PROJECT NO. 51830

REVIEW OF CERTAIL RETAIL ELECTRIC CUSTOMER PROTECTION RULES	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENTS TO 16 TAC §25.43, 25.471, 25.475, 25.479, AND 25.498 AND NEW 16 TAC §25.499 AS APPROVED AT THE DECEMBER 16, 2021 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.43, §25.471, §25.475, §25.479, and §25.498. The commission also adopts new 16 TAC §25.499, relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts. The commission adopts these rules with changes to the proposed rules as published in the August 13, 2021 issue of the *Texas Register* (46 TexReg 4838). These rule amendments will implement an amendment to Public Utility Regulatory Act (PURA) §17.003(d-1)(c) and new §39.110 enacted by the 87th Texas Legislature. These rule changes also implement a number of other customer protections for retail electric customers.

Specifically, amended §25.43 simplifies the maximum Provider of Last Resort (POLR) rate formula and limits price volatility originating from ERCOT Real-Time Settlement Point Prices (RTSPPs) from adversely affecting residential, and small and medium commercial customers who are transitioned to POLR service through the addition of a 12-month RTSPP price average and year-over-year cap on price increases. Amended §25.498 restructures the maximum price cap for prepaid service to match the maximum POLR rate under amended §25.43 and removes the alternative price cap measures in the previous rule.

Amended §25.475 requires an additional notice of contract expiration and prohibits the offering of indexed and wholesale-indexed products to residential and small commercial customers. Amended §25.475 also clarifies that the price of fixed rate products does not vary with changes in ancillary service costs for residential and small commercial customers, unless the commission specifically designates a type of ancillary service charge as beyond the REP's control.

Amended §25.479 requires electric utilities and retail electric providers to periodically provide to customers information concerning load shed, type of customers and procedure to be considered for critical care or critical load, and reducing electricity use at times when involuntary load shed events may be implemented.

New §25.499 implements SB 3's Acknowledgement of Risk (AOR) requirements for wholesale indexed products offered to large and medium commercial customers and prescribes a standard format for the AOR document. Amended §25.471 adds new §25.499 to the list of rule sections that large commercial and industrial commercials cannot waive by contract.

The commission received comments on the proposed rules from Octopus Energy, the Office of Public Utility Counsel (OPUC), Windrose Power & Gas LLC, Texas Legal Services Center and AARP Texas (TLSC), Coalition of Competitive Retail Electric Providers, Texas-New Mexico Power Company (Joint TDUs), Texas Energy Association for Marketers

(TEAM), TXU Energy Retail Company LLC (TXU), Alliance for Retail Markets (ARM), Robert L. Borlick, and Joint REPs.

Question 1

Should the maximum rate for provider of last resort service that is charged by a large service provider to a residential customer in proposed §25.43(m)(2)(A)(iii) and small and medium non-residential customers in proposed §25.43(m)(2)(B)(iv) include a safety threshold to prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis? If so, what is an appropriate safety threshold?

TLSC favored a safety threshold or cap, but expressed concern over determining an appropriate cap. TLSC noted that a rate cap may have the potential to become "self-fulfilling," assuming the rate will increase annually. TLSC asserted that it was the intent of the Legislature and in the best interests of consumers to have POLR service widely available at a reasonable cost, and that the POLR rate should reflect average competitive rates.

CCR opposed a safety threshold that would prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis. CCR argued that POLR service is not meant to be a long-term service for customers, and instead is intended to be a safety net when a retail electric provider (REP) leaves the market unexpectedly and, as a result, a customer may not have time to select a different provider. CCR argued it is highly unlikely that residential and small non-residential customers who are transitioned to a POLR provider would pay the maximum rate under §25.43(m)(2)(A) and §25.43(m)(2)(B) because commission rules incentivize POLR providers to charge a competitive rate instead of the POLR rate. Specifically,

§25.43(s) requires quarterly reports to be filed with the commission if an LSP charges the maximum POLR rate for a customer segment under §25.43(m)(2).

TEAM stated it does not object to a 20% year-over-year safety threshold provided "there is a corresponding safety relief that provides REPs an ability to recover its costs for power procured at the last minute on the real time market for new POLR customers." TEAM asserted that the proposed mechanism based on the prior year's average of real time prices, which are not necessarily reflective of costs, are nonetheless useful for regulatory certainty as they provide a known price cap for certain services such as pre-paid services. For pre-paid services to be viable, any alternative price adjustment mechanism for POLR must not be a justification for a starting POLR rate that is too low.

ARM opposed a safety threshold that would prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis. ARM argued an additional safety threshold in the POLR rate is not necessary because the 12-month lookback required in assessing the "LSP energy charge" under §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) sufficiently dampens price volatility. ARM argued the POLR rate is not a long-term rate, and no residential or small non-residential customer should be on it for more than 60 days. ARM argued that for the remainder of the 2021-2022 POLR term, the risk of customers being subject to the POLR rate during any further mass transitions should be low because customers will likely be transferred to VREPs, which offer market-based month-to-month products that are not priced at the POLR rate.

OPUC favored a safety threshold or cap, and further recommended that the limitation should be the lesser of the formula outcome under the proposed rule or 20% for residential customers

and 25% for non-residential customers. OPUC argued that its proposal is appropriate as the current rule already contemplates a 20% increase over average RTSPPs for residential consumers and 25% for non-residential customers. OPUC asserted that consumers paying below the average RTSPP for their area would benefit from the flat maximum cap of 20% or 25% while consumers paying over the average RTSPP will benefit from the formula approach which would yield a price below their current price.

OPUC disagreed with assertions by ARM, TEAM, and CCR that a safety threshold is not warranted. OPUC agreed with TLSC's concerns that the existence of rate cap has the potential to create a presumption that the rate will increase annually. OPUC maintained that until a better solution is put forward, a safety net is warranted basis to protect residential and small non-residential consumers from overwhelming rate shock and that such a method still permits a reasonable return to providers of POLR service.

Joint REPs opposed OPUC's recommendations for a 20% and 25% rate cap for residential and small non-residential customers, respectively. Joint REPs argued that the POLR rate is short-term, and no customer should remain on it from year to year, decreasing the likelihood of rate shock. Joint REPs cited §25.43(j)(4) which requires LSPs (Large Service Provider) to move residential and small non-residential customers that have been dropped to POLR to a month-to-month market-based product after 60 days. Joint REPs subsequently recommended deferring changes to the POLR rate until a later rulemaking or adopt ARM's alternative proposal to maintain the current minimum and maximum POLR rate structure with modifications to bypass the direct pass-through of RTSPPs for residential and small non-residential customer classes. If the commission institutes a POLR cap, Joint REPs recommends the cap be set after considering the final POLR calculation determined by this rulemaking.

Joint REPs contended that the cap must account for whether the final formula is set as only a multiplier of past rates, set to an arbitrarily low rate, or developed to lessen the long-term risk that the POLR rate does not recover costs. Joint REPs claimed such a review is necessary because a low cap with a low formula with a following year where prices rebound could risk insufficient cost recovery for POLR providers and indicated that Oncor service territories have seen yearly variances that exceed 20% in three out of five years.

Commission Response

The commission agrees with OPUC and TLSC that a safety threshold is necessary for the POLR rate. POLR service serves as an emergency back-up for customers, so it is essential that an outlier year such as 2021 not be allowed to dictate extremely high rates for the next year. Accordingly, the commission sets the "LSP energy charge" variable of the maximum POLR rate formula for residential customers at the lesser of the formula outcome under the adopted rule or 120%. For small and medium non-residential customers the "LSP energy charge" is the lesser of the formula outcome under the adopted rule or 125%.

The commission disagrees with CCR and Joint REPs that a safety threshold is unnecessary because POLR is a short-term solution that customers are unlikely to remain on for an extended period. The commission further disagrees with ARM's contention that the 12-month lookback sufficiently dampens price volatility. While dampening price volatility, the 12-month lookback would also serve to lock in a high maximum POLR rate for an entire year, making the safety threshold even more necessary. It is against the public interest to require customers shifted to POLR service

to pay extraordinarily high prices associated with RTSPPs, which as shown by Winter Storm Uri, can increase dramatically enough to even increase the annual average of RTSPPs. Therefore, along with amendments setting the average RTSPPs to be over a 12-month period in the LSP energy charge variable, an additional cap is required to ensure high RTSPPs in one year do not render POLR service unaffordable in the next.

The commission also disagrees with TEAM's contention that the commission needs to include a cost recovery mechanism to ensure that REPs can recover their costs of serving POLR customers. This decision is consistent with the commission's other determinations in this rulemaking that market entities, not customers, should bear the risk of unpredictable price fluctuations beyond reasonable market expectations for electric service. The commission also notes that a POLR cost recovery mechanism has not been adequately noticed or developed to include in this rulemaking. However, if TEAM believes this proposal merits further consideration, the commission recommends that TEAM file comments in Project No. 52757, *Review of Chapter 25 – Rules Applicable to Electric Service Providers*.

Question 2

The first part of Question 2 states:

Do the acknowledgement of risk requirements in proposed §25.475(c)(3)(G) and §25.475(j) provide adequate customer protections for residential and small commercial customers that enroll in indexed retail electric products and retail electric products that allow for the pass-through of ancillary service charges?

TEAM, ARM, and CCR argued that the proposed AOR (Acknowledgement of Risk) requirements under §25.475(c)(3)(G) and §25.475(j) do provide adequate protections for residential and small commercial customers. CCR stated that the proposed AOR requirements ensure a customer that enrolls in an indexed product or a product that includes ancillary service charges understands the pricing volatility risk associated with such products.

TEAM and ARM asserted that proposed §25.475(c)(3)(G) and §25.475(j) adequately protect consumers and suggested that the AOR should appear in the EFL (Electricity Facts Label) with clear language indicating that the language applies only to indexed products subject to volatility. TEAM and ARM elaborated that the EFL already contains customer protections for price disclosure under §25.475(g)(2)(B) relating to disclosure of a total average price, and under §25.475(g)(2)(F) relating to contact information for current price data. ARM contended that AORs for pass-throughs of ancillary service prices are unnecessary because under current rules, such costs cannot be passed through on fixed rate products. TEAM pointed out that most competitive market commodity indices such as NYMEX do not carry the same type of volatility that was experienced in Winter Storm Uri, unlike the ERCOT (Electric Reliability Council of Texas) RTSPP that was fixed by regulatory action.

TLSC and OPUC stated that proposed §25.475(c)(3)(G) and §25.475(j) do not adequately protect residential customers from market risk. OPUC maintained that the "waiver" in the proposed rules is insufficient to protect residential and small commercial customers from the risks associated with indexed products. In TLSC's view, the AOR in §24.475(i) indicates customers may not fully understand the terms and conditions of a retail electric plan marketed to them. OPUC argued that waivers are so ubiquitous in everyday life that consumers do not read them and, if they do, the language may be difficult to understand. OPUC specifically

noted that ancillary service charges also require a waiver and that ancillary service prices were higher during Winter Storm Uri than the actual price for energy which was capped at $9,000. Therefore, according to TLSC and OPUC, a prohibition of all indexed products and products that pass through ancillary service charges for residential and small commercial consumers is warranted.

The second part of Question 2 states:

If not, should these products be prohibited for residential and small commercial customers?

TLSC and OPUC supported the prohibition of all indexed retail products for residential and small commercial customers. TLSC generally opposed the proposals provided by the retail electric industry and the general proposition of residential customers taking on the risk of indexed rates and paying directly for ancillary service via pass-through of cost. TLSC maintained that "few residential consumers possess the knowledge or the resources to monitor pricing in the ERCOT market" and therefore the risk of high prices should be carried by REPs, not consumers. TLSC further argued that indexed rates and the pass-through of costly ancillary service charges are contrary to the basic market concepts codified in PURA §39.101(e) and the intent of the Legislature in passing HB (House Bill) 16. TLSC stressed that even small price increases can have profound negative consequences for low- and fixed-income families and that the prohibition of plans that expose customers to sudden price increases is the best way to protect consumers. OPUC noted that while some indices may not vary significantly, others do and that consumers should not be exposed to such price fluctuations.

TLSC argued that comments from ARM, CCR, TEAM and Robert Borlick collectively supported shifting financial risk of the wholesale market from the REP to the consumer. TLSC

stated that a REP could manage its financial risk through voluntary customer programs to reduce load and costs that compensate customers for participating in such programs. Additionally, TLSC argued that customers can manage their financial risk by choosing a fixed-rate product. TLSC specifically agreed with OPUC that a customer signing a waiver cannot be expected to predict or comprehend the possibility of rate increases in the future.

OPUC disagreed with Octopus Energy, TEAM and CCR that indexed plans and plans with ancillary service pass through charges should be allowed for residential and small commercial customers. OPUC concurred with TLSC that few customers understand how to monitor indexed pricing and what it could mean for their electricity bills. OPUC further agreed with TLSC that many customers have difficulty understanding ancillary services and the contents of a contract with pass-through charges.

CCR, TEAM, ARM, and Octopus Energy opposed prohibiting all indexed retail products for residential and small commercial customers.

CCR argued that PURA §39.001(c) specifically prohibits the commission from regulating competitive electric services or prices except as authorized by PURA, such as the specific customer protection for pricing and billing under PURA §39.101(a). CCR further argued that the selection of pass-through of ancillary service charges or an indexed plan is a competitive decision and that prohibiting REPs from including specific cost drivers in pricing is unnecessary.

TEAM argued that indexed products have existed for years and have performed to overall consumer satisfaction. TEAM further pointed out that the Legislature only banned “real time wholesale indexed products” in HB 16, not other indexed products. Many indexed products,

according to TEAM, are not tied to the volatility of a commodity index, and benefit consumers. TEAM concluded that indexed products are "a necessary tool" for "development of customer-centric innovations." TEAM and ARM concluded that banning certain products stifles competition and forecloses customer choice. Until Winter Storm Uri, ancillary service charges were not nearly as volatile, according to TEAM and ARM. ARM proposed amendments across §25.475 to have that section conform with its recommendation to move the AOR into the EFL.

Octopus Energy argued that "competition and innovation" in the ERCOT retail electric market are key reasons against such a prohibition. Specifically, such a prohibition will undermine customer choice, reduce the development of load management incentives, and subvert efforts to improve reliability in the electric markets. Octopus Energy argued that the intent of HB 16 was to prohibit the offering or enrolling of residential and small commercial customers products that pass-through prices 100% indexed to the wholesale real-time market and that a ban on all indexed products is contrary to that intent. Octopus Energy maintained that indexed products appropriately protect customers from the highest prices, provide a significant cost reduction to residential and small-commercial customers and encourage reduced usage during peak load. Specifically, Octopus Energy encouraged voluntary caps imposed by REPs to prevent customer exposure from the highest prices associated with wholesale indexed products.

Octopus Energy agreed with TEAM in opposing the prohibition of all indexed products for residential and small commercial customers. Octopus Energy also agreed with Robert Borlick that "a broad prohibition against all indexed products would reduce the development of demand response in the residential and small commercial customer classes and reduce the reliability of the ERCOT grid." Octopus Energy opposed the recommendations of OPUC and

TLSC to prohibit all indexed products for residential and small commercial customers. Octopus Energy specifically argued that contrary to the arguments of OPUC, and to a lesser extent TLSC, that customers do understand the benefits and risks of a wholesale indexed product that they sign up for.

Joint REPs opposed prohibiting all indexed retail products for residential and small commercial customers. Joint REPs categorically opposed OPUC and TLSC's proposals to prohibit wholesale indexed products and products containing ancillary service pass-through charges as unsupported by law and restricting competitive innovation.

Commission Response

The commission finds that having "indexed products" as a separate category of products is unnecessary and confusing for residential and small commercial customers and prohibits the offering of indexed products to these customer classes.

The commission disagrees with CCR that PURA prohibits the commission from banning the sale of indexed products to residential and small commercial customers. Under PURA §39.001(c), cited by CCR, the commission "may not make rules…restricting or conditioning competition except as authorized in this title." PURA clearly authorizes the commission to prohibit practices when necessary to provide adequate customer protection. Under PURA §39.101(b), a customer is entitled to "receive sufficient information to make an informed choice of service provider," and "to be protected from unfair, misleading, or deceptive practices". The commission finds that indexed products—the price of which on any future date is unknown at the start of each billing period, can fluctuate unpredictably, and are indexed to metrics that are not available to

the customer as part of the enrollment process—do not provide sufficient information for a residential or small commercial customer to make an informed choice of service provider. Furthermore, the apparent stability of indexed rate plans can be misleading, because these plans have the potential to increase drastically without notice and such increases are not within the reasonable expectations for residential and small commercial customers.

The commission also disagrees with arguments made by ARM, TEAM, CCR, and Octopus that prohibiting indexed products unnecessarily stifles creativity, limits competition, or reduces incentives for demand response. The only unique feature of an indexed product is that the price of an indexed product can vary within a billing cycle in a manner that is unpredictable at the time of enrollment, which is not appropriate for residential and small commercial customers. Innovative fixed or variable price products can be designed to include elements such as time-of-use, seasonal, nights and weekends, tiered rates, flat rates, credits, and others, while providing customers with the appropriately tailored protections that those product types provide, such as the price certainty of fixed rate products or the lack of early termination fees or long-term commitments of variable price products. The commission encourages REPs to continue to bring new products to market to further enrich the competitive landscape of Texas' deregulated energy market.

Replacing "shall" with "will"

The commission is implementing a general change to its rules by removing "shall" from the text of its rules and replacing it with a more specific term. Several such changes were proposed in this section.

ARM identified four instances in §25.43 in which the commission proposed replacing "shall" with "must" where ARM recommends a change to "will" or "plan to" instead.

Commission Response

The commission agrees with ARM and replaces "must" with "will" in these contexts.

§25.43 – Provider of Last Resort (POLR)

Proposed §25.43 establishes the requirements for provider of last resort ("POLR") service, which is available to any requesting retail customer and to any retail customer whose REP has exited the market.

TLSC generally opposed high POLR rates, prepaid service, and having customers bear the financial risk of the market through indexed rates and pass-through of ancillary service costs.

TLSC maintained that, consistent with PURA § 39.106, POLR should be a standard retail service package that ensures stable, reasonable rates based on average prices being paid in the competitive market to a wide range of customers.

TLSC contended that the proposals by REP commenters to increase the POLR rate places price risk on residential consumers and allows REPs to use a high POLR rate as a marketing tool to gain market share during a mass transition. TLSC asserted that POLR service should be structured to place downward pressure on electricity prices and provide more affordable firm service to prepaid customers paying prices capped at the POLR rate. TLSC argued that current

commission rules incentivize POLR providers to charge an uncompetitive, high price for undesirable service. Further, they asserted, current POLR rates make the retail market less competitive by exposing consumers, rather than industry, to financial risk.

TLSC requested that the commission establish POLR service as a standard retail service package at a fixed rate for all customers and the POLR service option should be made available on the Power to Choose website maintained by the commission.

Commission Response

The commission declines to adopt TLSC's proposals to change POLR to a standard retail product for the reasons detailed in the commission's response to Question 1. Such proposals are outside the scope of this rulemaking. The adopted rule adequately addresses TLSC's concerns regarding customer protections while also providing appropriate compensation for REPs that provide POLR service.

§25.43(c)(8) – "Market-based product"

Subsection §25.43(c) contains section-specific defined words and terms. Paragraph §25.43(c)(8) is the definition for "Market-based product" which in the proposed rules is defined as "*A month-to-month product that is either offered to or matches the rate of a product offered to non-POLR customers of the REP for the same TDU territory and customer class. A month-to-month contract may not contain a termination fee or penalty. 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 (m)(2) of this section is not a market-based product*."

Alliance for Retail Markets (ARM) proposed modifying the definition of "market-based product" in §25.43(c)(8) to allow for "consistency with other in-market products." Specifically, ARM argued that REP customer segments may not map directly to the POLR customer classes of residential, small non-residential, medium non-residential, and large non-residential defined in §25.43(c) and therefore the proposed definition of §25.43(c)(8) may be challenging for REPs. ARM further argued that offering a rate consistent with general market rates should be sufficient for the definition rather than requiring a direct match to an existing product offered by a REP. ARM reasoned that POLR service creates unique risks and demands on REPs, such as bad debt, and that a REP should be able to calculate the high costs and risks of POLR into its market-based product pricing, rather than the "formulaic POLR rate."

Commission Response

The commission declines to adopt the recommendations proposed by ARM as the definition only requires a price match to a non-POLR customer product and the current definition excepts rates derived from using the maximum POLR formula under (m)(2) as being considered a market-based product for residential customers. Furthermore, ARM's comments regarding customer segmentation and mapping are substantively incorporated into §25.43(m)(2). The historical segmentation of residential customers and small and medium commercial customers, and large commercial customers and comments do not indicate that such categories are overly burdensome for REPs and to the extent that they could be improved the commission has adopted proposals of some commenters to do so.

§25.43(f)(1) – Customer Information

Paragraph §25.43(f)(1) provides an index of hyperlinked standard terms of POLR service for each customer class defined in §25.43(c) and specifically provides the rate to be charged, as defined in §25.43(m)(2), by a Large Service Provider (LSP).

ARM and TEAM indicated that, if the POLR rate formula is changed by the commission, the terms of service linked in §25.43(f)(1) must be updated accordingly. ARM and TEAM also pointed out that in the terms of service provided in §25.43(f)(1)(D) for Large Non-Residential Service, the term "RTSPP" should be changed to "energy charge" in (1)(iv) to be consistent with current rules: "The ~~RTSPP~~ energy charge shall have a floor of $7.25 per MWh."

Commission Response

The commission agrees with ARM and TEAM and amends the rule accordingly.

§25.43(i) – VREP List

Subsection§25.43(i) specifies the process for creating and publishing a list of Voluntary Retail Electric Providers ("VREP"). The existing rule requires REPS interested in becoming a VREP to submit a request no earlier than June 1 and no later than July 31. The proposed rule authorizes the commission's executive director to allow REPs to submit requests outside of this submission window.

TXU opposed the amendment to §25.43(i), interpreting it as allowing the executive director to designate additional VREPs (Voluntary Retail Electric Provider) at any time. TXU reasoned that the amendment should not be implemented because it would imbalance the inherent risk-reward considerations for a REP in deciding whether to be VREP. Specifically, a REP must consider the balance between a VREP competitively retaining customers assigned during a

POLR event in exchange for the additional financial risk of POLR customers and the foregoing of market opportunities due to VREP obligations. TXU argued that any calculations by a VREP to retain customers after a POLR event is rendered moot if the VREP pool can be altered by executive director and may disincentivize REPs from providing POLR service or postpone volunteering to be a VREP. Pursuant to this recommendation, TXU therefore recommended "unless otherwise determined by the executive director" be removed from proposed §25.43(i).

OPUC opposed TXU's recommendation to strike language in §25.43(i) authorizing the executive director to designate additional VREPs at any time, as such discretion by the executive director in the proposed rule would incentivize competition and thus be beneficial for providing the best possible price to consumers. OPUC noted that the final provider list for 2021 lacked any VREPs for the large non-residential service areas and that granting the executive director discretion to assign additional VREPs would permit additional coverage. However, OPUC acknowledged TXU's concerns and, in conjunction with the proposed rule, proposed a priority designation with a right of first refusal for REPs that enrolled and were certified as VREPs during period specified in the rule (i.e., June 1 to July 31 of each even-numbered year), rather than through executive director designation. This approach, in OPUC's view, "appropriately balances the desire for more participating VREPs with the reward for risks taken by VREPs who choose to participate through the regular VREP certification process."

Commission Response

The commission disagrees with TXU. The rule as proposed strikes an appropriate balance between the concerns described by TXU and allowing flexibility for the executive

director to act in response to unforeseen circumstances. OPUC's proposed "right of first refusal" is unnecessarily complex. Therefore, the commission adopts the language as proposed.

§25.43(l)(1)(E) – Mass transition of customers to POLR providers

Under §25.43(l)(1)(E), ERCOT is required to assign ESI (Electric Service Identifier) IDs to VREPs in proportion to the number of ESI IDs that each REP indicated it was willing to serve.

ARM argued that the allocation of customers detailed in current §25.43(l)(1)(E) is inefficient and discriminatory as a VREP could indicate it was willing to serve a very large number of customers which would dilute the proportion assignable to other VREPs. ARM reiterated that the benefit for REPs in becoming a VREP in exchange for the inherent risks is the potential to competitively retain customers assigned to it through a POLR event. ARM contended that basing the customer allocation on the ratio of a VREPs willingness-to-serve count relative to the total count for all VREPs diminishes that benefit. ARM hypothesized that a VREP could volunteer to serve a large number of customers for its willingness-to-serve maximum and therefore dilute the number of customers assigned to other VREPs. Instead, ARM proposed allocating customers shifted to POLR be equally divided between VREPs, up to the VREP's self-indicated maximum, and offered draft language in line with its recommendation:

> 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 must be assigned ~~a proportionate~~ an equal number of ESI IDs, ~~as calculated by dividing~~ up to 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~~ for a given class and POLR area.

Commission Response

The commission agrees with ARM that allocating POLR customers evenly among VREPs is a more equitable approach that reduces the risk of a REP inflating its willingness-to-serve count in order to be assigned a larger share of the available POLR customers. The commission adopts ARM's proposed language.

§25.43(m) – Rates Applicable to POLR Service

Subsection §25.43(m) details the obligations of a VREP in offering POLR service and the form and manner of such service, particularly establishing a maximum rate for POLR service charged by an LSP.

TLSC argued POLR rates should be a standardized, reasonable, and even long-term fixed rate product, reflective of competitive market rates. TLSC maintained that the POLR rate should not be punitive or designed primarily to provide temporary service in the event of financial default by a REP. TLSC expressed its preference for POLR service as a viable option for customers subject to switch-hold and customers on prepaid service. TLSC argued that a standard retail service package should be developed by all REPs and the pricing for such a package should be used for POLR customers across load zones.

Joint REPs opposed TLSC's recommendations to change POLR service into a long-term option by making it a standard retail service package based on average prices in the market.

Joint REPs noted that the commission has declined to implement the same proposals in Project Number 31416, a prior rulemaking project addressing this rule. Joint REPs maintained that TLSC's recommendations were outside the scope of this rulemaking to implement the requirements of HB 16 and SB (Senate Bill) 3 and highlighted that POLR is intended to be a short-term solution to prevent service disruptions and not act as a substitute for competitively priced products. Joint REPs referred to PURA §39.001(a) which states "electric services and their prices should be determined by customer choices and the normal forces of competition" and that TLSC's proposals were contrary to the statutory mandate. Specifically, Joint REPS argued that to require the POLR rate be set at an average price as TLSC suggested would pressure the market towards convergence on the average price point, thus eradicating incentives to innovate or add value to retail electricity customers.

Commission Response

The commission declines to modify the rule in response to TLSC's comments. The commission agrees with Joint REPs that POLR is intended to function as a safety net to prevent service disruptions in certain situations, including mass transitions, and is not intended to act as a substitute for competitively priced products or pressure the market toward certain pricing outcomes or product types. The commission has also addressed this topic in response to comments on Question 1.

§25.43(m)(2) – Maximum Rate Formula

Paragraph §25.43(m)(2) establishes the maximum rate for POLR service charged by an LSP for each class of customer.

TEAM and ARM commented that a POLR rate that is too low will be contrary to the intent of POLR service as a short-term "last resort" and could interfere with the competitive market. Specifically, because PURA §39.107(g) caps the price for prepaid service at the POLR rate, TEAM and ARM argued that a low POLR rate may affect a REP's ability to offer prepaid pricing. TEAM further commented that POLR service must be offered even outside of mass transitions under PURA §39.106(c). Therefore, if POLR service rates are lower than market-based offers, VREPs may lose money on POLR service which may impact the provision of other products that incorporate POLR costs and pricing structure such as prepaid products.

TEAM emphasized that the POLR rate should be high enough to mitigate the risks taken on by the VREPs for providing POLR service. TEAM asserted that if the calculations in proposed §25.43(m)(2)(A) and §25.43(m)(2)(B) were applied to 2021, then the residential rate would be five percent lower than the result generated by the existing rule, and the small and medium non-residential rate would be the same. Conversely, if the proposed formula is applied to 2022, the POLR rates would be higher because of the outlier rates caused by Winter Storm Uri. TEAM and ARM argued that the proposed formula applied past September 2022 may produce lower POLR rates that would limit a REP's capability to offer other products, such as prepaid service.

Additionally, TEAM stated that the proposed POLR rate formula does not account for ancillary service costs, which have been significantly higher due to Winter Storm Uri. TEAM argued that, if ancillary service costs continue to be volatile in the future due to similar events, the POLR rate should include ancillary service charges as a variable.

Commission Response

The commission disagrees with TEAM that the proposed POLR rate formula does not account for ancillary service costs and declines to amend the proposed rule. Ancillary service costs are accounted for in the LSP energy charge variable for each customer class.

Medium Non-residential customers

TEAM and ARM maintained that HB 16's ban on real-time wholesale indexed products does not apply to medium non-residential customers. Therefore, medium non-residential customers should not be grouped with small non-residential customers, and the POLR rate formula for each should be structured differently. TEAM specifically proposed a separate LSP energy rate for medium non-residential customers. Under TEAM's proposal, the LSP customer charge for small non-residential customers would increase to 5¢ per kWh. The LSP customer charge for medium non-residential customers would remain at 2.5¢ per kWh.

OPUC opposed TEAM's recommendations for altering the POLR rate structure, stating that POLR service already costs more due to the inherent risk it poses. Further, OPUC argued, TEAM's proposal would increase an already high rate that likely exceeds the average market price. Finally, OPUC argued the POLR rate is generally paid by customers who, often through no fault of their own, are transitioned onto a POLR product. Therefore, OPUC requested the commission reject the proposal by TEAM to alter the POLR formula.

TLSC proposed the commission compare the results of other calculation methodologies with current or past POLR rates. TLSC referred to two alternative rate calculation methods: RTSPP Data Normalization and Weighted Average Energy Rate Charges. According to TLSC, RTSPP Data Normalization is representative of the rate year, discounts outliers and utilizes an adder

to accurately reflect the retail rate. Weighted Average Energy Rate Charges, as explained by TLSC, is based on the weighted average energy rate charge in the load zone for a wholesale rate plus an adder to accurately reflect the retail rate.

Commission Response

The commission declines to implement TEAM's proposed rule language splitting small commercial customers and medium commercial customers from §25.43(m)(2)(B) into separate paragraphs. The commission has determined that the current rule adequately segments the customer categories and that only large customer categories should be exposed to hourly RTSPPs or ancillary service charges in the POLR rate formula and ancillary service charges in wholesale indexed products.

The commission declines to implement TLSC's proposals RTSPP Data Normalization and Weighted Average Energy Rate Charges as these methods would change the POLR rate to be more like a retail product, which is not its intended purpose. The commission refers to its responses under Question 1.

§25.43(m)(2)(A)(ii) and §25.43(m)(2)(B)(iii) – "LSP customer charge"

Clauses§25.43(m)(2)(A)(ii) and §25.43(m)(2)(B)(iii) contain the definition of "LSP customer charge" which is a constant of 6¢ for residential customers and 2.5¢ for small and medium non-residential customers.

TEAM and ARM made several recommendations for altering the POLR formula. Specifically, TEAM and ARM proposed increasing the "LSP customer charge" for residential customers to 9¢ from 6¢ and, for small commercial customers only, increasing the "LSP customer charge"

to 5¢ from 2.5¢. ARM further argued that the increase to the LSP customer charge is necessary to ensure that LSPs can sufficiently recover costs incurred for providing POLR service to residential and small non-residential customer categories.

TLSC expressed skepticism about the LSP customer charge of 6¢ in §25.43(m)(2)(A)(ii) and stressed the basis for these calculations and assumptions should be documented and published for comment and amendment if appropriate.

TLSC opposed TEAM and ARM's proposals to increase the customer charge for residential customers from 6¢ to 9¢ per kWh in §25.43(m)(2)(A)(ii) and to set the energy charge floor at $7.25 per kWh. TLSC argued that, if TEAM and ARM's proposals were adopted, the lowest POLR rate possible would be 18.06¢ per kWh, which is unaffordable for most customers.

Commission Response

The commission declines to implement TEAM and ARM's proposals for "LSP customer charge" for residential and small commercial customers. The commission agrees with OPUC and TLSC that TEAM and ARM's recommendations would result in a maximum POLR rate for these customer segments that is unaffordable. The commission instead implements changes to these variables that protect customers from extreme rates and ensure cost recovery for REPS consistent the commission's responses to Question 1.

§25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) – "LSP energy charge"

Clauses §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) define "LSP energy charge" for use as a variable in the formula calculating maximum rate for POLR service charged by an LSP for residential and small and medium commercial customer segments, respectively.

Proposed §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) changes the calculation of LSP energy charge from an hourly rate to a rate that is set annually. Within the calculation of the energy charge is a multiplier of 120 percent for residential customers and 125 percent for small and medium non-residential customers. TEAM advocated for increasing the 120% LSP energy charge multiplier for residential customers to 125% and including an additional provision applicable to residential and small commercial customers. If the average of the actual RTSPPs for the applicable load zone for the 30 days preceding the transition to a POLR rate is at least twice the historical average RTSPP, the additional provision would increase the multiplier to 175% and the base LSP energy charge would be calculated according to the historical average RTSPP multiplied by the number of kWhs the customer used. TLSC opposed TEAM's proposals to increase the multiplier from 120% to 125% for residential customers.

ARM suggested that the LSP customer charge increase be implemented with one of two proposed amendments. ARM's first proposal calculated the LSP energy charge as a rolling average of the RTSPP from the preceding 60 days with a 125% multiplier. ARM's second proposal maintained the language of the proposed rule but contained an additional trigger provision that would alter the calculation of "LSP energy charge" based on specific criteria. If the average RTSPP for the 30 days preceding the transition to POLR was twice the historical average RTSPP, then the LSP energy charge would include an additional multiplier. The multiplier would be the ratio of the preceding 30 days' average RTSPP to the historical average RTSPP.

TEAM and ARM recommended that the reference to "customer load zone" within the definition of "LSP energy charge" for residential and small commercial customers be modified to match the average charge calculation under §25.43(c)(15)(C), where the average POLR

charge is determined based on the customer load zone "partially or wholly in the customer's TDU service area with highest average price." TEAM elaborated that each TDU area covers two to three load zones and that it is market standard for EFLs to be provided to customers based on the customer's TDU territory, and therefore "load zone" should be similarly specified. TEAM and ARM elaborated, arguing the current rule's method of using the highest of load zone averages is beneficial and that this change would ensure customer EFLs do not vary based on load zone within the same TDU territory and therefore be less confusing to customers as well as to REP call centers.

Commission Response

The commission agrees with TEAM and ARM that the reference to "customer load zone" within the definition of "LSP energy charge" defined in §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) be modified to "load zone partially or wholly in a service area" and adopts the recommended rule language. The commission declines to implement TEAM's and ARM's remaining proposals regarding the LSP energy charge. The commission agrees with OPUC and TLSC that TEAM's and ARM's recommendations would result in a maximum POLR rate for these customer segments that is unreasonable. The commission instead implements changes to these variables consistent with the commission's discussion of responses to Question 1.

Time period for LSP energy charge calculation

CCR suggested the commission consider having POLR price calculation based on the calendar year instead of what appears to be the state's fiscal year. CCR stated in both cases the "LSP energy charge" defined in §25.43(m)(2)(A)(iii) and §25.43(m)(2)(B)(iv) would be the average

of the actual RTSPPs for the customer's load zone for the previous 12-month period ending December 31 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. CCR expressed that transitioning to a calendar year would simplify a customer's understanding of the rate calculations under §25.43(m)(2)(A) and §25.43(m)(2)(B), would harmonize with the requirements of §25.43(j), relating to the selection and service of REPs as LSPs, and ensure customers are provided he most up-to-date information. Joint REPs recommended that, if CCR's calendar year proposal is adopted, then EFL updates should be due on April 1 instead of December 31 in order to permit ERCOT to complete final settlement for December of the preceding year, which is 55 days after the operating day.

Commission Response

The commission disagrees with CCR's and Joint REP's recommendation to base the POLR price calculation on the calendar year. The timing of the current rule is to ensure the new POLR rate is available on January 1st to match the new POLR term every other year and therefore the commission declines to adopt CCR and Joint REP's proposed changes for "LSP energy charge" regarding the same.

For §25.43(m)(2)(A)(iii) only, Windrose recommended the LSP energy charge calculation use Intercontinental Exchange (ICE) data, specifically the ERCOT North 34KV Real-Time Peak Fixed Price Future contracts, as an index predictive of the short-term future market prices. The ICE-based variable recommended by Windrose would be a 30-day forward looking average. Windrose explained that when a REP receives customers switched through a mass transition to POLR then "the rational action a REP would take" is to acquire monthly short-term forward

contracts to hedge the variable load created by the POLR-switched customers. Windrose asserts using an index predictive of future prices is better than an approach using historical prices because with a "backward looking proposal there will always be the risk that market fundamentals are different, and the historical pricing will not allow a REP to cover their costs." Further, Windrose recommended the multiplier for the LSP energy charge be 200% to more fully account for other costs and peak-hour price spikes not already accounted for in the LSP energy charge calculation.

Joint REPs agreed with Windrose's recommendations that the energy charge component of the POLR rate be based on the short-term forward market on the Intercontinental Exchange by using the average price for the next 30 days for the ICE ERCOT North 345 kV Real-Time Peak Fixed Price Future contract, the multiplier of customer usage, and the 200% adder for non-energy costs such as losses, ancillary services, and other expenses. Joint REPs further stated if a POLR cap is adopted, Joint REPs recommended Windrose's proposed definition for §25.43(m)(2)(A)(iii) be considered for the maximum POLR cap and the minimum POLR cap be the calculation under the current version of §25.43(m)(2)(A)(iii).

Commission Response

The commission declines to adopt Windrose's proposal for "LSP energy charge." Windrose's recommendation offers no price certainty because it is based on forward prices. In implementing HB 16, the commission seeks to mitigate extreme variability in POLR rates. The commission also declines to accept Joint REPs' proposal to make Windrose's proposal the maximum POLR rate.

§25.43(m)(2)(A)(iv) and §25.43(m)(2)(B)(v) — "Number of kWhs the customer used"

Clauses §25.43(m)(2)(A)(iv) and §25.43(m)(2)(B)(v) define "Number of kWhs the customer used" for use as a variable in the formula calculating maximum rate for POLR service charged by an LSP for residential and small non-residential customer segments, respectively. Proposed §25.43(m)(2)(A)(iv) and §25.43(m)(2)(B)(v) state "'Number of kWhs the customer used' is based on interval data."

ARM proposed a definition of "Number of kWhs the customer used" that would change the basis of the definition from 'interval data' for residential and small commercial customer segments to 'usage information provided by the TDU.' ARM contended that interval data is not relevant for the POLR rate formula because the POLR rate is not directly indexed to RTSPPs due to the changes imposed by the commissions proposed rule, or ARM's alternative rule. Therefore, ARM suggested that it is more accurate to state that usage information is provided by the TDU, not interval data, for residential and small commercial customer segments. TEAM recommended a virtually identical definition of "number of kWhs the customer used" and reorganization of §25.43(m)(2).

Commission Response

The commission agrees with ARM and TEAM that "interval data" may not necessarily be available from a non-standard meter. The commission amends the proposed rule to clarify that "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

§25.43(m)(4) – Good Cause Exception

Paragraph §25.43(m)(4) allows the LSP, for good cause, to adjust the rate applicable to a specific customer class prescribed in §25.43(m)(2) on an interim basis and after 10 business

days of notice to the customer class, upon a showing by an LSP that the POLR rate as calculated is insufficient for cost recovery. Windrose recommended subsection §25.43(m)(4) be removed from the proposed rule as it prevents a future POLR rate from being truly ascertainable and effectively means that there is no known POLR rate. Windrose expanded its point with a hypothetical where the POLR rate is lower than the REP's cost to serve the customer. Specifically, Windrose stated that, to mitigate exposure to real time prices, REPs purchase forward wholesale power contracts to hedge fixed-price contracts sold to retail customers. Windrose argued that, by nature, POLR customers are "unexpected load" that a VREP has not fully accounted for. Windrose implied that the good cause exception diminishes the already limited certainty a VREP has about its allocation of POLR customers and prevents adequate risk mitigation by a VREP through the purchase of short-term forward contracts to hedge the variable load and set variable rate pricing.

Windrose also indicated that the current rule sets the POLR rate based on the wholesale price to ensure VREPs can recover such costs. Windrose expressed concern that in an event similar to Winter Storm Uri where wholesale prices spike, VREPs would argue that "load weighted real time price" is the necessary cost to recover in applying for the good cause exception in §25.43(m)(4). Windrose articulated that this would effectively turn the subsection into a "back door" to charge customers real-time costs of power, contrary to the intention of this rulemaking and therefore should be deleted.

Joint REPs opposed Windrose's recommendation to delete §25.43(m)(4) but acknowledged the concern. Joint REPs argued that deleting the good cause exception in §25.43(m)(4) effectively requires an LSP to potentially operate at a loss by taking on a variable number of customers on short notice, at rates that do not cover the prevailing costs of providing service.

Joint REPs further commented that the requirement for each LSP to seek a good cause exception under §25.43(m)(4) in situations that warrant good cause would be resource intensive for LSPs and the commission, and instead could be mitigated by designing the POLR rate to account for risk. However Joint REPs contended that the "circuit breaker" provisions within §25.43(m)(4) requiring the adjusted rate to be on an interim basis and upon good cause shown to the commission, with 10 days of notice to customers are sufficient for unanticipated events.

Commission Response

The commission declines to implement Windrose's proposal to remove the good cause exception codified under §25.43(m)(4) for the reasons cited by Joint REPs.

§25.43(p)(13) and §25.43(p)(14) – REP Obligations and Prohibitions, ERCOT Rules for Identification of Customers Transferred to POLR Service

Subsection §25.43(p) details a REP's obligations in transitioning customers to POLR service. Paragraph §25.43(p)(13) prohibits a mass transition under §25.43(p) from superseding a customer-made switch request to a new REP if the request was made before the mass transition was initiated, and further requires that a customer-requested switch post-dating the mass transition be made on the next available switch date. Paragraph §25.43(p)(14) contains ERCOT-specific rules regarding identification of mass transitioned customers for a period of 60 days, termination identification based on the later of the first completed switch or end of the 60-day period, and an implementation timetable with requirements for ERCOT regarding system changes or new transactions.

ARM proposed amendments to §25.43(p)(13) on the basis that the rule addresses concerns that have since been resolved by advanced metering systems (AMS) that permit same day switching and have diminished costs related to physical meter readings. ARM argued that §25.43(p)(13) is now harmful to the customer's REP-of-choice as the rule requires customers be switched to the customer's REP-of-choice, who may be not expecting the additional customer and may not yet be financially prepared to serve that customer, rather than allowing the customer to continue to be switched to the POLR REP and then later be switched to the customer's REP-of-choice on the agreed upon date. ARM recommended that the customer's REP-of-choice be given the opportunity to proceed with the switch date as originally scheduled or advance the switch to the customer's chosen REP instead of the customer being switched to the POLR REP. ARM proposed draft language for §25.43(p)(13), replacing the language stating that "the switch must be made on the next available switch date" and replacing it with "the scheduled recipient REP shall be notified and given the opportunity to accelerate the switch date."

ARM also provided draft language for §25.43(p)(14) which struck the last sentence concerning the processing of the switch transaction as an "unprotected, out-of-cycle switch".

Commission Response

The commission agrees with ARM that AMS allows REPs the ability to offer same-day switches. However, the commission disagrees with ARM that REPs should have the option of allowing the customer to be transitioned to a VREP or POLR rather than honoring the customer's selection of REP. The commission adopts §25.43(p)(13) as proposed. The commission agrees with ARM's proposed amendment §25.43(p)(14) and amends the rule accordingly.

§25.43(t)(1) – ERCOT Customer Notice Requirements for POLR Transition

Subsection §25.43(t) prescribes the form, manner, and timing of notice to customers transitioned to POLR service and notice to the commission by ERCOT, the REP transitioning the customer, and the POLR provider. Paragraph §25.43(t)(1) prescribes the methods ERCOT must use to notify the customer of the customer's transition to POLR service and requires ERCOT to study the effectiveness of the prescribed notice methods used and report the results to the commission.

ARM recommended §25.43(t)(1) be amended to acknowledge that ERCOT may use different messaging for customers transitioned to a VREP during a POLR transition because these customers are served on a market-based month to month rate, rather than the POLR rate calculated under §25.43(m)(2).

Commission Response

The commission declines to adopt ARM's proposal for §25.43(t)(1). Whether a customer is served on a market-based month-to-month rate or the maximum POLR rate has no bearing on the form of notice. While the "language and format approved by the commission" may vary based on the rate type, the current rule language allows appropriate flexibility.

§25.43(t)(3)(B) – Pricing of POLR service

Subparagraph §25.43(t)(3)(B) requires the notice to include a description of the POLR provider's rate for service and, if the pricing of subsection §25.43(m)(2) is applicable, 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 must not be determined until the time the bill is prepared.

TEAM recommended removing language about the POLR rate being unpredictable and not determined until the bill is prepared or otherwise amending the language to be consistent with the final pricing formula determined in this rulemaking under §25.43(m)(2). TEAM specifically highlighted the requirement that "a statement that the price is generally higher than available competitive prices" be reviewed once the commission establishes the final pricing formula.

Commission Response

The commission agrees with TEAM that the formula in the adopted rule no longer should be described as "unpredictable" and amends the rule accordingly. The statement "a statement that the price is generally higher than available competitive prices" is an accurate description of the POLR rate and should remain in the notice.

§25.471(a) – General Provisions of Customer Protection Rules – concerning applicability

Paragraph §25.471(a)(3) applies minimum, mandatory customer protection rules to aggregators and REPs, and, where applicable, TDUs, registration agents, brokers, and power generation companies. Customers larger than 50 kW are eligible to waive a number of these rules. Proposed §25.471(a)(3) adds proposed §25.499 (relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts) to the list of rules that a customer larger than 50 kW cannot agree to waive by contract.

ARM supported the proposed changes to rules applicable to customers other than residential and small commercial customers, as the changes provide certainty and will help ensure compliance.

TLSC alleged that some REPs adopt contract provisions that are contrary to PURA and commission rules. TLSC recommended amending §25.471(a)(4) to require that REPs "notify the commission of all offerings and certify that each published document is fully in compliance with statutory and regulatory requirements."

Commission Response

The commission declines to adopt TLSC's recommendation to amend §25.471(a)(4) require a REP to notify the commission of all offerings and certify that published REP documents comply with all statutory and regulatory requirements, because this would be overly burdensome for both REPs and commission staff. All products offered by a REP must already meet specific, minimum customer protection requirements detailed under Chapter 25, Subchapter B of this title as required by PURA §39.101, regardless of whether the REP has certified compliance. Further, requiring a REP to notify the commission of each new product would impose a cost on REPs without providing any additional customer protection. If, on its own initiative or in response to a complaint by a customer, commission staff desires to review a document produced by a REP, it can request that document under §25.485 (relating to Customer Access and Complaint Handling).

§25.475(a) – Applicability of Customer Protection Rules

Section §25.475 prescribes customer protection rules applicable to REPs and general requirements and information disclosures applicable to residential and small commercial

customers. Specifically, §25.475 lists notice and information disclosure requirements for contracts with residential and small commercial customers for fixed rate products and non-fixed rate products.

Proposed §25.475(a) details the requirements applying to REPs and aggregators in marketing and providing service to residential and small commercial customers, and further specifies that the section applies to brokers, aggregators, and TDUs only when specifically stated. Additionally, the proposed version indicates that the section is effective for contracts entered into on or after September 1, 2021, and that contracts entered into prior must comply with the version of §25.475 effective at the time of execution.

TLSC opposed the proposed changes to §25.475(a) requiring compliance for brokers and aggregators only when specified. TLSC contended that, like REPS, the §25.475 rules should universally apply to brokers and aggregators.

Commission Response

The commission declines to apply the entirety of §25.475 to brokers and aggregators as recommended by TLSC as such a sweeping change of the rule's applicability is beyond the scope of this rulemaking project. Further, the commission notes that each of these entities plays different roles in the market, requiring different customer protection rules. Brokerage service customer protection rules, for example, are codified separately under §25.486 (relating to Customer Protections for Brokerage Services).

Effective date

TEAM recommended that §25.475(a) clarify that PURA §39.112, via Section 3 of HB 16, only applies to new enrollments or re-enrollments on or after September 1, 2021, not existing customers and provided rule language consistent with its proposal. Accordingly, TEAM expressed concern that the rule will apply to pre-existing contracts and maintained that expiration dates in the proposed rule should not affect existing customer contracts. TEAM maintained that requiring REPs to craft an expiration notice system, no matter where the customer is in their existing contract, would be onerous. TEAM emphasized that any rule exceeding the scope of HB16 should only be effective on or after the effective rule date and further argued that any changes related to SB 3 should not be applied until the effective date of the rulemaking, and instead should be effective no later than December 1, 2021.

TEAM proposed language for §25.475(a) that would make the rule apply only to brokers and aggregators when specifically indicated and would be effective for new contracts beginning after the rule is effective, with a three-month window for implementation. Additionally, TEAM and ARM recommended that any contracts created prior to the effective rule date would adhere to current rule requirements. ARM specified that the applicability in wholesale indexed product ban for residential and small commercial customers under §25.475(c)(2)(F), acknowledgment of wholesale pricing risk for larger customers under §25.499, and increased contract notice expiration requirements for residential term contracts under §25.475(c)(2)(D) and (E) and §25.475(e) should track HB 16 to be effective only for contracts entered into, on or after September 1, 2021.

ARM additionally recommended that, for rule requirements under §25.475 and §25.499 beyond the scope of HB 16, be effective 120 days after this rulemaking to provide REPs time

to implement. ARM's recommended language was also included in redlines provided by Joint REPs.

Commission Response

The commission agrees with Joint REPs that REPs need time to implement modifications to the rule that were adopted at the discretion of the commission that effect contract documents. However, the commission disagrees that requirements mandated by statute merit a delayed effective date. Further, the clarifications that the commission made to the definitions of fixed price products and price are effective immediately.

The commission adds language clarifying that the "requirements for an additional notice to residential customers of contract expiration is effective for contracts entered into on or after September 1, 2021. REPs must comply with the requirements set forth in §25.475(e)(2)(B)(ii), (e)(2)(C)(iii), (v), (vi), (vii), (h)(4), (h)(6)(C), and the requirements set forth under §25.475(e)(1) for contracts entered into with small commercial customers by April 1, 2022. Contracts entered into prior to the effective date of these provisions must comply with the provisions of this section in effect at the time the contracts were executed."

The commission also notes that the ban on offering wholesale indexed products to residential and small commercial customers under §25.475(c)(3)(F) was effective via statute on September 1, 2021, and the ban on offering indexed products under that subparagraph is effective on February 1, 2022. The commission, however, addresses the deadlines by adding language to §25.475(c)(3)(F).

The commission does not provide a delayed effective date for §25.475(c)(3)(G) or (j) as these provisions were removed from the rule.

§25.475(b)(1)-(2) – Contract and Contract Documents

Paragraph §25.475(b)(2) defines the term "Contract" as inclusive of the terms of service, EFL, and YRAC. Proposed §25.475(b)(2) adds the AOR to the definition. Proposed §25.475(b)(2) defines the term "Contract Documents" as the terms of service, EFL, YRAC, and, if applicable, the AOR.

ARM and TEAM opposed requiring AORs under §25.475(j) for residential and small commercial customers who purchase a product with a separate assessment of ancillary service charges and instead recommended inclusion of the AOR in the EFL. ARM and TEAM therefore requested the removal of AOR references under §25.475(b)(1) and included a proposed revision to the definition removing the AOR reference.

CCR and Joint REPs proposed inclusion of a reference to the Prepaid Disclosure Statement (PDS) in the definitions of both contract and contract documents and provided recommended language.

Commission Response

The commission removes the reference to AOR in both the definitions of contract and contract documents because the commission is prohibiting each of the products requiring an AOR under the proposed rule. The commission agrees with CCR and Joint REPs that PDS should be included in both definitions and adopts Joint Reps recommended language.

§25.475(b)(5) and (8) – Definitions of Fixed Rate Product & Price

Paragraphs §25.475(b)(5) and §25.475(b)(8) respectively provide the definitions of "fixed rate product" and "price". Under existing §25.475(b)(5), a fixed rate product is a "retail electric product…for which the price (including all recurring charges) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in TDU charges, changes to [ERCOT administrative fees] or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control." Under existing §25.475(b)(8), price is defined as the "cost for a retail electric product that includes all recurring charges [and excluding applicable taxes]." Proposed §25.475(b)(5) and (8) clarify that ancillary services are included in both the definition of price and again, in "price" as it is used in the definition of fixed rate product.

The commission's proposed changes to the definitions of price and fixed rate product were intended to ensure that REPs were prohibited from passing through to customers enrolled in fixed rate products changes in the costs of ancillary services. TEAM, ARM, CCR, Octopus, and Joint REPs opposed the commission's proposed changes, but differed in whether they objected to the prohibition on the pass through of existing ancillary service charges or new or modified ancillary service charges.

Existing Ancillary Service Charges

CCR argued the existing definition of "fixed rate product" allows REPs to pass through costs "beyond the REP's control" such as ERCOT charges and that conversely, the proposed rule forces REPs to "bundle" ERCOT charges into its generation costs. CCR maintained that, if the commission requires REPs to offer a "fixed price" inclusive of ancillary service charges

without permitting REPs to pass through such costs to customers, REPs will likely cease offering fixed rate products.

CCR argued that the amount of ancillary service costs a REP will be responsible for is unknown because ERCOT allocates each load serving entity a load share of the total ancillary services it procures and that only once ERCOT has procured all ancillary services, which may vary daily, can a REP have certainty about the amount and type of ancillary services ERCOT will charge the REP. As such, under the proposed rule it is difficult for a REP to design a fixed rate product that adequately accounts for a REP's ancillary service charges and therefore, a REP cannot include ancillary service charges as part of the "price" for a fixed rate product on the EFL or otherwise recoup that cost. CCR opined that the current rules allow charges that are not within the REP's control to be passed through to the customer and in contrast, the proposed rule prohibits the pass through of ancillary service charges for fixed rate products, which in turn will result in a REP absorbing as a loss any increase in costs not covered by the fixed amount prescribed on the EFL at the outset of the contract. Therefore, in CCR's view, components of an ASC that are not within a REP's control should be eligible to be passed through to customers and that conversely, the proposed rule erroneously concludes that ancillary service charges are a generation expense within the control of the REP and not part of the ERCOT fee charged to loads.

CCR suggested amending the definition of "fixed rate product" to disclose what is "fixed" depending on whether a REP discloses the total price ("bundled") or itemizes all or some of cost components of the price ("unbundled") on the EFL. If a REP offers a "bundle" then the rate is inclusive of generation charges, TDU charges, and ERCOT charges and pass-through of any increases to these costs would be prohibited. However, if an "unbundled" product is

offered, the EFL will include a "fixed" generation portion, while other line item costs are eligible to be passed through to customers.

OPUC, ARM, and TEAM each filed comments reflecting a different understanding of current law than that espoused by CCR with regards to whether REPs are currently permitted to pass through changes in existing ancillary service charges to residential and small commercial customers enrolled in a fixed rate product.

OPUC expressed indifference to the proposed definition because, in OPUC's view, ancillary service charges are already not permitted to be passed through to customers, and the proposed definitional changes to "fixed rate product" and "price" will have no effect on what has already been established by the commission.

ARM and TEAM drew a distinction between variations in existing ancillary service prices, and changes to the process ERCOT uses for determining the quantity of ancillary services acquired or the creation of new ancillary service products. These commenters argue that existing ancillary services have historically been treated as recurring charges that are properly included in the price of a fixed indexed product but that changes to the quantity of ancillary services acquired or the creation of new ancillary service products qualify as regulatory actions that would permit a variation in price charged to the customer. OPUC agreed that ancillary service charges were recurring charges.

TEAM also argued that the proposed rule creates ambiguity as to what quantity or type of ancillary service charges must be carried by load service entities and REPs.

Joint REPs opposed CCR's proposed amendments for the definition of "fixed rate product" to provide for separate descriptions and pass-through criteria for "bundled" and "unbundled"

plans, because it will cause confusion among customers and current rules already require disclosure by REPs as to which terms of a product can and cannot change in the EFLs.

Commission Response

The commission declines to modify the definition of fixed rate product to provide for separate descriptions and pass-through criteria for bundled and unbundled plans, as requested by CCR, as such a delineation would be superfluous. The price of a fixed rate product is not permitted to vary based on any changes in ancillary service charges, unless determined by the commission, regardless of whether they are presented in a bundled or unbundled manner. The commission also agrees with Joint REPs that this proposal would cause confusion among customers regarding which aspects of their rates were fixed.

The commission disagrees with CCR's depiction of ancillary service charges as part of an ERCOT administrative fee that can be passed through to customers. In Project Number 35768, *Rulemaking Relating to Retail Electric Provider Disclosures to Customers*, the commission specifically "clarifie[d] that for the fixed rate product, ERCOT fees include fees approved by the commission and charged to loads, such as the ERCOT administrative fee… [and under] this definition, ERCOT fees would not include ancillary services…". The commission agrees with TEAM, ARM, and OPUC that ancillary service charges should be treated as recurring charges that are fixed in the context of a fixed rate product.

The commission agrees with TEAM that the proposed rule does not clearly delineate between which ancillary service charges are not permitted to cause the price of a fixed

rate product to vary from the disclosed amount. To clarify that, unless determined by the commission, REPs are not permitted to pass through any variations in ancillary service charges, the commission adds language to paragraph (b)(5): "The price may not vary from the disclosed amount to reflect changes in ancillary service charges unless the commission expressly designates a specific type of ancillary service product as incurring charges beyond the REP's control for a customer's existing contract."

New or Modified Ancillary Service Charges

TEAM, ARM, and CCR each argued REPs should be permitted to modify the price of fixed rate products when ERCOT or the commission introduce modified or new ancillary service products. ARM noted that "there is an important distinction between variations in ancillary services prices and variations in the quantity of ancillary services obtained (or suite of ancillary services procured)." ARM elaborated, stating that "variations in the price of ancillary service charges [may not be passed through to customers], but changes to ERCOT's process for determining the *quantity* of ancillary services to be obtained or the creation of new ancillary service products that result in charges assessed to load serving entities (such as REPs) arguably qualify as regulatory actions that would permit a price change under to §25.475(d)(2)(B). Further, ARM characterized ERCOT's procurement of a dramatically increased quantity of ancillary services as regulatory action that should be eligible for pass-through under §25.475(d)(2)(B).

In the alternative, ARM recommended clarifying the reference to ancillary service charges in the proposed definitions to distinguish which ancillary service costs that a REP can and cannot

reasonably control. ARM stated that REPs should not "unilaterally bear policy-driven risks that are beyond their control."

TEAM argued that changing the definition of "fixed rate product" will only cause confusion as the proposed rule differs from the statutory definition of "fixed rate product" under PURA §39.112(a), which was not changed by HB 16. Additionally, TEAM stated the meaning of "ancillary services" has been in flux at the commission in terms of quantity or type of ancillary service costs LSEs (Load Serving Entities) and REPs are responsible for. Specifically, TEAM argued that ancillary services were "historically designed to cover unanticipated forecast error in the amount of load on the system and short-term risk of the sudden loss of a generation unit" but recent action by ERCOT using ancillary services as a "reserve substitute" has changed the meaning of ancillary services in practice. TEAM concluded that if ERCOT creates a new cost or fee beyond REP's control, and labels it an ancillary service charge, REPs should not be prohibited from passing through that cost.

TLSC opposed ARM, TEAM, and CCR's recommendations to remove ancillary service charges from the proposed definitions of "fixed rate product" and thus permit ancillary service charges to be passed through to customers. TLSC argued that this would mean REPs would be able to charge fees additional to the "fixed" price. TLSC maintained that consumers may be misled by a rate that passes through ancillary service charges as being lower than it actually is. Accordingly, TLSC reasoned that REPs, not the consumer, should bear "financial risk in the market" by hedging wholesale prices.

Commission Response

As previously stated, the commission modifies the definition of fixed rate product to clarify that "[t]he price may not vary from the disclosed amount to reflect changes in ancillary service charges unless the commission expressly designates a specific type of ancillary service product as incurring charges beyond the REP's control for a customer's existing contract." The commission declines to adopt ARM's recommendation for distinguishing between ancillary service costs that a REP can and cannot reasonably control in the proposed definition of "fixed rate product" and "price" or to draw a distinction between existing and new or modified ancillary service charges. Such distinctions would not effectuate the commission's customer protection goal of insulating customers from hazardous price increases as whatever portion of ancillary service charges that may not be known is the portion most subject to volatility due to outlier events. The added language to the definition of "fixed rate product" specifies that the commission, in its discretion, may review whether costs outside of a REPs control incurred for ancillary service products may be passed through in the price for a fixed rate product in existing customer contracts. The commission has determined to review costs associated with ancillary service products for pass through eligibility to balance customer protection interests and the risk concerns of REPs.

Ancillary service charges are a necessary cost that is required to maintain the safety and reliability of the electric grid, and while the commission recognizes that these costs may be challenging for REPs to predict with accuracy, REPs are in a significantly better position to do so than residential or small commercial customers and have access to a much wider array of financial tools to manage those risks.

The commission also disagrees with TEAM that not allowing the price of fixed rate products to vary due to changes in ancillary service costs is inconsistent with statute. The commission acknowledges that the statutory definition for fixed rate product in PURA §39.112(a) aligns with the existing definition in the commission's rules, but PURA §39.112(k) specifically states that "[n]o provision in this section shall be construed to prohibit the commission from adopting rules that would provide a greater degree of customer protection." Moreover, under PURA §39.101(a)(1) "the commission shall ensure that retail electric customers are established that entitle a customer to… safe, reliable, and reasonably priced electricity" and under PURA §39.101(b)(5) and (6) a customer is entitled "to receive sufficient information to make an informed choice of service provider" and "to be protected from unfair, misleading, or deceptive practices".

Similar to its analysis for prohibiting indexed rate products under Question 2 above, the commission finds that allowing REPs to modify the price of a fixed rate product based on changes in costs associated with ancillary service charges does not ensure that customers are entitled to reliable and reasonably priced electricity, nor – by the REPs' own admission – do customers have sufficient information to make an informed choice of provider if individual REPs may elect to pass these costs through to customers directly. Lastly, while the commission recognizes that REPs are not misleading or deceptive in attempting to pass through ancillary service charges or modify the rate of fixed rate products in response to changes in ancillary service costs, it is fundamentally unfair for customers to bear an unexpected, unknown cost that could be exponentially higher than what is expected upon signing of a contract for a fixed-rate product. Including ancillary service charges in the definitions of "fixed rate product" and "price," and thus preventing

ancillary service charges from being passed through to customers, is neither a ban on REPs offering fixed-rate products nor an unreasonable restraint on cost recovery by REPs. The commission finds that these proposed definitional changes and resulting effects on fixed-rate products are "both practical and limited so as to impose the least impact on competition" as required by PURA § 39.001(d).

§25.475(c) – General Retail Electric Provider requirements

Subsection §25.475(c) concerns the general and specific contract requirements and general information disclosure requirements a REP must provide customers in their communications with said customers. Subsection §25.475(c) also contains website requirements for REPs, concerning specific information that must be available on REP websites.

CCR recommended simplifying language referring to documents such as terms of service, YRAC, EFL, the AOR to "contract documents" because the proposed language excludes the PDS.

Commission Response

The commission declines to simplify references to the terms of service, YRAC, EFL, and AOR to "contract documents." Additionally, distinction among the documents is necessary for specific requirements for each document within §25.475 and reference elsewhere in the rules. The commission has adopted CCR's and Joint REP's proposal to include the PDS in the definition of "Contract documents" under §25.475(b)(2). The commission adds references to PDS as appropriate throughout this subsection.

§25.475(c)(2)(A) – General Contracting Requirements

Subparagraph §25.475(c)(2)(A) concerns required contract documents and their formatting.

TEAM and ARM suggested removing references to AORs from the proposed language. ARM recommended requiring AOR within EFLs and removing references to AOR in §25.475(c)(2)(A) since they would no longer be needed with their recommendation. TEAM recommended the removal of AOR language from §25.475 entirely and alternatively also recommended modifying the proposed rule to require an AOR in the EFL.

Commission Response

The commission removes all references to AOR in 25.475, consistent with its decisions to prohibit the offering of indexed products to residential and small commercial customers and prohibit the pass through of ancillary service charges to these customers.

§25.475(c)(3)(F) and §25.475(c)(3)(G) – Specific Contracting Requirements

Proposed §25.475(c)(3)(F) concerns a REP, aggregator, or broker's ability to enroll a residential or small commercial customer in a wholesale indexed product.

Proposed §25.475(c)(3)(G) concerns a REP, aggregator, or broker's ability to enroll a customer that is not a residential or small commercial customer in a wholesale indexed product.

TLSC recommended the proposed subparagraph §25.475(c)(3)(F) prohibit all indexed products as well as all products that pass through ancillary service charges. Octopus Energy, TEAM and CCR oppose the prohibition of indexed plans and plans with ancillary service pass through charges for residential and small commercial customers. CCR, TEAM, and TLSC recommended deleting some or all of proposed §25.475(c)(3)(G) and Octopus agreed in reply. CCR and TEAM recommended striking the subparagraph in its entirety. CCR argued that the

proposed subparagraph is beyond the scope of HB 16. OPUC disagreed with CCR, replying that placing restrictions or eliminating indexed products is well within the commission's authority. Octopus recommended "appropriate safeguards" for an indexed product rather than a complete ban. Robert Borlick commented "that a ban of all indexed products would reduce demand response and reliability of the ERCOT grid" and Octopus agreed in reply. TLSC commented that most customers lack the knowledge or the resources to monitor ERCOT market pricing or ancillary service charges. OPUC agreed. OPUC disagreed with CCR, TEAM and Octopus Energy's opposition to prohibition of indexed plans and plans with ancillary service pass through charges for residential and small commercial customers.

TLSC recommended the deletion of the subsection "concerning the customer's acknowledgement of risk." ARM and TEAM suggested modifying the proposed subparagraph to permit the placement of the AOR in the EFL. TEAM made this suggestion in the alternative, if the commission did not strike the language.

Commission Response

The commission agrees with TLSC's and OPUC's recommendation and adopts language consistent with a comprehensive ban on wholesale indexed products and products that pass-through ancillary service charges to residential or small non-residential customers. The commission disagrees with Octopus Energy, TEAM, and CCR and declines to adopt its proposals for the rule. The comprehensive discussion of this decision is found under the commission response to comments on Question 2.

The commission also adds language clarifying when these prohibitions take effect, as discussed under §25.475(a) above.

Proposed §25.475(e)(1) – Notice Timeline for Expiration of a Non-Fixed Rate Product

Proposed §25.475(e) encompasses contract expiration and renewal offers. The rule dictates what information a REP is required to provide a customer, under which circumstances and when such information needs to be sent to customers. Proposed §25.475(e)(1) addresses the notice a REP must provide a customer regarding the expiration of a non-fixed rate product and a REP's obligation should they fail to provide such notice.

TEAM opposed the application of fixed rate product expiration notice requirements under proposed §25.475(e)(1) to small commercial customers because doing so would be outside the scope of HB 16.

ARM and TEAM proposed clarifying proposed §25.475(e)(1) to conform to the language of HB 16. Specifically, TEAM suggested adding language to the paragraph that would allow contract expiration notices to be sent electronically as stated in proposed §25.475(e)(2)(B).

Commission Response

The commission strikes proposed paragraph (e)(1) from the adopted rule, as it is no longer necessary. All variable price products are month-to-month, and non-fixed rate term products are no longer permitted consistent with the commission's decision to eliminate indexed products for residential and small commercial customers.

Proposed §25.475(e)(2)(A); Adopted §25.475(e)(2)(A) – Notice Timeline for Fixed-Rate Products

Proposed §25.475(e)(2) addresses the notice a REP must provide a customer regarding the expiration of a fixed rate product and a REP's obligation should they fail to provide such notice.

Proposed §25.475(e)(2)(A) establishes the form and manner of expiration notices to customers subscribing to fixed-rate products.

TLSC supported the proposed changes to the notice timeline for fixed rate products in proposed §25.475(e)(2).

ARM opposed the application of contract expiration notice provisions to small commercial customers because it would be outside the scope of HB 16 and requested that small commercial customers not be included in the adopted rule. Alternatively, ARM suggested changing the language of subparagraph proposed §25.475(e)(2)(A) to allow REPs to send the final contract expiration notice to a small commercial customer 14 days prior to the contract expiration date.

ARM and TEAM also recommended permitting REPs to send the first contract expiration notice up to three months prior to the contract end date if the contract is for a term of 12 months or longer, as three months would encompass the last third of the contract term. Octopus Energy agreed. In the alternative, ARM suggested amending the preamble of proposed §25.475(e)(2)(A) to provide for this flexibility.

Octopus Energy recommended requiring two additional notices at two months and one month prior to the end date of the contract. If these two additional notices are required, Octopus also recommends limiting a REP's option to extend a contract to three months or less, should the REP fail to provide appropriate notice of the original contract end date.

Commission Response

The commission disagrees with ARM and TEAM that contract expiration notice provisions should not apply to small commercial customers. As detailed in commission responses to Question 1, Question 2, §25.43(m)(2), and §25.475(b)(5), the commission, in its discretion, has gone beyond the mandatory minimum requirements of H.B. 16 and S.B. 3 pursuant to its statutory authority as the agency charged with regulation of the electric market. However, the commission acknowledges the prudence expressed in commenters' recommendations and adopts ARM's proposal permitting a REP to send the final contract expiration notice to a small commercial customer 14 days prior to the contract expiration date. The commission further adopts ARM and TEAM's proposal, supported by Octopus Energy, to send the first contract expiration notice up to three months prior to the contract end date if the contract is for a term of 12 months or longer and amends §25.475(e)(1)(A) accordingly. The commission declines to adopt Octopus Energy's recommendations for two additional notice requirements for two months and one month prior to the end date of the contract as ARM and TEAM's proposal substantively addresses this concern with a 12-month threshold.

Proposed §25.475(e)(2)(C); Adopted §25.475(e)(2)(C) – Additional Means of Providing Notice

Proposed §25.475(e)(2)(C) dictates a REP's obligation if the notice timeline for expiration of a fixed rate product is not met and the customer does not select another retail electric product before the expiration of the fixed rate contract term.

ARM commented that proposed §25.475(e)(2)(C) should be deleted as it is duplicative of proposed §25.475(e)(3)(E). TEAM suggested clarifying proposed §25.475(e)(2)(C) to conform to proposed §25.475(e)(3)(E) to specify that "sufficient expiration notice' means the final [contract expiration notice] and not that all three [contract expiration notices] must first be sent" ARM also suggested this in the alternative to deleting proposed §25.475(e)(2)(C).

Octopus Energy strongly supported the changes to the notice REPs must provide customers regarding the termination of a fixed rate product. Octopus proposed clarifying proposed §25.475(e)(2)(C) concerning how long a REP must continue serve to a customer under the pricing terms of a fixed rate product if a REP makes an error providing the expiration notice during the last third of the customer's fixed rate contract period.

Joint REPs opposed Octopus Energy's recommendation for contract expiration notice, arguing it may be harmful in practice. Joint REPs recommend including an explanation in the preamble to clarify that the requirement in proposed §25.475(e)(2)(C) is not intended to allow for REPs to avoid sending the contract expiration notice to a customer by continuing to serve such a customer on a fixed rate product.

Commission Response

The commission adopts ARM's and TEAM's proposal for clarifying "sufficient expiration notice" in §25.475(e)(1)(C) to specify the final contract expiration notice and not that all three contract expiration notices must first be sent in order to conform with §25.475(e)(2)(E).

The commission declines to adopt Octopus Energy's proposal for §25.475(e)(1)(C). The proposed rule appropriately balances the obligation of a REP to provide required notice to a customer with the right of a customer to select another retail electric product.

The commission agrees with Joint REPs that §25.475(e)(1)(C) is not intended to permit REPs to continue to serve a customer on a fixed rate product by failing to issue contract expiration notices to customers.

The commission agrees with Octopus Energy's recommendation limiting REPs to extend a contract by a period not exceeding three months should the REP fail to provide appropriate notice of the original contract end date and amends the rule accordingly.

Proposed §25.475(e)(3)(A) and §25.475(e)(3)(C)(vi); Adopted §25.475(e)(2)(A) and §25.475(e)(2)(C)(vi) – Contract Expiration

Paragraph §25.475(e)(3) reflects REP's responsibilities to a customer when a contract is reaching its expiration date, including notice and information requirements. Proposed §25.475(e)(3)(A) details the procedure a REP must follow if a customer takes no action in response to the final notice of contract expiration. Proposed §25.475(e)(3)(B) and its subsections prescribe the requirements and form and content of a customer's contract expiration notice.

Octopus recommended clarifying proposed §25.475(e)(3)(A) to require REPs to provide monthly notice of the price applicable to a default renewal product before that product goes into effect. To do this, Octopus recommended changing proposed §25.475(e)(3)(A) to require REPs to provide notice of the price a customer will pay if they default to the renewal prices no later than 24 to 72 hours before the rate is applicable unless the customer is on a daily or hourly

index. In addition, Octopus suggested making this price notice a requirement for "any variable price product sold to residential and small commercial customers, as well as customers who rolled onto such a product prior to the effective date of HB 16."

Joint REPs opposed Octopus Energy's recommendation for price disclosure because it is "unnecessary, impractical" and goes beyond the scope of HB 16. Joint REPs further commented that REPs have existing obligations to provide notice of price to customers under §25.475 and a product's price is not known until a customer's usage is known and the contract is towards its end.

ARM and TEAM commented that the removal of the word "visible" from proposed §25.475(e)(3)(B)(i) may have been in error. ARM suggested the appropriate word to remove from that subparagraph would have been "readily." If this was the case, ARM supported the change, and this support would also be applicable to the same change in proposed §25.475(e)(3)(B)(ii) and §25.475(e)(3)(B)(iii) as well. TEAM recommended including in proposed §25.475(e)(3)(C)(vi) language like that of proposed §25.475(e)(3)(C)(v) and proposed §25.475 (e)(3)(C)(vii) that clarifies the information required in the final notice.

Commission Response

The commission declines to adopt Octopus Energy's recommendations for §25.475(e)(2)(A) as it is beyond the scope of this rulemaking and agrees with Joint REPs regarding the same. The commission agrees with ARM and TEAM and adopts their proposed change for §25.475(e)(2)(B)(i), removing the word "readily" and replacing it with "visible" in conformity with §25.475(e)(2)(B)(ii) and §25.475(e)(2)(B)(iii).

The commission agrees with TEAM and adopts their proposed change to add "The final notice provided pursuant to subsection (e)(3) must include" to §25.475(e)(2)(C)(vi) for conformity with §25.475(e)(2)(C)(v) and §25.475(e)(2)(C)(vii).

Proposed §25.475(e)(4); Adopted §25.475(e)(3) – Affirmative Consent

Paragraph §25.475(e)(4) prescribes how a customer may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, and what information must be sent to a customer in doing so.

ARM and TEAM recommended removing the reference to the AOR as a separate document in proposed §25.475(e)(4)(C). In the alternative TEAM suggested including the AOR in the EFL.

Commission Response

The commission removes the reference to AORs as requested, as AORs are no longer necessary in accordance with the commission's decision to prohibit the offering of indexed products to residential and small commercial customers.

§25.475(h)(4) – TDU Load Shed Procedures

§25.475(h) dictates the specificity required in the Your Rights as a Customer (YRAC) disclosure. Proposed §25.475(h)(4) requires that a TDU develop load shed procedures on or before September 1, 2021. The YRAC document detail such procedures and identifies for customers where more detailed information on the same can be found.

TLSC requested YRACs and terms of services to be reviewed for compliance with commission rules upon being posted on Power to Choose. TEAM requested the commission assist utilities

in creating a standard load shedding procedure. Additionally, TEAM requested assistance with creating conformity in particular areas, even if the commission believes each region should have different standards. Joint TDUs reported having already created a template for a "concise, standardized communication discharging the TDU's obligations under §25.475(h)(4) that each TDU will provide each REP and post on the TDU's website." Joint TDUs believed they have already fulfilled their obligation to communicate the load shed procedures, along with information required by S.B. 3. Additionally, Joint TDUs believed the omission of a formal review and approval process is inherent and proper, because TDUs are required to communicate their own respective procedures on load shed. Joint TDUs requested a reasonable period to comply with the new rule and asserted a September 1, 2021, deadline was inappropriate in that it is retroactive. TEAM also requested an opportunity for REPs to review and comment on load shed procedures prior to the rule adoption. Joint TDUs acknowledged they would include this documentation on their respective websites but doing so would only be beneficial for customers who have consistent computer access.

TLSC requested the commission not assist TDUs with creating a document because it would alleviate legal liability for providing reliable power. TLSC requested transparency of the process and additional information that provides information of load shedding priorities for each address. TLSC believed this information is important for critical care and chronically conditioned customers.

TLSC listed certain types of information they would like to see included in the periodic notice of load shed procedures: notification of critical care and chronic condition customers twice yearly, how involuntary load shedding affects these individual's power supply, and safety nets created by REPs and utilities alike, along with a phone number to communicate with a

knowledgeable individual in case of an unplanned outage. TLSC believed the current TDU draft plan is insufficient.

Commission Response

The commission disagrees with TLSC's recommendation for the commission to review YRACs and terms of service documents simultaneously after being posted on the Power to Choose website for similar reasons as stated under heading §25.471(a). Imposing a requirement for the commission to review the YRACs and terms of service documents upon posting to the Power to Choose website is out of scope of this rulemaking.

The commission finds that TEAM's proposal for the commission to assist utilities in creating a standard load shedding procedure is beyond the scope of this rulemaking.

The commission agrees with Joint TDUs and TEAM that a September 1, 2021 effective date for compliance with §25.475(h)(4) is inappropriate. However, the commission notes TDUs are required to comply with §17.003(d-1) to the extent possible or practicable as of September 1, 2021.

§25.479 – Issuance and Format of Bills

Section §25.479 concerns the required contents of bills and the frequency and delivery of such bills. Subparagraph §25.479(c)(1)(S) requires a bill to a residential customer list the Power to Choose website in 12-point font or larger on the first page of the bill. Proposed §25.479(d) requires a REP to provide public service notices to its customers, including load shed procedures, a list of critical customers and applications for the same, and recommendations to customers to reduce electricity use during load shed.

TLSC expressed concern for residential customers who lack internet access being able to reach the Power to Choose website as specified in §25.479(c)(1)(S). Due to this concern TLSC recommended adding the Power to Choose phone number to the §25.479 (c)(1)(S) required information for residential customers.

ARM and TEAM expressed concerns about the timeline for public service notices in §25.479 (d)(1)-(4). Because of hurricane messaging requirements in May to November, ARM and TEAM proposed changing the public service notice requirements to April and December with an allowance for electronic communication.

ARM also commented that service notice requirements in §25.479(d) are similar to the requirements that §25.479(h)(4) would add to the YRAC documents. Therefore, ARM recommended changing §25.479(d)(2) to allow REPs to direct customers to a website maintained for purposes of §25.479(h)(4).

Commission Response

The commission disagrees with TLSC's recommendation for §25.479(c)(1)(S) to change the rule language to include the Power to Choose phone number. The required language is specified in PURA §39.116.

The commission disagrees with ARM's and TEAM's recommendation to change §25.479(d)(1)-(4) to require REPs to provide information to customers in April and December as opposed to April and October. The commission's selection of April and October is intended to allow customers sufficient time in advance of the summer and winter seasons to apply for critical care status or make other necessary arrangements. This goal supersedes ARM's and TEAM's goal to make the messaging cycle more

convenient for their implementation. The commission agrees with ARM that §25.479(d)(2) should reference the YRAC documents detailing critical customers under §25.479(h)(4) and amends the rule accordingly.

§25.485(c) – Regarding Complaint Handling

Subsection §25.485(c) addresses a customer's ability to make a formal or informal complaint and a REPs ability to require alternative dispute resolution in the terms of service.

TLSC expressed concerns over terms of service agreements violating §25.485(c) and that they are written in language costumers cannot comprehend. TLSC recommended that the commission needs to be more proactive in this regard as the customers most vulnerable are poor, elderly, or those with disabilities. TLSC suggested "regular compliance reviews of the documents, providing standard language for all or portions of the document, and issuing fines when violations are found" or a recurring procedure for document review that define the business relationship between a REP and customer.

Commission Response

The commission declines to adopt the recommendations of TLSC for reviewing terms of service agreements as outside the scope of this rulemaking.

§25.498 – Prepaid service

Section §25.498 governs the applicability and relevant definitions for prepaid service in addition to the requirements and obligations of a REP in offering prepaid service.

TLSC opposed general prepaid service, arguing that it is targeted to low-income customers, has subpar consumer protection standards resulting in multiple disconnections in a single

month, and is high priced. TLSC suggested that instead of prepaid service, reasonably priced fixed-rate POLR service offered as a standard retail service package be available to transition prepaid customers to post-paid service. TLSC urged the commission to be proactive in monitoring for compliance with prepaid service rules and take corrective action where required.

Commission Response

The commission declines to adopt the recommendations of TLSC for banning prepaid service products as this proposal is beyond the scope of this rulemaking. The commission also declines to adopt the recommendations of TLSC to transform POLR service into a retail service product. As discussed in the commission's response to Question 1 above, the commission opts to use a year-over-year safety threshold to ensure that POLR rates remain at a reasonable level.

§25.498(c)(15) – Price Cap for Prepaid Service

Paragraph §25.498(c)(15) prohibits a REP providing prepaid service to a residential customer from charging higher than the POLR rate in the applicable TDU service territory. Specifically, the calculation under §25.475(g)(2)(A) – §25.475(g)(2)(E) for prepaid service must be equal to or lower than at least one of the tests described in subparagraph §25.498(c)(15)(A) – §25.498(c)(15)(C) which consist of the minimum, maximum, and average POLR rates. §25.498(c)(15)(D) requires the same test for a prepaid fixed rate product. Windrose offered draft language modifying §25.498(c)(15) as follows:

> "A REP that provides prepaid service to a residential customer ~~shall~~ must not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The

> average price over a calendar month or TDU billing cycle for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A)-(E) of this title ~~shall~~ must be equal to or lower than at least one of the tests described in subparagraphs (A)-(C) of this paragraph"

Windrose proposed the amendment because it interpreted the commission's intent for the rule to be to ensure the average price charged does not exceed the POLR threshold and that the average is calculated over the billing cycle or a typical billing period. Windrose noted that some REPs offer free energy and TDU charges overnight in exchange for a higher rate during peak hours and that such a REP could charge a higher rate during peak hours so long as the average rate is below the POLR threshold. In calculating the average, Windrose notes a timeframe is necessary and proposes the timeframe be "a calendar month or TDU billing cycle." ARM noted if the commission's proposed changes to §25.43(m)(2)(A) and §25.43(m)(2)(B) are implemented, amendments may be required for §25.498(c)(15) to determine whether a prepaid product is compliant with the requirement that it be priced no greater than the POLR rate. Specifically, some of the changes to the existing rule in proposed §25.43(m)(2)(A) and §25.43(m)(2)(B) may render the tests envisioned in §25.498(c)(15) impractical and would warrant revision. However, ARM stated that if its alternative proposal for §25.43(m)(2)(A) and §25.43(m)(2)(B) is adopted, the tests in §25.498(c)(15) could likely remain as-is.

Commission Response

The commission disagrees with Windrose that §25.498(c)(15) should use the "average price" in determining if the REP is offering a rate that exceeds the POLR threshold.

The commission agrees with ARM that the final POLR rate formula under §25.43(m)(2) affects the prepaid service price cap tests under §25.498(c)(15). Accordingly, the commission modifies §25.498(c)(15) and removes references to the average POLR rate test and the minimum POLR rate test.

§25.499 – Acknowledgement of Risk Requirements for Certain Commercial Contracts

Proposed §25.499 establishes requirements related to AOR documents for wholesale indexed products or products that include a separate assessment of ancillary services costs offered to a customer other than a residential or small commercial customer.

ARM endorsed proposed new §25.499 which, in ARM's view, improved amended §25.471's enumeration of customer protection rules as §25.499 separately addresses requirements for customers other than residential or small commercial entities and thus makes the applicability of customer protection rules clearer.

TEAM argued that HB 16 does not impose an AOR requirement for any products other than wholesale indexed products and if an AOR requirement is imposed it should be included within the EFL. TEAM provided draft language removing the requirements for an AOR for products with a separate assessment of ancillary services costs located in subsections (a) and (d) of this section.

Joint REPs, which included TEAM, provided a redline of this rule in its reply that did not include TEAM's recommended language.

Commission Response

The commission declines to adopt TEAM's recommendation to not require an AOR for products containing a separate assessment of ancillary service costs. A customer that enrolls in a product with a separate assessment of ancillary service costs needs to understand the inherent risk of a large, unexpected increase in cost associated with this type of product. While not explicitly required by HB 16, the commission finds that these products present a similar risk as wholesale indexed products, and therefore, merit similar treatment under commission rules.

The commission also declines to adopt TEAM's recommendation that the AOR disclosure should be solely provided as a part of an EFL. To ensure that a customer *acknowledges* the risks, the commission requires affirmative action on the part of the customer.

§25.499(b) – Effective Date

Proposed §25.499(b) specifies that this section is effective for enrollments or re-enrollments entered into on or after September 1, 2021.

ARM recommended that the requirements imposed by the proposed rule that exceed the requirements of HB 16 should be effective 120 days after adoption to provide REPs time to modify systems and implement the requirements.

Commission Response

The commission agrees with ARM that REPs require time to implement the changes required by this subsection. The commission specifies that the AOR requirements for

product types other than wholesale indexed products are effective for enrollments or reenrollments entered into on or after April 1, 2021.

§25.499(d) – Acknowledgement of Risk Requirements

Proposed §24.499(d) requires an aggregator, broker, or REP, prior to enrolling a customer in a wholesale indexed product or a product containing a separate assessment of ancillary service charges, to obtain an AOR signed by the customer verifying that the customer accepts the potential price risks associated with the product. Paragraph (d)(2) of this subsection contains specific language that must be included in an AOR for products that contain a separate assessment of ancillary service charges.

CCR recommended that the proposed language in §25.499(d) be modified to allow for other methods for obtaining customer consent, beyond a signature. Specifically, CCR recommended that a REP be permitted to obtain an AOR by means of one of the methods authorized in §25.474 of this title (relating to Selection of Retail Electric Provider).

Joint REPs opposed CCR's recommendations that the AOR requirement be modified to allow for alternative means of obtaining customer consent by cross-referencing an authorized method in §25.474. Joint REPs opposed this recommendation as large commercial customers can waive §25.474 via §25.471(a)(3). Additionally, Joint REPs stated that HB 16, via PURA §39.110(c), requires a customer-signed acknowledgement as a prerequisite to enrollment.

Commission Response

The commission declines to allow a REP to obtain an AOR through one of the methods for enrollment under §25.474 as requested by CCR. The commission agrees with Joint

REPs that the language of HB 16 requires a *signed* AOR. However, the commission notes that it does not specify that the AOR must contain a physical signature, and that other forms of signatures authorized by law, such as electronic signatures, also fulfill this requirement.

CCR and TEAM argued that the commission exceeded the requirements of H.B. 16 by expanding the use of the AOR beyond wholesale indexed products to also include products containing a separate assessment of ancillary services costs. TEAM recommended removal of the reference to ancillary service costs from (d) and both commenters recommended deletion of (d)(2).

Commission Response

The commission declines to omit products containing a separate assessment of ancillary service costs from the AOR requirements under §25.499(d) for reasons discussed in its reply to comments filed on §25.499.

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

This new rule and rule amendments are proposed under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and

jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §17.003, which requires electric utilities and retail electric providers to provide clear and uniform information about rates, terms, services, involuntary load shed procedures, critical designations, and procedures for applying for critical designations; §17.102, which directs the commission to adopt and enforce rules requiring that charges on an electric service provider's bill be clearly and easily identified, §39.101, which requires the commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; §39.106, which requires that the commission designate providers of last resort; §39.107(g), which prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR, §39.110, which prohibits the offering of wholesale indexed products to residential or small commercial customers and placed conditions on the enrollment of other customers in wholesale indexed products; §39.112, which requires a REP to provide certain information to a residential customer who has a fixed rate product.

Cross reference to statutes: Public Utility Regulatory Act §14.001, §14.002, §17.003, §17.102, §39.101, §39.106, §39.107(g), §39.110, and §39.112.

§25.43. Provider of Last Resort (POLR).

(a) **Purpose.** This section establishes the requirements for Provider of Last Resort (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) 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 (r) 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, must 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 terms when used in this section have the following meanings, unless the context indicates otherwise:

(1) **Affiliate --** As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs).

(2) **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.

(3) **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.

(4) **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.

(5) **Business day** -- As defined by the ERCOT Protocols.

(6) **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).

(7) **Large service provider** (LSP) -- A REP that is designated to provide POLR service pursuant to subsection (j) of this section.

(8) **Market-based product** – A month-to-month product that is either offered to or matches the rate of a product offered to non-POLR customers of the REP for the same TDU territory and customer class. A month-to-month contract may not contain a termination fee or penalty. 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 (m)(2) of this section is not a market-based product.

(9) **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.

(10) **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.

(11) **POLR area** -- The service area of a TDU in an area where customer choice is in effect.

(12) **POLR provider** -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.

(13) **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.

(14) **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.

(15) **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.

(16) **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 must offer a basic, standard retail service package to customers it is designated to serve, which is limited to:

(A) Basic firm service; and

(B) Call center facilities available for customer inquiries.

(5) A POLR provider must, 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 (m)(2) of this section must contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice must also include contact information for the LSP, and the Power to Choose website, and must 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 an 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 must 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 (m)(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 must 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 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).

(3) An LSP that has received commission approval to designate one of its affiliates to provide POLR service on behalf of the LSP pursuant to subsection (k) of this section must retain responsibility for the provision of POLR service by the LSP affiliate and remains liable for violations of applicable laws and commission rules and all financial obligations of the LSP affiliate associated with the provisioning of POLR service on its behalf by the LSP affiliate.

(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 (m)(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 (m)(2) of this section must provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service must 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) Each REP must provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative will 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 will 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 (r) of this section.

(2) POLR providers must 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 must 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 will determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year.

(1) Each REP must provide information to the commission necessary to establish its eligibility to serve as a POLR provider for the next term. A REP must file, by July 10th of each even-numbered year, by service area, information on the

classes of customers it provides 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. As part of that filing, a REP may request that the commission designate one of its affiliates to provide POLR service on its behalf pursuant to subsection (k) of this section in the event that the REP is designated as an LSP. The independent organization must provide to the commission the total number of ESI ID and total MWh data for each class. Each REP must also provide information on its 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 will 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 MWhs 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 will publish the names of all REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and will 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 will verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff will 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 must make a filing with the commission detailing the basis for its concerns and must 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 must file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff will review the filing, and will 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 will 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 will 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 unless otherwise determined by the executive director. This filing must 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, will not be considered confidential information.

(1) A VREP must 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 will 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 will 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 must provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff will 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 must be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP must 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 will be communicated to ERCOT and must be implemented for the current allocation if possible.

(5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must 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 must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it will 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 will 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 must be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the

transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.

(2) In each POLR area, for each customer class, the commission will 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 must be designated as LSPs. Commission staff will 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 an LSP.

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL must be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) must 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 must note that such information is REP-specific.

(4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) of this section must 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 (t)(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 (t)(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 will 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 must 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 must 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 must 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 will, with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) **Designation of an LSP affiliate to provide POLR service on behalf of an LSP.**

(1) An LSP may request the commission designate an LSP affiliate to provide POLR service on behalf of the LSP either with the LSP's filing under subsection (h) of this section or as a separate filing in the current term project. The filing must be made at least 30 days prior to the date when the LSP affiliate is to begin providing POLR service on behalf of the LSP. To be eligible to provide POLR service on behalf of an LSP, the LSP affiliate must be certificated to provide retail electric service; have an executed delivery service agreement with the service area TDU; and meet the requirements of subsection (h)(2) of this section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this section as related to serving customers in the applicable customer class.

(2) The request must include the name and certificate number of the LSP affiliate, information demonstrating the affiliation between the LSP and the LSP affiliate, and a certified agreement from an officer of the LSP affiliate stating

that the LSP affiliate agrees to provide POLR service on behalf of the LSP. The request must also include an affidavit from an officer of the LSP stating that the LSP will be responsible and indemnify any affected parties for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP in the event that the LSP affiliate defaults or otherwise does not fulfill such financial obligations.

(3) Commission staff will make an initial determination of the eligibility of the LSP affiliate to provide POLR service on behalf of an LSP and publish their names. The LSP or LSP affiliate may challenge commission staff's eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to provide POLR service on behalf of the LSP. Commission staff will reassess the LSP affiliate's eligibility and notify the LSP and LSP affiliate of any change in eligibility status within 10 business days of the receipt of the additional documentation. If the LSP or LSP affiliate does not agree with staff's determination of eligibility, either or both may then appeal the determination to the commission through a contested case. The LSP must provide POLR service during the pendency of the contested case.

(4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU must make a filing with the commission detailing the basis for its concerns and must provide a copy of the filing to the

LSP and the LSP affiliate that are the subject of the filing. If the filing contains confidential information, ERCOT or the TDU must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it will request that the LSP affiliate demonstrate that it has the capability. The commission staff will review the LSP affiliate's filing and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing POLR service. The LSP affiliate may continue providing POLR service to ESI IDs currently receiving the service during the pendency of the proceeding; however, the LSP must immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to POLR service through a mass transition, during the pendency of the proceeding.

(5) Designation of an affiliate to provide POLR service on behalf of an LSP must not change the number of ESI IDs served or the retail sales in megawatt-hours for the LSP for the reporting period nor does such designation relieve the LSP of its POLR service obligations in the event that the LSP affiliate fails to provide POLR service in accordance with the commission rules.

(6) The designated LSP affiliate must provide POLR service and all reports as required by the commission's rules on behalf of the LSP.

(7) The methodology used by a designated LSP affiliate to calculate POLR rates must be consistent with the methodology used to calculate LSP POLR rates in subsection (m) of this section.

(8) If an LSP affiliate designated to provide POLR service on behalf of an LSP cannot meet or fails to meet the POLR service requirements in applicable laws and Commission rules, the LSP must provide POLR service to any ESI IDs currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.

(9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.

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

(1) ERCOT must 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 must use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP must 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 must:

(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 must be assigned an equal number of ESI IDs, up to the number that each VREP indicated it was willing to serve for a given class and POLR area.

(2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT must 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 must 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 must:

(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 must be treated as a separate event.

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

(1) A VREP must provide service to customers using a market-based, month-to-month product. The VREP must 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 must 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 must 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, reliability unit commitment (RUC) capacity short 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 must be $0.06 per kWh.

(iii) LSP energy charge must be the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the applicable load zone for the previous 12-month period ending September 1 of the preceding year (the historical average RTSPP) multiplied by the number of kWhs the customer used during that billing period and further multiplied by 120%. In no instance may the LSP

energy charge exceed 120% of the previous year's LSP energy charge. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

(iv) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

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

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

Where:

(i) Non-bypassable charges must 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, RUC capacity short 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 must be $0.025 per kWh.

(iii) LSP demand charge must 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 must be the average of the actual RTSPPs for the applicable load zone for the previous 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. In no instance may the LSP energy charge exceed 125% of the previous year's LSP energy charge. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

(v) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

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

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

Where:

(i) Non-bypassable charges must 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, RUC capacity short 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 must be $2,897.00 per month.

(iii) LSP demand charge must be $6.00 per kW, per month.

(iv) LSP energy charge must be the appropriate RTSPP, 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 must have a floor of $7.25 per MWh.

(3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP must 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 must 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 must be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(n) **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 must use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU must 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 must then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

(o) **Limitation on liability.** A POLR provider must make reasonable provisions to provide service under this section to any ESI IDs currently receiving the service and to ESI IDs obtained in a future mass transition or served upon customer request; however, liabilities not excused by reason of force majeure or otherwise must be limited to direct, actual damages.

(1) Neither the customer nor the POLR provider must 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 will 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.

(p) **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 (m)(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 must return the customers' deposits within seven calendar days of the initiation of the transition.

(6) ERCOT must create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, must be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT must be tested on a periodic basis. Each REP must submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission will establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT must 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 must be treated as confidential and must only be used for mass transition related purposes.

(8) Information from the TDU and ERCOT to the POLR providers must 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 must 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 must 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 must 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 must 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 must 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 will 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. For a REP that has obtained a current list from the Low Income List Administrator (LILA) that identifies low-income customers, these funds must first be used to provide deposit payment assistance for that REP's transitioned low-income customers. The Executive Director or staff designee will, 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, must

satisfy in full the customers' initial deposit obligation to the VREP or LSP.

(B) For a REP that has obtained a current list from the LILA that identifies low-income customers, the Executive Director or the staff designee will distribute available proceeds pursuant to §25.107(f)(6) of this title to the VREPs proportionate to the number of customers they received in the mass transition, who at the time of the mass transition were identified as low-income customers by the current LILA list, 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 must be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers as identified in the LILA list that are 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 must be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(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 must 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 must 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 must 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 must be made on the next available switch date.

(14) ERCOT must identify customers who are mass transitioned for a period of 60 calendar days. The identification must 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 must 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.

(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(l) of this title (relating to Selection of Retail Electric Provider) is not required.

(16) In a mass transition event, the ERCOT initiated transactions must 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 must not be considered a break in a series of consecutive months of estimates, but must not be considered a month in a series of consecutive estimates performed by the

TDU. A TDU must 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 must 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 must not bill as a discretionary charge, the costs included in this regulatory asset, which must 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 must 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 must 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 must promptly

cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(q) **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 will, 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 must continue to serve customers who have not selected another REP.

(r) **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 will, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions apply:

(1) The board of directors must provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority must 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 must be for a minimum period corresponding to the period for which the solicitation must be made;

(4) The electric cooperative wishing to delegate its authority to designate a continuous provider must 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 must automatically reject the delegation of authority.

(s) **Reporting requirements.** Each LSP that serves customers under a rate prescribed by subsection (m)(2) of this section must 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 must be filed within 30 calendar days of the end of the quarter.

(1) For each month of the reporting quarter, each LSP must 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 from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;

(B) 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;

(C) 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

(D) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (B) or (C) of this paragraph.

(2) For each month of the reporting quarter each LSP must 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 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;

(B) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(C) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and

(D) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (A) or (B) of this paragraph.

(3) For the entirety of the reporting quarter, each LSP must 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.

(t) **Notice of transition to POLR service to customers.** When a customer is moved to POLR service, the customer must be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice must be provided within two days of the time ERCOT and the transitioning REP know that the customer must be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it must provide notice as soon as practicable. The POLR provider must provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and must provide the notice to transitioning customers as soon as practicable. The POLR provider must email the notice to the commission staff members designated for receipt of the notice.

(1) ERCOT notice methods must include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT must notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) of this section. ERCOT must 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 must include:

(A) The reason for the transition;

(B) A contact number for the REP;

(C) A statement that the customer will receive a separate notice from the POLR provider that must disclose the date the POLR provider must begin serving the customer;

(D) Either the customer's deposit plus accrued interest, or a statement that the deposit must 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 will use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and

(H) 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 must include:

(A) The date the POLR provider began or will 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 (m)(2) of this section, a statement that the price is generally higher than available competitive prices;

(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 (m)(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.

(u) **Market notice of transition to POLR service.** ERCOT must 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 must include the exiting REP's name, total number of ESI IDs, and estimated load.

(v) **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 must 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.

(w) **Deposit payment assistance.**

(1) The commission staff designee will distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

(2) The executive director or staff designee will 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 identified by the LILA that have been or will be transitioned to the applicable POLR (if available); and

(B) the amount of deposit payment assistance that will be provided on behalf of a POLR customer identified by the LILA (if available).

(3) Amounts credited as deposit payment assistance pursuant to this section must be refunded to the customer in accordance with §25.478(j) of this title.

§25.471. General Provisions of Customer Protection Rules.

(a) **Application.** This subchapter applies to aggregators and retail electric providers (REPs). In addition, where specifically stated, these rules apply to transmission and distribution utilities (TDUs), the registration agent, brokers and power generation companies. These rules specify when certain provisions are applicable only to some, but not all, of these providers.

(1) Affiliated REP customer protection rules, to the extent the rules differ from those applicable to all REPs or those that apply to the provider of last resort (POLR), do not apply to the affiliated REP when serving customers outside the geographic area served by its affiliated transmission and distribution utility. The affiliated REP customer protection rules apply until the price-to-beat obligation ends in the affiliated REPs' affiliated TDU service territory.

(2) Requirements applicable to a POLR apply to a REP only in its provision of service as a POLR.

(3) The rules in this subchapter are minimum, mandatory requirements that must be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.499 (relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts), a customer other than a residential or small commercial class customer, or a non-residential customer whose load is part of an aggregation in excess of 50 kilowatts, may

agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules must be reduced to writing and provided to the customer. Additionally, copies of such agreements must be provided to the commission upon request.

(4) The rules of this subchapter control over any inconsistent provisions, terms, or conditions of a REP's terms of service or other documents describing service offerings for customers in Texas.

(5) For purposes of this subchapter, a municipally owned utility or electric cooperative is subject to the same provisions as a REP where the municipally owned utility or electric cooperative sells retail electricity service outside its certificated service area.

(b) **Purpose.** The purposes of this subchapter are to:

(1) provide minimum standards for customer protection. An aggregator or REP may adopt higher standards for customer protection, provided that the prohibition on discrimination set forth in subsection (c) of this section is not violated;

(2) provide customer protections and disclosures established by other state and federal laws and rules including but not limited to the Fair Credit Reporting Act (15 U.S.C. §1681, et seq.) and the Truth in Lending Act (15 U.S.C. §1601, et seq.). Such protections are applicable where appropriate, whether or not it is explicitly stated in these rules;

(3) provide customers with sufficient information to make informed decisions about electric service in a competitive market; and

(4) prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators, REPs, and brokers in the marketing, solicitation and sale of electric service, in the administration of any terms of service for electric service and in providing advice or procurement services to, or acting on behalf of, a retail electric customer regarding the selection of a retail electric provider, or a product or service offered by a retail electric provider.

(c) **Prohibition against discrimination.** This subchapter prohibits REPs from unduly refusing to provide electric service or otherwise unduly discriminating in the marketing and provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for low-income or energy efficiency services.

(d) **Definitions.** For the purposes of this subchapter the following words and terms have the following meaning, unless the context indicates otherwise:

(1) **Applicant** -- A person who applies for electric service via a move-in or switch with a REP that is not currently the person's REP of record or applies for aggregation services with an aggregator from whom the person is not currently receiving aggregation services.

(2) **Burned Veteran** -- A customer who is a military veteran who a medical doctor certifies has a significantly decreased ability to regulate body temperature because of severe burns received in combat.

(3) **Competitive energy services** -- As defined in §25.341 of this title (relating to Definitions).

(4) **Customer** -- A person who is currently receiving retail electric service from a REP in the person's own name or the name of the person's spouse, or the name of an authorized representative of a partnership, corporation, or other legal entity, including a person who is changing premises but is not changing their REP.

(5) **Electric service** -- Combination of the transmission and distribution service provided by a transmission and distribution utility, municipally owned utility, or electric cooperative, metering service provided by a TDU or a competitive metering provider, and the generation service provided to an end-use customer by a REP. This term does not include optional competitive energy services, as defined in §25.341 of this title, that are not required for the customer to obtain service from a REP.

(6) **Energy service** -- As defined in §25.223 of this title (relating to Unbundling of Energy Service).

(7) **Enrollment** -- The process of obtaining authorization and verification for a request for service that is a move-in or switch in accordance with this subchapter.

(8) **In writing** -- Written words memorialized on paper or sent electronically.

(9) **Move-in** -- A request for service to a new premise where a customer of record is initially established or to an existing premise where the customer of record changes.

(10) **Retail electric provider (REP)** -- Any entity as defined in §25.5 of this title (relating to Definitions). For purposes of this rule, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory. An agent of the REP may perform all or part of the REP's responsibilities pursuant to this subchapter. For purposes of this subchapter, the REP will be responsible for the actions of the agent.

(11) **Small commercial customer** -- A non-residential customer that has a peak demand of less than 50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12- month period.

(12) **Switch** -- The process by which a person changes REPs without changing premises.

(13) **Termination of service** -- The cancellation or expiration of a service agreement or contract by a REP or customer.

§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers.

(a) **Applicability**. The requirements of this section apply to retail electric providers (REPs) in connection with the provision of service and marketing to residential and small commercial customers. When specifically stated, the requirements of this section apply to brokers, aggregators, and transmission and distribution utilities (TDUs). The requirements for an additional notice to residential customers of contract expiration is effective for contracts entered into on or after September 1, 2021. REPs must comply with the requirements set forth in §25.475(e)(2)(B)(ii), (e)(2)(C)(iii), (v), (vi), (vii), (h)(4), (h)(6)(C), and the requirements set forth under §25.475(e)(1) for contracts entered into with small commercial customers by April 1, 2022. Contracts entered into prior to the effective date of these provisions must comply with the provisions of this section in effect at the time the contracts were executed.

(b) **Definitions**. The definitions set forth in §25.5 (relating to Definitions) and §25.471(d) (relating to General Provisions of Customer Protection Rules) of this title apply to this section. In addition, the following words and terms, when used in this section have the following meanings, unless the context indicates otherwise.

(1) **Contract** -- The terms of service document, the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), and the documentation of enrollment pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), and, if applicable, Prepaid Disclosure Statement (PDS).

(2) **Contract documents** -- The terms of service, EFL, YRAC, and, if applicable, PDS.

(3) **Contract expiration** -- The time when the initial term contract is completed. A new contract is initiated when the customer begins receiving service pursuant to the new EFL.

(4) **Contract term** -- The time period the contract is in effect.

(5) **Fixed rate product** -- A retail electric product with a term of at least three months for which the price (including all recurring charges and ancillary service charges) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in TDU charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity, Inc. administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control. The price may not vary from the disclosed amount to reflect changes in ancillary service charges unless the commission expressly designates a specific type of ancillary service product as incurring charges beyond the REP's control for a customer's existing contract.

(6) **Indexed product** -- A retail electric product for which the price, including recurring charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer, and to reflect actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads or changes

resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that are beyond the REPs control. An indexed product may be for a term of three months or more, or may be a month-to-month contract.

(7) **Month-to-month contract** -- A contract with a term of 31 days or less. A month-to-month contract may not contain a termination fee or penalty.

(8) **Price** -- The cost for a retail electric product that includes all recurring charges, including the cost of ancillary services, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax.

(9) **Recurring charge** -- A charge for a retail electric product that is expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a twelve month period. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.

(10) **Term contract** -- A contract with a term in excess of 31 days.

(11) **Variable price product** -- A retail product for which price may vary according to a method determined by the REP, including a product for which the price, can increase no more than a defined percentage as indexed to the customer's previous billing month's price. For residential customers, a variable price product can be only a month-to-month contract.

(12) **Wholesale Indexed Product** -- A retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time

settlement point prices determined by the independent organization certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power region.

(c) **General Retail Electric Provider requirements.**

(1) **General Disclosure Requirements.**

(A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, terms of service, EFLs, YRACs, and, if applicable, PDSs distributed by a REP or aggregator must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:

(i) Using the term or terms "fixed" to market a product that does not meet the definition of a fixed rate product.

(ii) Suggesting, implying, or otherwise leading someone to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.

(iii) Suggesting, implying or otherwise leading someone to believe that receiving retail electric service from a REP will provide a customer with better quality of service from the TDU.

(iv) Falsely suggesting, implying or otherwise leading someone to believe that a person is a representative of a TDU or any REP or aggregator.

(v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the initial contract term.

(B) Written and electronic communications must not refer to laws, including commission rules without providing a link or website address where the text of those rules are available. All printed advertisements, electronic advertising over the Internet, and websites, must include the REP's certified name or commission authorized business name, or the aggregator's registered name, and the number of the certification or registration.

(C) The terms of service, EFL, YRAC , and, if applicable, PDS must be provided to each customer upon enrollment. Each document must be provided to the customer whenever a change is made to the specific document and upon a customer's request, at any time free of charge.

(D) A REP must retain a copy of each version of the terms of service, EFL, YRAC, and, if applicable, PDS during the time the plan is in effect for a customer and for four years after the contract ceases to be in effect for any customer. REPs must provide such documents at the request of the commission or its staff.

(2) **General contracting requirements.**

(A) Each terms of service, EFL, and YRAC must be complete, be written in language that is clear, plain and easily understood, and be printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents must include a link or website address to the full text of the applicable law or rule.

(B) Each contract document must be available to the commission to post on its customer education website if the REP chooses to post offers to the website.

(C) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. The REP may require a customer to provide evidence that it is moving to another location. There must be no early termination fee assessed to the customer as a result of the customer's relocation if the customer provides a forwarding address and, if required, reasonable evidence that the customer no longer occupies the location specified in the contract.

(D) A terms of service and EFL must disclose the type of product being described, using one of the following terms: fixed rate product or a variable price product.

(E) A REP must not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a

product with a contract term of 12 months or less for an existing residential customer or in response to an applicant's request to become a residential customer.

(F) In any dispute between a customer and a REP concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.

(G) For a variable price product, the REP must disclose on the REP's website and through a toll-free number the current price and, for residential customers, one year price history, or history for the life of the product, if it has been offered less than one year. A REP must not rename a product in order to avoid disclosure of price history. The EFL of a variable price product must include a notice of how the current price and, if applicable, historical price information may be obtained by a customer.

(H) A REP must comply with its contracts.

(3) **Specific contract requirements.**

(A) The contract term must be conspicuously disclosed.

(B) The start and end dates of the contract must be available to the customer upon request. If the REP cannot determine the start date, the REP may estimate the start date. After the start date is known, the REP must specify the end date of the contract by:

(i) specifying a calendar date; or

(ii) reference to the first meter read on or after a specific calendar date.

(C) If a REP specifies a calendar date as the end date, the REP may bill the term contract price through the first meter read on or after the end date of the contract.

(D) Each contract for service must include the terms of the default renewal product that the customer will be automatically enrolled in if the customer does not select another retail electric product before the expiration of the contract term after the customer has received all required expiration notices.

(E) If a REP does not provide proper notice of the expiration of a fixed rate contract and the customer does not select another REP before expiration of the contract term, the REP must continue to serve the customer under the pricing terms of the fixed rate product until the REP provides notice in accordance with applicable requirements of subsection I(2)(A)(i) or (ii) or the customer selects another retail electric product.

(F) A REP, aggregator, or broker is prohibited from offering:

(i) an indexed product to a residential or small commercial customer on or after February 1, 2022; or

(ii) a wholesale indexed product to a residential or small commercial customer on or after September 1, 2021.

(4) **Website requirements.**

(A) Each REP that offers residential retail electric products for enrollment on its website must prominently display the EFL for any products

offered without a person having to enter any personal information other than zip code and information that allows determination of the type of offer the consumer wishes to review. Person-specific information must not be required.

(B) The EFL for each product must be printable in no more than a two-page format. The EFL, terms of service, YRAC, and, if applicable, PDS for any products offered for enrollment on the website must be available for viewing or downloading.

(d) **Changes in contract and price and notice of changes.** A REP may make changes to the terms and conditions of a contract or to the price of a product as provided for in this section. Changes in term (length) of a contract require the customer to enter into a new contract and may not be made by providing the notice described in paragraph (3) of this subsection.

(1) **Contract changes other than price.**

(A) A REP may not change the price (other than as allowed by paragraph (2) of this subsection) or contract term of a term contract for a retail electric product, during its term; but may change any other provision of the contract, with notice under paragraph (3) of this subsection.

(B) A REP may not change the terms and conditions of a variable price month-to-month product unless it provides notice under paragraph (3) of this subsection.

(2) **Price changes.**

(A) A REP may only change the price of a fixed rate product or a variable product consistent with the definitions in this section and according to the product's EFL. Such price changes do not require notice under paragraph (3) of this subsection.

(B) For a fixed rate product, each bill must either show the price changes on one or more separate line items, or must include a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions.

(C) Each residential bill for a variable price product must include a statement informing the customer how to obtain information about the price that will apply on the next bill.

(3) **Notice of changes to terms and conditions**. A REP must provide written notice to its customers at least 14 days in advance of the date that the change in the contract will be applied to the customer's bill or take effect. Notice is not required for a change that benefits the customer.

(4) **Contents of the notice to change terms and conditions**. The notice must:

(A) be provided in or with the customer's bill or in a separate document;

(B) include the following statement, "Important notice regarding changes to your contract" clearly and conspicuously in the notice;

(C) identify the change and the specific contract provisions that address the change;

(D) clearly specify what actions the customer needs to take if the customer does not accept the proposed changes to the contract;

(E) state in bold lettering that if the new terms are not acceptable to the customer, the customer may terminate the contract and no termination penalty may apply for 14 days from the date that the notice is sent to the customer but may apply if action is taken after the 14 days have expired. No such statement is required if the customer would not be subject to a termination penalty under any circumstances; and

(F) state in bold lettering that establishing service with another REP may take up to seven business days.

(e) **Contract expiration and renewal offers.**

(1) **Notice Timeline for Expiration of a Fixed Rate Product.**

(A) For fixed rate products, the REP must provide the customer with at least three written notices of the date the fixed rate product will expire. The notices must be provided during the last third of the fixed rate contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the fixed rate contract period. For contracts with a period of 12 months or longer, the first notice may be provided up to three months prior to the contract end date. For fixed rate contracts for a period:

(i) Of more than four months, the final notice must be provided at least 30 days before the date the fixed rate contact will expire.

(ii) Of four or fewer months, the final notice must be provided at least 15 days before the date the fixed rate contract will expire.

(iii) For a small commercial customer, the final notice must be provided at least 14 days before the fixed rate contract will expire.

(B) The notices must be provided to the customer by mail at the customer's billing address, unless the customer has opted to receive communications electronically from the REP.

(C) If a REP does not provide the required notice of the expiration of a customer's fixed rate contract and the customer does not select another retail electric product before expiration of the fixed rate contract term, the REP must continue serving the customer under the terms of the fixed rate contract until the REP provides notice in accordance with applicable requirements of subsection (e)(1)(A)(i) or (ii), or until the customer selects another retail electric product.

(2) **Contract Expiration.**

(A) If a customer takes no action in response to the final notice of contract expiration for the continued receipt of retail electric service upon the contract's expiration, the REP must serve the customer pursuant to a default renewal product that is a month-to-month product that the customer may cancel at any time without a fee. The month-to-month product price may vary between billing cycles based on clear terms designed to be easily understood by the average customer.

(B) Written notice of contract expiration must be provided in or with the customer's bill, or in a separate document.

(i) If notice is provided with a residential customer's bill, the notice must be printed on a separate page. A statement must be included in a manner readily visible on the outside of the envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."

(ii) If the notice is provided in or with a small commercial customer's bill, the REP must include a statement in a manner readily visible on the outside of the billing envelope or in the subject line of an electronic bill that states, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."; or

(iii) For residential and small commercial customers, if notice is provided in a separate document, a statement must be included in a manner readily visible on the outside of the envelope and in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice. See Enclosed."

(C) A written notice of contract expiration (whether with the bill or in a separate envelope) must set out the following:

(i) The date, in boldfaced and underlined text, as provided for in subsection (c)(3)(B) of this section that the existing contract will expire.

(ii) If the REP provided a calendar date as the end date for the contract, a statement in bold lettering no smaller than 12 point font that no termination penalty must apply to residential and small commercial customers 14 days prior to the date stated as the expiration date in the notice. In addition, a description of any fees or charges associated with the early termination of a residential customer's fixed rate product that would apply before 14 days prior to the date stated as the expiration date in the notice must be provided. No such statements are required if the original contract did not contain a termination fee.

(iii) If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty applies to residential customers for 14 days prior to the date provided as the "on or after" date included in connection with the first meter read language referenced in the notice, or that no termination penalty applies to small commercial customers for 14 days prior to the contract end date. No such statement is required if the original contract did not contain a termination fee.

(iv) A description of any renewal offers the REP chooses to make available to the customer and the location of the terms of service and EFL for each of those products and a description of actions

the customer needs to take to continue to receive service from the REP under the terms of any of the described renewal offers and the deadline by which actions must be taken.

(v) The final notice provided pursuant to subsection (e)(2) must include a copy of the EFL for the default renewal product if the customer takes no action or if the EFL is not included with the contract expiration notice, the REP must provide the EFL to the customer at least 14 days before the expiration of the contract using the same delivery method as was used for the notice. The contract expiration notice must specify how and when the EFL will be made available to the customer.

(vi) The final notice provided pursuant to subsection (e)(2) must include a statement that if the customer takes no action, service to the customer will continue pursuant to the EFL for the default renewal product that must be included as part of the notice of contract expiration. The terms of service for the default renewal product must be included as part of the notice, unless the terms of service applicable to the customer's existing service also applies to the default renewal product.

(vii) The final notice provided pursuant to subsection (e)(2) must include a statement that the default service is month-to month and may be cancelled at any time with no fee.

(3) **Affirmative consent.** A customer that is currently receiving service from a REP may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Affirmative consent is not required when a REP serves the customer under a default renewal product pursuant to paragraph (1) of this subsection. Each recording, electronic document, or written consent form must:

(A) Indicate the customer's name, billing address, service address (for small commercial

customers, the ESI ID may be used rather than the service address);

(B) Indicate the identification number of the terms of service and EFL under which the customer will be served;

(C) Indicate if the customer has received, or when the customer will receive copies of the terms of service, EFL, YRAC, and, if applicable, PDS;

(D) Indicate the price(s) which the customer is agreeing to pay;

(E) Indicate the date or estimated date of the re-enrollment, the contract term, and the estimated start and end dates of contract term;

(F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response; and

(G) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.

(f) **Terms of service document.** The following information must be conspicuously contained in the terms of service:

(1) **Identity and contact information**. The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).

(2) **Pricing and payment arrangements.**

(A) Description of the amount of any routine non-recurring charges resulting from a move-in or switch that may be charged to the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;

(B) For small commercial customers, a description of the demand charge and how it will be applied, if applicable;

(C) An itemization, including name and cost, of any non-recurring charges for services that may be imposed on the customer for the retail electric product, including an application fee, charges for default in payment or late payment, and returned checks charges;

(D) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the terms of service; and

(E) A description of payment arrangements and bill payment assistance programs offered by the REP.

(3) **Deposits.** If the REP requires deposits from its customers:

(A) a description of the conditions that will trigger a request for a deposit;

(B) the maximum amount of the deposit or the manner in which the deposit amount will be determined;

(C) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;

(D) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits); and

(E) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.

(4) **Rescission, Termination and Disconnection.**

(A) In a conspicuous and separate paragraph or box:

(i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the terms of service, pursuant to §25.474 of this title; and

(ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile number or e-mail address that the customer may use to rescind service.

(B) A statement as to how service can be terminated and any penalties that may apply;

(C) A statement of the customer's ability to terminate service without penalty if the customer moves to another premises and provides evidence that it is moving, if required, and a forwarding address; and

(D) If the REP has disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.

(5) **Antidiscrimination.** A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services. For residential customers, a statement informing the customer that the REP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less.

(6) **Other terms.** Any other material terms and conditions, including exclusions, reservations, limitations of liability, or special equipment requirements, that are a part of the contract for the retail electric product.

(7) **Contract expiration notice.** For a term contract, the terms of service must contain a statement informing the customer that a contract expiration notice will be sent at least 14 days prior to the end of the initial contract term. The terms

of service must also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which must be a month-to-month product.

(8) A statement describing the conditions under which the contract can change and the notice that will be provided if there is a change.

(9) **Version number.** A REP must assign an identification number to each version of its terms of service, and must publish the number on the terms of service document.

(g) **Electricity Facts Label.** The EFL must be unique for each product offered and must include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.

(1) **Identity and contact information**. The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).

(2) **Pricing disclosures.** Pricing information must be disclosed by a REP in an EFL. The EFL must state specifically whether the product is a fixed rate or variable price product.

(A) For a fixed rate product, the EFL must provide the total average price for electric service reflecting all recurring charges, excluding state and

local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer.

(B) For a variable price product, the EFL must provide the total average price for electric service for the first billing cycle reflecting all recurring charges, including any TDU charges that may be passed through and excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer. Actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charge to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that were not implemented prior to the issuance of the EFL and were not included in the average price calculation may be directly passed through to customers beginning with the customer's first billing cycle.

(C) The total average price for electric service must be expressed in cents per kilowatt hour, rounded to the nearest one-tenth of one cent for the following usage levels:

(i) For residential customers, 500, 1,000 and 2,000 kilowatt hours per month; and

(ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month. If demand charges apply assume a 30 percent load factor.

(D) If a REP combines the charges for retail electric service with charges for any other product, the REP must:

(i) If the electric product is sold separately from the other products, disclose the total price for electric service separately from other products; and

(ii) If the REP does not permit a customer to purchase the electric product without purchasing the other products or services, state the total charges for all products and services as the price of the total electric service. If the product has a one-time cost up front, for the purposes of the average price calculation, the cost of the product may be figured in over a 12-month period with 1/12 of the cost being attributed to a single month.

(E) The following must be included on the EFL for specific product types:

(i) For a variable price product that increases no more than a defined percentage as indexed to the customer's previous billing month's price, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month." For residential customers, the following additional statement is required: "Please review the historical price of this product available at

{insert specific website address and toll-free telephone number}." In the disclosure chart, the box describing whether the price can change during the contract period must include the following statement: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity, Inc. administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control."

(ii) For all other variable price products, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}. In the disclosure chart, the box describing whether the price can change during the contract period must include the following statement: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside

our control." For residential customers, the following additional statement is required: "Please review the historical price of this product available at {insert specific website address and toll-free telephone number}."

(3) **Fee Disclosures.**

(A) If customer may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL must include a statement in the electricity price section that some customers will be subject to a special charge that is not included in the total average price for electric service and must disclose how the customer can determine the price and applicability of the special charge.

(B) A listing of all fees assessed by the REP that may be charged to the customer and whether the fee is included in the recurring charges.

(4) **Term Disclosure.** EFL must include disclosure of the length of term, minimum service term, if any, and early termination penalties, if any.

(5) **Renewable Energy Disclosures.** The EFL must include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix.

(6) **Format of Electricity Facts Label.** REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting requirements as outlined above. Such subsections should be referred to for

determination of the required reporting items on the EFL. Each EFL must be printed in type no smaller than ten points in size, unless a different size is specified in this section, and must be formatted as shown in this paragraph:

Electricity Facts Label (EFL)

{Name of REP}, {Name of Product}, {Service area *(if applicable)*}, {Date}

Electricity price

Average Monthly Use	500kWh	1,000kWh	2,000kWh
For Non-POLR usage:			
Average price per kWh	{x.x}¢	{x.x}¢	{x.x}¢
For POLR usage:			
Maximum price per kWh	{x.x}¢	{x.x}¢	{x.x}¢

{If applicable} On-peak {season or time}:{xxx}
{If applicable} Average on-peak price per kilowatt-hour: {x.x}¢
{If applicable} Average off-peak price per kilowatt-hour: {x.x}¢
{If applicable} Potential surcharges corresponding to the given electric service.

{If variable that does not change within a defined percentage} **Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}.**{If residential} **Please review the historical price of this product available at {insert website address and toll-free number}.**

{If variable that changes within a defined percentage}**Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month.** {If residential} **Please review the historical price of this product available at {insert website address and toll-free number}.**

Other Key Terms and Questions

See Terms of Service statement for a full listing of fees, deposit policy, and other terms.

Type of Product	(fixed rate or variable rate)

Disclosure Chart	Contract Term	(number of months)
	Do I have a termination fee or any fees associated with terminating service?	(yes/no) (if yes, how much)
	Can my price change during contract period?	(yes/no)
	If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change) In addition, if the REP chooses to pass through regulatory changes the following must be required: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control."
	What other fees may I be charged?	(List or give direct location in terms of service.)
	Is this a pre-pay or pay in advance product?	(yes/no)
	Does the REP purchase excess distributed renewable generation?	(yes/no)
	Renewable Content	(This product is x% renewable.)
	What is the statewide average for renewable content is?	(% of statewide average for renewable content)

	Contact info, certification number, version number, etc. *Additional information may be added below.*

Type used in this format:

Title: 12 point
Headings: 12 point boldface
Body: 10 point

(7) **Version number.** A REP must assign an identification number to each version of its EFL, and must publish the number on the EFL.

(h) **Your Rights as a Customer disclosure.** The information set out in this section must be included in a REP's "Your Rights as a Customer" document in plain language, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.

(1) A YRAC document must be consistent with the terms of service for the retail product.

(2) The YRAC document must inform the customer of the REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies pursuant to §25.480 of this title (relating to Bill Payment and Adjustments).

(3) The YRAC document must inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection.

(4) The YRAC must provide information the REP has received from the TDU pursuant to PURA §17.003(e) regarding the TDU's procedures for implementing involuntary load shedding initiated by the independent organization certified under PURA §39.151 for the ERCOT power region, and, if applicable, where any additional details regarding those procedures or relevant updates may be located. The REP may fulfill this requirement by providing a website address with the required information. Each TDU must develop such information and resources by

September 1, 2021 and make the website address where such information can be viewed available to REPs. A REP may provide this information at a website address other than the website addresses made available by the TDUs. A TDU or other entity providing a website address is required to update this information within 30 days of any material change in the information.

(5) The YRAC document must inform the customer of the customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.

(6) The YRAC document must inform the customer of the availability of:

(A) Financial and energy assistance programs for residential customers;

(B) Any special services such as readers or notices in Braille or TTY;

(C) Special policies or programs available to residential customers designated as chronic condition or critical care under §25.497 of this title and the procedure for a customer to apply to be considered for such designations; and

(D) Any available discounts that may be offered by the REP for qualified low-income residential customers. A REP may comply with this requirement by providing the customer with instructions for how to inquire about such discounts.

(7) The YRAC document must inform the customer of the following customer rights and protections:

(A) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);

(B) The customer's right to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);

(C) Protections relating to disconnection of service pursuant to §25.483 of this title;

(D) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);

(E) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List); and

(F) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information).

(8) **Identity and contact information**. The REP's certified name and business name (dba), certification number, mailing address, e-mail and Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference) at which the customer may obtain information concerning the product.

(i) **Advertising claims.** If a REP or aggregator advertises or markets the specific benefits of a particular electric product, the REP or aggregator must provide the name of the electric

product offered in the advertising or marketing materials to the commission or its staff, upon request. All advertisements and marketing materials distributed by or on behalf of a REP or aggregator must comply with this section. REPs and aggregators are responsible for representations to customers and prospective customers by employees or other agents of the REP concerning retail electric service that are made through advertising, marketing or other means.

(1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP must include the EFL of the REP making the claim. In lieu of including an EFL, the following statement must be provided: "You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP)." If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. Upon request, a REP must provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.

(2) **Television, radio, and internet advertisements.** A REP must include the following statement in any television, Internet, or radio advertisement that makes a specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: "You can obtain important standardized information that will allow you to compare this product with other

offers. Contact (name, telephone number and website (if available) of the REP)." If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. This statement is not required for general statements regarding savings or environmental quality, but must be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. Upon request, a REP must provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.

(3) **Outdoor advertisements**. A REP must include, in a font size and format that is legible to the intended audience, its certified name or commission authorized business name, certification number, telephone number and Internet address (if available).

(4) **Renewable energy claims.** A REP must authenticate its sales of renewable energy in accordance with §25.476 of this title (relating to Renewable and Green Energy Verification). If a REP relies on supply contracts to authenticate its sales of renewable energy, it must file a report with the commission, not later than March 15 of each year demonstrating its compliance with this paragraph and §25.476 of this title.

§25.479. Issuance and Format of Bills.

(a) **Application.** This section applies to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

(b) **Frequency and delivery of bills.**

(1) A REP must issue a bill monthly to each customer unless service is provided for a period of less than one month. A REP may issue a bill less frequently than monthly if both the customer and the REP agree to such an arrangement.

(2) A bill must be issued no later than 30 days after the REP receives the usage data and any related invoices for non-bypassable charges, unless validation of the usage data and invoice received from a transmission and distribution utility by the REP or other efforts to determine the accuracy of usage data or invoices delay billing by a REP past 30 days. The number of days to issue a bill must be extended beyond 30 days to the extent necessary to support agreements between REPs and customers for less frequent billing, as provided in paragraph (1) of this subsection or for consolidated billing.

(3) A REP must issue bills to residential customers in writing and delivered via the United States Postal Service. REPs may provide bills to a customer electronically in lieu of written mailings if both the customer and the REP agree to such an

arrangement. An affiliated REP or a provider of last resort must not require a customer to agree to such an arrangement as a condition of receiving electric service.

(4) A REP must not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document.

(c) **Bill content.**

(1) Each customer's bill must include the following information:

(A) The certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) A toll-free telephone number, in bold-face type, which the customer can call during specified hours for inquiries and to make complaints to the REP about the bill;

(C) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system;

(D) The service address, electric service identifier (ESI), and account number of the customer;

(E) The service period for which the bill is rendered;

(F) The date on which the bill was issued;

(G) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action;

(H) The current charges for electric service as disclosed in the customer's terms of service document, including applicable taxes and fees labeled "current charges." If the customer is on a level or average payment plan, the level or average payment due must be clearly shown in addition to the current charges;

(I) A calculation of the average unit price for electric service for the current billing period, labeled, "The average price you paid for electric service this month." The calculation of the average price for electric service must reflect the total of all fixed and variable recurring charges, but not include state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and must be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

(J) The identification and itemization of charges other than for electric service as disclosed in the customer's terms of service document;

(K) The itemization and amount of any non-recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the REP's terms of service document provided to the customer;

(L) The balances from the preceding bill, payments made by the customer since the preceding bill, and the amount the customer is required to pay by the due date, labeled "amount due;"

(M) A notice that the customer has the opportunity to voluntarily donate money to the bill payment assistance program, pursuant to §25.480(g)(2) of this title (relating to Bill Payment and Adjustments);

(N) If available to the REP on a standard electronic transaction, if the bill is based on kilowatt-hour (kWh) usage, the following information:

(i) the meter reading at the beginning of the period for which the customer is being billed, labeled "previous meter read," and the meter reading at the end of the period for which the customer is being billed, labeled "current meter read," and the dates of such readings;

(ii) the kind and number of units measured, including kWh, actual kilowatts (kW), or kilovolt ampere (kVa);

(iii) if applicable, billed kW or kVa;

(iv) whether the bill was issued based on estimated usage; and

(v) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;

(O) Any amount owed under a written guarantee agreement, provided the guarantor was previously notified in writing by the REP of an obligation on

a guarantee as required by §25.478 of this title (relating to Credit Requirements and Deposits);

(P) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;

(Q) Notification of any changes in the customer's prices or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document;

(R) The notice required by §25.481(d) of this title (relating to Unauthorized Charges); and

(S) For residential customers, on the first page of the bill in at least 12-point font the phrase, "for more information about residential electric service please visit www.powertochoose.com."

(2) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's bill, then the term in this paragraph must be used to identify that charge, and such term and its definition must be easily located on the REP's website and available to a customer free of charge upon request. Nothing in this paragraph precludes a REP from aggregating transmission and distribution utility (TDU) or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP must not exceed the amount of the TDU tariff charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, by adding the word "total" to a defined term, where appropriate, changing the use of lowercase or capital letters or punctuation, or using the acceptable abbreviation specified in

this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's bill.

(A) Advanced metering charge -- A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.

(B) Competition Transition Charge -- A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.

(C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.

(D) Late Payment Penalty -- A charge assessed for late payment in accordance with Public Utility Commission rules.

(E) Meter Charge -- A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.

(F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover he miscellaneous gross receipts tax imposed on retail electric

providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.

(G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.

(H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.

(I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.

(J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.

(K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.

(L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.

(3) If the REP includes any of the following terms in its bills, the term must be applied in a manner consistent with the definitions, and such term and its definition must be easily located on the REP's website and available to a customer free of charge upon request:

(A) Base Charge -- A charge assessed during each billing cycle without regard to the customer's demand or energy consumption.

(B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, during the billing cycle.

(C) Energy Charge -- A charge based on the electric energy (kWh) consumed.

(4) A REP must provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request and, to the extent that the charges are consistent with the terms set out in paragraph (2), of this subsection, the terms must be used in the itemization.

(5) A customer's electric bill must not contain charges for electric service from a service provider other than the customer's designated REP.

(6) A REP must include on each residential and small commercial billing statement, in boldfaced and underlined type, the date, as provided for in §25.475(c)(3)(B) of this title (relating to General Retail Electric Provider Requirements and Information Disclosure to Residential and Small Commercial Customers) that a fixed rate product will expire.

(7) To the extent that a REP uses the concepts identified in this paragraph in a customer's bill, it must use the term set out in this paragraph, and the definitions in this paragraph must be easily located on the REP's website. A REP may not use a different term for a concept that is defined in this paragraph.

(A) kW -- Kilowatt, the standard unit for measuring electricity demand, equal to 1,000 watts;

(B) kWh -- Kilowatt-hour, the standard unit for measuring electricity energy consumption, equal to 1,000 watt-hours; and

(8) Notice of contract expiration may be provided in a bill in accordance with §25.475 of this title.

(d) **Public service notices.** A REP must, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission. Additionally, in April and October of each year, or as otherwise directed by the commission, the REP must provide information to each customer along with the customer's bill about:

(1) The electric utility's procedures for implementing involuntary load shedding initiated by the independent organization certified for the ERCOT power region under PURA §39.151;

(2) The types of customers who may be considered critical care residential customers, critical load industrial customers, or critical load according to commission rules adopted under PURA §38.076;

(3) The procedure for a customer to apply to be considered a critical care customer, a critical load industrial customer, or critical load according to commission rules adopted under PURA §38.076; and

(4) Reducing electricity use at times when involuntary load shedding events may be implemented.

(e) **Estimated bills.** If a REP is unable to issue a bill based on actual meter reading due to the failure of the TDU, the registration agent, municipally owned utility or electric cooperative to obtain or transmit a meter reading or an invoice for non-bypassable charges to the REP on a timely basis, the REP may issue a bill based on the customer's estimated usage and inform the customer of the reason for the issuance of the estimated bill.

(f) **Non-recurring charges.** A REP may pass through to its customers all applicable non-recurring charges billed to the REP by a TDU, municipally owned utility, or electric cooperative as a result of establishing, switching, disconnecting, reconnecting, or maintaining service to an applicant or customer. In the event of a meter test, the TDU, municipally owned utility, electric cooperative, and REP must comply with the requirements of §25.124 of this title (relating to Meter Testing) or with the requirements of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable. The TDU, municipally owned utility, or electric cooperative must maintain a record of all meter tests performed at the request of a REP or a REP's customers.

(g) **Record retention.** A REP must maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records must contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing records may be obtained by that customer on request, and may be obtained once per 12-month period, at no charge.

(h) **Transfer of delinquent balances or credits.** If the customer has an outstanding balance or credit owed to the customer's current REP that is due from a previous account in the same customer class, then the customer's current REP may transfer that balance to the customer's current account. The delinquent balance and specific account or address must be identified as such on the bill. There must be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) of this title.

§25.498. **Prepaid Service.**

(a) **Applicability.** This section applies to retail electric providers (REPs) that offer a payment option in which a customer pays for retail service prior to the delivery of service and to transmission and distribution utilities (TDUs) that have installed advanced meters and related systems. A REP may not offer prepaid service to residential or small commercial customers unless it complies with this section. The following provisions do not apply to prepaid service, unless otherwise expressly stated:

(1) §25.479 of this title (relating to Issuance and Format of Bills);

(2) §25.480(b), (e)(3), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments); and

(3) §25.483 of this title (relating to Disconnection of Service), except for §25.483(b)(2)(A) and (B), (d), and (e)(1)-(6) of this title.

(b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise.

(1) **Connection balance** -- A current balance, not to exceed $75 for a residential customer, required to establish prepaid service or reconnect prepaid service following disconnection.

(2) **Current balance** -- An account balance calculated consistent with subsection (c)(6) of this section.

(3) **Customer prepayment device or system (CPDS)** -- A device or system that includes metering and communications capabilities that meet the requirements of this section, including a device or system that accesses customer consumption

information from a TDU's advanced metering system (AMS). The CPDS may be owned by the REP, and installed by the TDU consistent with subsection (c)(2)-(4) of this section.

(4) **Disconnection balance** -- An account balance, not to exceed $10 for a residential customer, below which the REP may initiate disconnection of the customer's service.

(5) **Landlord** -- A landlord or property manager or other agent of a landlord.

(6) **Postpaid service** -- A payment option offered by a REP for which the customer normally makes a payment for electric service after the service has been rendered.

(7) **Prepaid service** -- A payment option offered by a REP for which the customer normally makes a payment for electric service before service is rendered.

(8) **Prepaid disclosure statement (PDS)** -- A document described by subsection (e) of this section.

(9) **Summary of usage and payment (SUP)** -- A document described by subsection (h) of this section.

(c) **Requirements for prepaid service.**

(1) A REP must file with the commission a notice of its intent to provide prepaid service prior to offering such service. The notice of intent must include a description of the type of CPDS the REP will use, and the initial Electricity Facts Label (EFL), terms of service, and PDS for the service. Except as provided in subsection (m) of this section, a REP-controlled CPDS or TDU settlement provisioned meter is required for any prepaid service.

(2) A CPDS that relies on metering equipment other than the TDU meter must conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).

(3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).

(4) A CPDS must not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS must be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU must protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).

(5) A REP may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, United States Postal Service, email, telephone, mobile phone, or other electronic communications. The means by which the REP will communicate required information to a customer must be described in the terms of service and the PDS.

(A) A REP must communicate time-sensitive notifications required by paragraph (7)(B), (D), and (E) of this subsection by telephone, mobile phone, or electronic means.

(B) A REP must, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must provide these public service notices to its customers by electronic communication, or by other acceptable mass communication methods, as approved by the commission.

(6) A REP must calculate the customer's current balance by crediting the account for payments received and reducing the account balance by known charges and fees that have been incurred, including charges based on estimated usage as allowed in paragraph (11)(E) of this subsection.

(A) The REP may also reduce the account balance by:

(i) estimated applicable taxes; and

(ii) estimated TDU charges that have been incurred in serving the customer and that, pursuant to the terms of service, will be passed through to the customer.

(B) If the customer's balance reflects estimated charges and taxes authorized by subparagraph (A) of this paragraph, the REP must promptly reconcile the estimated charges and taxes with actual charges and taxes, and credit or debit the balance accordingly within 72 hours after actual consumption data or a statement of charges from the TDU is available.

(C) A REP may reverse a payment for which there are insufficient funds available or that is otherwise rejected by a bank, credit card company, or other payor.

(D) If usage sent by the TDU is estimated or the REP estimates consumption according to paragraph (11)(E) of this subsection, the REP must promptly reconcile the estimated consumption and associated charges with the actual consumption and associated charges within 72 hours after actual consumption data is available to the REP.

(7) A REP must:

(A) on the request of the customer, provide the customer's current balance calculated pursuant to paragraph (6) of this subsection, including the date and time the current balance was calculated and the estimated time or days of paid electricity remaining; and

(B) make the current balance available to the customer either:

(i) continuously, via the internet, phone, or an in-home device; or

(ii) within two hours of the REP's receipt of a customer's balance request, by the means specified in the Terms of Service for making such a request.

(C) communicate to the customer the current price for electric service calculated as required by §25.475(g)(2)(A)-(E) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers);

(D) provide a warning to the customer at least one day and not more than seven days before the customer's current balance is estimated by the REP to drop to the disconnection balance;

(E) provide a confirmation code when the customer makes a payment by credit card, debit card, or electronic check. A REP is not required to provide a confirmation code or receipt for payment sent by mail or electronic bill payment system. The REP must provide a receipt showing the amount paid for payment in person. At the customer's request, the REP must confirm all payments by providing to the customer the last four digits of the customer's account number or Electric Service Identifier (ESI ID), payment amount, and the date the payment was received;

(F) ensure that a CPDS controlled by the REP does not impair a customer's ability to choose a different REP or any electric service plans offered by the REP that do not require prepayment. When the REP receives notice that a customer has chosen a new REP, the REP must take any steps necessary to facilitate the switch on a schedule that is consistent with the effective date stated on the Electric Reliability Council of Texas (ERCOT) enrollment transaction and ERCOT's rules for processing such transactions; and

(G) refund to the customer or an energy assistance agency, as applicable, any unexpended balance from the account within ten business days after the REP receives the final bill and final meter read from the TDU.

(i) In the case of unexpended funds provided by an energy assistance agency, the REP must refund the funds to the energy assistance

agency and identify the applicable customer and the customer's address associated with each refund.

(ii) In the case of unexpended funds provided by the customer that are less than five dollars, the REP must communicate the unexpended balance to the customer and state that the customer may contact the REP to request a refund of the balance. Once the REP has received the request for refund from the customer, the REP must refund the balance within ten business days.

(8) Nothing in this subsection limits a customer from obtaining a SUP.

(9) The communications provided under paragraph (7)(A)-(D) of this subsection and any confirmation of payment as described in paragraph (7)(E) of this subsection, except a receipt provided when the payment is made in person at a third-party payment location, must be provided in English or Spanish, at the customer's election.

(10) A REP must cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.

(11) A REP must not:

(A) tie the duration of an electric service contract to the duration of a tenant's lease;

(B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;

(C) require a connection balance in excess of $75 for a residential customer;

(D) require security deposits for electric service; or

(E) base charges on estimated usage, other than usage estimated by the TDU or estimated by the REP in a reasonable manner for a time period in which the TDU has not provided actual or estimated usage data on a web portal within the time prescribed by §25.130(g) of this title (relating to Advanced Metering) and in which the TDU-provided portal does not provide the REP the ability to obtain on-demand usage data.

(12) A REP providing service must not charge a customer any fee for:

(A) transitioning from a prepaid service to a postpaid service, but notwithstanding §25.478(c)(3) of this title (relating to Credit Requirements and Deposits), a REP may require the customer to pay a deposit for postpaid service consistent with §25.478(b) or (c)(1) and (2) of this title and may:

(i) require the deposit to be paid within ten days after issuance of a written disconnection notice that requests a deposit; or

(ii) bill the deposit to the customer.

(B) the removal of equipment; or

(C) the switching of a customer to another REP, or otherwise cancelling or discontinuing taking prepaid service for reasons other than nonpayment, but may charge and collect early termination fees pursuant to §25.475 of this title.

(13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account balance, the REP must notify the customer of the amount of the debt and that the

customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.

(14) In addition to the connection balance, a REP may require payment of applicable TDU fees, if any, prior to establishing electric service or reconnecting electric service.

(15) A REP that provides prepaid service to a residential customer must not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The price for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A)-(E) of this title must be equal to or lower than the maximum POLR rate for the residential customer class at the 500 kilowatt-hour (kWh), 1,000 kWh, and 2,000 kWh usage levels as shown on the POLR EFL posted on the commission's website for the applicable TDU service territory. When an updated POLR EFL is posted on the commission's website, the REP, at the REP's option, may continue to reference the prior POLR EFL to ensure compliance with this paragraph for prepaid service prices charged during the first 30 days, beginning the date that the updated POLR EFL is posted. For a fixed rate product, the REP must show that the prepaid service prices calculated under §25.475(g)(2)(A), (D)-(E) of this title are equal to or lower than the test described in this paragraph at the time the REP makes the offer and provided that the customer accepts the offer within 30 days.

(d) **Customer acknowledgement**. As part of the enrollment process, a REP must obtain the applicant's or customer's acknowledgement of the following statement: "The continuation

of electric service depends on your prepaying for service on a timely basis and if your balance falls below {insert dollar amount of disconnection balance}, your service may be disconnected with little notice. Some electric assistance agencies may not provide assistance to customers that use prepaid service." The REP must obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title (relating to Selection of Retail Electric Provider).

(e) **Prepaid disclosure statement (PDS).** A REP must provide a PDS contemporaneously with the delivery of the contract documents to a customer pursuant to §25.474 of this title and as required by subsection (f) of this section. A REP must also provide a PDS contemporaneously with any advertisement or other marketing materials not addressed in subsection (f) of this section that include a specific price or cost for prepaid service. The commission may adopt a form for a PDS. The PDS must be a separate document and must be at a minimum written in 12-point font, and must:

(1) provide the following statement: "The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.";

(2) inform the customer of the following:

(A) the connection balance that is required to initiate or reconnect electric service;

(B) the acceptable forms of payment, the hours that payment can be made, instructions on how to make payments, any requirement to verify payment and any fees associated with making a payment;

(C) when service may be disconnected and the disconnection balance;

(D) that prepaid service is not available to critical care or chronic condition residential customers as these terms are defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers and Chronic Condition Residential Customers);

(E) the means by which the REP will communicate required information;

(F) the availability of deferred payment plans and, if a REP reserves the right to apply a switch-hold while the customer is subject to a deferred payment plan, that a switch-hold may apply until the customer satisfies the terms of the deferred payment plan, and that a switch-hold means the customer will not be able to buy electricity from other companies while the switch-hold is in place;

(G) the availability of energy bill payment assistance, including the disclosure that some electric assistance agencies may not provide assistance to customers that use prepaid service and the statement "If you qualify for low-income status or low-income assistance, have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it."; and

(H) an itemization of any non-recurring REP fees and charges that the customer may be charged.

(3) be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP.

(f) **Marketing of prepaid services**.

(1) This paragraph applies to advertisements conveyed through print, television, radio, outdoor advertising, prerecorded telephonic messages, bill inserts, bill messages, and electronic media other than Internet websites. If the advertisement includes a specific price or cost, the advertisement must include in a manner that is clear and conspicuous to the intended audience:

(A) any non-recurring fees, and the total amount of those fees, that will be deducted from the connection balance to establish service;

(B) the following statement, if applicable: "Utility fees may also apply and may increase the total amount that you pay.";

(C) the maximum fee per payment transaction that may be imposed by the REP; and

(D) the following statement: "You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP)." If the REP's phone number or website address is already included on the advertisement, the REP need not repeat the phone number or website as part of this required statement. The REP must provide the PDS and EFL to a person who requests standardized information for the product.

(2) This paragraph applies to all advertisements and marketing that include a specific price or cost conveyed through Internet websites, direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. In addition to meeting the requirements of §25.474(d)(7) of this title, a REP must include the PDS and EFL on Internet websites and in direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. For electronic communications, the PDS and EFL may be provided through a hyperlink.

(3) This paragraph applies to outbound telephonic solicitations initiated by the REP. A REP must disclose the following:

(A) information required by paragraph (1)(A)-(C) of this subsection;

(B) when service may be disconnected, the disconnection balance, and any non-TDU disconnection fees;

(C) the means by which the REP will communicate required information; and

(D) the following statement: "You have the right to review standardized documents before you sign up for this product." The REP must provide the PDS and EFL to a person who requests standardized information for the product.

(4) This paragraph applies to solicitations in person. In addition to meeting the requirements of §25.474(e)(8) of this title, before obtaining a signature from an applicant or customer who is being enrolled in prepaid service, a REP must provide the applicant or customer a reasonable opportunity to read the PDS.

(g) **Landlord as customer of record.** A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.

(1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP must provide to the TDU the name, service and mailing addresses, and ESI ID, and keep that information updated as required in the TDU's Tariff for Retail Delivery Service.

(2) The REP must treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.

(h) **Summary of usage and payment (SUP).**

(1) A REP must provide a SUP to each customer upon the customer's request within three business days of receipt of the request. The SUP must be delivered by an electronic means of communications that provides a downloadable and printable record of the SUP or, if the customer requests, by the United States Postal Service. If a customer requests a paper copy of the SUP, a REP may charge a fee for the SUP, which must be specified in the terms of service and PDS provided to the customer. For purposes of the SUP, a billing cycle must conform to a calendar month.

(2) A SUP must include the following information:

(A) the certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) a toll-free telephone number, in bold-face type, that the customer can call during specified hours for questions and complaints to the REP about the SUP;

(C) the name, meter number, account number, ESI ID of the customer, and the service address of the customer;

(D) the dates and amounts of payments made during the period covered by the summary;

(E) a statement of the customer's consumption and charges by calendar month during the period covered by the summary;

(F) an itemization of non-recurring charges, including returned check fees and reconnection fees; and

(G) the average price for electric service for each calendar month included in the SUP. The average price for electric service must reflect the total of all fixed and variable recurring charges, but not including state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and must be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

(3) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's SUP, then the term in this paragraph must be used to identify the charge, and such term and its definition must be easily located on the REP's website

and available to a customer free of charge upon request. Nothing in the paragraph precludes a REP from aggregating TDU or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP must not exceed the amount of the TDU charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, adding the word "total" to a defined term, where appropriate, changing the use of lower-case or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's SUP.

(A) Advanced metering charge -- A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.

(B) Competition Transition Charge -- A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.

(C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.

(D) Late Payment Penalty -- A charge assessed for late payment in accordance with Public Utility Commission rules.

(E) Meter Charge -- A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.

(F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover the miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.

(G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.

(H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.

(I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.

(J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.

(K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.

(L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.

(4) If the REP includes any of the following terms in its SUP, the term must be applied in a manner consistent with the definitions, and such term and its definition must be easily located on the REP's website and available to a customer free of charge upon request:

(A) Base Charge -- A charge assessed during each billing cycle of service without regard to the customer's demand or energy consumption.

(B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period during the billing cycle.

(C) Energy Charge -- A charge based on the electric energy (kWh) consumed.

(5) Unless a shorter time period is specifically requested by the customer, information provided must be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months.

(6) In accordance with §25.472(b)(1)(D) of this title, a REP must provide a SUP to an energy assistance agency within one business day of receipt of the agency's request, and must not charge the agency for the SUP.

(i) **Deferred payment plans**. A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a negative current balance over time. A deferred payment plan may be established in person, by

telephone, or online, but all deferred payment plans must be confirmed in writing by the REP to the customer.

(1) The REP must place a residential customer on a deferred payment plan, at the customer's request:

(A) when the customer's current balance reflects a negative balance of $50 or more during an extreme weather emergency, as defined in §25.483(j)(1) of this title, if the customer makes the request within one business day after the weather emergency has ended; or

(B) during a state of disaster declared by the governor pursuant to Texas Government Code §418.014 if the customer is in an area covered by the declaration and the commission directs that deferred payment plans be offered.

(2) The REP must offer a deferred payment plan to a residential customer who has been underbilled by $50 or more for reasons other than theft of service.

(3) The REP may offer a deferred payment plan to a customer who has expressed an inability to pay.

(4) The deferred payment plan must include both the negative current balance and the connection balance.

(5) The customer has the right to satisfy the deferred payment plan before the prescribed time.

(6) The REP may require that:

(A) no more than 50% of each transaction amount be applied towards the deferred payment plan; or

(B) an initial payment of no greater than 50% of the amount due be made, with the remainder of the deferred amount paid in installments. The REP must inform the customer of the right to pay the remaining deferred balance by reducing the deferred balance by five equal monthly installments. However, the customer can agree to fewer or more frequent installments. The installments to repay the deferred balance must be applied to the customer's account on a specified day of each month.

(7) The REP may initiate disconnection of service if the customer does not meet the terms of a deferred payment plan or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount. However, the REP must not initiate disconnection of service unless it has provided the customer at least one day's notice that the customer has not met the terms of the plan or, pursuant to subsection (c)(7)(D) of this section, a timely notice that the customer's current balance was estimated to fall below the disconnection balance, excluding the remaining deferred amount.

(8) The REP may apply a switch-hold while the customer is on a deferred payment plan.

(9) A copy of the deferred payment plan must be provided to the customer.

(A) The plan must include a statement, in clear and conspicuous type, that states, "If you have any questions regarding the terms of this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP)."

(B) If a switch-hold will apply, the plan must include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(C) If the customer and the REP's representative or agent meet in person, the representative must read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.

(D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but must not include a finance charge.

(E) The plan must include the terms for payment of deferred amounts, consistent with paragraph (6) of this subsection.

(F) The plan must state the total amount to be paid under the plan.

(G) The plan must state that a customer's electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan, or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount.

(10) The REP must not charge the customer a fee for placing the customer on a deferred payment plan.

(11) The REP, through a standard market process, must submit a request to remove the switch-hold, pursuant to §25.480(m)(2) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP must notify the customer that the customer has satisfied the deferred payment plan and that the switch-hold is being removed.

(j) **Disconnection of service.** As provided by subsection (a)(4) of this section, §25.483 (b)(2)(A) and (B), (d), (e)(1)-(6), and the definition of extreme weather in §25.483(j)(1) of this title apply to prepaid service. In addition to those provisions, this subsection applies to disconnection of a customer receiving prepaid service.

(1) **Prohibition on disconnection**. A REP must not initiate disconnection for a customer's failure to maintain a current balance above the disconnection balance on a weekend day or during any period during which the mechanisms used for payments specified in the customer's PDS are unavailable; or during an extreme weather emergency, as this term is defined in §25.483 of this title, in the county in which the service is provided.

(2) **Initiation of disconnection.** A REP may initiate disconnection of service when the current balance falls below the disconnection balance, but only if the REP provided the customer a timely warning pursuant to subsection (c)(7)(D) of this section; or when a customer fails to comply with a deferred payment plan, but only if the REP provided the customer a timely warning pursuant to subsection (i)(7) of

this section. A REP may initiate disconnection if the customer's current balance falls below the disconnection balance due to reversal of a payment found to have insufficient funds available or is otherwise rejected by a bank, credit card company, or other payor.

(3) **Pledge from electric assistance agencies.** If a REP receives a pledge, letter of intent, purchase order, or other commitment from an energy assistance agency to make a payment for a customer, the REP must immediately credit the customer's current balance with the amount of the pledge.

(A) The REP must not initiate disconnection of service if the pledge from the energy assistance agency (or energy assistance agencies) establishes a current balance above the customer's disconnection balance or, if the customer has been disconnected, must request reconnection of service if the pledge from the energy assistance agency establishes a current balance for the customer that is at or above the customer's connection balance required for reconnection.

(B) The REP may initiate disconnection of service if payment from the energy assistance agency is not received within 45 days of the REP's receipt of the commitment or if the payment is not sufficient to satisfy the customer's disconnection balance in the case of a currently energized customer, or the customer's connection balance if the customer has been disconnected for falling below the disconnection balance.

(4) **Reconnection of service**. Within one hour of a customer establishing a connection balance or any otherwise satisfactory correction of the reasons for disconnection,

the REP must request that the TDU reconnect service or, if the REP disconnected service using its CPDS, reconnect service. The REP's payment mechanism may include a requirement that the customer verify the payment using a card, code, or other similar method in order to establish a connection balance or current balance above the disconnection balance when payment is made to a third-party processor acting as an agent of the REP.

(k) **Service to Critical Care Residential Customers and Chronic Condition Residential Customers.** A REP must not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP must not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.

(1) If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential customer, the REP must diligently work with the customer to promptly transition the customer to postpaid service or another REP in a manner that avoids a service disruption. The REP must not charge the customer a fee for the transition, including an early termination or disconnection fee.

(2) If the customer is unresponsive, the REP must transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(l)(2)(A) of this title. The REP must provide

the customer notice that the customer has been transferred to a new product and must provide the customer the new product's Terms of Service and EFL.

(l) **Compliance period**. No later than October 1, 2011, prepaid service offered by a REP pursuant to a new contract to a customer being served using a "settlement provisioned meter," as that term is defined in Chapter 1 of the TDU's tariff for retail delivery service, or using a REP-controlled collar or meter must comply with this section. Before October 1, 2011, prepaid service offered by a REP to a customer served using a settlement provisioned meter or REP-controlled collar or meter must comply with this section as it currently exists or as it existed in 2010, except as provided in subsection (m) of this section.

(m) **Transition of Financial Prepaid Service Customers**. A REP may continue to provide a financial prepaid service (*i.e.*, one that does not use a settlement provisioned meter or REP-controlled collar or meter) only to its customer that was receiving financial prepaid service at a particular location on October 1, 2011. A customer who is served by a financial prepaid service must be transitioned to a service that complies with the other subsections of this section by the later of October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or a REP-controlled collar or meter. The customer must be notified by the REP that the customer's current prepaid service will no longer be offered as of a date specified by the REP by the later of either October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or REP-controlled collar or meter, as applicable. The REP must provide the notification no sooner than 60 days and not less than 30 days prior to the termination of the

customer's current prepaid service. The customer must be notified that the customer will be moved to a new prepaid service, and the REP must transmit an EFL and PDS to the customer with the notification, if the customer does not choose another service or REP.

§25.499. Acknowledgement of Risk Requirements for Certain Commercial Contracts.

(a) **Purpose.** This section establishes requirements for the offering of wholesale indexed products and products containing separate assessment of ancillary services costs to a customer other than a residential or small commercial customer.

(b) **Application.** This section applies to all retail electric providers (REPs), aggregators and brokers. The Acknowledgement of Risk (AOR) for wholesale indexed products required by this section is effective for enrollments or re-enrollments entered into on or after September 1, 2021. The AOR required for other product types required under this section are effective for enrollments or re-enrollments entered into on or after April 1, 2021. REPs are not required to modify contract documents related to contracts or enrollments entered into before this date.

(c) **Definitions.** The definitions set forth in §25.5 (relating to Definitions) and §25.471(d) (relating to General Provisions of Customer Protection Rules) of this title apply to this section. In addition, wholesale indexed product, when used in this section, means a retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power region.

(d) **Acknowledgement of Risk (AOR)**. Before a customer other than a residential or small commercial customer is enrolled in a wholesale indexed product, or a product that contains a separate assessment of ancillary service charges, an aggregator, broker, or REP must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.

(1) For Wholesale Indexed Products, the AOR must include the following statement in clear, boldfaced text: "I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices."

(2) For products that contain a separate assessment of ancillary service charges the AOR must include the following statement in clear, boldfaced text: "I understand that my energy bill may include a separate assessment of ancillary service charges, which may cause my energy bill to be multiple times higher in a month in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges."

(3) An AOR may be included as an addendum to a contract.

(4) A REP, aggregator, or broker must retain a record of the AORs for each customer during the time the applicable plan is in effect and for four years after the contract ceases to be in effect for any customer. A REP must provide such documents at the request of the commission or its staff.

This agency certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §25.43, relating to Provider of Law Resort, §25.471, relating to General Provisions of Customer Protection Rules, §25.475, relating to General Retail Electric Provider Requirements and General Information Disclosures to Residential and Small Commercial Customers, §25.479, related to Issuance and Format of Bills, §25.498, relating to Prepaid Service, and §25.499, relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts are hereby adopted with changes to the text as proposed.

Signed at Austin, Texas the _____ day of December 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

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PETER LAKE, CHAIRMAN

_____

WILL MCADAMS, COMMISSIONER

_____

LORI COBOS, COMMISSIONER

_____

JIMMY GLOTFELTY, COMMISSIONER