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**PROJECT NO. 33814**

<b>RULEMAKING CONCERNING</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>PREPAID RETAIL ELECTRIC</b>	<b>§</b>	
<b>SERVICE USING A CUSTOMER-</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PREPAYMENT DEVICE OR SYSTEM</b>	<b>§</b>	

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**ORDER ADOPTING NEW §25.498 AS APPROVED  
AT THE JULY 31, 2007 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §25.498, relating to Retail Electric Service Using a Customer Prepayment Device or System, with changes to the proposed text as published in the February 23, 2007 issue of the *Texas Register* (32 TexReg 698). This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). This new section is adopted under Project Number 33814.

In this rule, the commission is establishing standards for the provision of prepaid electric service. This is applicable to Retail Electric Providers (REPs') using either special devices installed at the customer's home or business to record electric consumption and make payments, or using advanced meters installed by the transmission and distribution utilities and other payment mechanisms at or near the customer's home or business. Current commission rules are based on a customer establishing credit or paying a deposit to receive electric service, having the consumption metered on a monthly basis, and allowing the customer more than two weeks after the receipt of a bill for service to pay for the service and notifying the customer at least 10 days prior to the discontinuance of service. This system has several drawbacks for customers and REPs, including the risks to retail providers in extending credit, onerous requirements for many customers to pay deposits, and a long lag between the consumption of electricity and payment.

Based on the information provided in this proceeding, the commission concludes that prepaid service will be a valuable option for REPs' and for many customers, because it can reduce REPs' credit risk, eliminate the need for deposits, permit customers to make smaller, more frequent payments, and shorten the lag between consumption and payment, providing customers better information about the costs of their consumption decisions. The rule that the commission is adopting exempts REPs that are providing prepaid service under this rule from certain customer protection rules, but the commission's objective in adopting this rule is to provide customers an option that they may find valuable and preserve customer protections that are appropriate for this service. In addition, the commission is adopting customer protections that are peculiar to this prepaid service, such as requirements regarding how payments may be made and how quickly service must be restored if a customer allows its credit balance to expire and then makes an additional payment to restore service. Prepaid service has been used in other states and countries and is being used by at least one electric cooperative in Texas, and the commission believes that this service will meet a need in the competitive retail market.

The commission received initial written comments on the proposed new rule from the Electric Reliability Council of Texas (ERCOT), CenterPoint Energy (CenterPoint), Office of Public Utility Counsel (OPUC), Reliant Energy Inc. (Reliant), REPower Energy (REPower), TXU Cities Steering Committee (Cities), TXU Energy Retail Power Company (TXU Energy), and Texas Legal Services Center (TLSC). Reply comments were filed by AARP Texas (AARP), CenterPoint, Cities, OPUC, REPower, TLSC, and Texas Ratepayers Organization to Save Energy (Texas ROSE).

Public hearings on the proposed rule were held at commission offices on April 13, 2007, at 10:00 a.m., and on April 18, 2007, at 1:00 p.m. Representatives from Community Action Committee (CAC), Community Action Committee Victoria (CAC Victoria), Combined Community Action of Giddings (CCA Giddings), OPUC, REPower, Save the Family (STF), TLSC, Texas Association of Community Organizations for Reform Now (ACORN), TXU Energy, and Texas ROSE attended the hearings and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

All comments, including any not specifically referenced herein, were fully considered by the commission.

Texas ROSE urged the commission to delay the adoption of the proposed changes to the customer protection rules until more information can be gathered on the potential impacts of prepaid service on residential consumers. However, Texas ROSE offered that if a rule is adopted, it should include several important provisions. These provisions include: (1) prohibiting critical care and seriously ill and disabled customers from taking "self-disconnection" prepaid electric service, (2) providing clear disclosures regarding the features and limitations of the service and information about other REPs and electric plans available to the consumer, (3) providing a clear disclosure of how the service may affect the customer's ability to qualify for energy assistance programs, and (4) requiring any landlord working as a REPower agent to follow the commission rules and fully disclose product information as recommended by TLSC and Texas ROSE in filed comments.

In its public hearing comments, Texas ROSE stated that “we are not convinced that the service REPower is offering is safe for Texas residential consumers, particularly the low-income, elderly and disabled.” Texas ROSE added that by allowing REPower to offer its prepaid meter service without the customer protections required of all other REPs may result in unsafe living conditions and even loss of life. Texas ROSE also commented that it believes the proposed rule may result in problems, which it views as an unreasonable risk to take for the sake of saving the consumer the cost of transaction fees that the commission already has the authority to lower, and that REPs have the ability to waive.

*Commission response*

The commission does not agree with Texas ROSE that research on the effects of prepaid electric services is incomplete and inconclusive. Information was presented during the public hearings that demonstrate the benefits to the customers of prepaid service using a customer prepayment device or system (CPDS). The commission disagrees with Texas ROSE’s assertion that the commission could resolve transaction fees issues by simply lowering fees that the REPs charge to customers for related services. These services have a cost that can be avoided through remote connection and disconnection. The commission agrees with Texas ROSE that it should limit the circumstances under which seriously ill or critical care customers would be allowed to take prepaid service using a CPDS, and has added provisions accordingly. The commission agrees with Texas ROSE that REPs should provide a clear disclosure and information regarding the features and limitations of their prepaid services. The commission further agrees with Texas ROSE that any landlord

**working as an agent of a prepaid REP using a CPDS shall be required to follow all applicable commission rules, and shall fully disclose product information to tenants.**

Regarding disconnection, Texas ROSE discussed the provisions to exempt REPower from the PUC disconnection rules, which Texas ROSE views as a fundamental change in the offering of firm service to Texas residential electric consumers. Texas ROSE cautioned that this step should not be taken without fully considering all the consequences for residential consumers.

***Commission response***

**The commission believes the benefits of prepaid services using a CPDS outweigh any “consequences” as posed by Texas ROSE. The commission has added disclosure provisions, in renumbered §25.498(d), which address Texas ROSE’s concerns about customer disclosures. The commission does not believe that a prepaid REP should be exempt from all disconnection rules, and has addressed those provisions accordingly.**

Texas ROSE provided additional background in comments pertaining to prepaid programs in Arizona and Great Britain. Texas ROSE concluded that there is little experience world-wide with the type of technology and electric service plan being offered by REPower. While noting the information provided by REPower describing the success of Arizona’s Salt River Project (SRP) prepaid program, Texas ROSE stated that it would be helpful to have information and conclusions about that program from an independent, objective source, rather than from SRP itself. Texas ROSE added that it does not view SRP as a valid comparison for the prepaid electric service using a customer premise device proposed by REPower, and urged the

commission to exercise extreme caution in making special allowances for prepaid service plans at the expense of customer safety.

Texas ROSE commented on several important differences between the prepaid service package being offered by SRP and REPower. It noted that the SRP's M-Power program operates under a regulated tariff and is targeted toward low-income customers or customers with poor credit histories. The rates charged by SRP for prepaid service are similar to the charges paid by regular residential customers and are predictable. Texas ROSE stated that the rates charged by REPower are among the highest rates available, and the rate is subject to change at any time. Texas ROSE added that the SRP Program is not available to customers with medical life support equipment, whereas the rule being considered by the commission does not prohibit residential customers dependent on electricity to operate life support equipment from taking prepaid service from REPower.

STF, a nonprofit organization that said it represents the interests of low-income residents in Arizona, provided comments pertaining to its experiences with SRP's M-Power program. STF said that the M-Power program has been in place for the past 10 years, and that it has found it to be a powerful and useful resource tool, helping STF to move their families to a different economic level. STF said the M-Power program works well for many homeless and low income families. In Arizona, the summer begins in March and lasts through October. STF said that many families that are referred to the STF assistance program are unable to obtain affordable housing and cannot afford utility bills.

STF summarized that customers participating in the M-Power program have the following benefits: (1) immediate feedback concerning their electric energy usage, provided through a daily electronic log of power usage and expense, that promotes “real time” change in utility usage and allows families to see the differential costs of energy usage throughout the day and week, (2) ability to learn how to better budget for utility costs on a monthly basis, (3) ability to learn the real costs of utilities in their household without the penalty of accumulating large electricity bills in the process (particularly important for low-income families who cannot “get out from under” large electricity bills in Arizona, that affect their credit history and ability to access utilities in the future), (4) provide parents an opportunity to educate their children about energy costs and the benefits of energy conservation, and (5) provide families an opportunity and incentive to become aware of and develop life-long changes in energy usage strategies.

Regarding whether STF participants are able to understand the program to prevent disconnection, the STF representative said, “trust me, they make it work.” STF added further that “their families become so empowered and comfortable with the results” from the use of the M-Power system while they receive benefits from the STF program, that when they transition out of the program they request the M-Power equipment be installed in their new residence.

*Commission response*

**The commission acknowledges Texas ROSE’s observations on the differences between the regulated market in Arizona and the competitive market in Texas, where REPower seeks to offer prepaid services. While there are differences in the markets and programs proposed to be offered, the commission believes that STF has provided compelling information that**

**demonstrates that customers can benefit from and adapt to prepaid electric service using a CPDS.**

Texas ROSE stated REPower's latest terms of service agreement states that the landlord is the customer of record for the electricity services for the apartment unit with a prepaid customer-premise device and the landlord is a REPower agent. Texas ROSE commented that it found it troubling that in the terms of service agreement, the customer gives the landlord the right to allow REPower to terminate delivery of service at any time. Texas ROSE said using the landlord as an agent of the REP is much different than the SRP M-Power program, where the customer has a direct relationship with the utility company and there is no middle-man.

OPUC also commented on the role of the landlord in the prepaid model, and offered language that would prevent the landlord from initiating interruptions.

***Commission response***

**The commission agrees with OPUC that even if listed as the customer of record, landlords, property managers or property owners shall not be allowed to request or effectuate interruptions of their tenants taking service using a CPDS. The commission has added language to prevent such persons from effectuating interruptions.**

Texas ROSE noted that studies indicate that the SRP M-Power customers are, on average, reducing their electricity usage by 12.8%. Texas ROSE added that the claimed 12.8% savings should be compared to the savings that can be realized through a traditional energy efficiency

program. Texas ROSE also noted that a study has been conducted in Great Britain where approximately 30% of customers take prepaid service, indicating that 34% of customers with prepayment meters were disconnected at least once during the previous year, usually because of a lack of cash. Texas ROSE also raised concern for the safety of small children who may be left without light or heat, because electricity is not available.

Texas ROSE commented that SRP reports that customer satisfaction rates for customers using M-Power are at 84 to 90%. Texas ROSE concluded that both SRP and REPower claim savings to consumers under the prepaid meter plan, due to the absence of security deposits, late fees, and reconnection fees because the customer self-disconnects. Texas ROSE believes that if fees are an issue for residential consumers, there are other solutions to the problem of high fees than the prepaid service models in use by SRP and REPower. Texas ROSE said that customers who wish to prepay are not prohibited from doing so with traditional service while still maintaining customer protections.

*Commission response*

**The commission believes the information provided by STF concerning participants in the SRP M-Power program demonstrates that prepaid service using a CPDS has numerous benefits to customers. Customers have ability to monitor their energy consumption in near real-time, reduce electric consumption if they choose, and pay-as-they-go for electric service. There is no evidence that the safety risks associated with prepay services using CPDS are substantially different than those using traditional electric meters, where customers may have to wait hours or days for a crew to physically restore service after an**

**interruption. The commission disagrees with Texas ROSE that a customer satisfaction rate of 84 to 90% is not encouraging, and believes that this is a substantial satisfaction rate.**

A current REPower customer from Texas provided comments describing her experiences with the company and how she has benefited from the prepaid service using a customer-premise device. The customer stated that she thoroughly enjoyed the benefits of prepaid service. She is a single mother, and liked the service, because: (1) it is hard to make the large deposits that other REPs require, (2) other REPs have additional fees, (3) it was hard to understand the meter or how it works in the traditional model, and (4) prepaid service allows her to “go right to the box, push the button, and see how much (power) I used yesterday.” The customer added that prepaid service helps her to better manage electricity. The service gives her the option of controlling how much to use and how much to spend. Previously, she noted, she had to “scrape by” to pay her electric bills. Now, with the prepaid service, she said she doesn’t experience those problems. She also noted that the nearest pay station was less than one mile away.

Herb Roberts with REPower provided a presentation with information regarding the differences in the market between an interruption of service and a disconnection. REPower contended that there is a real difference between interruption of service and a disconnection of service. REPower argued that with an interruption, “customers are in control.” REPower added that in the prepaid model, customers can better budget their expenses, and prevent disconnections. Customers have access to real-time information, can pay-as-they-go, and can budget their electricity expenses, REPower noted.

*Commission response*

**The commission agrees with REPower that prepaid services provide many benefits to customers, including ability to better monitor and control electricity consumption.**

ACORN, representing 27,000 member families in Texas, provided comments that it opposes prepaid service using special meters with disconnection ability. ACORN believed that customers using prepaid services will most likely pay the highest electric rates, and may never be able to receive electric bill payment assistance.

ACORN acknowledged that in the prepaid model, there are benefits such as the elimination of late fees experienced in the traditional credit model. However, ACORN argued that there are other ways in which the customers using customer-premise devices may be penalized. Both ACORN and OPUC pointed out that there may be transaction fees if the prepaid service includes a prepaid card, where customers are required to pay a transaction fee each time they load money on the card to obtain continued service.

CAC commented that it was concerned that REPower would only accept cash as a valid form of payment. CAC was also concerned with additional processing fees that could be charged to customers. CAC Victoria and CCA Giddings raised similar concerns in comments. ACORN commented that with prepaid service, when the money runs out, the power goes out. ACORN, TLSC, AARP, and OPUC all expressed additional concern for critical care and seriously ill and disabled customers and recommended that those customers be prohibited from taking prepaid service. ACORN added that prepaid service could potentially “rip-off” the neediest customers.

*Commission response*

The commission acknowledges the concerns listed by these commentors. However, the commission believes that the benefits of prepaid services outweigh the costs of such service. The commission is not adopting a rule for one specific company, but a generic rule for prepaid service using meters with special functions. Many REPs may wish to offer prepaid service using a CPDS. This includes REPs that plan to offer prepaid service using a system that interfaces with a transmission and distribution utility (TDU) advanced meters as they are deployed. The commission disagrees with ACORN that prepaid service could potentially “rip-off” the neediest customers; rather, those customers who have difficulty budgeting to pay large monthly power bills, incur onerous deposits, and frequently pay fees for disconnecting and reconnecting service will now be able to pay for power on a more frequent basis and will have a greater chance of keeping the “lights on.”

Regarding contract cancellation fees, the commission has added a provision prohibiting REPs using a CPDS from charging customers cancellation fees, which could be a deterrent to customer choice.

TLSC raised additional concerns regarding prepaid services, including issues pertaining to apartment complexes. TLSC opposed electric service being tied to provisions in a lease. TLSC recommended that the rule contain safeguards for customers taking prepaid service, particularly those living in apartment complexes. Similarly, OPUC expressed concerns that apartment owners may tie the lease to the purchase of electricity with a particular REP. OPUC also stated

that there is a potential for misrepresentation by the landlord regarding competitive providers, and there could be incentives to engage in anticompetitive activities. REPower responded that issues between the tenant and the landlord and the REP are “market related” and are not addressed in this rulemaking. REPower further stated that it believes there are sufficient rules to address those issues.

OPUC, Texas ROSE and TLSC argued that the rule should require a “very strong” disclosure statement to the customer by the REP. OPUC also recommended that because of the special dynamics of prepaid services, there should be no indefinite contract terms and no termination fees. OPUC also commented that any special equipment that is part of prepaid services should show compliance with American with Disabilities Act (ADA), and the REP should show compliance with ADA to the commission. OPUC emphasized that customers should be able to reach the kiosk (if used by the REP), and the input keys on the Customer Information Unit (CIU), and read the print-outs from the kiosks. OPUC also recommended that the commission consider requiring Braille to be added to the CIU and the kiosks. REPower responded that a REP can offer reasonable accommodation to its system and equipment for customers with disabilities.

#### ***Commission response***

**The commission agrees with parties that electric service should not be tied to a lease. One of the fundamental tenets of the competitive retail market is that customers have the right to choose their retail electric provider. For some customers, the ability to obtain service without a deposit and to pay for power in smaller than monthly increments will be important benefits, and this kind of prepaid service may be very desirable. Other**

customers may prefer to choose a service provider on the basis of price or the environmental qualities of the energy the REP provides. To protect this right to choose, the commission is prohibiting tying of electric service to the lease.

The commission is also addressing the ability of a landlord to terminate service of its tenant in this rulemaking. The commission agrees with parties that a disclosure statement incorporating some of the commentors' suggestions should be provided to the customer by the REP, and has added language accordingly. The commission is including in the rule requirements relating to ease of payment. This rule should result in the development of prepaid service plans by several REPs using different payment mechanisms, and customers should be able to choose a payment mechanism that meets their needs. The commission agrees that REPs must comply with all applicable federal disability laws and urges REPs to provide reasonable accommodation to customers with disabilities. The commission disagrees with REPower that there are other rules that sufficiently address the relationship between the customer and the landlord, and has addressed that issue in this rulemaking.

AARP opposed the adoption of a prepaid rule. However, if approved, AARP stressed that the interruption protections for prepaid services should be equivalent to the protections for customers taking traditional retail electric service. AARP agreed with the proposed provisions that would require REPs to offer deferred payment plans during extreme weather emergencies. AARP also suggested that REPs should offer customers deferred payment plan options if they have an inability to pay. AARP stated that the commission should not "lower the bar" for prepaid services. AARP also raised concerns regarding potential billing disputes, and how that situation

may change if there are not actual paper bills issued to the customer. AARP also expressed concern regarding PUC investigations for complaints, and wondered how information would be provided in the prepaid model. AARP urged the commission to match this rule to existing rules.

*Commission response*

The commission believes there is a special need for deferred payment plans during extreme weather emergencies. The commission has also included a provision in renumbered §25.498(f)(3) which requires REPs to maintain usage records for two years. The commission agrees with AARP that the bar should not be lowered for prepaid services, and believes that customer protections are adequately addressed in this rulemaking. Prepaid service is fundamentally different from post-paid service, however, and the commission is not requiring REPs offering service under this rule to offer deferred payment plans to customers who express an inability to pay. One of the benefits of this service is the ability for customers to make more frequent payments in smaller amounts, and this should help them avoid accruing large obligations that would warrant a deferred payment plan.

*General comments*

CenterPoint encouraged the commission to view this rule as allowing for the implementation of a pilot project for prepaid systems. REPower disagreed with CenterPoint, and argued that this rule is not being undertaken as a pilot project. CenterPoint said that following the adoption of this rule, work should begin immediately to develop a more comprehensive rulemaking to address other issues related to prepaid service. CenterPoint said the commission should make it clear

that adoption of this rule does not foreclose or preempt reconsideration of issues or alternatives in a subsequent rulemaking.

TXU Energy said it supports innovative products such as the one promoted by REPower, because such products lead to more options and choices for customers. TXU Energy also said that as new products and services are designed, the commission should quickly and fairly adopt rules that are consistent with PURA, maintain a level playing field for REPs, and provide the “appropriate safeguards and protections for customers.” In reply comments, TLSC and Texas ROSE agreed with such comments.

TLSC also commented that it does not support allowing customer protection rules to be changed to benefit one REP’s proposed prepaid service if it causes a hardship to other REPs that do not provide similar services. TLSC urged the commission to require REPs offering a prepaid service to disclose service limitations to potential customers, make pre-payment devices and statements of account accessible to customers at any time, and allow customers better opportunities to test that consumption is being properly metered.

Cities opposed the implementation of the proposed rule. Cities expressed concern that the commission may be proposing new policies that will encourage services that have not been demonstrated to benefit consumers and that ultimately may harm consumers by relaxing customer protections relating to billing and the interruption of service. REPower disagreed with Cities’ assessment, and argued that the Texas legislature in 1999 clearly envisioned a competitive

marketplace that offered consumers many different and varied options for their electric service, as well as technological innovation.

Cities said it did not believe consumers will take the time to familiarize themselves with technical and complicated consumer rights and obligations that will apply under this new rule. Cities said consumers may not understand the steps they must take to avoid service interruptions or to prevail in a complaint against a REP who does not follow the rule requirements prior to interrupting service.

Cities also said it does not believe the commission has adequate staffing to enforce the requirements of the proposed rule, including new requirements of billing information, metering accuracy, deferred payment plans, and restrictions on interruption of service. Cities said that if these provisions are not enforced, there will “almost certainly be customer service related problems and numerous customer complaints.” Therefore, Cities said the benefits of the proposed rule do not offset the potential costs of administering the rule and the relaxation of consumer protections. REPower disagreed with Cities and argued that the commission will actually receive fewer complaints from customers taking prepaid services using a CPDS.

***Commission response***

**The commission wants to encourage new, innovative product offerings, including those that provide customers additional flexibility to choose how frequently to pay for electric service and flexibility to monitor electric consumption in real-time. The benefits of prepaid service using a CPDS are substantial and should not be limited to small pilot projects. The**

commission is therefore adopting a rule that will allow REPs to offer the services in all service areas open to competition. By adopting a rule of general applicability, the commission seeks to ensure that all REPs are subject to the same rules and have an equal opportunity to provide customers such prepaid services. The commission agrees with CenterPoint that the adoption of this rule does not foreclose or preempt reconsideration of issues or alternatives in a subsequent rulemaking.

The commission also believes that with the appropriate rules in place, customers will be able to follow the appropriate procedures, as well as take the steps necessary to avoid service interruption. The operation of the prepayment systems described by REPower is not complicated, and the information from the SRP indicates that customers do not have difficulty understanding how such a system works. Some of the drawbacks of the existing credit system include a significant lag between the time that energy is consumed and when customers must pay for it, and real-time cost and consumption information that is not available to the customer. Shortening this lag, as the testimony from STF indicates, may be a significant improvement for customers, helping them understand the real costs of their energy consumption decisions, improving their ability to control their consumption, and allowing them to pay in smaller increments. In fact, this evidence demonstrated that customers have greater control over their electric service with the prepayment model than in traditional post-payment electric models. Customers are able to monitor usage in near real-time and have greater flexibility to decide how often and how much to pay toward their electric service. The commission has adequate staff to enforce customer protection rules. A more comprehensive rulemaking could be conducted, if needed, to address any

issues that arise from the adoption of this rule and address other prepaid retail electric service models.

TLSC and Texas ROSE stated that any prepayment devices installed should meet standards of the TDU and should not interfere with the TDU meter or equipment.

REPower stated that the Texas customer protection rules were written without prepayment models in mind, and the traditional post-payment model has been the primary model by which electric service has been delivered. REPower said that the prepayment model is very different than a post-payment model, and therefore the customer protection rules imposed on REPs offering prepaid electric service using customer premise devices should be different than the rules imposed on REPs providing traditional electric services. TLSC and Texas ROSE disagreed with REPower on these points and emphasized the importance of customer protection rules.

REPower stressed that the prepayment system reduces a REP's collection costs and other inefficiencies present in a traditional post-payment electric service model. REPower also said that electric service using customer premise devices is an innovation that replaces the need for traditional disconnections as a collection mechanism, because service is not provided until funds are collected and further, customers have the benefit of real-time awareness of their consumption information so they can easily control their usage as well as their total energy costs.

REPower added that under a post-payment model, customers consume electricity before they pay for it, and that customers do not receive real-time information regarding their consumption and

expenses. REPower said that there are few other industries where consumers consume the product prior to purchase without any knowledge of the price or quantity they will have to purchase. REPower said most day-to-day transactions such as purchases of groceries and gasoline require customers to pay as they go, rather than be billed later for the items.

TLSC and Texas ROSE agreed in reply comments with Cities' concern that prepaid services may not have been fully demonstrated to benefit small residential consumers, and may actually harm those customers by "relaxing selected customer protection provisions relating to billing and disconnection of service." AARP argued that the proposed rule could weaken existing customer protection rules.

*Commission response*

The commission agrees with REPower that the commission's current customer protection rules were not written with this kind of prepayment technology in mind. These current rules are unworkable for prepaid electric service using a CPDS, because they require issuance of bills after service has been provided and they do not clearly allow a prepaid electric service provider to interrupt electric service without undergoing a lengthy notice process. The commission agrees with TLSC and Texas ROSE that commission rules must ensure that customer protections are maintained. However, the commission believes that different customer protections are appropriate for traditional post-payment electric service and prepaid electric service models. Therefore, the commission is providing certain modifications to customer protection rules to accommodate the prepaid services using a

CPDS and adopting new customer protections to make this service work well for customers.

The rule provides customer protections to ensure that customers can track their electric service usage and account balance on at least a daily basis and provides them an advance warning prior to any interruption of service. It also provides customers the ability to quickly restore service at a lower cost than reconnection fees charged under post-payment models. The commission agrees with TLSC and Texas ROSE that the CPDS should not interfere with the TDU meter or equipment. The commission disagrees with AARP that this rulemaking will weaken the existing customer protection rules and believes this rule takes adequate steps to ensure customer protection rules are maintained.

REPower said that REPs providing service under the traditional post-payment model use disconnection of service as a collections mechanism. REPower said that in Project No. 27084, the commission concluded that the right to disconnect customers for non-payment had helped affiliate REPs to “significantly reduce their bad debt levels.” REPower also noted that the commission in Project No. 27084 stated that “one of the goals of competition is for the industry to offer better prices and innovative services for customers. Uncollectible revenues incurred by REPs will ultimately be borne by other customers, as retail prices are adjusted upward to recover these costs. Such rate impact is to the detriment of all customers and the development of the competitive market. Extending the ability to request disconnection by all REPs should therefore enable non-affiliated REPs to compete more vigorously on price.”

REPower commented that it believes that customers that fail to maintain a sufficient credit balance in to the prepay model will fully understand that their service will not continue until a credit balance is restored. REPower said that service interruptions in the prepay model, unlike disconnections, are fully within the control of the customer. Interruptions, according to REPower, do not require the processing of Texas SET transactions nor the actions of the TDU to effectuate, as do traditional disconnections.

*Commission response*

The commission acknowledges that like a “disconnection” at the point of delivery, an “interruption” of service on the customer side of the point of delivery can facilitate a REP’s management of revenue collection. Reducing or avoiding uncollectible debt would allow REPs to eliminate or reduce customer deposits compared to post-payment models, and may allow REPs to offer services at a lower price. One of the commission’s objectives in this rulemaking is to facilitate competition among REPs in providing prepaid service, so that competition can put downward pressure on the retail prices offered by REPs for prepaid service. Furthermore, by avoiding disconnections and reconnections, the REPs and customers may avoid costs and delays associated with transaction processing and sending out crews to provide those services. However, the immediate impact on customers of an “interruption” is similar to the impact of a “disconnection” – the customer is left without power.

REPower said the commission’s disconnection and billing rules should not apply to prepaid electric service, and requested changes to the rule that would allow a REP using a prepaid CPDS

to interrupt service to a customer whenever that customer's prepaid balance is exhausted. REPower's equipment is not capable of obtaining instant remote signals that could be sent to prevent interruptions of electric service on extreme weather emergency days. REPower argued that prohibitions against interruption of service for ill and disabled customers and during extreme weather are only appropriate for customers receiving service using post-payment models and not prepayment models. TLSC and Texas ROSE opposed changing the rule to allow for interruption of power on extreme weather emergency days just because one company's equipment does not have instant remote communications capabilities. They argued that the standards for commission rules should be based on the needs of the customer rather than the technical constraints of one company's equipment.

Unlike traditional electric service, where a customer is often required to pay a deposit and is billed for electric service after receiving it (post-payment model), many REPs offering prepayment electric services do not charge a deposit and therefore have no assurance they will be paid by a customer if they provide service after the customer's account balance has been exhausted. Because of this difference, REPower said prohibition on interruptions of power for ill and disabled customers or customers during extreme weather emergencies "have no place in this rule."

TLSC and Texas ROSE responded that a customer's real-time awareness of energy consumption or a low prepayment balance would not protect a critical care or disabled customer from losing power during an extreme weather emergency and possibly losing his or her life. TLSC and Texas ROSE argued that rules that temporarily prohibit disconnection of ill or disabled

customers or disconnection on extreme weather emergency days were written with the “intent of protecting the most vulnerable persons in society.” Further, TLSC and Texas ROSE said those protections are needed regardless of the type of meter or equipment installed at a residence.

TLSC and Texas ROSE argued that TDUs directly notify REPs, not customers of extreme weather emergencies, putting REPs (and not customers) in the best position to determine when the prohibition against disconnection due to a weather emergency applies. TLSC and Texas ROSE argued that the commission lacks the authority to adopt a rule that supersedes requirements created by statute, specifically PURA §39.101 and §39.107. They stated that regardless of the type of model being employed by a REP, the statutory requirements cannot be avoided by merely changing the commission’s customer protection rules.

*Commission response*

**The commission believes the rulemaking should strike a balance between the needs of customers for safeguards ensuring they receive continuous and reliable electric service and the needs of REPs to collect from customers amounts owed for the service, and be able to offer innovative products and services. The commission agrees with TLSC and Texas ROSE that the rule should not be dictated entirely by technological constraints of equipment that one REP has used or plans to install. REPs have the obligation to operate within the commission rules that are designed to afford certain protections to customers.**

**While the commission notes the distinction that REPower makes between interruption and disconnection, the commission agrees with TLSC and Texas ROSE that the two words have**

the same meaning for the customer. Whether electric service to a customer is disconnected at the TDU meter (point of delivery) or interrupted on the customer side of the meter (by a CPDS), the customer is immediately left without power. Because REPs offering prepaid service using a CPDS will be precluded from having a deposit to cover service (except for an equipment deposit) provided to customers after a customer's prepayment balance is exhausted, it is reasonable to allow REPs using a CPDS to interrupt service in most cases when a customer's prepayment balance is exhausted, provided that certain disclosures have been made to the customer and other safeguards are in place. However, it is reasonable to place in the rule safeguards that prohibit a REP from interrupting service during extreme weather emergencies, weekends, and for seriously ill or critical care customers.

The commission agrees with Texas ROSE and TLSC that any modifications to existing customer protection rules cannot contradict Texas statutes, and has provided in the rule a prohibition against interruption of service during weekends, extreme weather emergencies or for seriously ill and critical care customers. PURA §39.101(a)(1) and (h) require the commission to establish retail customer protections against service disconnections during an extreme weather emergency. The commission agrees with TLSC and Texas ROSE that customers need protection from interruption of electric service during extreme weather emergencies, whether the interruption occurs at the TDU meter (point of delivery) or on the customer side through an interruption of power by the CPDS. Likewise, the commission finds that seriously ill and critical care customers are particularly vulnerable to the negative effects of disconnections and interruptions of power. Therefore, the

commission adopts renumbered §25.498(j), which prohibits REPs from providing prepayment service using a CPDS to a critical care customer or a customer that is seriously ill or has a person residing with them who is seriously ill, if the customer does not sign a waiver, provided by the REP, which states the customer understands the medical risks associated with the fact that its retail electric service can be interrupted. The rule requires that if such a customer chooses not to sign such a waiver, the REP shall work with the customer to transition the customer to another product or provider in a manner that avoids a service disruption. The commission disagrees with REPower's contention that disconnection protections are only appropriate for traditional credit models.

The commission in this proceeding considered what type of billing information or statements a customer receiving prepayment services using a CPDS should receive. REPower stated that it believes that customers would find expenditure information more useful than simply presenting consumption information. TLSC and Texas ROSE argued that REPower's contention ignored the fact that customers who need weatherization or energy assistance through the Low Income Home Energy Assistance Program (LIHEAP) need more than expenditure information to be eligible for assistance. They said energy assistance agencies may require customers to present billing history as part of an application process. TLSC and Texas ROSE argued that to comply with P.U.C. Substantive Rule §25.472(b)(4), REPs providing prepayment services must provide customers with everything that would exist on a traditional bill, not just expenditure information, so that these customers have access to energy assistance for which they may be eligible.

REPower argued that service interruptions are not disconnections. REPower explained that the term “disconnection” has specific meaning in this market, and the rules and protocols that govern this market, underscore this specific meaning. According to REPower, disconnection is a “term of art” that refers to the market process by which a REP requests that a TDU physically sever the electric service to a premise. Under existing commission rules and protocols, a “disconnection” is an action taken by the TDU at the request of the REP, where the customer has no direct control.

TLSC and Texas ROSE were also critical of provisions in the rule that allow REPs to deliver payment and usage data to customers electronically, rather than on a printed bill or statement. They said allowing REPs to deliver such information through some electronic means ignores the fact that many customers will not have a computer and internet access, and many may be unable to use such devices if their power has been turned off. TLSC and Texas ROSE argued that people who need energy assistance may be among the least likely to have computers or internet access, and therefore customers using prepayment services should be provided summaries of electric usage by mail or hand delivery, rather than electronic delivery. Texas ROSE further explained that TDUs notify REPs and not customers of extreme weather emergencies. Therefore, they argued that it is critical that REPs and not customers bear the responsibility to prevent interruptions of power during extreme weather emergencies. They argued that customer premise devices that are not capable of remote communications should not be permitted.

CenterPoint commented that it does not take a position on how those terms should be defined for purposes of this rule, but disagreed that there is a distinction between interruption and

disconnection as those terms are used in this market. CenterPoint added that those terms are used in the TDU Tariff for Retail Delivery Service (Tariff), as is the term “suspension” of service, but they are not specifically defined and the distinction between them or the extent that they are fungible is unclear. CenterPoint argued that this rulemaking is not the appropriate vehicle for resolving Tariff interpretation issues, or adopting terms or making distinctions that would apply to the Tariff. CenterPoint requested that this rule make clear that if any definition or distinction between interruption and disconnection is adopted in this rule, that it is limited in its application solely to this rule.

*Commission response*

**The commission is adopting renumbered §25.498(f)(1), which will require a REP to provide a statement of electric usage to a customer upon request. The LIHEAP program allows customers requesting energy assistance to fill out a release of information form that LIHEAP agencies use to obtain electric usage data directly from REPs. Subsection (f)(4) of the rule requires a REP to provide such summary data within one business day. Therefore, customers have avenues to receive electric usage and payment history in a timely manner. Furthermore, the rule’s disclosure provision, renumbered §25.498(d), requires customers taking service under this rule to be provided a prominent disclosure informing them that service can be interrupted when their prepayment balance is exhausted and of any limitations on access to energy assistance. Section 25.498(f)(4) also requires a REP to provide a summary to an energy assistance provider within one business day. CenterPoint’s request regarding the tariff (§25.214) is not addressed.**

§25.498(a)

Reliant supported §25.498(a) as drafted, and urged the commission to retain this language in the adopted rule.

TXU Energy suggested that two additional exceptions be added to this subsection. First, §25.473(d)(2) requires a REP to provide “customer bills” in both English and Spanish. Renumbered §25.498(c)(7) states that communication from the customer premise device shall be in English “or” Spanish. TXU Energy agreed that the REP should have the option, and suggested that the customer billing portion of §25.473(d)(2) be exempted in this section. In reply comments, OPUC commented that the customer should be able to choose what language the information is communicated.

TXU Energy also recommended adding §25.479(c)(1) to the list of rules that REPs using a CPDS will be exempt from following. Section 25.479(c)(1) lists requirements for what must be printed on a customer bill, and since renumbered §25.498(f)(1) states that a REP is not required to issue traditional bills to customers, TXU Energy said §25.479(c)(1) should be added to clarify that the list of what must be printed on a bill also does not apply to prepaid REPs.

***Commission response***

**The proposed rule included an exception for all of §25.479(b), so there is no need to specifically address subsection (b)(1) of that section. The commission agrees with TXU Energy with respect to renumbered §25.479(c)(1), and has made changes accordingly. For clarification purposes, the commission has added to this list of rules, P.U.C. Substantive**

**Rule §25.454(e)(3)(C), which specifies a line item that is required to be placed on the bills of LITE-UP customers. In lieu of this requirement, the commission has amended subsection (c) to require that the REP include a statement that the customer is receiving the LITE-UP Discount on the written receipt or confirmation of payment, and leaves the exact wording to the discretion of the REP. The commission agrees with OPUC that a CPDS as well as other communications to the customer should be capable of communicating in English and Spanish.**

*§25.498(a)(2)*

REPower continued to emphasize that an interruption of service to a customer being served under this rule is not a disconnection of service. REPower stated that it believes that all REPs, including those offering prepayment services, are governed by §25.483, which establishes the standards for disconnection of service. REPower requested that the rule clearly state that “interruptions in service” are not “disconnects.”

TXU Energy commented that it was unclear as to why all of §25.483 was given as an exception. TXU Energy also commented that §25.483(b)(2)(A) and (B) require a REP to test all electronic transactions related to disconnections and reconnections of service, and to file an affidavit from an officer of the company affirming that the REP understands PUC rules and has trained its staff on disconnection and reconnection requirements. TXU Energy argued that all REPs should comply with these rules, including REPs using a CPDS . TXU Energy stated further that §25.483(d) allows a REP to disconnect for reasons such as dangerous conditions, or service connected without authority, and these should remain. TXU Energy also pointed out that

§25.483(e) covers situations where a REP cannot disconnect service, that should apply to a CPDS as well.

*Commission response*

**The commission disagrees with the contention that an interruption of service is not a form of a disconnection. An interruption of service is a form of a disconnection. The commission agrees with TXU Energy that a minimum requirement for the power to be turned on immediately is beneficial to the market and has made modifications accordingly. The commission agrees with TXU Energy's comments concerning §25.483(b)(2)(A) and (B), (d) and (e) and has modified the rule accordingly.**

TXU Energy commented that turning on the power after payment is received is one of the assumed benefits of prepayment services, as well as the ability to turn the power off at the moment the prepaid account is exhausted. TXU Energy stated that it believes that the power should come back on when the prepaid account has a positive balance of at least \$50, or within some reasonable amount of time. TXU Energy proposed that power be restored within 24 hours after the customer accrues a positive balance of \$50. OPUC disagreed with TXU Energy that a customer should have to pay \$50 to restore service.

*Commission response*

**The commission agrees that power should be restored soon after payment is made, and has modified language to require REPs beginning on June 1, 2008, to restore power to customers using a CPDS within two hours of receipt of a customer's payment. Prior to**

June 1, 2008, REPs will be required to restore electric service using a CPDS under the same timelines as reconnections must be processed pursuant to §25.483(m). The commission realizes that some prepay REPs may install a separate meter on the customer premises, while others will choose to use TDU advanced meters, or other technologies. The commission is phasing in the two hour electric service restoration requirement to allow REPs time to replace or modify equipment so the REPs can meet the two hour service restoration requirement. The commission disagrees with TXU Energy and agrees with OPUC that \$50 minimum to restore service is an unnecessary amount. The commission has revised the rule to prohibit a REP from requiring customers using a CPDS to make a minimum prepayment transaction amount. One of the benefits of prepaid service is that it allows customers to pay for service in small increments. Establishing a \$50 minimum would undermine this benefit. The prohibition on a minimum transaction amount is not intended to prohibit a REP from charging a reasonable transaction fee to a customer making a payment using a CPDS, provided that the fee has been disclosed in the REP's terms of service document.

§25.498(a)(3)

REPower proposed a new section be added to address the distinction between voluntary interruptions of power that occur when a customer's prepaid balance is exhausted, and disconnections, which occur when a TDU stops power flow at the point of delivery. REPower suggested this distinction be communicated to the customer at the time of enrollment. REPower argued further that customers should be fully aware that interruptions of power are not the same

as disconnections, and as a result, the protections customers might expect to receive from a post-payment REP may not be provided by a prepayment REP.

*Commission response*

**The commission agrees with REPower that more direct notice of the consequences of failure to prepay for service is appropriate and has modified the disclosure statement required by §25.498(d) to address this matter more directly.**

*§25.498(b)(1)*

With the addition of subsection (b), relating to definitions, provisions in proposed subsection (b) appear in subsection (c) of the rule that the commission is adopting. Reliant recommended that throughout the rule, the phrase “prepaid” services or “power” be replaced with the phrase “retail electric” service or “electricity.”

TXU Energy questioned the need for REPs to file with the commission a written description of its prepaid services using a customer-premise prepayment device, prior to offering such services to customers. Rather, TXU Energy suggested that REPs inform commission staff. TXU Energy stated further that there is a concern that competitors could review the filings to obtain sensitive competitive information about a company’s future products and business plans, which could cause a company to lose its competitive advantage. At a minimum, TXU Energy said, anything provided to the commission should be provided under seal by the REP.

REPower commented that it is not appropriate to require a REP to file a written description of its prepaid service. REPower argued that it is unnecessary to require REPs to file specific

information in advance of a product offering describing how compliance will be achieved. OPUC argued that parties should have access to the description of the prepaid services prior to the offering, so that potential problems can be addressed before they occur. OPUC further suggested that if the commission determines that a filing is not required or may be made under seal, the REP should be required to provide the same information to OPUC that it provides to the commission.

*Commission response*

**The commission agrees with TXU Energy that a REP should not have to file a written description of its plan for prepaid services, but rather, a REP shall file a general statement of intent to provide services using a CPDS. The statement will not need to be approved by the commission, and the exact details of the products need not be provided to the commission. The commission agrees with OPUC that the REP shall file a copy of the statement of intent with OPUC. In order for the commission to assist customers who call with questions or complaints, it must know which companies are providing prepaid service under this rule. The commission will maintain a list of companies who have filed a statement of intent to provide service. The filings will provide notice to the public and staff of the services being offered and permit the staff to obtain any additional information it needs to assist customers.**

TLSC contended that the rule should not and cannot use disclosure statements to operate as a way for a REP to evade customer protection rules. TLSC and Texas ROSE recommended

specific language to be used in a model disclosure page, and argued that it met the requirements of subsection (c) of the rule.

*Commission response*

**The commission agrees with TLSC and Texas ROSE that REPs shall be required to provide customers a separate disclosure statement along with the Terms of Service when a REP enrolls a new customer, and has added language to that effect to the rule.**

*§25.498(b)(2)*

CenterPoint proposed that a defined term, “Customer Prepayment Devices or Systems (CPDS),” be used throughout the rule. Alternatively, “Prepayment Systems” could be used. CenterPoint also suggested that the language in this section be modified to include the term “systems,” so that REPs that use equipment different than that proposed by REPower may participate under the rule. For example, the rule should allow for technologies and services that would be available through communication with a TDU’s AMS, if available. In reply comments, REPower supported the language suggested by CenterPoint.

CenterPoint also suggested the removal of the word “premise,” as part of the defined terms for prepayment devices. CenterPoint added that while REPower equipment will be installed at the customer’s premises, that is not true for other technologies that would support prepaid service. Therefore, CenterPoint opined, the term is unnecessarily limiting and should not be incorporated into the definition. In reply comments, OPUC opposed the removal of the term “premise”, as it is key to this “fast-tracked proposed rule” due the limitations and special circumstances

surrounding this type of equipment, and that it also would eliminate the distinction between prepaid electric service using customer premise prepayment devices, and other forms of prepaid service.

OPUC added that exemptions or amendments, if any are needed for other prepaid models, can be addressed in the more thorough and broad-based consideration of rules that staff contemplated would be initiated following the conclusion of this rulemaking.

In its initial comments, Reliant stated that the language should be amended to clarify that service interruption may be executed at the meter by the TDU, at the request of the REP. The current language could be interpreted to require that the prepayment device itself must initiate the interruption of electric service if the customer's prepayment balance is exhausted. REPower argued that this requirement can be streamlined to focus only on ownership of the meter and/or other software or equipment that comprises the Prepayment Management System (PMS), as defined by REPower.

*Commission response*

**The commission agrees with Reliant and CenterPoint that a standard terminology should be used throughout the rule, and that it should be broad enough to allow REPs to provide services through a variety of customer prepayment devices, including a system that communicates with a REP using a TDU Advanced Metering System (AMS). The commission does not agree with OPUC that the removal of "premise" eliminates the distinction between product offerings and does not agree that the scope of the rule should**

be limited, as OPUC suggests. One of the objectives of the broader scope is to facilitate competition among REPs that provide prepaid electric service, and the commission believes that different forms of prepaid services are adequately addressed in the rule.

REPower said that the section would be strengthened if the rule listed specific technical requirements for REP-owned or controlled meters. REPower suggested that this would prevent confusion or disputes related to the deployment of such meters and would clarify that the technical requirements of such meters are not the same as the requirements for TDU meters. REPower said the installation of REP-owned or controlled meters should be governed by many of the same provisions that apply to TDU meters, specifically, §25.121(e), as well as §25.122 and §25.125.

REPower also proposed that a definitions section be added to the rule, to include the terms “Prepay Metering System” and “Interruption.” REPower suggested that PMS be defined as a system that includes a meter and other software or equipment that has the capability of providing the prepay services outlined by the rule. REPower further suggested that “interruption” be defined as the automatic cessation of electric service by a PMS to a premise that occurs when the customer fails to maintain a credit balance during a time period in which interruptions are not prohibited under this rule.

#### *Commission response*

The commission agrees with REPower that certain standards concerning prepayment devices that meter electric consumption should be specified by the rule and that a

definitions subsection is appropriate, and has modified the rule to address these concerns. The commission is not adopting the suggested definition of interruption, for reasons that are discussed above.

*§25.498(b)(3)*

REPower suggested that if a definition of PMS is added, the first sentence of this paragraph is no longer needed, as well as the last sentence. REPower believes that all equipment that comprises the PMS should be subject to this provision, except for upgrades to existing meters, and other PMS equipment currently being used by a REP.

*Commission response*

The commission agrees with REPower that all equipment that comprises the prepaid system should be subject to this provision, except for TDU meter upgrades. The commission does not agree with REPower that the first and last sentences are no longer needed. The commission believes that it is important to establish standards for the metering devices, in view of the latitude that the rule gives to REPs to select and install such devices as a part of a CPDS.

*§25.498(b)(4)*

CenterPoint proposed a new section to govern the installation and operation of REP owned or controlled prepayment devices or communication equipment. The proposed language gives notice to a REP that its equipment must be installed in accordance with TDU standards, and that it cannot interfere with the operation of TDU equipment, including communication equipment.

CenterPoint said that as technology advances, it is critical to ensure that REP devices function in conjunction with TDU equipment, without creating interference.

REPower argued that each TDU appears to interpret existing tariff provisions differently. REPower suggested that TDU issues will require more attention and thought and should be addressed in the more comprehensive rulemaking already anticipated. For this reason, REPower opposed the suggested language by CenterPoint.

*Commission response*

**The commission disagrees with REPower that this new section should not be added, and agrees with CenterPoint that a new section is appropriate that addresses the installation and operation of REP owned or controlled prepayment devices or communication equipment, and has added language accordingly. The commission has also added language to the rule that allows a TDU to install a CPDS, and it shall not constitute a provision of a competitive energy service as those terms are defined in §25.341(3).**

*§25.498(b)(5)*

CenterPoint and Reliant recommended that this section be rephrased to not preclude payment by methods other than those listed. CenterPoint proposed the phrase “including but not limited to,” to accomplish adding flexibility. Reliant suggested clarifying this section to assure that REPs and customers have the freedom to choose mutually acceptable methods of payment. Reliant believes the rule was intended to allow a system where the customer can make a payment via

telephone or Internet, obtain a confirmation code, and enter the code into an in-home prepayment device.

OPUC commented that this provision should be amended to include a more specific definition of “near the customer’s premises.” OPUC stated that it believes that a reasonable definition of “near” would be not more than one-half mile, the equivalent of five city blocks. TXU Energy recommended that “near” should at least be within five miles of the customer’s premise. TLSC stated that the location should be not more than two blocks from the customer’s premises.

TXU Energy stated that it was unclear what “near the customer’s premises” meant. TLSC commented that the term “near” was too ambiguous and thus not adequate protection for customers. TXU Energy recommended that the rule be changed to require a REP to provide one device option on the premises, such as in the apartment managers office, and another device nearby, such as at a local grocery store.

TLSC emphasized that REPs offering prepaid services using customer-premise prepayment devices must make those pre-payment devices convenient for customers to ensure that they can access the devices at any time to allow customers to make payments to keep their service from being interrupted.

REPower agreed that customers should be able to make prepayments at locations convenient to the customer’s premises, but opined that having two prepayment devices or mechanism in close proximity to the customers’ premise is unnecessarily burdensome.

*Commission response*

The commission agrees with CenterPoint and Reliant that the rule should not preclude payment by methods other than those listed, and has made changes in accordance with this recommendation. The commission disagrees that the term “near” is not definite enough. The commission disagrees with OPUC’s recommendation that “near” should include a reference to five city blocks, because city blocks are of various lengths and imposing a “one-mile” criteria is a specific measurement that can be verified. The commission disagrees with TXU Energy’s recommendation that “near” should be replaced with language stating “within five miles,” because that distance is not within easy walking distance and could make it difficult for some customers to make payments. The commission believes that the payment locations outside of the customer’s premises shall be determined by the market. Furthermore, the commission disagrees with TXU Energy’s recommendation that the rule be changed to require payment locations both at the customer’s premises and another nearby location, because requiring multiple locations may be unnecessary and would add to the cost of providing the services.

*§25.498(b)(6)*

TLSC stated that because customer-premise prepayment devices are exempted from complying with §25.479, relating to issuance and format of bills, customers using such service must have access at any time to a written statement of their remaining dollar balance and estimate of time or days of paid electricity remaining to apply for bill payment assistance without any time constraints associated with requesting a statement from the REP.

*Commission response*

The commission agrees that such notification is important and concludes that if the CPDS provides such a notification at the customer's request, the REP should provide the information to the customer within two hours from when the customer makes such a request.

*§25.498 (b)(6)(B)*

REPower expressed concern that not all prepay metering systems can display "electricity usage since the last payment" as outlined in the proposed rule. Some systems only allow for the real-time presentation of consumption. REPower argued that it is up to the customer to keep a record of consumption over any particular period of time. REPower offered that expenditure information, coupled with the current electricity rate provides customers with sufficient information on their usage.

*Commission response*

The commission agrees with REPower and has removed the requirement to show electricity usage since the last payment. A REP is encouraged but not required to provide this information to the customer. For a customer seeking to track longer-term usage and payment history, subsection (f) of the rule requires a REP to provide a customer with Payment and Usage summary upon request.

§25.498(b)(6)(D)

REPower suggested that the requirement that the customer be warned of the expiration of a credit balance be modified to allow for the warning to be based on a trigger determined by the REP and such trigger be clearly disclosed in the REP's terms of service document. OPUC disagreed with REPower and recommended that the trigger level be determined in this rulemaking. OPUC added that if a "days remaining" trigger cannot be utilized, then an equivalent level of "dollars remaining" trigger should be determined and required.

*Commission response*

**The commission agrees with REPower and has made changes in accordance with this recommendation. The commission does not agree with OPUC's recommendations because it believes that customers will be more interested in knowing when they will need to make an additional payment for service and that different REPs will offer varying prepaid products with different triggers, and that customers should have the choice to determine what trigger will best suit their particular needs. As REPs and customers become more experienced with using these systems, they should have the latitude to adjust the triggers, within the limits established by this section.**

§25.498(b)(6)(E)

REPower commented that some PMS allow for the display of expenditure information over a period of time, but not necessarily consumption information. REPower therefore proposed that this provision allow for the presentation of either expenditure or consumption information.

*Commission response*

**The commission agrees with REPower and has made changes accordingly.**

*§25.498(b)(6)(F)*

REPower commented that this list should be expanded to include the presentation of the ESI ID, instead as an account number, as an option.

*Commission response*

**The commission agrees with REPower and has made changes accordingly.**

*§25.498(b)(6)(G)*

TXU Energy suggested that this language be more precise. Rather than state that the customer-premise prepayment device shall be “removed easily,” TXU Energy recommended clarifying that the device be capable of being removed within 24 hours of request to the REP. REPower agreed with TXU Energy that the language should be more precise. REPower suggested that rather than removal within 24 hours, that removal begin prior to the start of business on the effective date stated on the enrollment transaction for customers that switch to a different REP.

*Commission response*

**The commission agrees with TXU Energy and REPower that the language should be more precise. The commission agrees with REPower’s suggested language and has adopted language accordingly.**

§25.498(b)(6)(H)

REPower argued that a key requirement of a prepaid service is that it have the ability to automatically interrupt service when a customer's credit balance is exhausted, and suggested language to capture that requirement.

OPUC argued that a section should be added to require that the customer premise prepayment device or system provide an estimate of the hours or days of paid electricity remaining, as well as a dollar balance.

*Commission response*

**The commission agrees with REPower that, with the exceptions noted above regarding extreme weather emergencies and seriously ill and critical care customers, a REP should be able to interrupt a customer's service when the balance is exhausted. The commission does not agree with OPUC that estimated remaining days or hours should be required because some systems may not be able to provide that information, and subsection (c)(8)(D) of the rule requires that customers receive balance information on request or daily and will receive a warning before service is interrupted.**

§25.498(b)(6)(H)

OPUC and TLSC recommended that this section be amended so that a customer could request an accuracy check free of charge every two years, instead of every four. REPower pointed out that TDU's are currently required to provide a free meter test once every four years, and that prepaid

REPs should not be held to a higher standard than TDUs. OPUC also stated that the customer records should be maintained by the REP for at least four years.

*Commission response*

The commission concludes that the testing standards should be consistent with the provisions that apply in the case of TDU meters and has modified the section to refer to the provision of the electric delivery tariff relating to the customer's ability to request a meter test. Existing rules require REPs to retain billing records for two years, and the commission concludes that there is no reason to impose a longer retention period on prepay REPs.

§25.498(c)

TLSC commented that a REP that offers prepaid services should prominently disclose all limitations of its service compared to what a customer using a standard service would be entitled to under current customer protection rules. TLSC offered language to that effect. REPower did not agree with TLSC's suggested language for disclosure.

*Commission response*

The commission concludes that it is appropriate for a REP offering service under this section to disclose the terms of the service that the customer will be subject to and has adopted special disclosure requirements to provide a prominent notice that service may be interrupted if the customer fails to maintain a positive credit balance and of other key

**features of this service. The commission does not agree that a comparison to a service that the customer is not taking would be beneficial to a customer.**

*§25.498(d)*

CenterPoint recommended including language requiring a REP offering service under the rule to provide the TDU contact information for the end-use retail customer, regardless of how the term “customer” is defined for purposes of ERCOT transactions. CenterPoint pointed out that under the standard TDU Tariff for electric delivery service (Section 4.3.7), all REPs, including Option 1 REPs, are required to provide this information to the TDU and keep the information current by providing updates to the TDU. CenterPoint said that the TDU will receive outage calls and other inquiries from customers who take service from REPs operating under this rule, just as the REP does with other customers. CenterPoint said this requires that a TDU has contact information for the customer, and that the rule should specifically address how it affects TDU Tariffs.

REPower commented that it fully supports the use of existing ERCOT market transactions to provide market participants with information necessary to process customer transactions. REPower suggested modifying the language to reflect that existing Texas SET transactions be referenced. Further, REPower suggested that the last sentence clarify that all REPs are required to provide ERCOT customer billing contact information in the format required by ERCOT.

ERCOT commented that it does not take a position on whether the name, service, mailing addresses and ESI ID of each customer taking service under this rule needs to be provided to the TDUs. However, ERCOT stated that for its purposes, it does not need to know the names of

customers taking service under this rule. ERCOT stated further that neither the postcard-notification system for retail switches nor the customer information repository that is being assembled for mass-transition contingencies would be affected by the existence of a prepaid meter or device. ERCOT therefore requested that references to ERCOT be stricken from this section.

*Commission response*

**The commission agrees with CenterPoint that the rule should refer to the standard TDU tariff for electric delivery service and require that customer names be provided to the TDUs. The commission also agrees that the REP should provide customer information to the TDU. The commission agrees with parties that REPs shall follow ERCOT protocols and provide only the information ERCOT requires and has made changes accordingly.**

*§25.498(e)(1)*

REPower stated that it does not believe that a REP should be required to deliver a document of a customer's usage history by mail or hand delivery, if the customer agrees in writing to electronic delivery. REPower also stated that it believes that it should only be required to provide such a summary free of charge once per year.

*Commission response*

**Subsection (e) as proposed is being adopted as subsection (f). The commission does not agree with REPower. A customer should be able to obtain their billing and usage history, anytime, free of charge from the REP, so that they may track their usage and check the**

accuracy of charges. Because REPs providing service under this rule are being exempted from the obligation and expense of producing monthly bills to customers, it is reasonable that they provide customers a payment and usage summary free of charge upon request. The commission agrees that the information can be provided by an electronic means that provides a customer a durable record, such as an email, if the customer agrees.

*§25.498(e)(2)*

REPower suggested that the summary of electric charges in the prepay model should not include the same information required in a bill to customers taking traditional service under a post-payment model. REPower therefore suggested amending this subsection to state that it requires the provision of a purchase and usage history for a time period requested by the customer.

*Commission response*

The commission does not agree with REPower. Because REPs providing service under this rule are being exempted from the obligation and expense of producing monthly bills to customers, it is reasonable that they provide customers a payment and usage summary upon request that includes most items that would be included in a bill for customers taking traditional service under a post-payment model. This information is necessary for customers to track their usage and check the accuracy of charges.

*§25.498(e)(3)*

Reliant recommended a slight modification to this subsection, for the purpose of consistency with §25.479(g), relating to Issuance and Format of Bills, and suggested a clarification that the