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PROJECT NO. 51830

**REVIEW OF CERTAIN RETAIL
ELECTRIC CUSTOMER PROTECTION
RULES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ALLIANCE FOR RETAIL MARKETS' COMMENTS
IN RESPONSE TO COMMISSION STAFF'S STRAWMAN**

I. INTRODUCTION

On June 25, 2021, the Public Utility Commission of Texas ("Commission") Staff filed a Strawman Rule and Briefing Questions ("Strawman") to implement changes from House Bill ("HB") 16 and certain sections of Senate Bill ("SB") 3 of the 87th Legislature. The Strawman proposed changes to 16 TEXAS ADMINISTRATIVE CODE ("TAC") §§ 25.471, 25.475, and 25.479, and also included two questions related to the Provider of Last Resort ("POLR") rates established by 16 TAC § 25.43. Staff's Strawman requested comments by July 6, 2021. Therefore, these comments are timely filed.

The Alliance for Retail Markets ("ARM")¹ is an association of competitive retail electric providers ("REPs"), and each member is certificated to provide retail electric service to customers in areas open to customer choice in Texas. ARM appreciates Commission Staff's time and efforts in drafting this Strawman for stakeholder feedback and submits these comments for consideration and development of a Proposal for Publication.² ARM is available to assist or provide additional information as may be helpful.

II. COMMENTS

As recommended by Commission Staff, ARM provides a bullet point summary of its recommendations in Section II.A., followed by comments and a proposed redline on the proposed clean version of the Strawman draft to 16 TAC §§ 25.471, 25.475, and 25.479. As discussed below, ARM also proposes a new § 25.499 to address requirements for offering wholesale indexed

¹ The members of the Alliance for Retail Markets ("ARM") participating in this project are Calpine Retail; Constellation New Energy, Inc.; ENGIE Resources LLC; Gexa Energy, LP; NRG Retail Companies (Reliant, Green Mountain Energy Company, U.S. Retailers LLC (Cirro Energy and Discount Power), , Stream SPE, Ltd., XOOM Energy Texas, LLC, and the Direct Energy family of retail electric providers); and Vistra Corp. (4Change Energy, Ambit Energy, Express Energy, TriEagle Energy, TXU Energy, and Veteran Energy).

² While ARM has endeavored to develop principled, consistent comments and feedback, given the breadth of changes proposed or contemplated in the Strawman relative to the timing of these comments, ARM reserves the right to revise and further develop the positions outlined in these comments.

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products and products containing a separate assessment of ancillary services costs to customers other than residential or small commercial customers. These comments also include responses to Commission Staff's questions regarding the Provider of Last Resort ("POLR") rates established in 16 TAC § 25.43. A redline document consolidating ARM's proposed edits to the Strawman's redlined rule language is also attached.

A. Summary of ARM's Recommendations

As requested by Commission Staff, a bullet-point summary of ARM's recommended changes to the Strawman are as follows:

- Establish a new rule, § 25.499, to contain requirements for offering wholesale indexed products and products containing a separate assessment of ancillary services costs to customers other than residential or small commercial customers, and make conforming changes to § 25.471 to add § 25.499 provisions that such customers are unable to waive;
- To the extent this rulemaking imposes additional requirements on REPs than required by HB 16, establish implementation date 120 days after order is adopted;
- § 25.475(b):
 - maintain current definition of "fixed rate product," and
 - delete definition of "wholesale indexed product" and instead reference it within the definition of Indexed Product, with a cross reference to new proposed § 25.499;
- § 25.475(c)(3)(E): clarify that if a REP does not provide proper notice of the expiration of the contract, the REP is not required to send three expiration notices to catch up, but instead is required to send the final notice that contains the terms of the default renewal product;
- § 25.475(e)(1): clarify that the notice requirements apply to term products and not month-to-month products;
- § 25.475(e)(2): clarify that REPs have latitude to determine the timing of the three notices of contract expiration to residential customers as long as all such notices accomplish the objectives in HB 16;
- § 25.475(e)(2)(D): either clarify that "sufficient notice" means the third (final) notice of contract expiration required (not three notices to catch up) or delete because it is duplicative of § 25.475(c)(3)(E);
- § 25.475(e)(3)(B): clarify that REPs may continue to provide written notice of contract expiration in a mailing separate from the customer's bill or on a separate document with the bill and to track the language in HB 16;
- § 25.475(e)(3)(C)(iii): clarify that no termination penalty applies to residential customers 14 days prior to the contract end date rather than after receipt of the first contract expiration notice;
- § 25.475(e)(3)(C)(v): clarify, consistent with HB 16, that the REP is required to include the EFL with the final (third) notice of contract termination rather than with all three notices;

- § 25.475(h)(3): propose that REPs provide information about the transmission and distribution utilities' ("TDUs") load shedding procedures via statement in the Your Rights as a Customer ("YRAC") document that such information is available at a specified website (provided by each TDU) and suggest that TDUs make live outage maps available at that website address;
- § 25.475(j)(2): propose to delete the requirement to obtain a signed Acknowledgement of Risk ("AOR") for indexed products other than wholesale indexed products, consistent with HB 16;
- § 25.475(j)(3): clarify to require REPs to provide an AOR disclosure for assessment of ancillary service charges and move this requirement to new proposed § 25.499;
- § 25.479(c): propose requiring REPs to include a reference to www.powertosavetexas.org instead of www.powertochoose.com on customer bills; and
- § 25.479(d):
 - require REPs to send public service notices in April and December (rather than October),
 - clarify that REPs may send such notices in the customer bills, and
 - clarify that the information about the TDUs' procedures for implementing involuntary load shedding may be provided by reference to the TDU website recommended in 25.479(c).

B. 16 TAC § 25.471, General Provisions of Customer Protection Rules

Section 25.471 establishes generally applicable customer protection rules and permits a customer other than a residential or small commercial customer to agree to terms of service that differ from the Commission's customer protection rules in Subchapter R, with three exceptions for rules that cannot be waived. Accordingly, large commercial and industrial customers ("C&I Customers") are relatively free to contract with REPs outside of the requirements in Subchapter R, which makes sense given the relatively sophisticated nature of C&I customers to negotiate and evaluate contract terms and the fact that many of the proposed requirements in § 25.475 would not be workable within the context of a contract with a large commercial entity.

Currently § 25.471(a)(3) specifies which rules (§§ 25.495 and 25.481) or subsections of a rule (§ 25.485(a) and (b)) that may not be waived. The Strawman proposes to add a fourth exception for "applicable portions of § 25.475" that cannot be waived. However, the provisions of § 25.475 are appropriately limited to residential and small commercial customers because the streamlining and standardization of certain service and disclosure requirements preclude some of the flexibility needed for the kinds of custom contract provisions in which many C&I customers find value. The Strawman proposes vague language regarding the "applicable" customer

protections under § 25.475. To avoid confusion regarding the applicability of customer protection rules to C&I Customers as drafted in the Strawman, ARM recommends moving the appropriate provisions of the Strawman's § 25.475 applicable to C&I customers into a new rule § 25.499, and revising § 25.471(1)(a)(3) to reference § 25.499 instead of the Strawman's proposed "applicable portions of § 25.475.". Consistent with these recommendations, ARM proposes the following changes to the Strawman in § 25.471:

- (a)(3) ... Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), ~~applicable portions of §25.475 of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Customers),~~ and §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and § 25.499 (relating to Wholesale Indexed Products and Acknowledgement of Risk Requirements for Certain Commercial Contracts),...

Alternatively, if a new rule specific to C&I customers is not moved into a new § 25.499, then ARM recommends that the Strawman's reference to "applicable portions of § 25.475" to revised to conform with the specific sections of § 25.475 adopted in this rulemaking that are applicable to C&I customers (e.g., § 25.475(j)).

C. 16 TAC § 25.475, Information Disclosures to Customers

ARM generally notes that it will take time and resources for REPs to modify their operational systems and processes to comply with the changes required by HB 16, as well as the additional changes that this rulemaking project may implement. HB 16 expressly provides that its changes to PURA (e.g., ban on the offering of wholesale indexed products to residential and small commercial customers, acknowledgement for larger commercial customers enrolling on wholesale indexed products, and additional contract expiration notice requirements for residential customers on fixed rate products) apply to enrollments or re-enrollments executed on or after September 1, 2021.³ Accordingly, ARM proposes that, to the extent this rulemaking imposes additional requirements on REPs beyond those specifically required by HB 16, the Commission allow REPs 120 days from the date of the order adopting the amendments to comply with the additional

³ See Tex. H.B. 16, 87th Leg., R.S., Sections 2 and 3 (2021).

requirements. That timeframe is consistent with the implementation date imposed for the previous amendments to §25.475 in Project No. 37214.

1. 16 TAC § 25.475(b), Definitions

The Strawman proposes to amend the definition of “Fixed rate product” to include an explicit reference to “ancillary service charges.” ARM notes that the current definition of “Fixed rate product,” which pertains to retail electric contracts subject to 16 TAC § 25.475, only permits the price to vary from the disclosed amount to reflect the following: (1) actual changes in TDU charges, (2) changes to the Electric Reliability Council of Texas (“ERCOT”) or Texas Regional Entity administrative fees charged to loads, or (3) changes resulting from federal, state, or local laws that impose new or modified fees or costs on a REP that are beyond the REP’s control. To the extent that existing ancillary service charges vary, the current language in the definition of “Fixed rate product” arguably may not allow REPs to pass through those charges.

However, ARM does want to note an important conceptual distinction with respect to ancillary service charges between ancillary service *prices* and ancillary service *quantities*. While REPs have some limited ability to hedge against ancillary service price changes, REPs cannot hedge against unexpected and unpredictable changes in the quantity of ancillary services procured by ERCOT. For example, ERCOT recently announced their intention to increase ancillary service procurements going forward and to only provide updates to the ancillary service quantities on the 20th of the preceding month.⁴ These incremental ancillary service quantities will drive additional costs that could not have been anticipated by REPs when establishing current customer contract pricing, and are more akin to changes in law that impose new fees or costs on a REP that are beyond the REP’s control.

Therefore, ARM recommends that the Commission keep the current definition of Fixed Rate Product:

- (5) **Fixed rate product.** A retail electric product with a term of at least three months for which the price (including recurring charges ~~and ancillary service charges~~) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in the Transmission and Distribution Utility (TDU) charges, changes to the Electric Reliability

⁴ See ERCOT Special TAC Meeting, ERCOT Additional Operational Reserves Presentation (June 30, 2021) http://www.ercot.com/content/wcm/key_documents_lists/234398/ERCOT_Additional_Operational_Reserves_06302021.pptx.

Council of Texas (ERCOT) or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

The Strawman also proposes adding a definition for "Wholesale Indexed Products" in new subsection (b)(12). Rather than defining that term in § 25.475, ARM recommends deleting that definition and referencing Wholesale Indexed Products in the definition of Indexed Product, with a cross-reference to the new separate rule § 25.499 that ARM proposes for the regulation of Wholesale Indexed Products.

2. 16 TAC § 25.475(c), *General Retail Electric Provider Requirements*

Subsection 25.475(c)(3) provides specific disclosure requirements that REPs must include in retail electric service contracts. The Strawman proposes to add new disclosure requirements in subsections (c)(3)(D)-(G).

One of the Strawman's new disclosure requirements in proposed subsection (c)(3)(E) would require a REP to continue to serve a customer under the pricing terms of the fixed rate product if the REP does not provide notice of the expiration of the contract until the provider provides "expiration notice" (or the customer selects another retail electric product). ARM recommends that the proposed amendment clarify that this means the final notice of contract expiration required by subsection (e), which would allow the customer either 30 days or 15 days (depending on whether the term is for more than or less than four months) to select another retail electric product or be automatically enrolled in a default renewal product. In other words, in instances where such an oversight may occur, the REP would not be required to send three contract expiration notices to "catch up", further elongating the original contract's end date, and should only be required to send the final notice that contains the terms of the default renewal product:

(c)(3)(E) If a REP does not provide proper notice of the expiration of the contract and the customer does not select another REP before expiration of the contract term, the REP must continue to serve the customer under the pricing terms of the fixed rate product until the ~~provider~~REP provides expiration—notice in accordance with the applicable requirements of subsection (e)(2)(A)(i) or (ii), or the customer selects another retail electric product.

3. 16 TAC § 25.475(e), Contract expiration and renewal offers

In new § 25.475(e)(1) and (e)(2), the Strawman proposes separate notice requirements for the expiration of fixed rate products and non-fixed rate products. ARM notes that these notice provisions could not apply to month-to-month products,⁵ because of the lack of time for such notice in a short-duration product and because the expiration timeframe for a month-to-month product is apparent to the customer from the inherent nature of that product. ARM recommends that subsection (e)(1) clarify that such notice requirements apply to *term* non-fixed rate products:⁶

(e)(1) **Notice Timeline for Expiration of a Non-Fixed Rate Term Product.** For term products other than fixed rate products, the REP must send a written notice...

HB 16 requires that a REP provide at least three notices of expiration of a fixed rate product to a residential customer within certain specified intervals. Subsection (e)(2) of the Strawman would expand this statutory requirement to require such notices to also be sent to small commercial customers on fixed rate products. Although the Legislature intentionally included small commercial customers in other parts of HB 16 (e.g., the ban on wholesale indexed products), it notably did not include small commercial customers in the new requirements for expiration notices. Because HB 16 was intentional in its use of “small commercial customer” (including it in some provisions but excluding it in others), ARM respectfully requests that the Commission maintain the current contract expiration notice requirements for small commercial customers and revise proposed subsection (e)(2) to require the three written notices of expiration of a fixed rate product apply only to residential customers, consistent with HB 16.

Furthermore, ARM recommends that the REP be permitted to have latitude to determine the timing of when the three notices of contract expiration should start, provided all such notices are sent during the last third of the contract period and at reasonably even distribution, with the last notice complying with the 30- or 15-day deadline prior to contract end date, depending on term.⁷ For example, under one possible reading of the Strawman, a REP could be required to send

⁵ Month-to-month products may be either variable or indexed products.

⁶ 16 TAC § 25.475(b)(10) defines a “term contract” as: “A contract with a term in excess of 31 days.”

⁷ See Tex. H.B. 16, 87th Leg., R.S., Section 2 (2021) (adding to PURA § 39.112(b) that the three notices of contract expiration must be “provided during the last third of the contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the contract period. The final notice for a contract with a period of more than four months must be provided at least 30 days before the date that the contract”

the first contract expiration notice 12 months before the end of a 36-month fixed rate product (i.e., exactly at the last third mark). However, based on its relationships with the customer, a REP may determine that it would be better to provide the initial notice six or three months prior to contract end date because that would be a more relevant timeframe for the customer to feel the need to take action.

Allowing the latitude recommended by ARM would still accomplish the statutory objective of contract expiration notices being sent to residential customers “*during* the last third of the contract term” but would avoid the likelihood that customers might ignore or be confused by the notice because of how far away the contract’s expiration date would be. ARM maintains that it may not be necessary to make this clarification in the language of the rule itself, as the preamble to any final adopted rule could provide that guidance. However, to the extent that rule language is preferred, ARM recommends the following changes to § 25.475(e)(2)(A):

(e)(2) Notice Timeline for Expiration of a Fixed Rate Product.

(A) For fixed rate products, the REP must provide notice of contract expiration at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer, and ~~customer with~~ for a residential customer. The notices to residential customers must be provided during the last third of the contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the contract period. For contracts with a term of 12 months or longer, the first notice may be provided no less than three months prior to the contract end date. For contracts for a period:

Subsection 25.475(e)(2)(D) of the Strawman requires that if a REP does not provide the required notice of expiration, then the REP must continue serving the customer under the terms of the fixed rate contract “until sufficient notice is provided and the customer selects another retail electric product.” Similar to § 25.475(c)(3)(E) above, ARM recommends that the proposed amendment clarify that “sufficient notice” means the *final* notice of contract expiration required by subsection (e) (not three notices to catch up), which would allow the customer either 30 days or 15 days (depending on whether the term is for more than or less than four months) to select another retail electric product or be automatically enrolled in a default renewal product. Additionally, ARM notes that § 25.475(e)(2)(D) is worded to require continued service under fixed rate terms “until sufficient expiration notice is provided *and* the customer selects another retail electric product,”

will expire. The final notice for a contract with a period of less than four months must be provided at least 15 days before the date that the contract will expire.”).

(emphasis added) but HB 16 uses “or” (which is consistent with how the provision is drafted for § 25.475(c)(3)(E)).

Alternatively, because (c)(3)(E) already addresses this requirement, ARM recommends that (e)(2)(D) is duplicative and could be removed.

4. 16 TAC § 25.475(e)(3), Contract Expiration

The Strawman proposes to add language in (e)(3)(A) that: “The month-to-month product price may vary between billing cycles based on clear terms designed to be easily understood by the average customer.” ARM notes that this requirement is duplicative of subsection (c)(2)(A), which requires that contract documents “be written in language that is clear, plain and easily understood, and shall be printed in paragraphs of no more than 250 words in a font no smaller than 10 point.” Accordingly, ARM proposes that the duplicative language not be added to (e)(3)(A).

The Strawman proposes to amend § 25.475(e)(3)(B) in a manner that may inadvertently remove the option for REPs to provide a written notice of contract expiration in a mailing separate from the customer’s bill. Additionally, the Strawman appears to not provide an option for the REP to provide the notice of contract expiration with the bill in a separate document. Both of these options are allowed by House Bill 16, which provides:

A notice required by Subsection (b) must: *if* included with a customer’s bill, be printed on a separate page or included as a separate document;” (emphasis added).⁸

Similarly, the retention of § 25.475(e)(3)(B)(iii) in the Strawman suggests that Commission Staff’s intention was not to reduce notification options. Accordingly, ARM recommends the following changes to subsection (e)(3)(B) and (B)(i) to maintain the flexibility for REPs to provide written notice of contract expiration in a separate document from the bill or, if notice is provided with the bill, to provide such notice as a separate page or document:

(B) Written notice of contract expiration must be provided in or with the customer’s bill, ~~as~~or in a separate document.

(i) If notice is provided with a residential customer’s bill, the notice must be printed on a separate page or included as a separate document...

The Strawman proposes to amend subsection (e)(3)(B)(i)-(iii) to require the notice of contract expiration provided with a residential customer’s bill must be included “in a manner readily

⁸ Tex. H.B. 16, Section 2, Public Utility Regulatory Act (“PURA”) § 39.112(e).

visible.” This language is similar to Section 2 of HB 16, which requires that such notice provided by mail must be provided in a manner visible from the outside of the envelope in which the notice is sent...” The modifier “readily” is not included in the statute and therefor ARM recommends that the language in the rule track the statute.

Because of the requirement under HB 16 that the REP must now send three notices of the expiration of a contract, subsection (e)(3)(C)(iii) could be interpreted to require a REP to waive the termination fee after the residential customer receives the first contract expiration notice. This would be an unreasonable result as, in some instances, the first contract expiration notice could be sent months before the contract is set to expire. Nothing in HB 16 stated or suggested such an outcome, and therefore ARM recommends amending subsection (e)(3)(C)(iii) to clarify:

- (iii) If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty applies to residential customers after receipt of the contract expiration notice 14 days prior to the date provided as the “on or after” date included in connection with the first meter read language referenced in the notice, or that no termination penalty applies to small commercial customers for 14 days prior to the contract end date...

The Strawman did not propose to revise § 25.475(e)(3)(C)(v), which requires the notice of contract expiration to include a copy of the Electricity Facts Label (“EFL”) for the default renewal product if the customer takes no action. ARM recommends that this subsection be amended to clarify that the REP is required to include the EFL with the final (third) notice only, consistent with HB 16.⁹ Under ARM’s proposed amendment, a REP could still choose to include the EFL in the first two notices, but should not be required to do so because the pricing for such product may not be available at that time of the earlier notices or could change during the interim period between notices (e.g., as a result of changes to transmission and distribution delivery rates that REPs pass through to customers). Accordingly, ARM recommends that § 25.475(e)(3)(C)(v) be revised to track the language of Public Utility Regulatory Act (“PURA”) § 39.112(f) added by HB 16:

- (v) The final notice provided pursuant to subsection (e)(3) must include A copy of the EFL for the default renewal product if the customer takes no action...

⁹ Section 2 of H.B. 16 revises PURA § 39.112(b) to add to notice requirements for residential customers with fixed rate products and further adds PURA § 39.112(f) which states, “The **final notice** provided under Subsection (b) must include the pricing terms for the default renewal product required by Subsection (h).” (emphasis added).

5. 16 TAC § 25.475(h), *Your Rights as a Customer Disclosure*

Section 9 of SB 3 amends PURA § 17.003 to add subsection (d-1) requiring electric utilities to provide to REPs, and REPs periodically to provide to retail customers, certain information about the electric utility's load shedding practices, critical customer designations, and reduction of electricity use during load shedding events. The Strawman proposes to amend § 25.475(h) to incorporate this requirement into the information included in the Your Rights As a Customer ("YRAC") document.

ARM suggests that the most efficient way for REPs to disseminate the most up-to-date information to their customers about TDUs' involuntary load shedding procedures is for the TDUs to ensure that the most accurate and current information is available to REPs in an easily accessible fashion (i.e., a website address). That will enable REPs to include a statement in the YRAC that this information may be found at a specified website or other contact point provided by the TDU. This will result in the YRAC being a more dynamic document without having to undergo repeated changes. ARM therefore recommends the following amendments:

- (h)(3) ...The YRAC must also provide directions to a website address or other resource with information ~~the REP has received from~~ provided by the transmission and distribution utility (TDU) pursuant to PURA §17.003(e) regarding the TDU's procedures for implementing involuntary load shedding initiated by the independent organization certified under PURA §39.151 for the ERCOT power region, and, if applicable, where any additional details regarding those procedures or relevant updates may be located. Each TDU must develop such information and resources by September 1, 2021 and make the website address available to REPs where such information may be viewed by the REP's customers. TDUs are required to update this information on the website within 30 days of any material change in the information.

One of the critical lessons learned from Winter Storm Uri is that timely and accurate communication is critical. When it comes to rotating outages, the ability of REPs to communicate with customers regarding what to expect depends on the quality of the information provided to REPs by the TDUs. To help prioritize such communications, ARM recommends that the Commission's rules require TDUs to provide notice to all REPs operating within the TDU's service territory of the location, time, and expected duration of emergency and necessary service interruptions. Although TDUs' retail delivery tariff already requires TDUs to communicate such information to REPs, a more explicit requirement included in the body of a rule would be helpful.

Furthermore, it would also be helpful to the REP's customers if the Commission were to require TDUs to include live outage maps at the website address that ARM proposed in section (h)(3).

6. 16 TAC § 25.475(j), *Acknowledgement of Risk*

The AOR requirement pursuant to Section 1 of HB 16 applies only to wholesale indexed products. However, the Strawman proposes to require a signed AOR for other indexed products as well, with examples such as NYMEX-indexed products noted at the Commission's Open Meeting. The Legislature could have required a signed AOR for indexed products other than wholesale indexed products, but it did not and focused its attention on the subset of indexed products (i.e., wholesale indexed products) then offered by some REPs to residential and small commercial customers that carried the highest risk of price volatility. ARM therefore recommends that the Commission limit the requirement to obtain a signed AOR to wholesale index products (which may only be offered to customers other than residential or small commercial customers), and that those provisions be moved to a new rule in § 25.499. Furthermore, it should be noted that REPs are already required to provide a reasonable range of pricing outcomes in the EFL for an indexed rate product, so customers are made aware of the potential for variability in other types of indexed products. Accordingly, ARM recommends that proposed subsection (j)(2) be deleted.

The Strawman also proposes to add subsection (j)(3) to require an AOR for products that contain a direct pass-through of ancillary service charges. If the Commission's goal is to better disclose the pricing volatility that can occur with products that have an ancillary service charge component, the word "pass-through" should only be used by REPs to describe costs that the REP incurs that are, in turn, passed through to customers without mark-up. ERCOT assigns ancillary service costs to REPs on a load-ratio-share basis. If a REP passes those costs through to its customers as a line item rather than building those costs into the prices offered to customers, then the pass through should reasonably approximate the customer's share of the REP's load ratio share. If a REP separately charges the customer for ancillary costs on another basis, that basis should be disclosed to the customer but should not be characterized as a "pass-through" charge. Regardless of whether an ancillary service charge is a pass-through charge or another form of charge that is not built into the customer's price, ARM supports the Commission requiring REPs to provide the disclosure in subsection (j)(3) in a new proposed § 25.499(e)(2) because this type of product structure is typically limited to C&I customers. Accordingly, ARM recommends the following amendment:

25.499(e)(2) For products that contain a ~~direct pass-through of separate assessment for~~ ancillary service charges, the AOR must include the following statement in clear, boldfaced text: “I understand that my energy bill may include a ~~direct pass-through of separate assessment for~~ ancillary service charges, which may cause ~~by my~~ bill to be multiple times higher in a month in which ancillary service charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges.”

D. 16 TAC § 25.479, Issuance and Format of Bills

1. *16 TAC § 25.479(c)(1)(S)*

Subsection (c) of § 25.479 establishes information required to be included in a customer’s bill. Subsection (c)(1)(S) currently requires the first page of a residential customer’s bill to contain a reference to www.powertochoose.com. This provision originated with a provision from PURA § 39.116, which expired on September 1, 2011. ARM recommends that this subsection be amended to require customer bills to include a reference to the Commission’s www.powertosavetexas.org website instead of www.powertochoose.com because it provides more holistic recommendations and resources for customers to reduce consumption for savings, and also includes links to www.powertochoose.com, ERCOT grid conditions, and other valuable resources. Accordingly, ARM recommends the following amendment:

(c)(1)(S) For residential customers, on the first page of the bill in at least 12-point font the phrase, “for more information about means to save on your utilities, including information about residential electric service, please visit ~~www.powertochoose.com~~ www.powertosavetexas.org.”

2. *16 TAC § 25.479(d), Public Service Notices*

The Strawman proposes to amend subsection (d) to require a REP to provide certain information to customers in April and October each year. Because of the significant amount of required notices that REPs already provide during the May through November timeframe (including hurricane messaging), ARM recommends that subsection (d)(1) require REPs to send these public service notices in December instead of October because that is during a time of year with fewer notices. Notice at this time will be more likely to catch customers’ attention.

The Strawman’s proposal that the notice be included “along with” the customer’s bill could be interpreted to require that such notice must be in the form of a bill insert. ARM requests that

the Commission allow the flexibility to include these notices on the bill as well. Also, because certain of the required information is from TDUs (e.g., the TDU's procedures for implementing involuntary load shedding), ARM recommends that this information could be provided in the TDUs' website references that ARM recommended in § 25.475(h) for inclusion in the YRAC. Accordingly, ARM recommends the following amendments:

- (d)(1) In April and ~~October~~ December of each year, or as otherwise directed by the commission, the REP must provide information to each customer ~~along with~~ within the customer's bill ~~including~~ about:
- (A) The electric utility's procedures for implementing involuntary load shedding initiated by the independent organization certified for the ERCOT power region under PURA §39.151. A REP may satisfy this requirement by reference to the website address provided by the TDUs pursuant to § 25.475(h);

E. Comments in Response to Questions Regarding Provider of Last Resort (POLR) Rates

- 1. If the Commission removes the real-time settlement price point (RTSPP) from the POLR rate formulas, what would be an equitable approach to POLR pricing moving forward?***

For the residential and small commercial customer classes, ARM notes that, anecdotally, POLRs historically appear to have tended to serve customers at market-based month-to-month rates (i.e., at rates that do not involve an RTSPP component). This is oftentimes both practically more efficient for the POLR and a better experience for customers. However, there still remains significant risk for POLRs in covering loads that are acquired quickly, most likely unhedged, and for which collection is more challenging. As such, it is important for non-volunteer POLR large service providers ("LSPs") to retain some mechanism for offsetting that risk. There are a number of approaches that may be workable in the context of HB 16.¹⁰ ARM is prepared to work with the

¹⁰ ARM notes that while PURA § 39.106(b) requires that the POLR provide a "fixed, non-discountable rate approved by the commission," the options considered should not be limited by the current definition of a fixed rate in 16 TAC § 25.475(b)(5). The statutory wording was adopted in 1999, prior to the current definition of a fixed rate. Consistent with the current formulas for POLR service in 16 TAC § 25.43(m), the POLR rate has appropriately been implemented differently than the fixed rate definition in 16 TAC § 25.475(b)(5). *See* Rulemaking Proceeding to Amend Requirements for Provider of Last Resort Service, Project No. 25360 at 25 (Aug. 22, 2002) (finding that a fixed formula rate complies with the requirement in PURA § 39.106(b) that the POLR provide a "fixed, non-discountable rate approved by the [C]ommission"); *compare* 16 TAC § 25.475(b)(5) and 16 TAC §25.43(m); *see* Project No. 35768 Order Adopting Repeal of § 25.475, and Amendment to § 25.476 as Approved at the February 2, 2009 Open Meeting.

Commission to develop a mechanism that addresses that risk. This is not limited to the medium and large non-residential customer classes; that risk applies to all customer classes.

Regardless of the POLR pricing approach chosen, an LSP should continue to have the discretion to charge a lower rate at the time of a mass transition if they so choose. As is currently the case, the applicable rate should be required to be the same for each customer class in a TDU service territory.

2. What other considerations should the Commission take into account in determining whether and how to remove RTSPP from the POLR rate formulas (e.g. the role the POLR rate plays in §25.498, related to prepaid service, etc.)?

If the RTSPP were to be removed from the POLR rate formulas, the Commission should take into account the risk considerations entailed in providing POLR service, the role of prepaid service in relation to POLR service, and impacts on communications to customers.

With regard to risk considerations, the nature of POLR service being used for mass transitions means that POLR REPs will not have otherwise planned or hedged for the load acquired as part of the mass transition because it was not part of their portfolio or part of the REP's forecasting. As discussed above, ARM is prepared to help develop a mechanism that considers this risk.

In regard to prepaid service, the POLR rate continues to function as a cap on prices charged by REPs for prepaid service due to the statutory requirement of PURA § 39.107(g).¹¹ For that reason, changing the POLR rate may necessitate changes to the specificity in 16 TAC § 25.498(c)(15)(A)-(D). One option to revise this cap if the RTSPP is removed from the POLR formula is for the prepay cap to be set at the highest posted POLR rate for the applicable TDU service area.

In addition, for communications during a mass transition, the current language in the calls, emails, and postcards sent to mass transition customers through ERCOT highly encourages them to switch to avoid a high rate. This can encourage a customer to request a switch prior to receiving communications from the volunteer POLRs ("VREPs") or LSPs letting the customer know the rate that they will actually be on. While the specific language used is not included in the rule, the intent of these communications should be contemplated in this rulemaking. To the extent that mass

¹¹ PURA § 39.107(g) ("Metered electric sold to residential customers on a prepaid basis may not be sold at a price that is higher than the price charged by the provider of last resort.").

transitions all go to VREPs or otherwise result in all POLR customers being placed on market-based month-to-month rates (perhaps with a multiplier or similarly less volatile rates than the current POLR formula), the language in the current communications should be modified accordingly.

III. CONCLUSION

For the reasons stated herein, ARM respectfully requests that the Commission propose amendments to its customer protection rules and to the POLR rule in a Proposal for Publication consistent with comments herein.

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Respectfully submitted,

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**ATTORNEYS FOR ALLIANCE FOR RETAIL
MARKETS**

1 **§25.471. General Provisions of Customer Protection Rules.**

2 (a) **Application.** This subchapter applies to aggregators and retail electric providers (REPs).

3 In addition, where specifically stated, these rules apply to transmission and distribution
4 utilities (TDUs), the registration agent, brokers and power generation companies. These
5 rules specify when certain provisions are applicable only to some, but not all, of these
6 providers.

7 (1)-(2) No changes.

8 (3) The rules in this subchapter are minimum, mandatory requirements that must be
9 offered to or complied with for all customers unless otherwise specified. Except
10 for the provisions of §25.495 of this title (relating to Unauthorized Change of
11 Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges),
12 ~~applicable portions of §25.475 of this title (relating to General Retail Electric~~
13 ~~Provider Requirements and Information Disclosures to Customers), and~~
14 §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling),
15 and § 25.499 (relating to Wholesale Indexed Products and Acknowledgement of
16 Risk Requirements for Certain Commercial Contracts), a customer other than a
17 residential or small commercial class customer, or a non-residential customer
18 whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms
19 of service that reflect either a higher or lower level of customer protections than
20 would otherwise apply under these rules. Any agreements containing materially
21 different protections from those specified in these rules must be reduced to writing
22 and provided to the customer. Additionally, copies of such agreements must be
23 provided to the commission upon request.

1 (4)-(5) No changes.

2 (b)-(d) No changes.

§25.475. General Retail Electric Provider Requirements and Information Disclosures to ~~Residential and Small Commercial~~ Residential and Small Commercial Customers.

(a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) ~~and aggregators, when specifically stated,~~ in connection with the provision of service and marketing to residential and small commercial customers. ~~This section is effective April 1, 2010. When specifically stated, the requirements of this section apply to brokers and aggregators. When specifically stated, the requirements of this section apply to the provision of service and marketing to large commercial and industrial customers. This section is~~ The wholesale indexed product ban for residential and small commercial contracts and requirements for additional notice of contract expiration for residential fixed price products required by this section are effective for ~~contracts-enrollments or re-enrollments entered into on or after September 1, 2021. All other changes required by this amended rule are applicable to contracts executed four months after this amended rule is effective. REPs are not required to modify contract documents related to contracts entered into before this date, but shall~~ must provide notice of expiration as required by subsection (e) of this section.

(b) **Definitions.** The definitions set forth in §25.5 (relating to Definitions) and §25.471(d) (relating to General Provisions of Customer Protection Rules) of this title apply to this section. In addition, the following words and terms, when used in this section ~~shall~~ have the following meanings, unless the context indicates otherwise.

- (1) **Contract** -- The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), ~~and and~~ the documentation of enrollment pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), ~~and, if applicable, the Acknowledgement of Risk (AOR).~~
- (2) **Contract documents** -- The TOS, EFL ~~and and~~, YRAC, ~~and, if applicable, AOR.~~
- (3) **Contract expiration** -- The time when the initial term contract is completed. A new contract is initiated when the customer begins receiving service pursuant to the new EFL.
- (4) **Contract term** -- The time period the contract is in effect.
- (5) **Fixed rate product** -- A retail electric product with a term of at least three months for which the price (including recurring charges ~~and ancillary service charges~~) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in the Transmission and Distribution

Utility (TDU) charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

- (6) **Indexed product** -- A retail electric product- for which the price, including recurring charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer, and to reflect actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that are beyond the REPs control. Consistent with §25.499 of this title (relating to Wholesale Indexed Products and Acknowledgement of Risk Requirements for Certain Commercial Contracts), indexed products for residential and small commercial customers shall not include a direct pass-through of real time settlement point prices determined by the independent organization certified under PURA § 39.151 for the ERCOT power region. Indexed products for residential and small commercial customers may not reference an index that changes more frequently than monthly. An indexed product may be for a term of three months or more, or may be a month-to-month contract.
- (7) **Month-to-month contract** -- A contract with a term of 31 days or less. A month-to-month contract may not contain a termination fee or penalty.
- (8) **Price** -- The cost for a retail electric product that includes all recurring charges, including ancillary services, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax.
- (9) **Recurring charge** -- A charge for a retail electric product that is expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a twelve month period. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.
- (10) **Term contract** -- A contract with a term in excess of 31 days.
- (11) **Variable price product** -- A retail product for which price may vary according to a method determined by the REP, including a product for which the price, can increase no more than a defined percentage as indexed to the customer's previous billing month's price. For residential customers, a variable price product can be only a month-to-month contract.

(12) ~~Wholesale Indexed Product~~—A retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power region.

(c) General Retail Electric Provider requirements.

(1) General Disclosure Requirements.

- (A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs, and YRACs~~and AORs~~ distributed by a REP or aggregator must~~shall~~ be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:
- (i) Using the term or terms “fixed” to market a product that does not meet the definition of a fixed rate product.
 - (ii) Suggesting, implying, or otherwise leading someone to believe that a REP or aggregator has been providing retail electric service prior to the time the REP or aggregator was certified or registered by the commission.
 - (iii) Suggesting, implying or otherwise leading someone to believe that receiving retail electric service from a REP will provide a customer with better quality of service from the TDU.
 - (iv) Falsely suggesting, implying or otherwise leading someone to believe that a person is a representative of a TDU or any REP or aggregator.
 - (v) Falsely suggesting, implying or otherwise leading someone to believe that a contract has benefits for a period of time longer than the initial contract term.
- (B) Written and electronic communications must~~shall~~ not refer to laws, including commission rules without providing a link or website address where the text of those rules are available. All printed advertisements, electronic advertising over the Internet, and websites, must~~shall~~ include the REP’s certified name or commission authorized business name, or the aggregator’s registered name, and the number of the certification or registration.
- (C) The TOS, EFL, and~~and~~ YRAC, and, if applicable, AOR ~~must~~shall be provided to each customer upon enrollment. Each document must~~shall~~ be provided to the

customer whenever a change is made to the specific document and upon a customer's request, at any time free of charge.

- (D) A REP ~~must~~shall retain a copy of each version of the TOS, EFL, ~~and~~and YRAC, ~~and~~if applicable, AOR during the time the plan is in effect for a customer and for four years after the contract ceases to be in effect for any customer. REPs ~~must~~shall provide such documents at the request of the commission or its staff.

(2) **General contracting requirements.**

- (A) A TOS, EFL, ~~YRAC, and AOR must~~ YRAC ~~must~~shall be complete, ~~shall~~ be written in language that is clear, plain and easily understood, and ~~shall~~ be printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents ~~must~~shall include a link or internet address to the full text of the law.
- (B) All contract documents ~~must~~shall be available to the commission to post on its customer education website (if the REP chooses to post offers to the website).
- (C) A contract is limited to service to a customer at a location specified in the contract. If the customer moves from the location, the customer is under no obligation to continue the contract at another location. The REP may require a customer to provide evidence that it is moving. There ~~must~~shall be no early termination fee assessed to the customer as a result of the customer's relocation if the customer provides a forwarding address and, if required, reasonable evidence that the customer no longer occupies the location specified in the contract.
- (D) A TOS and EFL ~~must~~shall disclose the type of product being described, using one of the following terms: fixed rate product, indexed product or a variable price product.
- (E) A REP ~~must~~shall not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less for an existing residential customer or in response to an applicant's request to become a residential customer.
- (F) In any dispute between a customer and a REP concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.

- (G) For a variable price product, the REP ~~must~~ disclose on the REP's website and through a toll-free number the current price and, for residential customers, one year price history, or history for the life of the product, if it has been offered less than one year. A REP ~~must~~ not rename a product in order to avoid disclosure of price history. The EFL of a variable price product or indexed product ~~must~~ include a notice of how the current price and, if applicable, historical price information may be obtained.
- (H) A REP ~~must~~ comply with its contracts.

(3) **Specific contract requirements.**

- (A) The contract term ~~must~~ be conspicuously disclosed.
- (B) The start and end dates of the contract ~~must~~ be available to the customer upon request. If the REP cannot determine the start date, the REP may estimate the start date. After the start date is known, the REP ~~must~~ specify the end date of the contract by:
- (i) specifying a calendar date; or
 - (ii) reference to the first meter read on or after a specific calendar date.
- (C) If a REP specifies a calendar date as the end date, the REP may bill the term contract price through the first meter read on or after the end date of the contract.
- (D) Each contract for service must include the terms of the default renewal product that the customer will be automatically enrolled in if the customer does not select another retail electric product before the expiration of the contract term after the customer has received expiration notice.
- (E) If a REP does not provide proper notice of the expiration of the contract and the customer does not select another REP before expiration of the contract term, the REP must continue to serve the customer under the pricing terms of the fixed rate product until the REP provider provides expiration notice in accordance with applicable requirements of subsection (e)(2)(A)(i) or (ii) or the customer selects another retail electric product.
- (F) A REP, aggregator, or broker must not offer a wholesale indexed product to a residential or small commercial customer. A REP, aggregator, or broker may enroll a customer other than a residential or small commercial customer in a wholesale indexed product only if the REP, aggregator, or broker obtains before the customer's enrollment an acknowledgementAOR in compliance with §25.499 of this title (relating to Wholesale

Indexed Products and Acknowledgement of Risk Requirements for Certain Commercial Contracts)the requirements of this section.

~~(G) — A REP, aggregator, or broker may enroll a customer, including a customer other than a residential or small commercial customer, in an indexed product or a product that contains a direct pass through of ancillary service charges only if the REP, aggregator, or broker obtains before the customer's enrollment and AOR in compliance with the requirements of this section.~~

(4) **Website requirements.**

- (A) Each REP that offers residential retail electric products for enrollment on its website ~~must~~shall prominently display the EFL for any products offered without a person having to enter any personal information other than zip code and information that allows determination of the type of offer the consumer wishes to review. Person-specific information ~~must~~shall not be required.
- (B) The EFL for each product ~~must~~shall be printable in no more than a two page format. The EFL, TOS, ~~and~~and-YRAC, ~~and, if applicable, AOR~~ for any products offered for enrollment on the website ~~must~~shall be available for viewing or downloading.

(d) **Changes in contract and price and notice of changes.** A REP may make changes to the terms and conditions of a contract or to the price of a product as provided for in this section. Changes in term (length) of a contract require the customer to enter into a new contract and may not be made by providing the notice described in paragraph (3) of this subsection.

(1) **Contract changes other than price.**

- (A) A REP may not change the price (other than as allowed by paragraph (2) of this subsection) or contract term of a term contract for a retail electric product, during its term; but may change any other provision of the contract, with notice under paragraph (3) of this subsection.
- (B) A REP may not change the terms and conditions of a month-to-month product, indexed or variable price products, unless it provides notice under paragraph (3) of this subsection.

(2) **Price changes.**

- (A) A REP may only change the price of a fixed rate product, an indexed product, or a variable product consistent with the definitions in this section and according to the

product's EFL. Such price changes do not require notice under paragraph (3) of this subsection.

(B) For a fixed rate product, each bill ~~must~~shall either show the price changes on one or more separate line items, or ~~must~~shall include a conspicuous notice stating that the amount billed may include price changes allowed by law or regulatory actions.

(C) Each residential bill for a variable price product ~~must~~shall include a statement informing the customer how to obtain information about the price that will apply on the next bill.

(3) **Notice of changes to terms and conditions.** A REP must provide written notice to its customers at least 14 days in advance of the date that the change in the contract will be applied to the customer's bill or take effect. Notice is not required for a change that benefits the customer.

(4) **Contents of the notice to change terms and conditions.** The notice ~~must~~shall:

- (A) be provided in or with the customer's bill or in a separate document;
- (B) include the following statement, "Important notice regarding changes to your contract" clearly and conspicuously in the notice;
- (C) identify the change and the specific contract provisions that address the change;
- (D) clearly specify what actions the customer needs to take if the customer does not accept the proposed changes to the contract;
- (E) state in bold lettering that if the new terms are not acceptable to the customer, the customer may terminate the contract and no termination penalty ~~may~~shall apply for 14 days from the date that the notice is sent to the customer but may apply if action is taken after the 14 days have expired. No such statement is required if the customer would not be subject to a termination penalty under any circumstances; and
- (F) state in bold lettering that establishing service with another REP may take up to seven business days.

(e) **Contract expiration and renewal offers.** ~~The REP shall~~

(1) Notice Timeline for Expiration of a Non-Fixed Rate Term Product.

For term products other than fixed rate products, the REP must send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP ~~must~~shall send the notice by mail to a residential

customer or ~~may~~**shall** send the required notice to a customer's e-mail address if available to the REP and if the customer has requested to receive contract-related notices electronically. The REP ~~must~~**shall** send the notice to a small commercial customer by mail or may send the notice to the customer's e-mail address if available to the REP and, if the customer has requested to receive contract-related notices electronically. Nothing in this section ~~precludes~~**shall preclude** a REP from offering a new contract to the customer at any other time during the contract term.

(2) Notice Timeline for Expiration of a Fixed Rate Product.

(A) For fixed rate products, the REP must provide notice of contract expiration at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer, and the customer with at least three written notices of the date the fixed rate product will expire for a residential customer. The notices to residential customers must be provided during the last third of the contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the contract period. For contracts with a term of 12 months or longer, the first notice may be provided no less than three months prior to the contract end date. For contracts for a period:

(i) Of more than four months, the final notice must be provided at least 30 days before the date the contract will expire.

(ii) Of less than four months, the final notice must be provided at least 15 days before the date the contract will expire.

(B) The notices must be provided to the customer by mail at the customer's billing address, unless the customer has opted to receive communications electronically from the REP.

(C) Additional means of providing the customer notice may be utilized, so long as it is in addition to the notice required in paragraph (B) of this subsection.

(D) If a REP does not provide the required notice of the expiration of a customer's contract and the customer does not select another retail electric product before expiration of the contract term, the REP must continue serving the customer under the terms of the fixed rate contract until sufficient expiration notice is provided and the customer selects another retail electric product.

(3) Contract Expiration.

- (A) If a customer takes no action in response to ~~the final~~ notice of contract expiration for the continued receipt of retail electric service upon the contract's expiration, the REP ~~must~~shall serve the customer pursuant to a default renewal product that is a month-to-month product that the customer may cancel at any time without a fee. The month-to-month product price may vary between billing cycles based on clear terms designed to be easily understood by the average customer.
- (B) Written notice of contract expiration ~~must~~shall be provided in or with the customer's bill, ~~or in~~or in a separate document.
- (i) If notice is provided with a residential customer's bill, the notice ~~must~~shall be printed on a separate page. A statement ~~must~~shall be included in a manner readily visible on the outside of the envelope sent to a residential customer's billing address by mail and in the subject line on the e-mail (if the REP sends the notice by e-mail) that states, "Contract Expiration Notice. See Enclosed."
- (ii) If the notice is provided in or with a small commercial customer's bill, the REP must include a statement in a manner readily visible on the outside of the billing envelope or in the subject line of an electronic bill that states, "Contract Expiration Notice" or "Contract Expiration Notice. See Enclosed."; or
- (iii) If notice is provided in a separate document, a statement ~~must~~shall be included in a manner readily visible on the outside of the envelope and in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice. See Enclosed." for residential customers or for small commercial customers, "Contract Expiration Notice" ~~or "Contract Expiration Notice. See Enclosed."~~
- (C) A written notice of contract expiration (whether with the bill or in a separate envelope) ~~must~~shall set out the following:
- (i) The date, in boldfaced and underlined text, as provided for in subsection (c)(3)(B) of this section that the existing contract will expire.
- (ii) If the REP provided a calendar date as the end date for the contract, a statement in bold lettering no smaller than 12 point font that no termination

penalty ~~must~~shall apply to residential and small commercial customers 14 days prior to the date stated as the expiration date in the notice. In addition, a description of any fees or charges associated with the early termination of a residential customer's fixed rate product that would apply before 14 days prior to the date stated as the expiration date in the notice must be provided. No such statements are required if the original contract did not contain a termination fee.

- (iii) If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty ~~applies~~shall apply to residential customers ~~after receipt of the contract expiration notice~~14 days prior to the date provided as the "on or after" date included in connection with the first meter read language referenced in the notice, or that no termination penalty ~~applies~~shall apply to small commercial customers for 14 days prior to the contract end date. No such statement is required if the original contract did not contain a termination fee.
- (iv) A description of any renewal offers the REP chooses to make available to the customer and the location of the TOS and EFL for each of those products and a description of actions the customer needs to take to continue to receive service from the REP under the terms of any of the described renewal offers and the deadline by which actions must be taken.
- (v) The final notice provided pursuant to subsection (e)(3) must include a~~A~~ copy of the EFL for the default renewal product if the customer takes no action, or if the EFL is not included with the contract expiration notice, the REP must provide the EFL to the customer at least 14 days before the expiration of the contract using the same delivery method as was used for the notice. The contract expiration notice must specify how and when the EFL will be made available to the customer.
- (vi) A statement that if the customer takes no action, service to the customer will continue pursuant to the EFL for the default renewal product that ~~must~~shall be included as part of the notice of contract expiration. The TOS for the default renewal product ~~must~~shall be included as part of the notice, unless

the TOS applicable to the customer's existing service also applies to the default renewal product.

- (vii) The final notice provided pursuant to subsection (e)(3) must include a~~A~~ statement that the default service is month-to month and may be cancelled at any time with no fee.

(4) **Affirmative consent.** A customer that is currently receiving service from a REP may be re-enrolled with the REP for service with the same product under which the customer is currently receiving service, or a different product, by conducting an enrollment pursuant to §25.474 of this title or by obtaining the customer's consent in a recording, electronic document, or written letter of authorization consistent with the requirements of this subsection. Affirmative consent is not required when a REP serves the customer under a default renewal product pursuant to paragraph (1) of this subsection. Each recording, electronic document, or written consent form must:

- (A) Indicate the customer's name, billing address, service address (for small commercial customers, the ESI ID may be used rather than the service address);
- (B) Indicate the identification number of the TOS and EFL under which the customer will be served;
- (C) Indicate if the customer has received, or when the customer will receive copies of the TOS, EFL, ~~and~~ and YRAC, ~~and, if applicable, AOR;~~
- (D) Indicate the price(s) which the customer is agreeing to pay;
- (E) Indicate the date or estimated date of the re-enrollment, the contract term, and the estimated start and end dates of contract term;
- (F) Affirmatively inquire whether the customer has decided to enroll for service with the product, and contain the customer's affirmative response; and
- (G) Be entirely in plain, easily understood language, in the language that the customer has chosen for communications.

(f) **Terms of service document.** The following information ~~must~~shall be conspicuously contained in the TOS:

- (1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).

(2) **Pricing and payment arrangements.**

- (A) Description of the amount of any routine non-recurring charges resulting from a move-in or switch that may be charged to the customer, including but not limited to an out-of-cycle meter read, and connection or reconnection fees;
- (B) For small commercial customers, a description of the demand charge and how it will be applied, if applicable;
- (C) An itemization, including name and cost, of any non-recurring charges for services that may be imposed on the customer for the retail electric product, including an application fee, charges for default in payment or late payment, and returned checks charges;
- (D) A description of any collection fees or costs that may be assessed to the customer by the REP and that cannot be quantified in the TOS; and
- (E) A description of payment arrangements and bill payment assistance programs offered by the REP.

(3) **Deposits.** If the REP requires deposits from its customers:

- (A) a description of the conditions that will trigger a request for a deposit;
- (B) the maximum amount of the deposit or the manner in which the deposit amount will be determined;
- (C) a statement that interest will be paid on the deposit at the rate approved by the commission, and the conditions under which the customer may obtain a refund of a deposit;
- (D) an explanation of the conditions under which a customer may establish satisfactory credit pursuant to §25.478 of this title (relating to Credit Requirements and Deposits); and
- (E) if applicable, the customer's right to post a letter of guarantee in lieu of a deposit pursuant to §25.478(i) of this title.

(4) **Rescission, Termination and Disconnection.**

- (A) In a conspicuous and separate paragraph or box:
 - (i) A description of the right of a customer, for switch requests, to rescind service without fee or penalty of any kind within three federal business days after receiving the TOS, pursuant to §25.474 of this title; and

- (ii) Detailed instructions for rescinding service, including the telephone number and, if available, facsimile number or e-mail address that the customer may use to rescind service.
 - (B) A statement as to how service can be terminated and any penalties that may apply;
 - (C) A statement of customer's ability to terminate service without penalty if customer moves to another premises and provides evidence that it is moving, if required, and a forwarding address; and
 - (D) If the REP has disconnection authority, pursuant to §25.483 of this title (relating to Disconnection of Service), a statement that the REP may order disconnection of the customer for non-payment.
- (5) **Antidiscrimination.** A statement informing the customer that the REP cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a economically distressed geographic area, or qualification for low income or energy efficiency services. For residential customers, a statement informing the customer that the REP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less.
- (6) **Other terms.** Any other material terms and conditions, including exclusions, reservations, limitations of liability, or special equipment requirements, that are a part of the contract for the retail electric product.
- (7) **Contract expiration notice.** For a term contract, the TOS ~~must~~shall contain a statement informing the customer that a contract expiration notice will be sent at least 14 days prior to the end of the initial contract term. The TOS ~~must~~shall also state that if the customer fails to take action to ensure the continued receipt of retail electric service upon the contract's expiration, the customer will continue to be served by the REP automatically pursuant to a default renewal product, which ~~must~~shall be a month-to-month product.
- (8) A statement describing the conditions under which the contract can change and the notice that will be provided if there is a change.
- (9) **Version number.** A REP ~~must~~shall assign an identification number to each version of its TOS, and ~~must~~shall publish the number on the terms of service document.

(g) **Electricity Facts Label.** The EFL ~~must~~shall be unique for each product offered and ~~must~~shall include the information required in this subsection. Nothing in this subsection precludes a REP from charging a price that is less than its EFL would otherwise provide.

(1) **Identity and contact information.** The REP's certified name and business name (dba) (if applicable), mailing address, e-mail and Internet address (if applicable), certification number, and a toll-free telephone number (with hours of operation and time-zone reference).

(2) **Pricing disclosures.** Pricing information ~~must~~shall be disclosed by a REP in an EFL. The EFL ~~must~~shall state specifically whether the product is a fixed rate, variable price or indexed product.

(A) For a fixed rate product, the EFL ~~must~~shall provide the total average price for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer.

(B) For an indexed product, the EFL ~~must~~shall provide sample prices for electric service reflecting all recurring charges, excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, resulting from a reasonable range of values for the inputs to the pre-defined pricing formula.

(C) For a variable price product, the EFL ~~must~~shall provide the total average price for electric service for the first billing cycle reflecting all recurring charges, including any TDU charges that may be passed through and excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax, to the customer. Actual changes in TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charge to loads or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on a REP that were not implemented prior to the issuance of the EFL and were not included in the average price calculation may be directly passed through to customers beginning with the customer's first billing cycle.

(D) The total average price for electric service ~~must~~shall be expressed in cents per kilowatt hour, rounded to the nearest one-tenth of one cent for the following usage levels:

(i) For residential customers, 500, 1,000 and 2,000 kilowatt hours per month;
and

- (ii) For small commercial customers, 1,500, 2,500, and 3,500 kilowatt hours per month. If demand charges apply assume a 30 percent load factor.
- (E) If a REP combines the charges for retail electric service with charges for any other product, the REP ~~must~~shall:
 - (i) If the electric product is sold separately from the other products, disclose the total price for electric service separately from other products; and
 - (ii) If the REP does not permit a customer to purchase the electric product without purchasing the other products or services, state the total charges for all products and services as the price of the total electric service. If the product has a one-time cost up front, for the purposes of the average price calculation, the cost of the product may be figured in over a 12-month period with 1/12 of the cost being attributed to a single month.
- (F) The following ~~must~~shall be included on the EFL for specific product types:
 - (i) For indexed products, the formula used to determine an indexed product, including a website and phone number customers may contact to determine the current price.
 - (ii) For a variable price product that increases no more than a defined percentage as indexed to the customer's previous billing month's price, a notice in bold type no smaller than 12 point font: "Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may increase by no more than {insert percentage} percent from month-to-month." For residential customers, the following additional statement is required: "Please review the historical price of this product available at {insert specific website address and toll-free telephone number}." In the disclosure chart, the box describing whether the price can change during the contract period ~~must~~shall include the following statement: "The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control."

- (iii) For all other variable price products, a notice in bold type no smaller than 12 point font: “Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}.
- In the disclosure chart, the box describing whether the price can change during the contract period ~~must~~shall include the following statement: “The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP charges; changes to the Electric Reliability Council of Texas or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs that are outside our control.” For residential customers, the following additional statement is required: “Please review the historical price of this product available at {insert specific website address and toll-free telephone number}.”

(3) **Fee Disclosures.**

- (A) If customers may be subject to a special charge for underground service or any similar charge that applies only in a part of the TDU service area, the EFL ~~must~~shall include a statement in the electricity price section that some customers will be subject to a special charge that is not included in the total average price for electric service and ~~must~~shall disclose how the customer can determine the price and applicability of the special charge.
- (B) A listing of all fees assessed by the REP that may be charged to the customer and whether the fee is included in the recurring charges.

(4) **Term Disclosure.** EFL ~~must~~shall include disclosure of the length of term, minimum service term, if any, and early termination penalties, if any.

(5) **Renewable Energy Disclosures.** The EFL ~~must~~shall include the percentage of renewable energy of the electricity product and the percentage of renewable energy of the statewide average generation mix.

(6) **Format of Electricity Facts Label.** REPs must use the following format for the EFL with the pricing chart and disclosure chart shown. The additional language is for illustrative purposes. It does not include all reporting requirements as outlined above. Such subsections should be referred to for determination of the required reporting items on the EFL. Each EFL ~~must~~shall

be printed in type no smaller than ten points in size, unless a different size is specified in this section, and ~~must~~shall be formatted as shown in this paragraph:

Electricity Facts Label (EFL)				
{Name of REP}, {Name of Product}, {Service area (if applicable)},				
Electricity price	Average	500kWh	1,000kWh	2,000kWh
	Average price	{x.x}¢	{x.x}¢	{x.x}¢
	For POLR use:	{x.x}¢	{x.x}¢	{x.x}¢
	Minimum price			
	per kilowatt-			
<p>{If applicable} On-peak {season or time}:{xxx}</p> <p>{If applicable} Average on-peak price per kilowatt-hour: {x.x}¢</p> <p>{If applicable} Average off-peak price per kilowatt-hour: {x.x}¢</p> <p>{If applicable} Potential surcharges corresponding to the given electric service.</p> <p>{If variable that does not change within a defined percentage} Except for price changes allowed by law or regulatory action, this price is the price that will be applied during your first billing cycle; this price may change in subsequent months at the sole discretion of {insert REP name}. {If</p>				
Other Key Terms and	See Terms of Service statement for a full listing of fees, deposit policy, and other terms.			
	Type of Product	(fixed rate indexed or variable)		
	Contract Term	(number of months)		
	Do I have a termination fee or any fees associated with terminating service?	(yes/no) (if yes, how much)		
	Can my price change during contract period?	(yes/no)		

<p><i>Disclosure</i></p> <p><i>Chart</i></p>	<p>If my price can change, how will it change, and by how much?</p>	<p>(formula/description of the way the price will vary and how much it can change)</p> <p>In addition if the REP chooses to pass through regulatory changes the following must<u>shall</u> be required:</p> <p>“The price applied in the first billing cycle may be different from the price in this EFL if there are changes in TDSP (List, or give direct location in TOS.)</p>
	<p>What other fees may I be charged?</p>	<p>(List, or give direct location in TOS.)</p>
	<p>Is this a pre-pay or pay in advance</p>	<p>(yes/no)</p>
	<p>Does the REP purchase excess</p>	<p>(yes/no)</p>
	<p>Renewable Content</p>	<p>(This product is x% renewable)</p>
	<p>The statewide average for renewable content is</p>	<p>(% of statewide average for renewable content)</p>
<p>Contact info, certification number, version number</p>		

- (7) **Version number.** A REP ~~must~~ assign an identification number to each version of its EFL, and ~~must~~ publish the number on the EFL.
- (h) **Your Rights as a Customer disclosure.** The information set out in this section ~~must~~ be included in a REP's "Your Rights as a Customer" document, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.
- (1) A YRAC document ~~must~~ be consistent with the TOS for the retail product.
- (2) The YRAC document ~~must~~ inform the customer of the REP's complaint resolution policy pursuant to §25.485 of this title (relating to Customer Access and Complaint Handling) and payment arrangements and deferred payment policies pursuant to §25.480 of this title (relating to Bill Payment and Adjustments).
- (3) The YRAC document ~~must~~ inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection. The YRAC must also provide directions to a website address or other resource with information provided by the REP has received from the transmission and distribution utility (TDU) pursuant to PURA §17.003(e) regarding the TDU's procedures for implementing involuntary load shedding initiated by the independent organization certified under PURA §39.151 for the ERCOT power region, and, if applicable, where any additional details regarding those procedures or relevant updates may be located. Each TDU must develop such information and resources by September 1, 2021 and make the website address available to REPs linking to the TDU website where such information may be viewed by the REP's customers. TDUs are required to update this information on the website within 30 days of any material change in the information.
- (4) The YRAC document ~~must~~ inform the customer of the customer's right to have the meter tested pursuant to §25.124 of this title (relating to Meter Testing), or in accordance with the tariffs of a transmission and distribution utility, a municipally owned utility, or an electric cooperative, as applicable, and the REP's ability in all cases to make that request on behalf of the customer by a standard electronic market transaction, and the customer's right to be instructed on how to read the meter, if applicable.
- (5) The YRAC document ~~must~~ inform the customer of the availability of:
- (A) Financial and energy assistance programs for residential customers;
- (B) Any special services such as readers or notices in Braille or TTY;

- (C) Special policies or programs available to residential customers ~~with physical disabilities, including residential customers who have a critical need for electric service to maintain life support systems;~~ designated as chronic condition or critical care under §25.497 of this title and the procedure for a customer to apply to be considered for such designations.; and
 - (D) Any available discounts that may be offered by the REP for qualified low-income residential customers. A REP may comply with this requirement by providing the customer with instructions for how to inquire about such discounts.
- (6) The YRAC document ~~must~~shall inform the customer of the following customer rights and protections:
- (A) Unauthorized switch protections applicable under §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider);
 - (B) The customer's right to dispute unauthorized charges on the customer's bill as set forth in §25.481 of this title (relating to Unauthorized Charges);
 - (C) Protections relating to disconnection of service pursuant to §25.483 of this title;
 - (D) Non-English language requirements pursuant to §25.473 of this title (relating to Non-English Language Requirements);
 - (E) Availability of a Do Not Call List pursuant to §25.484 of this title (relating to Electric No-Call List) and §26.37 of this title (relating to Texas No-Call List); and
 - (F) Privacy rights regarding customer proprietary information as provided by §25.472 of this title (relating to Privacy of Customer Information).
- (7) **Identity and contact information.** The REP's certified name and business name (dba), certification number, mailing address, e-mail and Internet address (if applicable), and a toll-free telephone number (with hours of operation and time-zone reference) at which the customer may obtain information concerning the product.
- (i) **Advertising claims.** If a REP or aggregator advertises or markets the specific benefits of a particular electric product, the REP or aggregator ~~must~~shall provide the name of the electric product offered in the advertising or marketing materials to the commission or its staff, upon request. All advertisements and marketing materials distributed by or on behalf of a REP or aggregator ~~must~~shall comply with this section. REPs and aggregators are responsible for representations to customers and prospective customers by

employees or other agents of the REP concerning retail electric service that are made through advertising, marketing or other means.

- (1) **Print advertisements.** Print advertisements and marketing materials, including direct mail solicitations that make any claims regarding price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP ~~must~~shall include the EFL of the REP making the claim. In lieu of including an EFL, the following statement ~~must~~shall be provided: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number, and Internet address (if available) of the REP).” If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. Upon request, a REP ~~must~~shall provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.
- (2) **Television, radio, and internet advertisements.** A REP ~~must~~shall include the following statement in any television, Internet, or radio advertisement that makes a specific claim about price, savings, or environmental quality for an electricity product of the REP compared to a product offered by another REP: “You can obtain important standardized information that will allow you to compare this product with other offers. Contact (name, telephone number and website (if available) of the REP).” If the REPs phone number or website address is included on the advertisement, such phone number or website address is not required in the disclaimer statement. This statement is not required for general statements regarding savings or environmental quality, but ~~must~~shall be provided if a specific price is included in the advertisement, or if a specific statement about savings or environmental quality compared to another REP is made. Upon request, a REP ~~must~~shall provide to the commission the contract documents relating to a product being advertised and any information used to develop or substantiate comparisons made in the advertisement.
- (3) **Outdoor advertisements.** A REP ~~must~~shall include, in a font size and format that is legible to the intended audience, its certified name or commission authorized business name, certification number, telephone number and Internet address (if available).
- (4) **Renewable energy claims.** A REP ~~must~~shall authenticate its sales of renewable energy in accordance with §25.476 of this title (relating to Renewable and Green Energy Verification). If a REP relies on supply contracts to authenticate its sales of renewable energy, it ~~must~~shall file

a report with the commission, not later than March 15 of each year demonstrating its compliance with this paragraph and §25.476 of this title.

~~(i) Acknowledgement of Risk. Before a customer's enrollment in an indexed product, a wholesale indexed product, or a product that contains a direct pass-through of ancillary service charges, an aggregator, broker, or retail electric provider must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.~~

~~(1) For Wholesale Indexed Products the AOR must include the following statement in clear, boldfaced text: "I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices."~~

~~(2) For Indexed Products other than Wholesale Indexed Products the AOR must include the following statement in clear, boldfaced text: "I understand that the volatility and fluctuation of indexed pricing based on non-fixed indices may cause my energy bill to be multiple times higher in certain billing periods. I understand that I will be responsible for charges caused by fluctuations in the non-fixed indices and the resulting indexed price."~~

~~(3) For products that contain a direct pass-through of ancillary service charges the AOR must include the following statement in clear, boldfaced text: "I understand that my energy bill may include a direct pass-through of ancillary service charges, which may cause by bill to be multiple times higher in billing periods in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges."~~

§25.479. Issuance and Format of Bills.

(a) **Application.** This section applies, beginning April 1, 2010, to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

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

- (1) A REP must issue a bill monthly to each customer, unless service is provided for a period of less than one month. A REP may issue a bill less frequently than monthly if both the customer and the REP agree to such an arrangement.
- (2) Bills must be issued no later than 30 days after the REP receives the usage data and any related invoices for non-bypassable charges, unless validation of the usage data and invoice received from a transmission and distribution utility by the REP or other efforts to determine the accuracy of usage data or invoices delay billing by a REP past 30 days. The number of days to issue a bill must be extended beyond 30 days to the extent necessary to support agreements between REPs and customers for less frequent billing, as provided in paragraph (1) of this subsection or for consolidated billing.
- (3) A REP must issue bills to residential customers in writing and delivered via the United States Postal Service. REPs may provide bills to a customer electronically in lieu of written mailings if both the customer and the REP agree to such an arrangement. An affiliated REP or a provider of last resort must not require a customer to agree to such an arrangement as a condition of receiving electric service.
- (4) A REP must not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document.

(c) **Bill content.**

- (1) Each customer's bill must include the following information:

- (A) The certified name and address of the REP and the number of the license issued to the REP by the commission;
- (B) A toll-free telephone number, in bold-face type, which the customer can call during specified hours for inquiries and to make complaints to the REP about the bill;
- (C) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system;
- (D) The service address, electric service identifier (ESI), and account number of the customer;
- (E) The service period for which the bill is rendered;
- (F) The date on which the bill was issued;
- (G) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action;
- (H) The current charges for electric service as disclosed in the customer's terms of service document, including applicable taxes and fees labeled "current charges." If the customer is on a level or average payment plan, the level or average payment due must be clearly shown in addition to the current charges;
- (I) A calculation of the average unit price for electric service for the current billing period, labeled, "The average price you paid for electric service this month." The calculation of the average price for electric service must reflect the total of all fixed and variable recurring charges, but not include state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and must be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.
- (J) The identification and itemization of charges other than for electric service as disclosed in the customer's terms of service document;
- (K) The itemization and amount of any non-recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the REP's terms of service document provided to the customer;

- (L) The balances from the preceding bill, payments made by the customer since the preceding bill, and the amount the customer is required to pay by the due date, labeled “amount due;”
- (M) A notice that the customer has the opportunity to voluntarily donate money to the bill payment assistance program, pursuant to §25.480(g)(2) of this title (relating to Bill Payment and Adjustments);
- (N) If available to the REP on a standard electronic transaction, if the bill is based on kilowatt-hour (kWh) usage, the following information:
 - (i) the meter reading at the beginning of the period for which the customer is being billed, labeled “previous meter read,” and the meter reading at the end of the period for which the customer is being billed, labeled “current meter read,” and the dates of such readings;
 - (ii) the kind and number of units measured, including kWh, actual kilowatts (kW), or kilovolt ampere (kVa);
 - (iii) if applicable, billed kW or kVa;
 - (iv) whether the bill was issued based on estimated usage; and
 - (v) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;
- (O) Any amount owed under a written guarantee agreement, provided the guarantor was previously notified in writing by the REP of an obligation on a guarantee as required by §25.478 of this title (relating to Credit Requirements and Deposits);
- (P) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;
- (Q) Notification of any changes in the customer’s prices or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer’s terms of service document;
- (R) The notice required by §25.481(d) of this title (relating to Unauthorized Charges); and

(S) For residential customers, on the first page of the bill in at least 12-point font the phrase, “for more information about residential electric service please visit www.powertosavetexas.org~~www.powertochoose.com~~.”

(2) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer’s bill, then the term in this paragraph must be used to identify that charge, and such term and its definition must be easily located on the REP’s website and available to a customer free of charge upon request. Nothing in this paragraph precludes a REP from aggregating transmission and distribution utility (TDU) or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP must not exceed the amount of the TDU tariff charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, by adding the word “total” to a defined term, where appropriate, changing the use of lowercase or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer’s bill.

(A) Advanced metering charge -- A charge assessed to recover a TDU’s charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU’s standard metering charge. Acceptable abbreviation: Advanced Meter.

(B) Competition Transition Charge -- A charge assessed to recover a TDU’s charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.

(C) Energy Efficiency Cost Recovery Factor -- A charge assessed to recover a TDU’s costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.

(D) Late Payment Penalty -- A charge assessed for late payment in accordance with Public Utility Commission rules.

(E) Meter Charge -- A charge assessed to recover a TDU’s charges for metering a customer’s consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.

(F) Miscellaneous Gross Receipts Tax Reimbursement -- A fee assessed to recover the miscellaneous gross receipts tax imposed on retail electric providers operating in an

incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.

- (G) Nuclear Decommissioning Fee -- A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.
 - (H) PUC Assessment -- A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.
 - (I) Sales tax -- Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.
 - (J) TDU Delivery Charges -- The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.
 - (K) Transmission Distribution Surcharges -- One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges.
 - (L) Transition Charge -- A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.
- (3) If the REP includes any of the following terms in its bills, the term must be applied in a manner consistent with the definitions, and such term and its definition must be easily located on the REP's website and available to a customer free of charge upon request:
- (A) Base Charge -- A charge assessed during each billing cycle without regard to the customer's demand or energy consumption.
 - (B) Demand Charge -- A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, during the billing cycle.
 - (C) Energy Charge -- A charge based on the electric energy (kWh) consumed.
- (4) A REP must provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request and, to the extent that the charges are consistent with the terms set out in paragraph (2), of this subsection, the terms must be used in the itemization.
- (5) A customer's electric bill must not contain charges for electric service from a service provider other than the customer's designated REP.

(6) A REP must include on each residential and small commercial billing statement, in boldfaced and underlined type, the date, as provided for in §25.475(c)(3)(B) of this title (relating to General Retail Electric Provider Requirements and Information Disclosure to Residential and Small Commercial Customers) that a fixed rate product will expire.

(7) To the extent that a REP uses the concepts identified in this paragraph in a customer's bill, it must use the term set out in this paragraph, and the definitions in this paragraph must be easily located on the REP's website. A REP may not use a different term for a concept that is defined in this paragraph.

(A) kW -- Kilowatt, the standard unit for measuring electricity demand, equal to 1,000 watts;

(B) kWh -- Kilowatt-hour, the standard unit for measuring electricity energy consumption, equal to 1,000 watt-hours; and

(8) Notice of contract expiration may be provided in a bill in accordance with §25.475 of this title.

(d) **Public service notices.** A REP must, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission.

(1) In April and ~~December~~October of each year, or as otherwise directed by the commission, the REP must provide information to each customer ~~in~~along with the customer's bill ~~including~~about:

(A) The electric utility's procedures for implementing involuntary load shedding initiated by the independent organization certified for the ERCOT power region under PURA §39.151. A REP may satisfy this requirement by reference to the website address provided by the TDUs pursuant to § 25.475(h);

(B) The types of customers who may be considered critical care residential customers, critical load industrial customers, or critical load according to commission rules adopted under PURA §38.076;

(C) The procedure for a customer to apply to be considered a critical care customer, a critical load industrial customer, or critical load according to commission rules adopted under PURA §38.076; and

(D) Reducing electricity use at times when involuntary load shedding events may be implemented.

- (e) **Estimated bills.** If a REP is unable to issue a bill based on actual meter reading due to the failure of the TDU, the registration agent, municipally owned utility or electric cooperative to obtain or transmit a meter reading or an invoice for non-bypassable charges to the REP on a timely basis, the REP may issue a bill based on the customer's estimated usage and inform the customer of the reason for the issuance of the estimated bill.
- (f) **Non-recurring charges.** A REP may pass through to its customers all applicable non-recurring charges billed to the REP by a TDU, municipally owned utility, or electric cooperative as a result of establishing, switching, disconnecting, reconnecting, or maintaining service to an applicant or customer. In the event of a meter test, the TDU, municipally owned utility, electric cooperative, and REP must comply with the requirements of §25.124 of this title (relating to Meter Testing) or with the requirements of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable. The TDU, municipally owned utility, or electric cooperative must maintain a record of all meter tests performed at the request of a REP or a REP's customers.
- (g) **Record retention.** A REP must maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records must contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing records may be obtained by that customer on request, and may be obtained once per 12-month period, at no charge.
- (h) **Transfer of delinquent balances or credits.** If the customer has an outstanding balance or credit owed to the customer's current REP that is due from a previous account in the same customer class, then the customer's current REP may transfer that balance to the customer's current account. The delinquent balance and specific account or address must be identified as such on the bill. There must be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) of this title.

§25.499. Wholesale Indexed Products and Acknowledgement of Risk Requirements for Certain

Commercial Contracts.

- (a) **Purpose.** The purpose of this section is to prohibit the offering of wholesale indexed products to residential and small commercial customers and to establish requirements for the offering of wholesale indexed products and products containing separate assessment of ancillary services costs to a customer other than a residential or small commercial customer.
- (b) **Application.** This section applies to all retail electric providers (REPs), aggregators and brokers. This section is effective for contracts entered into on or after September 1, 2021. REPs are not required to modify contract documents related to contracts entered into before this date.
- (c) **Definitions.** The definitions set forth in §25.5 (relating to Definitions) and §25.471(d) (relating to General Provisions of Customer Protection Rules) of this title apply to this section. In addition, the following words and terms, when used in this section, shall have the following meaning unless the context indicates otherwise:
- (1) **Wholesale Indexed Product** - A retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under the Public Utility Regulatory Act (PURA) §39.151 for the ERCOT power region.
- (d) **Prohibition Relating to Residential and Small Commercial Customers.** A REP, aggregator, or broker may not offer a wholesale indexed product to a residential or small commercial customer.
- (e) **Acknowledgement of Risk (AOR).** Before a customer other than a residential or small commercial customer is enrolled in a wholesale indexed product, or a product that contains a separate assessment for ancillary service charges, an aggregator, broker, or REP must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.
- (1) For Wholesale Indexed Products, the AOR must include the following statement in clear, boldfaced text: “I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices.”

- (2) For products that contain a separate assessment for ancillary service charges the AOR must include the following statement in clear, boldfaced text: “I understand that my energy bill may include a separate assessment for ancillary service charges, which may cause my bill to be multiple times higher in billing periods in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges.”
- (3) A REP, aggregator, or broker shall maintain a record of the AORs for each customer while the customer is enrolled with the REP on the applicable product.