

PROJECT NO. 37034

PROJECT TO IMPLEMENT TERMS	§	PUBLIC UTILITY COMMISSION
OF SERVICE AND NOTIFICATION	§	
DOCUMENTS PURSUANT TO	§	OF TEXAS
SUBST. R. §25.43	§	

**ORDER ADOPTING AMENDMENT TO §25.43
AS APPROVED AT THE FEBRUARY 11, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts the amendment of §25.43, relating to Provider of Last Resort with changes to the proposed text as published in the October 23, 2009 issue of the *Texas Register* (34 TexReg 7278). The amendment replaces the Terms of Service (TOS) required by §25.43(f)(1)(A)-(D). The POLR rule establishes the requirements for POLR service and ensures that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) as a result of the customer's REP having failed to either provide service to the customer or meet its obligations to ERCOT. The amendment adopts new documents describing the terms of POLR service that REPs serving as POLRs must provide. These new documents comport with amendments to §25.43 made by the commission in Project Number 35769, *Rulemaking Related to Providers of Last Resort*. The rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 37034 is assigned to this proceeding.

In its Proposal for Publication, the commission stated that a public hearing would be held in this proceeding if requested. As no request for a hearing was received, none was held.

The commission received initial comments on its Proposal for Publication from the following: Direct Energy, L.P., First Choice Power, Green Mountain Energy Company, Gexa Energy, L.P., and Stream Energy, collectively as the Association of Retail Marketers (ARM); Accent Energy, Amigo Energy, Cirro Energy, Green Mountain Energy Company, Hudson Energy, Just Energy, StarTex Power, Stream Energy, Tara Energy, and TriEagle Energy, collectively as the Texas Electric Association of Marketers (TEAM); TXU Energy Retail Company LLC; CPL Retail Energy; Integrys Energy; Reliant Energy Retail Services LLC; and WTU Retail Energy. All of the foregoing will be referred to as the “Retail Electric Companies.”

The commission received combined reply comments from all of the aforementioned companies except: Just Energy, Integrys Energy, and TXU Energy Retail Company LLC. The authors of the reply comments will be referred to as the “Subsequent Commenters.”

The commission received numerous comments throughout the documents that LSP should be used instead of POLR.

Commission response

The commission concurs and makes changes to the documents.

STANDARD TERMS OF SERVICE (All Customer Classes)

3. SERVICE CHARGES AND FEES

The Retail Electric Companies argued that the table describing fees should be deleted or left at the option of the REP, saying that these details may be disclosed in the Electric Facts Label or

the REP may point customers to the Terms of Service Document. Alternatively, they suggested that the table could be modified to allow the REP to refer to “the applicable TDU tariff” or similar language, owing to the complexity of fees which vary among TDUs.

Commission response

The commission declines to adopt either proposed alternative. Consistent with §25.475(g)(3)(B), the POLR Terms of Service shall list all fees that may be charged to the customer.

The Retail Electric Companies commented that fee language regarding “Unmetered Guardlights and Security Lighting” and “Guardlights and Security Lighting” is no longer consistent with commission rules and should be deleted.

Commission response

The commission concurs and adopts the proposed deletion.

The Retail Electric Companies argued that the “right to cancel” section should be deleted, stating that they see no positive result to the customer who exercises this right. They cite §25.43(o)(2), making the customer responsible for POLR charges as support for their argument.

Commission response

The commission concurs and deletes the language referring to a right to rescission. Customers are transferred to a POLR to ensure continuity of electric service, and are

responsible for payment for power consumed under §25.43(o)(2) once they have been transferred to POLR service. This being the case, and given the fact that a POLR customer may cancel the POLR service at any time without further liability, an option to rescind has no benefit beyond what is already available.

STANDARD TERMS OF SERVICE (Residential)

2. SECURITY

The Retail Electric Companies noted that this section contains a subsection (a) but no (b), and suggested that this be corrected by either eliminating the subsection (a) designation or designating the opening paragraph as (a) and then re-designating the current (a) as (b).

Commission response

The commission adopts the Retail Electric Companies' recommendations to eliminate the subsection designation.

CASH DEPOSIT

1)

The Retail Electric Companies commented that it was unclear what would be required to satisfy the term "exact" with regard to conditions for charging a deposit in the residential terms of service (TOS). They said that a requirement for specificity in this regard would reveal company-specific information that would be beneficial to competitors, and that there was no clear reason for this term to be present in the residential but not the small commercial TOS. They

recommended that the term be deleted altogether, or in the alternative, that these two terms be removed.

Commission response

The commission agrees with the Retail Electric Companies that detailing the exact method for requiring a deposit is unnecessary. The terms of service specify limits concerning deposits. Therefore the commission does not require the REP to list “exact” conditions for charging a deposit.

3)

The Retail Electric Companies noted that customers who have applied for LITE UP service (distinct from customers who are already enrolled for LITE UP service) may pay the initial cash deposit in two installments if the deposit exceeds fifty dollars. They said that there was no such provision for non-POLR service, and it should not be applied for POLR service. They further noted that, while there is a mechanism for identifying enrolled LITE UP customers, this is not true for those who have applied but are not yet enrolled. They opined that there is no sound policy reason to require additional benefits for LITE UP applicants using POLR service as opposed to regular service.

Commission response

The commission concurs and strikes this provision for LITE UP applicants.

**3. BILLING,
7. LENGTH OF AGREEMENT, and
10. BILL PAYMENT METHODS**

In connection with this paragraph, paragraph 7, Length of Agreement, and paragraph 10, Bill Payment Methods, the Retail Electric Companies contended that levelized payment plans are inappropriate for POLR service because POLR service is intended for short-term use, the LSP is encouraged to offer competitive alternative rates to move the customer off POLR service as soon as possible, and the POLR rate for a given month is not known until the bill is rendered. They thus recommended that references to levelized billing plans for POLR service be deleted. As an alternative, they suggested that customers requesting levelized payment plans be informed of the option to select a competitive product with the LSP.

Commission response

The commission concurs and adopts the Retail Electric Companies' proposed language.

STANDARD TERMS OF SERVICE (Small Non-Residential Service)

(iv)

The Retail Electric Companies noted that the phrase “multiplied by the level of kWh used” had been used redundantly.

Commission response

The commission concurs and deletes the redundancy.

STANDARD TERMS OF SERVICE (Medium Non-Residential Service)**(iv)**

The Retail Electric Companies noted that the phrase “multiplied by the level of kWh used” had been used redundantly.

Commission response

The commission concurs and deletes the redundancy.

STANDARD TERMS OF SERVICE (Large Non-Residential Service)**7.**

The Retail Electric Companies opined that the waiver of certain customer protection laws that is offered for medium non-residential POLR customers should be offered to large non-residential POLR customers as well, arguing that there is no reason that this should not be the case, and suggested that the omission of a waiver for large non-residential POLR customers was inadvertent.

Commission response

The commission concurs and adopts the language suggested by the Retail Electric Companies.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of

its powers and jurisdiction; §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, 17.004, 39.101, and 39.106.

§25.43. Provider of Last Resort (POLR).

- (a) **Purpose.** The purpose of this section is to establish the requirements for Provider of Last Resort (POLR) service and ensure that it is available to any requesting retail customer and any 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 or failed to meet its obligations to the independent organization.
- (b) **Application.** The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (q) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).
- (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 electric 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 the customer’s meter.
- (4) **Business day** -- As defined by the ERCOT Protocols.
- (5) **Large non-residential customer** -- A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).
- (6) **Large service provider (LSP)** -- A REP that is designated to provide POLR service pursuant to subsection (j) of this section.
- (7) **Market-based product** -- For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (1)(2) of this section is not a market-based product.
- (8) **Mass transition** -- The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

- (9) **Medium non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.
 - (10) **POLR area** -- The service area of a TDU in an area where customer choice is in effect, except that the service area for AEP Texas Central Company shall be deemed to include the area served by Sharyland Utilities, L.P.
 - (11) **POLR provider** -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.
 - (12) **Residential customer** -- A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.
 - (13) **Transitioned customer** -- A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.
 - (14) **Small non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.
 - (15) **Voluntary retail electric provider (VREP)** -- A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.
- (d) **POLR service.**
- (1) There are two types of POLR providers: VREPs and LSPs.
 - (2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.

- (3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.
- (4) A POLR provider shall offer a basic, standard retail service package to customers it is designated to serve, which shall be limited to:
 - (A) Basic firm service;
 - (B) Call center facilities available for customer inquiries; and
 - (C) Benefits for low-income customers as provided for under PURA §39.903 relating to the System Benefit Fund.
- (5) A POLR provider 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), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.
- (6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (1)(2) of this section shall contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice shall also include contact information for the LSP, and the Power to Choose website, and shall include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to a LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) **Standards of service.**

- (1) An LSP designated to serve a class in a given POLR area shall serve any eligible customer requesting POLR service or assigned to the LSP 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. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (1)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.
- (2) A POLR provider shall abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), 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. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).

(f) **Customer information.**

(1) The Standard Terms of Service prescribed in subparagraphs (A)-(D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (1)(2) of this section.

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

Figure: 16 TAC §25.43(f)(1)(A)

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

Figure: 16 TAC §25.43(f)(1)(B)

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

Figure: 16 TAC §25.43(f)(1)(C)

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

Figure: 16 TAC §25.43(f)(1)(D)

(2) An LSP providing service under a rate prescribed by subsection (1)(2) of this section shall provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service shall be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) **General description of POLR service provider 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 POLR providers in areas of the state in which customer choice is in effect, except that the commission shall not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (q) of this section.
- (2) POLR providers shall serve two-year terms. 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 POLR providers are initially selected in such areas.

- (h) **REP eligibility to serve as a POLR provider.** In each even-numbered year, the commission shall determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year. On a schedule to be determined by the commission, POLR providers shall be designated to complete the 2009-2010 period pursuant to the requirements of this section. REPs designated to provide service as of February 26, 2009 may continue providing such service pursuant to the requirements of this section as they existed prior to the 2009 re-adoption of this section, until such time as new POLR providers are required to provide service pursuant to the current requirements of this section. POLRs may serve customers on a market-

based, month-to-month rate and provide notice pursuant to the provisions of this section as of this section's effective date.

- (1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as a POLR provider for the next term, except that for the 2009-2010 term, the information already provided for that term shall serve this purpose. Starting with the 2011-2012 term REPs shall file, by July 10th, of each even-numbered year, by service area, information on the classes of customers they provide service to, and for each customer class, the number of ESI IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. The independent organization shall provide to the commission the total number of ESI ID and total MWh data for each class. All REPs shall also provide information on their technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section shall not be considered confidential information.
- (2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for 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 of this title (relating to Certification of Retail Electric Providers (REPs));

- (B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWs 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 term;
- (D) On the date of the commencement of the term, the REP or its predecessor 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 executed delivery service agreement with the service area TDU;
- (F) The REP is certificated as an Option 2 REP under §25.107 of this title;
- (G) The REP's customers are limited to its own affiliates;
- (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 out of eligibility for either, or both of the small or medium non-residential customer classes; or
- (I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.

- (3) For each term, the commission shall publish the names of all of the REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and shall provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove the REP's assertion. Commission staff shall verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff shall notify the REP of any change in eligibility status within 10 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 POLR providers.
- (4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.
- (5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff shall review the filing, and 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 POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.

- (i) **VREP list.** Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission shall post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, 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 as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, shall not be considered confidential information.
 - (1) A VREP 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 and provided the additional information set out in this subsection is eligible for designation as a VREP.
- (3) Commission staff shall make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR 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 evidence of its capability to serve as a VREP. Commission staff shall reassess the REP's eligibility and notify the REP of any change in eligibility status within 10 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 VREPs.
- (4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it shall provide information to demonstrate that it is capable of serving the additional ESI IDs, and 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 ESI IDs, the request shall be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP shall continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires

from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff shall be communicated to ERCOT and shall be implemented for the current allocation if possible.

- (5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff shall review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP 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 VREP service. No ESI IDs shall be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.
- (j) **LSPs.** This subsection governs the selection and service of REPs as LSPs.

- (1) The REPs eligible to serve as LSPs 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 customer class, the commission shall designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area shall be designated as LSPs. Commission staff shall designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as a LSP.
- (3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL shall be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) shall be supplied to commission staff electronically for placement on the commission webpage by January 1 of each year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL shall note that such information is REP-specific.
- (4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (1)(2) of this section shall move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class

and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

- (A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (s)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (s)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product shall be provided at a later time, but no later than 14 days before their effective date.
- (B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP shall move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP shall inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.
- (5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under

this section, the commission may relieve an LSP from a transfer of additional customers. The LSP shall continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee shall, with 90 days notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) **Mass transition of customers to POLR providers.** The transfer of customers to POLR providers shall be consistent with this subsection.

(1) ERCOT shall first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT shall use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP shall not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT shall:

- (A) Sort ESI IDs by POLR area;
- (B) Sort ESI IDs by customer class;
- (C) Sort ESI IDs numerically;
- (D) Sort VREPs numerically by randomly generated number; and
- (E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i)

of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP shall be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each VREP indicated it was willing to serve by the total that all VREPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number.

- (2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT shall assign remaining ESI IDs 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 POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area shall be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT shall:
 - (A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;
 - (B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;
 - (C) Sort ESI IDs in excess of the allocation to VREPs, numerically;
 - (D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;
 - (E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area

and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;

(F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and

(G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.

(3) Each mass transition shall be treated as a separate event.

(1) **Rates applicable to POLR service.**

(1) A VREP shall provide service to customers using a market-based, month-to-month product. The VREP shall use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.

(2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) **Residential customers.** The LSP rate for the residential customer class shall be determined by the following formula:

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

Where:

- (i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge shall be \$0.06 per kWh.
- (iii) LSP 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%.
- (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 LSP 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 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(B) **Small and medium non-residential customers.** The LSP rate for the small and medium non-residential customer classes shall be determined by the following formula:

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

Where:

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

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

- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP 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) LSP 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 125%.
- (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 LSP 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 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

- (C) **Large non-residential customers.** The LSP rate for the large non-residential customer class shall be determined by the following formula:

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

Where:

- (i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, replacement reserve charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$2,897.00 per month.
- (iii) LSP demand charge shall be \$6.00 per kW, per month.

- (iv) LSP energy charge shall be the appropriate MCPE, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge shall have a floor of \$7.25 per MWh.
- (3) If in response to a complaint or upon its own investigation, the commission determines that a LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP shall issue refunds to the specific customers who were overcharged.
- (4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate shall be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.
- (5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection shall be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

- (m) **Challenges to customer assignments.** A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider 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 provider for the customer is determined appropriate, the customer shall then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.
- (n) **Limitation on liability.** The POLR providers shall make reasonable provisions to provide service under this section to customers who request POLR service, or are transferred to the POLR provider, 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 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 POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail

electric service to a customer taking service under this section from the POLR provider.

(o) **REP obligations in a transition of customers to POLR service.**

- (1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (1)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.
- (2) The POLR provider 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 service under this section at the rate in effect at that time.
- (3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP 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 provider is complete.
- (4) The POLR provider 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 service under this section.
- (5) A defaulting REP whose customers are subject to a mass transition event shall return the customers' deposits within seven calendar days of the initiation of the transition.

- (6) 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 periodic testing. The commission shall establish a procedure for the verification of 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.
- (7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider 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 POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section shall be treated as confidential and shall only be used for mass transition related purposes.
- (8) Information from the TDU and ERCOT to the POLR providers shall be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section shall not constitute a violation of the customer protection rules that address confidentiality.

- (9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider 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 provider may make the request for deposit before it begins serving the customer, but the POLR provider shall begin providing service to the customer even if the service initiation date is before it receives the deposit – if any deposit is required. A POLR provider 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 provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it shall determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider shall not request a deposit from the residential customer.

- (A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director shall distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. These funds shall first be used to provide deposit payment assistance for transitioned customers enrolled in the rate reduction program pursuant to §25.454 of this title (relating to Rate Reduction Program). The Executive Director or staff designee shall, at the time of a transition event, determine the reasonable deposit amount up to \$400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above \$400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, shall satisfy in full the customers' initial deposit obligation to the VREP or LSP.
- (B) The Executive Director or the staff designee shall distribute available proceeds pursuant to §25.107(f)(6) of this title to VREPs proportionate to the number of customers they received in the mass transition, who at the time of the transition are enrolled in the rate reduction program pursuant to §25.454 of this title, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds shall be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

- (C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference shall be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits) that allows an eligible customer to pay its deposit in two equal installments provided that:
- (i) The amount distributed shall be considered part of the first installment and the VREP or LSP shall not request an additional first deposit installment amount if the amount distributed is at least 50% of the reasonable deposit amount; and
 - (ii) A VREP or LSP may not request payment of any remaining difference between the reasonable deposit amount and the distributed deposit amount sooner than 40 days after the transition date.
- (D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.
- (10) On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to POLR providers, of all of the customers served by a REP:

- (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 recognizing that a REP is in default under the TDU 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 customers.
- (11) A REP shall not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.
- (12) ERCOT may provide procedures for the mass transition process, consistent with this section.
- (13) A mass transition under this section 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 was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch shall be made on the next available switch date.

- (14) Customers who are mass transitioned shall be identified for a period of 60 calendar days. The identification shall terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions shall be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.
- (15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(1) of this title (relating to Selection of Retail Electric Provider) is not required.
- (16) 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 POLR provider 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. A TDU shall create a regulatory asset for the TDU fees associated with a mass transition of

customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU shall not bill as a discretionary charge, the costs included in this regulatory asset, which shall consist of the following:

- (A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and
 - (B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.
- (17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU shall perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU shall calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU shall promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(p) **Termination of POLR service provider status.**

- (1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:
 - (A) If the POLR provider fails to maintain REP certification;
 - (B) If the POLR provider fails to provide service in a manner consistent with this section;
 - (C) The POLR provider fails to maintain appropriate financial qualifications;
or
 - (D) For other good cause.
- (2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee shall, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.
- (3) At the end of the POLR service term, the outgoing LSP shall continue to serve customers who have not selected another REP.

- (q) **Electric cooperative delegation of authority.** An electric cooperative that has adopted customer choice may select 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 shall, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions shall apply:

- (1) The board of directors shall provide the commission with a copy of a board resolution authorizing such delegation of authority;
 - (2) The delegation of authority shall 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 shall be for a minimum period corresponding to the period for which the solicitation shall be made;
 - (4) The electric cooperative wishing to delegate its authority to designate an continuous provider shall 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 shall automatically reject the delegation of authority.
- (r) **Reporting requirements.** Each LSP that serves customers under a rate prescribed by subsection (1)(2) of this section 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.
- (1) For each month of the reporting quarter, each LSP shall report the total number of new customers acquired by the LSP under this section 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.
- (2) For each month of the reporting quarter each LSP 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 LSP;
 - (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 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) For the entirety of the reporting quarter, each LSP shall report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.
- (s) **Notice of transition to POLR service to customers.** When a customer is moved to POLR service, the customer shall be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice shall be provided within two days of the time ERCOT and the transitioning REP know that the customer shall be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it shall provide notice as soon as practicable. The POLR provider shall provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and shall provide the notice to transitioning customers as soon as practicable. The POLR provider shall email the notice to the commission staff members designated for receipt of the notice.
- (1) ERCOT 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 with an automated phone-call and email to the

extent the information to contact the customer is available pursuant to subsection (o)(6) of this section. ERCOT shall study the effectiveness of the notice methods used and report the results to the commission.

(2) Notice by the REP from which the customer is transferred shall include:

- (A) The reason for the transition;
- (B) A contact number for the REP;
- (C) A statement that the customer shall receive a separate notice from the POLR provider that shall disclose the date the POLR provider shall begin serving the customer;
- (D) Either the customer's deposit plus accrued interest, or a statement that the deposit shall be returned within seven days of the transition;
- (E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, 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;"
- (F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different 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) If applicable, a description of the activities that the REP shall 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) 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.
- (3) Notice by the POLR provider shall include:
- (A) The date the POLR provider began or shall begin serving the customer and a contact number for the POLR provider;
 - (B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (1)(2) of this section, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate for each billing period shall not be determined until the time the bill is prepared;
 - (C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a

REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;

- (D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, 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 Terms of Service and Electricity Facts Label (EFL); and
- (F) For residential customers that are served by an LSP under a rate prescribed by subsection (1)(2) of this section, a notice to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(t) **Market notice of transition to POLR service.** ERCOT shall notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The notification shall include the exiting REP’s name, total number of ESI IDs, and estimated load.

(u) **Disconnection by a POLR provider.** The POLR provider 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, service under this section shall begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once 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) **Deposit payment assistance.** Customers enrolled in the rate reduction program pursuant to §25.454 of this title shall receive POLR deposit payment assistance when proceeds are available in accordance with §25.107(f)(6) of this title.
- (1) Using the most recent Low-Income Discount Administrator (LIDA) enrolled customer list, the Executive Director or staff designee shall work with ERCOT to determine the number of customer ESI IDs enrolled on the rate reduction program that shall be assigned to each VREP, and if necessary, each LSP.
 - (2) The commission staff designee shall distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.
 - (3) The Executive Director or staff designee shall use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:
 - (A) a list of the ESI IDs enrolled on the rate reduction program that have been or shall be transitioned to the applicable POLR; and

- (B) the amount of deposit payment assistance that shall be provided on behalf of a POLR customer enrolled on the rate reduction program.
- (4) Amounts credited as deposit payment assistance pursuant to this section shall be refunded to the customer in accordance with §25.478(j) of this title.

Figure: 16 TAC §25.43(f)(1)(A)

Standard Terms of Service

[Insert LSP 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 LSP 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 utility (TDU) rates. 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

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP 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 LSP rate for your electric service will be based on the formula detailed below.

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

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

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 LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.06 per kWh.
- (iii) LSP 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%.
- (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 LSP 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 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

Figure: 16 TAC §25.43(f)(1)(A)

2. SECURITY

LSP shall not require a cash deposit if you are able to provide the LSP with a Credit Reference Letter that includes the following representations: 1) you have been a customer of any retail electric provider within the two years prior to your request for electric service or prior to your transfer to POLR 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.

A residential customer currently enrolled in the LITE UP Texas program may be eligible for additional deposit assistance. (See paragraph 3, under Cash Deposit.)

If these conditions do not apply, LSP may require a cash deposit unless you can demonstrate to the LSP any of the following prior to the due date of the cash deposit: 1) you are 65 years of age or older and you are not currently delinquent in payment of any electric service account; 2) you are a victim of family violence as defined by the Texas Family Code § 71.004, and as determined 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 LSP.

[Insert toll-free FAX Number]

** To be considered medically indigent, the customer must demonstrate 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.

CASH DEPOSIT

- 1) Your cash deposit, if required, may not exceed one fifth (1/5) 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 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) LSP may require a deposit to be provided after 15 calendar days of service if you receive 10 days' notice that a deposit is required.
- 3) A customer who is currently enrolled in LITE UP Texas (Low Income Telephone and Electric Utilities Program) may pay the initial cash deposit to LSP in two installments if the deposit exceeds \$50. The first installment shall not exceed one-tenth (1/10) of the estimated annual billing and shall be due within ten calendar days of LSP'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 LSP or call toll-free 1-866-4-LITE-UP (1-866-454-8387) to determine eligibility or to receive an application.
- 4) 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 LSP for the term in which the guarantee is in effect. If the guarantor fails

Figure: 16 TAC §25.43(f)(1)(A)

- to become, or ceases to be, a customer of the LSP, the LSP may require the customer to pay the initial or additional cash deposit as a condition of continuing the contract for service.
- 5) 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 LSP 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 16th day falls on a holiday or weekend, the due date shall be the next business day. The LSP 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.
 - 6) The LSP 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.
 - 7) Your service may be disconnected for failure to pay the required cash deposit within ten calendar days of issuance of a notice of disconnection of service.
 - 8) 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.
 - 9) You will accrue interest on your cash deposit(s) with LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
 - 10) 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 LSP.
 - 11) Your cash deposit and accrued interest will be refunded if you pay your bills for 12 consecutive months without having any late payments. A REP may refund the deposit to you through a bill credit.
 - 12) 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.

3. BILLING

- 1) You will be billed for the amount of electricity that you consume.
- 2) Billing statements will reflect the total charges for POLR services provided by LSP.
- 3) Your bill will be due upon receipt and will be considered delinquent if it is not paid by the 16th day after issuance of the bill.
- 4) The LSP or a REP affiliated with the LSP shall offer a level or average payment plan if you are not currently delinquent. You may be required to select a competitive product offered by the LSP or a REP affiliated with the LSP to receive the level or average payment plan. LSP offers deferred and level payment (also known as budget) plans. Please contact LSP at the 24-hour customer service number below for information about these options.
- 5) *[Insert toll-free phone Number]*

4. 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:

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must pay all applicable taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other residential customers}

Figure: 16 TAC §25.43(f)(1)(A)

<i>Service Charges and Fees</i>	<i>Amount</i>
Account History charge 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 account history charge.	\$25.00
Collection Letter charge for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
Disconnection charge for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
Account Reinstatement fee for handling accounts for reconnection after disconnection for non-payment (in addition to any applicable disconnect or reconnect charges).	No charge
Equipment charge for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
Reconnection charge for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
Late fees 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
Return check charge for each check returned for insufficient funds.	\$25.00
Tampering charge 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 TDU]
Disconnection Reminder Notification 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
LSP reserves the right to charge for court costs, legal fees, and other costs associated with collection of delinquent amounts.	
LSP 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 TDU.	

5. 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 is not paid on or before the 16th 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.
- c) Service may not be reconnected by the LSP until all delinquent amounts and charges owed to LSP have been paid and credit has been re-established.

Figure: 16 TAC §25.43(f)(1)(A)

- 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 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 3 **BILLING** and section 4 **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 the cash deposit.
- g) A disconnection notice may be issued concurrently with your bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

6. 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.

The TDU, any previous retail electric provider, or the Independent Organization may provide LSP information about your electric service, 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.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

7. LENGTH OF AGREEMENT

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

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP or unless you enter a level payment plan or deferred payment plan. If you decide to be placed on LSP’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 LSP’s 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.

8. CONTACT INFORMATION

Name of Provider:
Physical Address:

Customer Service: (toll free)
24-Hour Power Outages: Contact your local electricity delivery company [provide number]
Internet web-site:
Fax: (toll free)

You may contact LSP if you have a dispute concerning your bill or your service from LSP. 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 LSP 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 LSP

Figure: 16 TAC §25.43(f)(1)(A)

shall, for a period of 30 calendar days following LSP'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 LSP Customer Service or either of the following state agencies:

Texas Department of Housing and Consumer Affairs:	1-512-475-3800
Public Utility Commission of Texas:	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 LSP (optional):* in cash through an agent authorized by the LSP], 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 the LSP's Customer Service number to begin those options for bill payment at no cost.

If you have had two or more personal checks unpaid by your financial institution within the last 12 months, LSP may 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 your payment has been declined, rejected or charged back two or more times within the last 12 months, LSP will require all further payments to be by cash, cashier's check or money order.

11. FORCE MAJEURE

LSP 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 TDU.

12. LIMITATION OF LIABILITY

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER, OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

13. REPRESENTATIONS AND WARRANTIES

LSP 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."

LSP 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

LSP 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.

Standard Terms of Service

[Insert LSP 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 LSP under Public Utility Commission of Texas (PUC) 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 utility (TDU) rates. 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 comunicándose con nosotros al [insert toll-free number].**

1. PRICE FOR BASIC FIRM SERVICE.

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP 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 LSP rate for your electric service will be based on the formula detailed below. 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:

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

Where:

- (i) Non-bypassable charges shall be all TDSP 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 LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP 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) LSP 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 125%.
- (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 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 LSP 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 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

2. BILLING

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

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) You may be required to make a cash deposit or other credit arrangement. {LSP will insert the conditions that will trigger a request for a deposit here} If your service is initiated with LSP and you are required to pay a cash deposit, you will be required to pay the cash deposit after LSP receives confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than 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.
- 2) If 12 months of historical usage data is not available, LSP 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 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 LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing LSP 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 LSP.
- 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) LSP may 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 LSP.
- 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.

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)

You agree to pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You agree to pay all applicable Taxes and any fees charged by any governmental entity.

You agree to pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other Small Non-residential customers}

<i>Service Charges and Fees</i>	Amount
Account Reinstatement fee for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$10.00
Account History charge 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
Collection Letter charge for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
Drawing on an irrevocable letter of credit. Includes all of the activities required to present a drawing letter to customer's bank.	\$50.00 plus any fees imposed by financial institution
Disconnection charge for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
Equipment charge for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
Field Collection charge 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
Field Service Calls 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 TDU discretionary charges.	\$100.00/hour
Reconnection charge for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
Master Contracts <ul style="list-style-type: none"> • Set-up fee per new or transferred contract • Additional fee per each unit placed on a master contract, added to an existing contract or transferred 	\$25.00 \$ 5.00
Master Metered Facilities: Master Metered Tenant charge 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. Tenant Notification charge 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 add'n'l 5 notices per 50 units over 100 units

Figure: 16 TAC §25.43(f)(1)(B)

<i>Service Charges and Fees</i>	Amount
Late fees will be assessed on the seventeenth (17 th) 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
Reread request charge for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDSP]
Processing fee 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
Return check charge 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
Tampering charge 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]
Disconnection Reminder Notification 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
LSP 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.	
LSP 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 TDU and billed to LSP.	

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 is not paid on or before the 16th 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.
- c) Service may not be reconnected until all delinquent amounts and charges owned to LSP 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 **BILLING** and section 4 **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 the cash deposit.
- g) A disconnection notice may be issued concurrently with your cash deposit billing.
- h) Your service may be disconnected for failure to pay an initial cash deposit bill.
- i) LSP cannot disconnect your electric service until you are a customer of the LSP.

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 LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide the POLR Provider with information about your electric service 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.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

6. LENGTH OF AGREEMENT

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

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

7. CONTACT INFORMATION

Name of Provider:
Physical Address:

Certificate Number:
Customer Assistance:
 Contact hours
 our Power Outage: [provide number]
 Fax:
 Internet web-site:

You may contact LSP if you have a dispute concerning your bill or your service from LSP. 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 LSP 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 LSP shall, for a period of 30 calendar days following the LSP’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).

8. 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 LSP (optional):* in cash through an agent authorized by the LSP], 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 the LSP’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 LSP 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. 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, LSP may require all further payments for electric service to be by cash, cashier's check, or money order.

9. FORCE MAJEURE

LSP 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 TDU.

10. LIMITATION OF LIABILITY AND INDEMNITY

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

11. REPRESENTATIONS AND WARRANTIES

LSP 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."

LSP 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.

12. DISCRIMINATION

LSP 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.

Standard Terms of Service

[Insert LSP 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 LSP under Public Utility Commission of Texas (PUCT) Retail Electric Provider (REP) Certificate No. _____. These Standard Terms of Service are subject to changes in applicable charges and transmission and distribution utility (TDU) rates. 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.

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR service. Your LSP 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 LSP rate for your electric service will be based on the formula detailed below. 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:

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

Where:

- (i) Non-bypassable charges shall be all TDSP 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 LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge shall be \$0.025 per kWh.
- (iii) LSP 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) LSP 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 125%.
- (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 LSP 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 125%. This methodology shall apply until the

commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

2. SECURITY

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

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) You may be required to make a cash deposit or other credit arrangement. If your service is initiated with LSP and you are required to pay a cash deposit, you will be required to pay the cash deposit after LSP receives confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than 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 12 months of historical usage data is not available, LSP 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 credit worthiness may be used.
- 3) You may be required, in the future, to pay an additional cash deposit or 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 LSP. Each year in December, the PUCT establishes the interest rate LSP will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing LSP 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 LSP.
- 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) LSP may 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 LSP.
- 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.

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)(C)

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must pay all applicable Taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP's fees must be the same as those fees routinely applied to other Medium Non-residential customers }

<i>Service Charges and Fees</i>	Amount
Account Reinstatement fee for handling accounts for reconnection after disconnection for non-payment. This is in addition to any applicable disconnect or reconnect charges.	\$10.00
Account History charge 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
Collection Letter charge for processing a registered or certified letter demanding payment of past due accounts.	\$15.00
Drawing on an irrevocable letter of credit. Includes all of the activities required to present a drawing letter to customer's bank.	\$50.00 plus any fees imposed by financial institution
Disconnection charge for disconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
Equipment charge for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
Field Collection charge 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
Field Service Calls 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 TDU discretionary charges.	\$100.00/hour
Reconnection charge for reconnection of service pursuant to TDU's tariffs.	[Insert pass through charge from TDU]
Master Contracts <ul style="list-style-type: none"> • Set-up fee per new or transferred contract • Additional fee per each unit placed on a master contract, added to an existing contract or transferred 	\$25.00 \$ 5.00
Master Metered Facilities: Master Metered Tenant charge 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. Tenant Notification charge 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 TDU] \$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per add'n'l 5 notices per 50 units over 100 units

Figure: 16 TAC §25.43(f)(1)(C)

<i>Service Charges and Fees</i>	Amount
Late fees will be assessed on the seventeenth (17 th) 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
Reread request charge for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDU]
Processing fee 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
Return check charge 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
Tampering charge 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 TDU]
Disconnection Reminder Notification 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
LSP 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.	
LSP 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 TDU and billed to LSP.	

4. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service.

- a) Your account will be considered delinquent if your monthly bill is not paid on or before the 16th 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.
- c) Service may not be reconnected until all delinquent amounts and charges owned to LSP 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 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 the cash deposit.
- g) Your service may be disconnected for failure to pay an initial cash deposit bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

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 LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide to LSP information about your electric service, 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.

The LSP may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

6. LENGTH OF AGREEMENT

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

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

7. WAIVER OF CERTAIN CUSTOMER PROTECTION RULES

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. CONTACT INFORMATION

Name of Provider:
Physical Address:

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

You may contact LSP if you have a dispute concerning your bill or your service from LSP. 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 LSP 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 LSP shall, for a period of 30 calendar days following the LSP’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 LSP (optional):* in cash through an agent authorized by the LSP], 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 the LSP'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 LSP 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, LSP may require all further payments for electric service to be by cash, cashier's check, or money order.

10. FORCE MAJEURE

LSP 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 TDU.

11. LIMITATION OF LIABILITY AND INDEMNITY

NEITHER YOU NOR THE POLR PROVIDER SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

12. REPRESENTATIONS AND WARRANTIES

LSP 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."

LSP 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

LSP 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.

Standard Terms of Service

[Insert LSP 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 changes in applicable charges and or transmission and distribution utility (TDU) rates. Each Standard Terms of Service will be given a unique version number for quick reference.

1. PRICE FOR BASIC FIRM SERVICE.

Your Large Service Provider (LSP) is a Provider of Last Resort designated by the Public Utility Commission of Texas and will provide POLR Service. Your LSP 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 LSP will be derived from the following formula:

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

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 LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge shall be \$2,897.00 per month.
- (iii) LSP demand charge shall be \$6.00 per kW, per month.
- (iv) LSP energy charge shall be the appropriate MCPE, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, 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

LSP has no obligation to continue to serve you if you fail to pay the required cash deposit within the appropriate time frame.

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. The late payment fee (5%) will be assessed on the seventeenth (17th) 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**.

Figure: 16 TAC §25.43(f)(1)(D)

- 1) You may be required to make a cash deposit of other credit arrangement. If your service is initiated with LSP, you will be required to pay a cash deposit or letter of credit after LSP receives confirmation from the Registration Agent of the effective date you are to become a customer of LSP. Cash deposits required for POLR service shall be no higher than 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 12 months of historical usage data is not available, LSP 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 LSP. Each year in December, the PUCT establishes the interest rate the LSP will apply to your cash deposit for the next calendar year.
- 5) You may satisfy security requirements by providing LSP 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 LSP. 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 LSP.
- 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) LSP may 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 LSP.
- 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.

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.

You must pay non-recurring fees charged by the transmission and distribution utility (TDU) that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDU may include service connection, disconnection or reconnection fees, or meter test fees. Non-recurring fees will appear as line items on your bill.

You must to pay all applicable taxes and any fees charged by any governmental entity.

You must pay any other REP fees disclosed [on the EFL or below and referenced on the EFL]. {Instruction: REP’s fees must be the same as those fees routinely applied to other Large Non-Residential customers }

<i>Service Charges and Fees</i>	Amount
Account Reinstatement fee for handling accounts for reconnection after disconnection for non-payment.	\$ 50.00

Figure: 16 TAC §25.43(f)(1)(D)

<i>Service Charges and Fees</i>	Amount
This is in addition to any applicable disconnect or reconnect charges.	
Account History charge 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
Collection Letter charge for processing a registered or certified letter demanding payment of past due accounts or drawing on your letter of credit.	\$15.00
Drawing on irrevocable letter of credit includes all of the activities required to present a drawing letter to your bank.	\$150.00 plus any fees imposed by financial institution
Disconnection charge for disconnection of service pursuant to TDSP's tariffs, including charges that may be assessed by the TDU for scheduling a disconnection that is canceled.	[Insert pass through charge from TDU]
Equipment charge for providing testing, monitoring or other special equipment at the request of the customer.	[Insert pass through charge from TDU]
Field Collection charge 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
Field Service Calls 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
Late fees will be assessed on the seventeenth (17 th) 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
Master Contracts <ul style="list-style-type: none"> ▪ Set-up fee per new or transferred contract ▪ Additional fee per each unit placed on a master contract, added to an existing contract or transferred 	\$25.00 \$ 5.00
Master Metered Facilities: Master Metered Tenant charge for facilities may be assessed to recover costs associated with installing, maintaining, testing, reading or other costs incurred by LSP for rendering electric service to tenants of master metered facilities. Tenant Notification charge 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 TDU] \$25.00 to meet Subst. R. 25.483 minimum. \$10.00 per add'l 5 notices per 50 units over 100 units
Reread request charge for each request by a customer to obtain meter readings in addition to the normal cycle readings.	[Insert pass through charge from TDU]

Figure: 16 TAC §25.43(f)(1)(D)

Return check charge 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
Tampering charge 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 TDU]
Disconnection Reminder Notification 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
LSP 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.	
LSP 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 TDU and billed to LSP.	

4. DISCONNECTION OF SERVICE

Disconnection means a physical interruption of electric service.

- a) Your account will be considered delinquent if payment for your monthly bill is not paid on or before the 16th 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. Your service may be disconnected after you are notified of your failure to comply with the terms of this Standard Terms of Service.
- c) Service may not be reconnected until all delinquent amounts and charges owed to LSP 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 TDU 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 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 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) Your service may be disconnected for failure to pay an initial cash deposit bill.
- h) LSP cannot disconnect your electric service until you are a customer of the LSP.

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 LSP.

The TDU, any previous retail electric provider, or the Independent Organization may provide information to LSP about your electric service, including but not limited to previous billings and usage of electricity, meter readings and

Figure: 16 TAC §25.43(f)(1)(D)

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.

The LSP at its discretion may release your customer payment information to credit reporting agencies, regulatory agents, agents of LSP, energy assistance agencies, law enforcement agencies or the TDU.

The LSP may use credit-reporting agencies to evaluate your credit history consistent with applicable law.

6. LENGTH OF AGREEMENT

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

No term of service is required for POLR service unless by mutual agreement a term is agreed to in writing between you and LSP.

7. WAIVER OF CERTAIN CUSTOMER PROTECTION RULES

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:

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

8. CONTACT INFORMATION

Name of Provider:	Certificate Number:
Physical Address:	Customer Assistance:
	Contact hours:
	24-Hour Power Outage:
	[provide number]
	Fax:
	Internet web-site:

You may contact LSP if you have a dispute concerning your bill or your service from LSP. 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 LSP 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 LSP shall, for a period of 30 calendar days following the LSP’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). 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 the LSP’s 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 LSP 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.

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

10. FORCE MAJEURE

LSP 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 TDU.

11. LIMITATION OF LIABILITY AND INDEMNITY

NEITHER YOU NOR THE LSP SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES. ANY LIABILITIES OF THE POLR NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. NOTWITHSTANDING THE FOREGOING, THE POLR PROVIDER HAS NO OWNERSHIP, RIGHT OF CONTROL, OR DUTY TO THE TDU, RETAIL CUSTOMER OR OTHER THIRD PARTY, REGARDING THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM. THEREFORE THE POLR PROVIDER SHALL NOT BE LIABLE TO ANY PERSON OR ENTITY FOR ANY DAMAGES, DIRECT, INDIRECT, OR CONSEQUENTIAL, INCLUDING, BUT WITHOUT LIMITATION, LOSS OF BUSINESS, LOSS OF PROFITS, OR REVENUE, OR LOSS OF PRODUCTION CAPACITY, OCCASIONED BY ANY FLUCTUATIONS OR INTERRUPTIONS OF DELIVERY SERVICE CAUSED, IN WHOLE OR IN PART, BY THE DESIGN, CONSTRUCTION, OR OPERATION OF THE TDU'S DELIVERY SYSTEM.

12. REPRESENTATIONS AND WARRANTIES

LSP 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."

LSP 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

LSP 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.

Figure: 16 TAC §25.43(f)(1)(D)

SIGNED AT AUSTIN, TEXAS this the 15th day of FEBRUARY 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER