

**PROJECT NO. 31416**

**EVALUATION OF DEFAULT SERVICE § PUBLIC UTILITY COMMISSION  
FOR RESIDENTIAL CUSTOMERS AND §  
REVIEW OF RULES RELATING TO THE § OF TEXAS  
PRICE OF BEAT AND PROVIDER OF §  
LAST RESORT §**

**ORDER ADOPTING AMENDMENT TO §25.43  
AS APPROVED AT THE JUNE 29, 2006, OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.43, relating to Provider of Last Resort (POLR) with changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1567). The amendment revises the current POLR rule based upon the experience gained since the POLR has been in existence and implements a multiple POLR provider system to reduce the risk to a POLR provider associated with providing POLR service.

Three key elements associated with the rule amendment are: 1) the pricing structure of POLR service, 2) the selection process of the POLR providers, and 3) reducing the time required for the mass transition process by which customers of a Retail Electric Provider (REP) are transferred to POLRs.

1) The pricing structure of POLR service can be divided into two distinct categories, the POLR rate, and competitively marketed, non-POLR priced products and services. The POLR rate is meant to be a last resort pricing mechanism, as it is the intent of the commission to structure POLR service in a manner so that when customers are transitioned to a POLR provider, the POLR provider will have an opportunity to market to the transitioned customers and enroll

them in their competitively available products and services, thus reducing or eliminating exposure to the POLR rate. The potential to gain customers at a relatively low acquisition cost should provide incentive to REPs to volunteer to become POLR providers. The POLR rate is designed to reflect several elements: a pass through of utility non-bypassable charges, a pass through of ERCOT charges, an additional POLR customer and demand charge (to reflect the costs to the POLR provider), and an energy charge that is 130% of the actual hourly market clearing price of energy (MCPE) with an associated price floor. For the large non-residential customer class, the POLR rate consists of a pass through of utility non-bypassable charges, a pass through of ERCOT charges, an additional POLR customer and demand charge, and an energy charge that is 130% of the 15 minute interval MCPE with an associated price floor. This POLR rate structure is similar to the current POLR rate structure for the large non-residential customer class.

2) The selection process of the POLR providers consists of creating an initial eligibility list, followed by the selection of two different types of POLR providers: volunteer POLR REPs and non-volunteering POLR providers. One of the reasons to amend the POLR rule was to reduce the risk and burden associated with serving as a POLR. Under the amended rule, the risk and burden may be eliminated entirely as volunteer POLR REPs may be able to assume responsibility for the transitioned customers without the need for the non-volunteering POLR providers to serve customers under the POLR rule. However, as POLR service is “last resort” service intended to ensure continuity of service, it is necessary to designate five non-volunteering POLR providers that will assume responsibility for any transitioned customers in excess of what the volunteer POLR REPs are capable of serving. As the non-volunteering POLR providers will be providing “last resort” service, it is necessary to designate the five largest REPs to serve in this capacity, as

the five largest REPs should be the five retail providers most able to assume the responsibility without undue hardship to them. Under the previous POLR rule, one REP could be forced into a “non-volunteering” status, so the amended rule does not create a new burden for REPs, but actually reduces the risk of that burden as five REPs will share the responsibility, as opposed to one bearing the entire risk of providing the service.

3) The desire to reduce the time frame associated with the mass transition process is of key importance for the simple reason that a mass transition to POLR providers usually represents costs to the market as a whole, because most mass transitions of customers to the POLR providers are associated with the insolvency of a REP. The longer it takes to transition the responsibility for a customer to the POLR provider, the higher the costs that will ultimately be borne by all market participants. According to the ERCOT Protocols and contracts between ERCOT and market participants, a REP, through the qualified scheduling entity (QSE) that is its representative for ERCOT billing and scheduling, is responsible to ERCOT for market services that ERCOT acquires and provides on behalf of all market participants. When a REP or QSE defaults, the amount owed represents a “short pay.” The costs associated with serving the customers of the defaulting REP until the responsibility for the customer is transferred to the POLR provider is effectively added to the short pay amount. If ERCOT is unable to collect the short pay amount, it is charged to all market participants on a load ratio share basis. To reduce the amount of short pay, and the burden on the market as a whole, it is therefore important to initiate and complete the mass transition process as quickly as possible.

This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). This amendment is adopted under Project Number 31416.

A public hearing on the amendment was held at commission offices on April 7, 2006. Representatives from the Association of Community Organization for Reform Now (ACORN); AARP; Texas Ratepayers' Organization to Save Energy (Texas Rose); Texas Legal Services Center (TLSC); and the general public attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments and reply comments on the proposed amendment from First Choice Power Special Purpose, L.P. (First Choice); TXU Cities Steering Committee (Cities); Joint Commenters; Retail Market Coalition (RMC); Electric Reliability Council of Texas, Inc. (ERCOT); Tenaska Power Services Co., Sempra Energy Solutions, Coral Power, L.L.C., and Constellation NewEnergy, Inc. (collectively TSCC); Office of Public Utility Counsel (OPC), TLSC, Texas Rose, and AARP (collectively OTTA); City of Houston (COH); Joint TDUs (TDUs); Texas Industrial Energy Consumers (TIEC); Competitive REPs (CREPs); and Public Citizen Texas Office (combined with Texas Rose and TLSC, collectively TTP). Comments were also filed by OPC, independent of OTTA.

**The commission posed the following questions:**

- 1. In regard to the proposed POLR rate, what is the appropriate "MCPE multiplier" to be applied as the "X%" in the POLR rate formula?*

First Choice, TSCC, and RMC recommended a multiplier of 150% that would be applied to a shaped Market Clearing Price of Energy (MCPE).

Cities commented that any MCPE multiplier should not be a predetermined fixed percentage, but should be based upon a competitive bidding process from POLR suppliers and urged the commission to reject the 150% MCPE multiplier proposed by RMC, stating that it was excessive and unjustified.

RMC additionally commented that it supports an energy price floor for the residential and small non-residential customers without interval data recorder (IDR) meters, and an MCPE floor for IDR-metered customers because MCPE could potentially go negative and because the POLR rate is not intended to be a competitive offering. TSCC replied that it generally agreed with RMC's energy floor suggestion but proposed using a set price rather than a multiplier as a multiplier would make the floor unknown and it would therefore be difficult for POLRs to plan their business decisions, while a fixed price floor would provide both the POLR and customers with some degree of certainty. Additionally, if MCPE hit an extremely low or negative level, a multiplier would not result in a floor much different from the MCPE, and therefore would not serve its intended function.

In reply comments, OPC stated that the POLR should be a balance between consumer and industry interests and that the 150% multiplier was derived from trying to match the historical prices of POLR. OPC stated that the multiplier, in addition to the \$25 customer charge is too

avaricious. OPC commented that the MCPE is not the appropriate method of pricing POLR service for residential customers, but if the method is adopted, the formula should include a small X factor of 10 to 12 mills per kWh that is added to the otherwise applicable formula price in order to recover a REP's margin. OPC also stated in reply comments that if a variable spot pricing formula is adopted, then a weighted average of up and down MCPE for balancing energy service over an entire 30-day period should be used as that would provide a more accurate calculation and be less subject to aberrations if a longer period of time is used than the arbitrary two days per month proposed by some parties.

TSCC stated in reply comments that the proposed multiplier recovers variable energy-related charges and that a fixed adder would not compensate POLRs for the additional credit exposure that increased MCPE creates.

*Commission response*

**The commission agrees with OPC that the POLR price should be a balance between consumer and industry interests and has crafted the POLR rate formula accordingly. The POLR rate is intended to recover the costs associated with POLR service and should not be a rate that competes with market offerings. The commission is concerned that the implementation of a 150% multiplier, in addition to customer charges, demand charges, and the flow through of wires charges creates a POLR rate that is slightly excessive and would give POLRs an incentive to keep customers on the POLR rate, and therefore has modified the multiplier to 130% of MCPE. The commission disagrees with OPC and Cities that an MCPE based formula is not the appropriate method of pricing POLR service for**

residential customers as the cost to serve customers is directly correlated with the MCPE. The POLR rate formula has been revised accordingly.

2. *In regard to the proposed POLR rate, what are the appropriate monthly customer charges or demand charges?*

Cities stated that the monthly customer charges and demand charges are a relatively small component of the POLR rate and should be incorporated in the overall MCPE based charge to simplify the POLR rate structure. Alternatively, Cities commented that the charges should not be predetermined but rather should be based on competitive bids from POLR suppliers.

RMC recommended customer charges of \$25 for the residential class, \$50 for the small non-residential class without a demand meter or with an IDR meter, \$0 for the small non-residential class with a demand meter but no IDR meter, and \$2,897 for the small non-residential class with an IDR meter and the large non-residential class. RMC's recommended demand charges were \$6 per kW (or kVA) for the small non-residential class with a demand meter, but no IDR meter. RMC's proposed energy charge floor for all but the small non-residential IDR metered class and the large non-residential class is a total energy charge which is the higher of 150% X MCPE or a simple average of historical POLR rates in the transmission and distribution service provider (TDSP) territory for 12 months ending in March of even-numbered years, and MCPE must be greater than or equal to \$7.25 per MWh for the last two classes. RMC commented that in most months, their proposed methodology would have resulted in a POLR rate that was lower than the actual POLR rate approved by the commission.

TSCC commented that transmission and distribution charges, ancillary services charges (including RPRS Market Clearing Prices) and taxes should be passed through at cost and recommended a \$6 per kW per month demand charge for the small and large non-residential classes.

*Commission response*

**The commission disagrees with Cities that the POLR rate structure needs to be simplified for smaller customers and disagrees with the concept of a competitive bid process as such a process is inconsistent with the structure of the amended POLR rule. As there will be multiple POLR providers, it would be inappropriate to enforce the bid of one POLR provider upon all other POLR providers, as such a bid may not be representative of the costs of the other POLR providers. In addition, if the POLR rate is allowed to vary from POLR to POLR to reflect different bids from different POLR providers, then an issue arises over which customers get transitioned to which POLR providers. If the POLR rate is the same among all POLR providers, which POLR provider a customer is transitioned to is largely immaterial. Consistent with the commission response to question number 1, the POLR rate formulas have been modified accordingly to reflect a 130% MCPE multiplier and customer and demand charges of: a customer charge of \$0.06 per kWh for the residential customer class; a customer charge of \$0.025 per kWh and a demand charge of \$2.00 per kW (\$50.00 per month for customers without a demand meter) for the small and medium non-residential customer classes; and a customer charge of \$2,897.00 and a demand charge of \$6.00 per kW for the large non-residential customer class.**

3. *In regard to the proposed POLR rate, how far in advance of billing does the rate need to be calculated? Does a customer who is to be transitioned to POLR need to know the rate at that time or is it appropriate for the rate to be calculated after service is rendered, but before a bill is issued?*

First Choice commented that the risk premium for POLRs may be mitigated to the extent that the lag between the provision of POLR service and the MCPE price used to bill the customer can be reduced. First Choice proposed addressing this lag by using a shaped MCPE for each month for each Congestion Zone (Load Zone) and the predominant load profile/Weather Zone combination on the first business day following the usage monthly cycle read date for each ESI\_ID. Beginning on the 3rd business day after posting of the shaped MCPE, such MCPE should be applied in calculating POLR bills. RMC stated in reply comments that it agrees with First Choice's goal to mitigate the risks of serving transitioned customers by reducing the lag between the MCPE prices but stated that REPs' billing systems cannot handle such frequent price changes and First Choice's proposal should therefore be rejected.

Cities commented that the POLR rate formula, along with indicative values of the POLR rate, should be published on the commission's website and provided by POLR suppliers to customers as soon as practical after their transfer to POLR service.

RMC recommended that for the residential and small non-residential classes, the reference price should be reset twice a month to decrease the deviation between the cost to serve POLR customers and the revenues from POLR customers. RMC further commented that the

commission could increase the effectiveness of Electricity Facts Label (EFL) type information by posting historical POLR rates so that customers will have a better sense of what the POLR rates have been over time.

TSCC commented that any firm rate would have to be significantly augmented by risk premiums and would have the potential to overcharge customers or to under-compensate POLRs. TSCC stated that a transparent formula for deriving a POLR rate provides sufficient information for prospective POLR customers and recommended that the POLR notice to customers contain the formula for deriving the rate, and include the total rate from a previous period as an example.

ERCOT stated in reply comments that it strongly encourages the commission to reject RMC's recommendation and not assign the calculation task to ERCOT as the task of calculating, determining and posting POLR rates, or any rates or prices in the retail market, is outside of ERCOT's purview and range of responsibilities under PURA. ERCOT also commented that RMC's proposal calls for ERCOT to make the POLR rate information available through a programmatic interface, which would require a system change for ERCOT of unknown scope and expense.

*Commission response*

**The commission agrees with attempting to match the cost of POLR service with the amount POLR customers are charged. The commission agrees with RMC that multiple monthly changes to the POLR rate for smaller customers is inappropriate. The POLR rate formulas have been modified consistent with previous commission responses. The**

commission agrees with Cities that the POLR formula rate should be published on the commission's website and the commission agrees with TSCC that the POLR rate formula should be transparent to customers. The commission agrees with ERCOT that ERCOT should not be responsible for calculating the revised POLR rate.

4. *In regard to the small non-residential greater than or equal to 50 kW customer class, what are the appropriate customer protection rules to be waived?*

Cities commented that it was not aware of any customer protection rules that should be waived for small non-residential customers.

RMC and TSCC stated that §25.471(a)(3) already provides that the customer protection rules may be waived for commercial customers with a peak demand of 50kW or greater, with the exception of §25.495, relating to Unauthorized Change of Retail Electric Provider, §25.481, relating to Unauthorized Charges, and §25.485(a)-(b), relating to Customer Access and Complaint Handling.

TDUs commented that it is not necessary or advisable to bifurcate and create two different POLR small non-residential customer classifications, based on a 50 kW breakpoint. TDUs commented that POLRs should only volunteer to serve the small non-residential class if they are prepared to serve customers who cannot waive customer protections and that it is unnecessary to create a separate class in order to allow the POLRs to pick and choose customers based on their own pre-defined criteria or who they would find it lucrative to serve, rather than those criteria already

existing in the market. TDUs commented that market systems currently do not distinguish customer classes by a line of demarcation at 50 kW and ERCOT cannot assign customers based upon this breakpoint. In reply comments, ERCOT stated that without expressing an opinion on whether a new customer class is needed, eliminating the new proposed customer class would reduce the number of TX SET changes needed and the cost of implementing the new rule. In reply comments, TDUs stated that ERCOT correctly described the difficulty and expense that would be entailed in bifurcating and creating these new customer classes. TSCC stated in reply comments that the commission should retain the proposed new customer class so that certain customer protection rules may be waived and stated that the TDUs' assertion that only REPs who can serve customers while complying with all customer protection rules should volunteer to serve as small non-residential POLRs appears to reflect more the TDUs' desires to avoid modifying their systems than a genuine desire to improve the market or protect customers.

*Commission response*

**The commission disagrees with the TDUs that it is not necessary or advisable to bifurcate and create two different POLR small non-residential customer classifications, based on a 50 kW breakpoint. The commission is concerned with the number of REPs that will be eligible to serve as POLR and the number that will volunteer to serve as POLR. With the bifurcation of the small non-residential customer class, the number of REPs serving as POLR should be increased. The commission agrees with RMC and TSCC that §25.471(a)(3) provides that the customer protection rules may be waived for customers with a peak demand of 50kW or greater, with the exception of §25.481, §25.485(a)-(b), and §25.495.**

5. *In regard to the eligibility criteria to serve as a POLR, are the proposed 1% threshold values too low (or too high)?*

Cities recommended that the threshold be established as a percentage of historical POLR customer levels in each area rather than as 1% of total customers in a like customer class.

RMC and TSCC commented that the 1% threshold is appropriate for determining eligibility to serve as a volunteer POLR REP and would permit a wide spectrum of REPs to serve as POLR in a voluntary capacity. RMC commented that for non-volunteering POLR providers the threshold should be 3% or more of the total MWh served in the TDSP service area for a customer class for the 12-month period ending March of the year that POLRs are designated. RMC stated that the rationale for this position was that it is essential that non-volunteering POLR providers be sufficiently sized and experienced to handle mass transitions of POLR customers.

TSCC suggested that the threshold eligibility level for non-voluntary POLRs should be 5%. In reply comments TSCC stated that while RMC advocated a 3% threshold and TSCC proposed a 5% threshold, the important point is that the commission should require only those REPs who have a pre-existing capability to serve a particular customer class to become a POLR for that class. TSCC replied that RMC's suggestion to use MWhs served rather than customer numbers has some merit, but a REP might serve a significant amount of load in a particular class attributable to only a handful of customers, therefore TSCC recommended that using a mix of

factors so that the commission would consider the REP's customer numbers as well as MWh served would be appropriate.

*Commission response*

**The commission disagrees with the recommendation of Cities as the historic level of POLR customers may not be an indicator of future POLR customers, but the commission is concerned with the number of REPs that will be eligible under a 3%, 5%, and even a 1% threshold. The commission agrees with TSCC that using a mix of factors is appropriate to ensure that a REP is capable of serving as a POLR and that the eligibility requirements are not so strict that the pool of potential POLR providers is extremely limited. The eligibility criteria have been modified accordingly.**

6. *In regard to the eligibility criteria to serve as a POLR, what should be the minimum financial qualifications that a REP must demonstrate to the commission?*

Cities commented that financial qualifications of POLR candidates should be evaluated by the commission on a case by case basis and considered as one of the factors in the award of eligible POLR providers. Cities stated that the commission should seek information from each POLR candidate regarding its financial performance, instances of default, and willingness to offer financial guarantees from lenders or parent companies to support their proposed POLR service.

RMC and TSCC commented that the REP certification procedures and requirements found in §25.107 define the minimum financial qualifications to serve as a REP and that the same

qualifications should apply to POLR service providers as well. RMC replied that it disagreed with the recommendation of Cities, consistent with its initial comments.

TTP commented that if the REP certification process did a better job of screening applicants there would be fewer defaults and even the poor POLR pricing structure currently in place would not be as big an issue as it is today and will be after January 1, 2007. TTP commented that the commission should raise the standards and credit requirements for REP certification in the Texas market. TDUs stated in reply comments that it agrees with TTP that certification standards for REPs should be strengthened, which would decrease the likelihood of REP defaults, reduce the negative experience and costs for customers, and make the issues addressed in this rulemaking less significant.

*Commission response*

**The commission agrees with RMC and TSCC that the REP certification qualifications should apply to POLR service providers but disagrees with the concept that once a REP is certified it can serve as a POLR without additional scrutiny. The commission agrees with Cities that financial qualifications of POLR candidates should be evaluated by the commission on a case by case basis when the POLR eligibility list is created. When the POLR eligibility list is created, the commission shall determine that a REP continues to meet the certification standards as well as consider information concerning financial performance, instances of default, and other relevant financial information before the REP is placed on the POLR eligibility list. The commission agrees with TTP and TDUs that stronger REP certification standards would probably decrease the likelihood of customers**

being transitioned to POLR providers due to a REP failure, but notes that revisions to commission Substantive Rule §25.107 – *Certification of Retail Electric Providers (REPs)*, is outside the scope of Project No. 31416.

7. *Should customers who are served by a POLR provider because their chosen REP is no longer serving them be able to request an out-of-cycle meter read without being charged the applicable transmission and distribution utility discretionary charge for the service? If so, what is the appropriate cost recovery methodology that should be used to compensate the transmission and distribution utility for performing the service?*

Cities stated that there is no apparent justification for singling out and subsidizing the cost attributable to this particular risk, by allowing customers to obtain out-of-cycle meter reads without paying for the service.

RMC stated that if TDSP's are required to waive out-of-cycle meter read fees when customers switch from POLR, new market rules and system changes would be necessary as there is currently no way for the TDSP to know that the switch is a switch away from POLR and that the out-of-cycle meter read fee should be waived. In addition, RMC commented that it opposed any TDSP surcharges or temporary rate riders to recover waived fees because those measures would constitute piece-meal ratemaking.

TSCC stated that if customers want an out-of-cycle meter read, the customer can pay the TDSP tariff charge for having one done and TSCC does not see any public policy reason why the charge should be waived.

TDUs stated in initial and reply comments that the charges incurred for an out-of-cycle meter read should be billed to the gaining REP, as is currently the case under the Tariff for Retail Delivery Service and that there may be no need for a switch from the POLR to a new REP as the goal of the rule is to allow volunteer POLR REPs to market to keep or gain new customers and make POLR service more attractive. TDUs also commented that requiring out-of-cycle meter read costs be included in transmission and distribution utility (TDU) general base rates is inequitable to the remainder of the TDU ratepayers because it forces other ratepayers to fund such meter reads when the switching ratepayer has the option to switch on-cycle at no additional meter read cost. TDUs stated in initial and reply comments that cost recovery for out-of-cycle meter reads is problematic through a general base rate case because it would be difficult to gauge as “known and measurable” the costs on an ongoing yearly basis. TDUs commented that they support proposed amended §25.43(e)(3)(D) and (s)(2)(G) that obligate POLRs to notify and inform customers that acceleration of switches to another REP that may be accomplished through a “special or out-of-cycle meter read” would involve an applicable transmission and distribution utility charge for the meter read. In reply comments, TDUs stated that RMC correctly points out that a REP may currently pass on to its customer a TDU tariffed charge for out-of-cycle switch requests, and TDU charges for out-of-cycle meter reads associated with a customer switch from the POLR to another REP should be treated the same way. TDUs also stated in reply comments that no public

policy reason justifies waiver of fees associated with out-of-cycle meter reads performed in this instance.

*Commission response*

**The commission agrees that it is not appropriate to subsidize the costs associated with an out-of-cycle meter read by adding the costs to TDU non-bypassable rates. The commission notes that in accordance with Project No. 29637 - *Rulemaking To Amend P.U.C. Substantive Rule §25.214 And Pro-Forma Retail Delivery Tariff*, when a REP transitions customers to POLR providers, the exiting REP is responsible for the associated meter reading charges. If a customer then desires an out-of-cycle meter read to switch to a new REP of choice from the POLR provider, the applicable TDU charge will be applied to the new REP.**

8. *Is the selection methodology appropriate for volunteer POLR REPs and, if not, how should it be modified to encourage REP participation?*

Cities stated that there was no justification for making the Affiliated Retail Electric Provider (AREP) ineligible for selection as a volunteer POLR REP and stated that the AREP may be the best situated to provide POLR service and may offer the most attractive rate for such service. Cities recommended that the volunteer POLR REP selection and designation process be based on a more competitive process that considers REP price bids based on providing POLR service at a guaranteed percentage of MCPE, plus adders for a specified amount of load, as REPs may be willing to provide competitive offers to serve all or a portion of the POLR load.

RMC commented that ERCOT will be allocating electric service identifier numbers (ESI IDs), not customers, to the receiving POLRs and stated that the best approach for allocating ESI IDs to multiple POLRs when there is a mass transition would be to base the allocation on the MWh represented by the ESI IDs being transferred. RMC also commented that any system that mandates that the smallest volunteer POLR REP receive all the new load it volunteers for before the next volunteer POLR REP receives any discriminates against the larger volunteer POLR REPs. RMC recommended that each volunteer POLR REP be required to submit, by customer class and POLR area, the number of additional ESI IDs it is willing to take as a volunteer POLR REP each time there is a mass customer transition, and ESI IDs be randomly allocated to all volunteer POLR REPs based on the percentage of ESI IDs each volunteer POLR REP specified in its submission to the commission.

ERCOT replied that it believes that the cost and effort involved with an allocation methodology made on the electric consumption (MWh) represented by the ESI IDs outweigh the benefits of the approach. ERCOT's current method of aggregating consumption data does not provide for continuous banking of consumption data at the ESI ID level, and the system changes needed to obtain this data would have a tremendous impact on system performance and data storage needs. The use of the number of ESI IDs as a limit on participation should be sufficient. ERCOT noted that the methodology proposed by RMC eliminates much of the ambiguity contained in the methodology in the proposed rule. In particular, RMC's methodology clarifies that the volunteer POLR REP limit on the number of ESI IDs that it would accept is applicable to each mass customer transition.

*Commission response*

The commission agrees with Cities that AREPs should be eligible to serve as volunteer POLR REPs and notes that nothing in the rule prohibits AREPs from serving as such. The commission disagrees with Cities that volunteer POLR REPs should be based upon a competitive process as the recommendation is inconsistent with the overall structure of the rule. The commission agrees with ERCOT that the number of ESI IDs as a limit on volunteer POLR REP participation is sufficient, but notes that volunteer POLR REPs must be prepared for the varied load that different ESI IDs may represent, and factor this variable into their determination of their level of volunteer POLR participation. The commission agrees to revise the allocation methodology language to eliminate concerns over discrimination and agrees that the recommendation of RMC is an appropriate non-discriminatory methodology, but the commission does note that the recommendation of RMC could effectively push smaller volunteer POLR REPs out of the equation if larger volunteer POLR REPs effectively dominate the volunteer pool. As experience is gained, the allocation methodology may need to be revised in a future proceeding. The allocation methodology language has been modified accordingly to address potential discrimination concerns.

**Public Hearing Comments**

Texas Rose filed comments in conjunction with the April 7, 2006, public hearing in this project. The filed comments restated the positions summarized elsewhere in this document and are not repeated in this section. The public hearing comments of Texas Rose also included example bills, electricity facts labels, and related documents as support for its stated positions.

Representatives from ACORN, AARP, Texas Rose, TLSC, and the general public attended the Public Hearing and provided comments and testimonials about their experiences with the current costs of electricity. In general, all that commented requested rule revisions that would enhance the ability of customers to purchase electricity at an affordable price. No comments specific to proposed rule language were received.

**Comments on the proposed amendment to §25.43.**

*§25.43(a) - Purpose*

RMC recommended that the policy embodied in proposed subsection (n)(12)(E) of this section be elevated to the purpose and application subsections of the rule and stated that the commission should re-examine its policy on the purpose of the POLR and ensure that POLR services exist only in two situations, when a customer chooses POLR, and for continuity of service due to a REP default. RMC stated that POLR service as it relates to termination of customers from other REPs for reasons other than REP default does not reflect good public policy and should be deleted. In reply comments, OPC opposed the recommendation of RMC.

TSCC commented that (a)(2) needs to be revised because the current rule incorrectly states that all customers will be assured continuity of service if a REP terminates service in accordance with the termination provisions of the customer protection rules. TSCC therefore recommended that (a)(2) be revised to exclude non-paying customers from the assurance of continuity of service. In reply comments, TSCC stated that with the new disconnection rules, REPs should simply

disconnect customers rather than passing them on to POLR providers. RMC replied that it agreed with the rationale underlying the recommendation of TSCC to clarify that customers disconnected for non-payment are not assured continuity of service.

*Commission response*

**The commission conceptually agrees with the comments of RMC and TSCC. Currently, Commission Substantive Rule §25.483 addresses disconnection of service. As §25.483 contains requirements to obtain disconnection authority, all REPs may not have that authority. Commission Substantive Rule §25.482 addresses termination of contract for REPs that do not have disconnect authority. In the instance of termination, the rule specifically provides that the customer is to be transferred to the AREP for non-payment issues and to a POLR provider for reasons other than non-payment. Commission Substantive Rules §§25.482 and 25.483 are outside the scope of this project and cannot be changed here, but it is the intent of the commission that as of January 1, 2007, customers are no longer transitioned to POLR service for reasons other than the request of the customer, or to ensure continuity of service when the customer's REP fails to provide service. The rule language has been modified to indicate that the portions of the rule that relate to termination of service shall not be applicable after January 1, 2007, and it is the intent of the commission to modify §§25.482 and 25.483 accordingly, in a subsequent project.**

*§25.43(b) – Application; termination of service for non-payment*

TSCC recommended that the provisions of the proposed rule, except for those relating to the selection of POLRs, should become effective January 1, 2007. RMC stated in reply comments that subsections (l) and (n) of this section along with the POLR selection criteria should become effective 20 days after the adopted rule is published in the Texas Register in accordance with the Administrative Procedure Act, §2001.036. ERCOT replied that in the best-case scenario, it could implement changes to TX SET, no earlier than March 31, 2007, and strongly recommended that no specific deadlines be imposed upon it to make changes required by this rule.

*Commission response*

**The commission notes that the rule will become effective 20 days after the adopted rule is submitted to the Secretary of State, in accordance with the Administrative Procedure Act, §2001.036. The rule language has been modified where appropriate to indicate if portions of the rule will not be able to be implemented until a later date, for reasons such as required Texas SET changes, and when it is not appropriate for portions of the rule to be implemented until a later date, such as the POLR rate and the Standard Terms of Service.**

TSCC commented that if (b)(2) is intended to require all REPs who terminate electric service to a customer for non-payment to transfer the customer to a POLR instead of requesting disconnection, TSCC strongly objects to that proposal. RMC replied that it does not agree with TSCC's proposed revision to subsection (b)(2) of this section, finding that proposed change internally inconsistent with the appropriate policy objectives for POLR service that TSCC articulated.

*Commission response*

**Consistent with its previous discussion, the commission clarifies that §25.482 requires REPs that do not have disconnection authority to transfer customers to the AREP for non-payment and to a POLR provider for issues other than non-payment. The argument of TSCC implies that all REPs have disconnection authority, but that is not correct. However, it is the commission's intent that as of January 1, 2007, REPs shall not transfer customers to the AREP for non-payment and shall not transfer customers to a POLR provider for issues other than non-payment, per §25.482. The rule language has been modified accordingly to clarify this intent.**

OTTA commented that (b)(3) is in conflict with (a)(1) and the statute. RMC replied that nothing in the proposed language is in direct conflict with PURA §39.109 or any other provision in the statute, and is, in fact, wholly consistent with PURA §39.106(g), which provides that in the event a REP fails to serve its customer, the POLR provider shall offer service to the customer without any interruption.

OTTA recommended that the purpose of POLR service after the end of the Price to Beat service should be to provide basic generation service at a reasonable price and on reasonable terms and conditions. TTP generally agreed as it stated in initial and reply comments the need for an affordable rate package for low-income consumers. TTP further stated that to be able to afford electricity, and medicine and food, low-income Texans need a rate that is more reflective of electricity rates when the market was originally opened to competition. In reply comments, Cities

agreed with OTTA that POLR service should be redesigned to provide a basic default generation service at a reasonable price with reasonable terms for customers who do not choose an alternative supplier or whose service is terminated due to REP default or for any other reason. Cities further stated that by awarding the contract for such service to one or two suppliers in each TDSP region, the attractiveness of such loads could be greatly improved and the prospects of obtaining a reasonably priced, competitively procured default service product for small customers could be increased. RMC replied that OTTA's contention that POLR service is the means by which a customer's entitlement to "reasonably priced electricity" in PURA §39.101(a)(1) is achieved is simply incorrect. RMC stated that under PURA, it is competition, not POLR service, that provides "reasonably priced electricity" under PURA §39.101(a)(1). RMC stated in reply comments that the Legislature mandated that the commission establish a POLR rate that is a "standard retail service package," (PURA §39.106(b)) not an "affordable rate package." (PURA §17.004(a))

*Commission response*

**The commission disagrees that subsections (a)(1) and (b)(3) are in conflict and declines to make a change. The commission disagrees with OTTA and Cities that the purpose of POLR should be to provide "reasonable" electric prices. The commission restates that in accordance with (b)(3), the purpose of POLR is to ensure continuity of service. The commission appreciates the situation described by TTP, but notes that there is no authority to return rates to a level that is not based upon current conditions. The commission disagrees with the "awarded contract" approach of Cities as it is inconsistent with overall**

design of the POLR rule and would remove customers from the AREP, in violation of PURA §39.102(b).

*§25.43(c) - Definitions*

ERCOT commented the “small non-residential less than 50 kW” and “small non-residential greater than or equal to 50 kW” customer classes be renamed to “small non-residential customer” and “medium non-residential customer” respectively. ERCOT also recommended that since the terms “non-volunteering POLR providers” and “volunteer POLR REPs” are used throughout the rule, the terms should be defined and included in subsection (c) of this section. RMC replied that it agreed with ERCOT to rename the proposed two division of the small non-residential customer class to “small non-residential customer” and “medium non-residential customer.”

RMC commented that the definition of POLR in subsection (c)(7) of this section, is inconsistent with the application of this rule, as set forth in the proposed amendment to subsection (b)(2) of this section. While proposed subsection (b)(2) of this section indicates that a nonpaying customer will be served by a POLR following the expiration of the price to beat period, the definition of POLR in subsection (c)(7) of this section states that non-payment is the only reason a REP may not transfer a customer to POLR.

*Commission response*

**The commission agrees with ERCOT and RMC that additional clarity would be gained by re-naming the bifurcated small non-residential customer class and has modified the rule language accordingly. The commission agrees with ERCOT that non-volunteering POLR**

providers and volunteer POLR REPs should be added to the list of definitions. The commission agrees with RMC that there is an inconsistency in the definition in subsections (c)(7) and (b)(2) of this section. Consistent with previous commission clarification, the rule language has been modified to clarify the intent that under §25.482, REPs without disconnect authority may only transfer customers to a POLR provider for reasons other than non-payment, though it is the intent of the commission that termination of customers to POLR service for reasons other than non-payment shall not be applicable as of January 1, 2007.

*§25.43(d) – POLR service*

OTTA stated that “former PTB customers” should be transferred to a POLR whose prices should be established through a competitive process based on the statutory obligation to provide a fixed rate and affordable rate package to residential customers. RMC replied that it is noteworthy that OTTA recommended that residential POLR service be priced based on a non-market, integrated resource planning-type portfolio of electricity contracts which is a design that has yielded disastrous results in many of the states OTTA cites. RMC stated in reply comments that the proposal to create a POLR service that would serve all former PTB customers is unlawful as PURA §39.101(b)(2) states that a customer should be entitled to “assume that the customer’s chosen provider will not be changed without the customer’s informed consent.” In addition, PURA §39.102(b) states that “the affiliated retail electric provider of the electric utility serving a retail customer on December 31, 2001, may continue to serve that customer until the customer chooses service from a different retail electric provider.”

*Commission response*

**The commission agrees with the argument of RMC and declines to implement a POLR structure that would move former price to beat customers to POLR service upon the expiration of price to beat. Such a POLR design would be inconsistent with PURA §39.101(b)(2) and §39.102(b).**

ERCOT commented that the ERCOT database utilizes three classes of customers: residential, small non-residential, and large non-residential. To accommodate four classes of customers, ERCOT would need a change to TX SET and an update to its database. TDUs would need the ability to assign a new customer class through a change to TX SET, and ERCOT's database would need to be configured to capture this new information. ERCOT strongly suggested that any changes to customer class assignments resulting from the POLR rule should be implemented using current market practices as described in the ERCOT Protocols. In addition, ERCOT commented that in order to manage a change from three to four classes, it would need to coordinate processing time with the TDUs to manage the large volumes of TX SET transactions that would be necessary to implement the rule change.

TSCC stated in reply comments that the commission should reject the TDU's request to have only three customer classes (see preamble question number 4), which would eliminate a POLR's ability to provide service to small non-residential customers over 50kW at terms that may differ from the customer protection rules. TSCC also stated that the commission should not place undue significance on the fact that ERCOT may need to change Texas SET to accommodate four POLR customer classes as ERCOT has made numerous changes to Texas SET to implement commission

policies. TSCC stated that the added diversity in POLR providers and service that allowing small non-residential customers over 50kW to take service under terms different than the customer protection rules represents an important enhancement to the POLR system. TSCC stated that absent ERCOT providing quantification reflecting an undue cost in changing Texas SET, this factor should not dictate the commission's decision.

RMC replied that the commission should reject TDUs recommendation, as it would effectively remove all REPs who do not serve any portion of the small non-residential class from being included in the commission's selection process for non-volunteering POLR providers. Such an exclusion would place an even greater burden on all remaining eligible POLR REPs to perform POLR responsibilities for the small non-residential class. RMC stated in reply comments that it agrees with ERCOT that changes to ESI ID customer class assignment should be implemented in accordance with current ERCOT Protocols, which would require TDUs to make necessary ESI ID assignments using a TX SET transaction to update the ERCOT database. RMC urged the commission to ensure that this ESI ID assignment activity is completed no later than year-end.

*Commission response*

**Consistent with the position stated in response to preamble question number 4, the commission agrees with the stated positions of TSCC and RMC and agrees that it will be beneficial to the market to bifurcate and create two different POLR small non-residential customer classifications, based on a 50 kW breakpoint.**

The commission disagrees with TSCC that ERCOT must quantify costs before they can be considered and incorporated in a final decision. The commission is well aware of the amount of changes required by ERCOT to comply with commission rules, and while ultimately the commission must rule in a fashion it feels is correct, the cumulative effect upon ERCOT, relative to the benefit gained, is certainly an appropriate factor to consider when making a decision.

In this instance, the commission determines that the bifurcation of the small non-residential customer class would be beneficial to REPs that are only interested in providing POLR service to customers that it would not have to serve under the customer protection rules, and thus the number of REPs willing to provide POLR service should be maximized by bifurcating the small non-residential customer class.

The commission agrees with the argument of RMC that not bifurcating the small non-residential customer class could effectively remove a large number of REPs from the non-volunteering POLR provider pool, which could place a greater burden on the remaining eligible POLR REPs in regard to the small non-residential class. However, the commission notes that the rule provides for five non-volunteering POLR providers, which is a significant step toward reducing the burden on POLR REPs when compared to the one POLR provider authorized under the previous POLR structure.

ERCOT shall make every effort to implement the bifurcated small non-residential customer class as soon as possible, and in the event that ERCOT is not capable of having an

**automated process in place to effectuate the bifurcation by December 31, 2006, ERCOT shall manually bifurcate the small non-residential customer class until the automated process is in place, which shall be no later than July 1, 2007.**

*§25.43(e) – Standards of service*

RMC commented that subsection (e)(2) of this section requires a POLR to serve “any customer according to the Standard Terms of Service” based on that customer’s service class, and that to eliminate any possible ambiguity, the reference to “any customer” should be changed to “any POLR customer.” RMC also commented that to remove any ambiguity, a sentence should be added to subsection (e)(2) of this section, stating that there is no intention to prohibit POLR customers from enrolling in a non-POLR product provided by the REP serving as POLR or by a REP affiliated with the POLR.

TSCC commented that for clarity, the phrase “as described in subsection (d)(2) of this section” be moved to modify the word “customer” in the first line. TSCC commented that it did not have an objection to the proposal to allow volunteer POLR REPs to charge a rate less than the POLR rate. TSCC recommended that the language be further clarified to state that volunteer POLR REPs shall only be allowed to charge a rate less than the POLR rate under the conditions set out in subsection (i)(3) of this section. TSCC commented that subsection (i)(3) of this section should clearly provide that the customer protection rules do not apply to non-residential customers 50 kW and above, non-residential customers whose load is part of an aggregation in excess of 50 kW, and large non-residential customers, except for the customer protection rules that cannot be waived.

RMC commented that a clarification statement should be added to (e)(3) that if there is an inconsistency or conflict between the POLR rule and the customer protection rules, the provisions of the POLR rule will apply. RMC also commented that the requirement in (e)(3)(B) that non-volunteering POLR providers provide a list of certified REPs to every customer is duplicative and should be deleted because subsection (s)(2)(D) of this section requires POLRs to notify transitioning customers of their ability to choose an alternative provider. Likewise, RMC commented that proposed subsection (e)(3)(D) of this section should be deleted because the language with respect to the POLR customer's ability to request a special or out-of-cycle meter read is repeated later in proposed subsection (s)(2)(G) of this section.

*Commission response*

**The commission agrees with RMC and TSCC that there is unintended ambiguity in subsection (e) of this section. The rule language has been modified to clarify the commission's intent. The commission agrees with RMC that it is not the intent of the commission to prohibit a POLR customer from enrolling in a non-POLR product provided by the REP serving as POLR or by a REP affiliated with the POLR. The commission agrees with RMC that if there is a conflict with the customer protection rules the provisions of the POLR rule will apply. The commission also agrees with RMC that the requirements of subsection (e)(3)(B) and (D) of this section are duplicative and have been deleted.**

*§25.43(f) – Customer information*

RMC recommended that subsection (f)(2) of this section distinguish between non-POLR customers and POLR customers by specifically limiting the requirement to new POLR customers. In addition, RMC recommended that the second sentence of subsection (f)(2) of this section be deleted because it referenced updates to the Standard Terms of Service based upon the requirements of §25.475 of this title, but RMC noted that the POLR is not allowed to change the Standard Terms of Service.

*Commission response*

**The commission agrees with RMC that additional clarity would be gained by specifically limiting the requirement in subsection (f)(2) of this section, to new POLR customers. The commission declines to delete the second sentence of subsection (f)(2) of this section. While the commission agrees with RMC that the POLR is not allowed to change any of the provisions or the format of the Standard Terms of Service without authorization, §25.475(d) addresses items such as the REP’s certified name, mailing address, Internet website address, a toll-free telephone number, and pass-through charges from the wires utility, which could change. Therefore, to the extent any information that is contained in the Standard Terms of Service changes, that document would need to be updated accordingly, when appropriate.**

*§25.43(h) – REP eligibility to serve as a POLR*

RMC recommended that an affirmative statement that a REP is eligible unless rendered ineligible by one of the criteria or situations listed in the rule because the subsection has been revised such

that it lists ineligibility criteria as opposed to eligibility criteria. RMC commented that the reference to financial condition in subsections (h)(1) and (h)(2)(J) of this section be eliminated. TSCC replied that consistent with preamble question number 5 it would suggest using a formula that incorporates both MWhs and customer numbers.

*Commission response*

**The commission agrees that the rule would benefit from a statement clarifying that a REP is eligible unless rendered ineligible by one of the criteria or situations listed in the rule and has modified the language accordingly. The commission declines to delete the references to “financial condition” as the commission is concerned with a “cascading effect” of customers being transitioned to POLR providers, which then places the POLR provider in a position of default. The language has, however, been modified as a result of other clarification efforts. Consistent with the response to preamble question number 5, the commission agrees with TSCC that using a mix of factors is appropriate to ensure that a REP is capable of serving as a POLR and that the eligibility requirements are not so strict that the pool of potential POLR providers is extremely limited. The eligibility criteria have been modified and clarified accordingly.**

TSCC recommended that the date for the required filing in subsection (h)(1) of this section be moved up to June 1 of each even-numbered year and urged that a date certain of July 1 be added to subsection (h)(3) of this section for the publication of the eligible REP list. TSCC commented that if, given the effective date of the revised POLR rule, TSCC’s recommended timeline is not workable for 2006, the rule should require that timeline for all even-numbered years after 2006,

and a timeline for 2006 that is as close as possible given the effective date of the rule. TSCC commented that the information required to be provided should include the number of customers served in each class, as well as the number of meters served in each class. This information is necessary if the commission is to make an eligibility determination pursuant to subdivision (2)(B) and (C) based on the number of customers and the number of meters served by TDU service area. RMC replied that it does not advocate a modification to the July 10<sup>th</sup> deadline in proposed subsection (h)(1) of this section and proposes that the commission publish the REP eligibility list on or before September 1<sup>st</sup> of even-numbered years but noted that the commission may need to establish specific deadlines for 2006 that will ensure that POLRs will be ready to provide service at the outset of the upcoming 2007-2008 POLR term. RMC stated in reply comments that TSCC's proposal to require REPs to provide information with respect to the number of customers and the number of meters by customer class is unnecessary because RMC advocated in its initial comments that the REPs file information with respect to the amount of MWh served for each customer class, which is the appropriate eligibility measurement to be used rather than measurements based on the number of customers or meters.

*Commission response*

**The commission declines to make the adjustment to the filing date contained in subsection (h)(1) of this section. The commission believes that the stated dates are appropriate and give enough time for the next step to occur in the POLR selection process. The commission has added language to the rule that delays the POLR REP selection process time frames, for 2006, to address the concern of the adopted rules effective date in relation to the initial time frames. Consistent with previous discussion, the commission has changed the**

**information that must be provided by the REPs to reflect the mix of factors that will be considered in determining POLR eligibility.**

TSCC commented that two kinds of REPs should be considered ineligible to be required to provide involuntary POLR service; Option 2 REPs that are certified to serve only those customers who contract for 1 MW or more of capacity and sign an affidavit stating that the customer is satisfied that the REP meets the financial, technical and managerial, and customer protection standards prescribed in 25.107(f)(2), (g), and (h); and a REP currently serving a two-year term as a POLR should not be required to serve a subsequent, consecutive term as a POLR, unless the REP volunteers such service. In reply comments, TIEC and OPC supported TSCC's proposed exclusion of Option 2 REPs from POLR eligibility. RMC replied that to avoid concerns of discrimination it opposed TSCC's recommendation that non-volunteering POLR providers be exempt from a subsequent, consecutive term.

*Commission response*

**The commission agrees with TSCC, TIEC, and OPC that Option 2 REPs should be ineligible to serve as non-volunteering POLR providers and has modified the rule language accordingly to make the ineligible status more explicit. The commission does not agree with TSCC that non-volunteering POLR providers should be exempt from serving a subsequent, consecutive term. POLR service is a condition of receiving REP certification and the commission sees no justifiable reason to exempt a REP from a subsequent, consecutive term. In addition, the commission notes that it would be unwise to remove the initial five non-volunteering POLR providers from the non-volunteering POLR provider**

pool for subsequent terms, as the rationale for the non-volunteering POLR provider selection process is that the five REPs that are most likely able to handle a large mass transition that would extinguish the available voluntary POLR REP pool, are needed to fulfill that role.

RMC recommended that the eligibility test should be 1% of MWh for volunteer POLR REPs and 3% of MWh for non-volunteering POLR providers.

TSCC commented that consistent with its answers to preamble question number 5, the eligibility threshold for volunteer POLR REPs should be 1% and 5% for non-volunteering POLR providers. TSCC also commented that another way to address the issue of the only meters being served in the small, non-residential class are multiple meters belonging to a single or very few large non-residential customers, may be to define a customer by the contractual relationship between the customer and the REP, rather than the number of meters served. RMC stated in reply comments that with the exception of the 1% and 3% eligibility thresholds that RMC proposed respectively for volunteer POLR REPs and non-volunteering POLR providers, RMC supports the application of the same eligibility standards to both categories of POLRs and opposes this organizational change to proposed subsection (h)(2) of this section.

*Commission response*

**As stated in the response to preamble question number 5, the commission is concerned with the number of REPs that will be eligible under a 3%, 5%, and even a 1% threshold. Therefore the commission has determined that using a mix of factors is appropriate to**

ensure that a REP is capable of serving as a POLR and that the eligibility requirements are not so strict that the pool of potential POLR providers is extremely limited. The eligibility criteria has been modified to reflect a “1% mixed factor threshold” that shall be determined by adding the numeric portion of the percentage of ESI IDs served and the numeric portion of the percentage of MWhs served. A REP that serves 0.2% of ESI IDs and 0.8% of MWhs sold shall be eligible (0.2 plus 0.8 equals 1.0), just as a REP that serves 1% of ESI IDs and any percentage of MWhs served. This “mixed factor” methodology should allow more REPs the ability to become POLR eligible and will address the problem of REPs which might serve a low number of ESI IDs that represent a relatively large amount of load, and the reverse situation of REPs which might serve a high number of ESI IDs that only represent a relatively small amount of load.

TSCC stated that in subsection (h)(2)(D) of this section, “and (C)” should be added after “subparagraph (B).”

*Commission response*

The commission agrees with TSCC that subsection (h)(2)(D) of this section should reference both subsection (h)(2)(B) and (h)(2)(C) of this section as the intent was applicable to both. However, consistent with previous responses, the language regarding REP eligibility has been modified accordingly, and the need to reference subsection (h)(2)(C) of this section has become moot.

TSCC recommended that in subsection (h)(2)(F) of this section, the phrase “is not certified to serve or” be deleted because, other than Option 2 REPs, the REP certification rule does not provide for certification by customer class.

TIEC stated that clarity regarding the REPs that are qualified to serve as POLRs is of additional importance as some of TIEC’s member companies also have REPs that serve some limited, non-affiliated customers under the commission’s “Option 2” REP certification standards, and the rule should clarify that Option 2 REPs are not eligible to serve as POLRs.

*Commission response*

**The commission agrees with TSCC and TIEC that the rule would benefit from additionally clarity of specifically addressing Option 2 REPs and has thus revised the rule language to make the intent clearer. The commission notes that the language that TSCC recommended for deletion was intended to address the Option 2 REPs that TSCC referenced and is therefore not appropriate to be deleted, but consistent with the comments of TIEC, the commission agrees that the reference to Option 2 REPs should be more explicit.**

TSCC commented that subsection (h)(2)(H) of this section should be revised to allow the described “opting out” also by any REP that served customers subject to the customer protection rules because it was picked by lottery to be the small non-residential POLR for the 2005-2006 term, when the small non-residential class was 0-1000kW and the opting out clauses were not in effect.

*Commission response*

**The commission agrees with TSCC that a REP should not lose the ability to opt-out if it has only served customers subject to the customer protection rules as a result of being picked by lottery to serve as the small non-residential POLR for the 2005-2006 term. However, the commission does not want to discourage a REP that now has the ability to serve customers under the customer protection rules from doing so if it so desires.**

In regard to (h)(3), RMC recommended that the commission announce REPs eligible to serve as POLR no later than four months prior to the date when a new POLR term begins and that a REP must receive some notice regarding when and where the eligibility list will be available. RMC commented that a REP must have the ability to ascertain if an error has occurred in the eligibility determination and to submit documentation demonstrating the error. TSCC replied that while the time frame recommended by RMC differs from that suggested by TSCC, the important point is to allow REPs sufficient time to begin planning to serve if selected and, if necessary to allow enough time for a REP to challenge such a designation. TSCC also replied that it agrees with RMC's request to have the authority to rely on the original data provided to Staff to contest a designation, rather than additional information, as the rule should allow a REP to put forward any information that would demonstrate that it does or does not qualify to serve as a POLR.

*Commission response*

**Consistent with previous discussion, the commission declines to change the timeframes contained within the rule as they provide adequate time to prepare for POLR service. The commission agrees with RMC and TSCC that a REP should be allowed to contest eligibility**

by relying upon the originally supplied data. The commission does not want, however, the challenge process to simply turn into a process where any REP unhappy with its eligibility determination simply makes the commission staff reexamine the eligibility without providing any new rationale or specifically illustrating why the REP believes the initial determination is wrong. Therefore, the commission has modified the rule language to clarify that any relevant information may be used to challenge an eligibility determination, but in any such challenge, the REP will bear the burden of proof and must specifically provide the data, the calculations, and a written explanation, that clearly illustrates and proves the REPs assertion.

RMC recommended that subsection (h)(4) of this section be deleted as it does not see a need for biannual reports. Subsection (o) of this section addresses the termination of POLR status. RMC recommended that a new subsection be added that requires the commission to establish a standard form that REPs must use to report their eligibility information.

*Commission response*

The commission declines to adopt the recommendation of RMC. The biannual reports are required so that the commission can determine that a REP that was initially eligible to serve as a POLR provider, remains in a position of qualification. The biannual report requirement is meant to help reduce the possibility of a POLR transition causing another REP to default. The commission agrees with RMC that a standard form for REPs to report their eligibility information would be useful but declines to adopt any such form at this time. As experience is gained through the selection process for the 2007-2008 POLR

term, the commission Staff may develop a standard form that REPs may use to submit their eligibility information.

*§25.43(i) – Volunteer POLR REP list*

ERCOT recommended it be allowed to establish the maximum number of ESI IDs that a volunteer POLR REP may accept in a mass transition event, exclusive of their load value. TSCC stated in reply comments that the commission should not adopt ERCOT's recommendation because it would amount to ERCOT establishing the customer load that a volunteer POLR REP may accept. To accommodate concerns about a REP designating too great or too small a load, the commission could institute some sort of challenge procedure in which ERCOT could challenge a volunteer POLR REP's load designation before the commission. This should be only an abbreviated procedure, resolved within a very short time based on objective evidence by which ERCOT would show that the REP's designation should not be upheld.

*Commission response*

**The commission agrees with TSCC that ERCOT should not be responsible for determining the amount of load that a volunteer POLR REP may accept as restricting a POLR REP will most likely result in a contested proceeding that is appropriately the responsibility of the commission. However, the commission notes that consistent with the discussions in other commission responses, volunteer POLR REPs shall designate the number of ESI IDs, not load, that they are willing to accept, and ERCOT shall make the assignments exclusive of their load value. The key difference is that the volunteer POLR REP shall designate the number of ESI IDs and not ERCOT. The commission agrees with the concept of ERCOT**

challenging a volunteer POLR REP's designation if ERCOT feels it is appropriate to do so. This challenge process would effectively accomplish the same goal, but would keep the challenge process with the commission. The commission believes that this process could be a valuable tool to decrease the likelihood that a transition of customers would cause a volunteer POLR REP to default. The commission has modified the rule language accordingly. The commission envisions that if ERCOT has specific reason to doubt the ability of a volunteer POLR REP to serve additional customers in accordance with the rule, or if ERCOT believes the volunteer POLR REP no longer meets the eligibility requirements, ERCOT shall make a confidential filing with the commission that describes the particular concerns. If the commission staff is in agreement with ERCOT, the volunteer POLR REP shall be given the opportunity to withdraw from volunteer POLR REP status. If the volunteer POLR REP declines to withdraw, the issue shall be brought before the commission for determination of the REP's continued eligibility to serve as a volunteer POLR REP.

RMC commented that it is unclear if the notification to the commission pursuant to proposed subsection (i) of this section, to indicate a willingness to serve as a volunteer POLR REP should be submitted as part of or separately from the eligibility information required by proposed subsection (h)(1) of this section, which states that REPs should indicate any interest in providing POLR service as a volunteer POLR REP by July 10 of each even numbered year. RMC recommended that the rule should be clarified so that proposed subsection (i) of this section specifies all of the information relating specifically to a REP's willingness to serve as a volunteer POLR REP, while proposed subsection (h)(1) of this section is limited to specify only the

information that all REPs must file for purposes of determining eligibility. RMC recommended that each volunteer POLR REP be required to submit, by customer class and POLR area, the number of additional ESI IDs it is willing to take as a volunteer POLR REP each time there is a mass customer transition. In the event of a mass customer transition, the affected ESI IDs, up to the total number of ESI IDs that all volunteer POLR REPs specified, should be randomly allocated to all volunteer POLR REPs based on the percentage of ESI IDs each volunteer POLR REP specified in its submission to the commission. ERCOT replied that it agrees with RMC's suggested language that substitutes the number of ESI IDs for load or consumption.

OTTA commented that the "volunteer" and "non-volunteer" approach will make it impossible for any one POLR provider to serve a sufficient number of customers to assure stable and affordable prices and will contribute to the high cost of essential electric service for Texans. OTTA commented that a volunteer REP acting as POLR can offer a different rate for POLR customers, but that it is not required to be offered to all POLR customers so that the POLR is likely to make this offer only for those customers that it considers "desirable."

*Commission response*

**The commission agrees with RMC that there needs to be clarity between subsections (i) and (h)(1). The commission has modified the rule language to clarify its intent that all REPs must supply the information to determine eligibility for voluntary and non-volunteering POLR service, and separately, a REP must indicate its willingness to serve on a volunteer POLR REP basis. The commission agrees with RMC that in a mass transition, ESI IDs will be transitioned to the POLR providers and not the generic designation of**

**“customers.” The commission agrees with OTTA that the offer of a non-POLR price to a POLR customer should be on a non-discriminatory basis. In a mass transition event, customers are transitioned rapidly and through no fault of their own. Customers are also captive to the POLR provider for some period of time. It would be inappropriate to treat customers in a discriminatory fashion by making available competitive products to some customers and restricting others to only the POLR rate. To eliminate this problem, the solution is to make the same competitive products and services available to POLR customers as would be available to similarly-situated non-POLR customers. The rule language has been modified accordingly to reflect this concept.**

ERCOT commented that the proposed provisions in subsection (i)(1) of this section could lead to unpredictability and uncertainty during mass transitions and could potentially place ERCOT in an untenable position of having to assign customers to POLR REPs without clear rules governing the process. ERCOT indicated that it is extremely reluctant to take on the responsibility of assigning customers to POLR REPs under the proposed method given the potential for large numbers of volunteer POLR REPs in various customer class segments and TDU service areas, with varying limits on their willingness to accept mass transition customers. ERCOT recommended that subsection (i)(1) of this section be modified to require volunteer POLR REPs to note any limitations on their willingness to serve (such as whether their capability to serve is for one transition event or for a given period of time). ERCOT also questioned whether volunteer POLR REPs who did not receive their identified limit of POLR customers in one transition should be given priority in a subsequent transition. ERCOT suggested that to avoid extensive modifications that would be necessary to limit the assignment of ESI IDs to POLRs, ERCOT should be allowed

to assign customers to the volunteer POLR REPs by identifying a maximum number of ESI IDs of each customer class exclusive of their load value. ERCOT suggested that ESI IDs should be sorted by TDU service area, then sorted by customer class, then assigned a random number and sort the ESI IDs numerically based on the random number, then sort the volunteer POLR REPs according to a methodology approved by the commission, and finally assign the ESI IDs to volunteer POLR REPs in numerical order at the quantity agreed to starting with the first volunteer POLR REP identified in the commission-prescribed methodology. RMC stated in reply comments that contrary to ERCOT, it believes that permitting volunteer POLR REPs to designate any limitations on their willingness to serve POLR customers in less objective, precise, and straightforward terms than the number of ESI IDs per mass transition could pose administrative problems for ERCOT ensuring that the designated limitations are honored.

TSCC suggested that the “no later than” date for REPs to submit an indication of their willingness to serve as a POLR on a volunteer basis be moved to July 15, two weeks after TSCC’s proposed date for publication of the eligible REP list. TSCC also commented that the phrase “At the time it requests volunteer POLR REP status,” be added to the beginning of subsection (i)(1) of this section. RMC replied that it does not advocate a change in the timeframe, as recommended by TSCC.

*Commission response*

**The commission agrees with ERCOT that there is ambiguity in the rule and has therefore modified the language to address the concerns of ERCOT and clarify the commission’s intent with regard to assigning ESI IDs to POLR REPs. It is the commission’s intent that**

when a volunteer POLR REP designates the number of ESI IDs that it can serve on a volunteer basis, that the number applies to each transition occurrence. If the customers received by a volunteer POLR REP in one transition changes the volunteer POLR REPs ability to serve POLR customers in a subsequent transition, then the volunteer POLR REP has the responsibility to change its designation. Each transition event is to be independent of another transition event, meaning that no preference is given to a volunteer POLR REP in a subsequent transition, if it did not receive the full amount of ESI IDs it had volunteered for in a previous transition. The commission agrees with the ESI ID assignment methodology outlined by ERCOT and has modified the rule language to reflect the described process. In addition, the last step of assigning the ESI IDs to volunteer POLR REPs shall be done in the non-discriminatory percentage of total volunteer ESI IDs method previously described by RMC and discussed in the response to preamble question number 8.

OTTA commented that the proposed rule needs to clarify how disclosures to customers need to be made when marketing alternative products.

*Commission response*

The commission notes that subsection (i)(3) has been modified to remain consistent with the discussions contained in other commission responses. The commission agrees with OTTA that the rule language needs to clarify how disclosures to POLR customers are to be made when marketing alternative products to remove any ambiguity. It is the commission's intent that volunteer POLR REPs initiate their normal enrollment marketing

**procedures with transitioned customers to make the customers aware of and to switch them to non-POLR rate products.**

OTTA commented that the provision in (i)(4) that states that the smallest POLR providers get the first assignments is likely to reward those REPs who are the least successful in the competitive market and who may not have the necessary billing and customer support infrastructure to handle a sudden influx of customers. It is likely that the smallest REPs will not have the resources or size to offer more attractive offers to residential customers and will rely on the high priced POLR service to stay in business.

ERCOT commented in reply comments that the use of ESI IDs rather than load for the purposes of allocating to POLRs is appropriate. ERCOT stated that its current method for aggregating consumption data does not provide for continuous banking of consumption data at the ESI ID level. For ERCOT to be able to obtain this data, it would have to make extensive modifications to its system processes, which would have a tremendous impact on system performance and data storage needs.

*Commission response*

**The commission notes that the concern of OTTA is now moot as the commission has modified the assignment methodology, consistent with the discussions in previous commission responses. The commission also agrees with ERCOT that, consistent with previous discussion, an allocation methodology based upon ESI IDs is appropriate. The commission again notes that volunteer POLR REPs must factor the potential variation in**

**load that different ESI IDs may represent into the decision on how many ESI IDs the REP volunteers to serve in a transition event.**

ERCOT commented that if a volunteer POLR REP requests removal from the volunteer POLR REP list, then the volunteer POLR REP must continue to make its POLR service available to ESI IDs previously acquired through a mass transition event as well as any ESI IDs the volunteer POLR REP may acquire from a mass transition event during the 30-day notice period. ERCOT also stated that the reference to estimated amount of load in subsection (i)(5) of this section should be revised to reflect the number of ESI IDs by customer class in a TDU service territory.

RMC replied that it should be clarified that if a volunteer POLR REP requests to be removed from the list or to modify its requested number of ESI IDs pursuant to proposed subsection (i)(5) of this section, such a change would be prospective only, the volunteer POLR REP would not be permitted to simply walk away from its responsibility to continue to serve POLR customers that have already been allocated to it.

OTTA recommended that a volunteer POLR REP not be allowed to become a POLR for several years after it un-volunteers.

*Commission response*

**The commission agrees with the interpretation of RMC which addresses the concerns of ERCOT. If a volunteer POLR REP changes its volunteer status, such a change is on a prospective basis. The REP is not allowed to abandon customers that had previously been**

transitioned to it. The commission agrees with ERCOT that the reference to “load” should be changed to “ESI IDs” consistent with previous commission responses. The commission disagrees with OTTA that a volunteer POLR REP should be disqualified for several years if it un-volunteers. While the commission does not want volunteer POLR REPs “bouncing” back and forth and hopes that such movement would be kept to a minimum, the intent of the volunteer system is to encourage REPs to volunteer for an amount that they can adequately serve. If that amount changes, the commission does not desire to have a volunteer POLR REP “locked in” to a commitment that can no longer be honored. After time, if the REP is again in a position to volunteer, the commission sees no reason to exclude the REP from POLR eligibility simply because it determined that it was in its best interest to not potentially assume transitioned customers at some point in the past.

*§25.43(j) – Non-volunteering POLR Providers*

RMC recommended that if a volunteer POLR REP follows the enrollment processes in §25.474, when a customer affirmatively chooses a competitive product, then it is clear that the customer chose the competitive product and the limit in (j)(3) that the marketed rates must be lower than the POLR rate is unnecessary.

RMC commented that an alternative approach for allocating the non-volunteering POLR obligations is to allocate the responsibility by market share to all REPs that are determined eligible to be a non-volunteering POLR provider using the 3% eligibility standard in proposed subsection (h)(2)(C) of this section. The transfer of ESI IDs to non-volunteering POLR providers should be similar to the process recommended for transfer of ESI IDs to volunteer POLR REPs in proposed

subsection (i) of this section. TSCC replied that it disagrees with RMC's suggestion that all REPS who meet the eligibility criteria should become POLRs. TSCC stated in reply comments that selecting the five largest providers in that customer class ensures that only REPs who presently possess adequate resources and experience in serving that customer class will serve as POLRs. Using the five largest providers minimizes the ramp-up expenses REPs would incur as a non-volunteer POLR provider, and also assures customers that the POLR will possess experience and acumen in serving that customer class.

*Commission response*

**The commission agrees with RMC that if a customer affirmatively chooses a competitive product or service then the commission should not be concerned with how the competitive product compares to the POLR price. To clarify the commission's intent, a transitioned customer should go through the POLR's normal marketing procedures as a REP, to move the transitioned customer to an alternative product. Any arbitrary rate offering that transitioned customers are automatically placed under without the customer being marketed to and without the customer making an affirmative choice, shall not be at a rate higher than the POLR rate. The commission agrees with TSCC that it is inappropriate and overly burdensome to make all REPs that meet the eligibility requirements non-volunteering POLR providers. By increasing the number of non-volunteering POLR providers to five from the one authorized in the previous structure, as well as the existence of the volunteer POLR REP structure, the risk associated with being a non-volunteering POLR provider has been greatly reduced and there is not a need for every eligible REP to serve as a non-volunteering POLR provider.**

ERCOT cautioned that any form of reallocation process will greatly complicate this rulemaking and the changes ERCOT will have to make to its systems and processes. If the commission decides to include such a reallocation process as proposed by RMC where a non-volunteering POLR provider may request that ERCOT reallocate ESI IDs if a non-volunteering POLR provider is assigned load equating to more than a 10% positive variance from its load ratio share, the process and standards to be applied need to be clearly stated.

*Commission response*

**The commission agrees with ERCOT that a reallocation process will greatly complicate the rule and believes that such a process is unwarranted in light of the existence of five non-volunteering POLR providers and the added provision that addresses financial integrity. Therefore, the commission declines to adopt the reallocation process as proposed by RMC.**

First Choice and RMC commented that the POLR Electricity Facts Label (EFL) update process should require the largest non-volunteering POLR provider for the residential customer class and the largest non-volunteering POLR provider for each of the small non-residential customer classes in a POLR service territory to each calculate an EFL at the time the POLR price is determined. The POLR responsible for the calculation would then provide the commission with electronic copies of the EFLs to post on the commission's website.

*Commission response*

**The commission agrees with First Choice and RMC that the POLR EFL should be completed by the largest (or first) of the non-volunteering POLR providers in each service territory for each customer class as there is no need for multiple POLR EFLs that would state the same rate. The POLR responsible for the calculation shall provide the commission with electronic copies of the EFLs for placement on the commission's website.**

TSCC stated that if the commission desires that each POLR area have five non-volunteering POLR providers, TSCC recommends that the phrase "other than the volunteering REPs" be inserted after "five eligible REPs" in the third sentence of subsection (j)(1) of this section. TSCC also commented that the date for designating the non-volunteering POLR providers should be moved up to September 1, instead of sometime in October. RMC replied the revisions proposed by TSCC might suggest that the identities of the five non-volunteering POLR providers for a specific customer class in a TDSP service area must be different from the identities of the POLR providers that volunteer to serve that same class in the area, and thus opposes the suggested modification of TSCC.

*Commission response*

**The commission declines to make the exact recommended changes of TSCC because the recommended language is inconsistent with the rule as the non-volunteering POLR providers may also serve as volunteer POLR REPs, but the commission has modified the rule language throughout the rule to clarify its intent where it is appropriate to do so. Consistent with other commission responses, the commission declines to change the date as**

**recommended by TSCC but has made the “October” reference specific to October 15. The commission believes that the dates and time frames included in the rule are appropriate.**

RMC commented that proposed subsection (j)(2) of this section should specify October 1, as the date by which non-volunteering POLR providers shall be announced. RMC commented that it agreed that the allocation of ESI IDs to non-volunteering POLR providers should be reduced by the number of any ESI IDs served by the POLR REP on a volunteer basis. RMC further recommended that non-volunteering POLR providers should be able to offer competitive products and services to the customers transferred to POLR and those customers have the right to choose such competitive products. TSCC commented that the date for non-volunteering POLR providers to be announced should be moved to September 1.

OTTA stated that the methodology by which the non-volunteering POLR providers are selected is not set forth in the proposed rule.

*Commission response*

**The commission declines to change the date specified in the rule as the commission believes that the time frames and dates are appropriate. The commission disagrees with RMC that the allocation to non-volunteering POLR providers should be reduced by any amount the POLR provides service to on a voluntary basis. The commission has discovered an error in the process in that the calculation would leave transitioned customers unaccounted for if all five non-volunteering POLR providers were also volunteer POLR REPs. Therefore the “credit for voluntary service” language has been removed due to the necessity of properly**

accounting for all ESI IDs that must be transitioned. The commission agrees with RMC that non-volunteering POLR providers should be allowed to market non-POLR products to transitioned customers. It is the commission's intent that the marketing be handled in the same fashion as is applicable to volunteer POLR REPs. The commission disagrees with OTTA that the rule language does not state the methodology by which non-volunteering POLR providers are selected, but the rule language has been modified to clarify intent and eliminate ambiguity throughout.

TSCC commented that the allocation process and how market share will be calculated needs to be clarified. TSCC suggested that market share be calculated based on the number of customers and that to avoid future confusion, the sequencing should be clarified in this subsection (j)(2) of this section. RMC replied that it opposes the revision proposed by TSCC and suggested that if the approach in proposed subsection (j)(2) of this section is retained, the subsection should be modified to clarify that market share based on "load" means the REPs' market share based on MWh.

*Commission response*

**The commission agrees with RMC that the current language is ambiguous. The rule language has been modified to clarify that the reference to "load" refers to a REP's market share based upon MWh served.**

RMC recommended a new subsection (j)(5) of this section, that would permit a non-volunteering POLR provider to request the commission to relieve it of any additional allocation of POLR

customers, based on a showing that it will be unable to maintain its financial integrity if it is required to serve any additional POLR customers.

*Commission response*

**The commission sincerely hopes that this situation never arises as this is the exact event that the change from one POLR provider to multiple volunteer POLR REPs and five non-volunteering POLR providers is meant to prevent. However, the commission agrees that if an additional allocation of POLR ESI IDs will threaten the financial integrity of a non-volunteering POLR provider, the POLR provider should be relieved of future non-volunteering POLR provider responsibility and with 90 days notice, the next eligible REP (determined in the same fashion as the original five) shall assume the non-volunteering POLR provider responsibility.**

*§25.43(k) – POLR rate*

OTTA commented that POLR service for residential customers should be priced based on the average price of a portfolio of electricity supply contracts and services that is designed to assure affordable and stable prices for essential electricity service. OTTA stated that the intermingling of the duties of the POLR with most of the larger REPs in the retail market will be confusing to customers and will contribute to the inability to comply with the statutory vision for POLR service that the commission appears to have ignored in these proposed rule changes. Cities replied that it agreed with OTTA that it would be unwise to base POLR pricing on the MCPE when such prices can become extremely volatile. The proposed reliance on MCPE pricing could

have disastrous consequences for customers who are not informed of the potential high risk and volatility associated with such pricing.

COH commented that the POLR rate formula is too fluid because it is tied to MCPE and there does not appear to be any competitive bidding process to determine the adders or percentages in the rate formula. COH urged the commission to reconsider its current formula for calculating the POLR rate, and make the POLR the safe harbor anticipated by the Legislature.

TTP commented that the affordable rate package it proposes would be determined with a formula that starts with the residential price to beat in effect on January 1, 2002, adjusted for national price increases using a U.S. Department of Energy price index and then provide a twenty percent rate discount.

*Commission response*

**The commission disagrees with OTTA that the POLR price should be based upon a portfolio of supply contracts as the recommendation is inconsistent with the general structure of the POLR rule. The commission also disagrees with OTTA that the POLR rule does not comply with the “statutory vision” of POLR service. The commission disagrees with Cities that the volatility of the MCPE formula is problematic. The commission has determined that the POLR price must accurately reflect the cost and risk associated with providing POLR service. The commission declines to reconsider the POLR rate formula as recommended by COH and disagrees that the POLR rate should be based upon a competitive bid process, as experience with a bid process is one of the factors that**

**led to the need for the current rule amendments. The commission disagrees with TTP that the starting point for the POLR rate formula for the residential and small non-residential customer classes should be the price to beat rates, and disagrees that the rate should then be adjusted in a fashion that is not consistent in any way with the costs associated with providing POLR service.**

Cities commented that the rate formula under subsection (k)(1) should be simplified to facilitate comparisons of POLR offers and to provide greater transparency to POLR customers by eliminating customer and demand charge components of the rate. Additionally, Cities commented that the rate formula should be modified to specify that both TDSP charges and credits will be passed through under the POLR rate to ensure that small customers receive the benefits of any credits resulting from the true-up proceedings. RMC stated in reply comments that it opposed Cities proposal to incorporate the customer and demand charges in the overall MCPE-based charge to simplify the POLR rate structure. RMC also replied that Cities proposed modification to specify that TDSP credits will be passed through under the POLR rate is unnecessary.

OTTA commented that such a pricing plan will make it impossible for most residential consumers to compare alternative pricing mechanisms or alternative providers. OTTA commented on the uncertainty of how a POLR will calculate a deposit amount based upon the proposed formula.

RMC commented that it generally supports the MCPE-based rate structure set forth in the proposed amendments and stated that POLR service should be provided using a market-based rate that reflects the short-term market price for power, the non-bypassable charges, and the risk

associated with providing service to the unpredictable POLR load. RMC commented that it supports retaining the current method of calculating POLR rates for large non-residential customers because the formula relies on a shaped ERCOT load profile. RMC commented that because IDR-metered customers have actual meter usage available, it would be inappropriate to apply a 30-day average load profile-based formula to these customers. RMC therefore recommended that the same formula as proposed for the large non-residential customers should be used for small non-residential customers with IDR meters. RMC commented that \$2,897 is a reasonable customer charge for customers with an IDR meter. RMC commented that for the residential and small non-residential customer classes, the pricing formula should be revised to reflect a twice-monthly update because more frequent updates to the MCPE would reduce the necessary risk premium for POLR service to these classes. RMC stated that the reference to demand charges should be deleted from the residential pricing formula as no demand charge will be applicable. RMC recommended that the rules should clarify that neither customer charges nor demand charges should be pro-rated for partial months. RMC stated that the customer charge is intended to cover the administration associated with setting up, billing, and then closing an account, which is the same whether the customer is on the service for one month or one day. RMC also stated that demand charges are based on the highest demand in the time period for which service is rendered, and it is therefore inappropriate to pro-rate these charges for service that do not span a full month. RMC commented that the current terms of service for POLR indicates that demand charges should not be prorated and that the rule would benefit from greater clarity with a specific statement to that effect. RMC recommended that the MCPE floor of \$7.25 per MWh for the large non-residential class that exists in the current rule be retained and also applied to the IDR-metered small non-residential customer class. For residential and small

commercial customers without IDR meters, RMC recommended that the POLR be allowed to charge non-bypassable charges plus the customer or demand charges plus the higher of either 150% of MCPE or an energy price floor based on historical averages of POLR rates. The energy price floor for the residential class for the two-year period beginning January 1, 2007, should be derived by taking a simple average of historical non-volunteering POLR provider rates at 1000 kWh per month usage (less non-bypassable charges and its proposed POLR customer charges) for the 12 months ending March 31, 2006. This calculation should be performed for each TDSP service area to develop an energy floor specific to each service area. The energy price floor for the small non-residential class without IDR meters is derived in the same manner. For subsequent two-year POLR cycles, the floor should be updated for each TDSP territory and customer class using a simple average of 150% of MCPE for the 12-months ending March 31 of even numbered years. RMC also recommended that the commission allow a non-volunteering POLR provider to request an increase to the energy price floor if the current floor yields a POLR rate that is less than the competitive electricity price offered to a majority of customers in a particular class in a particular TDSP service area. RMC commented that the rules should clarify that not only are TDSP charges added to develop a complete POLR rate but also applicable taxes and other non-bypassable charges. These charges are specified as part of the price in the existing POLR terms of service, but have been deleted from the proposed POLR terms of service. RMC commented that more clarity is needed around the ERCOT process for calculating the MCPE and posting the data. ERCOT should be explicitly directed when and where to post the information publicly. RMC proposed that these calculations be posted on ERCOT's website on the 15<sup>th</sup> and the last day of every month, using data from the 30 days immediately prior to the posting. The commission should also clarify that the load profile to be used for calculating the POLR rate is a backcasted

load profile, rather than a forecasted profile. RMC recommended that rather than using all possible load profile/weather zone/congestion zone combinations for each TDSP territory, each rate should use the predominant weather zone, load profile type, and congestion zone. RMC stated that given the number of POLRs that will be serving under the proposed rule, RMC recommended that the commission memorialize its monthly process to administer the POLR rate calculations by including the process in the rule.

ERCOT suggested that the commission review the calculation for the small non-residential customer class POLR rates to ensure that a qualifier for interval load reflects the intent of this rule. The language in subsection (k)(1)(B) of this section should also be modified to be consistent with ERCOT's suggested definition for medium non-residential customer class in subsection (c) of this section. In reply comments, ERCOT stated that it encourages the commission to reject the request of RMC that ERCOT be directed to post backcasted shaped MCPE data on ERCOT's programmatic interface on the 15<sup>th</sup> and last day of each month. ERCOT also questioned whether the designations of profiles and zones to be used should be made by rule. For example, RMC's recommendation uses 2006 zones, which could potentially change in subsequent years.

TSCC stated in reply comments that it supports the general concept of a price or MCPE floor. TSCC recommended using a defined price, rather than a formula. TSCC also reiterated their reply to OPC's recommendation of using a fixed MCPE adder rather than a multiplier. TSCC stated that the commission should use the multiplier to account for unknown and unforeseeable costs and to minimize customer charges at low MCPE levels.

RMC stated in reply comments that the costs incurred to serve electric customers include ERCOT Administration Fee, Unaccounted for Energy, Local Balancing Energy, Out of Merit Energy, Out of Merit Capacity, Black Start, Reliability Must Run, Regulation Service-Up, Regulation Service-Down, Responsive Reserve Service, Non-Spinning Reserve Service, Replacement Reserve Service, Voltage Support, QSE costs, losses, and bad-debt expense, and therefore stated that OTTA has not considered the full extent of costs incurred to serve electric customers in its comments and recommendations.

*Commission response*

**Consistent with previous discussions in other commission responses, the commission has determined that the POLR rate should reflect a flow through of the applicable non-bypassable charges, a flow through of ERCOT charges, a POLR customer and demand charge, and an energy charge that is 130% of the MCPE, with a price floor. The commission disagrees with OTTA that the MCPE based formula would be indecipherable for unsophisticated customers and the commission disagrees with Cities that a revised formula will simplify comparisons of alternate rates and increase transparency. The commission also declines to eliminate customer and demand charges as they are necessary components used to recover the costs associated with providing POLR service. The commission agrees that all non-bypassable charges, meaning both charges and credits, should be passed through to POLR customers, as well as any other applicable taxes. The commission agrees with RMC that customer charges and demand charges should not be pro-rated when a customer leaves the POLR and has modified the rule language accordingly.**

***§25.43(l) – Prohibition on serving as POLR (Challenges to ESI ID assignments)***

RMC commented that the rule does not address which entity is responsible for service to customers during a POLR's challenge. If the POLR REP does not succeed in its challenge, it should be responsible for the service because it should have been providing service during the period it made the challenge. If the POLR REP prevails and is found not to be correctly designated as the POLR for that customer, RMC believes the market should be responsible for the service and any costs associated with providing service for the dispute period should be allocated to retail market participants. ERCOT and TDUs disagreed that when a POLR successfully challenges a customer assignment by ERCOT, then the cost to serve the customer should be uplifted to all market participants in an equitable and non-discriminatory manner. ERCOT stated that it believes that uplift in such circumstances would not be necessary and that costs can be assigned to the proper POLR after the proper assignment is made and that all subsequent settlements for those operating days will correctly reflect changes to the proper POLR. TDUs added that the POLR has an obligation to serve customers assigned to it, unless and until the customer's classification is changed, and any change in the customer's classification should operate prospectively, not retroactively.

ERCOT commented that since the TDU is responsible for assigning the customer class, ERCOT recommends that if the POLR REP wishes to challenge the customer class of an ESI ID, the POLR REP should utilize the appropriate market resolution tool to work with the TDU. In the event a POLR challenges a customer assignment and the TDU determines that the appropriate POLR is not the POLR of Record, ERCOT proposes that back-dated transactions may be used to

assign the ESI ID to the correct POLR. The TDU would then also be required to forward updated initial and final meter readings to the appropriate POLRs through ERCOT in order to synchronize market systems. TDUs replied that they do agree with ERCOT that challenges to customer class assignment should be resolved using existing market resolution tools or those being developed by the market.

TSCC commented that it strongly agrees with this provision but that it needs to be clarified and deadlines added. TSCC also stated that the title of this subsection is misleading and should be changed as the subsection does not address prohibitions on serving as a POLR, but rather that a POLR is not obligated to serve customers in classes for which it has not been designated to provide service. TSCC commented that the subsection should include strict deadlines to minimize the period of time a customer may be served by the wrong POLR at the wrong rates and terms of service and a POLR is at risk of having to provide service to a customer it is not prepared to serve. TSCC recommended that a POLR notify ERCOT within 2 working days of receiving information indicating that a customer who is proposed to be transferred to the POLR may belong to a class or reside in a TDU service area which the POLR is not designated to serve. Within 24 hours of such notification, ERCOT must request the TDU in the applicable POLR area to make the necessary determination of the appropriate customer class and TDU service area, and the TDU must provide this determination to ERCOT and the POLR REP no later than 24 hours after the ERCOT notification. The rule should provide that the POLR REP shall initiate a switch request to the appropriate POLR upon being provided information by the TDU confirming the appropriate customer class and TDU service area. ERCOT replied that the timeframes proposed by TSCC are inappropriate and unnecessary as there is already a defined process for resolving

retail data issues, with the TDU data as the source of the resolution, and therefore the resolution should be between the POLR and the TDU.

TDUs commented that ERCOT should be in charge of making assignments of customers to POLRs, as is the case now. If the TDU is asked to resolve a dispute, it will merely reflect what is in the TDU systems, information that will have been provided to ERCOT. TDUs commented that any dispute about a customer's assignment should not delay the implementation of the switch to the POLR, and the limitation on the POLR's obligation to serve contained in the first sentence of this subsection should not be read as providing otherwise. ERCOT disagreed with the TDUs in that pursuant to the ERCOT Protocols, the TDU is responsible for assigning customer class. Therefore, if a POLR disputes the classification, that dispute is between the POLR and the TDU, not between the POLR and ERCOT. Any such dispute can be resolved using the market's existing retail data dispute resolution processes. In reply comments, TDUs commented that they disagree with ERCOT that the TDUs should be responsible for assignment of customers to POLR classes, and for resolution of disputes regarding assignment. Currently, ERCOT assigns customers to POLRs based on the customer's "Premise Type" which is reported to ERCOT by the TDU. However, the "Premise Type" is not equivalent to customer class and may not be up-to-date. Instead, customers should be assigned based on actual historic usage data, which ERCOT already has in its system. If ERCOT were to calculate and assign customers based on this historic usage data, assignments would be more accurate than if done by "Premise Type" and there would be fewer disputes. ERCOT is also in a better position than the TDU to settle any disputes about customer assignment that arise, based on the same historic information in its system.

TSCC stated in reply comments that the disagreement between TDUs and ERCOT is exactly why the rule needs to specify a mechanism that will ensure that a customer is served by the appropriate POLR, and will specify exactly which entity bears responsibility for actions necessary to ensure that takes place. TSCC recommended imposing this responsibility on the TDU, as the TDU will have the most up-to-date and complete information, and putting this responsibility on the TDU will reduce the burdens on ERCOT. A transfer to POLR is just one form of customer switch and typically the TDU will provide the requisite customer information in a customer switch, so this provision merely requires the TDU to verify its own information in the event a customer is directed to the wrong POLR. TSCC stated in reply comments that backdating POLR service dates as suggested by ERCOT is not an appropriate resolution, particularly in the larger customer classes. If a customer is retroactively assigned to a POLR, then that POLR will not have had any opportunity to secure a deposit or obtain other credit security in advance of that customer being transferred to the POLR. If a customer is retroactively assigned to a POLR, and then the customer defaults, that POLR bears the financial consequences of the default. Those consequences can be severe in the large classes. Further, if the commission does not firmly establish which entity bears the responsibility to clarify which customer belongs with which POLR, the resolution process could take a long time.

*Commission response*

**The commission disagrees with RMC that the costs associated with serving a customer whose POLR designation has been successfully challenged should be uplifted to the market. The commission agrees with ERCOT that uplift would not be necessary and that costs can**

be assigned to the proper POLR after the proper assignment is made and that all subsequent settlements for those operating days will correctly reflect charges to the proper POLR. Any settlement charges to the incorrect POLR prior to this change in POLR assignment would be corrected with subsequent settlements. This methodology is similar to and consistent with ERCOT's current market dispute resolution process involving an inadvertent switch, using the FasTrak system. The commission also agrees with the rationale stated by TDUs, that the POLR has an obligation to serve customers assigned to it, unless and until the customer's classification is changed. Therefore, the responsibility to serve a POLR customer shall be the POLR REP that the ESI ID is initially assigned to. In the event the assignment is challenged, the ESI ID shall remain the responsibility of the assigned POLR until a determination is made that changes the assignment. A challenge shall be conducted and resolved using existing market resolution tools as recommended by ERCOT and the TDUs. The commission agrees with ERCOT that the timeframes proposed by TSCC are inappropriate and unnecessary as the commission has determined that the existing market resolution tools should be used for resolving retail data issues. The commission agrees with ERCOT that the applicable TDU should be responsible for making the determination in a POLR assignment dispute. The TDU shall make the determination based upon historic usage data and not premise type. The commission agrees that ERCOT may have the same data in its system, but the commission determines that the TDU is the appropriate entity to review the historic usage data and make the determination as to which customer class the ESI ID belongs in.

*§25.43(m) – Limitation on liability*

Cities commented that §25.43(m) should be modified to ensure that POLR providers have some legal obligation to provide the offered POLR service and also stated that there is no justification for the proposed amendment to the POLR rule to reduce the liability of the POLR supplier for defaults under such service agreements.

RMC commented that the limits on liability need to be clarified in circumstances that do not involve intentional misconduct or gross negligence. Without this change, it would be unclear whether the POLR could be held responsible for the negligence of another entity involved in the POLR process for actual damages. RMC stated in reply comments that the current Terms of Service clearly place liability for direct actual damages on the POLR. RMC further stated in reply comments that the proposed language would make the POLR liable for consequential, exemplary, special, incidental, or punitive damages in cases of gross negligence or intentional misconduct, but the proposed language fails to clearly and specifically limit liability to direct, actual damages for all occasions other than gross negligence or intentional misconduct, which creates an ambiguity associated with liability when gross negligence or intentional misconduct is not involved, that should be clarified. RMC stated that the rule would be clearer if the specific limitation to direct, actual damages included in the current POLR Terms of Service remained, avoiding any ambiguity associated with cases of negligence that don't amount to gross negligence or intentional misconduct. RMC also proposed that the rule should also clarify that the POLR is only responsible for its own gross negligence or intentional misconduct related to its provision of or its preparation to provide POLR service, and that the POLR's liability for its own negligence is limited to direct, actual damages, if gross negligence is not involved.

TSCC commented that the POLR rule should include a limitation on liability for direct damages for the POLRs, and the limitation of liability clause should state that a POLR is not liable for damages to any REP whose customers are transferred to the POLR in compliance with the commission's rules. TSCC stated in reply comments that the commission should reject OPC's suggestion to delete this provision, as well as the Cities suggestion that it should not limit damages in the event the POLR fails to provide service.

OTTA commented that the proposed broad exemption from liability does not appear warranted in light of the statutory basis for the POLR obligation and the regulated nature of this service.

*Commission response*

**The commission agrees with RMC that the rule would be more clear if the specific limitation to direct, actual damages included in the previous POLR Terms of Service was retained. The commission has modified the rule language concerning the limitation on liability to clarify the intent of the commission to reflect the level of liability consistent with the previous POLR Terms of Service in the body of the rule language itself. The commission agrees with the comments of TSCC that POLR providers should not be liable for damages to any REP whose customers are transitioned in accordance with this rule and has added language accordingly. The commission believes that it is also appropriate to extend this limitation of liability to ERCOT and has modified the rule language accordingly.**

*§25.43(n) – Transition of customers to POLR service*

TSCC suggested that this subsection be reformatted to include all the provisions relating to “one off” transitions in one paragraph, and all provisions relating specifically to mass transitions in another. RMC replied that it agreed with TSCC that the processes should be set out in detail to make sure that the rules are clear as to how the transition to POLR will occur.

RMC recommended that subsections (n)(1) and (4)-(6) of this section be revised to clarify that POLR responsibilities apply only during the time period that the POLR is the customer’s REP of record.

RMC stated that one provision of the rules (§25.474(1)) that extends the processing time for a switch is the requirement that ERCOT notify customers of the pending switch and allow customers seven days after the receipt of the notice to cancel the requested switch. The process adds at least ten days to the switching process. The notice requirement applies even for out-of-cycle switches. In fact, it subjects out-of-cycle switch requests to a higher rejection rate than normal meter read switches. To accelerate the process for switching customers off of POLR and in order to make the out-of-cycle switch request process more reliable, the commission should consider eliminating the ERCOT postcard notification process currently codified in §25.474(1).

TIEC commented that 25.43 must have absolute clarity regarding how a customer gets transferred to the POLR, the notices that must be provided, and the process for obtaining a switch from the POLR.

*Commission response*

The commission agrees with TSCC that the rule should clearly address and differentiate the “one-off” instance as opposed to the mass transition situation, when applicable. However, the rule has been modified to reflect the intent of the commission that the “one-off” situation shall not be applicable as of January 1, 2007. Consistent with the discussion in previous commission responses, in the event of a challenge to POLR assignment, the assigned POLR shall serve the customer while the challenge is pending. If the challenge is successful, the responsibilities may be backdated to the transition date to reflect the correct POLR assignment, therefore, the commission agrees with RMC that POLR responsibilities apply only during the time that a POLR is ultimately determined to be the REP of record, but notes that the assigned POLR is responsible while a challenge is pending. This process is consistent with the current process. The commission agrees with RMC that for the purposes of transitions to and from a POLR provider, the ERCOT postcard notification process codified in §25.474(1) is not required.

RMC requested that subsection (n)(2) of this section be deleted to be consistent with its position that POLR functions are for customers who request POLR service and customers affected by REP default only.

*Commission response*

Consistent with the discussion in other commission responses, the commission declines to make the requested deletion of subsection (n)(2) of this section, due to the existence of §25.482, but has modified the rule language as appropriate to reflect that the provisions of §25.482 shall not be applicable as of January 1, 2007.

RMC recommended that subsection (n)(3) of this section be deleted because the provision has never been used by the market in processing mass transitions. It also stated that the issues of meter reads are addressed in another portion of the rule. RMC stated that in every transition of customers from a defaulting REP to the POLR, a market transaction has been used and an actual meter read has been obtained, and thus there is no need for subsection (n)(3) of this section.

*Commission response*

**The commission declines to delete subsection (n)(3) of this section. The fact that actual meter reads have been obtained in past transitions is immaterial. It is the intent of the commission, that in an effort to reduce the time frame associated with a mass transition, that TDUs supply meter reads within two days. With such a short time frame, meter read estimations may be part of the required process.**

RMC commented that the rule needed to be clarified to establish that the timeline for return of the deposit begins only after the REP receives the final meter read. RMC stated that (n)(7) is inconsistent with subsection (o)(3)(E) of this section, which is basically unchanged from the existing rule and allows 20 days for return of a deposit by a REP transitioning customers to POLR. It is also inconsistent with §25.478(j) which requires that a deposit be returned “promptly” after the REP is no longer the REP of record.

*Commission response*

**The commission agrees that the rule language needs to be consistent throughout and has modified the language accordingly. It is the intent of the commission that an exiting REP return any unused portion of a customer's deposit within seven calendar days of receiving the meter read data from the TDU. The rule language in subsection (o)(3)(E) has been modified to remain consistent with this intent. The commission does not believe that §25.478(j) is inconsistent with this intent as that language only makes reference to the return of deposits "promptly." It is the commission's intent that the seven calendar day requirement constitutes a "prompt refund."**

TDUs, Cities, and Joint Commenters generally stated that in the event of a mass transition involving thousands or tens of thousands of customers, the benefit of having information available through a customer information repository would greatly outweigh the cost in time and resources of populating the database.

RMC commented that it supported striking proposed subsection (n)(8) of this section because of the benefits of receiving customer information from the proposed database are far outweighed by the cost to maintain such a repository. RMC commented that the largest mass transition has only been 12,269 ESI IDs and continuously updating the customer information database creates an overwhelming administrative burden for something that might never happen. ERCOT generally agreed. While TTP also generally agreed, it also recommended improved customer notification systems and coordination with the Low-income Discount Administrator for obtaining customer information that is not available because of an uncooperative REP. TDUs disagreed in reply comments that the information storage would result in a significant expense, stating that there is

no need to create a separate, expensive database, because an existing ERCOT database (Siebel) can be modified to store the information necessary for the POLR to be able to identify and bill the customer, such as name, telephone number, billing “care of” name, and billing address. TDUs also commented in replies that if it is necessary to place an obligation on POLRs to treat customer proprietary information with care, the commission should create the obligation by rule, or impose it as part of the POLR sign up process.

TSCC suggested that a deadline be included for an ERCOT database of December 31, 2006. TSCC commented that subsection (n)(8) of this section should also specify the minimum customer information that should be included in the ERCOT database. TSCC commented that the last sentence of subsection (n)(8) of this section does not specify whose responsibility it is to provide customer information to the POLR in the event of a mass transition. TSCC recommended that such responsibility lie with the transferring REP, unless the transferring REP is unable to provide such information or has already exited the market. In such situations, the TDUs in whose service area the customers are located should have this responsibility. TSCC also commented that five business days is too long to wait for critical customer information to be provided to the POLR and recommended that the deadline be shortened to no longer than two business days.

*Commission response*

**The commission agrees that a customer database could be costly to initiate and maintain. However, the commission believes that there is value to having some form of data warehouse in the event an exiting REP does not provide appropriate customer information**

to the POLR providers. The commission agrees with TSCC that the rule would benefit from additional clarity in regard to providing customer information to POLR providers. The rule language has been modified accordingly to reflect the commission's intent that in a transition of customers to POLR providers, it is the responsibility of the exiting REP to provide customer data to the POLR providers. If the exiting REP does not provide the data, the appropriate TDU shall provide whatever data is in the TDU's possession, with the understanding that the data may be out-dated, incomplete, inaccurate, or simply may not exist. In the future, ERCOT shall be responsible for providing the appropriate data through some form of data warehouse, as discussed in later commission responses. The commission declines to change the timeframe as recommended by TSCC as the commission believes that the time frames contained in the rule are appropriate. The commission declines to adopt the recommendation of TTP to utilize the Low-income Discount Administrator as the commission believes that the rule language has been modified in a fashion that addresses the concerns over the customer information database. The commission agrees with TDUs that the rule should create the obligation on POLRs to treat customer proprietary information with care and has modified the rule language accordingly.

ERCOT commented that it currently maintains a database that continuously matches each ESI ID to its REP of record, but does not include each customer's billing information. The rule, as proposed, could be read to require ERCOT to substantially increase the amount of data maintained in this retail database, at significant expense. ERCOT stated that a more effective and efficient solution exists that would obviate the need for ERCOT or market participants to invest in

redundant data storage, data processing and resulting data synchronization. ERCOT recommended the establishment of a single standard file format and a standard set of customer billing contact data elements that, in the event of mass transition event, the departing REP and the POLR would use to send and receive customer billing contact information. To assess both the REP's ability to rapidly populate and send such files and a POLR's ability to rapidly receive the data, ERCOT recommended that the rule require a periodic verification methodology to be administered by ERCOT or a qualified third party. ERCOT would report non-compliance issues to the commission. In addition, ERCOT requested that the commission rules clearly confirm all REPs' responsibilities for submitting timely, accurate and complete files in the event of mass transition. In reply comments, OPC stated that it supports Texas Rose and ERCOT's concern as to the costs of maintaining a duplicate consumer database. OPC stated that it supports ERCOT's alternative solution that is more effective and efficient.

*Commission response*

**The commission agrees with the alternative recommendation of ERCOT. The commission believes the customer information is needed in the event of a mass transition and believes that ERCOT's proposal offers a relatively low-cost solution. It is the commission's intent that ERCOT develop the single standard file format, the required data elements, and the process for populating and sending the files, in its usual process. The commission agrees that the rule needs to clarify that REPs have the responsibility to submit timely, accurate, and complete files in the event of a mass transition, as well as in the verification tests. ERCOT shall finish designing this process and implement it as soon as feasible, but the commission declines to give ERCOT an initial "hard" deadline to complete the task, but**

**ERCOT shall make every effort to have the process finished by December 31, 2006. However, if it is not possible for ERCOT to design and implement the process by December 31, 2006, ERCOT shall finish implementation of the process no later than July 1, 2007.**

ERCOT stated that it should be assigned the duty of initiating mass transition of customers to POLR, but, ERCOT does not believe that it will be capable of acting in this role by December 31, 2006. RMC replied that it supported the proposal that ERCOT generates the Texas SET transactions to initiate the mass transition process on behalf of the POLRs and supports a December 31, 2006 timeframe.

TDUs suggested in reply comments that the proposed rule reflect the possibility that in the future, ERCOT, rather than the TDU will provide historic usage data to the POLR.

*Commission response*

**The commission agrees that in the future, ERCOT shall initiate a mass transition to POLR instead of the POLR REP. ERCOT shall make every effort to implement this process as soon as possible, and in the event that ERCOT is not capable of acting in this role by December 31, 2006, ERCOT shall have the capability to implement the process no later than July 1, 2007. The commission agrees with the TDUs that in the future, it may be possible for ERCOT to provide historic usage data instead of the TDU, but disagrees that the rule need to reflect that ERCOT shall assume that responsibility at this time as there has not been a problem identified with the TDUs supplying the historic usage data.**

ERCOT stated that Section 1.3 of the ERCOT Protocols already provides for the information described in subsection (n)(9) of this section to be treated confidentially as Protected Information. Therefore, an additional confidentiality agreement is a duplicative, unnecessary administrative burden. ERCOT suggested that this subsection merely reference the fact that the information should be maintained as Protected Information, pursuant to the ERCOT Protocols. RMC replied that it agreed with ERCOT's comment that an additional confidentiality agreement to transfer customer usage and demand data prior to the transition of the customer to the POLR provider is "duplicative and unnecessary." RMC stated that customers are also protected by §25.472(b) of the customer protection rules, which give a REP, TDSP, or ERCOT the right to obtain customer information to facilitate a necessary market transfer such as transferring a customer to POLR.

The TDUs commented that the existing ERCOT Protocols addressing confidentiality of information are not necessarily sufficient to allow the TDU to release confidential information to POLRs without customer permission. The better approach is for the rule to expressly state that release of such information by the TDU will not violate the customer protection rules that address confidentiality.

TSCC commented that subsection (n)(9) and (10) of this section should provide that the confidentiality agreement under which customer information may be provided to the POLR shall be a standard confidentiality agreement approved by the commission.

*Commission response*

**The commission agrees that the rule language needs to expressly state that the release of information from a TDU to a POLR in a transition event does not violate the customer protection rules that address confidentiality and that an additional confidentiality agreement is not necessary. The commission has modified the rule language to clarify this intent.**

ERCOT and TDUs stated that the rule should make clear that the current practice of transferring historic usage and demand data using the 867\_02 Texas SET transaction, in response to an electronic switch request, is the appropriate way of supplying this information to the POLR. TDUs stated that if POLRs are interested in getting the information quickly, they simply need to send the switch request expeditiously. The only reason to require that usage data be supplied by any other method is if the commission agrees with TSCC that the POLR should be given usage information prior to initiating the switch request. The purpose would be to allow the POLR to second guess the assignment of the customer, protest the assignment, and collect a deposit before ever initiating the switch. The TDUs believe that the published amendments indicate that the commission does not favor this approach, and that the switch is not to be delayed while the POLR checks the assignment, protests it or collects a deposit, and thus there is no rationale for providing usage data on any basis other than as an electronic response to a Texas SET transaction requesting a switch.

TSCC stated in reply comments that the commission should reject TDUs request that the transition process may only utilize the Texas SET process as Texas SET is not fool-proof, and errors can occur.

TDUs suggested in reply comments that the language in the proposed rule that says that supplemental information may be provided through other formats be deleted. The TDUs are concerned that POLRs may seek to avoid the current, established process of information sharing through Texas SET electronic format, citing this language. TDUs suggested that if the language is retained, the commission should make clear that supplementation through means other than Texas SET should only occur in very exceptional circumstances, such as when electronic transaction fail, and only at the option of the entity supplying the information. RMC replied it agreed with TDUs that Texas SET should be the primary means for transferring a customer's usage and demand information, but also stated that there may be exceptional circumstances or emergency situations in which TDUs and POLR providers need to process transactions outside the Texas SET transactions.

*Commission response*

**The commission agrees that the Texas SET process is the appropriate fashion for historic usage and demand data to be transferred to a POLR provider. The commission agrees that to get historical usage data in an expeditious fashion, a POLR should submit the switch request expeditiously. It is not the intent of the commission that the transition process be delayed for any reason, as delays place additional cost upon all market participants. It is the intent of the commission that the transition process be as expeditious as possible and it is for this reason that the commission desires ERCOT to initiate transition switches once it is capable of doing so and why previous commission response indicated that the postcard notification requirement should be waived in a POLR transition event. The commission**

**declines to delete the rule language that states that supplemental data may be provided through other formats as there may be a circumstance when supplemental data is required. The commission agrees with TDUs that to clarify its intent the rule language has been modified to reflect that supplementation shall only occur after a switch has been submitted by a POLR provider or initiated by ERCOT, and that such supplementation should only occur under exceptional circumstances, at the option of the entity supplying the information.**

TSCC commented that subsection (n)(11) of this section imposes a major risk and economic burden on the POLR by requiring a POLR to begin serving a customer even if the customer has not paid a deposit by the service initiation date and that the POLR is also prohibited from disconnecting a customer until the appropriate time period to submit the deposit has elapsed. TSCC commented that POLR pricing is not designed to support non-paying customers. In reply comments TDUs stated that the proposed amended rule provides a fair balance between the POLR's need for a deposit and protection for customers as the proposed rule facilitates a seamless transition of customers to a POLR without the delay that would be caused were the POLR allowed to make a customer deposit a prerequisite to initiation of service. TDUs also stated in reply comments that favorable POLR pricing and terms and conditions are designed in a manner to address the added risks associated with serving customers transferred to a POLR, and that allowing the POLR to disconnect a customer who fails to pay the deposit, adequately protects the POLR. TDUs stated that allowing a POLR to refuse service to a customer transitioned to its service undermines the very purpose of the POLR in the competitive retail market. TDUs noted that TSCC failed to recognize that the POLR Terms of Service Agreements

state that POLR providers will require payment of the initial cash deposit within ten days of receiving confirmation from the Registration Agent of the effective date a customer becomes a customer of the POLR. This language contradicts TSCC's assertion that the current terms do not obligate a POLR to provide service unless a customer first pays a deposit.

TSCC stated in reply comments that the commission should reject the TDUs point that the transition process should not particularly allow time for a POLR to collect a deposit. TSCC stated that if POLRs are not going to be permitted to protect themselves against incurring loss and unrecovered costs in advance of being compelled to provide this regulated service, then they should be afforded the same protections against loss and unrecovered costs that the TDUs are afforded in providing their regulated services. Just as the commission has authorized TDU tariff mechanisms for uplifting to the market the TDUs' bad debt and UFE costs, then the commission must fashion a similar cost recovery mechanism for POLRs. TDUs disagreed with TSCC in reply comments and stated that the role of the POLR is to provide immediate and seamless service to customers whose REP has left the market, and that the costs of doing so are accounted for through favorable POLR rates and terms and conditions.

TDUs commented that market participants have been working to decrease the time necessary for accomplishing the transition and the process should not be delayed while the POLR researches the customer's usage and calculates and collects a deposit. The TDUs stated that the intent of this subsection of the proposed rule is in agreement with this approach, and is intended to expedite the transition process by providing that payment of a customer deposit shall not be a condition of

initiating POLR service. However, the TDUs recommend modifications to the proposed language to clearly reflect that intent.

*Commission response*

The commission disagrees with TSCC that a POLR should be allowed to collect a deposit before initiating POLR service. While this point is currently in the rule language, the commission has modified the rule language to make this point more explicit and unambiguous, consistent with the recommendation of TDUs. The purpose of POLR service is to provide continuity of service. Continuity is not to be delayed or interrupted for the collection of a deposit. Upon initiating a mass transition switch, a POLR provider will receive the historic usage data necessary to calculate any deposit the POLR provider may require. A POLR provider shall begin serving the POLR ESI ID upon transition to the POLR regardless of if any required deposit has been received, to ensure continuity of service. A POLR provider then has the right to disconnect a customer (ESI ID) that does not submit a required deposit. This is consistent with the Customer Protection Rules that only allow the REP serving a customer to request a disconnection for non-payment and that allow ten days for the payment of a deposit before a disconnection for non-payment can be enacted. To address the risk associated with potentially serving large non-residential customers for ten days before a deposit is due, for the large non-residential customer class, any required deposit shall be due three days from the day the deposit is requested, after which disconnection for non-payment can be enacted, assuming the REP requesting the disconnection has the authority to do so. The commission's intent will become even more important as revisions to the mass transition process are made that

shorten the transition timeframes. The commission disagrees with TSCC that the commission must allow POLR providers to uplift unrecovered costs. The commission notes that the POLR obligation is a requirement to be certified as a REP and the POLR rate is intended to reflect the risk of providing POLR service. POLR service is not risk free, but the commission believes that the risk is appropriately accounted for in the POLR rate formula, making uplift unwarranted.

RMC commented that proposed subsection (n)(11) of this section should be amended so that the deposit can be waived upon a customer's request. RMC commented that if a customer contacts the POLR and affirmatively asks for a deposit waiver, then the REP and customer are engaged in a dialogue that would facilitate receiving the necessary information to show that the customer has satisfactory credit and does not need to pay a deposit.

*Commission response*

The commission agrees with RMC that deposits should be able to be waived upon a customer's request as long as the waiver provisions are uniformly applied in a non-discriminatory fashion, and has modified the rule language accordingly.

OTTA recommended that any customer who is the subject of a "mass" transfer to POLR due to a default by the REP should not be required to pay any deposit amount. OTTA recommended that the POLR rule require all REPs to contribute to a pool of funds to shield residential and small commercial customers from any obligation to pay a deposit for POLR service due to the default of their prior REP and the mass transfer of customers to the POLR. OTTA recommended that

low income customers should be exempt from a deposit requirement for POLR service. RMC stated in reply comments that it opposes the deposit proposals of OTTA because they are inconsistent with the current practices and have no statutory support. TSCC stated in reply comments that the commission should reject OTTA's comment that a POLR should not be allowed to require a customer to provide a deposit before initiating service in cases where the prior REP defaults. TSCC maintains that a deposit is absolutely necessary before service begins to safeguard against the customer's default.

*Commission response*

**The commission agrees with the comments of RMC and declines to adopt the recommendations of OTTA as there is no statutory support to require all REPs to pay into a "pool" to subsidize the deposit requirements of transitioned customers. The commission has previously rejected the argument of TSCC that POLR providers must have a deposit before POLR service begins and reiterates the rejection here as the position of TSCC ignores the role of POLR service to provide continuity of service and ignores the fact that the POLR rate compensates the POLR provider for the level of risk associated with POLR service. If TSCC's position were adopted, it would be inappropriate for the POLR rate to be anything higher than the POLR provider's cost to serve, as risk will have been eliminated. This would be inconsistent with the position that POLR service is not meant to be a competitive market rate.**

ERCOT recommended that in scenarios when a REP is requesting a voluntary mass transition of its customers to the POLR, the REP should file its request with the commission because the

commission, not ERCOT, is in the best position to determine whether the REP is using the POLR as a means to eliminate non-profitable contracts. Upon direction from the commission, ERCOT would initiate the mass transition in this scenario. ERCOT recommended that the rule provide that any mass transition to POLR must involve all of the customers of record assigned to the departing REP at the time of initiation of the mass transition. ERCOT also commented that the rule should include another reason for the initiation of a mass transition event – an order entered by a court of competent jurisdiction or other applicable governmental authority. RMC stated in reply comments that it supports ERCOT’s proposed rule change that when a REP exits the market, all customers of record assigned to the REP be included in the transfer and with ERCOT’s recommendation that a judicial order could serve to initiate a mass transition of ESI IDs from a REP.

*Commission response*

**The commission declines to adopt the recommendation of ERCOT that the commission must approve a voluntary mass transition. The reason being that time may be of the essence and waiting for a commission Open Meeting may cause the financial complications that a REP was trying to avoid with the voluntary transition. To avoid the problem of having to “judge” if the REP is using a mass transition to eliminate non-profitable contracts, the commission agrees with ERCOT that all ESI IDs of the transitioning REP shall be subject to the mass transition to POLR. In addition, it should be noted that a mass transition event may lead to de-certification of the transitioning REP. The commission also agrees that a judicial order could be the cause of the initiation of a mass transition. The commission has modified the rule language consistent with these positions.**

RMC commented that it supports the implementation of an automated process as described in proposed subsection (n)(13) of this section where ERCOT would streamline the mass transition process by initiating customer transfers to POLR and by offering alternatives to the TDUs to provide meter reads in a more expedited manner. RMC stated that the subsection should be modified to make the automated process mandatory by year-end. ERCOT commented that it supported the concept of ERCOT generating the transactions on behalf of the POLRs in mass transition events and recommended that the commission authorize it as part of this rulemaking in order to implement it as soon as possible. ERCOT requested authorization for the process as part of this rule, with the methodology to be developed through the stakeholder process and approved by the ERCOT Board, while being allowed a reasonable amount of time to incorporate these requirements. TSCC commented that subsection (n)(13) of this section should be revised to require ERCOT, by December 31, 2006, to revise the mass transition process so that it is initiated by ERCOT, and to design and implement the necessary procedures. TDUs agreed that ERCOT should initiate the switch to shorten the time needed for a transition and also stated that the rule should clarify that ERCOT will utilize Texas SET for this purpose. TDUs stated in reply comments that the Texas SET Working Group, in conjunction with input from the Mass Transition Task Force has published a timeline that reflects the willingness of a majority of market participants to implement this process by December 31, 2006. The TDUs therefore recommend that the commission urge ERCOT to either meet the implementation date agreed to by the market participants.

*Commission response*

**The commission agrees that in an effort to shorten the mass transition time frame as much as possible, ERCOT should initiate switches to POLR through the Texas SET process and that ERCOT shall make every effort to implement this process as soon as possible, and in the event that ERCOT is not capable of acting in this role by December 31, 2006, ERCOT shall have the capability to implement the process no later than July 1, 2007. The methodology for the process may be developed through the stakeholder process and approved by the ERCOT board.**

RMC also stated that the rule should require that a TDU provide a meter read within two days of receiving the transaction to move a customer to POLR under a mass transition. In the case of mass transition, the TDU has the option of providing the meter read through one or a combination of the following options: actual meter reads, advanced metering data, or estimates. This portion of the mass transition solution should be implemented with this rulemaking and does not require a change to any ERCOT systems. ERCOT also supported the use of estimated meter reads by TDUs to effectuate switches. ERCOT acknowledged that an actual meter read is preferred whenever feasible, but recommended that TDUs be authorized to estimate meter reads to effectuate switches during a mass transition event, as the TDUs deem necessary in order for the TDUs to meet their meter reading timeline obligation during mass transition events. ERCOT also suggested that meter reading estimation activity conducted in connection with a mass transition event not be included in TDU meter reading performance metrics. In reply comments, the TDUs stated that they agree with ERCOT and RMC that the TDUs should be provided options for the manner in which meter reads are conducted to effectuate expeditious customer switches to a

POLR, including the use of estimated meter reads, which should not be counted against the TDU's meter reading performance measures.

*Commission response*

**The commission agrees with RMC that in an effort to shorten the time frame involved in mass transitions to POLR providers, the TDU must provide a meter read within two calendar days of receiving the transaction to move a customer to a POLR provider. While an actual meter read may be preferable, due to the two calendar day time frame the TDU may estimate the meter reads associated with a mass transition where the ESI ID does not have a meter that allows for reading in a fashion other than a physical meter read, which is the scenario envisioned in Chapter 4.3.4 CHANGING OF DESIGNATED COMPETITIVE RETAILER, of the commission adopted Pro-Forma Retail Delivery Tariff in Project No. 29637, *Rulemaking To Amend P.U.C. Subst. R. §25.214 And Pro-Forma Retail Delivery Tariff*. Consistent with Chapter 4.7.2.2 ESTIMATES FOR REASONS OTHER THAN FOR DENIAL OF ACCESS BY RETAIL CUSTOMER, of the Pro-Forma Tariff in Project No. 29637, an estimated meter read for the purpose of a mass transition to POLR shall not be considered a break in a series of consecutive months of estimates, but shall not be considered a month in a series of consecutive estimates performed by the TDU.**

RMC commented that the TDUs should not charge POLRs out-of-cycle meter reads in a mass transition because the POLR cannot pass this fee to POLR customers, but that the appropriate policy should be that those costs are borne by the entity causing the mass transition, the exiting REP, and not the acquiring REP or POLR. The TDUs commented that they strongly disagree

with RMC that the exiting REP should be billed for the costs of the out-of-cycle meter read or estimate required in the event of a mass transition of customers to a POLR.

*Commission response*

**The commission has already ruled on this issue. Consistent with Chapter 6.1.2.1 STANDARD DISCRETIONARY CHARGES, of the Pro-Forma Tariff in Project No. 29637, out-of-cycle meter reads or estimates for the purpose of a mass transition shall be charged to the exiting competitive REP. The rule language has been modified to clarify this intent.**

ERCOT commented that the mass transition timelines for all parties should be established using calendar days, as opposed to business days, as the unit of measure. TSCC replied that it supports ERCOT's recommendation to use calendar days, rather than business days, in all transition timelines, as this would more accurately reflect the service provided to customers.

*Commission response*

**The commission agrees with the comments of ERCOT and TSCC that all mass transition timelines should be established using calendar days and has modified the rule language accordingly as calendar days more accurately reflects the service provided to customers and the need for expedited treatment of mass transition events.**

ERCOT suggested that in subsection (n)(14) of this section, the information to be provided to POLRs not include a customer's service address, most recent twelve months of usage and demand

data and TDU charges. ERCOT stated that the customer's service address can be obtained through the ERCOT Texas Market Link or through public extracts and that requiring the departing REP to provide the customer's service address creates the potential for a data synchronization conflict between the REP's data and ERCOT systems. ERCOT also stated that the customer's most recent twelve months of usage and demand data can be provided by the TDU through Texas SET transactions. TDUs replied that they agree with ERCOT and added that RMC had requested that the exiting REP also provide the customer's meter class, meter type, language preference, tax ID or social security number, designation as low income eligible, and designation as critical care or critical load, but it is not clear as to the benefit of such information to the POLR, and thus TDUs do not believe it is helpful or necessary to include this additional information.

TSCC commented that subsection (n)(14) of this section should be revised to include a deadline for the transitioning REP to provide the listed information to the appropriate POLR provider, and the deadline should be that the information is provided at the same time as the REPs written request to the POLR for the transfer of customers. Additionally, there should be a requirement that the appropriate TDUs or ERCOT provide all the listed information in their possession to the POLR in the event the transitioning REP is unable or unwilling to provide the information, or has already exited the market, with a two day deadline. TDUs stated in reply comments that the switch request should be the triggering event for the provision of historic usage data and it will be provided almost immediately in response to a switch request coming from the POLR or ERCOT. Therefore, rather than putting a deadline on the provision of information, the process of transitioning customers to the POLR can best be sped up by requiring the POLR or ERCOT to

send a switch request initiating the switch, as soon as possible. RMC stated in reply comments that the two-business day standard should be included in proposed subsection (n)(14) of this section, which deals with transfer of information from the defaulting REP to the POLR provider and to the extent the customer information repository requirement is not eliminated, the two-business day standard should also be included in proposed subsection (n)(8) of this section.

TDUs questioned the value of a REP's obligation to share with the POLR a customer's account number with the REP that is losing the customer and the customer's TDU charges. Without further clarification as to the benefit of a REP providing such information to the POLR, the TDUs propose deleting (C) and (J) of this proposed rule revision. RMC stated in reply comments that they have found the customer account number to be useful in determining ESI IDs that are for the same customer and that the information helps in customer contact and billing inquiries, and therefore finds no reason for this item to be removed from the list of information an exiting REP must provide.

*Commission response*

**The commission agrees with ERCOT and the TDUs and has revised the list of information to be provided to not include a customer's service address, most recent twelve months of usage and demand data and TDU charges as the information is already readily available. The commission declines to add the additional items listed by RMC as the additional benefit is unclear. The commission agrees with TDUs that the initiation of a switch to the POLR provider is the triggering event for the provision of customer data. The commission declines to put a deadline on TDUs and ERCOT to provide any information in their**

possession that an exiting REP did not provide and notes that historical usage information will be provided when the switch is initiated by ERCOT or the POLR provider and that a customer information repository will address the missing data issues. The commission agrees with RMC that the customer's account number may be useful information and therefore declines to delete it from the list.

*§25.43(o) – Termination of POLR status*

RMC commented that proposed subsection (o)(2) of this section provides that if a POLR defaults or has its status revoked, the responsibility for its POLR duties will be assumed by the next eligible POLR. This proposed provision would only impact the designation of the five non-volunteering POLR providers under the proposed rule. Since RMC recommended in subsection (i) of this section, that all eligible POLR REPs should be part of the non-volunteering POLR provider pool, there is no reason to designate that the next eligible POLR REP will take its place because all eligible POLR REPs are already part of the allocation.

TSCC commented that it is not clear who the “next REP” is referring to and should be clarified.

*Commission response*

**The commission has declined to make the recommended change of RMC to subsection (i) of this section, which makes its comments in subsection (o) of this section, moot. The commission therefore declines to incorporate the comments of RMC. The commission agrees with TSCC that the reference to the “next REP” should be clarified and has modified the rule language accordingly.**

RMC stated that at the end of a POLR term, POLR customers who do not select another provider may either be served by the outgoing POLR through a competitive affiliate at a rate specified by the competitive affiliate or may be terminated to the incoming POLR. For those customers who do not select another REP at the end of the POLR term, in addition to transferring customers to a competitive product of an affiliate, the REP serving as POLR should be allowed to transfer the customers to one of its own competitive offerings. Therefore, RMC stated that subsection (o)(3)(A) and (C) of this section should be modified to reflect that a single entity may provide both a POLR function and a competitive function.

*Commission response*

**The commission agrees with RMC that the rule language should make it clear that a single entity may provide both a POLR function and a competitive function and has made corresponding changes to the rule language.**

RMC commented that a provision similar to the one that has been proposed for deletion in subsection (o)(3)(B) of this section should be reinstated because unless the waiver provision is

reinstated, if the outgoing POLR chooses the competitive affiliate option, an argument can be made that the competitive affiliate is acquiring customers and is subject to the notice requirements of §25.493.

*Commission response*

**The commission agrees with the comments of RMC and has modified the rule language accordingly as it is not the commission's intent to make the competitive affiliate of the POLR subject to the notice requirements of §25.493.**

*§25.43(q) – Reporting requirements*

RMC commented that as of June 1, 2004, the commission's rules gave all REPs the right to disconnect customers for non-payment. As a result, AREPs and POLRs are no longer the only entities disconnecting customers. It would therefore be discriminatory and unfair to require the AREPs and POLRs to continue to report this disconnection information, while other REPs that also disconnect customers have no such obligation. Therefore, RMC recommended that subsection (q) of this section be deleted in its entirety. However, if there is any POLR-specific information that commission believes it needs, any reporting requirement that remains should be very specific and should be applicable to POLR providers only.

*Commission response*

**The commission disagrees with the comments that requiring information from POLR providers is discriminatory as §25.482 requires customers terminated for reasons other than non-payment to be transitioned to a POLR provider and customers terminated for**

non-payment to be transitioned to the AREP. While all REPs potentially have disconnection authority, the commission disagrees with RMC that all REPs actually do have disconnect authority. The commission still desires the information required in subsection (q) of this section, to be reported and therefore declines to delete subsection (q) of this section. Consistent with the discussion in other commission responses, it is the intent of the commission that the provisions of §25.482 shall not be applicable as of January 1, 2007. At that time, some of the requirements of subsection (q) shall become inapplicable.

*§25.43(r) – Waiver of customer protection rules*

RMC recommended that the entire subsection be deleted for the following reasons. In subsection (r)(1) of this section, the provisions of §25.475(e) that require the provision of a revised terms of service statement to customers 45 days prior to a material change in the customer's terms of service are waived. The provision is unnecessary because a customer that is being transferred to or chooses POLR service will be served by a REP different from the customer's current provider. The provisions of §25.475(e) are applicable only in situations where a REP is changing its current customer's terms of service. In a POLR scenario, the POLR REP will be providing service to a new customer, not an existing one. Therefore, because §25.475(e) does not apply in such a contact, a waiver of that rule's provisions is not necessary.

TSCC commented that the referenced subsection (b)(3) of this section does not appear to relate to any action requiring the issuance of a revised terms of service statement, nor does §25.483(b) of this title (relating to Disconnection of Service). TSCC stated that it suggests retaining this

provision to clarify that a POLR for non-residential customers over 50 kW may provide service on terms that differ from the customer protection rules (other than for slamming, cramming, and complaint handling). RMC stated in reply comments that it agreed with TSCC.

*Commission response*

**The commission agrees with RMC and TSCC that subsection (r) of this section is no longer appropriate as the scenario envisioned in subsection (r)(1) of this section cannot occur as the POLR provider cannot materially change the POLR Standard Terms of Service and the provision does not apply when a customer is transitioned to POLR service, and the scenario envisioned in subsection (r)(2) of this section has been deleted consistent with the discussion in previous commission responses. The commission has therefore revised the rule language to delete subsection (r) of this section. TSCC's recommendation concerning waiver of the customer protection rules is addressed elsewhere in the amended rule and the Standard Terms of Service.**

*§25.43(s) – Notice of transition to POLR service*

Cities recommended that the notice for a transition to POLR service be amended to include a statement of the existing POLR rates so that the customers recognize the significance of the proposed action. In addition, Cities recommended that the notices include customer service contact numbers for the REP, POLR, and the commission, to allow the affected customers to obtain answers about the process and reasons for the POLR transition.

TSCC commented that the second sentence of subsection (s) of this section should be clarified to require the transitioning REP to notify the customer when the REP knows the customer will be transitioned to POLR service, and the POLR to notify the customer as soon as the POLR has the customer information.

OTTA commented that notices to customers that reference the [www.powertochoose.org](http://www.powertochoose.org) website should also provide a toll free number where the customer can ask for the relevant information that is otherwise provided on the website. RMC agreed in reply comments.

TTP recommended that ERCOT send a notice to customers involved in a mass transitions as soon as a REP defaults. TTP stated that the revision to the rules governing the transition to POLR shifts more responsibility from the REPs to ERCOT at ratepayer expense.

*Commission response*

**The commission agrees with Cities that notice should include the previous month's POLR rate as well as a contact number for the REP and the POLR provider. The commission notes that as there will be multiple POLR providers, the exiting REP will not be able to provide a contact number for the POLR provider in subsection (s)(1) of this section, but the information will be provided in subsection (s)(2) of this section. The commission agrees with TSCC the rule language should clarify the notice requirements as they relate to the timing of the notification. The commission agrees with OTTA and RMC that a toll-free number should accompany the reference to the [www.powertochoose.org](http://www.powertochoose.org) website for customers that do not have internet access. In light of the notice required in subsections**

**(s)(1) and (2) of this section, the commission declines to adopt the recommendation of TTP that ERCOT also send notice to customers, as such additional notice would be unnecessary.**

RMC commented that it agrees that customers should be able to switch from POLR service as soon as practical. However, there are some operational limitations that should be understood as processes are implemented to switch customers from POLR service more quickly. RMC stated that some REPs' systems may result in a speedier switch after an out-of-cycle meter read than others, and if REPs are allowed to use their own internal processes to switch customers effective with the most recent meter read in the system, then the customer would not be billed at the POLR rate for any time period. Instead, the customer would receive a full cycle bill at the competitive product rate.

*Commission response*

**The commission agrees with RMC that there may be variations between REPs in regard to out-of-cycle switches, but the intent is that through an out-of-cycle meter read, a customer transitioned to a POLR provider can switch a REP of choice without having to wait for an entire billing cycle for the choice to become effective. In regard to the second comment of RMC, when a customer is transitioned to a POLR provider, if the customer is marketed to and enrolled in one of the POLR provider's non-POLR pricing options, that enrollment may be nothing more than an internal process to the REP. While the REP may make any non-POLR pricing option effective with the most recent meter read in the REP's system so that the customer will not be billed at the POLR rate for any time period, it is not the commission's intent to require such treatment.**

RMC stated that guidance from the commission would be helpful as to whether the commission wants customers to be moved from the POLR rate as quickly as possible. Another alternative would be for POLR REPs to use a “move-in” transaction to switch the customer from POLR service to a competitive product, but in the past there have been complaints about REPs using move-in transactions to effectuate switches.

*Commission response*

**The commission clarifies that POLR REPs should not use a “move-in” transaction to switch customers from POLR service to a competitive product and competitive REPs should not use a “move-in” transaction to switch a POLR customer away from the POLR provider to the competitive REP. The use of a “move-in” transaction causes unintended complications such as the resetting of demand ratchets and the loss of critical-care designation and is therefore inappropriate to be used to expedite a switch in anything other than extreme circumstances, or when necessary to re-energize a disconnected customer.**

RMC stated in reply comments that it disagrees with TDUs’ recommendation that subsection (s)(2)(G) be revised to state that the “special or out-of-cycle meter read” will be charged at the discretion of the gaining REP.

*Commission response*

**The commission agrees with TDUs that while an out-of-cycle meter read is a discretionary charge, that charge is applied to the REP and not the customer. The REP then makes the**

**decision of whether or not to pass the cost along to the customer. Whether or not to pass along such cost may be a determining factor in a customer's decision of which REP to switch service to. The rule language has been modified accordingly to clarify this fact.**

***§25.43(t) – Disconnection by POLR***

RMC stated that POLR REPs must comply with the applicable customer protection rules afforded each customer class, as well as the provisions of §25.43 and the Standard Terms of Service included in §25.43 and therefore, the inclusion of subsection (t) of this section is redundant and not necessary.

TSCC proposed that ERCOT should attribute a meter to a POLR only for the period of time the POLR has agreed to provide POLR service meaning that if any charges attributable to the meter are incurred after the date the POLR has requested the meter be disconnected, such charges should be tracked by ERCOT and charged to the responsible TDU. In reply comments, the TDUs disagreed with TSCC's proposal and stated that the Pro Forma Retail Delivery Tariff, as well as the Customer Protection Rules, address the procedure for requesting disconnection, the timeline for performing the service, and when the responsibility of the REP for the customer ends. There is no reason to treat disconnections requested by the POLR differently, and there is no way to identify in the system of the TDU whether a disconnection request comes from a POLR or a REP. ERCOT noted in reply comments that it has no process to track disconnect notices or to charge TDUs for charges attributable to a meter and believes that the creation of such a process would not be a cost efficient solution for situations where a TDU does not disconnect a customer on the date requested by a POLR.

*Commission response*

The commission disagrees with RMC that subsection (t) of this section is not necessary. Numerous questions have been raised in regard to the transition process, including when a POLR provider must initiate service to a transitioned customer and when the POLR provider has the right to disconnect a transitioned customer who fails to pay a required deposit. The intent of subsection (t) of this section is to eliminate ambiguity by making it clear that only the REP (or POLR REP) serving a customer may request disconnection of a customer, and the disconnection may not occur until after proper notice and after the appropriate payment period has elapsed. In other words, a POLR provider's obligation begins when a customer is transitioned to the POLR provider and the customer shall not be required to pay a deposit to initiate POLR service, but a deposit may be required to prevent disconnection after POLR service has been initiated. It is the commission's intent that subsection (t) of this section clarify these points.

The commission agrees with the TDUs that there is no reason to treat disconnections requested by a POLR provider differently than from any other REP and acknowledges that a TDU will not know whether a disconnection request is from a POLR provider as opposed to any other REP. The commission notes that the volunteer POLR REP system and the marketing of non-POLR rate products to transitioned customers would further blur the line of a REP acting as a POLR in regard to disconnection.

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.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.052, and §39.202.

**§25.43. Provider of Last Resort (POLR).**

- (a) **Purpose.** The purpose of this section is to ensure that, as mandated by the Public Utility Regulatory Act (PURA) §39.106:
- (1) A basic, standard retail service package will be offered by a POLR or multiple POLRs at a fixed, non-discountable rate to any requesting customer in all of the Texas transmission and distribution utilities' (TDUs') service areas that are open to competition; and
  - (2) All customers will be assured continuity of service if their retail electric provider (REP) defaults pursuant to subsection (n)(12) of this section and, until January 1, 2007, if their REP terminates service in accordance with the termination provisions of Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service).
- (b) **Application; termination of service for non-payment.**
- (1) This section applies to REPs that may be designated as POLRs in TDU service areas in Texas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) exercises its right to designate a POLR within its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (p) of this section to select a POLR within the electric cooperative's service area.
  - (2) POLR service for a residential or small non-residential customer of a competitive REP whose electric service is terminated for non-payment under the provisions of

§25.482 of this title (relating to Termination of Contract) shall be provided by the affiliated REP for that POLR area. In the case of the territory encompassed by Sharyland Utilities, LP, the affiliated REP shall be deemed to be First Choice Power, Inc, the entity providing default service in that area. The provisions of this section do not apply to any affiliated REP serving non-paying residential and small non-residential customers of competitive REPs except as otherwise specifically stated herein. As of January 1, 2007, this paragraph will expire and REPs will not be permitted to terminate customers to POLR for any reason except pursuant to a mass transition for the reasons described in subsection (n)(12) of this section.

- (3) POLR service is intended to provide continuity of service, and is available to any requesting customer and any customer that is transitioned to POLR service consistent with this section. The POLR rate must reflect the inherent level of risk associated with POLR service. POLR service is envisioned as a temporary service and the POLR rate is not intended to be a competitive offering, but a cost and risk based offering.
  - (4) For 2006, all timeframes and deadlines that pertain to the eligibility and selection of POLR providers shall be extended by one day for every day that the effective date of this section falls after June 1, 2006. The extension shall not apply to the October 15, 2006, deadline to select non-volunteering POLR providers or the December 31, 2006, end of the 2005-2006 POLR term.
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:

- (1) **Basic firm service** — Electric service that is not subject to interruption for economic reasons and that does not include value added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.
- (2) **Billing cycle** — A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used a service.
- (3) **Billing month** — Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through meter readings.
- (4) **Large non-residential customer** — A non-residential customer, at the time of the transition to POLR service having a peak demand in the previous 12-month period at or above one megawatt (MW).
- (5) **Medium non-residential customer** — Beginning January 1, 2007, a non-residential retail customer, at the time of the transition to POLR service having a peak demand in the previous 12-month period of 50 kW or greater, but less than 1,000 kW.
- (6) **Non-discountable rate** — A rate that does not allow for any deviation from the price offered to all customers within a class, except as provided in §25.454 of this title (relating to Rate Reduction Program).
- (7) **Non-volunteering POLR provider** — A REP that has been selected to provide POLR service consistent with subsection (j) of this section.

- (8) **POLR area** — The service area of a TDU in an area where customer choice is in effect, except that the POLR area for AEP-Texas Central Company shall be deemed to include the area served by Sharyland Utilities, L.P.
- (9) **Provider of last resort (POLR)** — A REP certified in Texas that has been designated by the commission to provide a basic, standard retail service package in accordance with this section. There may be multiple POLR providers in a TDU service area. The term POLR, when used as a noun, refers to both a volunteer POLR REP and a non-volunteer POLR provider.
- (10) **Residential customer** — Retail customers classified as residential by the applicable transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity for personal, family, or household purposes and who are not resellers of electricity.
- (11) **Small non-residential customer** — Beginning January 1, 2007, a non-residential retail customer, at the time of the transition to POLR service having a peak demand in the previous 12-month period of less than 50 kW. Prior to January 1, 2007, a non-residential retail customer having a peak demand of less than 1,000 kW.
- (12) **Volunteer POLR REP** — A REP that has voluntarily agreed to provide POLR service consistent with subsection (i) of this section.
- (d) **POLR service.**

- (1) For the purpose of POLR service, beginning with the 2007-2008 POLR term, there will be four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.
- (2) The POLRs may be designated to serve any or all of the four customer classes in a POLR area. Within the customer class it is designated to serve, the POLRs shall provide service to the following customers:
  - (A) Any customer requesting POLR service;
  - (B) Any customer assigned to the POLR pursuant to a mass transition for the reasons described in subsection (n)(12) of this section; and
  - (C) Until January 1, 2007, any customer not receiving service from its selected REP for any reason other than non-payment who is automatically assigned to the POLR.
- (3) The POLRs shall offer a basic, standard POLR retail service package, which will be limited to:
  - (A) Basic firm service;
  - (B) Call center facilities for customer inquiries;
  - (C) Standard retail billing (which may be provided either by the POLR or another entity);
  - (D) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund; and
  - (E) Standard metering, consistent with PURA §39.107(a) and (b) (which may be provided either by the POLR or another entity).

- (4) A POLR and any REP affiliated with the POLR shall make the same competitive products and services available to a POLR customer as they would to a similarly-situated non-POLR customers.
  - (5) The POLRs shall, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), provide billing and collection duties for REPs who have defaulted on payments to the servicer of transition bonds or to TDUs.
  - (6) Each POLR customer billing for residential customers shall notify the customer that other competitive products or services may be available from the POLR, a REP affiliated with the POLR, or another competitive REP, and shall include contact information for the POLR and the Power to Choose, and shall include a notice from the commission in the form of a bill insert or a bill message with the header “A Message from the Public Utility Commission” addressing why the customer has been transitioned to POLR, the continuity of service purpose and temporary nature of POLR service, the need to choose a competitive product or provider, and information on competitive markets to be found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).
- (e) **Standards of service.**
- (1) A REP who has been designated by the commission to serve as a POLR for a class in a given POLR area shall serve any customer in that class as described in subsection (d)(2) of this section.

- (2) A POLR shall serve any POLR customer, as described in subsection (d)(2) of this section, according to the Standard Terms of Service in subsection (f)(1) of this section for any POLR customer's respective customer class, except that beginning with the 2007-2008 POLR term, POLRs may charge a rate less than the POLR rate, if it is applied uniformly to all POLR customers. This paragraph is not intended to prohibit POLR customers from enrolling in a non-POLR product or service provided by the REP serving as a POLR or a REP affiliated with the REP serving as a POLR.
- (3) A POLR shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter, except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section shall apply. For the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter shall be waived, except for §25.481, relating to Unauthorized Charges, §25.485(a)-(b), relating to Customer Access and Complaint Handling, and §25.495, relating to Unauthorized Change of Retail Electric Provider. In addition, the POLR shall be held to the following general standards:
- (A) The POLRs shall inform any customer transferred to it, that the POLR is now providing service to the customer and shall disclose all charges for which the customer will be responsible; and
- (B) The POLRs may not require that a customer sign up for a minimum term as a condition of POLR service, except that if the POLR offers a level or average payment plan in accordance with Subchapter R of this chapter. A

residential or small or medium non-residential customer who elects to receive POLR service under such plan may be required to sign up for a minimum term of no more than six months.

(f) **Customer information.**

(1) The Standard Terms of Service prescribed in subparagraphs (A)-(D) of this paragraph are effective for all POLR service beginning with the 2007-2008 POLR term. These forms may be changed through the rulemaking process and are available in the commission's Central Records Division and on the commission's website at [www.puc.state.tx.us](http://www.puc.state.tx.us).

(A) Standard Terms of Service, Provider of Last Resort (POLR) Residential Service:

[Figure: 16 TAC §25.43\(f\)\(1\)\(A\)](#)

(B) Standard Terms of Service, Provider of Last Resort (POLR) Small Non-Residential Service:

[Figure: 16 TAC §25.43\(f\)\(1\)\(B\)](#)

(C) Standard Terms of Service, Provider of Last Resort (POLR) Medium Non-Residential Service:

[Figure: 16 TAC §25.43\(f\)\(1\)\(C\)](#)

(D) Standard Terms of Service, Provider of Last Resort (POLR) Large Non-Residential Service:

[Figure: 16 TAC §25.43\(f\)\(1\)\(D\)](#)

- (2) The POLRs shall provide each new POLR customer the Standard Terms of Service applicable to the specific customer. Such Standard Terms of Service shall be updated as required under §25.475(d) of this title (relating to Information Disclosures to Residential and Small Commercial Customers.)
- (g) **General description of POLR selection process.**
- (1) All REPs shall provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative shall designate REPs that are eligible to serve as POLRs in areas of the state in which customer choice is in effect, except that the commission shall not designate POLRs in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated its POLR designation authority to the commission in accordance with subsection (p) of this section.
- (2) The commission shall select REPs that will provide POLR service for two-year terms as specified in paragraph (3) of this subsection. The POLR rate shall be established under the provisions of subsection (k) of this section.
- (3) POLRs shall serve two-year terms beginning in January of each odd-numbered year. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule shall be set at the time POLRs are initially selected in such areas.
- (h) **REP eligibility to serve as POLR.** In each even-numbered year, beginning with 2006, the commission shall determine the eligibility of certified REPs to serve as a POLR for the term scheduled to commence in January of the next year.

- (1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as POLR for the next POLR term. All REPs shall file, by July 10<sup>th</sup>, of each even numbered year, by service area, information on the classes of customers they provide service to, the number of ESI IDs the REP serves in each POLR customer class, the total number of ESI IDs in each POLR customer class, the amount of MWhs the REP serves in each POLR customer class for the annual period ending March of the current year, and the total number of MWhs sold by all REPs for each POLR customer class for the annual period ending March of the current year. ERCOT shall make the total ESI ID and total MWh data available to REPs for inclusion in the eligibility filing. All REPs shall also provide information on their technical capability and financial ability to provide service to additional customers in a mass transition scenario. Specific information received from a REP under this subsection shall be treated confidentially if it is submitted to the commission in accordance with the provisions of §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials). However, the commission's determination regarding eligibility of a REP to serve as POLR under the provisions of this section shall not be considered confidential information.
- (2) Eligibility to be designated as a POLR is specific to POLR area and customer class. A REP is eligible to provide POLR service to a particular customer class in a POLR area, unless:
  - (A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the

commission, or the REP's certificate is deemed suspended pursuant to §25.107(i) of this title (relating to Certification of REPs);

- (B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of MWhs served in the POLR area, for the particular class, is less than 1.0;
- (C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the POLR term;
- (D) On the date of the commencement of the POLR term, the REP or its predecessor, including a REP that has assumed the responsibilities of another REP, will not have served customers in Texas for at least 18 months;
- (E) The REP does not serve the applicable customer class, or does not have an agreement with the service area TDU;
- (F) The REP is certificated as an Option 2 REP under §25.107(d)(2) of this title;
- (G) The REP's customers are limited to its own affiliates;
- (H) A REP that files an affidavit stating that it only serves customers subject to the customer protection rules because it was picked by lottery to be a small non-residential customer class POLR for 2005-2006 may opt-out of eligibility for the small non-residential customer class;
- (I) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large

non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers may opt-out of eligibility for either, or both of the small or medium non-residential customer classes; or

- (J) The REP does not meet certain minimum financial qualifications as determined by the commission.
- (3) For each POLR term scheduled to commence in January of the next year, the commission shall publish the names of all of the REPs eligible to provide POLR service for each customer class in each POLR area. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrates and proves the REPs assertion. Commission staff shall verify the additional documentation and, if accurate, recalculate the REP's eligibility. Commission staff will notify the REP of any change in eligibility status within ten business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the volunteer POLR REP list or the selection of the non-volunteering POLR providers.
- (4) A REP that is serving as a POLR in accordance with this section shall submit reports not later than March 1 and September 1 of each year providing the information specified in paragraph (2) of this subsection.
- (5) A standard form may be created for use in determining REP eligibility to serve as a POLR, that REPs may use to report necessary eligibility information.

- (i) **Volunteer POLR REP list.** Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission shall post on its webpage the REPs that are willing to serve as POLR on a volunteer basis, beginning in 2006 for the 2007-2008 POLR term. REPs may submit an indication of their willingness to voluntarily serve as POLR, in a separate filing from the one required in subsection (h) of this section, no earlier than July 10, and no later than July 31, of each even-numbered year. This filing shall include a description of the REP's capabilities to serve additional ESI IDs as well as the REPs current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of ESI IDs without technically or financially distressing the REP. Specific information received from a REP under this subsection shall be treated confidentially if it is submitted to the commission in accordance with the provisions of §22.71(d) of this title. However, the commission's determination regarding eligibility of a REP to serve as a volunteer POLR REP, under the provisions of this section, shall not be considered confidential information.
- (1) A volunteer POLR REP shall provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each POLR area, and the number of ESI IDs the REP is willing to serve by customer class and POLR area in each transition event.
- (2) A REP that has met the eligibility requirements of subsection (h) of this section shall be eligible for the volunteer POLR REP list contingent upon the additional information provided in this subsection.

- (3) A volunteer POLR REP shall not charge its POLR customers a rate higher than the POLR rate for POLR service. Any rate charged to POLR customers without the customer's affirmative choice, that is below the POLR rate, must be offered uniformly to all POLR customers. However, a volunteer POLR REP may market to its POLR customers, on a non-discriminatory basis, competitive products using a rate structure other than the POLR rate structure. A POLR and any REP affiliated with the POLR shall make the same competitive products and services available to a POLR customer as are available to similarly-situated non-POLR customers. The volunteer POLR REP, in any marketing to the POLR customer, shall make it clear that the customer has the right to switch to a different REP or take service from the volunteer POLR REP under a competitive product with a rate structure other than the rate structure set out in the POLR's Standard Terms of Service, if the POLR offers such a competitive product. A customer may agree to a long-term contract for non-POLR service with the REP serving as POLR, but the POLR REP shall not represent to the customer that agreeing to a long-term contract is the only option to avoid the POLR rate. If, based on a customer's choice, the volunteer POLR REP enrolls a customer in a competitive product or service, it shall follow the appropriate enrollment process in §25.474 of this title (relating to Selection of Retail Electric Provider). After enrolling in a non-POLR, competitive product or service, the customer shall no longer be considered a POLR customer.
- (4) Upon the transition of customers to the POLRs, beginning with the 2007-2008 POLR term, ERCOT shall use the volunteer POLR REP list to assign customers to

the volunteer POLR REPs in a non-discriminatory manner, before assigning customers to the non-volunteering POLR providers. ESI IDs, up to the total number of ESI IDs that all volunteer POLR REPs specified pursuant to paragraph (1) of this subsection, shall be allocated to the volunteer POLR REPs in the non-discriminatory fashion detailed below. A volunteer POLR REP shall not be assigned more ESI IDs than it has indicated it is willing to serve. ERCOT shall use the following methodology to ensure non-discriminatory assignment of ESI IDs to the volunteer POLR REPs. If ERCOT has not implemented an automated process to distinguish between the small and medium non-residential customer class, ERCOT shall manually bifurcate the applicable customers until an automated process is implemented. Such automated process shall be implemented no later than July 1, 2007. ERCOT shall:

- (A) Sort ESI IDs by TDU service territory;
  - (B) Sort ESI IDs by customer class;
  - (C) Sort ESI IDs numerically;
  - (D) Sort volunteer POLR REPs numerically by randomly generated number;
- and
- (E) Assign ESI IDs in numerical order to volunteer POLR REPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each volunteer POLR REP indicated a willingness to serve pursuant to paragraph (1) of this subsection. If the number of ESI IDs is less than the total that the volunteer POLR REPs indicated that they are willing to serve, each volunteer POLR REP shall be assigned a

proportionate number of ESI IDs, as calculated by dividing the number that each volunteer POLR REP indicated it was willing to serve by the total that all volunteer POLR REPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the volunteer POLR REPs, and rounding to a whole number.

- (5) Each transition event shall be treated as a separate event.
- (6) A volunteer POLR REP may file a request to be removed from the volunteer POLR REP list or to modify the number of ESI IDs it is willing to serve at any time, and such a request shall be effective 30 calendar days after the request is filed with the commission. A volunteer POLR REP shall continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the volunteer POLR REP acquires from a mass transition event during the 30-day notice period.
- (7) ERCOT may challenge a volunteer POLR REPs eligibility. If ERCOT has reason to believe that a REP is no longer capable of performing additional volunteer POLR REP responsibilities, ERCOT shall make a confidential filing with the commission detailing the basis for its challenge. Commission staff shall review the filing of ERCOT and if commission staff concludes that the REP should no longer provide POLR service, it shall request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs shall be assigned to a volunteer POLR REP after the commission staff initiates a proceeding to disqualify the volunteer POLR REP's

eligibility, unless the commission by order, confirms the volunteer POLR REP's eligibility.

- (j) **Non-volunteering POLR providers.** The provisions of this subsection shall govern the manner in which the non-volunteering POLR providers for a given POLR area and customer class are selected and serve, beginning with the 2007-2008 POLR term.
- (1) The REPs eligible to serve as POLRs shall be determined based on the information provided by REPs in accordance with subsection (h) of this section.
  - (2) In each POLR area, for each POLR customer class, there shall be five non-volunteering POLR providers. The non-volunteering POLR providers shall be the five eligible REPs that have the greatest market share based upon MWhs served, by customer class within the POLR area. The commission's designee shall designate the non-volunteering POLR providers by October 15, of the year preceding the POLR term, based upon the data the commission has at the time of the determination. Selection as a non-volunteering POLR provider does not effect a REPs ability to also serve as a volunteer POLR REP.
  - (3) In the event of a mass transition of customers to POLR service, customers shall be allocated to the non-volunteering POLR providers only after the volunteer POLR REP list has been exhausted. The customers to be transitioned to the non-volunteering POLR providers shall be allocated to the non-volunteering POLR providers in a non-discriminatory fashion, in accordance with their percentage of market share based upon MWhs served, as determined in paragraph (2) of this

subsection, by POLR area and customer class. To ensure non-discriminatory assignment of ESI IDs to the non-volunteering POLR providers, ERCOT shall:

- (A) Sort the ESI IDs in excess of the allocation to volunteer POLR REPs, by TDU service territory;
  - (B) Sort ESI IDs in excess of the allocation to volunteer POLR REPs, by customer class;
  - (C) Sort ESI IDs in excess of the allocation to volunteer POLR REPs, numerically;
  - (D) Sort non-volunteering POLR providers numerically by MWs served; and
  - (E) Assign ESI IDs in numerical order to non-volunteering POLR providers, in proportion to the percentage of MWs served by each non-volunteering POLR provider to the total MWs served by all non-volunteering POLR providers.
- (4) For the purpose of calculating the POLR rate for each customer class in each POLR area, a POLR EFL shall be completed by the non-volunteering POLR provider that has the greatest market share in accordance with paragraph (2) of this subsection. The POLR EFL shall be supplied to commission staff electronically for placement on the commission webpage.
- (5) Non-volunteering POLR providers may market to transitioned POLR customers to enroll the customers in competitive products or services in the same fashion and under the same conditions as described in subsection (i)(3) of this section.
- (6) Upon a request from a non-volunteering POLR provider and a showing that the non-volunteering POLR provider will be unable to maintain its financial integrity if

it is allocated additional POLR customers, the commission shall relieve a non-volunteering POLR provider from the allocation of any such additional customers. The commission shall provide at least ten business days' notice and an opportunity for hearing on the request for relief. The non-volunteering POLR provider shall continue providing POLR service until the commission issues an order relieving it of this responsibility. In the event the requesting non-volunteering POLR provider is relieved of its responsibility, the commission's designee may, with 90 days notice, designate the next eligible REP a non-volunteering POLR provider, based upon the criteria in paragraph (2) of this subsection.

(k) **POLR rate.**

(1) The provisions of this paragraph establish the maximum POLR rate of volunteer POLR REPs and non-volunteering POLR providers beginning with the 2007-2008 POLR term.

(A) The POLR rate for the residential customer class shall be determined by the following formula:

POLR rate (in \$ per kWh) = (Non-bypassable charges + POLR customer charge + POLR energy charge) / kWh used

Where:

(i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative

charges, nodal fees or surcharges, replacement reserve charges attributable to POLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

- (ii) POLR customer charge shall be \$0.06 per kWh.
- (iii) POLR energy charge shall be the sum over the billing period of the actual hourly MCPEs for the customer multiplied by the level of kWh used, multiplied by 130%.
- (iv) “Actual hourly MCPE” is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.
- (v) “Level of kWh used” is based either on interval data or on an allocation of the customer’s total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer’s entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer’s billing period, then the POLR energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the

customer's billing period multiplied by 130%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

- (B) The POLR rate for the small and medium non-residential customer classes shall be determined by the following formula:

$$\text{POLR rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{POLR customer charge} + \text{POLR demand charge} + \text{POLR energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to POLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) POLR customer charge shall be \$0.025 per kWh.
- (iii) POLR demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) POLR energy charge shall be the sum over the billing period of the actual hourly MCPes, for the customer multiplied by the level of

kWh used, multiplied by 130%, multiplied by the level of kWh used.

- (v) “Actual hourly MCPE” is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.
- (vi) “Level of kWh used” is based either on interval data or on an allocation of the customer’s total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer’s entire billing period.
- (vii) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer’s billing period, then the POLR energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer’s billing period multiplied by 130%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

- (C) The POLR rate for the large non-residential customer class shall be determined by the following formula:

POLR rate (in \$ per kWh) = (Non-bypassable charges + POLR customer charge + POLR demand charge + POLR energy charge) / kWh used

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to POLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
  - (ii) POLR customer charge shall be \$2,897.00 per month.
  - (iii) POLR demand charge shall be \$6.00 per kW, per month.
  - (iv) POLR energy charge shall be the appropriate MCPE, determined on the basis of 15-minute intervals, for the customer multiplied by 130%, multiplied by the level of kWh used. The MCPE shall have a floor of \$7.25 per MWh.
- (2) If in response to a complaint or upon its own investigation, the commission determines that a POLR failed to charge the appropriate POLR rate, and as a result overcharged its customers, the POLR shall issue refunds to the specific customers who were overcharged.
- (3) On a showing of good cause, the commission may permit the POLR to adjust the POLR rate, if necessary to ensure that the rate is sufficient to allow the POLR to recover its costs of providing service. Notwithstanding any other commission rule

to the contrary, POLR rates may be adjusted on an interim basis for good cause shown and after at least ten business days notice and an opportunity for hearing on the request for interim relief. Any adjusted POLR rate shall be applicable to all POLR providers charging the POLR rate to the specific customer class, within the POLR area that is subject to the showing of good cause.

- (4) Customer and demand charges associated with POLR service shall not be pro-rated for partial month usage if a customer switches away from the POLR to a REP of choice.
- (l) **Challenges to ESI ID assignments.** A POLR is not obligated to serve an ESI ID within a customer class or a POLR area for which the POLR is not designated as a POLR, after a successful challenge of the ESI ID assignment. A POLR shall use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU shall make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR for the ESI ID is determined appropriate, the ESI ID will then be served by the appropriate POLR. Back dated transactions may be used to correct the POLR assignment.
- (m) **Limitation on liability.** The POLRs will make reasonable provisions to provide POLR service to customers who request POLR service, or are transitioned to POLR service, individually or through a mass transition; however, liabilities not excused by reason of force majeure or otherwise shall be limited to direct, actual damages. Neither the customer nor the POLR provider shall be liable to the other for consequential, incidental,

punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.

In no event shall ERCOT or a POLR be liable for damages to any REP, whether under tort, contract or any other legal theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR for POLR service, or for marketing, offering or providing competitive retail electric service to a customer taking POLR service from the POLR or being transitioned to the POLR, in compliance with this title.

(n) **Transition of customers to POLR service.**

- (1) POLR service for a requesting customer is initiated when the customer makes arrangements for POLR service, at the POLR rate, with any POLR authorized to serve the requesting customer's customer class within the requesting customer's POLR area. A POLR cannot refuse a customer's request to make arrangements for POLR service.
- (2) A customer other than a residential customer or small commercial customer (as defined in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules) may agree to a contract or terms of service that allow a REP to transfer the customer to a POLR for reasons other than non-payment, including the failure of the customer and its REP to agree on terms of renewal or extension of service. Unless ERCOT has a transaction that allows REPs to transfer such customers to the POLR, the POLR shall accept written requests for such transfers from REPs and shall initiate a switch for the customer to be transferred to the POLR. The acquisition by the POLR of such customers is not a prohibited

enrollment under §25.474 of this title. As of January 1, 2007, this paragraph will expire and REPs will not be permitted to terminate customers to POLR for any reason except pursuant to a mass transition for the reasons described in subsection (n)(12) of this section.

- (3) If a REP terminates service to a customer whose consumption is determined by monthly meter readings without giving notice, the POLR shall prorate the customer's usage based on the customer's historic data or load profile to establish the customer's charges for the relevant portion of the billing cycle, unless the customer requests and is willing to pay for an out-of-cycle meter read. Nothing in this section precludes a POLR from having an out-of-cycle meter read performed for a new customer on its own initiative provided the POLR does not pass on the cost of that meter read to the customer. As of January 1, 2007, this paragraph will expire and REPs will not be permitted to terminate customers to POLR for any reason except pursuant to a mass transition for the reasons described in subsection (n)(12) of this section.
- (4) The POLR is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for POLR service at the POLR rate in effect at that time.
- (5) If a REP terminates service to a customer, or transitions a customer to POLR, it is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR is complete.

- (6) The POLR is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer leaves POLR service.
- (7) A REP whose customers are transitioned to POLRs shall return any unused portion of a transitioned customer's deposit within seven calendar days of receiving an actual or estimated meter read supplied by the TDU.
- (8) ERCOT shall create a single standard file format and a standard set of customer billing contact data elements that in the event of a mass transition shall be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT shall be tested on a periodic basis. All REPs shall submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for the periodic tests. ERCOT shall retain the data from the last periodic test, to be used in lieu of data from the exiting REP, in instances where the exiting REP does not provide such data. ERCOT shall have the process utilizing the single standard file format designed and implemented as soon as possible, but no later than July 1, 2007. ERCOT shall revise the mass transition process so that customer transfers in a mass transition are initiated by ERCOT, rather than by a POLR, as soon as possible, but no later than July 1, 2007.
- (9) When customers are to be transitioned to a POLR, the POLR may request usage and demand data from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated (either by the POLR provider or by ERCOT). Customer proprietary information provided to a POLR in accordance

with this section shall be treated as confidential by the POLR and shall only be used for POLR related purposes.

- (10) Information from the TDU and ERCOT to the POLRs shall be provided in Texas SET format. However, the TDU or ERCOT may supplement the information to the POLRs in other formats and fashions to expedite the transition to the POLRs. Such supplemental formats shall only be used in exceptional circumstances and at the option of the entity supplying the information. The transfer of information in accordance with this section will not constitute a violation of the customer protection rules that address confidentiality.
- (11) A POLR may require a deposit from a customer that has been transitioned to the POLR to continue to serve the customer once the POLR has begun serving the customer. Despite the lack of a deposit, the POLR is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR may make the request for the deposit before the POLR begins serving the customer, but the POLR shall begin providing service to the customer even if the service initiation date is before the POLR receives the deposit, if any deposit is required, and shall not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR may require a deposit to be provided in three calendar days. The POLR may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. The POLR shall waive the deposit requirement for residential customers if the

customer meets the qualifications listed in section 2. SECURITY AND BILLING, of the Standard Terms of Service.

- (12) On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to the POLR providers, of all of the ESI IDs served by a REP, as of the date the mass transition is initiated.
- (A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement with ERCOT;
  - (B) Issuance of a commission Order declaring a REP in default of Tariff for Retail Delivery Service;
  - (C) Issuance of a commission Order de-certifying a REP;
  - (D) Issuance of a commission Order requiring a mass transition to POLR providers;
  - (E) Issuance of a judicial Order requiring a mass transition to POLR providers; and
  - (F) At the request of a REP, for the mass transition of all of that REP's ESI IDs (customers).
- (13) A REP shall not use the mass transition process in this section as a means to eliminate non-profitable contracts, while retaining profitable contracts. A REP's use of the mass transition process may lead to de-certification of the REP.
- (14) ERCOT may provide procedures for the mass transition process, consistent with this section.
- (15) Until the process described in paragraph (8) of this subsection is complete, a REP whose ESI IDs are to be transitioned to POLRs shall provide the following

information to the appropriate POLRs once the switch to the POLR has been initiated. In the event the exiting REP does not provide the required information, the TDUs shall promptly provide any relevant information in their possession with the understanding that the provided information may be out-dated, incomplete, or inaccurate. Providing the information to the POLRs under the conditions of a transition to POLRs shall not constitute a violation of Subchapter R of this chapter:

- (A) REP's Data Universal Numbering System (DUNS) number;
  - (B) Customer's ESI ID number;
  - (C) Customer's account number with the REP that is losing the customer;
  - (D) Customer's name;
  - (E) Customer's telephone number;
  - (F) Customer's billing "care of" name; and
  - (G) Customer's billing address.
- (16) A mass transition to POLR shall not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, that was made before a mass transition to POLR is initiated, unless the customer choice switch is scheduled for any date other than the next available switch date.
- (17) A "move-in" transaction shall not be used to switch a customer's ESI ID to another REP when a "move-in" has not occurred except when the premise is de-energized or in extreme circumstances as authorized by commission designee.
- (18) All mass transition event timelines shall be based upon calendar days if not specifically stated as such, unless specifically stated otherwise.

- (19) In the event of a transition to a POLR or away from a POLR to a REP of choice, the switch notification notice detailed in §25.474(1) of this title is not required.
- (20) In a mass transition event, the ERCOT initiated transactions shall request an out-of-cycle meter read for the associated ESI IDs, for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to POLR shall not be considered a break in a series of consecutive months of estimates, but shall not be considered a month in a series of consecutive estimates performed by the TDU. An out-of-cycle meter read or estimate for the purpose of a mass transition shall be charged to the exiting competitive REP.
- (o) **Termination of POLR status.**
- (1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:
- (A) If the POLR fails to maintain REP certification;
  - (B) If the POLR fails to provide service in a manner consistent with this section;
  - (C) For good cause, provided the commission affords the POLR due process;  
or
  - (D) The POLR fails to maintain appropriate financial qualifications.

- (2) If a non-volunteering POLR provider defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the next eligible REP will assume the duties of the former POLR, consistent with subsection (j)(6) of this section.
- (3) The provisions of this paragraph address the transition to a new POLR at the end of a POLR term.
  - (A) At the end of the POLR term the outgoing POLR may chose either to continue to serve POLR customers who do not select another provider through a competitive product or service provided by the outgoing POLR or a REP affiliated with the outgoing POLR or to transfer the customers who do not select another provider to the incoming POLR on the first meter read date after the term of the incoming POLR commences.
  - (B) A notice containing the information specified in either subparagraph (C) or (D) of this paragraph, as applicable, shall be provided to each POLR customer at least 60 calendar days prior to the end of the POLR term. The notice shall be in type no smaller than 12 points in size. The notice shall satisfy the requirements of §25.493(b) of this title (relating to Acquisition and Transfer of Customers from one Retail Electric Provider to Another). The notice shall also include a phone number for the outgoing POLR for the customer to call to obtain more information.
  - (C) The notice provided by a POLR that elects to transfer customers who fail to switch to another provider, to a competitive product or service provided by the outgoing POLR or a REP affiliated with the outgoing POLR, shall

include a description of the POLR pricing mechanism for the appropriate customer class and service area and a statement that the POLR price is generally higher than available competitive prices, that the POLR price is unpredictable, and that the exact POLR rate for each billing period will not be determined until the time the bill is prepared, and the competitive product or service rate offered by the outgoing POLR or a REP affiliated with the outgoing POLR. The notice shall specify the deposit requirements of the outgoing POLR or REP affiliated with the outgoing POLR and shall state that other providers may also require a deposit and may require payment of any amounts owed the provider for services previously rendered. The notice shall state where the customer may find additional information about offerings of other providers and shall inform the customer that, if the customer does not select another provider or request service from the incoming POLR by a specified date, that a competitive affiliate of the outgoing POLR will continue to serve the customer at the rate specified in the notice.

- (D) If the POLR elects to transfer customers who do not select another provider, to the incoming POLR on the first meter read date after the term of the incoming POLR commences, the notice to customers shall state where the customer can find more information about other offerings as well as the rates of the incoming POLR. The notice shall include a description of the POLR pricing mechanism for the appropriate customer class and service area and a statement that the POLR price is generally higher than

available competitive prices, that the POLR price is unpredictable, and that the exact POLR rate for each billing period will not be determined until the time the bill is prepared. The notice shall also inform the customer that, if the customer does not select another provider by a specified date, the customer will be transferred to the incoming POLR on the first meter read date after the commencement of the POLR term. The notice shall also inform the customer that the incoming POLR will bill the customer for a deposit and that the deposit can be made in two installments as will be described further in the notice from the incoming POLR.

- (E) If a POLR customer either requests service from the incoming POLR or is terminated to the incoming POLR by the outgoing POLR, the outgoing POLR shall offset the customer's final bill against the customer's deposit and refund any remaining balance to the customer within seven calendar days from the customer's final meter read date. The customer shall be entitled to pay the deposit required by the incoming POLR in two installments in the manner provided in §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

- (p) **Electric cooperative delegation of authority.** An electric cooperative that has adopted customer choice may propose to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission will, at its option,

accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions will apply:

- (1) The board of directors will provide the commission with a copy of a board resolution authorizing such delegation of authority;
  - (2) The delegation of authority will be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;
  - (3) The delegation of authority will be for a minimum period corresponding to the period for which the solicitation will be made;
  - (4) The electric cooperative wishing to delegate its authority to designate a POLR will also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and
  - (5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission will automatically reject the delegation of authority.
- (q) **Reporting requirements.** Each POLR shall file, and affiliated REPs serving nonpaying customers of competitive REPs shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report shall be filed within 30 calendar days of the end of the quarter. Except as provided in paragraph (5) of this subsection, information filed by an affiliated REP in accordance with paragraph (1) of this subsection will be made publicly available by the commission on an aggregated basis.

Except as provided in paragraph (5) of this subsection, information filed by a POLR in accordance with paragraphs (2)-(4) of this subsection will be made publicly available by the commission for each POLR area. After the report applicable to data for the fourth quarter of 2006 is filed, the requirements of this subsection that are applicable to the affiliated REP serving non-paying customers of competitive REPs will expire.

- (1) For each month of the reporting quarter, the affiliated REP shall report:
  - (A) The number of residential customers who were disconnected for non-payment and the number of those customers that were eligible for the rate reduction program under §25.454 of this title;
  - (B) The number of residential customers who were transferred to the affiliated REP by a competitive REP for non-payment and the number of those customers that were eligible for the rate reduction program under §25.454 of this title;
  - (C) The average amount owed to the affiliated REP by residential customers at the time of disconnection;
  - (D) The average amount owed to the affiliated REP by residential customers eligible for the rate reduction program at the time of disconnection;
  - (E) The number of small non-residential customers who were disconnected for non-payment; and
  - (F) The average amount owed to the affiliated REP by small non-residential customers at the time of disconnection.

- (2) For each month of the reporting quarter, each POLR shall report the total number of new customers acquired by the POLR and the following information regarding these customers:
- (A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;
  - (B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;
  - (C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;
  - (D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and
  - (E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.
- (3) For each month of the reporting quarter each POLR shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:
- (A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

- (B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the POLR;
  - (C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;
  - (D) The average amount owed to the POLR by each disconnected customer at the time of disconnection; and
  - (E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.
- (4) For the entirety of the reporting quarter, each POLR shall report, for each ESI ID that received POLR service, the TDU and POLR customer class associated with the ESI ID, the number of days the ESI ID received POLR service, and whether the ESI ID is currently a POLR customer.
- (5) Reports filed under this subsection are subject to release as public information unless the reports or specific parts of the reports can be shown to be exempt from disclosure under Chapter 552 of the Texas Government Code, commonly known as the Texas Public Information Act (TPIA). If a reporting entity contends that all or part of a report is confidential, then the reporting entity shall file the information in accordance with the requirements of §22.71(d) of this title. The reporting entity must submit in writing specific detailed reasons, including relevant legal authority, in support of its contentions that the material is exempt from disclosure under the TPIA. All reports and parts of reports that are not marked as confidential will be automatically considered public information upon submittal. The validity of any

claim of confidentiality may be determined by the commission through a contested case proceeding, by the Office of the Attorney General pursuant to the provisions of the TPIA, or both.

- (r) **Notice of Transition to POLR Service.** When a customer is moved to POLR service the customer will be provided notice of the transition by the REP transitioning the customer as well as by the POLR. Notice shall be provided as soon as the transitioning REP knows the customer will be transitioned to POLR service and as soon as the POLR has the customer contact information. The notice of transition to POLR service shall include, at a minimum the following items:
- (1) Notice by the REP transitioning the customer:
    - (A) The reason for the transition to POLR service;
    - (B) A contact number for the REP;
    - (C) A statement that the customer will receive a separate notice from the POLR that will disclose the date the POLR will begin serving the customer;
    - (D) A description of how and when any unused customer deposit will be returned to the customer;
    - (E) A description of the POLR pricing mechanism for the appropriate customer class and service territory and a statement that the POLR price is generally higher than available competitive prices, that the POLR price is unpredictable, and that the exact POLR rate for each billing period will not be determined until the time the bill is prepared;

- (F) A statement that the customer can leave POLR service by choosing a competitive product or service offered by the POLR, a REP affiliated with the POLR, or another competitive REP, as well as the following statement: “If you would like to choose a different retail electric provider, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;”
- (G) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header “A Message from the Public Utility Commission” addressing why the customer has been transitioned to POLR, the continuity of service purpose and temporary nature of POLR service, the need to choose a competitive provider, and information on competitive markets to be found at [www.powertochoose.org](http://www.powertochoose.org), or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);
- (H) If applicable, a description of the activities that the REP will use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and
- (I) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a “special or out-of-cycle meter read” and that applicable transmission and distribution utility charges for the meter read will be charged to the gaining REP, which may pass the charge on to you as a customer.

- (2) Notice by the POLR:
- (A) The date the POLR will begin serving the customer and a contact number for the POLR;
  - (B) A description of the POLR pricing mechanism for the appropriate customer class and service area and a statement that the POLR price is generally higher than available competitive prices, that the POLR price is unpredictable, and that the exact POLR rate for each billing period will not be determined until the time the bill is prepared;
  - (C) The deposit requirements of the customer and any applicable deposit waiver provisions and a statement that, if the customer chooses a competitive product or service offered by the POLR, a REP affiliated with the POLR, or another competitive REP, a deposit may be required;
  - (D) A statement that the competitive products or services may be available through the POLR, a REP affiliated with the POLR, or another competitive REP, and the customer can leave POLR service by choosing a competitive product or service offered by the POLR, a REP affiliated with the POLR, or another competitive REP, as well as the following statement: “If you would like to choose a different retail electric provider, please access [www.powertochoose.org](http://www.powertochoose.org), or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;”
  - (E) The applicable POLR Standard Terms of Service;
  - (F) The applicable disconnection procedures;

- (G) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a “special or out-of-cycle meter read” and that the applicable transmission and distribution utility charge for the meter read will be charged to the gaining REP, which may pass the charge on to you as the customer;
  - (H) Notice that after enrolling in a non-POLR, competitive product or service, the customer shall no longer be considered a POLR customer; and
  - (I) For residential customers, with each bill from the POLR, notice from the commission in the form of a bill insert or a bill message with the header “A Message from the Public Utility Commission” addressing why the customer has been transitioned to POLR, the continuity of service purpose and temporary nature of POLR service, the need to choose a competitive provider, and information on competitive markets to be found at [www.powertochoose.org](http://www.powertochoose.org) or toll-free 1-866-PWR-4-TEX (1-866-797-4839).
- (s) Disconnection by POLR. The POLR must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter except as otherwise stated in this section. To ensure continuity of service, POLR service shall begin when the ESI ID transition to the POLR is complete. A customer deposit is not a prerequisite for the initiation of POLR service. Once POLR service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may

not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title, has elapsed, except where otherwise noted in this section.

## Standard Terms of Service

### [Insert POLR Provider Name] (Certificate No. \_\_\_\_) Provider of Last Resort (POLR) Residential Service

This Standard Terms of Service applies to residential customers receiving Provider of Last Resort (POLR) service from [insert POLR Provider name] under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution service provider (TDSP) rates. Customers will be notified of material changes in these Standard Terms of Service resulting from changes in local, state or federal legislation or rules, applicable charges, or TDSP rates, at least 45 calendar days before such changes take effect unless otherwise directed by law. Each Standard Terms of Service will be given a unique version number for quick reference.

**SPANISH LANGUAGE (IDIOMA ESPANOL) Si usted** quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [insert toll-free number].

#### 1. PRICE FOR BASIC FIRM SERVICE

POLR Provider will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The rate for your electric service from POLR Provider will be based on the formula detailed below. These charges may be applied in a pay-in-advance manner as described in section 2 **SECURITY AND BILLING.**] Non-recurring charges (i.e., charges not occurring every month) will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES,** below.

Your rate for POLR service will be derived from the following formula:

$$\text{POLR rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{POLR customer charge} + \text{POLR energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to POLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) POLR customer charge shall be \$0.06 per kWh.
- (iii) POLR energy charge shall be the sum over the billing period of the actual hourly MCPEs for the customer multiplied by the level of kWh used, multiplied by 130%.
- (iv) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.
- (v) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the POLR energy charge shall be the simple average of the zonal MCPE prices over the 12-month

**Figure: 16 TAC §25.43(f)(1)(A)**

period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 130%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

**2. SECURITY AND BILLING**

***[PAY-IN-ADVANCE LANGUAGE TO BE INCLUDED IN STANDARD TERMS OF SERVICE AT THE OPTION OF THE POLR PROVIDER:***

POLR Provider will offer the option to either pay a cash deposit to prevent disconnection after POLR provider has begun providing your electric service, pursuant to subsection (a) **TRADITIONAL CASH DEPOSIT** below or to choose **PAY-IN-ADVANCE BILLING OPTION IN LIEU OF CASH DEPOSIT** pursuant to subsection (b) below.]

POLR Provider shall not require a cash deposit if you are able to provide the POLR Provider with a Credit Reference Letter that includes the following representations: 1) you have been a customer of any retail electric provider or the electric utility (prior to 2002) within the two years prior to your request for electric service; 2) you are not delinquent in payment of any such electric service account; and 3) you were not late in paying a bill more than once during the last 12 consecutive months.

A residential customer shall also be deemed as having established satisfactory credit and shall not be required to pay a cash deposit if the customer possesses a satisfactory credit rating obtained through an accredited credit reporting agency.

If these conditions do not apply, POLR Provider may require a cash deposit unless you can demonstrate to the POLR Provider any of the following prior to the due date of the cash deposit: 1) you are 65 years of age or older and your account with any retail electric provider or the electric utility (prior to 2002) has not had a delinquent balance within the last 12 months for the same type of service; 2) you are a victim of family violence as defined by the Texas Family Code § 71.004, by a family violence center, or by treating medical personnel;\* or 3) you are medically indigent.\*\*

\*This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of the toll-free fax number listed below to POLR Provider.

\*\* To be considered medically indigent, the customer must make a demonstration that the following criteria are met: the customer's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider, and either of the following must apply: (i) the customer or the customer's spouse has been certified by that person's physician (for the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social worker, state-licensed physical and occupational therapist, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 et seq as being unable to perform three or more activities of daily living, as defined in Title 22, Texas Administrative Code, Section 218.2, or (ii) the customer's monthly out-of-pocket medical expenses exceed 20% of the household's gross income.

**a) TRADITIONAL CASH DEPOSIT**

- 1) Your cash deposit, if required, will be based on one-sixth (1/6) of your estimated annual billing. You may also be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and your billings are more than twice the amount estimated to determine your cash deposit. Instead of an

**Figure: 16 TAC §25.43(f)(1)(A)**

- additional cash deposit, you may pay the total amount due by the due date of the bill, provided you have not exercised this option in the previous 12 months.
- 2) Your total cash deposit shall not exceed an amount equivalent to one-sixth (1/6) of your estimated annual billing.
  - 3) POLR Provider may require payment of a cash deposit within ten calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the POLR.
  - 4) A customer who has applied for or is enrolled currently in LITE UP Texas (Low Income Telephone and Electric Utilities Program) may pay the initial cash deposit to POLR Provider in two installments. The first installment shall not exceed the estimated billing for the next month or one-twelfth (1/12) of the estimated annual billing and shall be due within ten calendar days of POLR Provider's issuance of the written notice requiring the cash deposit. The second installment for the remainder of the cash deposit shall be due within 40 calendar days of the issuance of the original written notice. For more information regarding LITE UP Texas, contact POLR Provider or call toll-free 1-866-4-LITE-UP (1-866-454-8387) to determine eligibility or to receive an application.
  - 5) A written letter of guarantee may be used in lieu of paying a cash deposit. The guarantor must become or remain a customer of the POLR or its affiliated REP for the term in which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the POLR or its affiliated REP, the POLR may require the customer to pay the initial or additional cash deposit as a condition of continuing the contract for service.
  - 6) Upon default by a residential customer, the guarantor of the customer's account shall be responsible for the unpaid balance of the account only up to the agreed amount in the letter of guarantee. The POLR, or its affiliated REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed. The guarantor will have 16 calendar days from the date the notice is issued to pay the amount owed on the defaulted account. If the 16<sup>th</sup> day falls on a holiday or weekend, the due date shall be the next business day. The POLR or its affiliated REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill.
  - 7) The POLR or its affiliated REP may initiate disconnection of service to the guarantor for nonpayment of the guaranteed amount within ten calendar days of issuance of a notice of disconnection.
  - 8) Your service may be disconnected for failure to pay a required cash deposit within ten calendar days of issuance of a notice of disconnection of service.
  - 9) A disconnection notice may be issued concurrently with either the written request for the cash deposit or current monthly bill for electric service. Disconnection means a physical interruption of electric service.
  - 10) You will accrue interest on your cash deposit(s) with POLR Provider. Each year in December, the PUCT establishes the interest rate POLR Provider will apply to your cash deposit for the next calendar year.
  - 11) Your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with POLR Provider.
  - 12) Your cash deposit and accrued interest will be refunded if you pay your bills for 12 consecutive months without your service being disconnected for nonpayment and without having more than two delinquent payments.
  - 13) The guarantee agreement will be terminated if you pay your bills for 12 consecutive months without your service being disconnected for nonpayment and without having more than two delinquent payments within the last 12 months.

**b) [PAY-IN-ADVANCE LANGUAGE TO BE INCLUDED IN STANDARD TERMS OF SERVICE AT THE OPTION OF POLR PROVIDER] PAY-IN-ADVANCE BILLING OPTION IN LIEU OF CASH DEPOSIT**

- 1) If you select the pay-in-advance option, you will be billed in advance for your electric service after POLR Provider receives confirmation from the Registration Agent of the effective date you are to

**Figure: 16 TAC §25.43(f)(1)(A)**

become a POLR customer of POLR Provider. All bills, except the initial one requesting your payment in advance, will include, where applicable, the monthly charge, energy charge, non-bypassable charges, applicable taxes, service charges and other costs as permitted by governmental or regulatory authorities.

- 2) Your initial pay-in-advance billing will include charges for two months average kilowatt hour (kWh) consumption during the prior year and will include, where applicable, applicable taxes, service charges and other costs as permitted by governmental or regulatory authorities. The pay-in-advance amount will be used in lieu of the cash deposit and will be no greater than \$200 or less than \$75. The initial pay-in-advance option in lieu of cash deposit will be due within ten calendar days of issuance of a notice requiring a pay-in-advance billing.
- 3) Pay-in-advance billing requires that you maintain a balance of the two months initial total estimated charges for the time that you are a POLR customer and will be billed monthly on approximately 30-day periods.
- 4) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16<sup>th</sup> calendar day after issuance of the bill.
- 5) If your pay-in-advance billing exceeds the initial pay-in-advance amount, then the pay-in-advance billing amount will be reset to the highest amount for the next billing cycle.
- 6) There is no interest accrued on pay-in-advance billing.
- 7) If historical usage is not available, POLR Provider in its sole judgment may develop reasonable good faith estimates to determine your billing and establish a pay-in-advance billing amount accordingly. Estimates will be based on key energy determinants such as square footage, and HVAC type and size. Once there is an established history of six months usage, POLR Provider will review the pay-in-advance amount and adjust it, if necessary.
- 8) Billing statements will reflect the total charges for POLR services provided by POLR Provider.
- 9) Your service may be disconnected if you fail to pay the required pay-in-advance bill within ten calendar days of issuance of a notice of disconnection of service.
- 10) A disconnection notice may be issued concurrently with the written request for the required pay-in-advance bill.

**c) BILLING**

- 1) You will be billed monthly for your electric service.
- 2) Your monthly billing period will be approximately 30 calendar days.
- 3) You will be billed monthly after your scheduled monthly meter read date. Billing statements will reflect the total charges for POLR services provided by POLR Provider.
- 4) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16<sup>th</sup> day after issuance of the bill.
- 5) POLR Provider offers deferred and level payment (also known as budget) plans. Budget plans will be reconciled quarterly. Please contact POLR Provider at the 24-hour customer service number below for information about these options.

**3. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC SERVICE** in section 1:

Service Charges and Fees	Amount
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12-month history is requested more than once within a 12-month period. If you are a low-income customer, the first two premise usage histories provided on your behalf to an agency providing bill payment assistance shall not be counted in determining whether you are subject to an	\$25.00

**Figure: 16 TAC §25.43(f)(1)(A)**

<b>Service Charges and Fees</b>	<b>Amount</b>
account history charge.	
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Disconnection charge</b> for disconnection of service pursuant to TDSP's tariffs.	[Insert pass through charge from TDSP ]
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment (in addition to any applicable disconnect or reconnect charges).	No charge
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDSP]
<b>Reconnection charge</b> for reconnection of service pursuant to TDSP's tariffs.	[Insert pass through charge from TDSP]
<b>Unmetered Guardlight/Security lighting charge</b> applies to existing guardlights.	[Insert applicable \$/kWh charge equivalent to 125% of former applicable PTB]
<b>Late fees</b> will be assessed on delinquent deferred payment arrangements. Deferred payment arrangements are delinquent if not paid by the date specified by the deferred payment plan.	5% assessed on the late deferred payment amount
<b>Out-of-cycle meter reading charge</b> may be charged if you request an out-of-cycle meter reading:	
During regular hours	[Insert pass through charge from TDSP]
Outside regular working hours – Non-holiday	[Insert pass through charge from TDSP]
Outside regular working hours – Holidays	[Insert pass through charge from TDSP]
<b>Reread charge</b> will be assessed if requested by the customer.	[Insert pass through charge from TDSP]
<b>Return check charge</b> for each check returned for insufficient funds.	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric	[Insert pass through charge from TDSP]

**Figure: 16 TAC §25.43(f)(1)(A)**

Service Charges and Fees	Amount
service not recorded may also be billed to you.	
<b>Disconnection Reminder Notification</b> charge for notifying customer that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
POLR Provider reserves the right to charge for court costs, legal fees, and other costs associated with collection of delinquent amounts.	
POLR Provider reserves the right to charge for services requested by you that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDSP.	

**4. DISCONNECTION OF SERVICE**

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- a) Your account will be considered delinquent if your monthly bill or pay-in-advance bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service or any payment plan.
- c) Service may not be reconnected by the POLR Provider until all delinquent amounts and charges owed to POLR Provider have been paid and credit has been re-established.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT substantive rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC SERVICE**, section 2 **SECURITY AND BILLING** and section 3 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected.
- f) A disconnection notice may be issued concurrently with the written requests for either the cash deposit or with a pay-in-advance in lieu of cash deposit billing.
- g) A disconnection notice may be issued concurrently with your bill.
- h) You may be disconnected for failure to pay an initial pay-in-advance bill in lieu of cash deposit or a monthly pay-in-advance bill.
- i) POLR Provider cannot disconnect your electric service until you are a customer of the POLR Provider.

**5. CUSTOMER INFORMATION**

You will be required to provide your social security number, a valid driver’s license number, or other verifiable means of personal identification.

You authorize the TDSP, any previous retail electric provider, or the Independent Organization to provide POLR Provider information including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), driver’s license, etc.

You authorize POLR Provider to release your customer payment information to credit reporting agencies, regulatory agents, agents of POLR Provider, energy assistance agencies, law enforcement agencies or the TDSP.

**Figure: 16 TAC §25.43(f)(1)(A)**

You authorize POLR Provider to use credit-reporting agencies to evaluate your credit history consistent with applicable law.

**6. LENGTH OF AGREEMENT**

**NOTICE: POLR PROVIDER CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required under this agreement unless by mutual agreement a term is agreed to in writing between you and POLR Provider or unless you enter a level payment plan or deferred payment plan. If you decide to be placed on POLR Provider’s Level or Deferred Payment Plans, you will not be charged a penalty for canceling your service before the end of the term but you will be responsible for all outstanding amounts due, including Level and Deferred Payment Plan reconciliation amounts. If you decide to be placed on POLR Provider’s:

- a) Level (also known as Budget) Payment Plan, your term of service shall be six months from the date of the first monthly billing subsequent to being placed on the level payment plan. The term shall start on the date you enter the Level Payment Plan; or
- b) Deferred Payment Plan, your term of service shall be a minimum of three months or the length agreed to for making deferred payments, whichever is longer. The term shall start on the date you enter the Deferred Payment Plan.

**7. END OF POLR TERM**

POLR Provider’s Standard Terms of Service and obligations to offer the POLR rate specified under section 2, **PRICE FOR BASIC SERVICE**, will expire on [*insert last date of POLR term*]. At least 60 calendar days before that date, POLR Provider will provide you notice of available options for securing electric service after POLR’s existing term has expired. If you obtain electric service from a provider other than POLR Provider, your final bill from POLR Provider will be offset against your deposit and any remaining balance will be refunded to you within seven calendar days from the final meter read date.

**8. CONTACT INFORMATION**

Name of Provider:	24-Hour Customer Service: (toll free)
Physical Address:	24-Hour Power Outages: Contact your local electricity delivery company
	Internet web-site:
	Fax: (toll free)

You may contact POLR Provider if you have a dispute concerning your bill or your service from POLR Provider. You must provide, in writing, within ten business days of the invoice date, your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the POLR may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the POLR Provider shall, for a period of 30 calendar days following POLR Provider’s receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days.

Complaints regarding your service may also be directed to the Public Utility Commission of Texas, 1-888-782-8477 (toll free).

**9. LOW INCOME PAYMENT ASSISTANCE INFORMATION**

Rate discounts and other assistance programs may be available for qualified low-income customers. For more information, contact POLR Provider Customer Service or either of the following state agencies:

**Figure: 16 TAC §25.43(f)(1)(A)**

Texas Department of Housing and Consumer Affairs:  
Public Utility Commission of Texas:

1-512-475-3800  
1-888-782-8477 (toll free)

**10. BILL PAYMENT METHODS**

You may pay for your electric service by personal or cashier's check, money order, debit or credit card, electronic funds transfer, [*Insert if offered by POLR Provider (optional):* in cash through an agent authorized by the POLR Provider], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact POLR Provider's Customer Service number to begin those options for bill payment at no cost.

If you have had two or more personal checks returned for insufficient funds within the last 12 months, POLR Provider will require all further payments for electric service to be by cash, cashier's check, money order or debit/credit card. If you pay by debit/credit card and it has been declined two or more times within the last 12 months, POLR Provider will require all further payments to be by cash, cashier's check or money order.

**11. FORCE MAJEURE**

POLR Provider shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDSP.

**12. LIMITATION OF LIABILITY**

POLR PROVIDER DOES NOT GENERATE YOUR ELECTRICITY, NOR DOES POLR PROVIDER TRANSMIT OR DISTRIBUTE ELECTRICITY TO YOU. POLR PROVIDER WILL NOT BE LIABLE FOR FLUCTUATIONS, INTERRUPTIONS OR IRREGULARITIES IN BASIC FIRM SERVICE. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NEITHER YOU NOR THE POLR PROVIDER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE.

**13. REPRESENTATIONS AND WARRANTIES**

POLR PROVIDER WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

POLR PROVIDER MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**14. DISCRIMINATION**

**Figure: 16 TAC §25.43(f)(1)(A)**

POLR Provider will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

You have the right to cancel this agreement (Standard Terms of Service) for electric service without penalty or fee of any kind for a period of three federal business days after you have received the Standard Terms of Service. You may cancel your service and this agreement by calling the toll free 24-hour Customer Service number contained in this Standard Terms of Service or by contacting us through fax or e-mail. ***Cancellation of this agreement will result in disconnection of your service as provided in this agreement.***

## Standard Terms of Service

**[Insert POLR Provider Name] (Certificate No. \_\_\_\_\_)  
Provider of Last Resort (POLR) Small Non-Residential Service**

This Standard Terms of Service (STOS) applies to small non-residential customers (i.e., less than 50 kW) receiving Provider of Last Resort (POLR) service from POLR Provider under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution service provider (TDSP) rates. Customers will be notified of material changes in these Standard Terms of Service resulting from changes in local, state, or federal legislation or rules, applicable charges, or TDSP rates, at least 45 calendar days before such changes take effect, unless otherwise directed by law. Each Standard Terms of Service will be given a unique version number for quick reference.

**SPANISH LANGUAGE (IDIOMA ESPAÑOL) Si usted** quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [*insert toll-free number*].

### 1. PRICE FOR BASIC FIRM SERVICE.

POLR Provider will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The rate for your electric service from POLR Provider will be based on the formula detailed below. These charges may be applied in a pay-in-advance manner as described in section 2 **SECURITY AND BILLING.** Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

Your rate for POLR service will be derived from the following formula:

$$\text{POLR rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{POLR customer charge} + \text{POLR demand charge} + \text{POLR energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to POLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) POLR customer charge shall be \$0.025 per kWh.
- (iii) POLR demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) POLR energy charge shall be the sum over the billing period of the actual hourly MCPEs, for the customer multiplied by the level of kWh used, multiplied by 130%, multiplied by the level of kWh used.
- (v) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.
- (vi) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.
- (vi) For each billing period, if the sum over the billing period of the actual hourly MCPEs for a customer multiplied by the level of kWh used falls below the simple average of the

**Figure: 16 TAC §25.43(f)(1)(B)**

zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the POLR energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 130%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

**2. SECURITY AND BILLING**

***[PAY-IN-ADVANCE LANGUAGE TO BE INCLUDED IN STANDARD TERMS OF SERVICE AT THE OPTION OF POLR PROVIDER:***

POLR Provider will offer the option to either pay a cash deposit to prevent disconnection after POLR provider has begun providing your electric service, pursuant to subsection (a) **TRADITIONAL CASH DEPOSIT** or to choose **PAY-IN-ADVANCE BILLING OPTION IN LIEU OF CASH DEPOSIT** pursuant to subsection (b).]

POLR Provider has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame [or to accept pay-in-advance billing.]

**a) TRADITIONAL CASH DEPOSIT**

If service is initiated under option (a) **TRADITIONAL CASH DEPOSIT** you will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16th) day after issuance of the bill. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE**.

- 1) If your service is initiated with POLR Provider and you are required to pay a cash deposit, you will be required to pay the cash deposit after POLR Provider receives confirmation from the Registration Agent of the effective date you are to become a customer of POLR Provider. Cash deposits required for POLR service shall be equivalent to the estimated billing for a two-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your two highest months of usage and demand in the most recent 12-month period. If 12 months of data are not available, the required two months cash deposit shall be determined by the longest available period less than 12 months.
- 2) If historical usage is not available, POLR Provider in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC size and type, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining creditworthiness may be used.
- 3) You may be required, in the future, to pay an additional cash deposit or [to pay-in-advance pursuant to subsection (b)] if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and you have used more than twice the amount estimated to determine your cash deposit.
- 4) You will accrue interest on your cash deposit with POLR Provider. Each year in December, the PUCT establishes the interest rate POLR Provider will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing POLR Provider with an irrevocable letter of credit in the amount of the required cash deposit. The required security must be provided within ten calendar days after a notice is issued to you requesting a cash deposit.
- 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with POLR Provider.

**Figure: 16 TAC §25.43(f)(1)(B)**

- 7) If your service is terminated prior to the regularly scheduled meter read date, the final bill for service may be calculated using the out-of-cycle meter readings. Final bills will not be prorated.
- 8) POLR Provider will require payment of the cash deposit within ten calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the POLR.
- 9) Your service may be disconnected if you fail to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.

**b) [PAY-IN-ADVANCE LANGUAGE TO BE INCLUDED IN STANDARD TERMS OF SERVICE AT THE OPTION OF POLR PROVIDER] PAY-IN-ADVANCE BILLING OPTION IN LIEU OF CASH DEPOSIT**

- 1) If your POLR electric service is initiated by pay-in-advance, you will be billed in advance for your electric service after POLR Provider receives confirmation from the Registration Agent of the effective date you are to become a POLR customer of POLR Provider. All bills including the initial one requesting your payment in advance, will include the monthly customer charge, demand charge, energy charge, and an estimate of two months' non-bypassable charges, applicable taxes, service charges and other costs as permitted by governmental or regulatory authorities.
- 2) Your initial pay-in-advance billing will include charges for two months, based on historical demand (the highest demand recorded for your service in the prior 12 months) and will be due within ten calendar days of issuance of the notice requiring a pay-in-advance billing.
- 3) Pay-in-advance billing requires that you maintain a balance of the two-months initial total estimated charges for the time that you are a POLR customer and will be billed monthly on approximately 30-day periods.
- 4) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16<sup>th</sup> calendar day after issuance of the bill.
- 5) If your pay-in-advance billing exceeds the initial pay-in-advance amount then the pay-in-advance billing amount will be reset to that amount for the next billing cycle.
- 6) There is no interest accrued on pay-in-advance billing.
- 7) If historical usage is not available, POLR Provider in its sole judgment may develop reasonable good faith estimates to determine your billing and establish a pay-in-advance billing amount accordingly. Estimates will be based on key energy determinants and electric equipment including, but not limited to: square footage, HVAC type and size, type of business, hours of operation, standard industry load factor assumptions, etc. Once there is an established history of six months usage, POLR Provider will review the pay-in-advance amount and adjust it if necessary. If your monthly bill exceeds the pay-in-advance amount, the pay-in-advance amount will be adjusted accordingly.
- 8) Billing statements will reflect the total charges for POLR services provided by POLR Provider.
- 9) Your service may be disconnected if you fail to pay the required pay-in-advance bill within ten calendar days of issuance of a notice of disconnection of service.

**3. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC FIRM SERVICE** in section 1. These fees will be billed for each premise. "Premise" herein shall mean the designated property or facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each Premise.

**Figure: 16 TAC §25.43(f)(1)(B)**

Service Charges and Fees	Amount
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$10.00
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12 month history is requested for more than once within a 12 month period.	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Drawing on an irrevocable letter of credit.</b> Includes all of the activities required to present a drawing letter to customer's bank.	\$50.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDSP's tariffs.	[Insert pass through charge from TDSP]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDSP]
<b>Field Collection charge</b> for each trip to customer's premise to collect an amount that is past due when the customer requests the trip.	\$10.00/ESI ID
<b>Field Service Calls</b> for each trip to the customer's premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A two hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the Field Service Call as well as any TDSP discretionary charges.	\$100.00/hour
<b>Reconnection charge</b> for reconnection of service pursuant to TDSP's tariffs.	[Insert pass through charge from TDSP]
<b>Guardlight/Security lighting charge</b> applies to existing guardlights or security lighting.	[Insert applicable \$/kWh charge equivalent to 125% of former applicable PTB]
<b>Master Contracts</b> <ul style="list-style-type: none"> <li>• Set-up fee per new or transferred contract</li> <li>• Additional fee per each unit placed on a master contract, added to an existing contract or transferred</li> </ul>	\$25.00 \$ 5.00
<b>Master Metered Facilities:</b> <b>Master Metered Tenant charge</b> for small non-residential 50 kW and below facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by POLR Provider for rendering electric service to tenants of master metered facilities.  <b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a tenant in a master metered facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	[Insert pass through charge from TDSP]  \$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per addn'l 5 notices per 50 units

**Figure: 16 TAC §25.43(f)(1)(B)**

Service Charges and Fees	Amount
	over 100 units
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed late fees if not paid by the date pursuant to a negotiated payment plan. <i>Late fees may not be assessed against a customer with a peak demand of less than 50 kW.</i>	5% assessed on the late payment amount
<b>Out-of-cycle meter reading charge</b> may be charged if you request an out-of-cycle meter reading:	
During regular hours	[Insert pass through charge from TDSP]
Outside regular working hours – Non-holiday	[Insert pass through charge from TDSP]
Outside regular working hours – Holidays	[Insert pass through charge from TDSP]
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDSP]
<b>Processing fee</b> for renegotiation of a payment plan. This fee applies if you request renegotiations more than once in any 30-day period. In addition, you may be required to pay the appropriate amount to the Company to reconcile your account balance.	\$10.00
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer’s financial institution.)	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer’s premise, or evidence thereof, at Customer’s premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDSP]
<b>Disconnection Reminder Notification</b> charge for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
POLR Provider reserves the right to charge for incurred court costs, legal fees and miscellaneous costs associated with legal action as a result of maintaining customer accounts.	
POLR Provider reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDSP and billed to POLR Provider.	

**4. DISCONNECTION OF SERVICE**

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- a) Your account will be considered delinquent if your monthly bill or pay-in-advance bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service or any payment plan.
- c) Service may not be reconnected until all delinquent amounts and charges owned to POLR Provider have been paid and credit has been re-established.

**Figure: 16 TAC §25.43(f)(1)(B)**

- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Substantive Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC FIRM SERVICE**, section 2 **SECURITY AND BILLING** and section 3 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.
- f) A disconnection notice may be issued concurrently with the written requests for either the cash deposit or with a pay-in-advance in lieu of cash deposit billing.
- g) A disconnection notice may be issued concurrently with your pay-in-advance billing or cash deposit billing.
- h) Your service may be disconnected for failure to pay an initial pay-in-advance bill, or monthly pay-in-advance bill, or cash deposit bill.
- i) POLR Provider cannot disconnect your electric service until you are a customer of the POLR Provider.

**5. CUSTOMER INFORMATION**

You will be required to provide a Federal tax identification (I.D) number, a social security number, a valid driver's license number or other verifiable means of personal identification in order to allow verification of changes you request in services from POLR Provider.

You authorize the TDSP, any previous retail electric provider, or the Independent Organization to provide information to POLR Provider including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver's license number, etc.

You authorize POLR Provider to release your customer payment information to credit reporting agencies, regulatory agents, agents of POLR Provider, energy assistance agencies, law enforcement agencies or the TDSP.

You authorize POLR Provider to use credit-reporting agencies to evaluate your credit history consistent with applicable law.

**6. LENGTH OF AGREEMENT**

**NOTICE: POLR PROVIDER CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required under this agreement unless by mutual agreement a term is agreed to in writing between you and POLR Provider or unless you enter an agreed payment plan requiring a minimum term.

**7. END OF POLR TERM**

POLR Provider's Standard Terms of Service and obligations to offer the POLR rate specified under section 2, **PRICE FOR BASIC FIRM SERVICE**, will expire on *[insert last date of POLR term]*. At least 60 calendar days before that date, POLR Provider will provide you notice of available options for securing electric service after POLR's existing term has expired. If you obtain electric service from a provider other than POLR Provider, your final bill from POLR Provider will be offset against your deposit and any remaining balance will be refunded to you within seven calendar days from the final meter read date.

**Figure: 16 TAC §25.43(f)(1)(B)**

**8. CONTACT INFORMATION**

Name of Provider:  
Physical Address:

Certificate Number:  
Customer Assistance:  
Contact hours  
24-Hour Power Outage:  
Fax:  
Internet web-site:

You may contact POLR Provider if you have a dispute concerning your bill or your service from POLR Provider. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the POLR may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the POLR Provider shall, for a period of 30 calendar days following the POLR Provider's receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days. Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free).

**9. BILL PAYMENT METHODS**

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, [*Insert if offered by POLR Provider (optional): in cash through an agent authorized by the POLR Provider*], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact POLR Provider's Customer Service number to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within (16 calendar days of bill issuance. If payments are not received by POLR Provider by the end of the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances including pay-in-advance. Late fees may not be assessed against a customer with a peak demand of less than 50 kW.

If you have had two or more personal checks returned for insufficient funds within the last 12 months, POLR Provider will require all further payments for electric service to be by cash, cashier's check, or money order.

**10. FORCE MAJEURE**

POLR Provider shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDSP.

**11. LIMITATION OF LIABILITY AND INDEMNITY**

POLR PROVIDER DOES NOT GENERATE YOUR ELECTRICITY, NOR DOES POLR PROVIDER TRANSMIT OR DISTRIBUTE ELECTRICITY TO YOU. POLR PROVIDER WILL NOT BE LIABLE FOR FLUCTUATIONS, INTERRUPTIONS OR IRREGULARITIES IN BASIC FIRM SERVICE. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NEITHER YOU NOR THE POLR PROVIDER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE.

**12. REPRESENTATIONS AND WARRANTIES**

**Figure: 16 TAC §25.43(f)(1)(B)**

POLR PROVIDER WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE “BASIC FIRM SERVICE” AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT “ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE.”

POLR PROVIDER MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**13. DISCRIMINATION**

POLR Provider will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

You have the right to cancel this agreement (Standard Terms of Service) for electric service without penalty or fee of any kind for a period of three federal business days after you have received the Standard Terms of Service. You may cancel your service and this agreement by calling the toll free Customer Service number during the hours stated in this Standard Terms of Service. Service may also be cancelled by toll-free fax or e-mail. *Canceling this service agreement will result in disconnection of service if you have not made arrangements for alternative supply*

## Standard Terms of Service

**[Insert POLR Provider Name] (Certificate No. \_\_\_\_\_)  
Provider of Last Resort (POLR) Medium Non-Residential Service**

This Standard Terms of Service (STOS) applies to medium non-residential customers (i.e., 50 kW or greater, but less than 1,000 kW (one Megawatt)) receiving Provider of Last Resort (POLR) service from POLR Provider under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution service provider (TDSP) rates. Customers will be notified of material changes in these Standard Terms of Service resulting from changes in local, state, or federal legislation or rules, applicable charges, or TDSP rates, at least 45 calendar days before such changes take effect, unless otherwise directed by law. Each Standard Terms of Service will be given a unique version number for quick reference.

**SPANISH LANGUAGE (IDIOMA ESPANOL) Si usted** quiere obtener el mismo documento impreso detallando los Términos de Servicio en español comunicandose con nosotros al [*insert toll-free number*].

### 1. PRICE FOR BASIC FIRM SERVICE.

POLR Provider will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. The rate for your electric service from POLR Provider will be based on the formula detailed below. These charges may be applied in a pay-in-advance manner as described in section 2 **SECURITY AND BILLING.**] Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

Your rate for POLR service will be derived from the following formula:

$$\text{POLR rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{POLR customer charge} + \text{POLR demand charge} + \text{POLR energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to POLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) POLR customer charge shall be \$0.025 per kWh.
- (iii) POLR demand charge shall be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) POLR energy charge shall be the sum over the billing period of the actual hourly MCPEs, for the customer multiplied by the level of kWh used, multiplied by 130%, multiplied by the level of kWh used.
- (v) "Actual hourly MCPE" is an hourly rate based on a simple average of the actual interval MCPE prices over the hour.
- (vi) "Level of kWh used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data over the hour to the total of the ERCOT backcasted profile interval usage data over the customer's entire billing period.

**Figure: 16 TAC §25.43(f)(1)(C)**

- (vii) For each billing period, if the sum over the billing period of the actual hourly MCPES for a customer multiplied by the level of kWh used falls below the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period, then the POLR energy charge shall be the simple average of the zonal MCPE prices over the 12-month period ending September 1 of the preceding year multiplied by the total kWh used over the customer's billing period multiplied by 130%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

**2. SECURITY AND BILLING**

***[PAY-IN-ADVANCE LANGUAGE TO BE INCLUDED IN STANDARD TERMS OF SERVICE AT THE OPTION OF POLR PROVIDER:***

POLR Provider will offer the option to either pay a cash deposit to prevent disconnection after POLR provider has begun providing your electric service, pursuant to subsection (a) **TRADITIONAL CASH DEPOSIT** or to choose **PAY-IN-ADVANCE BILLING OPTION IN LIEU OF CASH DEPOSIT** pursuant to subsection (b).]

POLR Provider has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame [or to accept pay-in-advance billing.]

**a) TRADITIONAL CASH DEPOSIT**

If service is initiated under option (a) **TRADITIONAL CASH DEPOSIT** you will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16th) day after issuance of the bill. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE**.

- 1) If your service is initiated with POLR Provider and you are required to pay a cash deposit, you will be required to pay the cash deposit after POLR Provider receives confirmation from the Registration Agent of the effective date you are to become a customer of POLR Provider. Cash deposits required for POLR service shall be equivalent to the estimated billing for a two-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your two highest months of usage and demand in the most recent 12-month period. If 12 months of data are not available, the required two months cash deposit shall be determined by the longest available period less than 12 months.
- 2) If historical usage is not available, POLR Provider in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC size and type, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining creditworthiness may be used.
- 3) You may be required, in the future, to pay an additional cash deposit or [to pay-in-advance pursuant to subsection (b)] if you have been issued a disconnection notice within the last 12 months or if you have been a customer for 12 months and you have used more than twice the amount estimated to determine your cash deposit.
- 4) You will accrue interest on your cash deposit with POLR Provider. Each year in December, the PUCT establishes the interest rate POLR Provider will apply to your cash deposit for the next calendar year.

**Figure: 16 TAC §25.43(f)(1)(C)**

- 5) You may satisfy security requirements by providing POLR Provider with an irrevocable letter of credit in the amount of the required cash deposit. The required security must be provided within ten calendar days after a notice is issued to you requesting a cash deposit.
- 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with POLR Provider.
- 7) If your service is terminated prior to the regularly scheduled meter read date, the final bill for service may be calculated using the out-of-cycle meter readings. Final bills will not be prorated.
- 8) POLR Provider will require payment of the cash deposit within ten calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the POLR.
- 9) Your service may be disconnected if you fail to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.

**b) [PAY-IN-ADVANCE LANGUAGE TO BE INCLUDED IN STANDARD TERMS OF SERVICE AT THE OPTION OF POLR PROVIDER] PAY-IN-ADVANCE BILLING OPTION IN LIEU OF CASH DEPOSIT**

- 1) If your POLR electric service is initiated by pay-in-advance, you will be billed in advance for your electric service after POLR Provider receives confirmation from the Registration Agent of the effective date you are to become a POLR customer of POLR Provider. All bills including the initial one requesting your payment in advance, will include the monthly customer charge, demand charge, energy charge, and an estimate of two months' non-bypassable charges, applicable taxes, service charges and other costs as permitted by governmental or regulatory authorities.
- 2) Your initial pay-in-advance billing will include charges for two months, based on historical demand (the highest demand recorded for your service in the prior 12 months) and will be due within ten calendar days of issuance of the notice requiring a pay-in-advance billing.
- 3) Pay-in-advance billing requires that you maintain a balance of the two-months initial total estimated charges for the time that you are a POLR customer and will be billed monthly on approximately 30-day periods.
- 4) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16<sup>th</sup> calendar day after issuance of the bill.
- 5) If your pay-in-advance billing exceeds the initial pay-in-advance amount then the pay-in-advance billing amount will be reset to that amount for the next billing cycle.
- 6) There is no interest accrued on pay-in-advance billing.
- 7) If historical usage is not available, POLR Provider in its sole judgment may develop reasonable good faith estimates to determine your billing and establish a pay-in-advance billing amount accordingly. Estimates will be based on key energy determinants and electric equipment including, but not limited to: square footage, HVAC type and size, type of business, hours of operation, standard industry load factor assumptions, etc. Once there is an established history of six months usage, POLR Provider will review the pay-in-advance amount and adjust it if necessary. If your monthly bill exceeds the pay-in-advance amount, the pay-in-advance amount will be adjusted accordingly.
- 8) Billing statements will reflect the total charges for POLR services provided by POLR Provider.
- 9) Your service may be disconnected if you fail to pay the required pay-in-advance bill within ten calendar days of issuance of a notice of disconnection of service.

**3. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the **PRICE FOR BASIC FIRM SERVICE** in section 1. These fees will be billed for each premise. "Premise" herein shall mean the designated property or

**Figure: 16 TAC §25.43(f)(1)(C)**

facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each Premise.

<b>Service Charges and Fees</b>	<b>Amount</b>
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$10.00
<b>Account History charge</b> if you request and are provided a premise usage history for more than the most recent 12 months or if a 12 month history is requested for more than once within a 12 month period.	\$25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
<b>Drawing on an irrevocable letter of credit.</b> Includes all of the activities required to present a drawing letter to customer's bank.	\$50.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDSP's tariffs.	[Insert pass through charge from TDSP]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDSP]
<b>Field Collection charge</b> for each trip to customer's premise to collect an amount that is past due when the customer requests the trip.	\$10.00/ESI ID
<b>Field Service Calls</b> for each trip to the customer's premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A two hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the Field Service Call as well as any TDSP discretionary charges.	\$100.00/hour
<b>Reconnection charge</b> for reconnection of service pursuant to TDSP's tariffs.	[Insert pass through charge from TDSP]
<b>Guardlight/Security lighting charge</b> applies to existing guardlights or security lighting.	[Insert applicable \$/kWh charge equivalent to 125% of former applicable PTB]
<b>Master Contracts</b> <ul style="list-style-type: none"> <li>• Set-up fee per new or transferred contract</li> <li>• Additional fee per each unit placed on a master contract, added to an existing contract or transferred</li> </ul>	\$25.00 \$ 5.00
<b>Master Metered Facilities:</b> <b>Master Metered Tenant charge</b> for small non-residential 50 kW and below facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by POLR Provider for rendering electric service to tenants of master metered facilities.  <b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a tenant in a master metered facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	[Insert pass through charge from TDSP]  \$25.00 to meet Subst. R. 25.483

**Figure: 16 TAC §25.43(f)(1)(C)**

Service Charges and Fees	Amount
	minimum. \$10.00 per addn'l 5 notices per 50 units over 100 units
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed late fees if not paid by the date pursuant to a negotiated payment plan.	5% assessed on the late payment amount
<b>Out-of-cycle meter reading charge</b> may be charged if you request an out-of-cycle meter reading:	
During regular hours	[Insert pass through charge from TDSP]
Outside regular working hours – Non-holiday	[Insert pass through charge from TDSP]
Outside regular working hours – Holidays	[Insert pass through charge from TDSP]
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDSP]
<b>Processing fee</b> for renegotiation of a payment plan. This fee applies if you request renegotiations more than once in any 30-day period. In addition, you may be required to pay the appropriate amount to the Company to reconcile your account balance.	\$10.00
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer's financial institution.)	\$25.00
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer's premise, or evidence thereof, at Customer's premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed to you.	[Insert pass through charge from TDSP]
<b>Disconnection Reminder Notification</b> charge for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any means of communication appropriate for the customer.	\$5.00
POLR Provider reserves the right to charge for incurred court costs, legal fees and miscellaneous costs associated with legal action as a result of maintaining customer accounts.	
POLR Provider reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDSP and billed to POLR Provider.	

**4. DISCONNECTION OF SERVICE**

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- a) Your account will be considered delinquent if your monthly bill or pay-in-advance bill is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected ten calendar days after notice is issued.
- b) Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service or any payment plan.

**Figure: 16 TAC §25.43(f)(1)(C)**

- c) Service may not be reconnected until all delinquent amounts and charges owned to POLR Provider have been paid and credit has been re-established.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Substantive Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch of provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC FIRM SERVICE**, section 2 **SECURITY AND BILLING** and section 3 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.
- f) A disconnection notice may be issued concurrently with the written requests for either the cash deposit or with a pay-in-advance in lieu of cash deposit billing.
- g) A disconnection notice may be issued concurrently with your pay-in-advance billing or cash deposit billing.
- h) Your service may be disconnected for failure to pay an initial pay-in-advance bill, or monthly pay-in-advance bill, or cash deposit bill.
- i) POLR Provider cannot disconnect your electric service until you are a customer of the POLR Provider.

**5. CUSTOMER INFORMATION**

You will be required to provide a Federal tax identification (I.D) number, a social security number, a valid driver's license number or other verifiable means of personal identification in order to allow verification of changes you request in services from POLR Provider.

You authorize the TDSP, any previous retail electric provider, or the Independent Organization to provide information to POLR Provider including, but not limited to: previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, and other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver's license number, etc.

You authorize POLR Provider to release your customer payment information to credit reporting agencies, regulatory agents, agents of POLR Provider, energy assistance agencies, law enforcement agencies or the TDSP.

You authorize POLR Provider to use credit-reporting agencies to evaluate your credit history consistent with applicable law.

**6. LENGTH OF AGREEMENT**

**NOTICE: POLR PROVIDER CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

No term of service is required under this agreement unless by mutual agreement a term is agreed to in writing between you and POLR Provider or unless you enter an agreed payment plan requiring a minimum term.

**7. WAIVER OF CERTAIN CUSTOMER PROTECTION RULES**

For the medium non-residential customer class, the Customer Protection Rule provisions contained within Subchapter R of this chapter shall be deemed waived by the execution of this Standard Terms of Service, except for the following:

- a) §25.481, relating to Unauthorized Charges;
- b) §25.485(a)-(b), relating to Customer Access and Complaint Handling; and
- c) §25.495, relating to Unauthorized Change of Retail Electric Provider.

**8. END OF POLR TERM**

POLR Provider's Standard Terms of Service and obligations to offer the POLR rate specified under section 2, **PRICE FOR BASIC FIRM SERVICE**, will expire on *[insert last date of POLR term]*. At least 60 calendar days before that date, POLR Provider will provide you notice of available options for securing electric service after POLR's existing term has expired. If you obtain electric service from a provider other than POLR Provider, your final bill from POLR Provider will be offset against your deposit and any remaining balance will be refunded to you within seven calendar days from the final meter read date.

**Figure: 16 TAC §25.43(f)(1)(C)**

**9. CONTACT INFORMATION**

Name of Provider:  
Physical Address:

Certificate Number:  
Customer Assistance:  
Contact hours  
24-Hour Power Outage:  
Fax:  
Internet web-site:

You may contact POLR Provider if you have a dispute concerning your bill or your service from POLR Provider. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the POLR may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the POLR Provider shall, for a period of 30 calendar days following the POLR Provider's receipt of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days. Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free).

**10. BILL PAYMENT METHODS**

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, [*Insert if offered by POLR Provider (optional):* in cash through an agent authorized by the POLR Provider], or automatic draft from your financial institution. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact POLR Provider's Customer Service number to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within (16 calendar days of bill issuance. If payments are not received by POLR Provider by the end of the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances including pay-in-advance. Late fees may not be assessed against a customer with a peak demand of less than 50 kW.

If you have had two or more personal checks returned for insufficient funds within the last 12 months, POLR Provider will require all further payments for electric service to be by cash, cashier's check, or money order.

**11. FORCE MAJEURE**

POLR Provider shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDSP.

**12. LIMITATION OF LIABILITY AND INDEMNITY**

POLR PROVIDER DOES NOT GENERATE YOUR ELECTRICITY, NOR DOES POLR PROVIDER TRANSMIT OR DISTRIBUTE ELECTRICITY TO YOU. POLR PROVIDER WILL NOT BE LIABLE FOR FLUCTUATIONS, INTERRUPTIONS OR IRREGULARITIES IN BASIC FIRM SERVICE. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NEITHER YOU NOR THE POLR PROVIDER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE.

**Figure: 16 TAC §25.43(f)(1)(C)**

**13. REPRESENTATIONS AND WARRANTIES**

POLR PROVIDER WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE “BASIC FIRM SERVICE” AS THAT TERM IS DEFINED IN PUCT SUBSTANTIVE RULE 25.43(c)(1), TO WIT “ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE.”

POLR PROVIDER MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**14. DISCRIMINATION**

POLR Provider will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

You have the right to cancel this agreement (Standard Terms of Service) for electric service without penalty or fee of any kind for a period of three federal business days after you have received the Standard Terms of Service. You may cancel your service and this agreement by calling the toll free Customer Service number during the hours stated in this Standard Terms of Service. Service may also be cancelled by toll-free fax or e-mail. *Canceling this service agreement will result in disconnection of service if you have not made arrangements for alternative supply*

## Standard Terms of Service

[Insert POLR Provider Name] (Certificate No. \_\_\_\_)  
Provider of Last Resort (POLR) Large Non-Residential Service (> = One Megawatt)

This Standard Terms of Service applies to Large Non-Residential customers receiving Provider of Last Resort (POLR) service from pursuant to Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. \_\_\_\_\_. These Standard Terms of Service are subject to certain current and future customer protection laws or rules as prescribed by local, state or federal authorities and to changes in applicable charges or transmission and distribution service provider (TDSP) rates. Customers will be notified of changes in applicable charges or TDSP rates, except for changes in the price for basic firm service as described below, at least 45 calendar days before such changes take effect, unless otherwise directed by law. Each Standard Terms of Service will be given a unique version number for quick reference.

### 1. PRICE FOR BASIC FIRM SERVICE.

POLR Provider will provide basic firm service, defined as electric service not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market.

The price for your electric service from POLR Provider will be derived from the following formula:

POLR rate (in \$ per kWh) = (Non-bypassable charges + POLR customer charge + POLR demand charge + POLR energy charge) / kWh used

Where:

- (i) Non-bypassable charges shall be all TDU and other non-bypassable charges and credits for the appropriate customer class in the applicable service territory, including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to POLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) POLR customer charge shall be \$2,897.00 per month.
- (iii) POLR demand charge shall be \$6.00 per kW, per month.
- (iv) POLR energy charge shall be the appropriate MCPE, determined on the basis of 15-minute intervals, for the customer multiplied by 130%, multiplied by the level of kWh used. The MCPE shall have a floor of \$7.25 per MWh.

Non-recurring charges will be billed as they are incurred and are set out in section 3 **SERVICE CHARGES AND FEES** below.

### 2. SECURITY AND BILLING

***[PAY-IN-ADVANCE LANGUAGE TO BE INCLUDED IN STANDARD TERMS OF SERVICE AT THE OPTION OF POLR PROVIDER:***

POLR Provider will offer the option to either pay a cash deposit to prevent disconnection after POLR provider has begun providing your electric service, pursuant to subsection (a) **TRADITIONAL CASH DEPOSIT** or to choose **PAY-IN-ADVANCE BILLING OPTION IN LIEU OF CASH DEPOSIT** pursuant to subsection (b). You will either be required to pay a cash deposit or be subject to pay-in-advance billing.]

POLR Provider has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame [or to accept pay-in-advance billing.]

**Figure: 16 TAC §25.43(f)(1)(D)**

**a) TRADITIONAL CASH DEPOSIT**

If service is initiated under option (a) **TRADITIONAL CASH DEPOSIT** you will be billed monthly for your electric service after the scheduled monthly meter read date. The monthly billing period will be approximately 30 calendar days. Your bill will be due upon receipt and will be considered delinquent if it is not paid by the sixteenth (16<sup>th</sup>) day after issuance of the bill. The late payment fee (5%) will be assessed on the seventeenth (17<sup>th</sup>) day after the bill issuance for all unpaid balances. Disconnection of service may result upon non-payment of a bill pursuant to section 4 **DISCONNECTION OF SERVICE.**

- 1) If your service is initiated with POLR Provider, you will be required to pay a cash deposit or letter of credit after POLR Provider receives confirmation from the Registration Agent of the effective date you are to become a customer of POLR Provider. Cash deposits required for POLR service shall be equivalent to the estimated billing for a three-month period, including, where applicable, customer and non-bypassable charges, and energy and demand charges determined based on your three highest months of usage and demand during the most recent 12-month period.
- 2) If historical usage is not available, POLR Provider in its sole judgment may develop reasonable good faith estimates to determine your cash deposit amount. Estimates will be based on key energy determinants and electric equipment, including, but not limited to: square footage, HVAC type and size, type of business, hours of operation, standard industry load factor assumptions, etc. Other non-discriminatory methods of determining creditworthiness may be used.
- 3) You may also be required, in the future, to pay an additional cash deposit if you have been issued a disconnection notice or if you have been a customer for three months and you have used more than the amount estimated to determine your initial cash deposit.
- 4) You will accrue interest on your deposit with POLR Provider. Each year in December, the PUCT establishes the interest rate the POLR Provider will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing POLR Provider with a surety bond or an irrevocable letter of credit in the amount of the required cash deposit. The surety bond must be approved by the POLR provider. The required security must be provided within three calendar days after a notice is issued to you requesting a cash deposit.
- 6) If not previously returned to you, your cash deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you upon closing of your account with POLR Provider.
- 7) If your service is terminated prior to the regularly scheduled meter read date, the energy usage for the final bills may be calculated using the out-of-cycle meter readings and will include all charges defined in section 1. **Price for Basic Firm Service.**
- 8) POLR Provider will require payment of the cash deposit within three calendar days of receiving confirmation from the Registration Agent of the effective date you become a customer of the POLR.
- 9) Your service may be disconnected if you fail to pay the required cash deposit within three calendar days of issuance of a notice of disconnection of service.

**Figure: 16 TAC §25.43(f)(1)(D)**

**b) [PAY-IN-ADVANCE LANGUAGE TO BE INCLUDED IN STANDARD TERMS OF SERVICE AT THE OPTION OF POLR PROVIDER] PAY-IN-ADVANCE BILLING OPTION IN LIEU OF CASH DEPOSIT**

- 1) If your POLR electric service is initiated by pay-in-advance, you will be billed in advance for your electric service after POLR Provider receives confirmation from the Registration Agent of the effective date you are to become a POLR customer of POLR Provider. All bills will include the monthly customer charge, demand charge, energy charge, and an estimate of two months' non-bypassable charges, applicable fees, taxes, service charges and other costs as permitted by governmental or regulatory authorities.
- 2) Your initial pay-in-advance billing will include, where applicable, charges for two months, based on historical demand and will be due within three calendar days of issuance of the notice requiring a pay-in-advance billing
- 3) Pay-in-advance billing requires that you maintain a balance of the two-month initial total estimated charges for the time that you are a POLR customer and will be billed monthly on approximately 30-day periods.
- 4) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16<sup>th</sup> calendar day after issuance of the bill.
- 5) If your pay-in-advance billing exceeds the initial pay-in-advance amount, then the pay-in-advance billing amount will be reset to that amount for the next billing cycle.
- 6) There is no interest accrued on pay-in-advance billing.
- 7) If historical usage is not available, POLR Provider in its sole judgment may develop reasonable good faith estimates to determine your billing and establish a pay-in-advance billing amount accordingly. Estimates will be based on key energy determinants and electric equipment including, but not limited to: square footage, HVAC type and size, type of business, hours of operation, standard industry load factor assumptions, etc. Once there is an established history of three months usage, POLR Provider will review the pay-in-advance amount and adjust it if necessary. If at any time the sum of your two highest monthly bills exceeds the pay-in-advance amount, the pay-in-advance amount may be adjusted accordingly.
- 8) Billing statements will reflect the total charges for POLR services provided by POLR Provider.
- 9) Your service may be disconnected if you fail to pay the required pay-in-advance bill within three calendar days of issuance of a notice of disconnection of service.

**3. SERVICE CHARGES AND FEES**

You will be subject to the following charges and fees in addition to the rates for service prescribed in section 1 **PRICE FOR BASIC FIRM SERVICE**. These fees will be billed for each premise. "Premise" herein shall mean the designated property or facilities and associated metered account identified by an Electric Service Identifier Number (ESI ID), which is a unique and permanent identifier assigned to each service point.

<b>Service Charges and Fees</b>	<b>Amount</b>
<b>Account Reinstatement fee</b> for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$ 50.00
<b>Account History charge</b> if you request and are provided a service point usage history for more than the most recent 12 months or if a 12-month history is requested more than once within a 12-month period.	\$ 25.00
<b>Collection Letter charge</b> for processing a registered or certified letter demanding payment of past due accounts or drawing on your letter of credit.	\$15.00

**Figure: 16 TAC §25.43(f)(1)(D)**

Service Charges and Fees	Amount
<b>Drawing on irrevocable letter of credit</b> includes all of the activities required to present a drawing letter to your bank.	\$150.00 plus any fees imposed by financial institution
<b>Disconnection charge</b> for disconnection of service pursuant to TDSP’s tariffs, including charges that may be assessed by the TDSP for scheduling a disconnection that is canceled.	[Insert pass through charge from TDSP]
<b>Equipment charge</b> for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDSP]
<b>Field Collection charge</b> for each trip to a customer’s premise to collect an amount that is past due when the customer requests the trip.	\$10.00 / ESI ID
<b>Field Service Calls</b> for each trip to the customer’s premise to provide non-competitive services such as billing and outage-related inquiries, as requested and approved by the customer after trip charges are disclosed. A four hour minimum will be billed for each customer requested Field Service Call and includes travel and incidental expenses with the field service call.	\$200.00/hour
<b>Late fees</b> will be assessed on the seventeenth (17 <sup>th</sup> ) day after the bill issuance for all unpaid balances, including pay-in-advance billing. Payment arrangements are delinquent and will be assessed a late fee if not paid by the date pursuant to a negotiated payment plan.	5% assessed on the late payment amounts
<b>Master Contracts</b> <ul style="list-style-type: none"> <li>▪ Set-up fee per new or transferred contract</li> <li>▪ Additional fee per each unit placed on a master contract, added to an existing contract or transferred</li> </ul>	\$25.00 \$ 5.00
<b>Master Metered Facilities:</b> <b>Master Metered Tenant charge</b> for facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by POLR Provider for rendering electric service to tenants of master metered facilities.  <b>Tenant Notification charge</b> for each apartment unit to recover expenses incurred each time a tenant in a master meter facility is notified of either impending disconnection for nonpayment of the electric service or of actual disconnection.	[Insert pass through charge from TDSP]  \$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per addn'l 5 notices per 50 units over 100 units
<b>Out-of-cycle meter reading charge</b> may be charged if you request an out-of-cycle meter reading.	
During regular hours	[Insert pass through charge from TDSP]
Outside regular working hours – Non-holiday	[Insert pass through charge from TDSP]
Outside regular working hours – Holidays	[Insert pass through charge]

**Figure: 16 TAC §25.43(f)(1)(D)**

Service Charges and Fees	Amount
	from TDSP]
<b>Reread request charge</b> for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDSP]
<b>Return check charge</b> for each check returned for insufficient funds. This charge will be imposed for each returned check (or for any bill payment method that results in a notice of insufficient funds from the customer’s financial institution.)	\$ 25.00
<b>Unmetered Guardlight/Security lighting charge</b> applies to existing guardlights or security lighting.	[Insert applicable \$/kWh charge equivalent to 125% of former applicable PTB tariff for unmetered guardlight/security lighting]
<b>Tampering charge</b> for unauthorized reconnection of service, tampering with the electric meter, theft of electric service by any person on customer’s premise, or evidence thereof, at customer’s premise. Additional charges for repair, replacement, relocation of equipment and estimated amount of electric service not recorded may also be billed.	[Insert pass through charge from TDSP]
<b>Disconnection Reminder Notification</b> charge for notifying customers that disconnection of service may be in progress. This notification may be made by telephone, electronically or by any other means of communication appropriate for the customer.	\$5.00
POLR Provider reserves the right to charge for court costs, legal fees and other costs associated with collection of delinquent amounts and miscellaneous legal costs associated with maintaining the account.	
POLR Provider reserves the right to charge for services, requested by you, that are rendered on your behalf after your approval of disclosed charges for those services, as well as the right to pass through tariff charges for services rendered by the TDSP and billed to POLR Provider.	

**4. DISCONNECTION OF SERVICE**

Disconnection means a physical interruption of electric service. Disconnection is subject to the rules of the PUCT.

- a) Your account will be considered delinquent if payment for your monthly bill or pay-in-advance billing is not paid on or before the 16<sup>th</sup> day after issuance of the bill. If your account becomes delinquent, your service may be disconnected three calendar days after notice is issued.
- b) Your service may be disconnected for failure to pay cash deposit as well as pay in advance. Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service or any payment plan.
- c) Service may not be reconnected until all delinquent amounts and charges owed to POLR Provider have been paid and credit has been re-established. Upon receipt of all amounts and charges owed service may not be reconnected immediately and is dependent upon TDSP scheduling.
- d) Your service may be disconnected without notice if a dangerous or hazardous condition exists, if the service has been connected without proper authority or for the reasons prescribed in the PUCT Substantive Rules. Service will not be reconnected until the dangerous or hazardous condition has been corrected.
- e) If you choose to cancel service under this Standard Terms of Service, your service will be disconnected unless you have made arrangements with another retail electric provider and a switch to the new provider has been successfully completed by the Registration Agent by the date you choose to cancel service. You

**Figure: 16 TAC §25.43(f)(1)(D)**

will be responsible for any charges pursuant to section 1 **PRICE FOR BASIC SERVICE**, section 2 **SECURITY AND BILLING** and section 3 **SERVICE CHARGES AND FEES** of this agreement up to the date your service is disconnected or the date you switch electric service to another REP.

- f) A disconnection notice may be issued concurrently with the written requests for either the cash deposit or with a pay-in-advance in lieu of cash deposit billing.
- g) A disconnection notice may be issued concurrently with your pay-in-advance or cash deposit billing.
- h) Your service may be disconnected for failure to pay an initial pay-in-advance bill or monthly pay-in-advance bill.
- i) POLR Provider cannot disconnect your electric service until you are a customer of the POLR Provider.

**Figure: 16 TAC §25.43(f)(1)(D)**

**5. CUSTOMER INFORMATION**

You will be required to provide a legal name, Federal tax identification (I.D.) number, a social security number, a valid driver's license number or other verifiable means of identification in order to allow verification of changes you request in services from POLR Provider.

You authorize the TDSP, any previous retail electric provider, or the Independent Organization to provide information to POLR Provider including but not limited to previous billings and usage of electricity, meter readings and types of service received, credit history, any records of tampering, other names in which service has been provided, social security number, contact telephone number(s), tax ID or driver's license number, etc.

You authorize POLR Provider at POLR Providers discretion to release your customer payment information to credit reporting agencies, regulatory agents, agents of POLR Provider, energy assistance agencies, law enforcement agencies or the TDSP.

You authorize POLR Provider to use credit-reporting agencies to evaluate your credit history consistent with applicable law.

**6. LENGTH OF AGREEMENT**

**NOTICE: POLR PROVIDER CANNOT REQUIRE THAT YOU SIGN UP FOR A MINIMUM CONTRACT TERM AS A CONDITION OF PROVIDING SERVICE.**

Subject to the advance payment provisions described in section 2, no term of service is required under this Standard Terms of Service unless by mutual agreement a term is agreed to in writing between you and POLR Provider or if you enter an agreed payment plan requiring a minimum term.

**7. END OF POLR TERM**

POLR Provider's Standard Terms of Service and obligations to offer the POLR rate specified under section 1, **PRICE FOR BASIC FIRM SERVICE**, will expire on *[insert last date of POLR term]*. At least 60 calendar days before that date, POLR Provider will provide you notice of available options for securing electric service after POLR's existing term has expired. If you obtain electric service from a provider other than POLR Provider, your final bill from POLR Provider will be offset against your deposit and any remaining balance will be refunded to you within seven calendar days from the final meter read date.

**8. CONTACT INFORMATION**

Name of Provider:  
Physical Address:

Certificate Number:  
Customer Assistance:  
Contact hours:  
24-Hour Power Outage:  
Fax:  
Internet web-site:

You may contact POLR Provider if you have a dispute concerning your bill or your service from POLR Provider. You must provide, in writing, within ten business days of the invoice date your reasons for disputing the invoice. You will be obligated to pay the undisputed portion of the bill and the POLR may pursue disconnection of service for nonpayment of the undisputed portion after appropriate notice. In the event that you give timely notice of a dispute, you and the POLR Provider shall, for a period of 30 calendar days following the POLR Provider's receipt

**Figure: 16 TAC §25.43(f)(1)(D)**

of the notice, pursue diligent, good faith efforts to resolve the dispute. Following resolution of the dispute, any amount found payable by either party shall be paid within ten business days.

Complaints regarding your service may also be directed to the Public Utility Commission, 1-888-782-8477 (toll free). Complaints directed to the Public Utility Commission do not relieve customer's obligation to pay in full within 16 calendar days .

**9. BILL PAYMENT METHODS**

You may pay for your electric service by personal or cashier's check, money order, electronic funds transfer, automatic draft from your financial institution or in cash through a company authorized agent. If you choose to make payment by means of electronic funds transfer or automatic draft, you must contact POLR Provider' Customer Service number above to begin those options for bill payment at no cost. Regardless of the payment method you select, all payments must be made within 16 calendar days of bill issuance. If POLR Provider does not receive payments by the end of the day on the due date, the bill will be considered delinquent and a late fee of 5% will be applied to all unpaid balances including pay-in-advance.

If you have had two or more personal checks returned for insufficient funds within the past 12 months, POLR Provider will require all further payments for electric service to be by cash, cashier's check or money order.

**10. FORCE MAJEURE**

POLR Provider shall not be liable in damages for any act or event that is beyond its control including but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, terrorism, wildlife, accident, breakdown or accident to machinery or equipment, or a valid curtailment order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, including any directive of the independent organization, and performance or nonperformance by the TDSP.

**11. LIMITATION OF LIABILITY AND INDEMNITY**

POLR PROVIDER DOES NOT GENERATE YOUR ELECTRICITY, NOR DOES POLR PROVIDER TRANSMIT OR DISTRIBUTE ELECTRICITY TO YOU. POLR PROVIDER WILL NOT BE LIABLE FOR FLUCTUATIONS, INTERRUPTIONS OR IRREGULARITIES IN BASIC FIRM SERVICE. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NEITHER YOU NOR THE POLR PROVIDER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE.

**12. REPRESENTATIONS AND WARRANTIES**

POLR PROVIDER WARRANTS THAT THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE "BASIC FIRM SERVICE" AS THAT TERM IS DEFINED IN PUCT SUBST. R. 25.43(c)(1), TO WIT "ELECTRIC SERVICE NOT SUBJECT TO INTERRUPTION FOR ECONOMIC REASONS AND THAT DOES NOT INCLUDE VALUE ADDED OPTIONS OFFERED IN THE COMPETITIVE MARKET. BASIC FIRM SERVICE EXCLUDES, AMONG OTHER COMPETITIVELY OFFERED OPTIONS, EMERGENCY OR BACK-UP SERVICE, AND STAND-BY SERVICE."

POLR PROVIDER MAKES NO OTHER WARRANTIES WHATSOEVER WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Figure: 16 TAC §25.43(f)(1)(D)**

**Figure: 16 TAC §25.43(f)(1)(D)**

**13. DISCRIMINATION**

POLR Provider will not refuse to provide electric service or otherwise discriminate in the provision of electric service to any customer based on race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, level of income, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

You have the right to cancel this agreement (Standard Terms of Service) for electric service without penalty or fee of any kind for a period of three federal business days after you have received the Standard Terms of Service. You may cancel your service and this agreement by calling the toll free Customer Service number during the hours stated in this Standard Terms of Service. Service may also be cancelled by toll-free fax or e-mail. ***Canceling this service agreement will result in disconnection of service if you have not made arrangements for alternative supply.***

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 §25.43 relating to Provider of Last Resort is hereby adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS the 10<sup>th</sup> day of JULY 2006.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PAUL HUDSON, CHAIRMAN**

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**JULIE PARSLEY, COMMISSIONER**

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**BARRY T. SMITHERMAN, COMMISSIONER**