

The primary goal of this project is to review existing customer protection rules in light of the practical experience obtained since the opening of the competitive market. The proposed rules will provide adequate and appropriate protections for retail customers, while not requiring retail electric providers (REPs) to incur unnecessary compliance costs. These rules will reduce costs to market participants, reduce confusion for customers, and provide certainty in the competitive retail electric market in Texas.

Proposed amendments to §25.471, General Provisions of Customer Protection Rules, delete several definitions that are already included in §25.5, Definitions. In addition, §25.471 has been amended to clarify that certain provisions of the customer protection rules cannot be waived by commercial customers with a peak demand of 50 kilowatts (kW) or higher. Specifically, such commercial customers could not agree to terms of service that do not comply with §25.481, Unauthorized Charges, §25.495, Unauthorized Change of Retail Electric Provider, and §25.485(b) and (d)-(e), Customer Access and Complaint Handling.

The commission proposes amendments to §25.472, Privacy of Customer Information, that would allow a REP to release proprietary customer information to a vendor, partner, or affiliate for the purposes of marketing other products or services only if the vendor, partner, or affiliate has signed a confidentiality agreement. In addition, the REP must mail a notice to all customers who may be included in the release of information and provide the customers at least 30 days to opt out of being included in the information release. This will allow REPs to offer new products and other competitive energy

services directly to customers, while still allowing customers who do not want such solicitations the option of not releasing their information to third parties.

Proposed amendments to §25.473, Non-English Language Requirements, clarify that the Electricity Facts Label must be provided in English or Spanish, at the customer's designation. In addition, if the REP markets its products in another language, the Electricity Facts Label must be provided to the customer in that language.

Currently §25.474, Selection or Change of Retail Electric Provider, includes provisions relating to authorization and verification of enrollment, the switching process, acquisition of customers, and unauthorized change of REP (slamming). The commission proposes repealing §25.474 and adopting a new §25.474, Selection of Retail Electric Provider, new §25.493, Acquisition and Transfer of Customers from one Retail Electric Provider to Another, and new §25.495, Unauthorized Change of Retail Electric Provider.

Proposed new §25.474, Selection of Retail Electric Provider, strengthens and clarifies the customer authorization process to enroll with a REP. For each method of enrollment, by internet, telephone sales, door-to-door sales, written (letter of authorization (LOA)), or other personal solicitations, a REP will be required to disclose standard information and obtain standard information from the applicant before obtaining that applicant's explicit authorization to enroll. For enrollment via door-to-door sales, a REP must wear an identification badge with the individual's name and photograph, the name of the REP and its certification number and toll-free telephone number. In addition to obtaining the

applicant's signature on an LOA, the REP will be required to obtain telephonic verification of the applicant's decision to enroll with the REP. A REP would not be allowed to submit a switch request until it has obtained and recorded the telephonic verification. Requiring telephonic verification will enhance a REP's ability to efficiently enroll customers and reduce the number of customer cancellations and slamming complaints from door-to-door marketing.

The proposed amendments to the requirements for telephonic enrollments will provide needed clarification regarding recording an applicant's authorization. Current rules are confusing for customers and REPs and have gaps that complicate enforcement by the commission. The proposed amendments require a REP to record the entirety of the applicant's authorization to enroll. In that recording, the REP must disclose specific information regarding the company and the product offered, and obtain specific information about the applicant. Also, the rule requires the REP to ask specific questions regarding the applicant's decision to switch; and the REP must receive affirmative answers from the applicant. These proposed changes provide certainty to REPs seeking to enroll new customers, while still allowing them to choose whether to record the authorizations or use a third party verification to record the entire authorization process.

Proposed new §25.474 also clarifies that authorization and right of rescission are not applicable for the following scenarios: transferring a customer's service to the affiliated REP for non-payment, transferring a customer's service to POLR, transferring a customer's service to a competitive affiliate of the POLR, transferring a customer's

service due to acquisition of a customer's REP by another REP, or transferring a customer's service from one premise to another without changing REPs. These changes reflect current practices and are intended only as clarification.

The commission proposes amendments to §25.475, Information Disclosures to Residential and Small Commercial Customers, that will clarify disclosure requirements for advertising and makes clarifying changes to the terms of service, Electricity Facts Label, and Your Rights as a Customer documents. REPs will be required to include the Electricity Facts Label or a statement on how to obtain standardized information only if the REP makes a specific claim in its marketing and advertising materials regarding price or environmental quality for an electricity product with respect to a product offered by another REP.

Proposed amendments to §25.476, Labeling of Electricity with Respect to Fuel Mix and Environmental Impact, will simplify the data collection and calculation process to develop the fuel mix and environmental impact disclosures on the Electricity Facts Label. The commission proposes to require generators to annually report fuel mix and emissions data for each of their generating units in Texas to the registration agent. Also, the commission proposes that the registration agent compile the data and post the scorecards REPs use to calculate the fuel mix and environmental impact disclosures. Currently commission staff must use three-year-old information from the Environmental Protection Agency and compile the data. Requiring generators to provide the data directly to the registration agent will streamline the process and enhance efficiency. In addition, the

registration agent has demonstrated its ability to receive and process complicated data and quickly make relevant calculations.

The commission proposes amendments to §25.477, Refusal of Electric Service, to clarify the disclosure requirements when a REP refuses service to an applicant or customer. If a REP refuses service on the basis of credit, the REP must provide notice consistent with the Fair Credit Reporting Act. A REP that refuses service for any other reason must verbally notify the applicant or customer of the specific reasons for the refusal and, upon request by the applicant or customer, the REP must provide written notice.

Proposed amendments to §25.478, Credit Requirements and Deposits, allow REPs to better manage their bad debt exposure, while ensuring that customers who demonstrate good payment history can establish creditworthiness. The commission proposes increasing the maximum deposit amount a REP may request from a residential customer. Instead of the higher of either one-sixth annual billing or the sum of the estimated billings for the next two months, the commission proposes allow a maximum deposit of one-fifth annual billings. This is roughly equivalent to 80 days of usage that a REP is likely to pay before service to a non-paying customer can be terminated. The commission also proposes requiring all REPs to refund a deposit if a residential customer has made timely payments for 12 months (or 24 months for a small commercial customer). Requiring all REPs to return deposits once good payment history is established will provide customers an incentive to pay promptly.

The commission proposes amendments to §25.479, Issuance and Format of Bills, to provide needed clarification of billing for electric service. Issuing accurate and timely bills to customers is imperative to the development of a competitive retail electric market. Incorrect or late billings cause payment problems for customers and REPs. To provide additional certainty to the retail market, the commission proposes requiring REPs to issue bills within 30 days of receiving usage data and invoices for non-bypassable charges.

Proposed amendments to §25.480, Bill Payment and Adjustments, provide clear and specific guidelines to allow a REP to backbill a customer as a result of underbilling. Also, the current rule addresses transmission and distribution utilities' (TDU) responsibility to submit wires charges in an appropriate timeframe. As a result, REPs may not have an adequate amount of time to submit a corrected bill within the six-month time limitation. Therefore, the commission proposes that neither a REP nor a customer would be responsible for corrected charges billed by the TDU unless such charges are billed within three months of the billing cycle in which the underbilling occurred. Likewise, a customer would not be responsible for corrected charges billed by a REP unless such charges are billed within six months of the billing cycle in which the underbilling occurred. These changes maintain a six-month backbilling limitation for customers, but ensure that a REP has time to issue a corrected bill due to corrections made by the TDU.

The commission proposes clarifying changes to §25.481, Unauthorized Charges.

Proposed amendments to §25.482, Termination of Contract, will clarify obligations of a REP regarding energy assistance clients; that customers must pay by the final due date, as stated in the termination notice, not the termination date; and that customers terminated for reasons other than non-payment will be transferred to the POLR, consistent with §25.43, Provider of Last Resort (POLR).

The commission proposes amendments to §25.483, Disconnection of Service, to allow all REPs the right to disconnect for non-payment beginning June 1, 2004, specify deadlines for reconnection of customers' service, and clarify obligations of a REP regarding energy assistance clients (consistent with the changes to §25.482). REPs are currently experiencing a high level of bad debt.

The current process of dropping non-paying customers to the affiliated REP has resulted in customer confusion because customers do not understand why they are receiving bills from the affiliated REP after a drop for non-payment of bills to their chosen REP. In addition, the current process has resulted in an increased workload for TDUs because the one-step disconnection process has been replaced by a two-step process that includes a drop to the affiliated REP prior to disconnection.

A majority of customers are already subject to disconnection for non-payment. All REPs may disconnect service to large commercial customers for non-payment. Affiliated REPs and the POLR may disconnect service to all customers for non-payment. The

commission proposes making the remaining small commercial and residential customers served by competitive REPs subject to disconnection as well.

Proposed amendments to §25.483 specify reconnection timelines to ensure that customers are quickly reconnected after making a satisfactory payment.

The commission proposes clarifying changes to §25.485, Customer Access and Complaint Handling to provide greater clarity and structure to the commission's complaint handling process.

Proposed amendments to §25.491, Record Retention and Reporting Requirements, will streamline the annual reports on complaints received by the REP. This will help REPs compile the information and help the commission evaluate the annual reports.

The commission proposes new §25.493, Acquisition and Transfer of Customers from one Retail Electric Provider to Another. This section was previously included in §25.474, Selection or Change of Retail Electric Provider. The proposed new rule makes clarifying changes only.

The substance of proposed new §25.495, Unauthorized Change of Retail Electric Provider, also was previously included in §25.474. The new rule provides needed clarification for resolving unauthorized change of REP and requires the REP, registration agent, and TDU to follow specific procedures to facilitate the prompt return of the

customer to the REP of choice. The rules do not specify how this should be accomplished, but require that the customer pay no more than the price the customer would have been billed had the unauthorized change not occurred, that the REP that served the customer without proper authorization pay all costs associated with returning the customer, that the customer be refunded any money paid to the unauthorized REP, and that the TDU may bill the REP of record for all non-bypassable charges for the period of the unauthorized change.

Finally, the commission proposes new §25.497, Critical Care Customers. The provisions of the proposed new rule are already being used in the market. The commission informally adopted these procedures at the December 7, 2001 Open Meeting (*See Project Number 23400, PUC Rulemaking Proceeding to Implement Electric Restructuring Transition Implementation Issues*).

Staff solicited comments from interested parties and held six workshops over the last four months to discuss how the customer protection rules could be improved. In August 2003, staff requested specific comments on the strawman drafts of the rules.

Carrie Collier, Analyst, Retail Market Oversight, Electric Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Collier has also determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be a well-ordered and more efficient market place that protects customers while promoting competition in the provision of retail electric power service to customers. Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There may be economic costs to persons who are required to comply with the proposed section, such as additional printing costs. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed sections will outweigh these costs.

Ms. Collier has determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and, therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022.

The commission staff will conduct a public hearing on this rulemaking pursuant to the Administrative Procedure Act §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, December 10, 2003, 9:00 a.m. - 4:00 p.m.

The commission seeks comments on the proposed sections and proposed form from interested persons. Comments on the proposal (16 copies) may be submitted to the Filing

Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is December 1, 2003. Reply comments are due by December 15, 2003. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The proposed form may be obtained from the commission's Central Records under Project Number 27084 or through the commission's website at www.puc.state.tx.us. All comments should be filed in Project Number 27084.

In addition, the commission seeks comments on the following questions:

1. Should the commission give all REPs the right to disconnect on June 1, 2004, instead of October 1, 2004 as proposed in the amendments to §25.483, Disconnection of Service. Once all REPs have the right to disconnect for non-payment, should §25.482, Termination of Service be repealed?
2. Should the commission allow all REPs to request "hard" disconnects of non-paying customers. Under a hard disconnect policy, a customer that has been disconnected for non-payment could not receive service from another provider unless the customer provides evidence that its debt to the disconnecting REP has been paid in full. If the commission were to adopt such a policy, would there need to be other changes to the customer protection rules (such as requiring all REPs to offer a deferred payment plan prior to disconnecting service).

3. The commission is proposing that REPs enrolling customers through door-to-door marketing using both a letter of authorization (LOA) and telephonic verification of the applicant's decision to enroll. Instead, should door-to-door enrollments be authorized by telephonic authorization consistent with proposed §25.474(h)(6)-(7)?
4. The Electricity Facts Label discloses the environmental impact of a REP's electricity product as an indexed comparison to the state average. Is there a more appropriate way to provide such information in an easy-to-read format? In the alternative, should REPs be allowed to show a generic environmental impact if the product does not make a claim regarding environmental impact?
5. Should the commission amend §25.485, relating to Customer Access and Complaint Handling, to address situations where it is unclear as to what market participant may be at fault (such as disputes as to the accuracy of a meter read, etc.)?
6. What, if any, rules governing TDUs roles and responsibilities, should be addressed in the standard tariff for retail delivery service and which should be addressed in the commission's substantive customer protection rules?

The commission proposes these sections pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this rule pursuant to PURA §39.101, which grants the commission

authority to establish various, specific protections for retail customers; §39.102, which provides retail customer choice; and PURA chapter 17, subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.102, and PURA chapter 17, subchapters A, C and D.

§25.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) – (36) (No change.)

(37) **Electricity Facts ~~Label~~** — Information in a A-standardized format, as described in §25.475(e) of this title (relating to Information Disclosures to Residential and Small Commercial Customers), ~~for disclosure of information and contract terms~~ made available to customers that summarizes the price, contract terms, fuel sources, and environmental impact associated with ~~to help them choose a provider and~~ an electricity product to help a customer choose an electricity product.

(38) **Electricity product** — A specific type of retail electricity service developed and identified by a REP, the product offered by a competitive retailer to a customer for the provision of retail electric service under specific terms and conditions of which are summarized in an, and marketed under a specific Electricity Facts Label that is specific to that electricity product label.

(39) – (144) (No change.)

§25.471. General Provisions of Customer Protection Rules.

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

(1) Affiliated ~~Affiliate~~ REP customer protection rules, to the extent the rules differ from those applicable to all REPs or those that apply to the provider of last resort (POLR), ~~do shall~~ not apply to the affiliated affiliate REP when serving customers outside the geographic area served by its affiliated transmission and distribution utility. The affiliated affiliate REP customer protection rules ~~shall~~ apply until the price to beat obligation ends January 1, 2007.

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

~~(3) — The rules in this subchapter shall take effect on January 15, 2001.~~

~~(3)~~(4) The rules in this subchapter are minimum, mandatory requirements that shall be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), and §25.485(b) and (d) – (e) of this title (relating to Customer Access and Complaint Handling), a ~~A~~ customer other than a residential or small commercial class customer, or a non-

residential customer whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules shall be reduced to writing and provided to the customer. Additionally, copies of such agreements shall be provided to the commission upon request.

~~(4)(5)~~ The rules of this subchapter control over any inconsistent provisions, terms, or conditions of a REP's terms of service~~contract~~ or other documents describing service offerings for ~~residential and small commercial customers or~~ customers in Texas.

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

~~(6)~~ Revisions to this subchapter shall take effect on June 1, 2004.

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

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

- (2) provide customer protections and disclosures established by other state and federal laws and rules including but not limited to the Fair Credit Reporting Act (15 U.S.C. §1681, *et seq.*) and the Truth in Lending Act (15 U.S.C. §1601, *et seq.*) Such protections are applicable where appropriate, whether or not it is explicitly stated in these rules;
- (3) provide customers with sufficient information to make informed decisions about electric service in a competitive market; and
- (4) prohibit fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators and REPs in the marketing, solicitation and sale of electric service and in the administration of any terms of service for electric service.

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

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

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

~~(1)~~ **Affiliate retail electric provider** — A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area and who provides retail electric service to customers inside the geographic area served by its affiliated transmission and distribution utility.

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

~~(3)~~ **Competitive retailer** — A REP, municipally owned utility, or electric cooperative that offers customer choice in the restructured competitive electric power market or any other entity authorized to provide electric power and energy in Texas. For purposes of this rule, a municipally owned utility or electric cooperative is only considered a competitive retailer where it sells retail electric power and energy outside its certificated service territory. Similarly, an affiliate REP is only considered a competitive retailer where it sells retail electric power and energy outside the geographic area served by its affiliated transmission and distribution utility. In no event does this term apply to a REP providing service as the provider of last resort.

~~(3)~~(4) **Customer** — A person who is currently receiving retail electric service from a REP in the person's own name or the name of the person's spouse,

or the name of an authorized representative of a partnership, corporation, or other legal entity, including; ~~or~~ a person who is changing premises but is not changing the REP of record ~~applies for such service for the first time or reapplies after discontinuance or termination of service.~~

~~(5) **Disconnection of service** — Interruption of a customer's supply of electric service at the customer's point of delivery by a transmission and distribution utility, a municipally owned utility or an electric cooperative.~~

~~(6) **Economically distressed geographic area** — Zip code area in which the average household income is less than or equal to 60% of the statewide median income, as reported in the most recently available United States Census data.~~

~~(4)~~⁽⁷⁾ **Electric service** — Combination of the transmission and distribution service provided by a transmission and distribution utility, municipally owned utility, or electric cooperative, metering service provided by a TDU or a competitive metering provider, and the generation service provided to an end-use customer by a REP. This term does not include optional competitive energy services, as defined in §25.341 of this title (relating to Definitions), that are not required for the customer to obtain service from a REP.

~~(5)~~⁽⁸⁾ **Energy service** — As defined in §25.223 of this title (relating to Unbundling of Energy Service).

~~(6)~~⁽⁹⁾ **In writing** — Written words memorialized on paper or sent electronically.

~~(7)~~ **Move-in** — A request for service to a premise where the customer of record changes.

~~(10)~~ **Provider of last resort (POLR)** — As defined in §25.43 of this title (relating to Provider of Last Resort).

~~(11)~~ **Registration agent** — Entity designated by the commission to administer premise information and related processes concerning a customer's choice of a REP in the competitive electric market in Texas.

~~(8)~~~~(12)~~ **Retail electric provider (REP)** — Any entity as defined in §25.5 of this title (relating to Definitions). For purposes of this rule, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory.

An agent of the REP may perform all or part of the REP's responsibilities pursuant to this subchapter. For purposes of this subchapter, the REP shall be responsible for the actions of the agent.

~~(9)~~~~(13)~~ **Small commercial customer** — A non-residential ~~nonresidential~~ customer that has a peak demand of less than 50 kilowatts during any 12-month period.

~~(14)~~ **Standard meter** — As defined in §25.341 of this title.

~~(10)~~ **Switch** — The process by which a person changes REPs without changing premises.

~~(11)~~~~(15)~~ **Termination of service** — The cancellation or expiration of a service sales agreement or contract by a REP or customer ~~by notification to the customer and the registration agent.~~

§25.472. Privacy of Customer Information.

(a) **Mass customer lists.** Prior to the commencement of retail competition, an electric utility shall release a mass customer list to certificated retail electric providers (REPs) and registered aggregators.

(1) ~~Contents of mass customer list.~~ A mass customer list shall consist of the name, billing address, rate classification, monthly kilowatt-hour usage for the most recent 12-month period, meter type, and account number or electric service identifier (ESI-ID)~~(ESI)~~. All customers eligible for the price to beat pursuant to the Public Utility Regulatory Act §39.202 shall be included on the mass customer list, except a customer who opts not to be included on the list pursuant to paragraph (2) of this subsection.

(2) Prior to the release of a mass customer list, an electric utility shall mail a notice ~~issue a mailing~~ to all customers who may be included on the list. The notice mailing shall:

- (A) explain the issuance of the mass customer list;
- (B) provide the customer with the option of not being included on the list and allow the customer at least 30~~15~~ days to exercise that option;
- (C) inform the customer of the availability of the no call lists pursuant to §25.484 of this title (relating to Texas Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List), and ~~shall~~

provide the customer with information on how to request placement on the list;

(D) provide a toll free telephone number and an Internet website address to notify the electric utility of the customer's desire to be excluded from the mass customer list.

(3) ~~Release date.~~—The commission will require the electric utility to release a mass customer list no later than 120 days before the commencement of customer choice.

(4) The mass customer list shall be issued, at no charge, to all REPs certified by, and aggregators registered with, the commission that will be providing retail electric or aggregation services to residential or small commercial customers.

(5) A REP shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of a REP prior to submission of the customer's enrollment to the registration agent.

(b) **Individual customer and premise information.**

(1) Except as specified in subsection (a) of this section, a REP or aggregator shall not release proprietary customer information, as defined in §25.272(c)(5) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), to any other person, including an affiliate of the REP, without obtaining the customer's or applicant's verifiable authorization by means of one of the methods authorized in §25.474 of

this title (relating to Selection ~~or Change~~ of Retail Electric Provider). This section shall not be interpreted to prevent a REP's communication of proprietary customer information to the registration agent in order to effectuate a customer's move-in, transfer, or switch. A REP may release proprietary customer information, as defined in §25.272(c)(5) of this title, to the registration agent, REP or transmission and distribution utility (TDU) as necessary to complete a required market transaction, under terms approved by the commission. This prohibition shall not apply to the release of such information by a REP or aggregator to:

- (A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving REPs or aggregators;
- (B) an agent, vendor, partner, or affiliate of the REP or aggregator engaged ~~to collect an overdue or unpaid amount or to perform any services for or functions on behalf of~~ of the duties of the REP or aggregator, including marketing of the REP's or aggregator's own products or services, or products or services offered pursuant to joint agreements between the REP or aggregator and a third party ~~if such duties are outsourced~~;
 - (i) All such agents, vendors, partners, or affiliates of the REP or aggregator shall be required to sign a confidentiality agreement with the REP or aggregator and agree to be held

to the same confidentiality standards as the REP or aggregator pursuant to this section; and

(ii) Prior to the release of information to such agent, vendor, partner or affiliate, a REP or aggregator shall mail a notice to all customers who may be included in the information provided to such agent, vendor, partner, or affiliate. The notice shall:

(I) explain the issuance of the information release and the reason for the information release; and

(II) provide the customer with the option of not being included in the information release and allow the customer at least 30 days to exercise that option.

(iii) This notice shall not be required if the REP provided customers the opportunity to opt out of being included in the release of customer information when the customer was enrolled.

(C) a consumer reporting agency as defined by the Federal Trade Commission~~credit reporting agencies pursuant to state and federal law;~~

(D) an energy assistance agency to allow a customer or an applicant to qualify for and obtain other financial assistance provided by the agency. A REP may rely on the representations of an entity claiming to provide energy assistance;

- (E) local, state, and federal law enforcement agencies; ~~pursuant to lawful process; or~~
- (F) the transmission and distribution utility within whose geographic service territory the customer or applicant is located, pursuant to the provisions of the transmission and distribution utility's commission-approved Tariff for Retail Delivery Service; ~~or:~~
- (G) the Office of the Public Utility Counsel, upon request pursuant to Public Utility Regulatory Act (PURA) §39.101(d).
- (2) A REP or aggregator shall not publicly disclose or make available for sale any customer-specific information about its customers including that obtained from the registration agent, the customer's transmission and distribution utility, or the customer. A REP or aggregator shall not disseminate, sell, deliver, or authorize the dissemination, sale, or delivery of any customer-specific information or data obtained.
- (3) A REP shall, upon the request of the customer or another REP that has received authorization from the customer, request from the TDU submit to the requesting REP or to the customer directly, the monthly usage of the customer for the previous 12 months. The TDU shall provide the requested information no later than three business days after the request is submitted. The REP shall provide the usage information to the requesting REP or to the customer directly, ~~or for as long as the REP has provided service to the customer, whichever is shorter.~~ The methods of authorization of release of customer specific information shall be those

methods described in §25.474 of this title. The TDU or REP shall not release any information of a prior occupant of the premise. A customer shall be entitled to request this information free of charge at least once every 12 months.

(4) A REP shall, upon the request of an energy assistance agency, provide a 12-month billing history free of charge that includes both usage data and the dollar amount of each monthly billing. If 12 months of billing data are not available from the REP, the REP shall estimate the amount billed using the REP's residential rate. The history shall also clearly designate estimated amounts. A residential billing history requested by an energy assistance agency shall be provided by the end of the next business day after the request is made. A residential billing history requested by a customer shall be provided within five business days of the customer request.

(5)(4) Upon the request of a customer, a REP shall notify a third person chosen by the customer of any pending disconnection of service or termination of contract for electric service with respect to the customer's account.

(5) This section shall not be interpreted to prevent a REP's communication of proprietary customer information to the registration agent in order to effectuate a customer selection or change of a REP or the customer's switch to the provider of last resort.

~~(6) A REP may release proprietary customer information, as defined in §25.272(c)(5) of this title, to the registration agent, under terms approved by the commission.~~

§25.473. Non-English Language Requirements.

(a) Applicability. This section applies to retail electric providers (REPs), aggregators, and the registration agent.

(b)(a) Retail electric providers (REPs). A REP shall provide the following information to a customer in English or Spanish, at the customer's designation when the customer is initially enrolled. Additionally, if the REP markets its products or services in a language other than English or Spanish, the following information shall also be provided to the customer in that other language:

- (1) ~~all documents required by this subchapter including, but not limited to, customer rights, including~~ Your Rights as a Customer disclosure, terms of service documents, Electricity Facts Label, customer bills, and customer bill notices ~~and termination or disconnection notices~~;
- (2) information on the availability of new electric services, discount programs, and promotions; and
- (3) access to customer service, including the restoration of electric service and response to billing inquiries.

(c)(b) Aggregators. An aggregator shall provide the following information to a customer in English or Spanish, at the customer's designation when the customer is initially solicited or enrolled. Additionally, if the aggregator markets its

products or services in a language other than English or Spanish, the following information shall also be provided to the customer in that other language:

- (1) terms of service documents required by this subchapter;
- (2) the availability of electric discount programs; and
- (3) access to customer service.

~~(d)~~ **Dual language requirement.** The following documents shall be provided to all customers in both English and Spanish:

- (1) Your Rights as a Customer disclosure;
- (2) the enrollment notification notice provided by the registration agent pursuant to §25.474~~(1)~~ of this title (relating to Selection ~~or Change~~ of Retail Electric Provider); and
- (3) a disconnection or termination notice ~~issued by the provider of last resort~~.

~~(e)~~ **Prohibition on mixed language.** Unless otherwise noted in this subchapter, if any portion of a printed advertisement, electronic advertising over the Internet, direct marketing material, billing statement, terms of service document, or Your Rights as a Customer disclosure is translated into another language, then all portions shall be translated into that language. A single informational statement advising how to obtain the same printed advertisements, electronic advertising over the Internet, direct marketing material, billing statement, terms of service documents, or Your Rights as a Customer disclosure in a different language is permitted.

~~§25.474. Selection or Change of Retail Electric Provider.~~

~~(a) General purpose. A retail electric provider (REP) shall not enroll a customer without obtaining the customer's authorization and having that authorization verified consistent with this section.~~

~~(b) Initial REP selection process.~~

~~(1) In conjunction with the commission's customer education campaign, the commission may issue to customers for whom customer choice will be an option an explanation of the REP selection process. The customer education information issued by the commission may include, but is not limited to:~~

~~(A) an explanation of retail electric competition;~~

~~(B) a list of all REPs qualified to provide electric service to the customer;~~

~~(C) a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and~~

~~(D) information on how a customer may designate whether the customer would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.~~

- ~~(2) — Any affiliate REP assigned to serve a customer that is entitled to receive the price to beat rate, pursuant to PURA §39.202(a), due to non-selection by the customer shall issue to a customer, either as a bill insert or through a separate mailing, by January 31, 2002:~~

 - ~~(A) — A terms of service document that includes an explanation of the price to beat rate;~~
 - ~~(B) — Your Rights as a Customer disclosure; and~~
 - ~~(C) — An Electricity Facts label for the price to beat, which may be in a separate document, or may be contained in the terms of service document.~~

- ~~(3) — An electric utility, whose successor affiliate REP will continue to serve a customer not eligible for the price to beat pursuant to PURA §39.102(b) due to non-selection by the customer of another REP, shall issue to a customer by June 1, 2001, a terms of service document. Such document shall contain an explanation of the price the customer will be charged by the affiliate REP.~~

- ~~(c) — **General standards for authorizations and verifications of enrollment or switch orders.**~~

 - ~~(1) — All authorizations and verifications of enrollment or switch orders shall be in plain, easily understood English or another language, if the underlying sales transaction was conducted in the other language. The entire authorization and verification shall be the same language.~~

- ~~(2) — The specific electric service package or plan for which the customer's assent is being attained or verified shall be disclosed to the customer.~~
- ~~(3) — The name of the specific REP for which the customer's authorization is being obtained and verified shall be disclosed to the customer. Any use of a name for the purposes of deception or to obtain a customer's authorization and verification based on confusion or inability to understand the import of the name of the REP and the services offered is prohibited.~~
- ~~(4) — Each authorization and verification shall affirmatively inquire as to the identity of the individual with the authority to change the customer's REP and explain that only that customer can agree to a change in REP.~~
- ~~(5) — A REP or an aggregator, other than a municipally owned utility or electric cooperative, shall submit copies of its sales script, contract, terms of service document and any other materials used to obtain a customer's authorization or verification to the commission upon request.~~
- ~~(6) — In the event a customer disputes an enrollment or switch, the REP shall provide to the customer proof of the customer's authorization and verification within five business days of the customer's request.~~
- ~~(d) — **Required authorization disclosures.** — All authorizations shall clearly and conspicuously disclose the following information contained in the REP's contract or terms of service document for each product offered to the customer:~~
- ~~(1) — the name of the new REP;~~

- ~~(2) — the ability of a customer to select to receive information in English, Spanish, or the language used in the marketing of service to the customer. The REP shall provide a means of obtaining and recording a customer's language preference;~~
- ~~(3) — price, including the total price stated in cents per kilowatt hour, for electric service;~~
- ~~(4) — term or length of the contract or term of service;~~
- ~~(5) — the presence or absence of early termination fees or penalties, and applicable amounts;~~
- ~~(6) — any requirement to pay a deposit and the amount of that deposit;~~
- ~~(7) — any fees to the customer for switching to the REP pursuant to subsection (1) of this section; and~~
- ~~(8) — the customer's right to review and cancel the contract within three federal business days without penalty and a statement that the customer will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of cancellation before the customer's electric service is switched to the REP.~~

~~(e) **Verification requirements.** A verification shall clearly:~~

- ~~(1) — confirm the customer's billing name, address, and electric service identifier (ESI) or account number to be used by the selected REP in making an enrollment or switch request to the registration agent;~~

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

- ~~(i) the customer's billing name, address, and ESI or account number to be used by the REP in making a switch request;~~
 - ~~(ii) the decision to switch from the current REP to the new REP; and~~
 - ~~(iii) that the customer designates (name of the new REP) to act as the customer's agent for switching the REP.~~
- ~~(D) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all the requirements of this subsection.~~

Customer billing name: _____

Customer billing address: _____

Customer service address: _____

City, state, zip code: _____

ESI ID or Account #: _____

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

Relationship to customer: _____

Telephone number of individual authorized to act for customer:

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

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

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

Signed: _____ Date: _____

~~(E) The customer's signature on the letter of agency, contract or other document which contains the materials terms and conditions of the service shall constitute an authorization and verification if the letter of agency, contract or documents comply with the provisions of this section.~~

~~(F) Before obtaining a signature from a customer, a REP shall provide the customer a reasonable opportunity to read any written materials accompanying the contract or terms of service document and shall answer any and all questions posed by any customer about information contained in the documents.~~

~~(G) Upon obtaining the customer's signature, a REP or aggregator shall immediately provide the customer a legible copy of the signed contract, the required terms of service document, and Your Rights as a Customer disclosure. If written solicitations by a REP contain the terms of service document or contract, any tear-off portion that~~

~~is submitted by the customer to the REP to obtain electric service shall allow the customer to retain the terms of service document.~~

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

~~(A) Additional authorization and verification requirements.~~

~~Telephonic enrollment or switch orders shall:~~

~~(i) clearly inform the customer at the beginning of a call that the call is being recorded. The entire authorization and verification conversation with the customer shall be recorded so that evidence of a customer's consent can be reviewed and investigated if a subsequent complaint is filed;~~

~~(ii) read any script and respond to any questions in the language used to make the underlying sales transaction and proceed at a normal conversational speed using plain, easily understood language;~~

- ~~(iii) at a normal conversational speed, state the name of the REP to which the customer is being switched in its entirety; and~~
- ~~(iv) for both the authorization and the verification, agents shall clearly state that the customer will have a right of cancellation without penalty and that the customer will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of cancellation before the customer's electric service is switched by the REP.~~

~~(B) Independent third party. An independent third party shall operate in a location physically separate from the REP or aggregator or the REP's or aggregator's marketing agent and shall not:~~

- ~~(i) be owned, managed, or directly controlled by the REP or aggregator or the REP's or aggregator's marketing agent; or~~
- ~~(ii) have financial incentive to confirm enrollment or switch orders.~~

~~(3) **Internet enrollment.** A REP or aggregator that offers Internet enrollment to customers shall comply with the authorization and verification requirements in subsections (c) and (d) of this section and with the following minimum requirements:~~

~~(A) The aggregator or REP shall maintain an Internet website at the website address provided to the commission. The website shall identify the legal name of the aggregator or REP, its address,~~

~~telephone number, and Texas license number to provide aggregation services or sell retail electric service.~~

~~(B) The means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the customer and the REP or aggregator shall be by an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;~~

~~(C) The REP or aggregator shall identify the terms of service document by a version number to ensure the ability to verify the particular agreement to which the customer assents. The REP or aggregator shall make available a copy of the terms of service document, as required by §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers), that is agreed to by a customer, on the REP's or aggregator's Internet website. The terms of service document shall be accessible by the customer for the duration of the contract term offered to the customer.~~

~~(D) The Internet enrollment procedure shall prompt the customer to print or save the terms of service document to which the customer assents and provide an option to have a written terms of service document sent by regular mail.~~

~~(E) The REP or aggregator shall provide to the customer a toll-free telephone number, Internet website address, and e-mail address for~~

~~contacting the REP or aggregator throughout the duration of the customer's agreement. The REP or aggregator shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.~~

~~(F) The REP or aggregator shall obtain a verification that meets the standards of subsection (e) of this section, provide a statement with a box that must be checked by the customer to indicate that the customer has read and agrees to select the REP to supply electric service, and the time and date of the customer's enrollment. The customer's enrollment shall be followed by a confirmation of the change of the customer's REP by e-mail, which shall include a conspicuous notice of the applicable right of cancellation and offer the customer the option of exercising this right by toll-free telephone number, e-mail, Internet website, facsimile transmission, or regular mail.~~

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

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

- ~~(A) The REP or aggregator shall comply with the standards set forth in subsections (c) (e) of this section and paragraph (1) of this subsection.~~
- ~~(B) The REP or aggregator shall provide the disclosures and right of rescission required by this section and the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door to Door Sales (16 C.F.R. §29).~~
- ~~(C) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification on the front of the individual's outer clothing that prominently displays the name of the REP or aggregator. The name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession.~~
- ~~(D) The REP or aggregator shall affirmatively state that it is not a representative of the customer's transmission and distribution utility. The REP's or aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable customer that the individual represents the customer's transmission and distribution utility or the provider of last resort (POLR).~~

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

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

~~(i) **Submission of customer's selection to the registration agent.** A REP may submit a customer's selection of the REP to the registration agent prior to the expiration of the cancellation period prescribed by subsection (h) of this section.~~

~~Additionally, the REP shall submit the switch request to the registration agent at the proper time so that the switch will be processed on the date agreed to by the customer and as allowed by the tariff of the transmission and distribution utility, municipally owned utility, or electric cooperative. The customer shall be informed of the scheduled date that the customer will begin receiving electric service from the REP, and of any delays in meeting that date. Additionally, the REP must advise the registration agent of any "special needs" customers and renew such notification to the registration agent annually.~~

~~(j) **Duty of the registration agent.** When the registration agent receives an enrollment or switch request from a REP, the registration agent shall:~~

~~(1) process that request promptly; and~~

~~(2) send the customer an enrollment or switch notification notice in English and Spanish pursuant to either subparagraph (A) or (B) of this paragraph, as appropriate.~~

~~(A) Standard enrollment and switches. The notice provided by the registration agent to the customer shall comply with the provisions of this subparagraph, unless the switch is considered a "switch to POLR" as described in subparagraph (B) of this paragraph. The notice shall:~~

~~(i) identify the REP that initiated the enrollment or switch request;~~

- ~~(ii) — inform the customer that the customer's REP will be switched unless the customer requests the registration agent to cancel the switch by the date stated in the notice;~~
- ~~(iii) — provide a cancellation date by which the customer may request a switch to be cancelled, no less than seven calendar days after the customer receives the notice; and~~
- ~~(iv) — provide instructions for the customer to request that the switch be cancelled. These instructions which shall include a telephone number, facsimile machine number, and e-mail address to reach the registration agent.~~

~~(B) — Switch to POLR. If the customer is being switched to the POLR at the request of the REP currently serving the customer, the notice provided to the customer by the registration agent shall include only the following:~~

- ~~(i) — the name of the REP that initiated the request;~~
- ~~(ii) — the name of the POLR that will begin providing electric service to the customer; and~~
- ~~(iii) — the date such switch will be effective.~~

~~(3) — unless the customer makes a timely request to cancel the switch, direct the transmission and distribution utility to implement the switch effective with the customer's next meter reading provided that such meter reading is at least one business day after the transmission and distribution utility~~

~~receives notice of the switch request or such other time and date as requested by the customer or the REP~~

~~(k) — **Customer's switch to POLR.** The methods of customer authorization, customer verification, and rights of cancellation are not applicable when the customer's electric service is "dropped" to the POLR by a REP for non-payment pursuant to §25.482 of this title (relating to Termination of Contract). Nothing in this subsection shall be read to imply that the customer is accepting a contract with the POLR for a specific term.~~

~~(l) — **Fees.** A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to a customer to select, switch or enroll with the REP unless the customer requests a switch or enrollment that does not conform with the normal meter reading and billing cycle. Such fee shall not exceed the rate charged by the transmission and distribution utility for this off-cycle meter reading. The registration agent shall not charge a fee to the end use customer for the switch or enrollment process performed by the registration agent.~~

~~(m) — **Transferring customers from one REP to another.**~~

~~(1) — Any REP that will acquire customers from another REP due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or~~

~~regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. If the transfer of customers will materially change the terms of service for the affected customers, the notice shall:~~

~~(A) identify the current and acquiring REP;~~

~~(B) explain why the customer will not be able to remain with the current REP;~~

~~(C) explain that the customer has a choice of selecting a REP and may select the acquiring REP or any other REP;~~

~~(D) explain that if the customer wants another REP, the customer should contact that other REP;~~

~~(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;~~

~~(F) identify the date that customers will be or were transferred to the acquiring REP;~~

~~(G) provide the Electricity Facts label and terms of service document of the acquiring REP; and~~

~~(H) provide a toll-free telephone number for a customer to call for additional information.~~

~~(2) The acquiring REP shall provide the commission with a copy of the notice when it is sent to customers.~~

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

~~(2) **Commission investigation.** The commission shall review all of the information related to the complaint, including the REP's response, and make a determination of whether the REP complied with the requirements of this section. The commission shall inform the complainant and the REP of the results of the investigation and identify any additional corrective actions that may be required of the REP or the customer's obligation to pay any charges related to the authorized switch.~~

~~(3) **Responsibilities of the REP that initiated the change.** If a customer's REP is changed without authorization consistent with this section, the REP that initiated the unauthorized change shall:~~

~~(A) within five business days of the customer's request, pay all charges associated with returning the customer to the original REP;~~

~~(B) within ten business days of the customer's request, provide all billing records and usage history information to the original REP related to the unauthorized change of services;~~

~~(C) within 30 days of the original REP's request for payment, pay the original REP the amount it would have received from the customer if the unauthorized change had not occurred;~~

~~(D) within 30 days of the customer's request, refund any amounts paid by the customer as required by paragraph (4) of this subsection;
and~~

~~(E) cancel all unpaid charges.~~

~~(4) **Responsibilities of the original REP.** The original REP shall:~~

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

~~(e) — Compliance and enforcement. —~~

~~(1) — Records of customer verifications and unauthorized changes. A REP, other than a municipally owned utility or an electric cooperative, shall provide a copy of records maintained under subsections (c) — (f) and (n) of this section to the commission upon request.~~

~~(2) — Administrative penalties. If the commission finds that a REP or aggregator, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission shall order the REP or aggregator to take corrective action as necessary. Additionally, the REP or aggregator may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council.~~

~~(3) — Certificate revocation. If the commission finds that a REP or aggregator, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP or aggregator, thereby denying the REP or aggregator the right to provide service in this state.~~

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

§25.474. Selection of Retail Electric Provider.

(a) Applicability. This section applies to retail electric providers (REPs) and aggregators seeking to enroll customers for retail electric service. In addition, where specifically stated, this section applies to transmission and distribution utilities (TDUs) and the registration agent.

(b) Purpose. The provisions of this section establish procedures for enrollment of applicants or customers by a REP and ensure that all customers in this state are protected from an unauthorized switch from the customer's REP of choice or an unauthorized move-in. A contested switch in providers shall be presumed to be unauthorized unless the REP provides proof, in accordance with the requirements of this section, of the customer's authorization and verification.

(c) Initial REP selection process.

(1) In conjunction with the commission's customer education campaign, the commission may issue to customers for whom customer choice will be available an explanation of the REP selection process. The customer education information issued by the commission may include, but is not limited to:

(A) an explanation of retail electric competition;

(B) a list of all REPs certified to provide electric service to the customer;

- (C) a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted; and
 - (D) information on how a customer may designate whether the customer would like to be placed on the statewide Do Not Call List and indicate the fee for such placement.
- (2) Any affiliated REP assigned to serve a customer that is entitled to receive the price to beat rate, pursuant to the Public Utility Regulatory Act (PURA) §39.202(a), shall issue to a customer, either as a bill insert or through a separate mailing, no later than 30 days after the commencement of customer choice:
 - (A) A terms of service document that includes an explanation of the price to beat rate;
 - (B) Your Rights as a Customer disclosure; and
 - (C) An Electricity Facts Label for the price to beat, which may, at the discretion of the REP, be in a separate document or contained in the terms of service document.
- (3) An electric utility, whose successor affiliated REP will continue to serve customers not eligible for the price to beat rate, pursuant to PURA §39.102(b), shall issue to these customers a terms of service document on a date prescribed by the commission. Such a document shall contain an explanation of the price the customer will be charged by the affiliated REP.

(d) Enrollment via the internet. For enrollments of customers via the internet, a REP or aggregator shall obtain authorization and verification of the switch request from the customer in accordance with this subsection.

(1) The website (or websites) shall clearly and conspicuously identify the legal name of the aggregator and its registration number to provide aggregation services or REP and its certification number sell retail electric service, its address, telephone number;

(2) The website shall include a means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the customer and the REP or aggregator that is an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;

(3) The website shall include an explanation that new service or a switch can only be made by the electric service customer or the customer's authorized agent;

(4) The entire enrollment process shall be in plain, easily understood language. The entire enrollment shall be the same language. Nothing in this section is meant to prohibit REPs or aggregators from utilizing multiple enrollment procedures or websites to conduct enrollments in multiple languages.

(5) Required authorization disclosures. Prior to requesting confirmation of the switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:

(A) the name of the new REP;

(B) the name of the specific electric service package or plan for which the applicant's assent is attained;

(C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP or aggregator shall provide a means of obtaining and recording a customer's language preference;

(D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;

(E) term or length of the term of service;

(F) the presence or absence of early termination fees or penalties, and applicable amounts;

(G) any requirement to pay a deposit and the estimated amount of that deposit;

(H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

(I) the applicant's right, pursuant to subsection (j) of this section, to review and cancel the contract within three federal business days, after receiving the terms of service, without penalty; and

(J) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable, before the applicant's electric service is switched to the REP.

(6) The enrolling customer shall be required to check a box affirming that the customer has read and understands the disclosures and terms of service required by paragraph (5) of this subsection.

(7) The REP or aggregator shall provide access to the complete terms of service document that is being agreed to by the customer on the website such that the customer may review the terms of service prior to enrollment. A prompt shall also be provided for the customer to print or save the terms of service document to which the customer assents.

(8) The REP or aggregator shall also provide a toll-free telephone number, Internet website address, and e-mail address for contacting the REP or aggregator throughout the duration of the customer's agreement. The REP or aggregator shall also provide the appropriate toll-free telephone number that the customer can use to report service outages.

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

(10) **Authorization for Internet enrollment.** Prior to final confirmation by the customer of enrollment with the REP or aggregator, the REP or aggregator shall:

- (A) obtain the customer's email address, billing name, billing address, service address, and name of any authorized representative;
 - (B) obtain the customer's electronic service identifier (ESI-ID), if available;
 - (C) affirmatively inquire whether customer has decided to establish new service or change from the current REP to the new REP;
 - (D) affirmatively inquire whether the customer designates the new REP to perform the necessary tasks to complete a switch or move in for the customer's service with the new REP; and
 - (E) obtain one of the following account holder verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth.
- (11) After enrollment, the REP or aggregator shall send a confirmation, by email, of the customer's request to select the REP. The confirmation email shall include:
- (A) a clear and conspicuous notice of the customer's right to review and cancel the contract within three federal business days, after receiving the terms of service without penalty and offer the customer the option of exercising this right by toll-free number, email, Internet website, facsimile transmission or regular mail. This notice shall be accessible to the customer without need to open an attachment or link to any other document; and

(B) the terms of service and Your Rights as a Customer documents.

These may be documents attached to the confirmation email, or the REP or aggregator may include a link to an Internet webpage containing the documents.

(e) **Written enrollment.** For enrollments of customers via a written letter of authorization (LOA), a REP or aggregator shall obtain authorization and verification of the switch or move-in request from the customer in accordance with this subsection.

(1) All LOAs for move-in or switch orders shall be in plain, easily understood language. The entire enrollment shall be in the same language.

(2) The LOA shall be a separate or easily separable document containing the requirements prescribed by this subsection for the sole purpose of authorizing the REP to initiate a switch request. The LOA is not valid unless it is signed and dated by the customer requesting the move-in or switch.

(3) The LOA may contain a description of inducements associated with enrolling with the REP; however, any such inducement shall not be printed on the LOA;

(4) The LOA shall be legible and shall contain clear and unambiguous language;

(5) **Required authorization disclosures.** The LOA shall disclose the following information:

- (A) the name of the new REP;
- (B) the name of the specific electric service package or plan for which the applicant's assent is attained;
- (C) the ability of an applicant to select to receive information in English, Spanish, or the language used in the marketing of service to the applicant. The REP shall provide a means of obtaining and recording a customer's language preference;
- (D) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;
- (E) term or length of the term of service;
- (F) the presence or absence of early termination fees or penalties, and applicable amounts;
- (G) any requirement to pay a deposit and the estimated amount of that deposit;
- (H) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;
- (I) the applicant's right, pursuant to subsection (j) of this section, to review and cancel the contract within three federal business days, after receiving the terms of service, without penalty; and
- (J) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable, before the applicant's electric service is switched to the REP.

(6) Authorization of written enrollment. A REP or aggregator shall, as part of the LOA:

(A) obtain the customer's billing name, billing address, and service address;

(B) obtain the customer's ESI-ID, if available;

(C) affirmatively inquire whether the customer has decided to establish new service or change from their current REP to the new REP;

(D) affirmatively inquire whether the customer designates the new REP to perform the necessary tasks to complete a switch or move in for the customer's service with the new REP; and

(E) obtain one of the following account holder verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth.

(7) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall contain all the information and disclosures required by this subsection.

LETTER OF AUTHORIZATION

REP name and license number: _____

Customer billing name: _____

Customer billing address: _____

Customer service address: _____

City, state, zip code: _____

ESI ID, if available: _____

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

Telephone number of individual authorized to act for customer: _____

By initialing here, I acknowledge that I have read and understand the terms of service for the product for which I am enrolling.

By initialing here, I acknowledge that I understand that the price I am agreeing to is _____ cents per kWh, the contract term that I am agreeing to is _____, that I will be required to pay a deposit in the amount of \$ _____ in order to establish service, that I prefer to receive information from my REP in English/Spanish (circle one), and that there is a penalty for early cancellation of _____ as specified by the terms of service.

By initialing here and signing below, I am authorizing (name of new REP) to become my new retail electric provider and to act as my agent to perform the necessary tasks to establish my electric service account with (name of new REP). This authorization to switch my provider of electric service extends to the following locations (list each service address):

I have read and understand this Letter of Authorization and the terms of service that describe the service I will be receiving. I am at least eighteen years of age and legally authorized to select or change retail electric providers for the service address(s) listed above.

Signed: _____ Date: _____

You have the right to review and cancel the contract within three federal business days, after receiving the terms of service, without penalty. You will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission before your electric service is switched to the REP.

(8) Before obtaining a signature from a customer, a REP shall:

(A) provide to the customer the Electricity Facts Label and provide the customer a reasonable opportunity to read the terms of service and any written materials accompanying the terms of service document; and

(B) answer any questions posed by any customer about information contained in the documents.

(9) Upon obtaining the customer's signature, a REP or aggregator shall immediately provide the customer a legible copy of the signed LOA, and shall distribute or mail the terms of service document and Your Rights as a Customer disclosure. If a written solicitation by a REP contains the terms of service document, any tear-off portion that is submitted by the customer to the REP to obtain electric service shall allow the customer to retain the terms of service document.

(10) The customer's signature on the LOA shall constitute an authorization of the switch request if the LOA complies with the provisions of this section and the terms of service or contract comply with the requirements of §25.475(d) of this title (relating to Information Disclosures to Residential and Small Commercial Customers).

(f) **Enrollment via door-to-door sales.** A REP or aggregator that engages in door-to-door marketing at a customer's residence shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this

section. In addition, a REP or aggregator shall comply with the following additional requirements:

(1) **Solicitation requirements.** A REP or aggregator that engages in door-to-door marketing at a customer's residence shall comply with the following requirements:

(A) The REP or aggregator shall provide the disclosures required by this section and the three-day right of rescission required by the Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door-to-Door Sales (16 C.F.R. §429).

(B) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. In addition, the individual shall wear an identification badge that includes the individual's name and photograph, the REP or aggregator's certification or registration number, and a toll-free telephone number maintained by the REP or aggregator that the applicant may call to verify the door-to-door representative's identity during specified business hours. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession.

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

(D) The REP or aggregator shall not represent that a customer is required to switch service in order to continue to receive power.

(E) Door-to-door representatives shall adhere to all local city/subdivision guidelines concerning door-to-door solicitation.

(F) The REP or aggregator shall inform customers that they will receive a telephone call within 48 hours to obtain authorization and verification of the customer's enrollment. If telephone service is not available at the premise, the REP or aggregator shall give the customer a toll-free telephone number to call in order to authorize and verify the enrollment.

(2) **Verification of authorization for door-to-door enrollment.** A REP, or an independent third party retained by the REP, shall call the enrolling customer within 48 hours of the enrollment to verify the applicant's decision to enroll with the REP.

(A) The verification call shall comply with the requirements in subsection (h)(7) of this section.

(B) If the customer is not available at the time of the verification call, the REP or independent third party shall leave a toll-free number for the customer to call and shall indicate to the customer that the switch cannot be processed until the enrollment is verified.

(C) The REP shall not submit a switch request until it has obtained a recorded telephonic verification of the enrollment.

(g) **Personal solicitations other than door-to-door marketing.** A REP or aggregator that engages in personal solicitation at a public location (such as malls, fairs, or places of business) shall comply with all requirements for written enrollments and LOA requirements detailed in subsection (e) of this section. In addition, a REP or aggregator shall comply with the following additional requirements:

(1) The individual who represents the REP or aggregator shall wear a clear and conspicuous identification of the REP or aggregator on the front of the individual's outer clothing or on an identification badge worn by the individual. The company name displayed shall conform to the name on the REP's certification or aggregator's registration obtained from the commission and the name that appears on all of the REP's or aggregator's contracts and terms of service documents in possession.

(2) The individual who represents the REP or aggregator shall not state or imply that it is a representative of the customer's transmission and distribution utility or any other REP or aggregator. The REP's or

aggregator's clothing and sales presentation shall be designed to avoid the impression by a reasonable person that the individual represents the customer's transmission and distribution utility or any other REP or aggregator.

(3) The REP or aggregator shall not represent that a customer is required to switch service in order to continue to receive power.

(h) **Telephonic enrollment.** For enrollments of customers via telephone solicitation, a REP or aggregator shall obtain authorization of the switch request from the customer in accordance with this subsection.

(1) A REP or aggregator shall electronically record on audio tape, a wave sound file, or other recording device the entirety of a customer's authorization.

(2) The REP or aggregator shall inform the customer that the authorization portion of the call is being recorded.

(3) Such authorizations shall be conducted in the same language as that used in the sales transaction.

(4) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(5) A REP or aggregator, or its sales representative, initiating a three-way call or a call through an automated verification system shall drop off the call once a three-way connection has been established.

(6) Required authorization disclosures. Prior to requesting confirmation of the switch request, a REP or aggregator shall clearly and conspicuously disclose the following information:

(A) the name of the new REP;

(B) the name of the specific electric service package or plan for which the applicant's assent is attained;

(C) the price of the product or plan, including the total price stated in cents per kilowatt-hour, for electric service;

(D) term or length of the term of service;

(E) the presence or absence of early termination fees or penalties, and applicable amounts;

(F) any requirement to pay a deposit and the estimated amount of that deposit;

(G) any fees to the applicant for switching to the REP pursuant to subsection (n) of this section;

(H) the applicant's right, pursuant to subsection (j) of this section, to review and cancel the contract within three federal business days, after receiving the terms of service, without penalty; and

(I) a statement that the applicant will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission, if applicable, before the applicant's electric service is switched to the REP.

(7) Authorization of telephonic enrollment.

- (A) Prior to final confirmation by the customer that they wish to enroll with the REP, the REP shall, at a minimum:
- (i) obtain the customer's billing name, billing address, and service address;
 - (ii) obtain the customer's ESI-ID, if available;
 - (iii) ask the applicant, "do you agree to establish new electric service or change your electric service from the current REP to (the new REP)?" and the applicant must answer affirmatively;
 - (iv) ask the applicant, "do you agree to designate (the new REP) to perform the necessary tasks to complete a switch or move in for your electric service with (the new REP)?" and the applicant must answer affirmatively;
 - (v) ask the applicant, "do you want to receive information in English, Spanish (or the language used in the marketing of service to the applicant)?" The REP shall provide a means of obtaining and recording a customer's language preference; and
 - (vi) obtain one of the following account holder verification data: last four digits of the social security number, mother's maiden name, city or town of birth, or month and day of birth.

(B) In the event the applicant does not consent to or does not provide any of the information listed in subparagraph (A) of this paragraph, the enrollment shall be deemed invalid and the REP shall not submit a switch or move-in request for the customer's service.

(C) Any independent third party that verifies enrollment with a REP shall:

(i) not be owned, operated, or directly controlled by the REP or the REP's marketing agent;

(ii) not have financial incentive to confirm change orders;

(iii) be operated in a location physically separate from the REP or the REP's marketing agent; and

(iv) not dispense information about the REP or its services.

(i) **Record retention.**

(1) A REP or aggregator shall maintain non-public records of each customer's authorization and verification of enrollment for 24 months from the date of the REP's initial enrollment of the customer and shall provide such records to the customer, commission staff, and the Office of Public Utility Counsel (OPUC) upon request.

(2) A REP or an aggregator shall submit copies of its sales script, contract, terms of service document, and any other materials used to obtain a customer's authorization or verification to the commission staff or OPUC upon request. In the event commission staff or OPUC request documents under this subsection, the requested records must be delivered to the

commission staff or OPUC within 15 days of the written request, unless otherwise agreed to by commission staff or OPUC.

(3) In the event a customer disputes an enrollment or switch, the REP shall provide to the customer proof of the customer's authorization within five business days of the customer's request.

(j) **Right of rescission.** A REP shall promptly provide the customer with the terms of service document after the customer has authorized the REP to provide service to the customer. For switch requests, the REP shall offer the customer a right to rescind the authorization to switch without penalty or fee of any kind for a period of three federal business days after the customer's receipt of the terms of service document. The provider may assume that any delivery of the terms of service document deposited first class with the United States Postal Service will be received by the customer within three federal business days. Any REP receiving an untimely notice of rescission from the customer shall inform the customer that the customer has a right to select another REP and may do so by contacting that REP. The REP shall also inform the customer that the customer will be responsible for charges from the REP for service provided until the customer switches to another REP.

(k) **Submission of customer's switch request to the registration agent.** A REP may submit a customer's switch request to the registration agent prior to the expiration of the rescission period prescribed by subsection (j) of this section.

Additionally, the REP shall submit the move-in or switch request to the registration agent so that the move-in or switch will be processed on the approximate scheduled date agreed to by the customer and as allowed by the tariff of the transmission and distribution utility, municipally owned utility, or electric cooperative. The customer shall be informed of the approximate scheduled date that the customer will begin receiving electric service from the REP, and of any delays in meeting that date.

(l) **Duty of the registration agent.** When the registration agent receives a move-in or switch request from a REP, the registration agent shall process that request in accordance with the protocols.

(1) **Switches.** The registration agent shall send a switch notification notice that shall:

- (A) be sent in English and Spanish consistent with §25.473(d) of this title (relating to Non-English Language Requirements);
- (B) identify the REP that initiated the switch request;
- (C) inform the customer that the customer's REP will be switched unless the customer requests the registration agent to cancel the switch by the date stated in the notice;
- (D) provide a cancellation date by which the customer may request a switch to be cancelled, no less than seven calendar days after the customer receives the notice; and

(E) provide instructions for the customer to request that the switch be cancelled. These instructions shall include a telephone number, facsimile machine number, and e-mail address to reach the registration agent. The registration agent shall take appropriate actions to process a customer's timely request for cancellation.

(2) The registration agent shall direct the transmission and distribution utility to implement any switch, move-in or transfer to the affiliated REP or the provider of last resort (POLR) in accordance with the protocols established by the registration agent, unless the customer makes a timely request to cancel the transaction.

(m) **Exemptions for certain transfers.** The provisions of this section relating to authorization and right of rescission are not applicable when the applicant's or customer's electric service is:

(1) transferred to the affiliated REP by a REP for non-payment pursuant to §25.482 of this title (relating to Termination of Service);

(2) transferred to the POLR pursuant to §25.43 of this title (relating to Provider of Last Resort (POLR)) when the customer's REP of record defaults or otherwise ceases to provide service. Nothing in this subsection implies that the customer is accepting a contract with the POLR for a specific term;

(3) transferred to the competitive affiliate of the POLR pursuant to §25.43(o) of this title;

- (4) transferred to another REP in accordance with section §25.493 of this title (relating to Acquisition and Transfer of Customers from One Retail Electric Provider to Another); or
 - (5) transferred from one premise to another premise without a change in REP and without a material change in the terms of service.
- (n) Fees. A REP, other than a municipally owned utility or an electric cooperative, shall not charge a fee to an applicant to switch to, select, or enroll with the REP unless the applicant requests a switch that does not conform with the normal meter reading and billing cycle. Such fee shall not exceed the rate charged by the transmission and distribution utility for an out-of-cycle meter reading. The registration agent shall not charge a fee to the end-use customer for the switch or enrollment process performed by the registration agent. The transmission and distribution utility may charge a fee for connection of service and such fee may be passed on to the applicant or customer by the REP. In addition, the REP may pass through to the applicant or customer any charges assessed by the transmission and distribution utility for changes to or cancellation of service orders made at the applicant's or customer's request.

§25.475. Information Disclosures to Residential and Small Commercial Customers.

(a) Applicability. The requirements of this section apply to retail electric providers (REPs) and aggregators, when specifically stated, providing service to residential and small commercial customers.

(b)(a) **General disclosure requirements.** All printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures distributed by ~~REPs~~ retail electric providers (REPs) and aggregators:

- (1) shall be provided in a readable format, written in clear, plain, easily understood language;
- (2) shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law; and
- (3) upon receipt of a license or certificate from the commission, shall include the ~~REP's~~ REPs certified name or the ~~aggregator's~~ aggregators registered name, and the number of the license or registration, ~~plan name, and name of the product offered.~~

(c)(b) Advertising and marketing materials. If a REP or aggregator advertises or markets the specific benefits of a particular plan or product to a customer, then the

REP or aggregator shall provide the plan name and name of the product offered in the advertising or marketing materials.

(1) **Print advertisements.** ~~Print~~ ~~Except as otherwise provided by this section,~~ advertisements and marketing materials, including direct mail solicitations ~~other than television or radio~~, that make any specific claims regarding price, ~~cost competitiveness~~, or environmental quality for an electricity product of the REP with respect to a product offered by another REP shall include the Electricity Facts ~~Label~~ Label. In lieu of including an Electricity Facts ~~Label~~ Label, the following statement ~~shall~~ may be provided: "You may obtain important standardized information that will allow you to compare this product with other offers. Call ~~For a copy of important standardized information and contract terms regarding this product, call~~ (name, telephone number, and website (if available) of the REP)." A REP shall provide ~~a terms of service document, which includes~~ an Electricity Facts ~~Label~~ Label ~~(and terms of service document if requested by the customer)~~ Label, relating to ~~the~~ service or product being advertised to each person who ~~requests it contacts the REP in response to this statement.~~

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

(name, telephone number and website (if available) of the REP)." This statement is not required for general statements regarding savings or environmental quality, but shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. A REP shall provide ~~a terms of service document, which includes~~ an Electricity Facts Label (and terms of service if requested by the customer)~~label~~, to each person who requests it~~contacts the REP in response to this statement~~.

(3) Internet advertisements. Advertisements on the internet shall comply with the provisions of paragraph (2) of this subsection. Each REP shall prominently display the Electricity Facts Label for any products offered by the REP for enrollment on the website without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The Electricity Facts Label shall be printable in a one-page format.

(4) Outdoor advertisements. Advertisements on outdoor signs such as billboards shall comply with the provisions of paragraph (2) of this subsection.

(d)(e) Terms of service document.

(1) For each electric service or electric product that it offers to residential or small commercial customers, a REP shall create a terms of service document. Each terms of service document shall be subject to review by

the commission and shall be furnished to the commission or its staff upon request.

(2) For services and products that a REP makes widely available to residential and small commercial customers, a REP shall assign an identification number to each version of its terms of service document, and shall publish the number on the terms of service document.

(3)(2) The terms of service document shall be provided to new customers and, if the service or product is being made widely available to residential and small commercial customers, to any eligible customer that requests the terms of service. An updated terms of service document ~~It~~ shall also be provided to current customers at any time that the REP materially changes the terms and conditions of service with its customers. Upon request, a customer may ~~customers are~~ entitled to receive an additional copy of the terms of service document under which it is receiving service.

~~(3) — A REP, other than a municipally owned utility or an electric cooperative, shall furnish its terms of service documents to the commission upon the commission's request.~~

(4) A REP shall retain ~~maintain~~ a copy of each version of the ~~customer's~~ terms of service during the time that the plan is offered and ~~document~~ for two years after that version of the terms of service is no longer offered and no customer is being served under that version of the terms of service ~~expire.~~

(5) The following information shall be conspicuously contained ~~presented~~ in the terms of service document:

- (A) The REP's certified name, mailing address, Internet website address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference);
- (B) The Electricity Facts ~~Label~~ as specified in subsection ~~(f)~~ ~~(e)~~ of this section, which may be provided with the terms of service document;
- (C) A statement as to whether there is a minimum ~~contract term of service~~, any automatic renewal provisions, how service can be cancelled, and any fees associated with cancellation of service;
- (D) A statement as to whether there are penalties to ~~terminate~~ ~~cancel~~ service before the end of the minimum term of ~~service~~ ~~the contract~~, and the amount of those penalties, and whether there are any conditions under which those penalties will not apply;
- (E) If the REP requires deposits from its customers, a description of the conditions that will trigger a request for a deposit, the maximum amount of the deposit, or the manner in which the deposit amount will be determined, a statement that interest will be paid on the deposit at the rate approved by the commission ~~including the amount of the interest that will be paid~~, and the conditions under which the customer may obtain a refund of a deposit;
- (F) The ~~description~~ ~~itemization~~ of any charges resulting from a move-in or switch that must be paid by the customer, including but not

limited to an out-of-cycle meter read, credit application fee, and connection or reconnection fees~~before service is initiated or switched;~~

(G) The itemization of any services that are included in the customer's terms of service~~contract~~, including:

(i) the specific methods and prices~~rates~~ by which the customer will be charged for electric service ~~and how such charges will appear on the customer's electric bill;~~ and

(ii) the price~~cost~~ for each service or product other than electric service ~~and how such charges will appear on the customer's electric bill~~. If a REP~~competitive retailer~~ has bundled the charges for these other services together, the total price~~cost~~ ~~of all charges~~ for services other than electric service ~~and how such charge will appear on the customer's electric bill;~~

(H) The itemization of any charges and fees that may be imposed on the customer, such as charges and fees~~during the period of the contract~~ for default, late payment, ~~switching fees, late fees, fees that may be charged to the customer for~~ returned checks, cancellation of service, termination of service, and collection of outstanding balance~~; fees charged for early termination of the contract, collection costs imposed on the customer if the customer defaults, and any other non-recurring fees and charges;~~

- (I) A description of the policies of the REP regarding payment arrangements and bill payment assistance programs offered by the REP, late payments, payments in dispute and defaults by the customer;
- (J) All other material terms and conditions, including, without limitation, exclusions, reservations, limitations, and conditions of the terms of contract for services offered by the REP;
- (K) In a conspicuous and separate paragraph or box:
 - (i) A description of the right of a new customer to rescind service~~cancel a contract~~ without fee or penalty of any kind within three federal business days after receiving the terms of service document pursuant to §25.474(j) of this title (relating to Selection of Retail Electric Provider) sent to the customer after the REP has obtained the customer's authorization to provide service to the customer; and
 - (ii) Detailed instructions for rescinding service~~canceling a contract~~, including the telephone number and, if available, facsimile machine number and e-mail address that the customer may use to rescind service~~cancel the contract~~; and
 - ~~(iii) Any information on automatic contract renewal that applies;~~

(L) A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services; and

~~(M)~~—A statement that bill payment assistance for customers is offered by the REP and that additional information may be obtained by contacting the REP; and

~~(M)(N)~~A statement that pricerate reductions for qualified low-income residential low income customers are offered by the REP and how to apply for the program.

~~(e)(d)~~ Notice ~~Minimum notice~~ of changes in terms and conditions, ~~contract,~~ and ~~terms of service~~.

(1) ~~Change in terms and conditions~~—A REP shall provide written notice to its customers at least 45 days in advance of any material change in the terms of service document. The notice shall identify the material change and clearly specify what actions the customer needs to take to terminate the terms of service agreement without a penalty~~terminate the contract~~, the deadline by which such action must be taken, and the ramifications if such actions are not taken within the specified deadline. This notice may be

provided in or with the customer's bill or in a separate document, but shall be clearly and conspicuously labeled with the following statement: "Important notice regarding changes to your terms of service~~electric service contract~~." The notice shall clearly state that the customer may decline any material change in the terms of service and terminate the terms of service agreement~~cancel the contract~~ without a penalty. Notice of the change is not required~~the customer's option to decline is not necessary~~ for material changes that benefit~~favor~~ the customer or for changes that are mandated by a regulatory agency. Notice is not required for changes in rates if the terms of service clearly specify the manner in which rates may be adjusted (i.e., variable rate products).

- (2) **Automatic renewal clauses.** A REP may utilize an automatic renewal clause. Any service~~contract~~ renewed through the activation of an automatic renewal clause shall be in effect for a maximum of 3130 days and such clause may be repeatedly activated unless cancelled by the customer or the REP materially changes the terms of service.

(f)(e) **Electricity Facts Label~~label~~.**

- (1) **Pricing disclosures.** Pricing information disclosed by a REP in an Electricity Facts Label~~label~~ shall include:
 - (A) For the total cost of electric services, exclusive of applicable taxes:
 - (i) If the billing is based on prices~~rates~~ that will not vary by season or time of day, the total average price for electric service reflecting

all recurring charges, including generation, transmission and distribution, and other flat rate charges expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for the following usage level~~each usage level as follows~~:

- (I) ~~For The average price for~~ residential customers, ~~shall be shown for~~ 500, 1,000, and 1,500 kilowatt hours per month; and
 - (II) ~~For The average price for~~ small commercial customers, ~~shall be shown for~~ 1,500, 2,500, and 3,500 kilowatt hours per month;
- (ii) If the billing is based on prices~~rates~~ that vary by season or time of day, the average price for electric service, reflecting all recurring charges and based on the applicable load profile approved by the commission, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:
- (I) ~~For The average price for~~ residential customers, ~~shall be shown for~~ 500, 1,000, and 1,500 kilowatt hours per month; and
 - (II) ~~For The average price for~~ small commercial customers, ~~shall be shown for~~ 1,500, 2,500, and 3,500 kilowatt hours per month;

- (iii) If a ~~REP~~competitive-retailer combines the charges for electric service with charges for any other product, the ~~REP~~competitive-retailer shall:
 - (I) If the electric services are sold separately from the other products, disclose the total price for electric service separately from other products; and
 - (II) If the ~~REP~~competitive-retailer does not permit a customer to purchase the electric service without purchasing the other products, state the total charges for all products as the price of the total electric service.
- (B) If the pricing plan ~~includes~~envisions prices that will vary according to the season or time of day, the statement: "This price disclosure is an example based on average usage patterns — your actual average price for electric service may be different depending on how and will vary according to when you use electricity. ~~See the terms of service document for actual prices.~~"
- (C) If the pricing plan ~~envisions~~envisions prices that will vary during the term of the ~~service~~contract because of factors other than season and time of day, the statement: "This price disclosure is an example based on average ~~service~~contract prices — your average price for electric service will vary according to your usage and (insert description of the basis for and the frequency of price changes during the

~~servicecontract~~ period). ~~See the terms of service document for actual prices.~~"

(D) If the price of electric service will not vary, the phrase "fixed price" and the length of time for which the price will be fixed; ~~and~~

(E) If the price of electric service ~~will vary, the phrase "variable price"~~ and a description of how the prices will change and when; ~~and is based on the season or time of day, the on peak seasons or times and the associated rates.~~

(F) The criteria used to calculate the average pricing disclosures for residential customers.

(2) ~~ServiceContract~~ terms disclosures. Specific ~~servicecontract~~ terms that shall be disclosed on the Electricity Facts ~~Label~~ are:



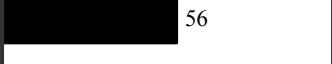




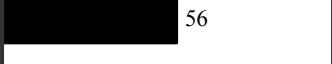




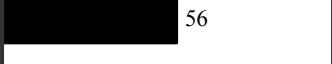


(A) The minimum ~~servicecontract~~ term, if any; and

(B) Early termination penalties, if any.

(3) **Fuel mix disclosures.** The Electricity Facts ~~Label~~ shall contain a table depicting, on a percentage basis, the fuel mix of the electricity product supplied by the REP in Texas. The table shall also contain a column depicting the statewide average fuel mix. The break-down for both columns shall provide percentages of net system power generated by the following categories of fuels: coal and lignite; natural gas; nuclear; renewable energy (comprising biomass power, hydropower, solar power and wind power); and other sources. Fuel mix information shall be based on generation data for the most recent calendar year.

- (A) The percentage used shall be rounded to the nearest whole number. Values less than 0.5% and greater than zero may be shown as "<0.5%".
 - (B) Any source of electricity that is not used shall be listed in the table and depicted as "0.0%".
- (4) **Emissions**~~Air emissions~~ and waste disclosures. The Electricity Facts ~~Label~~label shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide, ~~and~~ particulate emissions and nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (3) of this subsection. Emissions and waste disclosures shall be based on data for the most recent calendar year.
- (A) Emission rates for carbon dioxide, nitrogen oxide, sulfur dioxide and particulates shall be calculated in pounds per 1,000 kilowatt-hours (lbs/1,000 kWh), divided by the corresponding statewide system average emission rates, and multiplied by 100 to obtain indexed values.
 - (B) Rates for nuclear waste shall be calculated in pounds of spent fuel per 1,000 kilowatt-hours, divided by the corresponding statewide system average rate, and multiplied by 100 to obtain indexed values.
 - (C) The registration agent~~emission~~ shall calculate the statewide system average rates to be used in accordance with this subsection.

- (5) **Renewable energy claims.** A REP may verify its sales of renewable energy by requesting that the program administrator of the renewable energy credits trading program established pursuant to §25.173(d) of this title (relating to Goal for Renewable Energy) retire a renewable energy credit for each megawatt-hour of renewable energy sold to its customers.
- (6) **Format of Electricity Facts ~~Label~~Label.** Each Electricity ~~Facts Label~~ Fact label shall be printed in type no smaller than ten points in size and shall be formatted as shown in this paragraphbelow:

Electricity Facts																							
[Name of REP], [Name of Product] [Service area <i>(if applicable)</i>] <i>as of</i> [Date]																							
<i>Electricity price</i>	Average monthly use: 500kWh 1,000kWh 1,500 kWh Average price per kilowatt-hour: [x.x]¢ [x.x]¢ [x.x]¢																						
	<p>This price disclosure is an example based on [criteria used to construct the example] – your average price for electric service will vary according to [relevant variation]. See the Terms of Service document for actual prices.</p> <p>[If applicable] Price fixed for [xx] months. [If applicable] On-peak [season or time]:[xxx] [If applicable] Average on-peak price per kilowatt-hour: [x.x]¢ [If applicable] Average off-peak price per kilowatt-hour: [x.x]¢</p>																						
<i>Contract</i>	Minimum term:[xx] months. Penalty for early cancellation: \$[xx] <i>See Terms of Service statement for a full listing of fees, deposit policy, and other terms.</i>																						
<i>Sources of power generation</i>	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;"></th> <th style="width: 30%; text-align: center;"><i>This product</i></th> <th style="width: 30%; text-align: center;"><i>Texas (for comparison)</i></th> </tr> </thead> <tbody> <tr> <td>Coal and lignite</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Natural gas</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Nuclear</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Renewable energy</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Other</td> <td style="text-align: center;">[xx]%</td> <td style="text-align: center;">[xx]%</td> </tr> <tr> <td>Total</td> <td style="text-align: center;">100%</td> <td style="text-align: center;">100%</td> </tr> </tbody> </table>			<i>This product</i>	<i>Texas (for comparison)</i>	Coal and lignite	[xx]%	[xx]%	Natural gas	[xx]%	[xx]%	Nuclear	[xx]%	[xx]%	Renewable energy	[xx]%	[xx]%	Other	[xx]%	[xx]%	Total	100%	100%
	<i>This product</i>	<i>Texas (for comparison)</i>																					
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Renewable energy	[xx]%	[xx]%																					
Other	[xx]%	[xx]%																					
Total	100%	100%																					
<i>Emissions and waste per <u>1,000</u> kWh generated</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 30%;">Carbon dioxide</td> <td style="width: 40%; text-align: center;">  </td> <td style="width: 30%; text-align: right;">89</td> </tr> <tr> <td>Nitrogen oxides</td> <td style="text-align: center;">  </td> <td style="text-align: right;">112</td> </tr> <tr> <td>Particulates</td> <td style="text-align: center;">  </td> <td style="text-align: right;">56</td> </tr> <tr> <td>Sulfur dioxide</td> <td style="text-align: center;">  </td> <td style="text-align: right;">23</td> </tr> <tr> <td>Nuclear waste</td> <td style="text-align: center;">  </td> <td style="text-align: right;">10</td> </tr> <tr> <td colspan="2" style="text-align: center;"> <div style="display: flex; justify-content: space-around; width: 100%;"> <i>Better than Texas average</i> <i>Worse than Texas average</i> </div> </td> <td></td> </tr> </tbody> </table> <p style="text-align: center;">(Indexed values; 100=Texas average)</p>		Carbon dioxide		89	Nitrogen oxides		112	Particulates		56	Sulfur dioxide		23	Nuclear waste		10	<div style="display: flex; justify-content: space-around; width: 100%;"> <i>Better than Texas average</i> <i>Worse than Texas average</i> </div>					
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Type used in this format
 Title: 14 point
 Headings: 12 point boldface
 Body: 10 point

- (7) **Distribution of Electricity Facts ~~Label~~label.** ~~A~~Beginning July 1, 2002, a REP shall distribute its Electricity Facts ~~Label~~label to its customers no less than once in a 12-month period and to the commission upon request. A REP is not required to distribute its Electricity Facts Label to its customers pursuant to this paragraph if it has provided a new Electricity Facts Label to its customers in the past six months.~~with its January and July billings (or as a separate mailing).~~ ~~Additionally, a REP shall provide the commission with an electronic version of each Electricity Facts label the REP distributes to customers. The commission shall make each label available to the public in a non-preferential manner over the Internet.~~

~~(g)~~**(f) Your Rights as a Customer disclosure.** In addition to the terms of service document required by this section, a REP shall develop a separate disclosure statement for residential customers and small commercial customers entitled "Your Rights as a Customer" that summarizes the standard customer protections provided by the rules in this subchapter.

- (1) This disclosure shall initially be distributed at the same time as the REP's terms of service document and shall accurately reflect the REP's terms of service.
- (2) The REP shall distribute an update of this disclosure no less than once in a 12-month period~~once annually~~ to its customers.
- (3) Each REP's Your Rights as a Customer disclosure ~~is~~shall be subject to review and approval by the commission, upon request.

- (4) The disclosure shall inform the customer of the following:
- (A) The REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling);
 - (B) The customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the customer's right to be instructed on ~~by the REP~~ how to read the meter, if applicable;
 - (C) Disclosures concerning the customer's ability to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);
 - (D) Notice of any special services such as readers or notices in Braille or TTY services for hearing impaired customers;
 - (E) Special actions or programs available to those residential customers with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems;
 - (F) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);
 - (G) Cancellation of terms of service with or without penalty;
 - (H) Unauthorized switchSlamming protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail

~~Electric Provider) §25.474(n) of this title (relating to Selection or Change of Retail Electric Provider);~~

- (I) ~~Protections relating to termination~~ Termination of service protections pursuant to §25.482 of this title (relating to Termination of Service Contract) and disconnection of service ~~by the provider of last resort (POLR)~~ pursuant to §25.483 of this title (relating to Disconnection of Service);
- (J) Availability of financial and energy assistance programs for residential customers;
- (K) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List) and §26.37 (relating to Texas No-Call List);
- (L) Availability of discounts for qualified low-income residential ~~low income~~ customers;
- (M) Payment arrangements and deferred payments pursuant to §25.480 of this title (relating to Bill Payment and Adjustments);
- (N) Procedures for reporting outages;
- (O) Privacy rights regarding customer specific information as defined by §25.472 of this title (relating to Privacy of Customer Information);
- (P) Availability of POLR service and how to contact the POLR, including the POLR's toll free telephone number; and

(Q) The ~~the~~ steps necessary to have service restored or reconnected after involuntary suspension or disconnection.

§25.476. Labeling of Electricity with Respect to Fuel Mix and Environmental Impact.

(a) **Purpose.** The purpose of this section is to establish the procedures by which retail electric providers (REPs)~~competitive retailers~~ calculate and disclose fuel mix and environmental impact information on the Electricity Facts Label~~label~~ pursuant to §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers).

(b) **Application.**

(1) This section applies to all REP~~competitive retailers and affiliated retail electric providers (affiliated REPs)~~ as defined in §25.471(d)~~of this title (relating to General Provisions of Customer Protection Rules)~~. Additionally, some of the reporting requirements established in this section apply to all owners of generation assets as defined in subsection (c) of this section.

(2) Nothing in this section shall be construed as protecting a competitive retailer or affiliated~~REP~~ against prosecution under deceptive trade practices statutes.

(3) In accordance with the Public Utility Regulatory Act (PURA) §39.001(b)(4), the commission and the registration agent will protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information, including without limitation information reported to the commission or the registration agent pursuant

~~to subsections (e)(3)-(4) and (f)(1) of this section during the transition to a competitive market and after the commencement of customer choice.~~

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

(1) **Authenticated generation** — Generated electricity with quantity, fuel mix, and environmental attributes accounted for by a retired renewable energy credit (REC), or supply contract between a ~~competitive retailer or affiliated~~ REP and an owner of generation assets, to be used in calculating the retailer's Electricity Facts ~~Label label~~ disclosures.

(2) **Default scorecard** — The estimated fuel mix and environmental impact of all electricity in Texas that is not authenticated as defined in paragraph (1) of this subsection.

~~(3) **Electricity Facts label** — A standardized format, as described in §25.475(e) of this title, for disclosure information and contract terms made available to customers to help them choose a provider and an electricity product.~~

~~(4) **Electricity product** — A product offered by a competitive retailer or affiliated REP to a customer for the provision of retail electric service under specific terms and conditions, and marketed under a specific Electricity Facts label.~~

~~(3)~~⁽⁵⁾ **Environmental impact** — The information that is to be reported on the Electricity Facts ~~Label label~~ under the heading "~~Emissions emissions~~ and waste per kWh generated," comprising indicators for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear reactor fuel. For the purposes of this section, environmental impact refers specifically to emissions and waste from generating facilities located in Texas, except as provided in subsection (f)(3) of this section.

~~(4)~~⁽⁶⁾ **Fuel mix** — The information that is to be reported on the Electricity Facts ~~Label label~~ under the heading "~~Sourcesources~~ of power generation." The fuel mix shall be the percentage of total MWh obtained from each of the following fuel categories: coal and lignite, natural gas, nuclear, renewable energy, ~~and "other" sources, calculated as specified in this section~~ ~~and other known sources~~. Renewable energy shall include power defined as renewable by ~~PURAthe Public Utility Regulatory Act (PURA)~~ §39.904(d).

~~(5)~~⁽⁷⁾ **Generator scorecard** — The aggregated fuel mix and environmental impact of all generating facilities located in Texas that are ~~owned~~^{held} by the same owner of generation assets.

~~(6)~~⁽⁸⁾ **New product** — An electricity product during the first year it is marketed to customers.

~~(7)~~⁽⁹⁾ **Other generation sources** — A competitive retailer's or affiliated REP's supply of generated electricity that is not accounted for by a direct supply contract with an owner of generation assets.

~~(8)(10)~~ **Owner of generation assets** — A power generation company, river authority, municipally owned utility, electric cooperative, or any other entity that owns ~~electric or controls~~ generating facilities in the state of Texas.

~~(11)~~ ~~**Renewable energy credit (REC)**~~ — ~~A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by PURA §39.904 and implemented under §25.173 of this title (relating to the Goal for Renewable Energy).~~

~~(9)(12)~~ **Renewable energy credit offset (REC offset)** — A non-tradable allowance as defined by §25.173(c)(10) of this title (relating to Goal for Renewable Energy) and created by §25.173(i) of this title. For the purposes of this section, a REC offset authenticates the renewable attributes, but not the quantity, of generation produced by its associated facility.

(d) **Marketing standards for "green" and "renewable" electricity products.**

(1) A ~~competitive retailer or affiliated~~ REP may market an electricity product as "green" only in the following instances:

(A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d), Texas natural gas as specified in PURA §39.9044(d)(2), or a combination thereof, and

(B) All statements representing the product as "green," if not containing 100% renewable energy, as defined in PURA

§39.904(d), shall include a footnote, parenthetical note, or other obvious disclaimer that "A 'green' product may include Texas natural gas and renewable energy. See the Electricity Facts ~~Label~~ for this product's exact mix of renewable energy and Texas natural gas."

- (2) A ~~competitive retailer or affiliated~~ REP may market an electricity product as "renewable" only in the following instances:
 - (A) All of the product's fuel mix is renewable energy as defined in PURA §39.904(d); or
 - (B) All statements representing the product as "renewable" use the format "x% renewable," where "x" is the product's renewable energy fuel mix percentage.
- (3) If a ~~competitive retailer or affiliated~~ REP makes marketing claims about a product's "green" content on the basis of its use of natural gas as a fuel, the ~~competitive retailer or affiliated~~ REP must include with the report required under subsection (f)(1) of this section proof that the natural gas used to generate the electricity was produced in Texas.

(e) **Compilation of scorecard data.**

- (1) The registration agent shall ~~The commission will~~ create and maintain a database of generator scorecards reflecting each owner of generation assets' company-wide fuel mix and environmental impact data based on generating facilities located in Texas. These scorecards shall be used by

~~competitive retailers and affiliated~~ REPs in determining the fuel and environmental attributes of electricity sold to retail customers.

(2) Each generator's fuel mix and environmental impact data for the preceding calendar year shall ~~Initial generator scorecards based on the best available data will~~ be published on the registration agent's Internet~~the commission's internet~~ web site by April 1 of each year and shall state:

(A) percentage of MWh generated from each of the following fuel sources: ~~obtained from each fuel source~~ (coal and lignite, natural gas, nuclear, renewable energy, and other sources; and), ~~and the corresponding percentages of total MWh;~~

(B) MWh-weighted average annual emissions rates in pounds per 1,000 kWh for the aggregate generation sources of the owner of generation assets ~~for tons~~ of carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced (with spent nuclear fuel annualized using standard industry conversion factors), ~~and the corresponding emission rates in tons per MWh;~~ and

~~(C) sources from which data were obtained, including year of publication and year of generation.~~

(3) Not later than March 1 of each year, each owner of generation assets shall report to the registration agent the following data for the preceding calendar year: net generation in MWh from each of its generating units in Texas; the type of fuel used by each of its generating units in Texas; and

the MWh-weighted average annual emissions rate, on an aggregate basis for all of its generating units in Texas (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste. For purposes of calculating its average emissions rates, each owner of generation assets shall rely upon emissions data that it submits to the United States Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), or the best available data if the owner of generation assets does not submit pertinent data to the EPA or TCEQ. An owner of generation assets shall not be required to submit information to the registration agent regarding the net generation of its generating units located within the Electric Reliability Council of Texas (ERCOT) region if, upon request, the registration agent advises the owner of generation assets that it already has such information available from its polled settlement meter data. Each generator will have one month to review its initial scorecard data prior to publication on the commission's web site. The commission will accept changes reflecting retirement of facilities, the addition of new facilities, the sale or purchase of facilities, verified changes in a facility's emission rates and fuel use, and the correction of administrative errors.

- (4) Not later than March 15 of each year, each REP shall report to the registration agent the total MWh of electricity it purchased during the preceding calendar year, specifying the quantity purchased from each owner of generation assets or from other generation sources during that

~~calendar year. Not later than March 1 and September 1 of each year, the commission will adjust all generator scorecards to deduct the MWh and associated attributes of:~~

~~(A) power for which a REC has been issued; and~~

~~(B) power from facilities that have been designated by the commission as REC offset generators.~~

~~(5) Not later than March 1 and September 1 of each year, the commission will calculate a combined scorecard for all generating units whose capacity will be auctioned under §25.381(e)(1)(A) of this title (relating to Capacity Auctions), and a combined scorecard for all generating units whose capacity will be auctioned under §25.381(e)(1)(B)-(D) of this title.~~

~~(5)(6)~~ Not later than April 1~~March 1 and September 1~~ of each year, the registration agent shall ~~the commission will~~ calculate and publish on its Internet website a state average fuel mix, emission rate threshold values as described in this paragraph, and a default scorecard to account for all electric generation in the state that is not authenticated as defined in subsection (c)(1) of this section.

(A) The default fuel mix shall be the percentage of total MWh of generation not authenticated that has been obtained from each fuel type.

(B) Default emission rates for each type of emission~~environmental criterion~~ shall be calculated by dividing total poundstons of

emissions or waste by total MWh, using data only for generation not authenticated.

~~(7) The commission will include the adjusted generator scorecards, capacity auction scorecards and the default scorecard on the reporting forms to be used by competitive retailers and affiliated REPs to calculate their Electricity Facts label disclosures. The adjusted generator scorecard shall include a statement that the data may differ from the unadjusted scorecard and shall include a reference to the commission's web site for additional information.~~

(f) **Calculating fuel mix and environmental impact disclosures.**

(1) Not later than ~~March 15~~ February 1 and ~~August 1~~ of each year, each ~~competitive retailer and affiliated~~ REP shall report to the commission the following information ~~for the previous six month period ending December 31 or June 30:~~

~~(A) all owners of generation assets, other entities and capacity auctions from which the competitive retailer or affiliated REP purchased electricity for delivery to customers during the previous calendar year and the MWh obtained from each supplier, with sources that together supplied less than 5.0% of the competitive retailer's electricity combined and treated as other generation sources;~~

~~(A)(B)~~ MWh sold under each electricity product offered by the ~~competitive retailer or affiliated~~ REP during the previous calendar year; and

~~(B)(C)~~ attestations from power generators that the natural gas used to generate electricity supplied to the ~~competitive retailer or affiliated~~ REP was produced in Texas, if during the preceding calendar year and the current calendar year the REP markets the competitive retailer or affiliated REP intends to market "green" electricity on the basis of that power.

(2) Not later than ~~May 1~~April 1 and October 1 of each year, each ~~competitive retailer and affiliated~~ REP shall calculate and report to the registration agent its fuel mix and environmental impact for the preceding calendar year for each of its electricity products. The calculation methodology shall be as described in paragraphs (5) and (6) of this subsection.~~previous six-month period ending December 31 or June 30. Calculations shall include a disclosure that aggregates all electricity products offered by the competitive retailer, and specific disclosures for each electricity product. Disclosures provided on an Electricity Facts label shall describe a specific electricity product sold to customers during the previous six-month period ending December 31 or June 30, except as provided in paragraph (9) of this subsection.~~

(3) For power purchased from sources outside of Texas, a supply contract between a ~~competitive retailer or affiliated~~ REP and the owner of a

generating facility may be used to authenticate fuel mix and environmental impact for electricity generated at that facility and sold at retail in Texas~~environmental impact claims.~~

(A) The contract must identify a specific generating facility from which the ~~competitive retailer or affiliated~~ REP has obtained ~~is to obtain~~ electricity that it sold to retail customers in Texas during the preceding calendar year.

(B) A REP that intends to rely upon a supply contract with an out-of-state generator to authenticate fuel mix or environmental impact data shall submit a report to the registration agent for the specified generating facility no later than March 1 of each year that reports the facility's annual fuel mix and emissions rates (in pounds per 1,000 kWh) for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and nuclear waste. The competitive retailer or affiliated REP shall include fuel mix and environmental impact information for the specified generating facility in its report to the commission pursuant to paragraph (1) of this subsection. Data shall come from the same sources used by the commission as reported pursuant to subsection (e)(2)(C) of this section. If the generating facility is not included in any database used by the commission, the retailer and the generating facility owner may provide other comparable public data that have been reported to a federal or state agency for the specified facility.

- (4) For the purposes of disclosures on the Electricity Facts ~~Label~~~~label~~, the retirement of RECs shall be the only method of authenticating generation for which a REC has been issued in accordance with §25.173 of this title. The retirement of a REC shall be equivalent to one megawatt-hour of generation from renewable resources. The use of RECs to authenticate the use of renewable fuels on the Electricity Facts ~~Label~~ ~~label~~ must be consistent with REC account information maintained by the Renewable Energy Credits Trading Program Administrator. A REC offset may be used to authenticate the renewable attributes of the current MWh output from its associated supply contract.
- (5) ~~The fuel mix for a REP's electricity product~~~~A competitive retailer's or affiliated REP's company fuel mix~~ shall be the MWh-weighted average of the fuel mixes reported for the sources of generation from which electricity was purchased for that product. In calculating the fuel mix, the REP shall rely upon the following sources of information to obtain the fuel mix of its sources of generation: the generator scorecard data published by the registration agent under subsection (e)(2)(A) of this section; the default scorecard published by the registration agent under subsection (e)(5)(A) of this section; any reports filed under paragraph (3)(B) of this subsection; retired RECs; and REC offsets~~represented by the adjusted scorecards of its suppliers, scorecards for successfully bid capacity auctions, out-of-state supply contracts, retired RECs, REC offsets and the default scorecard.~~

MWh from generation sources not authenticated in accordance with this section shall be represented by the fuel mix of the default scorecard.

- (6) ~~The emission rates for a REP's electricity product shall be the MWh-weighted average of the emission rates reported for the sources of generation from which electricity was purchased for that product. In calculating the emissions data, the REP shall rely upon the following sources of information to obtain the emissions data of its sources of generation: the generator scorecard data published by the registration agent under subsection (e)(2)(B) of this section; the default scorecard published by the registration agent under subsection (e)(5)(B) of this section; and any reports filed under paragraph (3)(B) of this subsection.~~ A competitive retailer's or affiliated REP's ~~company environmental impact shall be the MWh-weighted average of the emission rates represented by the adjusted scorecards of its suppliers, scorecards for successfully bid capacity auctions, out-of-state supply contracts, retired RECs, REC offsets and the default scorecard.~~ Emissions of MWh from generation sources not authenticated in accordance with this section shall be represented by the default scorecard. The weighted average of each category of environmental impact shall then be indexed by dividing it by the corresponding state average emission rate and multiplying the result by 100.

- (7) If a ~~competitive retailer or affiliated~~ REP offers multiple electricity products that differ with regard to the fuel mix and environmental impact

disclosures presented on the Electricity Facts [Label, the REPlabels, the retailer](#):

(A) may apply any supply contract to the calculation of any product label as long as the sum of MWh applied does not exceed the MWh acquired under the contract; and

(B) may apply any number of RECs to the calculation of any product label as long as:

(i) the number of RECs applied to all product labels is consistent with the number of RECs the retailer has retired with the REC Trading Program Administrator, and

(ii) the number of RECs applied to each product label results in a renewable energy content for each product that is equal to or greater than a benchmark to be calculated from data maintained by the REC Trading Program Administrator.

The benchmark shall be defined on an annual basis as:

$SRR / TS,$

where

$SRR =$ the statewide REC requirement, in MWh, as calculated by the REC Trading Program Administrator for the compliance period

coinciding with the Electricity Facts ~~Label~~ disclosure, and

TS = total MWh sales for all ~~REP~~ competitive retailers to Texas customers during the compliance period coinciding with the Electricity Facts ~~Label~~ disclosure.

- (8) An affiliated REP shall use only one fuel mix and environmental impact disclosure for all price-to-beat products sold to residential and small commercial customers of its affiliated transmission and distribution utility, except that if the predecessor bundled utility had an approved renewable energy tariff in accordance with §25.251 of this title (relating to Renewable Energy Tariff) on file with the commission during the freeze on existing retail base rate tariffs established by PURA §39.052, the affiliated REP may sell a renewable ~~price-to-beat~~ ~~Price-to-Beat~~ product.
- (9) ~~Any~~ ~~A competitive retailer or affiliated~~ REP may anticipate the fuel mix and environmental impact of a new product ~~and adjust the disclosures for its existing products to account for the new product's projected sales.~~
- (A) On the fuel mix disclosure of a new product's Electricity Facts ~~Label~~ disclosure, the heading "Sources of power generation" shall be replaced with "Projected sources of power generation."

(B) On the environmental impact disclosure of a new product's Electricity Facts ~~Label-label~~, the heading "Emissions and waste per 1,000 kWh generated" shall be replaced with "Projected emissions and waste per 1,000 kWh generated."

~~(C) The competitive retailer or affiliated REP shall exercise due diligence in its acquisition of purchased power throughout the year so that the fuel mix and environmental impact authenticated at the end of the year is at least as favorable as what the retailer projected.~~

~~(C)(D)~~ A projected fuel mix may be used only for new products, ~~and the projections may not change during the year except as provided in subparagraph (E) of this paragraph.~~

~~(E) At the end of the first six months that a new product is offered, a retailer may choose to authenticate the product's fuel mix and environmental impact according to the provisions of this section and delete the word "projected" from the Electricity Facts label.~~

(g) Annual update of Electricity Facts Label. Each REP shall update its Electricity Facts Label for each of its products no later than July 1 of each year, so that the Electricity Facts Label displays the fuel mix and emissions data calculated pursuant to this section and reported to the registration agent for that product under subsection (f)(2) of this section for generation purchased during the preceding calendar year. The commission shall make available on the "power to

choose" Internet website the fuel mix and emissions data published by each REP on its Electricity Facts Labels for each product marketed to residential customers.~~Special provisions for the first year of competition. Each competitive retailer and affiliated REP shall estimate the fuel mix and environmental impact of its electricity products offered to customers during the first year of competition, and shall exercise due diligence in its power acquisitions throughout the year so that the fuel mix verified at the end of the year is at least as favorable as what was projected.~~

(h) **Compliance and enforcement.**

- (1) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission may take remedial action consistent with PURA §§39.101(e), 39.356, or 39.357, and the REP may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council.
- (2) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP, thereby denying the REP the right to provide service in this state.

(3) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the [Office of the Attorney General, Consumer Protection Division](#) ~~office of the attorney general~~ in order to ensure consistent treatment of specific alleged violations.

~~(4) The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each REP to the extent necessary to verify the accuracy of the REP's Electricity Facts [Label](#).~~

~~(5) The commission may inspect and obtain copies of the papers, books, accounts, documents, and other business records of each owner of generation assets to the extent necessary to verify the accuracy of the owner of generation assets' fuel mix and emissions data reported under [subsection \(e\)\(3\) of this section](#).~~

~~(6) In exercising any enforcement authority, inspection, audit, or other action under this section, the commission will ensure the confidentiality of competitively sensitive information.~~

§25.477. Refusal of Electric Service.

(a) **Acceptable reasons to refuse electric service.** A retail electric provider (REP) may refuse to provide electric service to an applicant or a customer for one or more of the reasons specified in this subsection:

(1) **Customer's or applicant's inadequate facilities~~inadequate~~.** The customer's or applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given, or the customer's or applicant's facilities do not comply with all applicable state and municipal regulations.

(2) **Use of prohibited equipment or attachments.** The customer or applicant fails to comply with the transmission and distribution utility's, municipally owned utility's, or electric cooperative's tariff pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.

(3) **Intent to deceive.** The applicant or customer applies for service at a location where another customer received, or continues to receive, service ~~and the other customer's bill from the REP is unpaid at that location,~~ and the REP can reasonably demonstrate that the change of account holder and billing name is made to avoid or evade payment of ~~an outstanding~~ bill owed to the REP.

(4) **For indebtedness.** The applicant or customer owes a bona fide debt to the REP for electric service~~the same kind of service as that being requested.~~

An ~~affiliated affiliate~~ REP or provider of last resort (POLR) shall offer the applicant or customer an opportunity to pay the outstanding debt to receive service. In the event ~~the applicant's or a~~ customer's indebtedness is in dispute, the applicant or customer shall be provided service upon paying the undisputed debt amount and a deposit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits).

- (5) **Failure to pay guarantee.** An applicant orA customer has acted as a guarantor for another applicant or customer and failed to pay the guaranteed amount, where such guarantee was made in writing and was a condition of service.
- (6) **~~Failure~~Refusal to comply with credit requirements.** The applicant or customer ~~fails~~refuses to comply with the credit and deposit requirements set forth in §25.478 of this title.
- (7) **Other acceptable reasons to refuse electric service.** In addition to the reasons specified in paragraphs (1) – (6) of this subsection, a REP other than the affiliated REP or POLR may refuse to provide electric service to an applicant or customer~~A competitive retailer may refuse to provide electric service to a customer for one or more of the reasons specified in paragraph (1) – (6) of this subsection or~~ for any other reason that is not otherwise discriminatory pursuant to §25.471 of this title (relating to General Provisions of Customer Protection Rules).

(b) **Insufficient grounds for refusal to serve.** The following reasons are not sufficient cause for refusal of service to an applicant or customer by a REP:

- (1) delinquency in payment for electric service by a previous occupant of the premises to be served;
- (2) failure to pay for any charge that is not related to ~~the provision of~~ electric service, including a competitive energy service, merchandise, or other services that are optional and are not included in ~~the~~ electric service provided;
- (3) failure to pay a bill that includes more than the allowed six months of underbilling, unless the underbilling is the result of theft of service; and
- (4) failure to pay the unpaid bill of another customer for usage incurred at the same address, except where the REP has reasonable and specific grounds to believe that the applicant or customer that currently receives service has applied for service to avoid or evade payment of a bill issued to a current occupant of the same address.

(c) **Disclosure upon refusal of service.**

- (1) A REP that refuses electric service to an applicant or customer on the basis of credit shall comply with the Fair Credit Reporting Act (15 U.S.C. §1691(d), et seq.) in providing notice to customers. A REP that refuses service for any other reason shall verbally notify the applicant or customer of the specific reasons for the refusal. In addition, upon request by the applicant or customer, a REP shall notify the customer in writing of the

~~reasons for refusal of service~~~~denies electric service to a customer shall~~
~~inform the customer of the reason for the denial.~~ Upon the customer's
~~request, this disclosure shall be furnished in writing to the customer. This~~
~~disclosure may be combined with any disclosures required by applicable~~
~~federal or state law.~~

- (2) ~~A written~~This disclosure is not required when the REP notifies the
~~applicant or customer verbally~~ally that the ~~applicant's or customer's~~
~~premise~~customer is not located in a geographic area served by REP, does
not have the type of usage characteristics ~~that is~~ served by the REP, or is
not part of a customer class served by the REP.
- (3) Specifically, the REP shall inform the ~~applicant or~~ customer:
- (A) of the ~~specific~~ reasons for the refusal of service;
 - (B) that the ~~applicant or~~ customer may be eligible for service if the
~~applicant or~~ customer remedies the ~~reasons~~ reason(s) for refusal
and complies with the REP's terms and conditions of service;
 - (C) that the REP cannot refuse service based on the prohibited grounds
set forth in §25.471(c) of this title;
 - (D) that ~~an applicant or a~~ customer who is dissatisfied may ~~submit~~file a
complaint with the commission pursuant to §25.485 of this title
(relating to Customer Access and Complaint Handling); and
 - (E) of the ~~possible~~ availability ~~or~~and existence of ~~other~~
~~providers~~POLR service and the toll-free telephone number

designated by the commission to allow the applicant or customer to
contact the available REPs~~POLR~~.

§25.478. Credit Requirements and Deposits.

(a) **Credit requirements for ~~permanent~~-residential customers.** A retail electric provider (REP) may require a residential customer or applicant ~~customers~~ to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.

(2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(3) A residential customer or applicant seeking to establish service with ~~of an affiliated affiliate~~ REP or provider of last resort (POLR) can demonstrate satisfactory credit using ~~any~~ one of the criteria listed in subparagraphs (A) through ~~(E)(D)~~ of this paragraph. A REP other than an affiliated REP or POLR competitive retailer may establish other criteria by which a customer or applicant can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:

- (i) has been a customer of any REP or an the electric utility ~~(prior to 2002)~~ within the two years prior to the customer's request for electric service;
 - (ii) is not delinquent in payment of any such electric service account; and
 - (iii) during the last 12 consecutive months of service was not late in paying a bill more than once.
- (B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer ~~an accredited credit~~ reporting agency, as defined by the Federal Trade Commission.
- (C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer's account with an electric utility or any other REP does not currently have a delinquent balance for the same type of service for which the customer or applicant applied ~~the electric utility (prior to 2002) or any other REP has not had a delinquent balance credit if the customer is 65 years of age or older and the customer's incurred within the last 12 months for the same type of service applied for.~~
- (D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been

determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center or by treating medical personnel. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated affiliate-REP or POLR.

(E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:

(i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and

(ii) the customer or applicant or the customer's-spouse of the customer or applicant must have been certified by that person's physician (~~for the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and~~

~~occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 et seq)~~ as being unable to perform three or more activities of daily living as defined in 22 TAC ~~§224.4 §218.2~~, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 et seq.

- (F) Pursuant to the Public Utility Regulatory Act (PURA)~~PURA~~ §39.107(g), a REP ~~that who~~ requires pre-payment ~~for by a~~ metered residential electric service ~~residential customer as a condition of initiating service~~ may not charge ~~the customer~~ an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.
- (G) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission ~~the customer's previous REP or from an accredited~~

~~credit reporting agency.~~ The REP shall obtain the customer's or applicant's authorization ~~pursuant to §25.474 of this title (relating to Selection or Change of Retail Electric Provider),~~ prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected to a customer in order to be able to provide credit history information at the request of the former customer. ~~Additionally, a REP may utilize credit reporting agencies to document customers with poor credit/payment histories.~~

~~(4) If satisfactory credit cannot be demonstrated by the residential customer of an affiliate REP or POLR using these criteria, the customer may be required to pay a deposit pursuant to subsections (c) and (d) of this section.~~

- (b) **Credit requirements for non-residential customers.** A REP may establish nondiscriminatory criteria pursuant to §25.471 of this title to evaluate the credit requirements for a non-residential customer or applicant ~~customers~~ and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional a deposit. No such deposit shall be required if the customer or applicant is a governmental entity.

(c) **Initial deposits.**

(1) If satisfactory credit cannot be demonstrated by the residential customer or applicant seeking to establish service with an affiliated REP or POLR using the criteria set forth in subsection (a)(3) of this section, the customer or applicant may be required to pay a deposit or a letter of guarantee.

(2)(1) An affiliated affiliate-REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (j) of this section, instead of paying a cash deposit. The letter of guarantee may be conditioned on the agreement of the guarantor to become or remain a customer of the provider affiliate REP or POLR for the term during which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the affiliate REP or POLR, the provider affiliate REP or POLR may require the customer who was obligated to pay the initial deposit to pay such deposit as a condition of continuing the contract for service.

(3)(2) An affiliated affiliate-REP or POLR shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with

the request for deposit. ~~Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.~~

~~(3) A competitive retailer that collects deposits from customers shall do so pursuant to subsections (f) (i), (k), and (m) of this section.~~

(d) **Additional deposits by existing customers.**

(1) An affiliated affiliate REP or POLR may request an additional deposit from an existing customer if:

(A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and

(B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.

(2) A customer shall pay an additional deposit within ten days after the affiliated affiliate REP or POLR has ~~issued a disconnection notice and~~ requested the additional deposit.

~~(3) Instead of an additional deposit, a residential customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.~~

~~(3)(4)~~ An affiliated affiliate REP or the POLR may disconnect service if the additional deposit is not paid within ten days of the request, provided a

written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with ~~either~~ the written request for the additional deposit ~~or current bill~~. ~~However, the affiliate REP is not required to request an additional deposit as a condition of continuing service unless such a requirement is contained within the REP's terms of service document.~~

~~(e) Deposits for temporary or seasonal service and for weekend residences. A REP may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service or weekend residences, as long as the policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (k) of this section.~~

(e)(f) **Amount of deposit.**

- (1) The total of all deposits, initial and additional, required by a REP, ~~other than the POLR,~~ from any residential customer or applicant shall not exceed an amount equivalent to one-fifth of the customer's estimated annual billing. A REP may base the estimated annual billing on a reasonable estimate of average usage for the customer class. ~~the greater of either:~~
 - ~~(A) the sum of the estimated billings for the next two months; or~~
 - ~~(B) one sixth of the estimated annual billing.~~

(2) For the purpose of determining ~~calculating~~ the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant.

~~(3) The POLR shall not collect a total deposit that exceeds an amount equivalent to one-sixth of the estimated annual billing.~~

~~(3)~~(4) If a customer or applicant qualifies ~~is qualified~~ for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds \$50 in two equal installments ~~the actual estimated billing for the next month or one-twelfth of the estimated annual billing in two installments~~. Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting a deposit. The customer shall have the obligation of providing sufficient information to the REP to demonstrate that the customer is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.

~~(A) The first installment shall not exceed the greater of the estimated billing for the next month or one-twelfth of the estimated annual billing and shall be due no earlier than ten days after the issuance of written notification.~~

~~(B) The second installment for the remainder of the deposit shall be due no earlier than 40 days after the issuance of written notification. The REP or POLR shall issue a written notification regarding the remaining deposit amount due within 20 days, but no less than ten days, prior to the due date for the second deposit installment.~~

~~(f)~~**(g) Interest on deposits.** A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission ~~in on~~ December ~~4~~ of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made ~~from retroactive to~~ the date of deposit.

- (1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.
- (2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

~~(g)~~**(h) Notification to customers.** When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit, how a

customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(h)(+) **Records of deposits.**

- (1) A REP that collects a deposit shall keep records to show:
 - (A) the name and address of each depositor;
 - (B) the amount and date of the deposit; and
 - (C) each transaction concerning the deposit.
- (2) A The REP that collects a deposit shall, ~~upon the request of the customer,~~ issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP and shall provide means for a depositor to establish a claim if the receipt is lost.
- (3) A The REP shall maintain a record of each unclaimed deposit for at least four years.
- (4) A The REP shall make a reasonable effort to return unclaimed deposits.

(i)(+) **Guarantees of residential customer accounts.** A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following these minimum requirements:

- (1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (f) of this section.

The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.

- (2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (k) of this section.
- (3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.
- (4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a the amount of the cash deposit from the residential customer as a condition of continuing service.
- (5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.
 - (A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.

- (B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).
- (6) The REP may initiate termination of the guarantor's service (or disconnection of service for the POLR, or any REP having disconnect authority) ~~to the guarantor~~ for nonpayment of the guaranteed amount only if the termination of service (or, where applicable, the disconnection of service) was disclosed in the written guarantee agreement~~terms of service document~~, and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Contract) or §25.483 of this title (relating to Disconnection of Service).

(j)(*) **Refunding deposits and voiding letters of guarantee.**

- (1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments.
Retention period for deposits and letters of guarantee.
- ~~(A) A deposit held by a POLR shall be refunded when the customer has paid POLR bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment of a bill and without having more than two occasions in which a bill was delinquent.~~

~~(B) A REP, other than the POLR, may keep a deposit for the entire time a customer receives electric service from the REP.~~

~~(C) Upon termination of a customer's electric service, a REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, at the customer's direction. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be voided and returned to the guarantor. Alternatively, the REP may provide the guarantor with written documentation that the contract has been voided. If the customer does not meet these refund criteria, the deposit and interest or the letter of guarantee may be retained.~~

(2) Once the REP is no longer the REP of record for a customer, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be voided and returned to the guarantor. Alternatively, the REP may provide the guarantor with written documentation that the contract has been voided.

(3)(2) If a customer's or applicant's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all

letters of guarantee on the account or provide written documentation that the guarantee agreement contract has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

~~(4)(3)~~ A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.

~~(k)(4)~~ **Re-establishment of credit.** ~~A~~Every customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit. ~~Upon request, the REP shall reasonably demonstrate the amount of electric service received, but not paid for, and the reasonableness of any charges for the unpaid service, and any other charges required to be paid as a condition of electric service restoration to such premise.~~

~~(1)(m)~~ **Upon sale or transfer of company.** Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records, ~~provided that the deposits were not returned to the customers and the legal successor accepts transfer of such deposits.~~

§25.479. Issuance and Format of Bills.

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

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

(1) ~~Until January 1, 2004, a~~ REP shall issue a bill monthly to each customer, unless service is provided for a period of less than one month.

~~Beginning January 1, 2004, 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 ~~as promptly as practicable after reading meters or obtaining the meter usage and other billing determinants from the transmission and distribution utility, the municipally owned utility or the electric cooperative.~~

(3) A REP shall issue bills ~~Bills shall be issued~~ to residential customers in writing and delivered via the United States Postal Service (~~U.S. mail~~). 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 affiliate~~ 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~~ ~~in no event shall 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 ~~receiving a bill.~~

(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, that 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, exclusive of applicable taxes, and a separate calculation of the average unit price of the current charge for electric service for the current billing period, labeled, "The average price you paid for electric service this month." This calculation shall reflect all fixed and variable recurring charges, but not include any nonrecurring charges or credits, which is expressed as a cents per kilowatt-hour rounded to the nearest one-tenth of one cent. If the customer is on a level or average payment plan, the level or average payment should be clearly shown in addition to the usage-based rate;
- (I) The identification and itemization of ~~recurring~~ charges other than for electric service as disclosed in the customer's terms of service document;
- (J) The itemization and amount included in the amount due for any ~~other~~ 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;
- (K) The total current charges, balances from the preceding bill, payments made by the customer since the preceding bill, the total

amount due and a notice that the ~~checkbox for 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);

- (L) The current beginning and ending meter readings of non-interval demand recorder meters, if the bill is based on actual kilowatt-hour (kWh) usage, including kWh, actual kilowatts (kW) or kilovolt ampere (kVa), and billed kW or kVa; the kind and number of units measured, whether the bill was issued based on estimated usage, and 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;
- (M) Any amount owed under a written guarantee agreement, contract provided the guarantor was previously notified in writing by the REP of an obligation on a guarantee or as required by §25.478 of this title (relating to Credit Requirements and Deposits);
- (N) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;
- (O) Notification of any changes in the customer's prices, rates—or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document;
and

(P) The notice required by §25.481(d) of this title (relating to Unauthorized Charges), ~~and~~

~~(2)(9)~~ If the REP has presented its electric service charges in an unbundled fashion, it shall use the following terms as defined by the commission:

"transmission and distribution service," "generation service," "System Benefit Fund," and, where applicable, "transition charge," ~~and~~ "nuclear decommissioning fee," and "municipal franchise fee."

~~(3)(2)~~ If the REP bundles its electric service charges, the REP shall provide an itemization to the customer upon the customer's request.

~~(4)(3)~~ ~~A~~~~n~~~~o~~~~e~~~~v~~~~e~~~~n~~~~t~~~~m~~~~a~~~~y~~~~a~~ customer's electric bill shall not contain charges for electric service from a service provider other than the customer's designated REP.

(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, an insert in its billing statement, or by electronic communication, or by other acceptable mass communication methods, as approved by the commission ~~as required 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 transmission and distribution utility (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~~an~~ estimated usage reading 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)(f) **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~~year~~, at no charge.

(h)(g) **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)(k)(4)(C) of this title.

§25.480. Bill Payment and Adjustments.

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

(b) **Bill due date.** A REP shall state a payment due date on the bill which shall not be less than 16 days after issuance. A bill is considered to be issued on the ~~The~~ issuance date stated is the issuance date on the bill or, ~~if there is no issuance date on the bill,~~ the postmark date on the envelope, whichever is later. A payment for electric service is delinquent if not received by the REP or at the REP's authorized payment agency by the close of business on the due date. If the 16th~~sixteenth~~ day falls on a holiday or weekend, then the due date shall be the next business day after the 16th~~sixteenth~~ day.

(c) **Penalty on delinquent bills for electric service.**

(1) A REP may charge a one-time penalty not to exceed 5.0% ~~may be charged~~ on a delinquent bill for electric service. No such penalty shall apply to

residential or small commercial customers served by the provider of last resort (POLR), or to customers receiving a low-income discount pursuant to the Public Utility Regulatory Act (PURA) §39.903(h). The one-time penalty, not to exceed 5.0%, ~~penalty on delinquent bills~~ may not be applied to any balance to which the penalty has already been applied.

(2) A bill issued to a state agency, as defined in the Government Code, Chapter 2251, shall be due ~~and bear interest if overdue~~ as provided in Chapter 2251, no earlier than the 31st day after the agency receives an invoice.

(d) **Overbilling.** If charges are found to be higher than authorized in the REP's terms and conditions for service or other applicable commission rules, then the customer's bill shall be corrected.

(1) The correction shall be made for the entire period of the overbilling.

(2) If the REP corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.

(3) If the REP does not correct the overcharge within three billing cycles of the error, it shall pay interest on the amount of the overcharge at the rate set by the commission.

(A) Interest on overcharges that are not adjusted by the REP within three billing cycles of the bill in error shall accrue from the date of payment or from the issuance date of the erroneous bill.

(B) All interest shall be compounded monthly ~~at based on~~ the approved annual rate set by the commission.

(C) Interest shall not apply to leveling plans or estimated billings.

(4) If the REP rebills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.

(5) A bill issued to a state agency shall bear interest if overdue as provided in Texas Government Code Chapter 2251.

(e) **Underbilling by a REP or TDU**. If charges are found to be lower than authorized by the REP's terms and conditions of service, or if the REP fails to bill the customer for service, then the customer's bill may be corrected.

(1) Notwithstanding the TDU tariff for retail delivery service, neither the REP nor the customer shall be responsible for corrected charges billed by the TDU unless such charges are billed by the TDU within 90 days from the date of the issuance of the bill in which the underbilling occurred, or if no bill was issued, within 100 days of the end of the billing cycle. However, the TDU may bill for charges beyond this timeframe if the underbilling is the result of adjustments due to meter errors as provided in §25.125 of this title (relating to Adjustments Due to Meter Errors) or is the result of theft of service by the customer, as defined in §25.126 of this title (relating to Meter Tampering), §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities), and §25.311 of this title (relating to Competitive

~~Metering Services). The REP may backbill the customer for the amount that was underbilled. The backbilling shall not include charges that extend more than six months from the date the error was discovered unless the underbilling is a result of theft of service by the customer.~~

(2) The customer shall not be responsible for corrected charges billed by the REP unless such charges are billed by the REP within 180 days from the date of issuance of the bill in which the underbilling occurred, or if no bill was issued, within 190 days of the end of the billing cycle. The REP may backbill a customer for the amount that was underbilled beyond the timelines provided in this paragraph if the underbilling is found to be the result of theft of service by the customer.

(3)(2) The REP may terminate service, or the POLR ~~or a REP with disconnect authority pursuant to §25.483(b) of this title (relating to Disconnection of Service).~~ may disconnect service, if the customer fails to pay the additional charges within a reasonable time.

(4)(3) If the underbilling is \$50 or more, the REP shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(5)(4) The REP shall not charge interest on underbilled amounts unless such amounts are found to be the result of theft of service (meter tampering, bypass, or diversion) by the customer, ~~as defined in §25.126 of this title (relating to Meter Tampering).~~ Interest on underbilled amounts shall be

compounded monthly at the annual rate, as set by the commission.

Interest shall accrue from the day the customer is found to have first stolen the service.

(6) If the REP adjusts the bills for a prior billing cycle, the adjustments shall be identified by account and billing date or service period.

(f) **Disputed bills.** If there is a dispute between a customer and a REP provider about the REP's bill for any service billed on the retail electric bill, the REP shall promptly investigate and report the results to the customer. The REP provider shall inform the customer of the complaint procedures of the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling).

(g) **Alternate payment programs or payment assistance.**

(1) **Notice required.** When a customer contacts a REP and indicates inability to pay a bill or a need for assistance with the bill payment, the REP shall inform the customer of all applicable alternative payment options and payment assistance programs that are offered by or available from the REP, such as bill payment assistance, deferred payment plans, disconnection moratoriums for the ill, or low-income energy assistance programs, and of the eligibility requirements and procedure for applying for each.

(2) **Bill payment assistance programs.**

- (A) ~~All REPs~~~~Each REP~~ shall implement a bill payment assistance program for residential electric customers. At a minimum, such a program shall solicit voluntary donations from customers through the retail electric bills~~by a check-off box on the retail electric bill~~.
- (B) Each REP shall provide an annual report on June 1 of each year to the commission summarizing:
- (i) the total amount of customer donations;
 - (ii) the amount of money set aside for bill payment assistance;
 - (iii) the assistance agency or agencies selected to disburse funds to residential customers; and
 - (iv) the amount of money disbursed by the REP or provided to each assistance agency to disburse funds to residential customers.
- (C) A REP shall obtain a commitment from an An assistance agency selected ~~by a REP~~ to disburse bill payment assistance funds that the agency will shall not discriminate in the distribution of such funds to customers based on the customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, familial status, location of customer in an economically distressed geographic area, or qualification for the low-income discount program or energy efficiency services.

- (h) **Level and average payment plans.** A REP shall offer a level or average payment plan to its customers who are not currently delinquent in payment to the

REP. Consistent with the REP's terms of service, the REP may bill or credit any overbilling or underbilling, as appropriate, at least once every twelve months. A REP shall not limit participation to only credit worthy customers. A REP may collect under-recovered costs from a customer annually, or upon termination of service to the customer. A REP shall refund any over-recovered amounts to customers annually, or upon termination of service to the customer. A Additionally, a REP may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan. All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document.

- (i) **Payment arrangements.** A payment arrangement is any agreement between the REP and a customer that allows a customer to pay the outstanding bill after its due date, but before the due date of the next bill. If the REP issues ~~issued~~ a termination or disconnection notice ~~(or in the case of the POLR, a disconnection notice)~~ before at the payment arrangement was made, that termination or disconnection should be suspended until after the due date for the payment arrangement. If a customer does not fulfill the terms of the payment arrangement, service may be terminated ~~(or disconnected in the case of the POLR)~~ after the later of the due date for the payment arrangement or the termination or disconnection date indicated in the notice, without issuing an additional disconnection notice. A REP may switch terminated customers to the POLR by notifying the registration agent.

(j) **Deferred payment plans.** A deferred payment plan is an ~~agreement arrangement~~ between the REP and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the ~~current next~~ bill. A deferred payment plan may be established in person or by telephone, but all deferred payment plans shall be confirmed in writing by the REP.

(1) A REP may offer a deferred payment plan to any residential customer who has expressed an inability to pay his or her bill.

(2) A REP shall offer a deferred payment plan to a customer who has been underbilled, as described in subsection (e) of this section, or to customers who qualify for such plans pursuant to ~~§25.482(g) of this title (relating to Termination of Contract) or~~ §25.483(j) of this title ~~(relating to Disconnection of Service).~~

(3) For customers who have expressed an inability to pay, an affiliated An affiliate REP or POLR shall offer a deferred payment plan unless such plans unless the customer:

(A) has been issued more than two termination or disconnection notices during the preceding 12 months; or

(B) has received service from the affiliated affiliate REP or POLR for less than three months, and the customer lacks:

(i) sufficient credit; or

(ii) a satisfactory history of payment for electric service from a previous REP (or its predecessor electric utility).

- (4) Any deferred payment plans offered by a REP shall not refuse a customer participation in such a program on any basis set forth in §25.471(c) of this title (relating to General Provisions of Customer Protection Rules)~~be implemented in a non-discriminatory manner, according to the provisions of this subsection.~~
- (5) Every deferred payment plan offered by a REP shall provide that the delinquent amount be paid in equal installments over at least three billing cycles, unless the customer requests a lesser number of installments. A REP may require an initial payment not to exceed 10% of the delinquent amount of the outstanding balance to initiate the agreement, with the remainder to be paid in equal installments over at least the next three billing cycles.
- (6) A copy of the deferred payment plan shall be provided to the customer and:
- (A) shall include a statement, in a clear and conspicuous ~~no smaller than 14 point size~~, that states "If you are not satisfied with this agreement, or if the agreement was made by telephone and you feel this does not reflect your understanding of that agreement, contact (insert name of REP)~~your retail electric provider.~~" In addition, where the customer and the REP's representative or agent meet in person, the representative shall read the preceding statement to the customer. ~~The REP shall provide information to~~

~~the customer in English or Spanish as necessary to make the preceding required statement understandable to the customer;~~

(B) may include a ~~5.0%~~ penalty not to exceed 5.0% for late payment but shall not include a finance charge;

(C) shall state the length of time covered by the plan;

(D) shall state the total amount to be paid under the plan;

(E) shall state the specific amount of each installment;

(F) shall allow for the termination or disconnection of service (as appropriate) if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms for disconnection or termination of service; and

~~(G) shall not refuse a customer participation in such a program on any basis set forth in §25.471(e) of this title (relating to General Provisions of Customer Protection Rules); and~~

~~(G)~~(H) shall allow either the customer or the REP to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.

(7) A REP may pursue termination or disconnection of service if of service ~~(or disconnection of service in the case of the POLR or a REP with disconnect authority pursuant to §25.483(b) of this title (relating to Disconnection of Service))~~ when a customer does not meet the terms of a deferred payment plan. However, service shall not be terminated or

disconnected until appropriate notice has been issued, pursuant to §25.483 of this title or §25.482 of this title (relating to Termination of Service), notifying as applicable, to the customer indicating that the customer has not met the terms of the plan. ~~The REP may renegotiate the deferred payment plan agreement prior to disconnection. If the customer does not fulfill the terms of the plan, and the customer was previously provided a disconnection notice or termination notice for the outstanding amount, no additional disconnection or termination notice shall be required.~~

- (k) **Allocation of partial payments.** A REP shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the current amount due for electric service. When there is no longer a balance for electric service, payment may be applied to ~~other~~ non-electric services billed by the REP. Electric service shall not ~~A contract for electric service cannot~~ be terminated or disconnected for non-payment of non-electric services.

§25.481. Unauthorized Charges.

(a) Authorization of charges. ~~Any After a customer has enrolled or switched to a retail electric provider (REP), pursuant to §25.474 of this title (relating to Selection or Change of Retail Electric Provider), any subsequent~~ services offered by the REP that will be billed on the customer's electric bill shall be authorized by the customer consistent with this section. ~~A REP may obtain authorization for an additional product or service to appear on the bill for existing customers by using any of the methods set forth in §25.474 of this title.~~

(b) **Requirements for billing charges.** A REP shall meet all of the following requirements before including any charges on the customer's electric bill:

(1) ~~Inform the customer.~~ The REP ~~shall inform~~ has thoroughly informed the customer of the product or service being offered, including all associated charges, and ~~explicitly inform~~ has explicitly informed the customer that the associated charges for the product or service will appear on the customer's electric bill.

(2) ~~Obtain customer consent.~~ The customer ~~must~~ has clearly and explicitly ~~consent~~ consented to obtaining the product or service offered and to ~~having~~ have the associated charges appear on the customer's electric bill. The ~~REP shall record the authorization~~ consent shall be authorized and verified by the REP in accordance with §25.474(f) of this title (relating to Selection of Retail Electric Provider). A record of the authorization

~~consent, including verification,~~ shall be maintained by the REP for at least 24 months, ~~beginning immediately after the consent and verification are obtained.~~

- (3) ~~Provide contact information.~~—The REP ~~shall provide~~ has provided the customer with a toll-free telephone number the customer may call and an address to which the customer may write to resolve any billing dispute and to answer questions.

(c) **Responsibilities for unauthorized charges.**

- (1) If a REP charges a customer's electric bill ~~is charged~~ for any product or service without proper customer authorization, the REP consent and verification of authorization in compliance with this section, ~~the REP that billed the customer, when it learns or is notified that any charge that has not been authorized,~~ shall promptly, but not later than 45 days thereafter:

(A) discontinue providing the product or service to the customer and cease charging the customer for the unauthorized product or service;

(B) remove the unauthorized charge from the customer's bill;

(C) refund or credit to the customer the all money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three billing cycles, pay interest at an annual rate established by the commission pursuant to §25.478~~(f)(g)~~ of this

title (relating to Credit Requirements and Deposits) on the amount of any unauthorized charge until it is refunded or credited; and

(D) ~~upon~~ ~~on~~ the customer's request, provide the customer, free of charge, with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal of the charge from the customer's electric bill.

(2) A REP shall not:

(A) seek to terminate or disconnect electric service to any customer for nonpayment of an unauthorized charge;

(B) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer remains shall remain obligated to pay any charges that are not in dispute, ~~and this paragraph does not apply to those undisputed charges~~; or

(C) re-bill the customer for any unauthorized charge.

(3) A REP, ~~other than a municipally owned utility or an electric cooperative~~, shall maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's electric bill and has notified the REP of the unauthorized charge. The record shall contain for each unauthorized charge:

(A) the date the each customer requested that the REP remove the unauthorized charge from the customer's electric bill;

- (B) the date the unauthorized charge was removed from the customer's electric bill; and
 - (C) the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.
- (d) **Notice to customers.** Any bill sent to a customer from a REP shall include a statement, prominently located on the bill, that if the customer believes the bill includes unauthorized charges, the customer should ~~may~~ contact the REP to dispute such charges and, if not satisfied with the REP's review may file a complaint with the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.
- (e) **Compliance and enforcement.**
- (1) ~~Records of customer authorizations.~~—A REP shall provide proof of the customer's authorization and verification to the customer and/or the commission upon request.
 - (2) ~~Records of unauthorized charges.~~—A REP shall provide a copy of records maintained under the requirements of subsection (c)(3) of this section to the commission and the Office of Public Utility Counsel upon request.

§25.482. Termination of Service Contract.

(a) **Applicability.** This section applies to retail electric providers (REPs) that do not have disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service). In addition, this section shall apply to a transmission and distribution utility (TDU) where specifically stated. This section applies only with respect to customers who are subject to termination, but not disconnection, by their REPretail electric provider (REP) pursuant to §25.483 of this title (relating to Disconnection of Service).

(b) **Termination policy.** A REP choosing to terminate its contract with a customer shall comply with the minimum standards in this section, or may have provisions in its terms of service that are more favorable to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require a REP to terminate its contract with a customer.

(1) **Termination for non-payment.** A REP ~~other than a REP~~ that is not authorized to disconnect for nonpayment pursuant to the provisions of §25.483(b) of this title may terminate its contract with a customer for nonpayment of electric service charges and transfer the customer to the affiliated REP. Any REP that is authorized to disconnect a customer for non-payment under the provisions of §25.483(b) of this title may not terminate a customer for nonpayment, if no other REP extends service to

~~that customer, service shall be offered by the POLR until September 24, 2002, and thereafter by the affiliated REP.~~

(A) Prior to terminating service to a customer for non-payment, a REP shall issue notice of termination to the customer in accordance with subsection (f) of this section.

(B) If a customer makes payment or satisfactory payment arrangements prior to the final due date, specified in the termination notice to the customer, the~~termination date date, a~~
REP shall continue serving the customer under the existing terms and conditions that were in effect prior to the issuance of a termination notice. Payment of the delinquent bill at the REP's authorized payment agency, if any, is considered payment to the REP.~~If a REP chooses to terminate its contract with a customer, it shall follow the procedures in this section, or modify them in ways that are more generous to the customer in terms of the cause for termination, the timing of the termination notice, and the period between notice and termination. Nothing in this section shall be interpreted to require a REP to terminate its contract with a customer.~~

(C) If a customer does not make a payment or satisfactory payment arrangements until after the final due date specified in the termination notice, the REP is not required to continue to serve the customer under the prior terms of service.

(2) Termination for reasons other than non-payment. If a REP terminates service with a customer for reasons other than nonpayment (i.e., contract expiration), the REP shall transfer the customer to the provider of last resort (POLR), unless otherwise authorized by the commission.

(c) **Termination prohibited.** A REP may not terminate its contract with a customer for any of the following reasons:

- (1) delinquency in payment for electric service by a previous occupant of the premises if the occupant is not of the same household;
- (2) failure to pay for any charge that is not related to electric service;
- (3) failure to pay for a different type or class of electric ~~utility~~ service unless charges for such service were included on that account's bill at the time service was initiated;
- (4) failure to pay charges arising from an underbilling, except for charges related to theft of service, in accordance with §25.480(e) of this title (relating to Bill Payment and Adjustments)~~more than six months prior to the current billing;~~
- (5) failure to pay disputed charges until a determination as to the accuracy of the charges has been made by the REP~~or the commission, and the customer has been notified of this determination;~~
- (6) failure to pay disputed charges while an informal complaint filed under §25.485 of this title (relating to Customer Access and Complaint

Handling) is pending or a complaint that has been formally docketed in accordance with §22.242 of this title (relating to Complaints) is pending;

(7)(6) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or

(8)(7) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the bill is based on an estimated meter read by the TDU~~the transmission and distribution utility is unable to read the meter due to circumstances beyond its control.~~

~~(d) **Termination on holidays or weekends.** Unless requested by the customer, a REP shall not terminate a contract for electric service on holidays or weekends.~~

(d)(e) **Termination due to abandonment by the REP.** A REP shall not abandon a customer or a service area without advance written notice to its customers and the commission and approval from the commission. In the event a REP provider terminates a customer's service contract due to abandonment, that REP provider shall not collect or attempt to collect penalties from that customer.

(e)(f) **Termination of energy assistance clients.**

(1) A REP shall not terminate a contract for service to a delinquent residential customer for a billing period in which the provider receives a pledge, letter

of intent, purchase order, or other notification that an energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the termination notice, and the customer, by the due date in the termination notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

(2) If an energy assistance provider has requested historical usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer and Premise Information), the REP shall extend the final due date on the termination notice, day for day, from the date the usage data was requested until it is provided.

(3) A REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the termination request.

(4) A REP may terminate service to a customer if the energy assistance agency's payment is not received by the date agreed upon by the REP and the energy assistance provider or if the customer fails to pay any portion of the bill not covered by the pledge.

~~(g) **Extreme weather.** A REP shall not seek to terminate a residential customer's contract for electric service due to non-payment during an extreme weather emergency. A REP shall offer residential customers a deferred payment plan that~~

~~complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term "extreme weather emergency" means the weather conditions described in §25.483 of this title (relating to Disconnection of Service).~~

~~(f)(h)~~ **Termination notices.** ~~Except as provided in §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers) a REP may issue a notice of termination of contract. Any termination notice issued by a REP shall:~~

- ~~(1) not be issued before the first day after the bill is due, to enable the REP to determine whether the payment was received by the due date. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP.~~
- ~~(2) be a separate mailing or hand delivered document with a stated date of termination with the words "termination notice" or similar language prominently displayed. The termination notice may be sent concurrently with a request for deposit, and a REP may send an additional notice by email or facsimile.~~
- ~~(3) have a final due date in the termination notice date that is not a holiday, or weekend day, or any other day that the REP's personnel is not available to take payments, and that is not less than ten days after the notice is issued.~~

(g)⊕ **Contents of termination notice.** Any termination notice shall include the following information:

- (1) The reasons for the termination of ~~service~~the contract;
- (2) The actions, if any, that the customer may take to avoid the termination of ~~service~~the contract;
- (3) If the customer is in default, the amount of all fees or charges which will be assessed, if any, against the customer as a result of the default under the contract, ~~if any~~, as set forth in the REP's terms of service document provided to the customer;
- (4) The amount overdue, if applicable;
- (5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of termination or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm."
- (6) A statement that informs the customer of the right to obtain services from another licensed REP, including the affiliated REP or a POLR, and that information about other REPs, the affiliated REP, or the POLR can be

obtained from the commission and the POLR. Customers that do not exercise their right to choose another REP shall have their electric service transferred to the POLR or the affiliated REP, if termination is for non-payment, in accordance with the applicable rules or protocols, and may be required to pay a deposit, or prepay, to receive ongoing electric service. The REP shall not state or imply that nonpayment by the customer will result in physical disconnection of electricity or affect the customer's ability to obtain electric service from another REP, the affiliated REP, or the POLR.

- (7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation and with the consent of both REPs.
- (8) The availability of deferred payment or other billing arrangements, if any, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs.
- (9) A description of the activities that the REP will use to collect payment, including the use of debt collection agencies, small claims court and other legal remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

~~(h)(f)~~ **Notification of the registration agent.** After the expiration of the notice period in subsection ~~(f)(h)~~ of this section, a REP shall notify the registration agent of a ~~transfer switch~~ request in a manner established by the registration agent so that the customer will receive service from the affiliated REP ~~or the POLR pursuant to §25.43(b)(2) and (3) of this title (relating to the Provider of Last Resort (POLR) or the POLR pursuant to §25.43(b)(1) and (4) and (d) of this title, unless the customer selects another REP or the POLR prior to the effective date of the switch.~~

~~(i)(k)~~ **Customer's right to terminate servicea contract without penalty.** ~~As disclosed in the customer's terms of service document,~~ a customer may terminate servicea contract without penalty in the event:

- (1) The customer moves to another premises;
- (2) Market conditions change and the terms of service documentecontract allows the REP to terminate servicethe contract without penalty in response to changing market conditions; or
- (3) A REP notifies the customer of a material change in the terms and conditions of the their service agreement.

§25.483. Disconnection of Service.

(a) **Disconnection and reconnection policy.** Only a transmission and distribution utility (TDU), municipally owned utility, or electric cooperative shall perform physical disconnections and reconnections. Unless otherwise stated, it is the responsibility of a retail electric provider (REP) to request such action from the appropriate TDU~~transmission and distribution utility~~, municipally owned utility, or electric cooperative in accordance with that entity's relevant tariffs, in accordance with the protocols established by the registration agent, requirements of the Electric Reliability Council of Texas, and in compliance with the requirements of this section. If a REP chooses to have a customer's electric service disconnected, it shall comply with the requirements ~~follow the procedures~~ in this section ~~or procedures that are more generous to the customer in terms of the cause for disconnection, the timing of the disconnection notice, and the period between notice and disconnection.~~ Nothing in this section requires a REP to request that a customer's service be disconnected~~shall be interpreted to require a REP to disconnect a customer.~~

(b) **Disconnection authority.**

(1) Any ~~The provider of last resort (POLR) and, beginning September 24, 2002, any~~ REP may authorize the disconnection of a large non-residential customer, as that term is defined in §25.43 of this title (relating to Provider of Last Resort (POLR)), unless the ~~that~~ customer is receiving service

under a contract entered into prior to September 24, 2002, the original term of which has not expired ~~at the time transfer to POLR is requested,~~ and ~~if~~ the contract makes no provision for waiver of the customer's right to be transferred to the POLR for non-payment.

- (2) Until ~~June 1, 2004~~~~October 1, 2004~~, and except as provided in subsection (d) of this section, only the affiliated REP or the POLR may authorize disconnection of residential and small non-residential customers, as those terms are defined in §25.43 of this title. No later than ~~April 1, 2004~~~~June 1, 2004~~, commission staff shall file a report with the commission assessing the potential impact on the public interest of authorizing all REPs to disconnect residential and small non-residential customers. On or before ~~June 1, 2004~~~~October 1, 2004~~, the commission shall make a determination as to whether authorizing all REPs to disconnect would be contrary to the public interest, taking into consideration such factors as the impact on the retail market as a whole and the likelihood of unauthorized disconnections. If the commission determines that authorizing all REPs to disconnect is not contrary to the public interest, REPs shall have such authority as of ~~June 1, 2004~~~~October 1, 2004~~, or another date determined by the commission, and after that date residential and small non-residential customers shall not be transferred to their affiliated REP for non-payment.

(c) **Disconnection with notice.** A REP having disconnection authority under the provisions of subsection (b) of this section, including the POLR, may authorize the disconnection of a customer's electric service after proper notice and not before the first day after the disconnection date in the notice for any of the following reasons:

- (1) failure to pay any outstanding bona fide debt for electric service a bill owed to the REP or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP;
- (2) failure to comply with the terms of a deferred payment agreement made with the REP;
- (3) violation of the REP's' terms and conditions on using service in a manner that interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;
- (4) failure to pay a deposit as required by §25.478 of this title (relating to Credit Requirements and Deposits); or
- (5) failure of the guarantor to pay the amount guaranteed, when the REP has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.

(d) **Disconnection without prior notice.** ~~Any Notwithstanding any contrary provision of subsection (b) of this section, any~~ REP or TDU may, at any time, authorize disconnection of a customer's electric service without prior notice for any of the following reasons:

- (1) Where a known dangerous condition exists for as long as the condition exists. Where reasonable, given the nature of the hazardous condition, the REP, or its agent, shall post a notice of disconnection and the reason for the disconnection at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;
- (2) Where service is connected without authority by a person who has not made application for service;
- (3) Where service is reconnected without authority after disconnection for nonpayment;
- (4) Where there has been tampering with the equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative;
or
- (5) Where there is evidence of theft of service.

(e) **Disconnection prohibited.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of a customer's electric service for any of the following reasons:

- (1) Delinquency in payment for electric service by a previous occupant of the premises;
- (2) Failure to pay for any charge that is not for electric service regulated by the commission, including competitive energy service, merchandise, or optional services;
- (3) Failure to pay for a different type or class of electric service unless charges for such service were included on that account's bill at the time service was initiated;
- (4) Failure to pay charges resulting from an underbilling, except theft of service, more than six months prior to the current billing;
- (5) Failure to pay disputed charges, except for the amount under dispute, until a determination as to the accuracy of the charges has been made by the REP or the commission, and the customer has been notified of this determination;
- (6) Failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §25.126 of this title (relating to Meter Tampering); or
- (7) Failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the bill is based on an estimated meter read by the TDUREP ~~is unable to obtain the meter reading due to circumstances beyond its control.~~

(f) **Disconnection on holidays or weekends**

~~(1) Unless a dangerous condition exists or the customer requests disconnection, a REP having disconnection authority under the provisions of subsection (b) of this section shall not request disconnection of a customer's electric service for nonpayment on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the REP's personnel are available on those days to take payments, make payment arrangements with the customer, and request reconnection of service ~~and personnel of the transmission and distribution utility, municipally owned utility, or electric cooperative are available to reconnect service.~~~~

~~(2) Unless a dangerous condition exists or the customer requests disconnection, a TDU shall not disconnect a customer's electric service on a holiday or weekend, or the day immediately preceding a holiday or weekend, unless the personnel of the TDU are available to reconnect service on all of those days.~~

(g) **Disconnection due to abandonment by the POLR.** A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission, in accordance with §25.43 of this title ~~(relating to Provider of Last Resort (POLR)).~~

(h) **Disconnection of ill and disabled.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection

for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill.

(1) Each time a customer seeks to avoid disconnection of service under this subsection, the customer shall accomplish all of the following by the stated date of disconnection:

(A) Have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the REP by the stated date of disconnection;

(B) Have the person's attending physician submit a written statement to the REP; and

(C) Enter into a deferred payment plan.

(2) The prohibition against service disconnection provided by this subsection shall last 63 days from the issuance of the bill for electric service or a shorter period agreed upon by the REP and the customer or physician.

(3) If, in the normal performance of its duties, a TDU obtains information that a customer scheduled for disconnection may qualify for delay of disconnection pursuant to this subsection, and the TDU reasonably believes that the information may be unknown to the REP, the TDU shall

delay the disconnection and promptly communicate the information to the REP. The TDU shall disconnect such customer if it subsequently receives a confirmation of the disconnect notice from the REP. Nothing herein should be interpreted as requiring a TDU to assess or to inquire as to the customer's status before performing a disconnection, or to provide prior notice of the disconnection, when not otherwise required.

(i) **Disconnection of energy assistance clients.**

(1) A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider.

(2) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer and Premise Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided.

(3) A REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the transmission and distribution utility.

(4) A REP may request disconnection of service to a customer if payment from the energy assistance provider's pledge is not received within the timeframe agreed to by the REP and the energy assistance provider, or if the customer fails to pay any portion of the outstanding balance not covered by the pledge.

(j) **Disconnection during extreme weather.** A REP having disconnection authority under the provisions of subsection (b) of this section shall not authorize a disconnect for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan that complies with the requirements of §25.480 of this title (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency.

(1) The term "extreme weather emergency" shall mean a day when:

(A)(+) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(B)(2) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

(2) A TDU shall notify the commission of an extreme weather emergency in a method prescribed by the commission, on each day that the TDU has determined that an extreme weather emergency has been issued for a county in its service area. The initial notice shall include the county in which the extreme weather emergency occurred and the name and telephone number of the utility contact person.

(k) **Disconnection of master-metered apartments.** When a bill for electric service is delinquent for a master-metered apartment complex:

(1) The REP having disconnection authority under the provisions of subsection (b) of this section shall send a notice to the customer as required by subsection (l) of this section. At the time such notice is issued, the REP, or its agents, shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not made before that time.

(2) At least six days after providing notice to the customer and at least four days before disconnecting, the REP shall post a minimum of five notices in English and Spanish in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be in large type and shall read: "Notice to residents of (name and address of

apartment complex): Electric service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

- (l) **Disconnection notices.** A disconnection notice for nonpayment shall:
 - (1) not be issued before the first day after the bill is due, ~~to enable the REP to determine whether the payment was received by the due date. Payment of the delinquent bill at the REP's authorized payment agency is considered payment to the REP;~~
 - (2) be a separate mailing or hand delivered notice with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed. The REP may send the disconnection notice concurrently with the request for a deposit;
 - (3) have a disconnection date that is not a holiday, ~~or~~ weekend day, or day that the REP's personnel are not available to take payments, and is not less than ten days after the notice is issued;
 - (4) include a statement notifying the customer that if the customer needs assistance paying the bill by the due date, or is ill and unable to pay the bill, the customer may be able to make some alternate payment arrangement, establish a deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.

(m) **Contents of disconnection notice.** Any disconnection notice shall include the following information:

- (1) The reason for disconnection;
- (2) The actions, if any, that the customer may take to avoid disconnection of service;
- (3) The amount of all fees or charges which will be assessed against the customer as a result of the default;
- (4) The amount overdue;
- (5) A toll-free telephone number that the customer can use to contact the REP to discuss the notice of disconnection or to file a complaint with the REP, and the following statement: "If you are not satisfied with our response to your inquiry or complaint, you may file a complaint by calling or writing the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326; Telephone: (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Complaints may also be filed electronically at www.puc.state.tx.us/ocp/complaints/complain.cfm;"
- (6) A statement that informs the customer of the right to obtain services from another licensed REP, and that information about other REPs can be obtained from the commission;
- (7) If a deposit is being held by the REP on behalf of the customer, a statement that the deposit will be applied against the final bill (if

applicable) and the remaining deposit will be either returned to the customer or transferred to the new REP, at the customer's designation and with the consent of both REPs;

(8) The availability of deferred payment or other billing arrangements, if any, from the REP, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs; and

(9) A description of the activities that the REP will use to collect payment, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other ~~legal~~ remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP.

(n) **Reconnection of service.** Upon a customer's satisfactory correction of reasons for disconnection, the REP shall request the TDU~~shall notify the transmission and distribution utility~~, municipally owned utility, or electric cooperative to reconnect the customer's electric service as quickly as possible, in accordance with standards established by the registration agent. The REP shall inform the customer of the approximate reconnection time in accordance with this subsection. If a REP submits a reconnection order with no priority or same day reconnect request and the TDU completes the reconnect the same day, the TDU shall not assess a priority reconnect fee. A TDU may assess a priority reconnect fee only when the customer expressly requests it. A customer's service shall be

reconnected no later than the timelines set forth in paragraphs (1)-(3) of this subsection; ~~within one day, to reconnect the customer's electric service and shall reinstate the service.~~

(1) Satisfactory payments made by a customer between 8:00 a.m. and 7:00 p.m. on a federal business day shall result in reconnection of that customer's electric service no later than the end of the TDU's next field operational day.

(2) Satisfactory payments made by a customer after 7:00 p.m., but before 8:00 a.m. on a federal business day shall result in reconnection of that customer's electric service no later than the end of the TDU's next field operational day.

(3) Satisfactory payments made by a customer on a day other than a federal business day shall be considered received on the next federal business day and shall result in reconnection of that customer's electric service no later than the end of the TDU's next field operational day.

§25.485. Customer Access and Complaint Handling.

(a) The purpose of this section is to ensure that retail electric customers have the opportunity for impartial and prompt resolution of disputes with REPs or aggregators.

~~(b)(a)~~ **Customer access.**

- (1) Each retail electric provider (REP) or aggregator shall ensure that customers have reasonable access to its service representatives to make inquiries and complaints, discuss charges on ~~customer's~~customers bills, terminate competitive service, and transact any other pertinent business.
- (2) Telephone access shall be toll-free and shall afford customers a prompt answer during normal business hours.
- (3) Each REP shall provide a 24-hour automated telephone message instructing the caller how to report any service interruptions or electrical emergencies.
- (4) Each REP and aggregator shall employ 24-hour capability for accepting a customer's rescission of the terms of service~~customer contract cancellation~~ by telephone, pursuant to rights of cancellation in §25.474~~(j)(h)~~ of this title (relating to Selection ~~or Change~~ of Retail Electric Provider).

~~(c)(b)~~ **Complaint handling.** A No REP or aggregator shall limit a residential or small commercial customer has the~~customer's~~ right to make a formal or informal

complaint to the commission, ~~and a terms of service agreement cannot impair this right. A REP or aggregator shall not require a residential or small commercial customer to make a formal or informal complaint to the commission.~~ A REP or aggregator shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

~~(d)~~**(e)** **Complaints to REPs or aggregators.** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone ~~to a~~ with the REP or aggregator. The REP or aggregator shall promptly investigate and advise the complainant of the results within 21 days. A customer who is dissatisfied with the REP's or aggregator's review shall be informed of the right to file a complaint with the REP's or aggregator's supervisory review process, if available, and, if not available, with the commission and the Office of Attorney General, Consumer Protection Division. Any supervisory review conducted by the REP or aggregator shall result in a decision communicated to the complainant within ten business days of the request. If the REP or aggregator does not respond to the customer's complaint in writing, the REP or aggregator shall orally inform the customer of the ability to obtain the REP's or aggregator's response in writing upon request.

~~(e)~~**(d)** **Complaints to the commission.**

(1) **Informal complaints.**

(A) If a complainant is dissatisfied with the results of a REP's or aggregator's complaint investigation or supervisory review, the REP or aggregator shall advise the complainant of the commission's informal complaint resolution process and the following contact information for the commission: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, Internet website address: www.puc.state.tx.us, TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(B) Complainants should include sufficient information in a complaint to identify the complainant and the company for which the complaint is made and describe the issue specifically. The following information should be included in the complaint ~~Customers are encouraged to include the following in their complaint:~~

- (i) The account holder's ~~customer's~~ name, billing and service addresses ~~address~~, and telephone number;
- (ii) The name of the REP or aggregator;
- (iii) The customer account number or electric service identifier (ESI);

(iv) An explanation of the facts relevant to the complaint; complaints; and

(v) The complainant's requested resolution; and

(vi)(v) Any ~~other~~ documentation that supports the complaint, including copies of bills or contract documents.

(C) All REPs and aggregators shall provide the commission an email address to receive notification of customer complaints from the commission.

(D)(C) The REP or aggregator shall investigate all informal complaints and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the REP or aggregator.

(E)(D) The commission shall review the complaint information and the REP or aggregator's response and notify the complainant of the results of the commission's investigation.

(2)(E) While an informal complaint process is pending:

(A)(i) The REP or aggregator shall not initiate collection activities, including termination or disconnection of service (as appropriate) or report the customer's delinquency to a credit reporting agency with respect to the disputed portion of the bill.

(B)(ii) A customer shall be obligated to pay any undisputed portion of the bill and the REP may pursue termination or disconnection of

service (as appropriate) for nonpayment of the undisputed portion after appropriate notice.

(3)(F) The REP or aggregator shall keep a record for two years after closure determination by the commission of all informal complaints forwarded to it by the commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint. Protests regarding commission-approved rates or rates and charges that are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.

(4)(2) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. This process may include the formal docketing of the complaint as provided in §22.242 of this title (related to Complaints).

§25.491. Record Retention and Reporting Requirements.

(a) **Application.** This section does not apply to a municipally owned utility where it offers retail electric power or energy outside its certificated service territory or to a REP that is an electric cooperative~~This section does not apply to a REP that is a municipally owned utility or electric cooperative.~~

(b) **Record retention.**

(1) Each REP and aggregator shall establish and maintain records and data that are sufficient to:

(A) Verify its compliance with the requirements of any applicable commission rules; and

(B) Support any investigation of customer complaints.

(2) All records required by this subchapter shall be retained for no less than two years, unless otherwise specified.

(3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter shall be provided to the commission within 15 calendar days of its request.

(c) **Annual reports.** On June 1 of each year, a REP shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers) to the commission and the Office of Public Utility Counsel (OPUC)

and the following additional information on a form approved by the commission for the 12-month period ending December 31 of the prior year:

(1) The number of residential customers served, by nine-digit zip code and census tract, by month, ~~to the extent that such zip code and census tract information is available;~~

(2) The number of written denial of service notices issued by the REP, by month, by customer class, by nine-digit zip code and census tract;

(3) The number and total aggregated dollar amount of deposits held by the REP, by month, by customer class, by nine-digit zip code and census tract; ~~and~~

~~(4)~~ Information relating to the REP's bill payment assistance program for residential electric customers required by §25.480(g)(2)(B) of this title (relating to Bill Payment and Adjustments);

~~(5)~~(4) The number of complaints received by the REP from residential customers for the following categories by month, by nine-digit zip code and census tract:

(A) ~~RefusalDenial~~ of electric service, which shall include all complaints pertaining to the implementation of §25.477 of this title (relating to Refusal of Electric Service);

(B) ~~Marketing and quality~~Quality of customer service, which shall include complaints relating to the interfaces between the customer and the REP, such as, but not limited to, call center hold time, responsiveness of customer service representatives, and

implementation of §25.472 of this title (relating to Privacy of Customer Information), §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers), §25.473 of this title (relating to Non-English Language Requirements), §25.476 of this title (relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact), and §25.484 of this title (relating to Texas Electric No-Call List), and which shall not include issues for which the REP is not responsible, such as, but not limited to, power quality, outages, or technical failures of the registration agent;

- (C) Unauthorized charges, which shall encompass all complaints pertaining to §25.481 of this title (relating to Unauthorized Charges) billing (cramping);
- (D) Enrollment, which shall encompass all complaints pertaining to the implementation of §25.474 of this title (relating to the Selection of Retail Electric Provider), §25.478 of this title (relating to Credit Requirements and Deposits), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider) Unauthorized change of a REP (slamming);
- (E) Accuracy of billing services, which shall encompass all complaints pertaining to the implementation of §25.479 of this title (relating to Issuance and Format of Bills); and

(F) Collection and ~~servicecontract~~ termination, and disconnection, which shall encompass all complaints pertaining to the implementation of §25.480 of this title (relating to Bill Payment and Adjustments), §25.482 of this title (relating to Termination of Service), and §25.483 of this title (relating to Disconnection of Service).

(6) In reporting the number of informal complaints received pursuant to paragraph (4) of this subsection, a REP may identify the number of complaints in which it has disputed categorization or assignment pursuant to the provisions set forth in §25.485 of this title (relating to Customer Access and Complaint Handling).

(d) **Additional information.** Upon written request by the commission or ~~OPUC~~the Office of Public Utility Counsel (OPC), a REP or aggregator shall provide within 15 days any information, including but not limited to marketing information, necessary for the commission or ~~OPUC~~OPC to investigate an alleged discriminatory practice prohibited by §25.471(c) of this title (relating to General Provisions of the Customer Protection Rules).

§25.493. Acquisition and Transfer of Customers from one Retail Electric Provider to Another.

(a) Notice requirement. Any retail electric provider (REP) that will acquire customers from another REP due to acquisition, merger, bankruptcy, or any other reason, shall provide notice to every affected customer. The notice may be in a billing insert or separate mailing, at least 30 days prior to the transfer, if practicable. If legal or regulatory constraints prevent the sending of advance notice, the notice shall be sent promptly after all legal and regulatory impediments have been removed. Transferring customers from one REP to another does not require advance commission approval.

(b) Contents of notice for adverse changes in terms of service. If the transfer of a customer will materially change the terms of service for the affected customer in an adverse manner, the notice shall:

- (1) identify the current and acquiring REP;**
- (2) explain the reasons for the transfer of the customer's account to the new REP;**
- (3) explain that the customer may select another REP without penalty due to the adverse change in the terms of service, and if the customer desires to do so, that they should contact another REP;**
- (4) identify the date that customers will be or were transferred to the acquiring REP;**

- (5) provide the new terms of service, including the Electricity Facts Label of the acquiring REP; and
- (6) provide a toll-free number for a customer to call for additional information.
- (c) Contents of notice for transfers with no adverse change in terms of service.**
If a transfer of a customer will not result in a material adverse change to the terms of service for the affected customer, the notice is not required to contain the information required by subsection (b)(3) of this section.
- (d) Process to transfer customers.** The registration agent shall develop procedures to facilitate the expeditious transfer of large numbers of customers from one REP to another.

§25.495. Unauthorized Change of Retail Electric Provider.

(a) Process for resolving unauthorized change of retail electric provider (REP).

If a REP is serving a customer without proper authorization pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), the REP, registration agent, and transmission and distribution utility (TDU) shall follow the procedures set forth in this subsection.

(1) The REP shall notify the registration agent of the unauthorized change of REP as promptly as possible.

(2) As promptly as possible following notice by the REP, the registration agent shall facilitate the prompt return of the customer to the original REP, or REP of choice in the case of a move-in.

(3) The affected REPs, the registration agent, and the transmission and distribution utility shall take all actions necessary to return the customer to the customer's original REP, or REP of choice in the case of a move-in, as quickly as possible.

(4) The affected REPs, the registration agent, and the TDU shall take all actions necessary to bill correctly all charges, so that the end result is that:

(A) the REP that served the customer without proper authorization shall pay all transmission and distribution charges associated with returning the customer to its original REP, or REP of choice in the case of a move-in;

(B) unless otherwise agreed to by all affected REPs:

- (i) the original REP has the right to bill the customer pursuant to §25.480(b) of this title (relating to Bill Payment and Adjustment) at the price disclosed in its terms of service for the time period of the unauthorized switch or move-in; and
- (ii) the REP that served the customer without proper authorization shall refund all charges paid by the customer for this time period within five business days after the customer is returned to the original REP, or REP of choice in the case of a move-in;
- (C) the customer shall pay no more than the price at which the customer would have been billed had the unauthorized switch or move-in not occurred;
- (D) the TDU has the right to seek collection of non-bypassable charges from the REP that ultimately bills the customer under subparagraph (B) of this paragraph; and
- (E) the REP that ultimately bills the customer under subparagraph (B) of this paragraph is responsible for non-bypassable charges and wholesale consumption for the customer.
- (5) The original REP shall provide the customer all benefits or gifts associated with the service that would have been awarded had the unauthorized switch or move-in not occurred, upon receiving payment for service provided during the unauthorized change;

(6) The affected REPs shall communicate with the customer as appropriate throughout the process of returning the customer to the original REP or REP of choice and resolving any associated billing issues.

(b) Customer complaints, record retention and enforcement.

(1) Customers may file a complaint with the commission, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling), against a REP for an alleged failure to comply with the provisions of this section.

(2) Upon receipt of a customer complaint, each REP shall:

(A) respond to the commission within 21 calendar days after receiving the complaint and in the response to the complaint provide to the commission all documentation relied upon by the REP and related to the:

(i) authorization and verification to switch the customer's service; and

(ii) corrective actions taken to date, if any.

(B) cease any collection activity related to the alleged unauthorized switch or move-in until the complaint has been resolved by the commission.

§25.497. Critical Care Customers.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context indicates otherwise.

(1) Critical load public safety customer — A customer for whom electric service is considered crucial for the protection or maintenance of public safety, as defined in §25.52 of this title (relating to Reliability and Continuity of Service) is a "critical load public safety customer." Such customer shall qualify as a "critical load" under §25.52(c)(1) of this title and qualify for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the transmission and distribution utility's (TDU) tariff for retail delivery service. In order to be eligible for this status, the customer must have a determination of eligibility pending with or approved by the TDU. The customer shall notify the retail electric provider (REP) that the customer may qualify. The REP shall convey any such notice to the TDU. Pursuant to a process determined collaboratively between the TDU and REP, eligibility will be determined by the TDU.

(2) Critical care industrial customer — An industrial customer, for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition on the retail customer's premises, is a "critical care industrial customer." Such customer shall qualify for notification of interruptions or suspensions of service, as provided in Sections 4.2.5,

5.2.5, and 5.3.7.4 of the TDU's tariff for retail delivery service. In order to be eligible for this status, the customer must have a determination of eligibility pending with or approved by the TDU. The customer shall notify the REP that the customer may qualify. The REP shall convey any such notice to the TDU. Pursuant to a process determined collaboratively between the TDU and REP, eligibility will be determined by the TDU.

(3) **Critical care residential customer** — A residential customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition is a "critical care residential customer." Such customer shall qualify as a "critical load" under §25.52(c)(1) of this title and for notification of interruptions or suspensions of service, as provided in Sections 4.2.5, 5.2.5, and 5.3.7.4 of the TDU's tariff for retail delivery service. In order to be eligible for this status, the customer must have the commission standardized Critical Care Eligibility Determination Form pending with or approved by the TDU. The customer shall notify the REP that the customer may qualify. The REP shall convey any such notice to the TDU. Eligibility will be determined by the TDU, pursuant to the procedures described in subsection (b) of this section.

(b) **Procedure for qualifying critical care residential customers.**

(1) A REP shall advise customers of their rights relating to critical care designation in the terms of service documents.

- (2) Upon a customer request, the REP shall mail to the customer the commission's standardized Critical Care Eligibility Determination Form.
- (3) The customer shall then return the completed form to the REP.
- (4) After the REP receives the completed form, it shall evaluate the form for completeness, and if the form is complete, the REP shall then forward the form to the appropriate TDU. If the form is incomplete, the REP shall notify and return the form to the customer.
- (5) A customer shall be considered "qualified" when the TDU receives the Critical Care Eligibility Determination Form, but the TDU shall remove the designation should the customer ultimately not qualify after evaluation.
- (6) After a TDU receives the completed form from the REP, it shall evaluate the information on the form. If the TDU needs additional information from the customer, the TDU shall notify the REP before contacting the customer to request such information.
- (7) The evaluation and qualification process shall not take longer than one month from the date the TDU receives the Critical Care Eligibility Determination Form.
- (8) The TDU shall notify the customer and the customer's REP of its ultimate qualification determination.
- (9) A customer may appeal the eligibility determination directly to the TDU. The TDU may set guidelines for the appeals process. A TDU shall notify

the customer and the customer's REP of any change in qualification based on the appeal.

(10) Qualification is valid for one year from date qualification was granted. If a TDU renews all customers once a year, regardless of qualification date, a renewal shall not be required for customers qualified less than one year.

(11) The TDU is responsible for notifying the customer's current REP of record 60 days prior to the annual expiration date of the qualification, so the REP can begin the renewal process.

(12) To commence renewal, the REP shall provide the customer with the commission standardized Critical Care Eligibility Determination Form and shall inform the customer that, unless renewed, the customer's critical care designation will expire. The renewal process shall be the same as the initial qualification process.

(c) **Effect of critical care status on payment obligations.** Qualification under this section does not relieve the customer of the obligation to pay the REP or the TDU for services rendered. However, a critical care residential customer may qualify for deferral of disconnection by following the procedures set forth in §25.483(h) of this title (relating to Disconnection of Service) or Section 5.3.7.4(3) of the TDU's tariff for retail delivery service or may contact the REP regarding other forms of payment assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 20th DAY OF OCTOBER
BY THE PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**