

The Public Utility Commission of Texas (commission) proposes new §§25.471-25.485, 25.491-25.492, Consumer Protection Rules for Retail Electric Service, governing the relationship between a retail customer and a retail electric service provider. The proposed new sections will implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.101, Customer Safeguards; §39.1025, Limitations on Telephone Solicitation; and chapter 17, subchapters A, C and D, Customer Protection. Project Number 22255 has been assigned to this proceeding.

Within the proposed rules, the term "electric service provider" includes both affiliated and non-affiliated retail electric providers (REPs) and the provider of last resort (POLR); the term "service provider" encompasses all non-electric power service providers. The proposed new sections seek to foster competition in the provision of retail electric power service while ensuring customer protection and establishing rules to govern customer service by electric service providers. These sections govern the relationship between the retail customer and an electric service provider, beginning with the electric service provider's initial marketing to the potential customer and extending through the electric service provider's customer billing, and including, for nonpayment, possible termination of the contract by the REP or affiliated REP, or disconnection of service by the POLR.

More specifically, the proposed sections relate to the following: §25.471, General Provisions of Customer Protection Rules; §25.472, Privacy of Customer Information; §25.473, Non-English Language Requirements; §25.474, Selection or Change of Electric Service Provider; §25.475, Information Disclosures to Residential and Small Commercial Customers; §25.476, Request for Service; §25.477, Refusal of Service; §25.478, Credit Requirements and Deposits; §25.479, Issuance and Format of Bills; §25.480, Bill Payment and Adjustments; §25.481, Unauthorized Charges; §25.482, Termination of Contract; §25.483, Disconnection of Service; §25.484, Do Not Call List; §25.485, Customer Access and Complaint Handling; §25.491, Record Retention and Reporting Requirements; §25.492, Non-Compliance with Rules or Orders; Enforcement by the Commission.

On May 15, 2000, commission staff distributed a staff-generated strawman for discussion at a commission workshop held in Austin, Texas, on May 22 and 23, 2000. Following the workshop, commission staff entertained written comment on the strawman proposal.

Patricia Dolese, Director of Operations, Customer Protection 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. Dolese 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 sections. 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.

Moreover, Ms. Dolese 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 §2001.022.

The commission seeks comments on the proposed rules from interested persons. Comments should be organized in a manner consistent with the organization of the proposed rules. When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples that are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on specific subsections of the proposed rules, the commission requests that parties specifically address the following issues:

1. Are the proposed rules consistent with the standards proposed by the Coalition for Uniform Business Rules (CUBR)?
2. Does the rule language regarding market practices and reporting requirements at §25.471(c) and §25.491(b)(1) provide enough specificity for the commission to determine if a marketing practice is discriminatory?
3. Should the commission adopt a prepayment plan, as set forth in §25.478(a)(3)(D)-(E), as a means for bona fide low-income applicants and certified victims of family violence to avoid the necessity of paying a deposit that might otherwise be required in order to receive service? If so, what additional requirements, if any, should apply to such prepayment plans?
4. With respect to §25.479(b)(15), relating to issuance and format of bills, what labels should be required to be used by electric service providers that elect to present their electric bills in an unbundled format? Please provide the standard label and a definition of what types of charges or services that label should include.
5. Should an electric service provider other than the POLR be permitted to charge a late fee for overdue payments?
6. Should electric service providers be required to make available a voluntary customer donation program to benefit low income customers?

7. What provisions and processes within these rules should apply to the customers of individual cooperatives and municipally-owned utilities as they open their home markets to electric competition?
8. Is the minimum contract term established in §25.477(a)(9) the appropriate mechanism to discourage customers from gaming the affiliate REP's price to beat rate?
9. In light of the emergency rule adopted by the commission on August 10, 2000 in Project Number 22869, *Petition of Texas Ratepayers' Organization to Save Energy and Texas Legal Services Center to Adopt an Emergency Rule to Suspend Disconnection of Electricity Because of Extreme Heat and Persistent Heat*, should the commission adopt a new standard for terminations and disconnects during prolonged heat events, that would preclude the future need for such emergency rules?

If so, please provide specific rule language that would be appropriate.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. 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. All comments should refer to Project Number 22255.

Commission staff will conduct a public hearing on this rulemaking pursuant to Texas Government Code §2001.029 on October 16, 2000, at 9:00 a.m. in the Commissioners' Hearing Room at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

The commission proposes these new rules pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2000) (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; §39.1025, which prohibits telephone solicitation to an electricity customer regarding the customer's choice of retail electric provider where the customer has given notice to the commission that it does not want to receive such solicitations, and which directs the commission to establish and provide for the operation of a database of customers giving such notice to the commission; §39.104, which grants the commission authority to use customer choice pilot projects; §39.106, which mandates the designation of providers of last resort by the commission; §39.107, which provides for metering services on introduction of customer choice; §39.202, which provides that an affiliated REP shall offer the "price to beat" to residential and small commercial customers of its affiliated transmission and distribution utility; 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: PURA §§14.002, 39.101, 39.102, 39.1025, 39.104, 39.106, 39.107, 39.202; and PURA chapter 17, subchapters A, C and D.

§25.471. General Provisions of Customer Protection Rules.

(a) **Application.** This subchapter applies to aggregators, service providers, and electric service providers. These rules specify when certain provisions are applicable only to some, but not all, of these providers.

(1) Affiliated retail electric provider (REP) customer protection rules, to the extent the rules differ from those applicable to all electric service providers or the provider of last resort (POLR), shall not apply to the affiliated REP when serving customers outside the geographic area served by its affiliated transmission and distribution utility. The affiliated REP customer protection rules shall apply until January 1, 2007.

(2) Requirements referenced to 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 1, 2001.

(4) The rules in this subchapter are mandatory requirements that shall be offered to or complied with for all customers unless otherwise specified. Customers other than residential or small commercial class customers may agree to terms of service that reflect either more or less 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.

- (5) The rules of this subchapter control over any inconsistent provisions, terms, and conditions of an electric service provider's contracts or other documents describing service offerings for customers or applicants in Texas.
- (b) **Purpose.** The purpose of this subchapter is to:
- (1) provide minimum standards for customer protection. An aggregator, service provider, or electric service provider may provide additional protections and customer rights and remedies provided the prohibition on discrimination set forth in subsection (c) of this section is not violated;
 - (2) provide customer protections and disclosures established by 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 the rules.
 - (3) provide customers with sufficient information to make informed decisions about electric service in a competitive market; and
 - (4) prohibit the use of fraudulent, unfair, misleading, deceptive, or anticompetitive acts and practices by aggregators, service providers, and electric service providers 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 electric service providers from refusing to provide electric service or otherwise 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 retail electric service for the first time or reapplies after discontinuance of service.
 - (2) **Competitive energy services** — As defined in §25.341 of this title (relating to Definitions).
 - (3) **Customer** — A person who is currently receiving retail electric service from an electric service provider 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.
 - (4) **Days** — Calendar days.
 - (5) **Disconnection of service** — Interruption of a customer's supply of electric service at the customer's meter by the transmission and distribution utility.

- (6) **Economically distressed geographic area** — Zip code area in which the average household income is 60% or less than the statewide median income, as reported in the most recently available United States Census data.
- (7) **Electric service** — Combination of transmission and distribution service and generation service provided to an end-use customer by an electric service provider. This term shall not include optional competitive energy services that are not required for the customer to obtain service from an electric service provider.
- (8) **Electric service provider** — A retail electric provider certificated to provide electric service in the state of Texas. This term also includes municipally-owned utilities and electric cooperatives operating outside their service areas. An electric service provider may be an affiliated REP, a non-affiliated REP, or a designated POLR.
- (9) **Energy service** — As defined in §25.223 of this title (relating to Unbundling of Energy Service).
- (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 settlement and premise data and other processes concerning a customer's choice of electric service provider in the competitive electric market in Texas.

- (12) **Retail electric provider (REP)** — Any retail electric provider as defined in §25.5 of this title (relating to Definitions) that is not an affiliated REP.
- (13) **Service provider** — Entity that provides goods or services to customers, the charges for which are contained in the bills issued by the electric service provider.
- (14) **Small commercial customer** — A nonresidential customer that has a peak demand of less than 50 kilowatts during any 12-month period.
- (15) **Standard meter** — As defined in §25.341 of this title.
- (16) **Termination of service** — Cancellation of a sales agreement or contract by an electric service provider by notification to the registration agent.

§25.472. Privacy of Customer Information.

(a) **Mass customer lists.**

- (1) The commission may authorize the electric utility, the transmission and distribution utility or the registration agent to release to electric service providers and aggregators a mass customer list on or after January 1, 2001 and annually thereafter, consisting of a list of residential and small commercial customer name, address, rate classification, monthly usage for the most recent 12-month period, meter type, and account number.

- (2) Prior to the release of such a list, the electric utility, the transmission and distribution utility or registration agent, as determined by the commission, shall issue a mailing to all customers which:
 - (A) explains the issuance of the mass customer list;
 - (B) provides the customer with the option of not being included on the list and allows the customer at least 15 days to exercise that option;
 - (C) offers the opportunity to be placed on the statewide Do Not Call list pursuant to §25.484 of this title (relating to Do Not Call List);
 - (D) provides a postage-paid postcard, a toll free telephone number, and an Internet website address to notify the designated entity of the customer's desire to be excluded from the list.
 - (3) The resulting list shall be issued to all electric service providers certified by and aggregators registered with the commission that will be providing retail electric or aggregation services to residential or small commercial customers.
 - (4) An electric service provider shall not use the list for any purpose other than marketing electric service and verifying a customer's authorized selection of an electric service provider prior to submission of the customer's enrollment to the registration agent.
- (b) **Individual customer information.**

- (1) An electric service provider 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 the electric service provider's affiliate, without obtaining the customer's verifiable authorization by means of one of the methods authorized in §25.474 of this title (relating to Selection or Change of Electric Service Provider). This prohibition shall not apply to the release of such information by an electric service provider or aggregator to:
 - (A) the commission in pursuit of its regulatory oversight or the investigation and resolution of customer complaints involving electric service providers or aggregators;
 - (B) an agent of the electric service provider or aggregator engaged to collect an overdue or unpaid amount;
 - (C) credit reporting agencies pursuant to state and federal law;
 - (D) an energy assistance agency to allow a customer to qualify for and obtain other financial assistance provided by the agency; or
 - (E) local, state, and federal law enforcement agencies pursuant to lawful process.
- (2) An electric service provider 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. An electric service provider or aggregator shall not disseminate, sell, deliver or authorize the dissemination, sale, or delivery of any customer-specific information or data obtained.

- (3) An electric service provider shall, upon the request of the customer or another electric service provider which has received authorization from the customer, submit to the requesting electric provider or to the customer directly, the monthly usage of the customer for the previous 12 months, or for as long as the electric service provider 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. A customer shall be entitled to request this information free of charge at least once every 12 months.
- (4) Upon the request of a customer, an electric service provider 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 an electric service provider's communication of proprietary customer information to the registration agent in order to effectuate a customer selection or change of an electric service provider or the customer's switch to the provider of last resort (POLR).

- (6) An electric service provider 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) **Electric service providers.** An electric service provider shall provide the following information to an applicant or a customer in English or Spanish, at the customer's designation. Additionally, if the electric service provider 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, applicant and customer rights, including Your Rights as a Customer disclosure, terms of service documents, bills, and bill notices;
 - (2) information on the availability of new services, discount programs, and promotions; and
 - (3) access to customer service including the restoration of electric service and billing inquiries.
- (b) **Aggregators.** An aggregator shall provide the following information to an applicant or a customer in English or Spanish, at the customer's designation. 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 discount programs; and
- (3) access to customer service.

- (c) **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 of the printed advertisement, electronic advertising over the Internet, direct marketing material, billing statement, terms of service document, or Your Rights as a Customer disclosure shall be translated into that language. Printed advertisements, electronic advertising over the Internet, direct marketing materials, billing statements, terms of service documents, and Your Rights as a Customer disclosures containing 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 disclosures in a different language are allowed.

§25.474. Selection or Change of Electric Service Provider.

- (a) **General purpose.** An electric service provider shall not enroll a customer without obtaining the customer's express authorization and having that authorization verified consistent with subsection (c) of this section.
- (b) **Initial electric service provider selection process.**
- (1) Before the start of retail electric competition, the commission may issue to all customers an explanation of the electric service provider selection process and an electric service provider selection form. The form shall be on a postage-paid post card and shall:
- (A) list all certified electric service providers in the IOU's certificated service area;
 - (B) allow a customer to designate one of the listed electric service providers as that person's provider of choice;
 - (C) allow the customer to receive information from designated electric service providers;
 - (D) allow a customer to designate whether they would like to be placed on the statewide Do Not Call list and indicate the fee for such placement; and
 - (E) be addressed to the registration agent.
- (2) Any affiliate REP assigned to serve a customer due to non-selection by the customer shall issue to a customer by January 31, 2002:

- (A) A terms of service document;
- (B) Your Rights as a Customer disclosure; and
- (C) an Electricity Facts label .

(c) **General standards for authorizations and verifications.**

- (1) All authorizations and verifications shall be in plain, easily understood English or other 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 service for which the customer's assent is being attained or verified shall be disclosed to the customer. Each service, including electric service and any other service offered by the electric service provider shall be clearly identified and a separate authorization and verification obtained for each service.
- (3) The specific service provider for which the customer's authorization is being attained and verified shall be disclosed to a 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 electric service provider 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 electric service provider and explain that only a customer in whose name electric service is billed can agree to a change in electric service provider.

- (5) An electric service provider 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.
- (d) **Required authorization disclosures.** The authorization shall clearly and conspicuously disclose the following information contained in the electric service provider's contract or terms of service document for each product offered to the customer:
- (1) the name of the new electric service provider;
 - (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 electric service provider shall provide a means of obtaining and recording a customer's language preference;
 - (3) 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 electric service provider; and
 - (8) the customer's right of cancellation 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 electric service provider.

(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 covered by the preferred electric service provider change order;
- (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 electric service provider to the new electric service provider; and
- (4) confirm that the customer designates the new electric service provider to act as the customer's agent for the change of electric service provider.

(f) **Methods of obtaining customer authorization and verification.**

- (1) **Written authorization and verification.** A written authorization and verification may include, but is not limited to, mailings, facsimiles, or direct enrollments from a customer for a change of electric service provider.
 - (A) A written authorization and verification shall not be combined with inducements of any kind on the same document, except that the written

authorization and verification may be combined with a check as described by the clauses below:

- (i) A check shall not contain any promotional language or material;
and
 - (ii) A check shall contain on the front and back, in easily readable, bold-face type near the signature line, the following notice: "By signing this check, I am authorizing (name of electric service provider) to be my new electric service provider."
- (B) The applicant's signature on a contract or other document which contains the materials terms and conditions of the service may constitute authorization and verification so long as the provisions of subsections (d) and (e) of this section are met.
- (C) Before obtaining a signature from the applicant, an electric service provider shall provide each applicant 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 applicant about information contained in the documents.
- (D) Upon obtaining the applicant's signature, an electric service provider shall immediately provide the applicant a legible copy of the signed contract, the required terms of service document, and Your Rights as a Customer disclosure. If written solicitations by an electric service

provider contain the terms of service document or contract, any tear-off portion that is submitted by the customer to the electric service provider to obtain electric service shall allow the customer to retain the terms of service document.

- (2) **Telephonic authorization and verification.** An electric service provider that obtains a customer's authorization by means of a telephone conversation shall obtain independent third party verification of the customer's authorization prior to submitting an enrollment or change order. In addition to the requirements of this paragraph, both the authorization and the third party verification must adhere to the requirements of subsections (d) and (e) of this section.

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

Telephonic enrollment or change orders shall clearly:

- (i) 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 in the language used to make the underlying sales transaction and proceed at a normal conversational speed using plain, easily, understood language;

- (iii) The script and conversation shall proceed at a normal conversational speed and the name of the electric service provider to which the customer is being switched shall be stated in its entirety; and
 - (iv) Both the authorization and the verification agents must 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 electric service provider.
 - (B) **Independent third party.** An independent third party shall operate in a location physically separate from the electric service provider or the electric service provider's marketing agent and shall not:
 - (i) be owned, managed, or directly controlled by the electric service provider or the electric service provider's marketing agent; or
 - (ii) have financial incentive to confirm change orders.
- (3) **Internet enrollment.** An electric service provider that offers Internet enrollment to applicants shall comply with the following minimum requirements:

- (A) The electric service provider shall maintain an Internet website that is identified in its certificate application maintained on file at the commission. The website shall identify the legal name of the electric service provider, its address, telephone number, and Texas license number to sell electric service.
- (B) The means of transfer of information, such as electronic enrollment, renewal, and cancellation information between the customer and the electric service provider shall be by an encrypted transaction using Secure Socket Layer or similar encryption standard to ensure the privacy of customer information;
- (C) The electric service provider shall identify the terms of service document by a version number to ensure the ability to verify the particular agreement to which the applicant assents. The electric service provider 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 an applicant, on the electric service provider'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 applicant to print or save the terms of service document to which the applicant assents and

provide an option to have a written terms of service document sent by regular mail.

- (E) The electric service provider shall provide to the applicant a toll-free telephone number, Internet website address, and e-mail address for contacting the electric service provider throughout the duration of the customer's agreement.
- (F) The electric service provider shall obtain verification that meets the standards of subsection (d) of this section, provide a statement with a box that must be checked by the applicant to indicate that the applicant has read and agrees to select the electric service provider to supply electric service, and the time and date of the applicant's enrollment. The applicant's enrollment shall be followed by a confirmation of the change of the applicant's electric service provider via e-mail, which confirmation shall include a conspicuous notice of the applicable right of cancellation and offer the applicant the option of exercising this right via toll-free telephone number, e-mail, Internet website, facsimile transmission, or regular mail.
- (G) Applicant and/or customer authorizations and verifications must adhere to any state and federal guidelines governing the use of electronic signatures.

- (4) **Door-to-door sales.** An electric service provider 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 electric service provider shall comply with the standards set forth in subsection (e)(1) of this section.
 - (B) The electric service provider shall provide the disclosures and 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).
 - (C) The individual who represents the electric service provider shall wear a clear and conspicuous identification on the front of the individual's outer clothing that prominently displays the name of the electric service provider. The name displayed shall conform to the name on the electric service provider's certification obtained from the commission and the name that appears on all of the electric service provider's contracts and terms of service documents in possession.
 - (D) The electric service provider shall affirmatively explain that it is not a representative of the customer's transmission and distribution utility. The electric service provider'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, affiliated retail electric provider (REP) or provider of last resort (POLR).

- (5) **Electronic authorization and verification.** An electric service provider may obtain customer authorization and verification for a change in electric service provider by electronic authorization if the electric service provider:
- (A) ensures that the electronic authorization confirms the information in subsections (d) and (e) of this section; and
 - (B) establishes one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a person calling the toll-free number(s) will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the automatic number identification (ANI).
- (g) **Record retention.** An electric service provider shall maintain records of a customer authorization or verification for a change in electric service provider for 24 months and shall provide such records to the customer, if the customer challenges the change, and to the commission if it so requests.
- (h) **Right of cancellation.** An electric service provider shall promptly provide the customer with the terms of service document after the customer has provided

authorization to select the electric service provider pursuant to one of the methods set forth in this section. The electric service provider shall offer the customer a right to cancel the contract without penalty or fee of any kind for a period of three business days after the customer's receipt of the terms of service document and acceptance of the electric service provider'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 four business days.

- (i) **Submission of customer's selection to the registration agent.** An electric service provider shall not submit a customer's selection of the electric service provider to the registration agent until the electric service provider has provided the customer with the right of cancellation and the three business day period has passed. This time period shall be no earlier than seven business days after the electric service provider has delivered the terms of service document to the customer or deposited the statement in the U.S. mail.

- (j) **Duty of the registration agent.** When the registration agent receives a switch request from an electric service provider, the registration agent shall:
 - (1) process that request promptly;
 - (2) send the customer an enrollment notification notice. The notice shall:
 - (A) identify the electric service provider that submitted the request;

- (B) inform the customer that his or her electric service will be changed unless the customer cancels the switch by the date stated in the notice;
- (C) provide a cancellation date that shall be no less than three business days after the customer receives the notice. The registration agent shall assume no less than four business days for the notice to reach a customer by U.S. mail;
- (D) provide instructions for canceling the switch, including the telephone number, facsimile machine number, and e-mail address that the customer may use to cancel the switch;
- (E) contain the following statement: "Retail electric providers are prohibited by law from switching your electric service without your permission, a practice commonly known as 'slamming.' If you have been slammed, you can prevent the switch from occurring by contacting (name of the electric service provider). You may also report the slam by writing or calling the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, (512) 937-7120 or in Texas (toll-free) 1-888-782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7163."

- (F) contain a toll-free number and statement in Spanish advising customers that information regarding this notice can be obtained in Spanish by calling the toll-free telephone number provided. Customers calling this telephone number shall be advised of the information contained in subparagraphs (A) through (E) of this paragraph; and
 - (3) implement the change effective with the customer's next meter reading and bill, if the customer does not cancel the pending selection or change of electric service provider within the specified cancellation period.

- (k) **Customer's switch to provider of last resort (POLR).** The methods of customer authorization, customer verification, and rights of cancellation are not applicable when the customer's electric service is changed to the POLR by the actions of an entity other than the POLR.

- (l) **Fees.** An electric service provider shall not charge a fee to a customer to select, switch or enroll with the electric service provider 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 electric service provider to another.**

(1) Any electric service provider that will acquire customers from another electric service provider 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. The notice shall:

- (A) identify the current and acquiring electric service provider;
- (B) explain why the customer will not be able to remain with the current electric service provider;
- (C) explain that the customer has a choice of selecting an electric service provider and may select the acquiring electric service provider or any other electric service provider;
- (D) explain that if the customer wants another electric service provider, the customer should contact that electric service provider;
- (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 effective date that customers will be transferred to the acquiring electric service provider;

- (G) provide the Electricity Facts label of the acquiring electric service provider; and
 - (H) provide a toll-free telephone number for a customer to call for additional information.
 - (2) The acquiring electric service provider shall provide the commission with a copy of the notice when it is sent to customers.
- (n) **Complaints alleging unauthorized change of electric service provider (Slamming).** A customer may file a complaint, pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) with the commission against an electric service provider for any reasons related to the provisions of this section.
 - (1) **Electric service provider's response to complaint.** After review of a customer's complaint, the commission shall forward the complaint to the unauthorized electric service provider. The electric service provider 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 their original electric service provider 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 electric service provider'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), (d) and (e) of this section.
- (2) **Commission investigation.** The commission shall review all of the information related to the complaint, including the electric service provider's response, and make a determination of whether the electric service provider complied with the requirements of this section. The commission shall inform the complainant and the electric service provider of the results of the investigation and identify any additional corrective actions that may be required of the electric service provider or the customer's obligation to pay any charges related to the authorized switch.
- (3) **Responsibilities of the electric service provider that initiated the change.** If a customer's electric service provider is changed without authorization consistent with this section, the electric service provider that initiated the unauthorized change shall:

- (A) pay all charges associated with returning the customer to the original electric service provider within five business days of the customer's request;
 - (B) provide all billing records and usage history information to the original electric service provider related to the unauthorized change of services within ten business days of the customer's request;
 - (C) pay the original electric service provider the amount it would have received from the customer if the unauthorized change had not occurred, within 30 days of the original electric service provider's request for payment;
 - (D) refund any amounts paid by the customer to the customer within 30 days of the customer's request; and
 - (E) remove all unpaid charges.
- (4) **Responsibilities of the original electric service provider.** The original electric service provider shall:
- (A) inform the electric service provider that initiated the unauthorized change 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)(C) 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 electric service provider that contains:
 - (i) the name of the electric service provider that initiated the unauthorized change;
 - (ii) the account number(s) affected by the unauthorized change;
 - (iii) the date the customer asked the unauthorized electric service provider to return the customer to the original electric service provider; and
 - (iv) the date the customer was returned to the original electric service provider; and
- (D) not bill the customer for any charges incurred during the first 30 days after the unauthorized change, but may bill the customer for charges incurred after the first 30 days based on what it would have charged if the unauthorized change had not occurred.

(o) **Compliance and enforcement.**

- (1) **Records of customer verifications and unauthorized changes.** An electric service provider shall provide a copy of records maintained under the requirements of subsections (c), (d), (e), (f) and (n) of this section to the commission upon request.
- (2) **Administrative penalties.** If the commission finds that an electric service provider is in violation of this section, the commission shall order the electric service provider to take corrective action as necessary, and the electric service provider may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024.
- (3) **Certificate revocation.** If the commission finds that an electric service provider is repeatedly and recklessly in violation of 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 electric service provider, thereby denying the electric service provider 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.

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

(a) General disclosure requirements.

- (1) 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 electric service providers and aggregators shall be provided in a readable format, written in clear, plain, easily understood language.
- (2) 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 electric service providers and aggregators shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.
- (3) An electric service provider or aggregator shall, upon receipt of a license or certificate from the commission, include its certificated name, the number of the license, plan name, and name of the product offered in all of its printed advertisements, electronic advertising over the Internet, direct marketing materials, terms of service documents, and Your Rights as a Customer disclosures.

(b) **Advertising and marketing materials.** Printed advertisements, direct marketing materials, and electronic advertising over the Internet of an electric service provider or an aggregator that are directed at residential and small commercial customers shall conform to all of the requirements of subsection (a) of this section.

(1) Except as otherwise provided by this section, advertisements and marketing materials, other than television or radio, that make any claims regarding price, cost competitiveness, or environmental quality shall include the Electricity Facts label. In lieu of including an Electricity Facts label, the following statement may be provided: "For a copy of important standardized information and contract terms regarding this product, call (name, telephone number, and website (if available) of the electric service provider)." An electric service provider shall provide a terms of service document, which includes an Electricity Facts label, relating to the service or product being advertised to each person who contacts the electric service provider in response to this statement.

(2) An electric service provider shall include the following statement in any television or radio advertisement that makes a claim about price, cost competitiveness, or environmental quality for an electricity product of the electric service provider: "You can obtain 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 electric service provider)."

An electric service provider shall provide a terms of service document, which includes an Electricity Facts label , to each person who contacts the electric service provider in response to this statement.

(c) **Terms of service document.**

- (1) For each service or product that it offers to residential or small commercial customers, an electric service provider shall create a terms of service document. An electric service provider shall assign a number to each version of its terms of service document.
- (2) The terms of service document shall be provided to new customers before and at any time that the electric service provider seeks to change the material terms and conditions of service with its customers. Upon request, customers are entitled to receive an additional copy of the terms of service document once annually.
- (3) For the purposes of market monitoring and providing the public with comparative information about electric service providers' standard contract offers, an electric service provider shall furnish its terms of service documents to the commission at regular intervals designated by the commission's Customer Protection Division. The information may be transmitted by e-mail or facsimile within five calendar days of the request.

- (4) An electric service provider shall maintain a copy of each customer's terms of service document for two years after the terms of service expire.
- (5) The following information shall be conspicuously presented in the terms of service document:
 - (A) The electric service provider's name, mailing address, Internet website address, and a toll-free telephone number (with hours of operation and time-zone reference);
 - (B) The Electricity Facts label as specified in subsection (e) of this section;
 - (C) A statement as to whether there is a minimum contract term;
 - (D) A statement as to whether there are penalties to cancel service before the end of the minimum term of the contract and the amount of those penalties;
 - (E) If the electric service provider requires deposits from its customers, a description of the conditions that will trigger a request for a deposit, the maximum amount of the deposit, a statement that interest will be paid on the deposit 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 itemization of any charges which must be paid by the customer before service is initiated or switched;
 - (G) The itemization of any services that are included in the customer's contract, including:

- (i) the specific methods and rates by which the customer will be charged for electric service; and
 - (ii) the cost for each service or product other than electric service, or, if the electric service provider has bundled the charges for these other services together, the total cost of all charges for services other than electric service;
- (H) The itemization of any charges that may be imposed on the customer 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, fees charge 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) The policies of the electric service provider regarding payment arrangements, 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 contract for services offered by the electric service provider;
- (K) In a conspicuous and separate paragraph or box:
 - (i) A description of the right of a new customer to cancel a contract without fee or penalty of any kind within three business

days after receiving the terms of service document sent to the customer after the electric service provider has obtained the customer's authorization to provide service to the customer;

- (ii) Detailed instructions for canceling a contract, including the telephone number, facsimile machine number and e-mail address which the customer may use to cancel the contract; and
 - (iii) Any information on automatic contract renewal that applies; and
- (L) A statement informing the customer that the electric service provider cannot deny service or require a prepayment or deposit for service based on an applicant's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of an applicant or customer in a economically distressed geographic area, or qualification for low income or energy efficiency services;
- (M) A statement that bill payment assistance for qualified low income customers is offered by the electric service provider (if any such assistance is offered), and that additional information may be obtained by contacting the local office of the electric service provider, the Texas Department of Housing and Community Affairs, or the Public Utility Commission of Texas. The main office telephone number (toll-free

telephone number, if available) and address for each state agency shall also be provided.

(N) A statement that rate reductions for qualified low income customers are offered by the electric service provider.

(d) **Minimum notice of changes in terms and conditions, contract, and terms of service.**

(1) **Change in terms and conditions.** An electric service provider shall provide written notice to its customers 45 days in advance of any material change in the terms of service document. The notice shall clearly specify what actions the customer needs to take to 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 the expiration of your electric service contract."

(2) **Automatic renewal clauses.** An electric service provider may utilize an automatic renewal clause. Any contract renewed through the activation of an automatic renewal clause shall be in effect for a maximum of 30 days and such clause may be repeatedly activated unless cancelled by the customer or the electric service provider materially changes the terms of service.

(e) **Electricity Facts label.**

(1) **Pricing disclosures.** Pricing information disclosed by an electric service provider in an Electricity Facts label shall include:

(A) For the total cost of electric services, exclusive of applicable taxes:

(i) If the billing is based on rates that will not vary by season or time of day, the average price for electric service reflecting all recurring charges, expressed as cents per kilowatt hour rounded to the nearest one-tenth of one cent for each usage level as follows:

(I) The average price for residential customers shall be shown for 500, 1,000 and 1,500 kilowatt hours per month; and

(II) The average price for small commercial customers shall be shown for 1,500, 2,500 and 3,500 kilowatt hours per month; and

(ii) If the billing is based on 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) The average price for residential customers shall be shown for 500, 1,000 and 1,500 kilowatt hours per month; and
 - (II) The average price for small commercial customers shall be shown for 1,500, 2,500 and 3,500 kilowatt hours per month;
- (iii) If an electric service provider combines the charges for electric service with charges for any other product, the electric service provider 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 electric service provider 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 envisions prices which will vary according to the season or time of day, the statement: "This price disclosure is an example based on average usage patterns – your average price for

electric service will vary according to when you use electricity. See the terms of service document for actual prices."

- (C) If the pricing plan envisions prices which will vary during the term of the contract because of factors other than season and time of day, the statement: "This price disclosure is an example based on average 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 contract 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 is based on the season or time of day, the on-peak seasons or times and the associated rates.
- (2) **Contract terms disclosures.** Specific contract terms that must be disclosed on the Electricity Facts label are:
- (A) The minimum contract 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 electric service provider in Texas. This break-down 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, hydro power, solar power and wind power); and other known sources. Electricity for which the fuel source is unknown shall be shown in a separate category labeled "unknown." 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%".

(4) **Air emissions disclosures.** The Electricity Facts label shall contain a bar chart that depicts the amounts of carbon dioxide, nitrogen oxide, sulfur dioxide and particulate emissions and high-level nuclear waste attributable to the aggregate known sources of electricity identified in paragraph (3) of this subsection. Information regarding emissions of nitrogen oxides, sulfur dioxide and particulates shall be based on the most recent annual Point Source Air Emissions Inventory published by the Texas Natural Resource Conservation Commission (see 30 TAC §101.10). Data on carbon dioxide and radioactive waste shall cover the same time period as that covered by the most recent Point Source Air Emissions Inventory.

(A) The carbon dioxide emissions, nitrogen oxide emissions, and sulfur dioxide emissions shall be calculated in pounds per 1,000 kilowatt-

hours (lbs/1,000 kWh), and expressed as a percentage of the statewide system average.

- (B) The high-level nuclear waste shall be calculated in pounds of high-level nuclear waste per 1,000 kilowatt-hours (lbs/1,000 kWh), and expressed as a percentage of the statewide system average.
 - (C) The commission shall calculate the statewide system average to be used in accordance with this subsection.
 - (D) The chart shall include a footnote to disclose the percentage of total electrical power supplied for which the electric service provider does not know the amount of emissions or nuclear waste.
- (5) **Renewable energy claims.** An electric service provider 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.** Each Electricity Fact label shall be printed in type no smaller than ten points in size and shall be formatted as shown below:

Electricity Facts	
[Name of REP], [Name of Product] [Service area <i>(if applicable)</i>]	
[Date]	
<i>Energy charge</i>	Average monthly use: <u>500kwh</u> <u>1,000kwh</u> <u>1,500 kwh</u>
	Average price per kilowatt-hour: <u>[x.x]¢</u> <u>[x.x]¢</u> <u>[x.x]¢</u>
	<p><i>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.</i></p> <p><i>[If applicable]Price fixed for [xx] months.</i></p> <p><i>[If applicable]On-peak [season or time]:[xxx]</i></p> <p><i>[If applicable]Average on-peak price per kilowatt-hour: [x.x]¢</i></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>	Coal and lignite [xx]%
	Natural gas [xx]%
	Nuclear [xx]%
	Renewable energy [xx]%
	Other [xx]%
	<u>Unknown</u> [xx]%
	Total 100%
<i>Emissions and waste</i> <i>(per MWH generated, as a percentage of Texas average)</i>	Carbon dioxide
	Nitrogen oxides
	Particulates
	Sulfur dioxide
	Nuclear waste (high-level)
	Nuclear waste (low-level)
	0% 100% 200%

Type used in this format
Title: 14 point
Headings: 12 point boldface
Body: 10 point

- (7) **Distribution of Electricity Facts label.** Beginning July 1, 2002, an electric service provider shall distribute its Electricity Facts label to its customers with its January and July billings (or as a separate bill insert). Additionally, electric service providers shall provide the commission with an electronic version of each Electricity Facts label the provider distributes to customers. The commission shall make each label available to the public in a non-preferential manner over the Internet.
- (f) **Your Rights as a Customer disclosure.** In addition to the terms of service document required by this section, an electric service provider 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 electric service provider's terms of service document and shall not be contradicted by any provision of the electric service provider's terms of service document.
- (2) The electric service provider shall distribute an update of this disclosure once annually to its customers.
- (3) Each electric service provider's Your Rights as a Customer disclosure shall be subject to review and approval by the commission.
- (4) The disclosure shall inform the customer of the following :

- (A) The electric service provider'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 his or her meter tested pursuant to §25.124 of this title (relating to Meter Testing) and the customer's right to be instructed by the electric service provider how to read his or her meter, if applicable;
- (C) Disclosures concerning the customer's ability to dispute unauthorized charges from appearing 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, TDD services for hearing impaired customers;
- (E) Special actions or programs available to those customers with physical disabilities, including 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 without penalty;
- (H) Slamming pursuant to §25.474(n) of this title (relating to Selection or Change of Electric Service Provider);

- (I) Termination of service protections pursuant to §25.482 of this title (relating to Termination of Contract) or 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;
- (K) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Do Not Call List);
- (L) Availability of discounts for qualified 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 steps necessary to have service restored and/or reconnected after involuntary suspension or disconnection.

§25.476. Request for Service.

- (a) **New service requests.** A retail electric provider (REP) shall initiate the switching process for a customer within three days of the date and conditions agreed to by the customer and the REP. The customer shall be informed of the actual date that the customer will begin receiving service from the new provider and of any delays in meeting that date.
- (b) **Affiliated REP or provider of last resort (POLR).** An affiliated REP or POLR shall initiate service under the terms and conditions reflected in the tariffs of the transmission and distribution utility within whose geographic service territory the customer is located. The date shall be disclosed to customers and service shall be installed within three days of the date disclosed to a customer.

§25.477. Refusal of Service.

- (a) **Acceptable reasons to refuse service.** An electric service provider may refuse to provide electric service to an applicant for one or more of the reasons specified in this subsection:
- (1) **Applicant's facilities inadequate.** The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be

given, or the applicant's facilities do not comply with all applicable state and municipal regulations.

- (2) **Use of prohibited equipment or attachments.** The applicant fails to comply with the transmission and distribution utility's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.
- (3) **Intent to deceive.** The applicant applies for service at a location where another customer received, or continues to receive, service and the other customer's bill from the electric service provider is unpaid at that location, and the service provider can prove the change of account holder and billing name is made to avoid or evade payment of an outstanding bill owed to the electric service provider.
- (4) **For indebtedness.** The applicant owes a bona fide debt to the electric service provider for the same kind of service as that being requested. An affiliated retail electric provider (REP) or provider of last resort (POLR) shall offer the applicant an opportunity to pay the outstanding debt to receive service. In the event an applicant's indebtedness is in dispute, the applicant shall be provided service upon paying a deposit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits).
- (5) **For indebtedness to the POLR.** An applicant of any electric service provider owes a bona fide debt to the POLR for the same kind of service as that being

requested from the electric service provider. An affiliate REP or POLR shall offer the applicant an opportunity to pay the outstanding debt to receive service. In the event an applicant's indebtedness is in dispute, the applicant shall be provided service upon paying a deposit pursuant to §25.478 of this title.

- (6) **Failure to pay guarantee.** An applicant has acted as a guarantor for another customer and failed to pay the guaranteed amount, where such guarantee was made in writing and was a condition of service.
 - (7) **Refusal to comply with credit requirements.** The applicant refuses to comply with the credit and deposit requirements set forth in §25.478 of this title.
 - (8) **Returning customer.** An affiliate REP can refuse to provide service to an applicant who was served by the affiliate REP within the prior 15 months if the applicant is unwilling to accept a one-year term of service with the affiliate REP.
 - (9) **Other acceptable reasons to refuse service.** An electric service provider that is not an affiliated REP or POLR may refuse to provide electric service to an applicant for one or more of the reasons specified in paragraph (1) 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 are not sufficient cause for refusal of service to an applicant by an electric service provider:

- (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 which are optional and 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; or
 - (4) failure to pay the unpaid bill of another customer for usage incurred at the same address, except where the electric service provider has reasonable and specific grounds to believe that the applicant 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) An electric service provider that denies electric service to an applicant shall inform the customer in writing of the reason for the denial within five business days. This disclosure may be combined with any disclosures required by applicable federal or state law.
 - (2) This disclosure is not required when the electric service provider notifies the customer orally that the customer is not located in a geographic area served by the electric service provider, does not have the type of usage characteristics that

is served by the electric service provider, or is not part of a customer class served by the electric service provider.

- (3) Any disclosure pursuant to this section shall inform the customer:
 - (A) of the reasons for the refusal of service;
 - (B) that the applicant may be eligible for service if the applicant remedies the reason(s) for refusal and complies with the electric service provider's terms and conditions of service;
 - (C) that the electric service provider cannot refuse service based on the prohibited grounds set forth in §25.471(c) of this title;
 - (D) that the applicant who is dissatisfied may file a complaint with the commission pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling); and
 - (E) of the availability and existence of POLR service and the toll-free telephone number to contact the POLR.

§25.478. Credit Requirements and Deposits.

- (a) **Credit requirements for permanent residential applicants.** An electric service provider may require residential applicants to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

- (1) Establishment of 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 applicant or customer of an affiliated retail electric provider (REP) or provider of last resort (POLR) can demonstrate satisfactory credit using any one of the criteria listed in subparagraphs (A) through (D) of this paragraph. Other electric service providers may establish other criteria by which an applicant can demonstrate satisfactory credit, as long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).
 - (A) The residential applicant:
 - (i) has been a customer of any electric service provider or the transmission and distribution utility (prior to 2002) within the two years prior to the applicant's request for electric service;
 - (ii) is not delinquent in payment of any such electric service account;
 - (iii) during the last 12 consecutive months of service was not late in paying a bill more than once;
 - (iv) did not have service disconnected for nonpayment; and

- (v) obtains a letter of credit history from the applicant's previous service provider. An electric service provider shall maintain payment history information for two years after electric service has been terminated to a customer in order to be able to provide credit history information at the request of the former customer.
- (B) The residential applicant demonstrates a satisfactory credit rating by appropriate means, including, but not limited to, the production of:
 - (i) generally acceptable credit cards;
 - (ii) letters of credit reference;
 - (iii) the names of credit references which may be quickly and inexpensively contacted by the service provider; or
 - (iv) ownership of substantial equity that is easily liquidated.
- (C) The residential applicant is 65 years of age or older and does not have an outstanding account balance incurred within the last two years with the transmission and distribution utility (prior to 2002) or any other REP for the same type of service applied for.
- (D) The residential applicant is a qualified low-income person as defined in the Public Utility Regulatory Act (PURA) §39.903(l) or is a certified victim of family violence (as defined in §71.004 of the Texas Family

Code) who is willing to adhere to the following terms, in lieu of paying an otherwise required deposit, in order to receive electric service:

- (i) enter into a pre-payment arrangement for a period of one year;
and
- (ii) receive service from the affiliate REP or POLR

(E) Pursuant to PURA §39.107(g), a REP who requires pre-payment by a metered 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 provider of last resort.

- (4) If satisfactory credit cannot be demonstrated by the residential applicant of an affiliate REP or POLR using these criteria, the applicant may be required to pay a deposit pursuant to subsections (c) and (d) of this section.
- (b) **Credit requirements for non-residential applicants.** An electric service provider may establish nondiscriminatory criteria to evaluate the credit requirements for non-residential applicants and apply those criteria in a nondiscriminatory manner.
- (c) **Initial deposits.**
- (1) An electric service provider shall offer a residential applicant or customer 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 electric service provider for the term during which the guarantee is in effect. If the guarantor fails to become, or ceases to be, a customer of the electric service provider, the electric service provider 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.

- (2) An 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. The customer may be required to pay this initial deposit within ten days after issuance of a written termination notice (or, in the case of the POLR, a notice of disconnection of service) that requests such 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.
- (d) **Additional deposits by existing customers.**
- (1) During the first 12 months of a residential customer's service, an affiliate REP or POLR may request an additional deposit if:
 - (A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original estimated annual billings; and

- (B) a termination notice has been issued (or, in the case of the POLR, a notice of disconnection of service) for the account within the previous 12 months.
- (2) A customer shall pay an additional deposit within ten days after the affiliate REP has issued a termination of service notice (or, in the case of the POLR, a notice of disconnection of service) 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.
- (4) An affiliate REP may terminate service (or in the case of the POLR, disconnect service) if the additional deposit is not paid within ten days of the request, provided a written termination or disconnection notice has been issued to the customer. A termination or disconnection notice may be issued concurrently with either the written request for the additional deposit or current usage payment. An affiliate REP may initiate a "drop" request to the registration agent if the customer does not pay the additional deposit demanded by the affiliate REP as a condition of continuing service. 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.** An electric service provider 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.

- (f) **Amount of deposit.** The total of all deposits, initial and additional, required by an electric service provider from any residential customer shall not exceed an amount equivalent to one-sixth of the estimated annual billing. The estimated annual billing shall only include charges for electric service charges that are disclosed in the electric service provider's terms of service document provided to the customer.

- (g) **Interest on deposits.** An electric service provider 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 on December 1 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 electric service provider keeps the deposit more than 30 days, payment of interest shall be made 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.

- (h) **Notification to customers.** When an electric service provider requires an applicant or customer to pay a deposit, the electric service provider shall provide the applicant or 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 electric service provider's terms of service document.

- (i) **Records of deposits.**
 - (1) An electric service provider 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) The electric service provider that collects a deposit shall, upon the request of the customer, issue a receipt of deposit to each applicant paying a deposit and shall provide means for a depositor to establish a claim if the receipt is lost.
 - (3) The electric service provider shall maintain a record of each unclaimed deposit for at least four years.
 - (4) The electric service provider shall make a reasonable effort to return unclaimed deposits.
- (j) **Guarantees of residential customer accounts.** A guarantee agreement in lieu of a cash deposit issued by any electric service provider, if applicable, shall conform to these minimum requirements:
- (1) A guarantee agreement between an electric service provider and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the applicant's account pursuant to subsection (f) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The electric service provider may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the electric service provider 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 electric service provider, the provider may treat the guarantee agreement as in default and demand the amount of the cash deposit from the residential customer as a condition of continuing service.
- (5) The electric service provider 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 electric service provider 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 electric service provider 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 electric service provider may initiate termination of service (or disconnection of service for the POLR) to the guarantor for nonpayment of the

guaranteed amount only if the termination or service (or, where applicable, the disconnection of service) was disclosed in the 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).

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

- (1) When the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service terminated (or, where applicable, disconnected by the POLR) for nonpayment of a bill and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of the current bills, the electric service provider shall promptly refund the deposit plus accrued interest to the customer, or void and return the guarantee or provide 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) If service is not connected, or is terminated or disconnected, the electric service provider shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the contract has been voided, or refund the customer'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 electric service provider 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 and/or guarantor moves or changes the address where service is provided, as long as the customer and/or guarantor remain a customer of the electric service provider.

- (l) **Re-establishment of credit.** Every applicant who previously has been a customer of the electric service provider and whose service has been terminated or disconnected for nonpayment of bills or theft of service (meter tampering or bypassing of meter) may be required, before service is reconnected, to pay all amounts due to the electric service provider or execute a deferred payment agreement, if offered, and reestablish credit. The electric service provider shall prove 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.

- (m) **Upon sale or transfer of company.** Upon the sale or transfer of an electric service provider 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) **Frequency and delivery of bills.** An electric service provider shall issue bills monthly, unless service is provided for a period less than one month. Bills shall be issued as promptly as possible after reading meters or obtaining the meter usage from the transmission and distribution utility. Bills shall be issued to residential customers in writing and delivered via the United States Postal Service (U.S. mail), unless the customer has enrolled with the electric service provider by means of the Internet and has specifically agreed to the issuance of an electronic bill or statement.
- (b) **Bill content.** Each customer's bill shall include all the following information:
- (1) The name and address of the electric service provider and the number of the license issued to the electric service provider by the commission;
 - (2) A toll-free telephone number, in bold-face type, that the customer can call during specified hours for inquiries and to make complaints about the bill; and

- (3) 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.
- (4) The service address, electric service identifier (ESI), and account number of the customer;
- (5) The service period for which the bill is rendered;
- (6) The date on which the bill was issued;
- (7) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the electric service provider to avoid a late charge or other collection action;
- (8) The current charges for electric service, 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 including any nonrecurring credits, which is expressed as a cents per kilowatt-hour rounded to the nearest one-tenth of one cent;
- (9) The identification and itemization of recurring charges other than for electric service;
- (10) 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 electric service provider's terms of service document provided to the customer;

- (11) The total current charges, balances from the preceding bill, payments made by the customer since the preceding bill, and the total amount due;
- (12) The beginning and ending meter readings; 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;
- (13) Any amount owed under a written guarantee contract provided the guarantor was previously notified in writing by the electric service provider as required by §25.478 of this title (relating to Credit Requirements and Deposits);
- (14) The customer's usage for the prior 12 billing periods or a statement that the customer may obtain a 12-month usage history from the electric service provider at no cost once during any calendar year;
- (15) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;
- (16) Notification of any changes in the customer's rates or charges due to the operation of a variable rate feature previously disclosed by the electric service provider in the customer's terms of service document; and

- (17) If the electric service provider 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"; "transition charge"; and "competition transition charge".
- (c) **Public service notices.** An electric service provider shall, as required by the commission, provide brief public service notices to its customers. The electric service provider shall provide these public service notices to its customers on its billing statements, as an insert in its billing statement, or by electronic communication, as required by the commission.
- (d) **Estimated bills.** If the electric service provider is unable to issue a bill based on actual meter reading due to the failure of the transmission and distribution utility to obtain or transmit a meter reading to the electric service provider on a timely basis, the electric service provider may issue a bill based on an estimated reading and inform the customer of the reason for the issuance of the estimated bill.
- (e) **Record retention.** An electric service provider 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. Copies of a customer's billing records may be obtained by that customer on request.

- (f) **Transfer of delinquent balances.** If the customer has an outstanding balance owed to the customer's current electric service provider that is due from a previous account in the same customer class, then the customer's current electric service provider 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.

- (g) **Allocation of partial payments.** An electric service provider shall allocate a partial payment by the customer first to the oldest balance due for electric service, followed by the amount due for other services billed by the electric service provider.

§25.480. Bill Payment and Adjustments.

- (a) **Bill due date.** An electric service provider shall state a payment due date on the bill which shall not be less than 16 days after issuance. The issuance date is the issuance date on the bill or, if there is no issuance date on the bill, the postmark date on the envelope. A payment for electric service is delinquent if not received by the electric service provider or at the electric service provider's authorized payment agency by the

- close of business on the due date. If the sixteenth day falls on a holiday or weekend, then the due date shall be the next business day after the sixteenth day.
- (b) **Penalty on delinquent bills for electric service.** A one-time penalty not to exceed 5.0% may be charged on a delinquent commercial or industrial bill. No penalty may be applied to a residential bill. The 5.0% penalty on delinquent bills may not be applied to any balance to which the penalty has already been applied. A bill issued to a state agency, as defined in Chapter 2251 of the Government Code, shall be due and bear interest if overdue as provided in Chapter 2251.
- (c) **Overbilling.** If charges are found to be higher than authorized in the electric service provider's terms and conditions for service, then the customer's bill shall be corrected.
- (1) The correction shall be made for the entire period of the overbilling.
 - (2) If the electric service provider corrects the overbilling within three billing cycles of the error, it need not pay interest on the amount of the correction.
 - (3) If the electric service provider 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 each year.
 - (A) Interest on overcharges that are not adjusted by the electric service provider within three billing cycles of the bill in error shall accrue from the date of payment or from the issuance date of the bill in error.

- (B) All interest shall be compounded monthly based on the annual rate.
 - (C) Interest shall not apply to leveling plans or estimated billings.
- (d) **Underbilling.** If charges are found to be lower than authorized by the electric service provider's terms and conditions of service, or if the electric service provider failed to bill the customer for service, then the customer's bill may be corrected.
- (1) The electric service provider 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 electric service provider may terminate service, or disconnect service if the provider of last resort (POLR), if the customer fails to pay underbilled charges within a reasonable time.
 - (3) If the underbilling is \$50 or more, the electric service provider 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.
 - (4) The electric service provider 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. Interest shall accrue from the day the customer is found to have first stolen (tampered, bypassed or diverted) the service.

- (e) **Disputed bills.** If there is a dispute between a customer and a provider about the electric service provider's bill for service, the electric service provider shall promptly investigate and report the results to the customer. The 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).

- (f) **Notice of alternate payment programs or payment assistance.** When a customer contacts an electric service provider and indicates inability to pay a bill or a need for assistance with the bill payment, the electric service provider shall inform the customer of all alternative payment and payment assistance programs that are offered by or available from the electric service provider, such as deferred payment plans, disconnection moratoriums for the ill, or low-income energy assistance programs, as applicable, and of the eligibility requirements and procedure for applying for each. In addition, an electric service provider shall inform the customer of the availability of POLR service and how to obtain this service.

- (g) **Level and average payment plans.** An electric service provider is encouraged to offer level or average payment plans to their customers. An affiliated retail electric provider (REP) or POLR shall offer one or more level or average payment plans. An electric service provider may initiate its normal collection activity if a customer fails to make a timely payment according to such a plan.
- (h) **Payment arrangements.** A payment arrangement is any agreement between the electric service provider 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 electric service provider issued a termination notice (or in the case of the POLR, a disconnection notice) before 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. An electric service provider may "drop" terminated customers to the POLR by notifying the registration agent.
- (i) **Deferred payment plans.** A deferred payment plan is any written arrangement between the electric service provider and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the 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 electric service provider.

- (1) Electric service providers are encouraged to offer a deferred payment plan to any residential customer who has expressed an inability to pay his or her bill.
- (2) Electric service providers are required to offer deferred payment plans to customers who have been underbilled, pursuant to subsection (d) of this section.
- (3) An affiliated REP or POLR is required to offer 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 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 electric service provider (or its predecessor transmission and distribution utility).
- (4) Any deferred payment plans offered by an electric service provider shall be implemented in a non-discriminatory manner, according to the provisions of this subsection.
- (5) Every deferred payment plan offered by an electric service provider:
 - (A) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the

following: **"If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact your service provider immediately and do not sign this contract. If you do not contact the service provider, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the service provider's failure or refusal to comply with the terms of this agreement."** In addition, where the

customer and the electric service provider representative or agent meet in person, the representative shall read the preceding statement to the customer. The service provider shall provide information to the customer in English or Spanish as necessary to make the preceding boldface language understandable to the customer;

- (B) may include a 5.0% penalty 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;
 - (G) shall not refuse a customer participation in such a program on any basis set forth in §25.471(b)(5) of this title (relating to General Provisions of Customer Protection Rules);
 - (H) shall be signed by the customer and a copy of the signed plan shall be provided to the customer. If the agreement is made over the telephone, then the electric service provider shall send a copy of the plan to the customer for signature; and
 - (I) shall allow either the customer or the electric service provider 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.
- (6) An electric service provider may pursue termination of service (or disconnection of service in the case of the POLR) when a customer does not meet the terms of a deferred payment plan. However, termination or disconnection shall not be performed until appropriate notice has been issued pursuant to §25.483 of this title (relating to Disconnection of Service) for the POLR or §25.482 of this title

(relating to Termination of Contract) for other electric service providers to the customer indicating that the customer has not met the terms of the plan. The electric service provider may renegotiate the deferred payment plan agreement prior to disconnection. If the customer did not sign the deferred payment plan, and is not otherwise fulfilling 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.

§25.481. Unauthorized Charges.

- (a) An electric service provider shall not charge a customer for a product or service without the customer's express authorization. An electric service provider may obtain a customer's authorization for a specific product or service by disclosing the itemized service in the provider's terms of service document for a new customer. An electric service provider may obtain a customer's 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 (relating to Selection or Change of Electric Service Provider).

- (b) An electric service provider shall remove any unauthorized charge from the customer's bill no later than 45 days after a charge is determined to be unauthorized and refund or credit to the customer all money that has been paid by the customer for any unauthorized charge.

- (c) An electric service provider shall not terminate or disconnect service (as appropriate) to any customer for nonpayment of an unauthorized charge or take any adverse credit action, including the filing of a credit report, against a customer for nonpayment of an unauthorized charge. This paragraph does not apply to undisputed charges or charges ultimately resolved against the customer.

- (d) If an electric service provider's bill includes charges other than those of the electric service provider, the electric service provider shall include the following notice on the customer's terms of service document (for new customers) and to all existing customers (either on the bill or in a separate bill insert) at least once per year: "Placing charges on your electric service bill for other products or services without your authorization is known as "cramming" and is prohibited by law. If you believe that any charge not related to the provisioning of electric service has not been authorized by you, call us immediately and request us to investigate this charge. We cannot terminate your service for disputing or refusing to pay for an unauthorized charge. We will investigate and, within 45 days, we will either remove the charge and reimburse you for prior payments

made by you, or submit evidence of your specific authorization for this charge. If you are dissatisfied with our investigation, you may file an informal complaint with 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."

- (e) An electric service provider 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 service bill, has notified the electric service provider of the unauthorized charge, and the charge was determined to be unauthorized. The record shall contain:
- (1) The name of the service provider that offered the product or service;
 - (2) The date the customer requested the electric service provider to remove the unauthorized charge from the customer's bill;
 - (3) the date the unauthorized charge was removed from the customer's bill; and
 - (4) the date and amount the customer was refunded or credited with any money that the customer had paid for the authorized charge.

§25.482. Termination of Contract.

- (a) **Termination policy.** An electric service provider can terminate its contract with a customer and, if no other electric service provider extends service to that customer, the customer may default to the service offered by the provider of last resort. If an electric service provider chooses to terminate its contract with a customer, it shall follow the procedures below, 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 an electric service provider to terminate its contract with a customer.
- (b) **Termination notices.** Except as provided in §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers) an electric service provider may issue a notice of termination of contract. Any termination notice shall:
- (1) not be issued before the first day after the bill is due, to enable the electric service provider to determine whether the payment was received by the due date. Payment of the delinquent bill at the electric service provider's authorized payment agency is considered payment to the electric service provider.
 - (2) be a separate mailing or hand delivered with a stated date of termination with the words "termination notice" or similar language prominently displayed.

- (3) have a termination date that is not a holiday or weekend day and that is not less than ten days after the notice is issued.
- (c) **Contents of termination notice.** Any termination notice shall include the following information:
- (1) The reason for the termination of the contract;
 - (2) The actions, if any, that the customer may take to avoid the termination of the contract;
 - (3) If the customer is in default, the amount of all fees or charges which will be assessed against the customer as a result of the early termination of the contract, if any, as set forth in the electric service provider's terms of service document provided to the customer;
 - (4) The amount overdue, if applicable to the purpose of the notice;
 - (5) A toll-free telephone number which the customer can use to contact the electric service provider to discuss the notice of termination or to file a complaint with the electric service provider, 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."

- (6) A statement that informs the customer of his right to obtain services from another licensed electric service provider or a provider of last resort, and that information about other electric service providers or the provider of last resort (POLR) can be obtained from the commission and the POLR. Customers that do not exercise their right to choose another electric service provider will have their electric service automatically transferred to the POLR and they may be required to pay a deposit, or prepay, to receive ongoing electric service. The electric service provider 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 the POLR.
- (7) If a deposit is being held by the electric service provider on behalf of the customer, a statement that the deposit will be refunded to the customer or applied against the final bill of the customer, or both.
- (8) Notification advising the customer that if the customer does not select another electric service provider by the next meter reading date, the customer will be automatically assigned to a provider of last resort for electric service.
- (9) The availability of deferred payment or other billing arrangements, if any, from the electric service provider, and the availability of any state or federal energy assistance programs and information on how to get further information about those programs.

- (10) A description of the activities that the electric service provider 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 arrangements with the electric service provider.
- (d) **Notification of the registration agent.** After the expiration of the notice period in subsection (b) of this section, an electric service provider shall notify the registration agent of a "drop" request in a manner established by the registration agent so that the customer will receive service from the POLR if the customer does not select another electric service provider prior to the next meter reading and billing cycle.
- (e) **Termination due to abandonment by the service provider.** An electric service provider shall not abandon a customer or a service area without written notice to its customers and approval from the commission.
- (f) **Extreme weather.** An electric service provider shall comply with the restrictions on termination of service for residential customers during an extreme weather emergency and shall work with affected customers to establish deferred payment plans that comply 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).

- (g) **Customer's right to terminate a contract without penalty.** A customer may terminate a contract without penalty in the event:
- (1) The customer moves outside the electric service provider's service area or into an area where the electric service provider charges a different rate; or
 - (2) The contract allows the electric service provider such a right in response to changing market reasons.

§25.483. Disconnection of Service.

- (a) **Disconnection policy.** Only the transmission and distribution utilities shall perform physical disconnections. Unless otherwise stated, it is the responsibility of an electric service provider to request such action from the appropriate transmission and distribution utility in compliance with the requirements of this section. If an electric service provider chooses to have a customer's electric service disconnected, it shall follow the procedures below, or modify them in ways 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 shall be interpreted to require an electric service provider to disconnect a customer.

- (b) **Disconnection with notice.** A provider of last resort (POLR) may seek to have a customer's electric service disconnected after proper notice for any of these reasons:
- (1) failure to pay a bill owed to the POLR or to make deferred payment arrangements by the date of disconnection stated on the disconnection notice;
 - (2) failure to comply with the terms of a deferred payment agreement made with the POLR;
 - (3) violation of the POLR's terms and conditions on using service in a manner which 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 POLR has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service.

(c) **Disconnection without prior notice.** An electric service provider, including a retail electric provider (REP) or affiliated REP, may seek to disconnect 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 electric service provider 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 was reconnected without authority after disconnection for nonpayment; or

(4) where there has been tampering with the distribution utility's equipment or evidence of theft of service.

(d) **Disconnection prohibited.** A POLR shall not seek to disconnect 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 regulated by the commission, including competitive energy service, merchandise, or other services which are optional and not included in regulated POLR 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 theft of service, more than six months prior to the current billing;
 - (5) failure to pay disputed charges, except for the required average billing payment, until a determination as to the accuracy of the charges has been made by the service provider 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 provider is unable to read the meter due to circumstances beyond its control.
- (e) **Disconnection on holidays or weekends.** Unless a dangerous condition exists or the customer requests disconnection, service shall not be disconnected on holidays or

- weekends, or the day immediately preceding a holiday or weekend, unless the provider's personnel are available on those days to take payments and reconnect service.
- (f) **Disconnection due to abandonment by the service provider.** A POLR shall not abandon a customer or a service area without written notice to its customers and approval from the commission.
- (g) **Disconnection of ill and disabled.** A POLR shall not disconnect 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 must accomplish all of the following by the stated date of disconnection:
- (A) have the person's attending physician (for purposes of this subsection, the term "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 service provider by the stated date of disconnection;

- (B) have the person's attending physician submit a written statement to the service provider; 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 service provider and the customer or physician.
- (h) **Disconnection of energy assistance clients.** A POLR shall not disconnect 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 the energy assistance provider is forwarding sufficient payment to continue service.
- (i) **Disconnection during extreme weather.** A POLR shall not disconnect a customer anywhere in its service territory during an extreme weather emergency and 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" shall mean a day when:
 - (1) 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, according to the nearest National Weather Service (NWS) reports; or

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

- (j) **Disconnection of master-metered apartments.** When a bill for electric service is delinquent for a master-metered apartment complex:
 - (1) The POLR shall send a notice to the customer as required by subsection (k) of this section. At the time such notice is issued, the provider 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 provider shall post a minimum of five notices 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)."

- (k) **Disconnection notices.** A disconnection notice issued by a POLR shall:
 - (1) not be issued before the first day after the bill is due, to enable the service provider to determine whether the payment was received by the due date.

Payment of the delinquent bill at the provider's authorized payment agency is considered payment to the provider.

- (2) be a separate mailing or hand delivered with a stated date of disconnection with the words "disconnection notice" or similar language prominently displayed.
- (3) have a disconnection date that is not a holiday or weekend day, not less than ten days after the notice is issued.
- (4) include a statement notifying the customer that if they need assistance paying their bill by the due date, or are ill and unable to pay their bill, they may be able to make some alternate payment arrangement, establish deferred payment plan, or possibly secure payment assistance. The notice shall also advise the customer to contact the provider for more information.

§25.484. Do Not Call List.

- (a) The commission or its designated agent will maintain or cause to be maintained a "Do Not Call" list of customers who do not want to receive telemarketing calls from electric service providers. The commission will provide customers with a variety of methods to be included on the list, including orally, in writing, and commercially acceptable electronic communication such as fax and e-mail. A customer will remain on the "Do

Not Call" list for five years or until the customer affirmatively requests that she or he be removed from the list, whichever occurs sooner.

- (b) **Prohibition.** A retail electric provider (REP) is prohibited from telemarketing to customers whose names are on the "Do Not Call" list. A REP shall be in compliance with this provision if the REP obtains the most recent version of the list on at least a quarterly basis and prevents telemarketing calls to customers identified on the list.

- (c) **Notice.** A REP shall include notice of the existence of the "Do Not Call" list in the Your Rights as a Customer disclosure or terms of service document. The notice shall explain what the "Do Not Call" list is and how a customer can request that he or she be added to or removed from that list by contacting the commission or the commission's agent for the implementation of the list.

§25.485. Customer Access and Complaint Handling.

- (a) **Customer access.**
 - (1) Each electric service provider or aggregator shall ensure reasonable access to its service representatives to make inquiries and complaints, discuss charges on

customers bills, terminate competitive service, and transact any other pertinent business.

- (2) Telephone access shall be toll-free and shall afford customers prompt answer times during normal business hours.
 - (3) Each electric service provider shall provide a 24-hour automated telephone message instructing caller to report any service interruptions or electrical emergencies.
 - (4) Each electric service provider and aggregator shall employ 24-hour capability for accepting customer contract cancellation by telephone.
- (b) **Complaint handling.** No electric service provider or aggregator shall limit a residential or small commercial customer's right to make formal or informal complaints to the commission. An electric service provider or aggregator shall not require a residential or small commercial customer to make formal or informal complaints to the commission. An electric service provider or aggregator shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution.
- (c) **Complaints to electric service providers or aggregators.** A customer or applicant for service may submit a complaint in person, or by letter, fax, e-mail, or by telephone with the electric service provider. The electric service provider shall promptly

investigate and advise the complainant of the results within 21 days. A customer or applicant who is dissatisfied with the electric service provider's review shall be informed of their right to file a complaint with the electric service provider's supervisory review process, if available, and, if not available, the commission. Any supervisory review conducted by the electric service provider shall result in a decision communicated to the complainant within ten business days of the request. If the electric service provider does not respond to the customer's complaint in writing, the electric service provider shall orally inform the customer of the ability to obtain the electric service provider's response in writing upon request.

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

(1) **Informal complaints.**

- (A) If the complainant is dissatisfied with the results of the electric service provider's complaint investigation or supervisory review, the electric service provider shall advise the complainant of the commission's informal complaint resolution process and, upon request, 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) Customers are encouraged to include the following in their complaint:
 - (i) The customer or applicant's name, address, and telephone number;
 - (ii) The name of the electric service provider;
 - (iii) The customer account number or electric service identifier (ESI) number;
 - (iv) An explanation of the facts relevant to the complaints; and
 - (v) Any other documentation that supports the complaint, including copies of bills or contract documents.
- (C) The electric service provider 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 electric service provider.
- (D) The commission shall review the complaint information and notify the complainant of the result of the investigation.
- (E) While an informal complaint process is pending:
 - (i) The electric service provider 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;

(ii) A customer is obligated to pay any undisputed portion of the bill and the electric service provider may pursue termination or disconnection of service (as appropriate) of the undisputed portion after appropriate notice;

(F) The electric service provider shall keep a record for two years after 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 charges or rates or charges which are not regulated by the commission, but which are disclosed to the customer in the terms of service disclosures, need not be recorded.

(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. 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) **Record retention.**

(1) Each electric service provider 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 chapter 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 chapter shall be provided to commission staff within five calendar days of its request.

(b) **Annual reports.** On June 1 of each year, an electric service provider shall report the information required by §25.107 of this title (relating to Certification of Retail Electric Providers) 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 direct mail solicitations annually distributed to prospective customers by zip code plus four;

- (2) The number of residential customers served by zip code plus four by month to the extent that such zip code information is available from the registration agent of the customer's transmission and distribution utility's service address;
- (3) The number of written denial of service notices issued by the provider, by month, by customer class;
- (4) The number and total aggregated dollar amount of deposits held by the electric service provider, by month, by customer class;
- (5) The number of complaints resolved by the electric service provider from residential customers according to the following categories by month:
 - (A) Denial of service;
 - (B) Quality of service;
 - (C) Unauthorized billing (cramming), as required by §25.481 of this title (relating to Unauthorized Charges);
 - (D) Unauthorized change of a REP (slamming);
 - (E) Accuracy of billing services; and
 - (F) Collection and contract termination.

§25.492. Non-Compliance with Rules or Orders; Enforcement by the Commission.

- (a) **Noncompliance.** An aggregator or electric service provider that fails to comply with Public Utility Regulatory Act (PURA) chapters 17 and 39, or commission order adopted pursuant to these chapters, may, after opportunity for hearing, be subject to any and all of the following available under the law, including, but not limited to:
- (1) assessment of civil and administrative penalties under PURA §15.023;
 - (2) civil penalties under PURA §15.028;
 - (3) suspension or revocation of the applicable certification or denial of a request for renewal or change in the terms associated with a certification; and
 - (4) such other relief directed to affected customers as allowed by law.
- (b) **Commission investigation.** The commission may initiate a compliance or other enforcement proceeding upon its own initiative, after an incident has occurred, or a complaint has been filed, or a staff notice of probable noncompliance has been served. The commission may coordinate this investigation with an investigation undertaken by the office of the attorney general.
- (c) **Suspension and revocation of certification.** The commission may initiate a proceeding to seek either suspension or revocation of an aggregator's or electric service providers certification.

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 16th DAY OF AUGUST 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**