

PROJECT NO. 35769

RULEMAKING RELATING TO § PUBLIC UTILITY COMMISSION
PROVIDERS OF LAST RESORT §
§ OF TEXAS

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §25.43
AS APPROVED AT THE NOVEMBER 5, 2008 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.43, relating to Provider of Last Resort (POLR). The proposed amendment (rule) modifies the structure and the mechanics of POLR service to reflect the experience gained from recent mass transitions of customers to the POLR during the summer of 2008 and account for changed circumstances in the competitive market. The proposed rule will strengthen the POLR structure in order to better protect customers in a mass transition and REPs that participate as POLR providers. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 35769 is assigned to this proceeding.

Ms. Christine Wright, Policy Analyst, Competitive Markets Division, has determined that for each of the first five years the amended rule is in effect, the enforcement and administration of the rule will not have a foreseeable impact on the costs or revenues of state or local governments.

Ms. Wright has also determined that for each of the first five years the rule is in effect the public benefits anticipated as a result of enforcing the rule will substantially outweigh any costs on persons required to comply with the rule. The rule will improve POLR service, by pricing POLR service at prices that better reflect the actual cost to provide the service, and create incentives for REPs to offer competitive market based rates to customers in transition. We believe this will

afford the POLR an opportunity of acquiring new customers, as opposed to simply providing temporary service to customers who may not pay the POLR for service. The rule will reduce the likelihood that customers in mass transition will be charged rates based on the market clearing price of energy (MCPE) in the spot market operated by the Electric Reliability Council of Texas (ERCOT).

During the summer of 2008, one or more REPs defaulted on their obligations to ERCOT, and the customers of those REPs had to be transitioned to other REPs, at times when the MCPE was high. Based on information gathered from market participants and other sources, Ms. Wright calculates that the MCPE during the summer varied from a low of (\$37.00) per MWh to a high of \$2250 per MWh. Transitions of customers occurred on May 19, May 30, June 7, June 13 and on July 3. The prices on May 19 ranged from (\$36.91) to \$2250 in ERCOT. The prices on May 30 ranged from (\$37.00) to \$1248.55 across ERCOT. On June 7, the prices ranged from \$41.60 to \$299.00 per MWh. On June 13, the prices ranged from \$26.71 to \$107.22 per MWh. And on July 3, the prices ranged from \$17.23 to \$213.16 per MWh. The rule allows the REPs greater flexibility in offering competitive market based rates to customers as they are acquired in a mass transition.

The economic costs to persons who are required to comply with the rule are associated with the acquisition of customers in a mass transition, and are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the public benefits accruing from implementation of the rule section will significantly outweigh these costs. The rule is intended to limit the costs to REPs by providing incentives for customers to stay with the new REP and

continue to take service. Significant costs to the REP occur when customers in transition do not pay their bills. Therefore, the rule is intended to encourage customers to stay with the new REP and establish a new relationship with the provider.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rule. Therefore, no regulatory flexibility analysis is required. Nevertheless, Ms. Wright has prepared an economic impact statement and regulatory flexibility analysis pursuant to Texas Government Code §2006.002. The commission has issued certificates to approximately 130 REPs. Approximately 30 of the 130 REPs (21%) are small or micro businesses. About half of the small and micro businesses are not currently serving customers. The small and micro businesses that are serving customers represent about \$25 million in combined annual revenues and about 0.53% of annual ERCOT load, and therefore mandatory service requirements proposed in the rule would not apply to those REPs.

Ms. Wright has also determined that for each year of the first five years the rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on the rule, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, January 9, 2009, at 10:00 am. The request for a public hearing must be received within 31 days after publication.

Initial comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 35769.

Additionally, the commission solicits comments on the following questions regarding the following:

- 1) The commission is considering a concept to provide a buffer to customers while they shop for a competitive retail electric offering following a mass transition event and to address bad debt incurred by emergency service providers. This concept would include the following elements:
 - (a) For an initial "limited period" (30 or 45 days) of time, a customer would be charged a specified rate that is lower than the emergency service rate set pursuant to the existing emergency service rule. The commission would post a rate for all emergency service providers on a monthly basis that would only be for mass transition customers.
 - (b) During that same time period, the customer would not be required to pay a deposit to the emergency service provider.

- (c) The emergency service provider would be reimbursed for any bad debt incurred for emergency service during the time period and for the difference between the emergency service rate set pursuant to the existing emergency service rule and the temporary lower rate charged to the mass transition customers during the specified initial period.
 - (d) At the end of the limited period of time, the regular emergency service rate would go into effect.
- 2) What is the appropriate source of funding to reimburse the emergency service providers for bad debt and the initial period rate differential?
 - 3) Should the commission consider any other concepts or mechanisms to address these issues? If so, please describe.
 - 4) Regarding the structure proposed for Mandatory Emergency Service Providers (MESPs), is the 2% of load the right amount? Should it be less than 2%? Should the number depend on size of REP?
 - 5) With respect to the methodology proposed for MCPE, is 120% of MCPE appropriate during times of extremely high prices? Should there be a different percentage of MCPE when prices are very high? If so, what should be the maximum MCPE percentage?

The rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 2007 and Supp. 2008) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.106, which requires that the commission designate retail electric providers of last resort; and PURA §39.101, which authorizes the commission to adopt and enforce rules that

ensure retail electric customer protections that entitle a customer: to safe, reliable, and reasonably priced electricity, to be served by a provider of last resort that offers a commission-approved standard service package, to be protected from unfair, misleading, or deceptive practices, to other information or protections necessary to ensure high-quality service to customers including minimum service standards relating to customer deposits and extension of credit, switching fees, levelized billing programs, termination of service, and quality of service, and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999.

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

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

(a) **Purpose.** The purpose of this section is to establish the requirements for emergency service and ensure that it is available to any requesting retail customer and retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer. ~~provider of last resort (POLR) 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 for 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** ~~Application; termination of service for non-payment.~~

~~(1) — The provisions of this section relating to the selection of REPs providing emergency service apply to all REPs that are serving retail customers. The remaining provisions apply~~ This section applies to REPs that ~~are~~ may be designated as providers in transmission and distribution (TDU) ~~POLRs in TDU~~ service areas in Texas under this section. This section does not apply when an

electric cooperative or a municipally owned utility (MOU) exercises its right to designate ~~an emergency provider~~~~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 ~~(r)~~~~(p)~~ of this section to select a ~~provider~~~~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) **Emergency service provider** -- A REP that may be required to provide emergency service pursuant to this section.~~

~~(5)~~(4) **Large non-residential customer** -- A non-residential customer, at the time of the transition to ~~emergency~~POLR service having a peak demand in the previous 12-month period at or above one megawatt (MW).

- ~~(6) **Large service provider (LSP)** -- A REP that may be required to provide emergency service pursuant to subsection (k) of this section.~~
- ~~(7) **Mandatory emergency service provider (MESP)** -- A REP that may be required to provide emergency service pursuant to subsection (j) of this section.~~
- ~~(8) **Mass Transition** -- The transition of ESI IDs from one REP to another provider, in large quantity.~~
- ~~(9) **(5) Medium non-residential customer** -- ~~A~~Beginning January 1, 2007, a non-residential retail customer, at the time of the transition to ~~emergency~~**POLR** service having a peak demand in the previous 12-month period of 50 kW or greater, but less than 1,000 kW.~~
- ~~(10) **Emergency (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~~ **blue** service consistent with subsection (j) of this section.~~
- ~~(8) **POLR area (ESA)** -- The service area of a TDU in an area where customer choice is in effect, except that the ~~service~~**POLR** area for AEP-Texas Central Company shall be deemed to include the area served by Sharyland Utilities, L.P.~~
- ~~(11) **Provider** -- A volunteer emergency service provider, a mandatory emergency service provider, or a large service provider.~~
- ~~(12)(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.

~~(13)~~ **Transitioned customer** -- An ESI ID that is served by a new provider under this section.

~~(14)~~ ~~(11)~~ **Small non-residential customer** -- A~~Beginning January 1, 2007,~~ a non-residential retail customer, at the time of the transition to emergency~~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.~~

~~(15)~~ **Voluntary emergency service provider (VESP)**~~(12)~~ ~~Volunteer POLR REP~~ -- A REP that has volunteered~~voluntarily agreed~~ to provide emergency~~POLR~~ service pursuant to~~consistent with~~ subsection (i) of this section.

(d) **Emergency~~POLR~~ service.**

~~(1)~~ There are three types of Emergency providers: voluntary emergency service provider (VESP), mandatory emergency service provider (MESP), and large service provider (LSP).

~~(2)(4)~~ For the purpose of EmergencyPOLR 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.

~~(3)~~ A Provider(2) ~~The POLRs~~ may be designated to serve any or all of the four customer classes in an ESAa ~~POLR area~~. Within the customer class it is designated to serve, the Providers may be required to ~~POLRs shall~~ provide service to the following customers:

- (A) Any customer requesting EmergencyPOLR service; and
- (B) Any customer assigned to the ProviderPOLR pursuant to a mass transition for the reasons described in subsection ~~(o)(n)(12)~~ of this section. ~~section;~~
and

~~(4)~~ A Provider(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 performed ~~provided~~ either by the ProviderPOLR or another entity as the Provider's agent); and);
- (D) Benefits for low-income customers as provided for under Public Utility Regulatory Act (PURA) ~~PURA~~ §39.903 relating to the System Benefit Fund. ~~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) A Provider~~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 Provider's~~POLR~~ customer billing for residential customers shall notify the customer that other competitive products or services may be available from the Provider~~POLR, a REP affiliated with the POLR,~~ or another competitive REP. ~~The notice~~REP, and shall also include contact information for the Provider~~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 an Emergency Provider~~POLR~~, the continuity of service purpose and the temporary nature of emergency~~POLR~~ service, ~~the need to choose a competitive product or provider,~~ and that more information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).
- (e) **Standards of service.**
- (1) A Provider~~REP who has been designated by the commission to serve as a POLR~~ for a class in a given emergency service~~POLR~~ area may be required to serve any

customer in that class requesting emergency service or assigned to the Provider pursuant to a mass transition shall serve any customer in that class as described in subsection (d)(2) of this section.

(2) A Provider shall serve any customer assigned to it pursuant to a mass transition, in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the Provider customer's class. A Provider may charge a rate less than the Emergency rate prescribed by this section as determined on the day of transition, if it is applied uniformly to all transitioned customers.

~~(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 Provider may market competitive products to customers assigned to it pursuant to a mass transition, on a non-discriminatory basis. A Provider shall make the same competitive products and services available to a transitioned customer as are available to similarly-situated non-transitioned customers. A Provider, in any marketing to the customer, shall make it clear that the customer has the right to switch to a different REP or take service from the Provider under a competitive product with a rate structure other than the emergency service rate, if the Provider

offers such a competitive product. A customer may agree to a long-term contract for non-emergency service with the Provider, but the Provider shall not represent to the customer that agreeing to a long-term contract is the only option to avoid the emergency service rate. If, based on a customer's choice, the Provider 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 product or service, the customer shall no longer be considered a transitioned customer.

~~(4)~~(3) A ~~Provider~~~~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 (relating to Customer Protection Rules for Retail Electric Service) 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, ~~a Provider~~~~the POLR~~ shall be held to the following general standards:

- (A) ~~A Provider~~~~The POLRs~~ shall inform any customer transferred to it, that the ~~Provider~~~~POLR~~ is now providing service to the customer and shall disclose all charges for which the customer will be responsible; and
- (B) ~~A Provider~~~~The POLRs~~ may not require that a customer sign up for a minimum term as a condition of ~~POLR~~ service, except that if the

~~Provider~~POLR offers a level or average payment plan in accordance with Subchapter R of this ~~chapter, a~~chapter. ~~A~~ residential or small or medium non-residential customer who elects ~~such a~~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 by a Provider under this section~~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.

(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 REPs providing emergency service~~ProvidersPOLRs~~ shall provide each new transitionedPOLR 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 providerPOLR 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 ProvidersPOLRs in areas of the state in which customer choice is in effect, except that the commission shall not designate ProvidersPOLRs in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated its ESAPOLR designation authority to the commission in accordance with subsection ~~(q)~~(p) of this section. The commission shall select REPs that will provide emergency service.
- (2) ~~ProvidersThe 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 emergencyPOLR 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 ProvidersPOLRs are initially selected in such areas.

- (h) **REP eligibility to serve as an emergency provider.** On a schedule to be determined by the commission~~POLR.~~ ~~In each even numbered year, beginning with 2006,~~ the commission shall determine the eligibility of certified REPs to serve as a Provider~~POLR~~ for the term scheduled to commence in January of the following~~next~~ year.
- (1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as Provider~~POLR~~ for the next ~~POLR~~-term. All REPs shall file, by July 10th, 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 REP's retail sales~~amount of MWhs the REP serves~~ in megawatt-hours for each transitioned ~~POLR~~-customer class for the annual period ending March 31 of the current year, and the retail sales of~~total number of MWhs sold by~~ all REPs in megawatt-hours for each ~~POLR~~-customer class for the annual period ending March 31 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 Provider~~POLR~~ under the provisions of this section shall not be considered confidential information.

- (2) Eligibility to be designated as a provider~~POLR~~ is specific to ESA~~POLR~~~~area~~ and customer class. A REP is eligible to be designated a Provider for~~provide~~~~POLR service to~~ a particular customer class in a TDU service~~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~~(d)~~ 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 retail sales~~MWhs—served~~ in the TDU service~~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;~~
- (H) 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 and opts may opt out of eligibility for either, or both of the small or medium non-residential customer classes; or
- ~~(I) The REP does not meet certain minimum financial qualifications established as determined by the commission under §25.107 of this title.~~
- (3) For each term 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 under this section for each customer class in each emergency service POLR area. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission submitting to commission staff additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove ~~illustrates and proves~~ the REPs assertion. Commission staff shall verify the additional documentation and, if accurate, reassess ~~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 ~~designation of Providers 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.~~

~~(4)(5) A standard form may be created for REPs to use in filing information concerning their determining REP eligibility to serve as a Provider POLR, that REPs may use to report necessary eligibility information.~~

- (i) ~~**VESP Volunteer POLR REP list.**~~ Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission shall post ~~the VESPs on its webpage. A REP may submit a request to be a VESP 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 ~~customers ESI IDs~~ as well as the ~~REP's REPs~~ current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of ~~customers ESI IDs~~ without technically or financially distressing the REP ~~and the specific information set out in this subsection.~~ 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 ~~VESP volunteer POLR REP~~, under the provisions of this section, shall not be considered confidential information.

- (1) A ~~VESP 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 ~~ESAPOLR area~~, and the number of ~~customers ESI IDs~~ the REP is willing to serve by customer class and ~~ESAPOLR area~~ in each transition event. For the large non-residential class, the REP may specify the maximum load that it is willing to serve.
- (2) A REP that has met the eligibility requirements of subsection (h) of this section ~~and provided shall be eligible for the volunteer POLR REP list contingent upon~~ the additional information ~~set out provided~~ in this subsection is eligible for designation as a VESP.
- (3) Commission staff shall make an initial determination of the REPs that are to serve as a VESP for each customer class in each emergency service area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional of its capability to serve as a VESP. Commission staff shall reassess the REP's eligibility and 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 designation of Providers.

- ~~(4) A VESP(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 ~~VESP~~volunteer POLR REP list or to modify the number of customers or load that ESI IDs it is willing to serve at any time. If the request is to increase the number of customers or load, it shall provide information to demonstrate that it is capable of serving the additional customers or load. The commission staff shall make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of customers or load, it shalltime, and such a request shall be effective ~~five~~30 calendar days after the request is filed with the commission. A ~~VESP~~volunteer POLR REP shall continue to serve ~~customers~~ESI IDs previously acquired through a mass transition event as well as ~~customers~~ESI IDs the ~~VESP~~volunteer POLR REP acquires from a mass transition event during the ~~five-day~~30-day notice period.

~~(5)~~ ~~(7)~~ ERCOT may challenge a ~~VESP's~~volunteer POLR REPs eligibility. If ERCOT has reason to believe that a REP is no longer capable of performing ~~VESP~~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 ~~VESPPOLR~~ 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 ~~VESPPOLR~~ service. No ESI IDs shall be assigned to a ~~VESPvolunteer POLR REP~~ after the commission staff initiates a proceeding to disqualify the ~~VESPvolunteer POLR REP's eligibility~~, unless the commission by order, confirms the ~~VESP's designationvolunteer POLR REP's eligibility~~.

~~(j) **MESPs.** All REPs that meet the eligibility criteria in subsection (h) of this section may be required to provide emergency service to transitioned customers as MESPs. Upon a request from a MESP and a showing that the MESP will be unable to maintain its financial integrity if customers are transferred to it under this section, the commission may relieve a MESP from a transfer of customers.~~

~~(k) **LSPs.** This subsection governs the selection and service of REPs as LSPs.~~

~~(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 ~~LSPsPOLRs~~ shall be determined based on the information provided by REPs in accordance with subsection (h) of this section.

(2) In each ~~emergency servicePOLR~~ area, for each ~~POLR~~ customer class, there shall be five ~~LSPsnon-volunteering POLR providers~~. The ~~LSPsnon-volunteering~~

~~POLR providers~~ shall be the five eligible REPs that have the greatest market share based upon ~~retail sales in megawatt-hours~~MWhs served, by customer class ~~and within the POLR~~ area. ~~Commission staff~~The commission's designee shall designate the ~~LSPs~~non-volunteering POLR providers by October 15, of the year preceding the ~~POLR~~ term, based upon the data submitted to the commission under subsection (h) of this section~~has at the time of the determination~~. Selection as a VESP or MESP ~~does not affect a REP's selection to also serve as a LSP~~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.~~

~~(3)~~(4) For the purpose of calculating the emergency service POLR rate for each customer class in each ~~POLR~~ area, ~~ana-POLR~~ EFL shall be completed by the ~~LSP 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.

~~(4) To the extent transitioned customers continue to receive service from an LSP under a rate prescribed by subsection (m)(3) of this section for more than 15 consecutive days following a mass transition, the LSP shall provide to the commission available contact information for customers. The commission may disseminate the contact information to REPs for the sole purpose of facilitating marketing to these customers subject to applicable privacy and other laws. Disclosure of customer information pursuant to this subsection shall not constitute a violation of §25.472 of this title (relating to Privacy of Customer Information).~~

~~(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 an LSP~~a non-volunteering POLR provider~~ and a showing that the LSP~~non-volunteering POLR provider~~ will be unable to maintain its financial integrity if it is allocated additional ~~POLR~~ customers, the commission may~~shall~~ relieve an LSP~~a non-volunteering POLR provider~~ from the allocation of ~~any such~~ additional customers. The LSP~~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 emergency~~POLR~~ service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP~~non-volunteering POLR provider~~ is relieved of its responsibility, commission staff~~the commission's~~ designee may, with 90 days' notice, designate the next eligible REP as an LSP~~a non-volunteering POLR provider~~, based upon the criteria in this subsection~~paragraph (2) of this subsection~~.~~

(1) **Transfer of customers to Providers.** If ERCOT transfers customers to Providers, ERCOT shall first transfer customers to VESPs, up to the number of customers that each VESP has offered to serve. If the number of customers in the ESA to be transferred less the aggregate limit that VESPs have offered to serve and does not exceed two percent of the number of customers in the ESA for a class that MESP's serve, any remaining customers shall be assigned to MESP's. If the number of customers to be transferred in the ESA exceeds the aggregate limit that the VESPs have offered to serve plus two percent of the number of customers for a class that MESP's serve, ERCOT shall transfer any customers remaining after the transfers to VESPs and LSPs but shall not assign customers to MESP's.

- (1) If the number of customers does not exceed the amount that the VESPs have offered to serve, ERCOT shall assign customers to the VESPs in ascending order of the price per kilowatt-hour offered by each VESP. If multiple VESPs offer the same price, then ERCOT shall assign the customers to the VESPs offering the same price on a random basis.
- (2) If the number of customers exceeds the amount that the VESPs have offered to serve, ERCOT shall assign customers to MESPs, within a class and service area, on a random basis.
- (3) ERCOT shall assign customers to MESPs, within a class and service area, on a random basis.
- (4) ERCOT shall assign customers to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and service area.

(m) **Rates.**

- (1) A VESP or MESP shall charge its customers a market-based, month to month service plan that it currently offers to new customers in the customer class.
- (2) Each VESP and MESP shall post its market-based month to month service plan on the commission's Power to Choose website or provide a description of the service and rate to the commission and ERCOT.
- (3) The provisions of this subsection establish the maximum rate for a LSP.

~~(k) **POLR rate.**~~

(4) ~~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 LSPPOLR rate for the residential customer class shall be determined by the following formula:

LSPPOLR rate (in \$ per kWh) = (Non-bypassable charges + LSPPOLR customer charge + LSPPOLR 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 LSPPOLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and ~~kWKW~~ used, where appropriate.
- (ii) LSPPOLR customer charge shall be \$0.06 per kWh.
- (iii) LSPPOLR 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 120%~~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 LSPPOLR rate for the small and medium non-residential customer classes shall be determined by the following formula:

$$\begin{aligned} \text{LSPPOLR rate (in \$ per kWh)} = & (\text{Non-bypassable charges} + \text{LSPPOLR customer charge} \\ & + \text{LSPPOLR demand charge} + \text{LSPPOLR energy charge}) / \text{kWh used} \end{aligned}$$

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 LSPPOLR load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kWKW used, where appropriate.
- (ii) LSPPOLR customer charge shall be \$0.025 per kWh.
- (iii) LSPPOLR 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) LSPPOLR 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 120%-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 LSPPOLR rate for the large non-residential customer class shall be determined by the following formula:

$$\begin{aligned} \text{LSPPOLR rate (in \$ per kWh)} = & (\text{Non-bypassable charges} + \text{LSPPOLR customer charge} \\ & + \text{LSPPOLR demand charge} + \text{LSPPOLR energy charge}) / \text{kWh used} \end{aligned}$$

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 LSPPOLR load, and applicable taxes from various

taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

- (ii) ~~LSPPOLR~~ customer charge shall be \$2,897.00 per month.
- (iii) ~~LSPPOLR~~ demand charge shall be \$6.00 per kW, per month.
- (iv) ~~LSPPOLR~~ energy charge shall be the appropriate MCPE, determined on the basis of 15-minute intervals, for the customer multiplied by ~~120%, 130%, multiplied by~~ the level of ~~kilowatt-hours used, plus line losses and ancillary services~~ kWh used. The ~~energy charge~~ MCPE shall have a floor of \$7.25 per MWh.

~~(4)(2)~~ If in response to a complaint or upon its own investigation, the commission determines that a ~~LSPPOLR~~ failed to charge the appropriate ~~LSPPOLR~~ rate, and as a result overcharged its customers, the ~~LSPPOLR~~ shall issue refunds to the specific customers who were overcharged.

~~(5)(3)~~ On a showing of good cause, the commission may permit the ~~LSPPOLR~~ to adjust the ~~LSPPOLR~~ rate, if necessary to ensure that the rate is sufficient to allow the ~~Provider~~ POLR to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, ~~LSPPOLR~~ 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 ~~LSPPOLR~~ rate shall be applicable to all ~~LSPPOLR~~ providers charging the ~~LSPPOLR~~ rate to the specific customer class, within the ~~LSPPOLR~~ area that is subject to the showing of good cause.

~~(6)~~(4) Customer and demand charges associated with ~~LSP~~~~POLR~~ service shall not be pro-rated for partial month usage if a customer switches away from the ~~LSP~~~~POLR~~ to a REP of choice.

~~(n)~~(+) **Challenges to ~~customer~~~~ESI-ID~~ assignments.** A ~~Provider~~~~POLR~~ is not obligated to serve a ~~customer~~~~an~~ ~~ESI-ID~~ within a customer class or ~~an~~~~POLR~~ area for which the ~~REP~~~~POLR~~ is not designated as a ~~Provider~~~~POLR~~, after a successful challenge of the ~~customer~~~~ESI-ID~~ assignment. A ~~Provider~~~~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 ~~Provider~~~~POLR~~ for the ~~customer~~~~ESI-ID~~ is determined appropriate, the ~~customer~~~~ESI-ID~~ will then be served by the appropriate ~~Provider~~~~POLR~~. Back dated transactions may be used to correct the ~~Provider~~~~POLR~~ assignment.

~~(o)~~(m) **Limitation on liability.** The ~~Providers~~~~POLRs~~ will make reasonable provisions to provide ~~POLR~~ service under this section to customers who request ~~emergency~~~~POLR~~ service, or are ~~transferred to the Provider~~~~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.

(1) Neither the customer nor the ~~emergency~~~~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.

~~(2)~~—In no event shall ERCOT or a Provider~~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 Provider~~to carry out this section~~~~POLR for POLR service~~, or for marketing, offering or providing competitive retail electric service to a customer taking ~~POLR~~ service under this section from the Provider~~POLR or being transitioned to the POLR, in compliance with this title~~.

~~(p)(m)~~ **Transition of customers to emergency~~POLR~~ service.**

(1) A customer may initiate service with a non-volunteer Provider by making arrangements for service under this section at the rate prescribed by subsection (m) of this section with any Provider that is designated~~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 service~~POLR~~ area. A Provider~~POLR~~ cannot refuse a customer's request to make arrangements for emergency service, except as otherwise permitted under this title~~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.~~

~~(2)(4)~~ The ProviderPOLR 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 under this section at the ~~POLR~~ rate in effect at that time.

~~(3)(5)~~ If a REP terminates service to a customer, or transitions a customer to a ProviderPOLR, 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 ProviderPOLR is complete.

~~(4)~~(6) The ProviderPOLR 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 ceases taking leaves POLR service under this section.

~~(5)~~(7) A REP whose customers are transitioned to an emergency service provider POLRs shall return ~~the any unused portion of a~~ transitioned customer's deposit within seven calendar days of the transition receiving an actual or estimated meter read supplied by the TDU.

~~(6)~~(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 ProvidersPOLRs 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.~~

~~(7)~~(9) When customers are to be transitioned to a ProviderPOLR, the ProviderPOLR may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the ProviderPOLR ~~provider~~ has been initiated (either by the ProviderPOLR ~~provider~~ or by ERCOT). Customer proprietary information provided to a ProviderPOLR in accordance with this section shall be treated as confidential ~~by the POLR~~ and shall only be used for mass transitionPOLR related purposes.

~~(8)~~(10) Information from the TDU and ERCOT to the ProvidersPOLRs shall be provided in Texas SET format. However, the TDU or ERCOT may supplement the information to the ProvidersPOLRs 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.

~~(9)~~(11) A ProviderPOLR may require a deposit from a customer that has been transitioned to the ProviderPOLR to continue to serve the customer once the ProviderPOLR has begun serving the customer. Despite the lack of a deposit, the ProviderPOLR 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 ProviderPOLR may make the request for the deposit before ~~it the POLR~~ begins serving the customer, but the ProviderPOLR shall begin providing service

to the customer even if the service initiation date is before ~~it~~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 ProviderPOLR may require a deposit to be provided in three calendar days. The ProviderPOLR may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. The ProviderPOLR shall waive the deposit requirement for residential customers if the customer meets the qualifications ~~set out~~listed in section 2. SECURITY AND BILLING, of the Standard Terms of Service.

~~(10)~~(42) On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to the ProvidersPOLR~~providers~~, of all of the customersESIIDs served by a REP, as of the date the mass transition is ~~initiated~~initiated.

- (A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;
- (B) Issuance of a commission order~~Order~~ declaring a REP in default of Tariff for Retail Delivery Service;
- (C) Issuance of a commission order~~Order~~ de-certifying a REP;
- (D) Issuance of a commission order~~Order~~ requiring a mass transition to emergency servicePOLR providers;
- (E) Issuance of a judicial order~~Order~~ requiring a mass transition to emergency servicePOLR providers; and
- (F) At the request of a REP, for the mass transition of all of that REP's customersESIIDs ~~(customers)~~.

~~(11)(13)~~A REP shall not use the mass transition process in this section as a means to ~~cease providing service to some customers, eliminate non-profitable contracts,~~ while retaining ~~other customers~~~~profitable contracts~~. A REP's ~~improper~~ use of the mass transition process may lead to de-certification of the REP.

~~(12)(14)~~ERCOT may provide procedures for the mass transition process, consistent with this section.

~~(13)(15)~~~~A mass transition under this section~~ ~~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, ~~if the request that~~ was made before a mass transition ~~to POLR~~ is initiated, unless the customer choice switch is scheduled for any date ~~after other than~~ the next available switch date.
- (14) ERCOT shall create a new transaction for customers in mass-transition no later than January 31, 2010.
- ~~(15)~~ ~~(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 ProviderPOLR or away from a ProviderPOLR to a REP of choice, the switch notification notice detailed in §25.474(l) of this title is not required.
- ~~(16)~~(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 a ProviderPOLR 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 not be

charged to the exiting REP or the Provider acquiring a transitioned customer. The TDU will not charge for out-of-cycle meter reads for customers that are transitioned to and from Providers. The TDU may create a regulatory asset to account for the costs of out-of-cycle meter reads~~be charged to the exiting competitive REP.~~

~~(q)(6)~~ **Termination of emergency provider~~POLR~~ status.**

- (1) The commission may revoke a REP's Provider~~POLR~~ status after notice and opportunity for hearing:
 - (A) If the Provider~~POLR~~ fails to maintain REP certification;
 - (B) If the Provider~~POLR~~ fails to provide service in a manner consistent with this section;
 - (C) For other good cause~~good cause, provided the commission affords the POLR due process~~; or
 - (D) The Provider~~POLR~~ fails to maintain appropriate financial qualifications.
- (2) If an MESP or LSP Provider~~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 Provider~~POLR~~, consistent with subsection ~~(k)(5)(j)(6)~~ of this section.
- (3) The provisions of this paragraph address the transition to a new Provider~~POLR~~ at the end of a ~~POLR~~ term.
 - (A) At the end of the emergency service~~POLR~~ term, the outgoing Provider~~POLR~~ may ~~choose~~ either to continue to serve ~~POLR~~ customers who do not select another provider through a competitive

product or service provided by the outgoing ~~ProviderPOLR or a REP affiliated with the outgoing ProviderPOLR~~ or to transfer the customers who do not select another provider to ~~an~~the incoming ~~ProviderPOLR~~ on the first meter read date after the term of the incoming ~~ProviderPOLR~~ 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 ~~ProviderPOLR~~ for the customer to call to obtain more information.
- (C) The notice provided by a ~~ProviderPOLR~~ that elects to transfer customers who fail to switch to another provider, to a competitive product or service provided by the outgoing ~~Provider~~ shall include a description of the rate, terms and conditions of the service to which the customers will be switched, and that other competitive products or services may be available ~~from~~~~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 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 ProviderPOLR or a REP affiliated with the outgoing ProviderPOLR. The notice shall specify the deposit requirements of the outgoing ProviderPOLR or REP affiliated with the outgoing ProviderPOLR 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 ProviderPOLR elects to transfer customers who do not select another provider, to the incoming ProviderPOLR on the first meter read date after the term of the incoming ProviderPOLR 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 ProviderPOLR. 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 ~~Provider~~~~POLR~~ on the first meter read date after the commencement of the ~~POLR~~-term. The notice shall also inform the customer that the incoming ~~Provider~~~~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 ~~Provider~~~~POLR~~.

- (E) If a ~~POLR~~-customer either requests service from the incoming ~~Provider~~~~POLR~~ or is ~~transferred~~~~terminated~~ to the incoming ~~Provider~~~~POLR~~ by the outgoing ~~Provider~~~~POLR~~, the outgoing ~~Provider~~~~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. ~~An eligible~~~~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).

~~(r)(p)~~ **Electric cooperative delegation of authority.** An electric cooperative that has adopted customer choice may ~~select~~~~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 an emergency provider~~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.

~~(s)(q)~~ **Reporting requirements.** Each LSP~~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 ~~(4)~~(5) of this subsection, information filed by an LSP~~a POLR~~ in accordance with paragraphs ~~(1)-(3)~~(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~~ LSP ~~month of the reporting quarter, each POLR~~ shall report the total number of new customers acquired by the LSP under this section ~~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 (relating to Rate Reduction Program);

- (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.

~~(2)(3)~~ For each month of the reporting quarter each LSPPOLR 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 LSPPOLR;
- (C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

- (D) The average amount owed to the ~~LSP~~~~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.

~~(3)~~(4) For the entirety of the reporting quarter, each ~~LSP~~~~POLR~~ shall report, for each ~~customer~~~~ESI-ID~~ that received ~~emergency~~~~POLR~~ service, the TDU and ~~POLR~~ customer class associated with the ~~customer's~~ ESI ID, the number of days the ~~customer~~~~ESI-ID~~ received ~~emergency~~~~POLR~~ service, and whether the ~~customer~~~~ESI-ID~~ is currently ~~an LSP's~~~~a~~~~POLR~~ customer.

~~(4)~~(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.

(t)(+) **Notice of Transition to EmergencyPOLR Service.** When a customer is moved to emergencyPOLR service, the customer will be provided notice of the transition by ERCOT, the REP transitioning the customer ~~and as well as~~ by the ProviderPOLR. Notice shall be provided within two days of the time ERCOT and as soon as the transitioning REP ~~know that~~ knows the customer will be transitioned ~~and to POLR service and as soon as the POLR has the~~ customer contact information is available. If ERCOT cannot provide notice to customers within two days, it shall provide notice as soon as practicable.

(1) Notice methods shall include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT shall notify transitioned customers by all reasonable means including, but not limited to, automated phone-calls and emails as available. ERCOT shall study the effectiveness of the notice methods used and report the results to the commission. ~~The notice of transition to POLR service shall include, at a minimum the following items:~~

(2) (+) Notice by the REP transitioning the customer shall include;

- (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 ProviderPOLR that will disclose the date the ProviderPOLR will begin serving the customer;
- (D) Either the customer's deposit plus accrued interest, or a statement that the deposit will be returned within seven days of the transition ~~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 the assigned POLR service by choosing a competitive product or service offered by the Provider 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, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;”

~~(E)(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 another REPPOLR, 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, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);

~~(G)(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

~~(H)(4)~~ Notice to the customer that after being transitioned to emergencyPOLR 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.~~

~~(3)(2)~~ Notice by the Provider shall include POLR:

- (A) The date the ProviderPOLR will begin serving the customer and a contact number for the ProviderPOLR;
- (B) A description of the Provider’s ratePOLR pricing mechanism for ~~the appropriate customer class and service~~ and, in the case of a notice from a non-volunteering provider, 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 ProviderPOLR, a REP affiliated with the ProviderPOLR, or another competitive REP, a deposit may be required;

- (D) A statement that the competitive products or services may be available through the ProviderPOLR, a REP affiliated with the ProviderPOLR, or another competitive REP, and the customer can leave Provider'sPOLR service by choosing a competitive product or service offered by the ProviderPOLR, a REP affiliated with the ProviderPOLR, 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, 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 from a Provider, 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 ProviderPOLR, 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 the ProviderPOLR, the continuity of

service purpose under this section ~~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 or toll-free 1-866-PWR-4-TEX (1-866-797-4839); ~~and~~.

(J) For residential customers that are transitioned to service based on the pricing in subsection (m)(3) of this section and those customers do not choose an alternative product from the Provider or switch to another REP, that proprietary information will be made available to competitive REPs for marketing purposes.

(u)(s) Disconnection by a ProviderPOLR. The ProviderPOLR 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 under this section shall begin when the customer's ESI ID transition to the ProviderPOLR is complete. A customer deposit is not a prerequisite for the initiation of ~~POLR~~-service under this section. 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.

(v) Reporting by REPs. All REPs shall provide to ERCOT a monthly report containing valid customer information. This information shall include ESI ID, service address, phone number, email address, and customer name. A REP is subject to enforcement action for failure to provide a report or failure to provide accurate information. The

commission shall establish a procedure in order to verify customer information submitted by REPs to ERCOT. ERCOT shall notify the commission if any REP fails to comply with the reporting requirements in this subsection.

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

**ISSUED IN AUSTIN, TEXAS ON THE 10th DAY OF NOVEMBER 2008 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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