

PROJECT NO. 37070

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
ADOPT COMMON TERMS USED IN	§	
BILLING TELECOMMUNICATIONS	§	OF TEXAS
AND ELECTRIC CUSTOMERS	§	

**ORDER ADOPTING AMENDMENTS TO §25.25 AND §25.479
AS APPROVED AT THE NOVEMBER 20, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.25 of this title, relating to Issuance and Format of Bills and §25.479 of this title, relating to Issuance and Format of Bills with changes to the proposed text as published in the August 14, 2009 issue of the *Texas Register* (34 TexReg 5457). The amendments will implement certain provisions of Texas House Bill 1822, 81st Leg. (2009) (HB 1822), Public Utilities Regulatory Act (PURA) §§17.003(c), 17.004(a), and 17.102, pertaining to a list of defined terms common to the electric industry and Texas House Bill 1799, 81st Leg. (2009) (HB 1799), PURA §39.116 pertaining to notice regarding customer choice information. The rule will require electric service providers to use specific defined terms in billing their customers and require that information concerning the customer-information website operated by the commission be included on customer bills. The rule will also require electric service providers to include on each residential and small commercial billing statement the date that a fixed rate product will expire. The amendments are adopted under Project Number 37070.

The commission received comments on the proposed amendments from Ambit Energy, LP; joint reply comments from ARM (on behalf of Constellation New Energy, Inc); CPL Retail Energy; Direct Energy, LP; First Choice Power; Green Mountain Energy Company, LLC; Gexa Energy,

LP; Integrys Energy Services of Texas, LP; Sempra Energy Solutions, LLC; and Stream Energy and WTU Retail Energy “REPs” and TEAM, (on behalf of Accent Energy, Amigo Energy, Cirro Energy, Green Mountain Energy Company, Just Energy, Hudson Energy Services, StarTex Power, Stream Energy, Tara Energy, and TriEagle Energy), (REPs), Committee of Cities Served by Oncor (Cities); Fox Smolen & Associates (FSA); the Office of Public Utility Counsel (OPC); and joint comments from Texas Ratepayer Organization to Save Energy/Texas Legal Service Center (TLSC) and AARP. No public hearing on the proposed amendments was requested by any person.

General Comments

FSA agreed with the preamble to the proposed amendments that it is very difficult to quantify specific costs and benefits of the amendments. FSA commented that the commission should be concerned about economic impact on small businesses, which depend upon a well functioning market to secure electricity at a reasonable cost to run their businesses.

OPC expressed a concern for customers that do not utilize the Internet and suggested that REPs’ customer service representatives be trained and knowledgeable about billing terminology to assist those customers without Internet access. OPC also suggested that the commission and OPC list the common terms on their customer information websites and inform respective intake personnel of the location of the definitions to assist customers. OPC encouraged the commission to require each REP to annually send a billing insert that informs customers of these new terms and definitions and any additional terms to assist those customers without Internet access. REPs stated that the process of sending a bill insert to millions of customers in order to reach the

handful of customers that would utilize it is an expensive and inefficient approach to education. REPs stated that a customer without Internet access could simply request a list to be sent by mail.

Commission Response

The commission concludes that the list of common terms and their definitions should be available to the customer on websites and, upon request, free of charge, through the means that the REP communicates with the customer, and the rule that is being adopted reflects this conclusion. The commission agrees with REPs that the cost of REPs providing an annual bill insert would exceed the benefit of providing the information. And, as OPC pointed out, the commission and OPC also have the opportunity to list the common terms on their respective customer information websites and provide the definitions to intake personnel, so they can assist customers, particularly customers that do not have access to the Internet.

OPC recommended that the HB 1822 common terms be applicable to all customers' billing statements. OPC pointed out that HB 1822, which adopted new PURA §39.112, applies to all customers because subsection (c) requires a REP to include "on each billing statement" the end date of a fixed-rate product, thus making the requirement applicable to all customers, regardless of class. OPC cited statutory construction law that supports its argument. REPs disagreed with OPC's position that the common billing terms should be applicable to all customers. REPs stated that OPC reached a false conclusion by failing to fully review the legislative history. REPs stated that the amendment described in OPC's comments simply caused the Senate

Committee to revert to the applicability of the House Engrossed version and did not broaden the applicability of the bill.

Commission Response

The commission disagrees with OPC's interpretation that HB 1822 applies to all customers. The commission concludes that the legislative history suggests that the Legislature intended the requirements of PURA §39.112(c) to apply only to bills provided to residential customers. Nevertheless, the commission has the discretion to apply it to other customers pursuant to its other authority under PURA. The comments in support of extending the provision to small commercial customers provide solid policy reasons for doing so. The proposed rule would apply the provision to residential and small commercial customers, and the commission concludes that this is the appropriate result. FSA has pointed out that small commercial customers are frequently exposed to early-termination penalties because they do not have information about the termination dates of their contracts. Accordingly, the commission is adopting the rule to require the date the contract expires to be placed on the bills of small commercial customers, as well as residential customers.

OPC proposed that this rulemaking more accurately define and expand the definition of small commercial customer for the purposes of Chapter 25. OPC disagreed with the current 50 kilowatt (kW) threshold for the small commercial customer class, as set out in Chapter 25, Subchapter R, which it views as arbitrary and permitting small businesses to sign contracts that require waivers of protections in Subchapter R. OPC voiced a concern that some of what they

consider small businesses may exceed the 50 kW threshold in the customer protection rules but be below the 1,000 kW threshold set out in PURA.

REPs strongly objected to OPC's recommendation that the definition of small commercial customers in §25.471(d)(10) (relating to general provisions of customer protection rules) be changed to include all non-residential customers with a peak demand less than 500 kW and potentially be expanded to 1,000 kW. REPs stated that a mandate of complete application of the customer protection rules for all customers up to 500 kW (or 1,000 kW) harms customers and REPs in numerous ways. REPs stated that statutory authority for most customer protection rules comes from PURA §39.101, which establishes numerous rights for customers and does not distinguish between classes of customers. Furthermore, REPs mentioned that nothing in PURA prohibits the commission from allowing customers of any specific peak demand, or even residential customers, to waive the customer protection rules. REPs pointed to Docket Number 27084, where the issue of lowering or raising the threshold for negotiation was first addressed. The commission stated in that proceeding, "it is appropriate to allow customers with a peak demand of 50kW and above the flexibility to agree to a higher or lower level of customer protections." Further, the commission determined that certain rules were essential and would be applicable in every instance. Instead of requiring application of all rules to large customers, the commission determined that the rules relating to slamming, customer complaint handling, and unauthorized charges would be applicable to all customers regardless of peak demand. REPs also cited Project Number 35768, in which the commission found no undue harm with the current 50 kW threshold that has been in effect for nearly a decade. REPs stated that broader application of the customer protection rules would simply increase costs with no customer

benefit. REPs pointed out that, if OPC's recommendation were to be granted, the Electricity Facts Label (EFL) would be required for customers up to 500 kW (or 1,000 kW). The EFL requires that the total average price be expressed in cents per kilowatt hour (kWh) based on 1500, 2500, and 3500 kWh usage with an assumed 30% load factor. A 50 kW customer at a 30% load factor would use 10,950 kWh, more than three times the maximum usage listed on the EFL. To produce an EFL in this instance would be costly and provide meaningless information to the customer. REPs also pointed out the following provisions that they believe are equally without meaning to large customers: in §25.475(c)(2)(A), a 250 word limit to contract paragraphs; and in §25.475(c)(2)(B), the requirement that all contract documents be available on the commission's website (if the REP chooses to post offers on the commission's power to choose website), which doesn't recognize that most large customers have custom contracts with individual prices. Finally, if the commission granted OPC's request to alter §25.471(d)(10) without the commission publishing an amendment to that rule, the issue of not providing clear notice would be raised by parties that were unaware that the waiver was an issue in this proceeding. REPs reminded the commission that neither §25.5 nor §25.471 are open in the instant rulemaking and continued to disagree with OPC's recommendation to redefine "small commercial customer."

Commission Response

The commission disagrees with OPC that this rulemaking should expand the definition of "small commercial customer" for the purposes of Chapter 25, at least with respect to Subchapter R, the customer protection rules for the competitive area. The commission agrees with REPs that applying all of the customer protection rules to all customers up to

500 kW (or 1,000 kW) could limit customers' ability to negotiate terms that are specific to their circumstances, could reduce the choices of REPs that customers currently enjoy, and would be costly to REPs. The commission also agrees with REPs that the commission has the discretion to establish different rules for different types of customers and to allow customers to waive the customer protection rules. In addition, while it might be appropriate at some point to re-assess the latitude that customers have to deviate from the customer protection rules or to change the threshold for opting out of them, this issues was not raised until after the rule was published and the commission prefers to have a broader discussion of a change of this magnitude prior to including it in a proposal that is published for formal comments or adopting such a change in a rule.

§25.25(c) Bill Content

OPC pointed out that the bill content requirements pertain to "each customer's bill" provided by an "electric utility" without any differentiation between residential, small commercial, or any other customer class. Therefore, the defined term for "customer" in this section should relate to all customers. In addition, the term electric utility applies to all electric utilities providing electric service in Texas, excluding municipal utilities.

OPC supported the definitions of "charge," "fee," and "tax" in the proposed rule and encouraged the commission to include the three terms in §25.25(c) and in the definitions in §25.5. REPs disagreed and stated that the terms do not necessarily comport with the use of those terms in other commission rules or in utility tariffs, and their inclusion in the adopted rules would be at best confusing.

Commission Response

The definitions of the terms “charge,” “fee,” and “tax” were included in the preamble to the proposed rule for explanatory reasons and the commission is not adopting them as a part of these rules.

OPC’s recommended additional language to be inserted in §25.25(c) to reflect HB 1822’s intent of providing the end date of fixed-rate products to all electric customers

Commission Response

The commission disagrees with OPC’s position that the end date of fixed products should be included on the bills of electric utilities. In the regulated environment, most customers do not take service for a particular term, so this information would not apply to most customers.

FSA took exception to the assertion of the REPs that HB 1822 could be interpreted as requiring the contract expiration date on customers’ bills only for residential customers, arguing that Section 5 of HB 1822 is very clear in requiring a retail electric provider to include on each billing statement the end date of the fixed rate product. FSA agreed with OPC’s comments regarding the construction of HB 1822. FSA pointed to §39.112(d), which provides that this section should not be construed to prohibit the commission from adopting rules that provide a greater degree of customer protection.

FSA agreed with OPC's suggestion that the threshold in the definition of a small commercial customer be increased from 50 kW to 500 kW and added that customers within this range of demand are not very different than customers with demand less than 50 kW. FSA stated that over 50 REP contracts that were evaluated on a customer's behalf contained the waiver allowed by §25.471(a)(3) and that the waiver is seldom negotiable. FSA urged the commission to take action to increase the number of customers afforded non-waivable protections.

Commission Response

Section 25.25 applies to electric utilities, which does not include retail electric providers. Accordingly, this provision applies to the bills issued by utilities that have not been unbundled and still sell electricity to retail customers. The existing rule and the proposed rule apply to all customer classes. In a regulated environment, a customer typically does not have the ability to negotiate terms of retail service and the format of the bill. In these circumstances, it is appropriate for the commission to establish billing requirements for all classes of customers. The comments concerning the definition of a small commercial customer and application of customer protection rules for all customers up to 500 kW (or 1,000 kW) is not relevant to the customer protection rules for integrated utilities, because most of the rules are not limited to residential customers. To the extent that other customer protection rules applicable to integrated utilities are limited in their application to residential customers, the commission is not changing these rules. Without the issuance of a proposal to amend other rules, the commission has not provided an opportunity for informed comments that would support amending them.

§25.25(c)(9)(A)-(K), (c)(10)

OPC agreed with the proposed terms and definitions in §25.25(c)(9)(A)-(K) and with subsection (c)(10). OPC suggested the following four terms be added: (1) transmission and distribution charge; (2) generation service cost; (3) transition charge; and (4) system benefit fund charge. OPC also recommended adding the following six terms and definitions to be consistent with §25.479(c)(2)-(3): (1) demand charge; (2) taxes and fees; (3) competition transition charge; (4) late-payment penalty; (5) meter re-read charge; and (6) transition charge. OPC requested that the commission consider the inclusion of the aforementioned terms in the definitions in §25.5 to ensure consistency of definitions throughout the rules in Chapter 25. REPs stated that it is unclear when a residential or small commercial customer of an integrated utility would be subject to charges unique to the competitive marketplace and would encounter terms like “competitive transition charge,” “late payment penalty,” “system benefit fund charge,” and “transition charge,” or when an integrated utility would offer a term “product” to such a customer.

Commission Response

The additional terms proposed by OPC are not relevant to the regulated environment, and the commission is therefore not including the additional provisions that OPC recommended.

OPC proposed to amend §25.5 and define small commercial customer as a non-residential customer that has a peak demand of less than 500 kW. OPC also proposed to amend §25.471(d) to provide a similar definition of small commercial customer.

Commission Response

The additional terms proposed by OPC are not relevant to the regulated environment, and the commission is therefore not including the additional provisions that OPC recommended.

*Comments to §25.479**Subsection (a)*

The REPs proposed to implement the changes required by the amendments to this section as soon as possible, but argued that the commission should not require implementation sooner than 90 days after the rules are adopted, which would allow REPs adequate time to implement the changes. REPs recommended that the adopted rule allow for a compliance date of March 1, 2010. REPs stated that an implementation period will be needed between the effective date and the compliance date in order to make the necessary changes to the REPs' billing systems. REPs pointed out that systems change implementation will not begin until the rule is adopted and the requirements are known. In addition, REPs mentioned that these system changes will have to be made concurrently with the change requirements from the disclosure rulemaking.

OPC disagreed with the comments made by the REPs and noted that HB 1822 was first filed on February 25, 2009; it was clear that by mid-May 2009 that the bill was going to pass the Legislature; in June 2009, the Governor signed it into law; the commission opened this project on June 2, 2009; and finally the legislation had a September 1, 2009 compliance date and has a December 1, 2009 rule effective date. OPC stated that the REPs have been on notice for quite

some time, and further delay would lend to continued confusion and frustration of Texas electric customers. OPC recommended that the commission keep the proposed rule language to ensure that REPs implement the changes as soon as possible.

Commission Response

The commission believes the legislative mandate this rule is based on lends urgency to making the rule effective soon, but it also recognizes that REPs face challenges in implementing it quickly. The commission believes the requirements of the amendment should be implemented as soon as possible, and REPs should be compliant by April 1, 2010.

Subsection (c)

FSA and Public Citizen requested that the commission close the loop-hole created by §25.471(a)(3) that may allow the expiration date requirements to apply only to residential and small commercial customers (defined as customers with under 50 kW in demand). FSA urged the commission to make this subsection applicable to all customers and prohibit waiver by a customer.

Commission Response

As discussed above, the commission concludes that this section should be applicable to residential customers and small commercial customers and not all customers. These customers typically do not have the bargaining power to require notice of the expiration date. Large commercial and industrial customers are expected to have the ability to negotiate notice provisions to protect their interests.

Subsection (c)(1)

Cities also stated that it is important that customers understand unexplained charges on their bills and that the definitions “facilitate consumer understanding of relevant billing elements.” TLSC and AARP agreed with Cities that the definitions should clearly explain the purpose of the charge and that a charge should not be defined as a catch-all category. In addition, they recommended that REPs be allowed to use only the terms defined in the PUC rules to describe charges on electricity bills, consistent with the statute and to reduce customer confusion. Further, they recommended prohibiting the use of billing terms for any recurring or non-recurring charges that are not specifically authorized in the commission’s rule.

REPs urged the commission to afford REPs some latitude in the application of the terms and recommended that the adopted rule on common billing terms allow a REP to use terms that are “not materially different” from the terms defined in the rule. The REPs’ recommended: substitution of “charge” or “fee” or “factor” for the word “surcharge” within a defined term; addition of the word “total” to a defined term; addition or deletion of a suffix to a word within a defined term; and use of an abbreviation, provided that the abbreviation and the unabbreviated term are identified on the customer’s bill.

Commission Response

The commission agrees with commenters that customers should be able to understand the charges on their bills and that the definitions are intended to facilitate consumer understanding of relevant billing elements. In addition, the commission agrees that the definitions should clearly explain the purpose of a charge. The spirit of HB 1822 is to establish uniformity in the terms that REPs use on their customer bills. At the same time, the commission has historically permitted a degree of latitude in the way that charges are presented on bills, and there is some value in maintaining past practices. Customers who are accustomed to seeing charges presented one way on a REP's bill may be confused and need to have questions answered if the REP is required to change the bill's look.

Therefore, the commission is adopting a rule that requires REPs to use terms that are defined in §25.479. 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. The rule allows REP to use differences in capitalization and hyphenation if necessary and to use appropriate abbreviations as provided in the rule. Terms and abbreviations may be completely capitalized, partially capitalized, or not capitalized at all. The rule does not prescribe how costs are presented on a bill or prohibit the use of billing terms for charges that are not specifically authorized in the commission's rule. The commission believes that precluding the use of terms that are not defined in the rule might limit REPs' ability to develop innovative services or features that customers would value.

Subsection (c)(1)(H) and (I)

REPs generally agreed that §25.479(c)(1)(H) in the current rule should be split into subparagraphs (H) and (I) as was done in the proposed amendments, but proposed minor changes in organization. REPs recommended that the description of average unit price be amended to use the same terminology found in §25.475(b)(8). In addition, REPs recommended that if the customer is on a level or average payment plan, the rule require that the level or average payment be clearly shown, in addition to the current charges and clarifications to the description of the calculation of the average price for electric service during the current billing period.

Commission Response

The commission agrees with REPs' recommendation to modify the language in subparagraph (H). The commission also agrees with REPs and modifies the language in subparagraph (I) with some modest changes for clarification to the REPs' recommendation.

Subsection (c)(1)(L)

REPs recommended adding a definition for "amount due" to clarify that the phrase should be used to label the amount the customer must pay by the due date of the bill to avoid collection action and disconnection of service and not the entire amount outstanding.

Commission Response

The commission agrees with REPs' recommendation and has changed the subsection accordingly.

Subsection (c)(1)(N)

REPs suggested that the requirements related to beginning and ending meter reads be consolidated in subsection (c)(1)(N) and removed from subsections (c)(1)(S) and (c)(7)(A) and (D). OPC agreed with the REPs that the requirement relating to the display of beginning and ending meter reads on customer billing statements do not need to be located in three different subsections. OPC asserted that these requirements should be delineated in both §25.25 and §25.479, and be made applicable to all Texas electric customers to ensure compliance with the intent of HB 1822.

In addition, REPs recommended that subparagraph (N) refer to the meter reading at the beginning of the period, the meter reading at the end of the period, the dates of these readings, and other clarifications.

Commission Response

The commission agrees with REPs that it is appropriate to modify the language in subparagraph (N) and delete proposed subsections (c)(7)(A) and (D). Because the terms referred to in these subsections are information that is required by subsection (c)(1)(N) to be included in a bill, there is no need to refer to them in subsection (c)(7). The commission agrees that these terms in subsection (c)(1)(S) are also redundant and removes them from this section.

§25.479(c)(1)(H),(I),(L),(S),(T)

OPC supported the addition of subsections (c)(1)(H), (I), (L), (S), and (T).

Commission Response

The commission is retaining these subparagraphs, with the exception of subparagraph (S), with modifications. The modifications and deletion of subparagraph (S) are discussed above.

Subsection (c)(2)(A)-(E)

Cities stated that the definition of the term monthly charge does not provide a clue as to the purpose of this charge. Therefore, all or nearly all charges in this section are monthly charges, so the term does not provide further explanation or purpose. Cities stated that a monthly charge should have a specific purpose that is stated in the rule. Cities offered the term “monthly customer administration charge” as a replacement to monthly charge and to have the definition make clear which entity is responsible for this additional charge.

OPC supported subsection (c)(2)(A)-(E).

Commission Response

The commission agrees with Cities that monthly charge as well as the other terms in this subsection require further explanation. Therefore, the commission redefined the terms in this subsection and revised subsection (c)(2) and renumbered it as subsection (c)(3)(A)-(C).

Subsections (c)(2), (c)(3) and (c)(7)

OPC suggested that, to ensure consistency with §25.25 and the definitions in §25.5, the following terms be added to §25.479(c)(2) and (3): generation service cost and system benefit fund charge.

REPs recommended that subsections (c)(2), (c)(3), and (c)(7) be deleted and be replaced with a new subsection (d) that contains a paragraph addressing acceptable alternatives to the terms specified in the rule; a paragraph addressing REP charges, fees, and taxes; a separate paragraph addressing transmission and distribution utility (TDU) surcharges; and a final provision requiring a REP to display on its website the definitions of the terms it employs on its bill.

REPs in their reply comments proposed that a REP be permitted to include one or more TDU surcharges on a customer's bill in any combination labeled as "Transmission Distribution Service Provider Surcharge(s)." REPs stated that this option would allow REPs to minimize the number of line items on the bill, which was an issue the commission had previously sought to address regarding telecommunications bills.

OPC disagreed with REPs' suggestion of allowing REPs to use terms not materially different from the terms defined in the rule. OPC stated that materially different is subjective and goes against the intent of HB1822. Cities also disagreed with REPs' recommendation and stated that it violates the intent and clear language of HB 1822, which requires that the commission adopt rules that "include a list of defined terms" and that "applicable terms be labeled uniformly on each retail bill." Cities stated that using terms not defined by the commission introduces

significant confusion into the billing process, violates both the clear language and intent of HB1822, and represents a slippery slope.

Commission Response

The commission disagrees with OPC's comments regarding consistency between §25.25 and §25.479, because the variety of customer service plans and the possibility of customer confusion are different between the integrated utility environment and a competitive market. However, the commission concludes that it is appropriate to add "system benefit fund" to the revised §25.479(c)(2).

The commission believes that HB 1822 reflects the legislature's conclusion that customers are confused by non-uniform language. The legislative history particularly indicates a concern about billing by REPs in the electric market. However, the statute allows the commission some latitude in the degree of uniformity that it requires in terms used by REPs in billing their customers. In view of this history, the commission concludes that it is appropriate to allow alternative terms, within limits, and has specified parameters use of alternative terms and abbreviations.

Subsection (c)(3)

TLSC and AARP stated that subsection (c)(3) is understood to mean the term customer charge can be renamed to the appropriate new billing term or it can be shown as a sub-item of demand charge, energy charge, monthly charge, transmission and distribution charge, or taxes and other fees. TLSC and AARP stated that a REP should only be permitted to use terms defined in the

commission rules to describe charges on electric bills. Cities stated that using terms not defined by the commission introduces significant confusion into the billing process, violates both the clear language and intent of HB1822, and represents a slippery slope.

TLSC and AARP noted that the billing rule, as structured, assumes that REPs sometimes bill customers using a “bundled rate” where various fees and charges are combined together for a single price per kilowatt hour. TSLC and AARP recommended the term, “bundled rate” be defined and that better information be made available to residential consumers about the bundled rates they pay. TLSC and AARP did not offer a definition for the term bundled rate. They stated that REPs should be required to make an itemized list of charges that are included in the bundled rate and made available on the REP’s website consistent with the existing rule, §25.479(c)(3) and that REPs should be permitted to use billing terms only for non-recurring charges that are specifically authorized in the commission’s rule. TSLC and AARP stated that the proposed rule defines terms that are rarely seen on residential bills, instead of identifying terms that are commonly seen.

Cities agreed with TLSC and AARP’s recommendation and urged the commission to clearly delineate all of those charges to be itemized in bundled rates. Otherwise the use of a bundled rate would violate the intent of HB 1822. Cities presented the example of two hypothetical REPs that charged bundled rates but include different itemized charges. Both have bundled rates, but they include different components, which violates the intent of HB 1822 that billing terms be labeled in a uniform fashion. Cities urged the commission to bring uniformity to the bundling of rates, which would assist consumers in making apples-to-apples comparisons between rate plans.

Cities in their reply comments reiterated that REPs should be required to utilize only terms identified and defined by the rules. If a REP or electric utility seeks to use some other term to describe a billing practice, that REP should obtain approval from the commission. OPC supported Cities and TLSC and AARP in the position that REPs should only use terms, including non-recurring charges, defined in commission rules. In addition, OPC supported Cities' suggestion that, should a REP wish to use a term different from those billing terms approved by the commission in this rulemaking, the REP should obtain commission approval. OPC preferred the definitions for charge, fee, and tax in the proposed rule, over the REPs' suggestion of the use of "surcharge" to replace charge or fee.

Ambit stated that the rule could require that transmission and distribution service provider (TDSP) charges be displayed under the TDSP designated section on the bill, since the origin of these charges is the TDSP. Ambit stated that the following specific TDSP charges could be displayed in this section: the advanced metering system (AMS) meter charge and the energy efficiency recovery factor. Ambit also proposed that bundled product bills have a separate line item called "Gross Receipts Tax" instead of "Miscellaneous Gross Receipts Tax Reimbursement" in order to shorten and simplify the bill. Ambit suggested that taxes and other fees be adopted for both bundled and unbundled charges. Ambit proposed to authorize the separation of each transition charge as a separate line item.

Commission Response

Under the rule that the commission is adopting, a REP may not use a different term for a charge that is defined in this paragraph (2), previously (3). The rule does not require that REPs use only terms indentified and defined by the rules. The commission concludes that such a restriction could preclude REPs from developing services or features that are attractive to customers.

To the extent that a REP uses a bundled rate, the commission agrees with Cities and TLSC and AARP that an itemized list of charges that are included in the bundled rate must be made available on the REP's website consistent with revised section §25.479(c)(2).

The commission disagrees with Ambit's comments that TDSP charges must be displayed under the TDSP designated section on the bill. The commission is adopting uniform terms, as required by HB 1822, but it is not the commission's intention to adopt a rule that requires a uniform billing format, because of the cost to REPs and the potential customer confusion resulting from changes in the design of bills to which customers are accustomed. The commission also disagrees with Ambit's proposal to shorten the term miscellaneous gross receipts reimbursement, because the comptroller guidance requires the term be labeled as reimbursement. The commission is adopting an approved abbreviation for this term, however.

Subsection (c)(3)(A)-(K)

Ambit proposed identifying advanced metering charges and energy efficiency cost recovery factors in subsection (c)(3) as “TDSP” charges. Ambit also proposed to add in subsection (c)(3)(K) a provision permitting a REP to parse out Transition Charges into separate line item charges (*e.g.*, Transition Charge 1, Transition Charge 2).

OPC supported the adoption of subsection (c)(3)(A)-(K).

OPC recommended retaining the term “meter charge.” OPC disagreed with REPs’ claim that using meter charge and advanced meter surcharge could lead to customer confusion. OPC pointed out that, to date, only two TDUs have commission-approved advanced meter deployment applications and the other TDUs, including AEP TNC, AEP TCC, and TNMP do not have advanced meter deployment applications. OPC stated having both terms in the common terms would avoid customer confusion.

OPC supported the inclusion of the term “meter re-read,” which is typically a discretionary service, in the list of common terms. OPC further suggested that all discretionary service charges be defined as common terms. REP’s disagreed with OPC on this point, arguing that no other discretionary charges are defined in the proposed rule and that it is inappropriate to define meter re-read.

Commission Response

The commission agrees with OPC's recommendation to include "System Benefit Fund" in this paragraph. The commission does not agree with Ambit's proposals to modify subparagraphs (A) and (C). Identifying these charges on the bill as TDSP charges does not further the purposes of HB 1822. For the same reason, the commission does not adopt Ambit's suggested change to subparagraph (K). The commission also agreed with the REP's that no other discretionary charges are defined in the proposed rule and that it is inappropriate to define meter re-read and therefore removed this definition from this subsection. Because of revisions to the rule, subsection (c)(3) has been renumbered to subsection (c)(2)(A-M) as a result of removing the term meter re-read and adding a two definitions to clarify Transmission Distribution Utility charges and surcharges.

Subsection (c)(4)

OPC supported the adoption of subsection (c)(4).

Subsection (c)(6)

Cities suggested that the commission create a standard definition for contract term.

Commission Response

"Contract term" is defined in §25.475(b)(4), and the commission makes no additional change, in response to Cities' suggestion.

Cities took issue with proposed §25.479(c)(6), which states that "if the exact date is not known, the REP may estimate the expiration date by reference to the billing cycle and month or

approximate date of expiration.” Cities stated that the exact date should always be known, that it should come precisely on the date when a term product expires. Cities provided an example, stating that a twelve-month contract entered into on August 27, 2009 should end “precisely 12 months later” on August 27, 2010. Cities offered a change to §25.479(c)(6) that would require a REP to include on each billing statement the date that a fixed rate product will expire and proposed to delete the remainder of this provision.

REPs proposed in subsection (c)(6) that the rule specify that the contract end date on a bill applies only to residential contracts for fixed rate products.

REPs stated that Cities assume that a 12-month contract is intended by both parties to be in effect for one calendar year, which is unlikely to be the case since, as a general rule, the electricity market operates on a monthly time table. REP systems have been built around the meter reading cycle process that is a key component of the current market design, and REPs render bills in accordance with the market design. REPs stated that to ask a REP to render a bill on a date with no meter read will introduce new costs because systems changes will be needed. REPs stated that with the deployment of advanced meters, the TDU will be better able to commit to a specific date, and there is no need at this time to fundamentally alter contract practices of REPs to resolve an issue that will be taken care of with the deployment of advanced meters. REPs stated that Cities did not provide justification for why defining a contract as being 365 days in length is superior to defining it in terms of 12 meter reading cycles. REPs urged the commission to reject Cities’ proposal and stated that contracts often end on meter reading dates for efficiency and

customer convenience and to require date-certain contract end dates is counterproductive and reduces customer choice.

FSA stated that REPs describe and interpret the contract “term” in different ways, and this practice leads to the payment of termination fees when small commercial customers change REPs. FSA supported the provision of the contract expiration date on the bill. FSA stated that an accurate expiration date on the bill would reduce or eliminate termination fees and help eliminate time consuming early termination disputes between REPs and customers. In addition, FSA stated that the expiration date would help REPs do a better job of forecasting the power requirements for a contract and allow customers more flexibility to shop the market for a financially viable REP. FSA suggested that the commission afford a grace period to the REPs when the TDU changes the meter read schedule from the annually published schedule. FSA stated that customers should not bear the cost of TDU modification of its published schedules. FSA also stated that customers should not be charged fees or penalties for inadvertently designating an erroneous end date when switching to a new provider because of a meter read that has been changed by the TDU and reflected in error by the REP. In addition, FSA stated that customers should be given a grace period from early termination fees imposed by REPs. FSA suggested a 14-day grace period before and after the actual switch occurs.

FSA also stated that it is a matter for commission investigation if a TDU’s metering schedules are only estimates and cannot be counted on to provide the actual expiration date. FSA added, “the market should not be allowed to charge the customers fees and penalties when the market cannot provide customers with timely and accurate knowledge concerning its process.” FSA

proposed a requirement that a REP include the date that a fixed rate product will expire on each billing statement. If the REP cannot determine the end date of the contract, the REP could estimate the date by referring to the billing cycle in the month of the approximate end date. After the billing cycle schedule for the TDU is known for the year in which the contract expires, the REP's actual end date would have to be consistent with the TDU meter reading schedule for the customer during the month of expiration. If the TDU's actual meter reading varies from its published schedule, no termination fees or other fees could be imposed on the customer for switching during a period of 14 days before or after the actual switch date occurs. FSA stated the requirement of PURA §39.112(c) that all REPs provide all customers with their contract expiration date will empower all customers with the information necessary to find the best electric prices and products.

OPC proposed that it be made clear in §25.479(c)(6) that the HB 1822 requirement pertains to all customers and is not limited to residential customers alone. FSA, Public Citizen, TEPA, and Cities agreed. Cities stated that HB 1822 does not allow for any latitude in this matter. OPC agreed with REPs, Cities, and FSA that customers with a term contract should know with certainty when their contracts expire. OPC also concurred with FSA that a contract expiration date will enable a customer to select the date for the new REP contract to coincide with the end date of the existing REP contract. Cities stated that the exact end date of the contract should always be known.

REPs disagreed with OPC and Fox Smolen that new PURA §39.112(c) requires REPs to include end dates of fixed rate products on bills rendered to both residential and small commercial

customers. REPs argued that Section 5 of HB 1822, which is codified in new PURA §39.112, clearly applies only to fixed rate products provided to residential customers. PURA §39.112(a) defines the term “fixed rate product,” PURA §39.112(b) specifies the context in which this term is used, and PURA §39.112(c) further emphasizes the meaning of the phrase “the fixed rate product.” REPs stated that the Legislature plainly intended the requirements in PURA §39.112(c) to apply only to bills provided to residential customers. REPs also cited the discussion on the Senate floor in which Senator Wendy Davis explained her amendment to HB 1822. The discussion centered solely on the provision of information to residential customers that may prompt those customers to shop on the Powertochoose website. The Powertochoose website is a tool for residential customers to compare REP offers, and non-residential retail electric products are not listed. Therefore, reading §39.112(c) to also encompass billing statements rendered to small commercial customers would be inconsistent with that discussion. REPs supported the requirement to include the end date of the contract on every bill for residential customers only, and opposed applying the requirement to apply to small commercial customers.

Commission Response

The commission disagrees with REPs that subsection (c)(6) should be limited to residential contracts for fixed rate products, because the commission believes that the contract date should appear on the bills of small commercial customers as well. The commission agrees in this case with REPs’ reliance on the rule of statutory construction that every word or phrase in a statute is chosen for a particular reason and therefore given the difference in the language between subsections (b) and (c) in PURA §39.112, in reference to “fixed rate

product,” the commission believes that the Legislature intended the requirements in PURA §39.112(c) to apply only to bills provided to residential customers. To the extent that the statutory provision is construed to apply only to residential customers, the commission nevertheless has discretion in deciding whether to apply this requirement to other customers. The comments in support of extending the provision beyond the residential customers to small commercial customers provide solid policy reasons for doing so. The proposed rule would apply the provision to residential and small commercial customers, and the commission concludes that this is the appropriate result. Large commercial and industrial customers should have the bargaining power to negotiate provisions to protect their interests in connection with the expiration of a contract. Small commercial customers are in a situation like that of residential customers and, as FSA has pointed out, are frequently exposed to early-termination penalties because they do not have information about the termination dates of their contracts. The commission agrees with FSA’s comments that an accurate expiration date on the bill would reduce or eliminate termination fees and help eliminate time consuming disputes between REPs and customers over such fees. In addition, an expiration date would give customers better information to shop the market for another contract or REP at the end of the contract term. The commission agrees with Cities and FSA that if the REP cannot determine the end date of the contract, the REP may estimate the date by referencing the billing cycle in the month of the approximate end date. The commission acknowledges that the REPs operate on a monthly time table and built systems around the meter reading cycle to render bills to customers. Accordingly, the adopted rule requires inclusion of the expiration date on the bill for small commercial and residential customers as provided for in §25.475(c)(3)(B)

relating to General Retail Electric Provider Requirements and Information Disclosure to Residential and Small Commercial Customers.

Subsection (c)(8)

OPC proposed removing §25.479(c)(8) because it is more permissive than mandatory and could be read as limiting bill content to only residential and small commercial customers. OPC offered alternative language if the commission chooses to include this paragraph to require compliance with this section and §25.475(e).

REPs agreed with OPC's comments that this section is permissive and is not explicitly required but inferred that the commission had included it in the bill format rule for the sake of completeness, so that a cross reference exists to a key item that may appear in or with a bill as allowed by another rule.

Commission Response

The commission disagrees with OPC that bill content requirements are applicable to all customers, including large commercial customers. The bill content requirements are applicable only to residential and small commercial customers. The commission agrees with OPC and REPs that subsection (c)(8) may be interpreted as permissive but it does serve as a cross reference to a key item in §25.475, which is mandatory. Therefore, the commission makes no change to this provision.

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

The amendment to §25.25 of this title, relating to Issuance and Format of Bills and §25.479 of this title, relating to Issuance and Format of Bills is adopted under the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §14.002 (Vernon 2007 & Supp. 2009) (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 §17.001, which directs the commission to adopt and enforce customer protection rules; §17.003(c), which requires the commission to require REPs to give clear and understandable information to customers about rates and to use a list of defined terms; §17.004(a), which provides that customers are entitled to bills that are presented in clear, readable and easy-to-understand language that uses terms defined in the rules adopted under §17.003; §17.102, which directs the commission to adopt and enforce rules requiring that charges on a REP's bill be clearly and easily identified, using terms defined in the rules adopted under §17.003; and §55.016, which authorizes the commission to enforce a requirement bills for electric services provide sufficient information for customers to understand the basis and source of the charges and identify all charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.001, 17.003(c), 17.004(a), 17.102, and 55.016.

§25.25. Issuance and Format of Bills.

- (a) **Frequency of bills.** An electric utility shall issue bills monthly, unless otherwise authorized by the Public Utility Commission, or unless service is provided for a period less than one month. Bills shall be issued as promptly as possible after reading meters.
- (b) **Billing information.** The electric utility shall provide free to the customer a breakdown of charges at the time the service is initially installed or modified and upon request by the customer as well as the applicable rate schedule.
- (c) **Bill content.** Each customer's bill shall include all the following information:
- (1) if the meter is read by the electric utility, the date and reading of the meter at the beginning and at the end of the billing period;
 - (2) the due date of the bill, as specified in §25.28 of this title (relating to Bill Payment and Adjustments);
 - (3) the number and kind of units metered;
 - (4) the applicable rate schedule and title or code should be provided upon request by the customer;
 - (5) the total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall be used only when an actual discount for prompt payment is granted. The terms shall not be used when a penalty is added for nonpayment within a designated period;
 - (6) the word "Estimated" prominently displayed to identify an estimated bill;

- (7) 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; and
- (8) any amount owed under a written guarantee contract provided the guarantor was previously notified in writing by the electric utility as required by §25.24 of this title (relating to Credit Requirements and Deposits).
- (9) To the extent that a utility applies a charge to the customer's bill that is consistent with one of the terms set out in this paragraph, the term shall be used in identifying charges on customer's bills, and the definitions in this paragraph shall be easily located on the utility's website. A utility may not use a different term for a charge that is defined in this paragraph.
 - (A) Advanced metering charge -- A charge to recover the costs of an advanced metering system;
 - (B) Energy Charge -- Any charge, other than a tax or other fee, that is assessed on the basis of the customer's energy consumption.
 - (C) Energy Efficiency Cost Recovery Factor -- A charge approved by the Public Utility Commission to recover the electric utility's cost of providing energy efficiency programs.
 - (D) Fuel Charge -- A charge approved by the Public Utility Commission for the recovery of the utility's costs for the fuel used to generate electricity.
 - (E) Meter Number -- The number assigned by the utility to the customer's meter.

- (F) Meter Charge -- A charge approved by the Public Utility Commission for metering a customer's consumption.
 - (G) Miscellaneous Gross Receipts Fee -- A fee assessed to recover the miscellaneous gross receipts tax imposed on utilities operating in an incorporated city or town having a population of more than 1,000.
 - (H) Municipal Franchise Fee -- A fee assessed to compensate municipalities for the utility's use of public rights-of-way.
 - (I) Nuclear Decommissioning Fee -- A charge approved by the Public Utility Commission to provide funds for decommissioning of nuclear generating sites.
 - (J) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.
 - (K) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities, and special purpose districts.
- (10) To the extent that a utility uses the concepts identified in this paragraph in a customer's bill, it shall use the term set out in this paragraph, and the definitions in this paragraph shall be easily located on the utility's website. A utility may not use a different term for a charge that is defined in this paragraph.
- (A) Current Meter Read -- The meter reading at the end of the period for which the customer is being billed;
 - (B) kW -- Kilowatt, the standard unit for measuring electricity demand, equal to 1,000 watts;

- (C) kWh -- Kilowatt-hour, the standard unit for measuring electricity energy consumption, equal to 1.000 watt-hours; and
- (D) Previous Meter Read -- The reading on the beginning the period for which the customer is being billed.

(d) **Estimated bills.**

- (1) An electric utility may submit estimated bills for good cause provided that an actual meter reading is taken no less than every third month. In months where the meter reader is unable to gain access to the premises to read the meter on regular meter reading trips, or in months when meters are not read, the electric utility must provide the customer with a postcard and request the customer to read the meter and return the card to the electric utility. If the postcard is not received by the electric utility in time for billing, the electric utility may estimate the meter reading and issue a bill.
- (2) If an electric utility has a program in which customers read their own meters and report their usage monthly and no meter reading is submitted by a customer the electric utility may estimate the customer's usage and issue a bill. However, the electric utility must read the meter if the customer does not submit readings for three consecutive months so that a corrected bill may be issued.

- (e) **Record retention.** Each electric utility shall maintain monthly billing records for each account for at least two years after the date the bill is mailed. The billing records shall

contain sufficient data to reconstruct a customer's billing for a given month. Copies of a customer's billing records may be obtained by that customer on request.

- (f) **Transfer of delinquent balances.** If the customer has an outstanding balance due from another account in the same customer class, then the utility may transfer that balance to the customer's current account. The delinquent balance and specific account shall be identified as such on the bill.

§25.479. Issuance and Format of Bills.

- (a) **Application.** This section applies, beginning April 1, 2010, 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 shall 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) Bills shall 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 shall 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 shall 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 shall not require a customer to agree to such an arrangement as a condition of receiving electric service.

- (4) A REP shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 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 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 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) System Benefit Fund - A non-bypassable charge approved by the Public Utility Commission, not to exceed 65 cents per megawatt-hour, that funds the low-income discount, one-time bill payment assistance, customer education, commission administrative expenses, and low-income energy efficiency programs.
- (K) 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.
- (L) 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
- (M) 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 shall be applied in a manner consistent with the definitions, and such term and its definition shall 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 shall 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 shall be used in the itemization.
- (5) A customer's electric bill shall not contain charges for electric service from a service provider other than the customer's designated REP.
- (6) A REP shall include on each residential and small commercial billing statement 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 shall use the term set out in this paragraph, and the definitions

in this paragraph shall 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 shall, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP shall 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.
- (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 shall 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 shall maintain a record of all meter tests performed at the request of a REP or a REP's customers.
- (g) **Record retention.** A REP shall maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records shall 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 shall be identified as such on the bill. There shall be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §25.25 and §25.479 relating to Issuance and Format of Bills is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 2nd DAY OF December 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER