

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

§25.108. Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges.

- (a) **Application.** This section applies to any retail electric provider (REP) or any other entity responsible for billing and collecting transition charges serving customers in a transmission and distribution utility (TDU) service area subject to a financing order issued by the commission under Public Utility Regulatory Act (PURA) §39.303.
- (b) **Definitions.**
- (1) **Financing order** – An order of the commission adopted under PURA §39.201 or §39.262 approving the issuance of transition bonds and the creation of transition charges for the recovery of qualified costs.
 - (2) **Indenture trustee** – An entity that administers the indenture related to transition bonds.
 - (3) **Servicer** – The entity responsible for carrying out obligations related to transition bonds under a servicing agreement.
 - (4) **Servicing agreement** – The agreement that details the obligations of the servicer related to the imposition, collection, and remittance of transition charges.
 - (5) **Special purpose entity (SPE)** – An entity formed by an electric utility, pursuant to a financing order, for the limited purpose of acquiring transition property, issuing transition bonds, and performing other activities relating thereto or otherwise authorized by a financing order.
 - (6) **Transition bonds** – Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.
 - (7) **Transition charges** – Nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.
- (c) **Applicability of REP standards.** Beginning on the date of customer choice for any retail customers, the servicer of the transition bonds will bill the transition charges for those customers to each retail customer's REP and the REP will collect transition charges from its retail customers. The standards in this section are the most stringent that can be imposed on REPs by any servicer of transition bonds. The standards relate only to the billing and collection of transition charges authorized by a financing order and do not apply to the collection of any other non-bypassable charges, or any other charges. The standards apply to all REPs other than REPs that have contracted with the transmission and distribution company to bill and collect transition charges from retail customers. REPs may contract with parties other than the transmission and distribution company to bill and collect transition charges from retail customers, but such REPs shall remain subject to the standards in this section.
- (d) **REP standards.** The REP standards for transition charges are:
- (1) **Rating, deposit, and related requirements.** A REP that does not have or maintain the requisite long-term, unsecured credit rating may select which alternate form of deposit, credit support, or combination thereof it will utilize, in its sole discretion. The indenture trustee shall be the beneficiary of any affiliate guarantee, surety bond or letter of credit. The provider of any affiliate guarantee, surety bond, or letter of credit must have and maintain a long-term, unsecured credit ratings of not less than "BBB-" and "Baa3" (or the equivalent) from Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's"), respectively. Each REP must:

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- (A) have a long-term, unsecured credit rating of not less than "BBB-" and "Baa3" (or the equivalent) from S&P and Moody's , respectively; or
- (B) provide:
 - (i) a deposit of two months' maximum expected transition charge collections in the form of cash,
 - (ii) an affiliate guarantee, surety bond, or letter of credit providing for payment of such amount of transition-charge collections in the event that the REP defaults in its payment obligations, or
 - (iii) a combination of clause (i) and (ii) of this subparagraph.
- (2) **Loss of credit rating.** If the long-term, unsecured credit rating from either S&P or Moody's of a REP that did not previously provide the alternate form of deposit, credit support, or combination thereof or of any provider of an affiliate guarantee, surety bond, or letter of credit is suspended, withdrawn, or downgraded below "BBB-" or "Baa3" (or the equivalent), the REP must provide the alternate form of deposit, credit support, or combination thereof, or new forms thereof, in each case from providers with the requisite ratings, within ten business days following such suspension, withdrawal, or downgrade. A REP failing to make such provision must comply with the provisions set forth in paragraph (5) of this subsection.
- (3) **Computation of deposit.** The computation of the size of a required deposit shall be agreed upon by the servicer and the REP, and reviewed during the first month of each calendar quarter to ensure that the deposit accurately reflects two months' maximum collections. If the REP provides a cash deposit, then within ten business days following such review, the REP shall remit to the indenture trustee the amount of any shortfall in such required deposit, or the servicer shall instruct the indenture trustee to remit to the REP any amount in excess of such required deposit. If the REP provides security in the form of a letter of credit or surety bond then within ten business days following such review, the REP shall submit replacement letters of credit or surety bonds in the amount determined pursuant to the review. A REP failing to so remit any such shortfall or failing to submit replacement letters of credit or surety bonds, as applicable, must comply with the provisions set forth in paragraph (5) of this subsection. REP cash deposits shall be held by the indenture trustee, as a collateral agent for the REP and the indenture trustee (in its capacity as indenture trustee) and shall be maintained in a segregated account which shall not be part of the trust estate, and invested in short-term high quality investments, as permitted by the rating agencies rating the transition bonds. Investment earnings on REP cash deposits shall be considered part of such cash deposits so long as they remain on deposit with the indenture trustee. At the instruction of the servicer, cash deposits will be remitted with investment earnings to the REP at the end of the term of the transition bonds unless otherwise utilized for the payment of the REP's obligations for transition bond payments. Once the deposit is no longer required, the servicer shall promptly (but not later than 30 calendar days) instruct the indenture trustee to remit the amounts in the segregated accounts to the REP.
- (4) **Payment of transition charges.** Payments of transition charges less the charge-off allowance described in paragraph (9) of this subsection are due 35 calendar days following each billing by the servicer to the REP, without regard to whether or when the REP receives payment from its retail customers. The servicer shall accept payment by electronic funds transfer, wire transfer, and/or check. Payment will be considered received the date the electronic funds transfer or wire transfer is received by the servicer, or the date the check clears. A 5.0% penalty is to be charged on amounts received after 35 calendar days; however, a ten calendar-

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day grace period will be allowed before the REP is considered to be in default. A REP in default must comply with the provisions set forth in paragraph (5) of this subsection. The 5.0% penalty will be a one-time assessment measured against the current amount overdue from the REP to the servicer. The "current amount" consists of the total unpaid transition charges existing on the 36th calendar day after billing by the servicer. Any and all such penalty payments will be made to the indenture trustee to be applied against transition charge obligations. A REP shall not be obligated to pay the overdue transition charges of another REP. If a REP agrees to assume the responsibility for the payment of overdue transition charges as a condition of receiving the customers of another REP that has decided to terminate service to those customers for any reason, the new REP shall not be assessed the 5.0% penalty upon such transition charges; however, the prior REP shall not be relieved of the previously-assessed penalties.

- (5) **Remedies upon default.** After the ten calendar-day grace period (the 45th calendar day after the billing date) referred to in paragraph (4) of this subsection, the servicer shall have the option to seek recourse against any cash deposit, affiliate guarantee, surety bond, letter of credit, or combination thereof provided by the REP, and to avail itself of such legal remedies as may be appropriate to collect any remaining unpaid transition charges and associated penalties due the servicer after the application of the REP's deposit or alternate form of credit support. In addition, a REP that is in default with respect to the requirements set forth in paragraphs (2), (3), or (4) of this subsection shall select and implement one of the options listed in subparagraphs (A), (B), or (C) of this paragraph. If a REP that is in default fails to immediately select and implement one of these options or, after so selecting one of the options, fails to adequately meet its responsibilities thereunder, then the servicer shall immediately implement the option in subparagraph (A) of this paragraph. Upon re-establishment of compliance with the requirements set forth in paragraphs (2), (3), or (4) of this subsection, and the payment of all past-due amounts and associated penalties, the REP will no longer be required to comply with this paragraph.
- (A) Allow the Provider of Last Resort ("POLR") or a qualified REP of the customer's choosing to immediately assume the responsibility for the billing and collection of transition charges.
- (B) Immediately implement other mutually suitable and agreeable arrangements with the servicer. It is expressly understood that the servicer's ability to agree to any other arrangements will be limited by the terms of the securitization Servicing Agreement and requirements of each of the rating agencies that have rated the transition bonds necessary to avoid a suspension, withdrawal, or downgrade of the ratings on the transition bonds.
- (C) Arrange that all amounts owed by retail customers for services rendered by the REP be timely billed and will immediately be paid directly into a lock-box controlled by the servicer with such amounts to be applied first to pay transition charges and other non-bypassable delivery charges before the remaining amounts are released to the REP. All costs associated with this mechanism will be borne solely by the REP.
- (6) **Billing by providers of last resort.** The initial POLR appointed by the commission, or any commission-appointed successor to the POLR, must meet the minimum credit rating or deposit/credit support requirements described in paragraph (1) of this subsection in addition to any other standards that may be adopted by the commission. If the POLR defaults or is not eligible to provide such services, responsibility for billing and collection of transition charges will immediately be transferred to and assumed by the servicer until a new POLR can be

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named by the commission or the customer requests the services of a certified REP. If the POLR or a qualified REP assumes responsibility for billing and collecting transition charges under paragraph (5) of this subsection or servicer assumes such responsibility under this paragraph, the POLR, replacement REP, or servicer, as applicable shall bill all transition charges which have not been billed as of the date it assumes such responsibility and shall be subject to the provisions of the financing order. (For example, if a REP which bills on a calendar month basis goes into default and is replaced by the POLR on April 20, the initial transition charge bill rendered by the POLR would cover all transition charges attributable to periods since March 31, the last date for which the original REP had rendered bills). Retail customers may never be re-billed by the successor REP, the POLR, or the servicer for any amount of transition charges they have paid their REP (although future transition charges shall reflect REP and other system-wide charge-offs). Additionally, if the amount of the penalty detailed in paragraph (4) of this subsection is the sole remaining past-due amount after the 45th calendar day, the REP shall not be required to comply with paragraph (5)(A), (B) or (C) of this subsection, unless the penalty is not paid within an additional 30 calendar days.

- (7) **Dispute resolution.** In the event that a REP disputes any amount of billed transition charges, the REP shall pay the disputed amount under protest according to the timelines detailed in paragraph (4) of this subsection. The REP and servicer shall first attempt to informally resolve the dispute, but if they fail to do so within 30 calendar days, either party may file a complaint with the commission. If the REP is successful in the dispute process (informal or formal), the REP shall be entitled to interest on the disputed amount paid to the servicer at the commission-approved interest rate. Disputes about the date of receipt of transition charge payments (and penalties arising thereof) or the size of a required REP deposit will be handled in a like manner. It is expressly intended that any interest paid by the servicer on disputed amounts shall not be recovered through transition charges if it is determined that the servicer's claim to the funds is clearly unfounded. No interest shall be paid by the servicer if it is determined that the servicer has received inaccurate metering data from another entity providing competitive metering services pursuant to PURA §39.107.
- (8) **Metering data.** If the servicer is providing the metering, metering data will be provided to the REP at the same time as the billing. The REP will be responsible for providing the servicer accurate metering data (including meter identification information) for all REP's customers whose meters are not read by the servicer at the time the data is provided to the independent organization (as defined in PURA §39.151(b)) under the independent organization's protocols for settlement.
- (9) **Charge-off allowances.** The REP will be allowed to hold back an allowance for charge-offs in its payments to the servicer. Such charge-off rate will be recalculated each year in connection with the annual true-up procedure. In the initial year, REPs will be allowed to remit payments based on the same system-wide charge-off percentage then being used by the servicer to remit payments to the indenture trustee for the holders of transition bonds; thereafter the charge-off percentage will be calculated based upon each REP's prior year charge-off experience. On an annual basis in connection with the true-up process, the REP and the servicer will be responsible for reconciling the amounts held back with amounts actually written off as uncollectible in accordance with the terms agreed to by the REP and the servicer, provided that:

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- (A) The REP's right to reconciliation for charge-offs will be limited to customers whose service has been permanently terminated and whose entire accounts (*i.e.*, all amounts due the REP for its own account as well as the portion representing transition charges) have been written off.
 - (B) If the REP's actual charge-offs are greater than the allowance for charge-offs, the REP may collect the difference, with interest, from the date the review was completed, in 12 equal monthly installments beginning in the month that the transition charges are adjusted to reflect the new charge off percentages. The REP's recourse will be limited to a credit against future transition charge payments unless the REP and the servicer agree to alternative arrangements, but in no event will the REP have recourse to the indenture trustee, the "SPE" or the SPE's funds for such payments and the indenture trustee and SPE shall not be liable for such amounts. If the REP's actual charge-offs are less than the allowance for charge-offs, the REP shall pay the difference, with interest, from the date the review was completed, in 12 equal monthly installments beginning in the month that the transition charges are adjusted to reflect the new charge-off percentages. The interest rate on amounts due to or from the REP under this paragraph shall be the interest rate in effect pursuant to Texas Utilities Code §183.003 on the date the annual reconciliation is made. REP and servicer shall each have the unilateral right to prepay any amounts due hereunder and thus avoid continued accrual of interest.
 - (C) The REP shall provide ' the servicer a list of all charge-offs qualifying for reconciliation under subparagraph (A) of this paragraph, and documentation permitting servicer to verify that service to the customer has been terminated and all amounts due the REP from such customers have been written off. The information shall be provided not later than 30 days prior to the date on which the annual true-up adjustment is to be filed and shall cover the most recent 12-month period for which data is available at the time of submission. The information to be provided by the REP shall include data demonstrating that the REP has not collected any amounts the REP claimed as charge-offs in prior periods, or, if any amount previously charged-off has been collected, quantifying the revenues. The REP's rights to credits will not take effect until adjusted transition charges reflecting the REPs charge-off experience have been implemented.
- (10) **Service termination.** In the event that the servicer is billing customers for transition charges, the servicer shall have the right to terminate transmission and distribution service to the end-use customer (or if the servicer is not the transmission and distribution utility to direct the transmission and distribution utility to terminate service to the end-use customer) for non-payment by the end-use customer pursuant to applicable commission rules. In the event that a REP or the POLR is billing customers for transition charges, the REP shall have the right to transfer the customer to the POLR (or to another certified REP) or to direct the transmission and distribution utility to terminate transmission and distribution service to the end-use customer for non-payment by the end-use customer pursuant to applicable commission rules. In the event that the POLR is billing customers for transition charges, the POLR shall have the right to direct the transmission and distribution utility to terminate transmission and distribution service to the end-use customer for non-payment by the end-use customer pursuant to applicable commission rules.

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- (11) **Precedence and modifications of REP standards in a financing order.**
- (A) Compliance with financing order standards. If the REP standards in the applicable financing order are in direct conflict with the standards in this section, then the REP must comply with the REP standards stated in the financing order, instead of the standards stated in this section, unless the standards of the financing order have been modified and approved according to subparagraph (B) of this paragraph.
 - (B) Commission modification of standards. The commission may impose standards on REPs that are different from those in the applicable financing order but only if the commission receives prior written confirmation from each rating agency that rated the transition bonds authorized by that financing order that the proposed modifications will not cause a suspension, withdrawal, or downgrade of ratings on the transition bonds.