

PROJECT NO. 24551

RULEMAKING TO AMEND §25.474 § PUBLIC UTILITY COMMISSION
REGARDING INITIAL RETAIL §
ELECTRIC PROVIDER SELECTION §
PROCESS § OF TEXAS

**ORDER ADOPTING AMENDMENTS TO §25.474 RELATING TO
SELECTION OR CHANGE OF RETAIL ELECTRIC PROVIDER
AS APPROVED AT THE DECEMBER 7, 2001 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §25.474, relating to Selection or Change of Retail Electric Provider, with changes to the proposed text as published in the September 7, 2001 *Texas Register* (26 TexReg 6820). The amendments are necessary to accomplish the commission's customer education goals. The amendments provide the commission the flexibility to seek a more efficient and effective means to accomplish its education goals. This amendment was adopted under Project Number 24551.

The commission received comments on the proposed amendment from American Electric Power Company, Inc. (AEP), Reliant Resources, Inc. (Reliant), TXU Energy Services Company (TXU), and Enron Corporation (Enron).

AEP, TXU, and Reliant generally agreed with the commission's proposed amendments and rationale for modifying §25.474(b). Reliant stated that by revising the language, the commission would be afforded greater latitude in deciding what information was necessary to distribute and how best to educate the selecting public. TXU noted that given budget limitations, the commission should have flexibility to use

available customer education funds for the most effective purposes at the most effective times and found it reasonable for the commission to eliminate the requirement that a customer be able to select a retail electric provider (REP) using a form distributed by the commission (commonly referred to as a REP Selection form). Enron, however, was concerned that the proposed amendments would nullify a major intent of the original rules, namely, to enable competition by equipping customers to participate in the market.

The commission agrees with AEP, Reliant, and TXU and finds that the education program can equip customers with knowledge about the market without a REP selection form. Information about retail electric competition can be effectively disseminated to customers without the use of a REP selection form. Since the adoption of §25.474, issues in the competitive retail market have arisen that impact which methods will be most effective in conveying customer education messages. Consequently, the commission finds that the proposed amendments to subsection (b)(1), including the deletion of existing subsection (b)(1)(C), will provide customers with a sufficient explanation of the REP selection process while allowing the customer education program to respond to the evolving retail electric market.

AEP stated that the commission should delay the initial REP selection process described in §25.474(b) due to cost considerations, market readiness and timing issues, and unresolved issues of what constitutes education and what defines market facilitation. Enron argued that if the commission does not send out customer education and the REP selection form prior to market opening, it would be endorsing the misinformation of some "market participants" that nothing will change on January 1, 2002. Enron

proposed that the commission segregate the mailing of the REP selection form between residential and non-residential customers and administer to the non-residential customers first, since large customers stand to gain substantially. Enron further proposed that the commission initiate a working group to coordinate with various REPs on this issue and to enable the commission to leverage the advertising schedule and budget of these REPs to ensure effective customer education.

The commission finds that market readiness and timing issues, which could not be predicted when §25.474 was adopted, affect the methods by which education messages can best be conveyed. The commission should be allowed to make use of qualitative and quantitative research information and adjust its education program to make the most effective use of its limited resources. While the commission does intend to segregate education materials for different classes of customers, it does not agree that one class of customers should be prioritized over another. Rather, the commission determines that a segregation of education materials warrants a difference in the nature of the material, not in the dissemination of the materials. The commission therefore rejects Enron's proposal. The commission also notes that informal meetings have already been initiated with REPs that are currently marketing in order to work together to ensure effective education.

Enron disagreed with the commission's proposal to delete the word "all" from subsection (b)(1) and noted that all electric customers in Texas are entitled to receive customer education.

The commission agrees with Enron that all electric customers are entitled to receive customer education. However, the commission does not agree that all customers must receive the same type of education materials. Different customer classes have different needs. By deleting the word "all" in subsection (b)(1) large commercial and industrial customer are not precluded from receiving customer education; therefore, this proposed amendment is adopted without change.

AEP recommended that the commission eliminate the phrase "REP selection" and any aspect of the customer education materials that imply a customer should choose to ensure that the commission's overall campaign efforts remained strictly educational. TXU urged the commission to ensure that what is sent remains a customer education piece and not a REP marketing document and suggested the commission amend proposed subsection (b)(1) to identify the information issued by the commission as customer education information.

The commission disagrees with AEP. AEP's suggestion is contrary to the commission's policy of informing customers about their choices. The commission agrees with TXU and amends subsection (b)(1) to reflect that the information disseminated by the commission will be educational.

TXU requested that the commission include a requirement in subsection (b)(1) that REPs be given 60 days advance notice of its intent to issue a customer education mailer, including a description of its expected contents, in order to allow REPs to formulate a marketing plan and respond to customer requests for information.

The commission finds TXU's request for a 60-day advance notice unreasonable. Given the changing market conditions, to which the customer education program must respond, the commission must be allowed to remain flexible. The commission shall strive to achieve advance notice at the earliest possible time. However, the commission finds that this notice represents an internal policy of the commission and it is unnecessary to include this provision in the rule.

TXU recommended that the commission delete subsection (b)(1)(B) to eliminate the requirement that a list of qualified REPs be sent to customers. TXU based its argument upon the difficulty in determining to which customers REPs are marketing and the need to prepare different mailers for different parts of the state. In the alternative, TXU suggested the commission change the reference to "certified" REPs.

The commission disagrees with TXU and finds it necessary to include only qualified REPs on the list sent to customers because some REPs are not certified to serve all customers. Including REPs that do not serve certain classes of customers would only aggravate and discourage customers from educating themselves about various REP offers; therefore, the commission makes no changes to proposed subsection (b)(1)(B).

Should the commission decide to issue a list of qualified REPs, then AEP urged the commission to include the affiliated REP in this list. AEP further urged the commission to include information that informs customers that they do not have to make a choice, and that if a customer does not select

another REP, that customer will be served by the affiliated REP at the price to beat. AEP cited recent reports of slamming activity during the pilot program as a demonstration of the need for informing customers of all available options. AEP suggested the commission edit subsection (b)(1)(A) to include this information.

The commission finds that including the affiliated REP in the list of qualified REPs would confuse and mislead customers by implying that they must take action to remain with the affiliated REP or to prevent changes to their account. The commission finds that information about the affiliated REP and the price to beat are contained in a general explanation of retail electric competition provided elsewhere by the customer education program and do not have to be individually noted in the rule. Therefore, the commission makes no changes to proposed subsection (b)(1)(A).

Enron opposed the commission's proposal to delete existing subsection (b)(1)(C) because doing so would defeat the major purpose of enabling competition to take off. Enron noted that if there is not customer participation in competition, retail electric competition would fail.

The commission finds that a proper authorization form for each qualified REP could not be included to sufficiently comply with §25.474(d) and (f)(1). Additionally, incorporating a REP authorization form into a customer education piece would be cost prohibitive and may confuse customers and facilitate

unintended switching by customers who merely want more information. For these reasons, the commission finds that a REP authorization form should not be included in a customer education piece.

Reliant stated that there is no reason to continue to lock the commission to a specific form and data. AEP also recommended the commission delete any reference in the rule to a form that allows customers to select one or more of the listed REPs because there is no indication of how customers may return the form and leaves questions as to who is responsible for the processing and processing costs associated with the return of these forms. TXU agreed with Reliant and AEP and suggested the need for a form and a reply card is a costly procedure that is more a marketing function than a customer education function. TXU also suggested the commission may provide REP contact information but should not mandate reply cards. TXU suggested proposed subsection (b)(1)(C) be deleted. Enron opposed TXU's proposal to delete proposed subsection (b)(1)(C).

The commission agrees with parties that the proposed amendment was unclear about who would be responsible for the processing of forms. The commission adopts TXU's suggestion that the commission provide REP contact information but not mandate reply cards. Therefore, the commission amends proposed subsection (b)(1)(C) to allow customers to contact or select one or more of the listed REPs from which they desire to receive information or to be contacted.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.101, which requires that the commission establish customer protections.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101 and 39.902.

§25.474. Selection or Change of Retail Electric Provider.

- (a) **General purpose.** A retail electric provider (REP) shall not enroll a customer without obtaining the customer's authorization and having that authorization verified consistent with this section.
- (b) **Initial REP selection process.**
- (1) In conjunction with the commission's customer education campaign, the commission may issue to customers for whom customer choice will be an option an explanation of the REP selection process. The customer education information issued by the commission may include, but is not limited to:
 - (A) an explanation of retail electric competition;
 - (B) a list of all REPs qualified to provide electric service to the customer;
 - (C) a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and
 - (D) information on how a customer may designate whether the customer would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.

- (2) Any affiliate REP assigned to serve a customer that is entitled to receive the price to beat rate, pursuant to PURA §39.202(a), due to non-selection by the customer shall issue to a customer, either as a bill insert or through a separate mailing, by January 31, 2002:
 - (A) A terms of service document that includes an explanation of the price to beat rate;
 - (B) Your Rights as a Customer disclosure; and
 - (C) An Electricity Facts label for the price to beat, which may be in a separate document, or may be contained in the terms of service document.
 - (3) An electric utility, whose successor affiliate REP will continue to serve a customer not eligible for the price to beat pursuant to PURA §39.102(b) due to non-selection by the customer of another REP, shall issue to a customer by June 1, 2001, a terms of service document. Such document shall contain an explanation of the price the customer will be charged by the affiliate REP.
- (c) **General standards for authorizations and verifications of enrollment or switch orders.**
- (1) All authorizations and verifications of enrollment or switch orders shall be in plain, easily understood English or another language, if the underlying sales transaction was conducted in the other language. The entire authorization and verification shall be the same language.

- (2) The specific electric service package or plan for which the customer's assent is being attained or verified shall be disclosed to the customer.
 - (3) The name of the specific REP for which the customer's authorization is being obtained and verified shall be disclosed to the customer. Any use of a name for the purposes of deception or to obtain a customer's authorization and verification based on confusion or inability to understand the import of the name of the REP and the services offered is prohibited.
 - (4) Each authorization and verification shall affirmatively inquire as to the identity of the individual with the authority to change the customer's REP and explain that only that customer can agree to a change in REP.
 - (5) A REP or an aggregator, other than a municipally owned utility or electric cooperative, shall submit copies of its sales script, contract, terms of service document and any other materials used to obtain a customer's authorization or verification to the commission upon request.
 - (6) In the event a customer disputes an enrollment or switch, the REP shall provide to the customer proof of the customer's authorization and verification within five business days of the customer's request.
- (d) **Required authorization disclosures.** All authorizations shall clearly and conspicuously disclose the following information contained in the REP's contract or terms of service document for each product offered to the customer:

- (1) the name of the new REP;
 - (2) the ability of a customer to select to receive information in English, Spanish, or the language used in the marketing of service to the customer. The REP shall provide a means of obtaining and recording a customer' language preference;
 - (3) price, including the total price stated in cents per kilowatt-hour, for electric service;
 - (4) term or length of the contract or term of service;
 - (5) the presence or absence of early termination fees or penalties, and applicable amounts;
 - (6) any requirement to pay a deposit and the amount of that deposit;
 - (7) any fees to the customer for switching to the REP pursuant to subsection (l) of this section; and
 - (8) the customer's right to review and cancel the contract within three federal business days without penalty and a statement that the customer will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of cancellation before the customer's electric service is switched to the REP.
- (e) **Verification requirements.** A verification shall clearly:
- (1) confirm the customer's billing name, address, and electric service identifier (ESI) or account number to be used by the selected REP in making an enrollment or switch request to the registration agent;

- (2) confirm appropriate verification data, such as the customer's date of birth, the customer's mother's maiden name, or other voluntarily submitted information;
 - (3) confirm the decision to change from the current REP to the new REP; and
 - (4) confirm that the customer designates the new REP to act as the customer's agent for the switch of REP.
- (f) **Methods of obtaining customer authorization and verification.** Customer authorizations and verifications shall be obtained by using one of the methods listed in this subsection.
- (1) **Written authorization and verification.** A written authorization from a customer for a selection or switch of a REP shall use a letter of agency (LOA) as specified in this subsection.
 - (A) The LOA shall be a separate or easily separable document containing the requirements prescribed in subparagraph (D) of this paragraph for the sole purpose of authorizing the REP to initiate a REP switch request. The LOA shall be signed and dated by the customer requesting the REP switch.
 - (B) The LOA shall not be combined with inducements of any kind on the same document.
 - (C) At a minimum, the LOA shall be printed in a size and type that is clearly legible, and shall contain clear and unambiguous language that confirms:
 - (i) the customer's billing name, address, and ESI or account number to be used by the REP in making a switch request;

- (ii) the decision to switch from the current REP to the new REP; and
 - (iii) that the customer designates (name of the new REP) to act as the customer's agent for switching the REP.
- (D) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all the requirements of this subsection.

Customer billing name: _____

Customer billing address: _____

Customer service address: _____

City, state, zip code: _____

ESI ID or Account #: _____

If applicable, name of individual legally authorized to act for customer:

Relationship to customer: _____

Telephone number of individual authorized to act for customer: _____

By initialing here and signing below, I am authorizing (name of new REP) to become my new retail electric provider in place of my current retail electric provider. I authorize (name of new REP) to act as my agent to make this

change happen, and direct my current retail electric provider to work with the new provider to make this change.

I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change retail electric providers for the address listed above.

Signed: _____ Date: _____

- (E) The customer's signature on the letter of agency, contract or other document which contains the materials terms and conditions of the service shall constitute an authorization and verification if the letter of agency, contract or documents comply with the provisions of this section.
- (F) Before obtaining a signature from a customer, a REP shall provide the customer a reasonable opportunity to read any written materials accompanying the contract or terms of service document and shall answer any and all questions posed by any customer about information contained in the documents.
- (G) Upon obtaining the customer's signature, a REP or aggregator shall immediately provide the customer a legible copy of the signed contract, the required terms of service document, and Your Rights as a Customer disclosure. If written solicitations by a REP contain the terms of service document or contract, any

tear-off portion that is submitted by the customer to the REP to obtain electric service shall allow the customer to retain the terms of service document.

(2) **Telephonic authorization and verification.** A REP or aggregator that obtains a customer's authorization by means of a telephone conversation shall audio record the entirety of such authorization, or obtain independent third party verification of, the customer's authorization prior to submitting an enrollment or switch order. In addition to the requirements of this paragraph, both the authorization and audio recording or third party verification shall adhere to the requirements of subsections (d) and (e) of this section.

(A) Additional authorization and verification requirements. Telephonic enrollment or switch orders shall:

- (i) clearly inform the customer at the beginning of a call that the call is being recorded. The entire authorization and verification conversation with the customer shall be recorded so that evidence of a customer's consent can be reviewed and investigated if a subsequent complaint is filed;
- (ii) read any script and respond to any questions in the language used to make the underlying sales transaction and proceed at a normal conversational speed using plain, easily, understood language;
- (iii) at a normal conversational speed, state the name of the REP to which the customer is being switched in its entirety; and

- (iv) for both the authorization and the verification, agents shall clearly state that the customer will have a right of cancellation without penalty and that the customer will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of cancellation before the customer's electric service is switched by the REP.
- (B) Independent third party. An independent third party shall operate in a location physically separate from the REP or aggregator or the REP's or aggregator's marketing agent and shall not:
 - (i) be owned, managed, or directly controlled by the REP or aggregator or the REP's or aggregator's marketing agent; or
 - (ii) have financial incentive to confirm enrollment or switch orders.
- (3) **Internet enrollment.** A REP or aggregator that offers Internet enrollment to customers shall comply with the authorization and verification requirements in subsections (c) and (d) of this section and with the following minimum requirements:
 - (A) The aggregator or REP shall maintain an Internet website at the website address provided to the commission. The website shall identify the legal name of the aggregator or REP, its address, telephone number, and Texas license number to provide aggregation services or sell retail electric service.
 - (B) The means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the customer and the REP or aggregator

shall be by an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;

- (C) The REP or aggregator shall identify the terms of service document by a version number to ensure the ability to verify the particular agreement to which the customer assents. The REP or aggregator shall make available a copy of the terms of service document, as required by §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers), that is agreed to by a customer, on the REP's or aggregator's Internet website. The terms of service document shall be accessible by the customer for the duration of the contract term offered to the customer.
- (D) The Internet enrollment procedure shall prompt the customer to print or save the terms of service document to which the customer assents and provide an option to have a written terms of service document sent by regular mail.
- (E) The REP or aggregator shall provide to the customer a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the customer's agreement. The REP or aggregator shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.
- (F) The REP or aggregator shall obtain a verification that meets the standards of subsection (e) of this section, provide a statement with a box that must be checked by the customer to indicate that the customer has read and agrees to

select the REP to supply electric service, and the time and date of the customer's enrollment. The customer's enrollment shall be followed by a confirmation of the change of the customer's REP by e-mail, which shall include a conspicuous notice of the applicable right of cancellation and offer the customer the option of exercising this right by toll-free telephone number, e-mail, Internet website, facsimile transmission, or regular mail.

(G) Customer authorizations and verifications shall adhere to any state and federal guidelines governing the use of electronic signatures.

(4) **Door-to-door sales.** A REP or aggregator that engages in door-to-door marketing at a customer's residence, or personal solicitation at a public location (such as malls, fairs, or places of retail commercial activity) shall be subject to the following:

(A) The REP or aggregator shall comply with the standards set forth in subsections (c)-(e) of this section and paragraph (1) of this subsection.

(B) The REP or aggregator shall provide the disclosures and right of rescission required by this section and the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. §29).

(C) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification on the front of the individual's outer clothing that prominently displays the name of the REP or aggregator. The name displayed shall conform to the name on the REP's certification or aggregator's registration

obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession.

(D) The REP or aggregator shall affirmatively state that it is not a representative of the customer's transmission and distribution utility. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable customer that the individual represents the customer's transmission and distribution utility or the provider of last resort (POLR).

(g) **Record retention.** A REP shall maintain non-public records of a customer authorization or verification for a change in REP for 24 months from the date of the REP's initial service to the customer and shall provide such records to the customer and the commission upon request.

(h) **Right of cancellation.** A REP shall promptly provide the customer with the terms of service document after the customer has provided authorization to select the REP pursuant to one of the methods set forth in this section. The REP shall offer the customer a right to cancel the contract without penalty or fee of any kind for a period of three federal business days after the customer's receipt of the terms of service document and acceptance of the REP's offer. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service (U.S. mail) will be received by the customer within three federal business days. The cancellation period shall not start until the customer receives the terms of service document in the manner prescribed by this subchapter, based on the customer's

method of enrollment. Any REP receiving a late notice of cancellation from the customer shall contact the registration agent and cancel the pending switch as soon as possible after such late notice is received.

- (i) **Submission of customer's selection to the registration agent.** A REP may submit a customer's selection of the REP to the registration agent prior to the expiration of the cancellation period prescribed by subsection (h) of this section. Additionally, the REP shall submit the switch request to the registration agent at the proper time so that the switch will be processed on the date agreed to by the customer and as allowed by the tariff of the transmission and distribution utility, municipally owned utility, or electric cooperative. The customer shall be informed of the scheduled date that the customer will begin receiving electric service from the REP, and of any delays in meeting that date. Additionally, the REP must advise the registration agent of any "special needs" customers and renew such notification to the registration agent annually.
- (j) **Duty of the registration agent.** When the registration agent receives an enrollment or switch request from a REP, the registration agent shall:
- (1) process that request promptly; and
 - (2) send the customer an enrollment or switch notification notice in English and Spanish pursuant to either subparagraph (A) or (B) of this paragraph, as appropriate.

- (A) Standard enrollment and switches. The notice provided by the registration agent to the customer shall comply with the provisions of this subparagraph, unless the switch is considered a "switch to POLR" as described in subparagraph (B) of this paragraph. The notice shall:
- (i) identify the REP that initiated the enrollment or switch request;
 - (ii) inform the customer that the customer's REP will be switched unless the customer requests the registration agent to cancel the switch by the date stated in the notice;
 - (iii) provide a cancellation date by which the customer may request a switch to be cancelled, no less than seven calendar days after the customer receives the notice; and
 - (iv) provide instructions for the customer to request that the switch be cancelled. These instructions which shall include a telephone number, facsimile machine number, and e-mail address to reach the registration agent.
- (B) Switch to POLR. If the customer is being switched to the POLR at the request of the REP currently serving the customer, the notice provided to the customer by the registration agent shall include only the following:
- (i) the name of the REP that initiated the request;
 - (ii) the name of the POLR that will begin providing electric service to the customer; and

- (iii) the date such switch will be effective.
 - (3) unless the customer makes a timely request to cancel the switch, direct the transmission and distribution utility to implement the switch effective with the customer's next meter reading provided that such meter reading is at least one business day after the transmission and distribution utility receives notice of the switch request or such other time and date as requested by the customer or the REP.
- (k) **Customer's switch to POLR.** The methods of customer authorization, customer verification, and rights of cancellation are not applicable when the customer's electric service is "dropped" to the POLR by a REP for non-payment pursuant to §25.482 of this title (relating to Termination of Contract). Nothing in this subsection shall be read to imply that the customer is accepting a contract with the POLR for a specific term.
- (l) **Fees.** A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to a customer to select, switch or enroll with the REP unless the customer requests a switch or enrollment that does not conform with the normal meter reading and billing cycle. Such fee shall not exceed the rate charged by the transmission and distribution utility for this off-cycle meter reading. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent.
- (m) **Transferring customers from one REP to another.**

- (1) Any REP that will acquire customers from another REP due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. If the transfer of customers will materially change the terms of service for the affected customers, the notice shall:
 - (A) identify the current and acquiring REP;
 - (B) explain why the customer will not be able to remain with the current REP;
 - (C) explain that the customer has a choice of selecting a REP and may select the acquiring REP or any other REP;
 - (D) explain that if the customer wants another REP, the customer should contact that other REP;
 - (E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;
 - (F) identify the date that customers will be or were transferred to the acquiring REP;
 - (G) provide the Electricity Facts label and terms of service document of the acquiring REP; and
 - (H) provide a toll-free telephone number for a customer to call for additional information.

- (2) The acquiring REP shall provide the commission with a copy of the notice when it is sent to customers.
 - (3) If the transfer of customers will not result in a material change to the terms of service for the affected customers, the notice shall contain only the information in paragraph (1)(A), (B), and (F)-(H) of this subsection.
- (n) **Complaints alleging unauthorized change of REP (Slamming).** A customer may file a complaint with the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for any reasons related to the provisions of this section.
- (1) **REP's response to complaint.** After review of a customer's complaint, the commission shall forward the complaint to the REP that the customer believes made an unauthorized switch. The REP is responsible for performing the following upon receiving a complaint:
 - (A) take all actions within its control to facilitate the customer's prompt return to the original REP within three days;
 - (B) cease any collections activities related to the switch until the complaint has been resolved by the commission; and
 - (C) respond to the commission within 21 calendar days after receiving the complaint. The REP's response shall include the following:
 - (i) all documentation related to the authorization and verification used to switch the customer's service; and

- (ii) all corrective actions taken as required by paragraph (3) of this subsection, if the switch in service was not verified in accordance with subsections (c)-(e) of this section.
- (2) **Commission investigation.** The commission shall review all of the information related to the complaint, including the REP's response, and make a determination of whether the REP complied with the requirements of this section. The commission shall inform the complainant and the REP of the results of the investigation and identify any additional corrective actions that may be required of the REP or the customer's obligation to pay any charges related to the authorized switch.
- (3) **Responsibilities of the REP that initiated the change.** If a customer's REP is changed without authorization consistent with this section, the REP that initiated the unauthorized change shall:
 - (A) within five business days of the customer's request, pay all charges associated with returning the customer to the original REP;
 - (B) within ten business days of the customer's request, provide all billing records and usage history information to the original REP related to the unauthorized change of services;
 - (C) within 30 days of the original REP's request for payment, pay the original REP the amount it would have received from the customer if the unauthorized change had not occurred;

- (D) within 30 days of the customer's request, refund any amounts paid by the customer as required by paragraph (4) of this subsection; and
 - (E) cancel all unpaid charges.
- (4) **Responsibilities of the original REP.** The original REP shall:
- (A) inform the REP that initiated the unauthorized switch of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (3)(B) of this subsection;
 - (B) provide to the customer all benefits or gifts associated with the service, such as frequent flyer miles, that would have been awarded had the unauthorized change not occurred, upon receiving payment for service provided during the unauthorized change;
 - (C) maintain a record of customers that experienced an unauthorized change in REP that contains:
 - (i) the name of the REP that initiated the unauthorized change;
 - (ii) the account number affected by the unauthorized change;
 - (iii) the date the customer asked the unauthorized REP to return the customer to the original REP; and
 - (iv) the date the customer was returned to the original REP; and
 - (D) not bill the customer for any charges the customer incurred during the first 30 days after the unauthorized change in providers, but may bill the customer for

charges that were incurred after the first 30 days based on what the original REP would have charged if the unauthorized change had not occurred.

(o) **Compliance and enforcement.**

- (1) **Records of customer verifications and unauthorized changes.** A REP, other than a municipally owned utility or an electric cooperative, shall provide a copy of records maintained under subsections (c) - (f) and (n) of this section to the commission upon request.
- (2) **Administrative penalties.** If the commission finds that a REP or aggregator, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission shall order the REP or aggregator to take corrective action as necessary. Additionally, the REP or aggregator may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council.
- (3) **Certificate revocation.** If the commission finds that a REP or aggregator, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP or

aggregator, thereby denying the REP or aggregator the right to provide service in this state.

- (4) **Coordination with the office of the attorney general.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.474 relating to Selection or Change of Retail Electric Provider is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 17th DAY OF DECEMBER 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Max Yzaguirre

Commissioner Brett A. Perlman

Commissioner Rebecca Klein