>	<i>Worse than Texas average</i>																			

Type used in this format

Title: 12 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 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.

§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) 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 as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. 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) A residential customer or applicant seeking to establish service with a REP other than an affiliated REP or POLR can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (B) of this paragraph. Notice of these options for customers or applicants shall be included in any written or oral notice to a customer or applicant when a deposit is requested. A REP other than an affiliated REP or POLR may establish additional methods by which a customer or applicant not meeting the criteria of subparagraphs (A) or (B) of this paragraph 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) The residential customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.
 - (B) 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 as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. 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 REP.
- (5) 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.
- (6) 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 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 disconnection for nonpayment of the guaranteed amount only if the disconnection of service was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection 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 disconnected, or the service is terminated by the customer, 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 disconnected, or the service is terminated by the customer, 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.

§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 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 disconnection notice before a payment arrangement was made, that disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be disconnected after the later of the due date for the payment arrangement or the disconnection date indicated in the notice, without issuing an additional disconnection notice.

(j) **Deferred payment plans.** 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 disconnection of service if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection; 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 disconnection of service if a customer does not meet the terms of a deferred payment plan. However, service shall not be disconnected until appropriate notice has been issued, pursuant to §25.483 of this title, notifying the customer that the customer has not met the terms of the plan. The requirements of subsection (j)(3) of this section shall not apply with respect to a customer who has received notice of a 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 disconnected for non-payment of non-electric services.

§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 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.

§25.482. Termination of Service (repeal)

§25.483. Disconnection of Service.

- (a) **Disconnection and reconnection policy.** Only a transmission and distribution utility (TDU), municipally owned utility, or electric cooperative shall perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate TDU, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the protocols established by the registration agent, and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall comply with the requirements in this section. Nothing in this section requires a REP to request that a customer's service be disconnected.
- (b) **Disconnection authority.**
- (1) Any REP may authorize the disconnection of a medium non-residential or large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)).
 - (2) Except as provided in subsection (d) of this section, all REPs shall have the authority to authorize the disconnection of residential and small non-residential customers pursuant to commission rules. Prior to authorizing disconnections for non-payment in accordance with this paragraph, a REP shall:
 - (A) test all necessary electronic transactions related to disconnections and reconnections of service; and
 - (B) file an affidavit from an officer of the company, in a project established by the commission for this purpose, affirming that the REP understands and

has trained its personnel on the commission's rule requirements related to disconnection and reconnection, and has adequately tested the transactions described in subparagraph (A) of this paragraph.

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

- (1) failure to pay any outstanding bona fide debt for electric service owed to the REP or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP;
- (2) failure to comply with the terms of a deferred payment agreement made with the REP;
- (3) violation of the REP's terms and conditions on using service in a manner that interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;
- (4) failure to pay a deposit as required by §25.478 of this title (relating to Credit Requirements and Deposits); or
- (5) failure of the guarantor to pay the amount guaranteed, when the REP has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

- (d) **Disconnection without prior notice.** Any REP or TDU may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:
- (1) Where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the REP, or its agent, shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;
 - (2) Where service is connected without authority by a person who has not made application for service;
 - (3) Where service is reconnected without authority after disconnection for nonpayment;
 - (4) Where there has been tampering with the equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative; or
 - (5) Where there is evidence of theft of service.
- (e) **Disconnection prohibited.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:
- (1) Delinquency in payment for electric service by a previous occupant of the premises;
 - (2) Failure to pay for any charge that is not for electric service regulated by the commission, including competitive energy service, merchandise, or optional services;

- (3) Failure to pay for a different type or class of electric service unless charges for such service were included on that account's bill at the time service was initiated;
 - (4) Failure to pay charges resulting from an underbilling, except theft of service, more than six months prior to the current billing;
 - (5) Failure to pay disputed charges, except for the amount not under dispute, until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;
 - (6) Failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this 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 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.

(h) **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.
- (i) **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.

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

(1) The REP having disconnection authority under the provisions of subsection (b) of this section shall send a notice to the customer as required by subsection (k) of this section. At the time such notice is issued, the REP, or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP shall post a minimum of five notices in English and Spanish in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: “Notice to residents of (name and address of apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection).”

(k) **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; and
 - (4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.
- (1) **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.
- (m) **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.

§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 disconnection of service 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 disconnection of service 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).

§25.488. Procedures for a Premise with No Service Agreement.

- (a) **Applicability.** This section applies to all retail electric providers (REPs).
- (b) **Service to premise with no service agreement.** If a REP finds that a current occupant at a premise for which the provider is shown as the REP of record in the ERCOT or TDU system is not the customer with whom the REP currently has a service agreement for retail electric service or the occupant is a customer whose prior service agreement has expired or is no longer in effect:
- (1) the REP may establish service with the occupant. The REP shall obtain verification of the occupant's authorization to establish service with the REP consistent with the requirements of §25.474 of this title (relating to Selection or Change of Retail Electric Provider); or
 - (2) the REP with disconnection authority may issue a disconnection notice to the current occupant. The notice shall contain the following:
 - (A) The date the disconnection will occur, provided that the date shall not be sooner than ten days from the date the notice is issued;
 - (B) What actions the occupant must take if that occupant believes the notice is in error or desires to establish service with the REP; and
 - (C) A statement that informs the occupant of the right to obtain service from another licensed REP and that information about other REPs can be obtained from the commission.

§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, 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).

§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. 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.5, relating to Definitions; §25.472, relating to Privacy of Customer Information; §25.473, relating to Non-English Language Requirements; §25.474, relating to Selection of Retail Electric Provider; §25.481, relating to Unauthorized Charges; §25.491, relating to Record Retention and Reporting Requirements; and §25.493, relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another; and the repeal of §25.482, relating to Termination of Service are hereby adopted with no changes to the text as proposed. It is ordered by the Public Utility Commission of Texas that §25.475, relating to Information Disclosures to Residential and Small Commercial Customers; §25.478, relating to Credit Requirements and Deposits; §25.480, relating to Bill Payment and Adjustments; §25.483, relating to Disconnection of Service; §25.485, relating to Customer Access and Complaint Handling; §25.488, relating to Procedures for a Premise with No Service Agreement are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 16th DAY OF FEBRUARY 2007.

PUBLIC UTILITY COMMISSION OF TEXAS

PAUL HUDSON, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

BARRY T. SMITHERMAN, COMMISSIONER