

The Public Utility Commission of Texas (commission) proposes new §25.107, relating to Certification of Retail Electric Providers, and new §25.108, relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges. The proposed new §25.107 establishes requirements for certification of retail electric providers (REPs), application procedures, requirements for maintaining certificates, and provisions for suspension and revocation of certificates, as well as related administrative penalties. The proposed new §25.108 imposes additional financial requirements on REPs who will be billing and collecting transition charges resulting from securitization by utilities. Project Number 21082 has been assigned to this proceeding.

Project Number 21082, *Certification of Retail Electric Providers and Registration of Power Generation Companies and Aggregators; Forms*, was established in July 1999 as one of many projects to implement Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543 (Vernon) (codified as an amendment to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§39.351, 39.353, 39.354, 39.3545, 39.356, and 39.357). Senate Bill 7, the Electric Restructuring Act, amends several sections of the Public Utility Regulatory Act and became effective September 1, 1999. In Project Number 21082, the commission staff posted questions for comment on its Internet site on October 20, 1999 and published an invitation to comment in the *Texas Register* on October 22, 1999 (24 TexReg 9434). The staff prepared a draft of §25.107 in December 1999, which was discussed at a workshop held on

December 15, 1999. Written comments were received and used to prepare a second draft of §25.107, which was discussed at a workshop held on January 28, 2000.

The commission discussed a staff recommendation for publication at its open meeting on March 23, 2000. On that occasion, written comments from parties were invited on that recommendation and staff was directed to prepare a revised recommendation for publication of rules. A revised staff recommendation was filed on April 6, 2000, and considered and amended at the open meeting held on April 12, 2000.

Although also a part of this project, the commission's proposed rules concerning the registration of aggregators and power marketers have been published on a different timeline. For more information on those proposed rules, see the March 17, 2000 *Texas Register* (25 TexReg 2240).

The commission seeks comments on the proposed rules from interested persons. Parties should organize their comments in a manner that parallels the organization of the proposed rules. The rule is written in the form of a list of requirements for REPS to obtain and maintain certification. Provisions are stated as ongoing standards and subsequently differentiated for the application stage only when necessary. Comments proposing alternate language should work within this structure as much as possible.

When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

The subject of financial requirements necessary for the certification of a REP dominated discussion of staff drafts of the proposed rule in workshops and in written comments. However, detailed discussion was constrained on the topic of standards that the REPs should meet for the purposes of billing and collecting transition charges due to the fact that several securitization dockets were open when public comment was invited (See Docket Number 21527, *Application of TXU Electric Company for a Financing Order to Securitize Regulatory Assets and Other Qualified Costs*, Docket Number 21528, *Application of Central Power and Light Company for a Financing Order to Securitize Regulatory Assets and other Qualified Costs*, and Docket Number 21665, *Application of Reliant Energy, Incorporated for a Financing Order to Securitize Regulatory Assets and other Qualified Costs*). As a result, the proposed new §25.108 includes financial requirements that have not yet received the benefit of public input through workshop discussions in the rulemaking process.

The financial standards proposed in these rules are designed to grant all qualified REPs a readily accessible opportunity to obtain certification and conduct business with the transmission and distribution

utilities on a statewide basis, while protecting customer deposits and advance payments, and protecting all payments of transition charges resulting from securitization.

The scheme of financial standards proposed in these rules to accomplish the above stated purposes has three additive components that are found in the first three paragraphs of §25.107(f): (1) three alternative credit quality standards for certification as a REP; (2) a financial standard for protecting customer deposits and other advance payments made to the REP; and (3) a financial standard and procedure for REPs to bill and collect any transition charges resulting from securitization. These credit standards apply to a REP's business with transmission and distribution utilities serving Texas, as well as to any electric cooperatives or municipal utilities electing customer choice. A discussion of each standard follows below.

The first financial component of this scheme is found in §25.107(f)(1) and addresses the credit quality standards for a REP to be certificated to provide retail electric service in Texas. This credit quality component provides three alternative tests for certification: (1) demonstration of \$50 million of net assets or equity; (2) demonstration of an investment grade credit rating; or (3) demonstration of \$100,000 in cash resources.

The second component of the financial standards of these proposed rules is financial backing for customer payments. The proposed rules require that the REP maintain the cash resources necessary to cover all customer deposits and other advance payments outstanding at any given time in case the REP

is unable or unwilling to meet its financial obligations. This standard requires that the REP maintain ongoing records for all such payments received from and outstanding to its customers.

For the third financial component of standards proposed in these rules, the commission proposes §25.108, relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges. The proposed section is referred to as a certification criterion in §25.107 and replicates the terms and conditions for activities that have been approved in Docket Number 21528. The commission proposes that these standards be applied statewide for all REPs that engage in the billing and collection of transition charges. The commission invites comment on whether the statewide standards established by rule might differ from those adopted in financing orders. If standards are adopted in this rulemaking that differ from any financing orders issued prior to the adoption of rules in this rulemaking, the REPs that are subject to those financing orders will continue to be subject to those orders until the written confirmation required by the financing orders is received from each of the credit rating agencies that have rated the transition bonds that the rule's different standards will not cause a suspension, withdrawal, or downgrade of the ratings on the transition bonds.

The extent to which any customer protection provisions, beyond the protection of customer deposits and advance payments, should be addressed in this rule is another issue that prompted considerable debate. Instead of eliminating all mention of such protections, and instead of articulating specific terms and conditions on a select few protection topics, these proposed rules state several customer protection provisions in the form of key principles. Each provision states a tenet of customer protection as a

baseline that also allows for more specificity to be decided elsewhere. The existence of such a list in these rules implementing PURA §39.352 serves several functions. First, it briefly indicates the scope of the requirements a prospective REP must prepare to meet under the statute pertaining to the certification of REPs. Second, it allows the commission flexibility to address the details of the provisions in other rulemakings pertaining to customer protection. Third, it provides a baseline that can be used to address complaints by affected parties that occur before other customer protection rules are complete or in the absence of adequate detail in any relevant commission rules.

In addition to comments on other provisions of the rules, the commission requests that parties specifically address the following two issues relating to the financial scheme described in the previous paragraphs, a third issue related to technical and managerial requirements, and a fourth issue related to reporting requirements for REPs.

1. Concerning §25.107(f)(1), relating to financial resources required for credit quality:
 - (A) To what extent does the approach of this provision, and the three credit quality alternatives in particular, achieve the goals of sufficient financial creditworthiness to promote fair competition and minimal financial barriers to entry to the market place?
 - (B) How do the credit quality standards that are set in this rule integrate with the expected credit quality standards to be established by an independent organization, as defined in PURA §31.151(b), and how should any differences be addressed?

2. Concerning §25.107(f)(2), Financial resources required for customer protection, do the financial standards set in paragraph (2) adequately protect the customers of small REPs against potential harmful effects of financial derivatives that may arise from buyer speculation in or seller default of these securities? If not, how should they be addressed?
3. Concerning §25.107(g), should the commission further distinguish between the continuing requirements for certified REPs and the application requirements, especially before retail choice begins?
4. Finally, concerning the annual report required by §25.107(i), Requirements for updating or changing the terms of a REP certificate: What circumstances should the commission consider in establishing a reporting period and due date for the report?

Ms. Jan Barga, Senior Policy Analyst, Office of Policy Development, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Barga has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be protecting Texas electric customers from REPs who do not have adequate resources or experience to provide retail electric service. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Barga has also determined that for each year of the first five years the proposed sections are in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, June 15, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed amendment and new rules (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 28 days after publication. Reply comments may be submitted within 41 days after publication. Parties are also requested to e-mail an electronic copy of comments to jan.barga@puc.state.tx.us, if possible.

The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 21082.

These new rules are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.352 which requires the commission to grant certificates to applicants who demonstrate sufficient qualification to provide retail electric service; §39.356, which grants the commission authority to establish terms under which the commission may suspend or revoke a retail electric provider's certification, and §39.357, which grants the commission authority to impose an administrative penalty for violations of §39.356.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 39.352, 39.356, and 39.357.

§25.107. Certification of Retail Electric Providers (REPs).

(a) **Application.** This section applies to all persons who seek to provide electric service to retail customers in Texas on or after the date of customer choice, as established by Public Utility Regulatory Act (PURA) Chapter 39, or as a provider of retail electric service in the Customer Choice Pilot Projects, as established under PURA §39.104 and §39.405. This section does not apply to the state, political subdivisions of the state, electric cooperatives or municipal corporations. An electric cooperative or municipally owned utility participating in customer choice may offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without obtaining certification as a REP.

(b) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:

(1) **Continuous and reliable electric service** – Electric power service provided at retail by a retail electric provider (REP), consistent with the customer's terms and conditions of service, uninterrupted by unlawful or unjustified action or inaction of the REP.

(2) **Customer** – Any entity who has applied for, has been accepted, or is receiving retail electric service from a REP for use on an end-use basis.

(3) **Person** – Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative or a municipal corporation.

- (4) **Retail electric provider** – A person that sells electric energy to retail customers in this state. As provided in PURA §31.002(17), a retail electric provider may not own or operate generation assets. As provided in PURA §39.353(b), a REP is not an aggregator.
 - (5) **Residential customer** – An end user consuming power for personal, family or household purposes, as defined in statewide transmission and distribution utility tariffs.
 - (6) **Revocation** – The cessation of all REP business operations in the state of Texas, pursuant to commission order.
 - (7) **Suspension** – The cessation of all REP business operation in the state of Texas associated with obtaining new customers, pursuant to commission order.
- (c) **Application for REP certification.**
- (1) After the date of customer choice, or as a participant in the Customer Choice Pilot Projects, a person, including an affiliate of an electric utility, may not provide retail electric service in the state unless the person is certified by the commission as a retail electric provider in accordance with PURA §39.352 and this section.
 - (2) A retail electric provider may apply for certification any time after September 1, 2000. A certificate granted pursuant to this section is not transferable without prior approval by the commission.
 - (3) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an applicant's owner or partner, or an

officer of the applicant. Applications may be obtained in the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each applicant shall file its application with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and Other Documents).

- (4) The applicant may identify certain information or documents submitted that it believes to contain proprietary or confidential information. Applicants may not designate the entire application as confidential. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission for use with applications for certification as a REP. If and when a public information request is received for information designated as confidential, the applicant or REP has the burden of establishing that information filed pursuant to this rule is proprietary or confidential.
- (5) Except where good cause exists to extend the time for review, the presiding officer shall issue an order stating whether an application is deficient or complete within 20 days of filing. Deficient applications and those without necessary supporting documentation will be rejected without prejudice to the applicant's right to reapply.
- (6) While the application is pending, an applicant shall inform the commission of any material change in the information provided in the application within ten days of any such change.

- (7) The commission will make an effort, where the facts of the case permit, to insure that applications filed simultaneously are resolved simultaneously. Except where good cause exists to extend the time for review, the commission shall enter an order approving, rejecting, or approving an application with modifications within 90 days of filing an application.
 - (8) A certificate granted pursuant to this section shall continue in force until further order of the commission.
 - (9) A certificate granted pursuant to this section shall not be construed to vest exclusive service or property rights in and to the area for which the certificate is granted.
- (d) **REP certification requirements based on service area.** As a requisite for obtaining and maintaining certification, a REP must designate a service area defined by either paragraph (1) or (2) of this subsection, and meet the certification requirements designated therein.
- (1) **Option 1.** For REPs defining service areas by geography:
 - (A) A REP must designate one of the following categories as its geographical service area:
 - (i) The geographic area of the city limits of a municipality and its extra-territorial jurisdiction, (indicating the zip codes applicable to that area);
or
 - (ii) The geographic area of an entire county, (indicating the zip codes applicable to that area); or

- (iii) A combination of the geographic areas described in clause (i) and (ii) of this subparagraph; or
 - (iv) The geographic area of the entire state of Texas; (indicating the zip codes applicable to that area); or
 - (v) The service area of specific transmission and distribution utilities, and/or municipal utilities or electric cooperatives in which competition is offered; or
 - (vi) The geographic area of Electric Reliability Council of Texas (ERCOT) or territory of another independent organization to the extent it is within Texas.
- (B) A REP with a geographical service area is subject to all subsections of this section, including those pertaining to administration, financial, technical and managerial, customer protection, and reporting requirements, as applicable.
- (C) The commission shall decide whether to grant a certificate to an applicant proposing to provide retail electric service to a geographical service area in Texas based on:
- (i) Provision of all of the information required of the applicant in the form, *Application for a Certificate to Provide Retail Electric Service*, approved by the commission.

- (ii) Whether the applicant has met the business name, office, and threshold residential service level requirements specified in subsection (e) of this section.
 - (iii) Whether the applicant has demonstrated that it possesses the financial and technical resources to provide continuous and reliable electric service to its customers in the area for which certification is sought and the technical and managerial ability to supply electricity at retail in accordance with customer contracts, pursuant to subsections (f) and (g) of this section.
 - (iv) Whether the applicant has demonstrated that it possesses the resources needed to meet the customer protection requirements, disclosure requirements, and marketing guidelines as specified in subsection (h) of this section.
 - (v) Whether the configuration of the proposed geographic area, if any, would discriminate in the provision of electric service to any customer because of race, creed, color, national origin, or any other basis prohibited by law or by subsection (h)(1) of this section.
- (D) If the presiding officer determines that an applicant does not possess resources sufficient to serve the geographical area designated by the applicant, the presiding officer shall notify the applicant of the deficiencies and allow the applicant to designate a different geographical service area commensurate with

its resources. If the applicant designates no suitable area within a reasonable time, the application shall be denied.

- (2) **Option 2 – For REPs defining service areas by customers.** As an alternative to a geographical service area, a REP may define a service area by a specific list of customers, each of whom contract for one megawatt or more of capacity. The applicant shall be certified as a REP only for purposes of serving the named customers.
- (A) To obtain certification under this paragraph, an applicant must file with the commission a signed, notarized affidavit from each individual retail customer with which it has contracted to provide one megawatt or more of capacity. The affidavit shall state that the customer is satisfied that the REP meets the financial, technical and managerial, and customer protection standards prescribed in subsections (f)(2), (g), and (h) of this section. The one-megawatt threshold may not be met by aggregation of individual electricity customers.
- (B) A REP whose service area is defined by customers shall meet the administrative requirements specified in subsection (e) of this section.
- (C) A REP whose service area is defined by customers shall meet the financial requirements for billing and collection of transition charges pursuant to subsection (f)(3) of this section, if applicable.
- (D) The commission will grant a certificate to an applicant under this paragraph upon a finding that the affidavits for each designated customer have been received and that all requirements of this paragraph are met.

- (E) A REP certified pursuant to this paragraph may be authorized to serve additional customers by amending its certificate pursuant to subsection (i)(6) of this section.
 - (F) A REP certified pursuant to this paragraph is subject to reporting requirements specified in this section.
- (e) **Administrative requirements.** As a requisite for obtaining and maintaining certification, a REP must meet the following requirements concerning business names, office access, and percentage of electricity sold to residential customers.
- (1) **Names on certificates.** All retail electric service shall be provided in the names under which the certificate was granted. If the applicant is a corporation, the commission shall issue the certificate in the corporate name of the applicant.
 - (A) No more than two assumed names may be authorized for use by any one REP at one time.
 - (B) Business names shall not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by an existing REP certificate holder.
 - (C) The commission shall review any names in which the applicant proposes to do business. If the commission determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the

applicant that the requested name may not be used by the REP. A REP will be required to amend its application to provide at least one suitable name in order to be certificated.

- (2) **Office requirements.** A REP shall continuously maintain an office located within Texas for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of PURA Chapter 39, Subchapter H, and applicable commission rules. The office satisfying this requirement for a REP shall have a physical address that is not a post office box and shall be a location where the above three functions can occur. To evaluate compliance with requirements in this paragraph, the commission's authorized representative may visit the office of a certificated REP at any time during normal business hours on the same basis available to an electric customer. An applicant shall submit the following information with an application:
- (A) Evidence that it has made arrangements for an office located in Texas, including the physical address of the office; or
 - (B) An affidavit stating that the applicant will obtain an office located within Texas meeting the requirements of this paragraph, and will notify the commission of its physical address, after certification but before providing retail electric service to customers in Texas.
- (3) **Threshold residential service requirement.** For 36 months after retail competition begins, if a REP serves an aggregate load in excess of 300 megawatts within Texas

during a given year, not less than 5.0% of the REP's load for the year in megawatt hours must consist of residential customers, pursuant to PURA §39.352(g).

- (A) The 300 megawatt aggregate load threshold shall be calculated by the "4CP" method, which consists of the average of the highest aggregate coincident peak demand occurrences in each of the months of June, July, August, and September of the annual reporting period, in megawatts, of all the REP's customers served in Texas.
- (B) If the 4CP calculation made under subparagraph (A) of this paragraph is in excess of 300 megawatts, the certificate holder shall:
 - (i) demonstrate that not less than 5.0% of the total quantity of megawatt hours it sold in the calendar year was supplied to residential customers, or
 - (ii) demonstrate that another REP served sufficient qualifying residential load on its behalf, or
 - (iii) make the necessary calculations and pay an amount into the system benefit fund equal to \$1 multiplied by a number equal to the difference between the number of megawatt hours it sold to residential customers and the number of megawatt hours it was required to sell to such customers.
- (C) The calculations in subparagraph (B) of this paragraph are subject to the following limitations:

- (i) An affiliated REP shall pay \$1 multiplied by a number equal to the difference between the number of megawatt hours sold to residential customers outside of the electric utility's service area and the number of megawatt hours it was required to sell to such customers outside of the electric utility's service area.
- (ii) For purposes of subparagraph (B)(ii) of this paragraph, "qualifying residential load" may not include customers served by an affiliated retail electric provider in its affiliated electric utility's service area.
- (iii) The requirements of this paragraph apply only to the portion of an affiliated REP's load that is outside the electric utility's service area. With respect to that "outside" load, any residential customers counted to meet the 5.0% threshold of residential customers must also be outside the electric utility's service area.
- (iv) Where several REPs belong to a common owner, their loads will be combined for purposes of evaluation under this subsection. If the common owner is an electric utility, only loads served outside the electric utility's service area will be used in the calculations under this paragraph.

(f) **Financial requirements.** As a requisite for obtaining and maintaining certification, a REP must meet the financial resource standards established by this subsection. The standards established by paragraphs (1), (2), and (3) of this subsection are additive.

(1) **Financial standards required for credit quality.** A REP shall fulfill the following financial qualifications listed below concerning its underlying credit quality:

(A) **Minimum credit standards for REP certification.** In order to be certified by the commission, a REP or its parent corporation or controlling shareholder providing a guaranty of its REP under subparagraph (D) of this paragraph must demonstrate that it has:

- (i) Assets in excess of liabilities, or equity, of at least \$50,000,000 on its most recent balance sheet;
- (ii) An investment grade credit rating as provided for under subparagraph (1)(F); or
- (iii) Cash resources of at least \$100,000.

(B) **Utility credit standards for REPs.** With the exception of the credit standards provided for in paragraph (3) of this subsection, a transmission and distribution utility shall not impose any additional or separate credit conditions on a REP, unless the REP has defaulted on one or more payments to the utility for services provided by the utility. A transmission and distribution utility may impose credit conditions on a REP that has defaulted to the extent specified in its tariff and allowed by commission rules.

- (C) **Financial evidence.** A REP shall be permitted to use any of the financial instruments listed below, as well as any other financial instruments approved in advance by the commission, in order to satisfy the cash requirements established by this rule.
- (i) Cash or cash equivalent, including cashier's check or sight draft;
 - (ii) A certificate of deposit with a bank or other financial institution;
 - (iii) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 15 months;
 - (iv) A line of credit or other loan issued by a bank or other financial institution, including a bond, irrevocable for a period of at least 15 months;
 - (v) A loan issued by a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 15 months;
 - (vi) A guaranty issued by a shareholder or principal of the applicant; a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant; irrevocable for period of at least 15 months.
- (D) **Loans or guarantees.** To the extent that it relies upon a loan or guaranty described in subparagraph (C)(v) or (vi) of this paragraph, the REP shall

provide financial evidence sufficient to demonstrate that the lender or guarantor possesses the cash or cash equivalents needed to fund the loan or guaranty.

(E) **Unencumbered resources.** All cash and other instruments listed in subparagraph (C) of this paragraph as evidence of financial resources shall be unencumbered by pledges for collateral. These financial resources shall be subject to verification and review prior to certification of the REP and at any time after certification in which the REP relies on the cash or other financial instrument to meet the requirements under this subsection. The resources available to the REP must be authenticated by independent, third party documentation.

(F) **Credit ratings.** To meet the requirements of this paragraph, a REP may rely upon either its own investment grade credit rating, or a bond, guaranty, or corporate commitment of an affiliate or another company, if the entity providing such security is also rated investment grade. The determination of such investment grade quality will be based on the ratings of either Standard & Poors (S&P) or Moody's Investor Services (Moody's). If the investment grade credit rating of either S&P or Moody's is suspended or withdrawn, the REP must provide alternative financial evidence included under subparagraphs (C) - (E) of this paragraph within ten days of the credit downgrade.

(2) **Financial standards required for customer protection.** A REP shall maintain records on an on-going basis for any deposits or advance payments received from

customers. Financial obligations to customers shall be payable to them within 30 calendar days from the date the REP notifies the commission that it intends to withdraw its certification or is deemed by the commission not able to meet its current customer obligations. Customer obligations shall be settled before the REP withdraws its certification or ceases doing business in Texas. A REP must meet the following financial qualifications concerning its receipt of customer payments:

- (A) **Financial obligations to customers.** The REP must maintain and provide evidence of financial resources equal to the sum of its obligations to customers for any deposits or other advance payments received from customers, subject to the following conditions.
- (i) Financial resources required under this paragraph shall be maintained at levels sufficient to demonstrate that the REP can cover all deposits or other advance payments that are outstanding at any given time.
 - (ii) The REP shall file with the commission a sworn affidavit demonstrating compliance with this paragraph within 90 days of receiving the first payment from customers for its services.
 - (iii) Financial resources required pursuant to this subsection shall not be reduced by the REP without the advance approval of the commission.
- (B) **Financial evidence.** A REP shall be permitted to use any of the financial instruments and conditions set out in paragraph (1)(C) – (F) of this subsection to demonstrate that its resources are adequate for customer protection.

- (C) **External notice.** Any party providing the financial resources necessary to protect customers under this provision of the rule, either directly or indirectly, shall be provided a copy of this rule by the REP.
- (3) **Financial standards required of REPs for the billing and collection of transition charges.** If a REP serves customers in the service area of a transmission and distribution utility that is subject to a financing order pursuant to PURA §39.310, the REP shall comply with any additional standards specified in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges).
- (4) **Credit support by affiliates.** To the extent it relies on an affiliated transmission or distribution utility for credit, investment, or financing arrangements pursuant to this subsection, the REP shall demonstrate that any such arrangement complies with §25.272(d)(7) of this title.
- (5) **Reporting requirements.** A REP certified under this subsection is subject to the ongoing annual financial requirements of subsection (f) of this section and any other applicable requirements of subsection (i) of this section.
- (g) **Technical and managerial resource requirements.** As a requisite for providing retail electric service, a REP must have technical resources to provide continuous and reliable electric service to customers in its service area and technical and managerial ability to supply electric service at

retail in accordance with its customer contracts. Technical and managerial resource requirements include:

- (1) Capability to comply with all scheduling, operating, planning, reliability, customer registration and settlement policies, rules, guidelines, and procedures established by the ERCOT independent system operator (ISO), or other independent organization, if applicable, including any independent organization requirements for 24 hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, interruption plan implementation, and telephone number, fax number, and address where its staff can be directly reached at all times.
- (2) Capability to comply with the registration and certification requirements of the ERCOT ISO or other independent organization and its system rules, or contracts for the purchase of power from entities registered with or certified by the ERCOT ISO or independent organization and capable of complying with its system rules.
- (3) Purchase of capacity and reserves, or other ancillary services, as may be required by the ERCOT ISO or other independent organization to provide adequate electricity to all the applicant's customers in its certificated area.
- (4) Compliance with all renewable energy portfolio standards in accordance with §25.173 of this title (relating to Goal for Renewable Energy).
- (5) At least one principal or employee experienced in the retail electric industry or a related industry.
- (6) Adequate staffing and employee training to meet all service level commitments.

- (7) The capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service, including procedures for response to outage notices on a 24-hour basis.
- (8) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.
- (9) The following information submitted in an initial application:
 - (A) Prior experience of the applicant or one or more of the applicant's principals or employees in the retail electric industry or a related industry.
 - (B) A 12 month estimate of the expected total load and residential load to be supplied with electric service in Texas by the applicant.
 - (C) Any complaint history and compliance record during the three calendar years prior to the filing of the application regarding the applicant, applicant's affiliates that provide utility related services such as telecommunications, electric, gas, water, or cable service, the applicant's predecessors in interest, and principals with public utility commissions, attorney general offices, or other applicable regulatory agencies in other states where the applicant is doing business or has conducted business in the past or with the Texas Secretary of State, Texas Comptroller's Office, or Office of the Texas Attorney General. Relevant information shall include, but is not limited to, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state

where complaints occurred. The Office of Customer Protection shall review any similar complaint information on file at the commission.

- (D) A summary of any history of bankruptcy, dissolution, merger or acquisition of the applicant or any predecessors in interest in the three calendar years immediately preceding the application; and
- (E) A statement indicating whether the applicant is currently under investigation, or has been penalized, by an attorney general or any state or federal regulatory agency, either in this state or in another state or jurisdiction for violation of any deceptive trade or consumer protection laws or regulations.
- (F) Disclosure of whether the applicant, a predecessor, an officer, director or principal has been convicted or found liable for fraud, theft or larceny, deceit, or violations of any customer protection or deceptive trade laws in any state;
- (G) An affidavit stating that the applicant will register with or be certified by the ERCOT ISO or other independent organization and will comply with all system rules and standards established by the ERCOT ISO or other independent organization; or that all entities with whom the applicant has a contractual relationship to purchase power are registered with or certified by the independent organization and will comply with all system rules and standards established by the independent organization; and
- (H) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements listed in paragraphs (1) - (5) of this subsection.

- (h) **Customer Protection requirements.** As a requisite for obtaining and maintaining certification, a REP shall comply with any customer protection requirements, disclosure requirements, marketing guidelines and anti-discrimination rules adopted by the commission pursuant to PURA §§17.001-17.004 and Chapter 39. In the absence of further specificity in other commission rules, certificated REPS shall be held to the general standards listed below. An applicant for certification as a REP shall provide a sworn affidavit, as specified in the application form approved by the commission, that it will comply with this section and any other applicable customer protection rules, disclosure requirements, marketing guidelines, and anti-discrimination rules approved by the commission.
- (1) A REP may not refuse to provide retail electric service or otherwise discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; or refuse to provide retail electric service to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services.
 - (2) A REP shall disclose to its customers whom to contact and what to do in the event of power outage or other electricity-related emergency.
 - (3) A REP shall inform its customers of illegal practices and of the customer's rights and avenues available to pursue a complaint against the REP.

- (4) A REP shall not switch, or cause to be switched, the retail electric provider for a customer without first obtaining the customer's permission.
 - (5) A REP shall not bill, or cause to be billed, an unauthorized charge to a customer's retail electric service bill.
 - (6) A REP shall respond in good faith when notified by a customer of a complaint.
 - (7) A REP shall maintain a customer service staff adequate to handle its customers' inquiries and complaints.
 - (8) A REP may not release proprietary customer information to any person unless the customer authorizes the release in a manner approved by the commission.
- (i) **Requirements for reporting and for changing the terms of a REP certificate.** The ongoing maintenance of a REP certificate is dependent upon keeping the certification information up to date, pursuant to the following requirements:
- (1) The certificate holder shall notify the commission within 30 days of any change in its office address, business address, telephone number(s), or other contact information.
 - (2) A certificate holder that has met the Texas office requirement by affidavit, pursuant to subsection (e)(2)(B) of this section, shall supply the commission with the physical office address on or before the date of commencing retail electric service in Texas.
 - (3) The holder of a REP certificate shall notify the commission within 30 days and must be prepared if, necessary, for re-certification by the commission if any of the following events occur:

- (A) a material change in any of the technical conditions presented pursuant to subsection (g) of this section as the basis for the approval of the applicant's initial certification; or,
 - (B) a material change in any of the financial requirements presented pursuant to subsection (f) of this section as the basis for approval of the applicant's initial certification;
- (4) All REP certificate holders shall file updated information set forth in this subsection on an annual basis on a report form approved by the commission. The annual report is due on June 1 each year for the preceding calendar year. The following information, at a minimum, shall be reported annually:
- (A) Any changes in addresses, telephone numbers, authorized contacts, and other information necessary for contacting the certificate holder.
 - (B) If certificated for a service area defined by geography, identification of areas where REP is providing retail electric service to customers in Texas compiled by zip code.
 - (C) For 36 months after retail competition begins, the result of the 4CP calculation and proof of threshold residential service requirements, if applicable, pursuant to subsection (e)(3) of this section.
 - (D) A list of aggregators with whom the REPs has conducted business in the reporting period, including commission registration verification for each.

- (E) A sworn affidavit that the certificate holder is not in material violation of any of the requirements of its certificate.
- (5) The holder of a REP certificate shall file with the commission notice of changes to the organizational structure or to the material facts represented in its application, including, but not limited to any change in name, service area, facilities ownership or affiliation upon which the commission relied in approving the REP's application. The commission may require the REP to file an amendment to its certificate if it determines that the changes warrant a reevaluation of the REP's basis for certification.
- (6) The holder of a REP certificate for a service area defined by specific customers may amend its certificate to add additional specified customers by submitting to the commission the affidavit required by subsection (d)(2) of this section from the additional customers on or before the commencement of electric service to the those customers.
- (7) A REP certificate shall not be transferred without prior commission approval. Approval for transfer shall be obtained by petition to the commission. The transferee must complete and file with the commission an application form for certification that demonstrates the transferee's financial and technical fitness to render service under the transferred certificate.
- (8) No REP certificate holder shall cease operations as a REP without prior notice to the commission, to each of the REP's customers to whom the REP is providing service on the proposed date of cessation of business operations, and other affected persons, including the independent operator, transmission and distribution utilities, electric

distribution cooperatives, municipally owned utilities, generation suppliers, and providers of last resort. The REP shall file with the commission proof of refund of any monies owed to customers. Upon the effective cessation date, a REP's certificate will be deemed suspended. If, within 24-months of cessation, a REP demonstrates compliance with certification requirements, the certificate will be reinstated.

- (9) If a REP files a petition in bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, it shall notify the commission within ten days of this event and shall provide the commission a brief summary of the nature of the proceedings. The commission shall have the right to proceed against any financial resources that the REP relied on in obtaining its certificate, to satisfy unpaid administrative penalties or payments owed to customers.
- (j) **Suspension and revocation.** Pursuant to PURA §39.356, certificates granted pursuant to this section are subject to suspension and revocation for significant violations of PURA, commission rules, or reliability standards adopted by an independent organization. The commission may also amend the certificate or impose an administrative penalty for a significant violation. The commission or any affected person may bring a complaint seeking to suspend or revoke a REP's certificate. Significant violations include, but are not limited to, the following:
- (1) Providing false or misleading information to the commission;
 - (2) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive business practices or unlawful discrimination;

- (3) Switching, or causing to be switched, the retail electric provider for a customer without first obtaining the customer's permission;
- (4) Billing an unauthorized charge, or causing an unauthorized charge to be billed to a customer's retail electric service bill;
- (5) Failure to maintain continuous and reliable electric service to its customers pursuant to this section;
- (6) Failure to maintain the minimum financial resources as set out in subsection (f) of this section;
- (7) Bankruptcy, insolvency, or inability to meet financial obligations on a timely basis;
- (8) Failure to observe any scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent organization;
- (9) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;
- (10) Suspension or revocation of a registration, certification, or license by any state or federal authority;
- (11) Conviction of a felony by the certificate holder or principal employed by the certificate holder, of any crime involving fraud, theft or deceit related to the certificate holder's service;
- (12) Not providing retail electric service to customers within 24 months of the certificate being granted by the commission;

- (13) Failure to serve as a provider of last resort if required to do so by the commission pursuant to PURA §39.106(f); and
- (14) Failure, or a pattern of failures to meet the conditions of this section or other commission rules or orders.

§25.108. Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges.

- (a) **Application.** This section applies to any retail electric provider (REP) serving customers in a transmission and distribution (T&D) utility service area subject to a financing order issued by the commission under Public Utility Regulatory Act (PURA) §39.303.
- (b) **Applicability of REP standards.** Beginning on the date of customer choice for any retail customers, the servicer of the transition bonds will bill the transition charges for those customers to each retail customer's REP and the REP will collect transition charges from its retail customers. The standards in this section are the most stringent that can be imposed on REPs by any servicer of transition bonds without the prior approval of the commission. The standards relate only to the billing and collection of transition charges authorized by a financing order and do not apply to the collection of any other non-bypassable charges, or any other charges. The standards apply to all REPs other than REPs that have contracted with the transmission and distribution company to bill and collect transition charges from retail customers. REPs may contract with parties other than the transmission and distribution company to bill and collect transition charges from retail customers, but such REPs shall remain subject to the standards in this section. Modifications to the REP standards in this section may not be implemented absent prior written confirmation from each of the rating agencies that have rated the transition bonds

that such modifications will not cause a suspension, withdrawal, or downgrade of the ratings on the transition bonds.

(c) **REP standards.** The REP standards for transition charges are:

(1) **Rating, deposit, and related requirements.** A REP that does not have or maintain the requisite long-term, unsecured credit rating may select which alternate form of deposit, credit support, or combination thereof it will utilize, in its sole discretion. The indenture trustee shall be the beneficiary of any affiliate guarantee, surety bond or letter of credit. The provider of any affiliate guarantee, surety bond, or letter of credit must have and maintain a long-term, unsecured credit ratings of not less than "BBB-" and "Baa3" (or the equivalent) from Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's"), respectively. Each REP must:

(A) have a long-term, unsecured credit rating of not less than "BBB-" and "Baa3" (or the equivalent) from S&P and Moody's , respectively; or

(B) provide:

(i) a deposit of two months' maximum expected transition charge collections in the form of cash,

(ii) an affiliate guarantee, surety bond, or letter of credit providing for payment of such amount of transition-charge collections in the event that the REP defaults in its payment obligations, or

(iii) a combination of clause (i) and (ii) of this subparagraph.

- (2) **Loss of credit rating.** If the long-term, unsecured credit rating from either S&P or Moody's of a REP that did not previously provide the alternate form of deposit, credit support, or combination thereof or of any provider of an affiliate guarantee, surety bond, or letter of credit is suspended, withdrawn, or downgraded below "BBB-" or "Baa3" (or the equivalent), the REP must provide the alternate form of deposit, credit support, or combination thereof, or new forms thereof, in each case from providers with the requisite ratings, within ten business days following such suspension, withdrawal, or downgrade. A REP failing to make such provision must comply with the provisions set forth in paragraph (5) of this subsection.
- (3) **Computation of deposit.** The computation of the size of a required deposit shall be agreed upon by the servicer and the REP, and reviewed no more frequently than quarterly to ensure that the deposit accurately reflects two months' maximum collections. Within ten business days following such review, the REP shall remit to the indenture trustee the amount of any shortfall in such required deposit, or the servicer shall instruct the indenture trustee to remit to the REP any amount in excess of such required deposit. A REP failing to so remit any such shortfall must comply with the provisions set forth in paragraph (5) of this subsection. REP cash deposits shall be held by the indenture trustee, maintained in a segregated account, and invested in short-term high quality investments, as permitted by the rating agencies rating the transition bonds. Investment earnings on REP cash deposits shall be considered part of such cash deposits so long as they remain on deposit with the indenture trustee. At the instruction

of the servicer, cash deposits will be remitted with investment earnings to the REP at the end of the term of the transition bonds unless otherwise utilized for the payment of the REP's obligations for transition bond payments. Once the deposit is no longer required, the servicer shall promptly (but not later than 30 calendar days) instruct the indenture trustee to remit the amounts in the segregated accounts to the REP.

- (4) **Payment of transition charges.** Payments of transition charges are due 35 calendar days following each billing by the servicer to the REP, without regard to whether or when the REP receives payment from its retail customers. The servicer shall accept payment by electronic funds transfer, wire transfer, and/or check. Payment will be considered received the date the electronic funds transfer or wire transfer is received by the servicer, or the date the check clears. A 5.0% penalty is to be charged on amounts received after 35 calendar days; however, a ten calendar-day grace period will be allowed before the REP is considered to be in default. A REP in default must comply with the provisions set forth in paragraph (5) of this subsection. The 5.0% penalty will be a one-time assessment measured against the current amount overdue from the REP to the servicer. The "current amount" consists of the total unpaid transition charges existing on the 36th calendar day after billing by the servicer. Any and all such penalty payments will be made to the indenture trustee to be applied against transition charge obligations. A REP shall not be obligated to pay the overdue transition charges of another REP. If a REP agrees to assume the responsibility for the payment of overdue transition charges as a condition of receiving the customers of another REP that has

decided to terminate service to those customers for any reason, the new REP shall not be assessed the 5.0% penalty upon such transition charges; however, the prior REP shall not be relieved of the previously-assessed penalties.

- (5) **Remedies upon default.** After the ten calendar-day grace period (the 45th calendar day after the billing date) referred to in paragraph (4) of this subsection, the servicer shall have the option to seek recourse against any cash deposit, affiliate guarantee, surety bond, letter of credit, or combination thereof provided by the REP, and to avail itself of such legal remedies as may be appropriate to collect any remaining unpaid transition charges and associated penalties due the servicer after the application of the REP's deposit or alternate form of credit support. In addition, a REP that is in default with respect to the requirements set forth in paragraphs (2), (3), or (4) of this subsection shall select and implement one of the options listed in subparagraphs (A), (B), or (C) of this paragraph. If a REP that is in default fails to immediately select and implement one of these options or, after so selecting one of the options, fails to adequately meet its responsibilities thereunder, then the servicer shall immediately implement the option in subparagraph (A) of this paragraph. Upon re-establishment of compliance with the requirements set forth in paragraphs (2), (3), or (4) of this subsection, and the payment of all past-due amounts and associated penalties, the REP will no longer be required to comply with this paragraph.

- (A) Allow the Provider of Last Resort ("POLR") or a qualified REP of the customer's choosing to immediately assume the responsibility for the billing and collection of transition charges.
 - (B) Immediately implement other mutually suitable and agreeable arrangements with the servicer. It is expressly understood that the servicer's ability to agree to any other arrangements will be limited by the terms of the securitization Servicing Agreement and requirements of each of the rating agencies that have rated the transition bonds necessary to avoid a suspension, withdrawal, or downgrade of the ratings on the transition bonds.
 - (C) Arrange that all amounts owed by retail customers for services rendered be timely billed and immediately paid directly into a lock-box controlled by the servicer with such amounts to be applied first to pay transition charges before the remaining amounts are released to the REP. All costs associated with this mechanism will be borne solely by the REP.
- (6) **Billing by providers of last resort.** The initial POLR appointed by the commission, or any commission-appointed successor to the POLR, must meet the minimum credit rating or deposit/credit support requirements described in paragraph (1) of this subsection in addition to any other standards that may be adopted by the commission. If the POLR defaults or is not eligible to provide such services, responsibility for billing and collection of transition charges will immediately be transferred to and assumed by the servicer until a new POLR can be named by the commission or the customer

requests the services of a certified REP. Retail customers may never be re-billed by the successor REP, the POLR, or the servicer for any amount of transition charges they have paid their REP (although future transition charges shall reflect REP and other system-wide charge-offs). Additionally, if the amount of the penalty detailed in paragraph (5) of this subsection is the sole remaining past-due amount after the 45th calendar day, the REP shall not be required to comply with paragraph (5)(A), (B) or (C) of this subsection, unless the penalty is not paid within an additional 30 calendar days.

- (7) **Dispute resolution.** In the event that a REP disputes any amount of billed transition charges, the REP shall pay the disputed amount under protest according to the timelines detailed in paragraph (4) of this subsection. The REP and servicer shall first attempt to informally resolve the dispute, but if they fail to do so within 30 calendar days, either party may file a complaint with the commission. If the REP is successful in the dispute process (informal or formal), the REP shall be entitled to interest on the disputed amount paid to the servicer at the commission-approved interest rate. Disputes about the date of receipt of transition charge payments (and penalties arising thereof) or the size of a required REP deposit will be handled in a like manner. It is expressly intended that any interest paid by the servicer on disputed amounts shall not be recovered through transition charges if it is determined that the servicer's claim to the funds is clearly unfounded. No interest shall be paid by the servicer if it is determined that the

servicer has received inaccurate metering data from another entity providing competitive metering services pursuant to PURA §39.107.

- (8) **Metering data.** If the servicer is providing the metering, metering data will be provided to the REP at the same time as the billing. If the servicer is not providing the metering, the entity providing metering services will be responsible for complying with commission rules and ensuring that the servicer and the REP receive timely and accurate metering data in order for the servicer to meet its obligations under the securitization servicing agreement and the applicable financing order with respect to billing and true-ups.
- (9) **Charge-off allowances.** The REP will be allowed to hold back an allowance for charge-offs in its payments to the servicer. Such charge-off rate will be recalculated each year in connection with the annual true-up procedure. In the initial year, REPs will be allowed to remit payments based on the same system-wide charge-off percentage then being used by the servicer to remit payments to the indenture trustee for the holders of transition bonds. On an annual basis in connection with the true-up process, the REP and the servicer will be responsible for reconciling the amounts held back with amounts actually written off as uncollectible in accordance with the terms agreed to by the REP and the servicer, provided that:
- (A) The REP's right to reconciliation for write-offs will be limited to customers whose service has been permanently terminated and whose entire accounts

(i.e., all amounts due the REP for its own account as well as the portion representing transition charges) have been written off.

- (B) The REP's recourse will be limited to a credit against future transition charge payments unless the REP and the servicer agree to alternative arrangements, but in no event will the REP have recourse to the indenture trustee, the Special Purpose Entity ("SPE") established at the time of securitization, or the SPE's funds for such payments.
 - (C) The REP shall provide information on a timely basis to the servicer so that the servicer can include the REP's default experience and any subsequent credits into its calculation of the adjusted transition charge rates for the next transition charge billing period and the REP's rights to credits will not take effect until after such adjusted transition charge rates have been implemented.
- (10) **Service termination.** In the event that the servicer is billing customers for transition charges, the servicer shall have the right to terminate transmission and distribution service to the end-use customer for non-payment by the end-use customer pursuant to applicable commission rules. In the event that a REP or the POLR is billing customers for transition charges, the REP shall have the right to transfer the customer to the POLR (or to another certified REP) or to direct the servicer to terminate transmission and distribution service to the end-use customer for non-payment by the end-use customer pursuant to applicable commission rules.
- (11) **Precedence and modifications of REP standards in a financing order.**

- (A) **Compliance with financing order standards.** If the REP standards in the applicable financing order are different than the standards in this section, then the REP must comply with the REP standards stated in the financing order, instead of the standards stated in this section, unless the standards of the financing order have been modified and approved according to subparagraph (B) of this paragraph.
- (B) **Commission modification of standards.** The commission may impose standards on REPs that are different from those in the applicable financing order but only if the commission receives prior written confirmation from each rating agency that rated the transition bonds authorized by that financing order that the proposed modifications will not cause a suspension, withdrawal, or downgrade of ratings on the transition bonds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 14th DAY OF APRIL 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**