

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§25.27. Retail Electric Service Switchovers.

(a) **Right to switchover.**

- (1) **General principles.** A consumer has the right to switch retail electric service to any electric or municipally owned utility that has the right to provide service in the area in which the consumer's consuming facility is located, subject to the terms of any contract for electric service entered into pursuant to the disconnecting utility's tariff. Because a consuming facility for which a switchover is sought can obtain electric service from the disconnecting utility prior to the switchover, an electric or municipally owned utility shall give a switchover a lower priority than the elimination of outages and requests for service to consuming facilities that do not have service. Nevertheless, a switchover shall be performed as soon as reasonably possible, and the disconnecting and connecting utilities shall strive to take the actions required below more quickly than the deadlines listed below. In addition, the disconnecting and connecting utilities shall minimize any outages related to making a switchover.
- (2) **Options and availability.** This section provides two switchover options: partial switchover and full switchover. All subsections of this section apply to electric utilities, while only subsections (a), (c), (e), and (g) of this section apply to municipally owned utilities. The partial switchover option is not available in a particular area prior to September 1, 1999 and prior to such time as both the disconnecting and connecting utilities have approved tariffs for transmission service at the transmission and primary and secondary distribution voltage levels. Until the utilities have such approved tariffs, subsections (d) and (e) of this section do not apply. In addition, the partial switchover option is not available to the extent that it would reduce the state's jurisdiction over a utility. The provisions for full switchovers in this section become effective for a particular area once the electric utilities that have a right to provide service in the area have tariffs in effect that are consistent with this section.
- (3) **Limitations and refunds.** A consuming facility may not be switched more than once every 12 months. A consumer or connecting utility who pays a switchover fee does not waive the right to seek a refund on the basis that the switchover fee was excessive. In addition, a connecting utility or consumer who buys facilities pursuant to this section waives the right to seek a refund only if it expressly agrees to waive that right.

(b) **Definitions.** As used in this section, the following terms have the following meanings.

- (1) **Idle facilities** - The disconnecting utility's facilities that are used to serve only the consuming facility being switched, as well as the easements for these facilities. For consuming facilities served above 480 volts, idle facilities also include costs, or a portion of costs, pertaining to the upgrade of transmission and distribution facilities that were necessary to serve the consuming facility, if the current or prior owner of the consuming facility agreed to pay the costs upon switching. In all other respects, idle facilities do not include facilities that were installed or are being used to serve more than one consuming facility, including: facilities that were designed with a capacity greater than necessary to serve the consuming facility being switched in order that additional consuming facilities could be served using the facilities in the future; and upgrades that were made to common facilities in order to serve the consuming facility being switched.
- (2) **Common facilities** - The disconnecting utility's facilities that are used, installed, or designed to serve more than one consuming facility, except as specified in the definition of idle facilities.

(c) **Documentation.** The requests, notices, offers, agreements, and switchover requests provided for in this section must be in writing, unless otherwise indicated.

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- (d) **Notice of switchover options.** Upon receiving an oral switchover request, the disconnecting utility shall at that time orally describe the two switchover options, including stating that there is no charge for a partial switchover, stating that there will be a switchover fee for a full switchover, stating that switchover requests must be in writing, stating that written general information on switchover fees will be provided within two working days, and providing a fax number and mailing address to send the switchover request. Within two working days of a switchover request that does not specify whether a partial or full switchover is being requested, the disconnecting utility shall provide the consumer a document describing the two switchover options, including a statement that there is no charge for a partial switchover, specifying for a full switchover the base charge and base charge adder and stating that the facilities recovery charge will vary depending on the circumstances, and providing the deadlines prescribed in subsection (f)(2)(C) of this subsection for the disconnecting utility to notify the connecting utility after payment of the switchover fee that the full switchover can proceed.
- (e) **Partial switchover.**
- (1) **Description.** Under the partial switchover option, the connecting utility provides power to the consuming facility using the disconnecting utility's transmission and/or distribution facilities. The disconnecting utility shall provide the connecting utility transmission service to the same point of delivery that the disconnecting utility provided electricity to the consuming facility prior to the switchover. Except where necessary or where the connecting utility requests it, all of the disconnecting utility's facilities needed to serve the consuming facility prior to the switchover shall remain in place. The disconnecting utility may not charge a switchover fee for a partial switchover, except that it may charge the connecting utility a cost-based fee where the connecting utility requests that the disconnecting utility remove facilities that were needed by the disconnecting utility to serve the consuming facility prior to the switchover. In addition, the disconnecting utility may charge a switching customer any account closing fee that applies to all departing customers, not just switching customers.
 - (2) **Procedure for partial switchover.** The disconnecting utility shall contact the connecting utility within three working days of receiving a request for a partial switchover in order to coordinate the switchover. The switchover shall occur within eight working days of the disconnecting utility's receipt of the request, unless the consumer agrees to a longer schedule or unless good cause exists for not completing the switchover within eight working days. If the switchover will not be completed within eight working days, then the disconnecting utility must notify the consumer, with copies to the commission's Office of Customer Protection and to the connecting utility, providing the reasons why the switchover has been delayed and when the switchover will be completed. This notice must be provided as soon as possible, by fax to the commission's Office of Customer Protection, connecting utility, and, if possible, the consumer.
- (f) **Full switchover.** A full switchover involves the disconnecting utility disconnecting its facilities and the connecting utility installing and/or purchasing transmission and/or distribution facilities to serve the consuming facility. If the consumer is a tenant, the consumer must obtain the clear and specific agreement of the owner or owner's agent to switch over the consuming facility and must provide it to the disconnecting utility as an attachment to a notarized affidavit stating that the consumer has obtained the owner's or owner's agent's agreement. This subsection does not apply within municipalities exercising original jurisdiction that enacted switchover rules by August 28, 1998 that provide for more expeditious full switchovers than provided by this subsection.

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- (1) **Switchover fee.** The switchover fee applies regardless of whether the consumer requesting the switchover has ever received service from the disconnecting utility at the consuming facility. The fee consists of a base charge and, where applicable, a base charge adder and facilities recovery charge. The disconnecting utility may not include in the switchover fee a charge for general administrative expenses related to closing the consumer's account. However, the disconnecting utility shall charge a switching customer any account closing fee that applies to all departing customers, not just switching customers. Where the disconnecting utility is allowed to charge for the original cost of facilities, it must deduct contributions in aid of construction that apply to those facilities. Accumulated depreciation shall be calculated using the depreciation rates that are currently used to book depreciation. Upon the payment of the switchover fee or purchase, or refusal of an offer to purchase, under the circumstances described in subparagraph (B)(i) of this paragraph, any construction charges owed by the consumer, pursuant to a contract entered into after the effective date of this subsection, for idle facilities used to provide service to the consuming facility being switched are extinguished.
- (A) **Base charge and base charge adder.** A base charge applies to the switchover of a consuming facility served at 480 volts or less. The base charge is equal to the cost of removing any meter and drop line used to serve the consuming facility, and shall be specified in the disconnecting utility's tariff. The switchover fee shall not include the original cost less depreciation and gross salvage of the meter and drop line for switchovers for which the base charge applies. A base charge adder that is less than the base charge must also be specified in the tariff to cover the situation where a consumer switches more than one consuming facility on the same premises at the same time. The base charge adder is equal to the cost of removing any meter and drop line used to serve each additional consuming facility.
- (B) **Facilities recovery charge.** The purpose of the facilities recovery charge is to recover costs related to idle facilities, other than meter and drop line costs covered by a base charge or base charge adder.
- (i) **Availability of facilities recovery charge.** The disconnecting utility may not impose a facilities recovery charge for idle facilities if the connecting utility or consumer purchases the idle facilities at a price equal to net book value and signs an agreement indemnifying the disconnecting utility from liability for the facilities after the purchase of the facilities. Before a consumer can purchase the facilities, it must prove that it has the financial resources to protect the disconnecting utility from liability risks resulting from the sale. Where more than one consumer requests a switchover, the disconnecting utility may not impose a facilities recovery charge for idle facilities if the connecting utility purchases the idle facilities and the common facilities used to serve the consuming facilities being switched, but not used to serve any consuming facilities not being switched, at a price equal to replacement cost less depreciation and signs an indemnity agreement. Replacement cost is equal to: the average original cost of like facilities installed in the most recent full calendar year for which information is available, that would be necessary to serve the consuming facilities being switched if facilities were first installed to serve the consuming facilities at the time of the switchover requests; plus the cost of easements for the facilities if the easements were obtained at the time of the switchover requests. The disconnecting utility also may not impose a

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facilities recovery charge if it refuses an offer to purchase under the conditions described in this subparagraph.

- (ii) Components of facilities recovery charge. The facilities recovery charge consists of the net book value (original cost less depreciation) less net salvage (gross salvage less cost of removal) of the idle facilities. In determining the net book value of the facilities, the original cost of the specific facilities should be used. If the original cost of the specific facilities is not available, the installation date of the facilities shall be determined or estimated and the average original cost of like facilities installed by the disconnecting utility in that year shall be used. If average original cost information is not available for the year in which the idle facilities were installed, then the average original cost of like facilities installed in the most recent full calendar year for which information is available shall be used and shall be deflated to the installation date of the idle facilities. Where average original cost information is used, the average original cost information shall be determined using the information for the operating division in which the consuming facility to be switched is located, if the disconnecting utility maintains original cost information by division.
 - (C) Labor charges. Labor charges for removing facilities are limited to a reasonable estimate of the direct labor cost (salary, insurance, pension, payroll taxes, etc.) for the time of persons needed to remove the facilities. No allocation of general overhead labor is allowed, but any necessary supervisory or engineering labor specific to the removal of the facilities may be included.
 - (D) Quantification of charges. The calculation of the base charge, base charge adder, and facilities recovery charge may involve the making of estimates. To the extent that there is a range of reasonable estimates for a particular charge, the estimate at the low end of the range should be used, so that the amount of the switchover fee will be minimized, but still be reasonable and in conformance with this section. Unless the consumer agrees otherwise, there will be no refund or surcharge if the actual cost of performing the switchover is less than or greater than the switchover fee. Instead of a utility-specific base charge and base charge adder, the commission may, through the issuance of an order, establish a single base charge and a single base charge adder to be used by all electric utilities. Likewise, the commission may, through the issuance of an order, establish fixed dollar charges for components of the facilities recovery charge.
 - (E) Payment of switchover fee and other charges. Before the connecting utility provides service, the disconnecting utility has the right to receive payment of the switchover fee and any other outstanding charges. The connecting utility shall not reimburse the consumer for the switchover fee, and may pay the switchover fee only if the consumer agrees prior to the connecting utility's payment of the fee that the consumer will reimburse the connecting utility for the fee. The agreement must contain a plan for the payment of the fee within a reasonable period of time.
- (2) **Procedure for full switchover.**
- (A) Notice of switchover fee and procedure. Upon receiving a request for a full switchover, the disconnecting utility must provide the consumer a document that quantifies the switchover fee within 15 working days. This document must be in 12 point, non-bold type and must itemize the base charge, base charge adder, and the facilities recovery charge of the switchover fee. In addition, the document must itemize the components of the facilities recovery charge, including a description of the idle facilities, the

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installation dates of the idle facilities, the original cost of the idle facilities, the accumulated depreciation associated with the idle facilities, the depreciation rates used to calculate the accumulated depreciation, transportation charges for removing the idle facilities, labor rates, labor hours for removing the idle facilities, and the gross salvage value of the idle facilities. The document must also state immediately below these itemizations, in bold, and in not less than 12 point type: "(Disconnecting utility) may not impose a facilities recovery charge under the circumstances described in Public Utility Commission of Texas Substantive Rule §25.27(f)(1)(B)(i). On request, you will be provided a copy of Rule §25.27."

- (B) Sale of both common and idle facilities. If a group of consumers request switchovers, the switchovers may necessitate that the connecting utility acquire common and idle facilities in that case. Within 15 working days of receipt of a request from the connecting utility, the disconnecting utility must provide by fax and mail a detailed, reasonable estimate of replacement cost less depreciation for the idle facilities and the common facilities used to serve the consuming facilities to be switched, but not used to serve any consuming facilities not being switched.
- (C) Offer to purchase facilities. Within five working days of receipt of an offer to purchase idle and/or common facilities under the conditions described in paragraph (1)(B)(i) of this subsection, the disconnecting utility must notify the connecting utility by fax, with copies by mail or fax to the consumers, whether it accepts or rejects the offer. If the disconnecting utility rejects the offer, it must also provide revised switchover fees that delete the facilities recovery charges, at the same time that it provides notice of rejection of the offer.
- (D) Payment of switchover fee and outstanding balances. Until the switchover fee and all outstanding balances are paid to the disconnecting utility, neither the disconnecting utility nor the connecting utility is under any obligation to take steps to make the switchover, and the connecting utility must not provide service to the consuming facility being switched until it receives notice from the disconnecting utility that the switchover can proceed. The disconnecting utility must within the following deadlines from the receipt of payment, notify the connecting utility by fax that the switchover can proceed: two working days for payment by cash, money order, cashier's check, or, if accepted by the disconnecting utility for bill payment, credit card, and five working days for payment by personal check or other forms of payment.
- (E) Deadline for full switchover. Once the disconnecting utility notifies the connecting utility that the switchover can proceed and once the connecting utility notifies the disconnecting utility by fax that the consumer has satisfied the conditions for service from the connecting utility, the switchover must be completed within ten working days unless the consumer agrees to a longer schedule, good cause exists for the disconnecting utility not being able to complete the switchover within ten working days, or the connecting utility needs more time to install facilities, so long as the connecting utility complies with the rules concerning responses to requests for service that apply regardless of whether the request relates to a switchover. If the disconnecting utility does not meet the deadline, then the disconnecting utility must notify the consumer, with copies to the commission's Office of Customer Protection and the connecting utility, providing the reasons why the switchover has been delayed and when the switchover will be completed. This notice must be provided as soon as possible, by fax to the commission's Office of Customer Protection, the connecting utility and, if possible, the consumer.

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- (F) **Consumer's failure to pay.** The consumer may continue to incur charges for retail electric service from the disconnecting utility after the consumer pays the switchover fee and outstanding balances, and may have an unfulfilled contractual obligation that requires future payment of charges to the disconnecting utility. The disconnecting utility has the right to payment of these charges consistent with §23.45 of this title (relating to Billing). If the consumer has not paid the charges within the appropriate time, the disconnecting utility may notify the connecting utility of the consumer's failure to pay and request that the consumer be disconnected, and must at the same time provide a copy of the notice to the consumer, by fax if possible. Upon receipt of such notification and request and upon receipt from the disconnecting utility of an agreement indemnifying the connecting utility from liability for improper cause for disconnection of service, the connecting utility must disconnect the consumer's service in compliance with the procedures in §23.46 of this title (relating to Discontinuance of Service). Immediately upon verification of the consumer's correction of its failure, the disconnecting utility must notify the connecting utility by fax that the consumer's failure has been corrected, and the connecting utility must immediately reconnect service. The connecting utility shall charge a switching customer any disconnection or reconnection fee that applies to all disconnected customers, not just those who have been disconnected pursuant to this subparagraph.
- (g) **Complaint concerning a switchover.** A consumer complaint to the commission concerning a switchover shall be handled according to §23.41(c) of this title (relating to Customer Relations), with the following modification. The commission will forward a complaint that it receives to both the disconnecting utility and the connecting utility, and both utilities must provide an initial response within the deadline specified in §23.41(c).
- (h) **Compliance tariff provisions.** An electric utility that has the right to serve in an area for which another utility also has the right to provide retail electric service shall include in its tariff a section entitled "Retail Electric Service Switchovers". Immediately below this title, the tariff shall state: "A request to switch service to a consuming facility to another utility that has the right to serve the facility shall be handled pursuant to Public Utility Commission of Texas Substantive Rule §25.27, a copy of which will be provided upon request." Immediately below this statement, the tariff must specify the electric utility's base charge and base charge adder. The electric utility's tariff shall not include any other information addressing retail electric service switchovers.