

**PROJECT NO. 36536**

**RULEMAKING TO EXPEDITE  
CUSTOMER SWITCH TIMELINES**

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**PUBLIC UTILITY COMMISSION  
  
OF TEXAS**

**ORDER ADOPTING AMENDMENTS TO §25.214 AND §25.474  
AS APPROVED AT THE JUNE 2, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to the Tariff for Retail Delivery Service, §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities, and amendments to §25.474, relating to Selection of Retail Electric Provider with changes to the proposed text as published in the February 13, 2009 issue of the *Texas Register* (34 TexReg 922). The amendments will facilitate more rapid transfers from one retail electric provider (REP) to another when a customer decides to switch retail providers. Under current rules, switching REPs can take as long as 45 calendar days; these amendments will shorten that time to seven business days or less. The amendments will modify the switch notification sent to the customer by the registration agent upon receipt of a switch request from a REP, and will require transmission and distribution utilities (TDUs) to process meter reads for customers who are switching REPs within four business days of receiving a request. The amendments will also require REPs to request switches consistent with the customer's requested switch date. The commission has adopted new §25.475, relating to General Retail Electric Provider (REP) Requirements and Information Disclosures to Residential and Small Commercial Customers, that requires REPs to notify customers of the termination of a term contract for electric service at least 14 days before the termination date. The changes in this rulemaking and §25.475 will require the registration agent, TDUs, and REPs to implement a shorter switching timeline and allow customers to be served by

their chosen provider more quickly. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 36536 is assigned to this proceeding.

In its Proposal for Publication, Staff noted that a public hearing would be held if requested. As no request for a hearing was received, none was held.

The commission received initial comments on the proposed amendments from the following: Accent Energy, Amigo Energy, Cirro Energy, Green Mountain Energy, Hudson Energy, U.S. Energy Savings, StarTex Power, Stream Energy, Tara Energy, and Tri-Eagle Energy, collectively as the Texas Electric Association of Marketers (TEAM); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, and Texas-New Mexico Power Company (Joint TDUs, collectively); Direct Energy, LP, Gexa Energy, LP, Green Mountain Energy Company, Sempra Energy Solutions, LLC, and Stream Energy, collectively as the Association of Retail Marketers (ARM); the Electric Reliability of Texas (ERCOT); Office of Public Utility Counsel (OPC); Oncor Electric Delivery Company, LLC (Oncor); Reliant Retail Services, LLC (Reliant); Steering Committee of Cities Served by Oncor (Cities); Texas Ratepayers Organization to Save Energy and Texas Legal Services (Texas ROSE/TLSC, collectively); the Texas Industrial Energy Consumers (TIEC); and TXU Energy Retail Company, LLC (TXU Energy).

The commission received reply comments from Joint TDUs; OPC; ERCOT; ARM, CPL Retail Energy, Reliant, TEAM, TXU Energy, and WTU Retail Energy (REP Coalition, collectively);

Oncor; TIEC; Cities; Texas ROSE/TLSC; and ARM, CPL Retail Energy, Direct Energy, TEAM, TXU Energy, and WTU Retail Energy (Retail Electric Companies, collectively).

The commission received supplemental comments from CenterPoint Energy Houston Electric LLC (CenterPoint); CPL Retail Energy, Direct Energy, Gexa Energy, Green Mountain Energy, Reliant Energy, First Choice Power, Stream Energy, TXU Energy Retail Company, TLC and WTU Retail Energy (Retail Electric Companies, collectively).

The commission received replies to supplemental comments from AEP Texas Central Company and AEP Texas North Company (jointly, AEP Texas); and CenterPoint.

In addition to comments on the proposed amendments, the commission requested interested persons to file comments in response to the following questions:

- 1. What additional customer protections need to be added to PUC rules to address the removal of the “ERCOT postcard”?*

Texas ROSE/TLSC supported retention of the ERCOT postcard notification process as a safeguard against slamming. They stated that elimination of the postcard would encourage more slamming, complicate resolution of slamming problems for customers, and result in an increase in slamming complaints filed at the commission. They referred to an alternative postcard that was discussed at a February 24, 2009 meeting with commission, OPC, and ERCOT staffs. As discussed at that meeting, the existing postcard message would be modified to simply inform the

customer that an order has been placed to switch the customer's service to a new REP. The customer would be directed to call the REP receiving the new account if the customer did not authorize the switch. Texas ROSE/TLSC preferred the current arrangement in which the customer is given a telephone number to initiate an automatic cancellation process, saying this arrangement offered the highest protection against slamming. But they also noted that the alternative postcard notification still provided the customer notice of the switch prior to receipt of an invoice from the new REP. They further noted that this arrangement should help simplify slamming complaint resolution at the commission. Texas ROSE/TLSC further recommended that within twelve months: (1) customers be directed to a toll-free telephone number that would automatically notify one or both REPs of the customer's contact; (2) REP customer service lines have a touch-tone selectable option to connect to trained, dedicated staff for handling switch cancellations; (3) REPs be required to notify ERCOT pursuant to §25.495(a)(1) within two business hours; (4) REPs be required to inform customers of their right to rescind a switch while it is being processed and of their right to complain to the commission if a rescission request is not readily carried out by the REP; (5) ERCOT protocols be retained and developed to ensure that all switches in process are honored during mass transitions; (6) discretionary service fee language be modified to make it clear that fees will be charged only when it is necessary to send a technician to read the meter; and (7) discretionary service fees for meter reads for expedited switches be charged by the TDU to the customer requesting the service.

In reply comments, Cities said that while they oppose elimination of the current ERCOT notification process, if the alternative postcard is adopted they concurred with Texas ROSE/TLSC regarding a toll-free telephone number to automatically alert REPs of a customer's

wish to cancel a switch and a requirement for quick action by REPs to cancel the switch, at the customer's request.

In reply comments, the REP Coalition said that while they were open to the continued use of a postcard for notification purposes that did not affect switching timelines, they took issue with recommendations of Texas ROSE/TLSC regarding timely REP responses to customer switch cancellations, creation of a special REP customer service calling category for customers wishing to cancel switches, and customer counseling regarding switch cancellation during enrollment. The REP Coalition said that each of these recommendations sent a message of caution to the customer when switching REPs, implying that the customer should have second thoughts about the switching decision. They said that repeated warning messages to customers are counterproductive in the development of a vibrant market, and that there is no public policy rationale for requiring a business to repeatedly offer a customer information on how to cancel an affirmatively made purchase decision. Retail Electric Companies expressed support for these comments.

ERCOT replied that the Texas ROSE/TLSC proposals would require significant cost and changes to the existing process, including six to eight months to modify call procedures and 12 to 14 months to develop new Texas SET transactions to notify REPs of customer switch cancellations.

Joint TDUs supported the proposal by Texas ROSE/TLSC, saying it would result in shortening the maximum switch time from 45 to 35 days. The average switch time would be diminished

from 26 to 16 days, and more than 75% of customer switches would be completed within 22 days and at no cost to the switching customer or to customers as a whole. Joint TDUs stated that there is no basis for assuming that customers would be dissatisfied with this timeline. Further, if REPs were to offer customers the option of paying for an out-of-cycle meter read, then those who wanted a shorter timeline could be accommodated under the current rules.

OPC and Cities expressed strong concern for a change in the process that resulted in the customer who has been switched without their permission first learning of the switch when they receive an invoice from a new REP. Cities said that some customers might not even respond to the invoice, assuming it is a mistake. This would further exacerbate the situation in the case of a slam. Cities were also concerned that elimination of the postcard might lead some agents contracted by REPs to believe that illegal practices will be profitable. Like Texas ROSE/TLSC, OPC favored the alternative postcard message and requirements that, upon notice by the customer, the new REP will be responsible for initiating and executing the process to return the customer to the customer's REP of record in accordance with §25.495.

Joint TDUs stated that the current postcard requirements allow time to correct switching errors before a switch takes place. They noted that 15% of switch requests in 2008 were not completed. They predicted that the result will be more incorrect switches, inadvertent gains, costs to correct switches, and impacts on retail customers and market participants.

Texas ROSE/TLSC noted that ERCOT sent out 674,000 postcard notifications in 2008 at a cost of just under one dollar each, and that of that number 23,887 customers exercised their option for

rescission. Cities opined that it was not unreasonable to assume that some of these rescissions involved slamming or some other unlawful practice. Cities pointed out that the postcard may spur customers to review REP disclosure information more closely.

Reliant pointed out that customer slamming complaints were down 72% in 2008, compared to the 2003 peak. They stated that the postcard notification process was instituted at the beginning of retail choice to combat slamming, but that the retail market has matured significantly since retail competition began. Reliant cited Commissioner Nelson's January 14, 2009 memo, stating that no other industry provides postcard notification of a change of service provider, and that the postcard may create confusion for that reason. Cities countered that while other industries, such as wireless communications, do not have an analog to the ERCOT postcard, there are hardware compatibility issues that keep slamming from being such a problem; a cell phone that works on one network will require modification to work on a different network.

Reliant said that the rule as proposed offered ample customer protection, including fully informing customers of relevant information during the authorization process and a verification process to validate switches.

In reply comments, Cities disagreed with Reliant's conclusion that customer notification is no longer needed because the market has matured, resulting in decreased slamming. Cities said Reliant had failed to acknowledge that the current notification process may be one of the main causes of the decline in slamming. Cities said that elimination of the rescission period is moving in the wrong direction by overtly encouraging unethical REPs to engage in slamming, and might

encourage high pressure telephone sales tactics. Cities said the concept of a “cooling off” period is sound, and that it allows customers additional time to consider service offerings, especially some of the more complex plans.

ARM contended that, while they were receptive to other ideas, the elimination of the postcard in its current form is essential to meaningful reduction in switching times. They said that the postcard required by §25.474(1) must be eliminated for switching timelines to be shortened sufficiently to meet the new provisions of the disclosure rule. It was ARM’s position that no new customer protection rules are required to address slamming; a REP who switches a customer without authorization violates the commission’s slamming rule (§25.495), which provides sufficient remedies to protect the slammed customer. The offending REP must bear all costs to return the customer to its chosen REP. Further, a REP who slams customers risks administrative penalties under §22.246 and suspension or revocation of its certificate pursuant to §25.107(j)(3). In addition, section 7 of the ERCOT Retail Market Guide addresses inadvertent gains, providing a process to cancel a pending switch or move-in transaction.

TXU Energy cited a Staff memo, stating that approximately 21,000 customers cancelled a pending switch using the 800 number on the current postcard, and said that while they were not aware of any other industry that provides this kind of notification, they believed that the postcard was responsible for preventing many inadvertent or illegitimate gains, saving customers significant frustration. TXU Energy believed that eliminating the postcard might shorten switching times, but it would also eliminate an important communications function that would be difficult to replace.

TXU Energy suggested retaining the postcard, but changing its message by directing the customer to their current REP if the customer had any issues with the pending switch. The rescission period would be eliminated, thus shortening switch times. TXU Energy acknowledged that this arrangement might lead to an increase in inadvertent gains, but the notification postcard would still allow the customer to contact the REP more expeditiously than would be the case in its absence.

Cities were unaware of any provision that might eliminate the need for the ERCOT postcard. They said email might be considered, but that all customers do not have email access, and fraudulent email addresses might thwart notification. ERCOT concurred, and noted that an email address is not a required field of information for any ERCOT transaction. Cities proposed to make the REP responsible to ERCOT for valid email addresses, and absent a response from the customer ERCOT would suspend the switch. Alternatively, Cities would require REPs to obtain third-party verification of the customer switch request, as is the practice for long distance telephone switches and as required by the Federal Trade Commission and some state agencies to reduce fraud.

*Commission Response*

**The commission acknowledges the issues raised in these comments and retains the postcard switch notification, with modifications suggested by TXU Energy to include contact information for the current REP as well as changes requiring contact information for the new REP. The commission agrees with REP Coalition concerning Texas ROSE/TLSC's**

**recommendations regarding special features on REPs' telephone systems for use by customers wishing to cancel switches. The commission does not find slamming to be so widespread as to warrant such warnings, and it is not aware of any other industry in which so many warnings are given to customers wishing to change service providers.**

**Regarding timely notification of cancelled switches by the new REP, §25.495 makes the new REP responsible for making the customer whole for any additional costs resulting from a cancelled switch; the commission finds this to be a sufficient stimulus for action on the part of the new REP to rectify the switch as soon as possible.**

Cities and Texas ROSE/TLSC believed that the ERCOT postcard is an important consumer protection and urged the commission to reconsider its elimination. TEAM said they understood this concern, and suggested (along with OPC) the use of a "non-actionable" postcard that would not include information about rescinding the switch but would simply reiterate the customer's choice and provide contact information for both the new and former REPs. TEAM stated that the postcard provides a means of customer education, and could include information such as a description of the expedited switch timeline, a warning about early termination fees for customers with term contracts, or information about [www.powertochoose.org](http://www.powertochoose.org).

In their reply comments, Joint TDUs said that in light of the comments of Texas ROSE/TLSC and TEAM, given the small percentage (12%) of customers who switch REPs each year, it would be better to remove the rescission period from the postcard and use the two existing meter reading processes (on- or off-cycle), with customers who request out-of-cycle reads paying for

the cost of these. Joint TDUs said that while this would not meet the 14-day switching requirements of the disclosure rule, it would shorten the longest switch time from 45 to 35 days, with an average switching time of 16 days. They noted that either the REP disclosure rule's requirement for a 14-day timeline could be changed, or it could be recognized that some customers would have to pay for an out-of-cycle meter read to meet the 14-day requirement. They recommended that the current process be left in place for non-POLR customers while advanced metering service is being implemented.

Cities replied that the alternative postcard with no automatic cancellation function places a greater burden on customers to work with their current REP when unauthorized switches occur, and this arrangement would rely on prompt and coordinated action between the current and gaining REP to reverse a switch before an invoice is sent by the gaining REP.

ERCOT said that if the existing postcard information needs to be modified because of the adoption of this rule, ERCOT will need two-three months to effect this change with its third-party service provider. ERCOT requested that the commission clarify whether the postcard will be sent to residential, small non-residential, and large non-residential customers that do not waive customer protection pursuant to §25.471(a)(3).

### *Commission Response*

**The commission concurs with TEAM, Cities, and Texas ROSE/TLSC that the postcard should be retained as a customer switch notification. The commission also concurs with TEAM and OPC on the use of a “non-actionable” notification, and adopts rule language**

**that retains the customer switch notification and provides telephone numbers for both the previous and new REPs. The commission recognizes, as Cities point out, that the elimination of the automated cancellation feature will make it more difficult for customers to cancel a switch, but it concludes that there are significant advantages to customers in expediting customer switches. Customers' terms and conditions may change when a term contract expires, and to permit them to quickly switch to a plan of their choosing will significantly improve customers' experience regarding choice in retail electricity. For the same reason, the commission is not adopting the recommendation of the Joint TDUs, which could leave a customer on a plan that is not the customer's choice for up to 35 days.**

TIEC noted that most of its members use interval data recording (IDR) meters and understand the benefits of advanced meters. They stated that advanced metering will alleviate many of the issues discussed herein. They were concerned that Discretionary Charges for meter reads under §25.214 are not class specific and that large customers may be impacted by the proposed rule changes. In their reply comments, they note that §25.475 (the REP disclosure rule) does not apply to large customers. Since the impetus for this rulemaking is the recent revisions to the REP disclosure rule, which does not apply to large customers, they urge that this rulemaking should not apply to large customers either. They suggested that the rule should explicitly target the mass market. TIEC initially understood the proposal for expedited switches at no cost to the customer would be applicable only to customers moving from POLR providers to other REPs. They found this arrangement appropriate, and questioned whether expedited reads should be available to all customers at no cost. TIEC requested that the commission retain on-cycle switching for customers with IDR meters, which would avoid many of the issues REPs have with

implementation of a new switching process for all customer switches. This would be a temporary process for TDUs rolling out advanced metering systems (AMS), but would be a long-term change for those with no plans for AMS.

ERCOT requested that the commission clarify whether the expedited switch would take the place of on-cycle switches, or if the expedited switch would constitute a third option. If the latter is the case, ERCOT said that it would have to undertake significant system modifications requiring \$4-5 million and 12-14 months to complete, thus undermining the commission's goal of quick implementation of the proposed rule.

TIEC replied that since expedited and out-of-cycle meter reads are both off-cycle and share similarities, it is worth considering whether the concept of expedited switching could be accomplished through on-cycle switching with certain process modifications.

TEAM and ARM commented that if the on-cycle switch process was retained, some switches could be performed in even shorter timeframes than are contemplated by the proposed amendments. In light of ERCOT's comments on the cost and time needed for system modifications to support a third type of switch, both TEAM and TXU Energy supported an approach with only two switch types. For clarity, TEAM and ARM suggested that the proposed expedited switch be referred to as a "standard" switch, and the out-of-cycle switch be referred to as a "self-selected" switch.

OPC and the REP Coalition agreed with TEAM and ARM's suggested use of in-cycle reads for expedited switches whenever they fall within the time specified for expedited switches. This would result in lower TDU costs to implement the rule, and would obviate the need for a sub-period bill for a minimal period of service.

*Commission Response*

**The commission adopts the terms “standard switch” and “self-selected switch” to replace “expedited switch” and “off-cycle switch,” respectively, as suggested by TEAM and ARM.**

**The commission finds that, in light of the time and costs for ERCOT to develop systems and procedures to support a third type of switch, there should only be two switching processes (standard and self-selected) and declines to retain the current on-cycle switch option suggested by TIEC, TEAM, and ARM. The commission believes that the TDUs will perform some of the switches on-cycle (under current timelines). Approximately 33% of expedited reads will fall within the three business days prior to the TDU's receipt of notification by ERCOT of first available switch date or within the four business days that begin with that notification. It is the commission's expectation that on-cycle meter reads will be used to effect standard switches whenever they fall within this period. The commission expects that TDUs will use the most cost-effective process available to effectuate standard switches under the expedited timeline that is adopted in this rule.**

Texas ROSE/TLSC said that providing customers who want or need a standard switch is more important than making sure that all switches are faster. They preferred that the commission

retain the out-of-cycle meter read to shorten switch timelines when customers need quick switches. Customers opting for out-of-cycle meter reads would pay for their cost. Customers who did not require a fast switch could still use the on-cycle meter read at no charge. Texas ROSE/TLSC said that the gaining REP should be required to explain and offer either option. They said this approach should be tried prior to undertaking expensive and time-consuming system changes at ERCOT.

Texas ROSE/TLSC indicated further that if the commission chooses to displace on-cycle meter reads with expedited reads, they would prefer that the gaining REPs absorb the cost of meter readings for their customers. They said that all customers should not have to pay the costs for customers who switch.

TEAM expressed support for expedited switching, saying the process would ensure that REPs react to customer needs. They agreed that a 45-day switching interval was excessive, and said that allowing the market to be more nimble in fulfilling customer choice would bring greater pressure on REPs to offer services and programs that meet customer needs, and that the ability to switch REPs quickly would lead to improved customer satisfaction.

OPC suggested that one way to shorten switch times while constraining costs would be to keep the status quo for meter read options, and have customers who want to switch on a specific date request an out-of-cycle read. While this would not result in a reduction of all switch timelines, it will provide customers a choice.

*Commission Response*

The commission recently completed a project to enhance disclosures to customers and customer awareness. During that project, the commission found that REPs need to price their service plans with short lead times. The wholesale market can be volatile, so the retail price they quote to customers and the power purchases they make to support the retail offer may not be viable from one week to the next. To avoid pricing their products with large risk premiums, they often need to establish prices in one week that are no longer consistent with market conditions a week or two later. The expedited switching timelines in this rule should make it easier for REPs to make offers that are consistent with market conditions and for customers to obtain prices, make a decision, and switch from one REP or plan to another. Other customers may be on plans that permit a REP to change some of the terms and conditions during the term of the plan, with an option for the customer to cancel the service if they are not in agreement with the change. The commission does not believe that it should take 30-45 days to switch providers. The new switching timeline will permit these customers to move quickly to a plan that they prefer. The switching timeline is also consistent with the notice provisions of §25.475(d)(4)(F) which will require the REP to inform the customer of a change in the terms of the contract and that it can take up to seven business days to switch providers. Notifications of terms of service that would be available to a customer at the expiration of a contract are also predicated on a seven day switching timeline. The commission acknowledges the comments of Texas ROSE/TLSC and OPC, but concurs with TEAM that the market will be more responsive to customers' ability to switch REPs quickly if all standard switching timelines are shortened; and for

**this reason, it is also appropriate for all customers to help pay for the cost to shorten the timelines.**

TEAM drew attention to the importance of customer education in this regard, and expressed support for legislative efforts to appropriately fund the customer education efforts of the commission and OPC.

*Commission Response*

**The commission concurs with TEAM that customer education in these matters is essential and encourages REPs to use every customer contact as an opportunity for customer education.**

ERCOT suggested and the REP Coalition agreed that rather than eliminating the rescission period, if the customer rescission period were shortened to two days, a switch cancellation could still take place within the four business day expedited switch process. Texas ROSE/TLSC agreed with ERCOT's suggestion, and proposed to add a notice to the postcard that after the two-day rescission period, customers should contact the REP to cancel the switch, consistent with Texas ROSE/TLSC's initial comments.

*Commission Response*

**The commission is requiring that contact information for the gaining and losing REPs appear on the postcard, but declines to adopt a requirement that the postcard include information about cancelling a switch. The commission believes that most of the switches**

**that occur in the market are legitimate, and cancellation information would not be relevant for the vast majority of customers.**

**The commission declines to adopt language supporting a two-day customer rescission period on the postcard, but retains the three-day rescission period provided in subsection (j).**

Joint TDUs noted that in any given year, 88% of customers do not switch REPs, but under the proposed rule the cost of expedited switches will be borne by all customers. They urged the commission to take time and care in the resolution of this issue. They pointed out that there is no perfect answer for implementing expedited switching processes prior to the advent of AMS. They said that switching is one of the most important processes in the market, requiring careful coordination between the losing REP, the gaining REP, the TDU, and ERCOT while protecting the customer and minimizing cost. Joint TDUs commented that the existing model, in which 90% of switches are completed using on-cycle meter reads, is the most efficient and cost effective approach given currently available technology. Further, they contended that once the proposed rule is adopted, it will take a minimum of six months to create, test, and implement the TDU system changes that the proposed rule will necessitate, and that a similar period may be required by other market participants. However, the Joint TDUs pointed out that these changes are needed only pending AMS deployment. Given this, Joint TDUs said the best compromise between speed, least cost, and effectiveness may be a less streamlined process.

REP Coalition stated in reply comments that, given the requirements of recently adopted §25.475(d)(4)(F), the compliance deadline for this amendment cannot extend past August 16, 2009.

Oncor expressed concern regarding the timing and cost to make the operational changes that expedited switching will require, and requested that the commission delay the effective date of this rulemaking until September or October 2009. Oncor noted that a delayed effective date was included in the recent amendments to the REP disclosure rule. Oncor appreciated the close interaction between the two rules but urged the commission to evaluate the requirements and consequences of the proposed rule on a stand-alone basis and consider amending or deferring the effective date of the REP disclosure rule if the commission determines that both rules must be implemented at the same time. Oncor said that while REPs had suggested that they could be ready to meet the currently proposed deadline, Oncor could not. Oncor noted that market participants had been given only five months to implement the REP disclosure rule and that the commission did not appear to directly take comments regarding timing and implementation.

In light of the August 16, 2009 compliance date of the REP disclosure rule and their understanding of the lead times needed by ERCOT to implement the two meter-read options, ARM requested that the compliance date for this amendment be the same. ERCOT requested that the rule be adopted during April 2009 to provide ample time for its implementation. ERCOT requested that the rule be adopted as soon as possible in light of the August 16 compliance date in the REP disclosure rule.

*Commission Response*

**The commission agrees with ARM that to be consistent with the requirements of the REP disclosure rule the compliance date for this amendment should be August 16, 2009. The commission recognizes that the TDUs will need additional time to comply with this rule and has adopted language allowing TDUs until December 1, 2009, to comply with the requirements for actual rather than estimated meter reads.**

Joint TDUs were concerned that the proposed rule would require them to provide a new service with no assurance of cost recovery. They stated that if the rule is changed to spread costs for expedited switches across all customers, TDUs should be allowed to choose the most cost-effective meter reading alternative, including estimates. Failing this, Joint TDUs predicted that switching costs would increase eight to ten times. They argued that the REPs' concerns about estimated meter reads were a good argument for leaving the current process in place. Oncor echoed these concerns, saying that it could not reasonably obtain actual meter reads for all switches within the time contemplated for implementation of the proposed rule, and that even if there were sufficient time, the direct costs to market participants for Oncor alone would be approximately \$6 million.

Oncor urged the commission to permit estimates as necessary to meet the timelines set forth in the proposed rule. Oncor noted that the proposed discretionary service charge provides for estimation of a meter read to complete an expedited switch, thus reflecting the Commission's desire to minimize the financial impact to the market. Without estimation, Oncor pointed out, the additional cost to the market will substantially increase in order to hire additional staff in the

short term and then ultimately reduce staff as each TDU deploys AMS throughout its service area. Oncor stated that, given the current implementation schedule for advanced meters within its service area, only 60% of meters would be candidates for estimation at the time the rule is implemented. A year later this figure would fall to 40%. Additional costs to perform actual meter reads for expedited switches for these non-AMS meters will be approximately \$5.1 million. Oncor noted that it had significant institutional knowledge of estimated meter reads and were sympathetic to the variety of concerns raised by the REPs in this regard. They said that these concerns were also recognized in the 2006 revision of TDU terms and conditions.

TEAM, REP Coalition, and TXU Energy strongly opposed the routine use of estimated meter reads for switches. TXU Energy said that estimated meter reads were one of the largest drivers of customer complaints, and that even when exhaustive efforts are made to investigate and revise estimates as appropriate, the process still produced poor customer experiences. TEAM said that the change to six-day switches was positive, but the proposed allowance of estimated meter reads at the discretion of the TDU was problematic. TEAM said that estimated meter reads were unfair to customers and both REPs involved in a switch because the lack of accuracy can lead to misplaced customer dissatisfaction with the new REP, creates the likelihood of imprecise and costly hedging decisions for both REPs, and can lead to REPs adding risk premiums to their retail prices.

Joint TDUs replied that these concerns were unfounded and should not be used as a basis to prohibit estimated meter reads. They said that the allegation that customers will be dissatisfied with estimates is unproven, and that the REPs should set expectations with the customer in the

process of switching. They argued that estimates used in expedited switches would be for relatively short periods, compared to estimates of regular monthly bills in which an entire month of usage is estimated. Joint TDUs said that estimated meter reads are reasonably accurate in the vast majority of cases, and that given the shorter usage periods being estimated for expedited switches, the accuracy should be even better. They said that even if an estimated read were off by an entire day, the cost of the error would come to only \$1.00 for a customer using 1,000 kWh per month switching in the middle of the month with a retail cost differential of 3¢ per kWh. They pointed out that even actual reads have an element of error, as ERCOT settlement occurs at midnight every day, while the meter readings were taken throughout the day, thus an estimated read is very unlikely to produce a significantly less accurate result than an actual read. In terms of harm to the REP resulting from estimated reads, Joint TDUs said that it would take a very large percentage of a REP's customers switching in a given month for any impact to be detectable.

Oncor's reply paralleled those of Joint TDUs. Oncor said that its current system of profile-based estimation yields results within 5% of actual reads. Oncor noted that the volume of switch-related meter reads varies widely from month to month and day to day. They urged customer education by the commission, REPs, and TDUs regarding the value of expedited switches and the fact that it comes at no cost to the customer with the possibility of an estimated read. They suggested that the possibility of an estimated meter read be included in the necessary disclosures by the REP rather than have customers be surprised after the fact. As an alternative, they suggested that estimated meter reads for the purpose of a switch could be deemed "final" for both wholesale and retail settlement. While admittedly unorthodox, Oncor said that this

arrangement would eliminate uncertainty and irritation that both REPs and customers experience in a cancel-rebill true-up.

REP Coalition said in replies that no level of accuracy in estimation could overcome customer misgivings about estimated meter reads.

TEAM argued that the cost to TDUs for expedited switches could be recouped under the surcharge proposed in §25.214(o). They also quoted Commissioner Nelson's December 18, 2008 memo filed in Project No. 35768 that suggested that TDUs could recover switching expenses as regulatory assets in rate cases. TEAM concluded that there could be no basis for a TDU arguing that actual meter reads rather than estimates would be cost-prohibitive. Oncor replied that they cannot reasonably obtain meter reads for all expedited switches, given the cost and time to do so.

### *Commission Response*

**The commission concurs with REPs' concerns regarding estimated meter reads, but recognizes that there should be some provision allowing estimates to occur on an ongoing-but limited, basis. The demand for meter reads for purposes of a switch often varies significantly from month-to-month and day-to-day; therefore a TDU needs some leeway to use estimated reads in such circumstances.**

**The commission also recognizes that the TDUs may be initially unable to meet the requirements of the amended rule, which restrict the number of estimated meter reads for**

**purposes of expedited switches. In light of this, the commission adopts language which allows TDUs to use unlimited estimated reads for expedited switches until December 1, 2009, at which time they will be required to perform actual reads for 80% of non-AMS meter reads for the purpose of a switch in any given month, and for any calendar year 95% must be actual reads. TDUs will be required to file quarterly reports indicating whether they are in compliance with this standard.**

**The commission understands that, customers may still have concerns regarding use of estimated reads for switches. The commission concurs with Oncor's recommendation and urges REPs to inform and educate customers of the possibility of estimated meter reads during the sales process. Additionally, the commission adopts language allowing for a cancel/re-bill for estimated meter reads in which the customer notifies the REP that the data appears to be erroneous.**

ARM argued that once a TDU has given a "scheduled date" for a standard switch, it is imperative that the meter read occur on that same date so that REP energy purchases to cover the load of the new customer will coincide with the switch date. Joint TDUs said this would remove the flexibility of four business days to schedule the meter read in the proposed rule. They said this would further exacerbate the challenge of staffing for meter reads for the purpose of switches.

*Commission Response*

**The commission concurs with ARM and adopts language requiring the TDU to honor the scheduled date it has given for a switch.**

In reply comments, Cities expressed concern for unintended consequences resulting from this project, its commendable intention notwithstanding. They said that when the potential for increased slamming, increases in TDU costs, requests for additional tariffs or regulatory assets, and disruptions caused by more estimated bills were taken into consideration, the costs appear to outweigh the benefits of expedited switching until advanced metering systems are in place. They suggested that we might be better served to consider expedited switching only for mass transitions at this time. Cities requested that the commission re-examine the full consequences of the approach it has taken, and determine whether it continues to believe the benefits of the desired objective outweigh the costs. These concerns were echoed by Oncor, which suggested that elimination or modification of the ERCOT postcard to provide only a notice of switching, coupled with speeding up some of the switching processes, might achieve the desired result. Cities also suggested a side-by-side comparison of the proposed rule and the REP disclosure rule timelines to determine whether a small revision in each might result in a better customer experience.

*Commission Response*

**The commission notes the concerns expressed by Cities and Oncor, but believes that the benefits of shortening the switching timeline outweigh their costs by making the market more responsive to customer needs, and facilitating the other benefits from the**

**amendments to §25.475. It should be noted that customers still have a three-day rescission period under §25.474(j).**

2. *What changes to PUC rules or ERCOT protocols need to be made to address “slamming” and a speedy switch back to the original REP at no additional cost to the retail customer?*

Cities contended that correction of all unauthorized switches should take precedence over other switches, and that a slamming REP should be required to pay 150% of charges resulting from an unauthorized switch, with the valid REP retaining two-thirds and the remaining one-third going to the customer, even if the customer did not remit payment for the first month bill from the slamming REP.

#### *Commission Response*

**The commission disagrees with Cities’ contention that punitive fees are appropriate to combat slamming, and finds that current rules in which the new REP must fully compensate the customer for any costs associated with an unauthorized switch are sufficient to guard against slamming.**

OPC noted that while §25.495 requires REPs to report unauthorized switches to ERCOT, the rule does not specify a timeline to remedy slams. OPC observed that the ERCOT Market Guide places some parameters around returning the customer to its chosen REP, but these parameters are tied to the date the inadvertent gain is logged on MarkeTrak rather than the date of the

unauthorized switch, thus extending the time to rectify the unauthorized switch. OPC proposed that §25.495 be amended to provide a maximum of 15 days from the time a customer informs a REP of an unauthorized switch until the customer is returned to its prior REP. OPC offered language for §25.474, directing a REP to initiate switch back processes in accordance with §25.495.

Reliant stated that the current §25.495 adequately addresses resolution of unauthorized switches. Oncor noted that slamming is addressed in §25.495, the ERCOT Market Guide, and MarkeTrak processes, but requested continuing confirmation from the commission that the REP responsible for an inadvertent gain pay all costs associated with returning the customer to its original status, and that these costs are not to be passed through to the customer. Oncor was unsure whether the expedited switching process contemplated in the proposed rule might result in increases in inadvertent gains.

### *Commission Response*

**The commission agrees with Reliant and declines to amend §25.474. As stated earlier, gaining REPs must bear all costs to restore customers who are switched without authorization to their original REP. This provides sufficient incentive for the gaining REP to take action quickly to undo unauthorized switches.**

TXU Energy stated that the processes currently in place to rectify inadvertent gains will be viable after this rulemaking to expedite customer switching goes into effect. But TXU Energy also noted that, under the current switching timelines, few customers have had their switches

completed prior to expiration of the rescission period. This may well not be the case should the switching timeline be shortened, resulting in an increase in inadvertent gains.

*Commission Response*

**The commission notes TXU Energy's concern and notes that careful monitoring should be done to ensure that the processes in place are meeting the needs of the market participants and customers.**

TXU Energy suggested that all TDU fees for returning customers to their original REPs, especially when the customer has exercised the right to timely rescission, should be waived and instead become regulatory assets.

Oncor stated that inadvertent gains are resolved between two REPs, and that the TDU participates only once such a resolution is reached. Oncor said that TXU Energy's suggestion would result in an uplift of these costs to the market as a whole, and that this socialization of costs does not follow the general rate principles of cost causation. Oncor suggested that any review of the inadvertent gain process should be done in the context of amending §25.495.

*Commission Response*

**The commission disagrees with Oncor, and finds that the costs to implement these amendments will serve to improve the functionality of the market for all customers, not just those who choose to switch providers in a given year. For this reason, socialization of the costs is appropriate.**

3. *What is the most appropriate means for TDUs to seek to recover significant increases in meter-related costs associated with meter reads for standard switches?*

Texas ROSE/TLSC stated that in cases of mass transitions or where customers have advanced meters, it is not appropriate for TDUs to charge fees for switching. In cases in which a TDU employee must physically read the meter, Texas ROSE/TLSC and TIEC favored having the charges paid by the customer requesting a switch. Joint TDUs concurred in reply comments. Texas ROSE/TLSC said the fact that many REPs refuse to offer meter reads other than those normally scheduled is a serious problem.

Joint TDUs said that, absent billing the switching customers for meter reads, and in light of pending AMS implementations, they favored treatment of the cost as a regulatory asset. Recognizing the fact that a given TDU rate case may be years away, they noted that carrying charges would be appropriate for these expenses, and the fact that these costs would diminish as AMS becomes more prevalent made the regulatory asset approach even more appropriate. They warned against parties supporting a regulatory asset now, only to oppose rate relief for the cost in a rate case, and urged the commission to make the rule clear with regard to the recoverability of these costs upon determination of their reasonableness.

REP Coalition stated that they also favored use of a regulatory asset to recover TDU costs of actual meter reads for expedited switches. This would give the commission the ability to examine costs in a rate case, thus preventing over-recovery. Furthermore, the proposed

surcharge amounts to piecemeal ratemaking, and a regulatory asset is a more reasonable approach in light of the expectation that the frequency of physical expedited reads will diminish with the advent of AMS.

Cities said it was unclear whether TDUs would incur additional costs or whether such costs would be significant under the proposed rule and opined that a rate case was the best vehicle for evaluation of overall TDU costs and revenues. To the extent costs are incurred to rectify unauthorized switches, Cities suggested that the gaining REP should be responsible for those costs.

Citing the AMS surcharge already in place for customers in Oncor and CenterPoint service areas, OPC could not endorse a process that would result in another charge to all customers to reduce switching timelines. OPC and TXU Energy further stated that, absent an amendment to PURA, the commission has no authority to enable a surcharge. OPC cited PURA §36.201, which states that, “the commission may not establish a rate or tariff that authorizes an electric utility to automatically adjust and pass through to the utility’s customers a change in the utility’s fuel or other costs.” But OPC was not fundamentally opposed to recovery of incremental costs by TDUs for meter reads for standard switches, subject to commission review and verification of the necessity and reasonableness of the charges. OPC said that any such charges should have a specified end date and should diminish as advanced meters are rolled out, with no charges for switching of customers with advanced meters. Reliant concurred, saying that a surcharge should only cover costs over and above those covered in the TDU’s last rate case (adjusted for load growth), should not result in over-recovery of costs, and should be adjusted annually to reflect

any over- or under-collection of meter reading expenses from previous years. Their proposed language also eliminated the current rule's proscription of reconciliation and retroactive recovery of costs, and limited cost recovery to those in FERC Account 902. OPC said that if the commission does not adopt OPC's suggestion for use of on-cycle and out-of-cycle meter reads exclusively, and if the commission chooses a reimbursement mechanism, OPC endorsed Reliant's suggested language to ensure that the surcharge can be reconciled.

Joint TDUs replied that to assume that costs for meter reads for standard switches would be charged to FERC Account 902 is incorrect and irrelevant to the determination of whether the costs were incurred to provide service as required by the rule.

In addition to raising costs, which AMS might eliminate in the long run but would have no impact in the near term, Oncor argued that the proposed rule would prevent TDUs from collecting fees that have been approved by the commission, and requested that the commission recognize the TDU's loss of revenue resulting from commission action. They stated that while expedited switching costs might not rival those of a new transmission line, they are still real costs. They favored having expedited meter reads be treated as regulatory assets, a recommendation with which TXU Energy concurred.

Cities replied that they were not aware of any legal authority for the commission to allow the commission to create new tariff surcharges outside of a general rate case. They opposed creation of a regulatory asset for this purpose, as it would shift costs to future rate cases, along with decisions on how and from whom to recover the costs. Additionally, they said that TDUs have

made no showing that the costs in this instance exceed the normal level of regulatory lag. Cities argued that these issues would not arise if expedited switching costs were paid by the REP requesting service. They said the only expedited switching costs that should be socialized were those associated with mass transitions, due to the accompanying negative impacts on the market. They said that the proposed amendments serve to eliminate one entity's rate and shift the costs to the general body of ratepayers through a surcharge was unprecedented and unwarranted.

TIEC commented that costs for expedited switches should be borne by the customers who request them. Failing this, they stated that any cost-free meter read policy should apply only to customers with non-IDR meters. In TIEC's view, the current system works well for large customers, many of whom have contracts that contemplate the current meter read system. In reply comments, TIEC said that loss of revenue should not be addressed through either a surcharge or a regulatory asset or by raising fees for out-of-cycle meter reads.

Joint TDUs and Oncor stated that cost recovery for TDUs should not be limited to "significant increases," as all costs for expedited switches will represent increases in cost. Joint TDUs noted that the new service will result in potentially thousands more meter reads per week over current levels, and that none of the costs for these additional reads will be recovered absent specific provisions by the commission. Joint TDUs and Oncor further said that PURA §36.051 allows for recovery of "reasonable and necessary operating expenses" rather than "significant" costs. Joint TDUs opined that the rule should provide for timely recovery of TDU costs through either a surcharge or regulatory asset, at the TDU's option. They said that if recovery was through a surcharge, the surcharge should be put in place at the time the new service is made available,

should be based on a forecast of the projected number of reads and/or estimated reads, and should include costs for reprogramming and creating systems and purchase of any hardware required. They stated that, pursuant to PURA Chapter 36, Subchapter C, the TDU should file for approval of a rider for the surcharge prior to initiation of expedited switching service. Joint TDUs stated that the surcharge should continue until obviated by implementation of AMS or until completion of a general rate case that includes consideration of these costs.

Oncor contended that the authorization for a regulatory asset is the appropriate cost recovery mechanism. It argued that when future costs are unexpected or unpredictable the use of a regulatory asset is warranted, whereas a surcharge is appropriate for expected levels of similar future costs. Further Oncor suggested that case law overturning the commission's approval of a regulatory asset in *Office of Public Utility Counsel v. Pub. Util. Comm'n*, 888 S.W.2d 804 (Tex. 1994) is not applicable. Oncor argued that the Supreme Court's decision pertains only to cases where a regulatory asset is used to alleviate regulatory lag, and in contrast, use of a regulatory asset in this instance is not meant to alleviate regulatory lag.

Oncor noted that the proposed tariff modifications will result in an explicit loss of revenue due to the fact that an Expedited Meter Read for the Purpose of a Switch has previously been accomplished by and billed as an Out-of-Cycle Meter Read for the Purpose of a Switch. In Oncor's case, the charge is \$7.25 for each out-of-cycle meter read. Texas ROSE/TLSC opposed uplifting the costs of expedited meter reads and allowing the TDUs to recover costs through a surcharge.

*Commission Response*

**Allowing TDUs special cost recovery for the increased costs that result from performing meter reads for the purpose of standard switches is appropriate because these rule amendments will necessitate that TDUs alter their meter reading practices in a manner that will increase their costs. While noting comments by Texas ROSE/TLSC and TIEC, the commission finds that it is appropriate to allow costs incurred in shortening switching timelines to be borne by all customers because this benefit will be available to all customers and will increase market responsiveness for all customers.**

**The commission adopts rule language that allows TDUs at their discretion, to seek cost recovery either through a regulatory asset or under the advanced metering system (AMS) surcharge allowed under §25.130(k). Because circumstances vary among TDUs, the commission is allowing each TDU to determine which cost recovery mechanism best suits their situation. The commission recognizes that these costs will be incurred in order to provide a critical benefit of advanced metering functionality for customers: the ability to quickly read a customer's meter without cost to that customer. This will allow the TDU to flow through the cost of reading a conventional, non-advanced meter in order to expedite the switching process for customers before AMS is deployed to all customers in the service territory. The commission finds that this is an essential modification to the competitive retail market, and therefore, is applying a mechanism in §25.474(p) which allows the TDU to exercise this option.**

**Alternatively, a TDU may choose to create a regulatory asset for recovery of costs. This additional option is appropriate, as not all TDUs are currently deploying advanced meters, and thus have no AMS surcharge in place for this purpose.**

In initial and reply comments, respectively, Reliant and REP Coalition proposed a modification of Section 4.3.4 of the TDU tariff to clarify that, unless a specific date is requested in the transaction, the TDU shall perform an expedited meter read in accordance with timelines provided in Chapter 6 of the tariff, relating to company specific rates and schedules. Reliant also proposed new Section 4.8.1.X, which would state that if no specific date is requested for a switch, the TDU will perform an expedited meter read in accordance with the timelines of Chapter 6, and provide the meter read to both the losing and gaining REP on the next business day. The date of the meter read determines the last billing date for the losing REP and first billing date for the gaining REP. In reply comments, TIEC noted that this section was noticed “no-change,” and argued that the suggested revisions would constitute a violation of notice requirements in Government Code §2001.024.

In reply, Oncor took issue with Reliant’s proposed new section, specifically the requirement that the meter reading data be delivered the next business day. Oncor stated that the current TDU tariff allows three business days for this, and that shortening the time would result in diminished data accuracy in that it would preclude parameter testing that currently detects and eliminates “outlier” meter reads.

*Commission Response*

**The commission disagrees that further tariff revision is needed for clarity, as the tariff language clearly states that the meter read for the purpose of a standard switch shall be used unless the self-selected switch alternative is specified by the REP. The commission, therefore, does not adopt the language proposed by REP Coalition and Reliant.**

**General Comments**

TXU Energy argued that expedited switching will create a potential for customers to “game” the system in cases of disconnection for non-payment; a REP is required to give at least ten days’ notice prior to disconnection for non-payment, while the proposal would allow a customer to switch REPs upon receipt of a disconnect notice and have service switched to the new REP before the original REP was disconnected, leaving the original REP with a bad debt. TXU Energy said that increased bad debt for REPs would be reflected in higher prices for all customers. TXU Energy said that this unintended consequence may require careful monitoring by the commission. In their reply comments, Retail Electric Companies acknowledged TXU Energy’s comments in this regard and concurred.

*Commission Response*

**The commission maintains that the benefit of shortened switching times for customers outweighs any impact of gaming by non-paying customers. REPs have safeguards against non-payment in the form of customer deposits and may have other recourse through credit reporting agencies and collections processes.**

Joint TDUs proposed changes to clarify that if an estimate is performed it should not count for the purposes of the limitations on the number of consecutive estimates that the TDU is allowed to perform. In reply comments, the REP Coalition countered that there is no legitimate reason why an estimated meter read for the purpose of a switch should not be included in the count as a policy matter.

*Commission Response*

**The commission concurs with Joint TDUs. The basis for limiting TDUs estimated reads was to ensure that customers provided access to their meters and that TDUs would rely primarily on actual reads rather than estimates for regular, on-cycle meter reads. Since the commission is requiring a TDU to read a meter apart from an on-cycle meter reading, it should not count against the TDU for its consecutive estimation allowance.**

**Section 25.214**

ARM suggested that meter reads for standard switches be performed within four business days rather than six calendar days to be consistent with the basis for the ERCOT protocols.

*Commission Response*

**The commission concurs and adopts language consistent with ARM's suggestion.**

**Section 25.474**

Oncor proposed that the commission make clear that a REP shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless the applicant requests an out-of-cycle meter read for the purpose of a switch.

*Commission Response*

**The commission agrees with Oncor. REPs shall not charge a switching fee absent an applicant request for an out-of-cycle (self-selected) switch and amends the rule accordingly.**

**Subsection (j)**

Reliant stated that the right of rescission in subsection (j) is no longer workable as it is virtually impossible to do so without assuming the full risk of any power used by a customer that cancels, which is precisely why the right of rescission is not applicable to a move-in. Door-to-door sales are allowed a rescission period because the contracts are handed to the customer upon enrollment.

*Commission Response*

**The commission declines to modify subsection (j), as the three-day right of rescission provides an important opportunity for the customer to review the terms and conditions of the service agreement. The commission notes that while Reliant is correct in saying that federal law requires the three-day rescission period only for door-to-door sales, the commission finds that the rescission period should apply to customers who are switching regardless of the sales channels.**

**Subsection (k)**

ARM proposed to modify subsection (k), so that TDUs would perform the expedited read on the regularly scheduled date if it falls within the timeframe the TDU has to read the meter, rather than reading it earlier.

***Commission Response***

**The commission concurs and adopts language in subsection (o) stipulating that the on-cycle read should be used if it falls within the three business days prior to the first available switch date, or within the four business days that begin on that date.**

Texas ROSE/TLSC were concerned that the proposed rules might not be sufficient to enforce the rescission protection.

TIEC argued that it was necessary to maintain the options that IDR customers have previously had available for an on-cycle or an off-cycle meter read. TIEC stated that contract provisions may tie a customer's ability to switch providers to the on-cycle meter read date and eliminating this option could impair the ability of larger customers to negotiate optimal contract terms. The REP Coalition replied that ERCOT had warned of expense and delay if three (on-cycle, off-cycle, and expedited) switching processes were required, and that ERCOT cannot develop a switching process for one class of customer that differs from those used by other customers. The REP Coalition concluded that only two switching processes should be allowed, in the interest of

moving the project forward. The REP Coalition suggested that IDR customer requirements could be met with out-of-cycle meter reads.

*Commission Response*

**The commission concludes that IDR customers' requirements can be met with the option of a standard switch or a self-selected switch.**

Joint TDUs recommended new titles for the proposed services in the rule: “switch on a date certain” and “switch not on a date certain.” AEP, CenterPoint, and TNMP recommended that the rule specify the number of days that the customer has to request cancellation of the switch, rather than that the customer will be returned to its chosen REP on the basis of a timely request. Joint TDUs proposed that, should the customer fail to respond within the specified time, the customer should either request a new switch to return to its chosen REP or accept service from the other REP.

*Commission Response*

**The commission declines to adopt new language as proposed. As is noted in the discussion of the terminology in the comments on the tariff, “expedited” switching has been changed to “standard” switching, and “out-of-cycle” has become “self-selected” switching. The commission finds these terms to be as descriptive, and less cumbersome than those proposed by the Joint TDUs.**

**The commission disagrees with AEP, CenterPoint, and TNMP’s recommendation that the rule specify the maximum number of days for a customer to cancel a switch, rather than merely requiring that the cancellation be “timely.” The amended language in §25.474(k) requires conformity with subsection (j), which allows customers three federal business days after receipt of terms of service to rescind the switch.**

**The commission declines to adopt language supporting Joint TDUs’ proposal that, should customers fail to exercise their right of rescission within the time allotted, they must either issue a new switch request to be returned to the original REP or their service will remain with the new REP. Joint TDUs failed to cite problems or issues that may have arisen from the pre-existing right of rescission language in subsection (j), and subsection (j) was listed as “No Change” in the Proposal for Publication.**

#### **Subsection (l)(2)**

ARM and Reliant proposed that the term “affiliated REP” be deleted from subsection (l)(2). OPC proposed changes consistent with its postcard proposal. Joint TDUs recommended that the term “POLR” be made consistent with the term chosen in the amendments to the POLR rule in Project No. 35769.

#### ***Commission Response***

**The commission agrees that it is appropriate to delete the word “affiliated” in this subsection, but it is continuing to use the term POLR here, as the use of the term has been continued in the POLR rulemaking project.**

**The commission agrees with OPC, and adopts a modified postcard which notifies the customer of a switch and provides contact information for the old and new REPs in the event the customer does not authorize the switch.**

Texas ROSE/TLSC reinforced the need to retain and develop protocols at ERCOT that assure that all switches in process are to be honored during a mass transition.

*Commission Response*

**The commission has addressed this issue in the POLR rulemaking and therefore declines to address it here.**

**Subsection (1)(3)**

OPC recommended adding a paragraph in subsection (1)(3), requiring the REP to initiate the rectification process by the close of the business day upon notification of an unauthorized switch. REP Coalition replied that this requirement would have no benefit for the customer, as the existing inadvertent gain process restores the customer to its original REP with no interruption in service and at no harm to the customer.

*Commission Response*

**The commission concurs with REP Coalition and takes no action in this regard.**

**Subsection (n)**

Joint TDUs proposed language to make clear that the TDU could still charge the customer a fee for denial of access.

*Commission Response*

**The changes to the tariff and §25.474 do not affect the provisions in the tariff relating to denial of access, which remain in effect. The commission, therefore, declines to adopt Joint TDUs' proposed language.**

CenterPoint and the Retail Electric Companies proposed that the TDUs be required to include certain costs in their cost recovery and that TDUs be prohibited from charging a fee related to the estimate adjustments in subsection (q).

*Commission Response*

**The commission adopts language precluding the TDU from charging fees for adjustments to estimated meter reads or for switch cancellations and requiring that costs for switch cancellations during the three-day customer rescission period be included in cost recovery.**

**Subsection (q)**

The Retail Electric Companies filed language on May 28 amending subsection (q) to address these concerns. In this proposal, amendments to the estimate will occur in two situations. First, if the next actual reading after an estimated switch is less than the estimate, this is clear evidence that the estimate was incorrect. Therefore, the estimate for the losing REP should be adjusted on

a non-discriminatory basis. Under the proposed amendments filed by the REPs, subsection (q)(2)(A) would require an adjustment in this situation.

The REP stakeholders also developed language whereby, in response to a complaint from the customer, if it is determined that usage per day for the estimated period is at least 25% greater than or 25% less than the average actual kWh usage per day, based on the next actual read, then the TDU would adjust the estimate and the customer would be rebilled. This creates a clear standard that the REPs and TDUs would follow to adjust a customer's bill. Subsection (q)(2)(B) addresses the review and adjustment in this situation.

AEP Texas proposed a specific methodology for the estimate adjustment process. CenterPoint expressed general agreement with the concept of adjusting the estimate and supported AEP Texas's proposed modifications.

### *Commission Response*

**The commission appreciates AEP's proposed modification of the adjustment process, but is reluctant to impose a single process on all the TDUs. Subsection (q)(2)(C), as proposed by the REP stakeholders, allows the TDUs to use a reasonable methodology for the adjustment of an estimate. The commission believes that AEP Texas's proposal to adjust the estimate using the average daily kWh usage based on the actual read is a reasonable methodology and would be allowed under the proposed REP language. However, the commission does not want to preclude the other TDUs from using another adjustment methodology that is also reasonable.**

**The commission believes that the adjustment to a customer's bill should be contingent on the REP actually receiving a customer complaint. The first sentence of subsection (q)(2)(B) is modified to read: "Only upon the receipt of a customer dispute of the estimated usage to either the gaining or losing REP, either REP may request the TDU review the estimate."**

**The commission adopts the language proposed by the Retail Electric Companies, as modified.**

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

TDUs shall apply to amend their tariffs to comply with the amendments adopted herein within ten days of the effective date of the amendments.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 & Supplement 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also adopts these rules pursuant to PURA §36.001, which grants the commission authority to establish and regulate rates of an electric utility; §36.003, which requires that the commission ensure that each rate of an electric utility is just and reasonable; §39.101, which grants the commission authority to establish

various, specific protections for retail customers; §39.102, which provides for retail customer choice; §39.203, which grants the commission authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice, and comparable rates for open access for all retail electric utilities offering customer choice, and PURA Chapter 17, Subchapters A and C, which deal, respectively, with general provisions relating to customer protection policy and the retail customer's right to choice.

Cross Reference to Statutes: PURA §§14.002, 36.001, 36.003, 39.101, 39.102, 39.203 and Chapter 17, Subchapters A and C.

**§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.**

- (a) - (c) (No change.)
- (d) **Pro-forma Retail Delivery Tariff.**
  - (1) **Tariff for Retail Delivery Service.**  
**Figure: [16 TAC §25.214\(d\)\(1\)](#)** (amendment on pg. 78 & 79 of 84)
  - (2) (No change.)

**6.1.2 DISCRETIONARY CHARGES**

**6.1.2.1 STANDARD DISCRETIONARY SERVICES**

**i. Charges Billed by Company to Competitive Retailer**

**Out-of-Cycle Meter Read Charges**

<b>Out-of-Cycle Meter Read Charges</b>	
<p><b>Re-Reads</b>                      Applicable to requests to re-read Retail Customer’s Meter to verify the accuracy of Company’s Meter Reading. The re-read shall be completed within five Business Days of Company’s receipt of the request.</p> <p style="margin-left: 40px;">i. Meter Reading found to be in error                      ii. Meter Reading found to be accurate</p>	<p>\$0.00                      \$x.xx</p>
<p><b>Out-of-cycle Meter Read for the Purpose of a Self-Selected Switch</b>                      Applicable to requests to read Retail Customer’s Meter on a date other than Company’s regularly scheduled monthly Meter Reading date for the purpose of a switch of a Retail Customer’s account to a new Competitive Retailer on a date certain. Company shall perform the Meter Read on the Competitive Retailer’s requested date, provided the Company receives the request on a Business Day that is not later than two Business Days prior to the requested date. Notices received after 5:00 PM CPT, or on a day that is not a Business Day, will be considered received on the next Business Day. If the requested date is not a Business Day, the out-of-cycle Meter Read will be scheduled for the first Business Day following the requested date. The meter read shall be performed in accordance with Section 4.3.4, CHANGING OF DESIGNATED COMPETITIVE RETAILER.</p>	<p>\$x.xx</p>

<p><b>Meter Read for the Purpose of a Standard Switch</b>                  Applicable to requests to read Retail Customer’s Meter for the purpose of switching Retail Customer’s account to a new Competitive Retailer when the customer has not requested switching on a date certain. Company shall use on-cycle meter readings obtained during the three business days prior to the first available switch date (FASD) received from the Registration Agent or the four business days beginning with the FASD for customers whose meters were scheduled for on-cycle readings during that time, and shall perform a Meter Reading or Estimated Meter Reading within four business days beginning with the FASD for customers whose meters were not scheduled to be read during that time. The Meter Reading shall be performed in accordance with Section 4.3.4, CHANGING OF DESIGNATED COMPETITIVE RETAILER.</p>	\$0.00
<p><b>Out-of-Cycle Meter Estimation for the Purpose of a Switch</b> due to denial of Access by Retail Customer</p>	\$ x.xx
<p><b>Out-of-Cycle Estimate for the Purpose of a Mass Transition</b>                  Charges for estimation shall be charged to the exiting Competitive Retailer.</p>	\$x.xx

**§25.474. Selection of Retail Electric Provider.**

(a) - (j) (No change.)

(k) **Submission of an applicant's switch or move-in request to the registration agent.** A REP shall submit a 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 TDU, municipally owned utility, or electric cooperative. A REP shall submit an applicant's switch request to the registration agent as a standard switch. In the alternative, the REP shall submit an applicant's switch request as a self-selected switch if the applicant requests a specific date for a switch, consistent with the applicable transmission and distribution tariff. 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, provided that if the customer makes a timely request to cancel service the REP shall take action to ensure that the switch is canceled or the customer is promptly returned to its chosen REP without inconvenience or additional cost to the customer. 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.**

(1) When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with this section and its

protocols, to the extent that the protocols are consistent with this section. The registration agent shall send a switch notification notice to the applicant that shall:

- (A) be worded 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; and,
  - (C) provide the names and telephone numbers for the gaining and losing REP.
- (2) The registration agent shall direct the TDU to implement any switch, move-in, or transfer to the REP or the POLR in accordance with this section and its protocols.
- (m) (No change.)
- (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 an out-of-cycle meter read for the purpose of a self-selected switch. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. The TDU shall not charge a fee for a review or adjustment described in subsection (q)(2) of this section. To the extent that the TDU assesses a REP a properly tariffed charge for connection of service, out-of-cycle meter read for self-selected 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. A TDU shall not assess to a REP or an applicant any costs associated with a switch cancellation, including inadvertent gain fees, that results from the applicant's exercise of the three-day right of

rescission. The TDU shall include such costs in the cost recovery mechanism described in subsection (p) of this section.

(o) **Use of actual meter read for the purpose of a switch.**

(1) If an actual meter read occurs during the four business days beginning with the first available switch date determined by the registration agent, the TDU shall use that actual meter read for the purpose of completing a standard switch.

(2) If an actual meter read occurred during the three business days prior to the first available switch date determined by the registration agent, the TDU shall use that actual meter read for the purpose of completing a standard switch.

(p) **TDU cost recovery.** The TDU may recover the reasonable costs associated with performing meter reads for purposes of a standard switch through one of the following two options at the TDU's discretion:

(1) TDU costs associated with performing standard meter reads for the purpose of switches, to the extent not reflected in base rates, shall be considered costs incurred in deploying advanced metering functionality and are to be considered in setting a surcharge established under PURA §39.107 (h) and §25.130 of this title (relating to Advanced Metering). The costs shall be included in the annual reports filed pursuant to §25.130(k)(5) of this title as actual costs spent to date in the deployment of Advanced Metering Systems (AMS) and shall be considered in setting, reconciling and or updating the AMS surcharge pursuant to §25.130(k) of this title; or,

- (2) a TDU shall create a regulatory asset for the expenses associated with performing standard meter reads for the purpose of switches pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such a regulatory asset, including carrying charges, shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary.
- (q) **Meter reads for the purpose of a standard switch.**
- (1) Beginning December 1, 2009, a TDU shall perform actual, as opposed to estimated, meter reads for at least 80% of meter reads for the purpose of a standard switch in any given month, and at least 95% of meter reads for the purpose of a standard switch in any calendar year, exclusive of remote meter reads using advanced meters. Until December 1, 2009, a TDU may perform estimated meter reads for standard switch requests only for residential customers, exclusive of customers with meters that have remote read capability. A TDU shall use best efforts to perform as many actual reads as possible for standard switches.
- (2) Notwithstanding §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), an estimated meter read for the purpose of a standard switch is not subject to adjustment, except as provided in subparagraph (A) or (B) of this paragraph. A customer is obligated to pay a bill based upon an estimated meter

read for the purpose of a switch, including any adjustment made pursuant to subparagraph (A) or (B) of this paragraph.

- (A) The TDU shall adjust the estimated meter read if the losing REP's billed usage is greater than the total kilowatt-hours used by the customer in the TDU monthly meter read cycle during which the estimate was made.
  - (B) Only upon the receipt of a customer dispute of the estimated usage to either the gaining or losing REP, either REP may request the TDU to review the estimate. In reviewing the estimate, the TDU shall promptly calculate the average actual kWh usage per day for the time period from the actual meter reading occurring prior to the estimated reading to the actual meter reading occurring after the estimated reading. The TDU shall determine whether the usage per day for the estimated period prior to the switch is at least 25% greater than, or 25% less than, the average actual kWh usage per day. If so, the TDU shall promptly adjust the estimated meter read. The TDU may adjust an estimate that does not meet this 25% threshold, on a non-discriminatory basis.
  - (C) The TDU shall apply a reasonable methodology in making adjustments pursuant to subparagraphs (A) and (B) of this paragraph and shall make the methodology available to REPs. Consistent with any meter read adjustments, the TDU shall adjust its invoices to the affected REP or REPs.
- (3) A TDU shall file performance reports with the commission as part of the information filed under §25.88 of this title (relating to Retail Market Performance

Measure Reporting). These reports shall show by month the number and percentages of actual and estimated meter reads for the purpose of switches, and whether that month's performance was in compliance with paragraph (1) of this subsection.

- (r) **Scheduled switch date.** Once a TDU notifies the REPs of a scheduled switch date, the TDU shall perform an actual or estimated read of the customer's meter for that date.

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 §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities, and amendments to §25.474, relating to Selection of Retail Electric Provider, are hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS this the 11th day of JUNE 2009.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BARRY T. SMITHERMAN, CHAIRMAN**

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**DONNA L. NELSON, COMMISSIONER**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**