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PROJECT NO. 51830

REVIEW OF CERTAIL RETAIL ELECTRIC CUSTOMER PROTECTION RULES	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

PROPOSAL FOR PUBLICATION OF AMENDMENTS OF 16 TAC §25.43, 25.471, 25.475, 25.479, and 25.498 and NEW 16 TAC §25.499 AS APPROVED AT THE JULY 29, 2021 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes amendments to existing 16 Texas Administrative Code (TAC) §25.43, 25.471, 25.475, 25.479, and 25.498. The commission also proposes new 16 TAC §25.499, relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts. These proposed rules will implement an amendment to Texas Utilities Code §17.003(d-1)(c) enacted by the 87th Texas Legislature requiring electric utilities and retail electric providers to periodically provide to customers information concerning load shed, type of customers and procedure to be considered for critical care or critical load, and reducing electricity use at times when involuntary load shed events may be implemented. These proposed rules will also prohibit the offering of wholesale indexed products to residential or small commercial customers and require customers other than residential or small commercial customers to sign an acknowledgement of risk prior to enrolling in any indexed products or products that contain a separate assessment for ancillary service charges. Finally, these amendments will pass additional, related customer protections.

The commission also requests comment from interested persons on the following questions:

1. Should the maximum rate for provider of last resort service that is charged by a large service provider to a residential customer in proposed §25.43(m)(2)(A)(iii) and small and medium non-residential customers in proposed §25.43(m)(2)(B)(iv) include a safety threshold to prevent the energy charge from increasing by more than a certain percentage on a year-to-year basis? If so, what is an appropriate safety threshold?

2. Do the acknowledgement of risk requirements in proposed §25.475(c)(3)(G) and §25.475(j) provide adequate customer protections for residential and small commercial customers that enroll in indexed retail electric products and retail electric products that allow for the pass-through of ancillary service charges? If not, should these products be prohibited for residential and small commercial customers?

Comments responding to these questions should be filed in accordance with the instructions below under the heading "***Public Comments***."

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will create a new regulation to implement PURA § 39.110 as enacted by the 87th Texas Legislature;

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will change the number of individuals subject to the rule's applicability by applying certain minor provisions of §25.475 to brokers and transmission and distribution utilities ; and

(8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Cliff Crouch, Customer Protection Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Crouch has also determined that for each year of the first five years the proposed rules and amendments are in effect, the anticipated public benefits expected as a result of the adoption of the proposed rules and amendments will be increased customer awareness of potential impacts to their electric bills, increased customer protections for the products they are enrolling in, and increased knowledge of availability of critical care and critical load designations. Mr.

Crouch does not believe there will be any major economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on September 14, 2021, at 9:30 A.M. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 7, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by **August 27, 2021**. Reply comments must be filed by **September 7, 2021**. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the

proposed rules on adoption. **Commission staff strongly encourages commenters to include a bulleted executive summary to assist Commission Staff in reviewing the filed comments in a timely fashion**. All comments should refer to Project Number 51830.

Statutory Authority

These new rules are proposed under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §17.003, which requires electric utilities and retail electric providers to provide clear and uniform information about rates, terms, services, involuntary load shed procedures, critical designations, and procedures for applying for critical designations; §17.102, which directs the commission to adopt and enforce rules requiring that charges on an electric service provider's bill be clearly and easily identified, §39.101, which requires the commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; §39.106, which requires that the commission designate providers of last resort; §39.107(g), which prohibits metered electric service being sold to residential customers on a prepaid basis at a price that is higher than the price charged by the POLR, §39.110, which prohibits the offering of wholesale indexed products to residential or small commercial customers and placed conditions on the enrollment of other customers in wholesale indexed products; §39.112, which requires a REP to provide certain information to a residential customer who has a fixed rate product.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 17.003, 17.102, 39.101, 39.106, 39.107(g), 39.110, and 39.112.

§25.43. Provider of Last Resort (POLR).

(a) **Purpose.** ~~The purpose of t~~This section ~~is to~~ establishes the requirements for Provider of Last Resort (POLR) service and ensures that it is available to any requesting retail customer and any retail customer who is transferred to another retail electric provider (REP) by the Electric Reliability Council of Texas (ERCOT) because the customer's REP failed to provide service to the customer or failed to meet its obligations to the independent organization.

(b) **Application.** The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (r) of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, ~~shall~~must be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).

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

(1) **Affiliate --** As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs).

(2) **Basic firm service** -- Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the

competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

(3) **Billing cycle** -- A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.

(4) **Billing month** -- Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through the customer's meter.

(5) **Business day** -- As defined by the ERCOT Protocols.

(6) **Large non-residential customer** -- A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).

(7) **Large service provider** (LSP) -- A REP that is designated to provide POLR service pursuant to subsection (j) of this section.

(8) **Market-based product** – A month-to-month product that is either offered to or matches the rate of a product offered to non-POLR customers of the REP for the same TDU territory and customer class. A month-to-month contract may not contain a termination fee or penalty. For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) of this section is not a market-based product.

(9) **Mass transition** -- The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

(10) **Medium non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.

(11) **POLR area** -- The service area of a TDU in an area where customer choice is in effect.

(12) **POLR provider** -- A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.

(13) **Residential customer** -- A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.

(14) **Transitioned customer** -- A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.

(15) **Small non-residential customer** -- A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.

(16) **Voluntary retail electric provider** (VREP) -- A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.

(d) **POLR service.**

(1) There are two types of POLR providers: VREPs and LSPs.

(2) For the purpose of POLR service, there are four classes of customers: residential, small non-residential, medium non-residential, and large non-residential.

(3) A VREP or LSP may be designated to serve any or all of the four customer classes in a POLR area.

(4) A POLR provider ~~shall~~must offer a basic, standard retail service package to customers it is designated to serve, which ~~shall~~ is limited to:

(A) Basic firm service; and

(B) Call center facilities available for customer inquiries.

(5) A POLR provider ~~shall~~must, in accordance with §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges), fulfill billing and collection duties for REPs that have defaulted on payments to the servicer of transition bonds or to TDUs.

(6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) of this section ~~shall~~must contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice ~~shall~~must also include contact information for the LSP, and the Power to Choose website, and ~~shall~~must include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) **Standards of service.**

(1) An LSP designated to serve a class in a given POLR area ~~shall~~must serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (m)(2) of this section an LSP may at its discretion serve the customer pursuant to a market-

based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.

(2) A POLR provider ~~shall~~must abide by the applicable customer protection rules as provided for under Subchapter R of this chapter (relating to Customer Protection Rules for Retail Electric Service), except that if there is an inconsistency or conflict between this section and Subchapter R of this chapter, the provisions of this section ~~shall~~ apply. However, for the medium non-residential customer class, the customer protection rules as provided for under Subchapter R of this chapter do not apply, except for §25.481 of this title (relating to Unauthorized Charges), §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), and §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider).

(3) An LSP that has received commission approval to designate one of its affiliates to provide POLR service on behalf of the LSP pursuant to subsection (k) of this section ~~shall~~must retain responsibility for the provision of POLR service by the LSP affiliate and remains liable for violations of applicable laws and commission rules and all financial obligations of the LSP affiliate associated with the provisioning of POLR service on its behalf by the LSP affiliate.

(f) **Customer information.**

(1) The Standard Terms of Service prescribed in subparagraphs (A)-(D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (m)(2) of this section.

(A) Standard Terms of Service, POLR Provider Residential Service:

Figure: 16 TAC §25.43(f)(1)(A)

(B) Standard Terms of Service, POLR Provider Small Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(B)

(C) Standard Terms of Service, POLR Provider Medium Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(C)

(D) Standard Terms of Service, POLR Provider Large Non-Residential Service:

Figure: 16 TAC §25.43(f)(1)(D)

(2) An LSP providing service under a rate prescribed by subsection (m)(2) of this section ~~shall~~must provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service ~~shall~~must be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) **General description of POLR service provider selection process.**

(1) ~~All~~ Each REP~~s~~ ~~shall~~must provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative will ~~shall~~ designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission will ~~shall~~ not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (r) of this section.

(2) POLR providers ~~shall~~must serve two-year terms. The initial term for POLR service in areas of the state where retail choice is not in effect as of the effective date of the rule ~~shall~~must be set at the time POLR providers are initially selected in such areas.

(h) **REP eligibility to serve as a POLR provider.** In each even-numbered year, the commission will ~~shall~~determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year.

(1) Each ~~All~~ REP~~s~~ ~~shall~~must provide information to the commission necessary to establish its ~~their~~ eligibility to serve as a POLR provider for the next term. A REP~~s~~ ~~shall~~must file, by July 10th~~,~~ of each even-numbered year, by service area, information on the classes of customers it provides ~~they provide~~ service to, and for each customer class, the number of ESI IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. As part of that filing, a REP may request that the commission designate one of its affiliates to provide POLR service on its behalf pursuant to subsection (k) of this section in the event that the REP is designated as an LSP. The independent organization ~~shall~~must provide to the commission the total number of ESI ID and total MWh data for each class. Each ~~All~~ REP~~s~~ ~~shall~~must also provide information on its ~~their~~ technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section will ~~shall~~ not be considered confidential information.

(2) Eligibility to be designated as a POLR provider is specific to each POLR area and customer class. A REP is eligible to be designated a POLR provider for a particular customer class in a POLR area, unless:

(A) A proceeding to revoke or suspend the REP's certificate is pending at the commission, the REP's certificate has been suspended or revoked by the commission, or the REP's certificate is deemed suspended

pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs));

(B) The sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, is less than 1.0;

(C) The commission does not reasonably expect the REP to be able to meet the criteria set forth in subparagraph (B) of this paragraph during the entirety of the term;

(D) On the date of the commencement of the term, the REP or its predecessor will not have served customers in Texas for at least 18 months;

(E) The REP does not serve the applicable customer class, or does not have an executed delivery service agreement with the service area TDU;

(F) The REP is certificated as an Option 2 REP under §25.107 of this title;

(G) The REP's customers are limited to its own affiliates;

(H) A REP files an affidavit stating that it does not serve small or medium non-residential customers, except for the low-usage sites of the REP's large non-residential customers, or commonly owned or franchised affiliates of the REP's large non-residential customers and opts out of eligibility for either, or both of the small or medium non-residential customer classes; or

(I) The REP does not meet minimum financial, technical and managerial qualifications established by the commission under §25.107 of this title.

(3) For each term, the commission will ~~shall~~publish the names of all ~~of the~~ REPs eligible to serve as a POLR provider under this section for each customer class in each POLR area and will ~~shall~~provide notice to REPs determined to be eligible to serve as a POLR provider. A REP may challenge its eligibility

determination within five business days of the notice of eligibility by filing with the commission additional documentation that includes the specific data, the specific calculation, and a specific explanation that clearly illustrate and prove the REP's assertion. Commission staff will ~~shall~~verify the additional documentation and, if accurate, reassess the REP's eligibility. Commission staff will ~~shall~~notify the REP of any change in eligibility status within 10 business days of the receipt of the additional documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of POLR providers.

(4) A standard form may be created by the commission for REPs to use in filing information concerning their eligibility to serve as a POLR provider.

(5) If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing POLR responsibilities, ERCOT or the TDU ~~shall~~must make a filing with the commission detailing the basis for its concerns and ~~shall~~must provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU ~~shall~~must file the confidential information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials). Commission staff ~~shall~~will review the filing, and ~~shall~~will request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing POLR service. No ESI IDs ~~shall~~will be assigned to a POLR provider after the commission staff initiates a proceeding to disqualify the POLR provider, unless the commission by order confirms the POLR provider's designation.

(i) **VREP list**. Based on the information provided in accordance with this subsection and subsection (h) of this section, the commission will ~~shall~~ post the names of VREPs on its webpage, including the aggregate customer count offered by VREPs. A REP may submit a request to be a VREP no earlier than June 1, and no later than July 31, of each even-numbered year unless otherwise determined by the executive director. This filing ~~shall~~must include a description of the REP's capabilities to serve additional customers as well as the REP's current financial condition in enough detail to demonstrate that the REP is capable of absorbing a mass transition of customers without technically or financially distressing the REP and the specific information set out in this subsection. The commission's determination regarding eligibility of a REP to serve as a VREP, under the provisions of this section, will ~~shall~~not be considered confidential information.

(1) A VREP ~~shall~~must provide to the commission the name of the REP, the appropriate contact person with current contact information, which customer classes the REP is willing to serve within each POLR area, and the number of ESI IDs the REP is willing to serve by customer class and POLR area in each transition event.

(2) A REP that has met the eligibility requirements of subsection (h) of this section and provided the additional information set out in this subsection is eligible for designation as a VREP.

(3) Commission staff will ~~shall~~make an initial determination of the REPs that are to serve as a VREP for each customer class in each POLR area and publish their names. A REP may challenge its eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to serve as a VREP. Commission staff will ~~shall~~reassess the REP's eligibility and notify the REP of any change in eligibility status within 10 business days of the receipt of the additional

documentation. A REP may then appeal to the commission through a contested case if the REP does not agree with the staff determination of eligibility. The contested status will not delay the designation of VREPs.

(4) A VREP may file a request at any time to be removed from the VREP list or to modify the number of ESI IDs that it is willing to serve as a VREP. If the request is to increase the number of ESI IDs, it ~~shall~~must provide information to demonstrate that it is capable of serving the additional ESI IDs, and the commission staff ~~shall~~will make an initial determination, which is subject to an appeal to the commission, in accordance with the timelines specified in paragraph (3) of this subsection. If the request is to decrease the number of ESI IDs, the request ~~shall~~must be effective five calendar days after the request is filed with the commission; however, after the request becomes effective the VREP ~~shall~~must continue to serve ESI IDs previously acquired through a mass transition event as well as ESI IDs the VREP acquires from a mass transition event that occurs during the five-day notice period. If in a mass transition a VREP is able to acquire more customers than it originally volunteered to serve, the VREP may work with commission staff and ERCOT to increase its designation. Changes approved by commission staff ~~shall~~will be communicated to ERCOT and ~~shall~~must be implemented for the current allocation if possible.

(5) ERCOT or a TDU may challenge a VREP's eligibility. If ERCOT or a TDU has reason to believe that a REP is no longer capable of performing VREP responsibilities, ERCOT or the TDU ~~shall~~must make a filing with the commission detailing the basis for its concerns and ~~shall~~must provide a copy of the filing to the REP that is the subject of the filing. If the filing contains confidential information, ERCOT or the TDU ~~shall~~must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and

Penalties). Commission staff will ~~shall~~ review the filing of ERCOT and if commission staff concludes that the REP should no longer provide VREP service, it ~~shall~~will request that the REP demonstrate that it still meets the qualifications to provide the service. The commission staff may initiate a proceeding with the commission to disqualify the REP from providing VREP service. No ESI IDs ~~shall~~will be assigned to a VREP after the commission staff initiates a proceeding to disqualify the VREP, unless the commission by order confirms the VREP's designation.

(j) **LSPs.** This subsection governs the selection and service of REPs as LSPs.

(1) The REPs eligible to serve as LSPs ~~shall~~must be determined based on the information provided by REPs in accordance with subsection (h) of this section. However, for new TDU service areas that are transitioned to competition, the transition to competition plan approved by the commission may govern the selection of LSPs to serve as POLR providers.

(2) In each POLR area, for each customer class, the commission will ~~shall~~ designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area ~~shall~~must be designated as LSPs. Commission staff will ~~shall~~ designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as an LSP.

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL ~~shall~~must be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) ~~shall~~must be supplied to commission staff electronically for placement on the commission webpage by January 1 of each

year, and more often if there are changes to the non-bypassable charges. Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL ~~shall~~must note that such information is REP-specific.

(4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) of this section ~~shall~~must move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

(A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (t)(3) of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (t)(3) of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product will ~~shall~~must be provided at a later time, but no later than 14 days before their effective date.

(B) The LSP is not required to transfer to a market-based product any transitioned customer who is delinquent in payment of any charges for POLR service to such LSP as of the 60th day of service. If such a customer becomes current in payments to the LSP, the LSP ~~shall~~must move the customer to a market-based month-to-month product as described in this paragraph on the next billing cycle that occurs five

business days after the customer becomes current. If the LSP does not plan to move customers who are delinquent in payment of any charges for POLR service as of the 60th day of service to a market-based month-to-month product, the LSP ~~shall~~must inform the customer of that potential outcome in the notice provided to comply with §25.475(d) of this title.

(5) Upon a request from an LSP and a showing that the LSP will be unable to maintain its financial integrity if additional customers are transferred to it under this section, the commission may relieve an LSP from a transfer of additional customers. The LSP ~~shall~~must continue providing continuous service until the commission issues an order relieving it of this responsibility. In the event the requesting LSP is relieved of its responsibility, the commission staff designee ~~shall~~will, with 90 days' notice, designate the next eligible REP, if any, as an LSP, based upon the criteria in this subsection.

(k) **Designation of an LSP affiliate to provide POLR service on behalf of an LSP.**

(1) An LSP may request the commission designate an LSP affiliate to provide POLR service on behalf of the LSP either with the LSP's filing under subsection (h) of this section or as a separate filing in the current term project. The filing ~~shall~~must be made at least 30 days prior to the date when the LSP affiliate is to begin providing POLR service on behalf of the LSP. To be eligible to provide POLR service on behalf of an LSP, the LSP affiliate must be certificated to provide retail electric service; have an executed delivery service agreement with the service area TDU; and meet the requirements of subsection (h)(2) of this section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this section as related to serving customers in the applicable customer class.

(2) The request ~~shall~~must include the name and certificate number of the LSP affiliate, information demonstrating the affiliation between the LSP and the LSP affiliate, and a certified agreement from an officer of the LSP affiliate stating that the LSP affiliate agrees to provide POLR service on behalf of the LSP. The request ~~shall~~must also include an affidavit from an officer of the LSP stating that the LSP will be responsible and indemnify any affected parties for all financial obligations of the LSP affiliate associated with the provisioning of POLR service on behalf of the LSP in the event that the LSP affiliate defaults or otherwise does not fulfill such financial obligations.

(3) Commission staff will ~~shall~~ make an initial determination of the eligibility of the LSP affiliate to provide POLR service on behalf of an LSP and publish their names. The LSP or LSP affiliate may challenge commission staff's eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to provide POLR service on behalf of the LSP. Commission staff will ~~shall~~ reassess the LSP affiliate's eligibility and notify the LSP and LSP affiliate of any change in eligibility status within 10 business days of the receipt of the additional documentation. If the LSP or LSP affiliate does not agree with staff's determination of eligibility, either or both may then appeal the determination to the commission through a contested case. The LSP ~~shall~~must provide POLR service during the pendency of the contested case.

(4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU ~~shall~~must make a filing with the commission detailing the basis for its concerns and ~~shall~~must provide a copy of the filing to the LSP and the LSP affiliate that are the subject of the filing. If the filing

contains confidential information, ERCOT or the TDU ~~shall~~must file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff will ~~shall~~ review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it will ~~shall~~request that the LSP affiliate demonstrate that it has the capability. The commission staff will ~~shall~~ review the LSP affiliate's filing and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing POLR service. The LSP affiliate may continue providing POLR service to ESI IDs currently receiving the service during the pendency of the proceeding; however, the LSP ~~shall~~must immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to POLR service through a mass transition, during the pendency of the proceeding.

(5) Designation of an affiliate to provide POLR service on behalf of an LSP ~~shall~~must not change the number of ESI IDs served or the retail sales in megawatt-hours for the LSP for the reporting period nor does such designation relieve the LSP of its POLR service obligations in the event that the LSP affiliate fails to provide POLR service in accordance with the commission rules.

(6) The designated LSP affiliate ~~shall~~must provide POLR service and all reports as required by the commission's rules on behalf of the LSP.

(7) The methodology used by a designated LSP affiliate to calculate POLR rates ~~shall~~must be consistent with the methodology used to calculate LSP POLR rates in subsection (m) of this section.

(8) If an LSP affiliate designated to provide POLR service on behalf of an LSP cannot meet or fails to meet the POLR service requirements in applicable laws and Commission rules, the LSP ~~shall~~must provide POLR service to any ESI IDs

currently receiving the service from the LSP affiliate and to ESI IDs in a future mass transition or upon customer request.

(9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.

(l) **Mass transition of customers to POLR providers**. The transfer of customers to POLR providers ~~shall~~must be consistent with this subsection.

(1) ERCOT ~~shall~~must first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT ~~shall~~must use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP ~~shall~~must not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT ~~shall~~must:

(A) Sort ESI IDs by POLR area;

(B) Sort ESI IDs by customer class;

(C) Sort ESI IDs numerically;

(D) Sort VREPs numerically by randomly generated number; and

(E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP ~~shall~~must be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each VREP indicated it was willing to serve by the total that all VREPs indicated they were willing to serve,

multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number.

(2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT ~~shall~~must assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area ~~shall~~must be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT ~~shall~~must:

(A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;

(B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;

(C) Sort ESI IDs in excess of the allocation to VREPs, numerically;

(D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;

(E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;

(F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and

(G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.

(3) Each mass transition ~~shall~~must be treated as a separate event.

(m) **Rates applicable to POLR service.**

(1) A VREP ~~shall~~must provide service to customers using a market-based, month-to-month product. The VREP ~~shall~~must use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.

(2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) **Residential customers.** The LSP rate for the residential customer class ~~shall~~must be determined by the following formula:

LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used

Where:

(i) Non-bypassable charges ~~shall~~must be all TDU charges and credits for the appropriate customer class in the applicable service territory and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge ~~shall~~must be $0.06 per kWh.

(iii) LSP energy charge ~~shall~~must be the ~~sum~~ average of~~ver~~ the actual Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone for the ~~billing period~~~~hourly average of the~~ previous 12-month period ending September 1 of the preceding year~~'s~~ ~~of the actual hourly Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone that is~~ multiplied by the number of kWhs the customer used during that ~~hour~~ billing period and ~~that is~~ further multiplied by 120%.

(iv) ~~"Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.~~

~~(v)~~ "Number of kWhs the customer used" is based ~~either~~ on interval data ~~or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period~~.

~~(vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall~~must~~ be the simple average of the RTSPPs for the load zone partially or wholly in the~~

~~customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall~~must ~~apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.~~

(B) **Small and medium non-residential customers. T**he LSP rate for the small and medium non-residential customer classes ~~shall~~must be determined by the following formula:

LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

(i) Non-bypassable charges ~~shall~~must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge ~~shall~~must be $0.025 per kWh.

(iii) LSP demand charge ~~shall~~must be $2.00 per kW, per month, for customers that have a demand meter, and $50.00 per month for customers that do not have a demand meter.

(iv) LSP energy charge ~~shall~~must be the ~~sum~~ average of~~ver~~ the actual RTSPPs for the customer's load zone for the ~~billing period of the actual hourly~~previous 12-month period ending September 1 of the ~~pre~~preceding~~vious~~ year~~'s actual RTSPPs, for the customer's load zone that is~~ multiplied by the number of kWhs the customer used during that billing period ~~hour~~ and~~ that is~~ further multiplied by 125%.

(v) ~~"Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.~~

~~(vi)~~ "Number of kWhs the customer used" is based~~ either~~ on interval data~~ or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period~~.

~~(vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall~~must~~ be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple~~

~~average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall~~must ~~apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.~~

(C) **Large non-residential customers.** The LSP rate for the large non-residential customer class ~~shall~~must be determined by the following formula:

LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used

Where:

(i) Non-bypassable charges ~~shall~~must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

(ii) LSP customer charge ~~shall~~must be $2,897.00 per month.

(iii) LSP demand charge ~~shall~~must be $6.00 per kW, per month.

(iv) LSP energy charge ~~shall~~must be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours

used. The energy charge ~~shall~~must have a floor of $7.25 per MWh.

(3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP ~~shall~~must issue refunds to the specific customers who were overcharged.

(4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate ~~shall~~must be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

(5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection ~~shall~~must be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(n) **Challenges to customer assignments.** A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider ~~shall~~must use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU ~~shall~~must make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is

determined appropriate, the customer ~~shall~~must then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

(o) **Limitation on liability.** ~~The~~ A POLR provider~~s~~ ~~shall~~must make reasonable provisions to provide service under this section to any ESI IDs currently receiving the service and to ESI IDs obtained in a future mass transition or served upon customer request; however, liabilities not excused by reason of force majeure or otherwise ~~shall~~must be limited to direct, actual damages.

(1) Neither the customer nor the POLR provider ~~shall~~must be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.

(2) In no event will ~~shall~~ ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.

(p) **REP obligations in a transition of customers to POLR service.**

(1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.

(2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer.

The customer is responsible for charges for service under this section at the rate in effect at that time.

(3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.

(4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.

(5) A defaulting REP whose customers are subject to a mass transition event ~~shall~~must return the customers' deposits within seven calendar days of the initiation of the transition.

(6) ERCOT ~~shall~~must create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, ~~shall~~must be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT ~~shall~~must be tested on a periodic basis. ~~All REPs~~Each REP ~~shall~~must submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission will ~~shall~~~~must~~ establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT ~~shall~~must notify the commission if any REP fails to comply with the reporting requirements in this subsection.

(7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the

appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section ~~shall~~must be treated as confidential and ~~shall~~must only be used for mass transition related purposes.

(8) Information from the TDU and ERCOT to the POLR providers ~~shall~~must be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section ~~shall~~must not constitute a violation of the customer protection rules that address confidentiality.

(9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider ~~shall~~must begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider ~~shall~~must not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if

deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it ~~shall~~must determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider ~~shall~~must not request a deposit from the residential customer.

(A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director ~~shall~~will distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. For a REP that has obtained a current list from the Low Income List Administrator (LILA) that identifies low-income customers, these funds ~~shall~~must first be used to provide deposit payment assistance for that REP's transitioned low-income customers. The Executive Director or staff designee will, ~~shall~~, at the time of a transition event, determine the reasonable deposit amount up to $400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above $400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, ~~shall~~must satisfy in full the customers' initial deposit obligation to the VREP or LSP.

(B) For a REP that has obtained a current list from the LILA that identifies low-income customers, the Executive Director or the staff designee will ~~shall~~ distribute available proceeds pursuant to §25.107(f)(6) of this title to the VREPs proportionate to the number of customers they received in the mass transition, who at the time of the mass transition were identified as low-income customers by the current LILA list, up to the reasonable deposit amount set by the Executive Director or staff

designee. If funds remain available after distribution to the VREPs, the remaining funds ~~shall~~must be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers as identified in the LILA list that are allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

(C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference ~~shall~~must be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits).

(D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.

(10) On the occurrence of one or more of the following events, ERCOT ~~shall~~must initiate a mass transition to POLR providers, of all of the customers served by a REP:

(A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;

(B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;

(C) Issuance of a commission order de-certifying a REP;

(D) Issuance of a commission order requiring a mass transition to POLR providers;

(E) Issuance of a judicial order requiring a mass transition to POLR providers; and

(F) At the request of a REP, for the mass transition of all of that REP's customers.

(11) A REP ~~shall~~must not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.

(12) ERCOT may provide procedures for the mass transition process, consistent with this section.

(13) A mass transition under this section ~~shall~~must not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch ~~shall~~must be made on the next available switch date.

(14) ERCOT must identify c~~C~~ustomers who are mass transitioned ~~shall be identified~~ for a period of 60 calendar days. The identification ~~shall~~must terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions ~~shall~~must be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer

switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.

(15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.

(16) In a mass transition event, the ERCOT initiated transactions ~~shall~~must request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider ~~shall~~must not be considered a break in a series of consecutive months of estimates, but ~~shall~~must not be considered a month in a series of consecutive estimates performed by the TDU. A TDU ~~shall~~must create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset ~~shall~~must be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU ~~shall~~must not bill as a discretionary charge, the costs included in this regulatory asset, which ~~shall~~must consist of the following:

(A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and

(B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.

(17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU ~~shall~~must perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU ~~shall~~must calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU ~~shall~~must promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(q) **Termination of POLR service provider status.**

(1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:

(A) If the POLR provider fails to maintain REP certification;

(B) If the POLR provider fails to provide service in a manner consistent with this section;

(C) The POLR provider fails to maintain appropriate financial qualifications; or

(D) For other good cause.

(2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee ~~shall~~~~must~~will, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.

(3) At the end of the POLR service term, the outgoing LSP ~~shall~~must continue to serve customers who have not selected another REP.

(r) **Electric cooperative delegation of authority**. An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission ~~shall~~will, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions ~~shall~~ apply:

(1) The board of directors ~~shall~~must provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority ~~shall~~must be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;

(3) The delegation of authority ~~shall~~must be for a minimum period corresponding to the period for which the solicitation ~~shall~~must be made;

(4) The electric cooperative wishing to delegate its authority to designate ~~an~~a continuous provider ~~shall~~must also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and

(5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission ~~shall~~must automatically reject the delegation of authority.

(s) **Reporting requirements.** Each LSP that serves customers under a rate prescribed by subsection (m)(2) of this section ~~shall~~must file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report ~~shall~~must be filed within 30 calendar days of the end of the quarter.

(1) For each month of the reporting quarter, each LSP ~~shall~~must report the total number of new customers acquired by the LSP under this section and the following information regarding these customers:

(A) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;

(B) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(C) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and

(D) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (B) or (C) of this paragraph.

(2) For each month of the reporting quarter each LSP ~~shall~~must report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;

(B) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(C) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and

(D) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (A) or (B) of this paragraph.

(3) For the entirety of the reporting quarter, each LSP ~~shall~~must report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.

(t) **Notice of transition to POLR service to customers.** When a customer is moved to POLR service, the customer ~~shall~~must be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice ~~shall~~must be provided within two days of the time ERCOT and the transitioning REP know that the customer ~~shall~~must be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it ~~shall~~must provide notice as soon as practicable. The POLR provider ~~shall~~must provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and ~~shall~~must provide the notice to transitioning customers as soon as practicable. The POLR provider ~~shall~~must email the notice to the commission staff members designated for receipt of the notice.

(1) ERCOT notice methods ~~shall~~must include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT ~~shall~~must notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) of this section. ERCOT ~~shall~~must study the effectiveness of the notice methods used and report the results to the commission.

(2) Notice by the REP from which the customer is transferred ~~shall~~must include:

(A) The reason for the transition;

(B) A contact number for the REP;

(C) A statement that the customer ~~shall~~must receive a separate notice from the POLR provider that ~~shall~~must disclose the date the POLR provider ~~shall~~must begin serving the customer;

(D) Either the customer's deposit plus accrued interest, or a statement that the deposit ~~shall~~must be returned within seven days of the transition;

(E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);

(G) If applicable, a description of the activities that the REP ~~shall~~must use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and

(H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(3) Notice by the POLR provider ~~shall~~must include:

(A) The date the POLR provider began or ~~shall~~must begin serving the customer and a contact number for the POLR provider;

(B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) of this section, a statement that the price is generally higher than available competitive prices, that the price is unpredictable, and that the exact rate for each billing period ~~shall~~must not be determined until the time the bill is prepared;

(C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;

(D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(E) The applicable Terms of Service and Electricity Facts Label (EFL); and

(F) For residential customers that are served by an LSP under a rate prescribed by subsection (m)(2) of this section, a notice to the customer that after being transitioned to service from a POLR provider, the

customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(u) **Market notice of transition to POLR service.** ERCOT ~~shall~~must notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The notification ~~shall~~must include the exiting REP's name, total number of ESI IDs, and estimated load.

(v) **Disconnection by a POLR provider.** The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section ~~shall~~must begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.

(w) **Deposit payment assistance.**

(1) The commission staff designee ~~shall~~will distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

(2) The Executive Director or staff designee ~~shall~~will use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:

(A) a list of the ESI IDs identified by the LILA that have been or ~~shall~~must be transitioned to the applicable POLR (if available); and

(B) the amount of deposit payment assistance that ~~shall~~must be provided on behalf of a POLR customer identified by the LILA (if available).

(3) Amounts credited as deposit payment assistance pursuant to this section ~~shall~~must be refunded to the customer in accordance with §25.478(j) of this title.

§25.471. General Provisions of Customer Protection Rules.

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

(1)-(2) No changes.

(3) The rules in this subchapter are minimum, mandatory requirements that must be offered to or complied with for all customers unless otherwise specified. Except for the provisions of §25.495 of this title (relating to Unauthorized Change of Retail Electric Provider), §25.481 of this title (relating to Unauthorized Charges), ~~and~~ §25.485(a)-(b) of this title (relating to Customer Access and Complaint Handling), <u>and §25.499 (relating to Acknowledgement of Risk Requirements for Certain Commercial Contracts),</u> a customer other than a residential or small commercial class customer, or a non-residential customer whose load is part of an aggregation in excess of 50 kilowatts, may agree to terms of service that reflect either a higher or lower level of customer protections than would otherwise apply under these rules. Any agreements containing materially different protections from those specified in these rules must be reduced to writing and provided to the customer. Additionally, copies of such agreements must be provided to the commission upon request.

(4)-(5) No changes.

(b)-(d) No changes.

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

(a) **Applicability**. The requirements of this section apply to retail electric providers (REPs) ~~and aggregators, when specifically stated,~~ 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, aggregators, and transmission and distribution utilities (TDUs). 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~~,~~ but ~~shall~~must provide notice of expiration as required by subsection (e) of this section. Contracts entered into prior to September 1, 2021 must comply with the provisions of this section in effect at the time the contracts were executed.

(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~~ 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~~, YRAC, and, if applicable, the 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 all 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, Inc. 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. 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 the cost of 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, YRACs, and, if applicable, AORs~~YRACs~~ 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~~ 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~~ 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) Each ~~A~~ TOS, EFL, YRAC, and, if applicable, AOR must ~~YRAC 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 website~~internet~~ address to the full text of the applicable law or rule.

(B) Each ~~All~~ contract document~~s~~ 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 to another location. 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~~shall~~ 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~~shall~~ not rename a product in order to avoid disclosure of price history. The EFL of a variable price product or indexed product must~~shall~~ include a notice of how the current price and, if applicable, historical price information may be obtained by a customer.

(H) A REP must~~shall~~ comply with its contracts.

(3) **Specific contract requirements.**

(A) The contract term must~~shall~~ be conspicuously disclosed.

(B) The start and end dates of the contract must~~shall~~ 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~~shall~~ 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 all required expiration notices.

(E) If a REP does not provide proper notice of the expiration of a fixed rate 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 provides 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 is prohibited from offering a wholesale indexed product to a residential or small commercial customer.

(G) A REP, aggregator, or broker may enroll a residential or small commercial customer in an indexed product or a product that contains a separate assessment of ancillary service charges only if the REP, aggregator, or broker obtains before the customer's enrollment an 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~~ 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 must~~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.

~~(1~~(2) **Notice Timeline for Expiration of a Fixed Rate Product.**

(A) For fixed rate products, the REP must provide the customer with at least three written notices of the date the fixed rate product will expire. The notices must be provided during the last third of the fixed rate contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the fixed rate contract period. For fixed rate contracts for a period:

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

(ii) Of four or fewer months, the final notice must be provided at least 15 days before the date the fixed rate 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) If a REP does not provide the required notice of the expiration of a customer's fixed rate contract and the customer does not select another retail electric product before expiration of the fixed rate contract term, the REP must continue serving the customer under the terms of the fixed rate contract until sufficient expiration notice is provided or the customer selects another retail electric product.

(3) **Contract Expiration.**

(A) If a customer takes no action in response to the final ~~a~~ 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 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 to residential customers for 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~~shall apply to residential customers after receipt of the contract expiration 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~~ 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, Inc. 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 customer~~s~~ 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: Minimum	{x.x}¢	{x.x}¢	{x.x}¢

{If applicable} On-peak {season or time}:{xxx}

{If applicable} Average on-peak price per kilowatt-hour: {x.x}¢

{If applicable} Average off-peak price per kilowatt-hour: {x.x}¢

{If applicable} Potential surcharges corresponding to the given electric service.

{If variable that does not change within a defined percentage}

Except for

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)

Disclosure Chart	Do I have a termination fee or any fees associated with	(yes/no) (if yes, how much)
	Can my price change during contract period?	(yes/no)
	If my price can change, how will it change, and by how much?	(formula/description of the way the price will vary and how much it can change) In addition if the REP chooses to pass through regulatory changes the following must~~shall~~ be
	What other fees may I be	(List, or give direct location in
	Is this a pre-pay or pay in advance product	(yes/no)
	Does the REP purchase excess distributed renewable	(yes/no)
	Renewable Content	(This product is x%
	The statewide average for renewable content is	(% of statewide average for renewable content)
	Contact info, certification number, version number	

(7) **Version number.** A REP must~~shall~~ assign an identification number to each version of its EFL, and must~~shall~~ publish the number on the EFL.

(h) **Your Rights as a Customer disclosure.** The information set out in this section must~~shall~~ be included in a

REP's "Your Rights as a Customer" document in plain language, to summarize the standard customer protections provided by this subchapter or additional protections provided by the REP.

(1) A YRAC document must~~shall~~ be consistent with the TOS for the retail product.

(2) The YRAC document must~~shall~~ 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~~shall~~ 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.

(4) The YRAC must provide information the REP has received from the 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. The REP may fulfill this requirement by providing a website address with the required information. Each TDU must develop such information and resources by

September 1, 2021 and make the website address where such information can be viewed available to REPs. A REP may provide this information at a website address other than the website addresses made available by the TDUs. A TDU or other entity providing a website address is required to update this information within 30 days of any material change in the information.

(54) The YRAC document mustshall 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.

(65) The YRAC document mustshall 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.

(7~~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).

(8~~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.

(j) **Acknowledgement of Risk.** Before a residential or small commercial customer's enrollment in an indexed product or a product that contains a separate assessment 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 indexed products other than wholesale indexed products the AOR must include the following statement in clear, boldfaced text: "This is an indexed product. I understand that if I enroll in this product, the rate I will be charged for electricity can change for reasons beyond my control. These changes may result in unexpectedly high bills, potentially significantly higher than previous bills, and I must pay any amount I am properly billed. I understand the risks involved with this plan.

(3) for products that contain a separate assessment of ancillary service charges the AOR must include the following statement in clear, boldfaced text: "This product contains a separate assessment of ancillary service charges. I understand that if I enroll in this product, the rate I will be charged for electricity can change for reasons beyond my control. These changes may result in unexpectedly high bills, potentially significantly higher than previous bills, and I must pay any amount I am properly billed. I understand the risks involved with this plan."

§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~~shall~~ 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) A bill ~~Bills~~ must~~shall~~ 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~~shall~~ 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~~shall~~ 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~~shall~~

not require a customer to agree to such an arrangement as a condition of receiving electric service.

(4) A REP must~~shall~~ not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document.

(c) **Bill content.**

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

(A) The certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) A toll-free telephone number, in bold-face type, 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~~shall~~ 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~~shall~~ 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~~shall~~ 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.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~~shall~~ 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~~shall~~ 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 he 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~~shall~~ be applied in a manner consistent with the definitions, and such term and its definition must~~shall~~ 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~~shall~~ 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~~shall~~ be used in the itemization.

(5) A customer's electric bill must~~shall~~ not contain charges for electric service from a service provider other than the customer's designated REP.

(6) A REP must~~shall~~ 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~~shall~~ use the term set out in this paragraph, and the definitions in this paragraph must~~shall~~ 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~~shall~~, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP must~~shall~~ 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. Additionally, in April and October of each year, or as otherwise directed by the commission, the REP must~~shall~~ provide information to each customer along with the customer's bill about:

(1) 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;

(2) 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;

(3) 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

(4) 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~~shall~~ comply with the requirements of §25.124 of this title (relating to Meter Testing) or with the requirements of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable. The TDU, municipally owned utility, or electric cooperative must~~shall~~ 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~~shall~~ maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records must~~shall~~ contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing records may be obtained by that customer on request, and may be obtained once per 12-month period, 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~~shall~~ be

identified as such on the bill. There must~~shall~~ be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) of this title.

§25.498. Prepaid Service.

(a) **Applicability.** This section applies to retail electric providers (REPs) that offer a payment option in which a customer pays for retail service prior to the delivery of service and to transmission and distribution utilities (TDUs) that have installed advanced meters and related systems. A REP may not offer prepaid service to residential or small commercial customers unless it complies with this section. The following provisions do not apply to prepaid service, unless otherwise expressly stated:

(1) §25.479 of this title (relating to Issuance and Format of Bills);

(2) §25.480(b), (e)(3), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments); and

(3) §25.483 of this title (relating to Disconnection of Service), except for §25.483(b)(2)(A) and (B), (d), and (e)(1)-(6) of this title.

(b) **Definitions.** The following terms, when used in this section, have the following meanings unless the context indicates otherwise.

(1) **Connection balance** -- A current balance, not to exceed $75 for a residential customer, required to establish prepaid service or reconnect prepaid service following disconnection.

(2) **Current balance** -- An account balance calculated consistent with subsection (c)(6) of this section.

(3) **Customer prepayment device or system (CPDS)** -- A device or system that includes metering and communications capabilities that meet the requirements of

this section, including a device or system that accesses customer consumption information from a TDU's advanced metering system (AMS). The CPDS may be owned by the REP, and installed by the TDU consistent with subsection (c)(2)-(4) of this section.

(4) **Disconnection balance** -- An account balance, not to exceed $10 for a residential customer, below which the REP may initiate disconnection of the customer's service.

(5) **Landlord** -- A landlord or property manager or other agent of a landlord.

(6) **Postpaid service** -- A payment option offered by a REP for which the customer normally makes a payment for electric service after the service has been rendered.

(7) **Prepaid service** -- A payment option offered by a REP for which the customer normally makes a payment for electric service before service is rendered.

(8) **Prepaid disclosure statement (PDS)** -- A document described by subsection (e) of this section.

(9) **Summary of usage and payment (SUP)** -- A document described by subsection (h) of this section.

(c) **Requirements for prepaid service.**

(1) A REP ~~shall~~must file with the commission a notice of its intent to provide prepaid service prior to offering such service. The notice of intent ~~shall~~must include a description of the type of CPDS the REP will use, and the initial Electricity Facts Label (EFL), Terms of Service (TOS), and PDS for the service. Except as provided

in subsection (m) of this section, a REP-controlled CPDS or TDU settlement provisioned meter is required for any prepaid service.

(2) A CPDS that relies on metering equipment other than the TDU meter ~~shall~~must conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).

(3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).

(4) A CPDS ~~shall~~must not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS ~~shall~~must be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU ~~shall~~must protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).

(5) A REP may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, United States Postal Service, email, telephone, mobile phone, or other electronic

communications. The means by which the REP will communicate required information to a customer ~~shall~~must be described in the TOS and the PDS.

(A) A REP ~~shall~~must communicate time-sensitive notifications required by paragraph (7)(B), (D), and (E) of this subsection by telephone, mobile phone, or electronic means.

(B) A REP ~~shall~~must, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP ~~shall~~must provide these public service notices to its customers by electronic communication, or by other acceptable mass communication methods, as approved by the commission.

(6) A REP ~~shall~~must calculate the customer's current balance by crediting the account for payments received and reducing the account balance by known charges and fees that have been incurred, including charges based on estimated usage as allowed in paragraph (11)(E) of this subsection.

(A) The REP may also reduce the account balance by:

(i) estimated applicable taxes; and

(ii) estimated TDU charges that have been incurred in serving the customer and that, pursuant to the TOS, will be passed through to the customer.

(B) If the customer's balance reflects estimated charges and taxes authorized by subparagraph (A) of this paragraph, the REP ~~shall~~must promptly reconcile the estimated charges and taxes with actual charges and taxes, and credit or

debit the balance accordingly within 72 hours after actual consumption data or a statement of charges from the TDU is available.

(C) A REP may reverse a payment for which there are insufficient funds available or that is otherwise rejected by a bank, credit card company, or other payor.

(D) If usage sent by the TDU is estimated or the REP estimates consumption according to paragraph (11)(E) of this subsection, the REP ~~shall~~must promptly reconcile the estimated consumption and associated charges with the actual consumption and associated charges within 72 hours after actual consumption data is available to the REP.

(7) A REP ~~shall~~must:

(A) on the request of the customer, provide the customer's current balance calculated pursuant to paragraph (6) of this subsection, including the date and time the current balance was calculated and the estimated time or days of paid electricity remaining; and

(B) make the current balance available to the customer either:

(i) continuously, via the internet, phone, or an in-home device; or

(ii) within two hours of the REP's receipt of a customer's balance request, by the means specified in the Terms of Service for making such a request.

(C) communicate to the customer the current price for electric service calculated as required by §25.475(g)(2)(A)-(E) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers);

(D) provide a warning to the customer at least one day and not more than seven days before the customer's current balance is estimated by the REP to drop to the disconnection balance;

(E) provide a confirmation code when the customer makes a payment by credit card, debit card, or electronic check. A REP is not required to provide a confirmation code or receipt for payment sent by mail or electronic bill payment system. The REP ~~shall~~must provide a receipt showing the amount paid for payment in person. At the customer's request, the REP ~~shall~~must confirm all payments by providing to the customer the last four digits of the customer's account number or Electric Service Identifier (ESI ID), payment amount, and the date the payment was received;

(F) ensure that a CPDS controlled by the REP does not impair a customer's ability to choose a different REP or any electric service plans offered by the REP that do not require prepayment. When the REP receives notice that a customer has chosen a new REP, the REP ~~shall~~must take any steps necessary to facilitate the switch on a schedule that is consistent with the effective date stated on the Electric Reliability Council of Texas (ERCOT) enrollment transaction and ERCOT's rules for processing such transactions; and

(G) refund to the customer or an energy assistance agency, as applicable, any unexpended balance from the account within ten business days after the REP receives the final bill and final meter read from the TDU.

(i) In the case of unexpended funds provided by an energy assistance agency, the REP ~~shall~~must refund the funds to the energy assistance agency and identify the applicable customer and the customer's address associated with each refund.

(ii) In the case of unexpended funds provided by the customer that are less than five dollars, the REP ~~shall~~must communicate the unexpended balance to the customer and state that the customer may contact the REP to request a refund of the balance. Once the REP has received the request for refund from the customer, the REP ~~shall~~must refund the balance within ten business days.

(8) Nothing in this subsection limits a customer from obtaining a SUP.

(9) The communications provided under paragraph (7)(A)-(D) of this subsection and any confirmation of payment as described in paragraph (7)(E) of this subsection, except a receipt provided when the payment is made in person at a third-party payment location, ~~shall~~must be provided in English or Spanish, at the customer's election.

(10) A REP ~~shall~~must cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.

(11) A REP ~~shall~~must not:

(A) tie the duration of an electric service contract to the duration of a tenant's lease;

(B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;

(C) require a connection balance in excess of $75 for a residential customer;

(D) require security deposits for electric service; or

(E) base charges on estimated usage, other than usage estimated by the TDU or estimated by the REP in a reasonable manner for a time period in which the TDU has not provided actual or estimated usage data on a web portal within the time prescribed by §25.130(g) of this title (relating to Advanced Metering) and in which the TDU-provided portal does not provide the REP the ability to obtain on-demand usage data.

(12) A REP providing service ~~shall~~must not charge a customer any fee for:

(A) transitioning from a prepaid service to a postpaid service, but notwithstanding §25.478(c)(3) of this title (relating to Credit Requirements and Deposits), a REP may require the customer to pay a deposit for postpaid service consistent with §25.478(b) or (c)(1) and (2) of this title and may:

(i) require the deposit to be paid within ten days after issuance of a written disconnection notice that requests a deposit; or

(ii) bill the deposit to the customer.

(B) the removal of equipment; or

(C) the switching of a customer to another REP, or otherwise cancelling or discontinuing taking prepaid service for reasons other than nonpayment, but may charge and collect early termination fees pursuant to §25.475 of this title.

(13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account

balance, the REP must notify the customer of the amount of the debt and that the customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.

(14) In addition to the connection balance, a REP may require payment of applicable TDU fees, if any, prior to establishing electric service or reconnecting electric service.

(15) A REP that provides prepaid service to a residential customer ~~shall~~must not charge an amount for electric service that is higher than the price charged by the POLR in the applicable TDU service territory. The price for prepaid service to a residential customer calculated as required by §25.475(g)(2)(A)-(E) of this title ~~shall~~must be equal to or lower than at least one of the tests described in subparagraphs (A)-(C) of this paragraph:

(A) The minimum POLR rate for the residential customer class at the 500 kilowatt-hour (kWh), 1,000 kWh, and 2,000 kWh usage levels as shown on the POLR EFL posted on the commission's website for the applicable TDU service territory. When an updated POLR EFL is posted on the commission's website, the REP, at the REP's option, may continue to reference the prior POLR EFL to ensure compliance with this paragraph for prepaid service prices charged during the first 30 days, beginning the date that the updated POLR EFL is posted.

(B) The maximum POLR rate for the residential customer class calculated pursuant to §25.43~~(l)~~(m) of this title (relating to Provider of Last Resort (POLR)).

(C) The average POLR rate for the residential customer class at the 500 kWh, 1,000 kWh, and 2,000 kWh usage levels using the formula described in §25.43~~(l)~~(m) of this title for the applicable TDU service territory, with the LSP energy charge calculated as the simple average of the RTSPPs over the prior month for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price. For prepaid service prices charged by a REP up to and including the tenth business day of a month, the test may be met by using the average POLR rate calculation for the month preceding the prior month.

(D) For a fixed rate product, the REP must show that the prepaid service prices calculated under §25.475(g)(2)(A), (D)-(E) of this title are equal to or lower than one of the tests described in subparagraphs (A) and (C) of this paragraph at the time the REP makes the offer and provided that the customer accepts the offer within 30 days.

(d) **Customer acknowledgement**. As part of the enrollment process, a REP ~~shall~~must obtain the applicant's or customer's acknowledgement of the following statement: "The continuation of electric service depends on your prepaying for service on a timely basis and if your balance falls below {insert dollar amount of disconnection balance}, your service may be disconnected with little notice. Some electric assistance agencies may not provide assistance to customers that use prepaid service." The REP ~~shall~~must obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title (relating to Selection of Retail Electric Provider).

(e) **Prepaid disclosure statement (PDS).** A REP ~~shall~~must provide a PDS contemporaneously with the delivery of the contract documents to a customer pursuant to §25.474 of this title and as required by subsection (f) of this section. A REP must also provide a PDS contemporaneously with any advertisement or other marketing materials not addressed in subsection (f) of this section that include a specific price or cost for prepaid service. The commission may adopt a form for a PDS. The PDS ~~shall~~must be a separate document and ~~shall~~must be at a minimum written in 12-point font, and ~~shall~~must:

(1) provide the following statement: "The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.";

(2) inform the customer of the following:

(A) the connection balance that is required to initiate or reconnect electric service;

(B) the acceptable forms of payment, the hours that payment can be made, instructions on how to make payments, any requirement to verify payment and any fees associated with making a payment;

(C) when service may be disconnected and the disconnection balance;

(D) that prepaid service is not available to critical care or chronic condition residential customers as these terms are defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers and Chronic Condition Residential Customers);

(E) the means by which the REP will communicate required information;

(F) the availability of deferred payment plans and, if a REP reserves the right to apply a switch-hold while the customer is subject to a deferred payment plan, that a switch-hold may apply until the customer satisfies the terms of the deferred payment plan, and that a switch-hold means the customer will not be able to buy electricity from other companies while the switch-hold is in place;

(G) the availability of energy bill payment assistance, including the disclosure that some electric assistance agencies may not provide assistance to customers that use prepaid service and the statement "If you qualify for low-income status or low-income assistance, have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it."; and

(H) an itemization of any non-recurring REP fees and charges that the customer may be charged.

(3) be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP.

(f) **Marketing of prepaid services**.

(1) This paragraph applies to advertisements conveyed through print, television, radio, outdoor advertising, prerecorded telephonic messages, bill inserts, bill messages,

and electronic media other than Internet websites. If the advertisement includes a specific price or cost, the advertisement ~~shall~~must include in a manner that is clear and conspicuous to the intended audience:

(A) any non-recurring fees, and the total amount of those fees, that will be deducted from the connection balance to establish service;

(B) the following statement, if applicable: "Utility fees may also apply and may increase the total amount that you pay.";

(C) the maximum fee per payment transaction that may be imposed by the REP; and

(D) the following statement: "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 REP's phone number or website address is already included on the advertisement, the REP need not repeat the phone number or website as part of this required statement. The REP ~~shall~~must provide the PDS and EFL to a person who requests standardized information for the product.

(2) This paragraph applies to all advertisements and marketing that include a specific price or cost conveyed through Internet websites, direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection. In addition to meeting the requirements of §25.474(d)(7) of this title, a REP ~~shall~~must include the PDS and EFL on Internet websites and in direct mail, mass e-mails, and any other media not addressed by paragraphs (1), (3), and (4) of this subsection.

For electronic communications, the PDS and EFL may be provided through a hyperlink.

(3) This paragraph applies to outbound telephonic solicitations initiated by the REP. A REP ~~shall~~must disclose the following:

(A) information required by paragraph (1)(A)-(C) of this subsection;

(B) when service may be disconnected, the disconnection balance, and any non-TDU disconnection fees;

(C) the means by which the REP will communicate required information; and

(D) the following statement: "You have the right to review standardized documents before you sign up for this product." The REP ~~shall~~must provide the PDS and EFL to a person who requests standardized information for the product.

(4) This paragraph applies to solicitations in person. In addition to meeting the requirements of §25.474(e)(8) of this title, before obtaining a signature from an applicant or customer who is being enrolled in prepaid service, a REP ~~shall~~must provide the applicant or customer a reasonable opportunity to read the PDS.

(g) **Landlord as customer of record.** A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.

(1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP ~~shall~~must provide to the TDU the name, service and

mailing addresses, and ESI ID, and keep that information updated as required in the TDU's Tariff for Retail Delivery Service.

(2) The REP ~~shall~~must treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.

(h) **Summary of usage and payment (SUP).**

(1) A REP ~~shall~~must provide a SUP to each customer upon the customer's request within three business days of receipt of the request. The SUP ~~shall~~must be delivered by an electronic means of communications that provides a downloadable and printable record of the SUP or, if the customer requests, by the United States Postal Service. If a customer requests a paper copy of the SUP, a REP may charge a fee for the SUP, which must be specified in the TOS and PDS provided to the customer. For purposes of the SUP, a billing cycle ~~shall~~must conform to a calendar month.

(2) A SUP ~~shall~~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, that the customer can call during specified hours for questions and complaints to the REP about the SUP;

(C) the name, meter number, account number, ESI ID of the customer, and the service address of the customer;

(D) the dates and amounts of payments made during the period covered by the summary;

(E) a statement of the customer's consumption and charges by calendar month during the period covered by the summary;

(F) an itemization of non-recurring charges, including returned check fees and reconnection fees; and

(G) the average price for electric service for each calendar month included in the SUP. The average price for electric service ~~shall~~must reflect the total of all fixed and variable recurring charges, but not including 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 ~~shall~~must be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

(3) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's SUP, then the term in this paragraph must be used to identify the charge, and such term and its definition ~~shall~~must be easily located on the REP's website and available to a customer free of charge upon request. Nothing in the paragraph precludes a REP from aggregating TDU or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP ~~shall~~must not exceed the amount of the TDU 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, adding the word "total" to a defined term, where appropriate, changing the use of lower-case 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 SUP.

(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.

(4) If the REP includes any of the following terms in its SUP, the term ~~shall~~must be applied in a manner consistent with the definitions, and such term and its definition ~~shall~~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 of service 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.

(5) Unless a shorter time period is specifically requested by the customer, information provided ~~shall~~must be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months.

(6) In accordance with §25.472(b)(1)(D) of this title, a REP ~~shall~~must provide a SUP to an energy assistance agency within one business day of receipt of the agency's request, and ~~shall~~must not charge the agency for the SUP.

(i) **Deferred payment plans**. A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a negative current balance over time. A deferred payment plan may be established in person, by telephone, or online, but all deferred payment plans ~~shall~~must be confirmed in writing by the REP to the customer.

(1) The REP ~~shall~~must place a residential customer on a deferred payment plan, at the customer's request:

(A) when the customer's current balance reflects a negative balance of $50 or more during an extreme weather emergency, as defined in §25.483(j)(1) of

this title, if the customer makes the request within one business day after the weather emergency has ended; or

(B) during a state of disaster declared by the governor pursuant to Texas Government Code §418.014 if the customer is in an area covered by the declaration and the commission directs that deferred payment plans be offered.

(2) The REP ~~shall~~must offer a deferred payment plan to a residential customer who has been underbilled by $50 or more for reasons other than theft of service.

(3) The REP may offer a deferred payment plan to a customer who has expressed an inability to pay.

(4) The deferred payment plan ~~shall~~must include both the negative current balance and the connection balance.

(5) The customer has the right to satisfy the deferred payment plan before the prescribed time.

(6) The REP may require that:

(A) no more than 50% of each transaction amount be applied towards the deferred payment plan; or

(B) an initial payment of no greater than 50% of the amount due be made, with the remainder of the deferred amount paid in installments. The REP ~~shall~~must inform the customer of the right to pay the remaining deferred balance by reducing the deferred balance by five equal monthly installments. However, the customer can agree to fewer or more frequent

installments. The installments to repay the deferred balance ~~shall~~must be applied to the customer's account on a specified day of each month.

(7) The REP may initiate disconnection of service if the customer does not meet the terms of a deferred payment plan or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount. However, the REP ~~shall~~must not initiate disconnection of service unless it has provided the customer at least one day's notice that the customer has not met the terms of the plan or, pursuant to subsection (c)(7)(D) of this section, a timely notice that the customer's current balance was estimated to fall below the disconnection balance, excluding the remaining deferred amount.

(8) The REP may apply a switch-hold while the customer is on a deferred payment plan.

(9) A copy of the deferred payment plan ~~shall~~must be provided to the customer.

(A) The plan ~~shall~~must include a statement, in clear and conspicuous type, that states, "If you have any questions regarding the terms of this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP)."

(B) If a switch-hold will apply, the plan ~~shall~~must include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be

removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(C) If the customer and the REP's representative or agent meet in person, the representative ~~shall~~must read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.

(D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but ~~shall~~must not include a finance charge.

(E) The plan ~~shall~~must include the terms for payment of deferred amounts, consistent with paragraph (6) of this subsection.

(F) The plan ~~shall~~must state the total amount to be paid under the plan.

(G) The plan ~~shall~~must state that a customer's electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan, or if the customer's current balance falls below the disconnection balance, excluding the remaining deferred amount.

(10) The REP ~~shall~~must not charge the customer a fee for placing the customer on a deferred payment plan.

(11) The REP, through a standard market process, ~~shall~~must submit a request to remove the switch-hold, pursuant to §25.480(m)(2) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to

remove the switch-hold, the REP ~~shall~~must notify the customer that the customer has satisfied the deferred payment plan and that the switch-hold is being removed.

(j) **Disconnection of service.** As provided by subsection (a)(4) of this section, §25.483 (b)(2)(A) and (B), (d), (e)(1)-(6), and the definition of extreme weather in §25.483(j)(1) of this title apply to prepaid service. In addition to those provisions, this subsection applies to disconnection of a customer receiving prepaid service.

(1) **Prohibition on disconnection**. A REP ~~shall~~must not initiate disconnection for a customer's failure to maintain a current balance above the disconnection balance on a weekend day or during any period during which the mechanisms used for payments specified in the customer's PDS are unavailable; or during an extreme weather emergency, as this term is defined in §25.483 of this title, in the county in which the service is provided.

(2) **Initiation of disconnection.** A REP may initiate disconnection of service when the current balance falls below the disconnection balance, but only if the REP provided the customer a timely warning pursuant to subsection (c)(7)(D) of this section; or when a customer fails to comply with a deferred payment plan, but only if the REP provided the customer a timely warning pursuant to subsection (i)(7) of this section. A REP may initiate disconnection if the customer's current balance falls below the disconnection balance due to reversal of a payment found to have insufficient funds available or is otherwise rejected by a bank, credit card company, or other payor.

(3) **Pledge from electric assistance agencies.** If a REP receives a pledge, letter of intent, purchase order, or other commitment from an energy assistance agency to make a payment for a customer, the REP ~~shall~~must immediately credit the customer's current balance with the amount of the pledge.

(A) The REP ~~shall~~must not initiate disconnection of service if the pledge from the energy assistance agency (or energy assistance agencies) establishes a current balance above the customer's disconnection balance or, if the customer has been disconnected, ~~shall~~must request reconnection of service if the pledge from the energy assistance agency establishes a current balance for the customer that is at or above the customer's connection balance required for reconnection.

(B) The REP may initiate disconnection of service if payment from the energy assistance agency is not received within 45 days of the REP's receipt of the commitment or if the payment is not sufficient to satisfy the customer's disconnection balance in the case of a currently energized customer, or the customer's connection balance if the customer has been disconnected for falling below the disconnection balance.

(4) **Reconnection of service**. Within one hour of a customer establishing a connection balance or any otherwise satisfactory correction of the reasons for disconnection, the REP ~~shall~~must request that the TDU reconnect service or, if the REP disconnected service using its CPDS, reconnect service. The REP's payment mechanism may include a requirement that the customer verify the payment using a card, code, or other similar method in order to establish a connection balance or

current balance above the disconnection balance when payment is made to a third-party processor acting as an agent of the REP.

(k) **Service to Critical Care Residential Customers and Chronic Condition Residential Customers.** A REP ~~shall~~must not knowingly provide prepaid service to a customer who is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. In addition, a REP ~~shall~~must not enroll an applicant who states that the applicant is a critical care residential customer or chronic condition residential customer.

(1) If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential customer, the REP ~~shall~~must diligently work with the customer to promptly transition the customer to postpaid service or another REP in a manner that avoids a service disruption. The REP ~~shall~~must not charge the customer a fee for the transition, including an early termination or disconnection fee.

(2) If the customer is unresponsive, the REP ~~shall~~must transfer the customer to a competitively offered, month-to-month postpaid product at a rate no higher than the rate calculated pursuant to §25.43(l)(2)(A) of this title. The REP ~~shall~~must provide the customer notice that the customer has been transferred to a new product and ~~shall~~must provide the customer the new product's Terms of Service and Electricity Facts Label.

(l) **Compliance period**. No later than October 1, 2011, prepaid service offered by a REP pursuant to a new contract to a customer being served using a "settlement provisioned meter," as that term is defined in Chapter 1 of the TDU's tariff for retail delivery service, or using a REP-controlled collar or meter ~~shall~~must comply with this section. Before October 1, 2011, prepaid service offered by a REP to a customer served using a settlement provisioned meter or REP-controlled collar or meter ~~shall~~must comply with this section as it currently exists or as it existed in 2010, except as provided in subsection (m) of this section.

(m) **Transition of Financial Prepaid Service Customers**. A REP may continue to provide a financial prepaid service (*i.e.*, one that does not use a settlement provisioned meter or REP-controlled collar or meter) only to its customer that was receiving financial prepaid service at a particular location on October 1, 2011. A customer who is served by a financial prepaid service ~~shall~~must be transitioned to a service that complies with the other subsections of this section by the later of October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or a REP-controlled collar or meter. The customer ~~shall~~must be notified by the REP that the customer's current prepaid service will no longer be offered as of a date specified by the REP by the later of either October 1, 2011 or sixty days after the customer begins to be served using either a settlement provisioned meter or REP-controlled collar or meter, as applicable. The REP ~~shall~~must provide the notification no sooner than 60 days and not less than 30 days prior to the termination of the customer's current prepaid service. The customer ~~shall~~must be notified that the customer will be moved to a new prepaid service, and the REP ~~shall~~must transmit

an EFL and PDS to the customer with the notification, if the customer does not choose another service or REP.

§25.499. Acknowledgement of Risk Requirements for Certain Commercial Contracts.

(a) **Purpose.** This section establishes 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 enrollments or re-enrollments entered into on or after September 1, 2021. REPs are not required to modify contract documents related to contracts or enrollments 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, wholesale indexed product, when used in this section, means 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) **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 of 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 of 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 of ancillary service charges, which may cause my energy bill to be multiple times higher in a month in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges."

(3) An AOR may be included as an addendum to a contract.

(4) A REP, aggregator, or broker must retain a record of the AORs for each customer during the time the applicable plan is in effect and for four years after the contract ceases to be in effect for any customer. A REP must provide such documents at the request of the commission or its staff.

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

ISSUED IN AUSTIN, TEXAS ON THE 30th DAY OF JULY 2021 BY THE PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ